

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

Purpose

This paper provides information in respect of the issues raised by Members at the Bills Committee meeting on the United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003 (the Bill) on 10 October 2003.

Implementation of international conventions against terrorism

2. Considerations of the necessity of making new legislative provisions for implementing the requirements in the International Convention for the Suppression of Terrorist Bombings (the Bombings Convention), the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the Maritime Safety Convention) and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (the Protocol) are set out in **Annexes A, B and C** respectively.

**Application of the Maritime Safety Convention
and the Protocol to Hong Kong**

3. China ratified the Maritime Safety Convention and the Protocol in August 1991. Before the reunification on 1 July 1997, the Chinese side had agreed to the British proposal that the Maritime Safety Convention and the Protocol should apply to Hong Kong. In view of the need to enact local legislation to give effect to the Convention and the Protocol and because there was insufficient time to put in place local legislation before the reunification, it was considered that arrangements should be made to extend the Convention and the Protocol to Hong Kong after 1 July 1997 when the necessary local legislation had been put in place. We are now seeking to give effect to the Convention and the Protocol through the Bill. We will also make necessary arrangements to have the Convention and the Protocol applied to Hong Kong in due course.

Proposed Orders on mutual legal assistance and surrender of fugitive offenders

4. The draft Fugitive Offenders (Terrorist Bombings) Order and Fugitive Offenders (Maritime Safety) Order seek to implement the extradition obligations under the Bombings Convention, the Maritime Safety Convention and the Protocol respectively. The draft Mutual Legal Assistance in Criminal Matters (Terrorist Bombings) Order is required to provide that offences covered by the Bombings Convention are not to be regarded as political offences. A similar Order is not required for the Maritime Safety Convention and the Protocol as they do not provide for a political offence exclusion. The three Orders are subsidiary legislation to be made by the Chief Executive in Council under the Fugitive Offenders Ordinance (Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) respectively, for which approval of the Legislative Council is required under appropriate vetting procedures.

5. The requirements on extradition and mutual legal assistance in the Bombings Convention, the Maritime Safety Convention and the Protocol are substantially in conformity with the provisions in Cap. 503 and Cap. 525 respectively. We do not expect that they will give rise to any interpretation problems.

Long title of the Bill

6. The function of the long title is to set out the purposes of the legislation. The long title of the Bill sets out very clearly the purposes of the Bill. An informative long title has more value to the reader.

7. Rule 57(4)(a) of the Legislative Council Rules of Procedure provides that amendments are allowed as long as they are relevant to the subject matter of the Bill. The long title may be of help in determining the scope of the Bill, but the scope is not defined by the long title.

Prohibition of recruitment of members for terrorists groups

8. The new section 10 in the Bill seeks to replace the existing section 10 of the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575) on prohibition of recruitment of members for

terrorist groups or becoming members of terrorist groups. In fact, the amendment was proposed as a Committee Stage amendment before the passage of the Ordinance, but was not approved due to a technicality. The purpose is to introduce improvements in the following two areas -

- (a) improving the language of the provision by making it clear that recruitment of members for or becoming members of terrorist **bodies** is prohibited; and
- (b) providing for the appropriate *mens rea* such that a recruiter or an existing member will be criminalized only when he “knows” or “has reasonable grounds to believe” that the organization concerned is a terrorist organization published in the Gazette.

9. Regarding other concerns raised in respect of the Ordinance before its passage, a table setting out how we had addressed them is at **Annex D**. It can be noted that the Ordinance has already incorporated the comments as agreed by the majority of the then Bills Committee.

Prohibitions relating to fixed platforms

10. The new section 11F in the Bill seeks to create the offences endangering the safety of fixed platforms as proscribed under Article 2 of the Protocol. Whether an act committed in disputed territorial waters outside Hong Kong would be prosecuted would depend on the facts of the case and whether another State also had jurisdiction.

Proposed law enforcement powers

11. The existing section 50 of the Police Force Ordinance (Cap. 232), based on which the United Nations (Anti-Terrorism Measures) Ordinance can be enforced, allows arrest, detention and bail of suspected persons and seizure of suspected property only. Upon careful deliberation, we consider that further provisions are needed to enable law enforcement agencies to require relevant persons to furnish information or produce materials etc. These powers are particularly important for investigation into suspicious financial transactions reports. We therefore propose to make new provisions in the new Parts 4A and 4B in the Bill on the law enforcement powers required for effective investigation of the offences under the Ordinance and the Bill. These powers are modelled on similar powers under the Drug Trafficking (Recovery of Proceeds) Ordinance

(Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455) and the Dangerous Drugs Ordinance (Cap. 134), the exercise of which is subject to prior court authorization.

Enforcement of the United Nations (Anti-Terrorism Measures) Ordinance

12. On 24 July 2003, a Pakistani man dined at a hotel in Wanchai and left without settling the bill. He also left a briefcase at the hotel. After departure, the man telephoned the hotel four times in the same evening, claiming to be a terrorist and that he had planted a bomb in the hotel. The Police was called to the scene and confirmed that the case was a bomb hoax.

13. The Police located and arrested the man. The man was convicted of the offences of “making off without payment” under section 18C of the Theft Ordinance (Cap. 210) and “false threats of terrorist acts” under section 11 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575). As he has previous records of psychiatric treatment, he has been sentenced to serve a 6-month hospital order for each charge concurrently.

Report to the United Nations on implementation of United Nations Security Council Resolution (UNSCR) 1373

14. Paragraph 6 of UNSCR 1373 “decides to establish, in accordance with rule 28 of its provisional rules of procedures, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution”.

15. The Counter Terrorism Committee of the Security Council had requested all Member States to submit reports, by 27 December 2001, on steps taken to implement UNSCR 1373. We had provided relevant information to the Central People’s Government (CPG). China submitted to the Counter Terrorism Committee its report on 27 December

2001, and supplementary reports in July 2002 and July 2003 respectively, which had incorporated information on Hong Kong. We will provide further information to the CPG when required.

