

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

Purpose

This paper addresses the issues raised at the Bills Committee meeting on 17 May 2004.

Section 2(5) – protection of privilege against self-incrimination

2. To address some Members' concerns raised at the Bills Committee meeting on 4 May 2004 on whether the protection of the privilege against self-incrimination guaranteed under the existing section 2(5) would be affected by the law enforcement powers under the new Parts 4A and 4B, we earlier proposed to amend section 2(5) to unambiguously set out that nothing in Part 4A, 4B or any other provision of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) shall restrict the privilege. At the Bills Committee meeting on 11 May 2004, Members considered that section 2(5) as it was already clearly protected the privilege against self-incrimination, and our proposed amendment was unnecessary. We have therefore deleted the draft Committee Stage Amendment (CSA) concerned accordingly.

Definition of “authorized officer”

3. The Bills Committee has suggested “authorized officer” be more clearly set out to mean an officer of the Police, the Customs and Excise Department, the Immigration Department and the Independent Commission Against Corruption. We have prepared the necessary draft CSA accordingly.

New section 6 – freezing of property

4. The Bills Committee has suggested “make available” be replaced by “deal with” in section 6, and “deal with” be defined. We agree to this suggestion. We have prepared the necessary draft CSAs accordingly, with the definition of “deal with” based on that in the Organized and Serious Crimes Ordinance (Cap. 455). We also propose to add the mental element of “knowingly” to section 14(2) (the offence provision for

section 6(1)) so that only a person who knowingly contravenes a notice issued under section 6(1) commits an offence.

Section 10(2) – offence of failing to cease to be a member of a gazetted terrorist group

5. The Bills Committee has suggested further consideration be given to applying the mental element of “recklessness” to the offence under the new section 10(2). The purpose is to catch those persons who, despite the risk involved, “turn a blind eye” to whether the organizations of which they are members are gazetted terrorist organizations. We have therefore prepared a draft CSA to provide for a revised section 10(2) to the effect that where a person is a member of a gazetted terrorist organization, the person commits an offence if he does not take practicable steps to cease to be such a member and is reckless as to whether the organization has been gazetted. We also propose to make a consequential technical amendment to section 14 (by adding a new subsection (3A) and amending subsection (4)) so that section 10 as re-drafted and its offence provision are compatible from a drafting point of view.

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

6. At the request of the Bills Committee, we reviewed and considered adopting in Hong Kong the UK model, i.e. sections 19 (and 21A) of the UK Terrorism Act 2000 (the Act) relating to terrorist property reporting requirements. Following the review, we confirmed in our paper of May 2004 (CB(2)2386/03-04(01)) that, subject to the Bills Committee’s agreement, we were prepared to consider the possibility of introducing a two-tier reporting system in Hong Kong, by making reference to the Act.

7. The proposal was discussed at the Bills Committee’s meeting on 17 May 2004. In view of the possible implications that such a reporting system would have on the sectors concerned, as well as the need to ensure consistency between the reporting requirements under section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap 455) and under section 12

of the United Nations (Anti-terrorism Measures) Ordinance (Cap. 575), it was agreed that consultation would need to be carried out before amendments should be contemplated. In this connection, the Bills Committee proposed that a separate review of the present reporting requirements under the three Ordinances be carried out.

8. We agree to undertake such a review and propose it be conducted in the context of the legislative exercise to give effect to the Financial Action Task Force on Money Laundering's Forty Recommendations (the Recommendations). The exercise, which is scheduled to start in 2004/05, will involve consultation with the various sectors (i.e., accountants; lawyers; real estate agents; company and trust service providers; and, precious metals and stones dealers) to be brought into the fold of the Recommendations and thus are subject to the reporting requirements. The review will cover both the scope of the obligation to report as well as the mental threshold to be adopted for making disclosures, having regard to similar legislation in the UK and other common law jurisdictions.

Others

9. Taking reference from the Terrorism Suppression Act 2002 of New Zealand, we propose to further improve the drafting of the new section 7 to the effect that funds to be used "in whole or in part, to commit one or more terrorist acts" will be criminalized.

