

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1098/18-19

(These minutes have been seen  
by the Administration)

Ref : CB2/PL/SE

### **Panel on Security**

#### **Minutes of meeting**

**held on Friday, 15 February 2019, at 10:45 am  
in Conference Room 2 of the Legislative Council Complex**

**Members present** : Hon CHAN Hak-kan, BBS, JP (Chairman)  
Hon James TO Kun-sun (Deputy Chairman)  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon CHAN Kin-por, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon Frankie YICK Chi-ming, SBS, JP  
Hon YIU Si-wing, BBS  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon LEUNG Che-cheung, SBS, MH, JP  
Hon Kenneth LEUNG  
Hon KWOK Wai-keung, JP  
Hon Dennis KWOK Wing-hang  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Elizabeth QUAT, BBS, JP  
Hon POON Siu-ping, BBS, MH  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon CHAN Chun-ying, JP

Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Dr Hon CHENG Chung-tai  
Hon AU Nok-hin  
Hon Tony TSE Wai-chuen, BBS

**Members attending** : Hon WU Chi-wai, MH  
Dr Hon KWOK Ka-ki  
Hon SHIU Ka-fai

**Members absent** : Hon Michael TIEN Puk-sun, BBS, JP  
Hon MA Fung-kwok, SBS, JP  
Hon CHAN Han-pan, BBS, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Hon CHUNG Kwok-pan  
Hon SHIU Ka-chun  
Hon YUNG Hoi-yan

**Public Officers attending** : Item IV

Mr John LEE Ka-chiu, SBS, PDSM, PMSM, JP  
Secretary for Security

Ms Mimi LEE Mei-mei, JP  
Deputy Secretary for Security 1

Ms Iris LEE Ho-ki  
Principal Assistant Secretary for Security A

Mr Percy LEUNG Siu-to  
Assistant Secretary for Security A2

Mr Paul TSANG Keung, SBS  
Law Officer (International Law)  
Department of Justice

Ms Linda LAM Mei-sau  
Deputy Law Officer (Mutual Legal Assistance)  
Department of Justice

Ms Dora SI Yuk-fung  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Miss Betty MA  
Chief Council Secretary (2) 1

**Staff in attendance** : Mr Timothy TSO  
Senior Assistant Legal Adviser 1

Mr Raymond LAM  
Senior Council Secretary (2) 7

Ms Gloria TSANG  
Council Secretary (2) 1

Ms Kiwi NG  
Legislative Assistant (2) 1

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Action

**I. Confirmation of minutes of previous meeting**  
(LC Paper No. CB(2)704/18-19)

The minutes of the meeting held on 4 December 2018 were confirmed.

**II. Information papers issued since the last meeting**  
(LC Paper Nos. CB(2)683/18-19(01) and CB(2)728/18-19(01))

2. Members noted that the following papers had been issued since the last meeting:

(a) letter dated 16 January 2019 from Mr Alvin YEUNG; and

(b) Administration's response to issues raised in a joint email from Ms Claudia MO, Mr CHAN Chi-chuen, Mr CHU Hoi-dick and Mr AU Nok-hin.

3. Regarding paragraph 2(b) above, Mr CHU Hoi-dick expressed concern whether the visit of a delegation led by the Under Secretary for Security to Xinjiang in December 2018 on the subject of combating

Action

terrorist activities would be discussed by the Panel and whether the Administration would arrange a similar visit for the Panel.

**III. Date of next meeting and items for discussion**

(LC Paper Nos. CB(2)767/18-19(01) and (02))

Regular meeting in March 2019

4. Members agreed that the following items would be discussed at the next regular meeting on 5 March 2019 at 2:30 pm:

- (a) Next generation electronic passport;
- (b) Development of "Smart Prison" by the Correctional Services Department; and
- (c) The "Animal Watchers" Scheme of the Police and the Administration's cooperation with multiple agencies in the prevention of cruelty to animals.

*(Post-meeting note: At the request of the Administration and with the agreement of the Chairman, the items in paragraph 4 (b) and (c) above were deferred to a future meeting to allow sufficient time for discussion of two agenda items deferred subsequently from this meeting to the meeting on 5 March 2019.)*

**IV. Cooperation between Hong Kong and other places on juridical assistance in criminal matters**

(LC Paper Nos. CB(2)767/18-19(03) and (04))

5. Secretary for Security ("S for S") briefed Members on the current regime on cooperation between Hong Kong and other places on juridical assistance in criminal matters and the Administration's proposals to improve relevant legislation which were under consideration by the Administration.

6. Members noted an information note entitled "Cooperation between Hong Kong and other places on juridical assistance in criminal matters" prepared by the Legislative Council ("LegCo") Secretariat.

