HONG KONG
INTERNATIONAL
CHAMBER OF COMMERCE

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019

ICC-HK was caught by surprise with the Administration's seeking legislative amendment on the basis of the Paper on the website of the Security Bureau in February. For a matter of such importance and with grave impact on Hong Kong, we are disappointed at such sudden notice.

2. Worse, the Administration has only allowed a short period of limited consultation for an issue which practically affects working and living in Hong Kong. This is most unbecoming in terms of public governance. Particularly, the Administration has previously committed to initiate public consultation on the details of any rendition arrangement proposals with China Mainland authorities upon completion of discussion with them. It now seeks to complete the enactment of the Amendment Bill in the current legislative year.

3. In the face of concern expressed about the proposals, the Administration trimmed the list of offences applicable from 46 to 37. The crux of the matter however is not the list of applicable offences, but rather the adverse impact on Hong Kong as a place to live and work, and to continue growing as a major international business centre attracting overseas investment.

4. Business and overseas investment are attracted and stay in Hong Kong because they have confidence in its rule of law and an independent judiciary among other things. Hong Kong's legal system has a common law foundation and is geared up to universal values and international standards in terms of protecting personal safety and ownership of property, but the proposed changes will lead to people to reconsider whether to choose Hong Kong to be the base of operation or the regional headquarters as there is risk of their being removed to

another jurisdiction which does not provide the protection they enjoy in Hong Kong.

5. According to information, 20 jurisdictions have entered into long term surrender arrangements with Hong Kong. These agreements are apparently concluded before Hong Kong has any type of rendition/extradition arrangements with the Mainland. If the Administration's proposals are approved by the Legislative Council, what would be the implications to the citizens of those jurisdictions having business or living in or even transitting through Hong Kong? Will these jurisdictions seek to re-negotiate their agreements? How would this impact on Hong Kong's being an international business centre? Could the Administration explain its position, and report the outcome of their exploring this with those jurisdictions?

6. Apparently, the Amendment Bill is intended to apply on an ad hoc basis to jurisdictions with which Hong Kong has no long term surrender agreement, including those with unsatisfactory safeguards for human rights. The Administration is in the best position to explain how such "special surrender arrangement" will operate even if a requesting jurisdiction has a poor record on civil / criminal procedures putting the alleged offender to unfathomable risk and what steps the Administration will take to ensure the safety of the person Hong Kong is to surrender to the requesting jurisdiction.

7. According to the Central Government, Hong Kong has a useful role in the Belt and Road Initiative, and assumes a leading role in the development of the Guangdong – Hong Kong – Macao Greater Bay Area because of Hong Kong's international network, financial infrastructure and professional services. To this end, among other measures, the government has worked to promote Hong Kong to be the seat of legal and dispute resolution services on the basis of Hong Kong's rule of law widely known internationally. The Administration could put the heart of many investors and practitioners at ease, if it could show how the proposed legislative changes would not scare away

capital and talent, and diminish Hong Kong's role in being an international dispute resolution center especially for the Belt and Road Initiative and the Greater Bay Area.

8. Undoubtedly, previous Administrations have been pursuing the issue of rendition with the Mainland. Yet if rendition arrangements have not been worked out in the past 20 years, there would be even less likelihood arrangements could be decided upon in a few months now, which would satisfy relevant international principles, taking into full account of all the complicated issues, and relieving Hong Kong residents from anxiety and fear for the risks they would face. It would be better to have no arrangement than to have a poor arrangement.

9. It is said that there is urgency to adopt the proposals for the safety and order of the community, and the Administration attempts to have the Amendment Bill passed by the Legislative Council before its recess. At the same time, it has been pointed out that for many years, Hong Kong stands out to be a safe city relative to other places, and the crime rate is generally going down steadily. It is questionable to suggest that there is a crisis for Hong Kong's turning into a hotbed of criminals and fugitives. The haste of the Administration in forcing through the proposals is not warranted.

10. It is argued that the proposed amendments have to be enacted so that justice might be done in respect of the homicide case in Taiwan last year, involving 2 Hong Kong residents. With respect, there are simpler ways to deal with this case as legal experts have pointed out, without having to complicate matters, and use a sledge hammer. The Taiwan case should be treated separately and on its own. Further, given the gross inadequacies of the proposed amendments, enactment of the Amendment Bill would mean more people in Hong Kong will be put to risk of losing freedom, property and even their life in future on being surrendered, than merely passing judgement on the convicted of the Taiwan case. Sadly, the victim cannot come back to life again.

11. There is comment alleging a "loophole" under the current legal regime in respect of surrendering fugitives, because of the absence of such arrangement with the Mainland. We should rather see this as unavoidable given the huge differences in the legal and juridical systems between the Mainland and Hong Kong, and any arrangement has to be thoroughly deliberated and carefully worked out to meet universal values and international standards of jurisprudence and public expectation. If that were a loophole, it would be legitimate and necessary until the legal and juridical situation would have changed in the Mainland. It might be a necessary evil but the lesser of the two evils.

12. Given the foregoing considerations, the examination of the Amendment Bill should not proceed further until thorough and proper consultation has been conducted by the Administration.

13. With regard to the text of the Amendment Bill, ICC-HK makes the following comments:

a) According to information, the Mainland does not have the duty to surrender fugitives to Hong Kong and can reserve the right to try cases locally. Its extradition law states that requests to hand over its own citizens should be rejected. That being the case, and with the Amendment Bill becoming law, Hong Kong would be the sole party to surrender fugitives to the Mainland, but there would be no reciprocity.

b) The Amendment Bill empowers the Chief Executive, HKSAR to have absolute discretion to enter into a "special surrender arrangement" with another jurisdiction, and disbands the function of negative vetting of the Legislative Council. There is no substantive argument to support the change, and we ask if the Legislative Council has been privy to this proposition. On the contrary, we believe the Legislative Council does not take its duty lightly. This is a serious matter about a person to be surrendered to another jurisdiction. Procedural inconvenience cannot be a sufficient reason to make the change, particularly when there are ways to overcome it.

c) The requesting jurisdiction must have a robust case for Hong Kong to process its request. An important component in current legislation is the requirement for judicial authentication of documents by the requesting jurisdiction. The Amendment Bill has the effect of removing this building block, suggesting the Administration is willing to accept a lower standard of evidence. This will make the task of scrutiny in Hong Kong more difficult, and the international creditability of Hong Kong's criminal legal system will be called into question.

d) To provide basic standards in safeguarding the rights of the accused, the Amendment Bill should state that if the Judiciary finds the transfer of a fugitive does not comply with the Hong Kong Bill of Rights Ordinance, it can reject the extradition request.

e) The Amendment Bill exempts a number of offences in Schedule 1. The Administration should explain clearly how this is decided upon, and the effect on the image of Hong Kong and on its international cooperation on legal matters in future.

14. Based on the foregoing, ICC-HK opposes the proposed amendments, and asks that the legislative process should halt pending a full scale and proper public consultation. Meanwhile, the Administration should find an alternative route to conclude the Taiwan homicide case. Finally, the dialogue with the Mainland for a long term agreement should continue.