



Why amend the legislation?



A murder case
in Taiwan early
last year

To plug the
loopholes in the current
regimes

Geographical restriction

- At present, the two ordinances do not apply to the Mainland, Macao, and Taiwan. Therefore, there is no legal basis for us to handle the surrender request relating to the Taiwan murder case.



The
Mainland



Macao



Taiwan

Impracticable process

- Under the current regime of the Fugitive Offenders Ordinance, case-based surrender arrangements must be given effect through subsidiary legislation published in the Gazette and after being scrutinised by the Legislative Council. This is **impracticable** in view of **timing** and **confidentiality**.
- As the personal particulars of the fugitive and the case details **would inevitably be disclosed in the Gazette, this would alert the fugitive**. Besides, as no action (including provisional arrest) can be taken during the Legislative Council scrutiny (ranging from 28 to 49 days), **the fugitive can flee during this period**.

Due to such loopholes, no case-based surrenders have taken place in the past 22 years since Hong Kong's return to the motherland.

Will the legislative amendments affect the general public ?

NO

The amendments mainly target **fugitives** who have **committed serious crimes stipulated** under the **Fugitive Offenders Ordinance**.

If the alleged offence ...

does not conform with the "Double Criminality" principle



"Double Criminality" means the act concerned is a criminal offence in both jurisdictions.

is of a political nature



results in death penalty



Will the amendments adversely affect Hong Kong?

The amendments mainly target fugitives who have committed serious crimes.



All acts that can be surrendered must be serious crimes stipulated under the Fugitive Offenders Ordinance. None of these offences relates to the press or speech.



The amendments are not related to acts of press, speech, academia, publication, etc. These freedoms and rights are fully safeguarded by the Basic Law and Hong Kong laws.



The amendments can minimise the chance of fugitives seeking refuge in Hong Kong and posing threats to law and order. They are conducive to a lawful business environment.



Nine categories of offences relating to bankruptcy, companies, securities, intellectual property, environmental protection, exportation or importation of goods, unlawful use of computers, taxes, and false or misleading trade descriptions, are not included under the case-based surrender arrangements.

The amendments **will not affect**

Freedom of the press

Freedom of speech

Business environment

How are the **legal rights** of an alleged offender protected?

Rights of the alleged offender

To apply for **judicial review**

To apply for ***habeas corpus*** for discharge from a committal order



How the Government guards the gate

Executive Authority has **full discretion** on whether to process a request or not

Only process requests from the central authority of a place

Careful scrutiny and consideration of every case-based surrender request. The Chief Executive may refuse surrender on humanitarian or other grounds when making the final decision on surrender.

In light of the needs of individual cases, the Government may consider adding more restrictions in the arrangements to further limit the circumstance for surrender, including presumption of innocence, open trial and legal representation that are in line with general human rights protection.

How to ensure **political offenders** are not surrendered ?

If the offences concerned are of **political character**, irrespective of how they are described



If the person concerned is to be prosecuted or punished on account of **race, religion, nationality or political opinions**, though the request is purported to be made on account of a relevant offence



If the person concerned might be prejudiced at trial or punished, detained etc. by reason of **race, religion, nationality or political opinions**



Proposed case-based
surrender of fugitive offenders

**Multiple
safeguards
and
legal
protection**

Surrender
request by the
relevant jurisdiction



Scrutiny by the Executive Authority

Department of Justice (DoJ) examines whether following conditions are met:

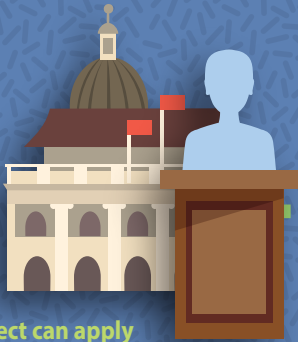
- Double criminality principle (i.e. the act concerned is a criminal offence in both jurisdictions)
- Offence(s) fall within the 37 stipulated categories and punishable with imprisonment of 7 years or more
- No death penalty, no political offence
- No prosecution on account of race, religion, nationality or political opinions
- Sufficient evidence
- No double jeopardy
- The requesting jurisdiction has to guarantee that no prosecution for other offences outside the surrender order and no re-surrender to another jurisdiction



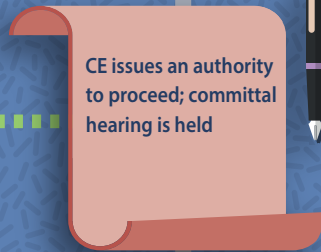
Scrutiny by the Executive Authority

- The Chief Executive (CE) has to be satisfied that the conditions for processing a request are met, taking into account DoJ's advice
- In light of the needs of individual cases, the Government may consider adding more restrictions in the arrangements to further limit the circumstance for surrender, including presumption of innocence, open trial, legal representation, right to cross-examine witnesses, no coerced confession and right to appeal that are in line with general human rights protection.

