

**Summary of the Observations of
the Hong Kong Bar Association (“HKBA”)
on the Security Bureau’s Proposal to Amend the
Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525
 (“MLAO”) and the Fugitive Offenders Ordinance, Cap.503 (“FOO”)**

1. Currently, arrangements for surrendering fugitives and for providing legal assistance to places outside Hong Kong are made under the MLAO and FOO. The Legislative Council looks at these arrangements made by the HKSARG when deciding to incorporate them as subsidiary legislation made under these ordinances.
2. The Security Bureau proposes changing this by amending the MLAO and FOO to formalize new *ad hoc* “case-based” arrangements to surrender a person to another jurisdiction with which Hong Kong does not have a long-term extradition agreement or provide assistance. These *ad hoc* arrangements will be set in motion by the CE issuing a certificate to start processing a request rather than through acts under subsidiary legislation. Moreover, the Security Bureau also proposes to remove the current restriction that prohibits surrender to the Mainland, Taiwan, and Macau.
3. HKBA notes that such proposed amendments would have the effect of enabling the rendition of Hong Kong residents, or persons merely passing through Hong Kong, to the Mainland without any legislative oversight of those arrangements. Rendition of fugitives to the Mainland is both a complex legal matter and a controversial issue that has been in abeyance since 1997. The HKSAR Government previously made a firm commitment that rendition arrangements with the Mainland would not be

put in place without thorough consultation with the public. HKBA is concerned that the Government is now “jumping the gun” by seeking to put in place *ad hoc* rendition arrangements in apparent breach of its commitment for full consultation on this delicate matter.

4. Various government officials, including the CE, have said that the proposed changes are aimed at redressing an injustice arising from the recent Taiwan homicide case. HKBA takes the view that it is not necessary to “over-liberalize” the FOO and MLA0 regimes, and in particular, to include the Mainland within the scope of the proposed arrangements only because of this case. It is doubtful whether changes would be effective without an assurance from Taiwan that it will agree to the proposed arrangements. It is open to the Government to amend the Criminal Jurisdiction Ordinance, Cap. 423 to cater for the investigation, apprehension, trial and conviction, in Hong Kong, of persons like the murder suspect in the Taiwan homicide case.
5. HKBA also expresses concern at the removal of legislative oversight for case-based arrangements. Replacing legislative vetting with executive authorization for the arrest and surrender of persons lowers the bar for the liberty and security persons who may be subject of requests from other places which do not provide internationally recognized minimum standards for criminal trials and dealing with prisoners or engage in practices that infringe human rights.
6. In short, the current proposals have significant and wide-ranging effects and potentially undermine the reputation of Hong Kong as a free and safe city governed by the rule of law.

7. HKBA wishes to emphasize that it does not want Hong Kong to become a refuge for fugitives whether from Taiwan, the Mainland or, indeed, from anywhere else in the world. However, the Legislative Council clearly thought there were good reasons to exclude the PRC when the FOO and MLOA in 1997. If circumstances have changed since then and the objections to inclusion of these places in those ordinances have gone, then the HKSAR Government needs to say why things have changed.
8. If there have indeed been significant changes such that the HKSAR Government now has confidence in the criminal justice system in those other parts of China, then logic would suggest that comprehensive surrender and assistance agreements should be negotiated, and not *ad hoc* agreements and the Legislative Council should continue to have its say.
9. HKBA wishes to underline the present serious concerns that the Hong Kong public and the international community have over the Mainland's human rights record. It notes that the HKSAR Government surrendering fugitives under arrangements that do not actually secure comparable minimum rights enjoyed by persons in our criminal justice and prison systems can only harm the international image of the HKSAR.

HONG KONG BAR ASSOCIATION

4th March 2019