

Amend the United Nations (Anti-Terrorism Measures) Ordinance to empower the Secretary for Security to authorize certain public officers to be authorized officers for the purposes of that Ordinance; to extend the Secretary for Security's power under section 6 of that Ordinance to freeze funds suspected to be terrorist property to any property suspected to be terrorist property; to repeal and replace section 10 of that Ordinance so that the new section 10 reflects the substance of this provision as proposed by the Administration during the committee stage of the Bill which became that Ordinance upon enactment; to permit implementation, in particular, of Article 2 of the United Nations International Convention for the Suppression of Terrorist Bombings; to permit implementation, in particular, of Article 3 of the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and of Article 2 of the United Nations Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; to amend section 12 of that Ordinance to specify the authorities to which and the persons to whom information obtained under or by virtue of a disclosure referred to in section 12(1) of that Ordinance may be disclosed; to set out the powers of investigation of authorized officers in relation to offences against that Ordinance; to provide for the seizure and detention of property suspected to be terrorist property; to repeal the redundant section 19 of that Ordinance; to amend references to "Court of First Instance" to "Court"; and to make consequential amendments, in particular to section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance and of the Organized and Serious Crimes Ordinance to reflect section 12 of the United Nations (Anti-Terrorism Measures) Ordinance as amended by this Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the United Nations (Anti-Terrorism Measures)(Amendment) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Interpretation

Section 2 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) is amended---

(a) in subsection (1)---

(i) in the definition of "funds", by repealing "the Schedule" and substituting "Schedule 1";

(ii) in the definition of "武器", by repealing "物料" where it twice appears

and substituting "材料";

(iii) by adding---

"authorized officer" (獲授權人員) means a public officer authorized under section 3A(1);

"Court" (法院) means the Court of First Instance;

"material" (材料) includes any book, document or other record in any form whatsoever, and any article or substance;

"possession" (管有) includes control;

"premises" (處所) includes any place and, in particular, includes---

(a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and

(b) any tent or removable structure;

"public body" (公共機構) means---

(a) any Government department; and

(b) any public body specified by the Chief Executive under subsection (8);

"relevant offence" (有關罪行) means an offence against this Ordinance;";

(b) by adding---

"(8) The Chief Executive may, by notice published in the Gazette, specify a body to be a public body for the purposes of the definition of "public body".

3. Application of certain provisions

outside HKSAR

Section 3 is amended by repealing "and 10" and substituting ", 10, 11B and 11F".

4. Section added

The following is added immediately after section 3---

"3A. Authorization of public officers

(1) The Secretary may authorize in writing any relevant public officer to be an authorized officer for the purposes of this Ordinance and subject to such conditions as the Secretary thinks fit specified in the authorization.

(2) In this section, "relevant public officer" (有關公職人員) means any public officer who is---

(a) a police officer;

(b) a member of the Immigration Service;

(c) a member of the Customs and Excise Service;

(d) an officer of the Independent Commission Against Corruption; or

(e) a legal officer, within the meaning of section 2 of the Legal Officers Ordinance (Cap. 87), of the Department of Justice."

5. Freezing of property

Section 6 is amended---

(a) in subsection (1)---

(i) by repealing "funds held by any person are" and substituting "property held by any person is";

(ii) by repealing "funds, direct that the funds" and substituting "property, direct that the property";

(b) in subsection (2)---

(i) in paragraphs (a) and (b)(i), by repealing "funds are" and substituting "property is";

(ii) in paragraph (b)(ii), by repealing "funds" and substituting "property";

(iii) by repealing "to the funds" and substituting "to the property";

(c) in subsection (4)---

(i) by repealing "funds" wherever it appears and substituting "property";

(ii) in paragraph (d), by repealing "have" and substituting "has";

(d) in subsection (5), by repealing "funds" where it twice appears and substituting "property";

(e) in subsection (6), by repealing "funds which were" and substituting "property which was";

(f) by repealing subsection (7) and substituting---

"(7) A notice under subsection (1) or (2) shall be given to the person holding the property concerned ("the recipient") and shall require the recipient to send a copy of the notice without delay to each person, if any, whose property it is, or for or on behalf of whom the property is held ("the owner").";

(g) by adding---

"(9) Where any property the subject of a notice under subsection (1) or (2) is immovable property, the notice shall, for the purpose of the Land Registration Ordinance (Cap. 128)---

(a) be deemed to be an instrument affecting land; and

(b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit.

(10) The Secretary may, in a notice under subsection (1)---

(a) give a direction that an authorized officer may, for the purpose of preventing any property the subject of the notice being removed from the HKSAR, seize the property;

(b) give directions in accordance with which any such property so seized shall be dealt with."

6. Section substituted

Section 10 is repealed and the following substituted---

"10. Prohibition on recruitment, etc.

to bodies of persons specified

in notices under section 4(1)
and (2) or orders under
section 5(2)

(1) A person shall not---

(a) recruit another person to become a member of; or

(b) become a member of,

a body of persons (including individuals), whether corporate or unincorporate, who the first-mentioned person knows or has reasonable grounds to believe is specified in a notice under section 4(1) or (2), or specified in an order under section 5(2), published in the Gazette.

(2) Where a person is a member of---

(a) a body of persons (including individuals), whether corporate or unincorporate, specified in a notice under section 4(1) or (2) published in the Gazette; or

(b) a body of persons (including individuals), whether corporate or unincorporate, specified in an order under section 5(2) published in the Gazette,

immediately before the date of its publication in the Gazette, then the first-mentioned person shall, as soon as is practicable after he knows or has reasonable grounds to believe that the body of persons is specified in that notice, or in that order, as the case may be, take all practicable steps to cease to be such a member."

