

立法會 *Legislative Council*

立法會LS45/02-03號文件

供《2002年聯合國制裁(阿富汗)(修訂)規例》及 《2002年聯合國制裁(安哥拉)(暫停實施)規例》 小組委員會參閱的文件

對《聯合國制裁條例》(第537章)的實施的意見

背景

小組委員會在審議《2002年聯合國制裁(阿富汗)(修訂)規例》(下稱“《阿富汗修訂規例》”)及《2002年聯合國制裁(安哥拉)(暫停實施)規例》期間，曾對《聯合國制裁條例》(第537章)(下稱“《制裁條例》”)若干方面的實施問題表示關注。上述兩項規例是根據《制裁條例》訂立的。小組委員會所關注事宜的詳情，可參閱立法會CB(2)920/02-03(01)號文件。

目的

2. 本文件旨在因應小組委員會的要求，透過《制裁條例》經由上述兩項規例實施的情況，並特別考慮到小組委員會所關注的事宜，就《制裁條例》的條文提供意見。

《制裁條例》的制定

3. 《聯合國制裁條例草案》在1997年7月9日進行首讀，在1997年7月16日通過，並於1997年7月18日刊登憲報後開始生效。立法會並無成立法案委員會研究此項條例草案。

4. 在1997年7月1日之前，各項聯合國制裁是透過英國政府發出的樞密院頒令在香港實施。此等頒令在1997年6月30日午夜已告失效。

5. 為避免法律真空，以及維護香港作為一個可靠貿易和金融中心的聲譽，中央人民政府同意香港特別行政區(“香港特區”)政府應制定法例，賦權行政長官在接獲外交部的指示後，訂立規例實施各項聯合國制裁。當時的工商局就該項條例草案發出的立法會參考資料摘要，載於立法會秘書處擬備的背景資料簡介(立法會CB(2)91/02-03(01)號文件)附錄III。

意見

第2(1)條——“制裁”的定義

6. 《制裁條例》第2(1)條把“制裁”界定為包括“由聯合國安全理事會決定針對中華人民共和國以外地方而實施的全面或局部經濟及貿易禁運、武器禁運以及其他強制性措施”。

7. 委員曾發表意見，認為《阿富汗修訂規例》針對“個人”而非地方(即阿富汗領土)實施制裁，因而可能無效。《制裁條例》的詳題亦訂明，該條例旨在“就《聯合國憲章》第七章所引起而對中華人民共和國以外地方施加制裁而訂定條文”。

8. 《制裁條例》旨在協助實施聯合國安全理事會根據《聯合國憲章》第VII章(在《制裁條例》的寫法為“第七章”)決定的措施，這點也許並無爭議。第VII章事實上包括第三十九至六十一條的條文，該等條文的文本現隨附於後，方便參閱(立法會LS45/02-03(01)號文件)。委員或會注意到，就《制裁條例》的目的而言，相關的條文只有第三十九及四十一條，該等條文分別作出下列規定——

“第三十九條

安全理事會應斷定任何和平之威脅、和平之破壞或侵略行為是否存在，並應作出建議，或根據第四十一條及第四十二條決定應採取甚麼措施，以維持或恢復國際和平及安全。”；

“第四十一條

安全理事會可決定採取甚麼武力以外之措施，以實施其決議，並可促請聯合國會員國執行此項措施。此項措施可包括經濟關係、鐵路、海運、航空、郵、電、無綫電及其他交通工具之局部或全部停止，以及外交關係之斷絕。”

9. 從第四十一條的條文可知，該條文並無界定根據該條文可決定採取的措施的範圍，只訂明該等措施不應涉及武力。該條文亦無限制只可針對某地方採取該等措施。然而，該條文確實訂明該等措施“可包括經濟關係……之局部或全部停止……”。值得注意的是，所引述的特定措施似乎較常以地方為目標。即使所針對的是“地方”，實際上亦應包括個人或組織以某國家的名義或為某國家而進行的活動或行為，而該國家會因所佔的領土而構成定義所指的地方。

