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Legislative Council

LC Paper No. LS 52/01-02

Paper for the LegCo Panels on Security and Administration of Justice and Legal Services

An Analysis of Overseas Legislation enacted to implement United Nations Security Council Resolution 1373

At the joint meeting of the Panel on Security and Panel on Administration of Justice and Legal Services on 30 November 2001, Members requested the Legal Services Division to prepare an analysis of overseas legislation to implement United Nations Security Council Resolution 1373.

2. The full text of legislation of Australia, Canada, Norway, Singapore and the United Kingdom has been provided by the Administration and circulated to Members under LC Paper No. CB(2)782/01-02. A table comparing the textual differences of these legislation is at the **Annex**.

3. The comparison focuses on the following aspects :

- (a) form of legislation and commencement;
- (b) scope of application;
- (c) list of terrorists (including criteria and amendment);
- (d) offences created (including mens rea and defences);
- (e) penalties (levels of fine and terms of imprisonment);
- (f) definition of "terrorist act" or "terrorism";
- (g) power to freeze funds;
- (h) directors' liability in the case of corporate liability;
- (i) exceptions and exclusions; and
- (j) compensation.

Encl

Prepared by

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	<u>AUSTRALIA</u>	<u>CANADA</u>	<u>NORWAY</u>	<u>SINGAPORE</u>	<u>UNITED KINGDOM</u>
Legislation	Charter of the United Nations (Anti-Terrorism Measures) Regulations 2001 made under the Charter of the United Nations Act 1945	United Nations Suppression of Terrorism Regulations made under the United Nations Act	Provisional Ordinance	United Nations (Anti-Terrorism Measures) Regulations 2001 made under the United Nations Act 2001	The Terrorism (United Nations Measures) Order 2001 made under the United Nations Act 1946
Form of legislation	subsidiary legislation	subsidiary legislation	ordinance	subsidiary legislation	subsidiary legislation
Date of commencement	15 October 2001	on the day it was registered (according to the Administration, introduced on 2 October 2001)	5 October 2001	13 November 2001	10 October 2001
Other legislation proposed and being considered		Anti-Terrorism Bill introduced on 15 October 2001			Anti-Terrorism, Crime and Security Bill introduced on 13 November 2001 to amend the Terrorism Act 2000
Application	<ul style="list-style-type: none"> - extraterritorial operation - a person (including a body corporate) in Australia - an Australian citizen outside Australia 	<ul style="list-style-type: none"> - individual or entity in Canada - a Canadian (an individual who is a citizen within the meaning of the Citizenship Act or a body corporate incorporated or continued by or under the laws of Canada or a province) outside Canada 	<ul style="list-style-type: none"> - person having habitual residence in Norway - Norwegian national - the above two categories of persons or a foreign national committing offence abroad 	<ul style="list-style-type: none"> - person in Singapore - citizen of Singapore outside Singapore 	<ul style="list-style-type: none"> - person within the UK - person elsewhere who : <ul style="list-style-type: none"> a. is a British citizen, a British Dependent Territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person; b. is a body incorporated or constituted under the law of any part of the UK

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List of terrorists	<ul style="list-style-type: none"> - Minister 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 United Nations Resolution 1373 	<ul style="list-style-type: none"> - Defines "listed person" to mean : <ul style="list-style-type: none"> a. Usama bin Laden or his associates as defined in section 1 of the United Nations Afghanistan Regulations <p>[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]</p> b. a person whose name is listed in the schedule to the Regulations - Scheduled persons are those persons where there are reasonable grounds to believe that <ul style="list-style-type: none"> a. they have carried out etc a terrorist activity; b. they are controlled by persons conducting these activities; or c. they are acting on behalf of etc such persons. - A listed person may apply to the Solicitor General for his name to be removed from the schedule. Solicitor General may, after reviewing the application, recommend to the Governor in Council if there are reasonable grounds for removal 	No such list	<ul style="list-style-type: none"> - Defines "terrorist" to mean any person who : <ul 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 	No such list

