

**Legislative Council Subcommittee on the
draft Criminal Jurisdiction Ordinance
(Amendment of Section 2(2)) Order 2002**

Purpose

In its submission of 20 November 2003 to the Subcommittee, the Hong Kong Bar Association has indicated that it has no in-principle objection to the proposed amendment to the Criminal Jurisdiction Ordinance. It has also asked about the consultation work of the Inter-departmental Working Group on Computer Related Crime (WG) and other issues. This paper responds to the points raised by the Bar.

General

2. We are pleased to note that the Bar has no in-principle objection to the proposals in the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002. Indeed, the draft Order is the first step in implementing the WG's recommendations on legislative changes. This will enable Hong Kong courts to exercise jurisdiction over transborder computer offences committed or planned outside Hong Kong but are connected to or intended to cause damage in Hong Kong.

Consultation and future work

3. In March 2000, in view of the growth in Internet and computer use and the associated threat of computer offences, the Government set up the WG to examine how the regime of computer crime legislation, enforcement and prevention could be strengthened. The WG made a number of recommendations on legislative and administrative measures to improve the existing regime for tackling computer offences. Its report was released for public consultation between December 2000 and February 2001.

4. In the course of the public consultation, we had invited comments on the WG's report from different organizations and associations, including the Hong Kong Bar Association, in December 2000. We received a total of 46 submissions. Our records show that the Hong Kong Bar Association did not make any submission.

5. Having thoroughly considered and analyzed the comments and views received, we have accepted most and modified some of the WG's recommendations. We presented our findings to the Legislative Council on 16 July 2001. In essence, we have decided to adopt a phased approach in implementing the accepted recommendations, taking into account such factors as the complexity and urgency of the issues as well as possible resource implications.

6. The Computer Crimes Ordinance enacted in 1993 has, through amending the Telecommunications Ordinance (Cap. 106), the Crimes Ordinance (Cap. 200) and the Theft Ordinance (Cap. 210) created some new offences and broadened the coverage of existing offences, as set out in the **Annex**. In many cases, although no explicit reference to the cyber environment is made, the relevant legislation may be interpreted to cover both the physical and the virtual worlds. For example, the provisions of the Personal Data (Privacy) Ordinance are equally applicable to the cyber environment and the physical environment.

7. The WG considered that the thrust of the legislative changes mentioned in paragraph 6 above was still along the right lines. In particular, the two new offences of unauthorized access to computer by telecommunications (section 27A of Cap. 106) and access to computer with criminal and dishonest intent (section 161 of Cap. 200) had enabled many computer offences to be dealt with. We consider that the WG's conclusions are still valid.

8. Nonetheless, the WG has recommended, and we have accepted, other legislative amendments, including the introduction of a custodial term for the offence of unauthorized access to computer (section 27A of Cap. 106) and other measures for better protection of computer data. In line with the agreed phased approach, these further measures will be introduced over time.

Annex

Computer Crimes Ordinance of 1993

Law	Provisions	Maximum Penalty
Section 27A, Cap. 106	prohibiting unauthorized access to computer by telecommunication	Fine of \$20,000
Section 59, Cap. 200	extending the meaning of property to include any program or data held in a computer or in computer storage medium	Not applicable
Sections 59 and 60, Cap. 200	extending the meaning of criminal damage to property to misuse of a computer program or data	10 years' imprisonment
Section 85, Cap. 200	extending the meaning of making false entry in bank book to falsification of the books of account kept at any bank in electronic means	Life imprisonment
Section 161, Cap. 200	prohibiting access to computer with criminal or dishonest intent	5 years' imprisonment
Section 11, Cap. 210	extending the meaning of burglary to include unlawfully causing a computer to function other than as it has been established and altering, erasing or adding any computer program or data	14 years' imprisonment
Section 19, Cap. 210	extending the meaning of false accounting to include destroying, defacing, concealing or falsifying records kept by computer	10 years' imprisonment