10. 安全理事會根據第四十一條可決定採取的措施，不限於所引述的特定措施，亦並非只針對某地方的措施，這點可從安全理事會第1267、1333或1390號決議清楚得知。舉例而言，該等決議決定採取的

措施包括凍結受塔利班、烏薩馬·本·拉丹或“基地”組織及與其有聯繫的個人、團體、企業及實體所控制的資金及其他財務資源，阻止該等個人入境或過境，以及關閉塔利班及阿里亞納阿富汗航空公司的所有辦事處。

11. 因此，委員或會對《制裁條例》中“制裁”的定義把該等特定措施局限為針對某地方實施的措施，感到奇怪。然而，鑒於《制裁條例》的詳題明確訂明，第2(2)(a)條又作出類似的提述，若說該定義的原意並不是列明其全部的涵義，不會是一個有說服力的論據。

12. 委員可考慮應否澄清在《制裁條例》下，制裁的涵蓋範圍為何，使該詞包括所有類別的聯合國制裁，不論針對個人抑或地方的制裁。

第3(5)條——使《釋義及通則條例》第34及35條不適用

13. 另一提出的問題是立法會審議根據《制裁條例》訂立的規例的職能。《制裁條例》第3(5)條現時訂明，《釋義及通則條例》(第1章)第34及35條不適用於根據《制裁條例》訂立的規例。如此一來，立法會便無法履行審議該等規例的法定職能。然而，這並不防止立法會成立小組委員會，以研究該兩項規例、要求政府當局作出澄清及向當局提出意見。

14. 在有關《聯合國制裁條例草案》的立法會參考資料摘要，政府當局作出解說：行政長官根據該條例草案訂立的規例無須提交立法機關審議的理由是，“聯合國制裁是外交事務，而香港特區對這些事務並無自主權，只可依照中央人民政府授權執行(見《基本法》第十三條)”(第8段)。

15. 然而，委員可參閱《制裁條例》第3(1)及(2)條——

“(1) 行政長官須訂立規例，以執行有關指示。

(2) 除第(3)款另有規定外，根據本條訂立的規例可規定違反任何該等規例即屬犯罪，並可就此訂明罰則。”

雖然該等規例的首要目的是執行外交部的指示，以實施安全理事會的決議，但《制裁條例》第3(2)條令該等規例亦可載有本地內部性質的條文，即訂立罪行和施加罰則。

16. 議員亦可參閱多條其他條例的類似條文，即《逃犯條例》(第503章)第3條、《刑事事宜相互法律協助條例》(第525章)第4條及《國際組織(特權及豁免權)條例》(第558章)第3條。根據所有該等條文，行政長官會同行政會議可訂立涉及對外關係的命令，而該等命令須提交立法會審議。隨文附上有關法例的摘錄(立法會LS45/02-03(02)號文件)，以供參閱。

17. 議員或會注意到，在1999至2000年度，有關的法案委員會在研究《國際組織(特權及豁免權)條例草案》期間，亦曾提出第1章第34條不適用的問題。政府當局在充分尊重《基本法》所訂立法會作為香港特區立法機關的地位和權力的情況下，同意了就該條例草案動議委員會審議階段修正案，刪除該條使第1章第34條不適用的條文。政府當局在提出修正案時，亦確認第1章第34(2)條已訂明立法會對附屬法例的“修訂方式不限，但須符合訂立該附屬法例的權力”，而政府當局亦相信立法會不會作出任何超越法定權限的事宜。

18. 同樣，若根據該條例訂立的規例須受第1章第34條規限，則立法會行使該條第(2)款所訂修訂權力的方式，須符合行政長官會同行政會議訂立該等規例(即執行有關指示)的權力。

