

立法會  
*Legislative Council*

LC Paper No. CB(2)236/03-04  
(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 third meeting  
held on Monday, 13 October 2003 at 11:00 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  
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
- Ms Rayne CHAI  
Government Counsel
- Ms Manda CHAN  
Assistant Secretary for Security

**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

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**I. Confirmation of minutes of meeting**  
(LC Paper No. CB(2)1640/02-03)

The minutes of the meeting held on 17 March 2003 were confirmed.

**II. Meeting with the Administration**  
(LC Paper Nos. CB(2)2193/02-03(01), 1324/02-03(02) and 823/02-03(02))

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

Computer related offences proposed to be added to the list of offences in section 2(2) of the Criminal Jurisdiction Ordinance (Cap. 461) (CJO)

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3. Miss Margaret NG opined that the Administration should reconsider carefully whether it was the best approach to include the three computer related offences in the list of offences in section 2(2) of CJO. She said that the scope of the offence under section 161 of the Crimes Ordinance, for example, was very wide. In her view, the inclusion of the offences in the list of offences in section 2(2) of CJO, which resulted in extra-territorial application of the offences, would have serious implications.

4. Miss Margaret NG added that she supported the Administration's intention to take appropriate and effective measures to deal with trans-border computer related crimes. However, she considered it preferable to amend the relevant principal ordinances to set out the extra-territorial scope of the three specific computer related offences, rather than bringing them within the scope of CJO. Mr SIN Chung-kai shared her view.

5. Administrative Assistant to Secretary for Security (AA/S for S) said that CJO was enacted to deal primarily with international fraud, enabling Hong Kong courts to exercise jurisdiction over offences of fraud and dishonesty. The purpose of the draft

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Criminal Jurisdiction Ordinance (Amendment of Section 2(2)) Order 2002 (the draft Order) was to deal effectively with the three computer related offences in question and the Administration was of the view that covering the offences under CJO was legally appropriate.

6. AA/S for S further said that the Administration was prepared to listen to members' views on whether it was appropriate to include all the three computer offences in the list of offences in section 2(2) of CJO. In his view, the issue of whether the scope of the three offences should be reviewed could be dealt with separately.

Offence of access to computer with criminal or dishonest intent under section 161 of the Crimes Ordinance

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7. In response to members' concern about the wide scope of the offence under section 161 of the Crimes Ordinance, AA/S for S said that the necessary element of the offence was "dishonesty" which had to be proven by the prosecution based on both an objective and subjective test. Experience had shown that it was difficult to prove a dishonest intent and hence the coverage of this offence was not overly broad.

8. Mr SIN Chung-kai agreed that it was not easy to prove the element of dishonesty for the offence under section 161 of the Crimes Ordinance. He considered that it would be helpful if the Administration could provide information on the outcome of previous prosecutions of the offence for the reference of the Subcommittee.

9. The Chairman noted that the Administration had explained in its paper that the offence under section 161 of the Crimes Ordinance was similar to that under section 2 of the UK Computer Misuse Act 1990 (the UK Act) (LC Paper No. CB(2)2193/02-03(01)). He pointed out that the offence under section 2 of the UK Act referred to "unauthorized access to a computer" whereas section 161 of the Crimes Ordinance referred to "access to a computer". To facilitate consideration of the Subcommittee, the Chairman requested Senior Assistant Legal Adviser to conduct an analysis on the offence under section 161 of the Crimes Ordinance as included in CJO and the offence under section 2 of the UK Act.

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10. Having regard to the views expressed by members, the Chairman requested the Administration -

Admin

- (a) to provide information on the following cases (with court judgments if any) since the enactment of section 161 of the Crimes Ordinance in 1993 -

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- (i) cases where prosecution had not been instituted after investigation because of difficulties in proving the dishonest intent of the accused;
  - (ii) cases where the court had ruled that the defendant did not act with dishonest intent; and
- (b) to provide information on any comments or views received by the Administration regarding the scope of the three computer related offences proposed to be added to the list of offences in section 2(2) of CJO.

Consultation with legal professional bodies

11. AA/S for S informed members that the legal professional bodies had been consulted on the recommendations of the Inter-departmental Working Group on Computer Related Crime in December 2000 to improve the existing regime on computer crime legislation.

Clerk

12. Members agreed that the Hong Kong Bar Association and the Law Society of Hong Kong should be requested to provide written views on the draft Order.

**III. Next meeting**

13. Members agreed that the date for the next meeting was to be scheduled pending receipt of the Administration's written response to issues raised.

14. The meeting ended at 12:55 pm.

Council Business Division 2  
Legislative Council Secretariat  
4 November 2003

**Proceedings of the third meeting of the Subcommittee on  
the draft Criminal Jurisdiction Ordinance  
(Amendment of Section 2(2)) Order 2002  
on Monday, 13 October 2003 at 11:00 am  
in Conference Room B of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000214	Chairman	Confirmation of minutes of the meeting on 17 March 2003 (LC Paper No. CB(2)1640/02-03).	
000215 - 000433	Admin	Paper prepared by the Admin responding to issues raised at the meeting on 17 March 2003 (LC Paper No. CB(2)2193/02-03(01)).	
000434 - 001902	Chairman Admin	Elements of the offence under section 161 of the Crimes Ordinance.  Proof of "dishonesty" for the offence under section 161 of the Crimes Ordinance and the tests applied for the proof established in the case of R v Ghosh (1982).  (Paras. 10 to 16 of LC Paper No. CB(2)2193/02-03(01))	
001903 - 002517	Miss Margaret NG Chairman Admin	Review on the appropriateness to include the three computer related offences in the Criminal Jurisdiction Ordinance (CJO).	
002518 - 004232	Miss Margaret NG Admin Chairman	Offences covered under the UK Computer Misuse Act 1990.  Alternative to deal with the three computer related offences by amending the relevant principal ordinances to set out the extra-territorial scope of the offences (para. 18 of LC Paper No. CB(2)2193/02-03(01)).	
004233 - 010100	Chairman Mr SIN Chung-kai Admin	The scope of the offence under section 161 of the Crimes Ordinance and difficulties in proving the elements of the offence, in particular the element of dishonesty.	
010101 - 011203	Ms Cyd HO Admin Chairman	Offence of destroying or damaging property under sections 59 and 60 of the Crimes Ordinance.	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
011204 - 011514	Chairman Admin	Views from the public on scope of the three computer related offences proposed to be added to the list of offences in section 2(2) of CJO.	Admin to provide details of comments and views it received concerning the scope of the offences.
011515 - 012106	Mr SIN Chung-kai Chairman Admin	Prosecution of offence under section 161 of the Crimes Ordinance -  (a) cases where prosecution had not been instituted after investigation because of difficulties to prove the dishonest intent; and  (b) cases where the court had ruled that the defendant did not act with dishonest intent.	Admin to provide information on the cases (with court judgments if any).
012107 - 012729	Ms Cyd HO Mr SIN Chung-kai Chairman Admin	Scope of the offence under section 59(1A)(a) of the Crimes Ordinance.	
012730 - 014455	Miss Margaret NG Admin Chairman Mr SIN Chung-kai	Scope of the offence under section 161 of the Crimes Ordinance and its extra-territorial application vis-à-vis the UK Computer Misuse Act 1990.  Implications of including the relevant computer related offences in CJO.  Consultation with legal professional bodies on the draft Criminal Jurisdiction Ordinance (Amendment of Section 2(2) Order 2002.	The Subcommittee to seek the written views from the two legal professional bodies on the draft Order.
014456 - 015201	Chairman Admin	Analysis on the offence under section 161 of the Crimes Ordinance as included in CJO and the offence under section 2 of the UK Computer Misuse Act 1990.	Senior Assistant Legal Adviser to provide an analysis for the Subcommittee's consideration.
015202 - 015225	Chairman	Date of next meeting to be fixed pending the Admin's written response.	