

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

**Summary of views from deputations/individual**

	<b>Deputations/Individual</b>	<b>General comments</b>	<b>Administration's responses</b>
1.	The Bar Association of Hong Kong	The present draft of the Bill does not provide a proper balance between effectiveness and the rights and freedom of members of the Hong Kong community. The Bill as drafted provides the potential for serious abuse of individual rights.	<p>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.</p> <p>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 (UNSCR) 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 International Covenant on Civil and Political Rights.</p> <p>A table which explains the legal effect of individual provisions in the Bill and how they are consistent with the requirements on the protection of human rights is separately prepared for Members' reference.</p>
2.	The Hong Kong Christian Institute	(a) Strongly urges the Government to conduct extensive and thorough public consultation on the Bill, and that the consultation period	(a) We attach great importance to comments from the public on any legislative proposals. We welcome comments and suggestions from the

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		<p>should not be less than three months; and</p> <p>(b) Any anti-terrorism measures must be in compliance with United Nations and human rights requirements.</p>	<p>public on the Bill during scrutiny of the Bill in accordance with established legislative process. We have carefully studied and provided responses to submissions made to the Bills Committee.</p> <p>(b) Please refer to our response to item 1.</p>
3.	The Hong Kong Journalists Association	(a) Measures under new Part 4A go beyond what is required by the United Nations to prevent terrorist threats;	<p>(a) UNSCR 1373 and other relevant international conventions set out the broad framework within which States have to provide the details for effective implementation. The new Parts 4A and 4B in the Bill should be seen in this light. They propose to empower the law enforcement agencies to require relevant persons to furnish information or produce materials, to search premises for relevant materials, and to seize and detain such materials. These powers are necessary for effective investigation into offences under the Ordinance, the exercise of which is subject to prior court authorization.</p> <p>Many other common law jurisdictions such as the United Kingdom, the United States, Australia, New Zealand, Canada and Singapore have also provided for similar law enforcement powers.</p>

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		<p>(b) Whilst it is recognised that the Ordinance does protect journalistic material in section 2(7)(b) by making it clear that Part XII of the Interpretation and General Clauses Ordinance applies to search and seizure operations involving journalist material, there remains the concern that new Part 4A may circumvent - through sections 12A and 12B - the provisions contained in the Interpretation and General Clauses Ordinance, insofar as they allow an authorised officer to seek a court order, through an ex parte application, allowing the authorities to interview a journalist about information he or she may have obtained on terrorist activities and to produce any relevant material on such activities;</p> <p>(c) This is of particular concern to journalists given that they may be forced to disclose sources of information or information which may be used to reveal sources, or alternatively may be jailed for up to one year if they refuse to comply with a court order. Such a provision would put tremendous pressure on a journalist, who has an obligation to protect confidential sources of information; and</p> <p>(d) Urges the Bills Committee to consider whether there is a way to protect journalists from such onerous provisions, preferably</p>	<p>(b) Section 2(7)(b) of the Ordinance provides for the avoidance of doubt that “the provisions of this Ordinance shall be subject to the operation of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1)”. The new Part 4A in the Bill, which is part of the Ordinance, is necessarily subject to section 2(7)(b).</p> <p>(c) and (d) Sections 12A and 12B in the new Part 4A in the Bill provide that the Court of First Instance will only issue an order to require a journalist to furnish information or produce materials if the objective tests set out in sections 12A(4) and 12B(5) respectively are met. These safeguards are comparable to those under section 84 of Cap. 1 which stipulates the conditions to be fulfilled for making a court order requiring production of journalistic material.</p> <p>The new sections 12A(15) and 12B(9) provide that any person on whom a requirement is imposed</p>

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		through the granting of an exemption for journalists carrying out legitimate journalistic activities, or alternatively through the imposition of proper safeguards, for example, by tightening up the provisions allowing the authorities to seek information or material from a journalist and providing for an inter partes court hearing and appeal mechanisms.	under an order may apply for the revocation or variation of the order.  With the above, we consider that the new Part 4A in the Bill is already subject to sufficient judicial safeguards.
4.	The Hong Kong Association of Banks	There is a need to protect banks from liability for delays resulting from compliance with sections 7 and 8 of the Ordinance.	We are examining if such a provision is needed.

Clause 2 - Interpretation

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
5.	The Hong Kong Association of Banks	<p>(a) To be consistent with new section 3A(1), the definition of "authorised officer", referred to in new section 2(1), should mean a "relevant" public officer;</p> <p>(b) To avoid circularity, the word "public" referred to in paragraph (b) of the definition of "public body" in new section 2(1) should be deleted; and</p> <p>(c) It should be clarified whether the Chief Executive may or may not specify, for example, a private company or any other organisation not having any of the characteristics of a public body, to be a public body for the purposes of the Ordinance under new section 2(8).</p>	<p>(a) In the new section 3A(1) the reference to "relevant public officer" is merely a drafting device used to refer to the public officers listed in the new section 3A(2). The new section 3A(2) provides that "relevant public officer" means any <u>public officer</u> of the law enforcement agencies. The use of "public officer" in the definition of "authorized officer" is correct.</p> <p>(b) We agree to the suggestion of removing "public" in paragraph (b) of the definition of "public body". We will propose a suitable amendment.</p> <p>(c) We have no intention to specify organizations that are purely private. The policy will be the same as for section 23(11) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and section 28(11) of the Organized and Serious Crimes Ordinance (Cap. 455). The relevant notice will be subsidiary legislation which is subject to scrutiny by the Legislative Council, and this provides an adequate safeguard.</p>

