

**Bills Committee on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003**

Implementation of international obligations relating to terrorism

The United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575) and the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003 (the Bill) are intended to implement United Nations Security Council Resolution (UNSCR) 1373, the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF), 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 in relation to fixed platforms. In addition, the Long Title of the Ordinance makes it clear that a number of connected or incidental matters are also dealt with. It should also be noted that UNSCR 1373 and the Special Recommendations of FATF specify obligations in general terms. In other words, a broad framework for domestic legislation is set out with the detail having to be provided by each individual jurisdiction against the background of its own legal system. This is why there are differences between the implementing legislation of various jurisdictions. The content of the Ordinance and the Bill should be viewed in the light of these considerations.

2. Tables which cross reference provisions in the Ordinance and the Bill to one of the instruments referred to (where relevant) are nevertheless prepared for Members' reference, at **Annexes A and B** respectively.

United Nations (Anti-Terrorism Measures) Ordinance [CAP 575]

Section No.	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations
1 - 2	Preliminary clauses including definitions of key terms, such as “terrorist” etc.	Neither UNSCR 1373 nor FATF provide for definitions. But they are necessary both as a matter of legislative drafting and to implement the broad obligations contained in these instruments.
3	Application outside HKSAR	Paragraphs 1(b) and (d) of UNSCR 1373 relate to supplying funds etc. to terrorists etc. The obligation is to take action to criminalise/prohibit action by nationals or persons or entities within their territories. HK does not have nationals and so the obligation to take extra-territorial action pursuant to these paragraphs has been implemented by equating “nationals” to “permanent residents” and HK bodies.
4	Specification by CE of persons and property as terrorists, terrorist associates or terrorist property	Not specifically required by UNSCR 1373 or FATF. But these specifications facilitate compliance with the obligations in UNSCR 1373 & FATF.

Section No.	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations
5	Specification by Court of persons and property as terrorists, terrorist associates or terrorist property.	Not specifically required by UNSCR 1373 or FATF. But, as with specifications under section 4 these specifications are intended to facilitate compliance with UNSCR 1373 and FATF. Members will recall that during the scrutiny of the original Bill it was considered that the CE should only have the power to specify terrorists etc. which had been designated by the Committee. Section 5 was accordingly introduced to allow court sanctioned specifications.
6	Freezing of funds	Paragraph 1(c) of UNSCR 1373 – “Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons

Section No.	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations
		<p>and associated persons and entities.”</p> <p>Section 6 also gives effect to FATF Special Recommendation III which reads, “Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts. Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.”</p> <p>Neither UNSCR 1373 nor FATF suggests a basis for freezing action. Section 6 provides for a “reasonable grounds to suspect” test that the property is terrorist property. As has been</p>

Section No.	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations
		<p>for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.”</p> <p>FATF Special Recommendation II - reads “Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations.”</p>
9	Prohibition on supply of weapons to terrorists and terrorist associates	<p>Paragraph 2(a) of UNSCR 1373 - “Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and <u>eliminating the supply of weapons to terrorists.</u>”</p> <p>The most effective method of complying with the obligation of eliminating the supply of weapons to terrorists is by way of an offence</p>

Section No.	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations
		mechanism.
10	Prohibition on recruitment, etc. to persons specified in notices under section 4(1) and (2)	<p>Paragraph 2(a) of UNSCR 1373 – “Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, <u>including by suppressing recruitment of members of terrorist groups</u> and eliminating the supply of weapons to terrorists.”</p> <p>The current Amendment Bill proposes an amendment to section 10 to make it clear that the offence only relates to terrorist groups. Again it is considered that the only feasible way of suppressing recruitment is by an offence mechanism. It is also considered logical to criminalise membership as well as recruitment.</p>
11	Prohibition against false threats of terrorist acts	No corresponding provision in UNSCR 1373 or FATF.

Section No.	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations
12	Disclosure of knowledge or suspicion that property is terrorist property	<p>FATF Special Recommendation IV - “If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.”</p> <p>The provision implementing this requirement to report is based on s. 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance [CAP 455]</p>
13	Forfeiture of certain terrorist property	<p>FATF Special Recommendation III requires the seizure and confiscation of property that is the proceeds of or used or intended to be used to finance terrorism.</p> <p>Section 13 provides for a court sanctioned forfeiture mechanism. Section 13(1) makes it</p>

Section No.	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations
		clear that forfeiture is limited to the property described in the FATF Special Recommendation.
14	Offences	Section 14 prescribes penalties. UNSCR 1373 and FATF are silent on this issue.
19	Regulations	FATF special Recommendation III requires the freezing of funds <u>or other assets</u> of terrorists. It was originally intended that Regulations would deal with this. It is now in fact to be dealt with in the Amendment Bill. There is no intention, at present, to use the Regulation making power.
15	Supplementary provisions applicable to licences	UNSCR 1373 and FATF do not deal with the question of licences. Section 15 was introduced to meet the concerns of Members that the legislation should in effect set out situations in which the grant of licences (sections 6 or 8) would be appropriate.

