

**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(01)) from the Law Society of Hong Kong.

Section 6 - freezing of property

2. As we have explained in our previous papers (CB(2)454/03-04(06) and CB(2)1195/03-04(04)) submitted to the Bills Committee, we consider that “reasonable grounds to suspect” is an appropriate test for the power to freeze under section 6 bearing in mind that we are dealing with urgent situations where intelligence from overseas will frequently have to be assessed. Any decision to freeze on that basis is appealable under section 17 and, on appeal, the Government will have to satisfy the court that “reasonable grounds to suspect” in fact exist. In the event of incorrect freezing, compensation is payable to the aggrieved under section 18.

3. “Reasonable suspicion” cannot be supported solely on the basis of personal factors. The test as to whether reasonable grounds for suspicion to justify a freezing action exist is partly subjective, in that the Secretary for Security (S for S) must have formed a genuine suspicion that the property concerned is terrorist property, and partly objective, in that there have to be reasonable grounds for forming such a suspicion; such grounds could arise from information received from another, provided that a reasonable person, having regard to all circumstances, would regard them as reasonable grounds for suspicion.

4. For freezing of terrorist property, our view is that speed is of paramount importance, taking into account the availability of modern technology and arrangements that allow funds to be transferred from one jurisdiction to another almost instantly, and non-fund property to be quickly liquidated or physically transferred out of Hong Kong. Upon careful deliberation on the fact that judicial procedures will alert the terrorists or terrorist associates and an appeal mechanism is available under section 17, we therefore propose to apply the freezing mechanism for terrorist funds under the existing section 6 to non-fund terrorist property.

5. 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.

6. The new section 6(10) is limited to situations where there is evidence to suggest that the frozen suspected terrorist property will be removed from Hong Kong. It is considered that in these urgent situations the test of “reasonable cause to suspect” is appropriate in order to promptly prevent the property from being mobilized for terrorism purposes.

Sections 6, 12G and 13 – freezing, seizure, and forfeiture of property

7. One of the principal objects of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) is to deny terrorists access to funds or other assets which could be used to finance terrorist activities. This differs from the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455) which are essentially directed towards confiscation of proceeds of crimes already committed. Therefore, when drawing up the provisions of Cap. 575, including sections 6, 12G and 13, we are seeking to ensure that they are necessary and appropriate for achieving the above object, rather than to exactly align the provisions with those in Cap. 405 and Cap. 455.

8. As explained in paragraph 2 above, we consider the test of “reasonable grounds to suspect” appropriate for freezing under section 6 as well as seizure under the new section 12G, as we are dealing with urgent situations based on overseas intelligence. It can be noted that the same test is applied in section 5(1)(c)(ii) of the Biological Weapons Ordinance (Cap. 491), sections 13(1) and 38(3) of the Aviation Security Ordinance (Cap. 494) and section 101 of the Criminal Procedure Ordinance (Cap. 221).

9. The suggestion of applying the “standard of proof applicable to civil proceedings in a court of law” for forfeiture under section 13 to freezing under section 6 and seizure under section 12G is not considered reasonable. Forfeiture involves permanent deprivation of property and should clearly require a higher test than that applicable to freezing or seizure.

Sections 6 and 12G – freezing and seizure of property

10. As pointed out in paragraph 7 above, one of the principal objects of Cap. 575 is to deny terrorists access to funds or other assets which could be used to finance terrorist activities. In some situations (e.g. where funds are in a bank account) a freezing notice will be appropriate to achieve that object. If, however, the property is on premises, a section 12G warrant may be more appropriate.

11. Sections 6 and 12G cater for different situational needs. The provisions are not intended to suit the convenience of S for S. As set out in paragraph 2 above, any freezing action is subject to appeal under section 17 and compensation is payable for incorrect freezing under section 18.

Security Bureau
May 2004