Subject can apply
for judicial review,
with a right of appeal to
the Court of Final Appeal



CE issues an authority
to proceed; committal
hearing is held

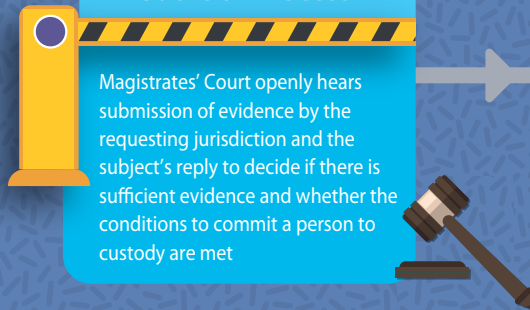


CE has the
authority to
refuse a request



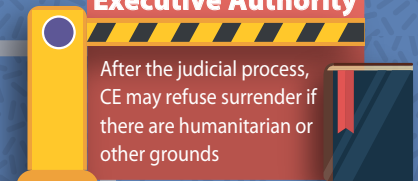
Judicial Process

Magistrates' Court openly hears
submission of evidence by the
requesting jurisdiction and the
subject's reply to decide if there is
sufficient evidence and whether the
conditions to commit a person to
custody are met



Scrutiny by the Executive Authority

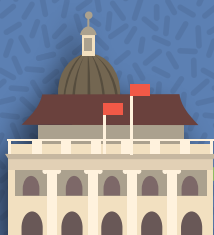
After the judicial process,
CE may refuse surrender if
there are humanitarian or
other grounds



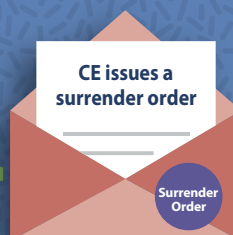
Subject can raise
objection to being
remanded in custody
and apply to the
High Court for *habeas corpus*, with a
right of appeal to the Court of Final Appeal



Subject can apply for judicial
review of CE's decision, with a
right of appeal to the Court of
Final Appeal



CE issues a
surrender order



Subject can petition
the CE to oppose surrender



Independent judiciary as **gatekeeper**

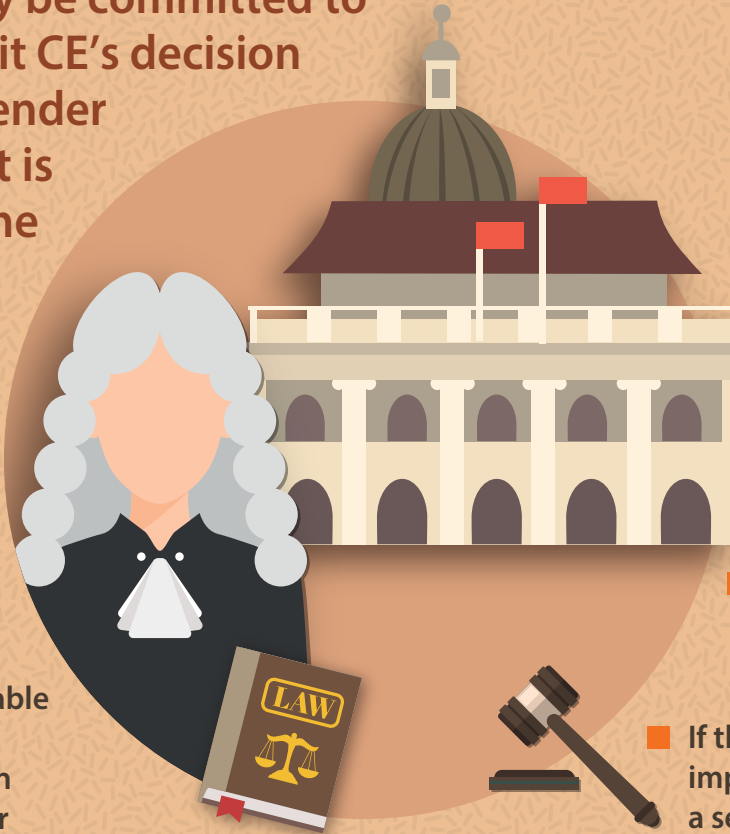
Committal hearing of the person held in open court