Security Bureau
October 2003

Implementation of the International Convention for the Suppression of Terrorist Bombings

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
1.	<p>For the purposes of this Convention:</p> <p>1. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.</p> <p>2. “Infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.</p> <p>3. “Explosive or other lethal device” means:</p> <p style="padding-left: 40px;">(a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or</p>	<p>The definitions of “state or government facility”, “infrastructure facility”, “explosive or other lethal device”, “place of public use” and “public transportation system” are provided for under the new section 11A in the United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003 (the Bill). The wording of the definitions follows closely the provisions in the Convention.</p> <p>It is necessary to define these terms in the Bill for the purposes of the offences created by the new section 11B in the Bill (which implements Article 2 of the Convention).</p>	-

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	<p>substantial material damage; or</p> <p>(b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.</p> <p>4. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.</p> <p>5. “Place of public use” means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether</p>		

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	<p>continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.</p> <p>6. “Public transportation system” means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.</p>		
2.	<p>1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:</p> <p>(a) With the intent to cause death or serious bodily injury; or</p> <p>(b) With the intent to cause extensive</p>	The offences are provided for under the new section 11B in the Bill.	Sections 53 (causing explosion likely to endanger life or property), 54 (attempt to cause explosion or making or keeping explosive with intent to endanger life or property), 55 (making or possession of explosive) and 60 (destroying or damaging property) of the Crimes Ordinance (Cap. 200) may have covered the bombing offences

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	<p>destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.</p> <p>2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.</p> <p>3. Any person also commits an offence if that person:</p> <p>(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or</p> <p>(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or</p> <p>(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal</p>	<p>Section 159G (attempting to commit an offence) of the Crimes Ordinance (Cap. 200) and section 89 (aiders, abettors and accessories) of the Criminal Procedure Ordinance (Cap. 221) already cover the offences under paragraphs 2 and 3 of Article 2. No new legislative provision is required.</p>	<p>proscribed by Article 2 of the Convention.</p> <p>Having taken into account the following factors, we consider it appropriate to add new provisions to the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) for complying with the requirements of the Convention –</p> <ul style="list-style-type: none"> the objective of the Convention is to prevent and repress terrorist attacks by means of explosives or other lethal devices. With an aim to combat terrorism, the Ordinance is a suitable legal vehicle to deal with terrorist activities proscribed by the Convention; Article 6 of the Convention requires State Parties to

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	activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.		<p>establish jurisdiction over the proscribed acts committed within their territories or by their nationals. New provisions are required to give effect to these requirements. In this regard, section 3 of the Ordinance fulfils such requirements;</p> <ul style="list-style-type: none">• if we implement the jurisdictional requirements under Article 6 without creating new offences in accordance with Article 2, we may be inappropriately extending the jurisdictional coverage of the general criminal law as mentioned above;• the bombing offences provided for under the new section 11B in the Bill

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			<p>closely follow the wording (and accordingly the elements and mens rea involved) of the acts proscribed by the Convention; and</p> <ul style="list-style-type: none">• it is more transparent and tidier to make provision under one Ordinance for offences created by multilateral conventions. This is the approach that is usually adopted [see Aviation Security Ordinance (Cap. 494), Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468) and Crimes (Torture) Ordinance (Cap. 427)], and there is the added advantage that the extent of extra-territorial jurisdiction can be directly related to the offences.

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3.	This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.	No new legislative provision is required.	-
4.	Each State Party shall adopt such measures as may be necessary: <div style="margin-left: 40px;"> (a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention; (b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences. </div>	The offences under Article 2 are provided for under the new section 11B in the Bill. Penalties for the offences are provided for under the new section 14(7A) in the Bill.	(see remarks for Article 2 above)

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5.	Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.	<p>The offences under Article 2 are provided for under the new section 11B in the Bill. Penalties for the offences are provided for under the new section 14(7A) in the Bill.</p> <p>Any human rights issues involved will be dealt with in accordance with the Hong Kong Bill of Rights Ordinance (Cap. 383) which has incorporated the provisions of the International Covenant on Civil and Political Rights.</p>	-
6.	<p>1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:</p> <ul style="list-style-type: none"> (a) The offence is committed in the territory of that State; or (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is 	New legislative provisions are needed to give effect to this requirement to establish extra-territorial jurisdiction. It is implemented under the new section 3 in the Bill.	-

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	<p>committed; or</p> <p>(c) The offence is committed by a national of that State.</p> <p>2. A State Party may also establish its jurisdiction over any such offence when:</p> <p>(a) The offence is committed against a national of that State; or</p> <p>(b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or</p> <p>(c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or</p> <p>(d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or</p> <p>(e) The offence is committed on board an aircraft which is operated by the Government of that State.</p>	<p>This is not a mandatory requirement. No new legislative provision is required.</p>	

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	<p>3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.</p> <p>4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.</p> <p>5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.</p>	<p>This is an administrative requirement. No new legislative provision is required.</p> <p>Extradition will be dealt with in accordance with the proposed Fugitive Offenders (Terrorist Bombings) Order and relevant extradition agreements with overseas jurisdictions. Hong Kong need not establish “universal” jurisdiction as it will have the capacity to extradite to all Parties to the Convention.</p> <p>No new legislative provision is required.</p>	

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7.	<p>1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.</p> <p>2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.</p> <p>3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:</p> <p style="padding-left: 40px;">(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to</p>	<p>The offences under Article 2 are provided for under the new section 11B in the Bill. The proposed law enforcement powers under Part 4A in the Bill are useful for investigation of any alleged offences.</p> <p>Custody of alleged offenders will be handled in accordance with existing law.</p> <p>These rights can be guaranteed administratively. The Hong Kong Bill of Rights Ordinance (Cap. 383) which has incorporated the provisions of the International Covenant on Civil and Political Rights is also relevant to this Convention provision.</p>	-

