

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

**Purpose**

This paper addresses the issues raised at the Bills Committee meeting on 31 May 2004.

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

2. The Bills Committee considered that the proposed offence under section 10(2) might not be appropriate, as it would not be practicable or reasonable to require an existing member of a gazetted terrorist group to “take all practicable steps” to cease to be such a member.

3. Noting the Bills Committee’s concerns, we have further examined the requirement to suppress recruitment of members of terrorist groups under paragraph 2(a) of United Nations Security Council Resolution 1373. We consider that section 10(1) is already sufficient to fulfil this requirement. We therefore propose that section 10(2) be deleted and have prepared the necessary draft Committee Stage Amendment accordingly.

**Immunity from liability for delays resulting from actions taken to ensure compliance with sections 7 and 8**

4. In its submission of 6 November 2003 to the Bills Committee, the Hong Kong Association of Banks (HKAB) suggested that it would be helpful if the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575) could be amended to provide that delays in processing payments or receipts, caused by internal screening procedures to ensure compliance with sections 7 and 8, should not render a bank liable for damages.

5. We have earlier, through the Hong Kong Monetary Authority, requested HKAB to provide further information on what procedures/methods the banks have adopted in screening suspicious transactions, how long each screening process usually takes, whether delays in collection or payment due to the screening process are frequent

and whether the banks have ever received any clients' claims for damages in respect of the Ordinance. HKAB has advised that different banks will use different screening methods and the time required will vary from one bank to another. Apparently no claim for damages has arisen from the need to comply with the Ordinance.

6. All parties involved in fund handling need to adopt the necessary screening measures for the purpose of complying with sections 7 and 8. From the information currently available, there does not appear to be sufficient justification for conferring immunity from civil liability for the banking sector. We trust that the banking profession should have the necessary expertise in exercising due diligence in ensuring that transactions are in compliance with the Ordinance, while taking care of their clients' interests.

### **Section 6 – freezing of property**

7. A Member has asked why a freezing notice under section 6 cannot be issued by the Court. As we have explained previously, for freezing of terrorist property, speed is of paramount importance. We should not underestimate the effectiveness of modern arrangements which can enable property to be quickly liquidated or transferred out of Hong Kong. Even in the case of non-fund property -

- (a) some financial institutions do provide speedy re-financing of real property, thus allowing the liquidation of property and transfer of the realized cash to another jurisdiction immediately;
- (b) some terrorists and terrorist associates may have established close relations with their financial institutions, and are able to make arrangements for their property to be speedily liquidated; and
- (c) some non-fund property such as cars, yachts and precious stones can be physically transported out of Hong Kong almost instantly.

8. The Ordinance has already built in effective safeguards against abuse and wrongful exercise of the freezing power. Section 6(5) provides that the Secretary for Security shall not re-freeze the same property unless there has been a material change in the grounds. Section 17 provides for an appeal mechanism for the affected persons to apply to the Court to revoke a freezing notice. On appeal the Administration will

bear the burden of satisfying the Court that there are reasonable grounds to suspect that the frozen property is terrorist property. In the event of incorrect freezing, compensation is payable to the aggrieved under section 18.

9. Given that speed is of the essence and that the Ordinance has provided sufficient safeguards, we consider that the freezing mechanism under section 6 is appropriate.

10. In our paper (CB(2)2236/03-04(01)) previously submitted to the Bills Committee, we have set out the statutory freezing mechanisms for terrorist funds and other property in some major overseas common law jurisdictions, namely, Australia, Canada, New Zealand, the United Kingdom and the United States. It can be noted that the relevant powers in their freezing mechanisms are exercised by their executive authorities.

Security Bureau  
June 2004

## Draft

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

#### COMMITTEE STAGE

##### Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	<p>(a) By deleting “empower the Secretary for Security to authorize” and substituting “provide for”.</p> <p>(b) By deleting “to repeal and replace section 10 of that Ordinance so that the new section 10 reflects the substance of this provision as proposed by the Administration during the committee stage of the Bill which became that Ordinance upon enactment” and substituting “to revise the definition of “terrorist act” and the offences relating to financing and supplying weapons to terrorists and membership of specified groups”.</p> <p>(c) By deleting “of authorized officers”.</p> <p>(d) By adding “; in relation to compensation, to change “serious default” to “default”, to extend compensation to seizure of property and to preserve common law remedies” after “terrorist property” where it last appears.</p>
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</p>

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”;

- (B) in sub-subparagraphs (A) and (B), by repealing “causes” and substituting “causing”;
- (C) in sub-subparagraph (C), by repealing “endangers” and substituting “endangering”;
- (D) in sub-subparagraph (D), by repealing “creates” and substituting “creating”;
- (E) in sub-subparagraphs (E) and (F), by repealing “is intended seriously to interfere with or seriously to disrupt” and 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 by repealing everything after “, funds” and substituting –

“\_

- (a) with the intention that the funds be used; or

(b) knowing that the funds will be used,  
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.”.”.

6 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 shall not –

- (a) recruit another person to become a  
member; or
- (b) become 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).

(2) In subsection (1), “body” ( ) means a  
body of persons, whether corporate or unincorporate.”.

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 –
  - “(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(3).

(b) By adding –

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

(2) Section 14(4) is amended by repealing “or (2)” where it first appears.”.

(c) In subclause (3) –

(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 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.”.