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Offences	<p>1. holder of a freezable account commits an offence if :</p> <p>a. he uses or deals with the asset;</p> <p>b. reckless as to whether the asset is a freezable account;</p> <p>c. the use or dealing is not in accordance with a notice issued by the Minister.</p> <p>- strict liability applies to 1(c), but it is a defence if the person proves that the use or dealing is solely for the purpose of preserving the value of the asset</p> <p>2. A person commits an offence if :</p> <p>a. he directly or indirectly makes an asset available to a proscribed person or entity;</p> <p>b. he is reckless as to whether the person or entity is proscribed;</p> <p>c. the making available of the asset is not in accordance with a notice issued by the Minister.</p> <p>- strict liability applies to 2(c)</p>	<p>1. knowingly provides or collects funds with the intention that the funds be used or in the knowledge that the funds are to be used by a listed person</p> <p>2. knowingly deals with assets owned or controlled by listed persons</p> <p>3. knowingly does anything that causes, assists or promotes any activity prohibited under offences 1 and 2 above unless he has a certificate issued by the Minister of Foreign Affairs</p> <p>4. fails to disclose the existence of property in possession or control that he has reason to believe is owned or controlled by or on behalf of a listed person or information about a transaction or proposed transaction in respect of such property</p> <p>5. a Canadian financial institution or an authorized foreign bank fails to determine on a continuing basis whether it is in possession or control of property owned or controlled by or on behalf of a listed person or fails to provide monthly report</p>	<p>1. wilfully makes available, collects or obtains funds or other financial assets with the intention that they should be used or in the knowledge that they are to be used to prepare or carry out a terrorist act</p> <p>- accomplice liable to same penalty</p> <p>2. wilfully makes funds to :</p> <p>a. person who may with just cause be suspected of preparing or perpetrating such offence</p> <p>b. entity owned or controlled by the suspect</p> <p>c. person or entity acting on behalf of or at the direction of the suspect or entity referred to in (b)</p> <p>- accomplice liable to same penalty</p> <p>3. financial institution wilfully breaches its duty to disclose information if it suspects a transaction has connection with such act or if it fails to comply with request</p> <p>4. person acting contrary to an order to render assistance or observe secrecy</p>	<p>1. provides or collects funds to any person by any means if he knows or has reasonable grounds to believe that the funds will be used to commit terrorist act or facilitate the commission of such act</p> <p>2. deals with property owned or controlled by terrorists or their associates, or provides financial services in relation to their property</p> <p>3. makes funds available to terrorists or their associates</p> <p>4. makes false threats of terrorist acts with the intention of inducing other persons a false belief that a terrorist act has been, is or will be carried out, such as :</p> <p>- communicating information that he knows or believes to be false</p> <p>- placing article or substance</p> <p>- despatching article or substance by post, rail or other means</p> <p>5. knowingly causes assists or promotes, or does anything that is intended to cause assist or promote actions prohibited</p>	<p>1. makes funds available to persons who commit or attempt to commit, facilitate or participate in the commission of acts of terrorism</p> <p>2. holder of suspected funds contravenes a direction of the Treasury not to make such funds available to any person</p> <p>3. intentionally engages in any activities knowing that the object or effect is to enable or facilitate the commission of the above offences</p> <p>4. fails to comply with conditions under a licence</p> <p>5. knowingly or recklessly makes statement or furnishes document or information that is false in a material particular, either for the purpose of obtaining a licence or in response to a direction</p> <p>6. removes document with intent to evade the Order</p> <p>7. without reasonable excuse discloses information or document outside the ambit of conditions set out in the Order</p>

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				<p>6. imposes a duty on persons to inform the Commissioner of Police if they have in possession property belonging to terrorists or information about transaction in respect of such property</p> <p>7. persons contravening the above shall be guilty of an offence</p>	<p>8. holder of funds fails to send a notice to the person whose funds they are or on whose behalf they are held</p> <p>9. a bank or building society fails to disclose to the Treasury knowledge or suspicion that one of its customer is a person committing acts of terrorism</p> <p>10. without reasonable excuse, refuses or fails to comply with direction of the Treasury to disclose information, or wilfully obstructs a person in the exercise of power</p>

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Penalties	<p>- for offences 1 and 2 :</p> <p>50 penalty units</p> <p><i>[Section 56 of the Interpretation Act 1987 as amended by the Statute Law (Miscellaneous Provisions) Act 1997 provides that the amount represented by each penalty unit is \$110. 50 penalty units mean \$5,500.]</i></p>	<p>- for any of the above offences :</p> <p>a. on conviction on indictment the maximum fine or imprisonment or both</p> <p>b. on summary conviction the maximum fine or imprisonment or both</p> <p><i>[Under section 3 of the United Nations Act, the Governor in Council may prescribe a fine not exceeding \$5,000, or a term of imprisonment not exceeding 5 years, or both, as a punishment on conviction on indictment. In the case of summary conviction the fine prescribed shall not exceed \$200 and the term of imprisonment shall not exceed 3 months.]</i></p>	<p>- for offence 1 : fines or a term of imprisonment not exceeding 15 years</p> <p>- for offence 2 : fines or a term of imprisonment not exceeding 10 years</p> <p>- for offence 3 : fines or a term of imprisonment not exceeding 1 year</p> <p>- for offence 4 : fines or a term of imprisonment not exceeding 2 years</p>	<p><i>[Under section 5 of the United Nations Act 2001, a person shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.]</i></p>	<p>- for offences 1, 2, 3 and 4 :</p> <p>a. conviction on indictment fine or a term of imprisonment not exceeding 7 years or both</p> <p>b. on summary conviction fine not exceeding the statutory maximum or a term of imprisonment not exceeding 6 months or both</p> <p>- for offences 5, 6 and 7 :</p> <p>a. conviction on indictment fine or a term of imprisonment not exceeding 2 years or both</p> <p>b. on summary conviction fine not exceeding the statutory maximum</p> <p>- for offences 8, 9 and 10 :</p> <p>on summary conviction a term of imprisonment not exceeding 6 months or fine not exceeding level 5 or both</p> <p><i>["statutory maximum", as defined in Schedule 1 to the Interpretation Act 1978, means the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 i.e. £5,000.]</i></p> <p><i>["Level 5" means £5,000 on the standard scale pursuant to section 38 of the Criminal Justice Act 1982.]</i></p>

