

**Full commencement of
United Nations (Anti-Terrorism Measures) Ordinance
and
United Nations (Anti-Terrorism Measures) (Amendment)
Ordinance 2004**

The United Nations (Anti-Terrorism Measures) Ordinance (Cap.575) (“the Ordinance”) and the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 (“the Amendment Ordinance”) will be fully implemented on 1st January 2011.

Background

2. The Administration enacted the Ordinance and the Amendment Ordinance in 2002 and 2004 respectively to fulfill Hong Kong’s international obligations to combat acts of terrorism and terrorist financing under United Nations Security Council Resolution 1373¹, the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF)² and other relevant International Conventions³.

3. The Administration published in the Gazette in 2002 legal notice 137, and legal notices 172 and 173 in 2004 to commence the operation of certain provisions of the Ordinance and the Amendment Ordinance. The other provisions of the Ordinance and the Amendment Ordinance which remain uncommenced (“the uncommenced provisions”) can only take effect after the relevant court rules and code of practice have been made. The court rules and code of practice have been passed by LegCo in December 2009 and July 2010 respectively. Accordingly, the Administration published in the Gazette legal notices 133 and 134 in October 2010 to bring the uncommenced provisions, including section 6 of the Ordinance, into operation on 1st January 2011.

¹ United Nations Security Council Resolution 1373, which was passed on 28 September 2001, aims at combatting international terrorism on various fronts, including measures against terrorist financing. United Nations Security Council Resolution 1373 is binding on all Member States. The Central People’s Government gave instructions to the HKSARG in October 2001 to implement the resolution.

² Hong Kong has been an active member of the FATF, an inter-governmental body which recommends standards and best practices in countering money laundering and terrorist financing. In October 2001, FATF made eight Special Recommendations, setting out the key legislative and regulatory steps that the FATF considers jurisdictions should adopt to stop terrorist financing. In October 2004, FATF made the ninth Special Recommendation.

³ The relevant Conventions include the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

Freezing Provisions under the Ordinance

4. Section 6 of the Ordinance authorizes the Secretary for Security to freeze the property of terrorists or of persons connected with terrorists. Section 14(2) and (3) of the Ordinance provides that it is an offence to knowingly contravene a notice under section 6(1) or contravene a requirement under section 6(7) without reasonable excuse. Section 15 of the Ordinance further sets out the supplementary provisions applicable to the licenses mentioned in section 6(1) or 8 of the Ordinance. As regards the application to the Court for a licence or variation of a licence and the application for revocation or variation of a notice or direction under section 6, the relevant provisions are set out in section 17(1)(b), (2), (3)(b)(iii), (4), (5), (6) and (7) of the Ordinance. The requirements of section 6, section 14(2) and (3), section 15 and section 17(1)(b), (2), (3)(b)(iii), (4), (5), (6) and (7) of the Ordinance are set out in full at **Annex A**.

5. Pursuant to the provisions set out above, if the Secretary for Security has reasonable grounds to suspect that any property held by any person is terrorist property, he may, by notice in writing (sample at **Annex B**), specify the property and direct that a person shall not, directly or indirectly, deal with the property except under the authority of a licence granted by him (samples at **Annex C** and **Annex D**). Section 6 (10) also provides that the Secretary for Security may, in a notice under section 6(1), give a direction that an authorized officer may, for the purpose of preventing the frozen property being removed from the HKSAR, seize the property and give directions to deal with the property concerned (sample at **Annex E**).

6. For details, please refer to the provisions of the Ordinance (Ordinance No. 27 of 2002)⁴ and its Amendment Ordinance (Ordinance No. 21 of 2004)⁵. Please consult a solicitor and/or a barrister for questions on the legal responsibilities and legal rights provided under the Ordinance. For enquiries about the notice or licence under section 6 of the Ordinance from law enforcement perspectives, please contact the Financial Investigations Division, Narcotics Bureau of the Hong Kong Police Force at (852) 2860 3401.

