HONG KONG BAR ASSOCIATION
Secretariat: LG2 Floor, High Court, 38 Queensway, Hong Kong
E-mail: info@hkba.org Website: www.hkba.org
Telephone: 2869 0210 Fax: 2869 0189

14 June 2019

The Hon. CHAN Hak-kan, BBS, JP
Panel on Security
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong.

Dear Sirs,

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019

Please find the "Additional Observations of HKBA on the HKSAR Government's proposed further changes to the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019", dated 6 June 2019.

Yours sincerely,

Philip Dykes SC
Chairman

Additional Observations of the Hong Kong Bar Association ("HKBA") on the HKSAR Government's proposed further changes to the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019

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1. The HKBA has said previously in statements published on 4th March 2019 and 2nd April 2019 that:

   i) it was not necessary to over-liberalize the FOO and MLAO regime to include Mainland China to enable the rendition of the suspect in the Taiwan case;

   ii) it was highly doubtful if the proposed amendments would in practice achieve the rendition of that suspect to Taiwan;

   iii) amendments might be made to other legislation to ensure that the Taiwan case will be dealt with;

   iv) the HKSARG ought to explain why it considers that circumstances have changed since 1997 in terms of both the human rights record and the criminal justice system in the Mainland to justify major changes now;

   v) the case-based arrangement would become the norm for surrender from Hong Kong to Mainland China. This is particularly so when the restriction against long-term surrender arrangements with the P.R.C. remains;

   vi) if there is to be no scrutiny by LegCo of '*ad hoc*' agreements, the Court ought to have an expanded role in vetting requests for human rights compliance in the requesting place; and

   vii) there was no principled basis for the exclusion of offences that carry a maximum sentence of less than 3 years' imprisonment.

2. On 30th May 2019, the Secretary for Security announced further changes to the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 which, for convenience sake, is here called 'the Fugitives Bill'. These changes include:

   i) Raising the imprisonment threshold for an offence in respect of which surrender can be sought to a maximum sentence of at least 7 years;

   ii) Setting a time limit for offences in the requesting place so that there will not be retrospective requests;

   iii) Allowing the CE to include in arrangements terms such as requiring the requesting jurisdiction to respect the presumption of innocence, open trial, visiting rights, banning forced confessions, and right to appeal; and

   iv) As far as the rest of China is concerned, surrender and confiscation requests to be made by the Supreme People's Procuratorate of the P.R.C. or the Supreme People's Court in the P.R.C. only.

3. On 1st June 2019, the Secretary for Security confirmed in an answer to a question raised by the Hon. Fernando Cheung Chiu-hung in a Special Meeting of Panel on Security in the Legislative Council that only the raising of the penalty threshold to 7 years will be written into the Fugitives Bill. All the other proposals will be in the form of policy statements and practices and will not be written into the Fugitives Bill.

Raising penalty threshold to 7 years

4. As admitted by the Secretary for Security himself, the raising of penalty threshold to 7 years would exclude some serious and heinous offences such as criminal intimidation, giving possession of firearms to unlicensed person, possession of child pornography, procuring unlawful sexual act by false pretenses, unlawful sexual intercourse with young persons under 16, using/procuring/offer young persons under 18 for making pornography or for live pornographic performances, procuring a girl under 21 to have unlawful sexual intercourse with a third person.

5. This further limitation contradicts the HKSARG's stated "grave concerns about injustice caused by the system's loopholes in the community as well as doubts against the Government's commitment to combating serious cross-boundary crimes."

6. There is no principled policy reason behind choosing seven years imprisonment maximum penalty as the threshold. The threshold in cases where there are regular reciprocal agreements is much lower (the Canadian, Australian and United Kingdom long-term surrender agreements have one year's imprisonment as the threshold term.) The immunity given to persons accused of Mainland crimes that carry less than seven years imprisonment does not make sense in legal policy terms.

7. Of greater concern should be the fact that there are still many offences in respect of which there is a liability to surrender, for example, obtaining property by deception, theft, fraud, conspiracy to

defraud, money laundering, blackmail, possessing false instruments, bribery and corruption, and perjury.

8. The HKBA maintains the view that the protection offered to those who are engaged in business activities with, and in, the rest of the P.R.C. by raising the threshold is likely to be illusory as these offences are staple fare in extradition requests.

