

立法會

Legislative Council

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the Administration)

Ref : CB2/PL/SE

Panel on Security

**Minutes of special meeting
held on Saturday, 1 June 2019, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon CHAN Hak-kan, BBS, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, BBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, BBS, JP
Hon POON Siu-ping, BBS, MH
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick

Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHAN Chun-ying, JP
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Dr Hon CHENG Chung-tai
Hon AU Nok-hin
Hon Tony TSE Wai-chuen, BBS

Members attending : Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WU Chi-wai, MH
Dr Hon KWOK Ka-ki
Dr Hon Helena WONG Pik-wan
Hon Martin LIAO Cheung-kong, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Andrew WAN Siu-kin
Hon SHIU Ka-fai
Hon LUK Chung-hung, JP
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Gary FAN Kwok-wai

Member absent : Hon SHIU Ka-chun

Public Officers attending : Item I
Mr John LEE Ka-chiu, SBS, PDSM, PMSM, JP
Secretary for Security

Ms Mimi LEE Mei-mei, JP
Deputy Secretary for Security 1 /
Ms Joceline CHUI Shih-yen
Principal Assistant Secretary for Security SD

Mr Percy LEUNG Siu-to
Assistant Secretary for Security A2 /
Mr Watson HAU Lai-man
Assistant Secretary for Security E3

Mr Paul TSANG Keung, SBS
Law Officer (International Law)
Department of Justice

Ms Linda LAM Mei-sau
Deputy Law Officer (Mutual Legal Assistance)
Department of Justice

Miss Sandy SHUM Tik
Senior Government Counsel (Acting)
Department of Justice

Ms Fanny IP Fung-king
Deputy Law Draftsman II
Department of Justice /
Mr Peter SZE Chun-fai
Senior Assistant Law Draftsman (Acting)
Department of Justice

Mr Llewellyn MUI Kei-fat
Deputy Solicitor General (Constitutional Affairs)
Department of Justice /
Mr Godfrey KAN Ka-fai
Senior Assistant Solicitor General
Department of Justice

Mr Paul HO Wing-kwong
Deputy Director of Public Prosecutions (II)
Department of Justice

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Mr Timothy TSO
Senior Assistant Legal Adviser 1

Ms Gloria TSANG
Senior Council Secretary (2) 7

Mr Ronald LAU
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Issues relating to the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019
(Ref : SB CR 1/2716/19, LC Paper Nos. CB(2)1236/18-19(01), CB(2)1355/18-19(01), CB(2)1449/18-19(01) and CB(2)1578/18-19(01))

Meeting arrangements

The Chairman said that this eight-hour special meeting was convened to continue discussion on issues relating to the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 ("the Bill"). He further said that he would deal with members' proposed motions, if any, towards the end of the meeting.

2. Mr LAM Cheuk-ting expressed regret at the absence of the Secretary for Justice ("SJ") at the meeting. The Chairman said that while the list of representatives of public officers attending the meeting was a matter for the Administration, he requested the Administration to take note of members' views on the matter.

Human rights and procedural safeguards under the proposed special surrender arrangements

3. Mr HO Kai-ming sought clarification as to some sayings that upon passage of the Bill, the gatekeeping role of the Legislative Council ("LegCo") would be lost and the court could only decide making a committal order by considering extradition documents from the requesting party. Secretary for Security ("S for S") stressed that the Bill basically involved two straightforward amendments, i.e. removing the geographical restrictions of the Fugitive Offenders Ordinance (Cap. 503) ("FOO") and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLAO"), as well as providing for the special surrender arrangements ("SSA") such that the Chief Executive ("CE") could activate the procedure by issuing a certificate. All the existing human rights and procedural safeguards or other related provisions under the current law would remain unchanged.

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4. Law Officer (International Law), Department of Justice ("LO(IL)/DoJ") further explained that clause 6 of the Bill, which sought to amend the authentication of supporting documents under section 23 of FOO, would not change the requirement of prima facie evidence in handling surrender of fugitive offender ("SFO") requests. In response to some worries about the weakening of the gatekeeping power of the court, he pointed out that section 23(4) of FOO would only apply without prejudice to the generality of section 10(2)(b) or 12(4) of FOO. In accordance with sections 10(2)(b) and 12(4) of FOO, the court could receive evidence relevant to the exercise of its jurisdiction under section 5 of FOO regarding the general restrictions on surrender.

5. Pointing out that there was a view that the court was unable to act as a gatekeeper regarding forged evidence, Mr LEUNG Che-cheung sought the Administration's clarification and the procedural safeguard in this aspect. Deputy Law Officer (Mutual Legal Assistance)/DoJ ("DLO(MLA)/DoJ") assured members that the court would not accept any hearsay evidence contrary to the law. For a person wanted for prosecution, the court must satisfy that the evidence was admissible according to the law of Hong Kong and was sufficient to establish a prima facie case against the wanted person. While some overseas countries had removed or simplified the requirement of prima facie evidence in handling SFO requests, Hong Kong had retained a stringent evidence requirement. Any persons opposing the committal order could apply the general restrictions under section 5 of FOO prohibiting the surrender. She stressed that reference had been drawn from the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters both promulgated by the United Nations ("UN") and international practice when drafting FOO and MLAO, and the implementation of both Ordinances had all along been effective over the past 20 years or so.

6. Dr CHENG Chung-tai pointed out that clause 5 of the Bill, which sought to amend section 10 of FOO in respect of the proceedings for committal, would allow the court of committal to take into account the requests of the requesting party when considering the reasonable period for discharge of the person arrested. Such an amendment appeared to reduce the gatekeeping power of the court.

7. DLO(MLA)/DoJ clarified that clause 5 of the Bill was merely a technical amendment for handling provisional arrest. The court would fix a reasonable period, normally 45 to 60 days under long-term surrender agreements, after which the person arrested would be discharged from

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custody unless an authority to proceed was received. The executive authority was required to provide sufficient justifications to the court if the reasonable period deviated from the usual one. She stressed that the proposed SSAs would also be along the same line.

8. In view of the wide public concern about CE's gatekeeping power, Mr CHAN Chun-ying asked whether consideration had been given to activating SSAs by the Chief Executive in Council. S for S explained that the activation procedure was only a process to kick-off the whole procedure. He stressed that reference had been drawn from foreign countries in devising such arrangements, and highlighted that any decisions made by CE would be subject to appeal and judicial review ("JR").

9. Mr LAM Cheuk-ting said that although the Administration had always stated that the Bill was proposed by drawing reference from UN's Model Treaty, the minimum guarantees in criminal proceedings as contained in Article 14 of the International Covenant on Civil and Political Rights under Article 3(f) of the Model Treaty were not included in the Bill. Given that the Mainland judicial officers were civil servants, it was unlikely to ensure an independent judicial system on the Mainland. He queried how to guarantee a fair trial for the surrendered persons on the Mainland.

10. S for S said that legal provisions such as impartial and independent trials, as well as the presumption of innocence were stipulated in the Criminal Procedure Law of the People's Republic of China ("PRC").

11. Mr WU Chi-wai expressed concern about the provision of forged evidence and the prosecution of offences of political character on the Mainland. He further sought information on the corresponding offences in Hong Kong and the Mainland respectively covered by the 37 items of offences under the Bill.

12. Mr MA Fung-kwok expressed concern about the use of trumped-up charges to conduct prosecutions of a political nature. Ms Alice MAK sought clarification about the possibility of making groundless accusations and trumped-up charges in SFO requests, and the risk of charging the person with additional offence(s) during trial.

