

立法會 LEGISLATIVE COUNCIL

來函檔號 YOUR REF :

本函檔號 OUR REF CB(3)/B/P2/FC/5 (18-19)

電 話 TELEPHONE 3919 3300 圖文傳真 FACSIMILE 2810 1691

> 香港中區 立法會道1號 立法會綜合大樓1017室 張超雄議員

張議員:

《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條例草案》

你於2019年7月12日致函立法會主席("主席"),根據《議事規則》第51(3)及(4)條,就上述條例草案徵求主席的意見(**附錄**)。就此,主席指示我回覆如下。

議員向立法會提交法案,必須符合《基本法》、現行法例及《議事規則》的相關規定,並遵循立法會的慣例,而涉及的程序已載述於立法會網頁內的"立法會議員提交法案資料文件"(立法會CB(3)9/16-17號文件)。按照有關程序及慣例,議員提交法案前,應先就立法建議諮詢相關事務委員會;之後主席會就法案書面徵詢政府當局的意見,並考慮提交法案議員的回應後,才會裁決法案是否符合《議事規則》第51(3)及(4)條的規定(即法案若涉及公共開支或政治體制或政府運作,便不得提出;若涉及政府政策,則有關議員須獲行政長官書面同意,方可提出)。

事實上,就你在函件中關注的事宜,楊岳橋議員亦曾於今年5月20日致函主席,就其擬提交的《2019年侵害人身罪(修訂)(域外法律效力)條例草案》,向主席申請豁免諮詢保安事務委員會的程序,直接提交該法案至立法會首讀。主席當時亦請楊議員注意上述程序及慣例(有關函件已上載立法會網頁)。楊議員其後就其法案諮詢保安事務委員會(有關會議於5月31日舉行),然後才要求主席裁決法案是否符合《議事規則》。

基於以上所述,主席會按照既定程序及慣例,待你就法案諮詢相關事務委員會後,才考慮你的法案是否符合《議事規則》。

立法會秘書 〈孝〉〉〉〉〉〉 (衛碧瑤代行)

2019年7月18日

副本送: 立法會其他議員



張超雄立法會議員辦事處

Fernando Chiu Hung Cheung Legislative Councilor's Office

立法會主席 梁君彥議員

(只備中文本 Chinese version only)

梁議員:

就《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條例草案》徵求意見

今年6月15日,行政長官宣佈暫緩《逃犯條例》及《刑事事宜相互法律協助條 例》的修例工作,收回就條例草案恢復二讀辯論的預告。7月9日,行政長官表示條例 已草案「壽終正寢」。

為了處理港人在台殺人案, 我建議修訂《逃犯條例》(第503章)及《刑事 事宜相互法律協助條例》(第525章), 把兩條條例對台灣的地理限制移除, 相信會 得到香港市民、本地及外國商會以及外國政府接受。

就此, 我已草擬了《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條 例草案》, 並取得由法律草擬專員發出的證明書。根據《議事規則》第51(3)及(4)條 我在此徵求 閣下就此修例草案的意見。謝謝。

立法會議員 張超雄

二零一九年七月十二日

附件:

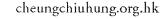
- 1. 《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條例草案》 版本)
- 2. 法律草擬專員發出的證明書(中英文版本)
- 3. 立法會參考資料摘要(中英文版本)

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第1條

本條例草案

旨在

修訂《逃犯條例》,以使香港能與大陸或澳門除外的地方作出移交安 排;以及修訂《刑事事宜相互法律協助條例》,以使該條例適 用於香港與與大陸或澳門除外的地方之間的協助請求。

由立法會制定。

第1部

導言

1. 簡稱

本條例可引稱為《2019 年逃犯及刑事事宜相互法律協助法例 (修訂)(第2號)條例》。

2. 修訂成文法則

第2及3部指明的成文法則現予修訂,修訂方式列於該兩部。

《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條例草案》

第2部

第 3 條

第2部

修訂《逃犯條例》(第503章)

3. 修訂第2條(釋義)

第 2(1)條, *移交逃犯安排*的定義 ——

(a) (a)(i)段 ——

廢除

"(中央人民政府或中華人民共和國的任何其他部分的政府除外)"

