

立法會
Legislative Council

Ref : CB2/SS/3/09

LC Paper No. CB(2)1372/09-10
(These minutes have been seen
by the Administration)

**Subcommittee on Proposed Resolution under section 12A of the
United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)**

**Minutes of first meeting
held on Tuesday, 23 March 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon LAU Kong-wah, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun

Member absent : Hon James TO Kun-sun

Public Officers attending : Item II

Ms Carol YIP Man-kuen
Deputy Secretary for Security

Ms Veronica WONG Hoi-yee
Assistant Secretary for Security

Mr YU Mun-sang
Chief Superintendent of Police (Organized Crime &
Triad Bureau)
Hong Kong Police Force

Miss LEE Sau-kong
Deputy Principal Government Counsel (Mutual Legal
Assistance)
Department of Justice

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2)5

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Miss Josephine SO
Senior Council Secretary (2)1

Ms Sandy HAU
Legislative Assistant (2)5

Action

I. Election of Chairman

Mr IP Kwok-him was elected Chairman of the Subcommittee.

II. Meeting with the Administration

(LC Paper Nos. CB(3)462/09-10, LS47/09-10 and CB(2)1126/09-10(02) to (05))

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

3. The Administration advised that it would amend the Chinese text of paragraph 22 of the Code of Practice for requiring persons to furnish information or produce material under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Code") by adding "副本" after the phrase "按照第17段規定作出的記錄".

4. Dr Margaret NG noted that the Preamble and paragraph 1 of the Code provided that a copy of the Code must be given to any person on whom a section 12A(5) or 12A(6) order ("section 12A order") had been served ("the interviewee"), and that the Code must be readily available in English and Chinese at all places where the interviewee might be required to answer questions, furnish information or produce material. To ensure that interviewees who did not read Chinese or English understand the provisions of the Code, Dr NG was of the view that the Code should be available in other major languages such as French, German, Spanish and Japanese. The Chairman, Ms Cyd HO and Mr Paul TSE shared Dr NG's view.

5. The Administration responded that while the Code was readily available in English and Chinese, paragraph 10 of the Code provided that free interpretation would be provided to any interviewee who did not read Chinese or English. Moreover, the record of the interview was required to be made in the language used by the interviewee. Paragraphs 17 to 22 of the Code further required that an accurate record of the interview should be made and that the

Admin interviewee should be given a copy of the Code of Practice and the relevant sections of the Ordinance. The interviewees would also be given an opportunity to read and sign the interview record, and to receive a copy of the record as soon as reasonably practicable. Nevertheless, the Administration agreed to consider making available the Code in other languages.

Admin 6. Dr Margaret NG requested the Administration to review the drafting of the Code to remove any ambiguities, such as it was unclear from paragraph 10 that free interpretation would be provided to any interviewee who did not read Chinese or English. The Administration undertook to do so.

7. Ms Cyd HO asked whether a child under the age of 10 could be guilty of an offence under section 14 of Cap. 575 if he or she failed to comply with a section 12A order, having regard to the fact that no child under the age of 10 could be guilty of an offence under section 3 of the Juvenile Offenders Ordinance (Cap. 226). The Administration replied that a person who was under the age of 10 could not be guilty of an offence under section 14 of Cap. 575 for failing to comply with a section 12A order.

Admin 8. Dr Margaret NG said that the Administration should explain clearly in the Code whether a child under the age of 10 would still be guilty of, say, contempt of court, for failing to comply with a section 12A order; and whether the parent, guardian or other person responsible for the care of the aforesaid interviewee would be guilty of an offence under section 14 of Cap. 575 and/or other offences if he or she refused to allow the interviewee to comply with a section 12A order. The Administration undertook to revert in writing.

Admin 9. Ms Cyd HO requested the Administration to also provide a paper on the rights and legal responsibilities of a child under the age of 10 and of a child from 10 to below 16 years of age required to answer questions or furnish information under other local legislation, and how these rights and legal responsibilities compared with those provided to interviewees under the age of 16 in the Code. The Administration agreed.

