

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

Purpose

This paper addresses the issues raised in the submission of 21 May 2004 (CB(2)2516/03-04(01)) from the Hong Kong Association of Banks.

Clause 8 (section 12(7) – disclosure of knowledge or suspicion that property is terrorist property, etc.)

2. At common law (see Attorney General v Ocean Timber Transportation Limited 1979 HKLR 298 and Hall v Commissioner of the ICAC 1987 HKLR 210) material which has been acquired by compulsory/statutory process for domestic purposes will usually not be able to be transmitted to overseas authorities. The new section 12(6) (and likewise the new section 25A(9) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455)) are included to permit Hong Kong to render assistance to overseas jurisdictions. The new section 12(7) (and the new section 25A(10) of Cap. 405 and Cap. 455) are included to make it clear that any existing rights to transmit materials overseas (pursuant to, for example, common law or the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)) will be preserved.

3. To clearly reflect our intention that the transmission of the information concerned to overseas authorities is for the respective purposes of the three Ordinances, we have accepted the Bills Committee's suggestion of prescribing the specific purposes of disclosure under the new section 12(6) of Cap. 575 and the new section 25A(9) of Cap. 405 and Cap. 455.

Clause 9 (sections 12A(3)(c)(i) and (ii), 12A(5) and (6) – requirement to furnish information or produce material)

4. As we have explained in our previous paper (CB(2)1195/03004(05)) submitted to the Bills Committee, the use of the word “reasonably” in the new sections 12A(3)(c)(i) and (ii), and 12A(5) and (6) means that the Secretary for Justice or authorized officer is

obliged to follow an objective approach in deciding what action to take pursuant to the order issued by the Court.

Clause 9 (section 12D(2)(a) – disclosure of information obtained under section 12A, 12B or 12C)

5. Our response in paragraph 2 above is applicable.

Clause 19 (Schedule 2 – form of notice under section 12A)

6. Our response in paragraph 4 above is applicable.

Schedule (consequential amendments)

7. Our response in paragraphs 2 and 3 above is applicable.

Security Bureau
May 2004