

LEGISLATIVE COUNCIL BRIEF

ORGANIZED AND SERIOUS CRIMES ORDINANCE (CAP. 455)

ORGANIZED AND SERIOUS CRIMES (AMENDMENT) BILL 2021

INTRODUCTION

The Hon Elizabeth Quat plans to introduce the Organized and Serious Crimes (Amendment) Bill 2021 to incorporate certain offences involving wildlife trafficking and illegal trade into the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455).

BACKGROUND AND JUSTIFICATIONS

2. Wildlife trafficking and illegal trade are highly lucrative and attractive to criminal organizations and syndicates. Despite the May 2018 amendment to the Protection of Endangered Species of Animals and Plants Ordinance (PESAPO) (Cap. 586) to increase the maximum penalties of offences under it, wildlife seizures in Hong Kong continued to reach new peaks in 2019 and 2020. In 2019, record seizure of 8.3 metric tonnes (MT) of pangolin along with 2.1 MT of ivory was made in a container from Nigeria. In the same year, the largest seizure of 82.5kg of rhino horn was made from cargo transshipment in the Hong Kong International Airport. April and May 2020 saw two almost identical seizures of 13 MT of shark fins. Even though the maximum penalties of offences under Cap. 586 were increased by 900%, the fact remains that neither the penalties under the Ordinance nor the powers it confers to investigators and enforcers are sufficient to effectively deter criminal organizations.

3. The OSCO aims to combat the growth of organized and serious crimes in Hong Kong. Its objectives are to enhance investigative capacity and deterrence, with a view to bolstering the government's ability to investigate and prosecute organized and serious crimes. Fully effective since 28 April 1995, the Ordinance includes such features as (i) increasing investigative powers; (ii) confiscating the proceeds of crime; (iii) expanding on anti-money laundering provisions; and (iv) increasing the penalties of specified offences involving organized crimes.

4. Unlike offences carrying similar penalties under the laws of Hong Kong, such as the Import and Export Ordinance (Cap. 60) and Dangerous Drugs Ordinance (Cap. 134), offences under Cap. 586 are excluded from Schedule 1 to OSCO, with several very significant repercussions:

- (1) Law enforcement agencies cannot utilize investigative powers under section 4 of OSCO to gain access to materials related to the proceeds of wildlife crime.
- (2) Where a person has been convicted of a wildlife crime, the Courts are not empowered to use section 8 of OSCO to confiscate the proceeds of that crime. Moreover, during the prosecution process, the Courts may not use the OSCO to issue restraint or charging orders over property representing the benefits of wildlife crime.
- (3) The Courts are not permitted to pass enhanced sentences for wildlife crimes charged under PESAPO.

5. Only under specific circumstances are offenders of wildlife crimes prosecutable under certain OSCO Schedule 1 offences, such as theft, handling stolen goods, importing or exporting unmanifested cargo and dealing with property representing the proceeds of an indictable offence. Thieves of incense trees have been charged with theft, and thieves of incense trees and Buddhist pines have also been charged with handling stolen goods.

6. The government amended the PESAPO in 2018 to make some wildlife crimes indictable. While theoretically charges can now be brought under section 25 for money laundering offences related to wildlife crime, without access to the coercive investigative powers available under OSCO section 4, law enforcement agencies are unlikely to gather sufficient evidence to pursue charges against offenders for wildlife crimes, as opposed to the related money laundering crimes. The incorporation of offences under Cap. 586 into OSCO Schedule 1 would therefore facilitate the investigation and combating of wildlife crimes. In this scenario, if a relevant wildlife crime constitutes an organized crime, law enforcement agencies may also utilize investigative powers under section 3 of OSCO.

RECOMMENDATIONS

7. It is recommended that Schedule 1 to the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455) be amended to incorporate certain offences under the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) to make OSCO provisions applicable to those offences. Those provisions provide for additional powers for investigating certain offences and proceeds of crimes, as well as the confiscation of such proceeds and related matters.

8. The inclusion of offences under Cap. 586 into Schedule 1 to OSCO facilitates the combating of wildlife crimes and demonstrates to the international community Hong Kong's commitment to stem out such crimes.

ENQUIRY

9. Enquiries about this legislative council brief may be directed to the office of the Hon Elizabeth Quat on 2833 9932.

Democratic Alliance for the Betterment and Progress of Hong Kong Legislative Council Member

Hon. Elizabeth QUAT's Office

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