

立法會
Legislative Council

LC Paper No. CB(2)906/18-19

(These minutes have been seen
by the Administration)

Ref : CB2/SS/4/18

Subcommittee on Fugitive Offenders (France) Order

**Minutes of meeting
held on Monday, 7 January 2019, at 4:30 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 Dennis KWOK Wing-hang

Member absent : Hon Kenneth LEUNG

Public Officers attending : Item I

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

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:

Article 7

- (a) consider the need to include in the Fugitive Offenders Ordinance (Cap. 503) ("FOO") a provision similar to Article 7.2 of the SFO agreement entered into by Hong Kong and the French Republic ("the Agreement") regarding the temporary surrender to Hong Kong of an accused or convicted person for the purpose of prosecution so as to provide the necessary legal basis for adopting the arrangement in other agreements on surrender of fugitive offenders ("SFO") in future;

(Post-meeting note: The Administration subsequently advised that section 19 of FOO had made provisions for keeping persons in custody in Hong Kong pursuant to an undertaking given to a requested Party under Article 7.2 of the Agreement.)

Article 13

- (b) explain the intent and need for Article 13.3 of the Agreement;
- (c) consider the implications, if any, of Article 13.3 of the Agreement on existing SFO agreements which did not contain a similar provision vis-à-vis any future SFO arrangement between Hong Kong and any other part of the People's Republic of China; and

Article 19

- (d) consider the need to state explicitly in FOO how a request for the surrender of a person under an applicable SFO agreement should be dealt with in circumstances where the same person was being transported in custody through Hong Kong pursuant to a request for transit made by another jurisdiction under another SFO agreement.

II. Any other business

3. The Chairman concluded that subject to the Administration's response on the issue referred to in paragraph 2(b) above, the Subcommittee had completed scrutiny of the Fugitive Offenders (France) Order ("the Order"). Members noted that the Subcommittee would make an oral report on its deliberations on the Order to the House Committee on 11 January 2019, followed by a written report. The deadline for giving notice of a motion to repeal the Order, if any, at the Council meeting of 23 January 2019 was 16 January 2019.

4. There being no other business, the meeting ended at 5:52 pm.

**Proceedings of meeting of the
Subcommittee on Fugitive Offenders (France) Order
held on Monday, 7 January 2019, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
001826 - 002007	Chairman	Opening remarks	
002008 - 003922	Chairman Admin ALA4	<p>Administration's response to issues raised at the meeting on 19 December 2018 (LC Paper No. CB(2)537/18-19(02)).</p> <p>The Chairman's concerns and the Administration's response on Article 13 (concurrent requests) regarding:</p> <p>(a) the intent and need for Article 13.3 of the surrender of fugitive offender ("SFO") agreement entered into by Hong Kong and the French Republic ("the Agreement"); and</p> <p>(b) the implications, if any, on existing SFO agreements which did not contain any provision similar to Article 13.3 of the Agreement.</p> <p>The Administration was requested to:</p> <p>(a) explain the intent and need for Article 13.3 of the Agreement; and</p> <p>(b) consider the implications, if any, of Article 13.3 of the Agreement on existing SFO agreements which did not contain a similar provision vis-à-vis any future SFO arrangement between Hong Kong and any other part of the People's Republic of China.</p>	Admin
003923 - 004417	Chairman Admin	<p>Examination of Article 7 (postponed or temporary surrender) of the Agreement. Comparison of the article with relevant article of the model agreement.</p> <p>The Chairman's concern and the Administration's response regarding the absence of a provision in the Fugitive Offenders Ordinance (Cap. 503) ("FOO") on the temporary surrender of fugitive offenders to Hong Kong for the purpose of prosecution similar to Article 7.2 of the Agreement.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		The Administration was requested to consider the need to include in FOO a provision similar to Article 7.2 of the Agreement so as to provide the necessary legal basis for adopting the arrangement in other SFO agreements in future.	Admin
004418 - 004700	Chairman Admin	Examination of Article 8 (request and supporting documents) of the Agreement. Comparison of the article with relevant article of the model agreement.	
004701 - 004805	Chairman Admin	Examination of Article 9 (authentication) of the Agreement. Comparison of the article with relevant article of the model agreement. The Chairman's question and the Administration's response regarding consistency of Article 9.2 of the Agreement with FOO.	
004806 - 004926	Chairman Admin	Examination of Articles 10 (language of documentation) and 11 (additional information) of the Agreement. Comparison of the articles with relevant articles of the model agreement.	
004927 - 005413	Admin Chairman ALA4	Examination of Article 12 (provisional arrest) of the Agreement. Comparison of the article with relevant article of the model agreement. The Chairman's question, the Administration's response and ALA4's view regarding the operation of Article 12.1 and 12.4 of the Agreement, which would be "at the discretion of the requested Party and in accordance with its law".	
005414 - 005613	Admin Chairman	Examination of Article 14 (representation and costs) of the Agreement. Comparison of the article with relevant article of the model agreement.	
005614 - 010401	Chairman Admin	Examination of Article 15 (arrangements for surrender) of the Agreement. Comparison of the article with relevant article of the model agreement. The Chairman's concern and the Administration's response regarding whether the operation of Article 15 of the Agreement would affect the decision of the Court of First Instance under section 14 of FOO.	

Time marker	Speaker	Subject(s) / Discussion	Action Required
010402 - 010703	Chairman Admin	Examination of Article 16 (surrender of property) of the Agreement. Comparison of the article with relevant article of the model agreement.	
010704 - 011015	Chairman Admin	Examination of Article 17 (specialty) of the Agreement. Comparison of the article with relevant article of the model agreement.	
011016 - 011044	Admin	Examination of Article 18 (resurrender) of the Agreement. Comparison of the article with relevant article of the model agreement.	
011045 - 011831	Admin Chairman ALA4	<p>Examination of Article 19 (transit) of the Agreement. Comparison of the article with relevant article of the model agreement.</p> <p>The Chairman's question, the Administration's response and ALA4's view regarding request for the surrender of a person under an applicable SFO agreement in circumstances where the same person was concurrently subject to a request for transit pursuant to another SFO agreement.</p> <p>The Administration was requested to consider the need to state explicitly in FOO how a request for the surrender of a person under an applicable SFO agreement should be dealt with in circumstances where the same person was concurrently subject to a request for transit pursuant to another SFO agreement.</p>	Admin
011832 - 011934	Chairman Admin	Examination of Article 20 (entry into force and termination) of the Agreement. Comparison of the article with relevant article of the model agreement.	
011935 - 012356	Chairman Mr Dennis KWOK	Provision of the Administration's response regarding Article 13.3 of the Agreement.	
012357 - 012634	Chairman	Completion of scrutiny and legislative timetable.	