Action

7. Members noted the following letter and email which were tabled at the meeting:

- (a) joint letter dated 13 February 2019 from Mr Dennis KWOK and Mr Alvin YEUNG suggesting the holding of a joint meeting with the Panel on Administration of Justice and Legal Services ("the AJLS Panel") to discuss the Administration's proposals and invite representatives from the Judiciary, the Hong Kong Bar Association and the Law Society of Hong Kong to attend the meeting; and
- (b) email dated 13 February 2019 from a member of the public on the Administration's proposals.

*(Post-meeting note: The joint letter and the email were circulated to members vide LC Paper No. CB(2)813/18-19 on 18 February 2019.)*

Inadequacies in existing legislation

8. Referring to paragraph 7(a) of the Administration's paper, Mr HUI Chi-fung said that under the Fugitive Offenders Ordinance (Cap. 503) ("FOO"), the scrutiny by LegCo of an one-off "case-based" arrangement could be held in closed doors so that information about the relevant case would not be disclosed to the public.

9. Mr Kenneth LEUNG said that under the existing "case-based" approach, the disclosure of case information could be avoided by including very brief information in the subsidiary legislation concerned, such as merely stating that it was a surrender of fugitive offender ("SFO") request from a certain jurisdiction.

10. S for S responded that details relating to an SFO request would inevitably be publicly disclosed when the relevant subsidiary legislation was published in the Gazette under the existing regime.

11. Mr CHAN Chun-ying expressed concern about a case in which a Hong Kong resident alleged of murdering another Hong Kong resident in Taiwan had returned to Hong Kong ("the Taiwan homicide case"), but the request for surrendering the person to Taiwan for trial could not be acceded to because of inadequacies in the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLAO") and FOO and said that he supported the Administration's proposals.

Action

12. Dr Elizabeth QUAT said that the Democratic Alliance for the Betterment and Progress of Hong Kong supported the Administration's proposals. The Taiwan homicide case revealed the inadequacies of existing legislation. There was a pressing need to introduce the proposed legislative amendments to address such inadequacies and enable the Administration to provide juridical assistance to Taiwan in the Taiwan homicide case.

13. Mr KWOK Wai-keung said that there was an urgent need to address the problems encountered in the provision of juridical assistance in the Taiwan homicide case. The Administration's proposals, which were directed at serious offences, should be enacted as soon as possible to address inadequacies in existing legislation.

14. Mr CHEUNG Kwok-kwan expressed concern that Hong Kong could not provide juridical assistance to Taiwan in the Taiwan homicide case because of inadequacies in existing legislation. He noted from paragraph 10(a) of the Administration's paper that even after an authority to proceed had been issued by the Chief Executive ("CE"), the court had the power to refuse the surrender of a person. He expressed support for the Administration's proposals and sought information on the consequences of not implementing the proposals.

15. S for S responded that if the Administration's proposals were not implemented, the Administration would be unable to provide juridical assistance in the Taiwan homicide case. Besides the case, there were four other SFO requests which could not be dealt with under existing legislation. These included three SFO requests involving homicide cases in which the victims were Hong Kong residents. Among these three cases, two suspects were still on the Mainland and one suspect was still in another jurisdiction. There was also a case in which a Hong Kong resident alleged of kidnapping in another jurisdiction could not be surrendered to that jurisdiction. He said that allowing offenders of serious crime to seek refuge in Hong Kong without the means to handle them would pose a serious threat to public order and public safety in Hong Kong.

Scope of jurisdictions covered in the Administration's proposed legislative amendments

16. Dr CHENG Chung-tai queried why the Administration's proposals were not confined to Taiwan but covered any other parts of the People's

Action

Republic of China ("PRC"), given that the Administration's proposals originated from the Taiwan homicide case.

17. Ms Claudia MO expressed concern that the Administration's proposals would broaden the applicability of MLAO and FOO to other parts of PRC. She said that many people lacked confidence in the legal system of the Mainland. To enable Hong Kong to provide juridical assistance in the Taiwan homicide case, the Administration's proposals should be narrowed to requests for mutual legal assistance in criminal matters ("MLA") and SFO between Hong Kong and Taiwan.

18. S for S responded that narrowing the applicability of the Administration's proposals to Taiwan would only partially address the inadequacies in existing legislation. He said that similar requests might be received later from another jurisdiction with which Hong Kong had not signed any SFO agreement. The Administration proposed to remove the limitation in existing legislation to provide a legal basis for instituting "case-based" MLA and SFO cooperation between Hong Kong and other jurisdictions with which Hong Kong had not entered into MLA or SFO agreements. S for S also supplemented that under the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO"), PRC included Taiwan, the Hong Kong Special Administrative Region ("HKSAR") and Macau.

