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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper summarises the discussions by the Panel on Security on the Administration's legislative proposals to implement the obligations under the United Nations Convention Against Corruption (UNCAC) in Hong Kong.

Background

2. The Central People's Government of the People's Republic of China has ratified UNCAC which came into force for the People's Republic of China, including Hong Kong, on 12 February 2006. UNCAC introduces a comprehensive set of standards, measures and rules that States Parties can apply, in order to strengthen the legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalisation of various forms of corruption in both the public and private sectors. It also introduces the fundamental principle and framework for stronger co-operation between states to prevent corruption.

3. To implement the obligations under UNCAC in Hong Kong, legislative amendments are required in relation to the confiscation of proceeds of crimes, extradition and mutual legal assistance in legal matters.

The subsidiary legislation

The Fugitive Offenders (Corruption) Order

4. The objective of the Fugitive Offenders (Corruption) Order is to apply as between Hong Kong and the places outside Hong Kong to which UNCAC relates the procedures for the surrender of fugitive offenders set out in the

Fugitive Offenders Ordinance (FOO). The procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms of UNCAC as recited in the Schedule to the Order.

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

5. The Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007 is made under section 31 of the Organized and Serious Crimes Ordinance (OSCO), subject to the approval of the Legislative Council (LegCo). It seeks to implement the requirements in relation to confiscation of proceeds of crime under UNCAC.

The Mutual Legal Assistance in Criminal Matters (Corruption) Order

6. The Mutual Legal Assistance in Criminal Matters (Corruption) Order is made under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (MLAO), subject to the approval of LegCo, to implement the mutual legal assistance requirements under UNCAC.

Discussions by the Panel on Security

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, extradition and mutual legal assistance in criminal matters under UNCAC in Hong Kong.

8. Members raised the following issues -

- (a) whether Hong Kong would be forced, after enactment of the proposed subsidiary legislation, to surrender fugitive offenders or provide mutual legal assistance in criminal matters to countries which had not entered into such 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;
- (b) whether Hong Kong had experienced any problem in the past in respect of surrender of fugitive offender requests involving corruption-related offences with countries with which Hong Kong had entered into such bilateral agreements; and
- (c) the reason for offences on "accepting" bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of Prevention of the Bribery Ordinance (POBO) having not been included in Schedule 2 to OSCO.

9. The Administration responded that -
- (a) Hong Kong had an obligation under UNCAC and the United Nations Convention Against Transnational Organized Crime (UNTOC) to surrender fugitive offenders or provide mutual legal assistance in criminal matters to a State Party to UNCAC and UNTOC, unless there were grounds for refusal under FOO or MLA. Articles 44(1) and 46(1) of UNCAC provided that the surrender of fugitive offenders and requests for mutual legal assistance should be dealt with in accordance with the domestic legislation of the requested party. The existing safeguards provided under FOO and MLA would not be affected by the proposed legislative amendments;
 - (b) Hong Kong had not experienced any problem in the past in respect of requests for surrender of fugitive offenders involving corruption-related offences with countries with which Hong Kong had entered into surrender of fugitive offender agreements; and
 - (c) the Department of Justice had looked into the reason why offences on "accepting" bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of POBO had not been included in Schedule 2 to OSCO, but had not been able to identify the reason.

Relevant papers

10. Members may wish to refer to the Administration's papers on its legislative proposals to implement UNCAC in Hong Kong and related matters (LC Paper Nos. CB(2)2577/05-06(03) and CB(2)735/06-07(01)) and the minutes of the Panel meeting held on 5 December 2006 (LC Paper No. CB(2)880/06-07). The papers are available on the website of the Council (<http://www.legco.gov.hk>).