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	<p>protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;</p> <p>(b) Be visited by a representative of that State;</p> <p>(c) Be informed of that person's rights under subparagraphs (a) and (b).</p> <p>4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.</p> <p>5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1(c) or 2(c), to invite the International Committee of the Red Cross to</p>	<p>No new legislative provision is required.</p> <p>No new legislative provision is required.</p>	

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	<p>communicate with and visit the alleged offender.</p> <p>6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.</p>	<p>This is an administrative requirement. No new legislative provision is required.</p>	
8.	<p>1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether</p>	<p>Prosecution of offences will be dealt with in accordance with established criminal procedures. No new legislative provision is required.</p>	-

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	<p>or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.</p> <p>2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.</p>	<p>The “condition” referred to in this paragraph is not provided for in Hong Kong domestic law. This provision is included to enable State Parties which do have such a “condition” in their domestic law to comply with the Convention.</p>	

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9.	<p>1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.</p> <p>2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.</p> <p>3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth</p>	<p>New legislative provisions are needed to give effect to the extradition requirements. These are implemented by the proposed Fugitive Offenders (Terrorists Bombings) Order.</p> <p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Terrorists Bombings) Order and relevant extradition agreements with overseas jurisdictions.</p> <p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Terrorists Bombings) Order and relevant extradition</p>	-

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	<p>in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.</p> <p>4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.</p> <p>5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.</p>	<p>agreements with overseas jurisdictions.</p> <p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Terrorists Bombings) Order and relevant extradition agreements with overseas jurisdictions. The requirement of double criminality has to be fulfilled for the purpose of extradition.</p> <p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Terrorists Bombings) Order and relevant extradition agreements with overseas jurisdictions, subject to the limitations, restrictions and qualifications in the Convention.</p>	
10.	<p>1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2,</p>	<p>New legislative provisions are needed to give effect to the requirements on mutual legal assistance. These are implemented by the proposed Mutual Legal Assistance in Criminal Matters (Terrorists Bombings) Order and</p>	-

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	<p>including assistance in obtaining evidence at their disposal necessary for the proceedings.</p> <p>2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.</p>	<p>relevant mutual legal assistance agreements with overseas jurisdictions.</p>	
11.	<p>None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political</p>	<p>Section 3(1) of the Fugitive Offenders Ordinance (Cap. 503) already provides that any extradition arrangements are “subject to the limitations, restrictions, exceptions and qualifications” contained in an extradition order. No new legislative provision is therefore required to exclude Convention offences from being adjudged “political”.</p> <p>Schedule 2 of the proposed Mutual Legal Assistance in Criminal Matters (Terrorist Bombings) Order provides that section 5(1)(b)</p>	-

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	motives.	of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) is deleted. Accordingly the offences under Article 2 of the Convention will not be regarded as political offences for the purpose of mutual legal assistance.	
12.	Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.	No new legislative provision is required. Existing provisions in the Fugitive Offenders Ordinance (Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) require refusal of surrender or assistance in these circumstances.	-
13.	1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State	No new legislative provision is required. Pursuant to Part V of the Mutual Legal Assistance in Criminal Matters Ordinance	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:</p> <ul style="list-style-type: none">(a) The person freely gives his or her informed consent; and(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate. <p>2. For the purposes of this article:</p> <ul style="list-style-type: none">(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;(b) The State to which the person is transferred shall without delay implement its obligation to return	<p>(Cap. 525), prisoners may be transferred to and from Hong Kong for the purposes of Article 13.</p>	

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	<p>the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;</p> <p>(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;</p> <p>(d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.</p> <p>3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal</p>		

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	liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.		
14.	Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.	These rights are guaranteed under the Hong Kong Bill of Rights Ordinance (Cap. 383) which has incorporated the provisions of the International Covenant on Civil and Political Rights. No new legislative provision is therefore required.	-
15.	States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly: (a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those	This can be achieved through international cooperation. No new legislative provision is required.	-

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	<p>offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;</p> <p>(b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2;</p> <p>(c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of</p>		

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	technology, equipment and related materials.		
16.	The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.	Disclosure of information to the United Nations is provided for under the new section 12D(4) in the Bill.	
17.	The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.	No new legislative provision is required.	
18.	Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.	No new legislative provision is required.	

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
19.	<p>1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.</p> <p>2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.</p>	No new legislative provision is required.	
20.	<p>1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the</p>	No new legislative provision is required.	China has declared that it does not consider itself bound by paragraph 1 of Article 20.

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.</p> <p>2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.</p> <p>3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.</p>		
21.	1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>Nations Headquarters in New York.</p> <p>2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.</p> <p>3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.</p>		
22.	<p>1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.</p> <p>2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall</p>	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.		
23.	<p>1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.</p> <p>2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.</p>	No new legislative provision is required.	-
24.	<p>The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.</p> <p>IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this</p>	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	Convention, opened for signature at New York on 12 January 1998.		