The person may be committed to custody to await CE's decision on his/her surrender only if the court is satisfied with the following matters:



- The offence is punishable under the law of the requesting jurisdiction with imprisonment for

7 years or more and the conduct constituting the offence if occurred in Hong Kong would constitute an offence in Hong Kong which falls within any of the **37 specified offence descriptions** and is punishable with imprisonment for **7 years or more**



- The **supporting documents** have been produced and duly authenticated

- If the person is wanted for the imposition or enforcement of a sentence:

- If the person is wanted for prosecution, the evidence submitted would be sufficient to warrant the person's committal for trial under **Hong Kong law**

- ◆ **and the person has not been sentenced:** there is an intention to impose a sentence
- ◆ **and the person has been sentenced:** the sentence has not been carried out, or no less than 6 months of a term of imprisonment remains to be served

If the court is not satisfied with any of the above matters, or if the committal of the person is prohibited by the restrictions in the Fugitives Offenders Ordinance the court shall discharge the person

Restrictions to surrender under Section 5 of FOO:

- The offence to which the request relates is of a political character
- The person was convicted in his absence and he has not had an opportunity of being tried in his presence for that offence, or if surrendered, would not have an opportunity to be retried in his presence for that offence
- The request is made for the purpose of prosecuting or punishing the person for his race, religion, nationality or political opinions
- The person might be prejudiced at his trial or punished or detained etc. by reason of his race, religion, nationality or political opinions
- Violation of the principle of double jeopardy, etc



Executive Authority as gatekeeper

If there is no applicable bilateral or multilateral surrender of fugitive offenders (SFO) arrangement to handle a particular surrender request, the Executive Authority will consider a host of factors on whether a case-based surrender arrangement should be entered into, including:

■ whether the offence concerned is among the categories of offence stipulated under the Fugitive Offenders Ordinance (FOO) and meets the punishment requirement

■ whether the offence involved is subject to refusal for the reasons under FOO, which include:

- ◆ double criminality principle
- ◆ political offences
- ◆ conviction in the person's absence
- ◆ whether the request is made for the purpose of prosecuting or punishing the person on account of

his race, religion, nationality or political opinions

- ◆ whether the person might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions
- ◆ rule against double jeopardy
- ◆ whether the offence is punishable with death, or whether there is an assurance that death penalty, even imposed, will not be carried out

■ the facts of the case and sufficiency of evidence (whether it constitutes a *prima facie* case against the person involved committing an offence)

■ the offence involved has not exceeded the effective limitation period of the requesting party and has not lapsed due to a pardon or other reasons, which render it not being subject to prosecution or punishment

