

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

**Purpose**

This paper addresses the issues raised in the submission of 20 May 2004 (CB(2)2487/03-04(02)) from Mr Simon N M Young, Assistant Professor, Faculty of Law, the University of Hong Kong.

**Section 6 - freezing of property**

2. The Bills Committee suggested at its meeting on 17 May 2004 that “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 Committee Stage Amendments accordingly, with the definition of “deal with” based on that used in the Organized and Serious Crimes Ordinance (Cap. 455).

3. As we have explained in our previous papers (CB(2)294/03-04(01) and CB(2)1195/03-04(05)) submitted to the Bills Committee, the two-year validity period of a freezing notice under section 6 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.

**Mental element of “recklessness”**

4. The judgment of Regina v G and another [2003] AII ER 765 focuses on the statutory construction of “recklessness” as a mental element in section 1 of the United Kingdom Criminal Damage Act 1971. Lord Bingham of Cornhill has said, in paragraph 28 of the judgment, that “in so expressing the question I mean to make it as plain as I can that I am not addressing the meaning of ‘reckless’ in any other statutory or common law context”. Lord Hutton has also said, in paragraph 69 of the judgment, that “it does not follow, however, that Lord Diplock’s broader concept of recklessness was undesirable in terms of legal policy”.

5. In Hong Kong, for statutory offences, the mental element is normally not defined and the common law is relied on. The law in application in Hong Kong for “recklessness” is the *Caldwell* definition. Regina v G and another is only of persuasive authority in Hong Kong, and the court has yet to adopt it in any criminal proceedings. In the circumstances, we consider that it may not be appropriate to include a statutory definition of “recklessness” in the Bill solely on the basis of this judgment. Nevertheless, we will closely monitor any development of the application of the interpretation of “recklessness” in this judgment to other legal contexts.

Security Bureau  
May 2004