其他意見

19. 政府當局已接納委員的意見，並會廢除《阿富汗修訂規例》中與《聯合國(反恐怖主義措施)條例》(第575章)(“《反恐條例》”)重疊的條文。若政府當局的既定政策是，日後根據《制裁條例》訂立的所有規例不得與《反恐條例》或任何其他條例有所重疊，則當局或許應考慮對《制裁條例》作出適當的修訂。舉例而言，《制裁條例》中“制裁”的定義或可不包括已根據任何該等其他條例實施的任何措施。

20. 就該條例的草擬方面，還可提出的有以下一些意見，可供委員考慮——

- (a) 根據定義，“制裁”指“強制性措施”，但第2(2)條只提述“措施”；
- (b) “制裁”的定義所載的“實施”，或與第2(2)條所載的“採取”並非一致；及
- (c) 第2(2)(b)條的制定並非與任何安全理事會決議有關。

立法會秘書處
法律事務部
2003年1月16日

Charter of the United Nations

Chapter VII
ACTION WITH RESPECT TO THREATS TO THE PEACE,
BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

²Amended text of Article 27, which came into force on 31 August 1965. (The text of Article 27 before it was amended read as follows:

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.)

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.
3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.
4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

而本條例直接間接地與移交逃犯安排有關的其他條文(包括“移交逃犯安排”的定義在內),亦須據此解釋。

(5) 凡適用於以下政府或地方的安排——

- (a) 香港政府及香港以外地方的政府;或
- (b) 香港及香港以外的地方,

部分是為了“移交逃犯安排”定義中(b)段所指明的目的,而部分是為了其他目的,則在本條例中,該等安排在與該等指明目的有關的範圍內屬移交逃犯安排。

(6) 凡任何安排若非有本款的規定便會只因為為移交被指控或被裁定犯了違反香港或香港以外地方的法律的罪行(或以具相同意思的用詞描述)的人而作出的以致不屬移交逃犯安排,則憑藉本款的規定及就本條例而言,該等安排須當作為移交逃犯安排,猶如——

- (a) 在該等安排中,凡提述移交被指控犯某項罪行(或以具相同意思的用詞描述)的人,即為提述移交因涉及某項罪行而被追緝以作檢控的人一樣;及
- (b) 在該等安排中,凡提述移交被裁定犯了某項罪行(或以具相同意思的用詞描述)的人,即為提述移交因涉及某項罪行而被追緝以作判刑或強制執行判刑的人一樣,

而本條例的條文須據此而適用於任何該等安排。

(7) 凡根據本條例任何作為須由或由某人訂明地方作出,則該作為可由某人代表該地方作出,而本條例的條文亦須據此解釋。

and the other provisions of this Ordinance (including the definition of “arrangements for the surrender of fugitive offenders”) which relate, whether directly or indirectly, to arrangements for the surrender of fugitive offenders shall be construed accordingly.

(5) Where arrangements applicable to—

- (a) the Government and the government of a place outside Hong Kong; or
- (b) Hong Kong and a place outside Hong Kong,

are partly for the purposes specified in paragraph (b) of the definition of “arrangements for the surrender of fugitive offenders” and partly for other purposes, the arrangements are in this Ordinance arrangements for the surrender of fugitive offenders to the extent that they relate to those specified purposes.

(6) Where, but for this subsection, any arrangements are not arrangements for the surrender of fugitive offenders only because they are for the purposes of the surrender of persons accused or convicted of an offence against the law of Hong Kong or a place outside Hong Kong (or words to the like effect), then, by virtue of this subsection and for the purposes of this Ordinance, such arrangements shall be deemed to be arrangements for the surrender of fugitive offenders as if—

- (a) any reference in such arrangements to the surrender of persons accused of an offence (or words to the like effect) were a reference to the surrender of persons wanted for prosecution in respect of an offence; and
- (b) any reference in such arrangements to the surrender of persons convicted of an offence (or words to the like effect) were a reference to the surrender of persons wanted for the imposition or enforcement of a sentence in respect of an offence,

and the provisions of this Ordinance shall apply to any such arrangements accordingly.

