

**立法會**  
**Legislative Council**

LC Paper No. CB(2)631/13-14  
(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 Thursday, 5 December 2013, at 8:30 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 I

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

Ms Kiwi NG  
Legislative Assistant (2) 1

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## **I. Meeting with the Administration**

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

2. Members requested the Administration -

- (a) to provide to the Legislative Council 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, when the Administration introduced the commencement notice for the Fugitive Offenders (Czech Republic) Order ("the Czech Order"), so as to facilitate the House Committee to consider whether there would be a need to form a subcommittee to study the commencement notice; and

- (b) to provide information, if any, on international model agreements on surrender of fugitive offenders which did not provide for "accusation against the person is not made in good faith in the interests of justice" as a discretionary ground to refuse surrender requests.

3. Members agreed that the Subcommittee would not move any motion to repeal the Czech Order.

## **II. Any other business**

### Legislative timetable for the Czech Order

4. The Chairman concluded that the Subcommittee had completed scrutiny of the Czech Order. Members noted that the Subcommittee would make an oral report on its deliberations on the Czech Order to the House Committee on 13 December 2013, followed by a written report. The deadline for giving notice of a motion to repeal the Czech Order, if any, at the Council meeting of 8 January 2014 was 31 December 2013.

### Date of next meeting

5. Members agreed that the Clerk would schedule the next meeting in consultation with the Chairman for continuation of discussion on the Mutual Legal Assistance in Criminal Matters (Spain) Order and the Mutual Legal Assistance in Criminal Matters (Czech Republic) Order with the Administration.

*(Post-meeting note: With the concurrence of the Chairman, the next meeting was scheduled for 10 December 2013 at 8:30 am to continue discussion with the Administration.)*

6. There being no other business, the meeting ended at 9:20 am.

**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 Thursday, 5 December 2013, at 8:30 am  
in Conference Room 2B of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000317	Chairman	Opening remarks	
000318 - 000842	Admin	Briefing on the Administration's response to issues raised at the meeting on 22 November 2013 (LC Paper No. CB(2)422/13-14(01)).	
000843 - 001105	Chairman Mr IP Kwok-him	<p>Mr IP Kwok-him's remark that it was acceptable for the Administration to publicize the lists of offences to be exchanged with the Czech Republic through Government Notice in the Gazette and the Department of Justice's website for public viewing.</p> <p>The Chairman's concern about the contents of the list of offences for which surrender might be granted under Czech's law to be provided by the Czech Republic under the surrender of fugitive offender ("SFO") agreement entered into by the Government of the Hong Kong Special Administrative Region ("HKSARG") and the Czech Republic ("the Czech Agreement").</p> <p>The Administration's response that the Czech Republic had yet to provide the list under the Czech Agreement but it might contain a description of the offences punishable by its laws by imprisonment or other form of detention exceeding a certain period of time.</p> <p>The Chairman's remark that there would be an opportunity for the Legislative Council to study the lists of offences to be exchanged with the Czech Republic, as the commencement notice on the Fugitive Offenders (Czech Republic) Order ("the Czech Order") would be a piece of subsidiary legislation and Members of the House Committee could propose the formation of a subcommittee to study the commencement notice, if considered necessary.</p>	

