

Statement by Department of Justice

In response to the media reports on the courts and prosecution process, the Department of Justice today (November 5) issued the following statement:

Article 88 of the Basic Law provides that judges of the courts of the Hong Kong Special Administrative Region (HKSAR) shall be appointed by the Chief Executive on the recommendation of an independent commission. And according to the Judicial Officers Recommendation Commission Ordinance, the Judicial Officers Recommendation Commission consists of nine members, including the Chief Justice of the Court of Final Appeal as Chairman and the Secretary for Justice as member. Seven other members appointed by the Chief Executive are two judges, one barrister, one solicitor and three persons not connected with the practice of law. The Chairman and no fewer than six other members may exercise and perform any of the functions, powers and duties of the Commission. A resolution of the Commission is not effective if there are more than two votes not in favour. In discharging their functions, members of the Commission must take an oath of office to declare that they will "freely and without fear or favour, affection or ill-will" give their advice to the Chief Executive.

The Basic Law stipulates that the courts of the HKSAR shall exercise judicial power independently, free from any interference. It also stipulates that members of the Judiciary shall be immune from legal action in the performance of their judicial functions. Judges and other members of the Judiciary are chosen on the basis of their judicial and professional qualities. They will only determine the merits of the case according to law even where a case has political, social or economic ramifications. The legal system in Hong Kong is transparent. Most of the courts proceedings are open to the public. Written judgments, which set out the reasoning of the courts in arriving at the decisions, will usually be uploaded onto the Judiciary's website for public inspection. Therefore, there is simply no need to speculate just what was behind a court's decision on any matter, much less assert that the members of the Judiciary might have taken into account factors extraneous to the law.

As regards the handling of cases, when the investigation is completed, a prosecution would only be commenced if sufficient admissible evidence to support a reasonable prospect of conviction is available. In some cases, if a plea can be taken on the first appearance at the magistrates' court and the defendant pleads guilty to the charge, the court will convict the defendant upon his own plea and sentence him in due course. If no plea is taken at the first appearance and is adjourned for further hearings (for example, for the relevant law enforcement agency to make further enquiries, or the defendant applies to adjourn the trial to view the prosecution bundle), the magistrate will deal with bail strictly in accordance with the Criminal Procedure Ordinance (Cap 221).

The magistrate is required by law to grant bail to a defendant unless it

appears to the magistrate that there are substantial grounds for believing that the defendant would fail to surrender to custody as the magistrate may appoint; commit an offence while on bail; or interfere with a witness or pervert or obstruct the course of justice. In deciding bail, the magistrate will consider the position and arguments of the prosecution and the defence, and all relevant materials placed before it by the parties. If bail is granted, conditions on bail can be imposed depending on the circumstances of the particular case to ensure the defendant returns to court and will not commit any offence while on bail. If dissatisfied with the magistrate's decision on bail, both the prosecution and the defendant can apply to the Court of First Instance of the High Court for review or variation. The Court of First Instance will likewise consider and decide such an application in accordance with the legal requirements under the Criminal Procedure Ordinance.

The public has the right to express their views on court decisions and related matters within the boundary permitted by the law. However, when expressing views on court rulings, one must also respect the judicial independence. Our courts administer justice and make their judgments in accordance with the law and admissible evidence. Judgments also set out the reasons by which they come to the decisions. Some may not like the outcome but should not endanger the impartiality and selflessness of the Judiciary by expressing criticism arbitrarily or unfairly, nor should they arbitrarily attack members of the Judiciary. These acts will only undermine the rule of law in Hong Kong. Scandalising the court or the members of the Judiciary by published words or publication of any report which prejudices the fair trial of an on-going proceeding may constitute criminal contempt. Past cases show that contemnors can be sentenced to fines and imprisonment.