

**立法會**  
**Legislative Council**

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**Paper for the House Committee Meeting  
on 24 February 2012**

**Legal Service Division Report on  
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012**

**I. SUMMARY**

- 1. Objects of the Bill** To implement the recommendations of the Financial Action Task Force on Money Laundering as set out in its 2008 Mutual Evaluation Report on Hong Kong.
- 2. Comments** The Bill seeks to amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575):

  - (a) to expand the definition of "terrorist act" to cover acts intended to coerce international organizations;
  - (b) to broaden the scope of prohibited terrorist financing from acts involving "funds" to those involving "property" of every kind; and
  - (c) to create a new offence of collecting property or soliciting financial (or related) services for terrorists or terrorist associates.
- 3. Public Consultation** It is not stated in the LegCo Brief whether the public has been consulted.
- 4. Consultation with LegCo Panel** The Panel on Security was consulted on the proposed amendments at its meeting held on 7 November 2011. Members requested the Administration to address various issues relating to the proposed amendments in the LegCo Brief.
- 5. Conclusion** The Legal Service Division is seeking clarification on certain technical issues. A further report will be issued, if necessary, after considering the Administration's reply.

## **II. REPORT**

### **Objects of the Bill**

The Bill seeks to implement the recommendations of the Financial Action Task Force on Money Laundering (FATF) as set out in its 2008 Mutual Evaluation Report on Hong Kong (the Report) by amending the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (the Ordinance) as follows:

- (a) to expand the definition of "terrorist act" to cover acts intended to coerce international organizations;
- (b) to broaden the scope of prohibited terrorist financing from acts involving "funds" to those involving "property" of every kind; and
- (c) to create a new offence of collecting property or soliciting financial (or related) services for terrorists or terrorist associates.

### **LegCo Brief Reference**

2. File Ref.: SBCR 9/16/1476/74 issued by the Security Bureau in February 2012.

### **Date of First Reading**

3. 22 February 2012.

### **Background**

4. Following the terrorist attacks on the United States on 11 September 2001, the United Nations Security Council Resolution 1373 (UNSCR 1373) was passed on 28 September 2001 to combat international terrorism by, among other measures, preventing and suppressing terrorist financing, criminalizing direct, indirect and wilful provision or collection of funds for terrorist acts and freezing terrorist assets. In October 2001, the Central People's Government gave instructions to the Hong Kong Special Administrative Region (Hong Kong) to implement UNSCR 1373.

5. Hong Kong is a member of FATF, an international body specializing in recommending standards and best practices in countering money laundering and terrorist financing. FATF closely monitors its members' implementation of its recommendations and publishes its findings in Mutual Evaluation Reports.

6. The obligations under UNSCR 1373 and FATF's recommendations are implemented in Hong Kong through the Ordinance. In 2008, FATF published the Report identifying a number of deficiencies under the Ordinance. According to paragraph 2 of the LegCo Brief, FATF concluded that Hong Kong needs to effectively implement legislative measures to address these deficiencies, including improvement to compliance with the recommendations which respectively require the criminalization of the financing of terrorism, terrorist acts and terrorist organizations, as well as the full implementation of the requirements of the United Nations on counter-terrorist financing.

7. Based on the Report, FATF resolved that Hong Kong should be put on a follow-up process and be required to report to FATF on a regular basis on improvement actions taken or planned. According to FATF's procedures, Hong Kong is expected to have addressed the major deficiencies identified in the Report and to seek FATF's agreement for removal from the follow-up process not later than June 2012.

## **Comments**

8. The Bill seeks to implement FATF's recommendations as set out in the Report.

### *Definition of "terrorist act"*

9. Section 2(1) of the Ordinance defines "terrorist act" to include the use or threat of action intended to compel the Government or to intimidate the public or a section of the public. As recommended in the Report, clause 3(1) of the Bill extends that definition to cover acts intended to coerce an "international organization". It is noted that the term is not defined in the Bill or the Ordinance. Examples of such organizations as provided in paragraph 7 of the LegCo Brief include the United Nations and the Red Cross.

### *References to "funds"*

10. Section 7 of the Ordinance prohibits the provision or collection of funds with the intention or knowledge that the funds will be used to commit terrorist acts. Under section 2(1) of, and Schedule 1 to, the Ordinance, funds include cash, deposits with financial institutions, securities and debt instruments, interest, dividends, rights of set-off, letters of credits and documents evidencing an interest in funds. Fixed assets, however, are not included. As such, the prohibition under section 7 does not apply to all assets. The Report recommended that the Ordinance expressly criminalize the provision of all assets, and not simply funds, for terrorist purposes.

11. To address FATF's recommendation, the Bill proposes to repeal the definition of "funds" set out in section 2(1) of and Schedule 1 to the Ordinance, and change various references to "funds" in the Ordinance to "property". "Property" is not defined in the Bill or the Ordinance. In the absence of such definition, the definition of "property" in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) is to apply save where the contrary intention appears either from Cap. 1 or from the context of the Ordinance. Under section 3 of Cap. 1, "property" is defined to include:

- (a) money, goods, choses in action and land; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in (a).

*Criminalization of the collection of funds for terrorists or terrorist associates*

12. Under section 8 of the Ordinance, no person shall, except under the authority of a licence granted by the Secretary for Security, make any funds or financial (or related) services available to or for the benefit of a terrorist or terrorist associate. The Report recommended that section 8 be amended to cover the collection of funds.

13. The Bill seeks to amend section 8 of the Ordinance to create a new offence of collecting property or soliciting financial (or related) services for terrorists or terrorist associates. The maximum penalty for the new offence is the same as that for the provision or making available of funds for terrorists or terrorist associates, i.e. a fine and imprisonment for 14 years on conviction on indictment, and a fine at level 6 (i.e. \$100,000) and imprisonment for 2 years on summary conviction.

*Consequential amendments*

14. Other provisions of the Bill seek to make various consequential amendments to rule 24 of Order 117A of the Rules of the High Court (Cap. 4 sub. leg. A) and Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615). In particular, it is proposed that the definition of "terrorist financing" under section 1 of Part 1 of Schedule 1 to Cap. 615 be amended to tally with the terrorist financing offences under the proposed sections 7 and 8 of the Ordinance.

### *Commencement*

15. By virtue of section 20(2) of Cap. 1, the Bill, if enacted, will come into operation on the day it is published in the Gazette as an Ordinance.

### **Public Consultation**

16. It is not stated in the LegCo Brief whether the public has been consulted.

### **Consultation with LegCo Panel**

17. At the meeting of the Panel on Security held on 7 November 2011, the Administration briefed members on the proposed amendments to the Ordinance. Some members sought the Administration's explanation on various issues (including the consequences for non-compliance with FATF's recommendations) and requested the Administration to address those issues in the LegCo Brief. Members may refer to the minutes of that meeting (LC Paper No. CB(2)686/11-12) for further details.

18. According to paragraphs 15 to 16 of the LegCo Brief, if Hong Kong fails to demonstrate sufficient improvements and obtain FATF's agreement to be removed from the follow-up process by June 2012, FAFT may tighten scrutiny on Hong Kong, which would seriously affect the competitiveness of Hong Kong and its status as an international financial centre. Members may refer to the LegCo Brief for further details.

### **Conclusion**

19. The Legal Service Division is seeking the Administration's clarification on certain technical issues. A further report will be issued, if necessary, after considering the Administration's reply.

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