

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

**Purpose**

At the meeting held on 15 April 2004, the Bills Committee requested that consideration be given to amending section 12 of the United Nations (Anti-terrorism Measures) Ordinance (Cap. 575) by making reference to the UK Terrorism Act 2000 to the effect that the obligation to report terrorist property would only cover information or other matters which come to a person arising from his work. The Bills Committee also requested for information on the operation of the Joint Financial Intelligence Unit (JFIU) and the jurisdictions which the JFIU intends to enter into information exchange arrangements following the enactment of the related amendments. The Administration's response is set out in the following paragraphs.

**Section 12 – disclosure of knowledge or suspicion that property is terrorist property**

2. A Member has suggested that section 12 be revised, adopting the formulation in section 19 of the United Kingdom Terrorism Act 2000 (the Act), which reads -

“(1) This section applies where a person -

(a) believes or suspects that another person has committed an offence under any of sections 15 to 18 (*i.e. terrorist financing offences*), and

(b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment.

(2) The person commits an offence if he does not disclose to a constable as soon as is reasonably practicable -

(a) his belief or suspicion, and

(b) the information on which it is based.”

3. It should be noted that the Act, as amended by the Anti-terrorism, Crime and Security Act 2001, contains another reporting requirement in section 21A which reads -

“(1) A person commits an offence if each of the following three conditions is satisfied.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person has committed an offence under any of sections 15 to 18.

(3) The second condition is that the information or other matter-

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of a business in the regulated sector.

(4) The third condition is that he does not disclose the information or other matter to a constable or a nominated officer as soon as is practicable after it comes to him.”

The “regulated sector”, following amendments made by the Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2003, essentially covers all financial institutions as well as the designated non-financial businesses and professions (DNFBPs), i.e. casinos, lawyers, accountants, company and trust service providers, estate agents, and precious metals and precious stones dealers. The DNFBPs have been brought into the fold of the revised Forty Recommendations of the Financial Action Task Force on Money Laundering in June 2003.

4. The mental threshold for disclosure for the “regulated sector” is “having reasonable grounds for knowing or suspecting”, because they are expected to exercise a higher level of diligence in handling transactions than those engaged in other businesses. Indeed, a number of other jurisdictions such as Australia, Canada and New Zealand have also

adopted this mental threshold for the reporting requirement on the financial sector.

5. Taking reference from the models in both sections 19 and 21A of the Act, we are prepared to consider amending section 12 of Cap. 575 to build in a two-tier reporting requirement.

### **Operation of the JFIU**

6. A note setting out the operation of the JFIU and the jurisdictions with which it intends to enter into agreements relating to information exchange is at the **Annex**.

Security Bureau  
May 2004

## **Operation of the Joint Financial Intelligence Unit**

### **Background**

The Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP) (Cap. 405) was enacted in September 1989 to discharge Hong Kong's international obligation<sup>1</sup> as well as to combat drug trafficking and the associated laundering of illicit proceeds by drug traffickers. Section 25 provides for disclosures of dealings connected with drug trafficking.

2. Following the enactment of DTROP, a centralized unit, staffed by the two agencies which handled narcotics related crimes, namely the Hong Kong Police Force and the Hong Kong Customs and Excise Department, was formed to handle disclosures made under section 25. The unit, which has been named as the Joint Financial Intelligence Unit (JFIU), is housed within the Narcotics Bureau of the Hong Kong Police Force.

3. In 1994, the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455) was enacted to enhance enforcement powers against organized and serious crimes. To deal with the laundering of proceeds of these crimes, OSCO has a provision similar to section 25 of DTROP<sup>2</sup>. To assist in the fight against terrorism, under section 12 of the United Nations (Anti-Terrorism Measures) Ordinance (UNATMO) (Cap. 575) enacted in 2002, there is a similar reporting requirement relating to terrorist property.

### **Operation**

4. All the disclosures under DTROP, OSCO and UNATMO are made to the JFIU. Upon receipt of a disclosure, the JFIU will conduct checks on the information contained therein and conduct analysis. If there is information which warrants further investigation and a suspected predicate offence can be determined, the intelligence will be referred to the appropriate investigation unit. If, however, a possible predicate offence cannot be identified, the JFIU will conduct its own enquiry to

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<sup>1</sup> Under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, contracting parties are required to criminalize the laundering of illicit drug proceeds.

<sup>2</sup> In 1995, amendments were made to both DTROP and OSCO to split the old section 25 into two new sections, i.e. section 25 which deals with money laundering, and section 25A which covers reporting of suspicious transactions.

develop information and to identify the possible predicate offence, followed by referral of the disclosure to the relevant investigation unit.