⁴ <<http://www.legco.gov.hk/yr01-02/english/ord/ord027-02-e.pdf>> and <<http://www.legco.gov.hk/yr01-02/chinese/ord/ord027-02-c.pdf>>

⁵ <<http://www.legco.gov.hk/yr03-04/english/ord/ord021-04-e.pdf>> and <<http://www.legco.gov.hk/yr03-04/chinese/ord/ord021-04-c.pdf>>

Annex A

Section 6 : Freezing of Funds

Section 6 of the Ordinance provides that –

- “(1) *Where the Secretary has reasonable grounds to suspect that any property held by any person is terrorist property, the Secretary may, by notice in writing specifying the property, direct that a person shall not, directly or indirectly, deal with the property except under the authority of a licence granted by the Secretary.*
- (2) *Where-*
- (a) *property is specified in a notice under subsection (1); and*
 - (b) *either-*
 - (i) *the Secretary ceases to have reasonable grounds to suspect that the property is terrorist property; or*
 - (ii) *the Court has granted an application under section 17 which relates to the property,*
- then the Secretary shall, as soon as is practicable, by notice in writing revoke the notice to the extent that it relates to the property.*
- (3) *Subject to subsection (4), a notice under subsection (1) which has not been revoked under subsection (2) shall expire on the 2nd anniversary of the date on which it was signed by the Secretary.*
- (4) *Where an application under section 13 has been made to the Court -*
- (a) *in respect of property, or part thereof, specified in a notice under subsection (1); and*
 - (b) *before the expiration of the notice under subsection (3),*
- then, subject to subsection (2), the notice shall not expire in relation to the property, or part thereof, as the case may be, until the date, if any, on which-*
- (c) *proceedings relating to the application (including proceedings relating to any appeal) are no longer pending; and*
 - (d) *the property, or part thereof, as the case may be, has not been forfeited in consequence of those proceedings.*

(Amended 21 of 2004 s. 5)

- (5) Where a notice under subsection (1) has been revoked under subsection (2) or has expired under subsection (3) or (4), the Secretary shall not again exercise the power under subsection (1) in respect of the property specified in the notice unless there has been a material change in the grounds in respect of which the Secretary proposes to again exercise that power in respect of the property. (Amended 21 of 2004 s. 5)*
- (6) For the avoidance of doubt, it is hereby declared that the revocation under subsection (2), or the expiry under subsection (3) or (4), of a notice under subsection (1) shall not affect the application of section 8 to the property which was specified in the notice. (Amended 21 of 2004 s. 5)*
- (7) A notice under subsection (1) or (2) shall be given to the person holding the property concerned (“the recipient”) and shall require the recipient to send a copy of the notice without delay to each person, if any, whose property it is, or for or on behalf of whom the property is held (“the owner”). (Replaced 21 of 2004 s. 5)*
- (8) A recipient shall be treated as complying with subsection (7) if, without delay, he sends a copy of the notice mentioned in that subsection to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.*
- (9) Where any property the subject of a notice under subsection (1) or (2) is immovable property, the notice shall, for the purpose of the Land Registration Ordinance (Cap. 128)—*

 - (a) be deemed to be an instrument affecting land; and*
 - (b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit.*
- (10) The Secretary may, in a notice under subsection (1)—*

 - (a) give a direction that an authorized officer may, for the purpose of preventing any property the subject of the notice being removed from the HKSAR, seize the property;*
 - (b) give directions in accordance with which any such*

property so seized shall be dealt with.

