

立法會
Legislative Council

LC Paper No. LS45/02-03

**Paper for the Subcommittee on United Nations Sanctions
(Afghanistan)(Amendment)Regulation 2002 and United Nations Sanctions
(Angola)(Suspension of Operation)Regulation 2002**

Comments on the Operation of the United Nations Sanctions Ordinance (Cap. 537)

Background

In the course of its scrutiny of the United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 (the Afghanistan Amendment Regulation) and United Nations Sanctions (Angola)(Suspension of Operation) Regulation 2002, the Subcommittee has expressed concern over the operation of certain aspects of the United Nations Sanctions Ordinance (Cap. 537) (the Ordinance), under which the two regulations are made. Members may refer to LC Paper CB(2)920/02-03(01) for details of the Subcommittee's concern.

Purpose

2. The purpose of this paper is to comment, at the request of the Subcommittee, on the provisions of the Ordinance in the light of its operation in the form of the two regulations, with particular reference to the Subcommittee's concerns.

Enactment of the Ordinance

3. The United Nations Sanction Bill received its first reading on 9 July 1997, was passed on 16 July 1997 and commenced on 18 July 1997 upon its gazettal. No Bills Committee was formed.

4. Prior to 1 July 1997, United Nations (UN) sanctions were implemented in Hong Kong through Orders in Council issued by the United Kingdom Government. These orders lapsed at midnight, 30 June 1997.

5. In order to avoid a legal vacuum and to safeguard Hong Kong's reputation as a responsible trading and financial centre, the Central People's Government agreed that the HKSAR Government should enact legislation which would empower the Chief Executive, upon the instruction of the Ministry of Foreign Affairs (MFA), to make regulations to implement UN sanctions. The LegCo Brief on the Bill issued at the time by the Trade and

Industry Bureau is at Appendix III of the Background brief prepared by the Legislative Council Secretariat (LC Paper No. CB(2)91/02-03(01)).

Comments

Section 2(1) - Definition of "sanction"

6. "Sanction" is defined in section 2(1) of the Ordinance as including "complete or partial economic and trade embargoes, arms embargoes, and other mandatory measure decided by the Security Council of the United Nations, implemented against a place outside the People's Republic of China".

7. Members have expressed the view that the Afghanistan Amendment Regulation imposes sanctions against "persons" instead of a place i.e. the territory of Afghanistan and as such, might not be valid. The long title of the Ordinance also states that the Ordinance is "to provide for the imposition of sanctions against places outside the People's Republic of China arising from Chapter 7 of the Charter of the United Nations".

8. It is perhaps not in dispute that the Ordinance is to facilitate the implementation of measures decided on by the UN Security Council pursuant to Chapter VII (expressed as 'Chapter 7' in the Ordinance) of the UN Charter. Chapter VII in fact contains Articles 39 to 61, a copy of which is attached for ease of reference (LS45/02-03(01)). Members may wish to note that the only provisions that may be relevant for the purpose of the Ordinance are Articles 39 and 41, which state respectively -

"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 41

The Security Council may decide what measures not involving the use of armed forces 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."

9. It is noted that Article 41 does not define the scope of the measures that could be decided on under that Article except that they should not involve the use of armed force. Nor does it limit the measures to those that could only be taken against a place. However, it

does provide that such measures "may include complete or partial interruption of economic relations" etc. It is interesting to note that the specific measures cited seem to be more usually targeted against a place. Even if a "place" is targeted, it would in practice include the activities or conduct of individuals or organisations carried out in the name of or for a particular state which by definition would constitute a place by virtue of the territory it occupies.

10. That the measures which could be decided on by the Security Council under Article 41 are not restricted to the specific measures cited nor targeted only against a place is clear from Security Council Resolution 1267, 1333 or 1390. For instance, the measures decided upon in those resolutions include freezing funds and other financial resources controlled by the Taliban, Usama bin Laden or Al-Qaida and other individuals, groups, undertakings and entities associated with them, preventing the entry into or transit of those individuals and closing all offices of Taliban and Ariana Afghan Airlines.

11. Members may therefore find it odd that the definition of "sanction" in the Ordinance should restrict the specified measures to those to be implemented against a place. The force of any argument that the definition is not intended to be exhaustive is however undermined by the clear wording of the long title and a similar reference in section 2(2)(a) of the Ordinance.

12. Members may wish to consider whether the scope of sanctions under the Ordinance should be clarified in order to cover all kinds of UN sanctions, whether they target at persons or places.

Section 3(5) - Disapplication of sections 34 & 35 of the Interpretation and General Clauses Ordinance

13. Another issue that has arisen is the role of LegCo in the scrutiny of the regulations made under the Ordinance. At present, section 3(5) of the Ordinance provides that sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under the Ordinance. This deprives LegCo of its statutory role in the scrutiny of such regulations. However, this does not prevent the setting up of the Subcommittee to study the two regulations, seek clarification from and present its views to the Administration.

