

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

Purpose

This paper addresses the issues raised in the submission of 18 November 2003 (CB(2)395/03-04(01)) from the Hong Kong Bar Association to the Bills Committee.

The United Nations (Anti-Terrorism Measures) Ordinance and the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003

2. We would like to reaffirm that preserving Hong Kong citizens' rights and freedoms guaranteed under the Basic Law is a guiding principle in drawing up our legislative proposals. In the process of the enactment of the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575), we had ensured that the provisions therein had maintained a proper balance between protecting personal freedom and human rights and ensuring public safety. Indeed the measures in the Ordinance are consistent with international practices, and comply with the requirements on protection of rights and freedoms under the Basic Law and the International Covenant on Civil and Political Rights (ICCPR). Strong and effective judicial and procedural safeguards in respect of the specification of terrorists, terrorist associates and terrorist property, and mechanisms for the aggrieved to lodge appeals and seek compensation are provided for under the Ordinance.

3. The United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 (the Bill) seeks to provide for further measures to implement Hong Kong's outstanding obligations to combat terrorism under United Nations Security Council Resolution 1373, the Special Recommendations of the Financial Action Task Force on Money Laundering, as well as international conventions relating to terrorism. We are satisfied that the provisions are consistent with the requirements to safeguard human rights and freedoms under the Basic Law and the ICCPR.

Definitions of “terrorist”, “terrorist act” and “terrorist property”, mens rea of offences

4. The Ordinance does not criminalize “innocent and ignorant” conduct. Our response to issues raised in respect of the definitions of “terrorist”, “terrorist act” and “terrorist property”, and *mens rea* of the offences under the Ordinance has been set out in the paper (CB(2)294/03-04(01)) submitted to the Bills Committee in November 2003.

Gazettal of terrorists and terrorist associates

5. As we have explained in the paper (CB(2)454/03-04(01)) submitted to the Bills Committee in November 2003, the Ordinance does not provide that a person is presumed to know of the existence or contents of a notice or an order published in the Gazette.

Specification by Court of First Instance

6. As we have pointed out in the paper (CB(2)454/03-04(01)) submitted to the Bills Committee in November 2003, the role of the Court of First Instance under sections 5 and 13 is entirely consistent with its role within the constitutional framework of Hong Kong.

Compensation

7. The result of our review of the compensation provision under section 18 of the Ordinance has been set out in the paper (CB(2)846/02-03(04)) and the letter (CB(2)1971/02-03(01)) submitted to the Panel on Security in January and May 2003 respectively.

8. The Bills Committee suggested at its meeting on 5 December 2003 that section 18 be amended to provide for a compensation arrangement that was better than the common law position, in view of the Administration’s wide freezing power under section 6. We will consider the suggestion in detail.

New section 10 – prohibition of recruitment for terrorist groups

9. As we have set out in the paper (CB(2)454/03-04(01)) submitted to the Bills Committee in November 2003, “having reasonable grounds to believe” is an established objective mental element appropriate for application in the new section 10.

New Parts 3A and 3B – prohibitions relating to bombings of prescribed objects, ships and fixed platforms

10. Considerations of the necessity of making new legislative provisions for implementing the requirements in the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf are set out in the paper (CB(2)204/03-04(01)) submitted to the Bills Committee in October 2003.

New section 12D – disclosure of information

11. As we have explained in the paper (CB(2)454/03-04(01)) submitted to the Bills Committee in November 2003, the new section 12D is modelled on section 6 of the Organized and Serious Crimes Ordinance (Cap. 455). It should be read subject to the more specific provisions for disclosure of personal data in the Personal Data (Privacy) Ordinance (Cap. 486). There will not be “unrestricted general disclosure” of the information concerned.

New sections 18(2A) and (2B) - compensation

12. Please refer to paragraphs 7 and 8 above.

Schedule – consequential amendments

13. As we have elaborated in the paper (CB(2)454/03-04(01)) submitted to the Bills Committee in November 2003, the new sections 25A(9) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455) are

modelled on the new section 12(6) in the Bill. They are simply directed towards ensuring that information disclosed pursuant to the three Ordinances ends up with the appropriate law enforcement body.

New section 12A – requirement to furnish information or produce material

14. The new section 12A is modelled on section 3 of the Organized and Serious Crimes Ordinance (Cap. 455). It is consistent with the relevant provisions on protection against self-incrimination in the Hong Kong Bill of Rights Ordinance (Cap. 383) and the ICCPR. The exercise of this enforcement power is subject to an order to be made by the Court.

15. The Court will only issue an order under the new section 12A if the objective tests set out in the new section 12A(4) are met. Once the authorized officer makes requirements of a particular person or a person who comes within the description of persons specified in the order, that person will be able to have recourse to the new section 12A(15) which provides for the right for that person to seek revocation or variation of the order. The code of practice to be prepared pursuant to the new section 12A(16) will cover such issues as duration of questioning and presence of a lawyer.

16. Section 2(5) of the Ordinance provides that “nothing in this Ordinance shall require the disclosure of any items subject to legal privilege” or “authorize the search or seizure of any items subject to legal privilege”. Clearly the new section 12A(11) in the Bill, which is part of the Ordinance, is subject to section 2(5). A relevant case is High Court case no. HACL 133/2002 (Pang Yiu Hung Robert v Commissioner of Police), which was decided before section 2(18) (which provides that nothing in Cap. 455 shall require disclosure of any items subject to legal privilege) of the Organized and Serious Crimes Ordinance (Cap. 455) came into force. The Court held that section 25A of Cap. 455 was subject to legal professional privilege even in the absence of a specific protection provision as in sections 3 and 4 etc. Based on that case, the Court is hardly likely to infer that section 12A(11) in the Bill is intended to override the general protection in the interpretative section 2(5) of the Ordinance.