- (11) *The Secretary may exercise the powers under subsection (10) only if he has reasonable cause to suspect that the relevant property will be removed from the HKSAR.*
- (12) *In subsection (1), “deal with” (處理), in relation to property, means –*
- (a) to receive or acquire the property;*
 - (b) to conceal or disguise the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);*
 - (c) to dispose of or convert the property;*
 - (d) to bring into or remove from the HKSAR the property; or*
 - (e) to use the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise). (Amended 21 of 2004, s5)”*

Section 14 : Offences

Section 14(2) and (3) of the Ordinance provides that -

- “(2) A person who knowingly contravenes a notice under section 6(1) commits an offence and is liable- (Amended 21 of 2004 s.14)*
- (a) on conviction on indictment to a fine and to imprisonment for 7 years;*
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.*
- (3) A person who, without reasonable excuse, contravenes a requirement under section 6(7) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 months.”*

Section 15 : Supplementary Provisions applicable to Licences mentioned in Section 6(1) or (8)

Section 15 of the Ordinance provides that –

“(1) *Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 6(1)-*

(a) such conditions may -

(i) relate to specifying the manner in which the property to which the licence relates shall be held from time to time;

(ii) relate to the appointment of a receiver to take possession of the property and to deal with it in a manner which preserves the value of the property or any other property into which it is converted; and

(iii) require a person holding the property to give possession of the property to a receiver, if any, appointed in respect of the property; and

(Replaced 21 of 2004 s.15)

(b) such exceptions may relate but are not limited to-

(i) the reasonable living expenses;

(ii) the reasonable legal expenses; and

(iii) the payments liable to be made under the Employment Ordinance (Cap 57),

of any person by, for or on behalf of whom the funds are held.

(2) Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 8, such exceptions may relate to the reasonable living expenses, reasonable legal expenses and the payments liable to be made under the Employment Ordinance (Cap 57) of the person second-mentioned in that section to which the licence relates.”

Section 17 : Applications to Court of First Instance

Section 17(1)(b), (2), (3)(b)(iii), (4), (5), (6) and (7) of the Ordinance provides that –

- “(1) *Where-*
- (b) *a notice has been given under section 6(1), then any person by, for or on behalf of whom any property specified in the notice is held, or any other person in respect of whom the Court is satisfied that the person is affected by the notice, may at any time make an application to the Court for the notice to be revoked to the extent that it relates to the property so specified. (Amended 21 of 2004 s. 16) (Amended 21 of 2004 s. 21)*
- (2) *A person who makes an application under subsection (1) shall give a copy of the application (and an affidavit, if any, and other relevant documents, if any, in support)-*
- (a) *to the Secretary for Justice and, in the case of an application under subsection (1)(a)(ii) or (b), to any other person by, for or on behalf of whom the property concerned is held; and (Amended 21 of 2004 s. 16)*
- (b) *not later than 7 days before the date fixed for the hearing of the application or such shorter period as the Court may permit pursuant to rules of court. (Amended 21 of 2004 s. 21)*
- (3) *On an application under subsection (1)-*
- (b) *the Court shall grant the application unless- (Amended 21 of 2004 s. 21)*
- (iii) *where subsection (1)(b) is applicable, the Court is satisfied that there are reasonable grounds to suspect that the property specified in the notice concerned under section 6(1) is terrorist property. (Amended 21 of 2004 s.16)*
- (4) *An application for-*
- (aa) *the revocation or variation of a direction mentioned in section 6(10) may be made by any person affected by the notice under section 6(1) in which the direction appears; (Added 21 of 2004 s.16)*
- (a) *the grant of a licence mentioned in section 6(1) or 8 may be made by any person affected by the operation of that*

section; or

(b) the variation of a licence mentioned in section 6(1) or 8 may be made by any person affected by the licence.

(5) A person who makes an application under subsection (4) shall give a copy of the application (and affidavit, if any, and other relevant documents, if any, in support)-

(a) to the Secretary for Justice and to any other person affected by -

(i) the notice under section 6(1) concerned;

(ii) the operation concerned of section 6(1) or 8; or

(iii) the licence concerned,

as the case may be; and (Replaced 21 of 2004 s.16)

(b) not later than 7 days before the date fixed for the hearing of the application or such shorter period as the Court may permit pursuant to rules of court. (Amended 21 of 2004 s. 21)

(6) The Court shall not grant an application under subsection (4) unless it is satisfied that it is reasonable in all the circumstances of the case to do so. (Amended 21 of 2004 s. 21)

