

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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BY FAX
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23 February 2012

Mr Bonny Loo
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Hong Kong

Dear Mr Loo,

United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012

I refer to your letter dated 20 February 2012 regarding the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 ("the Bill"). Our response to the issues raised is set out in the ensuing paragraphs *seriatim* –

- (a) As set out in paragraph 7 of the LegCo Brief (File ref: SBCR 9/16/1476/74), the proposed inclusion of the term "international organization" in the definition of "terrorist act" under section 2(1) of the United Nations (Anti-Terrorism Measures) Ordinance ("the UNATMO") (Cap. 575) is for the purpose of implementing the recommendation of the Financial Action Task Force on Money Laundering ("the FATF") in its 2008 Mutual Evaluation Report on Hong Kong ("the Report") that Hong Kong should "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 United Nations International Convention for the Suppression of the Financing of Terrorism ("the TF Convention"). In the TF Convention (or for that matter, the Report), the expression "international organization" is not defined. It is, however, commonly understood in the context of international law that an "international organization" refers to an international intergovernmental organization, as discussed in Parry and Grant, Encyclopaedic Dictionary of International Law, 2nd edition, p.370. For example, an international intergovernmental organization can be constituted by international multilateral treaty and has international legal personality and consisted of State members. Examples of international intergovernmental organizations would include the United Nations, the European Union, the African Union, and the World Trade Organization. In light of the foregoing, there is no need for the term "international organization" to be specifically defined in the Bill.

- (b) The FATF 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, the scope of coverage of "funds", currently set out in section 2 of the UNATMO, would need to be expanded in line with the Report's recommendation. To achieve this, we propose that the definition of "funds" in the UNATMO be repealed and the term "funds" be replaced by "property" throughout the UNATMO. This is consistent with the requirements of UNSCR 1373 and the FATF for freezing of fund and non-fund "assets" of terrorists and terrorist associates as implemented under section 6 of the UNATMO. Section 6 of the Ordinance was amended by the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance (21 of 2004)) to extend the freezing requirement to cover both funds and non-fund terrorist assets by replacing the word "funds" by "property", which is defined under the Interpretation and General Clauses Ordinance (Cap. 1). "Property" is defined in the Interpretation and General Clauses Ordinance (Cap. 1) to include money, goods, choses in action and land; and, arising out of or incident to property above-mentioned, the obligations, easements and every description of estate, interest and profit, present or future, vested or contingent. We consider that the definition is wide enough to address FATF's

recommendation in covering assets of every kind.

- (c) The Report recommended that the “collection” (in addition to the provision or making available) of funds for terrorists or terrorist organizations be made an offence and incorporated into section 8 of the UNATMO. The term “funds” as adopted by FATF¹ has the same definition as that for “funds” in Article 1.1 of the “TF Convention”, which includes “assets of every kind, whether tangible or intangible, movable or immovable....”². Accordingly, the collection of “funds”, as criminalised under the proposed section 8(b), should have the same coverage as referred to in the TF Convention. There is therefore a need to replace “funds” with “property” to reflect the requirements of the TF Convention as explained in paragraph (b) above, and to use the term “property” for our proposed amendment to section 8 of the UNATMO.

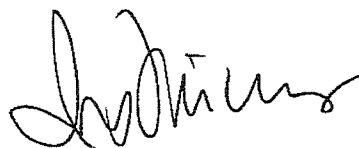
Paragraph 1(d) of UNSCR 1373 requires all States to prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of terrorists etc. This requirement is currently implemented under section 8 of the UNATMO which would become the new section 8(a) as set out in the Bill. As the proposed section 8(b) is to further implement FATF's recommendation in this regard, we have included "soliciting financial (or related) services" in section 8(b) for purpose of consistency with section 8(a) and full implementation of paragraph 1(d) of UNSCR 1373.

- (d) Sections 15 of the UNATMO and rule 24 of Order 117A of the Rules of the High Court contain respectively the supplementary provisions applicable to licences under the existing section 8 (i.e. the new section 8(a)) of the UNATMO and provisions relating to application for those licences. Given that the new section 8(b) does not refer to a licence, the operation of the provisions concerned will not be affected and, hence, there is no need to make the amendments.

