

立法會
Legislative Council

LC Paper No CB(2)2119/06-07(01)

Ref. : CB2/SS/5/06

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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides -

- (a) background information relating to the Legislative Council's (LegCo) scrutiny of bilateral agreements for surrender of fugitive offenders signed between Hong Kong and other jurisdictions; and
- (b) past discussion by the Panel on Security (the Panel) on the legislative proposals to implement the obligations under the International Convention for the Suppression of the Financing of Terrorism (the Convention).

LegCo's scrutiny of bilateral agreements for surrender of fugitive offenders

Background

2. The Fugitive Offenders Ordinance (Cap. 503), which came in operation on 25 April 1997, provides for the surrender to certain places outside Hong Kong persons wanted for prosecution, or for the imposition or enforcement of a sentence. It also provides for the treatment of persons surrendered to Hong Kong. Section 3 of Cap. 503 states that the Chief Executive (CE) in Council may, in relation to any arrangements for the surrender of fugitive offenders, by order direct that the procedures in the Ordinance shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications contained in the order.

3. An order for the surrender of fugitive offenders is subject to a mechanism of scrutiny by LegCo provided in section 3(2) to (6) of Cap. 503 under which LegCo has the power only to repeal the order.

4. Section 3(9) of Cap. 503 provides that CE in Council shall not make an order under the Ordinance unless the arrangements for the surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of the Ordinance.

5. LegCo has scrutinised the Fugitive Offenders (New Zealand) Order, the Fugitive Offenders (Sri Lanka) Order, the Fugitive Offenders (Portugal) Order, the Fugitive Offenders (Finland) Order, the Fugitive Offender (Germany) Order and the Fugitive Offenders (Republic of Korea) Order since its first term. In addition to these six Orders, orders in relation to the bilateral arrangements for surrender of fugitive offenders signed with 10 other foreign jurisdictions have been made under section 3 of Cap. 503. These jurisdictions are the Netherlands, Canada, Australia, Malaysia, the Philippines, the United States of America, India, Indonesia, the United Kingdom and Singapore.

The Fugitive Offenders (Malaysia) (Amendment) Order 2007

6. The Fugitive Offenders (Malaysia) (Amendment) Order 2007 (the Amendment Order) was made by CE in Council under section 3 of Cap. 503 to amend the Principal Order in order to implement in Hong Kong the protocol signed by the Government of Hong Kong and the Government of Malaysia on 17 October 2006 (the Protocol). 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 aims to further improve the bilateral agreement between Hong Kong and Malaysia on the arrangements for the surrender of fugitives. 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.

7. The Amendment Order is subject to a mechanism of scrutiny by LegCo provided in section 3(2) to (6) of Cap. 503. It will come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

8. Members have not been consulted on the Amendment Order.

Past discussion on the legislative proposals to implement the obligations under the Convention

9. At its meeting held on 6 February 2007, the Panel was consulted on the Administration's proposal to implement the extradition requirements under the Convention. The Convention applies to the offences of wilful 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 the offences proscribed

by anti-terrorism-related international conventions specified in the Convention, or an act intended to cause death or serious bodily injury to any person in order to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act. It requires States Parties to establish the above offences as criminal offences, and to freeze, seize or forfeit any funds used or allocated for the purposes of committing the offences. Articles 9 and 11 of the Convention require States Parties to include the offences under the Convention as extraditable offences and to carry out extradition subject to the conditions provided by the law of the requested party. The Convention entered into force for China, including Hong Kong, in May 2006.

10. Major queries raised by members and the Administration's responses are set out in the ensuing paragraphs.

11. In response to an enquiry raised by Hon James TO on whether the provision or collection of funds for the financing of offences proscribed by the anti-terrorism-related international conventions specified in the Convention were criminal offences under local legislation, the Administration advised that the principal obligations under the Convention were implemented through section 7 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).

12. Hon Margaret NG queried why an order needed to be made under section 3 of Cap. 503, given that offences under the conventions in the Annex to the Convention were extraditable offences under existing legislation.

13. The Administration explained that although the principal obligations of the Convention were implemented under Cap. 575, new legislative measures were nevertheless needed to give effect to the extradition obligations stipulated under Articles 9 and 11 of the Convention.

14. Hon CHOY So-yuk asked whether, for an offence under the Convention to be extraditable, the offence had to be punishable under the domestic legislation of both the requesting party and the requested party. The Administration replied that the Convention required extradition to be made in accordance with the laws of the requested jurisdiction. In Hong Kong, extradition requests from other jurisdictions were conducted in accordance with the requirements and safeguards in Cap. 503. Cap. 503 required that the offence for which extradition was sought had to be punishable under the domestic legislation of both the requesting party and the requested party.

15. On a question raised by Dr Hon LUI Ming-wah as to whether offences under the Convention included the financing of terrorist activities outside the territory of Hong Kong, the Administration pointed out that section 3 of Cap. 575 provided that section 7 applied to any person outside Hong Kong who was a Hong Kong permanent resident or a body incorporated or constituted under the laws of Hong Kong.

16. Members were also advised that the proposed Order would enable the surrender of fugitive offenders to jurisdictions which had not concluded bilateral agreements with Hong Kong on such arrangements but were States Parties to the Convention.

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

17. The Fugitive Offenders (Suppression of the Financing of Terrorism) Order was made by CE in Council under section 3 of Cap. 503 on 8 May 2007 to provide that the procedures in the Ordinance shall apply as between Hong Kong and the foreign States Parties of the Convention, subject to the limitations, restrictions, exceptions and qualifications contained in the extradition provisions of the Convention, thereby enabling the extradition requirements of the Convention to be brought into force in Hong Kong.

18. The Fugitive Offenders (Suppression of the Financing of Terrorism) Order is subject to a mechanism of scrutiny by LegCo provided in section 3(2) to (6) of Cap. 503. It will come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

Relevant papers

19. Members are invited to access LegCo's website (<http://www.legco.gov.hk>) for the LegCo Briefs on the Amendment Order and the Fugitive Offenders (Suppression of the Financing of Terrorism) Order, the report on the two Orders prepared by the Legal Service Division of LegCo Secretariat, and details of the paper and minutes of the meeting of the Panel on 6 February 2007.

Council Business Division 2
Legislative Council Secretariat
8 June 2007