

立法會
Legislative Council

Ref : CB2/SS/3/09

LC Paper No. CB(2)1665/09-10
(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 third meeting
held on Thursday, 6 May 2010, at 4:30 pm
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 I

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

Action

I. Meeting with the Administration
(LC Paper Nos. CB(2)1471/09-10(01) to (03))

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

Paragraph-by-paragraph examination of the Code of Practice ("the Code") prepared under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Ordinance")

2. The Administration was requested to -

- (a) make the Chinese rendition of the word "excuse", referred to in paragraphs 3 and 4(a) of the Code, consistent;
- (b) delete the words "限制" in paragraph 4(c) of the Chinese text of the Code;
- (c) add the words "or her" in paragraph 4(d) of the English text of the Code;
- (d) refine paragraph 9 of the Code to make clear that although telephone call made by the interviewee would be under supervision to prevent the likelihood of prejudice to the investigation, the authorised officer would not listen to the private consultation between the interviewee and his or her barrister and/or solicitor regardless of whether the latter was present during the interview or otherwise; redraft the sentence "If provided with reasonable justification, he or she may make further telephone calls" by using active voice; and move the sentence "The time taken for the private consultation and telephone call is not counted as part of the interview period" to the end of paragraph 9;

- (e) refine paragraph 10 of the Code to clearly reflect the principle that the interview should be conducted in a language preferred by the interviewee;
- (f) ascertain the appropriateness of using the term "弱智", instead of "智障", in referring to persons who were mentally handicapped under paragraph 12 of the Chinese text of the Code;
- (g) refine paragraphs 13 and 14 of the Code along the lines that the interviewee could also claim to be a hearing or speech impaired person and visually handicapped respectively. Corresponding amendments would also be made to paragraph 20(c) and (d) of the Code;
- (h) amend paragraphs 17 and 22 of the Code to make clear that the interview record or a copy of the tape should be given to the interviewee then and there immediately after the interview;
- (i) amend paragraph 17(a) of the Chinese text of the Code by replacing "(中、英文本)" with "(中文及英文本)"; and
- (j) provide free legal advice service to persons subject to a section 12A order, if they so wished or needed such as if the interviewees were suffering from a mental disability or incapacity, having regard to the fact that only persons involved in the relevant court proceedings in Hong Kong might apply for legal aid and the interview arranged under a section 12A order did not involve any court proceedings.

II. Any other business

3. Members agreed that subject to satisfactory responses from the Administration in writing to the issues raised by members set out in paragraph 2 above, no further meeting would be held and a report would be provided to the House Committee.

4. There being no other business, the meeting ended at 6:20 pm.

**Proceedings of the third meeting of the
Subcommittee on Proposed Resolution under Section 12A of the
United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)
on Thursday, 6 May 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000600	Chairman	Opening remarks	
000601 - 001044	Dr Margaret NG Chairman Admin	In response to Dr Margaret NG's suggestion, the Administration agreed to make it clear in paragraph 9 of the Code of Practice ("the Code") prepared under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("the Ordinance") that although telephone call made by the interviewee would be under supervision to prevent the likelihood of prejudice to the investigation, the authorised officer would not listen to the private consultation between the interviewee and his or her barrister and/or solicitor regardless of whether the latter was present during the interview or otherwise.	Admin to refine paragraph 9 of the Code (paragraph 2(d) of the minutes refers)
001045 - 001301	Chairman Admin	<u>Paragraph-by-paragraph examination of the Code</u> <i>Preamble</i> <i>Paragraph 1 concerning the provision of the Code to a person subject to an order made under section 12A of the Ordinance (a "section 12A order")</i> <i>Paragraph 2 on the definition of "authorized officer"</i>	
001302 - 001645	Chairman Admin ALA3	<i>Paragraphs 3 and 4 concerning the responsibility and privilege of a person subject to a section 12A order</i> The Administration was requested to - (a) make the Chinese rendition of the word "excuse", referred to in paragraphs 3 and 4(a) of the Code, consistent; (b) delete the words "限制" in paragraph 4(c) of the Chinese text of the Code; and (c) add the words "or her" in paragraph 4(d) of the Code.	Admin to amend the Code (paragraph 2(a)-(c) of the minutes refers)

