

立法會
Legislative Council

LC Paper No. CB(2)632/13-14
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by the Administration)

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**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 Tuesday, 10 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 SIN Chung-kai, SBS, JP

Member absent : Hon IP Kwok-him, GBS, 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

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. Meeting with the Administration

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

2. The Subcommittee requested the Administration to -

- (a) Mutual Legal Assistance in Criminal Matters (Spain) Order ("the Spain Order")

Article 3

- (i) explain how "an offence of a political character" under Article 3(2) would be interpreted by the court in Hong Kong;
- (ii) explain its policy and consideration factors for exercising the discretionary ground under Article 3(4) to refuse assistance;

Article 12

- (iii) provide the explanation given by the Spanish side on why they were not able to discharge the obligation under Article XII(3) of the model agreement on mutual legal assistance in criminal matters;

Article 18

- (iv) explain the policy towards exchange of information under Article 18 of Schedule 1 to the Spain Order; and
- (b) Mutual Legal Assistance in Criminal Matters (Czech Republic) Order ("the Czech Order")

Article 8

- (i) explain the reasons for inclusion of Article 8(3)(b) and whether this would lead to abuse of the information provided;
- (ii) provide examples of similar articles, if any, in the agreements signed with other jurisdictions;

Article 17

- (iii) explain why the time element found in Article XVII(1) of the model agreement, i.e. "preceded his departure from the requested party", was not found in Article 17(1)(b), and the implications of the absence of such time element in Article 17(1)(b); and

Article 20

- (iv) explain its policy towards exchange of information under Article 20 of Schedule 1 to the Czech Order.

3. The Subcommittee requested the Administration to set out as far as practicable the requirements under MLAO in future agreements on mutual legal assistance in criminal matters.

II. Any other business

4. The Chairman said that the next meeting would be scheduled pending the Administration's response to the issues raised by members.
5. There being no other business, the meeting ended at 10:32 am.

Council Business Division 2
Legislative Council Secretariat
8 January 2014

**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 Tuesday, 10 December 2013, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000956	Chairman	Opening remarks	
000957 - 001229	Admin Chairman	Commencement of article-by-article comparison of Schedule 1 to the Mutual Legal Assistance in Criminal Matters (Spain) Order ("the Spain Order") with the model agreement on mutual legal assistance in criminal matters ("the model agreement") (Annex B to LC Paper No. CB(3)339/13-14(05)). Examination of Articles 1 and 2 of Schedule 1 to the Spain Order. Comparison of the articles with relevant articles of the model agreement.	
001230 - 003603	Admin Chairman ALA4 Mr LEUNG Yiu-chung Mr SIN Chung-kai	Examination of Article 3 of Schedule 1 to the Spain Order. Comparison of the article with relevant article of the model agreement. The Chairman's question and the Administration's response regarding the meaning of Article 3(1)(g). The Administration was requested to - (a) explain how "an offence of a political character" under Article 3(2) would be interpreted by the court in Hong Kong; and (b) explain its policy and consideration factors for exercising the discretionary ground under Article 3(4) to refuse assistance under the Spain Order.	Admin
003604 - 003759	Admin Chairman	Examination of Article 4 of Schedule 1 to the Spain Order. Comparison of the article with relevant article of the model agreement. The Chairman's question and the Administration's response about the effect of Article 4(1).	

Time marker	Speaker(s)	Subject(s)	Action Required
003800 - 003924	Admin	Examination of Articles 5 to 10 of Schedule 1 to the Spain Order. Comparison of the articles with relevant articles of the model agreement.	
003925 - 004321	Admin Chairman	<p>Examination of Articles 11 and 12 of Schedule 1 to the Spain Order. Comparison of the articles with relevant articles of the model agreement.</p> <p>The Chairman's question and the Administration's response about the meaning of video conference in Article 11.</p> <p>The Administration was requested to provide, in connection with Article 12, the explanation given by the Spanish side on why they were not able to discharge the obligation under Article XII(3) of the model agreement.</p>	Admin
004322 - 005239	Admin Mr LEUNG Yiu-chung Chairman ALA4	<p>Examination of Article 13 of Schedule 1 to the Spain Order. Comparison of the article with relevant article of the model agreement.</p> <p>Mr LEUNG Yiu-chung's question and the Administration's response regarding the effect of adding the last sentence "If assistance stipulated in this sub-paragraph is refused, the Requested Party shall not be obliged to reveal its reason for refusal." in Article 13(b).</p>	
005240 - 005458	Admin Chairman	Examination of Articles 14 and 15 of Schedule 1 to the Spain Order. Comparison of the articles with relevant articles of the model agreement.	
005459 - 005519	Admin	Examination of Articles 16 and 17 of Schedule 1 to the Spain Order. Comparison of the articles with relevant articles of the model agreement.	
005520 - 005952	Admin Chairman	<p>Examination of Article 18 of Schedule 1 to the Spain Order. Comparison of the article with relevant article of the model agreement.</p> <p>The Administration was requested to explain its policy towards exchange of information under Article 18 of Schedule 1 to the Spain Order..</p>	Admin
005953 - 010438	Admin Chairman	Examination of Article 19 of Schedule 1 to the Spain Order. Comparison of the article with relevant article of the model agreement.	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>The Chairman's concern whether Article 19(5) would have the effect of widening the scope of "proceeds of crime" and "instrumentalities of crime".</p> <p>The Administration's response that Article 19(5) was in line with section 30(1)(e)(i) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLAO") and would not widen the scope of the terms.</p>	
010439 - 010603	Admin	<p>Examination of Articles 20 to 26 of Schedule 1 to the Spain Order. Comparison of the articles with relevant articles of the model agreement.</p> <p>The Administration's explanation that Article XI of the model agreement had been omitted at the request of the Spanish side for the reason that it was already stipulated in Article 1(2)(a) of Schedule 1 to the Spain Order.</p>	
010604 - 010914	Chairman Admin	<p>Commencement of article-by-article comparison of Schedule 1 to the Mutual Legal Assistance in Criminal Matters (Czech Republic) Order ("the Czech Order") with the model agreement (Annex C to LC Paper No. CB(3)339/13-14(05)).</p> <p>Examination of Articles 1 to 3 of Schedule 1 to the Czech Order. Comparison of the articles with relevant articles of the model agreement.</p> <p>The Chairman's question and the Administration's response regarding whether it was the international practice to translate all documents in support of a request into an official language of the Requested Party, if so required.</p>	
010915 - 011237	Admin Chairman	Examination of Article 4 of Schedule 1 to the Czech Order. Comparison of the article with relevant article of the model agreement.	
011238 - 011345	Admin Chairman	Examination of Article 5 of Schedule 1 to the Czech Order. Comparison of the article with relevant article of the model agreement.	

