

立法會

Legislative Council

LC Paper No. CB(2)137/19-20
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the Administration)

Ref : CB2/PL/SE

Panel on Security

**Minutes of special meeting
held on Monday, 3 June 2019, at 8:30 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
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 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 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 Mrs Regina IP LAU Suk-ye, 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
Hon SHIU Ka-fai
Hon LUK Chung-hung, JP
Hon KWONG Chun-yu
Hon Gary FAN Kwok-wai

Members absent : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Charles Peter MOK, JP
Hon KWOK Wai-keung, JP
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 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 Rita LAI
Senior Council Secretary (2) 1

Mr Ronald LAU
Council Secretary (2) 1

Ms Kiwi NG
Legislative 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))

The Chairman advised that this 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").

Surrender of fugitive offenders

2. Mrs Regina IP, Dr Helena WONG and Mr AU Nok-hin sought information on the number of requests for surrender of fugitive offenders ("SFO") under the signed SFO agreements with other jurisdictions. Secretary for Security ("S for S") said that since Hong Kong's return to the People's Republic of China ("PRC"), jurisdictions with which Hong Kong had signed the SFO agreements had surrendered 104 persons to Hong Kong and 67 persons had been surrendered to these jurisdictions. As the existing Fugitive Offenders Ordinance (Cap. 503) ("FOO") did not apply to the Mainland, Taiwan and Macau, no fugitive offenders had been surrendered to the Mainland.

3. Mr WONG Kwok-kin asked about the number of rejected cases of SFO requests. S for S advised that nine surrender requests were rejected by Hong Kong because of the lack of long-term SFO agreements. Pursuant to the long-term SFO arrangements with which Hong Kong had signed, Hong Kong had rejected more than six surrender requests because of various reasons, including non-compliance with the principle of "double criminality" and the rule against double jeopardy for cross-boundary crimes, insufficient evidence for prosecution and humanitarian reasons.

4. Mr Jeffrey LAM enquired about the timeframe for the court to process SFO requests and whether the persons involved would be prohibited from leaving Hong Kong. Deputy Law Officer (Mutual Legal Assistance)/Department of Justice ("DLO(MLA)/DoJ") advised that once a fugitive offender was arrested pursuant to a request, the person concerned would be kept in custody unless there were special circumstances justifying the granting of bail but the court would accord priority to process the case because it involved a person in custody. The timeframe for processing requests varied, depending on the facts and circumstances of individual cases.

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5. Mr LUK Chung-hung was concerned whether persons committing criminal offences in overseas jurisdictions could resist the SFO requests relying on the restrictions under FOO, i.e. being prejudiced or punished on account of their race, religion, nationality or political opinions.

6. S for S drew members' attention to the existing human rights and procedural safeguards to protect the rights of fugitive offenders and restrictions under section 5 of FOO which prohibited the surrender in respect of an offence of a political character. DLO(MLA)/DoJ added that the 46 descriptions of offences specified in Schedule 1 to FOO were criminal offences and were not related to political offences. In addition, the persons involved in the SFO requests could apply for habeas corpus.

Impact on Hong Kong upon passage of the Bill

7. Referring to the Mutual Evaluation Report on Anti-money Laundering and Combating the Financing of Terrorism issued by the Financial Action Task Force ("FATF") in 2008 ("the Report"), Mr Jimmy NG expressed concern about FATF's comment on the absence of a mechanism enabling Hong Kong to extradite to (and seek extradition from) other parts of PRC, and such deficiencies had posed a risk to money laundering and financing of terrorism in the financial system of Hong Kong. It was recommended that relevant arrangements be concluded as a matter of priority so as to address the risk.

8. Acknowledging the Report's remarks, S for S said that the proposed special surrender arrangements ("SSAs") under the Bill sought to improve the case-based surrender arrangements to handle SFO requests involving serious offences, with a view to upholding justice and protecting the safety of the general public and the community. It was noteworthy that bribery-related offences usually involving money laundering might constitute serious offences (such as handling of stolen goods) which could be subject to SSAs under the Bill. By international consensus, SFO was executed to combat organized and cross-boundary crimes, as well as maintain Hong Kong as a safe city, which should be beneficial to all walks of life.

