



HONG KONG BAR ASSOCIATION

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10th April 2012

Chairman
Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong.

Attn: Ms. Miranda Ho
Clerk to Bills Committee

Dear *Sirs,*

Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012

I refer to your letter of 27th March 2012.

A Submission from the Hong Kong Bar Association on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 has been endorsed during its Bar Council Meeting held on 5th April 2012.

I enclose a copy of the Submission dated 10th April 2012 for the consideration of the Bills Committee at its forthcoming meeting.

Yours sincerely,

Kumar Ramanathan
Kumar Ramanathan SC
Chairman

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

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United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012

Submission of the Hong Kong Bar Association

1. The Hong Kong Bar Association (“HKBA”) was asked by the Legislative Council Bills Committee on the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 (“the Bill”) to comment on the Bill.
2. The Bill aims to amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap 575) (“UNATMO”) in three main respects to address certain recommendations of the Financial Action Task Force (“FATF”) on Hong Kong’s measures to counter money laundering and terrorist financing.
3. The first area of amendment is concerned with the replacing the term “funds” in the UNATMO by the term “property” as the latter term is defined in the Interpretation and General Clauses Ordinance (Cap 1) s 3. The relevant FATF recommendation exhorts the HKSAR to review the UNATMO with a view to expressly criminalizing the provision of all assets and not simply “funds”. It is clear that the present definition of “funds” as per s 2(1) and Sch 1 of the UNATMO is inadequate in addressing the said recommendation. The proposed replacing definition of “property” is comprehensive in encompassing movable and immovable as well as tangible and intangible property. It is noted that the same definition of “property” has been applied in the UNATMO at present, such as Part 2 (specification of terrorists, terrorist associates and terrorist property and freezing of property), Part 4 (disclosure of knowledge or suspicion that property is terrorist property), Part 4B (seizure and detention of property suspected to be terrorist property) and Part 5 (forfeiture and offences).

4. The second area of amendment is concerned with expanding the definition of “terrorist act” to cover acts to coerce international organizations. Although this expansion is uncontroversial, there is no provision in the proposed amendments to specify the international organizations. As the Legislative Council Brief has indicated, it is envisaged that the international organizations will include those within the United Nations system, such as the United Nations Organization, and those outside, such as the International Committee of the Red Cross. While many international organizations are treaty based, some are not, such as the International Committee of the Red Cross. Therefore, it is suggested that the applicable international organizations be specified in a list to be updated by the Secretary for Security from time to time.
5. The third area of amendment is concerned with expanding the prohibition on assistance for terrorists and terrorist organizations to also cover the collection of property for such persons and organizations. This appears to be a proposal to increase the comprehensive coverage of terrorist financing offences.
6. The HKBA’s concerns over the Bill are more general ones. The UNATMO, as its title indicates, was enacted to give effect to United Nations Security Council Resolution 1373 (2001). The Bill proposes amendments that seem to go beyond the terms of Security Council Resolution 1373. The amendments are not required by reason of another Security Council Resolution. They are introduced because of the recommendations of FATF, a different international body. While the HKBA notes that the Long Title of the UNATMO has made reference to the implementation of FATF recommendations, presumably inserted following the 2004 amendments, consideration should be given to rename the UNATMO to a more suitable title in the light of the amendments in the Bill, which, if enacted, will hybridize the UNATMO for the purpose of implementing requirements from two different institutions.

7. The HKBA's next concern over the Bill relates to the note in paras 5 and 7 of the Legislative Council Brief that the FATF recommendations to be implemented follow the United Nations International Convention for the Suppression of the Financing of Terrorism 1999 ("the TF Convention"). While the People's Republic of China has ratified the TF Convention and applied it to the HKSAR, the TF Convention has apparently not been implemented in Hong Kong by legislation. For example, the Long Title of the UNATMO does not mention the TF Convention. Further, the People's Republic of China communicated to the United Nations depository of treaties in 2006 when it ratified the TF Convention that "[the] jurisdiction over five offences established by the People's Republic of China in accordance with paragraph 2 of Article 7 of the Convention shall not apply to the Hong Kong Special Administrative Region of the People's Republic of China". The Government of the HKSAR may wish to address the questions of whether and how the TF Convention is to be implemented in the separate legal system of the HKSAR, including whether and how the jurisdiction over the five offences set out in the TF Convention is to be established in Hong Kong.

Dated 10th April 2012.

Hong Kong Bar Association