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**Paper for the House Committee Meeting
of the Legislative Council
on 17 December 1999**

**Legal Service Division Report on
Drug Trafficking and Organized Crimes (Amendment) Bill 1999**

Objects of the Bill

The main objects of the Bill are to-

- (a) make parallel amendments to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) ("the DT(RoP)O") and the Organized and Serious Crimes Ordinance (Cap. 455) ("the OSCO") to-
 - (i) empower the Court of First Instance, in the case of a person who has been arrested for a drug trafficking offence or a specified offence under the OSCO, and released on bail, to issue a restraint or charging order against the person's property (sections 2 and 7 of Schedule 1 and sections 2 and 6 of Schedule 2);
 - (ii) empower the Court of First Instance or the District Court, in the case where a person, who is subject to proceedings for a drug trafficking offence or a specified offence under the OSCO, has absconded and reasonable steps have been taken to ascertain his whereabouts but of no avail, to issue a confiscation order against him (section 3(a) of Schedules 1 and 2);
 - (iii) empower the Court of First Instance or the District Court to fix a period within which a person has to pay under a confiscation order (section 6 of Schedule 1 and section 5 of Schedule 2);
 - (iv) require a person to give information in determining the value of realisable property the subject of a restraint or charging order and make it an offence for a person to knowingly deal in any realisable property in contravention of such an order (sections 8 and 9 of Schedule 1 and sections 7 and 8 of Schedule 2 and section 3(b)(ii) and (iii) of Schedule 3);

- (v) introduce a streamlined procedure for the realisation of property where the amount to be recovered under a confiscation order is not more than \$500,000 (sections 10 and 11 of Schedule 1 and sections 9 and 10 of Schedule 2);
 - (vi) create a new offence of dealing in realisable property having reasonable grounds to suspect that the property in whole or in part represents a person's proceeds of drug trafficking or an indictable offence (sections 12(a), (b) and (d), 13(b) and 15 of Schedule 1 and sections 11(a), (b) and (d), 12(b) and 13 of Schedule 2); and
 - (vii) increase the penalty for certain offences;
- (b) amend the DT(RoP)O to repeal section 4(4) so that certain statutory assumptions of a person having benefited from drug trafficking would also apply to a person convicted of drug money laundering offence (section 4 of Schedule 1); and
 - (c) make consequential amendments to the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg.) (section 15 of Schedule 1 and sections 1 and 2 of Schedule 3).

LegCo Brief Reference

- 2. NCR 3/1/8(G) Pt. 22 issued by the Security Bureau on 1 December 1999.

Date of First Reading

- 3. 8 December 1999.

Comments

- 4. The DT(RoP)O and OSCO provide for, amongst others, the tracing, restraining and confiscation of proceeds derived from drug trafficking or a specified offence under the OSCO. The Bill makes parallel amendments to the 2 Ordinances to further enhance the effectiveness of the confiscation and anti-money laundering provisions in the Ordinances. Members may refer to paragraph 5 of the LegCo Brief for details of the proposals in the Bill.

Public Consultation

5. Paragraph 23 of the LegCo Brief says that the Administration has consulted the 2 legal professional bodies, the Hong Kong Society of Accountants, financial regulators and the Action Committee Against Narcotics which, in general, are supportive of the proposals.

Consultation with the LegCo Panel

6. The Administration briefed the LegCo Security Panel at its meeting held on 11 November 1999. It supported the general principle of the Bill. But some members of the Panel expressed concern over what sort of evidence is required to establish the new offence of dealing in realisable property having reasonable grounds to suspect that the property in whole or in part represents a person's proceeds of drug trafficking or an indictable offence and the sufficiency of the deterrence effect of certain proposed penalties.

Conclusion

7. The Legal Service Division is still scrutinising the legal and drafting aspects of the Bill. In the light that some members of the LegCo Security Panel have expressed concern over certain aspects of the Bill, Members may wish, in the meantime, to consider whether it is necessary to form a Bills Committee to study the Bill in detail.

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