

立法會

Legislative Council

立法會LS99/05-06號文件

《截取通訊及監察條例草案》委員會文件

訂明授權所授權、規定或訂定的事宜

在法案委員會2006年6月19日會議上，委員審議《截取通訊及監察條例草案》(下稱“《監察條例草案》”)第29及30條所訂的訂明授權將會授權、規定或訂定的事宜。一名委員要求提供資料，說明《聯合國(反恐怖主義措施)條例草案》(下稱“《反恐條例草案》”)建議賦予獲授權人員何種權力。

2. 除截取及使用監察器材外，《監察條例草案》第29條規定訂明授權載有若干條款或授權進行若干事宜如下：——

- (a) 作出任何合理地需要作出的事情，以掩飾授權進行或規定進行的行為(第(3)款)；
- (b) 干擾任何財產(第(4)款)；
- (c) 有權規定訂明授權所指明的任何人提供該授權所指明的為執行該授權而提供的協助(第(5)款)；
- (d) 裝設、使用及維修任何須予使用以截取的器材或任何授權使用的監察器材(第(6)(a)款)；
- (e) 進入(在有需要時可使用武力進入)任何處所，以進行授權進行或規定進行的任何行為(第(6)(b)款)；
- (f) 截取為截取授權截取的任何通訊而需要截取的任何通訊(第(6)(c)款)；及
- (g) 向任何人提供將會用以識別通訊的地址、號碼、儀器或其他因素(第(6)(d)款)。

3. 《監察條例草案》第30條規定，訂明授權進一步授權從事為進行根據該授權而授權進行或規定進行的事情的目的而需要從事的任何行為，該等行為包括：——

- (a) 取出授權使用的器材；
- (b) 裝設、使用、維修及取出該等器材的任何增強設備；
- (c) 為裝設、維修或取出該等器材或增強設備，而將任何運輸工具或物體暫時從處所移走，並將該運輸工具或物體置回該處所；
- (d) 為裝設、維修或取出該等器材或增強設備而破開任何物件；
- (e) 將該等器材或增強設備連接至任何電源，並使用來自該電源的電力；

- (f) 將該等器材或增強設備連接至可用以傳送資料的任何物體或系統，並使用該物體或系統；及
- (g) 為執行該訂明授權而提供協助。

4. 《反恐條例草案》附表2就獲授權人員取得證據及資料作出規定，附表3則就懷疑是恐怖分子財產的財產的檢取及扣留訂定條文。附表2規定獲授權人員：——

- (a) 可要求任何人提供其管有或控制的資料，或交出其管有或控制的物料；及
- (b) 可申請發出搜查手令。

任何人無合理辯解而拒絕或沒有遵從有關要求，即屬犯罪。

5. 《反恐條例草案》附表3訂明獲授權人員具有下述權力：——

- (a) 有權搜查、檢取及扣留懷疑是恐怖分子財產的財產；
- (b) 有權破啟獲授權人員獲賦權進入及搜查的任何地方或處所的任何內外門戶；
- (c) 有權強行登上該人員獲賦權登上及搜查的任何船舶、飛機、車輛或鐵路列車；
- (d) 有權將妨礙該人員獲賦權作出的任何進入、搜查、檢查、檢取、移走或扣留的任何人或物品，以武力移走；
- (e) 有權扣留每一名在該人員獲賦權搜查的任何地方或處所內發現的人，直至該地方或處所被搜查完畢為止；及
- (f) 有權扣留每一名在該人員獲賦權搜查的任何船舶、飛機、車輛或鐵路列車上的人，並阻止任何人接近或登上該船舶、飛機、車輛或鐵路列車，直至該船舶、飛機、車輛或鐵路列車被搜查完畢為止。

6. 《反恐條例草案》附表2及附表3全文載於**附件**。除了在有需要時以武力進入處所的權力之外，《監察條例草案》並未就《反恐條例草案》建議訂定的任何權力作出規定。

7. 委員諒會記得，《反恐條例草案》於2002年7月恢復二讀辯論時，政府當局動議以委員會審議階段修正案刪除附表2及3，並同意依據現有法例所訂的調查、檢取及扣留權力行事。