13. DLO(MLA)/DoJ explained that in handling SFO requests, the supporting documents were normally in the form of affidavits or affirmations from witnesses who have personal knowledge of the facts and issues they deposed. Hearsay evidence contrary to the law would not be accepted.

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Besides, section 5 of FOO, which was modelled on the Extradition Act 1989 of the United Kingdom ("UK"), had stated that requests in relation to offences of a political character should be refused. Requests involving persons being prejudiced, prosecuted or punished on account of his race, religion, nationality or political opinions should also be refused. The person involved had the right to oppose the SFO request if there was sufficient evidence to prove that the offence was of a political character. S for S added that for any SFO requests, the person would not be dealt with for any offence other than the offence(s) for which the person was surrendered.

14. Mr Holden CHOW pointed out that there was a precedent domestic appeal case involving an extradition request, which provided reference for the courts of Hong Kong to deal with the issue of whether the fugitive offender concerned would obtain a fair trial in the requesting jurisdiction. In that appeal brought by CHONG Bing Keung Peter (莊炳強) which involved an extradition request by the United States of America ("USA"), the Court of Appeal considered the issue of whether the appellant would be prejudiced at his trial in the USA because of his race, in light of the restrictions on surrender by reason of the appellant's race, religion, nationality or political opinions as stipulated in section 5(1)(d) of FOO. He asked whether this decision would show that Hong Kong courts might take into account considerations of fair trial in future surrender cases drawing upon the above appeal decision and the provision in section 5(1)(d). LO(IL)/DoJ responded in the affirmative. He underlined that human rights in Hong Kong were well protected under the Basic Law ("BL") and the Hong Kong Bill of Rights Ordinance (Cap. 383).

15. Given that the Administration had recently proposed additional safeguards in respect of SSAs, Dr Fernando CHEUNG sought information on the Administration's proposed amendments to the Bill. S for S said that the Administration would move an amendment to raise the maximum imprisonment requirement for offences to which SSAs would apply from those punishable with imprisonment for more than three years to not less than seven years. Other additional safeguards would be stated in an administrative statement. Mr CHAN Chi-chuen asked when the text of the administrative statement would be made available to LegCo. S for S said that the Administration would make the administrative statement during the resumption of the Second Reading debate on the Bill at the Council meeting of 12 June 2019. It would also be uploaded on the Administration's webpage. That said, factors that might be added to the texts of SSAs were set out in Annex 2 to the Administration's paper.

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16. Mr CHUNG Kwok-pan sought information on the legal effect of the administrative statement on additional safeguards to be provided under SSAs, and the Administration's action if the requesting party refused to include these safeguards. Mr Holden CHOW recalled that a similar arrangement of issuing administrative guidelines was also adopted in the Competition Ordinance (Cap. 619), and asked whether the legal effect would be similar. He further said that according to the Revised Manuals on UN's Model Treaty on Extradition, it was not necessary to include all grounds for refusal in extradition laws as the restrictions on surrender varied, depending on the legal systems and circumstances of the treaty partners involved. Ms Starry LEE sought the Administration's view on the inclusion of additional safeguards into the legal provisions.

17. S for S responded that a person involved could raise the safeguards stated in the administrative statement in opposing an SFO request. He further said that including additional safeguards in FOO and MLAO involved a comprehensive review of the two Ordinances, which was not the policy objective in the current legislative exercise. Such inclusion might also affect existing SFO and MLA agreements that Hong Kong had signed. DLO(MLA)/DoJ remarked that UN's Model Treaty on Extradition was a key reference for different jurisdictions in drafting their extradition laws. The existing FOO and MLAO were in line with the common practice in respect of human rights and legal procedures in the relevant UN's Model Treaty.

18. Dr Fernando CHEUNG considered it totally unreliable if the additional safeguards were not included in the law. Pointing out that raising the threshold requirement for applicable offences from imprisonment for more than three years to seven years or more mainly excluded sex-related offences, he was confused why the Administration would make such an amendment to the Bill after meeting with the business sector. As it was stressed by the Administration that one of the purposes of the Bill was to plug the loopholes in the juridical assistance system, Mr HUI Chi-fung did not understand why the maximum imprisonment threshold could easily be raised twice to seven years or more. He asked whether the so-called loopholes could be plugged with the proposed amendments. Mr Andrew WAN was puzzled why raising the threshold requirement for applicable offences, in which mainly offences relating to sex, criminal intimidation and firearms control were excluded, would ease the worries of the business sector.

19. Pointing out that a total of 42 sexual and related offences in Part XII of the Crimes Ordinance (Cap. 200), such as rape, indecent assault, intercourse with mentally incapacitated person, were still under the scope of the Bill,

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Dr Elizabeth QUAT did not agree to some sayings that Hong Kong would become "the paradise of sexual offenders" after raising the threshold requirement from imprisonment for more than three years to seven years or more. She, however, noted that some serious sexual offences, including the procurement by false pretences, were not subject to SSAs as the maximum imprisonment was less than seven years. She appealed to the Administration to review the penalty of sexual offences as soon as possible.

20. Dr Priscilla LEUNG pointed out that raising the threshold imprisonment requirement to seven years or more would help ease the worries of the business sector as the offence of 重大責任事故罪 as stipulated in Article 134 of PRC's Criminal Law, i.e. "enterprises and institutions who do not submit to management and violate the rules and regulations or force workers to work in a risky way in violation of the rules, thereby giving rise to major accidents involving injury or death and causing other serious consequences", was removed. The offenders of such an offence, if particularly odious, could be sentenced to not less than three years and not more than seven years of fixed-term imprisonment in accordance with PRC's Criminal Law. In addition, the offence of "breach of trust", which also aroused concern of the business sector, would unlikely be punishable with imprisonment of seven years or more.

21. S for S responded that under the existing FOO, the case-based surrender mechanism had never been activated due to practical operational difficulties. The Bill sought to improve the case-based surrender arrangements to uphold justice. Having considered the views and concerns expressed by various sectors, it was decided that only exceptionally serious offences should be handled under SSAs as the arrangements were supplementary measures before the long-term surrender arrangements took place. It was also shown in previous operational experience that SFO mainly dealt with the most serious offences. As the most serious offences were tried at the Court of First Instance of the High Court and that the offences involved were punishable for seven years or more, it was therefore decided that the offences to which SSAs would apply should be punishable with imprisonment for seven years or more. In addition, the proposed threshold imprisonment requirement could handle a majority of offences regarding firearms control as they were subject to extremely stringent regulations. It was also highlighted that the Bill would not affect any existing long-term surrender agreements in which offences punishable with imprisonment for more than one year were covered.

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22. S for S added that section 153P of Cap. 200 stipulated that the provision had extra-territorial effect in respect of some offences, including sexual offences involving victims aged below 16. This was in line with the UN Convention on the Rights of the Child. Ms YUNG Hoi-yan, however, pointed out that section 153P was subject to the requirement that both the victim and the suspect were Hong Kong residents. She asked whether the scope of the extra-territorial effect would be expanded. In response, S for S said that the Law Reform Commission was conducting a comprehensive review of sexual related offences, and the Security Bureau ("SB") would closely monitor its latest development to refine the relevant policy as appropriate.

23. S for S further stressed that as opposed to zero handling of any SFO requests from jurisdictions that did not have long-term surrender agreements with the Hong Kong Special Administrative Region ("HKSAR"), the Bill, if passed, could at least handle requests relating to the exceptionally serious offences. It remained the key policy objective of the Administration to pursue long-term surrender arrangements with other places in the combat of crime. Mr Paul TSE concurred with his view.

