

政府總部的信頭
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23 July 1999

Miss Betty Ma,
Clerk to Panel,
LegCo Panel on Security,
Legislative Council Secretariat,
3/F, Citibank Tower,
Central, Hong Kong

Dear Miss Ma,

LegCo Panel on Security

At the Panel meeting on 3 December 1998, Members requested the Administration to :-

- (a) keep Members informed of any further clarification from the Mainland authorities on the case of LAU Kwok-wah;
- (b) provide information on the evidence requirements in committal proceedings under section 10(6)(b)(iii) of Cap. 503;
- (c) provide information on whether there were cases in the past similar to the LI Yu-hui case.

2. On (a), we are given to understand by the Mainland authorities that LAU Kwok-wah was tried in the Mainland for crimes he committed in the Mainland. We have not received any further clarifications on this case.

3. On (b), the Department of Justice has prepared a note to explain the evidence requirements under section 10(6)(b)(iii) of the Fugitive Offenders Ordinance (Cap. 503). This is at Annex.

4. On (c), available Police records show that, prior to the reunification, there were three cases similar to LI Yu-hui's case, where Mainland residents (one in each case) known to be involved in crimes committed in Hong Kong had been arrested and tried in the Mainland.

Yours sincerely,

(Alice Cheung)
for Secretary for Security

Encl.

**Evidence Requirements in
Committal Proceedings for Fugitive Offenders**

1. The Principles

1.1 In the HKSAR, the evidence requirements under the Fugitive Offenders Ordinance (“the Ordinance”) for a person wanted for prosecution in respect of an offence are set out in section 10(6)(b)(iii) of the Ordinance, namely :

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 if the offence had been committed within the jurisdiction of that court or any other court.

1.2 Evidence sufficient to warrant a person’s committal for trial according to the law of Hong Kong means that there must be a **prima facie** case against the fugitive. That is, there must be evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict : see R v Galbraith, 73 Cr.App.R.124.

1.3 In the context of surrender proceedings under the Ordinance, the following points should be noted :

- 1.3.1 the evidence presented by the requesting jurisdiction must be admissible according to Hong Kong rules of evidence;
- 1.3.2 the court of committal (i.e. magistrate) does not generally assess the credibility of the witnesses;
- 1.3.3 there is no right to cross-examine witness who have given evidence in support of the request who are outside Hong Kong;

1.3.4 the fugitive has no right to lead any evidence which contradicts any allegation contained in the evidence presented by the requesting place that the fugitive engaged in the conduct constituting the offence (section 23(4) of the Ordinance);

1.3.5 the fugitive may lead evidence to show that he is not the person identified in the request for surrender (section 23(5) of the Ordinance).

1.4 The evidence of the requesting place is normally presented in documentary form, and comprises statements by witnesses with relevant documentary exhibits attached. If the documents are in a foreign language, they must be accompanied by translations.

1.5 Such evidence is on its face admissible in the proceedings if it is duly authenticated in terms of section 23(2) of the Ordinance, namely if it :

1.5.1 purports to be signed or certified by a judge, magistrate or officer of the place concerned; and

1.5.2 purports to be sealed with the official seal or public seal of a competent authority of that place.

(The evidence is normally presented in the form of a bundle of documents under ribbon and seal).

1.6 There is no specific requirement in the Ordinance that the statements be under oath, but they are usually made under oath or at least made under some corresponding procedure in the requesting place.

2. The Procedures

2.1 Usually, a fugitive will be provisionally arrested in Hong Kong and brought before a magistrate. The case will be adjourned for up to 60 days for receipt of the formal request and supporting documents (i.e. the bundle of evidence).

2.2 Once the formal request is received, and should the Chief Executive direct the case to proceed (pursuant to an authority to proceed

issued to the court), the evidence will be filed in court and served on the fugitive or his legal representatives.

2.3 At the committal hearing, counsel from the Department of Justice (acting on behalf of the requesting place) will take the magistrate through the evidence presented to show that a prima facie case is made out. Oral evidence may be led in some cases e.g. a Hong Kong Police officer may find relevant material in the possession of the fugitive at the time of his arrest.

2.4 Counsel for the fugitive may lead evidence from his client, or from other witnesses on behalf of his client, but such evidence cannot contradict an allegation that the fugitive engaged in conduct constituting the offence (section 23(3) of the Ordinance).

2.5 Objection can be taken to admissibility of the evidence under Hong Kong rules of evidence, and further objections may be taken concerning the way in which the evidence itself has been authenticated by the requesting place.

2.6 At the conclusion of proceedings, the magistrate will decide whether section 10(6)(b)(iii) has been satisfied.

2.7 Before ordering committal, the magistrate must also be satisfied that :

2.7.1 the offence to which the authority to proceed relates is a relevant offence (section 10(6)(b)(i) of the Ordinance);

2.7.2 the supporting documents have been duly authenticated (section 10(6)(b)(ii) of the Ordinance), and

2.7.3 there are no restrictions against surrender (sections 5 & 10(6)(b) of the Ordinance).