

立法會
Legislative Council

LC Paper No. CB(2)1561/03-04
(These minutes have been
seen by the Administration)

Ref : CB2/SS/3/02

**Subcommittee on
the draft Criminal Jurisdiction Ordinance
(Amendment of Section 2(2)) Order 2002**

**Minutes of the fourth meeting
held on Friday, 9 January 2004 at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Cyd HO Sau-lan
Hon Margaret NG
Hon CHAN Kwok-keung, JP
Hon SIN Chung-kai
- Member absent** : Hon Ambrose LAU Hon-chuen, GBS, JP
- Public Officers attending** : Mr Johann WONG
Administrative Assistant to Secretary for Security
- Mr F C WONG
Chief Superintendent of Police
- Mr Richard TURNBULL
Senior Assistant Director of Public Prosecutions
- Mr Llewellyn MUI
Senior Government Counsel
- Ms Rayne CHAI
Government Counsel

Ms Manda CHAN
Assistant Secretary for Security

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Paul WOO
Senior Council Secretary (2)3

Action

I. Meeting with the Administration

(LC Paper Nos. CB(2)310/03-04(01); 425/03-04(01); 750/03-04(01); 916/03-04(01) and (02))

The Subcommittee deliberated (index of proceedings attached at **Annex**).

Seizure of computers

2. On the issue of seizure of computers raised by the Law Society in its letter dated 11 November 2003 to the Subcommittee (LC Paper No. CB(2)310/03-04(01)), the Administration was requested -

Admin

- (a) to provide the existing internal guidelines of the enforcement agencies relating to seizure of computer materials (including hardware) for the purpose of investigation of offences; and
- (b) to advise whether the existing resources and technological means available to the enforcement agencies were sufficient to ensure that the computer materials seized would be handled expeditiously.

The appropriate means to provide extra-territorial jurisdiction to offences

3. The Chairman, Miss Margaret NG, Mr SIN Chung-kai and Ms Cyd HO expressed the view that while they supported the Administration's intention to tackle cross-border computer related crimes by setting out the extra-territorial jurisdiction to computer offences, the preferred approach would be to amend the relevant principal

Action

Ordinances, instead of adding the offences to the Criminal Jurisdiction Ordinance (CJO) by way of resolution of the Legislative Council.

4. The Chairman said that it was more appropriate to deal with legislative proposals of a complex and controversial nature in the form of a bill which was subject to the three-reading procedure.

5. Regarding the three computer related offences in question, the Chairman and Miss Margaret NG said that they had reservation about including the offence of access to computer with criminal or dishonest intent under section 161 of the Crimes Ordinance in CJO to provide extended jurisdiction of the offence.

Admin

6. Miss Margaret NG said that she had difficulty to support the draft order. She suggested that the Administration should deal with computer offences and their jurisdiction rules by way of a consolidated bill, instead of adding the offences to CJO by resolution.

7. Administrative Assistant to Secretary for Security said that as shown in the Court of Final Appeal's judgment in *Li Man Wai v Secretary for Justice* (LC Paper No. CB(2)750/03-04(01)), the court had applied a very high threshold for establishing proof of dishonest intent in relation to the offence in section 161 of the Crimes Ordinance. A suspect should not in any event be easily convicted of the offence.

8. The Chairman opined that as a matter of legal policy, the method of adding offences to CJO to extend the jurisdictional rules applicable to the offences should not continue to be used in future. He said that he was inclined not to support the draft Order. However, he might be prepared to review his position on condition that -

- (a) the Administration would delete the offence of access to computer with criminal or dishonest intent under section 161 of the Crimes Ordinance from the draft Order; and
- (b) the approach to add offences to CJO by resolution should only be used as a make-shift measure. The Administration should give an undertaking to the effect that this approach would not be adopted in future, and measures would be taken to amend the principal Ordinances concerned to set out the extra-territorial scope of the offences covered by CJO so that CJO would eventually be repealed.

9. Senior Government Counsel said that members' reservation on using CJO to establish extended jurisdiction over the three computer offences in question was not directly related to the legislative development of the issue of criminal jurisdiction. Whether provisions on extra-territorial jurisdiction should be included in CJO or the

Action

relevant principal ordinances should depend on the circumstances pertaining to individual offences.

Admin

10. The Chairman asked the Administration to respond in writing to the proposals made by him and Miss Margaret NG.

11. The Chairman said that subject to the Administration's response, the Subcommittee would decide whether or not it should support the draft Order at the next meeting.

II. Date of next meeting

12. Members agreed that the date for the next meeting should be scheduled after receipt of the Administration's written response.

13. The meeting ended at 10:00 am.

Council Business Division 2
Legislative Council Secretariat
2 March 2004

**Proceedings of the fourth meeting of the Subcommittee on
the draft Criminal Jurisdiction Ordinance
(Amendment of Section 2(2)) Order 2002
on Friday, 9 January 2004 at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 - 000859	Chairman Admin	Paper prepared by the Administration responding to the submissions from the Law Society of Hong Kong and Hong Kong Bar Association (LC Paper Nos. CB(2)310/03-04(01), 425/03-04(01), 916/03-04(01) and (02)).	
000900 - 001134	SALA Chairman Admin	Reference to the age of offenders in section 2 of the UK Computer Misuse Act 1990.	
001135 - 003137	Chairman Admin Miss Margaret NG Ms Cyd HO	Existing internal guidelines for the enforcement agencies relating to seizure of computer materials for the purpose of investigation of offences. Existing resources and technological means to ensure that computer materials seized would be handled expeditiously.	Admin to provide relevant information in writing.
003138 - 004853	Miss Margaret NG Admin Chairman	Preferred legislative approach to provide extra-territorial scope of computer related offences. Proposal to deal with computer offences and their jurisdiction rules by way of a consolidated bill, instead of adding the offences to the Criminal Jurisdiction Ordinance (CJO) by resolution.	Admin to respond to the proposal in writing.

004854 - 005238	Chairman	Proposal of the Chairman (paragraph 8 of the minutes refers.)	Admin to respond to the proposal in writing.
005239 - 006021	Mr SIN Chung-kai Chairman Miss Margaret NG Admin	Offence under section 161 of the Crimes Ordinance. Judgment in the case of <i>Li Man Wai v Secretary for Justice</i> (LC Paper No. CB(2)750/03-04(01)).	
006022 - 011552	Chairman Admin Miss Margaret NG Ms Cyd HO Mr SIN Chung-kai	Preferred legislative means to extend jurisdiction of offences by way of amending relevant principal Ordinances, instead of adding the offences to CJO by resolution.	
011553 - 012553	Chairman Miss Margaret NG Admin	The Subcommittee to decide whether or not to support the draft Order at the next meeting, subject to Admin's response to issues raised by the Subcommittee.	