

立法會
Legislative Council

LC Paper No. LS 15/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 3 November 2000**

**Legal Service Division Report on
Drug Trafficking and Organized Crimes (Amendment) Bill 2000**

Objects of the Bill

The main objects of the Bill are to-

- (a) make parallel amendments to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) ("the DT(RoP)O") and the Organized and Serious Crimes Ordinance (Cap. 455) ("the OSCO") to-
 - (i) empower the Court of First Instance, in the case of a person who has been arrested for a drug trafficking offence or a specified offence under the OSCO, and released on bail, to issue a restraint or charging order against the person's property, if the Court is satisfied that there is reasonable cause to believe that the person may be charged with the offence after further investigation is carried out (sections 2 and 7 of Schedule 1 and sections 2 and 6 of Schedule 2);
 - (ii) empower the Court of First Instance or the District Court, in the case where a person, who is subject to proceedings for a drug trafficking offence or a specified offence under the OSCO, has absconded and reasonable steps have been taken to ascertain his whereabouts but of no avail, to issue a confiscation order against him (section 3(a) of Schedules 1 and 2);
 - (iii) empower the Court of First Instance or the District Court to fix a period within which a person has to pay under a confiscation order (section 6 of Schedule 1 and section 5 of Schedule 2);

- (iv) require a person to give information in determining the value of realisable property the subject of a restraint or charging order and make it an offence for a person to knowingly deal in any realisable property in contravention of such an order (sections 8 and 9 of Schedule 1 and sections 7 and 8 of Schedule 2 and section 3(b)(ii) and (iii) of Schedule 3);
 - (v) create a new offence of dealing in realisable property having reasonable grounds to suspect that the property in whole or in part represents a person's proceeds of drug trafficking or an indictable offence (sections 10(a), (b) and (d), 11(b) and 13 of Schedule 1 and sections 9(a), (b) and (d), 10(b) and 11 of Schedule 2); and
 - (vi) increase the penalty for certain offences;
- (b) amend the DT(RoP)O to repeal section 4(4) so that certain statutory assumptions for the purposes of determining whether a person has benefited from drug trafficking and the value of the benefit will also apply to a person convicted of drug money laundering offence (section 4 of Schedule 1); and
 - (c) make consequential amendments to the DT(RoP)O and the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg.) (section 12 of Schedule 1 and sections 1 and 2 of Schedule 3).

LegCo Brief Reference

- 2. NCR 3/1/8(G) Pt. 27 issued by the Security Bureau on 18 October 2000.

Date of First Reading

- 3. 1 November 2000.

Background

- 4. The Drug Trafficking and Organized Crimes (Amendment) Bill 1999 was introduced into the Legislative Council on 15 December 1999. Pursuant to a decision of the House Committee at its meeting held on 17 December 1999, a Bills Committee was formed to scrutinize the 1999 Bill. However, owing to the unavailability of a Bills Committee slot, the 1999 Bill was not enacted and it lapsed upon the dissolution of the last term of the Legislative Council.

Comments

5. The content of the Bill is substantially the same as that of the 1999 Bill, except that a proposal to dispense with the appointment of receivers to realise a defendant's property of a total value of not more than \$500,000 has been withdrawn. We have written to the Administration seeking reason for the withdrawal. In reply, the Administration explains that the proposal is withdrawn mainly due to the comments received from the Judiciary Administrator and some financial institutions subsequent to the submission of the 1999 Bill. The Administration further explains that the Judiciary Administrator made it clear that the Registrar of the High Court might be asked to receive assets but should not be involved in the realisation of the assets and financial institutions were concerned about the costs of and the practical arrangements in realising such assets.

6. The DT(RoP)O and OSCO provide for, amongst others, the tracing, restraining and confiscation of proceeds derived from drug trafficking or a specified offence under the OSCO. The Bill makes parallel amendments to the 2 Ordinances to further enhance the effectiveness of the confiscation and anti-money laundering provisions in the Ordinances. Members may refer to paragraph 8 of the LegCo Brief for details of the proposals in the Bill.

7. Apart from the point raised with the Administration mentioned in paragraph 5 of this report, we have also sought clarification from the Administration concerning certain technical aspects of the Bill. Copies of the correspondence are annexed for members' reference.

Public Consultation

8. Paragraph 23 of the LegCo Brief says that the Administration has consulted the two legal professional bodies, the Hong Kong Society of Accountants, the financial sector and the Action Committee Against Narcotics which, in general, are supportive of the proposals.

Consultation with the LegCo Panel

9. The Administration briefed the LegCo Security Panel about the proposals at its meeting held on 11 November 1999 in the last legislative session. It supported the general principle of the Bill. But some members of the Panel expressed concern over what sort of evidence is required to establish the new offence of dealing in realisable property having reasonable grounds to suspect that the property in whole or in part represents a person's proceeds of drug trafficking or an indictable offence and the sufficiency of the deterrence effect of certain proposed penalties.

Conclusion

10. Since this Bill is substantially the same as the 1999 Bill and because of the concerns over the 1999 Bill expressed previously, members may wish to form a Bills Committee to study the Bill in detail.

Encl

Prepared by

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1 November 2000

NCR 3/1/8 (G)

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26 October 2000

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Hong Kong

Dear Mr. Lam,

Drug Trafficking and Organized Crimes (Amendment) Bill 2000

Thank you for your letter of 16 October 2000. Our answers to the questions raised in your letter are appended below.

Section 3(b) of Schedules 1 and 2

The reason for the proposed section 3(17) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the proposed section 8(10) of the Organized and Serious Crimes Ordinance (Cap. 455) is to enable an application for a confiscation order against a dead or absconded defendant to be continued (and any ensuing confiscation order to be enforced), notwithstanding that the relevant drug trafficking offence/specified offence has been repealed.

