

**立法會**  
**Legislative Council**

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**Paper for the House Committee meeting on 29 June 2007**

**Report of the Subcommittee on  
Fugitive Offenders (Malaysia) (Amendment) Order 2007 and  
Fugitive Offenders (Suppression of the Financing of Terrorism) Order**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Fugitive Offenders (Malaysia) (Amendment) Order 2007 and Fugitive Offenders (Suppression of the Financing of Terrorism) Order.

**The subsidiary legislation**

Fugitive Offenders (Malaysia) (Amendment) Order 2007

2. The Fugitive Offenders (Malaysia) (Amendment) Order 2007 (L.N. 82) was made by the Chief Executive (CE) in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503) to amend the Principal Order in order to implement in Hong Kong the protocol entered into by the Government of the Hong Kong Special Administrative Region and the Government of Malaysia on 17 October 2006 (the Protocol) to supplement the Bilateral Agreement on the arrangements for the surrender of fugitives (the Agreement) signed in 1995. Section 4 of the Amendment Order adds a new Schedule to the Principal Order in order to set out the terms of the Protocol. According to the Administration, the Protocol essentially expands the list of extraditable offences without exceeding the scope provided for under Cap. 503, obliges both parties to give reasons for not taking action in response to a request for provisional arrest and improves other operational aspects of the agreement.

Fugitive Offenders (Suppression of the Financing of Terrorism) Order

3. The Fugitive Offenders (Suppression of the Financing of Terrorism) Order (L. N. 83) (the Order) was made by CE in Council under section 3 of

Cap. 503 on 8 May 2007 to give effect to the extradition obligations under the International Convention for the Suppression of the Financing of Terrorism (the Convention). The Convention, which entered into force for China, including Hong Kong, in May 2006, proscribes willful and unlawful provision or collection of funds, whether attempted or actual, with the intention or knowledge that the funds may be used to carry out terrorist acts. It requires States Parties to, inter alia, establish such acts as criminal offences, and to freeze, seize or forfeit any funds used for the purposes of committing the offences. It also requires States Parties to make these extraditable offences. The Order, which sets out the Convention in a schedule, provides that in relation to requests for extradition under the Convention, the extradition procedures in Cap. 503 shall apply as between Hong Kong and the States Parties to the Convention, subject to the limitations, restrictions, exceptions and qualifications contained in the extradition provisions of the Convention.

4. The Fugitive Offenders (Malaysia) (Amendment) Order 2007 and the Fugitive Offenders (Suppression of the Financing of Terrorism) Order are subject to a mechanism of scrutiny by the Legislative Council (LegCo) provided in section 3(2) to (6) of Cap. 503 under which LegCo has the power only to repeal the Orders.

5. The scrutiny period of the two Orders has been extended from 20 June 2007 to 11 July 2007 by a resolution of the Council.

### **The Subcommittee**

6. At the House Committee on 25 May 2007, Members agreed that a subcommittee be formed to study the two Orders. Under the chairmanship of Hon James TO, the Subcommittee has held one meeting with the Administration. The membership list of the Subcommittee is in the **Appendix**.

### **Deliberations of the Subcommittee**

#### Fugitive Offenders (Malaysia) (Amendment) Order 2007

7. The Subcommittee notes the reasons for introducing the following articles in the Protocol -

#### Article II

- (a) paragraph (a) was proposed by Hong Kong to align with the legal requirement in Hong Kong under section 2(2)(a) of Cap. 503 and

reflected in the model text for agreements for the surrender of fugitive offenders;

- (b) paragraphs (b) to (m) were proposed by the Malaysian side to expand the list of categories of offences in Article 2 of the Agreement. The newly added categories of offences are within Schedule 1 to Cap. 503;
- (c) paragraph (o) will enable surrender to be effected in respect of offences which are not listed in Article 2(1)(i) to (xxxvii) of the Agreement but are permitted under the law of the Requested Party. Similar provision can be found in item 46 of the Annex of the Hong Kong/Republic of Korea agreement concerning surrender of fugitive offenders;

### Article III

- (d) this article was proposed by the Malaysian side to make it absolutely clear that the Requested Party may refuse temporary surrender of a fugitive offender who has yet to complete serving his sentence;

### Article IV

- (e) new Article 8(2A) has been added by the agreement of the two sides to state a requirement to inform the Requesting Party of the result of its application for provisional arrest and to give reasons for denial. Similar formulations can be found in the Hong Kong/United States agreement in surrender of fugitive offenders;

### Article V

- (f) this amendment was proposed by Hong Kong to include a provision to cater for the disposal of property found on a surrendered person in the event of his subsequent death or abscondment. Similar provisions can be found in Hong Kong's agreements with Australia, Canada, Indonesia, New Zealand, Portugal, The Philippines and Sri Lanka in surrender of fugitive offenders;

### Article VI

- (g) this article was added to empower the Requested Party to require more information for its consideration of whether consent should be given for the surrendered fugitive to be dealt with in the Requesting Party for offences other than the offence or offences

in respect of which surrender is ordered. Similar formulations can be found in agreements with Australia, Canada, India, Indonesia, The Netherlands, New Zealand, The Philippines, Portugal and Sri Lanka;

#### Article VII

- (h) this article was proposed by the Malaysian side to replace Article 18 of the Agreement to enable Malaysia to handle a situation where it is required to resurrender a fugitive to the International Criminal Court established in accordance with the Rome Statute which Malaysia intends to accede to in the near future; and

#### Article VIII

- (i) this article to amend Article 19(2)(a) of the Agreement by replacing the words "defence or foreign affairs" by the words "national security or public order" was requested by the Malaysian side to reflect the legal position in Malaysia.

8. The Subcommittee has asked whether Article VII goes beyond the provisions of Cap. 503, as China is not a party to the Rome Statute establishing the International Criminal Court. The Administration has pointed out that a fugitive offender who has been surrendered under the Agreement shall not be resurrendered by the Requesting Party to a third State or an international tribunal established in accordance with a multilateral international convention that applies to the Requesting Party for trial or punishment for any offence that is committed before his surrender to the Requesting Party unless (a) the Requested Party consents; and (b) if under the convention the consent of another State is required, that State consents. These safeguards are consistent with those provided by Cap. 503.

#### Fugitive Offenders (Suppression of the Financing of Terrorism) Order

9. The Subcommittee has asked whether an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex to the Convention, under paragraph 1(a) of Article 2 of the Convention, is within the scope of terrorist act as defined in the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).

10. The Administration has advised that Articles 2 as well as 4 of the Convention require States Parties to establish the offences of financing terrorist acts as criminal offences. Section 7 of Cap. 575, which prohibits provision or collection of funds to commit terrorist acts, implements this Convention requirement.

**Recommendation**

11. The Subcommittee recommends that the Fugitive Offenders (Malaysia) (Amendment) Order 2007 and the Fugitive Offenders (Suppression of the Financing of Terrorism) Order be supported.

**Advice sought**

12. Members are invited to support the recommendation of the Subcommittee in paragraph 11 above.

Council Business Division 2  
Legislative Council Secretariat  
28 June 2007

**Subcommittee on Fugitive Offenders (Malaysia) (Amendment) Order 2007  
and Fugitive Offenders (Suppression of the Financing of Terrorism) Order**

**Membership list**

**Chairman** Hon James TO Kun-sun

**Members** Hon Margaret NG  
Hon LAU Kong-wah, JP

(Total : 3 Members)

**Clerk** Miss Mary SO

**Legal Adviser** Miss Monna LAI

**Date** 21 June 2007