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Legislative Council

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Paper for the LegCo Panel on Security

A comparison of Overseas Anti-Terrorism Legislation on Listing Process

At the meeting of the Panel on Security on 5 February 2002, Members requested the Legal Service Division and the Research and Library Services Division to provide details about the process of listing terrorists in overseas countries and the relevant provisions of the legislation of these countries.

2. A table comparing the textual differences of the relevant legislation is at the **Annex**. The information, updated as at 13 May 2002, has been collected from official web sites on the Internet. We have selected those jurisdictions whose legislation is in the English language.

3. The table comprised of three parts :

- (a) part I sets out legislation under which listing is subject to legislative process;
- (b) part II sets out legislation enabling listing not subject to legislative intervention; and
- (c) part III sets out legislation without a mechanism for listing.

Encl

Legal Service Division
Research and Library Services Division
LegCo Secretariat
30 May 2002

I. LISTING SUBJECT TO LEGISLATIVE PROCESS

JURISDICTIONS	LEGISLATION AND COMMENCEMENT DATE	PURPOSE	LISTING	AMENDMENT	REMARKS
United Kingdom	<p><i>Terrorism Act 2000</i></p> <p>20 July 2000</p> <p>(as amended by the <i>Anti-Terrorism, Crime and Security Act 2001</i> (20 December 2001))</p>	<p>To reform and extend existing counter-terrorist legislation, building on the proposals in the Government's consultation document <i>Legislation against terrorism</i> published in December 1998.</p>	<ul style="list-style-type: none"> Under section 3, an organisation is proscribed if it is listed in Schedule 2 or it operates under the same name as an organisation so listed. 	<ul style="list-style-type: none"> The Secretary of State may by order add an organisation to Schedule 2 if he believes that it is concerned in terrorism, remove an organisation from that Schedule, or amend the Schedule in some other way. An application may be made to the Secretary of State for removing an organisation from Schedule 2. If the application is refused, the applicant may appeal to the Proscribed Organisations Appeal Commission which shall allow any appeal if it considers that the decision to refuse is flawed when considered in the light of the principles of judicial review. A party to an appeal may bring a further appeal on a question of law to the Court of Appeal. 	<ul style="list-style-type: none"> Under section 123 of the <i>Terrorism Act 2000</i>, an order shall not be made by the Secretary of State unless a draft has been laid before and approved by resolution of each House of Parliament. An order may be made without a draft having been approved if : <ul style="list-style-type: none"> a. the Proscribed Organisations Appeal Commission makes an order; or b. the Secretary of State is of the opinion that it is necessary by reason of urgency. The Order made without an approved draft shall contain a declaration of the Secretary's opinion; and shall cease to have effect at the end of the period of 40 days beginning with the day on which the Secretary makes the Order, unless a resolution approving the Order is passed by each House during that period. The proscribed organisations listed in Schedule 2 of the <i>Terrorism Act 2000</i> are : <p>The Irish Republican Army, Cumann na mBan, Fianna na hEireann, the Red Hand Commando, Saor Eire, the Ulster Freedom Fighters, the Ulster Volunteer Force, the Irish National Liberation Army, the Irish People's Liberation Organisation, the Ulster Defence Association, the Loyalist Volunteer Force, the Continuity Army Council, the Orange Volunteers and the Red Hand Defenders.</p>

