

Department of Justice respects the judgment of the court

In response to media enquiries about the application for discharge of the warrant of arrest by Mr Ma Sik-chun, a spokesman for the Department of Justice (DoJ) said today (April 14) that the DoJ respects the judgment of the court delivered today.

The spokesman said that one of the key grounds relied on in support of Ma's application is the absence of sufficient admissible evidence to justify placing Ma on trial for the offences upon which he was indicted.

Following approaches by Ma's lawyers, the DoJ informed Ma's lawyers in 2005 that the DoJ had decided that there was no sufficient evidence available to the prosecution at that time to justify placing Ma on trial for any of the offences for which he was indicted in 1978. This conclusion was reached after detailed and careful analysis of the available evidence and witnesses. Among others, this conclusion was based on the consideration that the relevant witnesses had passed away, were unable to recall the relevant events due to long lapse of time or old age, or were unwilling to co-operate.

In respect of the present application, the DoJ reconsidered the case against Ma by reference to the Prosecution Code, the available evidence and the applicable law. At the same time, independent legal advice was also sought from outside leading counsel. Outside leading counsel agreed with the assessment made by the DoJ in 2005, that is to say, there is no sufficient admissible evidence available to the prosecution to justify placing Ma on trial for any of the offences upon which he was indicted.

As is made clear in paragraph 5.3 of the Prosecution Code, the decision to prosecute includes two required components: the first is that the admissible evidence available is sufficient to justify instituting or continuing proceedings;

the second is that the general public interest must require that the prosecution be conducted. Further, paragraph 10.1 of the Prosecution Code provides, among others, as follows: "A prosecutor remains under a duty continually to review a prosecution that has been commenced. The prosecution must be discontinued if, following a change of circumstances, a reapplication of the prosecution test at any stage indicates that the evidence is no longer sufficient to justify a reasonable prospect of conviction".

As stated above, there is no longer sufficient admissible evidence available to justify placing Ma on trial for any of the offences upon which he was indicted.

As to what approach the DoJ would adopt in the event Ma returns to Hong Kong, the spokesman said that the DoJ has nothing further to add.

Ends/Monday, April 14, 2014