Security Bureau
October 2003

Implementation of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
1.	For the purposes of this Convention, “ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.	<p>The definition of “ship” is provided for under the new section 11C in the United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003 (the Bill). The wording of the definition follows closely the provision in the Convention.</p> <p>It is necessary to define this term in the Bill for the purposes of the offences created by the new section 11E in the Bill (which implements Article 3 of the Convention).</p>	-
2.	<p>1. This Convention does not apply to:</p> <ul style="list-style-type: none"> (a) a warship; or (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or (c) a ship which has been withdrawn from navigation or laid up. <p>2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.</p>	<p>This is provided for under the new section 11D in the Bill.</p> <p>No new legislative provision is required.</p>	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
3.	<p>1. Any person commits an offence if that person unlawfully and intentionally:</p> <ul style="list-style-type: none"> (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely 	<p>The offences are provided for under the new section 11E in the Bill.</p>	<p>Sections 53 (causing explosion likely to endanger life or property), 54 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property), 60 (destroying or damaging property), and 62 (possessing anything with intent to destroy or damage property) of the Crimes Ordinance (Cap 200); sections 2 (murder) and 19 (wounding or inflicting grievous bodily harm) of the Offences Against the Person Ordinance (Cap. 212); and section 72 (endangering the safety of any person in any vessel or in the sea) of the Shipping and Port Control Ordinance (Cap. 313) may have covered the offences under paragraph 1 (b), (c), (d), (e) and (g) of Article 3.</p> <p>Having taken into account the following factors, we consider it</p>

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>to endanger the safe navigation of a ship; or</p> <p>(f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or</p> <p>(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).</p> <p>2. Any person also commits an offence if that person:</p> <p>(a) attempts to commit any of the offences set forth in paragraph 1; or</p> <p>(b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or</p> <p>(c) threatens, with or without a condition, as is provided for</p>	<p>Section 159G (attempting to commit an offence) of the Crimes Ordinance (Cap. 200) and section 89 (aiders, abettors and accessories) of the Criminal Procedure Ordinance (Cap. 221) already cover the offences under paragraph 2(a) and (b) of Article 3. No new legislative provision is required.</p> <p>New legislative provisions are needed to give effect to paragraph 2(c) of Article 3. The offence concerned is provided for under the new section 11E(3) in the Bill.</p>	<p>appropriate to add new provisions to the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) for complying with the requirements of the Convention –</p> <ul style="list-style-type: none"> the objective of the Convention is to prevent and repress terrorist acts against the safety of maritime navigation. With an aim to combat terrorism, the Ordinance is a suitable legal vehicle to deal with terrorist activities proscribed by the Convention; new legislative provisions are required to implement paragraph 1(a) and (f) of Article 3 as well as and Articles 4 and 6 (on jurisdictional requirements) of the Convention;

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.</p>		<ul style="list-style-type: none">• if we implement the jurisdictional requirements under Articles 4 and 6 without creating new offences in accordance with Article 3, we may be inappropriately extending the jurisdictional coverage of the general criminal law as mentioned above;• the offences provided for under the new section 11E in the Bill closely follow the wording (and accordingly the elements and mens rea involved) of the acts proscribed by the Convention, i.e. coverage of the offences is directed specifically at safety of maritime navigation; and

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
			<ul style="list-style-type: none"> it is more transparent and tidier to make provision under one Ordinance for offences created by multilateral conventions. This is the approach that is usually adopted [see Aviation Security Ordinance (Cap. 494), Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468) and Crimes (Torture) Ordinance (Cap. 427)], and there is the added advantage that the extent of extra-territorial jurisdiction can be directly related to the offences.
4.	1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.	New legislative provisions are needed to give effect to the jurisdictional requirements. They are implemented under the new section 11I in the Bill.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.		
5.	Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.	The offences under Article 3 are provided for under the new section 11E in the Bill. Penalties for the offences are provided for under the new section 14(7B) and (7C) in the Bill.	-
6.	1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed: (a) against or on board a ship flying the flag of the State at the time the offence is committed; or (b) in the territory of that State, including its territorial sea; or (c) by a national of that State.	New legislative provisions are needed to give effect to the jurisdictional requirements. They are implemented under the new section 11I in the Bill.	Section 23B (application of criminal law to Hong Kong ships on high seas etc.) of the Crimes Ordinance (Cap. 200) may be able to achieve the extra-territorial requirements under Articles 4 and 6 in respect of the offences under paragraph 1(a) to (d) and (g) of Article 3. However, it cannot cover the offences under paragraph 1(e)

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>2. A State Party may also establish its jurisdiction over any such offence when:</p> <ul style="list-style-type: none"> (a) it is committed by a stateless person whose habitual residence is in that State; or (b) during its commission a national of that State is seized, threatened, injured or killed; or (c) it is committed in an attempt to compel that State to do or abstain from doing any act. <p>3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as “the Secretary-General”). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.</p> <p>4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender</p>	<p>This is not a mandatory requirement. No new legislative provision is required.</p> <p>This is an administrative requirement. No new legislative provision is required.</p> <p>Extradition will be dealt with in accordance with the proposed Fugitive Offenders (Maritime Safety) Order and the relevant extradition agreements with overseas</p>	<p>and (f) of Article 3, which may not be committed on board a ship.</p>

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.</p> <p>5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.</p>	<p>jurisdictions. Hong Kong need not establish “universal” jurisdiction as it will have the capacity to extradite to all Parties to the Convention.</p> <p>No new legislative provision is required.</p>	
7.	<p>1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.</p> <p>2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.</p>	<p>Custody of alleged offenders will be handled in accordance with existing law.</p> <p>The proposed law enforcement powers under Part 4A in the Bill are useful for investigation of any alleged offence.</p>	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:</p> <ul style="list-style-type: none"> (a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence; (b) be visited by a representative of that State. <p>4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.</p>	<p>These rights can be guaranteed administratively. The Hong Kong Bill of Rights Ordinance (Cap. 383) which has incorporated the provisions of the International Covenant on Civil and Political Rights is also relevant to this Convention provision.</p> <p>No new legislative provision is required.</p>	

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.	This is an administrative requirement. No new legislative provision is required.	
8.	<p>1. The master of a ship of a State Party (the “flag State”) may deliver to the authorities of any other State Party (the “receiving State”) any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.</p> <p>2. The flag State shall ensure that the master of its ship is obliged, whenever</p>	<p>New legislative provisions are needed to give effect to the requirements on the obligations of the master of a ship under paragraphs 1, 2 and 4 of Article 8. They are provided for under the new section 11H in the Bill.</p> <p>Paragraphs 3 and 5 of Article 8 concern administrative arrangements. No new legislative provision is required.</p>	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.</p> <p>3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.</p> <p>4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.</p>		

