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Panel on Security

Background brief prepared by the Legislative Council Secretariat for the meeting on 6 February 2018

Notification mechanism between the Mainland authorities and the Hong Kong Special Administrative Region Government

Purpose

This paper provides background information on the notification mechanism between the Mainland authorities and the Hong Kong Special Administrative Region ("HKSAR") Government and summarizes the discussions of the Panel on Security ("the Panel") on the subject.

Background

2. Since 1 January 2001, the Mainland and the Hong Kong Special Administrative Region ("HKSAR") Government have put in place a reciprocal notification mechanism for cases involving unnatural deaths and imposition of criminal compulsory measures¹ on residents from the other side, so that notification could be made as soon as practicable.

3. The coverage of the reciprocal notification mechanism was expanded since 1 June 2003 following a consensus reached by the two sides after a review. The scope of the mechanism is as follows :

- (a) matters which concerned the Notification Unit in the Mainland (i.e. the Ministry of Public Security) should notify the Hong Kong Notification Unit (i.e. the Police) include the imposition of criminal

¹ Criminal compulsory measures include summons for questioning, putting on bail, residence under surveillance, detention and arrest. A new notification will be made for any change of criminal compulsory measure towards the same person.

compulsory measures on Hong Kong residents by the public security authorities, the Mainland customs authorities, People's Procuratorates and the Ministry of State Security, and the unnatural deaths of Hong Kong residents in the Mainland; and

- (b) matters which the Hong Kong Notification Unit should notify the Mainland counterparts include criminal prosecutions instituted by the Hong Kong Police Force, the Customs and Excise Department and the Immigration Department against Mainland residents, and the unnatural deaths of Mainland residents in Hong Kong.

Deliberations of the Panel

Implementation of the reciprocal notification mechanism

4. Members were advised that the reciprocal notification mechanism was implemented through an administrative arrangement under the principle of mutual respect and mutual non-intervention. Some members enquired whether there was a time limit within which notification had to be made under the notification mechanism and the average time taken in the past for notification by the Mainland. According to the Administration, notification was in general made under the mechanism as soon as practicable and there was not a time limit for notification. About 90% of the notifications were received with 15 days in the past.

5. Members were also advised that upon receipt of notification from the Mainland authorities, the HKSAR Government would inform the family members of the persons concerned as soon as possible so that the latter could consider whether to engage a lawyer or to seek other assistance through the HKSAR Government. Since the operation of the reciprocal notification mechanism in 2001 to the end of December 2015, over 12 000 notifications involving more than 9 400 Hong Kong residents were made by the Mainland authorities to the HKSAR side. Cases relating to the imposition of criminal compulsory measures were mostly related to fraud, smuggling and dangerous drugs offences, and the offences were mainly committed in Guangdong.

6. Following the incident of alleged missing of a shareholder of Causeway Bay Books in late 2015, the Panel held a special meeting on 26 January 2016 to discuss the notification mechanism and assistance to Hong Kong residents detained in the Mainland. Some members expressed concern that apart from the information announced by the public security authorities and media on the Mainland, there was very little information available about the case. These members cast doubt about the effectiveness of the notification mechanism.

7. According to the Administration, there was no information indicating whether the case concerned fell within the scope of the reciprocal notification mechanism. Nonetheless, the Police would continue with their investigation to elicit case details. Besides, in addition to the notification mechanism, there was a mechanism on police cooperation between the police authorities of HKSAR and the Mainland. Members were advised that the HKSAR Government would maintain liaison and exchange views with the Mainland authorities from time to time over the notification mechanism to ensure its effectiveness.

Review of the reciprocal notification mechanism

8. According to the Administration, the Central People's Government had, in response to the suggestion of the HKSAR Government to review the reciprocal notification mechanism, agreed to start discussion on the existing mechanism. Working meetings were held between both sides in July 2016 on the reciprocal notification mechanism, including the substantive arrangements on the time frame, content, scope and channel. Both sides also reviewed the actual operation of the notification mechanism, consolidated experience and discussed how to meet the aspirations of the public of the two places. Concrete and satisfactory progress had been made through these working meetings on the regulation and improvement of the reciprocal notification mechanism and both sides agreed to take forward the work as soon as possible. Both sides agreed to uphold the principle of "one country, two systems"; abide by the Constitution, the Basic Law and related laws of both places; and adhere to the principles of acting in accordance with the law, embracing differences, identifying mutually beneficial grounds and protecting human rights. These principles would be put in writing into the new reciprocal notification mechanism.

9. According to a press release issued by the Administration on 14 December 2017, the Mainland authorities and HKSAR Government reached consensus and signed the new arrangements on the reciprocal notification mechanism. New arrangements on the reciprocal notification mechanism would take effect on 1 February 2018 to replace the existing arrangements. The key features of the new arrangements are as follows:

- (a) 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;

- (b) the contents of notification of the two sides will be standardized to include such details as the suspected offence committed by the person concerned and the relevant legal basis, the place where the criminal compulsory measure is imposed or detention is taking place, and the officer-in-charge of the case; and
- (c) the new arrangements expressly require all Mainland agencies which are authorized to 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 make notifications. As regards the scope of making notifications by HKSAR to the Mainland, in addition to the existing law enforcement agencies including the Hong Kong Police Force, the Customs and Excise Department and the Immigration Department, the Independent Commission Against Corruption is newly added.

10. The Administration will brief the Panel on the new arrangements on the reciprocal notification mechanism between the Mainland authorities and HKSAR Government at the meeting on 6 February 2018.

Relevant papers

11. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

**Relevant papers on
notification mechanism between the Mainland authorities
and the Hong Kong Special Administrative Region Government**

Committee	Date of meeting	Paper
Panel on Security	24.10.2000 (Item IV)	Agenda Minutes
Panel on Security	3.5.2001 (Item V)	Agenda Minutes
Legislative Council	25.2.2004	Official Record of Proceedings (Question 6)
Legislative Council	29.6.2005	Official Record of Proceedings (Question 14)
Panel on Security	5.7.2005 (Item IV)	Agenda Minutes
Legislative Council	14.7.2010	Official Record of Proceedings (Question 12)
Panel on Security	26.1.2016 (Item II)	Agenda Minutes
Legislative Council	3.2.2016	Official Record of Proceedings (Question 13)
Legislative Council	11.5.2016	Official Record of Proceedings (Question 8)