

**Legislative Council Bills Committee on
United Nations (Anti-Terrorism Measures) Bill**

Clause-by-Clause Explanation

Clause No.	Purpose	Corresponding UNSCR 1373 or FATF Special Recommendations	Precedents in Overseas Jurisdictions/Remarks
1-2	Preliminary clauses including definitions of key terms, such as “terrorist act”, “property” etc.	N/A	<p>Definition of “terrorist act” modeled on the UK Terrorism (United Nations Measures) Order 2001, which is itself modeled on the UK Terrorist Act, with paragraph (a)(i)(F) and paragraph (b) also deriving from the Canadian Anti-Terrorism Act. UNSCR 1373 does <u>not</u> define “terrorist act”.</p> <p>Similar definitions are found in many major common law jurisdictions.</p>
3	Application outside HKSAR	Paragraphs 1(a) and (c) of UNSCR 1373 prohibit the provision of funds etc within territory or by nationals.	Section 1(5) of the UK Terrorism (United Nations’ Measures) Order 2001 is to the same effect.
4	Specification of persons and property as terrorists, terrorist associates or terrorist property	Paragraph 1(a) of UNSCR 1373 – “Prevent and suppress the financing of terrorist acts;”	As the list of terrorists, terrorist associates and terrorist property will be publicized, it will go a long way to facilitate compliance with provisions of the Bill which aim at suppressing the financing of terrorist acts. For example it will be easier for banks to identify listed terrorists from among their customers. It is also a necessary element of the prohibition against recruitment.

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			<p>In the UK, the Terrorism (United Nations Measures) Order 2001 provides a mechanism for listing. The Bank of England, as agent for the Treasury in exercise of its powers under Article 4 has issued a number of lists of terrorists against whom financial sanctions apply. This list is not provisional on legislative or judicial scrutiny. The Order shall cease to have effect in accordance with any decision of the Security Council to cancel or suspend the operation of Resolution 1373.</p> <p>Similar provisions apply under the UK Afghanistan (United Nations Sanctions) Order SI 396 and the UK Al Qaida and Taliban (United Nations Measures) Order 2002 (SI 2002/111)</p> <p>In Australia, under the Charter of the United Nations (Anti-Terrorism Measures) Regulations 2001, the Minister for Foreign Affairs must list names of “proscribed” persons or entities in the Gazette if he is satisfied that any such person or entity is mentioned in paragraph 1(c) of UNSCR 1373.</p> <p>In USA, by the Executive Order on Terrorist Financing, the President can issue lists on foreign persons blocking their property. Under section 212 of the Immigration and Nationality Act, a terrorist organization means an organization, amongst others, designated upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General as a terrorist organization etc.</p>

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5	Freezing of funds	<p>Paragraph 1(a) of UNSCR 1373 – “Prevent and suppress the financing of terrorist acts.”</p> <p>Paragraph 1(c) of UNSCR 1373 – “Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.”</p> <p>Clause 5 also gives effect to FATF Special Recommendation III which reads, “Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts. Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.”</p>	<p>Under the UK Terrorism (United Nations Measures) Order 2001, the Treasury may direct funds to be frozen where it has reasonable grounds for suspecting that the person on behalf of whom funds are held is, or may be, a person who commits etc. acts of terrorism. The order shall cease to have effect in accordance with any decision of the Security Council to cancel or suspend the operation of Resolution 1373. There is no other time restriction on the operation of the order.</p> <p>Similar provisions apply under the UK Afghanistan (United Nations Sanctions) Order SI 396 and the UK Al Qaida and Taliban (United Nations Measures) Order 2002 (SI 2002/111)</p> <p>Under the UK Anti-Terrorism, Crime and Security Act, the UK Treasury has a power to make a freezing order against a person or government outside the UK if it reasonably believes that action to the detriment of the UK’s economy or constituting a threat to the life or property of a UK national or resident has been or is likely to be taken. The Treasury must keep the order under review and it ceases to have effect at the end of a period of 2 years. The order must be laid before Parliament after being made and ceases to have effect at the period of 28 days unless approved by resolution of each house of Parliament. The provision has not yet been used.</p> <p>In USA, by the Executive Order on Terrorist Financing, the President can issue lists on foreign persons blocking their property.</p>

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			<p>Clause 5 of the United Nations (Anti-Terrorism Measures) Bill deals with the freezing of terrorist funds. We consider that freezing of property other than funds (such as real property) may not be needed at present. Clause 19 however will enable regulations to be made should the need arise.</p>
6	Prohibition on supply of funds to terrorists and terrorist associates	<p>Paragraph 1(a) of UNSCR 1373 – “Prevent and suppress the financing of terrorist acts;”</p> <p>Paragraph 1(b) of UNSCR 1373 – “Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;”</p> <p>Clause 6 also gives effect to FATF Special Recommendation II which reads, “Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.”</p>	<p>Similar offences are provided under the Australia Charter of the United Nations (Anti-Terrorism Measures) Regulations, the Canada United Nations Suppression of Terrorism Regulations, the Singapore United Nations (Anti-Terrorism Measures) Regulations 2001 and the UK Terrorism Act. The Canadian Suppression of the Financing of Terrorism Bill which is currently before the Canadian Federal Parliament will also implement paragraph 1(b) of UNSCR 1373.</p>