*[The Chairman issued a verbal warning to the Deputy Chairman at 11:12 am for continuously interrupting S for S's reply.]*

19. Mr AU Nok-hin said that the Administration's proposals reflected its total disregard of the ongoing discussions between the Mainland and Hong Kong since 1998 and the principles adopted in such discussions. S for S responded that the Administration's proposals, which allowed one-off "case-based" surrender to jurisdictions with which it had not signed SFO agreements, was a separate issue from ongoing discussions with the Mainland on long-term SFO arrangements.

20. The Deputy Chairman said that he was familiar with the subject of SFO and the general principles under FOO. As an agreement between Hong Kong and the Mainland on SFO arrangements had not yet been reached despite more than 20 years' discussions, he was surprised by the Administration's proposals, which might affect each individual in Hong Kong and undermine the rule of law. Its impact far exceeded that of legislation to implement Article 23 of the Basic Law ("BL"). He said that instead of implementing the current proposals, the Administration

Action

should seek the consent of the Central People's Government for entering into an SFO agreement with Taiwan.

21. S for S responded that the Administration's proposals sought to address inadequacies in existing legislation and cover all jurisdictions with which Hong Kong had not signed SFO agreements. He stressed that a "case-based" SFO regime was already in place in many common law jurisdictions such as Australia, Canada, Ireland, New Zealand, South Africa and the United Kingdom ("UK"). The Administration's proposals incorporated all existing safeguards on human rights under existing legislation, and additional safeguards could also be imposed in the case-based arrangement. He added that PRC had entered into SFO agreements with 55 jurisdictions, including Australia, France, Italy, Portugal, South Africa and Spain. It had also signed MLA agreements with 64 jurisdictions, including Canada, Japan, UK and the United States of America ("USA").

*[The Chairman issued the second verbal warning to the Deputy Chairman at 11:33 am for continuously interrupting S for S's reply.]*

22. Mr Alvin YEUNG said that many Hong Kong residents lacked confidence in the Mainland judicial system. The Administration's proposals would provide CE with too much power in SFO to other jurisdictions. He recalled that the Department of State of USA had stated in a report in 2018 that CE had refused an SFO request from USA because of political pressure. He expressed concern that CE might accede to an SFO request from the Mainland because of political pressure. He considered that to enable the provision of juridical assistance in the Taiwan homicide case, the Administration should merely confine the applicability of its proposals to Taiwan. He said that a person could be easily alleged of committing on the Mainland an offence falling within the 46 descriptions specified in Schedule 1 to FOO.

23. Dr KWOK Ka-ki said that the Administration's proposals would open a loophole by allowing CE to decide whether to accede to an SFO request. He expressed concern that the Administration's proposals would allow the Mainland to make a request for surrender of a person in Hong Kong on the ground that the person had breached Mainland laws. If the Administration's objective was merely to provide juridical assistance in the Taiwan homicide case, its proposals should be confined to SFO requests between Hong Kong and Taiwan.

Action

24. Mr Dennis KWOK said that the former Secretary for Justice had said at the AJLS Panel meeting on 20 October 1998 that owing to the different legal systems between Hong Kong and the Mainland, particularly in relation to capital punishment, a bilateral SFO agreement across the boundary had yet to be reached. The former SJ had also said that cross-boundary crimes were a matter of great concern and any agreement would have to be in the interest of justice both in Hong Kong and the Mainland. Mr KWOK queried whether there had been any change in relation to such issues since 1998. He added that according to the latest World Justice Report, PRC was ranked 108 in human rights protection. He queried how the human rights of an offender surrendered to the Mainland would be safeguarded and whether the offender would receive a fair trial on the Mainland.

25. Dr Fernando CHEUNG said that the Administration should seek to provide juridical assistance in the Taiwan homicide case to enable the surrender of the suspect concerned. However, the scope of the Administration's proposals should be confined to Taiwan.

26. Dr Priscilla LEUNG said that there was an urgent need to address the problems encountered in the provision of juridical assistance in the Taiwan homicide case. Legislative amendments to address inadequacies in existing legislation should not be confined to any particular jurisdiction.

27. Mr SHIU Ka-fai expressed concern that owing to inadequacies in existing legislation, fugitive offenders could not be surrendered in at least three homicide cases. He said that the issue in question was not whether the proposed "case-based" arrangement should be applicable to other parts of PRC, but whether it should be applicable to all jurisdictions with which Hong Kong had not signed SFO agreements.

28. S for S responded that CE's power under FOO had to be exercised in compliance with the laws of Hong Kong. The crime concerned in an SFO request must be among the 46 descriptions of offences specified in Schedule 1 to FOO and subject to the rule of double criminality. The person to be surrendered could raise to the court any possible threat to his human rights that might arise after the surrender. He stressed that it was inappropriate to confine the Administration's proposals to a single jurisdiction, as similar requests might be received in future from other jurisdictions with which Hong Kong had not signed SFO agreements.

Action

29. S for S added that whereas discussions between Hong Kong and the Mainland on a long-term SFO agreement was still ongoing, the Administration's proposals involved improvement to the existing "case-based" SFO arrangement and making it applicable to any jurisdiction with which Hong Kong had not entered into long-term SFO agreement. He stressed that all human rights and procedural safeguards under FOO would remain unchanged.

30. Mr HUI Chi-fung said that he opposed to the Administration's proposals. He queried the intent of the Administration's proposals and said that many people in Hong Kong lacked confidence in the judicial system of the Mainland. The Administration's proposals would place Hong Kong residents in a dangerous position as the Mainland could allege that a certain person in Hong Kong had breached Mainland laws and make an SFO request to Hong Kong for surrender of the person to the Mainland.

31. S for S responded that statistics of 2011 indicated that there were some 170 000 Hong Kong residents working on the Mainland and the daily number of Hong Kong residents travelling to the Mainland was around 200 000 to 300 000. Such people would not have done so if they had no confidence in the Mainland judicial system. He said that if a "case-based" approach was implemented in other common law jurisdictions, he could not see why the proposed "case-based" arrangement could not be implemented in Hong Kong.

32. Mr WONG Kwok-kin said that a "case-based" SFO regime and the establishment of a long-term SFO agreement with the Mainland were separate issues. The Hong Kong Federation of Trade Unions supported the Administration's proposals. He asked whether there was any time limit for making an SFO request. S for S responded that there was no time limit for making an SFO request, but the request would have to be made within the time limit for instituting prosecution in relation to specific offences in the requesting jurisdiction.

*[The Chairman issued a verbal warning to Mr HUI Chi-fung at 12:14 pm for continuously interrupting S for S's reply.]*

33. Dr Priscilla LEUNG said that to her knowledge, the Mainland and Taiwan had entered into some form of agreement on surrender of offenders. Mr Kenneth LEUNG said that to his knowledge, the SFO agreement between the Mainland and Taiwan was only applicable to

Action

illegal immigrants. S for S responded that relevant agreement between the Mainland and Taiwan included the "海峽兩岸共同打擊犯罪及司法互助協議".

34. Ms Claudia MO queried whether the relevant authorities of Taiwan would be willing to accept the juridical assistance provided by Hong Kong in the Taiwan homicide case, if the juridical assistance was provided on the premise that Taiwan was a part of PRC.

35. Mr Paul TSE said that it had long been set out in IGCO that PRC included Taiwan, HKSAR and Macau.

36. Mr CHAN Chi-chuen said that the proposed "case-based" arrangement was worse than a long-term SFO agreement. Taiwan authorities might not proceed with its SFO request in the Taiwan homicide case, if it was aware that the legislative amendments concerned was based on the premise that Taiwan was a part of PRC. He said that the Administration should seek to provide juridical assistance in the Taiwan homicide case with less controversial proposals.

37. S for S stressed that the Administration's proposed "case-based" arrangement only sought to enable the provision of juridical assistance to jurisdictions with which Hong Kong had not signed MLA or SFO agreements. The provision of juridical assistance to any jurisdiction under the "case-based" approach would only involve matters relating to the case concerned. He pointed out that after receiving the request in the Taiwan homicide case, the Administration could have chosen to take no action and replied to the Taiwan authorities that juridical assistance could not be provided under existing legislation. Nevertheless, the Security Bureau ("SB") and the Department of Justice ("DoJ") had put much effort in conducting a comprehensive study on overseas experience, including those of other common law jurisdictions such as Canada and UK, with a view to addressing inadequacies in existing legislation and providing juridical assistance in the Taiwan homicide case.

38. Mr CHU Hoi-dick said that the non-applicability of MLA and SFO to other parts of PRC was a firewall rather than inadequacy in legislation. He queried the intent of the proposed legislative amendments and expressed concern that the Administration was taking the opportunity arising from the Taiwan homicide case to extend the applicability of MLA and SFO to other parts of PRC. He asked whether the Administration would inform Taiwan authorities of such extension.

Action

39. S for S responded that there was no need for Hong Kong to seek the views of other jurisdictions on its proposed amendments to local legislation. He reiterated that the Administration's proposals were not directed at any single jurisdiction, but all jurisdictions with which Hong Kong had not signed any SFO agreement. He said that liaison with Taiwan authorities on the Taiwan homicide case was only related to the case itself.