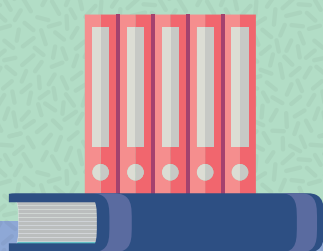
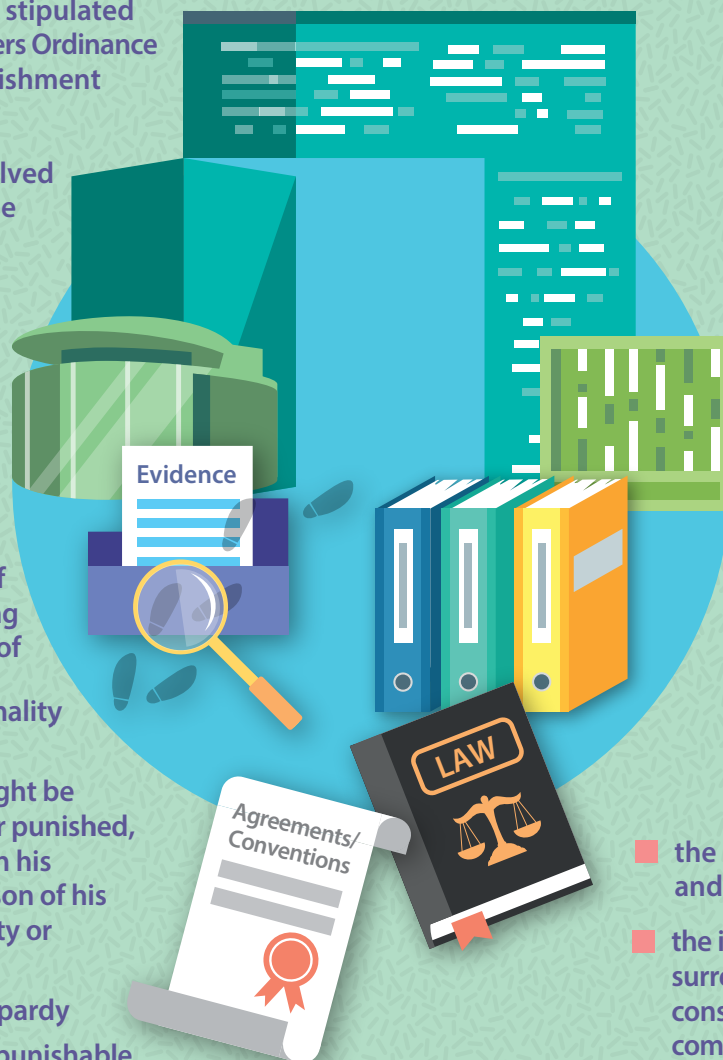
■ whether the alleged offence is genuinely made in the interest of justice

■ HKSAR's courts can exercise jurisdiction on the offence involved in the request

■ the laws of the requesting party and its SFO-related legislation

■ the impact of that case-based surrender on the international consensus and obligation of HKSAR in combating serious crimes and juridical assistance in criminal matters

■ the impact of that case-based surrender on HKSAR's obligation in applicable international agreements/conventions



In light of the needs of individual cases, the Executive Authority may consider adding the following in the arrangements:

- Presumption of innocence, open trial, legal representation, right to cross-examine witnesses, no coerced confession, right to appeal, etc. that are in line with general human rights protection
- The requesting party must assure that the effective limitation period of the relevant offence has not expired, or the prosecution and punishment in respect of the offences is not precluded for any reasons, e.g. pardon
- Enhance protection for the interests of surrendered persons, arranging visits by consuls (in the case of surrender to foreign countries) and officials, etc

1 Amendments to the Mutual Legal Assistance in Criminal Matters Ordinance and the Fugitive Offenders Ordinance

Targeting Fugitives Refining Mechanisms

The Government proposes to amend the ordinances to tackle two issues:

- A murder case that happened in Taiwan early last year
- To plug the current loopholes on combatting crimes, including:
 - i. Geographical restrictions: no surrender of fugitives and mutual legal assistance in criminal matters with other parts of China
 - ii. Impracticable operational procedures: the current case-based surrender arrangements must be given effect through subsidiary legislation published in the Gazette. This is impracticable in terms of timing and confidentiality. As the personal particulars of the fugitive and the case details would inevitably be disclosed in the Gazette, this would alert the fugitive. Besides, as no action (including provisional arrest) can be taken during the scrutiny period of the Legislative Council (ranging from 28 to 49 days), the fugitive can flee during this period. As such, no case-based surrenders have taken place in the past 22 years since Hong Kong's return to China.

The Taiwan murder case shows the actual need for combatting crime and pursuing justice. The loopholes mentioned not only affect the dignity of the rule of law and the fairness of social justice, it also allows serious crime offenders to seek refuge in Hong Kong which poses a threat to the safety of Hong Kong people.

2 Freedom of speech and business environment NOT affected

The amendments mainly target fugitives who have committed serious crimes, not ordinary members of the public.

The criminal acts liable for surrender of a fugitive must be among the 37 categories of offences stipulated under the amendment bill and be liable for imprisonment of 7 years or more:

- Such offences do not relate to speech, publication, academia or the press. These freedoms and rights are fully safeguarded by the Basic Law and Hong Kong laws.
- Nine categories of offences relating to bankruptcy, companies, securities, intellectual property, environmental protection, exportation or importation of goods, unlawful use of computers, taxes, and false or misleading trade descriptions, are not included under the case-based surrender arrangements.