¹ See FATF Special Recommendation II and paragraph 3 of its Interpretative Note (relevant extracts at Annex A).

² 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”.

- (e) The Security Panel was consulted on the salient features of the proposed amendments to the UNATMO on 7 November 2011. Some Panel Members requested that explanations on certain issues and we have provided the information in paragraphs 14 to 16 of the LegCo Brief issued on 15 February 2012.

A handwritten signature in black ink, appearing to read 'Veronica Wong', written in a cursive style.

(Ms Veronica Wong)
for Secretary for Security

C.C.

DoJ

(Attn: Ms Leonora IP)

Fax: 2845 2215

(Attn: Ms Anthea LI)

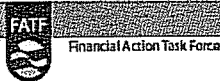
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FATF Special Recommendation II: Criminalising the financing of terrorism and associated money laundering

Text of the Special Recommendation and Interpretative Note

See also: The full text of the IX Special Recommendations [↗](#)

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Special Recommendation II : Criminalising the financing of terrorism and associated money laundering

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

Interpretative Note to Special Recommendation II: Criminalising the financing of terrorism and associated money laundering

Objective

1. Special Recommendation II (SR II) was developed with the objective of ensuring that countries have the legal capacity to prosecute and apply criminal sanctions to persons that finance terrorism. Given the close connection between international terrorism and inter alia money laundering, another objective of SR II is to emphasise this link by obligating countries to include terrorist financing offences as predicate offences for money laundering. The basis for criminalising terrorist financing should be the United Nations International Convention for the Suppression of the Financing of Terrorism, 1999.[1]

Definitions

2. For the purposes of SR II and this Interpretative Note, the following definitions apply:
 - a) The term funds refers to 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.
 - b) The term terrorist refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.
 - c) The term terrorist act includes:
 - (i) An act which constitutes an offence within the scope of, and as defined in one of the

following treaties: Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988), and the International Convention for the Suppression of Terrorist Bombings (1997); and

- (ii) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act.
- d) The term terrorist financing includes the financing of terrorist acts, and of terrorists and terrorist organisations.
- e) The term terrorist organisation refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Characteristics of the Terrorist Financing Offence

3. Terrorist financing offences should extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part: (a) to carry out a terrorist act(s); (b) by a terrorist organisation; or (c) by an individual terrorist.
4. Criminalising terrorist financing solely on the basis of aiding and abetting, attempt, or conspiracy does not comply with this Recommendation.
5. Terrorist financing offences should extend to any funds whether from a legitimate or illegitimate source.
6. Terrorist financing offences should not require that the funds: (a) were actually used to carry out or attempt a terrorist act(s); or (b) be linked to a specific terrorist act(s).
7. It should also be an offence to attempt to commit the offence of terrorist financing.
8. It should also be an offence to engage in any of the following types of conduct:
 - a) Participating as an accomplice in an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;
 - b) Organising or directing others to commit an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;
 - c) Contributing to the commission of one or more offence(s) as set forth in paragraphs 3 or 7 of this Interpretative Note by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a terrorist financing offence; or (ii) be made in the knowledge of the intention of the group to commit a terrorist financing offence.
9. Terrorist financing offences should be predicate offences for money laundering.
10. Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.
11. The law should permit the intentional element of the terrorist financing offence to be inferred from objective factual circumstances.
12. Criminal liability for terrorist financing should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
13. Making legal persons subject to criminal liability for terrorist financing should not preclude the possibility of parallel criminal, civil or administrative proceedings in countries in which more than one form of liability is available.
14. Natural and legal persons should be subject to effective, proportionate and dissuasive criminal,

civil or administrative sanctions for terrorist financing.

[1] Although the UN Convention had not yet come into force at the time that SR II was originally issued in October 2001 – and thus is not cited in the SR itself – the intent of the FATF has been from the issuance of SR II to reiterate and reinforce the criminalisation standard as set forth in the Convention (in particular, Article 2). The Convention came into force in April 2003.

Also available:

*Recommandation spéciale II du GAFI: Incrimination du financement du terrorisme et du blanchiment de capitaux commis dans le cadre des activités terroristes (French)

Related documents:

*9 Special Recommendations on Terrorist Financing (English)

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