**Chinese Taipei ME Assessor questions – technical compliance**

**中華臺北評鑑團提問-技術遵循**

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| **NO****編號** | **TC reference** | **Assessor question****評鑑團提問** | **Chinese Taipei Answer****中華台北回應** |
| 30(0731) | 5.3 | Please explain the scope of coverage of ‘property and property rights’, inter alia, whether they cover both legitimate and illegitimate sources] The TF offences extend to property and property [whether from legitimate or illegitimate source].請解釋“財物或財產上利益”的涵蓋範圍，除此之外，它們是否包括合法和非法來源？ | 1. 有關財物乃財產及物品之總稱，其中財產包括動產、不動產、現金、存款、外幣、有價證券、債權或其他財產上權利、其他具有經濟價值或得以金錢交易取得之利益；物品則係指不屬於財產之其他設備及用品。財產上利益，則是上述各財產類別所衍生之利益。
2. 我國資恐罪之成立，客觀構成要件為資恐者直接或間接為其收集或提供財物或財產上利益，「財物或財產上利益」並無合法或非法來源之規定，亦即資恐行為所使用之資金，無論係合法或非法來源，均可論處資恐罪。
3. The term property is a general term for property and articles. Property includes personal property, real estate, cash, deposits, foreign currency, securities, claims, or other property rights, and other interests of economic value or obtained through monetary transactions. Articles refer to other equipment and supplies not categorized as property. Property interests are the interests derived from the above categories of property.
4. The objective constitutive elements for determining terrorist financing offenses in Chinese Taipei are the direct or indirect collecting or providing of property or property interests by terrorist financiers; the source of the "property or property interests" is not stipulated as legal or illegal. Therefore funds used in any act of terrorist financing, regardless of whether from a legal or illegal source, constitute a terrorist financing offense.
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| 31(0731) | 5.6 | Article 25 of the Criminal Code stipulates that “An attempt is punishable only if specifically so provided and the punishment may be reduced from that for an accomplished offense.” What would be the case for Article 8 & 9 of the Counter Terrorism Financing Act? Would the sentencing be the same or reduced?]刑法第25條規定，未遂犯之處罰，以有特別規定者為限，並得按既遂犯之刑減輕之。依此，有關資恐防制法第8條和第9條的情況如何？ 資恐未遂的量刑會維持或減輕嗎？ | 1. 為遏止防範恐怖活動發生，並考量恐怖活動之施行，若未能及時察覺及遏止，將造成大規模傷亡，因此我國資恐罪之處罰，及於未遂犯，其資恐罪之成立，不以結果發生為必要。
2. 刑法第25條第2項規定，未遂犯之處罰「得」按既遂犯之刑減輕之，未遂犯之刑責非必然一定減輕，故有關資恐防制第8、9條訂有未遂犯之規定，故其刑責仍由承審法官依個案具體情事，於各該法定刑度內定之。中華臺北法院法官審理具體個案時，係依照訴訟當事人所涉及的一切情形，以犯罪行為人涉案責任為基礎，並審酌一切情狀，作為科刑輕重標準；這些情狀包括犯罪動機、目的；犯罪時所受刺激；犯罪手段；犯罪行為人生活狀況；犯罪行為人品行；犯罪行為人智識程度；犯罪行為人與被害人關係；犯罪行為人違反義務程度等項目綜合判斷，並在刑法或相關法規所規範的法定刑度內論科刑度。
3. In order to deter and prevent terrorism, and in consideration of the casualties caused on a massive scale if such acts are not detected and stopped in time, in Chinese Taipei, the punishment of a terrorist financing offense and the conviction of attempted terrorist financing are not necessarily based on the actual occurrence of a criminal act.