Procedural and human rights safeguards

40. Noting from the Administration's paper that SFO requests in relation to offences of a political character should be refused, Dr CHENG Chung-tai asked whether the Administration had sought legal advice on how to determine whether an offence was of a political character. S for S responded that whether an offence was of a political character would depend on the circumstances of each case. There were many precedents in other common law jurisdictions which could assist the court in determining whether an offence was of a political character.

41. Mr Jimmy NG asked whether the procedural safeguards in relation to SFO included broadly the following :

- (a) upon the issuance of an authority to proceed by CE, the court would conduct an open hearing to carefully examine the evidence and circumstances of each case and whether the surrender request fully complied with the requirements and human rights safeguards under FOO. A judge would, after considering the case in accordance with the law, decide whether to make an order of committal;
- (b) the person concerned could also apply for *habeas corpus* and lodge an appeal if his application was not successful;
- (c) if the person concerned made a torture claim, the surrender would be suspended until the claim had finally been determined and the absence of any torture risk had been confirmed; and
- (d) the person concerned could institute proceedings for judicial review against the order for his surrender.

Action

42. S for S replied in the affirmative. He stressed that a fugitive offender could not be surrendered without an order of committal made by court in accordance with the law.

43. Dr Priscilla LEUNG said that SFO requests were directed at serious offences and there were general principles aimed at safeguarding human rights in relation to such requests. Persons to be surrendered were subject to the double criminality principle, under which the crime concerned must constitute an offence in both jurisdictions. SFO requests in relation to offences of a political character would be refused. For an offence punishable with death penalty, the requesting party was required to assure that such penalty would not be imposed.

*[To allow sufficient time for discussion, members agreed that the meeting would be extended until all business under agenda item IV, including the motions proposed respectively by four members under the item, had been dealt. Members also agreed that agenda items V and VI would be deferred to the meeting on 5 March 2019.]*

44. Mr Paul TSE said that for many years, inadequacies in FOO had prevented SFO between Hong Kong and jurisdictions with which it had not signed SFO agreements. He noted that under the Administration's proposals, which involved one-off "case-based" arrangement, there were various procedural and human rights safeguards which had been set out in paragraph 5 of the Administration's paper. He said that the judicial system of the Mainland was at least better than that of the Philippines.

45. Mr Holden CHOW expressed support for the Administration's proposals. He said that he and Ms Starry LEE had been providing assistance to family members of the victim in the Taiwan homicide case and fully noted the serious impact of the case on the victim's family members. He sought information on the safeguards provided in the Administration's proposals.

46. Mr SHIU Ka-fai noted that after the issuance by CE of an authority to proceed with an SFO request, it was the court which decided whether to make an order of committal. He asked whether a person in Hong Kong could be easily surrendered to the Mainland for alleged economic crime.

47. S for S responded that all existing safeguards on human rights under FOO would be maintained in the Administration's proposals. These included the requirement that the crime concerned must constitute

Action

an offence in both jurisdictions. For SFO cases, the crime concerned must also be among the offences within the 46 descriptions specified in Schedule 1 to FOO. Requests in relation to offences of a political character would be refused. Requests involving persons being prejudiced or prosecuted/punished on account of his race, religion, nationality or political opinions would also be refused. The person to be surrendered could also apply for *habeas corpus* and lodge an appeal if his application was not successful.

48. Mr YIU Si-wing expressed support for the Administration's proposals and said that inadequacies in existing legislation should not be left unaddressed. He asked whether SFO requests were required to be supported by substantive evidence and information.

49. S for S responded that under section 10(6)(b)(iii) of FOO, the court had to be satisfied that the evidence in relation to the offence concerned would be sufficient to warrant the person's committal for trial according to the laws of Hong Kong if the offence had been committed within the jurisdiction of that court or any other court. The person to be surrendered or his lawyer could defend his case in court.

50. Mr WU Chi-wai asked about the actions to be taken by the Administration, if a person did not receive a fair trial after being surrendered to the requesting jurisdiction or was prosecuted for offences other than those listed in the SFO request. S for S responded that under FOO, a person would not be surrendered if it appeared that the person would be prosecuted for offences other than those in respect of which the surrender was sought or if the trial would be conducted in the absence of the person. According to experience, no requesting party had violated such requirements. He stressed that the safeguards under FOO were applicable to all SFO requests.

