

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

Purpose

At its meeting on 13 July 2007, the Subcommittee requested the Administration to consider the following issues in relation to the Fugitive Offenders (Corruption) Order (the FO Order) -

- (a) deleting everything in the Schedule to the FO Order except Article 44(8);
 - (b) deleting everything in the Schedule to the FO Order except Article 44; or
 - (c) giving an undertaking or statement to emphasize that Article 44(8) was the only operative provision in the Schedule to the Order.
2. The Subcommittee also requested the Administration to explain the effect, if any, of the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007 (the OSCO Order) on existing agreements on mutual legal assistance in criminal matters (MLA) and surrender of fugitive offenders (SFO), including whether a jurisdiction with which Hong Kong has not concluded an MLA agreement could seek MLA under the proposed amendments to Schedule 2 to the Organized and Serious Crimes Ordinance (Cap. 455) (OSCO).
3. This note provides the Administration's response to the above issues. The remaining issues¹ concerning the OSCO Order raised at the

¹ The Subcommittee also requested the Administration to explain/advise –

- (a) 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 OSCO;
- (b) if the Administration was aware of any countries where proceeds from corruption could only be recovered by way of a civil order; and
- (c) whether there were difficulties in the enforcement of an order issued under section 12 of the POBO.

meeting on 13 July 2007 will be dealt with in another note to be issued to the Subcommittee.

The FO Order

4. Section 3 of the Fugitive Offenders Ordinance (Cap. 503) provides that the Chief Executive in Council “may, in relation to any arrangements for the surrender of fugitive offenders, by order (a) reciting or embodying the terms of the arrangements ... direct that the procedures in this Ordinance shall apply...”. The terms of the arrangements are recited or embodied in the United Nations Convention Against Corruption (the Convention) and for this reason the Convention appears in the Schedule to the FO Order. This approach is consistent with that taken in the making of orders in relation to SFO provisions in all other multilateral agreements under Cap. 503 to date, including the Fugitive Offenders (Safety of Civil Aviation) Order, the Fugitive Offenders (Internationally Protected Persons and Hostages) Order, the Fugitive Offenders (Torture) Order, the Fugitive Offenders (Drugs) Order, the Fugitive Offenders (Genocide) Order, the Fugitive Offenders (Safety of United Nations and Associated Personnel) Order and the Fugitive Offenders (Suppression of the Financing of Terrorism) Order.

5. We do not suggest limiting the provisions of the Schedule to the FO Order to Article 44(8) or Article 44 of the Convention. For example, some other provisions of the Convention are relevant in certain contexts. Article 44(1) provides that Article 44 shall apply “to offences established in accordance with this Convention”. Those offences are found elsewhere in the Convention (Articles 15-30) and it is considered helpful to have the Convention scheduled to achieve a full understanding of the FO Order.

6. As explained in the paper (LC Paper No. CB(2)2451/06-07(01)) submitted to the Subcommittee meeting on 13 July 2007, the FO Order provides that in relation to the extradition provisions of the Convention, i.e. Article 44, 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. The FO Order does not have

the effect of implementing the non-extradition related provisions of the Convention.

The OSCO Order

7. The OSCO Order seeks to add the offences of “soliciting or accepting bribes” under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance (Cap. 201) to Schedule 2 to OSCO, so as to enable the Government to apply to the court to confiscate the proceeds of such offences as required under Article 31 of the Convention. It does not affect the operation of any existing bilateral MLA or SFO agreements between Hong Kong and other jurisdictions. Both Hong Kong and such other jurisdictions will continue to be obliged to provide assistance to each other in accordance with the provisions of the agreements.

8. The OSCO Order also does not have the effect of enabling any State Party to the Convention to seek MLA from Hong Kong. As explained in the paper (LC Paper No. CB(2)2451/06-07(01)) submitted to the Subcommittee meeting on 13 July 2007, the Mutual Legal Assistance in Criminal Matters (Corruption) Order (the MLA Order) provides that in relation to the MLA provisions of the Convention, the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) shall apply as between Hong Kong and the States Parties to the Convention, subject to the modifications specified in Schedule 2 to the Order. The MLA Order will enable Hong Kong to provide MLA to the States Parties to the Convention in accordance with Cap. 525.

Security Bureau
Department of Justice
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