

立法會

Legislative Council

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**Paper for the House Committee Meeting
on 12 April 2019**

Legal Service Division Report on Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019

I. SUMMARY

- 1. The Bill**

The main purposes of the Bill are to:

 - (a) amend the Fugitive Offenders Ordinance (Cap. 503) in relation to special surrender arrangements (that relate to particular circumstances not covered by surrender arrangements which are the subject of an order under section 3(1)) made between Hong Kong and any other place so that the arrangements, once made, may be given effect according to the procedures in Cap. 503 and any further protection for the surrender of a person as may be provided for by the arrangements; and
 - (b) amend the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) so that arrangements for mutual legal assistance made between Hong Kong and any place outside Hong Kong (including any other part of the People's Republic of China) may be given effect.
- 2. Public Consultation**

The Security Bureau invited the public to express views on the proposals from 12 February to 4 March 2019. About 4 500 written submissions were received, including about 3 000 in support and about 1 400 in opposition to the proposals.
- 3. Consultation with LegCo Panel**

The Panel on Security was briefed on 15 February 2019 on the legislative proposals. Members expressed various concerns on the proposals.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to revise the existing mechanisms for the surrender of fugitive offenders and the provision of mutual legal assistance in criminal matters, Members may consider forming a Bills Committee to examine the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 3 April 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: SB CR 1/2716/19) issued by the Security Bureau in March 2019 for further details.

Object of the Bill

2. The main purposes of the Bill are to:
 - (a) amend the Fugitive Offenders Ordinance (Cap. 503) in relation to special surrender arrangements (that relate to particular circumstances not covered by surrender arrangements which are the subject of an order under section 3(1)) made between Hong Kong and any other place so that the arrangements, once made, may be given effect according to the procedures in Cap. 503 and any further protection for the surrender of a person as may be provided for by the arrangements; and
 - (b) amend the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) so that arrangements for mutual legal assistance made between Hong Kong and any place outside Hong Kong (including any other part of the People's Republic of China ("PRC")) may be given effect.

Background

3. Cap. 503 and Cap. 525 were enacted in 1997 to provide for the statutory frameworks for the surrender of fugitive offenders ("SFO") and the arrangements for mutual legal assistance in criminal matters ("MLA") respectively. In gist, Cap. 503 provides for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence in respect of relevant offences against the laws of those places,¹ and for the treatment of persons surrendered from such places to Hong Kong. Cap. 525 regulates the provision and obtaining of assistance in the investigation and prosecution of criminal offences between Hong Kong and places outside Hong Kong. Currently, Hong Kong has signed MLA agreements with 32 jurisdictions and SFO agreements with 20 jurisdictions. At present, Cap. 503 and Cap. 525 are not applicable to SFO and

¹ For the purposes of Cap. 503, a relevant offence against the laws of places outside Hong Kong is one punishable with imprisonment for more than 12 months and among those 46 items of any of the descriptions specified in Schedule 1 to Cap. 503.

MLA requests between Hong Kong and other parts of PRC (which includes Taiwan and Macau).²

4. According to paragraph 9 of the LegCo Brief, the Administration proposes to amend Cap. 503 and Cap. 525 to tackle a homicide case that occurred in Taiwan in early 2018 involving a Hong Kong resident ("Taiwan homicide case") and to strengthen Hong Kong's cooperation mechanism in criminal and juridical assistance matters.

Provisions of the Bill

Proposed amendments to the Fugitive Offenders Ordinance (Cap. 503)

Special arrangements for the surrender of fugitive offenders

5. Under section 3(1) of Cap. 503, the Chief Executive in Council ("CE in C") may, in relation to any arrangements for SFO, by order reciting or embodying the terms of the arrangements, direct that the procedures for SFO in Cap. 503 apply between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications contained in the order. Pursuant to section 3(2) and (3), such order is required to be tabled in LegCo which may repeal it by resolution. An order under section 3(1) of Cap. 503 that is in force is referred to as "prescribed arrangements" in Cap. 503. These arrangements are applicable between the Government of the Hong Kong Special Administrative Region ("HKSAR Government") and the government of a place outside Hong Kong (other than the Central People's Government ("CPG") or the government of any other part of PRC), or between Hong Kong and a place outside Hong Kong (other than any other part of PRC).

6. Clause 3 of the Bill seeks to amend section 2(1) of Cap. 503 to expand the definition of "prescribed arrangements" to cover special surrender arrangements, in addition to arrangements which are the subject of an order under section 3(1). Under the Bill, special surrender arrangements ("SSAs") would apply between the HKSAR Government and the government of any place outside Hong Kong, including CPG or the government of any other part of PRC, or between Hong Kong and any place outside Hong Kong, including any other part of PRC, and they are made for the purposes of the surrender in particular circumstances of particular person(s) wanted for prosecution, or for the imposition or enforcement of a sentence in respect of an offence that is not covered by SFO arrangements implemented by an order made under section 3(1) of Cap. 503.

² According to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), "People's Republic of China" includes Taiwan, the Hong Kong Special Administrative Region and Macau.

7. Clause 4 of the Bill seeks to add a new section 3A to Cap. 503 to provide for a mechanism by which the procedures in Cap. 503 would apply in relation to SSAs. Under the new section 3A(2), a certificate issued by or under the authority of the Chief Executive ("CE") (annexing a copy of SSAs) stating that there are SSAs in respect of a person and the procedures in Cap. 503 apply would be conclusive evidence of these matters. The effect of the new section 3A, if passed, is that the procedures in Cap. 503 would apply in relation to SSAs without the need for making an order under section 3(1) or other subsidiary legislation. Among the existing procedures in Cap. 503 that would apply to SSAs include the proceedings for committal,³ application for habeas corpus and other safeguards.⁴ In addition to the procedures in Cap. 503, the relevant SSAs concerned may provide for further limits on the circumstances in which the person may be surrendered.

