

**LegCo Panel on Security
Meeting on 4 December 2003**

Trial in the Mainland of Serious Crimes Committed in Hong Kong

This paper responds to the questions raised by the Hon. James To, Panel Chairman, in relation to a diamond robbery case which occurred in Hong Kong on 17 July 2002.

Brief Facts of the Case

2. The Police received a report of robbery in the afternoon of 17 July 2002 via a 999 call that two diamond salesmen were hit by two males on the head from behind with a metal pipe in Percival Street, Causeway Bay. The two culprits snatched the briefcase held by one of the victims which contained diamonds after the attack and fled in different directions. With the information provided by a witness at the scene of crime, the Police later arrested one of the culprits in the vicinity. No diamonds were however recovered. The arrested culprit was subsequently charged for robbery. In February 2003, he was convicted and sentenced to 6 years imprisonment.

Liaison with the Mainland Public Security Authorities

3. Police investigation revealed that the arrested culprit came from Maoming to Hong Kong on a two-way permit. Despite that the cautioned statement of the arrested culprit did not implicate any other persons, two identified Mainlanders surfaced in the course of police investigation and they were suspected to be connected to the arrested Mainlander. The two persons left Hong Kong for the Mainland after the robbery. There was however insufficient evidence to suggest that these persons were involved in the planning and carrying out of the robbery. The Police therefore did not apply for warrants of arrest.

4. On 26 July 2002, the Police passed the information on the two identified Mainlanders to the Guangdong Public Security Bureau (GDPSB) and asked for their assistance in investigating whether these two persons were involved in the robbery case. GDPSB replied to the Police on 21 August 2002 indicating that they had arrested one of the identified Mainlanders in Maoming. GDPSB also

revealed in their reply that three Hong Kong males who were suspected to be involved in the robbery case were also arrested in Shenzhen. They were pursuing the other Mainlander identified by the Police and one female Hong Kong resident who was also believed to be involved in the robbery case.

5. Subsequent to GDPSB's notification of the arrest of a number of Hong Kong residents, the Police wrote to GDPSB on 17 September 2002 with a view to obtaining information including the brief facts of the arrest, personal particulars of the arrested persons, their role in the commission of the crime, details of the stolen property and the evidence seized related to the case. The identity of the four Hong Kong residents and their involvement in the case was unknown to the Police until notification about the arrest was received from the Mainland authorities. There was no evidence available in Hong Kong that might show their involvement in the robbery. No warrant of arrest had ever been issued. There was no prima facie case for the Police to seek return of the Hong Kong residents involved.

6. Towards the end of September 2002, some officers from the Maoming Public Security Bureau visited Hong Kong and met with the Police to understand the background of the case. With the Police's assistance, the Mainland public security officers interviewed two witnesses with their consent during their stay in Hong Kong. The Mainland public security officers briefed the Police on the details of the case and provided information on the four Hong Kong residents arrested in the Mainland to the Police. They also indicated that the two accomplices on the run had been arrested with a seizure of some suspected stolen diamonds.

7. On 11 October 2002, the Mainland public security authorities requested the Police for assistance in providing sketches / photos on the scene of crime, photos on the tools used, scientific evidence, hotel records, travel movement records of the arrested, personal particulars of the Hong Kong residents arrested, fingerprints of the arrested Mainlander. As proceedings against the arrested Mainlander in Hong Kong were ongoing, the information that could be released to the Mainland was limited. After seeking legal advice, the Police subsequently provided the Mainland public security authorities with basic information which included the personal particulars of the four Hong Kong residents, travel movement records and hotel records.

8. It can be seen from the above that during the liaison between the Police and

the Mainland public security authorities on the cooperation in the case, the Mainland side had provided the Police with details and nature of the crimes committed by the Hong Kong residents arrested. The Police had also requested the Mainland side to provide assistance and information related to the case during the course of investigation.

Mainland Court's Jurisdiction over the Case

9. The Hon James To has also asked to know:
 - (a) the legal basis for the Mainland court proceedings against the four Hong Kong residents, e.g. the relevant provisions in the Mainland laws; and
 - (b) whether the Administration considers that the Mainland judiciary has jurisdiction over the four Hong Kong residents.
10. We wish to make the following points:
 - (a) According to the judgment handed down by the Maoming Intermediate People's Court (MIPC) on 25 March 2003, the gang of six, including the four Hong Kong residents, was charged with "Robbery" under Article 263 of the Criminal Law of the People's Republic of China which provides that "whoever robs public or private property by violence, coercion or other methods shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined". That particular article further provides a list of cases where a fixed-term imprisonment of not less than 10 years, life imprisonment or death, fine and confiscation of property shall be imposed.
 - (b) The judgment also disclosed that the robbery took place in Hong Kong on 17 July 2002 and gave detailed description of the role of the individuals in the commission of crime. The defence lawyer of one of the defendants has taken issue on whether the Criminal Law was applicable in the case and the decision of the Court was recorded on page 19 of the judgment. In its judgment, the MIPC referred to Article 6 of the Criminal Law, in particular, the third paragraph of Article 6 which says "If a criminal act or its consequence takes place within the territory or territorial waters or space of the People's Republic of China, the crime shall be deemed to

have been committed within the territory and territorial waters and space of the People's Republic of China”.