連附件

立法會秘書處
法律事務部
2006年6月23日

證據及資料

1. 獲授權人員可要求人士提供資料等

(1) 在不損害本條例任何其他條文或任何其他法律的原則下，獲授權人員可要求任何在特區或居於特區的人，向該人員提供該人管有或控制的該人員為確保本條例獲遵從或為偵查規避本條例的情況而需要的任何資料，或向該人員交出該人管有或控制的該人員為確保本條例獲遵從或為偵查規避本條例的情況而需要的任何物料，而被要求的人須在該要求所指明的時間內及按該要求所指明的方式遵從該要求。

(2) 第 (1) 款不得視為規定任何曾代表任何人的大律師或律師將他以該身分所獲得的任何受保密權涵蓋的通訊披露。

(3) 凡任何人因沒有應根據本條提出的要求提供資料或交出物料而被定罪，裁判官或法庭可作出命令，規定該人在該命令所指明的限期內提供有關資料或交出有關物料。

(4) 本條所賦予要求任何人交出物料的權力，包括就如此交出的任何屬文件的物料取得副本或摘錄的權力，以及要求該人(如該人是法人團體，則要求屬該法人團體的現任或已卸任的高級人員或正受僱於該法人團體的任何其他人)就上述文件提供解釋的權力。

2. 手令的發出

(1) 如任何裁判官或法官根據任何警務人員、海關人員或獲授權人員經宣誓而作的告發而信納——

(a) 有合理理由懷疑有人已經或正在犯本條例所訂的罪行，並有合理理由懷疑與犯該罪行有關的證據，可在該告發所指明的任何處所或在如此指明的任何車輛、船舶或飛機中發現；或

(b) 任何理應已根據第 1 條交出但尚未交出的物料，可在任何上述處所或在任何上述車輛、船舶或飛機中發現，

則他可批出搜查手令，授權任何警務人員、海關人員或獲授權人員，連同任何其他在該手令中指名的人及任何其他警務人員或海關人員，於自該手令的日期起計的一個月內，隨時進入該告發所指明的處所或如此指明的車輛、船舶或飛機所在的任何處所(視屬何情況而定)，以及搜查該處所或車輛、船舶或飛機(視屬何情況而定)。

(2) 獲第 (1) 款所指的手令授權的人在行使該款所賦予的任何權力之前或之時，須應要求出示其身分的證據及已獲授權的證據。

(3) 任何藉上述手令獲授權搜查任何處所或任何車輛、船舶或飛機的人，可搜查在該處所、車輛、船舶或飛機中發現的人，或他有合理理由相信不久前離開或即將進入該處所、車輛、船舶或飛機的人，並可檢取該處所、車輛、船舶或飛機中或在上述的人身上發現，而他有合理理由相信是與犯第 (1) 款所提述的罪行有關的證據的任何物料，或他有合理理由相信是理應已根據第 1 條交出的任何其他物料，並就任何上述物料採取看來是必需的任何其他步驟，以保存上述物料和防止其被干擾；

但依據任何根據第 (1) 款發出的手令對任何人作搜查，只可由與該人性別相同的人進行。

EVIDENCE AND INFORMATION

1. Authorized officer may require person to furnish information, etc.

(1) Without prejudice to any other provision of this Ordinance or any other law, an authorized officer may request any person in or resident in the HKSAR to furnish to him any information, or to produce to him any material in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Ordinance, and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in subsection (1) shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(3) Where a person is convicted of failing to furnish information or produce material when requested so to do under this section, the magistrate or court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the material.

(4) The power conferred by this section to request any person to produce material shall include the power to take copies of or extracts from any material which is a document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of such document.

2. Issue of warrant

(1) If any magistrate or judge is satisfied by information on oath given by any police officer, customs officer or authorized officer that—

(a) there is reasonable ground for suspecting that an offence under this Ordinance has been or is being committed and that evidence in relation to the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

(b) any material that ought to have been produced under section 1 and has not been so produced is to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorizing any police officer, customs officer or authorized officer, together with any other persons named in the warrant and any other police or customs officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises or, as the case may be, the vehicle, ship or aircraft.

(2) Before or on exercising any power conferred by subsection (1), a person authorized by any such warrant shall, if requested so to do, produce evidence of his identity and authority.

(3) A person authorized by any such warrant to search any premises or any vehicle, ship or aircraft may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, ship or aircraft and may seize any material found on the premises or in the vehicle, ship or aircraft or on such person that he has reasonable ground to believe to be evidence in relation to the commission of an offence referred to in subsection (1) or any other material that he has reasonable ground to believe ought to have been produced under section 1 and may take in relation to any such material any other steps that may appear necessary for preserving it and preventing interference with it:

Provided that no person shall in pursuance of any warrant issued under subsection (1) be searched except by a person of the same sex.