Jurisdictions with which Hong Kong had signed agreements on MLA and SFO

51. Referring to paragraph 2 of the Administration's paper, Mr CHAN Chun-ying asked why Hong Kong had so far only signed MLA agreements with 32 jurisdictions and SFO agreements with 20 jurisdictions since 1997. He sought information on the SFO mechanism before 1997 and queried why there were still many jurisdictions with which Hong Kong had not entered into MLA and SFO agreements. S for S responded that before PRC resumed the exercise of sovereignty

Action

over Hong Kong in July 1997, SFO requests were dealt with in accordance with the system of the UK. After July 1997, the HKSAR Government had made appropriate arrangements with other jurisdictions for reciprocal juridical assistance in accordance with Article 96 of BL.

52. Dr Elizabeth QUAT said that besides the proposals in the Administration's paper, the Administration should seek to enter into long-term MLA and SFO arrangements with the Mainland. She asked whether there was a timetable for the signing of a long-term agreement with the Mainland on such arrangements. S for S said that while the proposed one-off "case based" arrangement was an interim measure, the Administration's objective was to enter into long-term arrangements on MLA and SFO with other jurisdictions, some of which were in the process of negotiations. The process, which involved lengthy discussions, the signing of relevant agreements and respective legislative processes by both sides, had inevitably taken a long time. Dr QUAT requested the Administration to provide a list of jurisdictions with which negotiations were being conducted on MLA and SFO arrangements and a list of jurisdictions with which negotiations on such arrangements were planned in future.

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53. Mr POON Siu-ping said that the introduction of legislative amendments to address inadequacies in existing legislation was a normal process. Noting that Hong Kong had only signed MLA and SFO agreements with 32 and 20 jurisdictions respectively since 1997, he asked whether the slow progress in signing such agreements with other jurisdictions was due to a lack of sufficient relevant manpower in DoJ. S for S responded that the time taken for Hong Kong to negotiate and sign MLA and SFO agreements with other jurisdictions, which ranged from a few years to more than 20 years, was affected by a number of factors. These included the priority accorded by the respective jurisdictions to the signing of such agreements, their legal systems and sometimes whether there was a change in government in these jurisdictions in the negotiation process.

Statistics on SFO requests received from and made to other jurisdictions

54. Referring to paragraph 3 of the Administration's paper, Mr CHAN Chun-ying sought information on the respective numbers of SFO requests received from and made to other jurisdictions with which Hong Kong had not entered into SFO agreements.

Action

55. S for S responded that since Hong Kong's return to the PRC, Hong Kong had refused at least eight SFO requests from jurisdictions with which Hong Kong had not signed SFO agreements. Regarding jurisdictions with which Hong Kong had signed SFO agreements, in the past ten years or so, Hong Kong had made 24 SFO requests to other jurisdictions, pursuant to which 11 persons had been surrendered to Hong Kong. Other jurisdictions, pursuant to their signed SFO agreements with Hong Kong, had made SFO requests to Hong Kong for the surrender of 66 persons, pursuant to which 23 persons had been surrendered to these jurisdictions. Discussions were still ongoing between the Mainland and HKSAR Government on the long-term MLA and SFO arrangements.

56. Mr Tony TSE noted the human rights and procedural safeguards referred to in paragraph 5 of the Administration's paper and expressed support for the Administration's proposals. He said that according to media reports, the Mainland had so far surrendered more than 200 fugitive offenders to Hong Kong. He sought information on the number of fugitive offenders surrendered from Hong Kong to the Mainland in the past.

57. S for S responded that surrender cases from the Mainland to Hong Kong had been conducted under an administrative arrangement. There had not been any SFO from Hong Kong to the Mainland.

Public consultation on the Administration's proposals

58. Mr AU Nok-hin asked whether the Administration had consulted the public on its proposals. S for S responded that SB was inviting public views on the Administration's proposals through its website until 4 March 2019.

59. Mr CHAN Chi-chuen said that the Panel should hold a meeting to receive public views on the subject before the relevant legislative amendments were drawn up by the Administration.

60. Mr WONG Kwok-kin said that as public views would probably be invited by the Bills Committee to be formed to scrutinize the relevant Bill, it was not necessary for the Panel to hold a meeting to receive public views on the subject. The holding of such a meeting would only delay the provision of juridical assistance in the Taiwan homicide case.

Action

61. Dr Fernando CHEUNG said that discussions of a Bills Committee differed from that of a Panel in that the former was restricted by the scope of the Bill concerned. His view was shared by Mr CHU Hoi-dick.

62. The Chairman said that as the Bills Committee to be formed to study the relevant Bill would probably invite public views, it was unnecessary for the Panel to do so. Regarding the joint letter dated 13 February 2019 from Mr Dennis KWOK and Mr Alvin LEUNG referred to in paragraph 7(a) above, he would consider the suggestion with the Chairman of AJLS Panel.