9. Mr Christopher CHEUNG did not subscribe to some sayings that the passage of the Bill would bring adverse impact on Hong Kong's economy. Mr POON Siu Ping was concerned about some sayings that special preferential treatments to Hong Kong on tariff and trade pursuant to the bilateral trade agreements would be terminated upon passage of the Bill, and thus would adversely affect the local economy.

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10. S for S responded that the Bill sought to make minimum changes to the existing regime of SFO. More restrictions on the activation of SFO could be provided for in the proposed SSAs, demonstrating that the protection to the surrendered persons was enhanced.

11. Mr AU Nok-hin was concerned about the response of the international community towards the introduction of the Bill. Following up with his question raised at the Council meeting of 27 March 2019, Mr AU enquired whether the Administration had conducted impact assessment of the passage of the Bill on the enforcement of the 20 SFO agreements and 32 mutual legal assistance in criminal matters ("MLA") agreements signed between Hong Kong and other jurisdictions and the bilateral relations between Hong Kong and these jurisdictions. To address worries of the public and the international community, Mr WU Chi-wai called on the Administration to exchange views with various sectors, in particular the legal sector, media, business associations, Consulate Generals, on the legislative proposals.

12. S for S said that the Bill sought to improve the case-based surrender arrangements to handle the Taiwan homicide case and to plug the loopholes in the existing juridical assistance system. The proposed SSAs were supplementary measures before any long-term surrender arrangements took place. The Bill would not affect any long-term SFO agreements in force. Instead, the passage of the Bill would provide the legal basis for the Administration to proactively communicate with the Taiwan side on its request for the surrender of the suspect in a pragmatic and respectful manner, having regard to the fact that the suspect of the Taiwan homicide case could be discharged from the prison as early as October 2019. S for S stressed that the Administration had listened and would continue to listen to the views and concerns from various sectors. It would endeavour to explain the legal provisions of the Bill to dispel misunderstanding of and ease concerns on the Bill.

The proposed special surrender arrangements

13. Mr Kenneth LEUNG expressed concern that as opposed to the existing case-based surrender arrangements under FOO which was to be scrutinized by the Legislative Council ("LegCo") before coming into effect, LegCo did not have any scrutiny role in the activation of the proposed SSAs. Mr LEUNG enquired whether consideration would be given to allowing LegCo to scrutinize an SSA following the Chief Executive ("CE")'s issue of a certificate to proceed with a case-based SFO request.

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14. S for S responded that FOO was modelled on the Extradition Act 1989 of the United Kingdom ("UK") where power to consider surrender vested in the executive authority. A similar framework was adopted in Australia and New Zealand as well. That said, CE had to be satisfied that the SFO requests under the proposed SSAs could be processed in accordance with FOO. Moreover, any decisions made by CE would be subject to judicial review ("JR") and appeal all the way to the Court of Final Appeal ("CFA").

15. Ms Alice MAK sought explanation on the proposed new section 23(2A) in clause 6 of the Bill regarding admissibility of evidence and the application of prima facie requirement. DLO(MLA)/DoJ explained that clause 6 of the Bill sought to add a means for authenticating supporting documents as stipulated in section 23 of FOO. The proposal would not change the evidential requirements i.e. there being prima facie evidence in committal proceedings against the wanted person. The proposed new section 23(2A) would make the arrangement more flexible for authenticating documents for admission as evidence in court, and was in line with the Model Treaty on Extradition promulgated by the United Nations with the spirit of simplifying and streamlining the extradition procedures as advocated in the Model Treaty. The proposed new section 23(2A) would apply without affecting section 10(6)(b)(iii) of FOO. S for S stressed that Hong Kong had all along adopted stringent evidential requirements in handling SFO requests.

16. Dr CHENG Chung-tai expressed disappointment at the absence of the Secretary for Justice at the meeting. Dr CHENG was concerned about the compatibility of the items of offences specified in Schedule 1 to FOO and the categorization of crimes stipulated in the Criminal Law of PRC. With reference to the crimes involving forged invoices as stipulated in Articles 206 to 210 of PRC's Criminal Law, he sought information on the corresponding offences in Schedule 1 to FOO and asked whether these offences were covered under the proposed SSAs.