Clause 5 - Freezing of property

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6.	Mr Simon YOUNG of the University of Hong Kong	<p>(a) The scheme proposed for freezing terrorist property should be replaced in its entirety with the more familiar scheme used to restrain crime tainted property. This is because freezing of property is difficult to apply in relation to immovable property and even to some movable property (e.g. chattel in a viable business). Oftentimes, the objective of freezing is met by allowing those persons who are using the property to continue their use, whilst prohibiting them (and others) from disposing or otherwise dealing with the property. This is exactly what a restraint order does, but in a much clearer and more precise manner;</p> <p>(b) The expression that the property "not be made available, directly or indirectly, to any person" except under the authority of a licence granted by the Secretary for Security in new section 6(1) is ambiguous, as it is not clear whether the reference to "any person" includes the person holding the property. If that is the case, it becomes difficult to determine when a person holding onto property has made such property available to himself or herself;</p>	<p>(a) For freezing of terrorist property, including both funds and non-fund property, our view is that speed is of paramount importance. The following factors should be taken into account –</p> <ul style="list-style-type: none"> <li>(i) the effectiveness of modern arrangements which enable non-fund property to be quickly liquidated or physically transferred out of Hong Kong;</li> <li>(ii) that judicial procedures will alert the terrorists or terrorist associates; and</li> <li>(iii) an appeal mechanism is available under section 17 of the Ordinance.</li> </ul> <p>(b) and (c) The wording of the provision follows paragraph 1(d) of UNSCR 1373. In practice, the effect of the provision is that the person holding the property should not make the property available to any other person. Similar provisions are found in the Australian Suppression of the Financing of Terrorism Act 2002, the Canadian Anti-Terrorism Act and the New Zealand Terrorism Suppression Act 2002.</p>

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		<p>(c) To address the problems in (b), the terms of the freeze power should be amended and aligned with the terms of the well-established restraint power in section 10 of the Drug Trafficking (Recovery of Proceeds) Ordinance (DTRPO) and in section 15 of OSCO. These restraint powers make clear that "they prohibit any person from dealing with" any realisable property. The word "dealing" also has a clear definition in both ordinances. With this amendment, new section 6(1) would become as follows -</p> <p style="padding-left: 40px;">"Where the Secretary has reasonable grounds to suspect that any property is terrorist property, the Secretary may, by notice in writing specifying the property, prohibit any person from dealing with the property except under the authority of a licence granted by the Secretary";</p> <p>(d) The expiry period of freezing notice should be shortened from two years to one year for the following reasons -</p> <p style="padding-left: 40px;">(i) The power to freeze power is more expansive than the power to forfeit property under section 13 of the Ordinance. In other words, the Secretary for Security has the power to freeze property that can never be the subject of forfeiture under the</p>	<p>(d) The two-year validity period was shortened from three years based on the suggestion of the majority of the then Bills Committee on the 2002 Bill. It has had regard to the time required for investigation, obtaining relevant information and evidence from other jurisdictions through mutual legal assistance arrangements and institution of legal proceedings for the purpose of forfeiting the funds concerned.</p>

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		<p>Ordinance. This is because whilst the Secretary has the power to freeze any reasonably suspected terrorist property, the Court does not have the parallel power to forfeit terrorist property per se. The Court's power to forfeit is restricted to terrorist property that in whole or in part directly or indirectly represents any proceeds arising from a terrorist act; is intended to be used to finance or otherwise assist the commission of a terrorist act; and was used to finance or otherwise assist the commission of a terrorist act;</p> <p>(ii) In view of the broad power of the Secretary for Security to freeze private property, it is necessary to have a relatively short expiry period to ensure property rights are not being illegitimately impaired;</p> <p>(iii) It is a little odd that the power to freeze property is not co-extensive with the power to forfeit. Under the Canadian anti-terrorism laws, the test for seizing or restraining terrorist property requires being satisfied that there exists "any property in respect of which an order of forfeiture may be made". In applying this test, the court ordering the restraint or seizure must consider the likelihood</p>	



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		<p>of forfeiting the property in question; and</p> <p>(iv) It is also instructive to note that the period of expiry of restraint orders in Canada is only six months, unless forfeiture or other relevant proceedings have commenced;</p> <p>(e) There is no need to provide the Secretary for Security with a warrantless power to seize property under new section 6(10), when a warrant-based search power is already proposed for in new Part 4B. Moreover, there are inadequate safeguards to the exercise of the warrantless power to seize property. Not only is it not reserved for only exigent circumstances, having reasonable grounds to suspect that the property will be removed from the HKSAR is also not made a prerequisite condition. The proposal simply says that the directed officer can exercise the power for the "purpose of preventing any property the subject of the notice being removed from the HKSAR";</p> <p>(f) Whilst the direction to the officer must be for the "purpose of preventing any property the subject of the notice being removed from the HKSAR", this is only a good faith requirement and is not a reason-based requirement, i.e. reasonable grounds to</p>	<p>(e) – (i) The new section 6(10) is intended to cover urgent situations where there is reason to believe that the terrorist property concerned is being physically transported out of Hong Kong. It provides that the Secretary for Security (S for S) may in a freezing notice give a direction that an authorized officer may seize the property concerned. Section 6(10)(a) already provides that the intention is to prevent the terrorist property, which has already been frozen by S for S in the notice based on “reasonable grounds to suspect”, from being removed from Hong Kong.</p>

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		<p>suspect that the property will in fact be removed from Hong Kong;</p> <p>(g) The criminalisation of breaching freezing notices can itself serve a deterrent effect in preventing property from being removed from the jurisdiction. Given the impaired privacy interests and the broad power to freeze, the principle of proportionality requires an added precondition of reasonable grounds to suspect that the property will be removed from the jurisdiction before the warrantless entry and search power can be triggered by the Secretary for Security;</p> <p>(h) The principle of necessity requires another safeguard. Authorised officers must take reasonable steps to exhaust all possible warrant-based search powers to seize the targeted property, before relying on the warrantless power. Such warrant-based powers should also include those provided under new section 12G; and</p> <p>(i) According to internationally recognised constitutional principles, warrantless search and seizure powers are presumptively unconstitutional, unless shown to be strictly necessary and proportional. Warrantless power must therefore be sufficiently narrow and restricted if it is to adhere to constitutional standards.</p>	

