



**The Law Society of Hong Kong's Views on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003**

1. This paper discusses the mechanism for the freezing of property proposed in the Bill, in response to the Administration's paper (Paper No. CB(2)454/03-04(06)).
2. The Administration referred to the use of "reasonable grounds to suspect" in section 5(1)(c)(ii) of the Biological Weapons Ordinance (Cap. 491), sections 13(1) and 38(3) of the Aviation Security Ordinance (Cap. 494) and section 101 of the Criminal Procedural Ordinance (Cap. 221) to justify the same test being used in section 6 of the United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO"). But those sections concern situations where an offence has been, is being or is about to be committed, whereas in section 6 of UNATMO, property can be frozen if the Secretary for Security has reasonable grounds to suspect a property is terrorist property, even if the property concerned would not be used to commit an offence.
3. When we compare similar provisions in other Ordinances, it can be seen the mechanism of issuing restraint orders for crime-related property in section 15 of the Organized and Serious Crimes Ordinance (Cap. 455) ("OSCO") and section 10 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) ("DTRPO") can also be adopted in UNATMO. Under these sections, the Court of First Instance may by a restraint order prohibit any person from dealing with any realizable property.
4. The Administration stressed the possibility of transferring property from one jurisdiction to another instantly, and suggested that judicial procedures would alert the terrorists or terrorist associates (Paper No. CB(2)294/03-04(02)). This is to presume that all procedures would necessarily alert the terrorists concerned. If speed is of such paramount importance, there is no reason why similar

mechanisms should not be adopted in OSCO and DTRPO as well. Under the OSCO and the DTRPO, a restraint order may be made on an ex parte application to a judge in chambers. This can prevent third parties from being aware of the judicial procedures.

5. The Administration should also explain the policy intent behind the proposed section 6(10) for an authorized officer to seize terrorist property, given that a power to seize and detain property with warrant is already proposed in Part 4B. Allowing the Executive to freeze terrorist property based on “reasonable grounds” is itself objectionable, and it is even more problematic to allow the Executive to seize alleged terrorist property without Court approval. It is inappropriate for the Executive to exercise such draconian powers without any scrutiny.

Constitutional Affairs Committee

The Law Society of Hong Kong

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