Other "safeguards"

9. As the Secretary for Security has stated clearly, the proposed additional safeguards will not be written into the amended ordinances. Instead efforts to secure compliance with these promised safeguards will be a matter for the executive.

10. The HKBA takes the view that this is a highly unsatisfactory arrangement.

11. Firstly, these safeguards depend entirely on the goodwill of the requesting state. They do not have the force of law. Neither the person surrendered nor the HKSAR can do anything to compel observance.

12. Secondly, the level of protection depends on the CE's ability to negotiate with the requesting party and its relationship with the HKSAR. Where there is an asymmetrical relationship, as there is with the Mainland, it is doubtful that the CE could go so far as to say that requests from there will not be entertained unless there is 100%

compliance with promises about a fair trial procedure, humane conditions of detention, access to lawyers etc.

13. The HKBA takes the view that the questions of i) whether there is a risk of human rights being abused in the event of surrender, and ii) whether there are sufficient human rights safeguards in place, are best answered by the courts rather than executive authorities. The independent courts will be the most suitable, persuasive, and effective authority as the protector of a fugitive's fundamental rights.

14. A ready-made example to follow would be the inclusion of a provision like sections 21[1] and 87[2] of the UK Extradition Act 2003 which requires a court to discharge a person in two types of extradition proceedings if extradition would not be compatible with

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[1] "**Section 21 Human Rights**

(1) If the judge is required to proceed under this section (by virtue of section 11 or 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
(2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
(3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.
(4) If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the category 1 territory.
(5) If the judge remands the person in custody he may later grant bail."

[2] "**Section 87 Human Rights**

(1) If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
(2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
(3) If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be extradited."

that person's human rights under the European Convention on Human Rights as incorporated in the Human Rights Act 1998.

15. In Hong Kong the equivalent would be to require a magistrate to discharge a person whose surrender was sought if surrender would not be compatible with that person's human rights under the ICCPR as applied to Hong Kong as incorporated in Basic Law, Article 39 and the Hong Kong Bill of Rights Ordinance.

16. As it is, the current proposals, it is unclear how the HKSARG can ensure compliance if promises for these safeguards from the requesting party are not honoured. The fact that the subject has already been surrendered, and been subject to human rights abuses, would make protests or disapproval meaningless. It is also difficult for the HKSARG to refuse to entertain future extradition requests given the asymmetrical relationship between the HKSARG and the Mainland and in light of the duty to comply with any instructions from the Central Government regarding extradition requests under section 24 of the FOO.

17. This is an unsatisfactory way to discharge the HKSARG's duties under Article 4 of the Basic Law to "safeguard the rights and freedoms of the residents of the HKSAR and of other persons in the Region in accordance with law." The HKBA takes the view that the only effective way to ensure that a subject of return will not be subject to risks of human rights abuse is requiring the court to refuse a surrender if there is such a risk.

Retrospective Limitations

18. The HKSARG said no surrender would take place if the subject offence is time-barred in the requesting place.

19. The HKBA takes the view that this would only provide very limited protection. Under Article 87 of the P.R.C. Criminal Law, offences "shall not be prosecuted" if a period of time has elapsed commensurate with the prescribed sentences of up to 5, 10, or life imprisonment or death sentence.[3]

20. The limitation on prosecution is however subject to a number of exceptions. If the subject has "escaped" after the public security organ has placed a case on file and conducted an investigation, the limitation period does not apply. Similarly, it will not apply if the victim made the complaint to a public security organ within the limitation period and the public security organ failed to place a case on file. Even when the longest applicable limitation period of 20 years has expired, the Supreme People's Procuratorate may still approve the instigation of a prosecution.[4]

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[3] "**Article 87** Crimes shall not be prosecuted if the following periods have elapsed:
(1) five years, when the maximum prescribed punishment is fixed-term imprisonment of less than five years;
(2) ten years, when the maximum prescribed punishment is fixed-term imprisonment of not less than five years but less than ten years;
(3) fifteen years, when the maximum prescribed punishment is fixed-term imprisonment of not less than ten years; and
(4) twenty years, when the maximum prescribed punishment is life imprisonment or death. If after twenty years it is considered that a crime must be prosecuted, the matter must be submitted to the Supreme People's Procuratorate for approval."