(4) 任何人憑藉本條獲賦權進入任何處所、車輛、船舶或飛機，可為此目的而使用合理所需的武力。

(5) 根據本條取去的任何物料或物件，可予保留3個月；如在該段期間內就第(1)(a)款所提述的罪行有任何與該等物料或物件有關的法律程序展開，則可保留至該等法律程序結束為止。

(6) 任何人依據根據本附表作出的要求而提供的資料或交出的物料(包括所交出的任何屬文件的物料的任何副本或摘錄)，以及根據第(3)款自任何人處檢取的物料，不得被披露，但在下述情況下則除外——

(a) 在該人的同意下披露；

但僅以另一人的受僱人或代理人的身分取得資料或管有物料的人不得給予本段所指的同意，然而該項同意可由任何本身有權享有該資料或管有該物料的人給予；

(b) 向任何本可根據本附表獲賦權要求提供或交出該資料或物料的人披露；

(c) 在行政長官授權下，向聯合國的任何機關或向任何任職於聯合國的人或向中華人民共和國以外任何地方的政府披露，而目的是協助聯合國或該政府確使由聯合國安全理事會就恐怖分子或與恐怖分子有聯繫者而決定的措施獲遵從或偵查規避該等措施的情況，但該資料或物料須是在中華人民共和國外交部批准的情況下經由中華人民共和國外交部轉交的；或

(d) 為了就本條例所訂的罪行提起任何法律程序而披露，或在其他情況下為了該等法律程序的目的而披露。

3. 罪行

任何人——

(a) 無合理辯解而拒絕或沒有在指明的時間(如無指明的時間，則為一段合理的時間)內按指明的方式遵從由任何獲賦權根據本附表提出要求的人所提出的任何要求；

(b) 故意或罔顧真偽地向任何根據本附表行使其權力的人提供任何在要項上屬虛假的資料或解釋或交出任何在要項上屬虛假的文件；

(c) 故意妨礙任何根據本附表行使其權力的人；或

(d) 出於規避本附表的施行的意圖而銷毀、破損、毀損、隱藏或移去任何物料，即屬犯罪。

4. “物料”的涵義

在本附表中，“物料”(material)包括任何簿冊、文件或其他任何形式的紀錄，以及任何物件或物質。

(4) Where, by virtue of this section, a person is empowered to enter any premises, vehicle, ship or aircraft, he may use such force as is reasonably necessary for that purpose.

(5) Any material or article of which possession is taken under this section may be retained for a period of 3 months or, if within that period there are commenced any proceedings for an offence referred to in subsection (1)(a) to which it is relevant, until the conclusion of those proceedings.

(6) No information furnished or material produced (including any copy of or extract from any material which is a document produced) by any person in pursuance of a request made under this Schedule, and no material seized under subsection (3) shall be disclosed except—

(a) with the consent of the person by whom the information was furnished or the material was produced or the person from whom the material was seized;

Provided that a person who has obtained information or is in possession of a material only in his capacity as a servant or agent of another person may not give consent for the purposes of this paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that material in his own right;

(b) to any person who would have been empowered under this Schedule to request that it be furnished or produced;

(c) on the authority of the Chief Executive, subject to the information or material being transmitted through and with the approval of the Ministry of Foreign Affairs of the People's Republic of China, to any organ of the United Nations or to any person in the service of the United Nations or to the Government of any place outside the People's Republic of China for the purpose of assisting the United Nations or that Government 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; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Ordinance.

3. Offences

Any person who—

(a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it;

(b) intentionally or recklessly furnishes any information, explanation or document which is false in a material particular to any person exercising his powers under this Schedule;

(c) intentionally obstructs any person in the exercise of his powers under this Schedule; or

(d) with intent to evade this Schedule, destroys, mutilates, defaces, secretes or removes any material, shall be guilty of an offence.

4. Meaning of “material”

In this Schedule, “material” (物料) includes any book, document or other record in any form whatsoever, and any article or substance.

