

For information  
on 5 December 2002

## **Legislative Council Panel on Security**

### **Measures to combat terrorism and terrorist financing**

#### **Purpose**

This paper provides information on the measures taken by the Government to combat terrorism and terrorist financing.

#### **Existing legislation tackling terrorism**

2. Criminal activities typically committed by terrorists or associated with terrorism constitute offences against the existing criminal law of Hong Kong. Such offences are found in laws specifically giving effect to multilateral conventions as well as the general criminal law. They are offences for which extradition and mutual legal assistance can be granted. Details are set out in **Annexes A, B and C** respectively.

#### **Existing legislation tackling terrorist financing**

3. Prior to the 11 September 2001 attacks in the United States, Hong Kong had already enacted legislation to enable the freezing and confiscation of proceeds of serious criminal offences (including offences typically committed by terrorists), and to give effect to various United Nations Security Council Resolutions (UNSCRs) against terrorism -

- (a) The Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455) which came into operation in 1989 and 1994 respectively allow for funds to be restrained and subsequently confiscated where a person has been charged with a specified offence (including money laundering and a number of terrorist type offences). The regimes are conviction based and the confiscated funds must be derived from a specified offence; and

- (b) In June 2000, the United Nations Sanctions (Afghanistan) Regulation (Cap. 537, sub leg K) came into operation, giving effect to UNSCR 1267 which prohibits the making of funds and other financial resources available to the Taliban and Taliban undertakings.

4. Following the 11 September 2001 incident, the international community called for global efforts to starve terrorists of funding. Hong Kong has therefore enacted further legislation giving effect to additional UNSCRs and the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF) to combat the financing of terrorism -

- (a) In October 2001, the United Nations Sanctions (Afghanistan) (Arms Embargo) Regulation (Cap. 537, sub leg N) came into operation. The Regulation implemented UNSCR 1333 which required all States to freeze funds and other assets of Usama Bin Laden, his associates and entities associated with him. The Regulation expired on 18 January 2002 (but see paragraph (c) below);
- (b) In July 2002, the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) was enacted and a substantive part of it came into operation in August 2002. The Ordinance fully implements the mandatory elements of UNSCR 1373 and the more pressing FATF Special Recommendations. The Ordinance prohibits the supply or collection of funds for terrorists or terrorist associates, the provision of funds or financial services for the benefit of terrorists or terrorist associates, requires disclosure of knowledge or suspicion that property is terrorist property, and enables the freezing of terrorist funds and assets; and
- (c) In July 2002, the United Nations Sanctions (Afghanistan) (Amendment) Regulation came into operation. The Regulation implements UNSCR 1390 which extends part of the sanctions previously imposed by UNSCRs 1267 and 1333.

### **Cooperation of the financial sector**

5. The financial sector in Hong Kong has been taking necessary steps to counter terrorist financing. The financial regulators (the Hong Kong Monetary Authority, Securities and Futures Commission and Insurance Authority) have issued advisory letters to financial institutions, drawing their

attention to relevant legislation, and alerting them to take the necessary steps to achieve compliance. They have also circulated lists of terrorists and terrorist associates gazetted under the legislation, instructing financial institutions to check the lists against their records and to report any suspicious transactions to the Joint Financial Intelligence Unit (JFIU) operated by the Police and the Customs and Excise Department.

6. The financial regulators have also been taking similar steps regarding the Executive Order issued by the United States President on 24 September 2001 on blocking property and prohibiting transactions with terrorists and their organizations. 24 lists of persons and entities have thus far been designated under the Executive Order. Suspicious accounts or transactions should also be reported to the JFIU. To assist financial institutions in the process, the FATF issued written guidance on the detection of terrorist financing in April 2002. The financial regulators have brought the guidance to the attention of the financial institutions.

### **Law enforcement**

7. The law enforcement agencies have stepped up intelligence support since September 2001. Necessary measures have been put in place to check against every listed person and entity, including their entries to Hong Kong. In addition, investigations have been conducted into a number of personalities and entities in connection with suspicious transaction reports received between September 2001 and July 2002. The law enforcement agencies have also responded to requests from foreign counterparts for assistance in terrorist financing investigation. They will continue to provide full support to their overseas counterparts and cooperate with them on tracing financial transactions suspected of being linked to terrorist activities.

