

立法會
Legislative Council

LC Paper No. CB(2)774/18-19
(These minutes have been seen
by the Administration)

Ref : CB2/SS/4/18

Subcommittee on Fugitive Offenders (France) Order

Minutes of meeting
held on Wednesday, 19 December 2018, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon James TO Kun-sun (Chairman)
Hon CHAN Hak-kan, BBS, JP
Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang

Public Officers attending : Item II

Ms Iris LEE Ho-ki
Principal Assistant Secretary for Security A

Mr Percy LEUNG Siu-to
Assistant Secretary for Security A2

Ms Anthea LI Suk-kwan
Deputy Principal Government Counsel
(Mutual Legal Assistance) 1
Department of Justice

Mr Felix HOE Chi-yeung
Senior Government Counsel
Department of Justice

Ms Cathy SZETO Ying-lok
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 : Mr Bonny LOO
Assistant Legal Adviser 4

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

I. Election of Chairman

Mr James TO was elected Chairman of the Subcommittee.

II. Meeting with the Administration

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

3. The Subcommittee requested the Administration to:

General

(a) explain whether the term "French Republic" covered overseas dependent territories of the French Republic;

Article 2

(b) provide the list of offences for which surrender of fugitive offenders ("SFO") to Hong Kong might be granted under the law of the French Republic and consider providing a hyperlink to the list on the relevant webpage of Hong Kong e-Legislation;

Article 3

- (c) provide information on how the nationality of a fugitive offender at the time of commission of an offence for which surrender was requested was to be determined (including whether the Central People's Government would be consulted in making such determination);

Article 6

- (d) provide information on the number of cases in which SFO requests from other jurisdictions had been refused by the Chief Executive ("CE") under the Fugitive Offenders Ordinance (Cap. 503) in the past, the procedures involved and whether the refusal by CE was made in written form and supported by reasons; and

Article 13

- (e) explain the intent and legal basis of Article 13.3 of the SFO agreement entered into by Hong Kong and the French Republic as well as whether the article as currently drafted could reflect the intent in relation to how Hong Kong should handle concurrent requests for surrender of the same person from the French Republic, a third State, and any other part of the People's Republic of China.

III. Any other business

4. The Subcommittee agreed that the next meeting would be held on 7 January 2019 at 4:30 pm to continue discussion with the Administration.

5. There being no other business, the meeting ended at 4:19 pm.

**Proceedings of meeting of the
Subcommittee on Fugitive Offenders (France) Order
held on Wednesday, 19 December 2018, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000428 - 000505	Mr Kenneth LEUNG Mr CHAN Hak-kan Mr James TO	Election of Chairman	
000506 - 000629	Chairman	Opening remarks	
000630 - 000928	Chairman Admin	Briefing by the Administration on the Fugitive Offenders (France) Order ("the Order").	
000929 - 001437	Chairman Mr Kenneth LEUNG Admin	Mr Kenneth LEUNG's question regarding the basis on which the model agreement on the surrender of fugitive offenders ("SFO") had been drawn up. Administration's response that the model agreement was drawn up by the Sino-British Joint Liaison Group before the People's Republic of China resumed the exercise of sovereignty over Hong Kong. The model agreement was consistent with the Fugitive Offenders Ordinance (Cap. 503) ("FOO") and the United Nations Model Treaty on Extradition.	
001438 - 001912	Chairman Mr Kenneth LEUNG Admin ALA4	Mr Kenneth LEUNG's question and information provided by ALA4 regarding the full list of jurisdictions which had signed SFO agreements with Hong Kong. Mr LEUNG's question, the Administration's response and information provided by ALA4 regarding whether Taiwan fell within the SFO mechanism under FOO which applied to "a place outside Hong Kong (other than any other part of the People's Republic of China)".	
001913 - 002636	Chairman Admin	The Chairman's concern that in a recent Hong Kong Policy Act Report published by the Department of State of the United States of America ("US"), it was mentioned that in respect of an SFO request made by the US Government, the Chief Executive ("CE") refused the request "at the behest of the Central Government".	

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		<p>Administration's response that:</p> <p>(a) SFO requests were handled in accordance with FOO and in the context of relevant bilateral SFO agreements concluded with the respective jurisdictions; and</p> <p>(b) in the case concerned, the SFO request from the US Government had been handled in accordance with FOO and the SFO agreement between Hong Kong and the US.</p>	
002637 - 002755	Mr Kenneth LEUNG Admin	<p>Mr Kenneth LEUNG's questions regarding the existing mechanism for SFO between the Mainland and Hong Kong.</p> <p>Administration's response that currently there was no SFO arrangement between the Mainland and Hong Kong. Such an arrangement was still under discussion. Despite the absence of such an arrangement, there were occasions in the past where, following discussion between the Hong Kong Police Force and the Mainland law enforcement authorities, the latter exercised discretion to return to Hong Kong certain Hong Kong residents suspected of having committed crimes in Hong Kong for investigation or trials.</p>	
002756 - 003008	Chairman Mr Kenneth LEUNG Admin	<p>Mr Kenneth LEUNG's questions regarding the number of SFO requests from and to the jurisdictions with which Hong Kong had signed SFO agreements.</p> <p>Administration's response that in the past 10 years, Hong Kong, pursuant to its signed SFO agreements with other jurisdictions, had made 24 SFO requests to other jurisdictions; while other jurisdictions, pursuant to their signed SFO agreements with Hong Kong, had made 66 SFO requests to Hong Kong.</p>	
003009 - 004313	Chairman Admin ALA4	<p>Commencement of article-by-article comparison of the SFO agreement entered into by Hong Kong and the French Republic ("the Agreement") with the model agreement on SFO (Annex A to LC Paper No. CB(2)474/18-19(02)).</p> <p>Examination of Articles 1 and 2 of the Agreement. Comparison of the articles with relevant articles of the model agreement.</p>	