Surrender of fugitives is a common international practice in combatting serious crimes. The HKSAR system makes reference to the guidelines and model treaty of the United Nations, and its protection on human rights is in line with the principles commonly adopted by many jurisdictions.

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3 No Surrender under EIGHT conditions

- No surrender if the “double criminality” principle is not complied with (i.e. it must be an offence in both places)
- No surrender for offences of a political character
- No surrender for prosecutions on account of race, religion, nationality or political opinions
- No surrender for any conviction made in the absence of a trial
- No “double jeopardy” (i.e. no prosecution if a person has been previously acquitted or convicted of the same offence)
- No surrender if charges go beyond the surrender order
- No re-surrender to a third party (i.e. the surrendered person will not be surrendered to a third jurisdiction)
- No surrender if the offence attracts the death penalty

4 Stringent scrutiny and full safeguards by laws

- The Government will comprehensively review each surrender request and has full discretion as to whether such a request would be agreed. Even if the court has made a committal order, CE may refuse surrender on humanitarian or other grounds when making the final decision on surrender.
- In light of the needs of individual cases, the Government may consider adding more restrictions in the arrangements to further limit the circumstance for surrender, including presumption of innocence, open trial, legal representation, right to cross-examine witnesses, no coerced confession and right to appeal that are in line with general human rights protection.
- The requesting party must assure that the effective limitation period of the relevant offence has not expired, or the prosecution and punishment in respect of the offences is not precluded for any reasons, e.g. pardon.
- Enhance protection for the interests of surrendered persons. The Government will negotiate post-surrender visits on a case-by-case basis, so as to arrange visits by consuls (in the case of surrender to foreign countries) and officials, etc.
- The alleged fugitive can hire a lawyer for court appearances. At the committal hearing stage, he/she may apply for a lawyer under the “Duty Lawyer Scheme” to represent him/her. If the court makes a committal order, the alleged fugitive can apply for legal aid for filing an appeal, *habeas corpus* or judicial review. If there is not sufficient evidence to send the alleged fugitive for trial in accordance with Hong Kong law, the court should discharge him/her. Hong Kong has a sound legal aid system. Non-Hong Kong residents are eligible to apply for legal aid, and cases involving human rights matters may also apply.

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5 Judicial independence as gatekeeper

Hong Kong's judicial independence, as guaranteed by the Basic Law, firmly upholds the rule of law. The power of final adjudication of the Hong Kong Special Administrative Region (HKSAR) is vested in the Court of Final Appeal, which may invite judges from other common law jurisdictions to hear the appeal.

Hong Kong's judicial independence was ranked first in Asia and eighth in the world. Since Hong Kong's return to China, its judicial system has been highly respected internationally.

The court will conduct a committal hearing in open court in respect of the subject person. The court may make an order committing the person to custody to await the Chief Executive's decision on his/her surrender only if the court is satisfied with all of the following matters:

- The offence specified on the authority to proceed is an offence which can be surrendered, i.e. the offence is punishable under the law of the requesting jurisdiction with imprisonment of 7 years or more, the conduct constituting the offence if it occurred in Hong Kong would constitute an offence coming within any of the 37 specified offence descriptions, and is punishable with imprisonment for 7 years or more and triable on indictment (the process includes application of the principle of double criminality).
- The supporting documents have been produced and duly authenticated.

- If the person involved is wanted for prosecution, the evidence submitted would be sufficient to warrant the person's committal for trial according to Hong Kong law.
- If the person involved is wanted for imposition or enforcement of a sentence: where the person was not sentenced, the requesting jurisdiction has an intention to impose a sentence; where the person has been sentenced, his sentence has not been carried out, or not less than 6 months of the term of imprisonment remain to be served.

If the court is not satisfied with the above matters, or if the committal of the person is prohibited by a provision of the FOO (including the restrictions in section 5 of the FOO), the court shall discharge the person.

The restrictions set out in Section 5 of the FOO include: the offence to which the request relates is an offence of a political character; the person involved was convicted in his absence and would not have an opportunity to be retried if surrendered; the request is made for the purpose of prosecuting or punishing the person for his race, religion, nationality or political opinions; the person involved might be prejudiced at his trial or punished or detained by reason of his race, religion, nationality or political opinions; violation of the principle of double jeopardy, etc.

