

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

Purpose

This note provides information on how the Fugitive Offenders (Corruption) Order (the FO Order) and the Mutual Legal Assistance in Criminal Matters (Corruption) Order (the MLA Order) give effect to the extradition and mutual legal assistance (MLA) provisions respectively under the United Nations Convention Against Corruption (the Convention), in response to the questions raised by the Subcommittee at its meeting on 12 June 2007.

Background

2. The Convention entered into force for China, including Hong Kong, in February 2006. It 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 also requires States Parties to extradite offenders and provide MLA to one another.

The FO Order

3. Article 44 of the Convention requires States Parties to include the offences under the Convention as extraditable offences among themselves. The FO 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 do so conform. Indeed Article 44(8) of the Convention provides that extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

5. Seven 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;
- (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; and
- (g) the Fugitive Offenders (Suppression of the Financing of Terrorism) Order (L.N. 83 of 2007) giving effect to the extradition requirements under the International Convention for the Suppression of the Financing of Terrorism.

The MLA Order

6. Articles 46 and 57 of the Convention require that States Parties shall afford one another the widest measure of MLA in relation to the offences under the Convention, and to enable a State Party's competent authorities to return confiscated property when acting on the request made by another State Party. Specifically, Article 46(27) stipulates that a person who consents to give evidence in a proceeding in a territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the person having had, for a period of 15 consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

7. The MLA Order made under section 4(1) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), which sets out the Convention in Schedule 1, provides that in relation to the MLA

provisions of the Convention, Cap. 525 shall apply as between Hong Kong and the States Parties to the Convention, subject to the modifications specified in Schedule 2 giving effect to Article 46(27) as mentioned in paragraph 6 above. Similar to the FO Order, the MLA Order does not have the effect of implementing the non-MLA related provisions of the Convention.

8. Section 4(2) of Cap. 525 provides that an order should not be made unless the arrangements for MLA are substantially in conformity with the provisions of Cap. 525. The arrangements for MLA under the Convention do so conform. Article 46(17) of the Convention provides that an MLA request shall be executed in accordance with the domestic law of the requested State Party. Similar modifications in respect of the safe conduct period have been effected for all our bilateral MLA agreements with other jurisdictions.

Other provisions of the Convention

9. How other principal obligations under the Convention are implemented is covered by another paper prepared for the Subcommittee.

Security Bureau
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