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7	Prohibition on making funds, or financial or related services available to terrorists and terrorist associates	<p>Paragraph 1(d) of UNSCR 1373 – “Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.”</p> <p>Clause 7 also gives effect to FATF Special Recommendation II</p>	<p>Similar offences are provided under the Australia Charter of the United Nations (Anti-Terrorism Measures) Regulations, the Canada United Nations Suppression of Terrorism Regulations, the UK Terrorism (United Nations Measures) Order 2001 and the Singapore United Nations (Anti-Terrorism Measures) Regulations 2001.</p>
8	Prohibition on supply of weapons to terrorists and terrorist associates	<p>Paragraph 2(a) of UNSCR 1373 – “Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.”</p>	<p>“Weapons” is defined in clause 1 to specifically include chemical, biological, radiological or nuclear weapons.</p> <p>A similar definition is provided under the UK Terrorism Act 2000.</p>
9	Prohibition on recruitment, etc. to persons specified in notices under section 4(1) and (2)	<p>Paragraph 2(a) of UNSCR 1373 – “Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.”</p>	<p>It is logical to criminalize membership as well as recruitment.</p> <p>Under the UK Terrorism Act 2000 a person commits an offence if he belongs to or professes to belong to a proscribed organisation.</p>

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10	Prohibition against false threats of terrorist acts	-	<p>A similar offence is provided under the Singapore United Nations (Anti-Terrorism Measures) Regulations 2001. A similar offence to section 10(2) is contained in the UK Anti-Terrorism, Crime and Security Act 2001.</p> <p>In Hong Kong, it should be noted that Section 28 of the Public Order Ordinance deals with bomb hoaxes only.</p>
11	Disclosure of knowledge or suspicion that property is terrorist property	<p>FATF Special Recommendation IV which reads, “If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.”</p>	<p>The UK Anti-Terrorism, Crime and Security Act 2001 amends the Terrorism Act 2000 by adding a new section which includes a similar reporting requirement upon any person.</p> <p>The Canada Anti-Terrorism Act amends the Proceeds of Crime (Money Laundering) Act requiring financial intermediaries to report suspicions of terrorist financing offences.</p> <p>The Singapore United Nations (Anti-Terrorism Measures) Regulations 2001 also includes a similar reporting requirement.</p> <p>Clause 11 of the United Nations (Anti-Terrorism Measures) Bill will facilitate action pursuant to clauses 5 and 13.</p>
12	Obtaining of evidence and information, etc.	-	<p>Clause 12 describes the purpose and scope of schedules 2 and 3.</p>

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13	Forfeiture of certain terrorist property	FATF Special Recommendation III requires the seizure and confiscation of property that is the proceeds of or used or intended to be used to finance terrorism.	<p>The use of the standard of “balance of probabilities” in deciding whether to forfeit suspected terrorist property under clause 13(4) is based on the existing provision in the Drug Trafficking (Recovery of Proceeds) Ordinance, Cap. 405. It is appropriate to adopt such a standard of proof as forfeiture is a civil matter rather than a criminal matter.</p> <p>Section 1 and schedule 1 of the UK Anti-Terrorism, Crime and Security Act 2001 provides for the forfeiture of terrorist cash in civil proceedings.</p>
14	Offences	–	Clause 14 sets out the offences and penalties under the Bill; they are in line with the level of punishment for comparable offences in other laws of Hong Kong.
15	Authorization of officers and delegations	–	<p>It is intended that the Secretary for Security will only authorize public officers of the HKSARG under clause 15(1) as “authorized officer”.</p> <p>It is envisaged that the Chief Executive will only in exceptional cases and under very special circumstances delegate his powers to another public officer under clause 15(2).</p> <p>It is intended that the Secretary for Security will delegate her power to a public officer of the HKSARG not below directorate level under clause 15(3).</p>

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16	Applications to Court of First Instance	-	<p>The UK Terrorism (United Nations Measures) Order 2001 allows for application to be made to the High Court for the Treasury’s direction to freeze terrorist funds to be set aside.</p> <p>Similar appeal procedures against the listing or proscription of terrorists etc. are provided under the UK Terrorism Act 2000 and the Canada Anti-Terrorism Act.</p>
17	Procedures for the hearing of applications under clause 16.	-	<p>Clause 17 provides for the making of rules of court regarding procedures for the hearing of applications made under clause 16. It is for the Rules Committee of the Judiciary to consider and make these rules which will be subsidiary legislation.</p>
18	Amendment of Schedules 1, 2 and 3	-	<p>Schedules 2 and 3 are based on existing HK law.</p>
19	Regulations – freezing of property (other than funds)	<p>Paragraph 1(a) of UNSCR 1373 – “Prevent and suppress the financing of terrorist acts;”</p> <p>Paragraph 1(c) of UNSCR 1373 – “Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.”</p>	<p>Please refer to clause 5 above.</p> <p>We have not prepared the draft regulations as we do not see the need to deal with the freezing of property, other than funds, at the present stage.</p>

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		FATF Special Recommendation III requires the freezing of funds or other assets of terrorists.	
Schedule 1	Definition of “funds”	–	This definition is based on the definition of “funds” provided under the UK Terrorism (United Nations Measures) Order 2001
Schedule 2	Evidence and information	–	It is intended that for the purposes of schedules 2 and 3 an “authorized officer” will only include a public officer of the HKSARG. Please refer to clause 15(1) above.
			<p>The procedure set out under section 2(6)(c) follows those under existing provisions of the regulations made under the United Nations Sanctions Ordinance e.g. the United Nations Sanctions (Arms Embargoes) Regulation, the United Nations Sanctions (Libya) Regulation.</p> <p>Communication with the United Nations or another Government 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 is a matter of foreign affairs and it is therefore in order that such information be provided to them through the Ministry of Foreign Affairs of the People’s Republic of China.</p>
Schedule 3	Seizure and detention of property suspected to be terrorist property	–	Schedule 3 is based on provisions in Dangerous Drugs Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance.