

律政司
律政司司長辦公室

香港中環下亞厘畢道 18 號
律政中心中座 5 樓

網址: www.doj.gov.hk



DEPARTMENT OF JUSTICE
Secretary for Justice's Office

5/F, Main Wing, Justice Place,
18 Lower Albert Road, Central, Hong Kong

Web site: www.doj.gov.hk

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來函檔案 Your Ref:
電話號碼 Tel. No.: 3918 4117
傳真號碼 Fax No.: 3918 4119

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Mr Lemuel Woo
Clerk to Panel on Administration of
Justice and Legal Services
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

By E-mail
(yfwoo@legco.gov.hk)

Dear Mr Woo,

**Panel on Administration of Justice and Legal Services
Meeting on 24 June 2019
Agenda Item on
“Implementation of the recommendations made by the Law Reform
Commission of Hong Kong”**

The offence of “access to computer with criminal or dishonest intent”
under section 161 of the Crimes Ordinance (Cap 200)

At the above meeting, the Department of Justice (DoJ) was requested to provide supplementary information on the total number of cases related to the offence of “access to computer with criminal or dishonest intent” under section 161 of the Crimes Ordinance (Cap 200) which were affected by the judgment of the Court of Final Appeal handed down on 4 April 2019 in respect of the said provision (i.e. *Secretary for Justice v Cheng Ka Yee & 3 Others* [2019] HKCFA 9), and the ways in which the DoJ would handle these cases. Our reply is set out as follows for Members' reference.

With regard to the impact brought about by judgment in the *Cheng Ka Yee* case, the Security Bureau is working with the relevant departments to proactively examine the legislative amendment on the crime concerned. The DoJ has also been liaising closely with the law enforcement agencies to ensure that all cases potentially affected by the judgment in *Cheng Ka Yee* case are handled appropriately, such as examining whether to proceed with prosecution with the charge of “access to computer with criminal or dishonest intent”, or considering the feasibility of laying alternative charge(s). In the consideration of each case, the DoJ will make the relevant prosecutorial decision based on the existing applicable law, relevant facts, evidence and the Prosecution Code.

Since the Court of Final Appeal handed down the judgment of the *Cheng Ka Yee* case on 4 April 2019, as of 2 August 2019, the DoJ has handled a total of about 12 court cases relating to the offence of “access to computer with criminal or dishonest intent” that were affected by the judgment. The legal proceedings in 9 of these cases have concluded, whilst the legal proceedings in the other 3 cases are still on-going. The ways in which the DoJ handles / handled the abovementioned 12 cases are generally as follows:

- (1) In six cases, the prosecution applied for amending part of charges to others charges and proceeded with the amended charges;
- (2) In two cases, the prosecution applied to withdraw the charges of “access to computer with criminal or dishonest intent”, but proceeded with the remaining charge in each case¹;
- (3) In two cases, the prosecution offered no evidence, but applied to the courts for orders that the defendants be bound over by virtue of section 109I of the Criminal Procedure Ordinance (Cap 221) and section 61 of the Magistrates Ordinance (Cap 227). The courts granted the orders accordingly;

¹ In one of the cases, because a witness subsequently refused to testify in court, the prosecution offered no evidence in relation to the remaining charge and the charge was dismissed accordingly.

- (4) In two cases, in accordance with paragraph 10.1 of the Prosecution Code, the DoJ continually reviewed the prosecution that had been commenced, and considered that the evidence was no longer sufficient to justify a reasonable prospect of conviction. The prosecution was therefore discontinued and the charges were dismissed.

Yours sincerely,



(Hinz Chiu)
Administrative Assistant
to Secretary for Justice