

**Subcommittee on Fugitive Offenders (Germany) Order and
Fugitive Offenders (Republic of Korea) Order**

At the meeting of the Subcommittee on Fugitive Offenders (Germany) Order and Fugitive Offenders (Republic of Korea) Order on 11 December 2006, the Administration was requested to-

- (a) make clear that “other competent authority” referred to in Article 8(3) of the Schedule to the Fugitive Offenders (Germany) Order covered the magistrate of Hong Kong;
- (b) explore ways to recoup from the Requesting Party expenses borne by Hong Kong for surrender of fugitive offender(s), if profits were realised from the property confiscated from the surrendered person(s) by the Requesting Party; and
- (c) provide information on the legal assistance available in Hong Kong to a person being requested for surrender by the Requesting Party, including the legal procedures involved and whether the duty lawyer service provided by the Magistrates’ Courts and the legal representation provided by the Legal Aid Department had adequate number of lawyers with the expertise to deal with cases involving surrender of fugitive offenders.

2. This note sets out the Administration’s response, as follows-

- (a) Magistrates in the Hong Kong are empowered under sections 9, 73 and 74 of the Magistrates Ordinance (Cap. 227) to issue warrants of arrest. They are competent authorities under Hong Kong law for issuing arrest warrants.

In Hong Kong Legal Dictionary, LexisNexis Butterworths, a judge is described as “a person invested with authority to decide questions in dispute between parties, and to afford appropriate punishment to offenders.” The term includes a magistrate of Hong Kong. A copy of the quoted text is attached at **Annex**.

Though “magistrate” is omitted from Article 8(3) of the Hong Kong/Germany Agreement on Surrender of Fugitive Offenders, it is the intention of the parties that the terms “judge” and “competent authority” cover “magistrate” and that the omission of “magistrate” would not pose a problem to acceptance of an arrest warrant issued by a magistrate.

(b) Article 12(2) of the Hong Kong/Germany Agreement on Surrender of Fugitive Offenders obliges a requested party to bear expenses for the arrest and detention of a fugitive offender and for conduct of legal proceedings for securing the surrender of the offender. A similar provision is found in the model agreement and the agreements on surrender of fugitive offenders in force between Hong Kong and other jurisdictions. Sharing of proceeds of crime following confiscation is an area that is covered in mutual legal assistance agreements.

(c) For committal proceedings held at the magistrates court, a person the surrender of whom is being sought may apply to be represented by a lawyer provided by the Duty Lawyer Scheme. The Duty Lawyer Scheme maintains a list of qualified lawyers who have experience or interest in these proceedings. Where a committal order is made against that person, he will be advised by the Court of his right to appeal against the order by way of habeas corpus proceedings. Where a surrender order is made, he may apply for judicial review. Proceedings relating to habeas corpus or judicial review are held at the Court of First Instance and courts above it, for which that person may apply for legal aid. According to the Legal Aid Department, there are sufficient solicitors and counsels who have expertise in the areas of administrative law / judicial review.

Security Bureau
International Law Division, Department of Justice
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Joint will

Joint will The embodiment of the wills of two or more persons, jointly executed and expressed in the one testamentary instrument. As each of the joint testators dies, the will is treated and admitted to probate as their separate will. A joint will may be revoked by one of the testators without the consent of the other testator or testators but only to the extent of the terms of his or her will: *In the Goods of Letitia Lovegrove* (1862) 2 Sw & Tr 453. See also **Grant of probate**; **Mutual wills**.

Journal entry For accounting purposes, a record of debits and credits in a general journal analysing transactions which incorporate entries such as adjustments to accounts, accruals, prepayments, transfers, and closing entries.

Joyriding A colloquial expression commonly applied to the offence of taking a motor vehicle or other conveyance for one's own or another's use without the consent of the owner or other lawful authority and with the intent to keep it or permanently deprive the owner of it, or driving a vehicle or allowing oneself to be carried in it knowing it to have been taken without authority. There is no offence of joyriding as such, but such conduct is generally charged and punished as 'Taking conveyance without authority': **Theft Ordinance** (Cap 210) s 14. See also **Larceny**.

JP See **Justice of the Peace**.

Judge 1. To adjudicate, try, grant remedy or pass sentence. 2. A person invested with authority to decide questions in dispute between parties, and to afford appropriate punishment to offenders. Judges in Hong Kong SAR are appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, legal professionals, and eminent individuals (the **Judicial Officers Recommendation Commission**). Judges are chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions: **Basic Law** art 88, 92. At least ten years' and five years' legal practice experience are mandatory for appointment as judge of the High Court and District Court respectively: **High Court Ordinance** (Cap 4) s 9(1); **District Court Ordinance** (Cap 336) s 5. For appointment as a magistrate, no less than five years' legal practice experience is required usually. A judge may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal ('CJ') and consisting of not fewer than three local judges. Likewise, the CJ may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal: **Basic Law** art 89. Judges have security of tenure until they

reach retirement age (either 60 or 65 years for District Court judges and 65 for judges of the Court of Final Appeal and the High Court): **District Court Ordinance** (Cap 336) s 11A; **High Court Ordinance** (Cap 4) s 11A; **Hong Kong Court of Final Appeal Ordinance** (Cap 484) s 14. Magistrates may be appointed on pensionable terms or on contract. If a judge dies after a hearing has commenced, the proceedings may be started anew or, with the consent of the parties, another judge be substituted to proceed with the cause and give judgment based on evidence already received and recorded, and upon further evidence adduced in the proceedings: for example, **District Court Ordinance** (Cap 336) s 62.

Judge of the Court of Final Appeal The Chief Justice, a permanent judge and a non-permanent judge: **Hong Kong Court of Final Appeal Ordinance** (Cap 484) s 2(1). There shall be not less than three permanent judges. The Court of Final Appeal may as required invite non-permanent Hong Kong judges, or judges from other common law jurisdictions to sit on the Court: s 5. The Chief Justice and the permanent judges are appointed by the Chief Executive acting in accordance with the recommendation of the **Judicial Officers Recommendation Commission**: ss 6, 7. A person is eligible to be appointed as the Chief Justice or as a permanent judge if he is the Chief Judge of the High Court, a Justice of Appeal, or a judge of the Court of First Instance, or a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years: s 12(1). There are lists of non-permanent Hong Kong judges and of judges from other common law jurisdictions, that consist of judges appointed by the Chief Executive acting in accordance with the recommendation: ss 8, 9. The total number of persons holding office as non-permanent judges shall not exceed 30 at any one time: s 10. A person who has been appointed as the Chief Justice, a permanent judge or a non-permanent judge shall not be entitled to practise as a barrister or solicitor in Hong Kong either while he holds office as such a judge or at any time after he ceases for any reason to hold office: s 13. See also **Chief Justice**; **Court of Final Appeal**.

Judge made law The common law deriving from judicial precedent and decisions, as opposed to law having its source in legislation or administrative regulation. The common law develops on a case by case basis where, through statutory interpretation, application by analogy, and reconsideration of legal principles, the law is continually refined and created. In higher courts where there are more than one judge and dissenting judgments, the majority judgment becomes the decision which forms the judicial precedent. A minority judgment may still have persuasive, though not binding, effect on a future court decision. See also **Common law**; **Precedent**.

Judge's chambers See **Chambers**.