2

代以

"(中央人民政府或澳門政府除外)";

(b) (a)(ii)段 ——

廢除

"(中華人民共和國的任何其他部分除外)"

代以

"(大陸或澳門除外)"。

3

第3部

修訂《刑事事宜相互法律協助條例》(第525章)

4. 修訂第 2 條(釋義)

第 2(1)條,相互法律協助的安排的定義 ——

(a) (a)(i)段 ——

廢除

"(中央人民政府或中華人民共和國的任何其他部分的政府除外)"

代以

"(中央人民政府或澳門政府除外)";

(b) (a)(ii)段 ——

廢除

"(中華人民共和國的任何其他部分除外)"

代以

"(大陸或澳門除外)"。

5. 修訂第3條(適用範圍)

第 3(1)條 ----

廢除

"香港與中華人民共和國的任何其他部分"

代以

"香港與大陸或香港與澳門"。

《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條例草案》

摘要說明

第1段

4

摘要說明

本條例草案的主要目的是 ——

- (a) 修訂《逃犯條例》(第 503 章)(《逃犯條例》),使香港能與大陸或澳門除外的地方作出移交安排,可予以執行;
- (b) 修訂《刑事事宜相互法律協助條例》(第 525 章)(《刑事互助條例》),以使香港與大陸及澳門除 外的地方作出的相互法律協助的安排,可予以執 行。

修訂《挑犯條例》

- 2. 現時,任何移交逃犯安排(*移交安排*),如非香港與中國其他部分作出者,均可根據《逃犯條例》予以執行。
- 3. 草案第 3 條修訂《逃犯條例》第 2(1)條,以使香港能與大陸或 澳門除外的地方作出移交安排。

修訂《刑事互助條例》

- 4. 現時,任何相互法律協助的安排,如非香港與中國的任何其他部分作出者,均可根據《刑事互助條例》予以執行。
- 5. 草案第 4 條修訂《刑事互助條例》第 2(1)條(見經修訂的相互法 律協助的安排的定義),而草案第 5 條則修訂《刑事互助條例》第 3(1)條,以使該條例適用於香港與大陸及澳門除外的地方之間的協助請求。

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Bill 2019

Part 1 Clause 1

1

A BILL

To

Amend the Fugitive Offenders Ordinance so that the arrangements for the surrender of fugitive offenders can be made between Hong Kong and any place other than the Mainland or Macau; and to amend the Mutual Legal Assistance in Criminal Matters Ordinance so that the Ordinance applies to requests for assistance between Hong Kong and any place other than the Mainland or Macau.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Ordinance 2019.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Bill 2019

Part 2 Clause 3

2

Part 2

Amendments to Fugitive Offenders Ordinance (Cap. 503)

3. Section 2 amended (interpretation)

Section 2(1), definition of arrangements for the surrender of fugitive offenders—

(a) paragraph (a)(i)—

Repeal

"(other than the Central People's Government or the government of any other part of the People's Republic of China)"

Substitute

"(other than the Central People's Government or the government of Macau)";

(b) paragraph (a)(ii)—

Repeal

"(other than any other part of the People's Republic of China)"

Substitute

"(other than the Mainland or Macau)".

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Bill 2019

Part 3 Clause 4

3

Part 3

Amendments to Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)

4. Section 2 amended (interpretation)

Section 2(1), definition of arrangements for mutual legal assistance—

(a) paragraph (a)(i)—

Repeal

"(other than the Central People's Government or the government of any other part of the People's Republic of China)"

Substitute

"(other than the Central People's Government or the government of Macau)";

(b) paragraph (a)(ii)—

Repeal

"(other than any other part of the People's Republic of China)"

Substitute

"(other than the Mainland or Macau)".

5. Section 3 amended (application)

Section 3(1)—

Repeal

"between Hong Kong and any other part of the People's Republic of China"

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Bill 2019

Part 3 Clause 5

4

Substitute

"between Hong Kong and the Mainland or between Hong Kong and Macau".

