

**立法會**  
**Legislative Council**

LC Paper No. CB(2)744/06-07  
(These minutes have been  
seen by the Administration)

Ref : CB2/SS/2/06

**Subcommittee on Fugitive Offenders (Germany) Order and  
Fugitive Offenders (Republic of Korea) Order**

**Minutes of meeting  
held on Monday, 11 December 2006 at 2:30 pm  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon James TO Kun-sun (Chairman)  
Hon Margaret NG  
Hon LAU Kong-wah, JP  
Hon Miriam LAU Kin-ye, GBS, JP

**Public Officers attending** : Security Bureau  
Ms Manda CHAN  
Principal Assistant Secretary for Security  
  
Ms Jane LEE  
Assistant Secretary for Security  
  
Department of Justice  
Mr John HUNTER  
Deputy Principal Government Counsel (Treaties & Law)  
  
Ms Deneb CHEUNG  
Senior Government Counsel  
  
Ms Linda LAM  
Senior Government Counsel  
  
Ms Marie SIU  
Senior Government Counsel

Ms Grace LEUNG  
Government Counsel

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (2)5

**Staff in attendance** : Ms Connie FUNG  
Assistant Legal Adviser 3

Ms Katherine YUNG  
Senior Council Secretary (2)8

Miss Jenny HO  
Legislative Assistant (2)5

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Action

**I. Election of Chairman**

Mr James TO was elected Chairman of the Subcommittee.

**II. Meeting with the Administration**

(Legislative Council Brief (File Ref. SBCR 3/5691/95 Pt.36; SBCR 1/2716/89(98) Pt.22), LS12/06-07 and LC Paper Nos. CB(2)573/06-07(01)-(03))

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

3. Senior Government Counsel (SGC) took members through the Administration's paper on an article by article comparison of the Agreement between the Government of the Hong Kong Special Administrative Region and the Government of the Federal Republic of Germany for surrender of fugitive offenders (SFO) and the model text on SFO (LC Paper No. CB(2) 573/06-07(02)).

Main issues raised

4. The Chairman expressed concern on whether the removal of the reference to "magistrate" in Article 8(3) of the Fugitive Offenders (Germany) Order (the Germany Order) would render it impossible for Hong Kong to request Germany to surrender a fugitive offender to Hong Kong if the warrant of arrest was issued by a magistrate in Hong Kong, and asked the Administration why such an arrangement was acceptable to Hong Kong.

Action

5. SGC explained that "magistrate" was removed from Article 8(3) of the Germany Order at the request of Germany on the grounds that magistrates in Germany did not have the power to issue warrant of arrest. SGC however pointed out that such removal would not render it impossible for Hong Kong to request Germany to surrender a fugitive offender to Hong Kong if the warrant of arrest was issued by a magistrate in Hong Kong as Germany recognised that magistrates in Hong Kong had such power and it was understood by both sides that "other competent authority" referred to in the Article covered magistrate. At the request of the Chairman, Principal Assistant Secretary for Security (PAS(S)) agreed to prepare a paper affirming this point.

Admin

6. The Chairman noted that the provisional arrest of the person sought would be terminated upon the expiration of 60 days in Article 10 of the Germany Order, as opposed to only 45 days provided for in Article 8 of the model agreement. Although precedent for such extension could be found in Article 9 of the Netherlands agreement, the Chairman urged the Administration to exercise prudence in agreeing to similar provision in future SFO agreements in order not to undermine human rights.

7. The Chairman was of the view that Hong Kong should receive a share of the profits realised from property confiscated by the requesting party from a person so surrendered by Hong Kong to cover expenses borne for surrendering the person. Ms Miriam LAU cautioned that this matter might be taken into account if international trend or practice was to allow the requested party to receive a share of the confiscated proceeds concerned.

8. PAS(S) responded that the Fugitive Offenders Ordinance (Cap. 503) under which the Germany Order was made did not provide for the sharing of confiscated proceeds as suggested by the Chairman in paragraph 7 above. Nevertheless, PAS(S) took note of the Chairman's view and would explore whether and how this should be done through administrative means or other bilateral/international agreements.

Admin

9. Referring to Article 20 of the Germany Order providing for the expeditious surrendering of the person without further formal proceedings if the person concerned consented voluntarily and in writing to surrender to the requesting party, the Chairman asked about the legal assistance available to a person who refused to be surrendered to the requesting party voluntarily.

10. SGC advised that at the Magistrates' Courts, an arrested person could ask for representation by lawyers provided by the Duty Lawyer Scheme. For proceedings above the Magistrates' Court level, an arrested person could apply to the Legal Aid Department (LAD) for assisted legal representation. At the request of the Chairman, PAS(S) agreed to provide a written factual account of the legal assistance available to such persons, including the legal procedures involved and whether under the duty lawyers service at the Magistrates' Courts

Admin

Action

and the legal service provided by the LAD could deal with cases involving surrender of fugitive offenders.

**III. Any other business**

11. To allow more time for members to scrutinise the Germany Order and the Fugitive Offenders (Republic of Korea) Order, the Chairman said that he would give notice to move a motion at the Council meeting on 20 December 2006 to extend the scrutiny period of the two Orders to 10 January 2007. A verbal report on this would be made to the House Committee on 15 December 2006.

12. The meeting ended at 3:24 pm.

Council Business Division 2  
Legislative Council Secretariat  
29 December 2006

**Proceedings of the Subcommittee on Fugitive Offenders (Germany) Order  
and Fugitive Offenders (Republic of Korea) Order  
on Monday, 11 December 2006 at 2:30 pm  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 – 000331	Ms Margaret NG Mr LAU Kong-wah Ms Miriam LAU Mr James TO	Election of Chairman	
000332 – 000640	Admin Chairman Mr LAU Kong-wah	Briefing on the Administration's paper on an article by article comparison of the Agreement between the Government of the Hong Kong Special Administrative Region and the Government of the Federal Republic of Germany for surrender of fugitive offenders (SFO) and the model text on SFO (LC Paper No.CB(2)573/06-07(02))  - Article 1	
000641 – 001653	Admin Chairman	- Articles 2 to 7	
001654 – 002457	Admin Chairman	- Article 8	<b>Admin to provide a written response (para. 5 of the minutes)</b>
002458 – 003649	Admin Chairman	- Articles 9 to 18	
003650 – 004408	Admin Chairman Ms Miriam LAU	- Article 19	<b>Admin to provide a written response (para. 8 of the minutes)</b>
004409 – 005046	Admin Chairman Ms Miriam LAU	- Article 20	<b>Admin to provide a written response (para. 10 of the minutes)</b>
005047 – 005204	Admin	- Articles 21 to 23	
005205 – 005635	Chairman Clerk	Extending the scrutiny period of the Fugitive Offenders (Germany) Order and Fugitive Offenders (Republic of Korea) Order	