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7.	The Law Society of Hong Kong	<p>(a) Given the dire consequences of property being frozen, the test of having "reasonable grounds to suspect" provides an unreasonably low threshold, therefore giving the Secretary for Security powers which are too wide;</p> <p>(b) Disagrees with the explanation provided by the Administration on the use of "reasonable grounds to suspect" in section 5(1)(c)(ii) of the Biological Weapons Ordinance, in sections 13(1) and 38(3) of the Aviation Security Ordinance and in section 101 of the Criminal Procedural Ordinance to justify the same used in section 6 of the Ordinance. This is because section 5(1)(c)(ii) of the Biological Weapons Ordinance, sections 13(1) and 38(3) of the Aviation Security Ordinance and section 101 of the Criminal Procedural Ordinance concern situations where an offence has been, is being or is about to be committed, whereas in section 6 of the Ordinance, 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;</p> <p>(c) Consideration should be given to adopting the mechanism of issuing restraint orders for crime-related property in section 15 of OSCO and section 10 of DTRPO in the Ordinance. Under section 15 of OSCO and section 10 of</p>	<p>(a) – (d) We consider that “reasonable grounds to suspect” is an appropriate test for the power to freeze under section 6 bearing in mind that we are dealing with urgent situations where intelligence from overseas will frequently have to be assessed.</p> <p>“Reasonable suspicion” cannot be supported solely on the basis of personal factors. The test as to whether reasonable grounds for suspicion to justify a freezing action exist is partly subjective, in that S for S must have formed a genuine suspicion that the property concerned is terrorist property, and partly objective, in that there has to be reasonable grounds for forming such a suspicion; such grounds could arise from information received from another, provided that a reasonable person, having regard to all circumstances, would regard them as reasonable grounds for suspicion.</p> <p>Any decision to freeze on that basis is appealable under section 17 and, on appeal, the prosecution will have to satisfy the court that “reasonable grounds to suspect” in fact exist.</p>

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		<p>DTRPO, the Court may by a restraint order prohibit any person from dealing with any realisable property;</p> <p>(d) Disagrees with the Administration's view that judicial procedures would alert the terrorists or terrorist associates in transferring property out of Hong Kong instantly, as 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 mechanism should not be adopted in OSCO and DTRPO as well. Under the OSCO and 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;</p> <p>(e) The Administration should explain the policy intent behind the proposed section 6(10) for an authorised officer to seize terrorist property, given that a power to seize and detain property with warrant is already proposed in new 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</p>	<p>(e) Please refer to our response to paragraphs (e) – (i) of item 6.</p>

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		<p>any scrutiny; and</p> <p>(f) It is also unreasonable to expect the persons concerned to apply for a licence from the Secretary for Security for the supply of funds to provide for legitimate legal and living expenses.</p>	<p>(f) The licence mechanism seeks to strike a balance between humanitarian considerations and the need to prevent abuse. Provision of funds for legitimate expenses needs to be regulated to avoid creating a loophole allowing the holder of funds to make those funds available on spurious grounds. In the event that S for S refuses to issue a licence or the affected persons are not satisfied with the conditions specified in a licence, section 17 provides that an application can be made to the Court of First Instance for the grant or variation of a licence.</p>

Clause 6 - Prohibition of recruitment for terrorist groups

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8.	Justice - the Hong Kong Section of the International Commission of Jurists	The use of "has reasonable grounds to believe" in new section 10 as a basis for conviction is objectionable.	"Having reasonable grounds to believe" is an established objective mental element which attracts criminal liability pursuant to existing criminal laws. The prosecution bears the burden of proving the element beyond reasonable doubt.
9.	Mr Simon YOUNG of the University of Hong Kong	<p>(a) A person is not caught by new section 10(1) if he or she innocently becomes a member of a specified terrorist group and later decides to maintain his/her membership after realising the group is specified. This is because he or she lacks the required mens rea at the time he or she commits the actus reus of "becoming a member". Such a person is also not caught by new section 10(2) because he or she becomes a member after the group is specified and could not be said to be a member "immediately before the date of [the specification's] publication in the Gazette"; and</p> <p>(b) There is no requirement to prove that the body of persons has in fact been specified for the offences under new section 10(1), as the reference to specifications only appears in the clause setting out the mens rea element of knowledge or having reasonable grounds to believe. In accordance with the analogous jurisprudence for the offence of money</p>	<p>(a) and (b) The purpose of the new section 10 is to introduce improvements in the following two areas -</p> <p>(i) improving the language of the provision by making it clear that recruitment of members for or becoming members of terrorist bodies is prohibited; and</p> <p>(ii) providing for the appropriate <i>mens rea</i> such that a recruiter or a member will be criminalized only when he "knows" or "has reasonable grounds to believe" that the organization concerned is a terrorist organization published in the Gazette.</p> <p>Subject to further discussion at the Bills Committee, we are prepared to improve the drafting of the new section 10 to make the intention clear.</p>

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		laundering, it is understood that the specification element is only part of the mens rea and not a separate actus reus element. To rectify this deficiency, it is recommended that new section 10(1) be drafted along the lines of new section 10(2) to make clear that the group in question must in fact be specified. The offence should not be made merely a "thought crime".	
10.	The Bar Association of Hong Kong	Proposed changes to section 10 whereby "reasonable grounds to believe" may become a basis for conviction should not be made.	Please refer to our response to item 8.