7. Parts 3A and 3B added

The following are added---

"PART 3A

Prohibitions Relating to Bombing
of Prescribed Objects

11A. Interpretation of Part 3A

(1) In this Part, unless the context otherwise requires---

"explosive or other lethal device" (爆炸性或其他致命裝置) means---

(a) an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage;
or

(b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material;

"infrastructure facility" (基建設施) means any publicly or privately owned facility providing or distributing services for the benefit of the public, and includes any water, sewage, energy, fuel or communications facility;

"place of public use" (公用場所) means those parts of any building, land, street,

waterway or other location that are accessible or open to the public, whether continuously, periodically or occasionally, and whether or not upon the payment of any fee, and includes any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public;

"prescribed object" (訂明標的) means---

- (a) an infrastructure facility;
- (b) a place of public use;
- (c) a public transportation system; or
- (d) a state or government facility;

"public transportation system" (公共運輸系統) means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;

"state or government facility" (國家或政府設施) includes any permanent or temporary facility or conveyance that is used or occupied by---

- (a) representatives of a state, or members of a government, the legislature or the judiciary, or officials or employees of a state or government or any other public authority or entity, in connection with their official duties; or
- (b) employees or officials of an intergovernmental organization in connection with their official duties.

(2) Any reference in this Part to a prescribed object does not include a prescribed object in the People's Republic of China outside the HKSAR.

11B. Prohibitions against bombing of prescribed objects

(1) A person shall not deliver, place, discharge or detonate an explosive or other lethal device in, into or against a prescribed object with the intention to cause death or serious bodily injury to any person.

(2) A person shall not deliver, place, discharge or detonate an explosive or other lethal device in, into or against a prescribed object---

- (a) with the intention to cause the destruction of all or part of the prescribed object; and
- (b) where it could be reasonably concluded that the destruction would be likely to result in major economic loss (and, if the destruction does occur, irrespective of whether it in fact results in major economic loss).

PART 3B

Prohibitions Relating to Ships and Fixed Platforms

11C. Interpretation of Part 3B

In this Part, unless the context otherwise requires---

"act" (行爲) includes an omission;

"act of violence" (暴力行爲) means---

(a) an act done in the HKSAR which constitutes the offence of murder, attempted murder, manslaughter, culpable homicide or assault, or an offence under section 17, 19, 20, 21, 22, 23, 28 or 29 of the Offences against the Person Ordinance (Cap. 212) or under section 53 or 54 of the Crimes Ordinance (Cap. 200); and

(b) an act done outside the HKSAR which, if done in the HKSAR, would constitute an offence mentioned in paragraph (a);

"fixed platform" (固定平台) means an artificial island, installation or structure permanently attached to the seabed for the purpose of the exploration or exploitation of resources or for other economic purposes;

"Hong Kong ship" (香港船舶) means a ship registered in the HKSAR;

"maritime navigational facility" (航海設施) includes---

(a) any lightship and any floating or other light exhibited for the guidance of ships;

(b) any description of a fog signal not carried on a ship;

(c) all marks and signs in aid of marine navigation;

(d) an electronic, radio or other aid to marine navigation not carried on board a ship;

"master" (船長) includes every person (except a pilot) having command or charge of a ship;

"Rome Convention" (《羅馬公約》) means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

"scheduled to navigate" (已編定航行), in relation to a ship, means that the ship has---

(a) an intended route;

(b) a voyage plan;

(c) a normal course of plying; or

(d) an advertised sailing schedule;

"ship" (船舶) means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft.

11D. Part not to apply to certain ships

This Part shall not apply to---

(a) a warship;

(b) a ship owned or operated by a state when being used as a naval auxiliary or for customs or police purposes; or

(c) a ship that has been withdrawn from navigation or is laid up.

11E. Prohibitions relating to ships

(1) A person shall not, without lawful excuse, intentionally---

- (a) by force or by threat of force or by any other form of intimidation, seize or exercise control over a ship;
- (b) on board a ship, commit an act of violence that is likely to endanger the safe navigation of the ship;
- (c) destroy a ship;
- (d) cause damage to a ship or the ship's cargo where that damage is likely to endanger the safe navigation of the ship;
- (e) place or cause to be placed on a ship anything that is likely to destroy the ship;
- (f) place or cause to be placed on a ship anything that is likely to cause damage to the ship or the ship's cargo where that damage endangers or is likely to endanger the safe navigation of the ship;
- (g) destroy, seriously damage or seriously interfere with the operation of any maritime navigational facilities, where the destruction, damage or interference, as the case may be, is likely to endanger the safe navigation of a ship; or
- (h) endanger the safe navigation of a ship by communicating to another person information which the person communicating the information knows to be false.

(2) A person shall not intentionally---

- (a) cause the death of any person in connection with the commission or attempted commission of any act prohibited under subsection (1)(a), (b), (c), (d), (e), (f), (g) or (h); or
- (b) injure any person in connection with the commission or attempted commission of any act prohibited under---

(i) subsection (1)(a), (b), (c), (d), (e), (f), (g) or (h); or

(ii) paragraph (a).

(3) A person shall not threaten to do, in relation to a ship, any act prohibited under subsection (1)(b), (c), (d) or (g) if the threat---

- (a) is in order to compel any other person to do or abstain from doing any act; and
- (b) is likely to endanger the safe navigation of the ship.

