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Hong Kong's Proposed Extradition Law Amendments

Two proposed changes to Hong Kong's extradition law sparked three massive demonstrations that shut down the center of the city. If adopted, the changes could make anyone—including U.S. citizens—residing in, visiting, or transiting the Hong Kong Special Administrative District (HKSAR) 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 legislation seeks to amend its Mutual Legal Assistance in Criminal Matters Ordinance (MLAO) to include mainland China, Macau, and Taiwan.

Legco was scheduled to take up the proposed amendments on June 12, but large-scale demonstrations on June 9 and 12 led Chief Executive Lam to announce on June 15 the suspension of consideration of the bill. On June 16, Hong Kong protesters gathered in even larger numbers, calling for Lam's resignation.

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 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.

Should U.S. citizens be concerned?

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 85,000 U.S. citizens residing 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 the PRC 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.” 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, like was done in the cases of Swedish national Gui Minhai, Canadians Michael

Kovrig and Michael Spavor, and U.S. citizens Kai Li and Sandy Phan-Gillis.

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.

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 joined a march opposing the extradition amendments (the Hong Kong Police's official estimate was 240,000 people). On June 12, 2019, the day Legco was to take up the bill, tens of thousands of protesters surrounded the Legco building and the HKSAR government headquarters. An estimated 5,000 Hong Kong police officers used tear gas, rubber bullets, bean bag rounds and water cannons to break up the protest. On June 16, 2019, an estimated 2 million people (338,000, according to the Hong Kong police) rallied, protesting against the conduct of the Hong Kong police on June 12, and calling for the permanent withdrawal of the bill, Lam's resignation, the dropping of all charges against arrested protesters, and an investigation into the conduct of the Hong Kong Police during the June 12 protest.

Before the protests occurred, the Hong Kong Bar Association, the American Chamber of Commerce in Hong Kong, and Hong Kong's International Chamber of Commerce came out against the extradition bill.

How has the Trump Administration responded?

On June 10, 2019, the State Department expressed "its grave concern about the Hong Kong government's proposed amendments to its fugitive offenders ordinance, and stated that the continued erosion of the "One Country, Two Systems" framework puts at risk Hong Kong's long-established special status in international affairs. On June 12, 2019, President Trump said that he was sure that Hong Kong and China will "be able to work it out."

What has the PRC government said?

The PRC government supported the amendments, but has backed Lam's decision to suspend the bill. It also has accused the United States, the European Union and other governments 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 protests against the proposed FOO amendments?

On June 10, 2019, Lam stated she was going ahead with the submission of the FOO amendments on June 12, 2019, as planned. On June 15, 2019, she announced she was suspending consideration of the bill.

What legislation has been introduced regarding U.S. policy in Hong Kong?

Three bills have been introduced specifically on Hong Kong. H.R. 3289 and S. 1838 are companion bills that would require that the Secretary of State certify annually that Hong Kong remains sufficiently autonomous to justify separate treatment from mainland China, seeks to protect U.S. citizens from extradition to mainland China, and blocks the entrance into the United States of persons responsible for abductions or extraditions of people from Hong Kong to mainland China. S. 1824 would amend the U.S.-Hong Kong Policy Act of 1992 to require the Secretary of State report on how China uses Hong Kong to circumvent U.S. laws.

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