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Canada	<p><i>United Nations Suppression of Terrorism Regulations</i></p> <p>(made under the <i>United Nations Act</i>)</p> <p>2 October 2001</p>	<p>To implement the United Nations Security Council Resolution 1373 (UNSCR 1373).</p>	<ul style="list-style-type: none"> • A "listed person" is defined to mean : <ol style="list-style-type: none"> a. Usama bin Laden or his associates as defined in section 1 of the United Nations Afghanistan Regulations, and b. a person whose name is listed in the schedule to the Regulations in accordance with section 2. • Under section 1 of the United Nations Afghanistan Regulations, Usama bin Laden or his associates means Usama bin Laden or any individual or entity associated with him according to the Committee of the Security Council, including those in the Al-Qaida organization. • Under section 2, a person whose name is listed in the schedule is a person who there are reasonable grounds to believe : <ol style="list-style-type: none"> a. has carried out, attempted to carry out, participated in or facilitated the carrying out of a terrorist activity; b. is controlled directly or indirectly by any person conducting any of the activities set out in paragraph (a); or c. is acting on behalf of, at the direction of, or in association with any person conducting any of the activities set out in paragraph (a). 	<ul style="list-style-type: none"> • A listed person may apply in writing to the Solicitor General for his name to be removed from the schedule. The Solicitor General may, after reviewing the application, recommend to the Governor in Council that the applicant be removed from the schedule, if there are reasonable grounds for removal. 	<ul style="list-style-type: none"> • Under section 19 of the <i>Statutory Instruments Act</i>, every statutory instrument issued, made or established, shall stand permanently referred to any Committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing the statutory instruments. • The Standing Joint Committee for the Scrutiny of Regulations monitors the exercise of regulatory power on behalf of Parliament. The Committee checks the instruments against the criteria approved by the Senate and the House of Commons at the beginning of each session of Parliament. • When the Committee finds a problem with a statutory instrument, it tells the regulation-making authority and suggests solutions. Where the Committee and the regulation-making authority are unable to agree on a solution, the Committee may make a report drawing the matter to the attention of both Houses of Parliament. Where the instrument is made by the Governor in Council, the Committee is also authorized, under the Standing Orders of the House of Commons, to make a report to the House of Commons proposing the disallowance of the instrument. A disallowance resolution, if not rejected, becomes an Order of the House enjoining the Governor in Council to revoke the statutory instrument.
	<p><i>The Anti-Terrorism Act</i></p> <p>24 December 2001</p>	<p>Part I of the Act amends the Criminal Code to implement international conventions related to terrorism, to create offences related to terrorism, including the financing of terrorism and the participation, facilitation and carrying out of terrorist activities, and to provide a means by which property belonging to terrorist groups, or property linked to terrorist activities, can be seized, retained and forfeited.</p>	<ul style="list-style-type: none"> • Section 83.05 provides that the Governor in Council may, by regulation, establish a list on which the Governor in Council may place any entity if, on the recommendation of the Solicitor General of Canada, the Governor in Council is satisfied that there are reasonable grounds to believe that : <ol style="list-style-type: none"> a. the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or b. the entity is knowingly acting on behalf of, at the direction of or in association with an entity referred to in paragraph (a). • The Solicitor General may make a recommendation only if he has reasonable grounds to believe that the entity to which the recommendation relates is an entity referred to in paragraphs (a) or (b). 	<ul style="list-style-type: none"> • On application in writing by a listed entity, the Solicitor General shall decide whether there are reasonable grounds to recommend to the Governor in Council that the applicant no longer be a listed entity. • The applicant may apply to a judge for judicial review of the decision of the Solicitor General. The Solicitor General shall cause to be published in the gazette notice of a final order of a court that the applicant no longer be a listed entity. • The Solicitor General shall review the list two years after the establishment of the list, and every two years after that. A listed entity may not make another application to the Solicitor General except if there has been a material change in its circumstances since the time when the entity made its last application or if the Solicitor General has completed the review. 	