11F. Prohibitions relating to fixed platforms

(1) A person shall not, without lawful excuse, intentionally---

- (a) by force or by threat of force or by any other form of intimidation, seize or exercise control over a fixed platform;
- (b) on board a fixed platform, commit an act of violence that is likely to endanger the safety of the platform;
- (c) destroy a fixed platform;
- (d) cause damage to a fixed platform where that damage is likely to endanger the safety

of the platform; or

(e) place or cause to be placed on a fixed platform anything that is likely to destroy the platform or to endanger the safety of the platform.

(2) A person shall not intentionally---

(a) cause the death of any person in connection with the commission or attempted commission of any act prohibited under subsection (1)(a), (b), (c), (d) or (e); or
(b) injure any person in connection with the commission or attempted commission of any act prohibited under---

(i) subsection (1)(a), (b), (c), (d) or (e); or

(ii) paragraph (a).

(3) A person shall not threaten to do, in relation to a fixed platform, any act prohibited under subsection (1)(b), (c) or (d) if the threat---

(a) is in order to compel any other person to do or abstain from doing any act; and
(b) is likely to endanger the safety of the platform.

11G. Provisions supplementary to
sections 11E and 11F

(1) For the purposes of sections 11E(2) and 11F(2), an act by any person occurs in connection with the commission or attempted commission of any of the acts prohibited under section 11E(1) or 11F(1) ("prohibited acts"), as the case may be, if it was done with intent---

(a) to commit or facilitate the commission or attempted commission of any of the prohibited acts;

(b) to avoid the detection of himself or of any other person in the commission or attempted commission of any of the prohibited acts; or

(c) to avoid the arrest or facilitate the flight of himself or of any other person on the commission or attempted commission of any the prohibited acts.

(2) Subsection (1) shall not limit the generality of the expression "in connection with the commission or attempted commission of".

11H. Master may deliver alleged offender
to appropriate authorities

(1) The master of a Hong Kong ship may deliver to the appropriate authorities of a state that is a party to the Rome Convention any person whom the master has reasonable grounds to believe has committed any act prohibited under section 11E.

(2) The master of a Hong Kong ship who intends to deliver a person under subsection (1) shall notify the appropriate authorities of the state concerned of---

(a) his intention to deliver the person to those authorities; and

(b) his reasons for intending to do so.

(3) A notification under subsection (2) shall be given---

- (a) if it is practicable to do so, before the ship enters the territorial sea of the state concerned; or
- (b) in any other case, as soon as is practicable.

(4) Where the master of a Hong Kong ship delivers a person under subsection (1), the master shall give to the appropriate authorities of the state concerned any evidence relating to the act concerned prohibited under section 11E that is in the master's possession.

11I. Extra-territorial jurisdiction in
relation to section 11E

Section 11E shall apply in respect of an act that occurs outside the HKSAR--

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(a) if---

(i) the act occurs against or on board a ship that is navigating, or is scheduled to navigate, into or through or from the waters beyond the outer limits of the territorial sea of a state or the lateral limits of its territorial sea with adjacent states; and

(ii) either---

(A) the ship is a Hong Kong ship; or

(B) the alleged offender is a Hong Kong permanent resident;

(b) if---

(i) the act occurs against or on board a ship that is within the territory of another state;

(ii) the alleged offender is found in a state that is a party to the Rome Convention but is not the state where the act occurred; and

(iii) either---

(A) the ship is a Hong Kong ship; or

(B) the alleged offender is a Hong Kong permanent resident."

8. Disclosure of knowledge or suspicion
that property is terrorist property,
etc.

Section 12(6) is repealed and the following substituted---

"(6) Information obtained under or by virtue of a disclosure referred to in subsection (1) may be disclosed---

(a) by any authorized officer to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption; and

(b) by any authorized officer---

(i) for the purpose of promoting multi-lateral cooperation in preventing and

suppressing the financing of terrorist acts; and

(ii) to the authorities or persons responsible for---

(A) investigating or preventing terrorist acts; or

(B) handling the disclosure of knowledge or suspicion that property is terrorist property,

of any place outside the HKSAR which the authorized officer thinks fit.

(7) Subsection (6) is without prejudice to any other right to disclose information obtained under or by virtue of a disclosure referred to in subsection (1) that may exist apart from subsection (6).".

9. Parts 4A and 4B added

The following are added---

"PART 4A

Powers of Investigation

12A. Requirement to furnish information or produce material

(1) An authorized officer may, for the purpose of an investigation into a relevant offence, make an ex parte application to the Court for an order under subsection (2) in relation to a particular person or to persons of a particular description.

(2) The Court may, if on such an application it is satisfied that the conditions referred to in subsection (4)(a), (b) and (d) or subsection (4)(a), (c) and (d) are fulfilled, make an order complying with subsection (3) in respect of the particular person, or persons of the particular description, to whom the application relates.

(3) An order under subsection (2) shall---

(a) give particulars of the relevant offence under investigation;

(b) identify the particular person, or state the particular description of persons, in respect of whom the order is made;

(c) authorize the authorized officer to require the person or persons in respect of whom the order is made---

(i) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation; or

(ii) to produce any material that reasonably appears to the authorized officer to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him so to relate,

or both; and

(d) contain such other terms (if any) as the Court considers appropriate in the public interest, but nothing in this paragraph shall be construed as authorizing the Court to order the detention of any person in custody without that person's consent.