Clause 7 (new Parts 3A and 3B - Prohibitions relating to bombing of prescribed objects, ships and fixed platforms)

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11.	Mr Simon YOUNG of the University of Hong Kong	<p>The proposed bombing offences deviate from the treaty provisions in several respects as follows -</p> <p>(a) The different modes of committing the offence in new section 11B(1) should be preceded by the qualifier "without lawful excuse and intentionally" to reflect the intention of Article 2(1) of the International Convention for the Suppression of Terrorist Bombings. This is however not a serious departure, since the common law presumption of mens rea is clearly not rebutted by virtue of the inherent mental elements in the prescribed conduct elements;</p> <p>(b) The reference and qualifier "extensive destruction" in Article 2(1)(b) of the International Convention for the Suppression of Terrorist Bombings should be included in new section 11B(2)(a); and</p> <p>(c) New section 11B(2)(b) does not accurately reflect the intention of Article 2(1)(b) of the International Convention for the Suppression of Terrorist Bombings, which envisages criminal liability where the conduct in fact causes major economic loss, although a risk of such loss did not exist. In this context, the "thin skull" policy reflected in the treaty seems justifiable and should probably be</p>	<p>Our intention is for the offences in the new Part 3A in the Bill to follow substantially the offences proscribed by the Bombings Convention. Subject to further discussion at the Bills Committee, we are prepared to improve the drafting of these provisions to reflect this intention more clearly.</p>



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		<p>maintained. Indeed, it would probably be safe to reproduce exactly what appears in the treaty.</p>	
12.	The Hong Kong Association of Banks	<p>The offence as drafted in new section 11B(2) could only be made out if a person places or detonates an explosive in a prescribed object, has the intention to cause destruction of all or part of the prescribed object and that it could be reasonably concluded that the destruction would be likely to result in major economic loss. Query whether the third ingredient of the offence is necessary, as it should be sufficient if a person places or detonates an explosive in a prescribed object and has the intention to cause destruction of all or part of the prescribed object. The inclusion of a further element of the offence will make it more difficult to make out.</p>	<p>The new section 11B(2) is intended to implement paragraph 1(b) of Article 2 of the Bombings Convention. The provision of the intention to cause destruction to the prescribed object reflects the requirement of Article 2 of the Convention.</p>
13.	Justice - the Hong Kong Section of the International Commission of Jurists	<p>It is not clear why it is necessary to make 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, since all of the prohibited acts would be crimes under the existing law.</p>	<p>We have added new provisions to the Ordinance for complying with the requirements of the Conventions and Protocol on account of the following factors –</p> <ul style="list-style-type: none"> <li>● the objective of the Conventions/Protocol is to prevent and repress terrorist attacks by means of explosives/other lethal devices, or against the safety of maritime navigation/fixed platforms. With an aim to combat terrorism, the Ordinance is a suitable legal vehicle to deal with terrorist activities</li> </ul>

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			<p>proscribed by the Conventions/Protocol;</p> <ul style="list-style-type: none"><li>● new provisions are required to criminalize certain acts proscribed by the Maritime Safety Convention and the Protocol;</li><li>● new provisions are required to give effect to the jurisdictional requirements under the Conventions/Protocol;</li><li>● if we implement the jurisdictional requirements without creating new offences in accordance with the Conventions/Protocol, we may be inappropriately extending the jurisdictional coverage of the general criminal law;</li><li>● the offences provided for under the new Parts 3A and 3B in the Bill closely follow the wording (and accordingly the elements and <i>mens rea</i> involved) of the acts proscribed by the Conventions/Protocol; and</li><li>● it is more transparent and tidier to make provision under one Ordinance for offences created by multilateral conventions. This is the approach that is usually adopted [see Aviation Security Ordinance (Cap. 494), Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468) and Crimes (Torture) Ordinance (Cap. 427)], and there is the added advantage that</li></ul>

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			the extent of extra-territorial jurisdiction can be directly related to the offences.
14.	The Bar Association of Hong Kong	It is not clear why new Parts 3A and 3B are necessary. All of the conduct which is rendered criminal within these two new Parts is already criminal under the existing law.	Please refer to our response to item 13.

Clause 8 - Disclosure of knowledge or suspicion that property is terrorist property)

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15.	The Hong Kong Association of Banks	<p>(a) Notwithstanding the provisions for disclosure of personal data in the Personal Data (Privacy) Ordinance, it should be clearly spelt out in new section 12(6)(a) that the information obtained under or by virtue of disclosure referred to in subsection (1) may be disclosed to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department and the Independent Commission Against Corruption for the purpose of investigation of terrorist property or terrorist offences; and</p> <p>(b) New section 12(7) should be deleted, as to include such would have the effect of allowing general disclosure, thereby negating the intention of new section 12(6), which is that information disclosed may only be disclosed in accordance with that section and not otherwise.</p>	<p>(a) We are considering this suggestion.</p> <p>(b) The new section 12(7) (and likewise the new sections 25A(10) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455)) does not create any other rights to disclose or enlarge the preceding right under section the new 12(6), but is directed towards saving any rights to disclose that may already exist under the common law.</p>
16.	The Law Society of Hong Kong	Disclosure of information under new section 12D has to be authorized by the Chief Executive, and transmitted through and with the approval of the Ministry of Foreign Affairs of the People's Republic of China. Such a requirement is however not found in new section 12(6).	The purpose of the new section 12(6) is to enable the law enforcement agencies to transmit information in relation to terrorist property which they have acquired by virtue of "suspicious transaction" disclosures under section 12(1) to their local and overseas counterparts, for the

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			<p>purpose of promoting cooperation in preventing and suppressing terrorist financing. As handling of suspicious transaction reports involves voluminous work of an operational nature, and the information exchange is conducted as part of the intelligence exchange regime, approval of the Central People's Government for the disclosure to overseas authorities would not be considered necessary.</p> <p>The purpose of the new section 12D is to enable information obtained by the law enforcement agencies by the use of compulsory powers to be similarly transmitted to their local and overseas counterparts <u>and</u> to permit such information to be transmitted to the United Nations provided that the Ministry of Foreign Affairs of the People's Republic of China approves. It should be noted that the Ministry of Foreign Affairs' approval is <u>only</u> required for transmission of information to the United Nations.</p>

Clause 9 (new Parts 4A and 4B – Powers of investigation and seizure and detention of property suspected to be terrorist property)