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Bill 2019

Explanatory Memorandum Paragraph 1

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Explanatory Memorandum

The main purposes of this Bill are—

- (a) to amend the Fugitive Offenders Ordinance (Cap. 503) (*FOO*) so that arrangements for the surrender of fugitive offenders made between Hong Kong and any place other than the Mainland or Macau may be given effect; and
- (b) to amend the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (*MLAO*) so that arrangements for mutual legal assistance made between Hong Kong and any place other than the Mainland or Macau may be given effect.

Amendments to FOO

- 2. Currently, arrangements for the surrender of fugitive offenders (*surrender arrangements*), not being such arrangements made between Hong Kong and other parts of the People's Republic of China (*PRC*), may be given effect under the FOO.
- 3. Clause 3 amends section 2(1) of the FOO so that arrangements for the surrender of fugitive offenders made between Hong Kong and any place other than the Mainland or Macau may be given effect.

Amendments to MLAO

- 4. Currently, arrangements for mutual legal assistance, not being such arrangements made between Hong Kong and other parts of the PRC, may be given effect under the MLAO.
- 5. Clause 4 amends section 2(1) of the MLAO (see the amended definition of *arrangements for mutual legal assistance*), and clause 5 amends section 3(1) of the MLAO, so that arrangements

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Bill 2019

Explanatory Memorandum Paragraph 5

6

for mutual legal assistance made between Hong Kong and any place other than the Mainland or Macau may be given effect.

《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條例草案》

根據《香港特別行政區立法會議事規則》 第 51(2)條簽發的證明書

本人認為《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條例草案》符合議事規則第50條的規定及香港法例的一般格式。



法律草擬專員 莊綺珊

2019年7月5日

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Bill 2019

Certificate under Rule 51(2) of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region

I am of the opinion that the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Bill 2019 conforms to the requirements of Rule 50 and the general form of Hong Kong legislation.

(Ms Theresa Johnson) Law Draftsman

5 July 2019

立法會參考資料摘要

《逃犯條例》(第 503 章) 《刑事事宜相互法律協助條例》(第 525 章)

《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條例草案》

引言

1. 立法會議員張超雄擬向立法會提交《2019年逃犯及刑事事宜相互法律協助法例(修訂)(第2號)條例草案》,旨在使香港能與大陸或澳門除外的地方作出移交逃犯安排及刑事司法互助。

理據

現行制度

- 2. 2018年2月,一名香港女子與一名香港另子一同前往台灣,期間該名女子遭該名男子殺害,該名男子事後逃回香港。
- 3. 由於香港與台灣之間尚未簽訂任何移交逃犯或刑事司法互助協議,因此 不能根據《逃犯條例》(第 503 章)及《刑事事宜相互法律協助條例》 (第 525 章)將疑犯移交台灣的執法和司法機構調查及審訊。
- 4. 行政長官會同行政會議於 2019 年 3 月 26 日,通過《2019 年逃犯及刑事事宜相互法律協助法例(修訂)條例草案》(下稱「政府草案」),並於4月3日的立法會會議上動議首讀及二讀,以及計劃在6月12日的立法會會議上恢復二讀辯論。
- 5. 可是,政府草案引起巨大的社會矛盾及紛爭,包括6月9日出現大型遊行,及6月12日的示威活動出現嚴重衝突。6月15日,政府收回就條例草案恢復二讀辯論的預告。
- 6. 為了處理港人在台殺人案,修訂《逃犯條例》(第 503 章)及《刑事事 宜相互法律協助條例》(第 525 章),把兩條條例對台灣的地理限制移除, 相信會得到香港市民、本地及外國商會以及外國政府接受。

建議

- 7. 本人建議修訂《逃犯條例》和《刑事事宜相互法律協助條例》,使香港 能與大陸或澳門除外的地方作出移交逃犯安排及刑事司法互助。
- 8. 本人的主要建議如下:

《逃犯條例》

(a) 修訂移交逃犯安排的定義,以使香港能與大陸或澳門除外的地方,即包括台灣,作出移交安排。

《刑事事宜相互法律協助條例》

(b) 修訂相互法律協助的安排的定義及條例的適用範圍,以使該條例適 用於香港與大陸或澳門除外的地方之間的協助請求。

修訂條例草案

- 9. 修訂條例草案的主要條文載列如下:
 - (a) 草案第 3 條修訂《逃犯條例》第 2(1) 條,以使香港能與大陸或澳門除外的地方作出移交安排;
 - (b) 草案第 4 條修訂《刑事互助條例》第 2(1) 條 (見經修訂的相互 法 律協助的安排的定義),而草案第 5 條則修訂《刑事互助條 例》 第 3(1) 條,以使該條例適用於香港與大陸或澳門除外的地方之間的協助請求。

查詢

如對本摘要有任何查詢,請與立法會議員張超雄聯絡。

立法會議員張超雄2019年6月

LEGISLATIVE COUNCIL BRIEF

Fugitive Offenders Ordinance (Chapter 503)
Mutual Legal Assistance in Criminal Matters Ordinance (Chapter 525)

FUGITIVE OFFENDERS AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS LEGISLATION (AMENDMENT) (No. 2) BILL 2019

INTRODUCTION

1. Legislative Council Member Fernando Cheung Chiu-hung intends to introduce the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) (No. 2) Bill to the Legislative Council (LegCo), to make Hong Kong able to have the arrangements for the surrender of fugitive offenders and mutual legal assistance in criminal matters with any place other than the Mainland or Macau.

JUSTIFICATIONS

Current regime

- 2. In February 2018, a Hong Kong woman travelled to Taiwan accompanied by a Hong Kong man, during her trip she was murdered by the said man. He escaped to Hong Kong after the incident.
- 3. Since Hong Kong and Taiwan have not signed any extradition and/or mutual legal assistance in criminal matters agreement, the SAR government was unable to transfer the suspect under the Fugitive Offenders Ordinance (Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap, 525) to Taiwan for investigation and trial by Taiwanese law enforcement agencies and judiciary.
- 4. On 26 March 2019, the Chief Executive in Council passed the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Ordinance (Amendment) Bill 2019 (the "government bill"), introduced the bill at the LegCo Meeting on 3 April for first and second reading, and planned to resume the bill's second reading on 12 June.

- 5. However, the government bill has led to huge controversy and disputes, include a large public procession on June 9, and the serious conflicts broke out in the protests on June 12. On June 15, the Government withdrew the notice of resumption for the bill's second reading.
- 6. To handle the Taiwan homicide case, amend the Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance, to remove the geographical restriction on Taiwan in the two ordinances. Hong Kong citizens, chambers of commerce both local and foreign, and foreign governments are more likely to accept this solution.

Proposals

- 7. I suggest making amendments to the Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance, to make Hong Kong able to have the arrangements for the surrender of fugitive offenders and mutual legal assistance in criminal matters with any place other than the Mainland or Macau.
- 8. My key proposals are as follows –

In the Fugitive Offenders Ordinance

(a) to amend the definition of arrangements for the surrender of fugitive offenders, to make Hong Kong able to have the arrangements for the surrender of fugitive offenders with any place other than the Mainland or Macau.

In the the Mutual Legal Assistance in Criminal Matters Ordinance

(b) to amend the definition of arrangements for mutual legal assistance and the scope of application of the Ordinance, so that the ordinance applies to requests for assistance between Hong Kong and any place other than the Mainland or Macau.

THE AMENDMENT BILL

- 9. The main provisions of the Amendment Bill are set out below
 - (a) Clause 3 amends section 2(1) of the FOO so that arrangements for the

- surrender of fugitive offenders made between Hong Kong and any place other than the Mainland or Macau may be given effect.
- **(b)** Clause 4 amends section 2(1) of the MLAO (see the amended definition of arrangements for mutual legal assistance), and clause 5 amends section 3(1) of the MLAO, so that arrangements for mutual legal assistance made between Hong Kong and any place other than the Mainland or Macau may be given effect.

Enquiries

For enquiries concerning this brief, please contact Legislative Council Member Fernando Cheung Chiu-hung.

Legislative Council Member Fernando Cheung Chiu-hung. June 2019