(4) The conditions referred to in subsection (2) are---

(a) that there are reasonable grounds for suspecting that the relevant offence under investigation has been committed;

(b) where the application relates to a particular person, that there are reasonable grounds for suspecting that the person has information, or is in possession of material, likely to be relevant to the investigation;

(c) where the application relates to persons of a particular description, that--
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(i) there are reasonable grounds for suspecting that some or all persons of that description have such information or are in possession of such material; and

(ii) the relevant offence could not effectively be investigated if the application was required to relate to a particular person, whether because of the urgency of the investigation, the need to keep the investigation confidential or the difficulty in identifying a particular person who has the relevant information or material;

(d) that there are reasonable grounds for believing that it is in the public interest, having regard---

(i) to the seriousness of the relevant offence under investigation;

(ii) to whether or not the relevant offence could be effectively investigated if an order under subsection (2) is not made;

(iii) to the benefit likely to accrue to the investigation if the information is disclosed or the material is obtained; and

(iv) to the circumstances under which the person or persons may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates),

that an order under subsection (2) should be made in respect of that person or those persons.

(5) Where an order under subsection (2) authorizes an authorized officer to require a person to answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to an investigation, the authorized officer may by one, or more than one, notice in writing served on that person require him to attend before an authorized officer at a specified time and place, or at specified times and places, and answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation.

(6) Where an order under subsection (2) authorizes an authorized officer to require a person to produce any material that reasonably appears to the authorized

officer to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to him so to relate, the authorized officer may by one, or more than one, notice in writing served on that person require him to produce at a specified time and place, or at specified times and places, any specified material that reasonably appears to him so to relate or any material of a specified class that reasonably appears to him so to relate.

(7) A notice in writing imposing a requirement on a person under subsection (5) or (6) shall---

(a) state that a court order has been made under this section and include---

(i) the date of the order;

(ii) the particulars of the relevant offence under investigation;

(iii) where the order is made in respect of that particular person, a statement to that effect;

(iv) where the order is made in respect of persons of a particular description and that person is of that particular description, a statement to that effect;

(v) a statement of the authorization given to an authorized officer by the order; and

(vi) a statement of any other terms of the order relevant to that person;

(b) have annexed to it a copy of the order under this section, but there may be excluded from such copy---

(i) any reference in the order to a particular person other than that person, or to persons of a particular description not including that person; and

(ii) any details in the order that relate only to such particular person or persons of a particular description; and

(c) be substantially in the form specified in Schedule 2 in relation to such notice and in addition shall set out or have annexed to it subsections (8), (9) and (10) and section 12E.

(8) An authorized officer may photograph or make copies of any material produced in compliance with a requirement under this section.

(9) Without prejudice to the generality of section 2(5), a lawyer may under this section be required to furnish the name and address of his client.

(10) An order under subsection (2), and a notice in writing imposing a requirement under subsection (5) or (6), may be made in relation to information held by, and material in the possession of, a public body.

(11) A person is not excused from furnishing information or producing any material required under this section on the ground that to do so would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise.

(12) A statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings against him except as follows---

(a) in evidence in proceedings under section 14(7F) or under section 36 of the Crimes Ordinance (Cap. 200); or

(b) for the purpose of impeaching his credibility in proceedings in respect of any offence where in giving evidence he makes a statement inconsistent with it.

(13) Where an order under subsection (2) has been made, the Secretary for Justice, or a person authorized in writing by the Secretary for Justice for the purpose of this subsection, may, after satisfying any conditions that may be prescribed by rules of court in this respect, obtain a copy of the order; but subject to the foregoing part of this subsection and to subsection (7)(b), no person is entitled to obtain a copy of the order or any part of the order.

(14) Where a requirement imposed on a person under this section relates to material which consists of information recorded otherwise than in legible form--
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(a) the requirement shall have effect as a requirement to produce the material in a form in which it can be taken away; and

(b) an authorized officer may, by notice in writing served on the person, require the person to produce at a specified time and place, or at specified times and places, the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the requirement to produce the material in the form in which it is recorded.

(15) An application for the revocation or variation of an order under this section may be made by any person on whom a requirement is imposed under the order.

(16) The Secretary shall prepare a code of practice in connection with---

(a) the exercise of any of the powers conferred; and

(b) the discharge of any of the duties imposed,

by this section, and any such code shall be laid before the Legislative Council and shall not be promulgated until the code has been approved by the Legislative Council.

12B. Order to make material available

(1) An authorized officer may, for the purpose of an investigation into a relevant offence, make an ex parte application to the Court for an order under subsection (2) in relation to particular material or to material of a particular description, whether in the HKSAR or elsewhere.

(2) Subject to subsections (6) and (7), the Court may, if on such an application it is satisfied that the conditions referred to in subsection (5) are fulfilled, make an order---

(a) that the person who appears to the Court to be in possession of the material to which the application relates shall---

- (i) produce the material to an authorized officer for him to take away; or
 - (ii) give an authorized officer access to it,
- within such period as the order may specify;

(b) that the person who appears to the Court likely to come into possession of the material to which the application relates shall, when the person comes into possession of any such material---

- (i) produce the material to an authorized officer for him to take away; or
 - (ii) give an authorized officer access to it,
- within such period as the order may specify; or

(c) in terms both of paragraphs (a) and (b).

(3) An order under subsection (2), in so far as it is in terms of paragraph (b) of that subsection, shall cease to have effect upon the expiration of 3 months after the day on which the order is made, or upon the expiration of such lesser period, if any, as is specified in the order for the purpose, but nothing in this subsection shall---

(a) affect any obligation incurred under that order prior to its expiration;

(b) prevent, in relation to the person required to comply with that order, any further order being made under that subsection in respect of that person (including before the expiration of that first-mentioned order).