14. It is noted that in its LegCo Brief on the United Nations Sanctions Bill, the Administration argues that the reason for not placing the regulations to be made by the Chief Executive under the Bill before the legislature "is that UN Sanctions are external affairs for which the HKSAR has no autonomy but may only conduct the same with the authorisation of the CPG (Article 13 of the Basic Law)" (paragraph 8).

15. However, members may wish to refer to section 3(1) and (2) of the Ordinance -

- "(1) The Chief Executive shall make regulations to give effect to a relevant instruction.
- (2) Subject to subsection (3), regulations made under this section may provide that a contravention of any such regulation shall be an offence and may prescribe penalties therefor."

Although the purpose of such regulations is primarily to give effect to instructions from MFA to implement Security Council resolutions, the effect of section 3(2) is that they may also contain provisions of a local nature, i.e. the creation of offences and the imposition of penalties.

16. Members may also wish to refer to comparable provisions in several other ordinances, namely section 3 of the Fugitive Offenders Ordinance (Cap. 503), section 4 of the Mutual Legal Assistance in Criminal Matters (Cap. 525) and section 3 of the International Organisations (Privileges and Immunities) Ordinance (Cap. 558). Under all those provisions, the Chief Executive in Council may make orders involving external relations which are subject to LegCo scrutiny. A copy of the relevant extracts is attached (LS45/02-03(02)).

17. Members may note that the issue of disapplication of section 34 of Cap. 1 arose when the Bills Committee considered the International Organisations (Privileges and Immunities) Bill in 1999-2000. Out of respect for the status and power of LegCo as the legislature of the HKSAR as provided for in the Basic Law, the Administration agreed to move a Committee Stage amendment to that bill deleting the provision that disapplied section 34 of Cap. 1. In making the amendment, the Administration recognizes that section 34(2) of Cap. 1 has already provided that LegCo may amend subsidiary legislation only "in any manner whatsoever consistent with the power to make such subsidiary legislation", and that LegCo would not act in any way that is ultra vires.

18. Similarly, if regulations under the Ordinance were to be made subject to section 34 of Cap. 1, LegCo's power to amend under its subsection (2) should be exercised in a way consistent with the power of the Chief Executive in Council to make the regulations, i.e. to give effect to the relevant instructions.

Other observations

19. The Administration has accepted members' view and will repeal those provisions in the Afghanistan Amendment Regulation which overlap with those in the United Nations (Anti-Terrorism Measures) Ordinance (Cap.575). If it is to be the established policy of the Administration that all future regulations made under the Ordinance shall not overlap with that ordinance or any other particular ordinance, it should perhaps be considered that the Ordinance be amended appropriately. For instance, the

definition of "sanction" in the Ordinance may exclude any measure that has already been implemented under any such other ordinance.

20. Some other observations are also made with regard to the drafting of the Ordinance for the consideration of members -

- (a) the definition of "sanction" refers to 'mandatory measures' but section 2(2) merely refers to 'measure';
- (b) 'implemented' in the definition of "sanction" may not tally with the wording 'to be employed' in section 2(2); and
- (c) section 2(2)(b) is not made relative to any Security Council resolution.

Prepared by
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Appendix II

**Charter of the United Nations and
Statute of the International Court of Justice**

Charter of the United Nations

NOTE: The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Statute of the International Court of Justice is an integral part of the Charter.

Amendments to Articles 23, 27 and 61 of the Charter were adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. A further amendment to Article 61 was adopted by the General Assembly on 20 December 1971, and came into force on 24 September 1973. An amendment to Article 109, adopted by the General Assembly on 20 December 1965, came into force on 12 June 1968.

The amendment to Article 23 enlarges the membership of the Security Council from 11 to 15. The amended Article 27 provides that decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members (formerly seven) and on all other matters by an affirmative vote of nine members

(formerly seven), including the concurring votes of the five permanent members of the Security Council.

The amendment to Article 61, which entered into force on 31 August 1965, enlarged the membership of the Economic and Social Council from 18 to 27. The subsequent amendment to that Article, which entered into force on 24 September 1973, further increased the membership of the Council from 27 to 54.

The amendment to Article 109, which relates to the first paragraph of that Article, provides that a General Conference of Member States for the purpose of reviewing the Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members (formerly seven) of the Security Council. Paragraph 3 of Article 109, which deals with the consideration of a possible review conference during the tenth regular session of the General Assembly, has been retained in its original form in its reference to a "vote of any seven members of the Security Council", the paragraph having been acted upon in 1955 by the General Assembly, at its tenth regular session, and by the Security Council.

**WE THE PEOPLES
OF THE UNITED NATIONS
DETERMINED**

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

**HAVE RESOLVED TO
COMBINE OUR EFFORTS TO
ACCOMPLISH THESE AIMS**

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

**Chapter I
PURPOSES AND PRINCIPLES**

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

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證——

- (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.