懷疑是恐怖分子財產的財產的檢取及扣留

1. 釋義

在本附表中，除文意另有所指外——

“法庭”(court)指原訟法庭；

“被檢取的財產”(seized property)指根據第 2 條被檢取的任何財產；

“輸出”(exported)就任何財產而言，包括為了輸出而運到特區任何地方的財產。

2. 獲授權人員的權力

(1) 為施行本條例，任何獲授權人員——

(a) 可截停、登上及搜查任何已抵達特區的船舶、飛機、車輛或鐵路列車(軍用船艦或軍用飛機除外)，並可在其逗留特區期間一直留在其上；

(b) 可搜查任何抵達特區的人，或任何即將離開特區的人；

(c) 可搜查任何輸入特區或將從特區輸出的物品；

(d) 如有理由懷疑任何船舶、飛機、車輛或鐵路列車內有任何恐怖分子財產，可截停、登上及搜查該船舶、飛機、車輛或鐵路列車；

(e) 如有理由懷疑任何地方或處所內有任何恐怖分子財產，而如要取得根據第(2)款發出的手令並非切實可行的話，則可無須有該手令而進入及搜查該地方或處所；或

(f) 在下列情況下，可截停及搜查任何人，及搜查任何人的財產——

(i) 該獲授權人員有理由懷疑該人實際保管有任何恐怖分子財產；或

(ii) 該人在任何發現有任何恐怖分子財產的船舶、飛機、車輛、鐵路列車、地方或處所之內被發現。

(2) 凡任何裁判官鑑於任何人的誓詞而覺得有合理理由懷疑任何地方有任何恐怖分子財產，或有人就該財產已犯了或即將犯違反本條例的規定的罪行，該裁判官可藉其向任何獲授權人員發出的手令，賦權該人員於日間或晚間，進入在該手令上指名的地方及在該處搜尋任何恐怖分子財產，並且檢取、移走及扣留任何恐怖分子財產。

(3) 為達到根據第(1)款搜查船舶或飛機的目的——

(a) 香港海關關長或警務處處長可藉親筆簽署的書面命令，扣留船舶不超過 12 小時，或扣留飛機不超過 6 小時；及

(b) 政務司司長可藉親筆簽署的書面命令，延長扣留船舶或飛機的限期；如屬船舶，則可將限期延長不超過 12 小時，如屬飛機，則可將限期延長不超過 6 小時。

任何根據本款發出的命令，須註明該命令自何時起有效及其有效期。

(4) 任何獲授權人員如有理由懷疑任何物品是恐怖分子財產，可檢取、移走及扣留該物品。

(5) 任何獲授權人員可——

(a) 破啓他獲本條賦權進入及搜查的任何地方或處所的任何內外門戶；

(b) 強行登上他獲本條賦權登上及搜查的任何船舶、飛機、車輛或鐵路列車；

SEIZURE AND DETENTION OF PROPERTY SUSPECTED
TO BE TERRORIST PROPERTY

1. Interpretation

In this Schedule, unless the context otherwise requires—

“court”(法庭) means the Court of First Instance;

“exported”(輸出), in relation to any property, includes the property being brought to any place in the HKSAR for the purpose of being exported;

“seized property”(被檢取的財產) means any property seized under section 2.

2. Powers of authorized officers

(1) For the purposes of this Ordinance, any authorized officer may—

(a) stop, board and search any ship, aircraft, vehicle or train which has arrived in the HKSAR (not being a ship of war or a military aircraft), and remain thereon as long as it remains in the HKSAR;

(b) search any person arriving in the HKSAR or about to depart from the HKSAR;

(c) search any thing imported into or to be exported from the HKSAR;

(d) stop, board and search any ship, aircraft, vehicle or train if he has reason to suspect that there is therein any terrorist property;

(e) without a warrant issued under subsection (2) where it would not be practicable to obtain such a warrant, enter and search any place or premises if he has reason to suspect that there is therein any terrorist property; or

(f) stop and search any person, and search the property of any person, if—

(i) he has reason to suspect that such person has in his actual custody any terrorist property; or

(ii) such person is found in any ship, aircraft, vehicle, train, place or premises in which any terrorist property is found.

(2) Where it appears to any magistrate upon the oath of any person that there is reasonable cause to suspect that in any place there is any terrorist property, or with respect to which an offence has been committed or is about to be committed against the provisions of this Ordinance, the magistrate may, by his warrant directed to any authorized officer, empower the officer by day or by night to enter the place named in the warrant and there to search for and seize, remove and detain any terrorist property.

