

LEGISLATIVE COUNCIL BRIEF

Criminal Jurisdiction Ordinance
(Chapter 461)

CRIMINAL JURISDICTION ORDINANCE (AMENDMENT OF SECTION 2(2)) ORDER 2002

INTRODUCTION

At the meeting of the Executive Council on 26 November 2002, the Council ADVISED and the Chief Executive ORDERED that the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002, at **Annex A**, should be laid before the Legislative Council for approval by resolution, to enable Hong Kong courts to exercise jurisdiction over the offences of -

- (a) unauthorized access to computer;
- (b) criminal damage relating to the misuse of computer; and
- (c) access to computer with criminal or dishonest intent,

when these crimes are committed or planned outside the geographical boundaries of Hong Kong. The Order shall be referred back to the Chief Executive in Council to be made after the draft has been approved by the Legislative Council.

JUSTIFICATIONS

2. In December 2000, the Inter-departmental Working Group on Computer Related Crime (WG) consulted the public on a number of recommendations to improve the existing regime on computer crime legislation, enforcement and prevention. Having taken into account comments received during the consultation exercise, the Chief Executive in Council agreed at its meeting on 10 July 2001 to accept most of the recommendations put forward by the WG. One of the accepted recommendations concerns putting the two offences of unauthorized access to computers and access to computers with criminal or dishonest intent under the Criminal Jurisdiction Ordinance (CJO), so that extended jurisdictional rules may apply to these offences.

3. The jurisdiction of the courts of Hong Kong is limited to acts done within the geographical boundaries of Hong Kong unless otherwise specified. The offences of unauthorized access to computers (hacking) and access to computer with criminal or dishonest intent often cover criminal acts that are transnational in nature. The perpetrator can gain access to a computer in Hong Kong even when he is situated in an overseas country. By putting these two offences within the scope of the CJO, Hong Kong courts can exercise jurisdiction over the offences if either the person who obtained access to the computer or the computer to which access was obtained is in Hong Kong.

4. An Inter-departmental Task Force led by Security Bureau to follow-up the WG's recommendations suggests extending the jurisdictional rules to the misuse of computers, as defined in section 59 of the Crimes Ordinance, which is covered under the offence of criminal damage in the Crimes Ordinance (section 60). This will be necessary because some computer-related offences may not involve dishonesty, and would therefore fall outside the scope of the two offences outlined in paragraph 2 above. For example, a person in an overseas jurisdiction "spams" (sends the same message indiscriminately) a computer in Hong Kong causing it to cease functioning. Such activity is not necessarily done with a dishonest intent. By including the offence of criminal damage within the scope of the CJO the prosecution will be able to draw from a greater armoury to enable the laying of charges against such activities.

THE PROPOSAL

5. We propose amending the list of offences in section 2(2) of the CJO by including the following offences –

- (a) "unauthorized access to computer by telecommunications" under section 27A of the Telecommunications Ordinance;
- (b) "destroying or damaging property" under section 60 of the Crimes Ordinance but limiting offence to criminal damage relating to misuse of computer as defined in section 59 of the Crimes Ordinance; and
- (c) "access to computer with criminal or dishonest intent" under section 161 of the Crimes Ordinance.

THE ORDER

6. A draft order giving effect to the proposed amendments is at **Annex A**. Subject to the approval of the Legislative Council in accordance with section 2(5) of the CJO, the Chief Executive in Council may make the Order pursuant to section 2(4) of the Ordinance. The sections of enactments referred to in the draft Order is enclosed at **Annex B**.

LEGISLATIVE TIMETABLE

7. The draft Order will be submitted before the Legislative Council for approval on 18 December 2002, and will be referred back to the Chief Executive in Council to be made after the Legislative Council approves it. We intend to effect the amendment by January 2003.

IMPLICATIONS OF THE PROPOSAL

8. The proposal has economic and financial and staffing implications as set out at **Annex C**.

9. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental or significant sustainability implications. It will not affect the current binding effect of the principal Ordinances concerned.

PUBLIC CONSULTATION

10. We have already consulted the public on the WG's recommendations in December 2000 including the proposed amendments to the CJO. The Legislative Council Panel on Security was also consulted on the WG's report and its recommendations in a special meeting on 10 February 2001. The Legislative Council was briefed on the way forward on 16 July 2001. The WG's recommendation on the proposed amendments to the CJO received across-the-board support.

