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Hong Kong: New U.N. anti-terrorism bill before LegCo covers broader array of asset forfeiture, say officials

Mar 08 2012 Ajay Shamdasani in Hong Kong

The United Nations Anti-Terrorism Measures (Amendment) (Bill 2012) should have a limited effect on anti-money laundering (AML) compliance woes for Hong Kong's banking and financial institutions, industry officials said. They acknowledged however that the U.N. bill could potentially ensnare money as well as any assets.

"The U.N.'s anti-terrorism measures are interesting because they apply not just to funds but also to any assets used for terrorism. While it's wider in what it 'catches' than existing local laws, the cost of compliance of the U.N. bill should not be heavy," Matthias Feldmann, a partner with law firm Clifford Chance in Hong Kong, told Thomson Reuters.

At the meeting of the territory's Executive Council on February 7, 2012, the Council advised, and Donald Tsang, chief executive, ordered, that the bill be introduced to the Legislative Council (LegCo). The bill was gazetted before LegCo on February 22, 2012, where the city's Security Bureau presented a brief stating that the bill's purpose was to implement two outstanding recommendations of the Financial Action Task Force on Money Laundering (FATF) as set out in its 2008 Mutual Evaluation Report on Hong Kong.

The bill's aim is to amend several essential concepts, such as replacement of the term "funds" with the word "property", and to expand prohibitions so that they also cover the collection of property for terrorists and their associates, relating to implementation of counter-terrorism measures. The bill also amends the definition of terrorist financing under Hong Kong's Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO), which seeks to maintain consistency between the definition under AMLO and ss7 and 8 of the United Nations (Anti-Terrorism Measures) Ordinance as amended by the bill.

Simon Young, an associate professor of law at the University of Hong Kong (HKU) and director of its Centre for Comparative and Public Law, has been urging the government to encompass all terrorist property, not just money, within the legal definition of terrorist financing for the past decade. "I told the government they should extend the statutory regime to all [not only funds] as early as 2002 when the original bill was being debated. Their response … they didn't see any need for the extension at that time. It just goes to show how shortsighted their thinking was back then," he told Thomson Reuters.

Young added that U.N. Security Council Resolution 1398 had to be applied to property generally, and not only to funds. "The FATF's 2008 review probably reinforced the need to have the anti-terror regime applied more generally to property," he said.

Jay Jhaveri, World-Check's head for Asian operations in Singapore, indicated that the Hong Kong government's recent communiqué on the U.N. bill served as a reminder that "We, as a society, and not just in financial services, must not let our guard down for terrorist-related activities, specifically funding, and for being vigilant for harbouring, aiding and abetting the proceeds of crime."

AMLO a bigger burden than U.N. bill

Feldmann said that the compliance burden for local financial institutions under the U.N. bill would not be substantial since the concepts being introduced were not new. Although he acknowledged the bill provided for the forfeiture of terrorist property and up to 14 years' imprisonment, Feldmann said it would still not pose as great a burden as the requirements of AMLO. "It is not comparable to AMLO, which sets up a detailed, comprehensive compliance framework for institutions; AMLO is not just a consolidation of Hong Kong's [existing] money laundering laws but imposes extremely heavy compliance costs," he said.

Similarly, a spokeswoman from the Hong Kong Monetary Authority (HKMA), the territory's *de facto* central bank, told Thomson Reuters that while the amendments were not expected materially to affect the operations of financial institutions, compliance personnel needed "to take note of the revised concept of terrorist financing in meeting their statutory obligations when the amendments are enacted and come into operation".

In 2008, the FATF, the Paris-based standard setter for global AML and countering terrorist financing (CTF) compliance norms, compiled a report on Hong Kong's success in meeting its recommendations in combating money laundering and terrorist financing. While recognising the city's strong overall money laundering regime, the report made a series of recommendations to improve Hong Kong's compliance with FATF's recommendations.

Specifically, the report concluded that Hong Kong needed to implement effective legislative measures to address certain deficiencies in its money laundering regime. These included improvements to compliance, with two major recommendations: criminalising the financing of terrorism, terrorist acts and terrorist organisations; and fully implementing U.N. requirements on CTF. Hong Kong's major trading partners, such as the U.S., the UK, Canada, Australia and Singapore, have already complied with the two recommendations mentioned above.

Christopher Wilson, a partner with accounting firm Deloitte Touche Tohmatsu in Hong Kong and head of its AML and sanctions practice in Greater China, said: "There shouldn't be an additional significant impact on compliance officers as the [U.N. bill] amendment is to clarify definitions." He added that compliance officers needed to ensure that their policies and procedures reflected any new definitions and systems changes that had to be made.

Reflecting on the U.N. bill, Nigel Morris-Cotterill, head of the Anti-Money Laundering Network, explained that most properly advised businesses already had the necessary compliance measures in place, "because of the international business they do, because of their overseas operations or because they are subsidiaries of foreign regulated businesses". He added that the "push-down effect" of regulatory regimes through the "family tree of businesses" meant "home" or "host" provisions applied to many businesses.

Morris-Cotterill stressed that compliance systems ought already to be in place. "The only material difference, therefore, should be to check watch lists carefully and to widen the scope of activity which comes within both the internal and external transaction reporting regimes," he said.

"Largely it's [the U.N. bill's amendments] just tidying up to ensure that the legal and regulatory position properly reflects the existing reality, and to ensure that wholly domestic businesses are on the same footing as those with international operations," he said.

HKU's Young agreed that the U.N. bill would not make much difference to local practice: "Though, technically, property is broader than funds, banks … already watch for property of indictable offences, so this will not result in any major shift in practice."

Middle Eastern motivations?

Although the timing, tenor and tone of the U.N. bill's amendments might suggest that the true end game is further to isolate nations such as Syria and Iran from the global economy and financial system, in fact many take the view that Hong Kong's decision to introduce the measures has been done for rather more practical reasons.

Julian Russell, managing director of Pacific Risk, a political and economic risk consultancy in Hong Kong, said: "The amendments would take a long time to prepare. Since they are partly a consequence of the 2008 [FATF] review, I do not see an ulterior motive due to current politically-motivated violence in the Middle East."

Likewise, Clifford Chance's Feldmann stressed that, considering how long it took to draft a bill, the more plausible trigger was the territory's 2008 FATF assessment. "Drafting AMLO was a response to that. There's a clear effort by the local government to let people know that we're not an offshore haven for laundering funds and that we're following the FATF's recommendations," he said.

Deloitte's Wilson emphasised that the city therefore needed to conform with U.N. sanctions, and that any changes needed to be reflected in its legislation.

AMLO is set to take effect on April 1, 2012.