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**Subcommittee on Subsidiary Legislation
to Implement the Obligations under the United Nations Convention
Against Transnational Organized Crime**

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 Transnational Organized Crime (UNTOC) in Hong Kong.

Background

2. The Central People's Government of the People's Republic of China has ratified UNTOC. UNTOC, which entered into force for Hong Kong on 27 September 2006, seeks to strengthen the power of governments in combating serious crimes by providing a basis for common actions against organized crimes, money laundering, corruption and obstruction of justice. It also promotes extradition, and enhances judicial cooperation, mutual legal assistance (MLA) and law enforcement cooperation.

3. Pursuant to Article 16 of UNTOC, a State Party shall, subject to relevant conditions, make extradition arrangements for a person who is the subject of a request for extradition and is located in its territory for offences covered by UNTOC, namely participation in an organized criminal group, money laundering, corruption, obstruction of justice or other serious crimes as defined in Article 2 of UNTOC, which are transnational in nature and involve an organized criminal group.

4. Article 18 of UNTOC requires States Parties to afford one another the widest measure of MLA in investigations, prosecutions and judicial proceedings in relation to the offences covered by UNTOC. Specifically, Article 18(27) stipulates that a person who consents to give evidence in a proceeding in the territory of the requesting State Party shall not be prosecuted,

detained, punished or subjected to any other restriction of his or her 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 witness, expert or other 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.

5. In addition, Article 14 of UNTOC requires each State Party, to the extent permitted by domestic law and if so requested, to give priority consideration to returning confiscated proceeds of crime or property to the requesting State Party.

6. To give effect to Articles 14, 16 and 18 of UNTOC, legislative measures are required.

The subsidiary legislation

The Fugitive Offenders (Transnational Organized Crime) Order

7. The Fugitive Offenders (Transnational Organized Crime) Order is made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503) (FOO) to implement the extradition requirements under UNTOC. The objective of the Order is to apply as between Hong Kong and the places outside Hong Kong to which UNTOC relates the procedures for the surrender of fugitive offenders set out in FOO. The procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the terms of UNTOC as recited in the Schedule to the Order.

The Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order

8. The Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order is made by the Chief Executive in Council under section 4 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (MLAO) to implement the MLA requirements under UNTOC. The Order, which includes UNTOC in Schedule 1, directs that MLAO shall, subject to the modifications specified in Schedule 2 to the Order, apply as between Hong Kong and the places outside Hong Kong to which UNTOC relates.

Discussions by the Panel on Security

9. At its meeting on 5 December 2006, the Panel on Security was consulted on the Administration's proposals to make an order under section 3 of

FOO and another order under section 4 of MLAO to give effect to Articles 14, 16 and 18 of UNTOC.

10. Members raised the following issues -

- (a) the reason why FOO and MLAO had not dealt with the requirements in Articles 14, 16 and 18 of UNTOC;
- (b) whether Hong Kong would be forced, after enactment of the proposed subsidiary legislation, to surrender fugitive offenders or provide MLA 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; and
- (c) the effect of the proposed legislative amendments.

11. The Administration responded that FOO and MLAO already enabled Hong Kong to surrender fugitive offenders and provide MLA in respect of offences under UNTOC to jurisdictions with which Hong Kong had concluded bilateral surrender of fugitive offenders and MLA agreements. In addition, MLAO permitted MLA to be provided on the basis of reciprocity. After the enactment of the proposed subsidiary legislation, FOO and MLAO would enable Hong Kong to respond to requests made by State Parties to UNTOC.

12. The Administration further advised that Hong Kong had an obligation under UNTOC to surrender fugitive offenders or provide MLA to a State Party to UNTOC, unless there were grounds for refusal under FOO or MLAO. The requests should be dealt with in accordance with the domestic legislation of the requested party. The existing safeguards provided under FOO and MLAO would not be affected by the proposed legislative amendments.

Relevant papers

13. Members may wish to refer to the Administration's papers on the subject (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 Legislative Council (<http://www.legco.gov.hk>).