17. DLO(MLA)/DoJ responded that crimes involving forged invoices could be considered as amounting to offences relating to fraud or obtaining property by deception specified in item 9 of Schedule 1 to FOO. She stressed that the conduct underlying the offence that one had committed, rather than the description of an offence per se, was the prime consideration for making a decision on double criminality.

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18. Mr Jeffrey LAM pointed out that offences relating to breach of trust should not be considered as amounting to a bribery and corruption offence for the purpose of item 15 in Schedule 1 to FOO. S for S said that the proposed case-based surrender arrangements would cover 37 categories of offences listed in Schedule 1 to FOO, and they included item 15 of that Schedule, which covered various elements including breach of trust. In this relation, it should be noted that the Hong Kong Special Administrative Region ("HKSAR") was under an obligation to implement the United Nations Convention Against Corruption. Deputy Director of Public Prosecutions (II)/DoJ said that the prosecution had to gather sufficient evidence and prove one's intent of the act and the offence when instituting prosecution.

19. Mr Christopher CHEUNG sought clarification as to whether committing offences relating to accounting issues for the purposes of the Trustee Ordinance (Cap. 29) would be subject to the regulation of the Bill. He further sought information on the nature of surrendered cases in the past years. Mr Tony TSE sought clarification as to whether professional negligence fell within the items of offences covered under the proposed SSAs.

20. S for S advised that based on the SFO agreements signed with 20 jurisdictions, a number of offenders who had committed serious crimes, including drug trafficking, murder or manslaughter, offences of a sexual nature and robbery, had been surrendered to the requesting places in the past years. DLO(MLA)/DoJ added that the court had rejected an SFO request in 2003 due to insufficient evidence provided by the requesting jurisdiction. DLO(MLA)/DoJ further advised that the basic principle of "double criminality" under FOO would apply to the proposed SSAs. Before making a committal order, the court had to be satisfied that the act alleged in a surrender request constituted a relevant offence meeting the requirement of "double criminality" and that the evidence was sufficient to establish a prima facie case against the wanted person. For professional negligence and professional misconduct, DLO(MLA)/DoJ pointed out that the conduct of professionals in various jurisdictions were usually regulated by the relevant rules of conduct drawn up by the respective professional bodies. She stressed that under the principle of "double criminality", a person would not be surrendered to another jurisdiction pursuant to an SFO request if such act did not constitute a criminal offence under Hong Kong law.

21. Mr Tony TSE sought information about the application of the exceptions to the limitation period as stipulated in Article 87(4) of PRC's Criminal Law.

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22. Dr Helena WONG, Mr Andrew WAN, Mr KWONG Chun-yu and Mr CHAN Chi-chuen were gravely concerned about the exceptions to the limitation period as stipulated in Articles 87(4) and 88 of PRC's Criminal Law. As such, they sought clarification as to whether SFO requests from the Mainland could be made after the expiry of the limitation period for prosecution.

23. S for S reiterated that the Bill sought to improve the case-based surrender arrangements to uphold justice. The legislative proposals were not tailor-made for any particular jurisdiction. S for S advised that in view of the different effective limitation periods in different jurisdictions adopting the civil law system, the requesting jurisdiction was required to provide assurance that the effective limitation period, if any, of the relevant offence had not expired, or the prosecution and punishment in respect of the offence was not precluded for any reasons. The limitation periods on the Mainland for prosecution against crimes with different punishment levels were clearly stipulated in Articles 87 to 89 of PRC's Criminal Law. The limitation period for prosecution should be counted from the date on which the crime was committed in accordance with Article 89. In addition, as far as requests from the Mainland were concerned, the HKSAR Government would only process SFO requests made by the Supreme People's Procuratorate ("SPP").

Human rights and procedural safeguards under the proposed special surrender arrangements

24. Mr WONG Kwok-kin, Mr POON Siu-ping, Mr CHUNG Kwok-pan and Mr Tony TSE sought information on the threshold imprisonment requirement of seven years or more for the offences to be dealt with under the proposed SSAs, as well as the human rights and procedural safeguards under the proposed SSAs.

