

联合国《制止向恐怖主义提供资助的国际公约》（1999）

International Convention for the Suppression of the Financing of Terrorism (1999)

背景：国际恐怖主义行为的次数和严重性在很大程度上依赖恐怖主义份子可以获得多少资助而定，因而向恐怖主义提供资助是整个国际社会严重关注的问题。在此以前多边法律文书并没有专门处理这种资助，所以迫切需要增强各国之间的国际合作，制定和采取有效的措施以防止向恐怖主义提供资助和通过起诉及惩罚实施恐怖主义行为者来加以制止。在 1999 年 12 月 9 日第五十四届联合国大会上，通过了《制止向恐怖主义提供资助的国际公约》，补充了现有的国际相关文书在此方面的不足。该公约于 2002 年生效。中国已于 2001 年 11 月 14 日签署了该公约。

该公约共 28 条，其中的第 18 条论及了在面临与反洗钱有关的可疑的交易情况时金融机构应采取的控制办法，同时通过缔约国加强进一步的国际合作来防止犯罪行为的发生。现将该公约中与反洗钱有关的内容摘录如下。

Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, inter alia,[1] by

adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate⁵, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof

of incorporation, including information concerning the customers name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith; [2]

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2

by considering:

(a) Measures for the supervision, including, for example, the licensing, of all money transmission agencies[3];

(b) Feasible measures to detect or monitor the physical cross-border transportation[4] of cash and bearer negotiable instruments[5], subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the

secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts^[6] and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

[1] *inter alia*:除了别的以外

5 *instigate*[5^{insti}^eit] 教唆

[2] Adopting regulations …… if they report their suspicions in good faith:制定条例迫使金融机构承担义务向主管当局迅速报告所有并无任何明显的经济目的或显而易见的合法目的的、复杂、不寻常的巨额交易以及不寻常的交易方式, 无须担心因诚意告发而承担违反限制披露信息的规定的刑事或民事责任。

[3] *money transmission agencies*:汇款机构

[4] *physical cross-border transportation*:实物跨境交送

[5] *bearer negotiable instruments*:不记名可转让票据, 无需背书即可转让。

[6] *Whereabouts*[5(h)wZErE5bauts] 所在