### **Efforts in international cooperation**

8. The FATF is a pre-eminent inter-governmental body established in 1989 to examine and recommend measures to counter money laundering. Hong Kong has been a member of the FATF since 1990. As an open recognition of Hong Kong's efforts on the anti-money laundering front, Hong Kong was selected the President of the FATF for the one-year term ending June 2002. Under the presidency of Hong Kong, the FATF has coordinated global efforts and made significant progress in curbing terrorist financing. At an extraordinary Plenary meeting held in Washington DC in October 2001, the FATF expanded its remit to cover terrorist financing, and formulated eight

Special Recommendations committing all FATF members to -

- (a) take immediate steps to ratify and implement the relevant United Nations anti-terrorism instruments;
- (b) criminalize the financing of terrorism, terrorist acts and terrorist organizations;
- (c) freeze and confiscate terrorist assets;
- (d) report suspicious transactions linked to terrorism;
- (e) provide the widest possible range of assistance to other countries' law enforcement and regulatory authorities for terrorist financing investigations;
- (f) impose anti-money laundering requirements on alternative remittance systems;
- (g) strengthen customer identification measures in international and domestic wire transfers; and
- (h) ensure that entities, in particular non-profit organizations, cannot be misused to finance terrorism.

9. Based on an agreed action plan, FATF members undertook to complete a self-assessment exercise based on the Special Recommendations. In early February 2002, the FATF held a global forum on terrorist financing at the conclusion of its Plenary meeting in Hong Kong. The forum called upon all countries to undergo the self-assessment exercise against the Special Recommendations on the same terms as FATF members.

10. The first self-assessment exercise for FATF members was completed at the Plenary meeting held in Paris in June 2002. The results of the exercise are encouraging and have demonstrated that FATF members have made great progress in putting counter-terrorist financing measures into place since 11 September 2001. At the same meeting, the FATF established a working group to identify countries that lack appropriate measures to counter terrorist financing for follow-up assessment and/or technical assistance, and to prepare guidance and interpretative notes for the implementation of the Special Recommendations. Hong Kong is actively participating in the working group. Up to the end of October 2002, more than 90 non-FATF members have returned completed questionnaires to the FATF.

11. Apart from participation in the FATF, we have also been vigilant in cooperating with the international community in actions against terrorism and terrorist financing at other relevant forums. Close contact with consulates is maintained and intelligence exchange with overseas counterparts continues. Threat assessment is constantly reviewed. International developments and their impact on Hong Kong are closely monitored. Mutual legal assistance and extradition under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and the Fugitive Offenders Ordinance (Cap. 503) respectively as described in Annex C remain the formal basis for cooperation with overseas jurisdictions in the investigation and prosecution of terrorism related offences.

12. Meanwhile, action is being taken to implement other international conventions against terrorism such as the International Convention for the Suppression of Terrorist Bombings, and the International Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, and to give effect to the remaining FATF Special Recommendations.

### **Concluding remarks**

13. There is no known terrorist infrastructure or terrorist support base in Hong Kong. The risk of Hong Kong becoming a target of terrorist attacks is low. Our law enforcement agencies are fully capable of keeping Hong Kong one of the safest cities in the world.

14. With a comprehensive legislative regime, effective enforcement actions and a cooperative financial sector, we are fully committed to joining our international partners in combatting terrorism and terrorist financing. We will continue to provide a safe and favourable environment in Hong Kong for residence, trade and investment.

**Laws giving effect to multilateral conventions**

The following seven multilateral conventions dealing with offences typically committed by terrorists are applicable in Hong Kong and have already been implemented by local legislation -

- (a) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973);
- (b) International Convention Against the Taking of Hostages (1979);
- (c) Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963);
- (d) Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
- (e) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
- (f) Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988); and
- (g) Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)

2. The two Conventions mentioned in paragraph 1(a) and (b) above have been implemented by the Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468) which provides -

- (a) for extra-territorial jurisdiction to deal with offences of attacking or threatening “protected persons” (protected persons include Heads of States, Governmental heads and official representatives of States) when these persons are outside their home jurisdiction; and

- (b) that it is an offence under Hong Kong law to detain hostages (whether in Hong Kong or elsewhere) and threaten to kill or injure them or continue their detention in order to compel a State, international governmental organization or person to do or abstain from doing any act.

In addition, the Fugitive Offenders (Internationally Protected Persons and Hostages) Order (Cap. 503 sub. leg. H) permits extradition to the Parties to the two Conventions for the offences dealt with in the Conventions.

