

立法會
Legislative Council

Ref : CB2/SS/7/06

LC Paper No. CB(2)2559/06-07
(These minutes have been seen by
the Administration)

**Subcommittee on
Subsidiary Legislation to Implement the Obligations under
the United Nations Convention Against Corruption**

**Minutes of meeting
held on Friday, 13 July 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
- Public Officers attending** : Miss Shirley YUNG
Deputy Director of Administration
- Ms Manda CHAN
Principal Assistant Secretary for Security
- Mr Ian MCWALTERS
Deputy Director of Public Prosecutions
- Mr Wayne WALSH
Deputy Principal Government Counsel (Mutual Legal Assistance Unit)
- Ms Francoise LAM
Senior Government Counsel
- Mr Hubert LAW
Assistant Secretary for Security
- Ms Jane LEE
Assistant Secretary for Security

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2) 1

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mr Raymond LAM
Senior Council Secretary (2) 5

I. Meeting with the Administration

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. The Subcommittee requested the Administration to provide a response to the following issues raised by members -

Fugitive Offenders (Corruption) Order

(a) to consider -

- (i) deleting everything in the Schedule to Fugitive Offenders (Corruption) Order (the Order) except Article 44(8);
- (ii) deleting everything in the Schedule to the Order except Article 44; or
- (iii) giving an undertaking or statement to emphasise that Article 44(8) was the only operative provision in the Schedule to the Order;

Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007

- (b) to explain the differences, including the scope of application and burden of proof, between a restitution order under section 12 of the Prevention of Bribery Ordinance (POBO) and a confiscation order under Schedule 2 to the Organized and Serious Crimes Ordinance (OSCO);
- (c) to explain the effect, if any, of the proposed amendments to Schedule 2 to OSCO on existing agreements on mutual legal assistance in criminal matters (MLA) and surrender of fugitive offenders, including whether a jurisdiction with which Hong Kong had not concluded an MLA agreement could seek MLA under the proposed amendments to Schedule 2 to OSCO;

Action

- (d) to advise if the Administration was aware of any countries where proceeds from corruption could only be recovered by way of a civil order; and
 - (e) to advise whether there were difficulties in the enforcement of an order issued under section 12 of POBO.
3. The Subcommittee requested the Clerk to identify from the records of the committee which studied the Organized Crime Bill 1991 the reasons for not including the offences on "accepting" bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of POBO in Schedule 2 to OSCO.

II. Date of next meeting

4. The Chairman concluded that the Subcommittee had completed its scrutiny of the Order and a written report on the deliberations of the Subcommittee would be submitted to the House Committee on 5 October 2007. She informed members that the deadline for moving a motion to repeal the Order would be 10 October 2007. Mr James TO disagreed that the Subcommittee had concluded its scrutiny of the Order, as there was still information on the Order to be provided by the Administration.
5. The Subcommittee agreed that the next meeting would be scheduled to continue discussion with the Administration on the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007 and the Mutual Legal Assistance in Criminal Matters (Corruption) Order, pending the availability of the information to be provided by the Administration.
6. The meeting ended at 10:15 am.

**Proceedings of meeting of the
Subcommittee on
Subsidiary Legislation to Implement the Obligations under
the United Nations Convention Against Corruption
on Friday, 13 July 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|---|--|--|
| 000000 - 000433 | Chairman | Relevant papers | |
| 000434 - 001348 | Admin | Briefing on the Administration's response to issues raised by members at the last meeting (LC Paper Nos. CB(2)2451/06-07(01) and CB(2)2465/06-07(01)) | |
| 001349 - 003119 | Hon James TO Hon Howard YOUNG Chairman Admin | Why offences on "soliciting or accepting" bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of Prevention of Bribery Ordinance (POBO) had not been included in Schedule 2 to the Organized and Serious Crimes Ordinance (OSCO) | Clerk to identify the reasons from the records of the committee which studied the Organized Crime Bill 1991 |
| 003120 - 003316 | Hon LAU Kong-wah Admin Chairman | Whether the proposed subsidiary legislation would be sufficient for implementing the obligations under the United Nations Convention Against Corruption in Hong Kong | |
| 003317 - 005320 | Hon James TO Admin Chairman | Difference between a restitution order under section 12 of POBO and a confiscation order under Schedule 2 to OSCO; effect of the proposed amendments to Schedule 2 to OSCO on existing agreements on mutual legal assistance in criminal matters (MLA) and surrender of fugitive offenders; countries where proceeds from corruption could only be recovered by way of a civil order | Admin to explain the difference, including the scope of application and burden of proof, between a restitution order under section 12 of POBO and a confiscation order under Schedule 2 to OSCO, to explain the effect, if any, of the proposed amendments to Schedule 2 to OSCO on existing agreements on MLA and surrender of |

| Time marker | Speaker | Subject(s) | Action Required |
|--------------------|---|---|---|
| | | | fugitive offenders; to advise if the Administration was aware of any countries where proceeds from corruption could only be recovered by way of a civil order |
| 005321 - 005805 | Chairman Hon James TO Admin | Timing for the next meeting; deadline for moving amendments to the Fugitive Offenders (Corruption) Order (the Order) | |
| 005806 - 011700 | Hon James TO Hon Howard YOUNG Chairman Admin | Whether there were difficulties in the enforcement of an order issued under section 12 of POBO | Admin to advise whether there were difficulties in the enforcement of an order issued under section 12 of POBO |
| 011701 - 013123 | Chairman Hon James TO Admin | Section-by-section examination of the Order | Admin to consider deleting everything in the Schedule to the Order except Article 44(8) or Article 44, or to give an undertaking or make a statement to emphasise that Article 44(8) was the only operative provision in the Schedule to the Order |
| 013124 - 014053 | Chairman Hon Howard YOUNG Hon James TO Admin | Whether the Subcommittee had completed scrutiny of the Order; reporting the deliberations of the Subcommittee on the Order to the House Committee; date of next meeting | |