

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

Purpose

This paper addresses the issues raised in the submission of 6 November 2003 (CB(2)210/03-04(03)) from the Hong Kong Association of Banks.

Clause 2 (section 2(1) – definition of “authorized officer”)

2. In section 3A(1) the reference to “relevant public officer” is merely a drafting device used to refer to the public officers listed in section 3A(2). Section 3A(2) provides that “relevant public officer” means any public officer of the law enforcement agencies. The use of “public officer” in the definition of “authorized officer” is correct.

Clause 2 (section 2(1) – definition of “public body”)

3. We agree to the suggestion of removing “public” in paragraph (b) of the definition of “public body”. We will move a Committee Stage amendment to this effect.

Clause 2 (section 2(8) – specification of public body)

4. We have no intention to specify organizations that are purely private. The policy will be the same as for section 23(11) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and section 28(11) of the Organized and Serious Crimes Ordinance (Cap. 455). The relevant notice will be subsidiary legislation which is subject to scrutiny by the Legislative Council, and this provides an adequate safeguard.

Clause 7 (section 11B – prohibitions against bombing of prescribed objects)

5. Section 11B(2) is intended to implement paragraph 1(b) of Article 2 of the International Convention for the Suppression of Terrorist Bombings. Changing the conjunction between sections 11B(2)(a) and

(b) from “and” to “or” will effectively remove the *mens rea* element of the offence and is not acceptable for that reason.

Clause 8 (section 12(6)(a) – disclosure of knowledge or suspicion that property is terrorist property)

6. Section 12(6) (and likewise sections 25A(9) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455) in relation to the proceeds of drug trafficking and indictable offences respectively) is intended to permit information in relation to terrorist property which has been disclosed to an authorized officer to be transmitted by that authorized officer -

- (a) within Hong Kong – to the law enforcement body which would be appropriate to deal with the information; and
- (b) outside Hong Kong – to the particular authority which deals with anti-terrorism (or drug trafficking for Cap. 405 or serious crimes for Cap. 455).

7. As such the provisions are simply directed towards ensuring that information disclosed pursuant to the three Ordinances in question ends up with the appropriate law enforcement body. In any event, the provision should be read subject to the more specific provisions for disclosure of personal data in the Personal Data (Privacy) Ordinance (Cap. 486). There will not be unrestricted disclosure of the information concerned.

Clause 8 (section 12(7) - disclosure of knowledge or suspicion that property is terrorist property)

8. Section 12(7) (and likewise sections 25A(10) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455)) does not create any other rights to disclose or enlarge the preceding right under section 12(6), but is directed towards saving any rights to disclose that may already exist under the common law.

Clause 9 (sections 12A(3)(c)(i) and (ii) – requirement to furnish information or produce material)

9. The Court of First Instance will only issue the order if the objective tests set out in section 12A(4) are met. The order is made only if the Court is satisfied that there are reasonable grounds for suspecting that the person has information or material that is relevant to the investigation.

Clause 9 (sections 12A(5) and (6) - requirement to furnish information or produce material)

10. Sections 12A(5) and (6) deal with the implementation of the court order. As set out in paragraph 9 above, the court order is issued only if the objective tests are met.

Clause 9 (sections 12A(11) and 12B(13) - requirement to furnish information or produce material, order to make material available)

11. There is, we consider, an important distinction between disclosure pursuant to section 12 and the furnishing of information etc. pursuant to section 12A or 12B. Section 12 is directed towards facilitating disclosure of knowledge or suspicion in relation to terrorist property. And so sections 12(2) and 12(3) provide that in certain circumstances a disclosure cannot constitute an offence and cannot amount to a breach of certain restrictions or render the discloser liable to damages. Sections 12A and 12B on the other hand require a person to comply with court orders in relation to the furnishing of information. Sections 12A(11) and 12B(13) are accordingly only directed towards ensuring that such persons cannot refuse to comply with these court orders on the basis of obligations as to secrecy or other restrictions as to disclosure of information (whether conferred by statute or otherwise).

Clause 9 (section 12D(2)(a) – disclosure of information obtained under section 12A, 12B or 12C)

12. Our response in paragraphs 6 and 7 above is applicable.

Clause 9 (section 12D(2)(b) - disclosure of information obtained under section 12A, 12B or 12C)

13. The purpose of section 12D(2)(b) is to enable information obtained by the law enforcement agencies by the use of compulsory powers to be transmitted to their overseas counterparts. The intention is to facilitate international cooperation for effective prevention and investigation of terrorist financing offences. It can be noted that section 12D(2) is modelled on section 6(2) of the Organized and Serious Crimes Ordinance (Cap. 455). Section 6(2) of Cap. 455 permits the disclosure of information acquired under sections 3, 4 and 5. These sections correspond to sections 12A, 12B and 12C in the United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003.

Clause 9 (section 12D(3) - disclosure of information obtained under section 12A, 12B or 12C)

14. Our response in paragraph 8 above is applicable.

Clause 19 (Schedule 2 – form of notice under section 12A)

15. Our response in paragraph 9 above is applicable.

Schedule (consequential amendments)

16. Our response in paragraph 6 to 8 above is applicable.

Immunity from liability for delays resulting from actions taken to ensure compliance with sections 7 and 8

17. Subject to further discussion at the Bills Committee, we will examine whether a provision to confer immunity from civil liability is needed.