(3) For the purpose of enabling a ship or aircraft to be searched under subsection (1)—

(a) the Commissioner of Customs and Excise or the Commissioner of Police may, by order in writing under his hand, detain a ship for not more than 12 hours or an aircraft for not more than 6 hours; and

(b) the Chief Secretary for Administration may, by order in writing under his hand, detain a ship or aircraft for further periods of not more than 12 hours in the case of a ship or not more than 6 hours in the case of an aircraft.

Any order made under this subsection shall state the times from which and for which the order is effective.

(4) Any authorized officer may seize, remove and detain any thing if he has reason to suspect that such thing is terrorist property.

(5) Any authorized officer may—

(a) break open any outer or inner door of or in any place or premises which he is empowered by this section to enter and search;

(b) forcibly board any ship, aircraft, vehicle or train which he is empowered by this section to board and search;

- (c) 將妨礙他獲本條賦權作出的任何進入、搜查、檢查、檢取、移走或扣留的任何人或物品，以武力移走；
- (d) 扣留每一名在他獲本條賦權搜查的任何地方或處所內發現的人，直至該地方或處所被搜查完畢為止；及
- (e) 扣留每一名在他獲本條賦權搜查的任何船舶、飛機、車輛或鐵路列車上的人，並阻止任何人接近或登上該船舶、飛機、車輛或鐵路列車，直至該船舶、飛機、車輛或鐵路列車被搜查完畢為止。
- (6) 根據本條對任何人作搜查，只可由與該人性別相同的人進行。
- (7) 任何人如反對在公眾地方根據本條被搜查，則不得如此搜查該人。
- (8) 任何人故意妨礙任何人行使本條賦予他的權力，即屬犯罪。
- (9) 在本條中——

“香港海關關長”(Commissioner of Customs and Excise) 包括香港海關副關長及香港海關助理關長；

“警務處處長”(Commissioner of Police) 包括警務處副處長、警務處助理處長或警務處高級助理處長。

3. 被檢取的財產的扣留限期

(1) 被檢取的財產不得扣留超過 30 日，但如在該限期屆滿前，有第(2)款所指的命令授權繼續扣留該財產，則屬例外。

(2) 法庭可應律政司司長或獲授權人員向其提出的申請發出命令，授權繼續扣留被檢取的財產，但法庭須信納——

- (a) 有合理理由懷疑該財產是恐怖分子財產；及
- (b) 在對該財產的來源或如何得來作進一步調查期間或在考慮(不論在特區或其他地方)提起下述的法律程序期間，扣留該財產是有充分理由的——
- (i) 針對任何人就與該財產相關的罪行而提起的法律程序；或
- (ii) 可導致就該財產發出本條例第 5(1) 條所指的通告的法律程序，或可導致該財產遭充公或以其他方式沒收的法律程序。

(3) 第(2)款所指的命令須授權在其指明的限期(該限期不得超過由該命令的日期起計的 3 個月)內繼續扣留該命令所關乎的被檢取的財產，而法庭在獲律政司司長或獲授權人員向其提出申請後，如信納第(2)(a)及(b)款所提述的事宜，可在該限期後不時發出命令授權繼續扣留該財產，但——

- (a) 本款所指的命令所指明的扣留限期不得超過由該命令的日期起計的 3 個月；及
- (b) 扣留限期共計不得超過由第(2)款所指的命令的日期起計的 2 年。

(4) 在被檢取的財產藉第(2)或(3)款所指的命令被扣留的任何時間，如——

- (a) 法庭應——
- (i) 被檢取該財產的人；
- (ii) 輸入或輸出該財產或由他人代為輸入或輸出該財產的人；或
- (iii) 以其他方式擁有該財產的權益的人，
- 提出的申請而信納並沒有或再沒有任何第(2)款所提述的扣留該財產的理由；或

(b) 法庭應律政司司長或獲授權人員提出的申請而信納再沒有充分理由扣留該財產，則法庭可指示將該財產發還。

- (e) remove by force any person or thing who or which obstructs any entry, search, inspection, seizure, removal or detention which he is empowered by this section to make;
- (d) detain every person found in any place or premises which he is empowered by this section to search until the same has been searched; and
- (e) detain every person on board any ship, aircraft, vehicle or train which he is empowered by this section to search, and prevent any person from approaching or boarding such ship, aircraft, vehicle or train, until it has been searched.
- (6) No person shall be searched under this section except by a person of the same sex.
- (7) No person shall be searched under this section in a public place if he objects to being so searched.
- (8) Any person who intentionally obstructs any person in the exercise of his powers under this section shall be guilty of an offence.
- (9) In this section—
- “Commissioner of Customs and Excise” (香港海關關長) includes a Deputy Commissioner of Customs and Excise and an Assistant Commissioner of Customs and Excise;
- “Commissioner of Police” (警務處處長) includes a deputy, assistant or senior assistant commissioner of police.

