

## **LegCo Panel on Security**

### **Assistance to Hong Kong residents detained in the Mainland**

#### **Introduction**

This paper sets out the assistance provided by the Hong Kong Special Administrative Region (HKSAR) Government to Hong Kong residents being detained in the Mainland.

#### ***Assistance to Detainees and their Families***

2. The HKSAR Government is very concerned about safeguarding the legal rights of Hong Kong residents being detained in the Mainland. Under the “One Country, Two Systems” principle, the HKSAR Government does not interfere with the law enforcement and the judicial process in the Mainland and neither do the Mainland authorities interfere with law enforcement and jurisdiction of the HKSAR. Hong Kong residents who are being detained in the Mainland for suspected criminal offences should be dealt with and their rights protected in accordance with the relevant laws in the Mainland. Upon the request of the Hong Kong resident being detained in the Mainland or his or her family, we would render practical assistance to them in accordance with the existing mechanism. The established procedures are set out below -

- (a) Upon the receipt of a request for assistance from the detainee or his or her family, the Immigration Department will interview the family members to get a thorough understanding of the case;
- (b) If required, the Immigration Department will provide information on the contact address and telephone number of law societies in the Mainland as published in 《全國律師協會及有關部門通訊錄》 to the family members concerned so that they may consider the need to seek legal advice;
- (c) After consolidating information on the case, the Immigration Department will submit the case to the Security Bureau for follow-up action in accordance with the established mechanism; and
- (d) Depending on the nature of the requests made by the family members, the Security Bureau will coordinate actions with other relevant Government Bureaux/Departments including the Beijing Office to provide the following assistance –

- (i) to convey the requests or appeals of family members, including any suspected breach of rules and procedures, to the relevant Mainland authorities through the established channel;
- (ii) through its liaison network at both the central and provincial levels, the Beijing Office will take appropriate follow-up actions where necessary to keep track of the response of the relevant Mainland authorities to the requests referred to them by the HKSAR Government;
- (iii) Immigration Department will immediately convey to the family members concerned any latest information received from the Mainland authorities through the Beijing Office. Further referrals will be made upon the request of family members, if necessary; and
- (iv) Upon receipt of a report of a person suspected missing in the Mainland, we will seek the assistance of the Liaison Bureau of the Police to liaise with their Mainland counterparts with a view to verifying if the missing Hong Kong resident has gone to the Mainland and, if so, to locating the person.

3. The Security Bureau oversees and closely monitors progress on the referrals made to the Mainland authorities, while the Immigration Department keeps close contact with the family members concerned.

4. Between 1 July 1997 and end of April 2005, the Government has received 503 requests for assistance (relating to 510 persons) relating to Hong Kong residents being detained or serving sentence in the Mainland. Out of these, 421 cases have been resolved and/or the persons concerned did not require further assistance from the Government (including 285 persons who have been released and returned to Hong Kong). The Immigration Department is taking follow-up actions on 82 cases involving 82 Hong Kong residents. Of these, 57 persons are under detention/on trial/bail in the Mainland while the remaining 25 persons are serving prison sentence.

### ***The Reciprocal Notification Mechanism***

5. In October 2000, the Security Bureau reached a consensus with the Ministry of Public Security on a reciprocal notification mechanism. It is an administrative arrangement implemented on the basis of mutual respect for the relevant laws of both sides under which notification will be made as soon as

practicable. The mechanism became operative on 1 January 2001. Its coverage was expanded since 1 June 2003 following a consensus reached by the two sides after a review. The scope of the mechanism is recapitulated below -

- (a) Matters which concerned Notification Unit in the Mainland should notify the Hong Kong Notification Unit (i.e. the Police) include the imposition of criminal compulsory measures on Hong Kong residents by the public security authorities, the Mainland customs authorities, People's Procuratorates and the Ministry of State Security, and the unnatural deaths of Hong Kong residents in the Mainland; and
- (b) Matters which the Hong Kong notification Unit should notify the Mainland counterparts include criminal prosecutions instituted by the Hon Kong Police Force, the Customs and Excise Department and the Immigration Department against Mainland residents, and the unnatural deaths of Mainland residents in Hong Kong.

6. The Hong Kong Police will inform the family members concerned as soon as possible after a notification has been received from the Mainland authorities. The procedures set out in paragraph 2 above will apply if the family members concerned require assistance from the Government.

7. As at the end of April 2005, a total number of 3 211 notifications have been made by the Mainland Notification Unit involving 2 439 Hong Kong residents. Among them, 2 254 persons are subject to compulsory measures and 185 were dead. Cases relating to the imposition of compulsory measures are mostly related to fraud and smuggling offences. The offences were mainly committed in Guangdong, although some cases took place in other provinces/cities.

### ***Relevant Provisions in Mainland Laws***

8. The power of the public security authorities in imposing compulsory measures is provided for under the Criminal Procedure Law (the Law) of the People's Republic of China. According to the Law, there are five types of compulsory measures which can be taken by the public security authorities, namely summons for questioning, putting on bail, residence under surveillance, detention and arrest. The rights and obligations of persons suspected to have committed a criminal offence are also provided in the Law. According to section 64 of the Law, the law enforcement authorities are required to inform the family of the detainee or the unit to which he or she belongs of the reasons for the detention and the place of detention within 24 hours, unless it is not feasible to do so or such notification will affect investigation.

9. To enhance the public's understanding of criminal legal proceedings in the Mainland, the Security Bureau, with the assistance of the Supreme People's Procuratorate, published a booklet on the Criminal Procedure Law 《內地刑事訴訟簡介》 in March 2000. The booklet contains a list of addresses and telephone numbers of complaint channels in the Mainland Public Security Bureaux, People's Procuratorates and the Courts. In July 2000, the Beijing Office published another reference booklet on Mainland criminal law and regulations relating to arrest and detention 《與被拘留、逮捕者有關的內地刑事法律、法規實用資料》. This booklet sets out the rights and obligations of persons suspected to have committed a criminal offence in the Mainland. The booklets published by the Security Bureau and the Beijing Office are available in the offices of the Immigration Department and the Beijing Office, and on the websites of the relevant departments.

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