(4) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(5) The conditions referred to in subsection (2) are---

(a) that there are reasonable grounds for suspecting that the relevant offence has been committed;

(b) that there are reasonable grounds for believing that the material to which the application relates is likely to be relevant to the investigation for the purpose of which the application is made;

(c) that there are reasonable grounds for believing that it is in the public interest, having regard---

(i) to the benefit likely to accrue to the investigation if the material is obtained; and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(6) Where an application under subsection (1) relates to material of a particular

description, an order under subsection (2) shall only be made where an application in relation to particular material is not practicable.

(7) An order under subsection (2) may require any officer of a public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Government.

(8) Where the Court makes an order under subsection (2)(a)(ii) or (b)(ii) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material.

(9) An application for the revocation or variation of an order under subsection (2) or (8) may be made by any person who is subject to the order.

(10) Where material to which an application under this section relates consists of information recorded otherwise than in legible form---

(a) an order under subsection (2)(a)(i) or (b)(i) shall have effect as an order to produce the material in a form in which it can be taken away; and

(b) an order under subsection (2)(a)(ii) or (b)(ii) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(11) Where an order under subsection (2)(a)(i) or (b)(i) relates to information recorded otherwise than in legible form, an authorized officer may, by notice in writing served on the person, require the person to produce the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the order to produce the material in the form in which it was recorded.

(12) An order under subsection (2) may be made in relation to material in the possession of a public body.

(13) A person is not excused from producing any material in relation to which an order under subsection (2) is made on the ground that to do so would breach an obligation as to secrecy or another restriction upon the disclosure of information imposed by statute or otherwise.

(14) An authorized officer may photograph or make copies of any material produced under this section.

12C. Authority for search

(1) An authorized officer may, for the purpose of an investigation into a relevant offence, apply to the Court for a warrant under this section in relation to specified premises.

(2) On such application the Court may issue a warrant authorizing an authorized

officer to enter and search the premises if it is satisfied---

(a) that a requirement imposed under section 12A(6) in relation to material on the premises has not been complied with;

(b) that an order under section 12B in relation to material on the premises has not been complied with;

(c) that the conditions referred to in subsection (3) are fulfilled; or

(d) that the conditions referred to in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2)(c) are---

(a) that there are reasonable grounds for suspecting that the relevant offence has been committed;

(b) that the conditions referred to in section 12B(5)(b) and (c) are fulfilled in relation to any material on the premises;

(c) that it would not be appropriate to make an order under section 12B in relation to the material because---

(i) it is not practicable to communicate with any person entitled to produce the material;

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material.

(4) The conditions referred to in subsection (2)(d) are---

(a) that there are reasonable grounds for suspecting that the relevant offence has been committed;

(b) that there are reasonable grounds for suspecting that there is on the premises material which is likely to be relevant to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized;

(c) that---

(i) it is not practicable to communicate with any person entitled to grant entry to the premises;

(ii) entry to the premises will not be granted unless a warrant is produced; or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.

(5) Where an authorized officer has entered premises in the execution of a warrant

issued under this section, he may seize and retain any material which is likely to be relevant to the investigation for the purpose of which the warrant was issued.

(6) An authorized officer may photograph or make copies of any material seized under this section.

12D. Disclosure of information obtained
under section 12A, 12B or 12C

(1) Where any information subject to an obligation of secrecy under the Inland Revenue Ordinance (Cap. 112) has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or by virtue of section 12A, 12B or 12C, that information may be disclosed by any authorized officer for the purposes of---

- (a) any prosecution of a relevant offence;
 - (b) any application for an order under section 5 or 13(1); or
 - (c) any consideration of giving a notice under section 6(1),
- but, subject to subsection (4), may not otherwise be disclosed.

(2) Subject to subsection (1), information obtained by any person under or by virtue of section 12A, 12B or 12C may be disclosed by any authorized officer---

- (a) to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption;
- (b) where the information appears to the Secretary for Justice to be likely to assist any corresponding person or body to discharge its functions, to that person or body; and
- (c) to the Chief Executive for the purposes of section 5 and the Secretary for the purposes of section 6.

(3) Subsection (2) is without prejudice to any other right to disclose information obtained under or by virtue of section 12A, 12B or 12C that may exist apart from subsection (2).

(4) Information mentioned in subsection (1) or (2) may, on the authority of the Chief Executive, but subject to the information being transmitted through and with the approval of the Ministry of Foreign Affairs of the People's Republic of China, be disclosed---

- (a) to any organ of the United Nations or to any person in the service of the United Nations; and
- (b) for the purpose of assisting the United Nations in securing compliance with or detecting evasion of measures in relation to a terrorist or terrorist associate decided upon by the Security Council of the United Nations.

(5) In this section, "corresponding person or body" (相應的人員或機構) means any

person who or body which, in the opinion of the Secretary for Justice, has under the law of a place outside the HKSAR, functions corresponding to any of the functions of any body mentioned in subsection (2)(a).

12E. Investigation not to be prejudiced

(1) Where an order under section 12A or 12B has been made or has been applied for and has not been refused or a warrant under section 12C has been issued, a person who, knowing or suspecting that the investigation in relation to which the order has been made or applied for or the warrant has been issued is taking place, shall not---

(a) without lawful authority or reasonable excuse, make any disclosure intending to prejudice the investigation; or

(b) falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, any material---

(i) knowing or suspecting that the material is likely to be relevant to the investigation; and

(ii) intending to conceal the facts disclosed by the material from persons carrying out the investigation.