3. The four Conventions mentioned in paragraph 1(c) to (f) above have been implemented by the Aviation Security Ordinance (Cap. 494), which gives powers to the commander of an aircraft in flight to protect the safety of the aircraft, and creates offences of -

- (a) hijacking;
- (b) performing various acts which are likely to endanger the safety of aircraft in flight (e.g. performing acts of violence on an aircraft, destroying air navigation facilities); and
- (c) performing acts of violence at airports and destroying or damaging the facilities of an airport.

Hong Kong courts can exercise jurisdiction over these offences irrespective of whether they were committed inside or outside Hong Kong. In addition, the Fugitive Offenders (Safety of Civil Aviation) Order (Cap. 503 sub. leg. G) permits extradition to the Parties to these four Conventions for the offences dealt with in the Conventions.

4. As regards the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Part VIIA of the Crimes Ordinance (Cap. 200) imposes controls (by creating offences) in respect of the manufacture, possession, transfer, and import and export of plastic explosives, by requiring plastic explosives to be marked with a detection agent.

## **The general criminal law**

The general criminal law of Hong Kong deals with terrorist type offences as follows -

### *Common law offences*

- murder
- kidnapping
- false imprisonment

### *Crimes Ordinance (Cap. 200)*

- causing explosion likely to endanger life or property (section 53)
- attempting to cause explosion, or making or keeping explosive with intent to endanger life or property (section 54)
- making or possession of explosive (section 55)
- destroying or damaging property (section 60)
- threats to destroy or damage property (section 61)
- possessing anything with intent to destroy or damage property (section 62)

### *Offences Against the Person Ordinance (Cap. 212)*

- administering poison or wounding with intent to murder (section 10)
- destroying or damaging building with intent to murder (section 11)
- setting fire to or casting away ship with intent to murder (section 12)
- attempting to administer poison, or shooting, or attempting to shoot or drown, etc, with intent to murder (section 13)
- shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm (section 17)



- wounding or inflicting grievous bodily harm (section 19)
- attempting to choke, etc, in order to commit indictable offence (section 20)
- using chloroform, etc, in order to commit indictable offence (section 21)
- administering poison, etc, so as to endanger life or inflict grievous bodily harm (section 22)
- administering poison, etc, with intent to injure, etc (section 23)
- causing bodily injury by gunpowder, etc. (section 28)
- causing gunpowder to explode, etc, or throwing corrosive fluid, with intent to do grievous bodily harm (section 29)
- possession of corrosive substance (section 29A)
- placing gunpowder near building, etc, with intent to do bodily injury (section 30)
- setting spring gun, etc, with intent to inflict grievous bodily harm (section 31)
- placing wood, etc, on a railway with intent to endanger passengers (section 32)
- assault occasioning actual bodily harm (section 39)
- common assault (section 40)
- making or having gunpowder with intent to commit offence (section 54)

*Firearms and Ammunition Ordinance (Cap. 238)*

- possession of arms or ammunition without licence (section 13)
- dealing in arms or ammunition without a licence (section 14)

*Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526)*

- prohibition on providing services in relation to weapons of mass destruction (section 4)

*Import and Export Ordinance (Cap. 60)*

- restriction on import and export of strategic commodities (section 6A)

*Organized and Serious Crimes Ordinance (Cap. 455)*

- dealing with property known or believed to represent proceeds of indictable offence (section 25)
- disclosure of knowledge or suspicion that property represents proceeds, etc. of indictable offences (section 25A)

*Dangerous Goods Ordinance (Cap. 295)*

- licence required for manufacture, etc, of dangerous goods (section 6)

*Pharmacy and Poisons Ordinance (Cap. 138)*

- possession of Part 1 poisons prohibited (section 23)

### **Extradition and mutual legal assistance**

Hong Kong has entered into 13 bilateral Agreements for the Surrender of Fugitive Offenders with other jurisdictions, which permit extradition to Hong Kong for the offences referred to in Annexes A and B as well as extradition from Hong Kong for equivalent offences in the other jurisdiction. These Agreements are implemented in Hong Kong by Orders under the Fugitive Offenders Ordinance (Cap. 503).

2. Hong Kong has also entered into 13 bilateral Mutual Legal Assistance Agreements with other jurisdictions, permitting international assistance to be rendered and obtained for the above mentioned offences. These Agreements are implemented by Orders under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525). The Ordinance also provides that assistance may be rendered on the basis of reciprocity if no agreement has been concluded.