24. Mr Jeremy TAM asked about the mechanism in handling a non-Hong Kong resident staying in Hong Kong after committing sexual offences involving victims aged below 16 outside Hong Kong. S for S said that any non-Hong Kong residents threatening the order and safety of Hong Kong could be asked to leave Hong Kong.

25. Mr HUI Chi-fung asked whether the Administration would handle the surrender requests if PRC refused to include additional safeguards which were in line with general human rights protection regarding SSAs. He considered that the Administration was unable to do anything if a person had been unreasonably surrendered to the Mainland. As CE was accountable to the Central People's Government of PRC ("CPG"), Mr Andrew WAN queried how the rights of surrendered persons on the Mainland could be protected in the absence of provisions of additional safeguards in the Bill. He also sought information on the procedure of refusing a special surrender request. Mr Charles MOK cast doubt about the safeguards provided to Hong Kong people as they were not explicitly stated in the law. Mr Kenneth LEUNG asked whether the provision for HKSAR to reserve the right to refuse an SFO request could be added in the Bill, which was in line with other long-term surrender agreements. Dr CHENG Chung-tai queried how to ensure a fair judgment would be made by CE when deciding the additional safeguards to be included in SSAs. Mr WU Chi-wai said that the lack of confidence

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in the Mainland legal system was the crux of the problem of the current legislative proposals. He sought information on the procedure to guarantee surrendered persons to be tried without delay in the requesting country, and the assistance provided to them if the requesting party failed to do so. For an offence punishable with death in the requesting party, Dr Fernando CHEUNG queried how to ensure that such punishment would not be imposed or carried out.

26. S for S stressed that the Bill was not tailor-made for any particular jurisdiction. To address the community's concerns about the rights of surrendered fugitive offenders, provisions (such as open trial, legal representation, right to cross-examine witnesses, etc.) could be added in the agreements of SSAs in light of the needs of individual cases to further limit the circumstances for surrender in accordance with clause 4 of the Bill. Annex 2 to the Administration's paper had listed out the factors that might be added to the texts of SSAs. If any requesting parties disagreed to the requirements of the HKSAR Government, CE had the full right to decide not to process the requests in accordance with the relevant sections of FOO. Besides, the texts of SSAs would be submitted to the court at the committal hearing conducted in open court, such that the public would have knowledge of those arrangements. In respect of every single order issued by CE including a decision on a surrender order, the person involved had the right to apply for JR and might lodge appeals all the way to CFA. Although it was only specified in the long-term surrender agreements that fugitives might not be surrendered under certain circumstances under the principle of reciprocity, S for S remarked that CE's discretion in SSAs would be far beyond that of long-term agreements. It was also highlighted that safeguards against death penalty had been stipulated in the existing FOO. Furthermore, PRC had signed SFO agreements with 55 jurisdictions, including France, Portugal, Spain, Italy and South Korea. The operation had been smooth so far, indicating that PRC had fully fulfilled the SFO agreements. S for S also pointed out that public scrutiny by the media would continue to play a key role in SFO with other jurisdictions.

27. LO(IL)/DoJ added that SFO served the purpose of transferring fugitive offenders to another jurisdiction for trial or service of sentence while protecting their rights. The requesting party would take into account different considerations before giving assurance on the additional safeguards proposed by the requested party. Besides, previous cases had shown that fugitive offenders, including those returned to the Mainland from other jurisdictions adopting a common law system, could lodge appeal or apply for JR on procedural or humanitarian grounds in such jurisdictions with reference

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to the track record of the requesting party in observing its previous assurances.

28. Mr Paul TSE and Ms Starry LEE said that there was no perfect legal system worldwide. A balance had to be struck such that offenders of serious crimes should not be given ways to escape justice, and at the same time, the rights and interests of fugitive offenders were well protected. It would be too extreme to oppose the Bill because of worries over the rights of fugitive offenders, but allowing offenders of serious crimes to evade legal responsibilities. Ms Alice MAK considered that the Administration should take forward the relevant legislative work to uphold justice and protect the safety of the public and the society.

29. Mr Dennis KWOK pointed out that the response from S for S was misleading. He said that France, Portugal, Spain and Italy had reserved the right to refuse the surrender of their nationals to PRC for trial despite they had signed long-term SFO agreements with PRC. However, given the asymmetric relationship between PRC and Hong Kong, it was impossible for the general public to trust that CE would refuse surrender requests from PRC based on humanitarian reasons. Although a fugitive offender was given the right to apply for appeal or JR, leave was still required. Mr CHU Hoi-dick added that the majority of long-term SFO agreements that PRC had signed were subject to the restriction that the requested party had the right not to surrender its nationals. S for S clarified that it was the option of a place to include the reservation of the right to refuse the surrender of their nationals in the bilateral agreements, and any SFO/MLA agreements signed by Hong Kong with other jurisdictions were required to be scrutinized by LegCo before coming into effect.

30. Mr Kenneth LEUNG sought clarification as to whether the power provided under clause 4 of the Bill to include further limitations in SSAs applied only to CE. LO(IL)/DoJ responded in the affirmative and explained that additional limitations would be included according to the needs of individual cases. Although CE could decide whether to make an order for surrender or to make no order, the decisions were subject to scrutiny by the court by way of JR. The test of "wrong, unjust or oppressive" was applied in precedent JR cases.

31. Mr Frankie YICK said that the Liberal Party had constantly expressed views on the Bill on behalf of the business sector. The business sector had no intention to allow sexual offenders to evade legal responsibilities. Due to the different legal systems adopted in Hong Kong and on the Mainland, he

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sought clarification on the calculation of the effective limitation period for prosecution of an offence, as well as the definition of offences relating to bribery and corruption under the Criminal Law of PRC. Ms Alice MAK pointed out that the proposed arrangement of only processing requests from the central authority of a place was in response to the public concern about the solemnity of requests, indicating that the Administration was not inclined to the business sector. Dr Priscilla LEUNG asked whether consideration would be given to seeking advice from local legal experts, in particular relating to requests involving some unfamiliar jurisdictions adopting the civil law system, before making an arrangement to activate SFO procedures. Mr CHAN Chun-ying suggested that to further ease the worries of the business sector, a minimum requirement of proceeds of bribery and corruption offences for surrender arrangement could be spelt out in the form of administrative guideline. Mr MA Fung-kwok asked whether a practitioner in the performing arts, culture and publication industry would face the risk of being surrendered to the Mainland for trials because of inadvertently committing offences relating to taxation or bribery issues. As bribery-related offences were subject to a maximum imprisonment of seven years in Hong Kong, Mr Paul TSE sought clarification as to whether such offences were not subject to the regulation by the Bill in principle.

32. S for S said that to his understanding, the limitation period should be counted from the day of committing an offence. In view of the different effective limitation periods in different jurisdictions adopting the civil law system, the domestic laws of the requesting jurisdiction in this regard would be considered. The requesting party must also provide assurance that the effective limitation period, if any, of the relevant offence had not expired. DoJ would initiate relevant legal research if considered necessary. In addition, any acts without receiving extra benefit or illegitimate gain should not be considered as amounting to a bribery offence according to Article 389 of PRC's Criminal Law. S for S further said that offences relating to fiscal matters, taxes or duties, as described in Schedule 1 to FOO, had been excluded from the coverage of the Bill. As bribery-related offences usually involved money laundering, it might constitute serious offences (such as handling of stolen goods) and would be subject to the regulation by the Bill.

33. Although Article 87 of the Criminal Law of PRC had stipulated the effective limitation period for prosecution of an offence, Mr CHU Hoi-dick pointed out that there were exceptions to the limitation period pursuant to Article 88 of the Criminal Law.