The offences previously specified in Schedule 1 to Cap. 405 were section 7(1) of the Dangerous Drugs Ordinance (Cap. 134) “possessing a dangerous drug for the purpose of unlawful trafficking” (repealed in 1992) and section 25 of Cap. 405 “assisting another to retain the benefit of drug trafficking” (amended in 1995). There are still cases where persons were charged with the former offence and then absconded. Since the offence is not included in the existing Schedule 1 of Cap. 405, without the proposed amendments, applications for confiscation orders against the absconded persons cannot be brought. The proposed section 3(17) of Cap.

405 and the proposed section 8(10) of Cap. 455 will enhance the comprehensiveness of the confiscation mechanism, as they will apply to any future repeal of offences from Schedule 1 of Cap. 405 or Schedule 1 or 2 of Cap. 455.

Section 8 of Schedule 1 and section 7 of Schedule 2

Regarding whether it is desirable to allow the holder of property in question to recover the cost incurred in ascertaining the value of the property, since the holder of the property has to give the value only “to the extent that it is practicable to do so”, compliance with the provisions would cause minimal, if any, costs to the holder. Further, the proposed provisions will mainly be used to request banks to provide current balance in an account that is the subject of a restraint order which is intended to operate expeditiously and without cost.

The proposed section 10(15) of Cap. 405 and proposed section 15(15) of Cap. 455 are aimed at the subject of a restraint order, who knows that the order is in place, but still intentionally deals in realisable properties in contravention of that order. We therefore do not consider that any further mental element to this provision is necessary.

Section 9 of Schedule 1 and section 8 of Schedule 2

Our response to section 8 of Schedule 1 and section 7 of Schedule 2 given above applies here.

Sections 10 and 11 of Schedule 1 and sections 9 and 10 of Schedule 2 to the lapsed Drug Trafficking and Organized Crimes (Amendment) Bill 1999

We consider it necessary to delete sections 10 and 11 of Schedule 1 and sections 9 and 10 of Schedule 2 of the 1999 Bill in respect of realization of property where amount to be recovered under a confiscation order is not more than the prescribed amount. The proposal was withdrawn mainly having regard to comments received from the Judiciary Administrator and some financial institutions subsequent to the submission of the 1999 Bill last year. Briefly, the Judiciary Administrator made it clear that the Registrar of the High Court might be asked to receive assets but should not be involved in the realisation of the assets. Financial institutions were concerned about the costs of and the practical arrangements in realising such assets.

Section 2 of Schedule 2

Regarding the choice of word between “when” and “where”, an examination of Cap. 455 shows that “where” is consistently used, e.g. section 3(5), (6), (15);

section 4(5), (6), (9), (10); section 8(1), (3)(b)(c), (7A), (7B) and (7C). Whether “when” or “where” is used in section 2 of Schedule 2 will not affect the substance of the proposal.

I hope the above would address your concerns.

Yours sincerely,

(Ms Mimi Lee)
for Commissioner for Narcotics

c.c.

D of J (Attn.: Mr M C Blanchflower
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16 October 2000

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(Attn : Miss Christina Chong
Assistant Secretary (Narcotics))

Dear Miss Chong,

Drug Trafficking and Organized Crimes (Amendment) Bill 2000

We are scrutinizing the legal and drafting aspects of the Bill. We should be grateful for your clarification of the following points relating to the Bill.

Amendment of Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405): Schedule 1

Section 3(b)

Why is it necessary to refer to offences previously specified in Schedule 1?

What were those offences?

Section 8

In proposed section 10(12), is it desirable to allow the holder of property in question to recover the cost, if any, incurred in ascertaining the value of the same?

In proposed section 10(15), is it desirable to add a further mental element along the line of "having reasonable ground to suspect" (c.f. proposed amendment to section 25)?

Section 9

In proposed section 11(9), is it desirable to allow the holder of property in question to recover the cost, if any, incurred in ascertaining the value of the same?

In proposed section 11(12), is it desirable to add a further mental element along the line of "having reasonable ground to suspect"?

Sections 10 and 11 of Schedule 1 to the lapsed Drug Trafficking and Organized Crimes (Amendment) Bill 1999

Section 10 of the lapsed Bill adds a new provision providing for realisation of property where amount to be recovered under confiscation order is not more than prescribed amount. Section 11 provides for a consequential amendment. However, it is noted that both proposed provisions are omitted from the Bill. What is the reason for omitting those provisions from the Bill?

**Amendment of Organized and Serious Crimes Ordinance (Cap. 455):
Schedule 2**

Section 2

Should the word "Where" be substituted with "When"?

Section 3

Why is it necessary to refer to offences previously specified in Schedule 1 or 2?

What were those offences?

Section 7

In proposed section 15(12), is it desirable to allow the holder of property in question to recover the cost, if any, incurred in ascertaining the value of the same?

In proposed section 15(15), is it desirable to add a further mental element along the line of "having reasonable ground to suspect"?

Section 8

In proposed section 16(9), is it desirable to allow the holder of property in question to recover the cost, if any, incurred in ascertaining the value of the same?

In proposed section 16(12), is it desirable to add a further mental element along the line of "having reasonable ground to suspect"?

Sections 9 and 10 of Schedule 2 to the lapsed Drug Trafficking and Organized Crimes (Amendment) Bill 1999

Section 9 of the lapsed Bill adds a new provision providing for realisation of property where amount to be recovered under confiscation order is not more than prescribed amount. Section 10 provides for a consequential amendment. However, it is noted that both proposed provisions are omitted from the Bill. What is the reason for omitting those provisions from the Bill?

It is appreciated that your reply, in both languages, could reach us by 20 October 2000.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

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