Time marker	Speaker	Subject	Action required
001646 - 001925	Admin Chairman ALA3	<p><i>Paragraphs 5 and 6 concerning the definition of "supervisory officer" and "senior officer"</i></p> <p><i>Paragraph 7 on the definition of "interviewee"</i></p> <p><i>Paragraph 8 on protection of the identity of the interviewee</i></p> <p><i>Paragraph 9 concerning the making of telephone call by the interviewee</i></p> <p>The Administration was requested to refine paragraph 9 of the Code to redraft the sentence "If provided with reasonable justification, he or she may make further telephone calls" by using active voice, and move the sentence "The time taken for the private consultation an telephone call is not counted as part of the interview period" to the end of the paragraph.</p>	Admin to amend the Code (paragraph 2(d) of the minutes refers)
001926 - 003916	Chairman Admin Mr James TO ALA3	<p><i>Paragraph 10 on protection provided to interviewees who did not share a common language with the authorized officer</i></p> <p>Mr James TO's view that the choice of language to be used for conducting the interview should rest with the interviewee. The Administration was requested to refine paragraph 10 of the Code to that effect.</p>	Admin to amend the Code (paragraph 2(e) of the minutes refers)
003917 - 004842	Ms Cyd HO Chairman Admin	<p><i>Paragraph 11 on protection provided to interviewees under the age of 16</i></p>	
004843 - 005734	Ms Cyd HO Chairman Admin Mr James TO	<p>Ms Cyd HO and Mr James TO were of the view that free legal advice service should be provided to persons subject to a section 12A order, if they so wished or needed such as if the interviewees were suffering from a mental disability or incapacity, having regard to the fact that only persons involved in the relevant court proceedings in Hong Kong might apply for legal aid and the interview arranged under a section 12A order did not involve any court proceedings.</p>	Admin to provide a written response (paragraph 2(j) of the minutes refers)
005735 - 005930	Chairman Admin Mr IP Wai-ming Ms Cyd HO	<p><i>Paragraph 12 on special arrangements for interviewees suffering from a mental disability or incapacity</i></p> <p>The Administration was requested to ascertain the appropriateness of using the term "弱智", instead of "智障", in referring to persons who were mentally handicapped under paragraph 12 of the Chinese text of the Code.</p>	Admin to amend the Code (paragraph 2(f) of the minutes refers)

Time marker	Speaker	Subject	Action required
005931 - 011230	Chairman Admin Mr James TO ALA3 Ms Cyd HO	<i>Paragraphs 13 and 14 on special arrangements for interviewees who were hearing or speech impaired persons and visually handicapped</i> The Administration was requested to refine paragraphs 13 and 14 of the Code along the lines that the interviewee could also claim to be a hearing or speech impaired person and visually handicapped respectively. Corresponding amendments would also be made to paragraph 20(c) and (d) of the Code.	Admin to amend the Code (paragraph 2(g) of the minutes refers)
011231 - 011716	Chairman Admin Ms Cyd HO ALA3	<i>Paragraph 15 on provision of short breaks</i> <i>Paragraph 16 on duration of interview</i>	
011717 - 014123	Chairman Admin Ms Cyd HO ALA3 Mr IP Wai-ming	<i>Paragraphs 17, 18, 19 and 20 on keeping/reading/signing the record of interview</i> The Administration was requested to amend - (a) paragraphs 17 and 22 of the Code to make clear that the interview record or a copy of the tape should be given to the interviewee then and there immediately after the interview; and (b) paragraph 17(a) of the Chinese text of the Code by replacing "(中、英文本)" with "(中文及英文本)". <i>Paragraph 21 on refusal to sign the record of interview</i> <i>Paragraph 22 on the provision of a copy of the record to the interview</i> <i>Paragraphs 23 to 26 on production of material</i> <i>Paragraphs 27 to 29 in relation to supervision and complaint</i>	Admin to amend the Code (paragraph 2(h)-(i) of the minutes refers)
014124 - 014343	Chairman Ms Cyd HO Admin ALA3	The Code did not cover orders made under section 12B of the Ordinance to make material available.	
014344 - 014747	Chairman Admin	Way forward	