

**United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)**  
**Provisions with human rights implication**

| <b>Section</b>   | <b>Human rights implication</b>   | <b>Administration's views</b>   |
|--|---|---|
| s.2(1) - definitions of "terrorist act", "terrorist associate", terrorist property"                | The Ordinance introduces various measures against "terrorist act", "terrorist associate" and "terrorist property". The precision of these definitions may have implication on the rights guaranteed under various human rights provisions of the Basic Law (e.g. privacy and freedom of association). | The definitions are sufficiently precise as to enable a person to regulate his conduct and satisfies the requirement of "legal certainty" as elaborated by the Court of Final Appeal in <i>Shum Kwok Sher v HKSAR</i> [2002] 2 HKLRD 793. |
| s.10 – prohibition on recruitment, etc. to persons specified in notices under section 4(1) and (2) | [Please refer to comments on the new section 10 in the Bill.]   |   |
| s. 11 – prohibition against false threats of terrorist acts  | The prohibition on the communication of certain information under s.11 has implication on the freedom to impart and receive information under HKBoR Article 16(2)/ICCPR Article 19(2).  | The interference is justified as necessary for the protection of public order.  |
| s. 12 – disclosure of knowledge or suspicion that property is terrorist property                   | To the extent that the information to be disclosed pursuant to section 12 touches on an individual's privacy, the compulsory disclosure requirement has implication on the right to privacy under HKBoR Article 14/ICCPR Article 17.  | The interference with privacy is not arbitrary as it is necessary for the protection of public safety and public order.   |

| <b>Section</b>   | <b>Human rights implication</b>  | <b>Administration's views</b>  |
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| s. 18 - compensation   | [Please refer to comments on the amended section 18 in the Bill.]  |  |
| s. 21 – proceedings inter partes shall be held in open court unless otherwise ordered by the court | The exceptions to public hearing provided in section 21(2) has implication on the right to fair and public hearing under HKBoR Article 10/ICCPR Article 14(1). | The exceptions are consistent with the permissible restrictions set out in HKBoR Article 10/ICCPR Article 14(1). |

**United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003**  
**Provisions with human rights implication**

| Clause  | Human rights implication   | Administration's views   |
|---|--|--|
| Clause 6 – new section 10 – prohibition on recruitment, etc. to bodies of persons specified in notices under s.4(1) or (2) or orders under s.5(2) | The prohibition interferes with the freedom of association under HKBoR Article 18/ICCPR Article 22.  | The interference is justified as necessary for the protection of public safety and public order.   |
| Clause 7 – new section 11H  | The power of the master of a HK ship to deliver a person pursuant to the new section 11H(1) has implication on one's liberty and security of persons under Article 5/ICCPR 9.  | The provision is necessary for the implementation of Article 8 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1999.  |
| Clause 8 – new section 12(6) - disclosure of knowledge or suspicion that property is terrorist property   | To the extent that the information to be disclosed pursuant to section 12 touches on an individual's privacy, the compulsory disclosure requirement has implication on the right to privacy under HKBoR Article 14/ICCPR Article 17.   | The interference with privacy is not arbitrary as it is necessary for the protection of public safety and public order. Further, the provision will be read subject to the more specific provisions on disclosure of personal data under the Personal Data (Privacy) Ordinance (Cap. 486).                       |
| Clause 9 - new Parts 4A and 4B – powers of investigation, seizure and detention of property suspected to be terrorist property                    | The proposed investigation and enforcement powers under these new Parts (including the interrogation power under s.12A, power to compel production of materials under s.12B, power to enter and search under s.12C, power to disclose information under s.12D, power to enter a premises for the purpose of search and | The powers proposed in the new Parts 4A and 4B are necessary for effective investigation and enforcement of measures under the Ordinance. The relatively more extensive powers under the new Parts are justified in view of the special nature of terrorist act, the serious threat it poses to society, and the |

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|   | seizure of terrorist property under s. 12G) have implication on the right to privacy under HKBoR Article 14/ICCPR Article 17.   | exigencies of dealing with it. Prior judicial authorization serves as procedural safeguard for the exercise of the relative extensive powers under these Parts.  |
| Clause 9 - new section 12A – requirement to furnish information or produce material | The power to compel a person to furnish information pursuant to court order under the new section 12A may raise concern of self-incrimination under HKBoR Article 11(2)(g). | With the direct use prohibition in the new section 12A(12), the interrogation power under section 12A is consistent with the protection against self-incrimination under HKBoR Article 11(2)(g)/ICCPR Article 14(3)(g).  |
| Clause 14 – amended section 18 – compensation                                       | Concern has been raised regarding the consistency of the "serious default" requirement with HKBoR Article 5(5).   | Article 5(5) of the HKBoR covers only “physical interference with the liberty or person of the citizen” ( <i>R v Yu Yem-kin</i> (1994) HKPLR 75, at 91). It does not apply generally to all cases of compensation under section 18. Further, Article 5 does not mandate the way in which the compensation claim is to be implemented. The present scheme, which provides statutory compensation in addition to common law remedies, is consistent with Article 5(5). |