

LS/B/31/02-03

Secretary for Security  
Security Bureau  
6/F, Main Wing  
Central Government Offices  
Hong Kong

8 October 2003

**BY FAX**

Total no(s) of page(s) : 5

(Attn : Ms Manda Chan  
Assistant Secretary)

Dear Manda,

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

I am scrutinizing the legal and drafting aspects of the Bill on behalf of Members and shall be grateful if you could clarify the following :

***Part 1 Preliminary***

***Clause 4 (Section 3A) Authorization of public officers***

For what purpose does the Secretary for Security ("the Secretary") have the power to authorize a legal officer of the Department of Justice?

***Part 2 Specification of Terrorists, Terrorist Associates and Terrorist Property and Freezing of Property***

***Clause 5 (Section 6) Freezing of property***

What are the justifications for giving the Secretary the power to freeze property other than funds on the basis that he has reasonable grounds to suspect that it is terrorist property? Why is there no distinction in dealing with immovable property? What does it mean by an immovable property "not to be made available directly or indirectly to any person"? Has the Administration considered the option of a restraint order?

Please explain the policy for the Secretary to give a direction to an authorized officer to seize property and to deal with it. Why is it necessary when Part 4B of the Bill proposes seizure and detention of property suspected to be terrorist property by way of a magistrate's warrant? Under the Organized and Serious Crimes Ordinance (Cap. 455) ("OSCO") and the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) ("DTRP"), seizure of property is carried out only under a warrant or restraint order by the court.

***Part 3A Prohibitions relating to ships and fixed platforms***

According to paragraph 3 of the LegCo Brief, the People's Republic of China ratified the Bombings Convention and applied to the HKSAR in November 2001, which has become effective to the HKSAR as from December 2001. Please supply documents showing the application of the Bombings Convention and confirm whether only Article 2 is to apply by virtue of this Bill.

***Part 3B Prohibitions relating to ships and fixed platforms***

According to paragraph 5 of the LegCo Brief, the People's Republic of China ratified the Maritime Safety Convention and the Protocol in August 1991 and arrangements will be made to have them applied to the HKSAR in due course. What are the procedures for applying the Convention and the Protocol to the HKSAR and to what extent have these been complied with? What are the justifications for proposing legislative measures prior to application to the HKSAR?

***Clause 7 (Section 11C) Interpretation of Part 3B***

Please let us have a copy of the Rome Convention.

***Part 4 Disclosure of knowledge or suspicion that property is terrorist property***  
***Clause 8 (Section 12) Disclosure of knowledge or suspicion that property is terrorist property, etc.***

Why is it necessary to propose two separate provisions (section 12(6) and new section 12D) for disclosure of information?

Please explain the reason for not requiring the approval of the Ministry of Foreign Affairs of the PRC (as in the proposed section 12D) for disclosure of information to the relevant authorities or persons of any place outside the HKSAR.

What are the other rights to disclose information that may exist apart from section 12(6)?

**Part 4A Powers of investigation**

**Clause 9 (Section 12A) Requirement to furnish information or produce material**

Is it intended that an authorized officer such as a police officer, a member of the Immigration Service, a member of the Customs and Excise service or an officer of the Independent Commission Against Corruption may make an ex parte application to the Court under section 12A(1)? We note that only the Secretary for Justice may do so under section 3 of OSCO.

Is section 12A(13) inconsistent with section 12A(1) in providing that the Secretary for Justice, or a person authorized in writing by the Secretary for Justice for the purpose of that subsection to obtain a copy of the order made under section 12A(2)?

Is the code of practice proposed to be made by the Secretary for Security under section 12A(16) intended to be subsidiary legislation?

**Clause 9 (Section 12B) Order to make material available**

Is it intended that an authorized officer other than a legal officer of the Department of Justice may make an ex parte application to the Court under section 12B(1) outside the HKSAR? We note that only the Secretary for Justice may do so under section 4 of OSCO.

There is no provision in OSCO similar to the proposed section 12B(2)(b) and (3). What are the justifications and how does the Administration intend to implement it?

**Clause 9 (Section 12C) Authority for search**

Why is it necessary to propose two provisions (new sections 12C and 12G) with different conditions by which an application may be made to the judge or magistrate for a search warrant? Is there any overlap?

Please confirm that the powers in Part 4A are subject to section 2(5) and (7) in relation to legal privilege, self-incrimination and search and seizure of journalistic materials.

**Part 4B Seizure and Detention of Property suspected to be Terrorist Property**

**Clause 9 (Section 12G) Issue of warrant**

Why does section 12G(2) provide that an authorized officer may seize, remove and detain any material produced or required to be produced by virtue of an order under section 12A or 12B or a warrant issued under section 12C?

Clause 9 (Section 12I)      Period for which seized property may be detained

What are the justifications for detaining seized property for not more than 30 days? Has the Administration considered empowering the Legislative Council to amend by resolution the period of time specified in section 12I(1) similar to section 24C(6) of DTRP?

Please confirm that the powers in Part 4B are subject to section 2(5) and (7) in relation to legal privilege, self-incrimination and search and seizure of journalistic materials.

**Part 5              Forfeiture and Offences**

Clause 10 (Section 13)      Forfeiture of certain terrorist property

Please clarify the policy intent of repealing section 13(5).

Clause 11 (Section 14)      Offences

Why is it that a person who hinders or obstructs an authorized officer in the execution of a warrant issued under section 12C commits an offence under section 14(7H) whereas a person who "intentionally" obstructs a person in the exercise of his powers under a warrant issued under section 12G(1) commits an offence under section 14(7J)?

Why does section 14(7J) makes it an offence to obstruct "any person" in the exercise of his powers under a warrant issued under section 12G(1) when that section specifies that the warrant is directed to any authorized officer? Is it the policy intent that "any person" includes other public officers assisting the authorized officer?

**Part 6              Miscellaneous**

Clause 12 (Section 15)      Supplementary provisions applicable to licences mentioned in section 6(1) or 8

Please explain the policy of appointing a receiver to take possession of a property suspected to be terrorist property.

Clause 14 (Section 18) Compensation

Has the Administration considered the need to provide for payment of compensation in respect of material seized under section 12C(5)?

Please consider the need for an additional provision to clarify that common law remedies are not excluded by section 18.

Clause 20 (Schedule) Consequential amendments

Please explain the reason for not requiring the approval of the Ministry of Foreign Affairs of the PRC (as in the proposed section 12D) for disclosure of information to the relevant authorities or persons of any place outside the HKSAR in the consequential amendments to DTRP and OSCO.

***Drafting Issues***

Clause 2 (Section 2) Interpretation

Please explain why the term "物料" in the definition of weapon is proposed to be amended as "材料".

The proposed definition of "premises" follows closely that in section 2 of OSCO and section 22 of DTRP. Please explain the difference between "removable structure" proposed in the Bill and "movable structure" used in the two related Ordinances. Why is "structure" rendered as "構築物" instead of "結構物"?

Clause 9

(Section 12A)

Requirement to furnish information or produce material

(Section 12B)

Order to make material available

Please explain why "relevant" is rendered "相干".

Please explain whether there is any difference between "revocation" (in the Bill) and "discharge" (in section 4 of OSCO) of an order. The Chinese rendition is the same for both terms.

Should "any obligation incurred" be rendered "所招致的任何責任" instead of "所招引的任何責任"?

Yours sincerely,

(Bernice Wong)  
Assistant Legal Adviser

c.c. DoJ  
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