

立法會
Legislative Council

LC Paper No. CB(2)520/13-14
(These minutes have been seen
by the Administration)

Ref : CB2/SS/3/13

**Subcommittee on
Fugitive Offenders (Czech Republic) Order,
Mutual Legal Assistance in Criminal Matters (Spain) Order and
Mutual Legal Assistance in Criminal Matters (Czech Republic) Order**

**Minutes of meeting
held on Friday, 22 November 2013, at 9:00 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon James TO Kun-sun (Chairman)
Hon LEUNG Yiu-chung
Hon IP Kwok-him, GBS, JP
Hon SIN Chung-kai, SBS, JP

Public Officers attending : Item II

Mr Vic YAU Cheuk-hang
Principal Assistant Secretary (Security) A

Mr Huggin TANG
Assistant Secretary for Security A2

Ms Elizabeth Bernice LIU Zoo-ring
Senior Government Counsel (Team 1)
Department of Justice

Ms Carmen CHU Ying-hung
Senior Government Counsel
Department of Justice

Ms Angie LI Sau-lee
Senior Government Counsel
Department of Justice

Ms Phyllis POON Hon-ying
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Council Secretary (2) 7

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Election of Chairman

Hon James TO was elected Chairman of the Subcommittee.

II. Meeting with the Administration

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

3. The Subcommittee requested the Administration -

- (a) to consider setting out in another piece of subsidiary legislation the respective lists of offences for which surrender might be granted under the contracting parties' laws, to be exchanged under Article 3(2) of the agreement between Hong Kong and the Czech Republic on Surrender of Persons Wanted for Criminal Proceedings; and

- (b) to explain why the discretionary ground for refusal of surrender request in Article 15(c) of the model agreement on surrender of fugitive offenders, i.e. "because the accusation against him is not made in good faith in the interests of justice", was not set out in the Fugitive Offenders (Czech Republic) Order ("the Czech Order").

4. Members agreed that the Chairman would, on behalf of the Subcommittee, move a motion to extend the scrutiny period of the Czech Order to the Council meeting of 8 January 2014.

III. Any other business

5. Members agreed that the next meeting would be held on 5 December 2013 at 8:30 am to continue discussion with the Administration.

6. There being no other business, the meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
13 December 2013

**Proceedings of meeting of the Subcommittee on
Fugitive Offenders (Czech Republic) Order,
Mutual Legal Assistance in Criminal Matters (Spain) Order and
Mutual Legal Assistance in Criminal Matters (Czech Republic) Order
held on Friday, 22 November 2013, at 9:00 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000211	Mr James TO Mr IP Kwok-him Mr LEUNG Yiu-chung	Election of Chairman	
000212 - 000421	Chairman	Opening remarks	
000422 - 000722	Admin	Briefing by the Administration on the Fugitive Offenders (Czech Republic) Order ("the Czech Order"), Mutual Legal Assistance in Criminal Matters (Spain) Order and Mutual Legal Assistance in Criminal Matters (Czech Republic) Order.	
000723 - 001007	Admin Chairman	Commencement of article-by-article comparison of the Schedule to the Czech Order with the model agreement on the surrender of fugitive offenders ("SFO") (Annex B to LC Paper No. CB(3)339/13-14(03)). Examination of Articles 1 and 2 of the Schedule to the Czech Order. Comparison of the articles with relevant articles of the model agreement.	
001008 - 011632	Chairman Mr LEUNG Yiu-chung Mr IP Kwok-him Mr SIN Chung-kai ALA4 Admin	Examination of Article 3 of the Schedule to the Czech Order. Comparison of the article with relevant article of the model agreement. The Chairman's concern that - (a) an agreed list of extraditable offences was set out in previous SFO orders, but not in the Czech Order, which would create uncertainty in law; (b) the offences for which fugitives might be surrendered under the SFO agreement entered into by the Government of the Hong Kong Special Administrative Region ("HKSARG") and the Czech Republic ("the Czech Agreement") might be less than the list of 46 categories of offence to be provided by HKSARG to the Czech Republic; and	