PUBLICITY

11. A press release will be issued on 27 November 2002. A spokesman will be available to answer media and public enquiries.

BACKGROUND

12. The CJO was enacted in December 1994 to address the jurisdictional problems associated with international fraud. It is meant to provide exceptions to the norm and enables the courts in Hong Kong to exercise jurisdiction over offences of fraud and dishonesty under the Theft Ordinance and Crimes Ordinance in the following circumstances –

- (a) Hong Kong courts will have jurisdiction if any of the conduct (including an omission) or part of the results that are required to be proved for conviction of the offences takes place in Hong Kong;
- (b) An attempt to commit the offences in Hong Kong is triable in Hong Kong whether or not the attempt was made in Hong Kong or elsewhere and irrespective of whether it had an effect in Hong Kong;
- (c) An attempt or incitement in Hong Kong to commit the offences elsewhere is triable in Hong Kong;
- (d) A conspiracy to commit in Hong Kong the offences is triable in Hong Kong wherever the conspiracy is formed and whether or not anything is done in Hong Kong to further or advance the conspiracy; or
- (e) A conspiracy in Hong Kong to do elsewhere that which if done in Hong Kong would constitute the offences is triable in Hong Kong provided that the intended conduct was an offence in the jurisdiction where the object was intended to be carried out.

13. The offences to which the CJO applies are listed in sections 2(2) and 2(3) of the Ordinance. Section 2(4) of the CJO provides that the Chief Executive in Council may, by order in the Gazette, amend sections 2(2) or 2(3) by adding or removing any offence. Section 2(5) of the CJO also provides that no order shall be made under section 2(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 shall not apply in relation to any such order.

ENQUIRIES

14. For any enquiries on the brief, please contact Ms Manda Chan, Assistant Secretary for Security, at telephone number 2810 2973.

Security Bureau
27 November 2002

LEGISLATIVE COUNCIL BRIEF

**CRIMINAL JURISDICTION ORDINANCE
(AMENDMENT OF SECTION 2(2)) ORDER 2002 : ANNEXES**

Annex A – Draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2))
Order 2002

Annex B - Sections of enactments referred to in the draft Criminal Jurisdiction
Ordinance (Amendment of Section 2(2)) Order

Annex C – Economic and financial and staffing implications of the proposal

DRAFT ORDER

**CRIMINAL JURISDICTION ORDINANCE (AMENDMENT
OF SECTION 2(2)) ORDER 2002**

(Made by the Chief Executive in Council under section 2(4) and (5) of the Criminal Jurisdiction Ordinance (Cap. 461), a draft of the Order having been laid before and approved by resolution of the Legislative Council)

1. Commencement

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Offences to which this Ordinance applies

Section 2(2) of the Criminal Jurisdiction Ordinance (Cap. 461) is amended –

(a) by adding before paragraph (a) –

"(aa) an offence under section 27A (unauthorized access to computer by telecommunications) of the Telecommunications Ordinance (Cap. 106)";

(b) in paragraph (b), by adding –

"section 60 (destroying or damaging property) but for the purpose of this section, the offence is limited to misuse of a computer as defined in section 59 of the Crimes Ordinance (Cap. 200)

section 161 (access to computer with criminal or dishonest intent)".

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

The purpose of this Order is to bring the offences of unauthorized access to computer by telecommunications, destroying or damaging property (but the offence is limited to misuse of a computer) and access to computer with criminal or dishonest intent within the scope of the Criminal Jurisdiction Ordinance (Cap. 461).

Criminal Jurisdiction Ordinance – Extract of Section 2

- (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.

(Enacted 1994)

Telecommunications Ordinance – Extract of Section 27A

(1) Any person who, by telecommunications, knowingly causes a computer to perform any function to obtain unauthorized access to any program or data held in a computer commits an offence and is liable on conviction to a fine of \$20000. (Amended 36 of 2000 s. 28)

(2) For the purposes of subsection (1)-

(a) the intent of the person need not be directed at-

(i) any particular program or data;

(ii) a program or data of a particular kind; or

(iii) a program or data held in a particular computer;

(b) access of any kind by a person to any program or data held in a computer is unauthorized if he is not entitled to control access of the kind in question to the program or data held in the computer and-

(i) he has not been authorized to obtain access of the kind in question to the program or data held in the computer by any person who is so entitled;

(ii) he does not believe that he has been so authorized; and

(iii) he does not believe that he would have been so authorized if he had applied for the appropriate authority.