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.		
9.	Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.	No new legislative provision is required.	-
10.	1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without	Prosecution of offences will be dealt with in accordance with established criminal procedures. No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.</p> <p>2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.</p>	<p>These rights are guaranteed under the Hong Kong Bill of Rights Ordinance (Cap. 383) which has incorporated the provisions of the International Covenant on Civil and Political Rights. No new legislative provision is required.</p>	
11.	<p>1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p>	<p>New legislative provisions are needed to give effect to the extradition requirements. These are implemented by the proposed Fugitive Offenders (Maritime Safety) Order.</p>	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3.</p> <p>3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.</p>	<p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Maritime Safety) Order and relevant extradition agreements with overseas jurisdictions.</p>	
	<p>3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.</p>	<p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Maritime Safety) Order and relevant extradition agreements with overseas jurisdictions.</p>	
	<p>4. If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place</p>	<p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Maritime Safety) Order and relevant extradition agreements with overseas jurisdictions. The requirement of double criminality has to be</p>	

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>within the jurisdiction of the State Party requesting extradition.</p> <p>5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 6 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.</p> <p>6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.</p> <p>7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are</p>	<p>fulfilled for the purpose of extradition.</p> <p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Maritime Safety) Order and relevant extradition agreements with overseas jurisdictions.</p> <p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Maritime Safety) Order and relevant extradition agreements with overseas jurisdictions.</p> <p>Extradition will be handled in accordance with the proposed Fugitive Offenders (Maritime Safety) Order and relevant extradition agreements with overseas jurisdictions, subject</p>	

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	modified as between States Parties to the extent that they are incompatible with this Convention.	to the limitations, restrictions and qualifications in the Convention.	
12.	<p>1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.</p> <p>2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.</p>	New legislative provisions are needed to give effect to the requirements on mutual legal assistance. These are implemented by the proposed Mutual Legal Assistance in Criminal Matters (Maritime Safety) Order and relevant mutual legal assistance agreements with overseas jurisdictions.	-
13.	<p>1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:</p> <p>(a) taking all practicable measures to prevent preparations in their</p>	These requirements can be achieved through international cooperation. No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>respective territories for the commission of those offences within or outside their territories;</p> <p>(b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.</p> <p>2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.</p>		
14.	Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its	Such information can be provided informally or in accordance with the proposed Mutual Legal Assistance in Criminal Matters (Maritime Safety) Order and relevant mutual legal assistance agreements with overseas	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.	jurisdictions.	
15.	<p>1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:</p> <ul style="list-style-type: none">(a) the circumstances of the offence;(b) the action taken pursuant to article 13, paragraph 2;(c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings. <p>2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.</p>	Disclosure of this information can be handled administratively.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as “the Organization”), to the other States concerned, and to the appropriate international intergovernmental organizations.		
16.	1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.	No new legislative provision is required.	China has declared that it shall not be bound by paragraph 1 of Article 16.

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.</p> <p>3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.</p>		
17.	<p>1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.</p>	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>2. States may express their consent to be bound by this Convention by:</p> <ul style="list-style-type: none">(a) signature without reservation as to ratification, acceptance or approval; or(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or(c) accession. <p>3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.</p>		
18.	<p>1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.</p>	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.		
19.	<p>1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.</p> <p>2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.</p> <p>3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.</p>	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
20.	<p>1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.</p> <p>2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.</p> <p>3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.</p>	No new legislative provision is required.	-
21.	<p>1. This Convention shall be deposited with the Secretary-General.</p> <p>2. The Secretary-General shall: (a) inform all States which have signed this Convention or acceded thereto, and all Members of the</p>	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>Organization, of:</p> <ul style="list-style-type: none">(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;(ii) the date of the entry into force of this Convention;(iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;(iv) the receipt of any declaration or notification made under this Convention;(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto. <p>3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the</p>		

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.		
22.	<p>This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.</p> <p>IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.</p> <p>DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.</p>	No new legislative provision is required.	-

Security Bureau
October 2003

**Implementation of the Protocol for the Suppression of Unlawful Acts
Against the Safety of Fixed Platforms Located on the Continental Shelf**

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
1.	<p>1. The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as “the Convention”) shall also apply <u>mutatis mutandis</u> to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.</p> <p>2. In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located.</p> <p>3. For the purposes of this Protocol, “fixed platform” means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or</p>	<p>The comments set out under “Necessity for new legislation for implementation” for Articles 5 and 7, 10 to 16 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the Convention) at Annex B are applicable to paragraph 1 of Article 1 of the Protocol.</p> <p>The jurisdictional requirements are implemented under the new section 3 in the Bill.</p> <p>The definition of “fixed platform” is provided for under the new section 11C in the Bill. The wording of the definition follows closely the provision in the Protocol.</p>	China has declared that it shall not be bound by paragraph 1 of Article 16 of the Convention.

