

**For discussion on
3 January 2017**

Legislative Council Panel on Security

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

PURPOSE

This paper seeks Members' views on the proposed amendments to the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO"), having regard to the mandatory requirements in the United Nations Security Council Resolution ("UNSCR") 2178 and views expressed by the Financial Action Task Force¹ ("FATF").

BACKGROUND

2. The Hong Kong Special Administrative Region ("HKSAR") has a number of legislation in place to deal with terrorism-related offences. Among them, UNATMO was enacted to implement the UNSCR 1373² passed after the September 11 terrorist attacks in the United States in 2001, and certain recommendations of FATF on counter-financing of terrorism ("CFT"). First enacted in 2002, UNATMO was amended in 2004 and 2012 to further implement UNSCR 1373 and some terrorism-related multilateral conventions, and to meet FATF's evolving CFT standards.

3. It is one of the HKSAR Government's priorities to stay vigilant at all times and to continuously enhance the counter-terrorism capability of the HKSAR. It is also the HKSAR's obligation to implement relevant UNSCRs

¹ FATF is an intergovernmental organization specializing in recommending standards and best practices in countering money laundering and terrorist financing. FATF conducts mutual evaluation of its members from time to time to assess their levels of compliance with its Recommendations. The last mutual evaluation on the HKSAR in 2008 put the HKSAR on a regular follow-up process. The HKSAR exited from the follow-up process in 2012 after making some improvements to its regime.

² UNSCR 1373 was endorsed on 28 September 2001. It requires, among other things, the prevention and suppression of terrorist financing, criminalization of the wilful provision or collection of funds for terrorist acts, freezing of terrorist assets, and prohibition from making funds, etc. available for the benefit of terrorist or terrorist associate.

in accordance with the Central People's Government's instruction and to comply with FATF's Recommendations.

UNSCR 2178

4. In September 2014, the United Nations Security Council passed UNSCR 2178 which is binding on all Member States. In October 2014, in accordance with Articles 13 and 48(8) of the Basic Law, the Central People's Government gave instructions to the HKSAR to implement the resolution.

5. In the resolution, the United Nations Security Council expressed grave concern about the acute and growing threat posed by foreign terrorist fighters, i.e. individuals who travel to a State other than their States of residence or nationality ("other State") for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or providing or receiving of terrorist training ("terrorism purpose"). Operative paragraph 6 (OP6) of UNSCR 2178 reads as follow –

“Recalls its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense-

(a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;

(b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,

(c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.”

FATF’s Recommendations

6. The HKSAR is a member of FATF. FATF’s Recommendations set out a comprehensive and consistent framework of measures which members are requested to implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Among them, Recommendations 5 and 6 are on CFT.

7. FATF’s Recommendation 5³ requires members to criminalize terrorist financing. Echoing UNSCR 2178, FATF expanded the ambit of Recommendation 5 in 2015 by extending terrorist financing to include financing the travel of foreign terrorist fighters. In its “Guidance on Criminalising Terrorist Financing” endorsed in October 2016, FATF urged members to ensure that these aspects would be criminalized as a matter of urgent priority, given the serious threats posed by foreign terrorist fighters.

8. With regard to the freezing of terrorist property, the existing legal provision which the HKSAR relies upon is section 6 of UNATMO, which reads as follows-

“where the Secretary⁴ has reasonable grounds to suspect that any property held by any person is terrorist property⁵, the Secretary may, by notice in writing specifying the property, direct that a person shall not, directly or indirectly, deal with the property except under the authority of a licence granted by the Secretary”.

³ Recommendation 5 (previously known as Special Recommendation II): *Countries should criminalize terrorist financing on the basis of the Terrorist Financing Convention, and should criminalize not only the financing of terrorist acts but also the financing of terrorist organizations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.*

⁴ Section 2 of UNATMO defines “Secretary” as “Secretary for Security”

⁵ Section 2 of UNATMO defines “terrorist property” as –
“(a) the property of a terrorist or terrorist associate; or
(b) any other property that -
(i) is intended to be used to finance or otherwise assist the commission of a terrorist act; or
(ii) was used to finance or otherwise assist the commission of a terrorist act”.

