

Information Paper

Legislative Council Panel on Security

ORGANIZED AND SERIOUS CRIMES ORDINANCE

Report on Implementation (1997 - 2005)

Introduction

This paper reports on the implementation of the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455) for the period of 1997 to 2005.

Background

2. OSCO was enacted on 21 October 1994 to enhance our capabilities to tackle organized and serious crimes, including triad and money laundering offences. It came into full effect on 28 April 1995.
3. The Ordinance provides for the following –
 - (a) special investigative powers, i.e. witness orders (orders to furnish information), production orders and search warrants;
 - (b) restraint of assets and confiscation of crime proceeds;
 - (c) criminalization of money laundering activities; and
 - (d) enhanced sentencing powers.

Such powers are subject to a number of safeguards. For example, the use of a number of investigative powers is restricted to the investigation of “specified offences” and “organized crimes” as defined by the Ordinance, with the authorization by a Judge of the Court of First Instance who must be satisfied that a number of conditions have been met (e.g. that there are reasonable grounds for suspecting that the organized crime under investigation has been committed; and that it is in the public interest, having regard to the seriousness of the organized crime to make the Order and whether or not the crime could be effectively investigated if the Order is not made .)

4. The Administration submitted a report on the implementation of OSCO up to 31 March 1997 for discussion at the meeting of the Panel on Security of the then Legislative Council on 12 May 1997. In light of changing circumstances, international trends and operational experience, several amendments have been made to OSCO since the report. The following lists the major amendments made –

- Organized and Serious Crimes (Amendment) Ordinance 2000 : the Amendment Ordinance introduced anti-money laundering measures for non-banking financial institutions, i.e. money changers and remittance agents. The Amendment Ordinance came into operation on 1 June 2000.
- Drug Trafficking and Organized Crimes (Amendment) Ordinance 2002 : the Amendment Ordinance strengthened, among others, the anti-money laundering provisions in OSCO. In particular, it sought to clarify the procedural aspects of confiscation orders, to strengthen the scope of restraint orders and charging orders, and to specify sanctions for breaching these orders. The Amendment Ordinance came into operation on 1 January 2003.
- Offences relevant to definitions of “organized crime” and “specified offence” : a number of serious offences, including those in the areas of weapons of mass destruction, chemical weapons and copyright infringement, have been added to Schedule 1 of OSCO, and as a result the OSCO provisions would be applicable to organized crimes involving such offences.

5. The following annexes set out the statistics on the implementation of OSCO from 1997 to 2005 -

- (a) Annex A - Special investigative powers
- (b) Annex B - Confiscation, restraint and charging orders
- (c) Annex C - Money laundering
- (d) Annex D - Special sentencing procedures

Way forward

6. Since its operation in 1995, OSCO has proved to be a useful tool in the fight against triads and organized crime. The powers and procedures in OSCO have greatly assisted in the fight against organized crime with encouraging results. The law enforcement agencies and the Department of Justice have built up considerable experience in administering OSCO over the years. The Administration will continue to review the operation of the Ordinance where appropriate.

Security Bureau
September 2006

Number of Witness Orders, Production Orders and Search Warrants Granted

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Witness Orders (s.3)									
Police	3	0	1	18	0	0	0	0	0
Customs & Excise Department (C&ED)	0	0	0	0	0	0	0	0	0
Total	3	0	1	18	0	0	0	0	0
Production Orders (s.4)									
Police	19	83	50	242 ¹	195 ¹	214 ¹	106	74	116
C&ED	50	10	0	0	4	0	0	20	66
Total	69	93	50	242	199	214	106	94	182
Search Warrants (s.5)									
Police	13	44	3	7	0	176 ²	0	0	0
C&ED	11	0	0	0	0	0	0	0	0
Total	24	44	3	7	0	176	0	0	0

Notes ¹ The increase was a result of the prevalence of such commercial crime cases as Local London Gold Fraud, Pyramid Selling Fraud and Boiler Room Fraud during the period.

² The search warrants were all issued in connection with a joint Police and ICAC operation.

Confiscation, restraint and charging orders granted

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Restraint Orders (s.15)									
Police	10	25	7	8	7	5	3	1	3
C&ED	1	0	0	0	0	0	0	1	4
Total	11	25	7	8	7	5	3	2	7
Value of assets under restraint order* (HK\$ million)									
Police	38.32	70.34	37.78	167.84	1044.40	1147.11	1252.71	1294.34	1272.65
C&ED	16.9	0	0	0	0	0	0	19.84	95.39
Total	55.22	70.34	37.78	167.84	1044.40	1147.11	1252.71	1314.18	1368.04
Charging Orders (s.16)									
Police	0	0	0	4	6	4	3	0	0
C&ED	1	0	0	0	0	0	0	1	4
Total	1	0	0	4	6	4	3	1	4
Confiscation Orders (s.8)									
Police	1	2	2	2	2	1	0	2	2
C&ED	0	0	1	0	0	0	0	0	0
Total	1	2	3	2	2	1	0	2	2
Value of assets confiscated pending recovery* (HK\$ million)									
Police	7.98	7.87	7.87	7.87	12.19	22.69	12.19	23.61	20.82
C&ED	0	0	1.75	0	0	0	0	0	0
Total	7.98	7.87	9.62	7.87	12.19	22.69	12.19	23.61	20.82
Value of assets Recovered ** (HK\$ million)									
Police	0	0.31	0.45	1.23	2.09	3.09	14.29	17.71	38.14
C&ED	0	0	1.86	1.86	1.86	1.86	1.86	1.86	1.86
Total	0	0.31	2.31	3.09	3.95	4.95	16.15	19.57	40

* Accumulated value of assets ordered to be confiscated / restrained at the end of the year

** Accumulated amount recovered and paid to the Government at the end of the year

Money laundering

The statistics on the money laundering offence under s.25 of OSCO are as follows –

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Police									
Number of persons prosecuted	22	28	13	23	33	69	81	73	96
Number of persons convicted	10	13	10	22	23	37	55	43	69
C&ED									
Number of persons prosecuted	0	0	0	0	0	0	1	0	3
Number of persons convicted	0	0	0	0	0	0	1	0	0
ICAC									
Number of persons prosecuted	0	0	15	9	8	17	32	17	8
Number of persons convicted	0	0	8	6	6	5	16	8	4
Total									
Number of persons prosecuted	22	28	28	32	41	86	114	90	107
Number of persons convicted	10	13	18	28	29	42	72	51	73

Number of reports of suspicious transactions to the Joint Financial Intelligence Unit^{Note} is as follows –

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Number of reports	4 227	5 570	5 804	6 104	6 484	10 871	11 678	14 029	13 505

Note The Joint Financial Intelligence Unit is the central unit to receive, analyse and disseminate reports on suspicious transactions.

Enhanced sentencing

The statistics on the application of special sentencing procedures under s.27 of OSCO are as follows –

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Police									
Number of Successful Applications	8	1	4	7	2	37	12	29	19
Total number of persons involved	27	1	28	13	5	104	23	47	48
C&ED									
Number of Successful Applications	0	0	0	0	0	1	2	0	0
Total number of persons involved	0	0	0	0	0	2	7	0	0