

# **Guideline on the Combat of Terrorist Financing**

## **Scope of Application**

1. This Guideline applies to all authorized insurers, insurance agents and insurance brokers carrying on or advising on long term business (hereinafter referred as “insurance institutions”) which are not financial institutions authorized by the Hong Kong Monetary Authority (“HKMA”) under the Banking Ordinance (“authorized financial institutions”). Insurance institutions that are authorized financial institutions are subject to the relevant provisions on terrorist financing in the HKMA’s Guideline on Prevention of Money Laundering.

## **Background**

2. Terrorist financing generally refers to the carrying out of transactions involving funds that are owned by terrorists, or that have been, or are intended to be, used to assist the commission of terrorist acts. This has not previously been explicitly covered under the money laundering regime where the focus is on the handling of criminal proceeds, i.e. the source of funds is what matters. In terrorist financing, the focus is on the destination or use of funds, which may have derived from legitimate sources.
3. Since 9/11, the Financial Action Task Force on Money Laundering (“FATF”) has expanded its scope of work to cover matters relating to terrorist financing. In this context, it has produced eight Special Recommendations on Terrorist Financing. A list of these can be found on the FATF website ([http://www1.oecd.org/fatf/srecstf\\_en.htm](http://www1.oecd.org/fatf/srecstf_en.htm)).

## **Legislation**

4. The United Nations Security Council (“UNSC”) has passed various resolutions to require sanctions against certain designated terrorists and terrorist organizations. In Hong Kong, regulations issued under the United Nations (Sanctions) Ordinance give effect to these UNSC resolutions. In particular, the United Nations Sanctions (Afghanistan) Regulation provides, among other things, for a prohibition on making funds available to designated terrorists. The list of designated terrorists is published in the Gazette from time to time.
5. In addition, the United Nations (Anti-Terrorism Measures) Ordinance (“UNATMO”) was enacted on 12 July 2002 and a substantive part of the law came into operation on 23 August 2002. This implements the mandatory elements of the UNSC Resolution 1373. The latter is aimed at combating international terrorism on various fronts, including the introduction of measures against terrorism financing. The UNATMO also implements the most pressing elements of the FATF’s eight Special Recommendations.

6. The key terrorist financing provisions in the UNATMO are summarized below. This does not constitute a legal interpretation of the provisions of the legislation referred to, for which appropriate legal advice should be sought when necessary.
7. Sections 7 and 8 of the UNATMO prohibits the supply or collection of funds and making funds or financial (or related) services available to terrorists or terrorist associates. Sections 6 and 13 of the UNATMO further permits terrorist property to be frozen and subsequently forfeited.
8. Section 12(1) of the UNATMO requires a person to report his knowledge or suspicion of terrorist property to an authorized officer (e.g. the JFIU). Failure to make a disclosure under this section constitutes an offence under section 14(5). The maximum penalty upon conviction of this offence is a fine of HK\$50,000 and imprisonment for 3 months.
9. The term “funds” includes funds mentioned in the Schedule to the UNATMO. It covers cash, cheques, claims on money, deposits with financial institutions or other entities, balances on accounts, securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts), interest, dividends or other income on or value accruing from or generated by property, letters of credit, documents evidencing an interest in funds or financial resources, etc.
10. A list of terrorist or terrorist associate names is published in the Gazette from time to time pursuant to section 10 of the United Nations Sanctions (Afghanistan) Regulation and section 4 of the UNATMO. The published lists reflect designations made by the United Nations Committee that was established pursuant to UNSC Resolution 1267. The UNATMO provides that it shall be presumed, in the absence of evidence to the contrary, that a person specified in such a list is a terrorist or a terrorist associate (as the case may be).
11. Regarding the obligations under section 12(1) of the UNATMO to disclose knowledge or suspicion that property is terrorist property, section 12(2) of the UNATMO states that if a person who has made such a disclosure does any act in contravention of section 7 or 8 of the UNATMO either before or after such disclosure and the disclosure relates to that act, the person does not commit an offence if :-
  - (a) the disclosure is made before he does that act and he does that act with the consent of the authorized officer; or
  - (b) the disclosure is made after he does that act, is made on his own initiative and is made as soon as it is practicable for him to make it.

12. Section 12(3) provides that a disclosure made under the UNATMO shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision. The person making the disclosure shall not be liable in damages for any loss arising out of the disclosure or any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

### **Policies and Procedures Expected of Insurance Institutions in Combating Terrorist Financing**

13. An insurance institution should take measures to ensure compliance with the relevant legislation on terrorist financing. The legal obligations of the insurance institution and those of its staff should be well understood and adequate guidance and training should be provided to the latter.
14. It is particularly vital that an insurance institution should be able to identify and report transactions with terrorist suspects. To this end, an insurance institution should ensure that it maintains a database of names and particulars of terrorist suspects which consolidates the various lists that have been made known to it. This should, in particular, include the lists published in the Gazette and those designated under the US Executive Order of 23 September 2001.
15. The database should be subject to timely update whenever there are changes, and should be made easily accessible by staff for the purpose of identifying suspicious transactions.
16. An insurance institution should check the names of both existing customers and new applicants for business against the names in the database. A risk-based approach could be used taking account of factors such as the country of origin of the customer, the location of counterparties with which it conducts transactions and does business and the type of transactions. An insurance institution should be particularly alert for suspicious remittances and should bear in mind the role which non-profit organizations are known to have played in terrorist financing.
17. The FATF issued in April 2002 a paper on guidance for financial institutions in detecting terrorist financing. The document describes the general characteristics of terrorist financing with case studies illustrating the manner in which law enforcement agencies were able to establish a terrorist financing link based on information reported by financial institutions. Annex 1 of the document contains a series of characteristics of financial transactions that have been linked to terrorist activity in the past.
18. An insurance institution should acquaint itself with this FATF guidance and should use it as part of its training material for staff. The guidance is available on the FATF website ([http://www1.oecd.org/fatf/pdf/guidfitf01\\_en.pdf](http://www1.oecd.org/fatf/pdf/guidfitf01_en.pdf)).

19. It should be noted that the list of characteristics only serves to show the types of transaction that could be a cause for additional scrutiny if one or more of the characteristics is present. The parties involved in the transaction should also be taken into account, particularly when the individuals or entities appear on a list of suspected terrorists.
20. Where an insurance institution suspects that a transaction is terrorist-related, it should make a report to the Joint Financial Intelligence Unit (“JFIU”). Even if there is no evidence of a direct terrorist connection, the transaction should still be reported to the JFIU if it looks suspicious for other reasons. It may emerge subsequently that there is a terrorist link. The contact information of the JFIU is as follows:-

The Joint Financial Intelligence Unit  
16th Floor, Arsenal House  
Police Headquarters  
Hong Kong  
Email Address: [jfiu@police.gov.hk](mailto:jfiu@police.gov.hk)  
Fax No.: (852) 2529 4013  
Tel. No.: (852) 2866 3366