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34. Mr WONG Kwok-kin cited the incident of Causeway Bay Books as well as the Mong Kok riot, and asked whether a person would be surrendered to the Mainland if he had already been tried of the same offence. He also sought clarification as to whether a person who committed an offence in Hong Kong would be surrendered to the Mainland for trial. Mr SHIU Ka-fai asked whether a person would be surrendered to the Mainland from Hong Kong if he had committed a criminal offence outside Hong Kong. He also sought clarification as to whether a person would be surrendered for the purpose of prosecuting on account of religion, or involvement in civil proceedings and related offences.

35. S for S stressed that the basic principle of "double criminality" and the rule against double jeopardy under FOO would apply to the proposed SSAs. He said that freedoms of the press and speech would be maintained and persons relating to any acts which did not constitute a criminal offence in Hong Kong would not be surrendered. He also referred members to paragraph 13 of Annex 2 to the Administration's paper, which stated that "if a surrender request involves a criminal offence which did not take place within the requesting country, and according to the laws of the requested country, the latter has no extra-territorial jurisdiction over such criminal offences, the surrender may be refused." S for S reiterated that the Bill simply involved amendments on removing the geographical restrictions of FOO and MLAO, as well as allowing CE to activate SSAs. The human rights and procedural safeguards under the existing FOO, which had been operating smoothly over the past 22 years, would remain unchanged. Deputy Director of Public Prosecutions (II) assured members that based on the territoriality principle under the common law system, criminal offences committed in a place would be tried and prosecuted within its borders. Mr Gary FAN, however, held the view that removing geographical restrictions of the existing FOO and MLAO for SSAs was not a simple issue because many people lacked confidence in the Mainland legal system.

36. As hedging activities were regarded as gambling in some countries, Mr Kenneth LEUNG pointed out that the financial sector had expressed concerns about the offences relating to gambling or lotteries stipulated in Schedule 1 to FOO. Given that such offences were excluded in all 20 SFO agreements that Hong Kong had signed, he asked about the possibility of removing them from the proposed SSAs as well.

37. Mr Gary FAN and Mr Charles MOK sought clarification as to some newspapers saying that a Hong Kong resident committing offences relating to national security in Hong Kong could be surrendered to the Mainland for

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trial. Based on the principle of "double criminality" and the absence of local law relating to national security for the time being, Mr Charles MOK further asked whether Article 23 of BL was planned to be executed in Hong Kong upon the passage of the Bill. Mr Jeremy TAM shared a similar concern. Ms Claudia MO expressed concern about the possibility of the press being surrendered to the Mainland for trial because of alleged crimes of endangering national security when working on the Mainland. The Deputy Chairman asked whether the Administration would undertake not to add any new offences to Schedule 1 to FOO, and for those offences which had aroused wide public concern, the maximum imprisonment would not be raised to seven years or more.

38. S for S said that offences relating to gambling or lotteries were explicitly stated in the laws of Hong Kong. According to the principle of "double criminality", persons involving any acts which neither violated the Gambling Ordinance (Cap. 148) nor constituted a criminal offence in Hong Kong would not be surrendered. He further said that requests involving persons being prejudiced or prosecuted on account of the person's political opinions would be refused in accordance with section 5(1)(c) of FOO. S for S reiterated that freedoms of speech, the press and publication were well protected under BL. Any amendments to the items of offences in Schedule 1 to FOO were required to be introduced into LegCo for scrutiny and, if the amendment were proposed to be made by subsidiary legislation, subject to the negative vetting procedure.

39. Mr Jeremy TAM asked whether a person committing an offence of bigamy involving same-sex marriage in overseas jurisdiction would be surrendered. DLO(MLA)/DoJ explained the principle of "double criminality" for the purpose of section 2(2)(b) of FOO and said that as Hong Kong did not recognize same-sex marriage, the case would not be regarded as constituting the offence of bigamy in Hong Kong. The "double criminality" principle under FOO was therefore not satisfied.

40. Mr POON Siu-ping asked whether the additional safeguards under SSAs would be applied to long-term SFO and MLA agreements as well. Mr MA Fung-kwok asked whether the proposed amendment to raise the threshold requirement for applicable offences from imprisonment for more than three years to seven years or more would impose impact on the existing long-term SFO agreements. S for S said that the proposals of the Bill and the additional safeguards would not affect the obligations of Hong Kong in respect of the 20 SFO agreements and 32 MLA agreements already signed. While pursuing long-term surrender arrangements with other places remained

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the key policy objective, SSAs were only supplementary measures to enable Hong Kong to effectively handle SFO requests involving serious criminal cases before long-term surrender arrangements were in place.

Procedures and statistics relating to surrender of fugitive offenders under the existing Fugitive Offenders Ordinance

41. Mr Jeffrey LAM sought information on the existing SFO procedures under FOO, the roles of Consulate Generals in handling SFO requests, and the statistics in respect of SFO over the past years.

42. S for S said that from 2008 to 2018, 25 persons were surrendered from Hong Kong to other jurisdictions, and 11 persons were surrendered to Hong Kong based on bilateral SFO agreements. In accordance with the Vienna Convention on Consular Relations, respective Consul General would be informed of the SFO requests, and they could exercise their consular jurisdiction to protect the interests of surrendered persons when appropriate.

43. Mr Paul TSE said that not many concerns regarding SFO had arisen despite FOO had been in force for over 20 years. As many Hong Kong people had frequent contacts with the Mainland, it was necessary to remove the existing geographical restriction of FOO and MLA0 to prevent fugitives from the Mainland, Macau and Taiwan making use of the judicial loopholes to evade legal responsibility or seek refuge in Hong Kong.

44. Mr CHUNG Kwok-pan and Mr HO Kai-ming sought details on the human rights and procedural safeguards under the existing FOO. Mr CHEUNG Kwok-kwan sought information on the gatekeeping role of the court to protect the rights of fugitive offenders.

45. S for S responded that existing safeguards had been stated in Annex 1 to the Administration's paper. The fugitive offender could also apply for habeas corpus and appeal to CFA. LO(IL)/DoJ further explained that in the international practice in SFO, the requesting jurisdiction would be asked to provide assurance, if considered necessary, to protect the rights and interests of the fugitive offenders concerned. Overseas jurisdictions adopting a common law system, such as USA, Canada and New Zealand, followed such practice when returning fugitive offenders to the Mainland. Furthermore, the HKSAR Government had adopted extremely stringent procedures in handling SFO requests. He particularly highlighted three features, including the decision by the magistrate of whether to make a committal order for a person's surrender based on the relevant provisions of FOO and evidence of the case, application for habeas corpus if a committal order had been made,

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and application for JR of a surrender order made by CE. Based on precedent cases in handling SFO requests, the test of "wrong, unjust, or oppressive" was applied by CE in considering whether a person should be surrendered. This was in line with the practice in handling relevant cases in UK. DLO(MLA)/DoJ added that the person involved could resist the request by relying on the restrictions under section 5 of FOO prohibiting the committal during the committal proceedings. If the court made a committal order, the person involved would not be surrendered until the expiration of 15 days beginning on the day on which the order was made. The executive authority and CE could not effect surrender within the period which gave the person time to apply for habeas corpus.

46. Mr YIU Si-wing asked whether a transit-passenger would face the risk of being detained if it was requested by another jurisdiction. S for S responded that the Administration would arrest or detain a person only after comprehensive consideration of the relevant documents provided by the requesting jurisdiction and upon satisfaction that the arrangements of the case were in compliance with the human rights and procedural safeguards under the existing legislation. Mr YIU further asked about the handling of US's surrender request of Ms Cathy MENG (孟晚舟) if it happened in Hong Kong. S for S stressed that the Administration would handle any SFO requests according to the law and the existing surrender arrangements with the requesting party.

