

**Bills Committee on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003**

Purpose

This paper provides information on the law enforcement powers stipulated in the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 (the Bill).

New Part 4A in the Bill – powers of investigation

New sections 12A and 12B – requirement to furnish information or produce material and order to make material available

2. The new sections 12A and 12B in Part 4A in the Bill seek to enable the law enforcement agencies to apply to the Court of First Instance for orders to require relevant persons to furnish information or produce materials. The Court will only issue a relevant order if the following objective tests set out in the new section 12A(4) or 12B(5) are met -

- (a) there are reasonable grounds for suspecting that the relevant offence under investigation has been committed;
- (b) there are reasonable grounds for suspecting that a particular person/persons of a particular description, has/have information, or is/are in possession of material, likely to be relevant to the investigation;
- (c) there are reasonable grounds for believing that it is in the public interest that an order should be made, having regard to the seriousness of the relevant offence under investigation; whether the relevant offence could be effectively investigated if an order is not made; the benefit likely to accrue to the investigation if the information is disclosed or the material is obtained; and the circumstances under which the person/persons may have acquired, or may hold, the information or material.

3. Sections 12A(15) and 12B(9) provide that any person on whom a requirement is imposed under an order may apply for the revocation or variation of the order.

New section 12C – authority for search

4. The new section 12C would allow the law enforcement agencies to apply to the Court of First Instance for orders to search premises for relevant materials, and to seize and retain such materials. Similar to the requirement to furnish information or produce material or make material available, the Court will only issue an order if the following objective tests set out in the new section 12C(3) or (4) are fulfilled -

- (a) there are reasonable grounds for suspecting that the relevant offence under investigation has been committed;
- (b) there are reasonable grounds for believing/suspecting that there is on the premises material which is likely to be relevant to the investigation;
- (c) there are reasonable grounds for believing that it is in the public interest that the material concerned should be produced, having regard to the benefit likely to accrue to the investigation if the material is obtained and the circumstances under which the person in possession of the material holds it; and
- (d) it is not practicable to communicate with any person entitled to produce the material, to grant access to the material or to grant entry to the premises; or entry to the premises will not be granted unless a warrant is produced; or the investigation might be seriously prejudiced unless immediate access to the material or entry to the premises is secured.

New section 12D – disclosure of information obtained under section 12A, 12B or 12C

5. The new section 12D would enable information obtained by the law enforcement agencies under the new section 12A, 12B or 12C to be transmitted to their local and overseas counterparts, and permits such information to be transmitted to the United Nations provided that the Ministry of Foreign Affairs of the People's Republic of China approves.

6. The new Part 4A is substantially based on sections 3, 4, 5, 6 and 7 of the Organized and Serious Crimes Ordinance (Cap. 455).

New Part 4B in the Bill – seizure and detention of property suspected to be terrorist property

7. The new section 12G in Part 4B in the Bill would enable the law enforcement agencies to apply to a magistrate for search warrants to cover the following situations -

- (a) where there is reasonable cause to suspect that there is terrorist property in any premises;
- (b) where there is reasonable cause to suspect that a relevant offence has been committed with respect to any premises; and
- (c) where there is reasonable cause to suspect that a relevant offence is about to be committed with respect to any premises.

8. The new section 12G is intended to cater for a wider application than the new section 12C, allowing applications for search warrants to be made to a magistrate when it is suspected that there is terrorist property in any premises or an offence is about to be committed. It will also enable search warrants to be obtained outside office hours, such that prompt actions can be taken in cases of urgency.

9. The new sections 12H to 12K provide for detention of seized suspected terrorist property.

10. The new Part 4B is modelled on section 52(1E) of the Dangerous Drugs Ordinance (Cap. 134) and Part IVA of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

Judicial oversight

11. The law enforcement powers provided for under the Bill are all modelled on similar powers under existing Ordinances, the exercise of which is subject to prior court authorization. Their operation, which is subject to judicial oversight, is different from that under the original Schedules 2 and 3 to the then United Nations (Anti-Terrorism Measures) Bill 2002 which proposed to empower the law enforcement agencies to request any person to furnish information or produce materials, or to seize suspected terrorist property, in the absence of a court order.

Previous concerns

12. There were concerns that provisions for the necessary law enforcement powers should not be made by way of subsidiary legislation but should form part of the principal ordinance. Such powers are now introduced under the Bill as amendments to the principal ordinance.

Section 21 – proceedings inter partes shall be held in open court unless otherwise ordered by the court

13. Section 21 provides that proceedings inter partes shall be held in open court unless the court orders otherwise in the interests of the security, defence or external relations of Hong Kong, or the administration of justice. Such interests could quite conceivably arise in proceedings under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575). “External relations” is used instead of “international relations” so that Hong Kong’s relations with the People’s Republic of China and Macau are also covered.

Security Bureau
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