(7) Where under this Ordinance any act is required to be, or may be, done by a prescribed place, that act may be done by a person on behalf of that place, and the provisions of this Ordinance shall be construed accordingly.

3. 行政長官會同行政會議可應用本條例

(1) 在符合第(9)款的規定下,行政長官會同行政會議可就任何移交逃犯安排,藉符合以下說明的命令——

- (a) 該命令載述或載錄該等安排的條款;
- (b) 該命令指明在該命令內所指明的任何有關成文法則須予廢除或修訂的範圍(如有的話),

3. Chief Executive in Council may apply Ordinance

(1) Subject to subsection (9), the Chief Executive in Council may, in relation to any arrangements for the surrender of fugitive offenders, by order— (Amended 71 of 1999 s. 3)

- (a) reciting or embodying the terms of the arrangements;
- (b) specifying the extent, if any, to which any relevant enactment specified in the order is to be repealed or amended,

指示本條例中的程序須在該命令所載的限制、約束、例外規定及約制(如有的話)的規限下,適用於香港及該等安排所涉及的香港以外地方。

(2) 根據第(1)款作出的命令須在憲報刊登,並須在刊登後的立法會的首次會議日提交該會首覽。

(3) 在自提交根據第(1)款作出的命令的日期當日起計的 28 日期限內,立法會可藉決議廢除該命令。

(4) 若第(3)款所提述的期限的屆滿日期(如非因本款規定)原應是——

(a) 在立法會會期結束前或立法會解散前的最後一次會議後;但

(b) 在立法會下一會期的第二次會議當日或該日之前,

則該期限須當作延展至該第二次會議的翌日,並在該日屆滿。

* (5) 立法會可於第(3)款所提述的期限或憑藉第(4)款而延展的該期限屆滿之前,藉決議就其中指明的命令——

(a) (就第(3)款所提述的期限而言)將該期限延展至在該期限屆滿之日後第 21 日或之後舉行的首次立法會會議;

(b) (在第(3)款所提述的期限已憑藉第(4)款而延展的情況下)將經如此延展的該期限延展至在該下一會期的第二次會議日後第 21 日或之後舉行的首次立法會會議。(由 2002 年第 8 號第 24 條代替)

(6) 根據第(3)或(5)款作出的決議須於其通過後的 14 日內,或在行政長官准許延展的期限內在憲報刊登。

(7) 根據第(1)款作出的命令在立法會可根據本條將該命令廢除的期限屆滿前不得實施。

(8) 在不損害第(7)款的實施的原則下,根據第(1)款作出的命令可指明該命令自以下日期起實施——

(a) 在該命令中指明的日期;或

(b) 保安局局長藉憲報公告指定的日期。(由 1997 年第 362 號法律公告修訂)

* 本款經《2002 年延展審議期限(立法會)條例》(2002 年第 8 號)第 24 條修訂,相關的過渡性條文見載於該條例第 25 條。

direct that the procedures in this Ordinance shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the order.

(2) An order under subsection (1) shall be published in the Gazette and shall be laid on the table of the Legislative Council at the next sitting day after it is published.

(3) The Legislative Council may, within the period of 28 days beginning on the date it is laid, by resolution, repeal an order under subsection (1).

(4) If the period referred to in subsection (3) would but for this subsection expire—

(a) after the last sitting before the end of a session or dissolution of the Legislative Council; but

(b) on or before the day of the second sitting of the Legislative Council in the next session,

that period shall be deemed to extend to and expire on the day after that second sitting.