4. Article 25, Paragraph 2 of the Criminal Code stipulates that the punishment of an attempt ‘’may’’ be reduced from that of an accomplished offense. That is to say, the criminal liability of a criminal attempt is not necessarily reduced. Articles 8 and 9 of the Counter-Terrorism Financing Act have provisions for attempted offenses; therefore their criminal liabilities are still determined within the statutory sentence by the trial judge on a case-by-case basis. When a Chinese Taipei’s court judge hears a specific case, the severity of the sentencing is based on the alleged involvement of the litigant, the liability of the offender, and all the circumstances. The above circumstances include factors such as the motive and purpose of the offense; the stimulation perceived at the time of committing the offense; the means used for the commission of the offense; the offender’s lifestyle; the offender’s moral character; the offender’s degree of education and intelligence; the relationship between the offender and the victim(s); the seriousness of the offender’s obligation violation, and others.
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| 32(0731) | 5.10 | Do TF offences apply to crimes committed by foreigners abroad?資恐罪之追訴，是否適用於外國人在國外犯下的罪行？ | 1. 在外國犯罪，原則上為刑事訴訟法效力所不及，例外於我國人在國外犯刑法第 5、6、7 各條之罪，或外國人在國外犯刑法第 5、7 各條之罪時，或依刑法第8條，所犯之罪之最輕本刑為3年以上有期徒刑者，準用之，前揭情況始為我國刑事訴訟法效力所及。
2. 依資恐防制法規定，資助恐怖活動罪（第8條）最輕本刑為1年以上、資助恐怖組織罪（第9條）及資助恐怖分子罪（第9條）最輕本刑為6月以上，均非為刑法第8條所規範最輕本刑3年以上有期徒刑之罪。因此資恐罪之追訴，不適用於外國人在國外犯下資恐罪。
3. 依據刑法第 4 條規定，犯罪之行為或結果，有一在中華民國領域內者，為在中華民國領域內犯罪。因此外國籍資恐者在國外資助在我國領域內發生的恐怖攻擊行動，因恐怖攻擊可能導致殺人或重傷害之結果，前揭罪刑刑度皆為最輕本刑3年以上有期徒刑，因此則依刑法第8條準用外國人之規定，對其具有管轄權。然而資恐行為亦屬幫助他人實行犯罪行為者，係刑法第30條規範之幫助犯，因此外國人在國外資助我國恐怖攻擊之行為，仍可追訴其罪刑。
4. In principle, an offense committed abroad is beyond the jurisdictional powers of the Code of Criminal Procedure. Exceptions include an offense committed abroad by a national in violation of Article 5, 6, or 7 of the Criminal Code, an offense committed abroad by a foreigner in violation of Article 5 or 7 of the Criminal Code, or an offense with minimum principal punishment of not less than 3 years of imprisonment according to Article 8 of the Criminal Code that applies mutatis mutandis. As such, the aforementioned circumstances are within the jurisdictional powers of the Code of Criminal Procedure.
5. According to the Counter-Terrorism Financing Act, the crime of financing terrorist activities (Article 8) is punishable by imprisonment for not less than 1 year, and the financing of terrorist organizations (Article 9) and the financing of terrorists (Article 9) are punishable by imprisonment for not less than 6 months. These offenses do not carry the minimum penalty of 3 years of imprisonment as stipulated in Article 8 of the Criminal Code. Therefore, the prosecution of terrorist financing does not apply to foreigners who commit terrorist financing abroad.
6. Article 4 of the Criminal Code states "Where either the conduct or the result of an offense takes place within the territory of the Republic of China, the offense shall be considered as committed within the territory of the Republic of China." As a terrorist attack may result in homicide or severe injury, foreign nationality terrorist financiers of terrorist attacks that occur within the territory of Chinese Taipei are punishable by a minimum penalty of three years imprisonment, the minimum principal punishment for the two aforementioned types of offenses. Therefore, Chinese Taipei has jurisdiction over foreigners in accordance with the provisions of Article 8 of the Criminal Code that apply mutatis mutandis. Moreover, terrorist financing is also the aiding of another in the commission of a crime, and is an accessory according to Article 30 of the Criminal Code. Therefore, if a foreigner abroad funds a terrorist attack in Chinese Taipei, the foreigner can still be prosecuted as an accessory to a crime.
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