10. The new section 11D reflects Article 2 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation that the Convention does not apply to a warship, a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes, etc. On close examination, we believe that although the Convention only refers to "state", the intention is to cover jurisdictions as well. Otherwise customs and police ships owned or operated by the Hong Kong Special Administrative Region Government would be left out. We therefore propose to make a drafting change by adding a new section 11D(ba) to include ships owned or operated by Hong Kong for customs and police purposes in the exemption list.

Draft

UNITED NATIONS (ANTI-TERRORISM MEASURES)(AMENDMENT) BILL 2003

COMMITTEE STAGEAmendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
2(a)	<p>(a) By adding –</p> <p>“(ia) in the definition of “terrorist act” in paragraph (a)(i) –</p> <p>(A) by repealing “(including, in the case of a threat, the action if carried out)” and substituting “is carried out with the intention of, or the threat is made with the intention of using action that would have the effect of”;</p> <p>(B) in sub-subparagraphs (A) and (B), by repealing “causes” and substituting “causing”;</p> <p>(C) in sub-subparagraph (C), by repealing “endangers” and substituting “endangering”;</p> <p>(D) in sub-subparagraph (D), by repealing “creates” and substituting “creating”;</p> <p>(E) in sub-subparagraphs (E) and (F), by repealing “is intended seriously to interfere with or seriously to disrupt” and</p>

substituting “seriously interfering with or seriously disrupting”;

(b) In subparagraph (iii) –

(i) by deleting the proposed definition of “authorized officer” and substituting –

““authorized officer” () means –

- (a) a police officer;
- (b) a member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap. 342);
- (c) a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap. 331); or
- (d) an officer of the Independent Commission Against Corruption established by section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);”;

- (ii) in the proposed definition of “premises” in paragraph (b) by deleting “removable” and substituting “movable”;
- (iii) by deleting the proposed definition of “public body”.

2 By deleting paragraph (b).

4 By deleting the clause.

5 (a) By deleting paragraph (a)(ii) and substituting –

“(ii) by repealing “the funds, direct that the funds not be made available, directly or indirectly, to any person” and substituting “the property, direct that a person shall not, directly or indirectly, deal with the property”.”.

(b) In paragraph (g) by adding -

“(11) The Secretary may exercise the powers under subsection (10) only if he has reasonable cause to suspect that the relevant property will be removed from the HKSAR.

(12) In subsection (1), “deal with” () in relation to property means –

- (a) to receive or acquire the property;
- (b) to conceal or disguise the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) to dispose of or convert the property;
- (d) to bring into or remove from Hong Kong the property; or

- (e) to use the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise).”.

New By adding –

“5A. Prohibition on provision or collection of funds to commit terrorist acts

Section 7 is amended –

- (a) in paragraph (a), by repealing “directly or indirectly supplied to or otherwise used by” and substituting “used”;
- (b) in paragraph (b) –
 - (i) by repealing “or having reasonable grounds to believe”;
 - (ii) by repealing “directly or indirectly supplied to or otherwise used by” and substituting “used”;
- (c) by repealing “a person who the first-mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate” and substituting “in whole or in part, to commit one or more terrorist acts (whether or not the funds are actually so used)”.

5B. Prohibition on making funds, etc. available to terrorists and terrorist associates

Section 8 is amended by repealing everything after “person” where it secondly appears and substituting “knowing that, or being reckless as to whether, such person is a terrorist or terrorist associate.”.

5C. Section substituted

Section 9 is repealed and the following substituted –

“9. Prohibition on supply of weapons to terrorists and terrorist associates

A person shall not provide or collect, by any means, directly or indirectly, weapons –

- (a) with the intention that the weapons be directly or indirectly supplied to or otherwise used;
- (b) knowing that the weapons will be directly or indirectly supplied to or otherwise used; or
- (c) being reckless as to whether the weapons would be directly or indirectly supplied to or otherwise used,

by a person and knowing that, or being reckless as to whether, such person is a terrorist or terrorist associate.”.”.

By deleting the proposed section 10 and substituting –

“10. Prohibition on recruitment, etc. to a body specified in a section 4(1) or (2) notice or a section 5(2) order

(1) A person who –

(a) recruits another person to become a member; or

(b) becomes a member,

of a body specified in a notice published in the Gazette under section 4(1) or (2) or an order published in the Gazette under section 5(3), knowing that, or being reckless as to whether, it is a body specified in such a notice or order (as the case may be) commits an offence.

