

United Nations (Anti-Terrorism Measures) Ordinance (Cap.575)
- Proposals for Amendments

Consultation Paper

1. BACKGROUND

1.1 The Hong Kong Special Administrative Region (“HKSAR”) has a number of legislation in place to deal with terrorism-related offences. Among them, the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“UNATMO”) was enacted to implement the United Nations Security Council Resolution (“UNSCR”) 1373¹ passed after the September 11 terrorist attacks in the United States in 2001, and certain recommendations of Financial Action Task Force (“FATF”) on counter-financing of terrorism (“CFT”). First enacted in 2002, UNATMO was amended in 2004 and 2012 to further implement UNSCR 1373 and some terrorism-related multilateral conventions, and to meet FATF’s evolving CFT standards.

UNSCR 2178

1.2 In September 2014, the United Nations Security Council passed UNSCR 2178 which is binding on all Member States. In October 2014, in accordance with Articles 13 and 48(8) of the Basic Law, the Central People’s Government gave instructions to the HKSAR to implement the resolution.

1.3 In the resolution, the United Nations Security Council expressed grave concern about the acute and growing threat posed by foreign terrorist fighters, i.e. individuals who travel to a State other than their States of residence or nationality (“other State”) for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or providing or receiving of terrorist training. Operative paragraph 6 of UNSCR 2178 is quoted below –

“Recalls its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and decides that all States shall ensure that their domestic laws and regulations establish

¹ UNSCR 1373 was endorsed on 28 September 2001. It requires, among other things, the prevention and suppression of terrorist financing, criminalization of the wilful provision or collection of funds for terrorist acts, freezing of terrorist assets, and prohibition from making funds, etc. available for the benefit of terrorist or terrorist associate.

serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense-

- (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.”*

FATF's Recommendations

1.4 Hong Kong is a member of FATF. FATF's Recommendations set out a comprehensive and consistent framework of measures which members are requested to implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction.

1.5 In the fourth follow-up report on the Mutual Evaluation Report of Hong Kong, China in 2012, FATF points out that the current freezing mechanism under UNATMO is insufficient as it only operates against property specified in the freezing notice, and the freezing process involves several procedural steps which would lead to delays that undermine the objective to freeze the property without delay and without notice².

² Mutual Evaluation of Hong Kong, China – 4th Follow-up Report:

2. PROPOSALS

2.1 In view of our obligation to fulfil UNSCR 2178 and address the shortcoming in our CFT as identified by FATF, we propose to amend UNATMO. A gist of our proposal is as follows –

- (a) Having regard to the mandatory requirements of UNSCR 2178, we **propose** to prohibit –
 - (i) a person in the HKSAR from leaving or attempting to leave the HKSAR, or going or attempting to go on board a conveyance with the intention to leave the HKSAR to other State for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or providing or receiving of terrorist training;
 - (ii) a Hong Kong permanent resident from entering or attempting to enter other State for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or providing or receiving of terrorist training;
 - (iii) a person in the HKSAR and a person outside the HKSAR who is a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR from the provision or collection, by any means, directly or indirectly, of property knowing or with the intention that the property will be used, or is planned to be used, in whole or in part, for the purpose of financing the travel of individuals to other State for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or providing or receiving of terrorist training; and
 - (iv) a person in the HKSAR and a person outside the HKSAR who is a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR from knowingly or intentionally organizing or facilitating, including acts of

“105.Section 6 is described as a freezing provision, but it only operates against identified property i.e. there has to be a process to identify property as that of a terrorist before section 6 can operate. The freezing process in this case requires first that the Secretary for Security issues a notice specifying the property (section 6(1)), and second that this notice is given to the person holding the property concerned (section 6(7)) who in turn has to approach the owner (section 6(8)). These successive steps also raise questions regarding the timeliness of the whole process.... Thus the need to (a) identify terrorist property and (b) take the further procedural steps, would be their nature lead to significant delays that undermine the objective of the requirements to freeze the property without delay and without notice.”

recruitment, the travel of individuals to other State for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or providing or receiving of terrorist training.

(b) Having regard to the views of FATF, we **propose**–

- (i) to prohibit a person, except under the authority of a licence granted by the Secretary for Security, from dealing with, directly or indirectly, any property, wholly or jointly, owned or controlled by or otherwise belonging to, or held by a person, knowing that, or being reckless as to whether, that person is a terrorist or terrorist associate as specified under section 4 or section 5 of UNATMO;
- (ii) that the proposed prohibition in sub-paragraph (b)(i) above applies to a person in the HKSAR and a person outside the HKSAR who is a Hong Kong permanent resident or a body incorporated or constituted under the law of the HKSAR.

2.2 Presently, section 12(2) of UNATMO exempts from offence any act in contravention of section 7 (which prohibits provision or collection of property to commit terrorist acts) or section 8 (which prohibits making property available to or collecting property for terrorists and terrorist associates) if the person who commits the act has disclosed to an authorized officer³ the information⁴ related to the terrorist property⁵. The purpose of the exemption is to protect the rights of bona fide third parties acting in good faith. We **propose** to apply the same exemption to an act in contravention of the prohibition proposed in paragraph 2.1(b) above.

³ According to Section 2 of UNATMO, “authorized officer” means –

- “ (a) a police officer;
- (b) a member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342);
- (c) a member of the Immigration Service established by section 3 of the Immigration Service Ordinance (Cap 331); or
- (d) an officer of the Independent Commission Against Corruption established by section 3 of the Independent Commission Against Corruption Ordinance (Cap 204).”

⁴ Section 12(1) of UNATMO provides that “where a person knows or suspects that any property is terrorist property, then the person shall disclose to an authorized officer the information or other matter- (a) on which the knowledge or suspicion is based; and (b) as soon as is practicable after that information or other matter comes to the person’s attention.”

⁵ Section 2 of UNATMO defines “terrorist property” as –

- “(a) the property of a terrorist or terrorist associate; or
- (b) any other property that -
 - (i) is intended to be used to finance or otherwise assist the commission of a terrorist act; or
 - (ii) was used to finance or otherwise assist the commission of a terrorist act”.

3. WHEN AND HOW TO RESPOND

3.1 Please send us your views on or before 3 March 2017 by any one of the following means–

By mail to: Security Bureau
10th Floor, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong

By fax to: 2524 3762

By email to: unatmo_consult@sb.gov.hk

3.2 It is optional for members of the public to supply their personal data upon providing views on this consultation paper. The submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to this consultation exercise. The Government bureaux and departments receiving the data may only use the data for such purposes.

3.3 The names and views of individuals and organisations who/which put forth submissions in response to this consultation paper (“senders”) may be published for public viewing. We may, either in discussion with others, whether privately or publicly, or in any other documents we publish, cite comments submitted in response to this consultation paper.

3.4 To safeguard senders’ personal data privacy, we will remove senders’ relevant data, such as residential/return addresses, email addresses, identity card numbers, telephone numbers, facsimile numbers and signatures, where provided, when publishing their submissions, if applicable.

3.5 We will respect the wish of senders to remain anonymous and/or keep the views confidential in part or in whole. If the senders request anonymity in the submissions, their names will be removed when publishing their views. If the senders request confidentiality, their views will not be published.

3.6 If the senders do not request anonymity or confidentiality in the submissions, it will be assumed that the senders can be named and the views can be published in their entirety.

3.7 Any sender providing personal data to us in the submission will have rights of access and correction with respect to such personal data. Requests for data access and correction of personal data should be made in writing –

By mail to: Access to Information Officer,
Security Bureau,
9th Floor, East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

By email to: unatmo_consult@sb.gov.hk

Security Bureau
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