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		<p>(c) the Administration should consider setting out in the Czech Order or another piece of subsidiary legislation a list of offences for which surrender might be granted under the laws of both parties, to be exchanged between HKSARG and the Czech Republic under the Czech Agreement.</p> <p>Mr LEUNG Yiu-chung's concern that -</p> <p>(a) it would be very difficult for members of the public to determine whether an offence might be subject to surrender pursuant to the lists of offences to be exchanged between HKSARG and the Czech Republic; and</p> <p>(b) the offences which might be surrendered under the Czech Agreement might be less than the 46 categories of offence to be provided by HKSARG to the Czech Republic under the Czech Agreement.</p> <p>Mr IP Kwok-him's view that the list of offences to be provided by HKSARG to the Czech Republic should be consistent with the list of offences set out in Schedule 1 to the Fugitive Offenders Ordinance (Cap. 503) ("FOO").</p> <p>Mr SIN Chung-kai's concern about why the list approach, whereby a list of offences agreed between HKSARG and the SFO agreement partner was set out in previous agreements with other jurisdictions on surrender of fugitives, was not adopted in the Czech Order.</p> <p>The Administration's response that -</p> <p>(a) some prospective SFO partners had indicated genuine difficulties in adopting the "list approach" because the approach was not compatible with their domestic laws and practice. The Administration had, after consulting the Panel on Security in 2005, used an alternative formulation where necessary in subsequent negotiations, which did not require a list of offences to be listed in the agreement, but a statement in the agreement of the requirement that surrender should only be</p>	

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		<p>granted for offences for which surrender was permitted under the laws of both parties, and which carried penalty beyond a certain level, and that the parties should provide each other with a list of the offences for which surrender would be granted before the entry into force of the agreement. The Czech Agreement was the first agreement to adopt this alternative formulation;</p> <p>(b) adopting the alternative formulation, Article 3(1) of the Czech Agreement provided, among others, that surrender should be granted for an offence which was punishable under the laws of both Contracting Parties by imprisonment or other form of detention for more than one year or a more severe penalty;</p> <p>(c) Article 3(2) of the Czech Agreement required that each Contracting Party should provide to the other a list of the offences for which surrender might be granted under its law;</p> <p>(d) for Hong Kong's part, the list of categories of offence in Schedule 1 to FOO would be provided to Czech Republic to fulfil the requirement of Article 3(2);</p> <p>(e) to its knowledge, the list of offences to be provided by the Czech Republic for exchange under the Czech Agreement was likely to contain a description of all offences punishable by its laws by imprisonment or other form of detention exceeding a certain period of time;</p> <p>(f) this formulation was in full compliance with the FOO which specified a list of offences for which surrender might be granted, and "dual criminality" as a key requirement for surrender of fugitives; and</p> <p>(g) the Administration will publish in the website of the Department of Justice the lists of offences after they were exchanged between HKSARG and the Czech Republic in accordance with the Czech Agreement.</p>	

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		<p>ALA4's briefing on her letter dated 5 November 2013 to the Administration and the Administration's explanation of its reply dated 8 November 2013.</p> <p>The Administration was requested to consider setting out in another piece of subsidiary legislation the respective lists of offences for which surrender might be granted under the contracting parties' laws, to be exchanged under Article 3(2) of the agreement between Hong Kong and the Czech Republic on Surrender of Persons Wanted for Criminal Proceedings.</p>	Admin
011633 - 011659	Chairman Admin	Examination of Articles 4 to 6 of the Schedule to the Czech Order. Comparison of the articles with relevant articles of the model agreement.	
011700 - 012628	Admin Chairman ALA4	<p>Examination of Article 7 of the Schedule to the Czech Order. Comparison of the article with relevant article of the model agreement.</p> <p>The Chairman's concern why the discretionary ground for refusal of surrender request in Article 15(c) of the model agreement, i.e. "because the accusation against him is not made in good faith in the interests of justice", was not set out in the Czech Agreement. The Administration undertook to give a written response.</p>	Admin
012629 - 012821	Admin Chairman	Examination of Articles 8 and 9 of the Schedule to the Czech Order. Comparison of the articles with relevant articles of the model agreement.	
012822 - 013003	Admin Chairman	Examination of Articles 10 to 14 of the Schedule to the Czech Order. Comparison of the articles with relevant articles of the model agreement.	
013004 - 013049	Chairman Mr SIN Chung-kai Mr IP Kwok-him	Extension of meeting time by 15 minutes.	
013050 - 013331	Admin Chairman	Examination of Articles 15 to 17 of the Schedule to the Czech Order. Comparison of the articles with relevant articles of the model agreement.	

Time marker	Speaker(s)	Subject(s)	Action Required
013332 - 013349	Admin Chairman	Examination of Articles 18 to 19 of the Schedule to the Czech Order. Comparison of the articles with relevant articles of the model agreement.	
013350 - 013517	Chairman Mr SIN Chung-kai Mr IP Kwok-him	Extension of scrutiny period for the Czech Order. Date of next meeting	

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