

立法會
Legislative Council

LC Paper No. LS83/06-07

**Paper for the House Committee Meeting
on 8 June 2007**

**Legal Service Division Report on
Proposed Resolutions
under section 31 of the Organized and
Serious Crimes Ordinance (Cap. 455)
and
section 4 of the Mutual Legal Assistance
in Criminal Matters Ordinance (Cap. 525)**

Introduction

The Chief Secretary for Administration and the Secretary for Security have respectively given notices to move motions at the Council meeting of 20 June 2007, namely a motion under section 31 of the Organized and Serious Crimes Ordinance (Cap. 455) and a motion under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525). The two motions seek to implement the requirements in relation to confiscation of proceeds of crime and mutual legal assistance under the United Nations Convention Against Corruption (the Convention) which has entered into force for the People's Republic of China, including Hong Kong, on 12 February 2006.

2. 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.

Proposed resolution under section 31 of the Organized and Serious Crimes Ordinance (Cap. 455)

3. The Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007 (the OSCO Order) is made by the Chief Executive in Council under section 31 of the Organized and Serious Crimes Ordinance (Cap. 455) (the OSCO), subject to the approval of the LegCo. The OSCO Order amends Schedule 2 to the OSCO by adding to that Schedule the offences under sections

4(2), 5(2), 6(2) and 9(1) (the offences on soliciting or accepting bribes) of the Prevention of Bribery Ordinance (Cap. 201) in order to better fulfil the requirements under Article 31 of the Convention. Under the amendments, the proceeds or property derived from those offences may be subject to a restraint order, charging order or confiscation order made under the OSCO.

4. There is no express commencement provision in the OSCO Order. According to section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the OSCO Order shall come into operation on the day when it is published in the Gazette.

Proposed resolution under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)

5. The Mutual Legal Assistance in Criminal Matters (Corruption) Order (the MLA Order) is made by the Chief Executive in Council under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (the MLAO), subject to the approval of the LegCo, in order to fulfil the requirements under Articles 46 and 57 of the Convention. The MLA Order directs that the MLAO shall, subject to the modifications specified in Schedule 2 to the MLA Order, apply as between Hong Kong and the places outside Hong Kong to which the Convention relates. The Convention is recited in Schedule 1 to the MLA Order.

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

Consultation with LegCo Panel

7. At its meeting on 5 December 2006, the Panel on Security was consulted on the Administration's proposals to implement the requirements of confiscation and mutual legal assistance in criminal matters under the Convention in Hong Kong. A member enquired why offences of accepting bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance (Cap. 201) had not been included in Schedule 2 to the OSCO. The member also enquired whether Hong Kong would be forced, after enactment of the proposed subsidiary legislation, to provide mutual legal assistance to countries which had not entered into bilateral 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. The Administration's replies are in the minutes of the Panel meeting (LC Paper No. CB(2)880/06-07 refers).

Conclusion

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

9. A subcommittee has already been formed at the House Committee meeting on 1 June 2007 to study the Fugitive Offenders (Corruption) Order (L.N. 100 of 2007), a related piece of subsidiary legislation. Should Members wish to consider the OSCO Order and the MLA Order in detail, Members may consider whether to refer the two Orders to the same subcommittee.

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