Scope of relevant offences covered by the special surrender arrangements

8. SSAs are proposed to have effect in respect of 37 of the 46 items of description of offences specified in Schedule 1 to Cap. 503 while nine items of offences (together with four other items of offences in Schedule 1⁵ to the extent that they relate to those nine excluded items) would be excluded (new section 3A(5) and (6)). The nine proposed excluded items of offences are those that relate to or are against (a) bankruptcy law or insolvency law; (b) the law relating to companies including offences committed by officers, directors and promoters; (c) securities and futures trading; (d) protection of intellectual property, copyrights, patents or trademarks; (e) environmental pollution or protection of public health; (f) control of exportation or importation of goods of any type or international transfer of funds; (g) unlawful use of computers; (h) fiscal matters, taxes or duties; and (i) false or misleading trade descriptions. Further, such offence should be one that is triable in Hong Kong on indictment and punishable with imprisonment, both in Hong Kong and the place outside Hong Kong to or from which a person may be surrendered ("the requesting party"), for more than three years or any greater punishment.

³ Upon the issuance of an authority to proceed by CE, the court shall conduct an open hearing to examine the evidence and circumstances of each case and whether the surrender request complies with the requirements under Cap. 503 and relevant arrangements. A judge may then decide whether to make an order of committal (section 10 of Cap. 503).

⁴ Other safeguards include refusal of requests for SFO where the offence concerned is of a political character, the request has been made for the purpose of prosecuting or punishing the fugitive on account of his race, religion, nationality or political opinions (section 5 of Cap. 503), and an order for surrender may only be made where the offence is punishable by death under the law of the requesting party, if the requesting party gives an assurance which satisfies the Chief Executive that death penalty will not be imposed or carried out (section 13(5) of Cap. 503).

⁵ These offences relate to possession or laundering of proceeds obtained from the commission of an offence; impeding the arrest or prosecution of a person who has or is believed to have committed an offence; conspiracy to commit an offence; aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit an offence.

Authentication of supporting documents

9. Under section 23 of Cap. 503, any supporting document or other document shall be deemed as duly authenticated and thus would be admissible in evidence in any proceedings under Cap. 503 without further proof if such document purports to be signed or certified by a judge, magistrate or officer of the requesting party and purports to be sealed with the official or public seal of a competent authority of the requesting party.

10. Clause 6 of the Bill seeks to add a new section 23(2A) to Cap. 503 to provide that the relevant document would also be deemed to be duly authenticated if it purports to be signed, certified, sealed, or otherwise authenticated, in a way provided for by the prescribed arrangements concerned.

Proposed amendments to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)

11. Section 4(1) of Cap. 525 provides that CE in C may, with the approval of LegCo, in relation to MLA, by order to which is annexed a copy of the arrangements direct that Cap. 525 shall, subject to such modifications thereto as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. Under section 2(1) of Cap. 525, "arrangements for mutual legal assistance" means arrangements which are applicable to (a) the HKSAR Government and the government of a place outside Hong Kong (other than CPG or the government of any other part of PRC); or (b) Hong Kong and a place outside Hong Kong (other than any other part of PRC), and for the purposes of the provision and obtaining of assistance in criminal matters between Hong Kong and that place. Section 3(1) of Cap. 525 provides that Cap. 525 shall not apply to the provision or obtaining of assistance in criminal matters between Hong Kong and any other part of PRC.

12. Clauses 8 and 9 of the Bill seek to amend the definition of "arrangements for mutual legal assistance" in section 2(1) of Cap. 525 and to repeal section 3(1) of Cap. 525 respectively. The effect of these amendments, if passed, is that Cap. 525 would apply to the provision or obtaining of assistance in criminal matters between the HKSAR Government and the government of any place outside Hong Kong (including CPG or the government of any other part of PRC) or between Hong Kong and any place outside Hong Kong (including any other part of PRC).

13. Clause 10 of the Bill seeks to add a new section 8(3) to Cap. 525 to provide that a request for assistance in criminal matters covered by bilateral MLA arrangements which are the subject of an order under section 4(1) of Cap. 525 may only be made pursuant to such bilateral arrangements.

Commencement

14. The Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

Public Consultation

15. According to paragraph 17 of the LegCo Brief, the Security Bureau invited the public to express views on the proposals from 12 February to 4 March 2019. About 4 500 written submissions were received, including about 3 000 in support and about 1 400 in opposition to the proposals.

Consultation with LegCo Panel

16. As advised by the Clerk to the Panel on Security, the Panel was briefed on the proposals on 15 February 2019. Members in general considered that the Government should provide juridical assistance in the Taiwan homicide case. Some members expressed support for the proposals to address the inadequacies of existing legislation. However, some members raised concern about the broadening of the applicability of Cap. 503 and Cap. 525 to other parts of PRC and suggested that the proposals should only be applicable to the Taiwan homicide case. Some members expressed concern about the procedural and human rights safeguards under the proposals. The Panel passed a motion expressing support for the proposals.

Conclusion

17. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to revise the existing mechanisms for SFO and the provision of MLA, Members may consider forming a Bills Committee to examine the Bill in detail.

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