

Subcommittee on Fugitive Offenders (Ireland) Order

At the Subcommittee meeting held on 19 May 2008, the Administration was requested to clarify whether the court has full discretion under section 9 of the Fugitive Offenders Ordinance (Cap. 503) in handling property in which third parties have rights as covered under Article 16 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Ireland Concerning Surrender of Fugitive Offenders ("the Agreement").

Relevant provisions of the Fugitive Offenders Ordinance (Cap. 503)

2. Section 8(1) of Cap. 503 provides for seizure of property from a person by stipulating –

“Where an authorized officer who arrests a person pursuant to this Ordinance has reasonable grounds for suspecting that there is property on or under the apparent control of the arrested person that –

(a) may be material as evidence in proving an offence to which the warrant (including a provisional warrant) under section 7(1) concerned relates; or

(b) has been acquired as a result of such an offence,

that authorized officer may, with such assistants as may be necessary, search for and seize any such property.”

Section 8(2) of Cap. 503 governs seizure of property from a place by providing –

“A magistrate may, if satisfied by information on oath that there are reasonable grounds for suspecting that there is likely to be found in any place any property that –

(a) may be material as evidence in proving an offence to which a request for surrender which has been received, or in respect of which the magistrate is satisfied will be received within the period provided for its receipt under the prescribed arrangements concerned, relates; or

(b) has been acquired as the result of such an offence,

issue a warrant authorizing any authorized officer, with such assistants as may be necessary, at any time to enter such place, by force if necessary, and there search for and seize any such property.”

3. Section 9(1) of Cap. 503 requires that any property seized under section 8 shall be disposed of pursuant to an order of court made under section 9(2). Section 9(2)(a) of Cap. 503 provides that –

“Where any property has been seized under section 8, a magistrate may by order direct the property to be disposed of –

if the magistrate is satisfied that the property –

(i) is material as evidence in proving an offence to which the request for surrender concerned relates; or

(ii) has been acquired as the result of such an offence,

by being sent to the prescribed place which made the request (and whether or not the person to whom the request relates is surrendered under this Ordinance to that place) or in such other manner as may be specified in the order”

4. In essence, for property seized under section 8 of Cap. 503, section 9(2)(a) empowers the court to decide that –

(a) the property should be sent to the jurisdiction requesting the surrender of the fugitive concerned; or

(b) the property should be disposed of in such other manner as the court may specify.

Article 16 of the Agreement

5. Article 16(1)(a) of the Agreement provides that to the extent permitted under the law of the requested Party, when a request for surrender of a fugitive is granted, the requested Party shall, if the requesting Party so requests, hand over to the requesting Party all articles, including sums of money, which may be required as evidence or have been acquired by the fugitive as a result of the offence and are in his possession or are discovered subsequently, and which have been specified by the requesting Party. This provision is consistent with section 8 of Cap. 503.

6. Article 16(2) of the Agreement preserves the rights of third parties in the articles covered under Article 16(1)(a), and provides that when such rights exist the articles shall on request be returned to the requested Party without charge as soon as practicable after the end of the proceedings. As Article 16(1)(a) stipulates that the handover of the articles concerned to the requesting Party is subject to the permission under the law of the requested Party, Article 16 in its entirety, as read with section 9(2)(a) of Cap. 503, in effect provides that the disposal of the articles concerned in which third parties have rights will be handled by the court in accordance with section 9(2)(a) of Cap. 503. As mentioned in paragraph 4 above, the court may, upon consideration of the representations put forward by the third parties in question and the request of the requesting Party, decide that the articles concerned should be sent to the requesting Party, or disposed of in such manner as the court may specify to take into account the third parties' rights. In other words, the court has full discretion in specifying that the articles concerned should be retained by the third parties in question, or handed over to the requesting Party and returned to Hong Kong after the end of the proceedings in the requesting Party.

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