Impact on Hong Kong upon passage of the Bill

47. Mr MA Fung-kwok said that he had written to the Administration raising various concerns on the Bill on behalf of the sports, performing arts, culture and publication industry. He was particularly concerned about the impact on the freedom of speech, creation and the press upon passage of the Bill.

48. S for S said that the Administration would provide a detailed response to Mr MA's letter as soon as practicable. He stressed that the freedoms and rights in Hong Kong were well protected under BL. According to the principle of "double criminality", a person would not be surrendered to another jurisdiction if these acts did not constitute a criminal offence in Hong Kong.

49. Mr KWONG Chun-yu expressed concern about the impact on Hong Kong upon passage of the Bill, in particular on the local economy and business environment. Mr Gary FAN said that judicial independence and

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impartiality had all along been essential to maintain Hong Kong as an international financial centre. He asked whether the Administration was able to afford the possibilities of the loss of capital and economic fluctuations upon passage of the Bill.

50. S for S reiterated that the Bill did not seek to change the existing human rights and procedural safeguards of FOO and MLAO. In fact, the two Ordinances had been operating smoothly over the past 20 years or so. By international consensus, SFO was executed to combat organized and cross-boundary crimes. SFO also helped maintain Hong Kong as a safe city, which should be beneficial to all walks of life. Once the Bill was passed, there would be a legal basis for removing the geographical restrictions of the case-based surrender arrangements under the existing FOO. Mr SHIU Ka-fai considered that the Bill had little impact on the business environment, given that a majority of Fortune Global 500 had set up direct business on the Mainland.

51. Mr Gary FAN queried why some overseas jurisdictions with long-term SFO agreements with Hong Kong had expressed the possibility of reviewing the bilateral agreements upon passage of the Bill. He asked whether the Administration had liaised with and explained the contents of the Bill to the international community.

52. Mr MA Fung-kwok sought information on the handling of upcoming SFO requests if an overseas jurisdiction with long-term agreement with Hong Kong subsequently decided to terminate their agreement upon passage of the Bill.

53. S for S advised that he had explained the Bill in person to the Head of Office of the European Union Office to Hong Kong and Macao, as well as over 10 Consul Generals. He had highlighted the fact that the Bill would not affect the existing 20 SFO agreements and 32 MLA agreements already signed. As such, it was unnecessary to terminate the existing long-term SFO agreements.

Handling of the Taiwan homicide case and other cases upon passage of the Bill

54. Mr CHU Hoi-dick pointed out that the Administration was not able to tell which would be the central authority of Taiwan, although it was now proposed that, as an enhanced protection for the interests of surrendered persons, only surrender requests from the central authority of a place

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should be processed. Mr Andrew WAN asked which authority in Taiwan could submit a special surrender request upon passage of the Bill. Mr CHAN Chi-chuen asked whether the Ministry of Justice was the central authority of Taiwan. Dr KWOK Ka-ki expressed concern that Taiwan would finally reject the handling of the Taiwan homicide case by means of SSAs under the current legislative amendments.

55. Dr Priscilla LEUNG said that PRC and Taiwan had processed SFO smoothly over the years, demonstrating that the problem of central authority of Taiwan could be resolved. Hong Kong had also recognized the judgment of a civil case made by a Taiwan's court before. Ms Starry LEE and Ms YUNG Hoi-yan sought information on the handling of the Taiwan homicide case upon passage of the Bill.

56. S for S said that according to UN's Model Treaty on Extradition, the central authority should be a competent authority of a jurisdiction, which had the power to include additional safeguards in respect of a surrender request. As it was impossible to state in advance the central authorities of all jurisdictions which had not entered into a long-term surrender agreement with HKSAR, the Administration would ascertain this with the requesting jurisdiction when necessary. Mr Kenneth LEUNG said that for ease of reference, consideration should be given to including the definition of a competent authority in the Bill. Mr CHAN Chi-chuen shared a similar view.

57. As for the Taiwan homicide case, S for S advised that once the Bill was passed, the Administration had the requisite legal basis to proactively communicate with the Taiwan-Hong Kong Economic and Cultural Cooperation Council on its request for the surrender of the suspect in a pragmatic and respectful manner via the Hong Kong-Taiwan Economic and Cultural Cooperation and Promotion Council. He noted that the Taiwan side had also agreed that the suspect should be brought to justice, and expressed that the door for negotiation on the mutual juridical assistance remained open. S for S supplemented that the Police had previously sent officers to Taiwan to liaise with the relevant authority on the case. Letters had also been sent to the Taiwan side to convey the intention to commence early liaison on the case. He was confident that upon passage of the Bill, the case could be properly dealt with to uphold justice.

58. Ms YUNG Hoi-yan expressed support for the current legislative proposals to handle the Taiwan homicide case and plug the loopholes in the juridical assistance system. She considered that a trial should be conducted

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at the place where the criminal offence took place as it facilitated, among others, collection of evidence and the handling of relevant evidence during prosecution proceedings. As such, she did not understand why there was a suggestion on "trying Hong Kong residents locally". S for S shared her view. Mr CHEUNG Kwok-kwan said that whether Taiwan would be cooperative in handling the homicide case upon passage of the Bill was beyond our control. The Administration should, as the first priority, focus on the legislative amendments to provide the necessary legal basis for the case.

59. The Deputy Chairman asked whether the Administration was going to surrender the suspect of the Taiwan homicide case to the Mainland for trial. S for S stressed that the suspect would never be surrendered to the Mainland for trial of the Taiwan homicide case. He drew Members' attention to Annex 2 to the Administration's paper stating that "if a surrender request involves a criminal offence which did not take place within the requesting country, and according to the laws of the requested country, the latter has no extra-territorial jurisdiction over such criminal offences, the surrender may be refused."

60. As several SFO requests had previously been rejected by Hong Kong, Ms YUNG Hoi-yan sought details of such rejections and the current situation of those fugitive offenders. DLO(MLA)/DoJ advised that the reasons for rejection varied and included non-compliance with the "double criminality" principle and the rule against double jeopardy for cross-boundary crimes. In some of the cases, the cases concerned were under investigation in the requesting jurisdictions when the surrender requests were made. S for S added that the fugitive offenders concerned, if they were Hong Kong residents, were still staying in Hong Kong. For non-Hong Kong residents, the Administration would exchange information and intelligence with relevant jurisdictions upon their departure. As for rejected cases which could not be dealt with because of the lack of long-term SFO agreements, there would be a legal basis to handle them upon passage of the Bill. In response to Mr AU Nok-hin's question regarding SFO to Macau upon passage of the Bill, S for S stressed that a jurisdiction should firstly submit a special surrender request. DoJ would comprehensively examine and consider the request according to relevant laws.

61. Mr Paul TSE and Mr CHEUNG Kwok-kwan asked whether it was necessary for Macau to amend its domestic legislation before submitting a special surrender request to Hong Kong. S for S responded that a surrender request should comply with the law of the requesting party.

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Issues relating to the Mutual Legal Assistance in Criminal Matters Ordinance

62. Mr HO Kai-ming sought clarification as to whether the properties of Hong Kong citizens could be forfeited upon passage of the Bill. Mr Jeffrey LAM asked under what circumstances one's properties could be frozen. S for S stressed that only proceeds of crime in connection with offences which met the principle of "double criminality" could be forfeited or confiscated. In addition, as far as requests from the Mainland were concerned, the HKSAR Government would only process requests made by the Supreme People's Court for assistance relating to restraining or confiscating the proceeds of crime.