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Definition of terrorist act or terrorism	Nil	Nil	<p>Defines "terrorist act" to mean :</p> <p>a. the unlawful use or threat of the unlawful use, of force or violence against persons or property in an attempt to exert pressure on or coerce the authorities or people of the country or society in general in order to achieve political, religious or ideological aims; and</p> <p>b. any acts such as those mentioned in the International Convention for the Suppression of the Financing of Terrorism</p> <p>[ie - an act which constitutes an offence within the scope of and as defined in 1 of the treaties listed in the annex to the Convention; or</p> <p>- any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act]</p>	<p>Defines "terrorist act" to mean the use or threat of action :</p> <p>a. where the action -</p> <ul style="list-style-type: none"> • involves serious violence against a person, serious damage to property, or the use of firearms or explosives • endangers a person's life • creates a serious risk to health or safety of the public or a section of the public • involves the release of harmful substance, toxic chemical or toxin • is designed to disrupt public computer systems, communication infrastructures, banking and financial services, public utilities, public transportation or public key infrastructure or emergency services; and <p>b. where the use or threat is intended or reasonably be regarded as intending to influence a government or intimidate the public or a section of the public</p>	<p>Defines "terrorism" to mean the use or threat of action where :</p> <p>a. the use or threat is designed to influence the government or to intimidate the public and is made for the purpose of advancing a political, religious or ideological cause;</p> <p>b. the action involves serious violence against a person, serious damage to property, endangers life, creates a serious risk to the health or safety of the public or is designed seriously to disrupt an electronic system;</p> <p>c. serious damage to property would be irrelevant if the use or threat involves the use of firearms or explosives</p>

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Power to freeze funds	- Minister may list assets or classes of assets if he is satisfied that they are owned or controlled by a person or entity mentioned in paragraph 1(c) of United Nations Resolution 1373	Nil	Police may freeze property belonging to persons suspected with just cause of preparing or carrying out terrorist act or funding such act - cannot freeze property that is absolutely necessary for the maintenance of the person or his household - court of summary jurisdiction to ratify the decision within 7 days unless it is absolutely necessary for investigation, then the time limit may be extended by court order up to 4 weeks	Nil	The Treasury may direct funds to be frozen where it has reasonable grounds for suspecting a person on behalf of whom funds are held is, or may be, a person who commits etc acts of terrorism - application to the High Court for the direction to be set aside
Directors' liability	Nil	- Any director, officer or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence - liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted	Nil	Nil	- Any director, manager, secretary or other similar officer or any person purporting to act in such capacity shall be guilty of the same offence if it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on his part - body corporate must be guilty of the offence - liable on conviction to the same punishment

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Exceptions	<ul style="list-style-type: none"> - Minister or a person authorised by him may, by written notice : <ul style="list-style-type: none"> a. permit a freezable asset to be used or dealt with in a specified way; or b. permit an asset to be made available to a proscribed person or entity. - A notice may be subject to conditions - A person is not liable to suit for anything done in good faith, and without negligence, in purported compliance with the Regulations 	<ul style="list-style-type: none"> - Minister of Foreign Affairs may issue certificate to a person, before he does or omits to do any act or thing, stating that the Minister has reasonable grounds to believe that : <ul style="list-style-type: none"> a. United Nations Resolution 1373 does not intend that the act or thing be prohibited; b. the act or thing has been approved by the Security Council or its Committee; or c. the person named in the certificate is not a listed person. 	Nil	Nil	<ul style="list-style-type: none"> - Licences may be granted by the Treasury for creating exceptions to the offences of making funds available and freezing of funds - The licences may be general or special, subject to or without conditions, and may be limited so as to expire on a specified date unless renewed - A special licence may be varied or revoked at any time by written notice - Treasury shall publish a general licence in such manner as they think fit. A general licence may be varied or revoked at any time by written notice published in the same manner as the licence

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Compensation	<p>- The owner of the asset is entitled to be compensated by the Commonwealth for any loss resulting from the application of the Regulations if :</p> <p>a. an asset was not used or dealt with by the holder in accordance with the instructions of the owner or controller;</p> <p>b. the holder was acting in good faith, and without negligence, in purported compliance with the Regulations; and</p> <p>c. the asset was not a freezable asset.</p>	Nil	Nil	Nil	Nil

[Words in italics represent additional information found on the Internet and not having been verified.]