

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

(position as at 15 May 2004)

Clause	Section	Scrutinised/to be scrutinised	Proposed Committee Stage amendments (CSAs)/other follow-up actions
Long title of the Bill	-	To be scrutinised	Pending proposed amendments from the Administration.
1 Short title and commencement	1	Scrutinised	----
2 Interpretation	2	To be scrutinised	The Administration has prepared CSAs to amend the definitions of "terrorist act" and "authorized officer"; to delete the definition of "public body" and section 2(8); and to put it beyond doubt that nothing in Parts 4A and 4B or any provision of the Ordinance affects the protection of legal privilege and the privilege against self-incrimination provided under section 2(5)(a),(b) and (c).
3 Application of certain provisions outside HKSAR	3	Scrutinised	<p><u>Question raised by members</u></p> <p>The Administration to confirm that the proposed amended section 3 would not affect the application of extraterritoriality at common law and in other ordinances.</p> <p><u>The Administration's response</u></p> <p>Section 3 as presently provided for would not affect any other existing provisions on extra-territorial jurisdiction.</p>

4 Authorization of public officers	New 3A	To be scrutinised	The Administration has prepared CSA to delete new section 3A, as this is no longer needed following the proposed amendment to the definition of "authorized officer" in section 2 which models on the definition of the same in the Organized and Serious Crimes Ordinance (Cap. 455).
5 Freezing of property	6	Scrutinised	<p>The Administration has prepared CSAs to add provisions under the new section 6(10) to the effect that S for S may give a direction to seize terrorist property only if he has reasonable grounds to suspect that the property will be removed from Hong Kong.</p> <p>The Administration is prepared to revise the new section 6 to reflect more clearly the policy intent that the provision is to prevent funds and other assets from being provided to terrorists/terrorist associates, and to prohibit terrorists/terrorist associates from mobilising funds and other assets.</p> <p>The Administration has confirmed that a freezing notice issued under the new section 6 does not affect a mortgagor's liability to the financial institution to pay the mortgage installments, and he would continue to be responsible for the payments.</p> <p>The Administration has also confirmed that the legal effect of a freezing notice and that of a restraint order under Cap. 455 is essentially the same.</p>
-	7 Prohibition on provision or collection of funds to commit terrorist acts	To be scrutinised	The Administration has prepared CSAs to amend section 7 to follow more closely the formulation in paragraph 1(b) of the United Nations Security Council Resolution 1373.

	<p style="text-align: center;">8</p> <p style="text-align: center;">Prohibition on making funds, etc. available to terrorists and terrorist associates</p> <p style="text-align: center;">9</p> <p style="text-align: center;">Prohibition on supply of weapons to terrorists and terrorist associates</p>	To be scrutinised	The Administration has prepared CSAs to replace the mental element of "having reasonable grounds to believe" with "recklessness".
<p style="text-align: center;">6</p> <p style="text-align: center;">Prohibition on recruitment, etc. to bodies of persons specified in notices under section 4(1) and (2) or orders under section 5(2)</p>	<p style="text-align: center;">10</p>	To be scrutinised	<p>The Administration has prepared CSAs to -</p> <ul style="list-style-type: none"> (a) replace the mental element of "having reasonable grounds to believe" with "recklessness" in new section 10(1); (b) improve the drafting so that the prohibition is against recruitment for terrorist groups (and not individuals), whether corporate or unincorporate; and (c) replace "after he knows" in new section 10(2) with "after it comes to his knowledge". <p>After further examining the appropriateness of replacing the mental element of "having reasonable grounds to believe" with "recklessness" in new section 10(2), the Administration has decided not to apply the mental element of "recklessness" to the offence under that section.</p>

7	<u>New Parts 3A and 3B</u>		
	11A Interpretation of Part 3A	Scrutinised	----
	11B Prohibitions against bombing of prescribed objects	Scrutinised	The Administration has provided a table of comparison of acts proscribed by the International Convention for the Suppression of Terrorist Bombings and existing similar criminal offences (LC Paper No. CB(2)2352/03-04(02) issued on 13 May 2004).
	11C Interpretation of Part 3B	Scrutinised	----
	11D Part not to apply to certain ships	Scrutinised	<p>The Administration has provided information on how "a ship that has been withdrawn from navigation or is laid up", referred to in new section 11D(c), should be construed.</p> <p>The Administration has provided information on the criminalisation of unlawful acts (similar to those under the new section 11E) committed against warships and ships excluded by the new section 11D by existing legislation (LC Paper No. Cb(2) 2353/03-04(01) issued on 14 May 2004).</p>
	11E Prohibitions relating to ships	Scrutinised	The Administration has provided more details on the interpretation of "intimidation" in new section 11E(1)(a).

	11F Prohibitions relating to fixed platforms	Scrutinised	----
	11G Provisions supplementary to sections 11E and 11F	Scrutinised	S for S should point out in his speech during the resumption of Second Reading debate on the Bill that the formulation of paragraphs (a), (b) and (c) of new section 11G(1) would not be setting a precedence for defining "an act by any person occurs in connection with the commission or attempted commission of any of the acts" in other local legislation.
	11H Master may deliver alleged offender to appropriate authorities	Scrutinised	----
	11I Extra-territorial jurisdiction in relation to section 11F	Scrutinised	----
8 Disclosure of knowledge of suspicion that property is terrorist property etc.	12	To be scrutinised	<p>The Administration has prepared CSAs to specify the purpose of disclosure, i.e. to suppress terrorist financing.</p> <p>The Administration is prepared to consider amending section 12 to build a two-tier reporting requirement, taking reference from the models in both sections 19 and 21A of the United Kingdom Terrorism Act 2000.</p> <p>The Administration has provided information on the modus operandi for information exchange between local and overseas law enforcement agencies</p>