[4] "**Article 88** No limitation on the period for prosecution shall be imposed with respect to criminals who escape from investigation or trial after a people's procuratorate or public

21. It is noteworthy that Article 89 of the P.R.C. Criminal Law provides that: "if further crime is committed during a limitation period for prosecution, the limitation period for prosecution of the former crime shall be counted from the date the latter crime is committed."[5] In other words, the limitation period for an 'old crime' can be extended indefinitely so long as there is an allegation of a new offence within that period.

22. The HKBA takes the view that this "safeguard" is riddled with uncertainties and it offers scarcely any reliable assurances that a person is safe from being prosecuted for an apparently time-barred offence as one or more of these exceptions may apply.

Requests made by the highest authorities

23. Prescribing the originating authority for a request is more a question of formality than substance. How a request is processed up to the highest authority for making a request is a matter of procedural law and administrative practice. Even where the highest authority issues

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security organ or state security organ places the case on file and conducts investigation, or a people's court handles the case.

No limitation on the period for prosecution shall be imposed if a victim puts forward accusation during a limitation period for prosecution, and a people's court or people's procuratorate or public security organ shall place the case on file but fails to do so."

[5] "**Article 89** The limitation period for prosecution shall be counted from the date of the crime; if the criminal act is of a continual or continuous nature, it shall be counted from the date the criminal act is terminated.

If further crime is committed during a limitation period for prosecution, the limitation period for prosecution of the former crime shall be counted from the date the latter crime is committed."

a request, the question of how a subject's prosecution is dealt with thereafter remains an unknown. It will be no comfort to a person surrendered if they are returned to the requesting place and then tried in local courts where due process is lacking, and fair trial rights are not secured.

24. Furthermore, despite the apparent raising of requirement under this head, there still remains the amendment to the authentication requirements under s.23 of the FOO that adds a provision which by-passes the requirement that any supporting document for surrender be authenticated by a judicial officer and a competent authority under s.23(2). The adoption of this approach under *ad hoc* arrangements is a step backward, weakening the usual safeguards built into long-term arrangements.

Mutual Legal Assistance

25. In addition to amendments being made to the FOO, the Fugitives Bill will also amend the MLAO to the effect that the same restriction affecting the rest of the P.R.C. will be removed. These changes have not attracted as much interest as the changes to FOO because they do not directly affect the liberty of an individual. It is worth explaining the effect of the amendments to MLAO in more detail here.

26. In gist, the MLAO empowers the HKSARG to enter into arrangements to provide legal assistance to a requesting place in criminal matters, which includes the investigation and prosecution of alleged criminal offences committed in the requesting place, as

well as ancillary criminal matters such as the enforcement of external confiscation orders.

27. Assistance that may be provided by the HKSARG include taking and producing evidence[6], searching seizing[7] and ordering the production of things[8] that are relevant to the investigation or prosecution of an external offence, producing a Hong Kong prisoner to give evidence[9] in an external criminal matter, applying for confiscation orders,[10] restraint orders[11], and charging orders[12] for recovering proceeds of crime, except where the primary purpose of the request is the assessment or collect of tax[13].

28. The HKBA notes that under the amended MLAO regime, the Secretary for Justice and Hong Kong law enforcement agencies may apply to the Hong Kong courts for any of these orders upon request by Mainland authorities where only a criminal investigation, rather than a prosecution, is said to be in place in the Mainland. The commencement threshold is much lower and there are no requirements of a *prima facie* case being present before such assistance is provided.

29. Moreover, the 'double criminality' requirement as seen in the FOO is much wider under the MLAO because there are no limits to the

[6] Section 10 MLAO
[7] Section 12 MLAO
[8] Section 15 MLAO
[9] Section 23 MLAO
[10] Section 27 MLAO
[11] Section 7, Schedule 2 MLAO
[12] Section 8, Schedule 2 MLAO
[13] Section 5(2) MLAO

types of offences that can be subject of an assistance request like the 46 types of offences set out in Schedule 1 of the FOO. Instead, the only "double criminality" requirement for mutual legal assistance is that the conduct subject of the request would also constitute an offence, or a serious offence carrying a maximum penalty of two years or more, in the requesting place and in Hong Kong[14] unless it is an offence of a political character[15], against military law[16], where the request is made for the purposes of prosecuting or punishing a person on account of his race, religion, nationality or political opinions[17], or falls foul of the rule against double jeopardy[18].