25. S for S advised that the offences to which SSAs would apply should be those punishable with imprisonment for seven years or more in both Hong Kong and the requesting jurisdiction. The threshold was used to confine SSAs to serious offences. As serious offences were tried at the Court of First Instance of the High Court in Hong Kong and were punishable for seven years or more, it was thus decided that the offences to which the proposed SSAs would apply should be punishable with imprisonment for seven years or more. Additional safeguards could be added in SSAs in light of the needs of individual cases to further limit the circumstances for surrender. Apart from moving an amendment to raise the threshold of imprisonment

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requirement for offences to which SSAs would apply, other additional safeguards would be stated in the policy statement which the Administration would make during the resumption of the Second Reading debate on the Bill. It would also be uploaded on the Administration's webpage.

26. Law Officer (International Law), DoJ ("LO(IL)/DoJ") added that under the existing FOO, for an offence punishable with death in the requesting place, the requesting party should assure that the death penalty would not be imposed or carried out after the wanted person was surrendered. Otherwise, the request would be refused. In respect of CE's decision on a surrender order, the person involved had the right to apply for JR and lodge appeals all the way to CFA. It was highlighted that in accordance with the common law principle and precedent cases, the test of "wrong, unjust or oppressive" would apply in considering whether a person should be surrendered. At the request of Senior Assistant Legal Adviser 1 ("SALA1"), LO(IL)/DoJ agreed to provide information on the relevant court cases regarding the common law principle adopted in considering whether a person should be surrendered.

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(Post-meeting note: The information provided by the Administration was circulated to Members vide LC Paper No. CB(2)1598/18-19 on 4 June 2019.)

27. Mr LAM Cheuk-ting asked about the difference in the legal effect of the administrative statement on additional safeguards to be provided under SSAs and having the procedural and human rights safeguards stipulated under FOO. At the invitation of Mr LAM, SALA1 said that according to the Administration, the additional safeguards to be provided in the proposed SSAs aimed to provide flexibility in light of the needs of individual cases and circumstances of different jurisdictions in the course of negotiating a case-based surrender arrangement.

28. LO(IL)/DoJ affirmed that pursuant to the proposed new section 3A(1) in clause 4 of the Bill, where individual circumstances of SSAs required, any provisions included in SSAs that further limited the circumstances in which the wanted persons might be surrendered would have legal effect under FOO. As regards concerns about cooperation between the HKSAR Government and the Mainland on juridical assistance in criminal matters, LO(IL)/DoJ advised that it was specified in Article 95 of the Basic Law ("BL") that "The Hong Kong Special Administrative Region may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other".

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SFO requests would be handled in accordance with BL and the laws of Hong Kong. In addition, the person concerned in an SFO request could apply for JR to challenge CE's decision on making a surrender order. When deciding whether to make a surrender order, CE had the power to refuse surrender if it would be "wrong, unjust or oppressive" to do so.

29. Dr Fernando CHEUNG, Mr Alvin YEUNG and Mr HUI Chi-fung cast doubt about the effectiveness of including the additional safeguards in the agreements of SSAs only. These members expressed grave dissatisfaction at the Administration's refusal to state explicitly in the Bill the additional safeguards (e.g. presumption of innocence, open trial and legal representation, etc.) for the surrendered fugitive offenders. With reference to the UK Extradition Act 2003, Mr Kenneth LEUNG asked whether provisions which were in line with the general human rights protection under the Hong Kong Bill of Rights Ordinance (Cap. 383) ("HKBORO") could be added in the Bill to safeguard the human rights of surrendered fugitive offenders under the proposed SSAs.

30. Mr Paul TSE considered that the legislative proposals were in line with the spirit of simplifying and minimizing the extradition procedures necessary to execute and initiate requests for extradition as advocated by the resolution on international cooperation in criminal matters adopted by the United Nations General Assembly in 1997. In his view, procedural and human rights safeguards for surrendered persons were enshrined in the existing FOO and the laws of Hong Kong under the common law system. He appealed to the Administration to use simple and layman terms to explain the content of the Bill to the general public.