(7) Where-

(a) proceedings relating to an application under subsection (4) (including proceedings relating to any appeal) are no longer pending; and

(b) either -

(i) the direction to which the application relates -

(A) is, or is still, required to be revoked; or

(B) is, or is still, required to be varied; or

(ii) the licence to which the application relates -

(A) is, or is still, required to be granted; or

(B) is, or is still, required to be varied,

as the case may be,

(Replaced 21 of 2004 s.16)

then the Secretary shall, as soon as is practicable, cause the direction to be revoked or varied, or the licence to be granted or varied, as the case may be, accordingly. (Amended 21 of 2004 s.16)”

Annex B

Notice No. XXX

This Notice has important legal consequences. It is in your interest to read the provisions of the Ordinance set out in this Notice, and to seek legal advice in relation to your rights and obligations under the Notice.

**Notice Under Section 6(1) of
United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575**

TO: *[name of person against whom the notice is made and the address]*

WHEREAS the Secretary for Security (“the Secretary”) has reasonable grounds to suspect that the property specified below, namely,

[xxxx]

is terrorist property (“the specified property”),

Pursuant to section 6(1) of the United Nations (Anti-Terrorism Measures) Ordinance (“the Ordinance”), you the said [xxxx], and *[name other persons prohibited by the Notice]* being the [xxxx] of the specified property, are by this Notice hereby directed not to deal with the specified property, whether directly or indirectly, except under the authority of a licence which may be granted by the Secretary.

2. For the purposes of this Notice, “deal with”, in relation to the specified property, has the meaning ascribed to it in section 6(12) of the Ordinance, namely:

- (a) to receive or acquire the property;
- (b) to conceal or disguise the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) to dispose of or covert the property;
- (d) to bring into or remove from the HKSAR the property; or
- (e) to use the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise).

3. This Notice shall expire, namely at the midnight on *[date of*

expiration], unless:

- (a) revoked at any earlier date; or
- (b) proceedings relating to an application under section 13 of the Ordinance are pending in respect of the specified property or any part thereof, in which case this Notice shall remain effective in respect of the specified property which is subject to those proceedings until those proceedings are no longer pending and the specified property or any part thereof has not been forfeited in consequence of those proceedings.

4. Any person who knowingly contravenes first paragraph and paragraph 2 of this Notice commits an offence and is liable on indictment to a fine and to imprisonment for 7 years; or on summary conviction to a fine at level 6 (a maximum fine of HK\$100,000) and to imprisonment for 1 year.

5. Pursuant to section 6(7) of the Ordinance, you [*if the addressee of this Notice is not the property owner*] are requested to send a copy of this Notice, without delay, to each person, whose property it is, or for or on behalf of whom the property is held (“the owner”). You will be treated as complying with this requirement if, without delay, you send a copy of this Notice to the owner at his / her last known address or, if you do not have an address for the owner, you make arrangements for a copy of this Notice to be supplied to the owner at the first available opportunity. If you, without reasonable excuse, fail to comply with this requirement, you commit an offence and are liable on conviction to be fined at level 6 (a maximum fine of HK\$100,000) and to imprisonment for 3 months.

6. Pursuant to section 17(1)(b) of the Ordinance, you, or any person by, for or on behalf of whom the property specified in this Notice is held, or any other persons affected by this Notice, may at any time make an application to the Court of First Instance for this Notice to be revoked. The application procedure is set out in section 17(2) of the Ordinance and Rule 23 of Order 117A of the Rules of the High Court, Cap. 4A.

7. You may make an application in writing to the Secretary for a licence to deal with the property under section 6(1) of the Ordinance. If the Secretary refuses to grant a licence, you or any person affected by the operation of section 6 of the Ordinance may apply to the Court of First Instance for the grant of a licence. You or any person affected by the licence may also apply to the Court of First Instance for the variation of licence. The application procedures for the grant or variation of a licence

are set out in section 17(4) and (5) of the Ordinance and Rule 24 of Order 117A of the Rules of the High Court, Cap. 4A.

