

**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 3 November 2003.

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

2. For the case as reported in the paper (CB(2)204/03-04(01)) submitted to the Bills Committee in October 2003, we would like to reaffirm that the offender was charged with an offence contrary to section 11(2) of the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575) after the evidence had been assessed, the law considered, allegations weighed and the circumstances of the offender evaluated. The magistrate who tried the case accepted the propriety of the charge as laid against the defendant. He convicted the defendant after trial and imposed a hospital order. The defendant was properly charged, tried and sentenced.

3. Notwithstanding the offender's previous records of psychiatric treatment, there was no evidence to indicate that he was incapable to form the requisite *mens rea* under section 11(2) of the Ordinance. Prior to trial, the magistrate had ascertained that he was fit to plead. The magistrate found him guilty as charged after trial.

Freezing of terrorist property

4. For freezing of terrorist property, including both funds and non-fund property, our view remains that speed is of paramount importance. It will be prudent not to underestimate the effectiveness of modern arrangements which enable non-fund property to be quickly liquidated or physically transferred out of Hong Kong -

- (a) some financial institutions do provide speedy re-financing of real property, thus allowing terrorists and terrorist associates to

liquidate their property and transfer the realized cash to another jurisdiction immediately;

- (b) some terrorists and terrorist associates may have established close relations with their financial institutions, and are able to make arrangements for their property to be speedily liquidated; and
- (c) some non-fund property such as cars, yachts and precious stones can be physically transported out of Hong Kong almost instantly.

5. Upon careful deliberation on the fact that judicial procedures will alert the terrorists or terrorist associates and an appeal mechanism is available under section 17 of the Ordinance, we therefore propose to apply the freezing mechanism for terrorist funds under the existing section 6 to non-fund terrorist property.

Application for search warrants under new sections 12C and 12G

6. The new Part 4B in the Bill, which includes the new section 12G, is based on Part IVA of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405). The new Part 4B is directed towards ensuring that terrorist property can be detained pending further action in relation to it. Part IVA of Cap. 405 is, in like fashion, directed towards money which represents the proceeds of drug trafficking which is in the process of being imported into or exported from Hong Kong. One significant difference is that under the new Part 4B in the Bill the terrorist property can only be seized if a magistrate has issued a warrant; under Part IVA of Cap. 405 the drug money can be seized by an authorized officer without warrant. In both Parts the continued detention of the property must be authorized by the Court of First Instance after a certain period. In that light, and bearing in mind that a judicial warrant is not required under Part IVA of Cap. 405, we consider it acceptable for the warrant to be issued by a magistrate.

7. The new section 12C is based on section 5 of the Organized and Serious Crimes Ordinance (Cap. 455) and section 21 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405). Under these sections the warrant is issued by either the Court of First Instance or the District Court.

Long title of the Bill

8. The long titles of the Bills introduced into the Legislative Council in recent years vary in length. Some are more detailed than the others. This reflects the fact that there is no rule as to the length of the long title. The drafting rule is that it must encompass the whole of the contents of the Bill. One way to do this is to describe the principal provisions. It can also be done in broader terms as long as there is no “vagueness or looseness of expression”. (Thornton, Legislative Drafting 4th edn. Page 195) Thornton recommends a more informative style. (Legislative Drafting, Page 193, copy at **Annex**) According to Thornton, if the amendments are numerous, it is permissible to use a simple form (Legislative Drafting, Page 195). It follows that describing each provision generally (if practicable) is a proper way of drafting a long title.

Information on a newspaper cutting

9. It has been the practice for Hong Kong to participate in trade control seminars and conferences organized by other economies to exchange views and experience on control of strategic commodities. Representatives of the Trade and Industry Department attended the Export Control Policy Dialogue held in Tokyo in October 2003 to exchange views with other participating economies on export control.

10. The interception case is one of the many cases of on-going cooperation between enforcement authorities of Hong Kong and other economies. The goods in question were said to be exported from Japan to Thailand via Hong Kong but were suspected to be diverted to North Korea for uses related to weapons of mass destruction.

Security Bureau
November 2003

Annex

Chapter 10

Preliminary provisions**LONG TITLE¹****Function**

Every Act begins with a long title the function of which is to indicate the general purposes of the Act. The long title is part of the Act, being considered, enacted, and subject to amendment, by the legislature. It is important because it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope.² It may not, however, be looked at to modify the interpretation of plain and unambiguous language.³

In some countries the long title is also of importance during the legislative process and may have effect to limit debate or amendment of the Bill. It would appear that the comprehensiveness of the long title in United Kingdom statutes is to some extent a consequence of the strictness of parliamentary practice in this regard. The Australian *Legislation Handbook* (Ch 2.47) states that 'Cabinet some years ago expressed a desire that the long title should be precise, as an aid to the restriction of the area of debate'. But such strictness has been relaxed in other jurisdictions and this has led to briefer and less informative long titles.⁴

Apart from parliamentary considerations, a comprehensive long title may serve a valuable purpose in assisting to communicate the intended spirit and scope of the Act. The long title presents one opportunity to the drafter to say in plain terms what he or she is about, but a purpose provision may be more effective. An abbreviated, truncated title serves no purpose other than that of a label, and that is the prerogative of the short title. For example, where an Act is to bear the short title 'Meat Industry Act', there is no value in a long title such as 'An Act relating to the Meat Industry'. A more informative long title, such as the following, might however serve some purpose:

An Act to encourage, facilitate and assist the development of the meat industry in the Republic; to establish the Meat Industry Corporation and provide for its functions; to

- 1 The title is nowadays usually referred to as the long title in order to distinguish it from the short title, and this practice is adopted in this chapter. Nevertheless, in some jurisdictions the practice is to retain for formal use the word 'title', unqualified by 'long'.
- 2 *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at 128.
- 3 *Re Wyke's Will Trusts* [1961] Ch 229 at 242; *Ward v Holmes* [1964] 2 QB 580, [1964] 2 All ER 729.
- 4 As to Canadian practice, see E. A. Driedger, *Legislative Forms and Precedents* (2nd edn) p153.