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	for other economic purposes.	It is necessary to define this term in the Bill for the purposes of the offences created by the new section 11F in the Bill (which implements Article 2 of the Protocol).	
2.	<p>1. Any person commits an offence if that person unlawfully and intentionally:</p> <ul style="list-style-type: none"> (a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or (b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or (e) injures or kills any person in 	The offences are provided for under the new section 11F in the Bill.	<p>Sections 53 (causing explosion likely to endanger life or property), 54 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property), 60 (destroying or damaging property), and 62 (possessing anything with intent to destroy or damage property) of the Crimes Ordinance (Cap 200), and sections 2 (murder) and 19 (wounding or inflicting grievous bodily harm) of the Offences Against the Person Ordinance (Cap. 212) may have covered the offences under paragraph 1 (b), (c), (d) and (e) of Article 2.</p> <p>Having taken into account the following factors, we consider it</p>

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	<p>connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).</p> <p>2. Any person also commits an offence if that person:</p> <p>(a) attempts to commit any of the offences set forth in paragraph 1; or</p> <p>(b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or</p> <p>(c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platform.</p>	<p>Section 159G (attempting to commit an offence) of the Crimes Ordinance (Cap. 200) and section 89 (aiders, abettors and accessories) of the Criminal Procedure Ordinance (Cap. 221) already cover the offences under paragraphs 2(a) and (b) of Article 2. No new legislative provision is required.</p> <p>New legislative provisions are needed to give effect to paragraph 2(c) of Article 2. The offence concerned is provided for under the new section 11F(3) in the Bill.</p>	<p>appropriate to add new provisions to the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) for complying with the requirements of the Protocol –</p> <ul style="list-style-type: none"> the objective of the Protocol is to prevent and repress terrorist acts against the safety of fixed platforms. With an aim to combat terrorism, the Ordinance is a suitable legal vehicle to deal with terrorist activities proscribed by the Protocol; new legislative provisions are required to implement paragraph 1(a) of Article 2 and Article 3 (on jurisdictional requirements) of the Protocol;

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			<ul style="list-style-type: none">• if we implement the jurisdictional requirements under Article 3 without creating new offences in accordance with Article 2, we may be inappropriately extending the jurisdictional coverage of the general criminal law as mentioned above;• the offences provided for under the new section 11F in the Bill closely follow the wording (and accordingly the elements and mens rea involved) of the acts proscribed by the Protocol, i.e. coverage of the offences is directed specifically at safety of fixed platforms; and• it is more transparent and tidier to make provision

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			under one Ordinance for offences created by multilateral conventions. This is the approach that is usually adopted [see Aviation Security Ordinance (Cap. 494), Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468) and Crimes (Torture) Ordinance (Cap. 427)], and there is the added advantage that the extent of extra-territorial jurisdiction can be directly related to the offences.
3.	1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed: (a) against or on board a fixed platform while it is located on the continental shelf of that State; or (b) by a national of that State.	New legislative provisions are needed to give effect to the jurisdictional requirements. They are implemented under the new section 3 in the Bill.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>2. A State Party may also establish its jurisdiction over any such offence when:</p> <ul style="list-style-type: none"> (a) it is committed by a stateless person whose habitual residence is in that State; (b) during its commission a national of that State is seized, threatened, injured or killed; or (c) it is committed in an attempt to compel that State to do or abstain from doing any act. <p>3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as “the Secretary-General”). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.</p> <p>4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in</p>	<p>This is not a mandatory requirement. No new legislative provision is required.</p> <p>This is an administrative requirement. No new legislative provision is required.</p> <p>Extradition will be dealt with in accordance with the proposed Fugitive Offenders (Maritime Safety) Order and the relevant</p>	

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	<p>article 2 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.</p> <p>5. This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.</p>	<p>extradition agreements with overseas jurisdictions. Hong Kong need not establish “universal” jurisdiction as it will have the capacity to extradite to all Parties to the Protocol.</p> <p>No new legislative provision is required.</p>	
4.	Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.	No new legislative provision is required.	-
5.	1. This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Organization (hereinafter referred to as “the Organization”) from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession.	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>2. States may express their consent to be bound by this Protocol by:</p> <ul style="list-style-type: none">(a) signature without reservation as to ratification, acceptance or approval; or(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or(c) accession. <p>3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.</p> <p>4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.</p>		

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
6.	<p>1. This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.</p> <p>2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.</p>	No new legislative provision is required.	-
7.	<p>1. This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.</p>	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.</p> <p>3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.</p> <p>4. A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.</p>		
8.	<p>1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.</p> <p>2. The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.</p>	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.		
9.	<p>1. This Protocol shall be deposited with the Secretary-General.</p> <p>2. The Secretary-General shall:</p> <ul style="list-style-type: none">(a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:<ul style="list-style-type: none">(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;(ii) the date of entry into force of this Protocol;(iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the	No new legislative provision is required.	-

Article No.	Provision of Article	Necessity for new legislation for implementation	Remarks
	<p>date on which the denunciation takes effect;</p> <p>(iv) the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol;</p> <p>(b) transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.</p> <p>3. As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.</p>		
10.	This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.	No new legislative provision is required.	-

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	<p>IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.</p> <p>DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.</p>		

Security Bureau
October 2003

**United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) –
Addressing comments/concerns**

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
Section 2 – definition of “terrorist act”	The coverage of the original definition of “terrorist act” was too wide and might suppress an individual's civil and political rights.	<p>The Administration explained that the definition of “terrorist act” was based on the definition of terrorism under the United Kingdom Terrorism (United Nations Measures) Order 2001 and the Canadian Anti-terrorism Act. The definition followed the international trend.</p> <p>The Administration moved Committee Stage Amendments (CSAs) to (i) tighten the definition of “terrorist act” by replacing such words as “involve” with “cause” and “designed” with “intended”; and (ii) to extend the exemption provision under paragraph (b) to the effect that any advocacy, protest, dissent or industrial action creating serious risk to public health and intended to seriously interfere with essential services, electronic systems etc will not constitute “terrorist act”.</p>
Section 2 – original definition of “property”	The coverage of the original definition of “property” was too wide.	The Administration moved CSAs to delete the definition of “property”. “Property” will be interpreted in accordance with its definition in the Interpretation and General Clauses Ordinance (Cap. 1).
Section 2 – definition of “weapons”	The original definition of “weapons” might cover many goods used for both military and	The Administration moved CSAs to (i) delete the original provision of “any goods specially designed or