31. S for S responded that in the international practice, MLA and SFO arrangements were made based on mutual respect, as well as confidence in respective local judicial systems, and the protection by and strict enforcement of relevant domestic laws. He stressed that the HKSAR Government adopted extremely stringent procedures in handling SFO requests. Apart from complying with FOO, surrender arrangements had to be underpinned by the laws of Hong Kong. Moreover, the court would make reference to overseas jurisprudence as appropriate. In respect of the rights of surrendered fugitive offenders during trial, the requesting party could be required to include safeguards that were in line with general human rights protection regarding SSAs. As the agreements on SSAs would have to be signed by both the requesting place and Hong Kong, the court would make reference to the protection as stated in the SSAs and any related assurances given by the requesting place. It was noteworthy that some requesting

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parties, though not being contracting states to the International Covenant on Civil and Political Rights, could be required to provide assurance to safeguard human rights in the trial of the surrendered persons in SSAs.

32. LO(IL)/DoJ added that the requesting jurisdiction would be asked to provide assurance, if considered necessary, to protect the rights and interests of the surrendered persons. The fugitive offender could also apply for habeas corpus and lodge appeals all the way up to to CFA. Overseas jurisdictions adopting a common law system had returned fugitive offenders to the Mainland along the same approach. One of such examples was the return of LAI Changxing by the Canadian Government to the Mainland.

33. Mr Frankie YICK expressed concern about the gatekeeping roles of the executive authority and the court in processing SFO requests. Mr YICK further asked about the changes in the existing mechanism upon passage of the Bill.

34. Mr LEUNG Che-cheung considered that the community's concerns about the legislative proposals were largely caused by the different legal systems in Hong Kong and on the Mainland. Mr LEUNG and Mr Tony TSE called on the Administration to explain the gatekeeping role of the court in considering SFO requests so as to ease worries of the public.

35. Having regard to the asymmetric relations between Hong Kong and the Mainland, Mr CHAN Chi-chuen, Dr Fernando CHEUNG and Mr KWONG Chun-yu expressed concerns that the HKSAR Government would accede to every SFO request from the Mainland. Dr Elizabeth QUAT did not subscribe to such views and considered it misleading. She was confident that given the independence of the Judiciary in Hong Kong, SFO requests would be processed by the court in an independent and fair manner. Mr LUK Chung-hung shared a similar view.

36. The Deputy Chairman said that the legal sector, including the Hong Kong Bar Association, had expressed worries about the legislative proposals and that the court would be put in a disadvantageous position in performing the gatekeeping role. With reference to the handling of SFO requests in UK and the arrangements adopted by the European Commission, he asked whether the court could reject any SFO requests if it was satisfied that the surrendered persons would not receive fair trial in the requesting jurisdiction, with a view to safeguarding the rights and interests of the wanted person.

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37. Mr Michael TIEN was concerned that the court might be under undue pressure in handling SFO requests. Similar to the trial of most serious offences at the Court of First Instance of the High Court, Mr TIEN called on the Administration to consider adopting the jury system in the committal hearings of SFO requests.

38. S for S advised that the long-term arrangements under MLA0 and FOO had been operating smoothly over the past 22 years. The Bill did not seek to change the existing human rights and procedural safeguards of FOO and MLA0. DLO(MLA)/DoJ added that the co-operation of other jurisdictions were required in handling SFO to combat organized and cross-boundary crimes. S for S and DLO(MLA)/DoJ advised that in the past 22 years, there were 17 applications for habeas corpus and four JR cases on CE's decision on issuance of an authority to proceed or making of a surrender order. At the request of the Chairman, DLO(MLA)/DoJ agreed to provide the relevant JR cases on CE's decision after the meeting.

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(Post-meeting note: The information provided by the Administration was circulated to Members vide LC Paper No. CB(2)1598/18-19 on 4 June 2019.)