* (5) Before the expiry of the period referred to in subsection (3) or that period as extended by virtue of subsection (4), the Legislative Council may by resolution in relation to an order specified therein—

(a) in the case of the period referred to in subsection (3), extend that period to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of its expiry;

(b) in the case where the period referred to in subsection (3) has been extended by virtue of subsection (4), extend that period as so extended to the first sitting of the Legislative Council held not earlier than the twenty-first day after the day of the second sitting in that next session. (Replaced 8 of 2002 s. 24)

(6) A resolution under subsection (3) or (5) shall be published in the Gazette within 14 days after it is passed or such further period as the Chief Executive may allow. (Amended 71 of 1999 s. 3)

(7) An order under subsection (1) shall not come into operation before the expiry of the period within which the Legislative Council may under this section repeal the order.

(8) Without prejudice to the operation of subsection (7), an order under subsection (1) may specify that it shall come into operation on a day—

(a) specified in the order; or

(b) to be appointed by the Secretary for Security by notice in the Gazette.

* For the transitional provision relating to this subsection as amended by section 24 of the Extension of Vetting Period (Legislative Council) Ordinance 2002 (8 of 2002), see section 25 of that Ordinance.

(9) 除非根據第(1)款作出的命令所關乎的移交逃犯安排實質上與本條例的條文相符，否則行政長官會同行政會議不得根據第(1)款作出該命令。

(10) 根據第(1)款作出的命令所指明的任何有關成文法則——

- (a) 在該命令所指明的範圍內予以廢除或修訂；而
(b) 該項廢除或修訂自該命令實施當日起生效。

(11) (由 1998 年第 25 號第 2 條廢除)

(12) 根據第(1)款作出的命令的文本是以下事項的確認——

- (a) 該命令所關乎的移交逃犯安排實質上與本條例的條文相符；及
(b) 本條例中的程序適用於該命令所關乎的任何香港以外地方。

(13) 凡任何成文法則的條文，對已根據第(10)款被廢除或修訂的任何有關成文法則作出任何提述，則該條文須在顧及上述廢除或修訂而作出必要的變通後予以理解及具有效力，而該項提述亦可於適當情況下據此理解及具有效力，猶如該項提述是對本條例的提述，或是對根據第(1)款作出的引致上述廢除或修訂的命令所關乎的移交逃犯安排的提述一樣。(由 1998 年第 25 號第 2 條修訂)

(14) 凡任何移交逃犯安排不再與香港以外地方有關，或成為與香港以外地方有關，則行政長官可藉憲報公告修訂根據第(1)款作出的關乎該等安排的命令，以指明——

- (a) 該等安排已不再與該地方有關，或已成為與該地方有關(視屬何情況而定)；及
(b) (a)段所提述的事件發生的日期。

(15) 《釋義及通則條例》(第 1 章)第 34 及 35 條不適用於根據第(14)款發出的公告。

(16) 在本條中——

“有關成文法則”(relevant enactment)指——

- (a) 與移交逃犯有關的任何條例；
(b) 任何英國成文法則。

而在不損害《釋義及通則條例》(第 1 章)第 3 條中“條例”的定義的原則下，亦包括任何該等條例的任何部分或條文；(由 1998 年第 25 號第 2 條代替)

(9) The Chief Executive in Council shall not make an order under subsection (1) unless the arrangements for the surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of this Ordinance. (Amended 71 of 1999 s. 3)

(10) Any relevant enactment specified in an order under subsection (1) is hereby repealed or amended—

- (a) to the extent specified in the order; and
(b) with effect on the day on which the order comes into operation.

(11) (Repealed 25 of 1998 s. 2)

(12) A copy of an order under subsection (1) shall be conclusive evidence that—

- (a) the arrangements for the surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of this Ordinance; and
(b) the procedures in this Ordinance apply in the case of any place outside Hong Kong to which the order relates.

