

立法會
Legislative Council

LC Paper No. LS76/06-07

**Paper for the House Committee Meeting
on 1 June 2007**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 25 May 2007**

Date of tabling in LegCo : 30 May 2007

Amendment to be made by : 27 June 2007 (or the 1st meeting of the next session if extended by resolution)

Fugitive Offenders Ordinance (Cap. 503)
Fugitive Offenders (Corruption) Order (L.N. 100)

The Fugitive Offenders (Corruption) Order (the Order) is made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503) (the Ordinance). The Ordinance provides for the surrender to certain places outside Hong Kong of persons who are wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the laws of those places. It also provides for the treatment of persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the law of Hong Kong who are surrendered from certain places outside Hong Kong.

2. The Central People's Government of the People's Republic of China has ratified the United Nations Convention Against Corruption (the Convention) and the Convention entered into force for the People's Republic of China, including Hong Kong, on 12 February 2006. The Convention introduces a comprehensive set of standards, measures and rules that States Parties can apply, in order to strengthen the legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of various forms of corruption in both public and private sectors. It also introduces the fundamental principle and framework for stronger co-operation between states to prevent corruption.

3. The objective of the Order is to apply as between Hong Kong and the places outside Hong Kong to which the Convention relates the procedures for the surrender of fugitive offenders set out in the Ordinance. Those procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the Convention as recited in the Schedule to the Order.

4. Under section 3(9) of the Ordinance, the Chief Executive in Council shall not make the Order unless the arrangements for the surrender of fugitive offenders to which the Order relates are substantially in conformity with the provisions of the Ordinance. According to paragraph 11 of the LegCo Brief, the extradition arrangements under the Convention do so conform.

5. The Order is subject to a mechanism of scrutiny by the LegCo provided in sections 3(2) to (6) of the Ordinance. The mechanism is similar to that provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), except that section 3(3) of the Ordinance restricts LegCo's power to only repeal the Order.

6. Members may refer to the LegCo Brief (File Ref.: CSO/ADM/CR2/1806/01 and SBCR 27/15/5691/74) issued by the Security Bureau dated May 2007 for background information.

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

8. At its meeting on 5 December 2006, the Panel on Security was consulted on the Administration's proposal to implement the extradition requirements under the Convention in Hong Kong. A member enquired whether Hong Kong would be forced, after enactment of the proposed subsidiary legislation, to surrender fugitive offenders to countries which had not entered into bilateral surrender of fugitive offender agreements with Hong Kong and where their legal systems or values might be different from those of Hong Kong, even though Hong Kong considered it inappropriate to do so. Another member enquired whether Hong Kong had experienced any problem in the past in respect of surrender of fugitive offender requests involving corruption-related offences with countries with which Hong Kong had entered into such bilateral agreements. The Administration's replies are in the minutes of the Panel meeting (LC Paper No. CB(2)880/06-07 refers).

9. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Order. A further report on the Order will be submitted, if necessary.

10. According to the LegCo Brief, apart from the Order, two other orders will be made to give effect to relevant articles of the Convention and will have to be approved by LegCo by resolution. Notices to move the proposed resolutions for their approval by LegCo at its meeting on 20 June 2007 have been given by the Administration. The two orders are -

- (a) the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007 to be made under section 31 of the Organized and Serious Crimes Ordinance (Cap. 455) to implement the requirements in relation to confiscation of proceeds of crime under the Convention; and

- (b) the Mutual Legal Assistance in Criminal Matters (Corruption) Order to be made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) to implement the mutual legal assistance requirements under the Convention.

Separate reports on those two orders will be made to the House Committee meeting on 8 June 2007.

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