(2) Where a person is a member of a body specified in a notice published in the Gazette under section 4(1) or (2) or an order published in the Gazette under section 5(3), the person commits an offence if he –

(a) does not take all practicable steps to cease to be such a member as soon as practicable after it comes to his knowledge that the body is specified in such a notice or order (as the case may be); or

(b) does not take all practicable steps to cease to be such a member and is reckless as to whether the body is specified in such a notice or order (as the case may be).

(3) In this section, “body” () means a body of persons, whether corporate or unincorporate.”.

7

- 7
- (a) In the proposed section 11B –
 - (i) in subsection (1) by adding “unlawfully and intentionally” after “not”;
 - (ii) in subsection (2) by adding “unlawfully and intentionally” after “not”;
 - (iii) in subsection (2)(a) by deleting “the destruction of all or part” and substituting “extensive destruction”;
 - (iv) by deleting subsection (2)(b) and substituting –
 - “(b) where such destruction results in or is likely to result in major economic loss.”.
 - (b) In the proposed section 11D –
 - (i) in paragraph (b) by deleting “or” at the end;
 - (ii) by adding –
 - “(ba) a ship owned or operated by the Government when being used for customs or police purposes; or”.
 - (c) In the proposed section 11E(1) by deleting “without lawful excuse,” and substituting “unlawfully and”.
 - (d) In the proposed section 11F(1) by deleting “without lawful excuse,” and substituting “unlawfully and”.

8 In the proposed section 12(6) –

- (a) in paragraph (a) by adding “, for the purpose of preventing and suppressing the financing of terrorist acts” after “Corruption”;
- (b) by deleting paragraph (b) and substituting –

3

“(b) by any authorized officer to the authorities or persons responsible for investigating or preventing terrorist acts, or handling the disclosure of knowledge or suspicion that any property is terrorist property, of any place outside the HKSAR which the authorized officer thinks fit, for the purpose of preventing and suppressing the financing of terrorist acts.”.

- 9 (a) In the proposed section 12A –
- (i) in subsection (1) by deleting “An authorized officer” and substituting “The Secretary for Justice”;
 - (ii) in subsection (3)(c) –
 - (A) by deleting “authorized officer” where it first appears and substituting “Secretary for Justice”;
 - (B) in subparagraph (i) by deleting “the authorized officer” and substituting “an authorized officer”;
 - (C) by deleting subparagraph (ii) and substituting –
 - “(ii) to produce any material, or any material of a class, that reasonably appears to the Secretary for Justice to be relevant to the investigation,”;

- (iii) in subsection (5) –
 - (A) by deleting “an authorized officer” where it first appears and substituting “the Secretary for Justice”;
 - (B) by deleting “the authorized officer” where it first appears and substituting “an authorized officer”;
 - (C) by deleting “the authorized officer” where it secondly appears and substituting “the Secretary for Justice”;
- (iv) by deleting subsection (6) and substituting –
 - “(6) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to produce any material that reasonably appears to the Secretary for Justice to be relevant to the investigation or be of a class that is so relevant, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to produce at a specified time and place, or at specified times and places, any specified material that reasonably appears to him to be so relevant or any material of a specified class that reasonably appears to him to be so relevant.”;

- (v) in subsection (7)(a)(v) by deleting “an authorized officer” and substituting “the Secretary for Justice”;
 - (vi) in subsection (7)(c) by deleting “subsections (8), (9) and (10)” and substituting “subsection (8)”;
 - (vii) by deleting subsections (9) and (10);
 - (viii) in subsection (11) by deleting “A person” and substituting “Subject to section 2(5)(a), (b) and (c), a person”;
 - (ix) in subsection (12) by deleting everything after “except” and substituting “in evidence in proceedings under section 14(7F) or under section 36 of the Crimes Ordinance (Cap. 200).”.
- (b) In the proposed section 12B –
- (i) in subsection (1) –
 - (A) by deleting “An authorized officer” and substituting “The Secretary for Justice or an authorized officer”;
 - (B) by deleting “elsewhere” and substituting “, in the case of an application by the Secretary for Justice, elsewhere”;
 - (ii) in subsection (2) by deleting “subsections (6) and (7)” and substituting “subsection (6)”;
 - (iii) by deleting subsections (7) and (12);
 - (iv) in subsection (13) by deleting “A person” and substituting “Subject to section 2(5)(a), (b) and (c), a person”.
- (c) In the proposed section 12D –

