

立法會

Legislative Council

LC Paper No. CB(2)1640/02-03

(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 second meeting
held on Monday, 17 March 2003 at 8:30 am
in Conference Room A of the Legislative Council Building**

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

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

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

Mr Paul WOO
Senior Assistant Secretary (2)3

Action

I. Confirmation of minutes

(LC Paper No. CB(2)1095/02-03)

The minutes of the meeting held on 8 January 2003 were confirmed.**1.**

II. Meeting with the Administration

(LC Paper Nos. CB(2)1324/02-03(01) and LS72/02-03)

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

3. The Administration was requested to -

- (a) explain the implications, if any, of the approval of the draft Order on mutual legal assistance arrangements between Hong Kong and overseas jurisdictions on extradition of offenders;
- (b) provide information on a case in which a Filipino was extradited to the United States (US) in mid 2000 for trial of an offence of spreading computer viruses to computers in the US, and the relevant legislation in the US which provided the legal basis for the US courts to exercise jurisdiction over the offence in question;
- (c) explain the legislative intent of section 161 of the Crimes Ordinance, the elements of the offence under the section, and the justifications for making the offence a criminal offence. Some members had expressed concern that the scope of the offence was too wide;

Action

- (d) respond to the view that the principal Ordinances concerned (i.e. the Telecommunications Ordinance and the Crimes Ordinance) should be amended to set out the extra-territorial scope of the three specific computer offences ;
- (e) respond to the view that consideration of the draft Order should be deferred until completion of the scrutiny of the National Security (Legislative Provisions) Bill (the Bill) because clause 11 of the Bill was related to two of the computer offences specified in the draft Order, i.e. the offences under section 27A of the Telecommunications Ordinance and section 161 of the Crimes Ordinance. According to some members, approval of the draft Order ahead of passage of the Bill would pre-empt deliberations on the extra-territorial application of the relevant offences under the Bill.

Admin

III. Date of next meeting

- 4. The Subcommittee agreed that the date of the next meeting should be fixed later, pending the Administration's response to the issues raised by members.
- 5. The meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
31 March 2003

Annex

**Proceedings of the second meeting the Subcommittee on
the draft Criminal Jurisdiction Ordinance
(Amendment of Section 2(2)) Order 2002
on Monday, 17 March 2003 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000000 - 000218	Chairman	Confirmation of minutes of the last meeting on 8 January 2003 (LC Paper No. CB(2)1095/02-03)	
000219 - 000402	Administration/ Chairman	Introduction on Admin's paper in response to the issues raised at the last meeting (LC Paper No. CB(2)1324/02-03(01)).	
000403 - 000725	SALA1/ Chairman/ Administration	Introduction on the paper prepared by the Legal Service Division on the provisions (clauses 11 and 4) of the National Security (Legislative Provisions) Bill.	
000726 - 001456	Mr SIN Chung-kai/ Chairman/ Administration	Request for information on a case in which a Filipino was extradited to the United States in mid 2000 for the offence of spreading computer viruses to computers in the US.	Admin to provide the information and the relevant legislation in US which enabled the US courts to exercise jurisdiction over the offence.
001457 - 002322	Mr SIN Chung-kai/ Administration/ Chairman	Implications of the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002 (the draft Order) on mutual legal assistance arrangements between Hong Kong and overseas jurisdictions concerning extradition of offenders.	Admin to respond in writing.
002323 - 002607	SALA1/ Chairman	Traditional jurisdictional rules under common law vis-à-vis extended jurisdictional rules applicable to the computer offences in the draft Order.	
002608 - 003953	Miss Margaret NG/ Administration	(a) Legislative intent of the offence under section 161 of the Crimes Ordinance, the scope and elements of the offence and the justifications for making the offence a criminal offence;	Admin to respond in writing.

Time Marker	Speaker	Subject(s)	Action required
		<p>(b) Approach to extend jurisdictional rules to the three specific computer offences : by expanding the scope of the Criminal Jurisdiction Ordinance, or amending the relevant principal Ordinances (i.e. the Telecommunications Ordinance and the Crimes Ordinance);</p> <p>(c) Interface of the scrutiny work of the Subcommittee and the Bills Committee on National Security (Legislative Provisions) Bill as certain provisions of the Bill were related to the computer offences in the draft Order.</p>	
003954 - 010017	Chairman/ Administration/ Miss Margaret NG/ Mr SIN Chung-kai/ Mr CHAN Kwok-keung	The offence of access to computer with criminal or dishonest intent under section 161 of the Crimes Ordinance.	
010018 - 010355	Mr CHAN Kwok-keung / Chairman/ Administration	Safeguards for a person who was himself a victim of a computer offence committed by another person, such as spreading computer viruses.	
010356 - 012157	Chairman/ Administration/ Miss Margaret NG/ Mr SIN Chung-kai	<p>Proposal to amend the Telecommunications Ordinance and the Crimes Ordinance to set out the territorial scope of the three computer offences;</p> <p>Proposal to defer consideration of the draft Order pending the full deliberations on the National Security (Legislative Provisions) Bill.</p>	
012158 - 013054	Administration/ Chairman/ Mr CHAN Kwok-keung	The extended jurisdictional rules under the Criminal Jurisdiction Ordinance (paragraph 11 in LC Paper No. CB(2)1324/02-03(01)).	
013055 - 013944	Miss Margaret NG/ Chairman/ Mr SIN Chung-kai/ Administration	Proposal to amend the Telecommunications Ordinance and the Crimes Ordinance in relation to extending the territorial scope of the three computer offences.	
013945 - 014111	SALA1	Report of the Bills Committee to study the Criminal Jurisdiction Bill dated November 1994 which explained why computer frauds were not then covered by the Bill.	

Time Marker	Speaker	Subject(s)	Action required
014112 - 014400	Chairman / Mr SIN Chung-kai/ Miss Margaret NG/ Mr Ambrose LAU	Discussion of the provisions in the National Security (Legislative Provisions) Bill concerning computer offences, pending receipt of the Administration's response to issues raised by members.	
014401 - 014432	Chairman/ Administration	Date of next meeting to be fixed.	

Note : The audio records of the above proceedings are kept at the LegCo Library

Council Business Division 2
Legislative Council Secretariat
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