5. In analysing the information contained in the disclosure, it is often found that there are links to other jurisdictions through, for example, nationality, source or destination of funds, or an address. If the JFIU has reasonable grounds to believe that feedback which is helpful in investigating criminal conduct in Hong Kong would be received, it will conduct checks with its overseas counterparts to obtain further information to facilitate assessing whether a crime has indeed been committed in Hong Kong. On its part, the JFIU will provide assistance to its overseas counterparts if the latter request for assistance in tracing possible Hong Kong links in their own investigations. However, assistance can only be rendered if the information provided suggests a possible crime in Hong Kong. This has not only handicapped the JFIU's ability to conduct exchange of intelligence with their overseas counterparts, but has also subjected the JFIU to international criticism.

### **International Trend and Obligations**

6. Hong Kong is a member of the Financial Action Task Force on Money Laundering (FATF). The FATF is an inter-government body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering. Under Recommendation 40 of the Forty Recommendations on anti-money laundering issued by the FATF, members (including Hong Kong) should ensure that their competent authorities (including FIU) provide the widest possible range of international co-operation to their foreign counterparts. There should also be clear and effective gateways to facilitate prompt and constructive exchange directly between counterparts, either spontaneously or upon request, of information relating to both money laundering and the underlying predicate offences. Separately, under Recommendation V of FATF's Special Recommendations on Terrorist Financing, members are under the obligation to afford one another, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organizations. A host of other international conventions and instruments including United Nations Security Council Resolution 1373, the United Nations Convention Against Transnational Organized Crimes as well as the United Nations Convention for the Suppression of the Financing of

Terrorism also call upon jurisdictions to share with one another intelligence gathered in a concerted effort to fight money laundering and terrorism.

7. The JFIU has also been a member of the Egmont Group, an informal organization made up of 84 FIUs from around the world since 1999. The purpose of the group is to provide a forum for FIUs to improve support for their respective national anti-money laundering programmes. One of the major tasks of the group is the expansion and systematization of the exchange of financial intelligence information. It is stipulated in its Statement of Purpose that:

“FIUs should be able to exchange information freely with other FIUs on the basis of reciprocity or mutual agreement and consistent with procedures understood by the requested and requesting party. Such exchange, either upon request or spontaneously, should produce any available information that may be relevant to an analysis or investigation of financial transactions and other relevant information related to money laundering and the persons or companies involved.”

8. In order to ensure that the financial intelligence passed to other FIUs is handled properly and to ensure reciprocity, the Egmont Group encourages members to sign memorandum of understanding (MoU) to govern exchange of financial intelligence between FIUs. To facilitate the conclusion of information exchange agreements between members, the Egmont Group has prepared a model MoU. All the important aspects of information exchange, e.g. confidentiality, use of data and third party rule are covered. It is envisaged that all MoUs to be signed between JFIU and its foreign counterparts following the legislative amendments will be drawn up on the basis of the Egmont model. So far, the JFIU has been approached by Australia, Japan, Singapore, South Korea and Thailand on signing of MoU.

### **Overseas Experience**

9. Unlike the JFIU, many overseas FIUs are not law enforcement agencies. Some of them are independent units, while others are units under the central bank, finance ministry, judiciary, or justice department. Many of these FIUs, including those of strategic value to JFIU in money laundering investigation, require MoU to be in place for exchange of intelligence, e.g. AUSTRAC (Australia), FINTRAC (Canada), JAFIO (Japan), STRO (Singapore), AMLO (Thailand) etc.

## **Advantages of having a statutory framework**

10. The proposed amendments to DTROP, OSCO and UNATMO aim to provide the necessary legal framework for the JFIU to enter into MoUs with the overseas FIUs and thus be able to share its intelligence with the latter. The FIUs of Australia, Canada, New Zealand and the UK are also empowered under legislation to carry out information exchange with their overseas counterparts. Following amendments and the signing of MoUs, the JFIU will be in a position to check with overseas FIUs on overseas links when necessary, e.g. in the identification of predicate crimes from suspicious transaction reports. Reciprocally, it can provide overseas FIUs with necessary intelligence when being requested upon even though the overseas requests do not suggest any offence in Hong Kong.

## **Conclusion**

11. In order to fulfil Hong Kong's international obligations, to improve the operation of the JFIU and to enhance international co-operation in the areas of anti-money laundering and fighting terrorism, section 12 of UNATMO and section 25A of DTROP and OSCO need to be amended to provide the necessary legal framework for JFIU to conduct exchange of information which comes to its possession through the suspicious transaction reports filed under the three sections. The amendments will also provide the JFIU with the required authority to enter into MoUs with its overseas counterparts to formalize and systemize such exchanges.