(13) Where a provision of any enactment makes any reference to any relevant enactment which has been repealed or amended under subsection (10), that provision shall be read and have effect with such modifications as may be necessary to take account of such repeal or amendment and, accordingly, that reference may, where appropriate, be read and have effect as if it were a reference to this Ordinance or to the arrangements for the surrender of fugitive offenders to which the order under subsection (1) which gave rise to such repeal or amendment relates. (Amended 25 of 1998 s. 2)

(14) Where any arrangements for the surrender of fugitive offenders cease to relate to, or become related to, a place outside Hong Kong, the Chief Executive may, by notice in the Gazette, amend the order under subsection (1) which relates to those arrangements to specify— (Amended 71 of 1999 s. 3)

- (a) that those arrangements have ceased to relate to, or have become related to, as the case may be, that place; and
(b) the date on which the event referred to in paragraph (a) occurred.

(15) Sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to a notice under subsection (14).

(16) In this section—

“relevant enactment” (有關成文法則) means—

- (a) any Ordinance relating to the surrender of fugitive offenders;
(b) any imperial enactment,

and, without prejudice to the definition of “Ordinance” in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), includes any part or provision of any such Ordinance; (Replaced 25 of 1998 s. 2)

“會議”(sitting)用於計算時間時，指會議開始當日，但只包括其議事程序表內載有附屬法例的會議。

(由 1999 年第 71 號第 3 條修訂)

“sitting”(會議)，when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper.

~~4. 可被移交的人~~

~~任何在香港的人如因涉及違反該地方的法律的有關罪行而在該地方被追緝以作檢控、判刑或強制執行判刑，均可按照本條例的條文予以逮捕和移交到該地方。~~

~~4. **Persons liable to be surrendered**~~

~~A person in Hong Kong who is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in respect of a relevant offence against the law of that place may be arrested and surrendered to that place in accordance with the provisions of this Ordinance.~~

4. 行政長官會同行政會議可指示本條例須予適用

(1) 在符合第(2)及(3)款的規定下，行政長官會同行政會議在經立法會批准後，可就任何相互法律協助的安排，藉附有一份該安排副本的命令，指示本條例(在受該命令內指明的該等變通的規限下)須適用於香港與該安排所關乎的香港以外地方之間。(由1999年第71號第3條修訂)

(2) 除非相互法律協助的安排在實際程度上符合本條例的條文，否則行政長官會同行政會議不得根據第(1)款作出命令。(由1999年第71號第3條修訂)

(3) 凡根據第(1)款作出的命令指明該款所提述的變通，則該等變通須錄錄於該命令的附表內。

(4) 根據第(1)款作出的命令可指明該命令自以下日期起實施——

(a) 該命令所指明的日期；或

(b) 保安局局長以憲報公告指定的日期。(由1997年第362號法律公告修訂)

(5) 一份根據第(1)款所作出的命令的副本，即為本條例適用於該命令所關乎的任何香港以外地方的確證。

(6) 凡任何相互法律協助的安排不再關乎香港以外地方，或變成關乎香港以外地方，行政長官可藉憲報公告修訂根據第(1)款所作出的關乎該等安排的命令，指明——(由1999年第71號第3條修訂)

(a) 該等安排已不再關乎該地方，或已變成關乎該地方(視屬何情況而定)；及

(b) (a)段所提述事件發生的日期。

(7) 《釋義及通則條例》(第1章)第35(b)條適用於根據第(1)款作出的命令，猶如在該條中“或部分修訂”的字眼已略去而代以“廢除”的字眼一樣。

4. Chief Executive in Council may apply Ordinance

(1) Subject to subsections (2) and (3), the Chief Executive in Council may, with the approval of the Legislative Council, in relation to any arrangements for mutual legal assistance, by order to which is annexed a copy of the arrangements direct that this Ordinance shall, subject to such modifications thereto as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. (Amended 71 of 1999 s. 3)

(2) The Chief Executive in Council shall not make an order under subsection (1) unless the arrangements for mutual legal assistance are substantially in conformity with the provisions of this Ordinance. (Amended 71 of 1999 s. 3)

(3) Where an order under subsection (1) specifies modifications referred to in that subsection, the modifications shall be summarized in a Schedule to the order.

