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BY FAX

7 February 2004

Clerk to the Panel on Security
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Mr Raymond Lam)

Dear Mr Lam,

**Follow-up on the Security Panel Meeting on
4 December 2003**

At its meeting on 4 December 2003, the LegCo Panel on Security discussed the papers on “Trial in the Mainland of Serious Crimes Committed in Hong Kong” and “Follow-up on the Case of Su Zhi-yi and the Case of Chan Tsz-cheung”. Members requested the Administration to follow up on a few issues, as set out in the minutes of the Panel Meeting (LC Paper No. CB(2)956/03-04). I would like to provide the Administration’s response as follows.

(a) Paragraphs 25- 27 of the Minutes

Members have enquired whether a Hong Kong resident who planned in Hong Kong through the internet to commit a crime in the Mainland but was never physically present in the Mainland would be liable to arrest by Mainland authorities. While we are not the authority on Mainland law, our research indicates that in considering whether a crime that was committed through the internet without the offender being present in the Mainland would be subject to Mainland law, it is pertinent

to establish if the particular act would constitute a crime under the Criminal Law of the People's Republic of China (PRC). Article 6 of the Criminal Law specifies that if a criminal act or its consequence takes place within the territory or territorial waters of the PRC, the crime shall be deemed to have committed within the PRC. For a crime that was (or deemed to be) committed in the PRC, the Mainland courts may exercise their jurisdiction in respect of the crime according to the Criminal Procedure Law.

(b) Paragraph 31 of the Minutes

Members have requested that in respect of criminal cases where both Hong Kong and the Mainland have jurisdiction, the Administration should try to establish with the Mainland a non-reciprocal administrative arrangement for the return of Hong Kong residents who had committed the main part of a crime in Hong Kong and fled to the Mainland for trial in Hong Kong. We have reflected Members' request to the Mainland authorities for consideration.

On the establishment of a formal rendition arrangement, we have not completed discussions with the Mainland authorities. Because of the very significant differences in the legal and judicial systems of Hong Kong and the Mainland and the complexity of the issues involved, the discussions have to be conducted with great care. We do not have a timetable as to when the discussions will complete.

(c) Paragraph 33 of the Minutes

Members have asked for information on the number and details of cases where both the Mainland and Hong Kong Courts have jurisdiction. We do not keep such a database and hence cannot provide the information.

(d) Paragraph 38 of the Minutes

The Panel Chairman referred to an article in the South China Morning Post on videotaping in connection with the Su Zhi-yi case. We have found the report in the South China Morning Post dated 19 April 2000 on the trial at first instance of the case of Su Zhi-yi by the Zhaoqing City Intermediate People's Court. According to the report, the lawyer defending Su told the Court that officers from the Zhaoqing Public Security Bureau had seized company accounts from Su's home in Hong Kong and the Prosecutors made the claim that the raid was legal. The

report does not mention videotaping of the alleged search by the public security officers.

We have looked at the judgment handed down by the Zhaoqing City Intermediate People's Court on 5 June 2000. It is clearly stated in the judgment that no public security officers had ever been to Su's home in Hong Kong to carry out searches and to obtain evidence (P.11 of the judgment). The Higher People's Court of Guangdong Province reaffirmed this particular point in its judgment on Su's appeal in December 2000 (P.20 of the judgment). The Hong Kong Police Force had made enquiries with the Guangdong Public Security Bureau (GDPSB) on this allegation on more than one occasion. GDPSB categorically stated that no Mainland public security officers had exercised jurisdiction in Hong Kong and none had been to Su's home in Hong Kong to undertake searches and taking of evidence. No videotaping had ever been carried out in connection with the case of Su. The GDPSB reiterated that Mainland public security officials were prohibited from visiting Hong Kong to undertake any police activities without prior notification to and liaison with the Hong Kong Police Force.

Yours sincerely,

(Mrs Margaret Chan)
for Secretary for Security