Time marker	Speaker(s)	Subject(s)	Action Required
011346 - 011406	Admin	Examination of Articles 6 and 7 of Schedule 1 to the Czech Order. Comparison of the articles with relevant articles of the model agreement.	
011407 - 012402	Admin Chairman Mr LEUNG Yiu-chung	<p>Examination of Article 8 of Schedule 1 to the Czech Order. Comparison of the article with relevant article of the model agreement.</p> <p>The Administration was requested to -</p> <p>(a) explain the reasons for inclusion of Article 8(3)(b) and whether this would lead to abuse of the information provided; and</p> <p>(b) provide examples of similar articles, if any, in the agreements signed with other jurisdictions.</p>	Admin
012403 - 012524	Admin	Examination of Articles 9 to 16 of Schedule 1 to the Czech Order. Comparison of the articles with relevant articles of the model agreement.	
012525 - 013534	Admin Chairman ALA4	<p>Examination of Article 17 of Schedule 1 to the Czech Order. Comparison of the article with relevant article of the model agreement.</p> <p>ALA4's question regarding the missing time element in Article 17(1)(b) as stated in her letter dated 4 November 2013 to the Administration and the Administration's explanation of its reply dated 8 November 2013.</p> <p>The Administration was requested to explain why the time element found in Article XVII(1) of the model agreement, i.e. "preceded his departure from the requested party" was not found in Article 17(1)(b), and the implications of the absence of such time element in Article 17(1)(b).</p>	Admin
013535 - 014920	ALA4 Chairman Admin Mr LEUNG Yiu-chung	ALA4's question regarding the lack of provision to cater for the scenario where the relevant person has undergone the punishment as set out in section 5(1)(e) of MLA0 in Article 4(1)(f) of Schedule 1 to the Czech Order as stated in her letter dated 4 November 2013 to the Administration and the Administration's explanation of its reply dated 8 November 2013.	

Time marker	Speaker(s)	Subject(s)	Action Required
		The Administration was requested to set out as far as practicable the requirements in MLAO in future agreements on mutual legal assistance in criminal matters.	Admin
014921 - 015647	Chairman Admin	Examination of Article 18 of Schedule 1 to the Czech Order. Comparison of the article with relevant article of the model agreement. The Chairman's view that the permission for the requesting party to retain property for disposal under its law should be exercised prudently under Article 18(3).	
015648 - 015708	Chairman Admin	Examination of Article 19 of Schedule 1 to the Czech Order. Comparison of the article with relevant article of the model agreement.	
015709 - 015736	Chairman Admin	Examination of Article 20 of Schedule 1 to the Czech Order. Comparison of the article with relevant article of the model agreement. The Administration was requested to explain its policy towards exchange of information under Article 20 of Schedule 1 to the Czech Order.	Admin
015737 - 015839	Chairman Admin	Examination of Articles 21 to 23 of Schedule 1 to the Czech Order. Comparison of the articles with relevant articles of the model agreement.	
015840 - 015851	Chairman Admin	Date of next meeting	
015852 - 020219	ALA4 Admin Chairman	ALA4's observation of the lack of application provision when comparing Article 23 of Schedule 1 to the Czech Order with Article XXI of the model agreement. The Administration's explanation that the second sentence of Article XXI(2) of the model agreement, which provided for the continuous execution of requests made prior to the service of the termination notice, had been deleted at the request of the Czech Republic. Nonetheless, Article 23(2) provided for termination to take effect six months after the giving of notice.	

Council Business Division 2
Legislative Council Secretariat
8 January 2014