

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

Purpose

This paper addresses the issues raised in the submission of 31 October 2003 (CB(2)210/03-04(01)) from the Hong Kong Journalists Association.

Part 4A – powers of investigation

2. The new Part 4A in the United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003 (the Bill) proposes to empower the law enforcement agencies to require relevant persons to furnish information or produce materials, to search premises for relevant materials, and to seize and detain such materials. These powers are necessary for effective investigation into offences under the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575).

3. We do not agree that the provisions in Part 4A in the Bill are “more onerous” than those in the original Schedule 2 to the United Nations (Anti-Terrorism Measures) Bill. Indeed the powers provided for in Part 4A 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. Their operation, which is subject to judicial oversight, is different from that under the original Schedule 2 which proposed to empower the law enforcement agencies to request any person to furnish information or produce materials in the absence of a court order.

Protection of journalistic materials

4. Section 2(7)(b) of the Ordinance provides for the avoidance of doubt that “the provisions of this Ordinance shall be subject to the operation of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1)”. There is no question that the new Part 4A in the Bill, which is part of the Ordinance, is subject to section 2(7)(b). Nevertheless, subject to further discussion at the Bills Committee, we are prepared to

consider the need for an additional provision to put it beyond doubt that all the investigative powers in the Bill are subject to Part XII of Cap. 1.

5. It is possible that a journalist may be required by a court order to furnish information or produce materials under sections 12A and 12B in the new Part 4A in the Bill. In this regard, it should be noted that sections 12A and 12B provide that the Court of First Instance will only issue an order if the objective tests set out in sections 12A(4) and 12B(5) respectively are met -

- (a) there are reasonable grounds for suspecting that the relevant offence under investigation has been committed;
- (b) there are reasonable grounds for suspecting that a particular person/persons of a particular description, has/have information, or is/are in possession of material, likely to be relevant to the investigation;
- (c) there are reasonable grounds for believing that the material concerned is likely to be relevant to the investigation; and
- (d) there are reasonable grounds for believing that it is in the public interest that an order should be made, having regard to the seriousness of the relevant offence under investigation; whether the relevant offence could be effectively investigated if an order is not made; the benefit likely to accrue to the investigation if the information is disclosed or the material is obtained; and the circumstances under which the person/persons may have acquired, or may hold, the information or material.

6. Sections 12A(15) and 12B(9) provide that any person on whom a requirement is imposed under an order may apply for the revocation or variation of the order.

7. The above tests are comparable to those under section 84 of Cap. 1 which stipulates the conditions to be fulfilled for making a court order requiring production of journalistic material -

- (a) there are reasonable grounds for believing that an arrestable offence has been committed;
- (b) the material is likely to be of substantial value to the investigation of the arrestable offence, or relevant evidence in

proceedings for the arrestable offence;

- (c) other methods of obtaining the material have been tried and failed or have not been tried because they were unlikely to succeed or would be likely to seriously prejudice the investigation; and
- (d) there are reasonable grounds for believing that it is in the public interest that an order should be granted, having regard to the benefit likely to accrue to the investigation and the circumstances under which a person in possession of the material holds it.

8. In view of the above, we consider that the new Part 4A in the Bill is already subject to sufficient judicial safeguards.

Security Bureau
November 2003