

**Legislative Council Subcommittee on
Fugitive Offenders (Suppression of the
Financing of Terrorism) Order**

Purpose

This note provides information on how the Fugitive Offenders (Suppression of the Financing of Terrorism) Order (the Order) gives effect to the extradition provisions under the International Convention on the Suppression of the Financing of Terrorism (the Convention). It also outlines how the other principal obligations under the Convention are implemented.

Background

2. The Convention entered into force for China, including Hong Kong, in May 2006. It proscribes 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 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 extradite alleged offenders.

The Order

3. Articles 9 and 11 of the Convention require States Parties to include the offences under the Convention as extraditable offences. The Order made under section 3(1) of the Fugitive Offenders Ordinance (Cap. 503), which sets out the Convention in a schedule, provides that in relation to the extradition provisions of 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. It does not have the effect of implementing the non-extradition related provisions of the Convention.

4. Section 3(9) of Cap. 503 provides that an order should not be made unless the arrangements for surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of

Cap. 503. The extradition arrangements under the Convention taken as a whole do so conform. Indeed Article 9 of the Convention provides that the State Party in whose territory the alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition. Article 11(2) specifies that extradition shall be subject to other conditions provided by the law of the requested State.

5. Six similar orders implementing the extradition provisions under other international conventions have previously been made, as follows -

- (a) the Fugitive Offenders (Safety of Civil Aviation) Order (Cap. 503G) giving effect to the extradition provisions under the Convention for the Suppression of Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation;
- (b) the Fugitive Offenders (Internationally Protected Persons and Hostages) Order (Cap. 503H) giving effect to the extradition provisions under the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents and the International Convention Against the Taking of Hostages;
- (c) the Fugitive Offenders (Torture) Order (Cap. 503I) giving effect to the extradition provisions under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (d) the Fugitive Offenders (Drugs) Order (Cap. 503J) giving effect to the extradition provisions under the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- (e) the Fugitive Offenders (Genocide) Order (Cap. 503K) giving effect to the extradition provisions under the Convention on the Prevention and Punishment of the Crime of Genocide; and
- (f) the Fugitive Offenders (Safety of United Nations and Associated Personnel) Order (L.N. 61 of 2007) giving effect to the extradition requirements under the Convention on the Safety of United Nations and Associated Personnel.

Other provisions of the Convention

6. For the other principal obligations under the Convention which need to be implemented by legislative measures, they are already covered in our domestic law. Details are set out in the ensuing paragraphs.

Articles 2 and 4

7. Articles 2 and 4 of the Convention require States Parties to establish the offences of financing terrorist acts as criminal offences. Section 7 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), which prohibits provision or collection of funds to commit terrorist acts, meets this Convention requirement.

Article 5

8. Article 5 requires States Parties to, in accordance with its domestic legal principles, take the necessary measures to enable a legal entity located in its territory or organized under its law to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence under the Convention. This requirement is met by section 3 of Cap. 575 which provides that section 7 shall apply to any person (including a legal entity) within Hong Kong as well as section 101E of the Criminal Procedure Ordinance (Cap. 221) which stipulates that where any person by whom an offence under any Ordinance has been committed is a company and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the company, the director or other officer shall be guilty of the like offence.

Article 7

9. Article 7 requires States Parties to take necessary measures to establish jurisdiction over the offences under the Convention when the offences are committed in their territory, on board a vessel flying their flags or an aircraft registered under their laws at the time the offences are committed, or by their nationals. This requirement is fulfilled by section 3 of Cap. 575 which provides that section 7 shall apply to any person within Hong Kong and any person outside Hong Kong who is a Hong Kong permanent resident, section 23B of the Crimes Ordinance which provides that any act of any person taking place on board a Hong Kong ship on high seas and (were it to take place in Hong Kong) constituting an

offence under the law of Hong Kong shall constitute that offence, and section 3 of the Aviation Security Ordinance (Cap. 494) which provides that any act taking place on board a Hong Kong-controlled aircraft while in flight than in or over Hong Kong and (were it to take place in Hong Kong) constituting an offence under the law of Hong Kong shall constitute that offence.

Article 8

10. Article 8 requires States Parties to take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences under the Convention as well as the proceeds derived from such offences, for purposes of possible forfeiture. This requirement is fulfilled by section 6 of Cap. 575, which provides for freezing of terrorist funds, section 12G of Cap. 575, which provides for seizure of terrorist funds and section 13 of Cap. 575, which provides for forfeiture of funds used to finance or otherwise assist the commission of a terrorist act or proceeds arising from a terrorist act.

Articles 12 to 16

11. Article 12 provides that States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings in respect of the offences under the Convention. Article 12(5) stipulates that States Parties shall carry out such obligations in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties, States Parties shall afford one another assistance in accordance with their domestic law. For States Parties with whom we have already entered into bilateral agreements on mutual legal assistance, we will be able to provide assistance in accordance with the agreements. For those with whom we have not concluded bilateral agreements, section 5(4) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) enables us to provide assistance on the basis of reciprocity.

Article 17

12. Article 17 specifies that any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to the Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and

applicable provisions of international law, including international human rights law. This requirement is met by the Hong Kong Bill of Rights Ordinance (Cap. 383).

Article 18

13. Article 18 provides that States Parties shall cooperate in the prevention of the offences under the Convention by taking all practicable measures to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories. Such measures include requiring financial institutions and other professions involved in financial transactions to utilize measures available for the identification of their customers, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. In this respect, the Hong Kong Monetary Authority has promulgated relevant guidelines on prevention of terrorist financing, requiring financial institutions to undertake the customer due diligence process to verify customers' identity and report suspicious financial transactions to the law enforcement agencies. Section 12 of Cap. 575 also requires disclosure of knowledge or suspicion that property is terrorist property to the law enforcement agencies.

Security Bureau
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