OFFICE OF
THE DIRECTOR OF
PUBLIC PROSECUTIONS
CAYMAN ISLANDS

POLICY – TERRORISM / TERRORIST FINANCING OFFENCES

PREAMBLE

Offences relating to the financing of terrorism are very likely to be extremely serious offences. They may lead, directly or indirectly to loss of life on a large scale, as well as serious harm in other forms.

If carried out within the Cayman Islands, any such financing offences are likely to cause serious reputational damage to the jurisdiction.

The commitment of the Cayman Islands to the fight against global terrorist financing can be demonstrated by the robust use of the criminal justice system, and the civil recovery regime, to deprive offenders of assets linked to such offending.

If the evidential test is met, a terrorist financing ("TF") prosecution would normally be in the public interest. This is particularly the case where the facts involve areas of identified high TF risk in the National Terrorist Financing Risk Assessment of 2019 (Annex A).

All counsel must be particularly alert to matters which fall within the identified risk profile of this jurisdiction, namely cases involving one of the 19 jurisdictions identified in the risk assessment or relating to the movement of funds utilising one of the 3 identified typologies, namely:

i. ***the use of financial institutions to move funds through the jurisdiction;***

ii. ***the use of local financial service providers to facilitate the movement of funds (whether or not such funds enter the jurisdiction);***

iii. ***the use of legal persons registered in the jurisdiction to facilitate the movement of funds (whether or not such funds enter the jurisdiction);***

Any other national or sectoral risk assessments impacting the TF risk of the jurisdiction will also be considered.

Terrorist Financing Offences

1. Under international standards a terrorist financing offence should extend to any person who willfully **provides or collects** funds or other assets by any means, directly or indirectly, with the unlawful intention that they should be used, in full or in part:
   (a) to carry out a terrorist act(s);
   (b) by a terrorist organisation; or
   (c) by an individual terrorist.

2. Terrorist financing differs from money laundering ("ML") in that it extends to funds or other assets from a legitimate as well as an illegitimate source.

3. Terrorist financing does not require that the funds or other assets:
   (a) were actually used to carry out or attempt a terrorist attack(s); or
   (b) are linked to a specific terrorist act.[1]

4. The organisational requirements of terrorists and terrorist organisations include but are not limited to propaganda, recruitment, travel and acquiring weapons and the general costs involved in the commission of terrorist atrocities, such as car hire and day to day living expenses.

5. Terrorist financiers are thus financial supporters of terrorist operations. They may be involved in **four distinct but interrelated** roles: ***donor, fundraiser, facilitator,* and *operative***. More specific examples of these different interrelated roles will help explain how terrorist financing in practice can occur, but are not to be considered as legal definitions.

[1] See sections 19 to 22 of the Terrorism Law (2018 Revision)

Donors are individuals who, wittingly or unwittingly, support the terrorist organisation's goals through the provision of financial contributions and usually have limited interaction with the group beyond monetary support.

Fundraisers are individuals who actively solicit funds on behalf of the terrorist organisation and are often more engaged in the movement and concealment of money.

Facilitators are directly associated with terrorist organisation leadership and operatives, often directly involved in promoting the terrorist agenda and knowledgeable of operational plans.

Finally, the *operative* is an individual committed to conducting a terrorist attack and, through either funding provided by the terrorist organisation or via self-funding, procures the necessary resources to this end.

6. One of the overarching objectives in the case of TF is to detect and disrupt current terrorist activity and thereby prevent the occurrence of planned or potential terrorist acts. This means that law enforcement or security services are often required to intervene in order to prevent an attack by arresting suspects and seizing goods and funds before they have enough evidence to charge a TF offence. In these circumstances, prosecutors should consider whether other criminal justice measures or regulatory measures can be applied where it is not practicable to seek a conviction for an offence involving TF.

Assignment of Counsel

7. Once an investigation into a potential terrorism / TF offence has been opened by the R.C.I.P.S., the Customs and Border Control Service, or the Anti-Corruption Commission, the DPP will be notified as soon as reasonably practical, and within no more than 24 hours.

8. If not already done, the DPP will also ensure that the Governor and the Commissioner of Police are notified (unless operational considerations prevent such steps being taken).[2] The DPP will provide any immediate investigative advice as and when necessary.

9. Within seven (7) days thereafter the responsibility for providing advice and assistance to the investigation will be assigned to Crown Counsel 1 (Financial Crime) ("CC1FC"), or Crown Counsel 1 (Fraud) ("CC1F"), as directed by the DPP.

10. Within 14 days thereafter Counsel assigned must seek a case conference with the investigating officer (unless an earlier conference is requested by the investigator). Counsel should request confirmation that checks have been made by the investigating officer as to whether any person / entity under investigation is on any relevant sanctions list with specific reference to CIMA's website and the Sanctions Co-Coordinator. Regular checks will be required in longer investigations.

11. The DPP should thereafter be briefed by CC1FC or CC1F every 14 days as to the progress of the investigation.

12. For each investigation, Counsel assigned will keep a log of the following:
    a. Conferences held;
    b. Notes from the meeting;
    c. Recommended actions;
    d. Results from the actions;
    e. Pre charge advice; and
    f. Applications made (and the outcome).