JURISDICTIONS	LEGISLATION AND COMMENCEMENT DATE	PURPOSE	LISTING	AMENDMENT	REMARKS
Singapore	<p><i>United Nations (Anti-Terrorism Measures) Regulations 2001</i></p> <p>(made under the <i>United Nations Act 2001</i>)</p> <p>13 November 2001</p>	<p>To assist in giving effect to UNSCR 1373.</p>	<ul style="list-style-type: none"> • Defines "terrorist" to mean any person who : <ol style="list-style-type: none"> a. commits or attempts to commit any terrorist act; or b. participates in or facilitates the commission of any terrorist act, and includes any person set out in the schedule. • Schedule sets out a list of terrorists and terrorist organisations. 		<ul style="list-style-type: none"> • The list of terrorists and terrorist organisations may be amended by the introduction of an amendment regulation.
India	<p><i>The Prevention of Terrorism Ordinance, 2001</i></p> <p>24 October 2001</p>	<p>To provide for defining substantive offences to deal with the new methods and strategy adopted by terrorist groups.</p>	<ul style="list-style-type: none"> • Section 18 provides that an organisation is a terrorist organisation if it is listed in the Schedule or it operates under the same name as an organisation listed in that Schedule. • The Central Government may, by order in the Gazette, add an organisation to the Schedule if it believes that the organisation is involved in terrorism, remove an organisation from that Schedule, amend that Schedule in some other way. An organisation shall be deemed to be involved in terrorism if it commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism, or is otherwise involved in terrorism. 	<ul style="list-style-type: none"> • An application may be made to the Central Government for removal of an organisation from the Schedule. Where an application is refused, the applicant may apply for a review to the Review Committee constituted by the Central Government. The Review Committee may allow an application for review if it considers that the decision was flawed when considered in the light of the principles of judicial review. • Under section 59, a Chairperson of the Review Committee shall be a person who is, or who has been, a Judge of a High Court, who shall be appointed by the Central Government or the State Government. The concurrence of the Chief Justice of the High Court shall be obtained in the case of a sitting Judge. • Where an order is made by the Review Committee, the Central Government shall make an order removing the organisation from the list in the Schedule. 	<ul style="list-style-type: none"> • The Ordinance was promulgated by the President against the background of the intensification of cross border terrorism targeted destabilizing India, the continued offensive agenda of Pakistan ISI and the recent developments of national and international consequences in the post 11 September scenario. The Ordinance would fulfill India's obligations in complying with the UNSCR 1373. • The Ordinance draws on several provisions of the <i>UK Terrorism Act 2000</i>. It is unclear whether the order is subject to scrutiny of the Parliament. • Section 1 provides that the Ordinance shall remain in force for a period of five years from the date of its commencement. • The 23 terrorist organisations listed in the Schedule are : <p>Babbar Khalsa International, Khalistan Commando Force, Khalistan Zindabad Force, International Sikh Youth Federation, Lashkar-e-taiba/Pasban-e-ahle Hadis, Jaish-e-mohammed/Tahrir-e-furqan, Harkat-ul-mujahideen/Harkar-ul-ansar/Karkat ul-jehad-e-islami, Hizb-ul-mujahideen/Hizb-ulmujahideen Pir Panjal Regiment, Al-umar-mujahideen, Jammu and Kashmir Islamic Front, United Liberation Front of Assam, National Democratic Front of Bodoland, People's Liberation Army, United National Liberation Front, People's Revolutionary Party of Kangleipak, Kanleipak Communist Party, Kanglei Yaol Kanba Lup, Manipur People's Libration Front, All Tripura Tiger Force, National Liberation Front of Tripura, Liberation Tigers of Tamil Eelam, Students Islamic Movement of India and Deendar Anjuman.</p>

JURISDICTIONS	LEGISLATION AND COMMENCEMENT DATE	PURPOSE	LISTING	AMENDMENT	REMARKS
USA	<p><i>Immigration and Nationality Act</i></p> <p>(As amended by the <i>Antiterrorism and Effective Death Penalty Act 1996</i></p> <p>24 April 1996)</p>	Section 219 of the <i>Immigration and Nationality Act</i> relates to the designation of foreign terrorist organizations.	<ul style="list-style-type: none"> • Under section 219, the Secretary of State is authorized to designate an organization as a foreign terrorist organization if he finds that : <ol style="list-style-type: none"> a. the organization is a foreign organization; b. the organization engages in terrorist activity; and c. the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States. • Seven days before making a designation, the Secretary shall by classified communication notify certain members of the House of Representatives, the Senate and relevant committees in writing of the intent to designate, the findings and the factual basis. Seven days thereafter, the Secretary shall publish the designation in the Federal Register. • A designation shall take effect upon publication and shall be effective for all purposes for a period of 2 years, subject to redesignation by the Secretary for an additional 2-year period if he finds that the relevant circumstances still exist. 	<ul style="list-style-type: none"> • Under the amended section 219, an organization so designated may seek judicial review in the Court of Appeals for the District of Columbia Circuit. • The Congress may block or revoke a designation by an Act of Congress. • The Secretary may revoke a designation if he finds that the circumstances have changed in such manner as to warrant revocation, or that national security warrants revocation. 	<ul style="list-style-type: none"> • In 1997, 30 groups are designated as foreign terrorist organizations. In 1999, 27 of these groups were re-certified. Additions were made in 1999, 2000 and 2001. In 2001, 26 out of 28 groups were re-certified.