30. To qualify for assistance by way of search, seizure, and confiscation, the MLAO sets the maximum penalty threshold at 2 years imprisonment. In other words, the raising of penalty threshold to 7 years imprisonment under the amended FOO regime would not be applicable to mutual legal assistance. Orders can still be made against a Hong Kong resident if he is faced with criminal investigation or prosecution of offences less serious than those that will be covered by the amended FOO.

31. The HKBA notes that the amendments to the MLAO would substantially strengthen the impact of the amended FOO in relation to criminal prosecutions in the Mainland. Where there is insufficient evidence to satisfy the *prima facie* evidence threshold to make a request for the surrender of fugitives under the FOO,

[14] Section 5(1)(g) MLAO
[15] Section 5(1)(b) MLAO
[16] Section 5(1)(c) MLAO
[17] Section 5(d) MLAO
[18] Section 5(e) MLAO

Mainland law enforcement agencies may request legal assistance from Hong Kong courts in order to search and seize evidence that may assist in building a *prima facie* case for eventual surrender to the Mainland for prosecution.

32. Moreover, external confiscation orders that may be enforced in Hong Kong by way of mutual legal assistance may arise from criminal and civil proceedings in the requesting place.[19]

33. Therefore, the HKBA takes the view that the concerns relating to human rights and due process protection, or the lack thereof, arising from the proposed amendments to the FOO also apply to the amendments to the MLAO.

HONG KONG BAR ASSOCIATION

6 June 2019

[19] Section 2(1) MLAO

香港大律師公會針對《2019年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》的補充意見書

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1. 公會於2019年3用4日及2019年4月2日曾兩度提出意見書，重點如下：
   i) 沒有必要過份放寬《逃犯條例》及《刑事事宜相互法律協助條例》以處理移交台灣殺人案疑犯的問題;
   ii) 非常懷疑是次修訂能否實際上達致移交台灣殺人案疑犯；
   iii) 可以通過修訂其他法例以確保台灣殺人案疑犯會被審訊；
   iv) 特區政府應解釋政府根據甚麼原因認為內地的人權狀況及刑事司法制度在1997後有重大改變以支持是次修訂；
   v) 一次性個案移交安排將會成為香港與內地移交逃犯的慣例，尤其當長期移交逃犯安排不適用於中華人民共和國的任何其他部分的限制仍然存在；
   vi) 倘若立法會沒有權限就一次性協議把關，法庭理應有權審批請求方的申請是否符合人權要求；
   vii) 沒有任何原則性的理由將可判處最高刑期三年以下的罪行剔出一次性個案移交安排。

2. 保安局局長於2019年5月30日宣佈將就《2019年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》（後稱「《逃犯條例草案》」）作出多項修補，詳情如下：
   i) 提高可移交逃犯的罪行門檻，定為可判處最高刑期七年或以上;
   ii) 請求方須要作出保證，有關罪行是在有效追訴期內；
   iii) 容許行政長官加入移交安排的條文，例如要求提出請求的司法管轄區須尊重無罪假定原則、公開審訊、探視權利、不能強迫認罪及上訴權；及
   iv) 就中國的任何其他部分而言，移交或沒收的請求只能由最高人民檢察院或最高人民法院提出。

3. 保安局局長於2019年6月1日，在立法會保安事務委員會特別會議中回應張超雄議員的提問時，確認只會將移交罪行門檻提升到7年修訂寫入《逃犯條例草案》。以上其他的建議只會以政策文件及慣例執行，並不會寫入《逃犯條例草案》。

將可移交罪行的可判處最高刑期提高至7年或以上

4. 保安局局長承認將可移交罪行的可判處最高刑期提高至7年或以上會剔除某些嚴重及滔天的罪行，例如刑事恐嚇、將槍械或彈藥交予無牌照的人管有、管有兒童色情物品、以虛假藉口促致他人作非法的性行為、與年齡在16歲以下的兒童性交、禁止利用、促致或提供未滿18歲的人以製作色情物品或作真人色情表演及促致年齡在21歲以下的女童與人非法性交。

5. 是次縮小適用範圍與特區政府聲稱回應「社會對制度上的漏洞所造成的不公義表示關注，亦有聲音質疑特區當局對打擊跨境嚴重罪行的決心」而提出修例的原因背道而馳。

6. 將可移交罪行的可判處最高刑期提高至7年或以上並沒有政策原因支持。其他與香港有長期相互協議的國家有明顯較低的門檻（加拿大，澳洲，英國的長期安排均以1年作為門檻）。給予涉嫌在內地干犯刑事罪行可判處最高刑期7年以下的疑犯作出豁免並不符合修例政策原因。