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		<p>The Chairman's concern that the lack of an agreed list of extraditable offences in the Agreement would create uncertainty in law.</p> <p>Administration's response that for the purpose of negotiations with prospective SFO agreement partners, it had initially adopted the "list approach" by seeking to list in the SFO agreements the categories of offences for which surrender could be granted. However, some prospective SFO partners such as some European countries had indicated genuine difficulties in adopting the "list" approach because the approach was not compatible with their domestic laws and practices. After consultation with the Panel on Security in 2005, the Administration had adopted an alternative formulation where necessary which did not require a list of offences to be provided in the agreement. Instead, a provision would be made in the agreement to require that surrender should only be granted for offences for which surrender was permitted under the laws of both parties, and which carried penalty beyond a certain level, and that the parties should provide each other with information on the offences for which surrender could be granted under their respective laws before the entry into force of the agreement. As a past reference, the Administration had provided the list of offences for which fugitive offenders might be surrendered under the laws of HKSAR and the Czech Republic in the Legislative Council Brief on the commencement notice for the Fugitive Offenders (Czech Republic) Order.</p> <p>The Administration was requested to provide the list of offences for which SFO to Hong Kong might be granted under the law of the French Republic and consider providing a hyperlink to the list on the relevant webpage of Hong Kong e-Legislation.</p>	<p>Admin</p>
004314 - 005443	Admin Chairman Mr Kenneth LEUNG ALA4	<p>Examination of Article 3 of the Agreement. Comparison of the article with relevant article of the model agreement.</p> <p>The Chairman's question and the Administration's response regarding how the nationality of a fugitive offender was to be determined.</p> <p>The Administration was requested to provide information on how the nationality of a fugitive</p>	<p>Admin</p>

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>offender at the time of commission of an offence for which surrender was requested was to be determined (including whether the Central People's Government would be consulted in making such determination).</p>	
005444 - 010811	<p>Admin Chairman Mr Kenneth LEUNG ALA4</p>	<p>Examination of Articles 4 and 5 of the Agreement. Comparison of the articles with relevant articles of the model agreement.</p> <p>The Chairman's question regarding examples of multilateral international convention in Article 6.1b) of the Agreement. Administration's response that examples of such multilateral international convention included the United Nations Convention Against Corruption, the International Convention for the Suppression of the Financing of Terrorism, and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.</p> <p>The Chairman's question, the Administration's response, and ALA4's advice on the scope of the term "sex" in Article 5.1b) and 5.1c) of the Agreement and the use of "sexual orientation" and "gender" in the Fugitive Offenders (Ireland) Order (Cap. 503AF) and the Fugitive Offenders (South Africa) Order (Cap. 503AH) respectively.</p>	
010812 - 013045	<p>Admin Chairman Mr Kenneth LEUNG Mr Dennis KWOK ALA4</p>	<p>Examination of Article 6 of the Agreement. Comparison of the article with relevant article of the model agreement.</p> <p>Concerns of the Chairman, Mr Dennis KWOK and Mr Kenneth LEUNG and the Administration's response regarding procedures for refusal of SFO requests from other jurisdictions by CE under FOO and the number of such cases in the past.</p> <p>Observation of ALA4 and the Administration's response regarding the use of the term "pardoned" in Article 5.2 but not in Article 6.3.</p> <p>The Administration was requested to provide information on the number of cases in which SFO requests from other jurisdictions had been refused by CE under FOO in the past, the procedures involved and whether the refusal by CE was made in written form and supported by reasons.</p>	<p>Admin</p>

Time marker	Speaker	Subject(s) / Discussion	Action Required
013046 - 015158	Chairman ALA4 Admin Mr Kenneth LEUNG Mr Dennis KWOK	<p>Examination of Article 13 of the Agreement. Comparison of the article with relevant article of the model agreement.</p> <p>Mr Kenneth LEUNG's question and the Administration's response regarding whether, for the purposes of the Agreement, the term "French Republic" covered overseas dependent territories of the French Republic.</p> <p>Concerns of Mr Dennis KWOK, Mr Kenneth LEUNG and the Chairman and the Administration's response regarding the intent and legal basis of Article 13.3 of the Agreement and whether the current drafting of the article could reflect the intent.</p> <p>The Administration was requested to:</p> <p>(a) explain whether the term "French Republic" covered overseas dependent territories of the French Republic; and</p> <p>(b) explain the intent and legal basis of Article 13.3 of the Agreement and whether the article as currently drafted could reflect the intent in relation to how Hong Kong should handle concurrent requests for surrender of the same person from the French Republic, a third State, and any other part of the People's Republic of China.</p>	Admin
015159 - 015339	Chairman	Date of next meeting	