63. DLO(MLA)/DoJ supplemented that unlike the Evidence Ordinance (Cap. 8), MLA0 provided the statutory framework to regulate the provision and obtaining of assistance in the investigation and prosecution of criminal offences, including the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime. She explained that an external confiscation order was required for the purpose of recovering the proceeds of crime. In executing a request for enforcement of an external confiscation order, the court should be satisfied of the relationship between the property and the crime, and the external confiscation order should not be subject to appeal in the requesting jurisdiction. The court also needed to be satisfied that enforcement of the external confiscation order would not be contrary to the interests of justice, and that the person in respect of whom the order was made received notice of the proceedings in the requesting jurisdiction and had the opportunity to defend in those proceedings.

64. Pointing out that an external confiscation order could be issued to recover the proceeds of crime irrespective of criminal or civil proceedings, Mr Alvin YEUNG said that consideration should be given to including provisions in MLA0 with a view to allowing the court of Hong Kong to assess and ensure the fairness of a confiscation order.

65. DLO(MLA)/DoJ assured members that under section 2(1) of MLA0, the purpose of an external confiscation order was to recover payments or other rewards received in connection with an external serious offence or their value. Such order had its root in a criminal matter and was unrelated to civil disputes. The existing MLA0 had, as stipulated under section 28(1), provided sufficient protection and defence mechanism for the persons involved. S for S reiterated that a comprehensive review of MLA0 was not the policy objective of the current legislative exercise.

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Issues relating to the Transfer of Sentenced Persons Ordinance

66. Mr CHEUNG Kwok-kwan said that SFO was executed to fight organized and cross-boundary crimes and was a commonly accepted means to combat crimes. He further said that PRC had already signed SFO agreements with overseas jurisdictions including Spain, France and Italy. He welcomed the additional safeguards provided by the Administration and specifically sought details on the proposed arrangement of helping sentenced persons to serve their sentence in Hong Kong. Mr POON Siu-ping raised a similar question.

67. Mr Tommy CHEUNG said that the Liberal Party was the first political party to discuss the legislative proposals with the Administration since the proposals were put forward in February 2019. Issues such as narrowing the 46 items of offences in the existing FOO and processing surrender requests only from the central authority, as well as concerns on the limitation period in jurisdictions adopting the civil law system had been thoroughly discussed over the past few months. He was glad to note that the Administration had now proposed additional safeguards in SSAs. He further asked whether the Administration would amend the Transfer of Sentenced Persons Ordinance (Cap. 513) ("TSPO") as soon as possible to include the application of the Ordinance to the Mainland.

68. S for S responded that under TSPO, sentenced persons in other jurisdictions were allowed to apply for transferring to and serving their remaining sentence in Hong Kong. Since TSPO coming into effect, the Administration had received 296 applications for transfer to Hong Kong. 118 sentenced persons were transferred to Hong Kong from, among others, Australia, Thailand, USA and Macau. As TSPO was not applicable to the Mainland, the Administration would follow up and explore relevant work with the Mainland upon passage of the Bill.

69. Noting that less than half of the 296 applications for transfer of sentenced persons were approved, Mr Jeremy TAM asked how to ensure such transfer applications would be approved by the Mainland. S for S explained that under TSPO, the transfer arrangement would be proceeded with only with tripartite consents from the HKSAR Government, the authority of the other jurisdiction and the sentenced person concerned. Mr TAM was concerned that a sentenced person would never be able to be transferred to Hong Kong without the consent from the Mainland authority.

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Public views on the Bill

70. Mr WU Chi-wai said that the Administration should discuss the Bill, from the legal point of view, with the Hong Kong Bar Association ("HKBA"). S for S responded that the Second Reading debate on the Bill would be resumed at the Council meeting of 12 June 2019. During the interim period, the Administration had been explaining the Bill incessantly and easing public worries and concerns at the special meetings held by the Panel on Security. The Administration would also provide response to HKBA's concerns at these Panel meetings.

71. Mr KWONG Chun-yu asked whether the Administration would still be able to withdraw the Bill at this moment. S for S said that the drafting and introduction of bills were the powers and functions of the HKSAR Government under BL. The Bill was proposed by the HKSAR Government with a view to handling the Taiwan homicide case and plugging the loopholes in our judicial assistance system. Meanwhile, CE had reflected the concerns of the society to CPG. CPG had expressed understanding and would respect and support the HKSAR Government's various measures in enhancing protection under the proposed SSAs.

72. Mr CHAN Chi-chuen suggested postponing the resumption of the Second Reading debate on the Bill at the Council meeting of 12 June 2019. He said that the current arrangement had greatly restricted Members to propose amendments to the Bill as the deadline for giving notice of amendments to the Bill was 1 June 2019 in accordance with the Rules of Procedure ("RoP"), not to mention that the Administration had just proposed additional safeguards in respect of SSAs under the Bill on 30 May 2019. Given that the Mainland Affairs Council had issued a latest statement reiterating Taiwan's view of not accepting any arrangements on the premise that Taiwan was a part of PRC, he considered that the urgency of the Bill did not exist. Mr Dennis KWOK urged the Administration not to use the Taiwan homicide case as an excuse for pursuing the Bill.

73. Pointing out that many Taiwan citizens were residing on the Mainland and some Taiwan youths aimed to pursue their careers there, Mr WONG Kwok-kin considered that the worries of the Mainland Affairs Council that Taiwanese would be surrendered from Hong Kong to the Mainland were ridiculous.

74. S for S explained that since the Bills Committee previously formed to scrutinize the Bill failed to function properly, the Administration, having

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regard to the time element of the Bill, had decided to resume the Second Reading debate on the Bill at the Council meeting of 12 June 2019 in accordance with RoP. The Administration was committed to explaining the Bill in detail during the Panel meetings with members. He further said that once the loopholes in the juridical assistance system were plugged, the Administration would proactively communicate with the Taiwan side on its request for the surrender of the suspect in a pragmatic and respected manner. He noted that the Taiwan side had also agreed that the suspect should be brought to justice, and expressed that the door for negotiation on the mutual juridical assistance remained open.

75. Mr CHU Hoi-dick expressed dissatisfaction at SJ's earlier response that surrendered persons could lodge appeal in accordance with the laws in the requesting jurisdictions. He pointed out that the non-applicability of FOO and MLA to other parts of PRC was a firewall rather than a loophole. Although it had always been stressed that the court was a gatekeeper in considering SFO requests, in particular requests from the Mainland, the legal sector had continuously expressed views to the contrary. Besides, the international community, including USA, the European Union, UK and Canada, had issued statements expressing concerns on the Bill.

76. S for S said that at the meeting of the Bills Committee on the Fugitive Offenders Bill on 14 January 1997, the Administration had stated that "the purpose of the Bill was to localize existing arrangements which were UK based and which did not include the PRC." At the resumption of the Second Reading debate on the Fugitive Offenders Bill in 1997, the Administration had also indicated that it was negotiating with the Mainland on SFO arrangements between HKSAR and the Mainland.

77. Given that the Chief Justice of the Supreme People's Court had stated that judicial independence had to be resisted, Mr AU Nok-hin asked whether the Administration had assessed the worries of the legal sector when handling SFO requests from the Mainland. S for S responded that there were both supporting and opposing views on the Bill from various sectors, including the legal sector. Having considered the specific views and concerns of the society, the Administration had refined the Bill by providing additional safeguards. He also pointed out that the principle of judicial independence had been stipulated in the Constitution of PRC. Dr Helena WONG, however, said that many people did not agree that the principle of judicial independence was adopted on the Mainland. The judgments made by the Mainland's courts were subject to the needs of the executive authority. S for S stressed that governing the country in accordance with the law had

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been stated in Mainland's legal provisions. As an international practice in handling SFO requests, the legal system in the requesting party had to be respected. Besides, UN's Model Treaty on Extradition set out the reference for different jurisdictions in respect of human rights and legal procedures, and had balanced the needs of both apprehending fugitive offenders and protecting human rights.