(3) Subsection (1) has effect without prejudice to any law relating to powers of inspection, search or seizure.

(4) Notwithstanding section 26 of the Magistrates Ordinance (Cap 227), proceedings for an offence under this section may be brought at any time within 3 years of the commission of the offence or within 6 months of the discovery of the offence by the prosecutor, whichever period expires first.

(Added 23 of 1993 s. 2)

Crimes Ordinance – Extract of Section 59

CRIMINAL DAMAGE TO PROPERTY

(1) In this Part, "property" (財產) means-

- (a) property of a tangible nature, whether real or personal, including money and-
 - (i) including wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but
 - (ii) not including mushrooms growing wild on any land or flowers, fruit or foliage of a plant growing wild on any land; or
- (b) any program, or data, held in a computer or in a computer storage medium, whether or not the program or data is property of a tangible nature.

In this subsection, "mushroom" (菌類植物) includes any fungus and "plant" (植物) includes any shrub or tree. (Replaced 23 of 1993 s. 3)

(1A) In this Part, "to destroy or damage any property" (摧毀或損壞財產) in relation to a computer includes the misuse of a computer.

In this subsection, "misuse of a computer" (誤用電腦) means-

- (a) to cause a computer to function other than as it has been established to function by or on behalf of its owner, notwithstanding that the misuse may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer;
- (b) to alter or erase any program or data held in a computer or in a computer storage medium;
- (c) to add any program or data to the contents of a computer or of a computer storage medium,

and any act which contributes towards causing the misuse of a kind referred to in paragraph (a), (b) or (c) shall be regarded as causing it. (Added 23 of 1993 s. 3)

(2) Property shall be treated for the purposes of this Part as belonging to any person-

- (a) having the custody or control of it;
- (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
- (c) having a charge on it.

(3) Where property is subject to a trust, the persons to whom it belongs shall be so treated as including any person having a right to enforce the trust.

(4) Property of a corporation sole shall be so treated as belonging to the corporation notwithstanding a vacancy in the corporation.

(Added 48 of 1972 s. 3)
[cf. 1971 c. 48 s. 10 U.K.]

Crimes Ordinance – Extract of Section 60

- (1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.
- (2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another-
 - (a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and
 - (b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered, shall be guilty of an offence.
- (3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson.

(Added 48 of 1972 s. 3)
[cf. 1971 c. 48 s. 1 U.K.]

Crimes Ordinance – Extract of Section 161

- (1) Any person who obtains access to a computer-
- (a) with intent to commit an offence;
 - (b) with a dishonest intent to deceive;
 - (c) with a view to dishonest gain for himself or another; or
 - (d) with a dishonest intent to cause loss to another,
- whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for 5 years.
- (2) For the purposes of subsection (1) "gain" (獲益) and "loss" (損失) are to be construed as extending not only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and-
- (a) "gain" (獲益) includes a gain by keeping what one has, as well as a gain by getting what one has not; and
 - (b) "loss" (損失) includes a loss by not getting what one might get, as well as a loss by parting with what one has.
- (Added 23 of 1993 s. 5)

**CRIMINAL JURISDICTION ORDINANCE
(AMENDMENT OF SECTION 2(2)) ORDER 2002**

ECONOMIC IMPLICATIONS

The amendments as for the Criminal Jurisdiction Ordinance (Cap. 461) will further improve our legislative regime to combat cyber crime, including notably cross-border cyber crime, and thus provide a more secure e-commerce environment for Hong Kong. This will help engendering operational efficiency in the economy and maintaining Hong Kong's reputation as an international business centre.

FINANCIAL AND STAFFING IMPLICATIONS

2. The proposal may generate some additional workload for the law enforcement agencies including Hong Kong Police Force, Customs and Excise Department, Immigration Department and Independent Commission Against Corruption which will be responsible for investigation and laying charges against perpetrators of cross-border computer crimes. That said, we anticipate that the additional workload arising from implementing the proposal is unlikely to be substantial and will absorb the additional requirement from within existing resources.