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Hong Kong’s Proposed Extradition Law Amendments

Two proposed changes to Hong Kong’s extradition law sparked demonstrations by an estimated one million marchers on June 9, 2019. If adopted, the changes could make anyone—including U.S. citizens—residing in, visiting, or transiting Hong Kong vulnerable to investigation by or extradition to mainland China, raising concerns about possible political prosecutions.

On April 3, 2019, Hong Kong’s Chief Executive Carrie Lam Cheng Yuet-ngor submitted to the city’s Legislative Council (Legco) proposed amendments to the Fugitive Offenders Ordinance (FOO) that would permit—for the first time—extradition of alleged criminals from Hong Kong to mainland China, the Macau Special Administrative Region (Macau), and Taiwan. In addition, the Hong Kong Special Administrative Region (HKSAR) government seeks to amend its Mutual Legal Assistance in Criminal Matters Ordinance (MLAO) to include mainland China, Macau, and Taiwan. Legco is scheduled to consider possible amendments starting on June 12, and will take a final vote on the bill no later than June 20, according to Legco President Andrew Leung Kwan-yuen.

What is the Fugitive Offenders Ordinance (FOO)?

The FOO establishes the process by which the HKSAR government administers extradition requests from other governments, including those with which the HKSAR has an extradition agreement (such as the United States). It also specifies which types of crimes are eligible for extradition.

Why propose the FOO amendments?

The HKSAR government has offered two reasons to amend the FOO. The first broad reason is to allow extradition of people to “other parts of the People’s Republic of China” (PRC), including Macau, mainland China, and Taiwan. The second specific reason is to permit the extradition of a Hong Kong permanent resident to Taiwan to face trial for the alleged murder of his girlfriend while they were vacationing in Taiwan in February 2019.

How would extradition requests from mainland China be administered under the proposed amendments?

The FOO amendments would change how the HKSAR government can extradite people to jurisdictions with which the HKSAR does not have an extradition agreement. Under the current FOO, the HKSAR government must ask Legco for permission to consider such an extradition request. The FOO amendments create a new “special surrender arrangement” that eliminates the need to obtain Legco’s approval, including extradition requests from mainland China.

Why eliminate the Legco’s role in the extradition process?

The HKSAR government has expressed concern that Legco members may reveal details of any pending extradition request, possibly leading to the flight of the accused or undermining the prosecution of the case. It also has stated that the Legco review is unnecessary and time consuming as the Chief Executive’s review of the case provides sufficient protection of the accused’s rights.

Table 1. Extradition Provisions of Hong Kong’s Fugitive Offenders Ordinance (FOO)
Existing FOO compared to proposed amendments, as submitted on April 3, 2019

	Existing FOO		Amended FOO	
Coverage	Governments with which the HKSAR has an extradition agreement	Any other governments (excluding Mainland China, Macau, and Taiwan)	Governments with which the HKSAR has an extradition agreement	Any other governments (including Mainland China, Macau, and Taiwan)
Crimes Subject to Extradition	46 types of violent and commercial crimes with possible sentence of 1 year or more	46 types of violent and commercial crimes with possible sentence of 1 year or more	46 types of violent and commercial crimes with possible sentence of 1 year or more	37 types of violent and commercial crimes with possible sentence of 3 years or more (see Note)
Role of Legco	None	Pass legislation to permit HKSAR to enter into a special extradition arrangement	None	None

Source: CRS analysis

Notes: Excludes crimes pertaining to bankruptcy and insolvency; acts of corporate officers; security and futures trading; intellectual property rights; environmental pollution and public health; export or import controls and international fund transfers; use of computers; taxes or duties; and false or misleading trade descriptions.

Should U.S. citizens be concerned?

The FOO applies to anyone physically in Hong Kong, regardless of nationality or length of stay. If the FOO amendments are adopted, any U.S. citizen residing in, visiting, or transiting through Hong Kong could be extradited from Hong Kong to mainland China. In addition, if the MLAO amendments are approved, PRC security officers could request that HKSAR security officers assist criminal investigations against U.S. citizens, including conducting searches of suspects' homes or businesses. The State Department estimated that there were 1,300 U.S. firms and 85,000 U.S. residents in Hong Kong in 2018.

