

香港特別行政區政府
保安局



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《2012 年聯合國(反恐怖主義措施)(修訂)條例草案》

二零一二年二月二十日來信收悉。就信中所載有關《2012 年聯合國(反恐怖主義措施)(修訂)條例草案》(下稱《條例草案》)的問題，現依次於下文各段逐一回應：

- (a) 立法會參考資料摘要(檔號：SBCR 9/16/1476/74)第 7 段提及，在《聯合國(反恐怖主義措施)條例》(《反恐條例》)(第 575 章)第 2(1)條下的“恐怖主義行為”定義中，建議加入“國際組織”一詞，是為了實施打擊清洗黑錢財務行動特別組織(“特別組織”)在 2008 年發表對香港的相互評核報告(“報告”)中所提出的建議，即香港應“擴闊恐怖主義行為的範圍，將意圖脅迫國際組織亦涵蓋在內”。這項建議主要建基於

《聯合國制止向恐怖主義提供資助的國際公約》第 2.1(b)條就“國際組織”的明文提述。上述公約(或就有關事項而言，上述報告)並沒有為“國際組織”一詞下定義。不過，根據《國際法詞典》(*Parry and Grant, Encyclopaedic Dictionary of International Law*, 第二版，第 370 頁)，在國際法的範圍內，“國際組織”通常指國際跨政府組織。例如，根據國際多邊條約成立的國際跨政府組織，這些組織具有國際法人資格，並主要以國家為成員。國際跨政府組織的例子包括聯合國、歐洲聯盟、非洲聯盟及世界貿易組織。基於以上所述，我們認為無須特意在條例草案中為“國際組織”一詞下定義。

- (b) 特別組織建議“香港檢討《反恐條例》，以期將提供任何資產(不單只是資金)，明確定為刑事罪行”。為回應報告的建議，現載於《反恐條例》第 2 條的“資金”一詞的涵蓋範圍須予擴闊，使之與報告的建議一致。為此，我們建議廢除《反恐條例》中“資金”的定義，並在整條條例中，以“財產”一詞取代“資金”。這與《反恐條例》第 6 條就實施聯合國安理會第 1373 號決議和特別組織要求有關凍結恐怖分子及與恐怖分子有聯繫者的資金及非資金“資產”的規定一致。《條例》第 6 條經由《聯合國(反恐怖主義措施)(修訂)條例》(2004 年第 21 號)修訂，以“財產”一詞取代“資金”，藉此擴大凍結規定的適用範圍，同時涵蓋恐怖分子的資金及非資金資產。“財產”一詞的定義，於《釋義及通則條例》(第 1 章)界定。“財產”界定為包括金錢、貨物、法據動產和土地；以及由上述財產所產生或附帶的義務、地役權以及各類產業、利益和利潤，不論是現存的或將來的、既得的或待確定的。我們認為，這定義範圍廣闊，足以回應特別組織的建議，涵蓋各種資產。
- (c) 報告建議，把為恐怖分子或恐怖組織“籌集”資金(不單止是提供資金)定為罪行，並納入《反恐條例》第 8 條。特別組織所採用的“資金”一詞¹，與《制止向恐

¹ 詳情請見特別組織特別建議 II 及其解釋說明第 2 段(相關摘要載於附件 A)。

怖主義提供資助的國際公約》第 1.1 條的“資金”定義相同，該定義涵蓋“各種資產，不論是有形或無形資產、是動產還是不動產...”²。按此，籌集資金（即在建議增訂的第 8(b)條訂定的罪行），應與《公約》所提述的涵蓋範圍相同。正如上文(b)段說明的理由，我們有需要以“財產”一詞取代“資金”，以反映《制止向恐怖主義提供資助的國際公約》的要求，並且在《反恐條例》第 8 條的建議修訂中採用“財產”一詞。

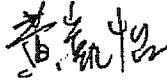
聯合國安理會第 1373 號決議第 1(d)段訂明，所有國家須禁止本國國民或本國領土內任何個人和實體直接間接為恐怖分子等提供任何資金、金融資產或經濟資源或金融或其他有關服務。這項規定現時根據《反恐條例》第 8 條實施，該條文將會成為新訂的第 8(a)條。由於建議新訂的第 8(b)條旨在進一步落實打擊清洗黑錢財務行動特別組織在這方面的建議，因此我們已在第 8(b)條加入“尋求金融(或有關的)服務”，使該條文與第 8(a)條保持一致，以及全面落實安理會第 1373 號決議第 1(d)段。