39. S for S stressed that the primary objective of the Bill was to remove the geographical restrictions in the existing law, such that once the Bill was passed, the Administration would have the legal basis to deal with the Taiwan homicide case. More restrictions on the activation of SFO could be provided for in the proposed SSAs in light of the needs of individual cases according to the circumstances in which the person might be surrendered, and the court would take into account such restrictions when considering an SFO request. As regards the suggestion of adopting the jury system during the committal hearings, it appeared to be unprecedented in state practice and would involve substantial changes to the existing mechanism, which was not the policy objective of the current legislative exercise.

40. On the concern about the gatekeeping role of the court, S for S advised that in accordance with section 10(6)(b)(iii) of FOO, the court of committal had to be satisfied that the evidence in relation to the offence would be sufficient to warrant the person's committal for trial according to the law of Hong Kong. The burden of proof for a surrender case was on the requesting party. As a matter of fact, Hong Kong's judicial independence enjoyed high ranking in the world, and eminent judges from other common law jurisdictions had been appointed as non-permanent judges of CFA. Judges exercised judicial power independently and were free from any

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interference. To facilitate members' understanding of the existing procedures in handling SFO requests, the Chairman requested and the Administration agreed to provide a flowchart in this regard.

(Post-meeting note: The information provided by the Administration was circulated to Members vide LC Paper No. CB(2)1630/18-19 on 10 June 2019.)

41. Mr POON Siu-ping was concerned how an SFO request would be dealt with in the event that CE and the court held different views on making a surrender order. S for S and DLO(MLA)/DoJ responded that the decision by the magistrate on whether to make a committal order for a person's surrender would be made based on the relevant provisions of FOO and evidence of the case. The person involved in an SFO request could apply for habeas corpus if a committal order had been made and apply for JR of a surrender order made by CE. While CE had power to decide on surrender, CE could not make a surrender order if the court decided not to make a committal order. In considering whether to order surrender, CE could take into account grounds in addition to those under FOO, such as humanitarian grounds.

Other issues

42. Mr KWONG Chun-yu enquired about the central authority of Taiwan that could submit an SFO request to Hong Kong upon passage of the Bill. Mr CHAN Chi-chuen shared a similar concern. S for S responded that the Administration would liaise with the requesting jurisdiction in respect of its central or competent/appropriate authority in the handling of SFO requests when necessary. As for the Taiwan homicide case, S for S advised that the HKSAR Government had been communicating with the Taiwan-Hong Kong Economic and Cultural Cooperation on its request for the surrender of the suspect via the Hong Kong-Taiwan Economic and Cultural Cooperation and Promotion Council.

43. Mr WU Chi-wai, Mr Andrew WAN and Mr KWONG Chun-yu said that the lack of confidence in the Mainland legal and judicial systems was the bone of contention of the current legislative proposals. Mr Alvin YEUNG shared the concerns and cast doubt about the adoption of the principle of judicial independence on the Mainland. Drawing reference to the resolution passed by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985 in respect of adopting the basic principle on the independence of the judiciary by the member states,

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Mr Dennis KWOK sought information on the judicial independence on the Mainland.

44. S for S said that governing the country in accordance with the law had been stated in Mainland's laws, including the PRC's Criminal Law. S for S added that the Administration had drawn reference from the international practice and came to the view that the HKSAR Government should only process SFO requests from the central authority of a place. Taking the Mainland as an example, the HKSAR Government would only process SFO requests made by SPP. LO(IL)/DoJ advised that pursuant to Article 95 of BL, the Administration had been negotiating with the Mainland on juridical assistance between HKSAR and the Mainland in accordance with the law including BL. Since 1997, HKSAR and the Mainland had concluded four arrangements on mutual legal assistance in civil and commercial matters, and these arrangements have been operating smoothly. While any case-based surrender arrangement between HKSAR and the Mainland that might be entered into after the Bill came into force would be different from these arrangements in that it involved assistance in criminal matters, there was nothing in the legislative proposal which would negatively impact on the fugitive offender's rights to challenge any surrender order against him on the basis of his rights under the laws of Hong Kong.

45. There being no other business, the meeting ended at 12:32 pm.

Council Business Division 2
Legislative Council Secretariat
5 November 2019