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001106 - 003720	Chairman Mr LEUNG Yiu-chung Mr IP Kwok-him Admin	<p>Mr LEUNG Yiu-chung's concern about whether the alternative formulation, which did not require a list of offences in the SFO agreement, would be adopted in all future SFO agreements with continental law jurisdictions.</p> <p>Mr IP Kwok-him's view that any SFO agreement entered into between HKSARG and a SFO partner should be consistent with the Fugitive Offenders Ordinance (Cap. 503) ("FOO") and the list of offences to be provided by HKSARG to its SFO partner should be consistent with the list of offences set out in Schedule 1 to FOO.</p> <p>The Chairman's view that -</p> <p>(a) if the list of offences to be provided by the Czech Republic under the Czech Agreement only contained a description of the offences punishable by its laws by imprisonment or other form of detention exceeding a certain period of time, there might be queries in future about whether the exchange of lists of offences was completed in accordance with Article 3(2) of the Czech Agreement and hence challenges against the validity of the Czech Order might be made;</p> <p>(b) to allow greater flexibility for what was to be exchanged between HKSARG and SFO partners having the same requirements as the Czech Republic, it should be stated in such agreements that each Contracting Party should provide to the other a description of offences for which fugitives might be surrendered under its law; and</p> <p>(c) the paper on the alternative formulation provided by the Administration to the Panel on Security in 2005 (LC Paper No. CB(2)1409/04-05(02)) had not explicitly stated that the list to be provided by a SFO partner might be in the form of a description of offences.</p> <p>Administration's response that -</p> <p>(a) some prospective SFO partners had indicated genuine difficulties in adopting</p>	

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		<p>the "list approach", whereby a list of offences for which surrender might be granted as agreed between HKSARG and the SFO agreement partner was set out in the SFO agreement, because the approach was not compatible with their domestic laws and practices. 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 contained in the agreement, but a statement in the agreement of the requirement that surrender should only be granted for offences for which surrender was permitted under the laws of both contracting 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;</p> <p>(b) the alternative formulation and the Czech Agreement was in full compliance with FOO. All the safeguards provided for in the FOO were retained; and</p> <p>(c) it anticipated that the "list approach" would continue to be adopted in some future SFO agreements, while the alternative formulation would be adopted in some other SFO agreements. As a matter of policy, the Administration aimed to enter into SFO agreements with more jurisdictions.</p>	
003721 - 004256	Chairman Mr SIN Chung-kai Mr IP Kwok-him Admin	<p>The Chairman's view that the Administration should either -</p> <p>(a) repeal the Czech Order and make the order again after completion of the exchange of lists of offences; or</p> <p>(b) provide to the Legislative Council the respective lists of offences for which fugitives might be surrendered under the contracting parties' laws, to be exchanged under Article 3(2) of the Czech Agreement, when it introduced the commencement notice for the Czech Order.</p>	

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		<p>Mr SIN Chung-kai's remark that as the surrender of fugitive offenders was subject to the double criminality requirement, he had no objection to the Czech Order.</p> <p>Mr IP Kwok-him's remark that he had no objection to the Czech Order.</p> <p>The Chairman's remark that while he did not support the Czech Order, he would not raise objection to the Czech Order.</p> <p>The Chairman's conclusion that the Subcommittee would not move any motion to repeal the Czech Order.</p> <p>The Administration was requested to provide to the Legislative Council 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, when it introduced the commencement notice for the Czech Order, so as to facilitate the House Committee to consider whether there would be a need to form a subcommittee to study the commencement notice.</p>	<p><b>Admin</b></p>
004257 - 004819	Chairman Admin	<p>The Chairman's question regarding how the model agreement on SFO was drawn up, including whether there were other model agreements on which it was based.</p> <p>Administration's response that the model agreement on SFO was drawn up by the Sino-British Joint Liaison Group before the reunification.</p> <p>The Chairman's view that the Administration should try its best to include the discretionary ground for refusal of surrender request in Article 15(c) of the model agreement on SFO, i.e. "because the accusation against him is not made in good faith in the interests of justice", in future SFO agreements.</p> <p>The Administration was requested to provide information, if any, on international model</p>	<p><b>Admin</b></p>

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		agreements on SFO which did not provide for "accusation against the person is not made in good faith in the interests of justice" as a discretionary ground to refuse surrender requests.	
004820 - 004901	Chairman	Deadline for giving notice of a motion to repeal the Czech Order; report of the Subcommittee's deliberations on the Czech Order to the House Committee.	
004902 - 005213	Chairman Mr SIN Chung-kai Mr IP Kwok-him	Date of next meeting	

Council Business Division 2  
Legislative Council Secretariat  
8 January 2014