3. 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) A court may, upon application made to it by the Secretary for Justice or 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 proceedings—
- (i) against any person in relation to an offence with which the property is connected; or
- (ii) which may result in a notice under section 5(1) of this Ordinance 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 a court, upon application made to it by the Secretary for Justice or 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) a 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 or on whose behalf it was being imported or exported; 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 the Secretary for Justice or an authorized officer, that its detention is no longer justified.

(5) 在任何被檢取的財產憑藉第(2)或(3)款所指的命令被扣留的任何時間，如有下述法律程序(不論是在特區或其他地方)提起——

- (a) 針對任何人就與該財產相關的罪行而提起的法律程序；或
- (b) 可導致就該財產而根據本條例第5(1)條作出指示的法律程序，或可能導致該財產遭充公或以其他方式沒收的法律程序，

則該財產不得在該等法律程序結束前予以發還。

4. 利息

被檢取的財產如是金錢，並且是依據第3(2)或(3)條所指的命令被扣留的，除非須用作某罪行的證據，否則須存入有利息的戶口內，而且在發還該財產時，所累算的利息須計入該財產內。

5. 程序

(1) 第3(2)條所指的命令，須規定向受該命令影響的人發出通知。

(2) 除本條例第17(3)條另有規定外，《高等法院規則》(第4章，附屬法例)第115號命令第24、25、26、27、28、30、31、32及33條規則，在經所有必要的變通後，須適用於第3(2)、(3)及(4)條並就該條適用，一如其各別適用於《販毒(追討得益)條例》(第405章)第24C(2)、(3)及(4)條並就該條適用一樣。

摘要說明

本條例草案的目的是為實施——

- (a) 聯合國安全理事會2001年9月28日第1373號決議中關於防止恐怖主義的措施的決定；及
- (b) 財務行動特別組織《關於資助恐怖分子的特別建議》的某些建議。

2. 本條例草案主要是藉着禁止在特區的人，或在特區以外的香港永久性居民，或在特區以外根據特區法律成立為法團或組成的團體——

- (a) 向從事或支持恐怖主義行為的人(參閱與草案第2(1)條中“恐怖分子”、“恐怖主義行為”、“與恐怖分子有聯繫者”及“實體”的定義一併理解的草案第3、6、7及8條)供應資金；
- (b) 處理上述的人的財產；或
- (c) 向上述的人供應武器，

從而協助實行該決議。

(5) If, at any time when any seized property is being detained by virtue of an order under subsection (2) or (3), 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 a direction being given under section 5(1) of this Ordinance 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 have been concluded.

4. Interest

Seized property which is money and which is detained in pursuance of an order under section 3(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.

5. Procedure

(1) An order under section 3(2) shall provide for notice to be given to persons affected by the order.

(2) Subject to section 17(3) of this Ordinance, Order 115, rules 24, 25, 26, 27, 28, 30, 31, 32 and 33, of the Rules of the High Court (Cap. 4 sub. leg.) shall, with all necessary modifications, apply to and in relation to section 3(2), (3) and (4) as it applies to and in relation to section 24C(2), (3) and (4) respectively of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

Explanatory Memorandum

The purpose of this Bill is to implement—

- (a) a decision of the Security Council of the United Nations in its Resolution 1373 of 28 September 2001 relating to measures for the prevention of terrorism; and
- (b) certain of the Special Recommendations on Terrorist Financing of the Financial Action Task Force.

2. The Bill principally assists in giving effect to the Resolution by prohibiting a person within the HKSAR or, outside the HKSAR, a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR, from—

- (a) supplying funds to;
- (b) dealing with the property of; or
- (c) supplying weapons to,

persons that engage in or support terrorist acts (see clauses 3, 6, 7 and 8 as read with the definitions of “terrorist”, “terrorist act”, “terrorist associate” and “entity” in clause 2(1)).