78. Mr LEUNG Che-cheung said that it was not easy for the general public to understand the legal provisions in the Bill. The Administration should use more specific examples during its explanation to the public, in particular via the radio channel. Mr CHAN Chun-ying and Mr YIU Si-wing suggested SB to design promotional leaflets to explain the Bill in laymen terms so as to ease public concerns. Noting that there were wrong messages about the Bill in the community, Dr Priscilla LEUNG requested the Administration to repeatedly clarify the public misunderstanding. Mr WONG Kwok-kin suggested the Administration to give precise and concise response to ease public concerns.

79. S for S said that the Administration had been working hard to provide explanations on various occasions for enhancing the understanding of the contents of the Bill among different stakeholders and members of the public. It would also strive to take forward the relevant publicity work.

80. Mr LEUNG Che-cheung further considered that the Bill should be discussed and scrutinized by LegCo. It was ridiculous to request foreign countries to impose sanctions on Hong Kong because of a piece of local legislation. The Administration should make more frequent public clarifications in this aspect.

81. Mr SHIU Ka-fai said that many people did not have enough understanding of the legal provisions concerned or had been affected by some misleading sayings in the community. He specifically acknowledged S for S's effort in explaining the Bill to the Liberal Party and the business sector to ease their worries. He did not understand why the general public was still over-worried about the Bill given that the business community who had frequent contacts with the Mainland was getting more relieved. In his view, the Administration should provide thorough explanation to the international community through the respective Consul Generals. S for S reiterated that he had explained the Bill in detail to the Head of Office of the European Union Office to Hong Kong and Macao, as well as over 10 Consul Generals. The Administration would continue working hard to enhance their understanding of the contents of the Bill.

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82. Given that only very few grey areas existed in banking rules and regulations, Mr CHAN Chun-ying said that the relevant sector did not have much worry that their previous acts would be subject to surrender. Besides, they were aware that SFO was an international practice to fight organized and cross-boundary crimes. Instead, they appealed to the Administration to guarantee that the proposed legislative amendments and the additional safeguards would remain unchanged in the future. S for S reiterated that the Bill would not change any existing human rights and procedural safeguards of the current Ordinance.

83. Mr Charles MOK, however, said that the business sector he had approached was still worried about the Bill. They considered that the Bill would undermine the principle of "one country, two systems" and the rule of law in Hong Kong.

Invitation of the Hong Kong Bar Association and the Law Society of Hong Kong to give views on the Bill

84. The Chairman referred members to a joint letter dated 31 May 2019 from seven members, which was tabled at the meeting, requesting the Panel to invite HKBA and the Law Society of Hong Kong to give their professional views about the Bill. He pointed out that the main purpose of the special meeting was to provide an opportunity for members to exchange views and question the Administration on the contents of the Bill. In addition, a motion regarding receiving public views on the Bill by the Panel was negated at the special meeting on 31 May 2019. He was of the view that inviting the two legal professional bodies to make oral representations would be inconsistent with the decision previously made by the Panel and unnecessarily cause unfairness to other deputations. As such, he considered that it was not appropriate to invite the two professional bodies to the special meetings, but the provision of written submissions to the Panel was still possible.

85. As a matter of fairness, Mr WONG Kwok-kin and Mr Holden CHOW concurred with the Chairman's decision. They said that the two professional bodies could provide written submissions to the Panel. Mr Paul TSE pointed out that during the scrutiny of the Fugitive Offenders Bill in 1997, no public hearing was held. HKBA and the Law Society of Hong Kong had instead submitted written submissions. He further said that HKBA had already provided a detailed written submission on the current legislative exercise.

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86. Mr Dennis KWOK said that as the Deputy Chairman of the Panel on Administration of Justice and Legal Services ("AJLS Panel"), he had requested the Chairman of AJLS Panel to discuss the feasibility of holding a joint meeting with the Panel on Security to invite the two legal professional bodies to give views on the Bill. Mr KWOK and Dr Fernando CHEUNG said that it was a usual practice for AJLS Panel to invite professional bodies to express their views from the legal point of view, in particular on important legislative amendments. As the Bill had aroused extensive discussions and diverse views in the community, Mr LAM Cheuk-ting considered it necessary to invite the two professional bodies to give views. He did not understand why such an invitation would be inconsistent with the decision previously made as it was not a public hearing. Mr Gary FAN cited that the Panel on Public Service had, on members' request, invited four relevant unions only to give views on issues relating to the lifeguards of the Leisure and Cultural Services Department at its regular meeting in February 2019. Mr Alvin YEUNG said that inviting the two legal professional bodies to give views should not be regarded as a public hearing. It was instead a special arrangement to enhance the understanding of members and the public on the contents of the Bill from the legal perspective.

87. Dr Priscilla LEUNG added that as the motion regarding receiving public views on the Bill by the Panel was negated earlier, AJLS Panel members would be consulted on their views shortly about the suggestion to hold a meeting to invite views from legal professional bodies and conduct a public hearing on the Bill.

88. As there were divided views among members, the Chairman ordered that a vote be taken on the proposal about inviting HKBA and the Law Society of Hong Kong to give their views on the Bill at a future meeting. Members requested a division.

The following members voted in favour of the proposal:

Mr James TO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Mr LAM Cheuk-ting, Mr HUI Chi-fung and Dr CHENG Chung-tai. (10 members)

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The following members voted against the proposal:

Ms Starry LEE, Mr CHAN Kin-por, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Ms Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr Jimmy NG, Mr HO Kai-ming, Mr Holden CHOW, Ms YUNG Hoi-yan, Mr CHAN Chun-ying and Mr CHEUNG Kwok-kwan. (18 members)

89. The Chairman declared that 10 members voted in favour of the proposal and 18 members voted against it. He declared that the proposal was negatived.

Other issues

90. Mr Frankie YICK asked whether any concerns had been raised in respect of the surrender procedures of PRC, and whether any termination of SFO agreements had been received from other jurisdictions. Ms Starry LEE sought information on whether PRC had failed to fulfil its obligations in any of the SFO agreements signed.

91. In response, S for S reiterated that PRC had signed SFO agreements with 55 jurisdictions, and 39 of them were in force, such as France, Portugal, Spain, Italy and South Korea. In addition, PRC had signed MLA agreements with 64 jurisdictions. The operation had been smooth so far, indicating that PRC had fully fulfilled the mutual agreements.

92. Mr Michael TIEN asked whether the Taiwan homicide case could be properly dealt with by solely removing the geographical restrictions under FOO and MLAO in the current legislative exercise, as the suspect was in prison. LO(IL)/DoJ responded that he did not see any legal problems in this regard.

93. Given that a jury system was adopted in criminal trials conducted in the High Court, Mr Michael TIEN asked whether a jury system and video examination of the prosecution witnesses could be considered in the committal hearings of SSAs. S for S said that Mr TIEN's suggestions involved a comprehensive review of FOO, which was not the policy objective of the current legislative exercise. LO(IL)/DoJ added that to his knowledge, there was no similar practice internationally. DLO(MLA)/DoJ further said that MLA involved mutual cooperation in which the general international practice had to be followed. Any new practice had to be thoroughly

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considered as it might affect SFO or MLA requests with other places in the long term.