[2] in the event of a terrorism offence the Cayman Islands Counter-Terrorism Team should also be notified.

13. If, at any stage of an investigation, a request is made for advice / assistance in relation to the making of a restraint order or account monitoring order, assigned counsel will treat such a request with the utmost urgency.

14. Any charging advice requested at the conclusion of the investigation will be provided, where practicable, by Counsel assigned at the investigative stage. Once a file has been submitted for a charging decision, assigned Counsel will give the file the highest priority.

15. In the event that criminal charges are not to be pursued, assigned Counsel will consider whether civil recovery proceedings may nevertheless be instigated and advise accordingly.

Applicable Legislation / Potential Offences

16. All Counsel assigned are expected to be familiar with the offences set out in the Terrorism Law (2018 Revision), as well as the specific investigative / preventative powers set out therein, and in particular the definition of terrorist financing:
"terrorist financing" means the financing of acts of terrorism, of terrorists and terrorist organisations and includes offences contrary to sections 19, 20, 21 and 22;"

17. In particular, all counsel will ensure that they are familiar with the definition of "terrorist property" as set out in s.18 of the Terrorism Law (2018 Revision): "*the proceeds of, or used in, or intended or allocated for use in, the financing of acts of terrorism, terrorists or terrorist organisations*". Such property can thus have a qualitative difference from "criminal property" as defined in proceeds of crime legislation.

18. Where a charge relating to terrorism or terrorist financing is authorised, the case will be assigned to Senior Crown Counsel, who will take conduct of the file until the conclusion of the proceedings, unless, in the view of the DPP, the charge can properly be dealt with by more junior counsel.

19. Offences under the Terrorism Law (2018 Revision) can carry a maximum sentence of up to 14 years imprisonment or a fine or both. In the event of conviction, Counsel will ensure that the Courts are fully aware of the seriousness of offending of this nature, and that sentencing guidelines for terrorism offences are brought to the attention of the court[3].

Parallel Financial Investigations

20. If there appears to be scope to conduct further investigations into the finances of a suspect / defendant over and above those of direct relevance to an offence, Counsel must advise in writing as to the necessity of a parallel financial investigation. Such advice must be given, and followed up, in every case in which a charge under the Terrorism Law (2018 Revision) is authorised.

21. Such investigations should be tailored to ensure that the definition of "terrorist property" under section 18 of the Terrorism Law (2018 Revision) is carefully considered, as well as the more conventional considerations relating to proceeds of crime under the Proceeds of Crime Law (2019 Revision).

22. Such investigations should trace what happened to the proceeds of the offence for the purposes of asset recovery. This involves identifying not only the direct proceeds but also the indirect proceeds, any instrumentalities, and any associates of the suspect / defendant who may be involved in the laundering process (or received a tainted gift).

23. In respect of all offences under the Terrorism Law (2018 Revision), law enforcement and prosecutors should ensure that investigations are actively pursued where the allegations appear to fall within the scope of the risks identified in our jurisdictional risk assessments. Such cases, when identified, should be given the highest priority for investigation, prosecution and asset recovery.

[3] The guidance issued by the Sentencing Council of England and Wales is of particular assistance in this regard.

24. In the event that a terrorist attack occurs within the Cayman Islands, a financial investigation should always take place into the funding of the attack in parallel with the investigation into the terrorism offence itself.

Civil Recovery

25. In the event that Counsel does not provide positive charging advice, they must consider whether civil recovery proceedings may be brought, and provide written advice accordingly. Civil recovery may be appropriate in cases where:
    a. the only known criminality is overseas, and there is no extra-territorial jurisdiction to pursue a criminal case in the Cayman Islands;
    b. there is no identifiable living suspect who is within the jurisdiction or realistically capable of being brought within the jurisdiction;
    c. terrorist property can be identified but cannot be linked to any individual suspect or offence;
    d. a law enforcement authority considers that an investigation could not generate sufficient evidence to create a realistic prospect of conviction;
    e. a criminal investigation has been conducted but the prosecuting authority considers that there is insufficient evidence to create a realistic prospect of conviction; or
    f. a prosecution has been conducted but has not resulted in a conviction.

25. Where a conviction is possible, a civil recovery might better serve the overall public in the following circumstances:
    a. where there is an urgent need to take action to prevent or stop offending which is causing immediate harm to the public, even though this might limit the availability of evidence for a future prosecution;
    b. it is not practicable to investigate all of those with a peripheral involvement in the criminality, and a strategic approach is taken in order to achieve a manageable and successful prosecution;

c. where a better deployment of resources to target someone with significant property which cannot be explained by legitimate income;
d. the offender is being prosecuted in another jurisdiction and is expected to receive a sentence that reflects the totality of the offending, so the public interest does not require a prosecution in the Cayman Islands.

Training

26. All Counsel will be provided with annual training in the areas of Terrorist Financing.

Statistics

27. CC1FC and CC1F will maintain statistics in relation to investigations covered by this policy document. The statistics will record the following:
    a. local enquiries;
    b. international enquiries;
    c. investigative court orders;
    d. civil recovery;
    e. asset tracing or freezing;
    f. joint investigation;
    g. predicate offence;
    h. any offending by a legal person; and
    i. liaison with supervisor or regulator re. regulatory breaches.

24th January 2020