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

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# A BILL

## To

Amend the United Nations (Anti-Terrorism Measures) Ordinance to replace all references to “funds” by “property”, to expand the definition of *terrorist act*, and to revise the prohibition on assistance for terrorists and terrorist organizations to cover the making available of property or financial (or related) services and the collection of property or solicitation of financial (or related) services by any means, directly or indirectly; and to make necessary consequential amendments to enactments.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

**1. Short title**

This Ordinance may be cited as the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2012.

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## Part 2

### Amendments to United Nations (Anti-Terrorism Measures) Ordinance

#### 2. United Nations (Anti-Terrorism Measures) Ordinance amended

The United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) is amended as set out in sections 3 to 8.

#### 3. Section 2 amended (interpretation)

(1) Section 2(1), definition of *terrorist act*, paragraph (a)(ii)(A), after “Government”—

**Add**

“or an international organization”.

(2) Section 2(1), definition of *terrorist property*, paragraph (b)—

**Repeal**

“consisting of funds”.

(3) Section 2(1), Chinese text, definition of 恐怖分子財產, paragraph (b)(i)—

**Repeal**

“資金”.

(4) Section 2(1), Chinese text, definition of 恐怖分子財產, paragraph (b)(ii)—

**Repeal**

“資金”.

(5) Section 2(1)—

**Repeal the definition of *funds*.**

**4. Section 6 amended (freezing of funds)**

Section 6, heading—

**Repeal**

**“funds”**

**Substitute**

**“property”.**

**5. Section 7 amended (prohibition on provision or collection of funds to commit terrorist acts)**

(1) Section 7, heading—

**Repeal**

**“funds”**

**Substitute**

**“property”.**

(2) Section 7—

**Repeal**

**“, funds”**

**Substitute**

**“, any property”.**

(3) Section 7(a)—

**Repeal**

**“funds”**

**Substitute**

**“property”.**

(4) Section 7(b)—

**Repeal**

**“funds”**

**Substitute**

“property”.

(5) Section 7, English text—

**Repeal**

“funds are”

**Substitute**

“property is”.

**6. Section 8 substituted**

Section 8—

**Repeal the section**

**Substitute**

**“8. Prohibition on making property, etc. available to or collecting property, etc. for terrorists and terrorist associates**

A person must not—

- (a) except under the authority of a licence granted by the Secretary, make any property or financial (or related) services available, by any means, directly or indirectly, to or for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate; or
- (b) collect property or solicit financial (or related) services, by any means, directly or indirectly, for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate.”.

**7. Section 15 amended (supplementary provisions applicable to licences mentioned in section 6(1) or 8)**

Section 15(1)(b)—

**Repeal**

“funds are”

**Substitute**

“property is”.

**8. Schedule 1 repealed (funds)**

Schedule 1—

**Repeal the Schedule.**

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## Part 3

### Consequential Amendment to Rules of the High Court

**9. Rules of the High Court amended**

The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in section 10.

**10. Order 117A, rule 24 amended (application concerning direction mentioned in section 6(10) or licence mentioned in section 6(1) or 8)**

Order 117A, rule 24(1)(a)—

**Repeal**

“, funds”.

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## Part 4

### Consequential Amendments to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance

#### 11. Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance amended

The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) is amended as set out in section 12.

#### 12. Schedule 1 amended (interpretation)

(1) Schedule 1, Part 1, section 1, definition of *terrorist financing*, paragraph (a)—

**Repeal**

“of funds”

**Substitute**

“of any property”.

(2) Schedule 1, Part 1, section 1, definition of *terrorist financing*, paragraph (a)(i)—

**Repeal**

“funds”

**Substitute**

“property”.

(3) Schedule 1, Part 1, section 1, definition of *terrorist financing*, paragraph (a)(ii)—

**Repeal**

“funds”

**Substitute**

“property”.

- (4) Schedule 1, Part 1, section 1, definition of *terrorist financing*, paragraph (a)—

**Repeal**

“funds are actually so used); or”

**Substitute**

“property is actually so used);”.

- (5) Schedule 1, Part 1, section 1, definition of *terrorist financing*, paragraph (b)—

(a) **Repeal**

everything before “directly”

**Substitute**

“(b) the making available of any property or financial (or related) services, by any means;”;

(b) **Repeal the full stop**

**Substitute**

“; or”.

- (6) Schedule 1, Part 1, section 1, definition of *terrorist financing*, after paragraph (b)—

**Add**

“(c) the collection of property or solicitation of financial (or related) services, by any means, directly or indirectly, for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate.”.

- (7) Schedule 1, Part 1, section 2—

**Repeal**

“*funds* (資金),”.

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## Explanatory Memorandum

### Background

The United Nations Security Council passed Resolution 1373 (*UNSCR 1373*) in September 2001. It requires, among other things, the prevention and suppression of terrorist financing, and criminalizing direct, indirect and wilful provision or collection of funds for terrorist acts and freezing of terrorist assets. It is binding on all Member States. In accordance with Articles 13 and 48(8) of the Basic Law, the Central People's Government gave instructions to the Hong Kong Special Administrative Region in October 2001 to implement UNSCR 1373.

2. Hong Kong is a member of the Financial Action Task Force on Money Laundering (*FATF*), an intergovernmental organization specializing in promoting and making Recommendations on best practices in countering money laundering and terrorist financing. FATF's Special Recommendations on Terrorist Financing overlap to a certain extent with UNSCR 1373. FATF closely monitors its members' implementation of the Recommendations and publishes its findings in Mutual Evaluation Reports.
3. In Hong Kong, the obligations under UNSCR 1373 and certain of FATF's Special Recommendations are implemented through the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (*the principal Ordinance*). The implementation of the requirements of UNSCR 1373 and the related Recommendations of FATF are under regular review. In 2008, FATF and the Asia/Pacific Group on Money Laundering published a Mutual Evaluation Report (*the Report*) on Hong Kong. The object of this Bill is to amend the principal Ordinance to address certain perceived shortcomings as identified in the Report.

### **Part 1—Preliminary**

4. Clause 1 sets out the short title.

### **Part 2—Amendments to United Nations (Anti-Terrorism Measures) Ordinance**

5. Clause 3(1) amends the definition of *terrorist act* in section 2(1) of the principal Ordinance to cover the intended coercion of an international organization.
6. Clauses 3(5) and 8 repeal the definition of *funds* in section 2(1) of the principal Ordinance, while other clauses change all references to “funds” in the principal Ordinance to “property”. These amendments deal with the perceived lack of coverage for certain type of assets.
7. Clause 6 substitutes section 8 of the principal Ordinance—
  - (a) to ensure that the prohibition under that section covers the making available of property or financial services by any means, to achieve consistency with sections 7 and 9 of the principal Ordinance; and
  - (b) to create a new offence of the collection of property or solicitation of financial services for terrorists or terrorist associates.

### **Part 3—Consequential Amendment to Rules of the High Court**

8. Clause 10 contains a consequential amendment to rule 24 of Order 117A of the Rules of the High Court (Cap. 4 sub. leg. A).

### **Part 4—Consequential Amendments to Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance**

9. Sections 7 and 8 of the principal Ordinance provide for the criminalization of terrorist financing. The legislative intent of the definition of *terrorist financing* in the Anti-Money

Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) is that the definition should tally with the terrorist financing offences under the principal Ordinance. Clause 12 contains consequential amendments to the definition.