94. Mr KWOK Wai-keung said that the Bill aimed to, apart from handling the Taiwan homicide case, plug the loopholes in the existing juridical assistance system such that offenders of serious crimes could not seek refuge in Hong Kong and evade legal responsibilities. He appealed to the public to support the passage of the Bill so as to prevent Hong Kong from being "the paradise of fugitive offenders".

95. Mr CHAN Chun-ying sought details about the introduction of an "observer scheme" to protect the rights of surrendered persons proposed by SJ earlier. S for S said that the Administration would negotiate the issue of post-surrender visits on a case-by-case basis, so as to arrange visits via appropriate means, including visits by consuls and officials, or other special cooperation arrangements.

Motion

96. The Chairman said that Dr Fernando CHEUNG, Mr Kenneth LEUNG and Mr Alvin YEUNG had indicated intention to move motions under the agenda item. He ruled that the three motions proposed by Dr CHEUNG and the motions respectively proposed by Mr Kenneth LEUNG and Mr Alvin YEUNG were directly related to the agenda item in accordance with Rule 22(p) of the House Rules. He said that the motions would be proceeded with and voted on in the order in which they were presented to the Panel.

97. Dr Fernando CHEUNG moved the following motion:

"本委員會要求政府把一般及必要的人權保障要求，包括無罪假定、公開審訊、有律師代表、盤問證人權利、不能強迫認罪及上訴權等，直接包括在法例的修訂，而不只是酌情在協定中加入。"

(Translation)

"This Panel urges that the Administration should directly include the general and necessary human rights safeguards, such as presumption of innocence, open trial, legal representation, right to cross-examine witnesses, no coerced confession and right to appeal, in the legislative amendments, instead of adding these safeguards in the agreements at its discretion only."

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98. The Chairman put Dr CHEUNG's first motion to vote. Members requested a division.

The following members voted in favour of the motion:

Mr James TO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Mr LAM Cheuk-ting, Mr HUI Chi-fung and Dr CHENG Chung-tai. (10 members)

The following members voted against the motion:

Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Ms Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr HO Kai-ming, Mr Holden CHOW, Ms YUNG Hoi-yan, Mr CHAN Chun-ying and Mr CHEUNG Kwok-kwan. (20 members)

99. The Chairman declared that 10 members voted in favour of the motion and 20 members voted against it. He declared that the motion was negatived.

100. Dr Fernando CHEUNG moved the following motion:

"鑒於政府在未有確保引渡方能夠遵守移交協定的承諾的機制，為保障香港市民的利益，本委員會要求政府考慮不同立法會議員提出的方案。"

(Translation)

"Given that there is a lack of a mechanism to ensure the fulfilment of undertakings under a surrender agreement by a requesting party, this Panel requests the Administration to take into account the proposals of various Legislative Council Members for safeguarding the interests of Hong Kong people."

101. The Chairman put Dr CHEUNG's second motion to vote.

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The following members voted in favour of the motion:

Mr James TO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Mr LAM Cheuk-ting, Mr HUI Chi-fung and Dr CHENG Chung-tai. (10 members)

The following members voted against the motion:

Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Ms Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr HO Kai-ming, Mr Holden CHOW, Ms YUNG Hoi-yan, Mr CHAN Chun-ying and Mr CHEUNG Kwok-kwan. (20 members)

102. The Chairman declared that 10 members voted in favour of the motion and 20 members voted against it. He declared that the motion was negated.

103. Dr Fernando CHEUNG moved the following motion:

"鑒於政府於5月30日提出的額外措施令到修訂逃犯條例未能解決台灣殺人案，有違政府修例的目的，令修例欠缺迫切性，本委員會要求政府撤回恢復二讀的預告，讓立法會能夠詳盡審議。"

(Translation)

"Given that the additional measures proposed by the Government on 30 May 2019 fail to address the Taiwan homicide case through amending the Fugitive Offenders Ordinance, which was contrary to the purpose of amending the Ordinance and nullifying the urgency of amending the Ordinance, this Panel urges the Administration to withdraw the notice of the resumption of the Second Reading debate on the relevant Bill, thereby enabling thorough scrutiny of the Bill by the Legislative Council."

104. The Chairman put Dr CHEUNG's third motion to vote.

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The following members voted in favour of the motion:

Mr James TO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Mr LAM Cheuk-ting, Mr HUI Chi-fung and Dr CHENG Chung-tai. (10 members)

The following members voted against the motion:

Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Ms Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr HO Kai-ming, Mr Holden CHOW, Ms YUNG Hoi-yan, Mr CHAN Chun-ying and Mr CHEUNG Kwok-kwan. (20 members)

105. The Chairman declared that 10 members voted in favour of the motion and 20 members voted against it. He declared that the motion was negatived.

106. Mr Kenneth LEUNG moved the following motion:

"本委員會要求律政司司長必須出席本委員會餘下有關於《2019年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》的會議。"

(Translation)

"This Panel demands that the Secretary for Justice should attend this Panel's remaining meetings on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019."

107. The Chairman put Mr LEUNG's motion to vote.

The following members voted in favour of the motion:

Mr James TO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Mr LAM Cheuk-ting, Mr HUI Chi-fung and Dr CHENG Chung-tai. (10 members)

Action

The following members voted against the motion:

Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr HO Kai-ming, Mr Holden CHOW, Ms YUNG Hoi-yan, Mr CHAN Chun-ying and Mr CHEUNG Kwok-kwan. (19 members)

108. The Chairman declared that 10 members voted in favour of the motion and 19 members voted against it. He declared that the motion was negatived. Ms Alice MAK said that she was against the motion but failed to indicate her view by the electronic voting system on time. The Chairman instructed the Clerk to record Ms MAK's vote accordingly.

109. Mr Alvin YEUNG moved the following motion:

"本事務委員會促請政府，在《2019年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》中，針對現行《刑事事宜相互法律協助條例》中，處理未有與香港簽訂雙邊刑事事宜相互法律協助協定的地區所提出的外地沒收令時，加入修訂以讓香港法院在作出外地沒收令的過程中，具有審視提出要求的司法管轄區之法治水平的權力，核實當地是否保證被告會獲得公平審訊，以及被沒收的資產是否會得到公正的處理，否則立法會不應通過此條例草案。"

(Translation)

"This Panel urges the Administration to include amendments to the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 in respect of handling of the external confiscation orders applied for by jurisdictions which have not signed any bilateral mutual legal assistance in criminal matters agreements with Hong Kong under the existing Mutual Legal Assistance in Criminal Matters Ordinance, such that Hong Kong courts, in the course of making an external confiscation order, are empowered to examine the level of the rule of law in the requesting jurisdiction, verify whether a fair trial for the accused will be guaranteed in the jurisdiction and whether confiscated assets will be handled in an impartial manner, otherwise the Legislative Council should not pass the Bill."

Action

110. The Chairman put Mr YEUNG's motion to vote.

The following members voted in favour of the motion:

Mr James TO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Mr LAM Cheuk-ting, Mr HUI Chi-fung and Dr CHENG Chung-tai. (nine members)

The following members voted against the motion:

Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Ms Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr HO Kai-ming, Mr Holden CHOW, Ms YUNG Hoi-yan, Mr CHAN Chun-ying and Mr CHEUNG Kwok-kwan. (20 members)

111. The Chairman declared that nine members voted in favour of the motion and 20 members voted against it. He declared that the motion was negatived.

112. There being no other business, the meeting ended at 5:30 pm.

Council Business Division 2
Legislative Council Secretariat
25 October 2019