



中華人民共和國香港特別行政區  
Hong Kong Special Administrative Region of the People's Republic of China



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By Fax (2524 3762)

30 November 2018

Ms LEE Ho-ki, Iris  
Principal Assistant Secretary for Security A  
Security Bureau  
A Division  
10/F, East Wing  
Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Ms LEE,

### **Fugitive Offenders (France) Order (L.N. 240)**

We are scrutinizing the legal and drafting aspects of the above Order and should be grateful if you would clarify the following matters.

#### General

In line with the usual practice, please provide an article-by-article comparison to highlight any discrepancies between the agreement for the surrender of accused or convicted persons entered into between Hong Kong and France and signed in Hong Kong on 4 May 2017 ("the Agreement"), and the model agreement previously endorsed by Members.

#### Article 2

It is noted that following the approach proposed in the note issued to the Panel on Security by the Security Bureau and the Department of Justice ("DoJ") in April 2005 (LC Paper No. CB(2)1409/04-05(02)) and subsequently adopted by the Fugitive Offenders (Czech Republic) Order (Cap. 503AI), Article 2 of the Agreement does not list the offences for which surrender is to be

granted under the Agreement, but requires each Party to inform the other in writing of the offences for which surrender may be granted under its law no later than the date on which it notifies the other Party that its requirements for the entry into force of the Agreement have been complied with. Please:

- (a) explain why paragraph 1 of Article 2 refers to "Surrender *shall* be granted for an offence", whereas paragraph 3 refers to "the offences for which surrender *may* be granted", bearing in mind that under section 4 of the Fugitive Offenders Ordinance (Cap. 503), a person in Hong Kong wanted in a prescribed place for prosecution or sentence *may* be arrested and surrendered to that place;
- (b) provide for our reference the list of offences which Hong Kong has provided to the Czech Republic under Cap. 503AI; and
- (c) confirm whether the list of offences set out in Schedule 1 to Cap. 503 will be provided to France under Article 2(3) of the Agreement.

#### Article 5

Under section 5(1)(c) and (d) of Cap. 503, a person shall not be surrendered to a prescribed place where he is likely to be prosecuted, prejudiced at his trial, or punished, detained or restricted in his personal liberty on account or by reason of his "race, religion, nationality or political opinions". Article 5(1)(b) and (c) of the Agreement, however, also refers to prosecution, punishment or prejudice on account of "sex" as an additional mandatory ground for refusing a request for surrender. Please explain why this additional ground is mentioned in Article 5, and whether "sex" is also intended to include sexuality or sexual orientation.

#### Articles 8 and 19

For the purposes of making a request for surrender, Article 8(1) identifies the competent authorities of the French Republic as "the judicial authorities", whereas Article 19(1) provides that a request for transit may be forwarded directly through "the Ministry of Justice of the French Republic". Under both Articles 8 and 19, the Hong Kong authority involved is DoJ. Please explain why different French authorities are involved under those two Articles.

The Order will be considered by the House Committee at its forthcoming meeting on 7 December 2018. Please let us have your reply in both English and Chinese **as soon as possible**.

Yours sincerely,



(Bonny LOO)  
Assistant Legal Adviser

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