- (i) in subsection (1) by adding “to the Secretary for Justice” after “authorized officer”;
- (ii) in subsection (2) –
 - (A) in paragraph (a) by adding “, for the purpose of preventing and suppressing a relevant offence” after “Corruption”;
 - (B) by deleting paragraph (b) and substituting –
 - “(b) to any corresponding person or body, where the information appears to the Secretary for Justice to be likely to assist that person or body to discharge its functions relating to preventing and suppressing offences of a similar nature to relevant offences; and”.
- (d) In the proposed section 12G –
 - (i) by deleting subsection (1) and substituting –
 - “(1) Where it appears to the Court upon the oath of any person that there is reasonable cause to suspect that –
 - (a) in any premises there is terrorist property; or
 - (b) there is in any premises any thing that is, or contains, evidence of a relevant offence,

the Court may issue a warrant authorizing an authorized officer to enter the premises named in the warrant and there to search for and seize, remove and detain any terrorist property.

(1A) An authorized officer executing a warrant issued under subsection (1) may use such assistance and force as is reasonable and necessary for the purposes for which the warrant is issued.”;

(ii) in subsection (2) by deleting “Any authorized officer” and substituting “An authorized officer who has entered any premises by virtue of a warrant issued under subsection (1)”.

(e) By deleting the proposed section 12H.

11 (a) By renumbering the clause as clause 11(4).

(b) By adding –

“(1) Section 14(2) is amended by adding “knowingly” before “contravenes”.

(2) Section 14 is amended by adding –

“(3A) A person who commits an offence under section 10(1) or (2) is liable –

(a) on conviction on indictment to a fine and to imprisonment for 7 years;

(b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.”.

(3) Section 14(4) is amended by repealing “10(1) or (2) or”.

(c) In subclause (4) –

(i) in the proposed section 14(7H) by adding “intentionally and without reasonable excuse” after “who”;

(ii) in the proposed section 14(7J) by adding “and without reasonable excuse” after “intentionally”.

14

(a) By renumbering the clause as clause 14(2).

(b) By adding –

“(1) Section 18(2)(c) is amended by repealing “serious”.

(c) In subclause (2) in the proposed section 18(2B)(a) by deleting “serious”.

New

By adding –

“14A. Section added

The following is added –

“18A. Saving of common law remedies

(1) Subject to subsection (2), nothing in section 18 affects any remedy available to a person at common law.

(2) Where a court orders any compensation under section 18 or damages at common

law in respect of any such default, the court shall take into account, in reduction of the amount of compensation or damages, any amount awarded as damages or ordered as compensation (as the case may be) in respect of that default.”.”.

19 In the Form in the proposed Schedule 2 –

(a) in paragraph 4 –

(i) by deleting “an authorized officer” where it first appears and substituting “the Secretary for Justice”;

(ii) in subparagraph (b) by deleting everything after “appears to” and substituting “the Secretary for Justice to be relevant to the investigation or be of a class that is so relevant.”;

(b) by deleting “Authorized officer” and substituting “for and on behalf of the Secretary for Justice”.

Schedule,
section 1

In the proposed section 25A(9) –

(a) in paragraph (a) by adding “, for the purpose of combating drug trafficking” after “Corruption”;

(b) by deleting paragraph (b) and substituting –

“(b) by any authorized officer to the authorities or persons responsible for investigating or preventing drug trafficking, or handling the disclosure of knowledge or suspicion on property

relating to drug trafficking, of any place outside Hong Kong which the authorized officer thinks fit, for the purpose of combating drug trafficking.”.

Schedule,
section 2

In the proposed section 25A(9) –

- (a) in paragraph (a) by adding “, for the purpose of combating crime” after “Corruption”;
- (b) by deleting paragraph (b) and substituting –
 - “(b) by any authorized officer to the authorities or persons responsible for investigating or preventing crime, or handling the disclosure of knowledge or suspicion on property relating to crime, of any place outside Hong Kong which the authorized officer thinks fit, for the purpose of combating crime.”.