7. 但更令人關注的是仍然有很多罪行需要移交逃犯，包括以欺騙手段取得財產、盜竊、欺詐、串謀欺詐、洗黑錢、勒索、管有虛假文書、行賄及貪污及作假證供等。

8. 公會仍然認為提高可移交罪行的可判處最高刑期，以給予在內地從事商業活動的人士提供保障的說法只不過是海市蜃樓，因為該等控罪均是一般移交請求所涉及的慣常控罪。

其他「保障」

9. 保安局局長明確表明，其他新增的保障不會寫入《逃犯條例草案》。反之，該些已承諾的保障只會由行政機關確保請求方履行。

10. 公會認為這是十分不妥善的做法。

11. 首先，此等保障全然依靠提出請求方的善意，而沒有法律效力。被移交的人士及特區政府沒有任何強制性方式令其他地區跟從。

12. 第二，保障的程度亦取決於特首與請求方的協議及這些地區與香港是否有對等關係。當關係並不對等，就如香港與內地的關係，便會令人懷疑特首有否能力要求對方承諾提供公平審訊、確保被拘留人士得到人道對待及會見律師的權利等，並向其明言一旦對方未能提供相關保障，移交的請求有機會遭拒絕。

13. 就著(i)在移交後，人權會否有機會遭受損害，及(ii)目前請求方的司法制度有否足夠的人權保障，大律師公會認為以上兩項問題均理應由法庭，而不是行政機關把關更為適合。獨立的法庭是最適切、最具說服力及最有效的機關執行確保逃犯權利的角色。

14. 一項現行的做法是參考英國於在英國《引渡法案 2003》 (UK Extradition Act 2003) 中加入第 21 及 83 條，要求法庭在處理移交會違反《人權法案 1998》 (Human Rights Acts 1998) 所收納的《歐洲人權公約》時，可解除逃犯的移交程序。

15. 就香港而言，相等的情況就會是要求裁判官在處理有機會違反《基本法》第 39 條所收納的《公民權利和政治權利國際公約》及《香港人權法案條例》下的權利的移交個案時，可解除對被移交人士的移交請求。

16. 在目前的方案中，若然請求方不守承諾，特區政府如何可以確保其會遵守人權保障的辦法並不清晰。考慮如該名逃犯已被移交、其人權亦已受侵害的事實，任何抗議或反對實屬徒然。基於特區政府與中央人民政府的不對等關係，特區政府將難以拒

絕往後中央人民政府的移交逃犯要求，尤其是《逃犯條例》第 24 條訂明行政長官須遵從中央人民政府發出的指令。

17. 這做法並未能理想地履行香港特區政府於基本法第 4 條下「依法保障香港特別行政區居民和其他人的權利和自由」的責任。大律師公會認為，真正有效令被移交人士不會遭受人權侵害的做法是容許及授權予法庭在該等情況下拒絕移交申請。

追訴期限制

18. 香港特區政府指出，若然罪行在提出移交地方的追訴期已過，港府不會接納移交的申請。

19. 大律師公會認為這保障的效果有限。《中國刑法》第 87 條訂明，若然犯罪時間已超過其法定最高刑的年期，如 5 年、10 年、無期徒刑、或死刑的適用追訴期，則「不再追訴」。[1]

20. 但相關條例亦訂明這個追訴時效期限有不少例外情況。如果當嫌疑犯「逃走」時，執法機關經已立案調查，追訴時效期限並不生效。同樣地，倘若受害人已向執法機關投訴，追訴時效期限亦不生效。縱使追訴時效過了 20 年，最高人民檢察院仍可核准追訴。

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[1] 第八十七條【追訴時效期限】犯罪經過下列期限不再追訴:

(一)法定最高刑為不滿五年有期徒刑的,經過五年;
(二)法定最高刑為五年以上不滿十年有期徒刑的,經過十年;
(三)法定最高刑為十年以上有期徒刑的,經過十五年;
(四)法定最高刑為無期徒刑、死刑的,經過二十年。

如果二十年以後認為必須追訴的,須報請最高人民檢察院核准。

21. 值得留意的是，《中國刑法》第 89 條提到：「在追訴期限以內又犯罪的，前罪追訴的期限從犯後罪之日起計算」。換句話說，只要在追訴期限以內有新的控罪指控，舊有罪行的追訴期就可無限延伸。