Other issues

63. Mr Kenneth LEUNG said that the 46 descriptions specified in Schedule 1 to FOO were not only serious criminal offences and there was a possibility that a businessman in Hong Kong could be prosecuted for breach of Mainland laws. Dr Fernando CHEUNG shared the view that many of the 46 offences specified in Schedule 1 to FOO were not only serious offences.

64. S for S responded that the list of 46 descriptions specified in Schedule 1 to FOO had been scrutinized by LegCo before it was enacted. In the past 21 years, no Member had raised any queries on the 46 offences specified in Schedule 1 to FOO. He added that under the double criminality principle, SFO requests in which the act concerned constituted an offence on the Mainland but not an offence in Hong Kong would be refused.

65. Mr LEUNG Che-cheung asked about the Administration's views on the suggestion of adding a sunset clause in the Administration's proposals. S for S responded that cases similar to the Taiwan homicide case could occur at any time in future. A sunset clause could not permanently address inadequacies in existing legislation.

66. Mr POON Siu-ping asked how cases in which the same person was concurrently subject to SFO requests from two or more jurisdictions would be dealt with under the Administration's proposals. S for S responded that how such a situation was to be dealt with was usually set out in SFO agreements, which included consideration of all relevant factors such as the relative seriousness and place of commission of the offences.

Action

Motion

67. The Chairman said that Ms Claudia MO, Mr Alvin YEUNG, Mr Dennis KWOK and Mr Holden CHOW had respectively indicated intention to move a motion under the agenda item. He ruled that the four motions were directly related to the agenda item in accordance with Rule 22(p) of the House Rules. He said that the four motions would be proceeded with and voted on in the order in which they were presented to the Panel.

68. Ms Claudia MO moved the following motion:

"本委員會反對修訂《刑事事宜相互法律協助條例》和《逃犯條例》的建議適用至中國大陸地區，因為對北京的司法制度缺乏信心及信任，恐怕有關修訂會淪為打壓政治異見的工具。本委員會建議政府須先易後難，先處理與台灣地區有關的修訂事宜。"

(Translation)

"This Panel objects that the applicability of the proposed amendments to the Mutual Legal Assistance in Criminal Matters Ordinance and the Fugitive Offenders Ordinance be extended to the Mainland China due to lack of confidence and trust in the judicial system of Beijing for fear that such amendments will become a tool to suppress political dissent. This Panel suggests the Government to deal with the easy tasks first and the difficult one afterwards, putting the amendments relating to Taiwan first."

69. The Chairman put Ms Claudia MO's motion to vote. Ms MO requested a division.

The following members voted in favour of the motion:

Mr James TO, Ms Claudia MO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Dr CHENG Chung-tai and Mr AU Nok-hin.  
(10 members)

Action

The following members voted against the motion:

Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Mr KWOK Wai-keung, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr Jimmy NG, Dr Junius HO, Mr Holden CHOW, Mr CHAN Chun-ying, Mr CHEUNG Kwok-kwan and Mr Tony TSE. (17 members)

70. The Chairman declared that 10 members voted in favour of the motion and 17 members voted against it. He declared that the motion was negatived.

71. Mr Alvin YEUNG moved the following motion:

"為盡快處理是次台灣殺人案的逃犯移交請求，為受害人及家屬彰顯公義，本委員會要求保安局在修訂《逃犯條例》和《刑事事宜相互法律協助條例》時，明文規定該修訂只適用於台灣，以避免牽涉其他司法管轄區的討論時衍生不必要的爭議，耽誤移交逃犯的最佳時機。"

(Translation)

"In order to expeditiously deal with the surrender request in relation to the Taiwan homicide case and bring justice to the victim and her family, this Panel requests the Security Bureau, when making amendments to the Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance, to expressly stipulate that those amendments will only apply to Taiwan so as to avoid unnecessary controversy arising from the discussions relating to other jurisdictions, thereby missing the most opportune time for the surrender of fugitive offender."

72. The Chairman put Mr Alvin YEUNG's motion to vote.

The following members voted in favour of the motion:

Mr James TO, Ms Claudia MO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Mr CHU Hoi-dick, Mr HUI Chi-fung, Dr CHENG Chung-tai and Mr AU Nok-hin. (12 members)

Action

The following members voted against the motion:

Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Mr KWOK Wai-keung, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr Jimmy NG, Dr Junius HO, Mr Holden CHOW, Mr CHAN Chun-ying, Mr CHEUNG Kwok-kwan and Mr Tony TSE. (17 members)

73. The Chairman declared that 12 members voted in favour of the motion and 17 members voted against it. He declared that the motion was negatived.

