

**立法會**  
**Legislative Council**

LC Paper No. CB(2)822/13-14  
(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 Tuesday, 21 January 2014, at 4:30 pm  
in Conference Room 2A 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

Mr Wayne Patrick Walsh  
Deputy Law Officer (Mutual Legal Assistance)  
Department of Justice

Ms Elizabeth Bernice LIU Zoo-ring  
Senior Government Counsel  
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 Kay CHU  
Council Secretary (2) 1

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. The Subcommittee requested the Administration to -

- (a) explain the interpretation of "an offence of a political character" under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLAO") and the effect of Article 3(2) of Schedule 1 to the Mutual Legal Assistance in Criminal Matters (Spain) Order; and
- (b) provide case law relating to the international judicial trend towards exclusion of terrorist offences from offences of a political character.

**II. Any other business**

3. Members agreed that the Subcommittee would consider the need for holding a further meeting with the Administration after consideration of the Administration's response to issues raised at this meeting.
4. There being no other business, the meeting ended at 5:10 pm.

Council Business Division 2  
Legislative Council Secretariat  
6 February 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, 21 January 2014, at 4:30 pm  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000422	Chairman	Opening remarks	
000423 - 001743	Admin	Briefing by the Administration on the Administration's response to issues raised at the meeting on 10 December 2013 (LC Paper No. CB(2)713/13-14(01)).	
001744 - 003509	Chairman Admin	<p>The Chairman's concern regarding the interpretation of "an offence of a political character" under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLAO"), whether the exception to "an offence of a political character" contained in Article 3(2) of Schedule 1 to the Mutual Legal Assistance in Criminal Matters (Spain) Order ("the Spain Order") would have the effect of changing the law regarding the interpretation of "an offence of a political character" under MLAO.</p> <p>The Administration's response that -</p> <ul style="list-style-type: none"> <li>(a) there was no definition of "an offence of a political character" in MLAO;</li> <li>(b) there had been an international judicial trend towards exclusion of terrorist offences from offences of a political character;</li> <li>(c) Article 3(2) sought to clarify - <ul style="list-style-type: none"> <li>(i) the intention of the parties to the agreement on mutual legal assistance in criminal matters ("MLA") concerned regarding the interpretation of offences of a political character; and</li> <li>(ii) the scope of offences of a political character in relation to MLA between Spain and Hong Kong.</li> </ul> </li> </ul>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>The Administration was requested to -</p> <p>(a) explain the interpretation of "an offence of a political character" under MLAO and the effect of Article 3(2) on the interpretation of "an offence of a political character"; and</p> <p>(b) provide case law relating to the international judicial trend towards exclusion of terrorist offences from offences of a political character.</p>	<b>Admin</b>
003510 - 004108	Chairman Admin	<p>Chairman's concern regarding whether the discretionary ground for refusal under Article 3(4) of the Spain Order would be exercised by Spain but not Hong Kong.</p> <p>The Administration's response that as Spain always provided a maximum sentence for her offences, it was expected that Hong Kong would not refuse a request for assistance from Spain on this discretionary ground. On the contrary, Spain might refuse to provide assistance to Hong Kong on this discretionary ground. Nevertheless, when Hong Kong made requests to Spain that involved offences carrying a prison sentence of undetermined duration, Hong Kong would explain to Spain the sentence reviewing mechanism under the Long Term Prison Sentences Review Ordinance (Cap. 524) for Spain's consideration of whether to invoke the discretionary right of refusal.</p>	
004109 - 004236	Chairman Mr IP Kwok-him	Members' agreement that the Subcommittee would consider the need for holding a further meeting with the Administration after consideration of the Administration's response to issues raised at this meeting.	