10. Ms Cyd HO noted from paragraph 16 of the Code that an interview should not exceed a period of six hours, except where a further period of not more than four hours had been approved by a senior officer who was not personally in charge of the investigation. Ms HO asked whether the authorised officer could still detain the interviewee for, say, another 48 hours. The Administration replied in the negative, as the interviewee was not under arrest or detention. A fresh notice would need to be issued by Secretary for Justice ("SJ") if more time was required to obtain information from the interviewee relating to the same investigation. A fresh application to the Court of First Instance for section 12A order would need to be made by SJ if the information to be sought from the interviewee was outside the scope of the original section 12A order application.

Admin

11. Referring to section 12A(9) and (10) of Cap. 575, Dr Margaret NG requested the Administration to clarify whether an interviewee could be excused from furnishing information or producing material required under a section 12A order without committing an offence under section 14(7F) of Cap. 575 or under section 36 of the Crimes Ordinance (Cap. 200), if he or she considered that to do so might incriminate himself or herself. The Administration agreed to include the issue in the note to be provided.

Admin

12. Ms Cyd HO asked whether consideration could be given to making available the Code in Braille for the interviewees who were visually impaired. The Administration agreed to consider.

13. In closing, members agreed that views on the Code should be sought from the two legal professional bodies, the Society for Community Organization and the Hong Kong Human Rights Monitor.

III. Date of next meeting

14. The Chairman said that the date of next meeting would be fixed after consulting members and the Administration.

(Post-meeting note : The next meeting has been scheduled for 27 April 2010 at 8:30 am.)

15. There being no other business, the meeting ended at 10:10 am.

Council Business Division 2
Legislative Council Secretariat
23 April 2010

**Proceedings of the first meeting of the
Subcommittee on Proposed Resolution under Section 12A of the
United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)
on Tuesday, 23 March 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000151	Dr Margaret NG Mr LAU Kong-wah Mr IP Kwok-him	Election of Chairman	
000152 - 000412	Chairman Dr Margaret NG	Chairman's opening remarks	
000413 - 001607	Admin	Briefing by the Administration on the Code of Practice prepared under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Code") (LC Paper No. CB(3)462/09-10 (02))	
001608 - 002814	Chairman Dr Margaret NG Admin Mr Paul TSE	The Administration was requested to - (a) make the Code available in other languages to cater for the interviewees who did not read Chinese or English; and (b) review the drafting of the Code to remove any ambiguities	Admin to provide a response (paragraphs 5 and 6 of the minutes refer)
002815 - 004257	Chairman Ms Cyd HO Admin Mr Paul TSE ALA3 Ms Margaret NG	The Administration was requested to - (a) explain clearly in the Code whether a child under the age of 10 would still be guilty of, say, contempt of court, for failing to comply with a section 12A order; and whether the parent, guardian or other person responsible for the care of the aforesaid interviewee would be guilty of an offence under section 14 of Cap. 575 and/or other offences if he or she refused to allow the interviewee to comply with a section 12A order; and (b) provide a paper on the rights and legal responsibilities of a child under the age of 10 and of a child from 10 to below 16 years of age required to answer questions or furnish information under other local legislation, and how these rights and legal responsibilities compared with those provided to interviewees under the age of 16 in the Code	Admin to provide a response (paragraphs 8 and 9 of the minutes refer)

Time marker	Speaker	Subject	Action required
004258 - 011410	Chairman Ms Cyd HO Admin Dr Margaret NG Mr Paul TSE	The Administration was requested to clarify whether an interviewee could be excused from furnishing information or producing material required under a section 12A order without committing an offence under section 14(7F) of Cap. 575 or under section 36 of the Crimes Ordinance (Cap. 200), if he or she considered that to do so might incriminate himself or herself	Admin to provide a response (paragraph 11 of the minutes refers)
011411 - 012246	Ms Cyd HO Chairman Admin	Time allowed for a person served with a section 12A notice to attend before an authorised officer to answer questions, furnish information or produce materials relevant to the investigation of an offence under Cap. 575 Clarification on the presence of a barrister and/or a solicitor for all interviewees during the interview	
012247 - 013149	Ms Cyd HO Mr Paul TSE Chairman Admin	The Administration was requested to make available the Code in Braille for the interviewees who were visually impaired.	Admin to consider (paragraph 12 of the minutes refers)
013150 - 014003	Chairman Admin Ms Cyd HO ALA3 Dr Margaret NG	Members agreed that the views on the Code should be sought from the two legal professional bodies, the Society for Community Organization and the Hong Kong Human Rights Monitor. The next meeting would be scheduled pending the availability of the responses in writing from the Administration	