74. Mr Dennis KWOK moved the following motion:

"為盡快處理是次台灣殺人案的逃犯移交請求，為受害人及家屬彰顯公義，本委員會要求保安局在修訂《逃犯條例》和《刑事事宜相互法律協助條例》時，引入日落條款，為該修訂設定時間限制。"

(Translation)

"In order to expeditiously deal with the surrender request in relation to the Taiwan homicide case and bring justice to the victim and her family, this Panel requests the Security Bureau to introduce a sunset clause when making amendments to the Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance so as to set a time limit for those amendments"

75. The Chairman put Mr Dennis KWOK's motion to vote.

The following members voted in favour of the motion:

Mr James TO, Ms Claudia MO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Mr CHU Hoi-dick, Mr HUI Chi-fung, Dr CHENG Chung-tai and Mr AU Nok-hin. (12 members)

Action

The following members voted against the motion:

Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Mr KWOK Wai-keung, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr Jimmy NG, Dr Junius HO, Mr Holden CHOW, Mr CHAN Chun-ying, Mr CHEUNG Kwok-kwan and Mr Tony TSE. (17 members)

76. The Chairman declared that 12 members voted in favour of the motion and 17 members voted against it. He declared that the motion was negated.

77. Mr Holden CHOW moved the following motion:

"鑒於去年初發生一名香港女子在台灣遭其男友殺害的案件，而台灣當局雖多次提出刑事司法協助，但因香港與台灣兩地沒有簽訂移交逃犯等相關協定，以至未能將嫌疑犯送交台灣接受審訊，令死者家屬未能為死者沉冤得雪，討回公道，此外，事件亦凸顯現有刑事司法互助的法律漏洞，令香港可成為逃犯天堂；就此，本委員會支持保安局提出修訂《刑事事宜相互法律協助條例》和《逃犯條例》，以完善以個案形式合作的機制及涵蓋面，並鑒於涉及上述台灣殺人案的嫌疑犯有潛逃機會，本會促請當局盡快提交相關修訂建議，讓立法會進行審議。"

(Translation)

"In view of the homicide of a Hong Kong woman by her boyfriend in Taiwan early last year and the fact that Hong Kong is unable to transfer the suspect to Taiwan for trial despite repeated requests from the Taiwan authorities for juridical assistance in criminal matters due to absence of relevant agreements between Hong Kong and Taiwan concerning the surrender of fugitive offenders, thereby rendering the deceased's family unable to seek vindication and justice for the deceased; apart from that, the above incident has also highlighted the loopholes in the existing legislation on mutual juridical assistance in criminal matters making Hong Kong a paradise for fugitive offenders; in this connection, this Panel supports the amendments to the Mutual Legal Assistance in Criminal Matters Ordinance and the Fugitive Offenders Ordinance proposed by the Security Bureau to enhance the mechanism for 'case-based' cooperation and its scope of application, and given that

Action

there is a risk of the suspect in the above homicide case absconding, this Panel urges the Administration to introduce the relevant proposed amendments into the Legislative Council expeditiously for scrutiny."

78. The Chairman put Mr Holden CHOW's motion to vote.

The following members voted in favour of the motion:

Ms Starry LEE, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Paul TSE, Mr Frankie YICK, Mr YIU Si-wing, Mr LEUNG Che-cheung, Mr KWOK Wai-keung, Dr Elizabeth QUAT, Mr POON Siu-ping, Mr Jimmy NG, Dr Junius HO, Mr Holden CHOW, Mr CHAN Chun-ying, Mr CHEUNG Kwok-kwan and Mr Tony TSE. (17 members)

The following members voted against the motion:

Mr James TO, Ms Claudia MO, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Kenneth LEUNG, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr Alvin YEUNG, Mr CHU Hoi-dick, Mr HUI Chi-fung, Dr CHENG Chung-tai and Mr AU Nok-hin. (12 members)

79. The Chairman declared that 17 members voted in favour of the motion and 12 members voted against it. He declared that the motion was carried.

**V. An update on the implementation of post-dispatch advice by the Fire Services Department**

(LC Paper Nos. CB(2)767/18-19(05) and (06))

80. Owing to time constraint, members agreed that the item would be deferred to the meeting on 5 March 2019.

**VI. Replacement of Marine Police Central Command System and its seven electro-optical sensors as well as the procurement of new electro-optical sensors**

(LC Paper Nos. CB(2)767/18-19(07) and (08))

81. Owing to time constraint, members agreed that the item would be deferred to the meeting on 5 March 2019.

Action

82. There being no other business, the meeting ended at 1:22 pm.

Council Business Division 2  
Legislative Council Secretariat  
28 March 2019