(2) Where a person has been arrested in connection with an investigation specified in subsection (1), that subsection shall not apply as regards any disclosure in respect of the investigation made after such arrest.

PART 4B

Seizure and Detention of Property Suspected to be Terrorist Property

12F. Interpretation of Part 4B

In this Part, unless the context otherwise requires---

"seized property" (被檢取的財產) means any property seized under section 12G.

12G. Issue of warrant

(1) Where it appears to any magistrate upon the oath of any person that there is reasonable cause to suspect that in any premises there is any terrorist property, or with respect to which a relevant offence has been committed or is about to be committed, the magistrate may, by his warrant directed to any authorized officer, empower the officer, with such assistance, and by such force, as is necessary and reasonable to enter the premises named in the warrant and there to search for and seize, remove and detain any terrorist property.

(2) Any authorized officer may seize, remove and detain any thing (including any material produced or required to be produced by virtue of an order under section 12A or 12B or a warrant issued under section 12C) if he has reason to suspect that such thing is terrorist property.

(3) An authorized officer who has entered any premises by virtue of a warrant issued under subsection (1) may stop and search any person found on the premises if---

(a) in relation to the premises, any thing mentioned in subsection (2) has been seized; or

(b) the authorized officer has reason to suspect that the person has in his actual custody any thing mentioned in subsection (2).

(4) No person shall be searched under this section except by a person of the same sex.

12H. Seized property may be detained

An authorized officer may, in accordance with the provisions of this Part, detain any seized property.

12I. Period for which seized property may be detained

(1) Seized property shall not be detained for a period of more than 30 days unless, before the expiration of that period, the continued detention of the property is authorized by an order under subsection (2).

(2) The Court may, on application made to it by an authorized officer, by order authorize the continued detention of seized property where it is satisfied that---

(a) there are reasonable grounds for suspecting that the property is terrorist property; and

(b) the detention of the property is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the HKSAR or elsewhere) of---

(i) proceedings against any person in relation to an offence with which the property is connected; or

(ii) steps which may result in a direction being given under section 6(1) in respect of the property or which may result in the forfeiture or other confiscation of the property.

(3) An order under subsection (2) shall authorize the continued detention of the seized property to which it relates for such period, not exceeding 3 months beginning with the date of the order, as is specified in the order and the Court, on application made to it by an authorized officer and if satisfied as to the matters referred to in subsection (2)(a) and (b), may thereafter from time to time by order authorize the further detention of the property but so that---

(a) no period of detention specified in an order under this subsection shall exceed 3 months beginning with the date of the order; and

(b) the total period of detention shall not exceed 2 years from the date of the order

under subsection (2).

(4) At any time while seized property is being detained by an order under subsection (2) or (3) the Court may direct its release if satisfied---

(a) on an application made by---

(i) the person from whom it was seized;

(ii) a person by, for or on behalf of whom it was held; or

(iii) a person who otherwise has an interest in it,

that there are no, or are no longer, any such grounds for its detention as are referred to in subsection (2); or

(b) on an application made by an authorized officer, that its detention is no longer justified.

(5) If, at any time when any seized property is being detained by virtue of an order under subsection (2) or (3)---

(a) proceedings are instituted (whether in the HKSAR or elsewhere) against any person in relation to an offence with which the property is connected; or

(b) steps have been taken (whether in the HKSAR or elsewhere) which may result in a direction being given under section 6(1) in respect of the property or which may result in the forfeiture or other confiscation of the property,

the property shall not be released until the proceedings or steps have been concluded.

12J. Interest

Seized property which is money and which is detained in pursuance of an order under section 12I(2) or (3) shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing thereon shall be added to the property on its release.

12K. Procedure

An order under section 12I(2) shall provide for notice to be given to persons affected by the order."

10. Forfeiture of certain terrorist

property

Section 13 is amended---

(a) in subsection (2), by repealing "該法庭" where it twice appears and substituting "法院";

(b) in subsection (4), by repealing "法院" and substituting "法庭";

(c) by repealing subsection (5).

11. Offences

Section 14 is amended by adding---

"(7A) Any person who contravenes section 11B(1) or (2) commits an offence and is liable on conviction to imprisonment for life.

(7B) Any person who contravenes section 11E(1), (2)(b) or (3) or 11F(1), (2)(b) or (3) commits an offence and is liable---

(a) on conviction on indictment to a fine and to imprisonment for 14 years;

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years.

(7C) Any person who contravenes section 11E(2)(a) or 11F(2)(a) commits an offence and is liable on conviction to imprisonment for life.

(7D) Any master of a Hong Kong ship who, without reasonable excuse, contravenes section 11H(2), (3) or (4) commits an offence and is liable on conviction to a fine at level 2.

(7E) Any person who without reasonable excuse fails to comply with a requirement imposed on him under section 12A commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

(7F) Any person who, in purported compliance with a requirement under section 12A---

(a) makes a statement that he knows to be false or misleading in a material particular; or

(b) recklessly makes a statement that is false or misleading in a material particular, commits an offence and is liable---

(c) on conviction on indictment to a fine of \$500,000 and to imprisonment for 3 years;

(d) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(7G) Any person who without reasonable excuse fails to comply with an order under section 12B(2) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

(7H) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under section 12C commits an offence and is liable---

(a) on conviction on indictment to a fine of \$250,000 and to imprisonment for 2 years;

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(7I) A person who contravenes section 12E(1) commits an offence and is liable---

(a) on conviction on indictment to a fine and to imprisonment for 7 years;

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 3 years.