(4) An order under subsection (1) may specify that it shall come into operation on a day—

(a) specified in the order; or

(b) to be appointed by the Secretary for Security by notice in the Gazette.

(5) A copy of an order under subsection (1) shall be conclusive evidence that this Ordinance applies in the case of any place outside Hong Kong to which the order relates.

(6) Where any arrangements for mutual legal assistance cease to relate to, or become related to, a place outside Hong Kong, the Chief Executive may, by notice in the Gazette, amend the order under subsection (1) which relates to those arrangements to specify— (Amended 71 of 1999 s. 3)

(a) that those arrangements have ceased to relate to, or have become related to, as the case may be, that place; and

(b) the date on which the event referred to in paragraph (a) occurred.

(7) Section 35(b) of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply to an order under subsection (1) as if for the words “amend the whole or any part” in that section there were substituted the words “repeal the whole”.

3. 國際協議的條文具有法律效力

行政長官會同行政會議可——

- (a) 藉訂立於憲報刊登的命令，宣布在任何國際協議中，關乎國際組織的地位、特權及豁免權及關乎與國際組織相關的人的地位、特權及豁免權並在該命令中指明的條文，在香港均有法律效力；及
- (b) 在該等命令中，訂定行政長官會同行政會議認為為施行任何該等協議中與該等特權及豁免權相關的條文所需要的條文。

4. 證據

(1) 凡對某人是否享有根據第 3 條訂立的命令所訂的特權或豁免權產生疑問，則除第 (2) 款另有規定外，一份由政務司司長發出並述明與該問題有關的事實之證明書，即為該事實的確證。

(2) 凡——

- (a) 根據第 (1) 款發出的證明書；與
- (b) 根據《基本法》第十九條第三款取得的證明文件，

在事實問題上互相矛盾或抵觸，則在矛盾或抵觸(視屬何情況而定)的範圍內，該證明文件凌駕於該證明書。

5. 全國性法律的實施

(1) 本條例或根據第 3 條訂立的命令並不損害——

- (a) 載於《1997 年全國性法律公布》(1997 年第 379 號法律公告)* 附表 5 的《中華人民共和國外交特權與豁免條例》的實施；或
- (b) 載於《1997 年全國性法律公布》(第 2 號)(1997 年第 386 號法律公告)# 附表 3 的《中華人民共和國領事特權與豁免條例》的實施。

* 刊載於第 1 冊，第 17/1 頁。
刊載於第 1 冊，第 18/1 頁。

3. Provisions of international agreements to have the force of law

The Chief Executive in Council may——

- (a) by order in the Gazette, declare that the provisions of an international agreement relating to the status, privileges and immunities of an international organization and of persons connected with such organization, and which are specified in the order, shall have the force of law in Hong Kong; and
- (b) in such order make such provisions as the Chief Executive in Council may consider necessary for carrying into effect the provisions of any such agreement in connection with such privileges and immunities.

4. Evidence

(1) Where a question arises as to whether or not a person is entitled to a privilege or immunity under an order made under section 3, a certificate issued by the Chief Secretary for Administration stating a fact relevant to that question is, subject to subsection (2), conclusive evidence of that fact.

(2) Where there is any conflict or inconsistency as respects a question of fact between——

- (a) a certificate issued under subsection (1); and
- (b) a certificate obtained under the third paragraph of Article 19 of the Basic Law,

then the second-mentioned certificate shall, to the extent of that conflict or inconsistency, as the case may be, prevail over the certificate issued under subsection (1).

5. Application of national laws

(1) Nothing in this Ordinance or an order made under section 3 shall prejudice the operation of——

- (a) the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities in Schedule 5 to the Promulgation of National Laws 1997 (L.N. 379 of 1997)*; or
- (b) the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities in Schedule 3 to the Promulgation of National Laws (No. 2) 1997 (L.N. 386 of 1997)#.

* in Volume 1, p. 17/1.
in Volume 1, p. 18/1.