

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

**Purpose**

This paper addresses the issues raised in the submission of 19 May 2004 (CB(2)2455/03-04(01)) from the Hong Kong Journalists Association.

**Part 4A – powers of investigation**

2. As we have explained in our previous papers (CB(2)454/03-04(02) and CB(2)2281/03-04(01)) submitted to the Bills Committee, it is possible that a journalist may be required by a court order to furnish information or produce materials under the new sections 12A and 12B. In this regard, it should be noted that the new sections 12A and 12B provide that the Court will only issue an order if the objective tests set out in the new sections 12A(4) and 12B(5) respectively are met -

- (a) there are reasonable grounds for suspecting that the relevant offence under investigation has been committed;
- (b) there are reasonable grounds for suspecting that a particular person/persons of a particular description, has/have information, or is/are in possession of material, likely to be relevant to the investigation;
- (c) there are reasonable grounds for believing that the material concerned is likely to be relevant to the investigation; and
- (d) there are reasonable grounds for believing that it is in the public interest that an order should be made, having regard to the seriousness of the relevant offence under investigation; whether the relevant offence could be effectively investigated if an order is not made; the benefit likely to accrue to the investigation if the information is disclosed or the material is obtained; and the circumstances under which the person/persons may have acquired, or may hold, the information or material.

3. The new sections 12A(15) and 12B(9) provide that any person on whom a requirement is imposed under an order may apply for the revocation or variation of the order.

4. The above tests are substantially the same as those under Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) which stipulates the conditions to be fulfilled for making a court order requiring production of “journalistic material” -

- (a) there are reasonable grounds for believing that an arrestable offence has been committed;
- (b) the material is likely to be of substantial value to the investigation of the arrestable offence, or relevant evidence in proceedings for the arrestable offence;
- (c) other methods of obtaining the material have been tried and failed or have not been tried because they were unlikely to succeed or would be likely to seriously prejudice the investigation; and
- (d) there are reasonable grounds for believing that it is in the public interest that an order should be granted, having regard to the benefit likely to accrue to the investigation and the circumstances under which a person in possession of the material holds it.

5. In view of the above, we consider that the new sections 12A and 12B are already subject to sufficient judicial safeguards.

### **Protection of journalistic materials**

6. We would also like to reiterate that section 2(7)(b) of the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575) already 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)”. It is clear that the new Part 4A (as far as search and seizure of materials are concerned), which is part of the Ordinance, is subject to section 2(7)(b). Subject to further discussion at the Bills Committee, it appears that adding another similar provision is not necessary.

## **Protection of legal privilege**

7. 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”. It is therefore unambiguous that all provisions in the Ordinance and the Bill are subject to this section. To address the concerns of the Bills Committee, the proposed amendments subjecting the new sections 12A(11) and 12B(13) to section 2(5) are simply for the purpose of removing any doubt that the two new provisions may override the protection of legal privilege. They do not provide anything additional to section 2(5).

Security Bureau  
May 2004