(7J) Any person who intentionally obstructs any person in the exercise of his powers under a warrant issued under section 12G(1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months."

12. Supplementary provisions applicable

to licences mentioned in section

6(1) or 8

Section 15(1)(a) is repealed and the following substituted---

"(a) such conditions may---

(i) relate to specifying the manner in which the property to which the licence relates shall be held from time to time;

(ii) relate to the appointment of a receiver to take possession of the property and to deal with it in a manner which preserves the value of the property or any other property into which it is converted; and

(iii) require a person holding the property to give possession of the property to a receiver, if any, appointed in respect of the property; and".

13. Applications to Court

Section 17 is amended---

(a) in subsection (1)(b)---

(i) by repealing "funds specified in the notice are" and substituting "property specified in the notice is";

(ii) by repealing "funds so" and substituting "property so";

(b) in subsection (2)(a), by repealing "or funds concerned is or are" and substituting "concerned is";

(c) in subsection (3)(b)(iii), by repealing "funds specified in the notice concerned under section 6(1) are" and substituting "property specified in the notice concerned under section 6(1) is";

(d) in subsection (4), by adding before paragraph (a)---

"(aa) the revocation or variation of a direction mentioned in section 6(10) may be made by any person affected by the notice under section 6(1) in which the direction appears;"

(e) by repealing subsection (5)(a) and substituting---

"(a) to the Secretary for Justice and to any other person affected by---

(i) the notice under section 6(1) concerned;

(ii) the operation concerned of section 6(1) or 8; or

(iii) the licence concerned,

as the case may be; and";

(f) in subsection (7)---

(i) by repealing paragraph (b) and substituting---

"(b) either---

(i) the direction to which the application relates---

(A) is, or is still, required to be revoked; or

(B) is, or is still, required to be varied; or

(ii) the licence to which the application relates---

(A) is, or is still, required to be granted; or

(B) is, or is still, required to be varied,

as the case may be,";

(ii) by adding "the direction to be revoked or varied, or" after "cause".

14. Compensation

Section 18 is amended by adding---

"(2A) Without prejudice to the operation of subsection (1), where---

(a) any property is seized property within the meaning of section 12F; and

(b) subsequently, none of the following events occurs---

(i) the property is specified in a notice under section 6(1);

(ii) the property is forfeited under section 13;

(iii) proceedings are instituted (whether in the HKSAR or elsewhere)---

(A) against any person in relation to an offence with which the property is connected;
or

(B) which may result in the forfeiture or other confiscation of the property,
the Court may, on an application made by any person by, for or on behalf of whom the property was held, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2B) The Court shall not order compensation to be paid under subsection (2A) unless it is satisfied that---

(a) there has been some serious default on the part of any person concerned with the seizure or detention of the property concerned; and

(b) the applicant has, in consequence of such seizure or detention and the default mentioned in paragraph (a), suffered loss in relation to the property."

15. Regulations

Section 19 is repealed.

16. Procedure

Section 20 is amended---

(a) by repealing subsection (1)(a)(iii), (iv) and (v) and substituting---

"(iii) section 17; or

(iv) section 18;"

(b) by repealing subsections (2) and (3) and substituting---

"(2) Rules of court---

(a) shall provide for applications by any person on whom a requirement is imposed under an order under section 12A or 12B for the revocation or variation of such order;

(b) may provide for---

(i) proceedings relating to section 12A, 12B or 12C;

(ii) conditions that must be satisfied before a person (including the Secretary for Justice) referred to in section 12A(13) may obtain a copy of an order under section 12A.

(3) Subsections (1) and (2) are without prejudice to the generality of any existing power to make rules."

17. Minor amendments

(1) Sections 2(6) and (7)(a), 5(1), (2), (5), (6) and (7)(b), 6(2)(b)(ii) and (4), 13(1) and (2), 17(1)(a)(i) and (ii) and (b), (2)(b), (3)(b), (5)(b) and (6) and 18(1), (2) and (3) are amended by repealing "of First Instance" wherever it appears.

(2) The heading to Part 2 is amended by repealing "Funds" and substituting "Property".

(3) The heading to Part 3 is amended by repealing "於" and substituting "乎".

18. Funds

The Schedule is amended by repealing "SCHEDULE" and substituting "SCHEDULE 1".

19. Schedule 2 added

The following is added---

"SCHEDULE 2 [s. 12A]

Form

Notice Under Section 12A of United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) Requiring Attendance to Answer Questions or Furnish Information

To:

(name and address of person)

1. On , in the Court of First Instance, Hong
(date)

Kong an order was made by the Hon. Mr. Justice under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance for the purpose of an investigation into a relevant offence. A copy of the order as it relates to you is annexed to this Notice.

2. Particulars of the relevant offence under investigation are---

(a) Offence:

(b) Date of offence:

(c) Place of offence:

(d) Other particulars:

*3. The order was made in respect of you.

or

*3. The order was made in respect of ,
(description of persons)

and you are a person of that description.

4. The order authorizes an authorized officer to require a person referred to in

paragraph 3 above---

*(a) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation;

*(b) to produce any material that reasonably appears to an authorized officer to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him so to relate.

5. This Notice requires you---

*(a) to attend before

(name and description of authorized officer)

at

(place of interview)

on

(date and time of interview)

to answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation;

*(b) to produce at

(time(s) and place(s))

the following material or class of material---

6. The order also requires

(other terms of the order relevant to the person)

7. NOTE: 1. This Notice has important legal consequences. It is in your interest to read the provisions of the Ordinance set out with this Notice, and to seek legal advice in relation to your rights and obligations under this Notice.