II. LISTING NOT SUBJECT TO LEGISLATIVE INTERVENTION

JURISDICTIONS	LEGISLATION AND COMMENCEMENT DATE	PURPOSE	LISTING	AMENDMENT	REMARKS
Australia	<p><i>Charter of the United Nations (Anti-Terrorism Measures) Regulations 2001</i></p> <p>(made under the <i>Charter of the United Nations Act 1945</i>)</p> <p>15 October 2001</p>	To implement UNSCR 1373.	<ul style="list-style-type: none"> • Under section 7(1), 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. 		<ul style="list-style-type: none"> • On 21 December 2001, the Minister listed the names of proscribed persons and entities in the Gazette. According to the joint news release by the Attorney General and the Minister for Foreign Affairs, the first list contains the names of individuals and groups that have been linked to Al Qaida, Osama bin Laden and the Taliban. The second list contains the names of internationally recognized foreign terrorist organisations.

JURISDICTIONS	LEGISLATION AND COMMENCEMENT DATE	PURPOSE	LISTING	AMENDMENT	REMARKS
Singapore	<p><i>Monetary Authority of Singapore Act</i></p> <p>1 January 1971</p>	<p>To establish a corporation to be known as the Monetary Authority of Singapore and to provide for the transfer to the corporation of certain functions and assets of the Government.</p>	<ul style="list-style-type: none"> • Section 27A of the Act empowers the Monetary Authority to issue directives to a financial institution or class of financial institutions as the Authority considers necessary in order to discharge any obligation binding on Singapore by virtue of a decision of the United Nations Security Council. 		<ul style="list-style-type: none"> • The Authority has, pursuant to section 27A of the Act, issued 5 directives to all banks and financial institutions on 9 October 2001 in order to facilitate the discharge of Singapore's obligations under UNSCR 1373. In the definition of "designated person", it includes any person or entity as may be identified, from time to time, by the Authority in annexes to the directives.
USA	<p><i>Immigration and Nationality Act</i></p> <p>(As amended by the <i>Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001</i>)</p> <p>26 October 2001)</p>	<p>Section 212 of the <i>Immigration and Nationality Act</i> relates to the designation of foreign terrorist organizations.</p>	<ul style="list-style-type: none"> • Under section 212, a terrorist organization means an organization : <ol style="list-style-type: none"> a. designated under section 219; b. otherwise 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, after finding that the organization engages in the activities described in that section, or that the organization provides material support to further terrorist activity; or c. that is a group of two or more individuals, whether organized or not, which engages in the activities described in that section. 		<ul style="list-style-type: none"> • The <i>USA Patriot Act</i> contains a sunset clause to the effect that the amendments shall cease to have effect on 31 December 2005.
	<p><i>International Emergency Economic Powers Act</i></p> <p><i>National Emergencies Act</i></p> <p><i>United Nations Participation Act</i></p> <p><i>United States Code</i></p>				<ul style="list-style-type: none"> • By the <i>Executive Order on Terrorist Financing</i> signed on 23 September 2001, the President declared a national emergency to deal with terrorism and ordered that all property of the foreign persons listed in the Annex to the Order that are in the United States or that thereafter come within the United States be blocked and that transactions with these persons be prohibited.

III. NO MECHANISM FOR LISTING

JURISDICTIONS	LEGISLATION AND COMMENCEMENT DATE	PURPOSE	LISTING	AMENDMENT	REMARKS
United Kingdom	<i>The Terrorism (United Nations Measures) Order 2001</i> (made under the <i>United Nations Act 1946</i>) 10 October 2001	To implement UNSCR 1373.	<ul style="list-style-type: none">• There is no mechanism for listing of terrorists or terrorist organisations.		
Norway	<i>Provisional Ordinance</i> 5 October 2001	To implement UNSCR 1373.	<ul style="list-style-type: none">• There is no mechanism for listing terrorists or terrorist organisations.		

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