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17.	Justice - the Hong Kong Section of the International Commission of Jurists	<p>(a) Powers in new Parts 4A and 4B are too wide generally and their drafting encourages abuse. The compulsory disclosure and investigation provisions do not require an existing specification or freezing order in respect of the person said to be a terrorist or terrorist associate or whose property is said to be terrorist property for the investigation of an offence under the Ordinance. For instance, it is an offence under section 8 for anybody to make any funds or financial (or related) services available to another person whom one has reasonable ground to believe is a terrorist. An authorised officer may consider such grounds exist, but the person who has made the funds available, say, for humanitarian purposes, may have other grounds to believe that the recipient is not. The officer then investigates that as a relevant offence under Parts 4A and 4B and compulsory disclosure, etc. follows; and</p> <p>(b) The new Part 4A compulsory disclosure, production and search powers are available on ex parte application to the Court. The provisions make no reference to an affidavit in support nor to the full and frank disclosure of conditions applicable to ex parte applications and orders in civil cases. Without such a requirement, evidence</p>	<p>(a) Please refer to our response to paragraph (a) under item 3.</p> <p>The mental element of “reasonable grounds to believe” in sections 7, 8 and 9, and the new section 10 requires the prosecution to prove both an objective and a subjective element -</p> <p>(i) objective element – there were grounds that a common sense, right-thinking member of the community would consider as sufficient to lead a person to the belief; and</p> <p>(ii) subjective element – those grounds were known to the accused.</p> <p>If the Court accepts that those grounds were unknown to the accused, the accused commits no offence as the prosecution fails to prove <i>mens rea</i> at (ii) above.</p> <p>(b) The Court will only issue an order under the new Part 4A if the objective tests set out in the new sections 12A(4) or 12B(5) are met.</p>

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		pointing away from the commission of an offence, or against the need for the order, may not be put before the Court.	
18.	The Hong Kong Christian Institute	Expresses concern that law enforcement authorities may make use of the provisions in new Parts 4A and 4B to infringe on the rights of organisations and individuals, such as by allowing interception of any form of communication and expanding the powers of arrest and detention of the law enforcement agencies, leak information on all bank transactions and target non-government organisations as terrorist financing offenders.	Please refer to our response to paragraph (a) under item 3. The provisions do <u>not</u> allow interception of any form of communication, or expand the powers of arrest and detention of the law enforcement agencies. The concerns that the provision will cause leakage of information on all bank transactions and target non-government organizations as terrorist financing offenders are unfounded.
19.	Mr Simon YOUNG of the University of Hong Kong	<p>(a) The attempt to support police powers by reference to Part IVA of the Drug Trafficking (Recovery of Proceeds) Ordinance is misguided for two reasons. First, Part IVA of DTRPO is only concerned with the import and export of proceeds of drug trafficking. In practical terms, Part IVA aims at drug proceeds that travellers attempt to take across the border. Secondly, Part IVA powers can only be exercised in relation to money not less than HK\$125,000. It is important to note that there is no equivalent Part in OSCO in relation to the proceeds of all serious and organized crimes; and</p> <p>(b) By contrast, new Part 4B proposes to give the police entry and search powers beyond the</p>	<p>(a) Part IVA of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) should be read together with the seizure provisions under the Dangerous Drugs Ordinance (Cap. 134). The mechanism for dealing with proceeds from drug trafficking provides useful reference in dealing with terrorist property.</p> <p>(b) The exercise of the enforcement powers under the new Part 4B is subject to prior</p>

	<b>Deputations/Individual</b>	<b>General comments</b>	<b>Administration's responses</b>
		context of State borders and in relation to property of all forms. Given the breadth of this power, it is necessary for there to be prior judicial authorisation.	judicial authorization.



Clause 9 (new Part 4A - Powers of investigation)

New Section 12A - Requirement to furnish information or produce material

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
20.	The Hong Kong Journalists Association	The threat of being summoned by authorised officers to disclose confidential sources of information will discourage journalists from reporting on terrorist's activities. The lack of this kind of information may not be in the interest of the public. Indeed, a journalist is put in an even more difficult position by the provision in new section 12A(11) that a person is not excused from furnishing information or producing material "on the ground that to do so would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise".	Please refer to our response to paragraphs (c) and (d) under item 3.
21.	The Hong Kong Association of Banks	<p>(a) It should be clearly spelt out in new sections 12A(3)(c)(i) and (ii) and 12A(5) and (6) that authorised officers should follow an objective approach in requiring persons to answer questions or produce material; and</p> <p>(b) New section 12A(11) should be amended to provide that the furnishing of information would not render the discloser liable to damages.</p>	<p>(a) The use of the word “reasonably” in the new sections 12A(3)(c)(i) and (ii), and 12A(5) and (6) means that the authorized officer is obliged to follow an objective approach in deciding what action to take pursuant to the order issued by the Court.</p> <p>(b) There is an important distinction between disclosure pursuant to section 12 and the furnishing of information etc. pursuant to the new section 12A or 12B. Section 12 is directed towards facilitating disclosure of knowledge or suspicion in relation to terrorist property. And so sections 12(2) and 12(3) provide that in certain circumstances a</p>

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
			<p>disclosure cannot constitute an offence and cannot amount to a breach of certain restrictions or render the discloser liable to damages. The new sections 12A and 12B, on the other hand, require a person to comply with court orders in relation to the furnishing of information. The new sections 12A(11) and 12B(13) are accordingly only directed towards ensuring that such persons cannot refuse to comply with these court orders on the basis of obligations as to secrecy or other restrictions as to disclosure of information (whether conferred by statute or otherwise).</p>
22.	Justice - the Hong Kong Section of the International Commission of Jurists	The potential for abuse under new section 12A(3)(c)(ii) and (6) is obvious, as such provisions compel the production of material which may not be at all relevant to the investigation of terrorism, but which only appear to the officer to "relate to" that investigation.	Our intention is that the material should be relevant to the investigation. Subject to further discussion at the Bills Committee, we are prepared to improve the drafting.
23.	The Bar Association of Hong Kong	New section 12A empowers the Executive to apply to the Court on an ex parte basis for an order which permits an authorised officer to require a person to answer questions or furnish information in relation to any matter that reasonably appears to the authorised officer to be relevant to his or her investigation under the Ordinance. There is little in the way of protection afforded to the person who is to be the subject of the order. There is no provision for permitting the person named to seek	The exercise of the enforcement power under the new section 12A is subject to an order to be made by the Court. The Court will only issue an order 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