9. FATF's Recommendation 6⁶ requires members to freeze without delay the funds or other assets of a person or entity designated as a terrorist or terrorist associate. In the fourth follow-up report on the Mutual Evaluation of Hong Kong, China in 2012, FATF points out that section 6 of UNATMO is insufficient as it only operates against property specified in the freezing notice, and the freezing process involves several procedural steps which would lead to delays that undermine the objective to freeze the property without delay and without notice.

PROPOSALS

10. In view of our obligation to fulfil UNSCR 2178 and address the shortcoming in our CTF regime as identified by FATF, we propose to amend UNATMO. A gist of our proposal is as follows –

- (a) Having regard to OP6 of UNSCR 2178, we **propose** to prohibit –
 - (i) a person in the HKSAR from leaving or attempting to leave the HKSAR, or going or attempting to go on board a conveyance with the intention to leave the HKSAR to other State for terrorism purpose;
 - (ii) a Hong Kong permanent resident from entering or attempting to enter other State for terrorism purpose;
 - (iii) a person in the HKSAR and a person outside the HKSAR who is a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR from the provision or collection, by any means, directly or indirectly, of property knowing or with the intention that the property will be used, or is planned to be used, in whole or in part, for the purpose of financing the travel of individuals to other State for terrorism purpose; and

⁶ Recommendation 6 (previously known as Special Recommendation III): “Countries should implement targeted financial sanctions regimes to comply with United Nations Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing. The resolutions require countries to freeze without delay the funds or other assets of, and to ensure that no funds or other assets are made available, directly or indirectly, to or for the benefit of, any person or entity either (i) designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with resolution 1267 (1999) and its successor resolutions; or (ii) designated by that country pursuant to resolution 1373 (2001).”

- (iv) a person in the HKSAR and a person outside the HKSAR who is a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR from knowingly or intentionally organizing or facilitating, including acts of recruitment, the travel of individuals to other State for terrorism purpose.
- (b) Having regard to the views of FATF (see paragraph 9), we **propose**–
- (i) to prohibit a person, except under the authority of a licence granted by the Secretary for Security, from dealing with, directly or indirectly, any property, wholly or jointly, owned or controlled by or otherwise belonging to, or held by a person, knowing that, or being reckless as to whether, that person is a terrorist or terrorist associate as specified under section 4 or section 5 of UNATMO;
 - (ii) that the proposed prohibition in sub-paragraph (b)(i) above applies to a person in the HKSAR and a person outside the HKSAR who is a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR.

11. Presently, section 12(2) of UNATMO exempts from offence any act in contravention of section 7 (which prohibits provision or collection of property to commit terrorist acts) or section 8 (which prohibits making property available to or collecting property for terrorists and terrorist associates) if the person who commits the act has disclosed to an authorized officer⁷ the information related to the terrorist property⁸. The purpose of the exemption is to protect the rights of bona fide third parties acting in good faith.

⁷ According to Section 2 of UNATMO, “authorized officer” means –

- “ (a) a police officer;
- (b) a member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342);
- (c) a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap 331); or
- (d) an officer of the Independent Commission Against Corruption established by section 3 of the Independent Commission Against Corruption Ordinance (Cap 204).”

⁸ Section 12(1) of UNATMO provides that “where a person knows or suspects that any property is terrorist property, then the person shall disclose to an authorized officer the information or other matter- (a) on which the knowledge or suspicion is based; and (b) as soon as is practicable after that information or other matter comes to the person’s attention.”

We **propose** to apply the same exemption to an act in contravention of the prohibition proposed in paragraph 10(b) above.

12. The legislative amendments will also include other consequential technical amendments required to give effect to the new and amended provisions.

Advice Sought

13. Members are invited to comment on the proposals detailed in paragraphs 10 to 12 above. Subject to Members' views, we plan to consult the stakeholders on the proposals in January 2017 and introduce the amendment bill within 2017.

Security Bureau
December 2016