

# 立法會

## *Legislative Council*

LC Paper No. CB(2)493/16-17(03)

Ref : CB2/PL/SE

### **Panel on Security**

#### **Information note prepared by the Legislative Council Secretariat for the meeting on 3 January 2017**

#### **Enactment of legislation against terrorism and terrorist financing**

#### Background

The United Nations Security Council Resolution ("UNSCR") 1373 was adopted by the United Nations Security Council at its 4385th meeting on 28 September 2001 after the terrorist attacks on the United States on 11 September 2001. It aims at combating international terrorism on various fronts, including the prevention and suppression of terrorist financing, criminalizing direct, indirect and wilful provision or collection of funds, establishing terrorist acts as serious criminal offences in domestic laws with appropriate penalties and enhanced exchange of information and intelligence to fight terrorism. By virtue of Chapter VII of the Charter of the United Nations, UNSCR 1373 is binding on all States. In October 2001, the Central People's Government gave instructions to the Hong Kong Special Administrative Region to implement the resolution.

2. Hong Kong is a member of the Financial Action Task Force on Money Laundering ("FATF"), an international body specializing in recommending standards and best practices in countering money laundering and terrorist financing. FATF has published a set of internationally recognized standards to cover the issues of anti-money laundering ("AML") and counter financing of terrorism ("CFT").

3. In 2008, FATF completed the Mutual Evaluation Report ("the 2008 Report") on Hong Kong's compliance with its recommendations in countering money laundering and terrorist financing. While recognizing the strengths of Hong Kong's AML and CFT regime, the 2008 Report made a series of recommendations to improve Hong Kong's compliance with FATF's recommendations. Specifically, the Report concluded that Hong Kong needed

to effectively implement legislative measures to address certain key deficiencies in the AML/CFT regime, including improvement to compliance with two major recommendations, i.e. the requirement to criminalize the financing of terrorism, terrorist acts and terrorist organizations, and the full implementation of the requirements of the United Nations on counter-terrorist financing.

#### Introducing legislation against terrorism and terrorist financing

4. Hong Kong did not have any anti-terrorism legislation of general application before 2002. Offences which were typically committed by terrorists or associated with terrorism were however offences against the laws of Hong Kong. These included laws which gave effect to multilateral conventions, bilateral agreements and UNSCRs, and the ordinary criminal laws of Hong Kong. As there were areas of UNSCR 1373 which the laws of Hong Kong could not cover without new legislative measures, the Administration adopted a two-stage approach to implement the anti-terrorism requirements of UNSCR 1373.

5. In stage one, the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO") was enacted in July 2002 to give effect to the mandatory elements of UNSCR 1373 and the most pressing FATF special recommendations.

6. In stage two, the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 was enacted in June 2004 to implement relevant international conventions against terrorism (i.e. the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf), and to provide for the Secretary for Security to effectively freeze terrorist assets which were not funds.

7. The United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2012 was enacted in August 2012 to implement the recommendations of FATF on money laundering as set out in the 2008 Report on Hong Kong.

#### Recent development

8. The United Nations Security Council adopted UNSCR 2178 at its 7272nd meeting on 24 September 2014 concerning threats to international peace and security caused by terrorist acts. Specifically, it decides that all States shall ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offence:

- (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.

9. Having regard to the mandatory requirements of anti-terrorism measures in UNSCR 2178 and the recommendations of FATF on counter-financing of terrorism, the Administration will brief the Panel on its suggestions to amend UNATMO at the meeting on 3 January 2017.