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		<p>to set aside the order. There are a number of concerns in relation to new section 12A and they include -</p> <p>(a) If the proposed section provides that a court order extends not only to a person who is specifically identified in the application, but also to "persons of a particular description". This seems unnecessarily wide and will produce a high degree of vagueness. Members of the class of persons who come within the category of a person "of a particular description" do not have the opportunity to challenge the order either on its merits or on the basis that they do not fall within a particular description. Such an order could create a very wide class of persons who would be liable to compulsory interrogation at a time and place of the choosing of the Executive. There is no time limit on the order and in theory it could last years. There is no limit on the duration of the interrogation. There is no right to have a lawyer present;</p> <p>(b) New section 12A(11) could be construed as abrogating legal professional privilege. Whilst section 2(5) of the Ordinance purports to preserve legal professional privilege, the plain words of new section 12A(11) are entirely inconsistent with section 2(5) because it is in the very nature of legal</p>	<p>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.</p> <p>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).</p> <p>The code of practice to be prepared pursuant to the new section 12A(16) is directed towards ensuring, in a practical sense, the efficient and fair application of the new section 12A. An officer breaching the code will be subject to disciplinary action.</p>

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		<p>professional privilege that a lawyer is "excused from furnishing information or producing any material required under this section on the ground that to do so would breach an obligation as to secrecy". If this is correct, it is both wrong in principle and violates the Basic Law. On that premise, a person who seeks legal advice as to his or her activities cannot be confident that he or she will obtain confidential advice because this provision means that his or her lawyer could be required to answer questions but, by reason of new section 12A(11) could not rely on confidentiality as a basis for refusing to disclose that which would normally be subject to legal professional privilege. Whilst it is to be noticed that new section 12A(9) refers to section 2(5), there is no such reference in new section 12A(11);</p> <p>(c) New section 12A(12) offers very little, if any, protection at all. This clause provides that "a statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings". Whilst his answers may not be available as evidence against him, the information that he provides may provide the interrogator with information from which he can build a case against the person being interrogated. Further, there is an exception to the provision in new section 12A(12)(b) in</p>	

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		<p>that the material may be used "for the purpose of impeaching his credibility in proceedings in respect of any offence where in giving evidence he makes a statement inconsistent with [the statement]". This will have the practical effect of making it very difficult for a person to give evidence without revealing the existence of the statement to the jury if he gives a version which is not consistent with what he told the investigators. This will have a real and practical effect on the right of an accused to testify or not to testify;</p> <p>(d) There is little in the way of practical means of ensuring a judge who hears an application under new section 12A will have a proper and truthful factual basis for deciding whether to grant a member of the Executive this extraordinary power of compulsory interrogation. Whilst the officer who gives facts to a Court in support of an application under new section 12A would be subject to the ordinary laws of perjury, that provides little scope for checking whether what the officer says is true or accurate. The affidavit will be confidential and will never see the light of day. The material supplied by the officer might be selective. It is wrong to assume that such officers always tell the absolute and full truth or represent material facts in a fair and proper context.</p>	

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		<p>The Court is not itself equipped to test the assertions of the officer except when what is asserted is inherently unlikely. The officer might sincerely believe in the truth what he or she says. He or she might be genuinely mistaken. In short, the Court has no practical way of checking whether the assertions of the officers contain are lies, distortions, spins or simple honest mistakes; and</p> <p>(e) The possible introduction of a code of conduct is not of much comfort. Any breach of such a code would not have any real effect on any individual.</p>	

Clause 9 (new Part 4A - Powers of investigation)  
New Section 12B - Order to make material available

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
24.	The Hong Kong Association of Banks	New section 12B(13) should be amended to provide that the furnishing of information would not render the discloser liable to damages.	Please refer to our response to paragraph (b) under item 21.

Clause 9 (new Part 4A - Powers of investigation)

New Section 12D - Disclosure of information obtained under section 12A, 12B or 12C

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
25.	The Hong Kong Association of Banks	<p>(a) Notwithstanding the provisions for disclosure of personal data in the Personal Data (Privacy) Ordinance, it should be clearly spelt out in new section 12D(2)(a) that the information obtained under or by virtue of section 12A, 12B or 12C may be disclosed to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department and the Independent Commission Against Corruption for the purpose of investigation of terrorist property or terrorist offences;</p> <p>(b) Notwithstanding the provisions for disclosure of personal data in the Personal Data (Privacy) Ordinance, it should be clearly spelt out in new section 12D(2)(b) as to the purpose of disclosing the information obtained under section 12A, 12B or 12C); and</p> <p>(c) New section 12D(3) should be deleted, as to include such would have the effect of allowing general disclosure, thereby negating the intention of new section 12D(2), which is that information disclosed may only be disclosed in accordance with that section and not otherwise.</p>	<p>(a) We are considering this suggestion.</p> <p>(b) The new section 12D(2)(b) has already stipulated that the information to be disclosed should be likely to assist any overseas corresponding person or body to discharge its functions. Subject to further discussion at the Bills Committee, we are prepared to improve the drafting.</p> <p>(c) Please refer to our response to paragraph (b) under item 15.</p>



