

**For discussion on
1 November 2011**

Legislative Council Panel on Security

**Proposed Amendments to the
United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)**

PURPOSE

This note sets out the salient features of proposed amendments to the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“the UNATMO”) that are required to address the deficiencies in relation to its Special Recommendation I (“SRI”) and Special Recommendation II (“SRII”) of the Financial Action Task Force on Money Laundering (“FATF”)¹, as set out in its 2008 Mutual Evaluation Report on Hong Kong (“the Report”).

BACKGROUND

2. In 2008, FATF completed the Report on Hong Kong’s compliance with FATF’s recommendations² in countering money laundering and terrorist financing. While recognizing the strengths of Hong Kong’s anti-money laundering and counter terrorist financing regime, the Report made a series of recommendations to improve Hong Kong’s compliance of FATF’s Recommendations.

3. Specifically, the Report concluded that Hong Kong needs to effectively implement legislative measures to improve one Core

¹ FATF is an inter-governmental body whose purpose is the development and promotion of local and international policies to combat money laundering and terrorist financing. FATF was created in 1989 and works to bring about legislative and regulatory reforms of members in those areas. It has published a set of internationally recognized standards to cover the issues of anti-money laundering/counter financing of terrorism, known as the “40 + 9 Recommendations”.

² A certain number of FATF’s “40 + 9 Recommendations” are considered as Core/Key Recommendations, the level of compliance of which is of particular importance when considering the effectiveness of a country’s or territory’s ability to meet FATF’s requirements.

Recommendation (i.e. SRII) and one Key Recommendation (i.e. SRI). While SRII sets out the requirement to criminalize the financing of terrorism, terrorist acts and terrorist organizations, SRI requires the full implementation of the instruments of the United Nations on counter-terrorism.

4. FATF is concerned about the series of recommendations under the Report that require improvement, and 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. Hong Kong is expected to have addressed the Core and Key Recommendations, including the two recommended legislative measures in paragraph 3 above, within four years after the Report (i.e. before mid-2012) when the FATF will consider whether Hong Kong should be removed from the follow-up process. If Hong Kong fails to make substantial improvements by mid-2012, Hong Kong may not only be prevented from seeking removal from the follow-up process, but may also invite FATF to further apply enhanced scrutiny and monitoring on Hong Kong which could severely affect Hong Kong's status as an international financial centre. Hong Kong's commitment and ability to timely complete the improvement measures to address the recommendations in the Report would be crucial for the removal from FATF's follow-up process.

PROPOSED AMENDMENTS

5. In order to address the deficiencies identified by the FATF in the Report, we propose to amend the UNATMO in the following three areas –

- (a) expand the definition of “funds” to include assets of every kind, whether tangible or intangible, movable or immovable;
- (b) expand the definition of “terrorist act” to cover acts to coerce international organizations; and
- (c) expand the prohibition on assistance for terrorists and terrorist associates to also cover the collection of funds for such terrorists and their associates.

(a) Expand the definition of “funds”

6. The word “funds” is defined in section 2(1) of the UNATMO to include funds mentioned in Schedule 1 to the UNATMO. The Report, in

assessing Hong Kong's compliance with SRII, noted that section 7 of the UNATMO "does not extend to 'assets of every kind, whether tangible or intangible, movable or immovable' as stipulated in the United Nations International Convention for the Suppression of the Financing of Terrorism (the "TF Convention")³". It recommended that "Hong Kong review the UNATMO with a view to expressly criminalizing the provision of all assets, and not simply funds". To address the recommendation of the Report, the definition of "funds" in the UNATMO would need to be expanded in line with the definition of "funds" in the TF Convention.

7. Sections 7 and 8 of the UNATMO prohibit the provision and collection of funds to commit terrorist acts or to terrorists and terrorist associates. In accordance with FATF's SRII, the expanded scope of "funds" should apply to both sections 7 and 8.

(b) Expand the definition of "terrorist act"

8. Section 2(1) of the UNATMO sets out the definition of "terrorist act". The Report recommended that Hong Kong "broaden the scope of terrorist acts to also cover the intended coercion of an international organization". This recommendation was based largely on expressed references to "international organization" made in Article 2.1(b) of the TF Convention regarding, for example, the criminalization of acts which cause death or serious bodily injury to persons for the purpose of compelling a government or an international organization to do or to abstain from doing any act. As such, we propose that the definition of "terrorist act" under section 2(1) of the UNATMO be expanded to cover international organizations (i.e. amending paragraph (a)(ii)(A) of the definition of "terrorist act" in section 2(1) of the UNATMO).

(c) Criminalization of the collection of funds for terrorists or terrorist associates

9. Section 8 of the UNATMO prohibits the provision of funds to terrorists and terrorist associates. In the report, the FATF is of the view that "it is doubtful to what extent it [i.e. section 8] would cover collection of

³ Article 1.1 of the TF Convention defines "funds", to mean "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".

funds”. The Report, therefore, recommended that the collection (in addition to the provision or making available) of funds for terrorists and/or terrorist associates be made an offence and incorporated into section 8 of the UNATMO. In this regard, we recommend that a new provision be added to prohibit the collection of funds or the solicitation of financial (or related) services for terrorists or terrorist associates.

Way Forward

10. The proposed amendments to the UNATMO above-mentioned will satisfy the requirements in relation to SRI and SRII of the FATF and demonstrate the ability of Hong Kong to seek removal from its follow-up process. Subject to Members’ views, we will submit the amendments to the UNATMO to LegCo for vetting as soon as possible.

Security Bureau
October 2011