

**立法會**  
***Legislative Council***

Ref : CB2/BC/11/02

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

**Concerns raised by some members of the Bills Committee on United Nations  
(Anti-Terrorism Measures) Bill on certain provisions which are also covered by  
the United Nations(Anti-Terrorism Measures) (Amendment) Bill 2003**

*Section 2 - Interpretation*

*(Clause 2 of the United Nations (Anti-Terrorism Measures) Bill)*

Hon Margaret NG considered that the definition of "terrorist property" should be narrowed down to mean "any property including funds that is intended to be used to finance or otherwise assist the commission of a terrorist act".

*Section 6 - Freezing of funds*

*(Clause 5 of the United Nations (Anti-Terrorism Measures) Bill)*

2. Hon Margaret NG, Hon Cyd HO, Hon Albert HO and Hon James TO considered that the powers in respect of freezing of funds for the Secretary for Security (S for S) were too wide, as S for S could freeze funds if she had reasonable grounds to suspect that they were terrorist property without having to seek prior court authorisation. This situation was exacerbated by the wide definitions of "terrorist act" and "terrorist property". These Members were of the view that the proposed section 6 should be reviewed to strike a proper balance between the enforcement of powers and protection for the innocent.

3. Hon Margaret NG considered that on humanitarian ground, there should be no need for the person concerned and/or his dependents to apply for a licence from S for S for the supply of funds for the purpose of meeting basic expenses such as food and clothing, and legal expenses. Miss NG also considered that the two-year expiry period of the freezing notice was too long, and should be reduced to one year.

*Section 10 - Prohibition on recruitment, etc. to persons specified in notices under*

*section 4(1) and (2)*

*(Clause 9 of the United Nations (Anti-Terrorism Measures) Bill)*

4. Hon Margaret NG considered that the scope of the proposed section 10 relating to the prohibition of recruitment of persons to serve with bodies which had been specified by the Chief Executive was too wide, and it would unnecessarily involve many people who were completely unrelated to terrorist organisations. Miss NG proposed that the scope of the section should be narrowed down, and a clear subjective mens rea be adopted.

*Section 12 - Disclosure of knowledge or suspicion that property is terrorist property  
(Clause 11 of the United Nations (Anti-Terrorism Measures) Bill)*

5. Hon Margaret NG considered that the proposed section 12, which dealt with disclosure of knowledge or suspicion that certain property was terrorist property, was at variance with the United Nations Security Council Resolution (UNSCR) 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF). Miss NG pointed out that section 12 imposed an obligation on "any person", but FATF only imposed the obligation on "financial institutions, other business or entities subject to anti-money laundering obligations" and UNSCR 1373 did not require Hong Kong to make a potential criminal of every ordinary citizen. Miss NG also considered that the expression "reasonable grounds to suspect" in relation to the mental element for the disclosure requirement should be replaced with "suspect on reasonable grounds".

*Section 13 - Forfeiture of certain terrorist property  
(Clause 13 of the United Nations (Anti-Terrorism Measures) Bill)*

6. Hon Margaret NG considered that the standard of proof for an application for a forfeiture order in respect of a terrorist property should be raised to one applicable to criminal proceedings, having regard to the wide powers of S for S to freeze funds.

*Section 18 - Compensation  
(New clause 16A to the United Nations (Anti-Terrorism Measures) Bill)*

7. The Bills Committee on United Nations (Anti-Terrorism Measures) Bill considered that the requirement of "serious default" for obtaining compensation should not be adopted, as it was very difficult for the affected persons to satisfy the court that there had been "serious default" on the part of the Government.

*Section 19 - Regulations*

*(Clause 18 of the United Nations (Anti-Terrorism Measures) Bill)*

8. Hon Margaret NG, Hon James TO and Hon Audrey EU were of the view that provisions for the necessary law enforcement powers should not be made by S for S by way of subsidiary legislation, and that such powers should form part of the Ordinance.

Council Business Division 2

Legislative Council Secretariat

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