22. 公會認為，這項「保障」充滿不確定因素，亦不能保證一人因提控時效表面上已過而免於被控，因為一個或多個例外情況仍然可能適用。

由最高權力機關提出請求

23. 在政策文件及執行慣例訂明起始的權力機關是不切實際。請求如何被呈交至最高權力機關，再由該機關提出請求，視乎法律程序和要求方的行政慣例。即使最高權力機關作出一個請求，引渡後如何處理該檢控亦是未知之數。如受引渡人士會被送返提出請求的地方受審，而在當地制度欠缺正當法律程序，導致公平審訊權利不獲保障，則仍會引起不安。

24. 再者，在這前提下，雖然表面上提高了要求，但《逃犯條例》第 23 條關於認證要求的修訂仍然存在。《逃犯條例草案》當中增加了一項條款，繞過第 23 條(2)款中，即任何支持移交的文件須由司法人員或具資格的機關認證的條件。一次性個案移交安排是一個倒退，削弱了長期移交逃犯安排下慣常的保障。

相互法律協助

25. 除了修訂《逃犯條例》以外，《逃犯條例草案》亦包括修改及移除《刑事事宜相互法律協助條例》中同樣針對中國內地的限制。這方面的修訂沒有吸引如《逃犯條例》般的注意是因為這些修訂並不影響人身自由。公會認為這些修訂也值得在此深入探討。

26. 簡單而言，《刑事事宜相互法律協助條例》賦予特區政府權力作出安排，向提出請求地區就刑事事宜提供法律協助，包括對聲稱在提出請求地區干犯的罪行作出調查及檢控，以及附屬刑事事宜，例如執行外地沒收令。

27. 特區政府可能提供的協助包括錄取及提供證據、搜查、檢取及作出命令要求提供有關調查或檢控外地罪行的物件、就外地罪行交出香港囚犯作供、申請沒收令、限制令、押記令以取回犯罪得益，但如請求的主要目的是評定或徵收稅項則除外。

28. 公會認為，《刑事事宜相互法律協助條例》經修訂後，僅僅聲稱在中國內地進行刑事調查，而非檢控，律政司司長及香港執法部門也可能在中國內地部門的要求下，向香港法庭申請任何上述的命令。因此，提出申請的門檻大大降低，提供協助前也不需要符合表面證據成立的條件。

29. 相比《逃犯條例》，《刑事事宜相互法律協助條例》中「雙重犯罪」的要求更為廣闊，因為協助請求所涵蓋的罪行種類並無限制，有別於《逃犯條例》附表 1 中列明的 46 種罪行。相反，相互法律協助的唯一「雙重犯罪」要求是，請求方所指的行為須在請求方的法律及香港法律下構成罪行或最高刑期兩年或以上的嚴重罪行，除非該罪行屬政治性質罪行、有違軍法；請求提出的目的是基於某人的種族、宗教、國籍或政治見解而對該人進行檢控，或違反禁止「一罪兩審」的原則。

30. 《刑事事宜相互法律協助條例》訂明了門檻，控罪的最高刑罰最少只須達 2 年監禁，就符合資格獲得搜查、檢取及沒收形式的協助。換句話說，即使修訂《逃犯條例》，將門檻提高至 7 年監禁，也不適用於相互法律協助。即使香港居民面對的刑事調查或控罪，較經修訂後《逃犯條例》中的罪行輕微，這些命令仍可以針對香港居民被濫用。

31. 公會認為，《刑事事宜相互法律協助條例》的修訂會大大加強經修訂後《逃犯條例》中有關中國內地刑事檢控的影響。當沒有足夠證據顯示有足夠表面證供以啟動《逃

犯條例》下的移交請求時，中國內地執法部門仍可以向香港法庭要求提供法律協助，從而搜查或檢取證據達至足夠表面證供，最終再將疑犯移交中國內地作出檢控。

32. 再者，請求方的民事或刑事司法程序均可以在香港要求根據《刑事事宜相互法律協助法例條例》執行外地沒收令。

33. 因此，公會認為所有關於人權及程序公義的憂慮，或就欠缺人權及程序公義的憂慮，同樣適用於《刑事事宜相互法律協助法例條例》的修訂。

香港大律師公會

二零一九年六月六日