2. You may be accompanied by a solicitor and a barrister when you attend to answer questions or furnish information in compliance with paragraph 5(a) of this Notice, or to produce material in compliance with paragraph 5(b) of this Notice.

Dated this day of 20 .

Authorized officer

* Delete as appropriate."

20. Consequential amendments

The enactments specified in the Schedule are amended as set out in the Schedule.

SCHEDULE [s. 20]

Consequential Amendments

Drug Trafficking (Recovery of Proceeds) Ordinance

1. Disclosure of knowledge or suspicion
that property represents proceeds,
etc. of drug trafficking

Section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)
is amended by adding---

"(9) Information obtained under or by virtue of a disclosure referred to in
subsection (1) may be disclosed---

(a) by any authorized officer to the Department of Justice, the Hong Kong Police Force,
the Customs and Excise Department, the Immigration Department, and the Independent
Commission Against Corruption; and

(b) by any authorized officer---

(i) for the purpose of promoting multi-lateral cooperation in combating drug
trafficking; and

(ii) to the authorities or persons responsible for---

(A) investigating or preventing drug trafficking; or

(B) handling the disclosure of knowledge or suspicion on property relating to drug
trafficking,

of any place outside Hong Kong which the authorized officer thinks fit.

(10) Subsection (9) is without prejudice to any other right to disclose
information obtained under or by virtue of a disclosure referred to in subsection
(1) that may exist apart from subsection (9).".

Organized and Serious Crimes Ordinance

2. Disclosure of knowledge or suspicion
that property represents proceeds,
etc. of indictable offence

Section 25A of the Organized and Serious Crimes Ordinance (Cap. 455) is amended
by adding---

"(9) Information obtained under or by virtue of a disclosure referred to in
subsection (1) may be disclosed---

(a) by any authorized officer to the Department of Justice, the Hong Kong Police Force,
the Customs and Excise Department, the Immigration Department, and the Independent
Commission Against Corruption; and

(b) by any authorized officer---

(i) for the purpose of promoting multi-lateral cooperation in combating crime;
and

(ii) to the authorities or persons responsible for---

(A) investigating or preventing crime; or
(B) handling the disclosure of knowledge or suspicion on property relating to crime, of any place outside Hong Kong which the authorized officer thinks fit.

(10) Subsection (9) is without prejudice to any other right to disclose information obtained under or by virtue of a disclosure referred to in subsection (1) that may exist apart from subsection (9).".

Explanatory Memorandum

The object of this Bill is to amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)("the Ordinance") to---

(a) empower the Secretary for Security ("the Secretary") to authorize certain public officers to be authorized officers for the purposes of the Ordinance (See new section 3A at clause 4 as read with the definition of "authorized officer" at clause 2(a)(ii) and the consequential repeal of section 12(6) effected by clause 8);

(b) extend the Secretary's power under section 6 to freeze funds suspected to be terrorist property to any property suspected to be terrorist property (See clause 5 as read with the consequential amendments to sections 15(1) and 17 made by clauses 12 and 13 respectively);

(c) repeal and replace section 10 so that the new section 10 substantially reflects this provision as proposed by the Administration during the committee stage of the Bill which became the Ordinance upon enactment (See clause 6);

(d) introduce a new Part 3A in order to permit the implementation, in particular, of Article 2 of the United Nations International Convention for the Suppression of Terrorist Bombings (See clause 7 as read with the consequential amendments to section 3 made by clause 3 and the new section 14(7A) at clause 11);

(e) introduce a new Part 3B to permit the implementation, in particular, of Article 3 of the United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and of Article 2 of the United Nations Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (See clause 7 as read with the consequential amendments to section 3 made by clause 3 and the new section 14(7B), (7C) and (7D) at clause 11);

(f) amend section 12 to specify the authorities to which and the persons to whom information obtained under or by virtue of a disclosure referred to in section 12(1) may be disclosed (See clause 8). The amendment is based to some extent on section 6(2) and (3) of the Organized and Serious Crimes Ordinance (Cap. 455). Clause 20 and the Schedule make consequential amendments to section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and of the Organized and Serious Crimes Ordinance (Cap. 455) to reflect section 12 as amended by the Bill;

(g) introduce a new Part 4A to set out the powers of investigation of authorized officers in relation to offences against the Ordinance (See clause 9, the definitions of "material", "possession", "premises", "public body" and "relevant offence" at clause 2(a)(ii), the new section 2(8) at clause 2(b), the new section 14(7E), (7F), (7G), (7H) and (7I) at clause 11, the new section 20(2) at clause 16(b) and the new Schedule 2 at clause 19). It should be noted that the provisions of the new Part 4A are substantially based on sections 3, 4, 5, 6 and 7 of the Organized and Serious Crimes Ordinance (Cap. 455);

(h) introduce a new Part 4B to provide for the seizure and detention of property suspected to be terrorist property (See clause 9, the new section 14(7J) at clause 11 and the new section 18(2A) and (2B) at clause 14). It should be noted that the provisions of the new Part 4B are substantially based on the provisions of Part IVA of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);

(i) repeal section 19 (the regulation-making power) as it is rendered redundant by the amendments made by the Bill (See clause 15); and

(j) make minor drafting amendments to the text of the Ordinance (For example, to amend all references to "Court of First Instance" to "Court" in the interest of brevity---See clause 17 as read with the definition of "Court" at clause 2(a)(ii)).