

**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)222/03-04(01)) from the Law Society of Hong Kong.

Freezing of property

2. For freezing of terrorist property, our view is that speed is of paramount importance, taking into account the availability of modern technology and arrangements that allow funds to be transferred from one jurisdiction to another almost instantly, and non-fund property to be quickly liquidated or physically transferred out of Hong Kong.

3. 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 United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance)(Cap. 575), we therefore propose to apply the freezing mechanism for terrorist funds under the existing section 6 to non-fund terrorist property.

4. We consider that “reasonable grounds to suspect” is an appropriate test for the power to freeze under section 6 bearing in mind that we are dealing with urgent situations where intelligence from overseas will frequently have to be assessed. Any decision to freeze on that basis is appealable and, on appeal, the prosecution will have to satisfy the court that “reasonable grounds to suspect” in fact exist. The same test is applied in section 5(1)(c)(ii) of the Biological Weapons Ordinance (Cap. 491), sections 13(1) and 38(3) of the Aviation Security Ordinance (Cap. 494) and section 101 of the Criminal Procedure Ordinance (Cap. 221).

5. Section 6(5) provides that S for S shall not re-freeze the same property unless there has been a material change in the grounds. Section 17 further provides for an appeal mechanism for the affected persons to apply to the Court of First Instance to have a freezing notice issued under section 6 revoked. On appeal the Administration will bear the burden of satisfying the Court that there are reasonable grounds to suspect that the

frozen property is terrorist property. This ensures effective safeguards against abuse and wrongful exercise of the freezing power.

6. While fully appreciating humanitarian considerations, we consider that provision of funds for legitimate expenses needs to be regulated to avoid creating a loophole allowing the holder of funds to make those funds available on spurious humanitarian grounds. Section 15 of the Ordinance allows S for S to grant a licence enabling the use of the frozen funds for the above purposes. In the event that S for S refuses to issue a licence or the affected persons are not satisfied with the conditions specified in a licence, section 17 further provides that an application can be made to the Court of First Instance for the grant or variation of a licence.

Disclosure of information to places outside the HKSAR

7. The purpose of the new section 12(6) in the Bill is to enable the law enforcement agencies to transmit information in relation to terrorist property which they have acquired by virtue of “suspicious transaction” disclosures under section 12(1) to their local and overseas counterparts, for the purpose of promoting cooperation in preventing and suppressing terrorist financing. As handling of suspicious transaction reports involves voluminous work of an operational nature, and the information exchange is conducted as part of the intelligence exchange regime, approval of the Central People’s Government for the disclosure to overseas authorities would not be considered necessary.

8. The purpose of the new section 12D is to enable information obtained by the law enforcement agencies by the use of compulsory powers to be similarly transmitted to their local and overseas counterparts and to permit such information to be transmitted to the United Nations provided that the Ministry of Foreign Affairs of the People’s Republic of China (PRC) approves. It should be noted that PRC approval is only required for transmission of information to the United Nations.