

**For information**

**Legislative Council Panel on Security  
New Arrangements on the Reciprocal Notification Mechanism  
between the Mainland and the Hong Kong Special Administrative Region**

**INTRODUCTION**

This paper aims to brief Members on the new arrangements on the reciprocal notification mechanism between the Mainland and the Hong Kong Special Administrative Region (HKSAR) relating to the imposition of criminal compulsory measures or the institution of criminal prosecution and unnatural deaths.

**BACKGROUND**

2. The reciprocal notification mechanism has come into operation since 1 January 2001. Under the then mechanism, the relevant authorities<sup>1</sup> of the Mainland and the HKSAR Government should notify each other of the criminal prosecution instituted against or the criminal compulsory measures imposed on residents of the other side who are suspected offenders, as well as the unnatural deaths of residents of the other side within their own territory. Since 1 June 2003, the scope of notifications made by the Mainland authorities has been extended to cases handled by the People's Procuratorates and the state security authorities.

3. As at 31 December 2017, a total of 15 265 notifications (including 630 notifications involving unnatural deaths of Hong Kong residents on the Mainland) were made by the Mainland to Hong Kong whereas 42 345 notifications (including 121 notifications involving unnatural deaths of Mainland residents in Hong Kong) were made by Hong Kong to the Mainland.

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<sup>1</sup> Back then, the relevant Mainland authorities included the public security and customs authorities, whereas those in Hong Kong included the Hong Kong Police Force, the Customs and Excise Department and the Immigration Department.

4. In June 2016, the HKSAR Government proposed to the Hong Kong and Macao Affairs Office of the State Council (HKMAO) that a review of the arrangements on the reciprocal notification mechanism be conducted with the mainland counterparts to improve the transparency of and time needed for notification. In the same month, with HKMAO's agreement, concerned departments of the two governments commenced discussion and initiated relevant work. Under the guiding principle of "one country, two systems", abiding by the Constitution, the Basic Law and the related laws of both sides, and based on the principles of "acting in accordance with the law", "identifying common and mutually beneficial grounds" and "rendering mutual support", the two sides exchanged views thoroughly and reached an agreement on revising and perfecting various arrangements under the notification mechanism, including its time frame, content, scope and channels.

5. On 14 December 2017, the Security Bureau of the HKSAR Government and the Ministry of Public Security (MPS) of the Mainland signed the "Arrangements on the Reciprocal Notification Mechanism between the Mainland and the Hong Kong Special Administrative Region Relating to Situations Including the Imposition of Criminal Compulsory Measures or the Institution of Criminal Prosecution" (the New Arrangements on the Notification Mechanism). The new arrangements will take effect on 1 February 2018 to replace the existing arrangements.

## **THE NEW ARRANGEMENTS ON THE NOTIFICATION MECHANISM**

6. The New Arrangements on the Notification Mechanism are to be implemented on the basis of mutual respect for the relevant laws of both parties. Therefore, they will under no circumstances affect the legal rights enjoyed by and the legal responsibilities and obligations of the person against whom a criminal compulsory measure is imposed or criminal prosecution is instituted or those of his or her family.

7. Regarding Hong Kong residents on whom criminal compulsory measures are imposed on the Mainland, the New Arrangements on the Notification Mechanism require all agencies which may impose criminal compulsory measures on Hong Kong residents according to the laws of the

Mainland, namely the public security authorities, the state security authorities, the customs and anti-smuggling departments and the prosecution authorities, to notify the HKSAR Government of the imposition of criminal compulsory measures (including detention, arrest, putting on bail and residence under surveillance) on Hong Kong residents who are suspected offenders, and the unnatural deaths of Hong Kong residents on the Mainland.

8. The HKSAR Government should notify the Mainland counterparts of criminal prosecution instituted by the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department and the newly-added Independent Commission Against Corruption against Mainland residents, and the unnatural deaths of Mainland residents in Hong Kong. Like the previous arrangements, such notification does not cover cases of Mainland residents being charged with the offences of landing and remaining in Hong Kong without permission or contravening the conditions of stay, or cases instituted by summons.

9. The following measures under the New Arrangements on the Notification Mechanism will improve the time needed for and transparency of notifications:

(1) Time Frame of Notification: For the first time, a notification time frame has been set under the new arrangements. Notification should be made within seven working days following the date of imposing criminal compulsory measures, instituting criminal prosecution or confirmation of the person's identity in unnatural deaths; not later than 14 working days for serious and complicated criminal cases; and not later than 30 working days for cases involving terrorist activities or suspected offences endangering national security<sup>2</sup>. Both sides agreed that either party shall be free to make an enquiry if there is any item which has not been notified or if there is any doubt. The requested party should reply within 30 working days after the date of receipt of such an enquiry;

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<sup>2</sup> If notification cannot be made tentatively due to situations such as the identity of the subject being unknown, failure of the subject to provide his real name, or natural disasters, etc., it should be made in accordance with the above time frame as soon as the circumstances permit.

- (2) Content of Notification: The content of notification of both sides will be standardised to include information of the persons concerned; facts of the case such as the alleged offence and the relevant legal basis; the date, location and type of criminal compulsory measure imposed on the Mainland, or the date and location of the detention that takes place in Hong Kong; the officer-in-charge of the case and his contact information, etc.;
- (3) Channels of Notification: The Office of Hong Kong, Macao and Taiwan Affairs of the Ministry of Public Security (the MPS Office) will be the Mainland notification unit while the Liaison Bureau of the Hong Kong Police Force will be the Hong Kong notification unit. Notifications from Hong Kong to the Mainland will be consolidated and made to the MPS Office via the Liaison Bureau of the Hong Kong Police Force. On the Mainland, notifications from the public security authorities and the state security authorities will be made to the Liaison Bureau of the Hong Kong Police Force via the MPS Office. However, notifications from the prosecution authorities will be made directly to the Liaison Bureau of the Hong Kong Police Force via the Office of Hong Kong and Macao Affairs of the Supreme People's Procuratorate. In addition, the Anti-smuggling Bureau of the General Administration of Customs, the Shanghai Municipal Bureau of Public Security and the Guangdong Provincial Public Security Department are authorised by the MPS to make direct notifications to the Liaison Bureau of the Hong Kong Police Force, thereby enhancing the efficiency of notification.

## **CONCLUDING REMARKS**

10. All in all, under the New Arrangements on the Notification Mechanism, improvements have been made in various aspects, including setting a notification time frame for the first time so as to inform family members of the subject of the relevant circumstances as early as possible. The new arrangements also stipulate that either side shall be free to make an enquiry about any case which has not been notified, and the other side shall give a reply within the prescribed time frame. The measure should offer the subject better protection. Given the vast geographical size of the Mainland

and the large number of investigation units, the content of notification will be standardised under the new arrangements so as to enhance transparency and accuracy. Lastly, both parties agreed to increase the number of notification channels for units in charge of the majority of the cases to make direct notifications to Hong Kong, thereby enhancing overall efficiency. We hope that the new arrangements will enable the HKSAR Government to inform the family members of Hong Kong residents as early as possible of the imposition of criminal compulsory measures on the Hong Kong residents on the Mainland, so that the family members may consider and decide whether to engage a local lawyer or to render other assistance to the Hong Kong residents in order to safeguard their legal rights. They may also seek assistance from the HKSAR Government when necessary.

**Security Bureau**  
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