

立法會
Legislative Council

**Paper for the House Committee Meeting
on 6 December 2002**

**Legal Service Division Report on
Proposed Resolution under section 2(4) and (5) of the
Criminal Jurisdiction Ordinance (Cap. 461)**

The Secretary for Security has given notice to move a motion at the Legislative Council meeting of 18 December 2002. The motion seeks the Legislative Council to approve the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002 ("the draft Order").

Background

2. The Criminal Jurisdiction Ordinance ("the Ordinance") gives jurisdiction to Hong Kong courts to try offences specified in section 2(2) and (3) in the Ordinance where any elements of the offence that must be proved in order to obtain a conviction takes place in Hong Kong, no matter what the citizenship or nationality of the accused is, or whether or not he was present in Hong Kong at the material time. The offences specified in section 2(2) ("Group A offences" in the Ordinance) are offences of dishonesty in the Theft Ordinance (Cap. 210) and the Crimes Ordinance (Cap. 200). The offences specified in section 2(3) ("Group B offences" in the Ordinance) are conspiracy, attempting or incitement to commit a Group A offence, and the common law offence of conspiracy to defraud. A copy of section 2 of the Ordinance is in Annex A for Members' reference.

3. Under section 2(4) and (5) of the Ordinance, the Chief Executive in Council may by order in the Gazette amend subsection (2) and (3), but no such order shall be made unless a draft of it has been laid before and approved by resolution of the Legislative Council. Section 2(5) also provides that section 34 of the Interpretation and General Clauses Ordinances (Cap. 1) (i.e. "negative vetting" of subsidiary legislation) shall not apply in relation to any such order. As a matter of law, after the Legislative Council approves the draft Order, the Chief Executive in Council would have the power to make the Order under section 2(4). There is no need for the future Order to be laid on the table of the Legislative Council.

4. When the Criminal Jurisdiction Bill was considered by the then Legislative Council in 1994, one of the concerns raised by Members was that computer frauds were not covered because, with modern technology, it was not difficult to manipulate computer data to achieve frauds elsewhere. The then Attorney General gave an assurance that if jurisdictional problems did occur, the Administration would give anxious consideration to bring the offences within coverage of the Ordinance.

5. The Security Bureau has issued a LegCo Brief (File Ref: SBCR 11/14/3231/88 issued by the Security Bureau on 27 November 2002) which contains background of the proposed amendments.

The Draft Order

6. The draft Order would add three computer related offences to the list of Group A offences in the Ordinance. They are -

- (1) unauthorized access to computer by telecommunications under section 27A of the Telecommunications Ordinance (Cap. 106);
- (2) destroying or damaging property under section 60 of the Crimes Ordinance (but limited to misuse of a computer as defined in section 59 of the same Ordinance);
and
- (3) access to computer with criminal or dishonest intent under section 161 of the Crimes Ordinance.

These offences are part of the recommended amendments in the report of the Interdepartmental Working Group on Computer Related Crime.

Consultation with LegCo Panel

7. The Panel on Security was consulted on the report of the Inter-departmental Working Group on Computer Related Crime at its meeting on 7 December 2000. Members of the Panel raised a number of issues and concerns relating to the report. Details are in the minutes of the meeting (LC Paper No. CB(2) 682/00-01). The Administration had not mentioned the draft Order at the meeting and there was no comment from members directly relating to the addition of offences to the Criminal Jurisdiction Ordinance. The Panel heard representations of various bodies relating to the Working Group's report at its special meeting on 10 February 2001. The bodies concerned were generally supportive of the direction in dealing with computer related crime but the discussions were not specific on the draft Order. Minutes of meeting is in LC Paper No. CB(2)2120/00-01.

Conclusion

8. The Legal Service Division is still considering a technical drafting point and will issue a further report in due course. Whether other offences should be added at this stage would be a policy consideration for Members.

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Encl.

2. 本條例所適用的罪行

(1) 本條例適用於下列兩類罪行——

- (a) 第(2)款所述的任何罪行(“甲類”罪行)；及
- (b) 第(3)款所述的任何罪行(“乙類”罪行)。

(2) 甲類罪行為——

- (a) 《盜竊罪條例》(第 210 章)下列條文所訂的任何罪行——

第 9 條(盜竊)
 第 16A 條(欺詐) (由 1999 年第 45 號第 7 條增補)
 第 17 條(以欺騙手段取得財產)
 第 18 條(以欺騙手段取得金錢利益)
 第 18A 條(以欺騙手段取得服務)
 第 18B 條(以欺騙手段逃避法律責任)
 第 18D 條(以欺騙手段促使在某些紀錄裏產生虛假記項)
 第 19 條(偽造帳目)
 第 21 條(公司董事等人作出虛假報表)
 第 22(2) 條(以欺騙手段促使有價產權書的簽立)
 第 23 條(勒索)
 第 24 條(處理贓物)

- (b) 《刑事罪行條例》(第 200 章)下列條文所訂的任何罪行——

第 71 條(偽造)
 第 72 條(製造虛假文書的副本)
 第 73 條(使用虛假文書)
 第 74 條(使用虛假文書的副本)
 第 75 條(管有虛假文書)
 第 76 條(製造或管有用作製造虛假文書的設備)

(3) 乙類罪行為——

- (a) 串謀犯甲類罪行；
- (b) 串謀詐騙；
- (c) 企圖犯甲類罪行；
- (d) 煽惑他人犯甲類罪行。

(4) 行政長官會同行政會議可藉在憲報頒布命令，修訂第(2)或(3)款的條文，增訂或刪除任何罪行。 (由 1999 年第 39 號第 3 條修訂)

(5) 除非有關命令的草稿事先已提交立法會，並經立法會以決議通過，否則不得根據第(4)款作出任何命令；《釋義及通則條例》(第 1 章)第 34 條不適用於該類命令。 (由 1999 年第 39 號第 3 條修訂)

2. Offences to which this Ordinance applies

(1) This Ordinance applies to 2 groups of offences—

- (a) any offence mentioned in subsection (2) (a “Group A” offence); and
- (b) any offence mentioned in subsection (3) (a “Group B” offence).

(2) The Group A offences are—

- (a) an offence under any of the following provisions of the Theft Ordinance (Cap. 210)—

section 9 (theft)
 section 16A (fraud) (Added 45 of 1999 s. 7)
 section 17 (obtaining property by deception)
 section 18 (obtaining pecuniary advantage by deception)
 section 18A (obtaining services by deception)
 section 18B (evasion of liability by deception)
 section 18D (procuring false entry in certain records by deception)
 section 19 (false accounting)
 section 21 (false statements by company directors, etc.)
 section 22(2) (procuring the execution of a valuable security by deception)
 section 23 (blackmail)
 section 24 (handling stolen goods)

- (b) an offence under any of the following provisions of the Crimes Ordinance (Cap. 200)—

section 71 (forgery)
 section 72 (copying a false instrument)
 section 73 (using a false instrument)
 section 74 (using a copy of a false instrument)
 section 75 (possessing a false instrument)
 section 76 (making or possessing equipment for making a false instrument)

(3) The Group B offences are—

- (a) conspiracy to commit a Group A offence;
- (b) conspiracy to defraud;
- (c) attempting to commit a Group A offence;
- (d) incitement to commit a Group A offence.

(4) The Chief Executive in Council may, by order in the Gazette, amend subsection (2) or (3) by adding or removing any offence. (Amended 39 of 1999 s. 3)

(5) No order shall be made under subsection (4) unless a draft of it has been laid before and approved by resolution of the Legislative Council, and section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in relation to any such order.