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6 No surrender for political offenders

There are three provisions in the FOO stipulating no surrender for a political offence:

- No surrender if an offence is of a political character, irrespective of how it is described in the prescribed arrangements
- No surrender if the request is in fact made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions, though the request is purported to be made on account of a relevant offence
- No surrender if the person concerned might be prejudiced at trial or punished, detained etc. by reason of his race, religion, nationality or political opinions.

The FOO stipulates that unless the requested jurisdiction consents, the requesting jurisdiction shall not deal with the person surrendered for any offence committed before his surrender other than the offence in respect of which his surrender was ordered.

7 Localisation of the FOO before handover

As set out in a Legislative Council brief on the FOO submitted by the Government in October 1996, the purpose of introducing the FOO was to localise laws in extradition used during the British administration through legislation, after which a suitable legal framework could be established to provide Hong Kong with a local legal basis to handle surrenders and negotiate surrender arrangements with other places after its return to China. Since the arrangement to be localised at that time did not include the Mainland, the FOO is not applicable for handling requests for surrender of fugitives between Hong Kong and other parts of China.

It remains our goal to pursue long-term agreements with other jurisdictions.

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8 20 long-term agreements in force NOT affected

The HKSAR Government has the responsibility and obligation to observe the long-term fugitives surrender agreements signed with the 20 jurisdictions. The Bill will not affect these agreements. Case-based surrender arrangements will only be adopted when there is no applicable long-term fugitives surrender agreement.

9 Impracticable to handle Taiwan murder case only

Serious crimes can happen at any time. Legislation on one single case cannot plug the loopholes in the current regimes. It is impracticable to handle each and every serious crime through case-based surrender arrangements or mutual legal assistance mechanisms by amending the legislation with a "sunset clause".

After the Bill is passed, Hong Kong can use the same set of standards in handling surrender requests by case-based arrangements with a jurisdiction that does not have any long-term agreement on surrender of fugitives with Hong Kong.

Fugitive Offenders Ordinance & Mutual Legal Assistance in Criminal Matters Ordinance

Fugitive Offenders Ordinance not applying to the Mainland **is a protection for Hong Kong people instead of a loophole?**

Incorrect

The Ordinance is currently **not applicable** to the Mainland, Macao and Taiwan.



Before Hong Kong's return to the Motherland, the Government localised the legal basis for extradition which did not include China during Hong Kong's colonial era, so that Hong Kong would have a local ordinance to negotiate surrender arrangements with other places after its **return to the Motherland**. It was **not a deliberate exclusion of any other parts of China during the localisation exercise**. It was also mentioned at that time that a new legislation on the surrender of fugitive offenders (SFO) arrangement with the Mainland might be introduced after Hong Kong's return to the Motherland. And it was not because there was an intention not to have a SFO arrangement with the Mainland.

Serious crimes can happen anywhere, any time. The Legislative Council has previously urged the HKSAR Government to negotiate such an arrangement with the Mainland following Hong Kong's return to the motherland. **The negotiation is ongoing.**



Will the amendments affect current long-term agreements signed by Hong Kong ?

The amendments **will not affect the 20 long-term agreements on surrender of fugitive offenders with other jurisdictions.**

For jurisdictions with which Hong Kong has entered into long-term agreements, case-based surrender arrangements **will not be applicable.**



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Has HKSAR Government communicated with Taiwan ?



Taiwan has issued a warrant for the arrest of the suspect and has made requests to Hong Kong.

Hong Kong is communicating with Taiwan through the platform of the **Hong Kong-Taiwan Economic and Cultural Cooperation and Promotion Council** and the **Taiwan-Hong Kong Economic and Cultural Co-operation Council**. We hope to get prepared as soon as possible under the principle of mutual respect and solely focusing on the case's facts.

After the Bill is passed, we will have a legal basis to co-operate with Taiwan in tackling the murder case under a case-based arrangement.

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Is it possible to
make an arrangement with Taiwan
on a single-case basis ?
or insert a **"sunset clause"** ?



Serious crimes can happen at any time. Legislation on one single case **cannot plug the loopholes in the current regimes.**



Inserting a "sunset clause" means repeating the current procedures of scrutiny and legislation in handling fugitives each and every time when a person is wanted for a serious crime, which is impracticable and **has a huge effect and delay on arresting actions.**



The amendments are to refine the current regimes so that we could effectively handle surrender requests, where necessary, from places that have not signed any long-term agreements with Hong Kong.