- (d) 《反恐條例》第 15 條和《高等法院規則》第 117A 號命令第 24 條規則，分別載有適用於現時《反恐條例》第 8 條（即新的第 8(a) 條）所述的特許的補充條文和與申請特許有關的條文。基於新的第 8(b)條並沒有提述特許，有關係文的運作不會受影響，故此，並無需要作出修訂。
- (e) 我們已於二零一一年十一月七日就《反恐條例》的主要修訂建議，諮詢保安事務委員會。部分委員要求當局就某些事宜提供說明，我們已在二零一二年二月十

² 根據《制止向恐怖主義提供資助的國際公約》第 1 條第 1 款，“資金”指“所有各種資產，不論是有形或無形資產、是動產還是不動產、不論以何種方式取得，和以任何形式，包括電子或數字形式證明這種資產的產權或權益的法律文件或證書，包括但不限於銀行貸記、旅行支票、銀行支票、郵政匯票、股票、證券、債券、匯票和信用證。”

五日發出的立法會參考資料摘要第 14 至第 16 段提供有關資料。

保安局局長

(黃凱怡  代行)

二零一二年二月二十三日

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FATF Special Recommendation II: Criminalising the financing of terrorism and associated money laundering

Text of the Special Recommendation and Interpretative Note

See also: The full text of the IX Special Recommendations 

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Special Recommendation II : Criminalising the financing of terrorism and associated money laundering

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.

Interpretative Note to

Special Recommendation II: Criminalising the financing of terrorism and associated money laundering

Objective

1. Special Recommendation II (SR II) was developed with the objective of ensuring that countries have the legal capacity to prosecute and apply criminal sanctions to persons that finance terrorism. Given the close connection between international terrorism and inter alia money laundering, another objective of SR II is to emphasise this link by obligating countries to include terrorist financing offences as predicate offences for money laundering. The basis for criminalising terrorist financing should be the United Nations International Convention for the Suppression of the Financing of Terrorism, 1999.[1]

Definitions

2. For the purposes of SR II and this Interpretative Note, the following definitions apply:
 - a) The term funds refers to assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.
 - b) The term terrorist refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.
 - c) The term terrorist act includes:
 - (i) An act which constitutes an offence within the scope of, and as defined in one of the

following treaties: Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988), and the International Convention for the Suppression of Terrorist Bombings (1997); and

(ii) 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 organisation to do or to abstain from doing any act.

- d) The term terrorist financing includes the financing of terrorist acts, and of terrorists and terrorist organisations.
- e) The term terrorist organisation refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Characteristics of the Terrorist Financing Offence

3. Terrorist financing offences should extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part: (a) to carry out a terrorist act(s); (b) by a terrorist organisation; or (c) by an individual terrorist.
4. Criminalising terrorist financing solely on the basis of aiding and abetting, attempt, or conspiracy does not comply with this Recommendation.
5. Terrorist financing offences should extend to any funds whether from a legitimate or illegitimate source.
6. Terrorist financing offences should not require that the funds: (a) were actually used to carry out or attempt a terrorist act(s); or (b) be linked to a specific terrorist act(s).
7. It should also be an offence to attempt to commit the offence of terrorist financing.
8. It should also be an offence to engage in any of the following types of conduct:
 - a) Participating as an accomplice in an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;
 - b) Organising or directing others to commit an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;
 - c) Contributing to the commission of one or more offence(s) as set forth in paragraphs 3 or 7 of this Interpretative Note by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a terrorist financing offence; or (ii) be made in the knowledge of the intention of the group to commit a terrorist financing offence.
9. Terrorist financing offences should be predicate offences for money laundering.
10. Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.
11. The law should permit the intentional element of the terrorist financing offence to be inferred from objective factual circumstances.
12. Criminal liability for terrorist financing should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
13. Making legal persons subject to criminal liability for terrorist financing should not preclude the possibility of parallel criminal, civil or administrative proceedings in countries in which more than one form of liability is available.
14. Natural and legal persons should be subject to effective, proportionate and dissuasive criminal,

civil or administrative sanctions for terrorist financing.

[1] Although the UN Convention had not yet come into force at the time that SR II was originally issued in October 2001 – and thus is not cited in the SR itself – the intent of the FATF has been from the issuance of SR II to reiterate and reinforce the criminalisation standard as set forth in the Convention (in particular, Article 2). The Convention came into force in April 2003.

Also available:

*Recommandation spéciale II du GAFI: Incrimination du financement du terrorisme et du blanchiment de capitaux commis dans le cadre des activités terroristes (French)

Related documents:

*9 Special Recommendations on Terrorist Financing (English)

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