			under the new section 12(6), as well as the jurisdictions with which the local law enforcement agencies have plans to establish such exchanges (LC Paper No. 2386/03-04(01) issued on 15 May 2004).
9	<u>New Parts 4A and 4B</u>		
	12A Requirement to furnish information or produce material	To be scrutinised	<p>The Administration has prepared CSAs to -</p> <ul style="list-style-type: none"> (a) replace "an authorized officer" with "Secretary for Justice" where it appears; (b) amend new sections 12A(3)(c)(ii) and (6) to the effect that only materials "relevant to" the investigation will be required to be produced to the law enforcement agencies; (c) put it beyond doubt that nothing in this section affects the protection of the privilege against self-incrimination under section 2(5)(c); and (d) delete new section 12A(10). <p>The Administration has advised that the operation of Part XII of the Interpretation and General Clauses Ordinance (Cap.1), which concerns search and seizure of "journalistic material", is not applicable to new section 12A. Nevertheless, it should be noted that new section 12A is already subject to sufficient judicial safeguards.</p> <p>The Administration has explained the rationale for providing the new section 12A(13)(LC Paper No. CB(2)2353/03-04(01) issued on 14 May 2004).</p>

	12B Order to make material available	To be scrutinised	<p>The Administration has proposed CSAs to -</p> <p>(a) replace "an authorized officer" with "the Secretary for Justice or an authorized officer";</p> <p>(b) put it beyond doubt that nothing in this section affects the protection of legal privilege and the privilege against self-incrimination provided under section 2(5)(a), (b) and (c); and</p> <p>(c) delete sections 12B(7) and 12B(12).</p> <p>The Administration has advised that the operation of Part XII of the Interpretation and General Clauses Ordinance (Cap.1), which concerns search and seizure of "journalistic material", is not applicable to new section 12B. Nevertheless, it should be noted that new section 12B is already subject to sufficient.</p>
	12C Authority for search	Scrutinised	-----
	12D Disclosure of information obtained under section 12A, 12B or 12C	Scrutinised	The Administration has prepared CSAs to amend new section 12D.
	12E Investigation not to be prejudiced	Scrutinised	-----

	12F Interpretation of Part 4B	Scrutinised	-----
	12G Issue of warrant	Scrutinised	<p>The Administration has prepared CSAs to -</p> <p>(a) amend new section 12G(1) to clarify that a search warrant may be issued when there is reasonable cause to suspect that there is terrorist property or evidence of a relevant offence in any premises;</p> <p>(b) amend new section 12G(2) to clarify that powers therein can only be exercised by law enforcement agencies who have entered the premises concerned by virtue of a warrant issued under new section 12G(1); and</p> <p>(c) improve the drafting of new section 12G(1) to the effect that the Court may issue a warrant to authorise the law enforcement agencies to enter premises and to search for, seize, remove and detain any terrorist property therein, and that the law enforcement agencies may use any assistance and force as is necessary and reasonable for the purpose of giving effect to the warrant.</p>
	12H Seized property may be detained	Scrutinised	The Administration has prepared CSA to delete new section 12H, as the new section 12G already provides an authorised officer to detain and seize terrorist property.
	12I Period for which seized property may be detained	Scrutinised	The Administration has provided justification(s) for detaining seized suspected terrorist property for not more than 30 days.
	12J Interest	Scrutinised	----

	12K Procedure	Scrutinised	----
10 Forfeiture of certain terrorist property	13	Scrutinised	----
11 Offences	14	To be scrutinised	<p>The Administration has provided a table of comparison of penalties set out in clause 11 of the Bill and those for existing similar criminal offences (Annex to LC Paper No. CB(2)2353/03-04(01) issued on 14 May 2004).</p> <p>The Administration has prepared CSAs to amend new sections 14(7H) and 14(7J) to the effect that a person who "intentionally" and "without reasonable excuse" obstructs an authorised officer in the execution of a warrant under new section 12C or 12G commits an offence.</p>
12 Supplementary provisions applicable to licences mentioned in section 6(1) or 8	15	Scrutinised	----
13 Applications to Court	17	Scrutinised	----
14 Compensations	18	Scrutinised	<p>The Administration has prepared CSAs to -</p> <p>(a) clearly reflect the common law rights to compensation of an individual who has been specified as a terrorist/terrorist associate or whose property has been specified or frozen as terrorist property, and delete everything after</p>

			<p>"common law" in the proposed new section 18A; and</p> <p>(b) amend "serious default" to "default".</p> <p>In response to some members' views and comments expressed at the meeting on 11 May 2004, the Administration has reiterated in writing that section 18 as proposed to be amended is proportionate and reasonable, and strikes a balance between its obligation to combat terrorist financing and the need to compensate the aggrieved.</p>
15 Regulations	19	Scrutinised	----
16 Procedure	20	Scrutinised	----
17 Minor amendments		Only heading to Part 2, 5(1),(2),(5),(6) and 7(b), 6(2)(b)(ii) and (4) have been scrutinised	
18 Funds	Schedule	Scrutinised	----
19 Schedule 2 added		To be scrutinised	The Administration has prepared CSAs to amend new Schedule 2.
20 Consequential amendments		Scrutinised	The Administration has prepared CSAs to amend section 25A of Cap. 455 and the Drug Trafficking (Recovery of Proceeds (Ordinance) (Cap.405) to specify that the purpose of disclosure is for the prevention and suppression of combating crimes and drug trafficking respectively.

			The Administration has provided information on whether the law enforcement agencies have put in place any system to differentiate between information received pursuant to the disclosure provisions in Cap. 405, Cap. 455 and Cap. 575 (LC Paper No. CB(2)2353/03-04(01) issued on 14 May 2004).
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Legislative Council Secretariat
15 May 2004