	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
26.	Justice - the Hong Kong Section of the International Commission of Jurists	<p>(a) The same restrictions on the passing on of information obtained under the disclosure order as applies in the case of new section 12(6) should apply. There cannot be unrestricted general disclosure of such information;</p> <p>(b) The potential for abuse under new section 12D(2) and (5) is particularly obvious and plainly offends against the Basic Law principle of "One country, Two systems". Any information and material obtained under compulsion from, say, a fiduciary in relation to any person being investigated under the Ordinance, including persons not the subject of a specification or freezing order and including information not relevant to a terrorist offence, may be passed by any authorised officer to any law enforcement person or body identified as such by the Secretary for Justice, anywhere in the world, for whatever purpose, if the Secretary for Justice thinks that information will assist those foreign authorities to discharge their functions; and</p> <p>(c) The drafting of new section 12D(2)(a) does not provide for the use of information obtained to make a further application or its disclosure in order that it may be shown not to provide reasonable grounds for belief or suspicion, even on an appeal against that</p>	<p>(a) – (c)</p> <p>Our intention is that the disclosure provisions in the Bill will enable the law enforcement agencies to share among themselves information obtained through enforcement actions for effective prevention and investigation of terrorism financing offences. In any event, the provisions 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.</p> <p>We are prepared to improve the drafting to reflect more clearly our intention.</p>

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		order or on judicial review. The list of permitted recipients must include the Court and the person(s) the subject of that order or application.	
27.	The Bar Association of Hong Kong	New section 12D is objectionable because it permits, in effect, the unrestricted passing of information which has been obtained under compulsion. Whilst it is accepted that it is desirable that law enforcement agencies co-operate on an international basis, there should be proper control on the passing of information thus required.	Please refer to our response to item 26.

Clause 9 (new Part 4B - Seizure and detention of property suspected to be terrorist property)  
New Section 12G - Issue of warrant

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
28.	Mr Simon YOUNG of the University of Hong Kong	<p>(a) Whilst the Administration believes that a magistrate should be given the authority of issuing search warrants for the purpose of seizing terrorist property under new section 12G(1), it is questionable why such a role should not be given to a superior court. The superior courts have been accorded such a role in the restraint and charging of proceeds of crime. The law relating to anti-terrorism is complex and often involves State interests. The decision to authorise police powers in relation to such matters involves a level of inquiry of difficult legal and factual matters that should only be given to a superior court;</p> <p>(b) The wording of new section 12G(1) is convoluted and unclear. The expression "or with respect to which a relevant offence has been committed or is about to be committed" does not seem to make sense within the context of the subsection. If the intention of this subsection is to contemplate the issuance of warrant under the following situations -</p> <p>(i) Where there are reasonable grounds to suspect that terrorist property will be found in the premises to be searched; or</p> <p>(ii) Where there are reasonable grounds to</p>	<p>(a) The new Part 4B in the Bill is directed towards ensuring that terrorist property can be detained pending further action in relation to it. Given that property may be transferred out of the territory quickly, speed is of the essence if such property has to be seized. Indeed, under Part IVA of Cap. 405 the drug money can be seized by an authorized officer without warrant. We consider it acceptable for the warrant to be issued by a magistrate under the new section 12G(1) in the Bill.</p> <p>(b) The new section 12G(1) is to enable search warrants to be issued to cover the following situations -</p> <p>(i) where there is reasonable cause to suspect that there is terrorist property in any premises;</p> <p>(ii) where there is reasonable cause to suspect that a relevant offence has been committed with respect to any premises; and</p> <p>(iii) where there is reasonable cause to</p>

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		<p>suspect that a relevant offence has been committed or is about to be committed; and evidence of that relevant offence will be found in the premises to be searched.</p> <p>then it should be re-drafted along such lines;</p> <p>(c) New section 12G(2) proposes to give authorised police officers a very broad legal authorisation to seize property. On its face, it is a warrantless seizure power that can be exercised at any time whenever an authorised officer has reason to suspect that the thing is terrorist property. With the wide definition of terrorist property, it would be dangerous to give officers this power without any judicial authorisation. To rectify such, it is recommended that the umbrella clause in new section 12G(3) be used to also qualify the proposed power in new section 12G(2); and</p> <p>(d) The power to search any person found in the targeted premises should not be allowed on the tenuous basis that suspected terrorist property is seized in those premises under new section 12G(3)(a). This remote precondition could trigger an arbitrary, yet lawful, search of persons en masse found in such premises with any belief that such persons would have on their persons</p>	<p>suspect that a relevant offence is about to be committed with respect to any premises.</p> <p>Subject to further discussion at the Bills Committee, we are prepared to improve the drafting to reflect clearly our intention.</p> <p>(c) The new section 12G(2) is <u>not</u> intended to provide for a warrantless seizure power. Its purpose is simply to put it beyond doubt that the law enforcement agencies when exercising the search power authorized under the new section 12G(1), upon uncovering relevant materials required to be produced under the new section 12A, 12B or 12C, are empowered to seize, remove and detain those materials if they are suspected to be terrorist property. Subject to further discussion at the Bills Committee, we are prepared to improve the drafting to reflect clearly our intention.</p> <p>(d) The new section 12G(3)(a) provides that the law enforcement agencies may stop and search any person found on any premises if in relation to the premises <u>any suspected terrorist property has been seized pursuant to the new section 12G(1)</u>. The provision is similar to section 52(1)(f)(ii) of the Dangerous Drugs Ordinance (Cap. 134). Comparable provisions can be found in</p>

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		evidence of an offence or terrorist property.	section 5 of the Biological Weapons Ordinance (Cap. 491), section 13 of the Crimes Ordinance (Cap. 200) and section 40 of the Firearms and Ammunition Ordinance (Cap. 238).

