

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

Purpose

This paper addresses the issues raised at the Bills Committee meetings on 6 and 11 May 2004 respectively.

New section 6 – freezing of property

2. The Bills Committee has requested more information on how “making available” in the new section 6 should be construed as far as non-fund terrorist property is concerned, whether a person living in a residential flat “frozen” under that section would be considered as “making available” the flat to himself, and whether the mortgage of a “frozen” property would in effect be also frozen.

3. When a person is holding some non-fund property (e.g. a residential flat), in the context, it would seem that he would not be considered as making the property concerned available to himself. In this connection, we have further examined the requirement to freeze funds and other assets of terrorists/terrorist associates under paragraph 1(c) of United Nations Security Council Resolution (UNSCR) 1373 and Special Recommendation III of the Financial Action Task Force on Money Laundering (FATF). Our view is that the intention underlying the requirement should be to prevent funds and other assets from being provided to terrorists/terrorist associates, and to prohibit terrorists/terrorist associates from mobilizing funds and other assets. Therefore the example in paragraph 2 above should not constitute the prohibited act contemplated by UNSCR 1373 and FATF. Subject to further discussion at the Bills Committee, we are prepared to revise the new section 6 to reflect the above intention more clearly.

4. A mortgaged property can be frozen under the new section 6. However, a freezing notice does not affect a mortgagor’s liability to the financial institution to pay the mortgage instalments, and he would continue to be responsible for the payments.

5. The Bills Committee would also like to know if the legal effect of a freezing notice under the new section 6 is the same as that of a restraint order under the Organized and Serious Crimes Ordinance (Cap. 455.) A restraint order under Cap. 455 prohibits any person from dealing with any realisable property held or controlled by the defendant, while a freezing notice under the new section 6 directs a person not to make available suspected terrorist property specified in the notice. Under section 15(11) of Cap. 455, where any property specified in a restraint order is immovable property the order shall, for the purposes of the Land Registration Ordinance (Cap. 128) be deemed to be an instrument affecting land and registrable as such in the Land Registry. The new section 6(9) in the Bill contains similar provisions. As such, the legal effect of a freezing notice and that of a restraint order is essentially the same.

New section 11D – Part 3B not to apply to certain ships

6. The Bills Committee has requested more information on whether unlawful acts (similar to those under the new section 11E) committed against warships and ships excluded by the new section 11D are criminalized by any existing legislation. Section 23B of the Crimes Ordinance (Cap. 200) provides for the application of criminal law to Hong Kong ships, and would cover the ships under section 11D(b) and (c). Hong Kong does not own or operate any warships. Crimes committed on board a warship of an overseas country will be subject to the jurisdiction of that country.

New sections 12A(13) and 20(2)(b)(ii)

7. The Bills Committee has requested more details on the rationale for providing for the new section 12A(13), the parties who would be likely to obtain a copy of a court order made under that section, and the conditions likely to be prescribed in the rules of court in accordance with the new section 20(2)(b)(ii).

8. The new section 12A(13) is based on section 3(15) of the Organized and Serious Crimes Ordinance (Cap. 455), providing that no person, except the Secretary for Justice (S for J) or a person authorized by S for J, is entitled to obtain a copy of an order made under section 12A(2). It serves to protect the confidentiality of the information set out in the court order, made on an ex parte application, so as not to prejudice the

investigation in progress, and to protect the safety of the persons identified in the court order. Section 3(15) of Cap. 455 has so far not been used. The conditions to be prescribed in the rules of court would take into account the intention to protect confidentiality of information and safety of persons as mentioned above.

Section 18 - compensation

9. Some Members have suggested we consider further amending section 18 to provide for an arrangement under which compensation would be payable to an aggrieved person even if there is no default on the part of the Government.

10. Taking into consideration concerns previously raised, we have proposed to amend section 18 by clearly preserving the common law rights to compensation, and lowering the threshold from “serious default” to “default”. We have also noted that the anti-terrorism laws in other major common law jurisdictions do not provide for compensation for “incorrect” Government specification or freezing. We are therefore of the view that section 18 as proposed to be amended is proportionate and reasonable, and strikes a balance between our obligation to combat terrorist financing and the need to compensate the aggrieved.

Disclosure of knowledge or suspicion under Drug Trafficking (Recovery of Proceeds) Ordinance, Organized and Serious Crimes Ordinance and United Nations (Anti-Terrorism Measures) Ordinance

11. The Bills Committee has requested more information on whether our law enforcement agencies have put in place any system to differentiate between information received pursuant to the disclosure provisions in the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), Organized and Serious Crimes Ordinance (Cap. 455) and United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) respectively.

12. Criminal activities are interconnected. For example, it is not unusual for drug trafficking offences to also involve other illegal smuggling activities at the same time. Therefore, it may not be practicable for the person making disclosure to unambiguously categorize the information disclosed as relating to a particular form of criminality in

each and every case. Our law enforcement agencies will assess the information received and ensure that where the information is transmitted overseas, that transmission will be to the authorities responsible for dealing with the particular criminal conduct to which the original disclosed information relates.

Penalties

13. The Bills Committee would like to know how the penalties set out in clause 11 of the Bill compare with those prescribed for similar existing criminal offences. We have compiled the relevant information in the **Annex** for Members' reference.

