

**立法會**  
**Legislative Council**

Ref : CB2/SS/3/09

LC Paper No. CB(2)1557/09-10  
(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 second meeting  
held on Tuesday, 27 April 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 James TO Kun-sun  
Hon LAU Kong-wah, JP  
Hon Cyd HO Sau-lan  
Hon CHAN Hak-kan  
Hon IP Wai-ming, MH  
Hon Paul TSE Wai-chun

**Public Officers attending** : Item II  
  
Ms Carol YIP Man-kuen  
Deputy Secretary for Security 1  
  
Mr David LAU Kam-kuen  
Principal Assistant Secretary for Security A  
  
Mr YU Mun-sang  
Chief Superintendent of Police (Crime Headquarter)  
Hong Kong Police Force  
  
Mr Kevin Paul ZERVOS, SC  
Deputy Director of Public Prosecutions (I)  
Department of Justice  
  
Ms Cecilia CHAN Sze-wan  
Senior Public Prosecutor  
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

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Action

**I. Confirmation of minutes of meeting**

(LC Paper No. CB(2) 1372/09-10)

The minutes of the meeting held on 23 March 2010 were confirmed.

**II. Meeting with the Administration**

(LC Paper Nos. CB(2)1241/09-10(01)-(03), CB(2)1370/09-10(01) and CB(2) 1377/09-10(01))

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).
3. Members noted the Administration's response to the submission from the Hong Kong Human Rights Monitor tabled at the meeting (LC Paper No. CB(2)1397/09-10(01)).

Interviewee under the age of 16

4. Members noted that a child under the age of 10 would not be held liable for a criminal offence if he or she failed to comply with the requirements to furnish information or produce material under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Ordinance"). As for children between 10 and under the age of 16, they would be guilty of an offence under section 14(7E) of the Ordinance if they without reasonable excuse failed to furnish information or produce material as required by an order issued by the Court of First Instance under section 12A of the Ordinance (a "section 12A order"); they could also be liable for prosecution under other local legislation if they failed to furnish information as required by such legislation.

5. Ms Cyd HO considered it not appropriate that children between 10 and under the age of 16 should be penalised for refusing to furnish information or produce material under the Ordinance, as some children might have

psychological barrier to disclose information or produce material for fear of, say, betraying or incriminating their friends.

6. The Administration pointed out that paragraph 11 of the Code of Practice for requiring persons to furnish information or produce material under a section 12A order ("the Code") provided that an interviewee under the age of 16 should be interviewed in the presence of a parent, guardian or other person responsible for his or her care or, if such a person was unavailable, in the presence of an adult who was independent of the investigating authority and, where reasonably practicable, knew the interviewee. Such adult, if he or she wished, was allowed to have a barrister and/or a solicitor to be present during the interview and to consult privately with the barrister and/or solicitor. The Administration further pointed out that where necessary, law enforcement agencies ("LEAs") would enlist the assistance of Social Welfare Department in providing necessary services to the child.

Admin 7. Dr Margaret NG requested the Administration to provide a paper setting out the procedures adopted by LEAs for handling children between 10 and under the age of 16 who refused to answer questions, furnish information or produce material pursuant to a section 12A order. Ms Cyd HO also requested the Administration to provide a paper on the procedures adopted by LEAs in overseas jurisdictions on eliciting information or material from a child for the purpose of investigating an offence under anti-terrorism legislation. The Administration agreed.

Admin 8. Ms Cyd HO urged the Administration to raise the age of criminal responsibility in Hong Kong. The Administration agreed to convey Ms HO's suggestion to the relevant policy bureaux/government departments for consideration.

#### Provision of the Code in languages other than Chinese and English

Admin 9. Members noted from paragraph 10 of the Administration's paper (LC Paper No. CB(2) 1370/09-10(01)) that the Administration would provide translated copies of the Code in languages other than Chinese and English in case the person subject to a section 12A order did not understand Chinese and English. The Chairman was of the view this should be made clear in the Code. The Administration agreed to refine paragraph 1 of the Code to that effect.

10. Dr Margaret NG commented that the drafting of the Chinese version of the Code could be further improved to make it easier to understand by the general public.

#### Responsibility and privilege of a person subject to a section 12A order

11. Dr Margaret NG sought clarification from the Administration as to whether a person subject to a section 12A order could rely on the privilege

against self-incrimination provided under section 2(5)(c) of the Ordinance to remain silent throughout the interview without any legal consequences. The Administration replied in the affirmative.