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
	non-military purposes.	prepared for use, or normally used, in the manufacture or maintenance of any arms or related material mentioned in paragraph (b) or components mentioned in paragraph (c)" in the definition of "weapons"; and (ii) add "precursor" in paragraph (a) of the definition. The purpose is to make it clear that only key substances for the production of chemical, biological, radiological or nuclear weapons will fall within the definition of "weapons".
Section 2 – definition of "items subject to legal privilege" and provision on "privilege against self-incrimination"	It was necessary to protect legal professional privilege and the privilege against self-incrimination.	<p>The Administration explained that legal professional privilege and the privilege against self-incrimination were already protected under common law.</p> <p>To address concerns, the Administration moved CSAs to add (i) the definition of "items subject to legal privilege"; and (ii) a new section 2(5) specifying that nothing in the Ordinance shall require disclosure or authorize the search/seizure of any items subject to legal privilege, or restrict the privilege against self-incrimination.</p>
Section 2 – provision on "journalistic materials"	It was necessary to protect journalistic materials.	The Administration moved CSAs to add a new section 2(7) stating for the avoidance of doubt that "journalistic materials" should be handled in accordance with Part XII of the Interpretation and General Clauses Ordinance (Cap. 1).

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
Sections 4 and 5 – specification by Chief Executive (CE) of persons and property as terrorists/terrorist associates and terrorist property	The administrative power given by the original provision to the CE to specify persons and property as terrorists/terrorist associates and terrorist property, as the case may be, was too wide. The affected persons would have no knowledge of the grounds for the CE's specification. In addition, the original specification period of three years was too long.	<p>The Administration moved CSAs to provide for two systems of specification –</p> <ul style="list-style-type: none"> (i) under the new section 4, the CE may specify terrorists/terrorist associates or terrorist property designated by the United Nations by publishing a notice in the Gazette; and (ii) under the new section 5, the CE may apply to the Court of First Instance for an order to specify terrorists/terrorist associates or terrorist property not designated by the United Nations. The Court shall only make the order if it is satisfied that the persons or property are terrorists/terrorist associates or terrorist property. The CE shall cause the order to be published in the Gazette. The specification period has been shortened from three to two years. The CE's applications shall be made inter partes unless otherwise specified in the rules of court to be made.
Section 6 – freezing of funds	The original freezing period of three years was too long. The Secretary for Security (S for S) should not re-freeze the same funds based on the same grounds. There should also be provision allowing the use of the frozen funds for legitimate purposes.	The Administration moved CSAs to (i) shorten the freezing period from three to two years; and (ii) add a new section 6(5) providing that S for S shall not re-freeze the same funds unless there has been a material change in the grounds.

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
		<p>The Administration also moved CSAs to add a new section 15 specifying that the licence granted by S for S under sections 6 or 8 would enable the use of the frozen funds for the reasonable living and legal expenses of the affected persons. The Administration further agreed to the Hon Albert Ho's CSA that the frozen funds could also be used for the payments liable to be made under the Employment Ordinance (Cap. 57).</p>
Section 8 – prohibition on making funds, etc. available to terrorists and terrorist associates	The meaning of “for the purposes of this section” in the original provision was unclear and should be deleted.	The Administration moved CSAs to delete “for the purpose of this section”.
Section 10 – prohibition on recruitment, etc. to persons specified in notices under section 4(1) and (2)	The meaning of “a person shall not become a member of a person” was unclear, the coverage of “to serve in any capacity with” was too wide and would unnecessarily involve persons who were not at all terrorist members, and appropriate mens rea should be provided for.	<p>The Administration moved CSAs to (i) make it clear the “a person shall not become a member of a body of persons (including individuals)”; (ii) delete “to serve in any capacity with”; and (iii) provide for the mens rea such that a person who knows or has reasonable grounds to believe that the recruiting organization is a specified terrorist organization will be criminalized.</p> <p>The CSAs were not approved due to some technical reasons. The Administration has planned to amend section 10 to the above effect in the stage two anti-terrorism legislative exercise.</p>

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
Section 11 – prohibition against false threats of terrorist acts	Section 11 was outside the scope of UNSCR 1373 and might suppress freedom of press.	<p>The Administration explained that section 10 sought to criminalize wilful and deliberate acts to disseminate false threats of terrorist acts with the intention to cause alarm and create confusion to the public. Section 10 would not suppress freedom of press.</p> <p>The Administration accepted the Hon Mrs Selina Chow's CSAs which made it clear that section 10 covered acts "causing alarm to the public or a section of the public".</p>
Section 12 – disclosure of knowledge or suspicion that property is terrorist property	The objective mental element of "has reasonable grounds to suspect" would impose a heavy burden on the financial sector. In addition, the disclosure requirement as imposed on lawyers would affect traditional lawyer-client relationship.	<p>The Administration moved CSAs to (i) replace the mental element of "has reasonable grounds to suspect" with "suspects"; and (ii) add a new section 12(4) to protect frontline or junior staff who make disclosure to a person in accordance with the procedures established by their employers.</p> <p>As mentioned above, the Administration also moved CSAs to add (i) the definition of "items subject to legal privilege" under section 2; and (ii) a new section 2(5) specifying that nothing in the Ordinance shall require disclosure or authorize the search/seizure of any items subject to legal privilege, or restrict the privilege against self-incrimination.</p>

