

立法會
Legislative Council

LC Paper No. LS10/13-14

**Paper for the House Committee Meeting
on 8 November 2013**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 1 November 2013**

Tabling in LegCo : Council meeting of 6 November 2013

Amendment to be made by : Council meeting of 4 December 2013 (or that of 8 January 2014 if extended by resolution)

Fugitive Offenders (Czech Republic) Order **(L.N. 166)**

L.N. 166 is made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503).

2. By L.N. 166, it is directed that the procedures in Cap. 503 for the surrender of fugitive offenders shall apply between Hong Kong and the Czech Republic. L.N. 166 is made in consequence of the agreement for the surrender of fugitive offenders entered into by the Government of the Hong Kong Special Administrative Region and the Czech Republic and signed in Hong Kong on 4 March 2013 (the Agreement). The Agreement is recited in the Schedule to L.N. 166. Under section 2 of L.N. 166, the relevant procedures are subject to the limitations, restrictions, exceptions and qualifications contained in the Agreement.

3. L.N. 166 is subject to a mechanism of scrutiny by the Legislative Council (LegCo) provided in section 3(2) to (6) of Cap. 503. The mechanism is similar to that provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), except that under section 3(3) of Cap. 503, LegCo may only repeal but not amend L.N. 166.

4. Members may refer to the LegCo Brief (File Ref.: SBCR 41/1/2716/80, SBCR 42/22/581/87 and SBCR 28/22/581/87) issued by the Security Bureau on 30 October 2013 for background information.

5. As advised by the Clerk to the Panel on Security, the Panel has not been consulted on L.N. 166. Members have been advised on surrender of persons wanted for criminal proceedings vide LegCo Brief (no reference number) issued by the Security Bureau in March 2013.

6. Upon enquiry, the Administration has advised that L.N. 166 has not adopted the "list" approach used in all the previous fugitive offenders orders as the European countries have expressed concerns that such an approach is not compatible with their domestic law and practice which generally permit extradition in respect of all criminal offences with a penalty above a certain threshold. Members had discussed the proposed alternative formulation that is now used in Article 3 of L.N. 166 at a meeting of the Panel on Security (LC Paper No. CB(2)1409/04-05(02)). The Administration has agreed to provide a comparison of the Agreement with that proposed formulation.

7. According to paragraph 10 of the LegCo Brief (File Ref.: SBCR 41/1/2716/80), the Secretary for Security will appoint the commencement date of L.N. 166 by notice in the Gazette. The date will coincide with that on which the agreement enters into force. The Agreement provides that it shall enter into force on the 30th day after the day on which the Contracting Parties have notified each other in writing that the requirement for the entry into force of the agreement have been complied with. As it is likely that Hong Kong will first complete the domestic procedures for bringing the Agreement into force, the date of operation of the Agreement will depend on when the Czech Republic completes its domestic procedures and notify Hong Kong.

**Official Administrator's Accounts (Interest)
(Amendment) Rules 2013**

(L.N. 167)

8. L.N. 167 is made by the Chief Justice under section 72(1A) of the Probate and Administration Ordinance (Cap. 10).

9. Under section 10 of Cap. 10, if any person dies intestate leaving an estate in Hong Kong, the deceased's estate shall vest in the Official Administrator (OA) who may administer the estate until OA authorizes another person (e.g. the deceased's next of kin) to administer the estate.

10. Section 15 of Cap. 10 provides that if the total value of the estate does not exceed HK\$150,000, OA may, without any legal formality, get in and administer the estate in a summary manner.

11. Rule 3 of the Official Administrator's Accounts (Interest) Rules 2013 (Cap. 10D) provides that if OA is administering an estate with a total value not exceeding HK\$150,000 and the administration of the estate is not completed within 3 months, OA must credit to the estate interest at the prevailing Hong Kong Association of Banks (HKAB) rate (HKAB Rate) for savings accounts on all moneys in OA's possession which belong to the estate.

12. According to the Judiciary Administration, as a result of the deregulation of interest rates in 2001, interest rates on all types of deposits, including savings account deposits, are determined by competitive market forces rather than by the HKAB. The Judiciary has been using the interest rate for savings accounts of The Hong Kong and Shanghai Banking Corporation Limited as an interim measure. For the purpose of interest calculation to be paid by OA, the Judiciary proposes to adopt the average interest rate on Hong Kong dollar savings deposits published monthly by the Hong Kong Monetary Authority (i.e. the Average Savings Deposit Rate compiled on the basis of the interest rates quoted by major licensed banks). Members may refer to the LegCo Brief (File Ref.: SC 261/8/164 PT2) issued by the Judiciary Administration in October 2013 for background information.

13. Upon enquiry, the Judiciary Administration has clarified that the Average Savings Deposit Rate is based on deposits of less than HK\$100,000 and the proposal is to apply the same interest rate to all estates not exceeding HK\$150,000.

14. According to the Panel paper on proposed amendments to Cap. 10D (LC Paper No. CB(4)766/12-13(01)), the Administration has consulted the Hong Kong Bar Association and the Law Society of Hong Kong on the proposal and no comments have been made.

15. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, the Panel has been consulted on the proposal and no comments have been made.

16. L.N. 167 seeks to amend Rule 3 of Cap. 10D to replace the HKAB Rate with the Average Savings Deposit Rate. It comes into operation on 1 January 2014.

Concluding Observations

17. Scrutiny of L.N. 166 is continuing, while we are awaiting the Administration's further information.

18. No difficulties have been indentified in relation to the legal or drafting aspects of L.N. 167.

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