12. Assistant Legal Adviser 3 pointed out that while Rule 16 of Order 117A of the Rules of the High Court provided for the resolution of disputed legal privilege claims, no such procedure was specified in relation to any claim for privilege against self-incrimination asserted by a person subject to a section 12A order in the Code. In response, the Administration stated that in practice an LEA would attempt to allay the interviewee's concerns, but that if the interviewee refused to make disclosure on the grounds that the information/material sought was self-incriminating, the LEA would not compel the interviewee to do so.

Procedures for requiring persons subject to a section 12A to answer questions or furnish information

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13. Dr Margaret NG was of the view that to allow a person subject to a section 12A order to make only one telephone call under paragraph 9 of the Code was too restrictive and not conducive to eliciting information from the interviewee. Dr NG requested the Administration to allow the interviewee to make more than one telephone call if there were reasonable grounds to do so. Dr NG further said that it should also be made clear in paragraph 9 of the Code whether the telephone call made by the interviewee would be under supervision. The Administration agreed to consider.

Admin

### **III. Date of next meeting**

14. Members agreed to hold the next meeting on 6 May 2010 at 4:30 pm.
15. There being no other business, the meeting ended at 9:53 am.

Council Business Division 2  
Legislative Council Secretariat  
14 May 2010

**Proceedings of the second meeting of the  
Subcommittee on Proposed Resolution under Section 12A of the  
United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)  
on Tuesday, 27 April 2010, at 8:30 am  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000022	Chairman	Confirmation of minutes of the meeting held on 23 March 2010	
000023 - 000247	Chairman	Opening remarks	
000248 - 001409	Admin	Administration's response to issues raised by members at the meeting on 23 March 2010 (LC Paper No. CB(2)1370/09-10(01))  Administration's response to comments from the two legal professional bodies, the Society for Community Organization and the Hong Kong Human Rights Monitor (LC Paper Nos. CB(2)1370/09-10(01) & CB(2)1397/09-10(01))	
001410 - 002249	Chairman Ms Cyd HO Admin	Interviewee under the age of criminal responsibility	
002250 - 004120	Dr Margaret NG Admin Chairman	The Administration was requested to make clear in paragraph 1 of the Code of Practice ("the Code") prepared under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Ordinance") that the Administration would provide translated copies of the Code in languages other than Chinese and English in case the person subject to a order made under section 12A of the Ordinance (a "section 12A order") did not understand Chinese and English  The drafting of the Chinese version of the Code should be further improved to make it easier to understand by the general public  The Administration was requested to provide a paper setting out the procedures adopted by law enforcement agencies ("LEAs") for handling children between 10 and under the age of 16 who refused to answer questions, furnish information or produce material pursuant to a section 12A order	<b>Admin to refine paragraph 1 of the Code (paragraph 9 of the minutes refers)</b>  <b>Admin to provide a response in writing (paragraph 7 of the minutes refers)</b>
004121 - 005026	Chairman Admin Dr Margaret NG ALA3	Responsibility and privilege of a person subject to a section 12A order	

Time marker	Speaker	Subject	Action required
005027 - 010420	Ms Cyd HO Chairman Admin	<p>The Administration was requested to provide a paper on the procedures adopted by LEAs in overseas jurisdictions on eliciting information or material from a child for the purpose of investigating an offence under anti-terrorism legislation</p> <p>The Administration was urged to raise the age of criminal responsibility in Hong Kong</p>	<p><b>Admin to provide a response in writing (paragraph 7 of the minutes refers)</b></p> <p><b>Admin to convey the suggestion to the relevant policy bureaux/government departments for consideration (paragraph 8 of the minutes refers)</b></p>
010421 - 010602	Mr CHAN Hak-kan	Considered that the Code had struck a proper balance between combating terrorist activities and safeguarding the rights of persons subject to a section 12A order	
010603 - 012153	Dr Margaret NG Chairman Admin ALA3	<p>The Administration was requested -</p> <p>(a) to allow the interviewee to make more than one telephone call if there were reasonable grounds to do so; and</p> <p>(b) to make clear in paragraph 9 of the Code whether the telephone call made by the interviewee would be under supervision</p>	<p><b>Admin to consider (paragraph 13 of the minutes refers)</b></p>
012154 - 012344	Chairman Dr Margaret NG Admin	Date of next meeting	