8. Enquiries on any matter concerning this Notice may be addressed to [*contact details of relevant officers of the Security Bureau*].

Dated this day of 20

Secretary for Security

SAMPLE

Licence No. XXX

**Licence Granted by Secretary for Security
Under Section 6(1) of
United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575**

TO: *[name and address of the person(s) to whom this licence is granted]*

1. This licence is granted pursuant to section 6(1) of the United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 (“the Ordinance”), in respect of the Notice made by the Secretary for Security on (date) pursuant to section 6(1) of the Ordinance directing that xxxx shall not, directly or indirectly, deal with the following property (“the specified property”):

[details and descriptions of the specified property, and the address in case of premises].

2. By virtue of this licence, you, the said xxx are permitted to xxx *[describe permitted actions/activities. Make reference to the purposes filed by the applicant for the application of a licence, e.g. to withdraw a sum of HK\$ (amount of the money) from the bank account no. 123 maintained with XXX Bank as living expenses or for paying legal expenses].*

3. This licence is subject to the following conditions *(if applicable)*:-

- (a) XXX
- (b) XXX
- (c) XXX

[Reference may be made to Section 15 of the Ordinance]

4. This licence takes *[effect from (date and time)]/[immediate effect and will continue]* until (date and time) or until revocation of the Notice if earlier*.

5. Pursuant to section 17(4)(b) of the Ordinance, any person affected by a licence made under section 6(1) of the Ordinance may apply to the Court of First Instance for the variation of the licence. The relevant application

procedures are set out in the section 17(5) of the Ordinance and Rule 24 of Order 117A of the Rules of the High Court, Cap. 4A.

6. Enquiries on any matter concerning this licence may be addressed to [*contact details of the relevant officers of the Security Bureau*].

Dated this day of 20

_____ Secretary for Security

* *delete as appropriate*

SAMPLE

Annex D

Licence No. XXX

**Licence Granted by Secretary for Security
Under Section 6(1) of
United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575**

TO: *[persons of a particular description for situations in which a non-specific licence will be granted to a class of persons]*

1. This licence is granted pursuant to section 6(1) of the United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575 (“the Ordinance”), in respect of the Notice made by the Secretary for Security on (date) pursuant to section 6(1) of the Ordinance directing that xxx shall not, directly or indirectly, deal with the following property (“the specified property”):

[details and descriptions of the specified property, and the address in case of premises].

2. By virtue of this licence, *[persons of a particular description, i.e. employees of a company]* are permitted to xxx *[describe permitted actions/activities in relation to the specified property. Make reference to the purposes filed by the applicant for the application of a licence. For example, employees of the ABC company are permitted to withdraw a sum of HK\$XXX per month as salary payment from the bank account no. DEF maintained with XYZ Bank under the name of XXXX [the subject person of the freezing notice]*

3. This licence is subject to the following conditions *(if applicable)*:-

- (a) XXX
- (b) XXX
- (c) XXX

(Reference may be made to Section 15 of the Ordinance)

4. This licence takes *[effect from (date and time)]/[immediate effect and will continue]* until (date and time) or until revocation of the Notice if earlier*.

5. Pursuant to section 17(4)(b) of the Ordinance, any person affected by a licence made under section 6(1) of the Ordinance may apply to the Court of First Instance for the variation of the licence. The relevant application procedures are set out in the section 17(5) of the Ordinance and Rule 24 of Order 117A of the Rules of the High Court, Cap. 4A.

6. Enquiries on any matter concerning this licence may be addressed to [*contact details of the relevant officers of the Security Bureau*].

Dated this day of 20

Secretary for Security

** delete as appropriate*

SAMPLE

Notice No. XXX

This Notice has important legal consequences. It is in your interest to read the provisions of the Ordinance set out in this Notice, and to seek legal advice in relation to your rights and obligations under the Notice.

