

For Information

Panel on Security
Follow-up to the Meeting on 5 July 2005:
Assistance to Hong Kong Residents Detained in the Mainland

In discussing the Administration's paper entitled "Notification mechanism between the Mainland authorities and the Hong Kong Special Administrative Region Government and assistance to Hong Kong residents detained in the Mainland" [LC Paper No. CB(2)1784/04-05(01)] at the meeting held on 5 July 2005, Members requested the Administration:

- (a) to provide information on the criteria adopted by Mainland authorities in determining whether visits by family members to detainees were allowed; and
- (b) to follow up with Mainland authorities on the suggestion of allowing family members and officials of the Hong Kong Special Administrative Region Government to visit Hong Kong residents detained in the Mainland.

2. The Administration's response is as follows:

- a) According to the relevant Mainland laws and regulations, visit to person in custody by family members are subject to approval by the investigation agency and the Public Security authorities. In deciding whether to approve visit applications, we understand that Mainland authorities would consider all relevant factors, including whether the visit would prejudice investigation.
- b) We have raised with Mainland authorities the suggestion of deploying HKSAR Government official to visit detained Hong Kong residents. According to the understanding we are given, the Beijing Office's role is not comparable to that of embassies/consulates of foreign countries in the Mainland. The HKSAR Government has no legal rights under Mainland law to visit Hong Kong residents detained in the Mainland. Notwithstanding this, family members may apply to visit detainees as mentioned in (a) above. Furthermore, according to Article 96 of the Criminal

Procedure Law of the People's Republic of China¹, persons subject to detention or criminal compulsory measures may engage legal representative to defend their cases. Legal representatives may visit their clients in accordance with the law.

Security Bureau
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¹ **Article 96** After the criminal suspect is interrogated by an investigation organ for the first time or from the day on which compulsory measures are adopted against him, he may appoint a lawyer to provide him with legal advice and to file petitions and complaints on his behalf. If the criminal suspect is arrested, the appointed lawyer may apply on his behalf for obtaining a guarantor pending trial. If a case involves State secrets, the criminal suspect shall have to obtain the approval of the investigation organ for appointing a lawyer.

The appointed lawyer shall have the right to find out from the investigation organ about the crime suspected of, and may meet with the criminal suspect in custody to enquire about the case. When the lawyer meets with the criminal suspect in custody, the investigation organ may, in light of the seriousness of the crime and where it deems it necessary, send its people to be present at the meeting. If a case involves State secrets, before the lawyer meets with the criminal suspect, he shall have to obtain the approval of the investigation organ.