Security Bureau
May 2004

**Comparison of penalties set out in clause 11 of
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003
and those for existing similar criminal offences**

United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 Offences	Comparable Offences
<p>Section 14(7A) (contravention of section 11B(1) or (2)) penalty : life imprisonment</p>	<ul style="list-style-type: none">- Causing explosion likely to endanger life or property (section 53 of Crimes Ordinance (Cap. 200)) penalty : life imprisonment- Attempt to cause explosion or making or keeping explosive with intent to endanger life or property (section 54 of Cap. 200) penalty : 20 years' imprisonment- Destroying or damaging property (section 60 of Cap. 200) penalty : 10 years' imprisonment to life imprisonment- Destroying and damaging building with intent to murder (section 11 of Offences Against the Person Ordinance (Cap. 212)) penalty : life imprisonment- Causing bodily injury by gunpowder, etc. (section 28 of Cap. 212) penalty : life imprisonment

<p>United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 Offences</p>	<p>Comparable Offences</p>
	<ul style="list-style-type: none"> - Causing gunpowder to explode etc. with intent to do grievous bodily harm (section 29 of Cap. 212) penalty : life imprisonment - Placing gunpowder near building etc. with intent to do bodily injury (section 30 of Cap. 212) penalty : 14 years' imprisonment
<p>Section 14(7B) (contravention of section 11E (1), (2)(b) or (3) or section 11F(1),(2)(b) or (3)) penalty : 14 years' imprisonment (upon indictment) 2 years' imprisonment and fine at level 6 (upon summary conviction)</p>	<ul style="list-style-type: none"> - Robbery (section 10 of Theft Ordinance (Cap. 210)) penalty : life imprisonment - Piracy with violence (section 19 of Cap. 200) penalty : life imprisonment - Piratical acts (section 20 of Cap. 200) penalty : life imprisonment - Destroying and damaging property (section 60 of Cap. 200) penalty : 10 years' imprisonment to life imprisonment - Murder (common law and section 2 of Cap. 212) penalty : life imprisonment - Manslaughter (common law and section 7 of

<p>United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 Offences</p>	<p>Comparable Offences</p>
	<p>Cap. 212) penalty : life imprisonment</p> <ul style="list-style-type: none"> - causing injuries to a person (section 17 or 19 of Cap. 212) penalty : life imprisonment or 3 years' imprisonment - criminal intimidation (section 24 of Cap. 200) penalty : 5 years' imprisonment (upon indictment) 2 years imprisonment and fine of \$2,000 (upon summary conviction)
<p>Section 14(7C) (contravention of section 11E(2)(a) or 11F(2)(a) penalty : life imprisonment</p>	<ul style="list-style-type: none"> - Murder (common law and section 2 of Cap. 212) penalty : life imprisonment - Manslaughter (common law and section 7 of Cap. 212) penalty : life imprisonment
<p>Section 14(7D) (contravention of section 11H(2), (3) or (4) penalty : fine at level 2 (\$5,000)</p>	<p style="text-align: center;">-</p>
<p>Section 14(7E) (non-compliance of section 12A) penalty : 1 year's imprisonment and fine at level 6 (\$100,000)</p>	<p>Section 3(13) of Organized and Serious Crimes Ordinance (Cap. 455) penalty : 1 year's imprisonment and fine at level 6 (\$100,000)</p>

<p>United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 Offences</p>	<p>Comparable Offences</p>
<p>Section 14(7F) (false/misleading statement under section 12A) penalty : 3 years' imprisonment and fine of \$500,000 (upon indictment) 1 year's imprisonment and fine at level 6 (\$100,000) (upon summary conviction)</p>	<p>Section 3(14) of Cap. 455 penalty : 3 years' imprisonment and fine of \$500,000 (upon indictment) 1 year's imprisonment and fine at level 6 (\$100,000) (upon summary conviction)</p>
<p>Section 14(7G) (non-compliance of section 12B(2)) penalty : 1 year's imprisonment and fine at level 6 (\$100,000)</p>	<p>Section 4(13) of Cap. 455 penalty : 1 year's imprisonment and fine at level 6 (\$100,000)</p>
<p>Section 14(7H) Obstructing an authorized officer in execution of a warrant under section 12C penalty : 2 years' imprisonment and fine of \$250,000 (upon indictment) 6 months' imprisonment and fine at level 5 (\$50,000) (upon summary conviction)</p>	<p>Section 5(6) of Cap. 455 penalty : 2 years' imprisonment and fine of \$250,000 (upon indictment) 1 year's imprisonment and fine at level 5 (\$50,000) (upon summary conviction)</p> <p>Section 36 of Cap. 212 penalty : 2 years' imprisonment</p>
<p>Section 14(7I) (contravention of section 12E(1)) penalty : 7 years' imprisonment and fine (upon indictment) 3 years' imprisonment and fine of \$500,000 (upon summary conviction)</p>	<p>- Section 7(3) of Cap. 455 penalty : 7 years' imprisonment and fine (upon indictment) 3 years' imprisonment and fine of \$500,000 (upon summary conviction)</p>

United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 Offences	Comparable Offences
	- Pervert the course of public justice (common law) penalty : 7 years' imprisonment and fine
Section 14(7J) (obstruction of any person in exercise of his power under section 12G(1)) penalty : 6 months' imprisonment and fine at level 6 (\$100,000)	Section 23 of Summary Offences Ordinance (Cap. 228) penalty : 6 months' imprisonment and fine of \$1,000 Section 36 of Cap. 212 penalty : 2 years' imprisonment Section 13A of Independent Commission Against Corruption Ordinance (Cap. 204) penalty : 6 months' imprisonment and fine of \$5,000