Notice Under Section 6(1) with Direction Under Section 6(10) of United Nations (Anti-Terrorism Measures) Ordinance, Cap. 575

TO: [*name of person against whom the Notice is made and the address*]

WHEREAS the Secretary for Security (“the Secretary”) has reasonable grounds to suspect that the property specified below, namely,

[xxxx]

is terrorist property (“the specified property”),

Pursuant to section 6(1) of the United Nations (Anti-Terrorism Measures) Ordinance (“the Ordinance”), you the said [xxxx], and [*name other persons prohibited by the Notice*] being the [xxxx] of the specified property, are by this Notice hereby directed not to deal with the specified property, whether directly or indirectly, except under the authority of a licence which may be granted by the Secretary.

2. For the purposes of this Notice, “deal with”, in relation to the specified property, has the meaning ascribed to it in section 6(12) of the Ordinance, namely:

- (a) to receive or acquire the property;
- (b) to conceal or disguise the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) to dispose of or covert the property;
- (d) to bring into or remove from the HKSAR the property; or
- (e) to use the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise).

3. Pursuant to section 6(10) of the Ordinance, I have directed the authorised officer [xxxx] to seize the specified property, and have made directions in relation to how it shall be dealt with after its seizure.

4. This Notice shall expire, namely at the midnight on [*date of expiration*], unless:

- (a) revoked at any earlier date; or
- (b) proceedings relating to an application under section 13 of the Ordinance are pending in respect of the specified property or any part thereof, in which case this Notice shall remain effective in respect of the specified property which is subject to those proceedings until those proceedings are no longer pending and the specified property or any part thereof has not been forfeited in consequence of those proceedings.

5. Any person who knowingly contravenes the first paragraph and paragraph 2 of this Notice commits an offence and is liable on indictment to a fine and to imprisonment for 7 years; or on summary conviction to a fine at level 6 (a maximum fine of HK\$100,000) and to imprisonment for 1 year.

6. Pursuant to section 6(7) of the Ordinance, you [*if the addressee of this Notice is not the property owner*] are requested to send a copy of this Notice, without delay, to each person, whose property it is, or for or on behalf of whom the property is held (“the owner”). You will be treated as complying with this requirement if, without delay, you send a copy of this Notice to the owner at his / her last known address or, if you do not have an address for the owner, you make arrangements for a copy of this Notice to be supplied to the owner at the first available opportunity. If you, without reasonable excuse, fail to comply with this requirement, you commit an offence and are liable on conviction to be fined at level 6 (a maximum fine of HK\$100,000) and to imprisonment for 3 months.

7. Pursuant to section 17(1)(b) of the Ordinance, you, or any person by, for or on behalf of whom the property specified in this Notice is held, or any other persons affected by this Notice, may at any time make an application to the Court of First Instance for this Notice to be revoked. The application procedure is set out in section 17(2) of the Ordinance and Rule 23 of Order 117A of the Rules of the High Court, Cap. 4A.

8. Pursuant to section 17(4)(aa) of the Ordinance, any person affected by the direction mentioned in paragraph 3 of this Notice may apply to the

Court of First Instance for the revocation or variation of the direction. The application procedures for the revocation or variation of the direction are set out in section 17(4) and (5) of the Ordinance and Rule 24 of Order 117A of the Rules of the High Court, Cap. 4A.

9. You may make an application in writing to the Secretary for a licence to deal with the property under section 6(1) of the Ordinance. If the Secretary refuses to grant a licence, you or any person affected by the operation of section 6 of the Ordinance may apply to the Court of First Instance for the grant of a licence. You or any person affected by the licence may also apply to the Court of First Instance for the variation of licence. The application procedures for the grant or variation of a licence are set out in the section 17(4) and (5) of the Ordinance and Rule 24 of Order 117A of the Rules of the High Court, Cap. 4A.

10. Enquiries on any matter concerning this Notice may be addressed to [*contact details of the relevant officers of the Security Bureau*].

Dated this day of 20

Secretary for Security