- (c) The MIPC went on to say that since part of the preparatory acts, subsequent hiding and disposal of the stolen property after the robbery were taken place within the Mainland, the case thus fell within the above-mentioned paragraph of Article 6. According to Articles 24 and 25 of the Criminal Procedure Law of the People's Republic of China, the Court hence exercises its jurisdiction over the case. It also mentioned whilst the Court also recognized that Hong Kong courts have jurisdiction over the matter, given that part of the criminal acts took place in Shenzhen, Maoming and Shanghai, courts in these three places likewise could exercise their respective jurisdiction. The MIPC particularly referred to the fact that the first defendant had approached the two Mainland co-defendants in Maoming to take part in the crime and discussed the mode of execution. On the basis that the preparatory acts took place there, the MIPC hence confirmed it has jurisdiction over the case.
- (d) The matter of jurisdiction is often a matter of national laws of the particular jurisdiction. It is apparent from the judgment that the defence lawyers for the first defendant had made representation to the court in this respect and the MIPC had addressed the issue in its judgment. We note that in the trial of the six, evidence of the robbery case had been presented to the Court including the testimony of the witnesses, recovery of part of the stolen property (and assessment of their value), statement of the defendants, etc. There is no basis for the Administration to assess the case and to determine if it was justifiable for the Mainland court to exercise its jurisdiction. These are matters that should be more properly dealt with by the appeal court. We can only confirm that the articles of the Criminal Law and Criminal Procedure Law referred to in the judgment are relevant to the jurisdiction matters of the Mainland courts.
- (e) The relevant provisions of the Criminal Law and the Criminal Procedure Law are extracted at Annex for ease of reference.

**Extract of the Relevant Provisions of the Criminal Law and
the Criminal Procedure Law of the People's Republic of China**

Criminal Law 刑法

Article 6 This Law shall be applicable to anyone who commits a crime within the territory and territorial waters and space of the People's republic of China, except as otherwise specifically provided by law.

This Law shall also be applicable to anyone who commits a crime on board a ship or aircraft of the People's Republic of China.

If a criminal act or its consequence takes place within the territory or territorial waters or space of the People's Republic of China, the crime shall be deemed to have been committed within the territory and territorial waters and space of the People's Republic of China.

第六條 凡在中華人民共和國領域內犯罪的，除法律有特別規定的以外，都適用本法。

凡在中華人民共和國船舶或者航空器內犯罪的，也適用本法。

犯罪的行為或者結果有一項發生在中華人民共和國領域內的，就認為是在中華人民共和國領域內犯罪。

Article 263 Whoever robs public or private property by violence, coercion or other methods shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; whoever falls under any of the following categories shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death and shall also be fined or sentenced to confiscation of property:

- (1) intruding into another person's residence to rob;
- (2) robbing on board the means of public transportation;
- (3) robbing a bank or any other banking institution;
- (4) committing robbery repeatedly or robbing a huge sum of money;
- (5) causing serious injury or death to another person in the course of robbery;
- (6) impersonating a serviceman or policeman in robbing;
- (7) robbing with a gun; or
- (8) robbing military materials or the materials for emergency rescue, disaster relief or social relief.

第二百六十三條 以暴力、脅迫或者其他方法搶劫公私財物的，處三年以上十年以下的期徒刑，並處罰金；有下列情形之一的，處十年以上有期徒刑、無期徒刑或者死刑，並處罰金或者沒收財產：

- (一) 入戶搶劫的；
- (二) 在公共交通工具上搶劫的；
- (三) 搶劫銀行或者其他金融機構的；
- (四) 多次搶劫或者搶劫數額巨大的；
- (五) 搶劫致人重傷、死亡的；
- (六) 冒充軍警人員搶劫的；
- (七) 持槍搶劫的；
- (八) 搶劫軍用物資或搶險、救災、救濟物資的。

Criminal Procedure Law 刑事訴訟法

Article 24 A criminal case shall be under the jurisdiction of the People's Court in the place where the crime was committed. If it is more appropriate for the case to be tried by the People's Court in the place where the defendant resides, then that court may have jurisdiction over the case.

第二十四條 刑事案件由犯罪地的人民法院管轄。如果由被告人民居住地的人民法院審判更為適宜，可以由被告人居住地的人民法院管轄。

Article 25 When two or more People's Courts at the same level have jurisdiction over a case, it shall be tried by the People's Court that first accepted it. When necessary the case may be transferred for trial to the People's Court in the principal place where the crime was committed.

第二十五條 幾個同級人民法院都有權管轄的案件，由最初受理的人民法院審判。在必要的時候，可以移送主要犯罪地的人民法院審判。