Clause 9 (new Part 4B - Seizure and detention of property suspected to be terrorist property)  
New Section 12I - Period for which seized property may be detained

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
29.	Mr Simon YOUNG of the University of Hong Kong	<p>(a) It is not clear from new section 12I whether affected persons will be allowed to access seized property for the purposes of paying reasonable living and legal expenses pending forfeiture. Providing such access has been Hong Kong's policy in relation to frozen terrorist property and in relation to restrained or charged proceeds of crime. To be consistent, such right of access should also be recognised here; and</p> <p>(b) It is unclear why only authorised officers may make application to the Court of First Instance to release the seized property on the grounds that the detention is no longer justified under new section 12I(4)(b). The same should be open to affected persons to show that the authorities, whether in Hong Kong or abroad, have not been diligently pursuing an investigation. If that is the case, it cannot be said that detention is justified according to new section 12I(2)(b).</p>	<p>(a) In practical terms, if property is detained pursuant to the new Part 4B, steps will be taken to have the property frozen pursuant to section 6. Section 15 already provides that access to frozen property can be granted by a licence.</p> <p>(b) The basis on which an authorized officer may make an application pursuant to the new section 12I(4)(b) in the Bill has to cover a situation where it is decided not to take further steps to freeze the property or institute proceedings. The grounds on which authorized officers may make applications to the Court to release the seized property are therefore necessarily wider than the grounds on which an affected person may challenge the continued detention of seized property.</p>

Clause 14 - Compensation

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
30.	Justice - the Hong Kong Section of the International Commission of Jurists	Compensation should be payable without the necessity of proving serious default on the part of the person concerned with the seizure or detention of the property concerned.	<p>The existing compensation arrangement under the Ordinance is proportionate and reasonable, in that it is commensurate with the position at common law and is consistent with established compensation criteria adopted in other existing ordinances.</p> <p>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 are considering the suggestion in detail.</p>
31.	Mr Simon YOUNG of the University of Hong Kong	<p>(a) Reference to the availability of common law remedies is not an answer to the high threshold of "serious default" requirement for obtaining compensation. This is because the common law remedies themselves are very limited given the historical immunity enjoyed by the Government from civil suit;</p> <p>(b) It is useful to compare this compensation scheme with the one in Canada which has a lower threshold. Under sections 462.32(6) and 462.33(7) of the Canadian Criminal Code, the Attorney General of the province must "give such undertakings as the judge considers appropriate with respect to the</p>	<p>(a), (c) – (e) Please refer to our response to item 30.</p> <p>(b) Canada in fact does not provide for compensation at all in its terrorist financing legislation.</p>

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		<p>payment of damages or costs, or both" in relation to the issuance and execution of a warrant or a restraint order in respect of proceeds of crime. Whilst few cases have considered the meaning of such undertaking, it is generally accepted by practitioners that the undertaking removes the Crown's immunity from civil suit and acts as a form of indemnity for damages and cost;</p> <p>(c) Given the potential damage resulting from the improper or unlawful use of the specification system, the Government has a correlative duty to provide for effective compensation, which logically should be more expansive than common law remedies;</p> <p>(d) This is consistent with the constitutional right in Article 5.5 of the Hong Kong Bills of Right stipulating that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". Whilst a specification does not necessarily result in a person's arrest or detention, where it does, the "serious default" requirement is inconsistent with Article 5.5 of the Hong Kong Bills of Right; and</p> <p>(e) The Administration cites English legislation to support the "serious default" precondition. However, this restriction was included in the English law before the coming into force of</p>	



	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		<p>the Human Rights Act 1998 (UK). This restriction, which results in parsimonious governmental compensation, is not without its critics. In 1991, the Irish Law Reform Commission criticised this high threshold for compensation in the context of confiscation of proceeds of crime. It ultimately refused to follow English law and recommended that "the court should have power to order the payment of compensation to any [aggrieved] person where it is satisfied that that it is just and reasonable to do so'. Presently, under the Irish Proceeds of Crime Act 1996, compensation is available for improperly seized property on a discretionary basis, as the court "considers just in the circumstances in respect of any loss incurred by the person by reason of the order concerned". It is recommended that the test for compensation in section 18 of the Ordinance (and consequently in the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance) be made more discretionary along the lines of the Irish model.</p>	
32.	The Bar Association of Hong Kong	The amendments to section 18 are objectionable. It should not be necessary for a person making a claim for compensation under the Ordinance to prove serious default on the part of the person concerned with seizure or detention of the property concerned.	Please refer to our response to item 30.

Clause 19 (new Schedule 2 – form of notice under new section 12A)

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
33.	The Hong Kong Association of Banks	It should be clearly spelt out in the paragraphs 4 and 5 of new Schedule 2 that authorised officers should follow an objective approach in requiring persons to answer questions or produce material.	Please refer to our response to paragraph (a) under item 21.

Clause 20 – Consequential amendments

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
34.	The Hong Kong Association of Banks	Section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance should be amended along the lines suggested for new sections 12(6)(a) and 12(7).	Please refer to our response to item 15.

Clause 20 – (Schedule – Consequential amendments)

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration’s responses</b>
35.	Justice – the Hong Kong Section of the International Commission of Jurists	These are not truly consequential amendments, as they enable information disclosed under the guise of one Ordinance to be freely available for use under another Ordinance. This is conducive to abuse of power and should not be permitted.	<p>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 modeled on the new section 12(6) in the Bill. All three new provisions are intended to permit information (in relation to terrorist property, the proceeds of indictable offences or drug trafficking) which has been disclosed to an authorized officer to be transmitted by that authorized officer –</p> <p>(i) within Hong Kong – to the law enforcement body which would be appropriate to deal with the information; and</p> <p>(ii) outside Hong Kong – to the particular authority which deals with anti-terrorism, drug trafficking or serious crimes.</p> <p>As such the provisions are simply directed towards ensuring that information disclosed pursuant to the three Ordinances ends up with the appropriate law enforcement body.</p>
36.	The Bar Association of Hong Kong	Many of the amendments which are described in the Bill as consequential amendments are not truly such. They enable information disclosed under the guise of one ordinance to be freely available for the use under another ordinance. This leaves	Please refer to our response to item 35.

	<b>Deputations/Individual</b>	<b>Major views/concerns</b>	<b>Administration's responses</b>
		the real possibility for abuse in the passing of what could well be private information.	

Security Bureau  
February 2004