Does the United States have an extradition agreement with Hong Kong?

Yes, that agreement sets the terms for extradition requests between Hong Kong and the United States, which are then administered in Hong Kong in accordance with the FOO.

Why was China excluded from the original FOO?

Legco passed the FOO in March 1997, four months before the United Kingdom transferred sovereignty over Hong Kong to the PRC. According to Hong Kong's last colonial Governor Chris Patten and others, China was intentionally excluded from the FOO because its legal and judicial systems were not up to international standards. Chief Executive Lam has claimed, however, that the exclusion of China from the FOO was an oversight.

Do the current FOO and/or the proposed amendments protect people from false or politically-based charges, or human rights abuses after extradition to mainland China?

The current FOO, as well as the proposed amendments, include some safeguards, such as prohibiting the extradition of a person for "an offence of a political character" or for "the purpose of prosecuting or punishing him [sic] on account of his [sic] race, religion, nationality, or political opinions." It also prohibits the extradition of people who were convicted *in absentia*, or where the sentence could be the death penalty.

Opponents fear the PRC will use the extradition process to persecute or falsely imprison its critics. Analysts point to the cases of Swedish national Gui Minhai, Canadians Michael Kovrig and Michael Spavor, and U.S. citizens Kai Li and Sandy Phan-Gillis as potential examples of China's willingness to use false or misleading criminal charges for political reasons.

How have people in Hong Kong reacted to the proposed FOO amendments?

On June 9, 2019, according to the protest organizers, 1.03 million people—or nearly 14% of Hong Kong's total population—joined a march opposing the extradition amendments (the Hong Kong Police's official estimate was 240,000 people). The Hong Kong Bar Association and the Hong Kong General Chamber of Commerce have come out against the amendments, as has the American Chamber of Commerce in Hong Kong and Hong Kong's International Chamber of Commerce.

Some Hong Kong business leaders and politicians support the FOO amendments, indicating that the amendments address an unwarranted exclusion of "other parts" of the PRC from the extradition process and provide adequate legal and human rights protection to the accused.

How has the Trump Administration responded?

On May 16, 2019, Secretary Pompeo "expressed concern about the Hong Kong government's proposed amendments to the Fugitive Ordinance law, which threaten Hong Kong's rule of law." A petition on the White House's "We the People" webpage urging the U.S. government "voice opposition" to the FOO amendments received more than 100,000 signatures on June 3, 2019, thereby requiring the White House to respond within 60 days.

What has the PRC government said?

The PRC's Liaison Office in Hong Kong held a meeting with Hong Kong leaders on May 17, 2019, explaining that the FOO amendments will allow China to prosecute corrupt mainland officials and entrepreneurs who have fled to Hong Kong. The PRC government also has accused the United States, the European Union and other governments that have expressed views on the issue of interfering in China's "internal affairs," and claims that "the opposition camp and its foreign allies" had "hoodwinked" Hong Kong residents.

How has Taiwan's government reacted to the issue?

The Taiwan government has stated it will not seek Chan's extradition under the amended FOO, as it implies that Taiwan is part of the PRC.

How has Chief Executive Lam reacted to the public response to the proposed FOO amendments?

On June 10, 2019, Lam stated she will go ahead with the submission of the FOO amendments on June 12, 2019, as planned. She had previously indicated that she would propose changes in the bill to raise the minimum sentence to seven years or more for the "special surrender arrangements." In addition, she has said that additional administrative safeguards would be adopted and made legally binding, including only considering extradition requests from China's top judicial authorities.

What options does Congress have?

If they wish to take action on the issue, Members, individually or collectively, could issue statements on the FOO amendments. Congress also could pass a resolution expressing its views on proposed extradition changes. Alternatively, Congress could consider legislation regarding U.S. policy in Hong Kong, similar to the Hong Kong Human Right and Democracy Act of 2017 (H.R. 3856, S. 417, 115th Congress). Congress could also organize a delegation to visit Hong Kong to express its views of the extradition legislation and other issues of concern. Hearings could be conducted on the subject, as well.

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