

立法會
Legislative Council

LC Paper No. CB(2)3333/03-04
(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 fifth meeting
held on Thursday, 24 June 2004 at 9:00 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Cyd HO Sau-lan
Hon CHAN Kwok-keung, JP
- Members absent** : Hon Margaret NG
Hon SIN Chung-kai
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 Eddie SEAN
Senior Government Counsel
- 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)2887/03-04(01); 823/02-03(01) and 1324/02-03(02))

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

Administration's position on how to take forward the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2) Order) 2002 (the draft Order)

2. Administrative Assistant to Secretary for Security (AAS for S) briefed members on the Administration's paper which responded to the issues raised at the last meeting on 9 January 2004 and set out the views of the Administration on how to take forward the draft Order (LC Paper No. CB(2)2887/03-04(01)).

3. In brief, the Administration believed that the procedures for making the order with prior approval of the Legislative Council (LegCo) by way of an affirmative resolution had provided sufficient safeguards for ensuring effective legislative scrutiny. The Administration remained of the view that the draft Order was the appropriate means to effect the intended changes to jurisdictional rules for the three computer offences in question. For future cases, without affecting the generality of the principle that each case should be considered on its own merits, the Administration would adopt the following guidelines –

- (a) careful consideration would be given to whether all the five principles set out in paragraph 4(a) to (e) of the Administration's paper needed to apply. Only where the answer was affirmative would the use of the Criminal Jurisdiction Ordinance (CJO) be contemplated; and

Action

- (b) if the legislative exercise involved not only jurisdictional rules but also other issues which should be dealt with in a principal ordinance, e.g., the evidential rules and law enforcement powers related to an offence, then the general rule would be to effect all the changes, including those concerning jurisdictional rules, through an amending Bill.

4. AAS for S confirmed that the Administration would not give fresh notice for moving a motion to seek the approval of LegCo on the draft Order at the last Council meeting in the 2003-3004 LegCo session. The Administration would continue to consult LegCo on legislative proposals involving jurisdictional rules in the next LegCo term.

Way forward

5. Members agreed that the Subcommittee should make a report to the House Committee and recommend that –

- (a) the Administration should revert to LegCo in the next term on how it proposed to take forward the matter, while addressing members' concern about the approach adopted by the Administration to extend the territorial jurisdiction of the three computer offences; and
- (b) as computer technology was developing rapidly, the Administration should consider setting up a standing working group to regularly review whether existing legislation was adequate to deal with new computer crimes, and to have interface with the relevant Panel of LegCo to facilitate early and in-depth deliberation.

6. Members agreed that the Subcommittee should make a report to the House Committee on its deliberation at the House Committee's meeting on 25 June 2004.

(Post-meeting note : The House Committee noted the Subcommittee's report at its meeting on 25 June 2004.)

7. The meeting ended at 9:55 am.

**Proceedings of the fifth meeting of the Subcommittee on
the draft Criminal Jurisdiction Ordinance
(Amendment of Section 2(2)) Order 2002
on Thursday, 24 June 2004 at 9:00 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000000 - 001938	Chairman Admin	The Administration's paper which set out its responses to the issues raised at the last meeting and its views on how to take forward the draft Order (LC Paper No. CB(2)2887/03-04(01)).	
001939 - 002436	Ms Cyd HO Admin Chairman	Review on extension of jurisdictional rule to deal with computer offences, taking into account rapid developments in computer technology and the need to protect free flow of information and freedom of expression.	
002437 - 003107	Chairman Admin Ms Cyd HO	Proposal for the Administration to set up standing working group to regularly review whether existing legislation was adequate to deal with new computer crimes.	
003108 - 003743	Mr CHAN Kwok-keung Admin Chairman	Enforcement difficulties encountered in combating computer crimes.	
003744 - 004208	Chairman	Proposal for the Administration to set up a working group to review existing legislation and to have interface with the relevant Panel of LegCo to facilitate early and in-depth deliberation.	
004209 - 004859	Mr CHAN Kwok-keung Admin Chairman Ms Cyd HO	Measures to deal with computer "spamming".	

Time Marker	Speaker	Subject(s)	Action required
004900 - 004954	Chairman	Way forward to deal with the draft Order. Report of the Subcommittee to the House Committee.	Subcommittee to make a report to the House Committee on 25 June 2004.

Council Business Division 2
Legislative Council Secretariat
5 October 2004