Section No.	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations
16	Delegations	UNSCR 1373 and FATF do not deal with the question of delegations.
17	Applications to Court of First Instance	Neither UNSCR 1373 nor FATF deal with the question of appeals.
18	Compensation	Neither UNSCR 1373 nor FATF deal with the question of compensation.
20	Procedure	No corresponding provision – section 20 covers Rules of Court.
21	Proceedings to be in open court	No corresponding provision.

United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003

Clause	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations or other International Conventions
1 – 2	Preliminary clauses including definitions of key terms	No corresponding provision.
3	Application of certain provisions outside HKSAR	Extra territorial jurisdiction in respect of offences created by clauses 11B and 11F is conferred in accordance with the requirements of Article 6.1 of the International Convention for the Suppression of Terrorist Bombings (for section 11B) and Article 3.1 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms (for section 11F).
4	Authorisation of public officers	No corresponding provision. Authorised officers have functions pursuant to Parts 4A and 4B of the Bill.
5	Freezing of Property	Special Recommendation III of FATF requires that, “Each country should implement measures to freeze without delay funds <u>or other assets of terrorists</u> ”. Section 6 of the Ordinance only deals with the freezing of funds. Clause 5 amends section 6 to extend the freezing power to all property.

Clause	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations or other International Conventions
6	Amendment of section 10 of the Ordinance	<p>Paragraph 2(a) of UNSCR 1373 provides that states shall – Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by <u>suppressing recruitment of members of terrorist groups</u> and eliminating the supply of weapons to terrorists.</p> <p>The amendment is to make it clear that the offence only applies to recruitment to terrorist group.</p>
Clause 7 provides for new sections 11A and 11B [comprising the new Part 3A of the Ordinance]	Prohibitions relating to terrorist bombings	<p>Article 2 of the International Convention for the Suppression of Terrorist Bombings prescribes the offence which Parties must create under domestic law. Clause 11B implements Article 2 of the Convention. Clause 11A provides for definitions which are relevant to the offence and which are set out in Article 1 of the Convention.</p>
Clause 7	Prohibitions relating to Ships and	Article 3 of the Convention for the Suppression of Unlawful

Clause	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations or other International Conventions
<p>provides for new sections 11C, 11D, 11E, 11F, 11G, 11H and 11I [comprising the new Part 3B of the Ordinance]</p>	<p>Fixed Platforms</p>	<p>Acts against the Safety of Maritime Navigation prescribes the offence which Parties must create under domestic law. Clause 11E implements Article 3 of the Convention. The definitions in clauses 11C and 11D derive, in part, from 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.</p> <p>Article 2 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms prescribes the offence which Parties must create under domestic law. Clause 11F implements Article 2 of the Protocol.</p> <p>Clause 11G (which does not derive from any provision in the Convention or Protocol) is a definition provision for the purposes of the offences created by section 11E(2) and 11F(2).</p> <p>Clause 11H implements Article 8 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.</p> <p>Clause 11I implements the extra-territorial jurisdiction requirements of Articles 4 and 6 of the Convention for the</p>

Clause	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations or other International Conventions
		Suppression of Unlawful Acts against the Safety of Maritime Navigation.
8	Disclosure of knowledge or suspicion that property is terrorist property	<p>FATF Special Recommendation IV provides –</p> <p>If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.</p> <p>Both UNSCR 1373 (paragraph 2(f)) and FATF (Recommendation V) provide that jurisdictions should provide each other with assistance/co-operation.</p>
9 (adds Parts 4A and 4B)	Powers of Investigation (Part 4A); Seizure and Detention of Property suspected to be Terrorist Property (Part 4B)	No strict equivalent although FATF Special Recommendation III provides that there should be power to seize and confiscate property that is the proceeds etc of terrorism.
10	Minor amendments to section 13	No equivalent.

Clause	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations or other International Conventions
	dealing with Forfeiture of terrorist property	
11	Prescribes penalties for offences created by the Bill	No equivalent.
12	Consequential amendments to section 15 (dealing with licences) to take account of the fact that it is now proposed that the freezing power extend to non-fund property	No equivalent.
13	Consequential amendments to section 17 (dealing with appeals) to take account of the fact that it is now proposed that the freezing power extend to non-fund property. Also, drafting improvements.	No equivalent.
14	This clause extends the compensation power in section 18 to cover the situation where action is taken pursuant to the new Part 4B.	No equivalent

Clause	Purpose	Corresponding provision in UNSCR 1373 or FATF Special Recommendations or other International Conventions
15	The Regulation making power is repealed	No equivalent
16	Minor amendments in relation to the provisions relating to Rules of Court.	No equivalent
17, 18	Minor amendments	No equivalent.
19	Prescribes Notices	No equivalent.
20	Consequential Amendments to Drug Trafficking (Recovery of Proceeds) Ordinance [CAP 405] and Organized and Serious Crimes Ordinance [CAP 455] in relation to disclosure.	No equivalent.