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
Section 13 – forfeiture of certain terrorist property	<p>The standard of proof in the forfeiture proceedings should be “the standard of proof applicable to civil proceedings in a court of law” instead of “the balance of probabilities” as provided for in the original section 13(4).</p> <p>There was concern as to whether the forfeiture provision under section 13 was consistent with the property right protection requirement under Articles 6 and 105 (BL 6 and 105) of the Basic Law.</p>	<p>The Administration moved CSAs to replace “the balance of probabilities” with “the standard of proof applicable to civil proceedings in a court of law” in section 13(4).</p> <p>As set out in a paper (referenced CB(2)2459/01-02(01)) submitted to the Bills Committee, the Administration affirmed that section 13 is consistent with BL 6 and 105, and in particular, section 13 does not constitute a “deprivation” (“徵用”) of property within the meaning of BL 105 for which compensation is payable. The term “deprivation” in BL 105, when construed in the light of the corresponding Chinese text “徵用”, arguably refers to the act where the state or the government resumes or acquires properties due to needs of defence or socio-economic development. Section 13 does not fall within the narrow meaning of “deprivation” (“徵用”) of property, since it is in the nature of preventive confiscation of terrorist property.</p> <p>Even if a broader meaning is given to the term “deprivation”, it does not, under European human rights jurisprudence, include preventive confiscation that can be justified under the principle of proportionality with</p>

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
		<p>reference to the overriding public interest. In this regard, section 13 seeks to combat the global problem of terrorism and, more specifically, terrorism financing, by way of preventive confiscation of terrorist property.</p> <p>Apart from the protection of the above important public interest, the principle of proportionality requires that there be a reasonable relationship of proportionality between the means employed for the interference with private property rights and the aim sought to be realized. Under European human rights jurisprudence in relation to confiscation or forfeiture of properties, it is relevant to consider whether there are procedures which enable reasonable account to be taken of the link between the conduct of owner and breach of law and allow the owner to put his case to the responsible authorities. In this regard, a forfeiture order under section 13 will not be made unless the court, under relevant Rules of the High Court, is satisfied that the property concerned is terrorist property and falls within the criteria laid down in section 13. There will therefore be sufficient procedural safeguards in compliance with the principle of proportionality to protect the rights of the parties concerned.</p>

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
Section 14 – offences	<p>A person who has a reasonable excuse not to send a copy of the freezing notice to the fund owner as required under section 6(7) shall not be construed as contravening the requirement.</p> <p>The original provision on the liability of a body corporate was unclear.</p>	<p>The Administration moved CSAs to amend section 14(3) to the effect that a person who, without reasonable excuse, contravenes a requirement under section 6(7) commits an offence.</p> <p>The Administration also moved CSAs to delete the original provision on the liability of a body corporate. The issue of criminality of directors and officers of a body corporate will be dealt with in accordance with section 101E of the Criminal Procedure Ordinance (Cap. 221).</p>
Section 16 – delegations	The CE should delegate his functions under the Ordinance only to public officers.	The Administration explained that the intention was for the CE to delegate his functions under the Ordinance only to public officers. The Administration also moved CSAs to section 16 to make it clear that delegations will be made only to public officers.
Section 17 – applications to Court of First Instance	Appeal avenues should be available to all persons affected by the specification orders and freezing notices under sections 5 and 6 respectively.	The Administration moved CSAs to (i) provide that the affected person could apply to the Court of First Instance to appeal against a specification order made upon an ex parte application under section 5; (ii) widen the scope of appellants in respect of property specified under section 5 or funds frozen under section 6 to include any affected person; and (iii) provide that a person affected by the freezing actions under section 6 or 8 could appeal to the

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
		<p>Court of First Instance for issue of a licence by S for S, or for variation of a license issued by S for S, for using the frozen funds.</p> <p>The Administration also moved CSAs to add a new section 2(7) to make it clear that the affected person could apply to the Court of Appeal in accordance with section 14 of the High Court Ordinance (Cap. 4) in respect of any judgment or order of the Court of First Instance arising from inter partes proceedings under section 5, 13, 17 or 18.</p>
Section 18 – compensation	The Government should pay compensation to the aggrieved persons who had been wrongly specified as terrorists/terrorist associates or whose property had been wrongly specified as terrorist property.	<p>The Administration explained that the right to claim damages from the Government was already available under common law.</p> <p>The Administration accepted Members' suggestion and moved CSAs to provide for a statutory compensation mechanism under the new section 18 whereby compensation would be paid to an affected person if there had been some serious default on the part of the Government in obtaining the specification under section 5 or 6, and the affected person had in consequence of the specification and default suffered loss. This is based on similar provisions in the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455).</p>

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
		<p>Noting Members' view that it would be difficult to prove that there had been "serious default" on the part of the Government, the Administration had undertaken to review the compensation provision in section 18 in consultation with relevant bureaux and departments, and report to Members within six months of the commencement of the Ordinance. The result of the review has been set out in a paper (referenced CB(2)846/02-03(04)) submitted to Members in January 2003.</p>
Section 19 – regulations	Provisions on freezing of non-fund property and on enforcement powers should be introduced by way of an amendment bill instead of subsidiary legislation.	<p>The Administration noted that it was not uncommon to make provision in a principal ordinance to empower the Administration to draw up regulations for different purposes. Such regulations are subsidiary legislation subject to scrutiny by the Legislative Council.</p> <p>The Administration had undertaken to give priority consideration to introducing an amendment bill to provide for the matters. In this regard, the Administration had explained at the meeting of the Panel on Security on 16 January 2003 that it would introduce a United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003 to cover, among other things, the freezing of non-fund terrorist property and the necessary enforcement powers.</p>

Section	Comments/concerns raised on the original provision in the Bill	Administration's response addressing comments/concerns raised
Section 21 – proceedings inter partes shall be held in open court unless otherwise ordered by court	The persons affected by the Government's specification and forfeiture actions should be assured of an open and fair hearing.	The Administration moved CSAs to provide for a new section 21 making it clear that proceedings inter partes in respect of actions under sections 5, 13, 17 and 18 shall be held in open court, unless the court otherwise orders that the proceedings shall be held in chambers or in camera in the interests of the security, defence or external relations of the HKSAR or the administration of justice.
original Schedules 2 and 3 – evidence and information; seizure and detention of property suspected to be terrorist property	The enforcement powers as provided for under the original Schedules 2 and 3 were too wide.	The Administration moved CSAs to delete Schedules 2 and 3.