

File Reference: SBCR 1/2716/19

## **LEGISLATIVE COUNCIL BRIEF**

Fugitive Offenders Ordinance (Chapter 503)  
Mutual Legal Assistance in Criminal Matters Ordinance (Chapter 525)

### **FUGITIVE OFFENDERS AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS LEGISLATION (AMENDMENT) BILL 2019**

#### **INTRODUCTION**

At the meeting of the Executive Council on 26 March 2019, the Council ADVISED and the Chief Executive ORDERED that the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (“the Bill”) at **Annex A** should be introduced into the Legislative Council (LegCo).

Annex A

2. The purpose of the Bill is to remove the loopholes in the mechanisms on surrender of fugitive offenders (SFO) and mutual legal assistance in criminal matters (MLA) in Hong Kong.

#### **JUSTIFICATIONS**

##### **Current regime**

3. The cooperation in criminal matters between Hong Kong and other places has all along been premised on long-term cooperation agreements with other jurisdictions. The Fugitive Offenders Ordinance (“FOO”, Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (“MLAO”, Cap. 525) provide the requisite legal bases for cooperation between Hong Kong and other places on SFO and MLA. When the two ordinances were introduced into LegCo in 1996 and 1997 respectively, the Administration clearly expressed that the two ordinances

were for combatting serious crime by strengthening cooperation in matters of criminal justice, and that no offenders should be able to avoid trial or serving a sentence by moving from one jurisdiction to another. We could not afford to let Hong Kong become a place for fugitives to evade legal responsibility or to allow criminals to avoid justice by seeking refuge in other places.

4. The two ordinances contain various substantive and procedural safeguards on human rights. The standards adopted in our SFO and MLA mechanisms are in line with the common practice in juridical assistance. The key safeguards include –

- (a) double criminality - the act or omission concerned must constitute an offence in both the requesting and requested jurisdictions. For SFO cases, the relevant offence must also be among the offences within the 46 items of offences described in Schedule 1 to FOO (at **Annex B**);
- (b) rule of autrefois acquit or convict (i.e. rule against double jeopardy) - an offence being tried in one place cannot be tried again in another; the requested party shall refuse the request unless this rule is followed;
- (c) political offence bar - requests in relation to offences of a political character shall be refused;
- (d) refusal of requests based on political or other motives - requests involving persons being prejudiced or prosecuted/punished on account of his race, religion, nationality or political opinions shall be refused;
- (e) protection against death penalty - for an offence punishable with death, the requesting party shall assure that such punishment will not be imposed or carried out. Otherwise the surrender request shall be refused or an MLA request may be refused; and
- (f) specialty protection and restriction against re-surrender - for SFO cases, the person shall not be dealt with for any offence other than the offence(s) for which he was surrendered, and shall not be re-surrendered to any other place.

Annex B

5. On the procedural front, all surrender requests have to go through three key statutory procedures, first, the Chief Executive (“CE”) will scrutinize all relevant circumstances of a case, the relevant arrangements made with the requesting party and the relevant law before issuing an authority to proceed<sup>1</sup>; second, the holding of a committal hearing in open court to examine the evidence and circumstances of each case having regard to the relevant law; and third, the consideration of a surrender order by the CE having regard to the court’s committal decision and the circumstances of the case. In considering a case, the executive and judicial authorities have to make sure that the request fully complies with relevant requirements and safeguards of the rights of individual as prescribed in the law and the relevant arrangements. As specified in FOO, the individual concerned has access to procedural safeguards including the application for habeas corpus and appeal if his application fails; application for bail supported by special circumstances; application for discharge in case of delay in his surrender; etc. The individual can also judicially review the executive decisions at any point of the procedure and resort to legal aid to do so if necessary.

6. Under FOO and MLAO, apart from long-term bilateral arrangements or multilateral conventions applicable to Hong Kong, we can also handle requests pursuant to a case-based approach (for MLA, this must be based on a reciprocity undertaking by the requesting party; for SFO, this must be based on arrangements agreed by both sides and subsidiary legislation that gives effect to the arrangements). Case-based cooperation is an interim measure before long-term arrangements with a place comes into effect. While case-based cooperation has been operating smoothly under MLAO, similar cooperation has never been invoked under FOO due to the impracticable operational requirements as detailed in paragraph 7 below.

### **Impracticable operational requirements and geographical restrictions**

7. In early 2018 there was a case in Taiwan in which a Hong Kong permanent resident was suspected to have murdered another Hong Kong permanent resident and then returned to Hong Kong. In this case, the suspect cannot be subject to surrender despite Taiwan’s requests due to the restrictions of the existing laws. The existing FOO and MLAO have revealed two practical problems, namely the impracticable operational requirements and geographical restrictions –

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<sup>1</sup> Means an order of the Chief Executive authorizing a person to be dealt with under Part 2 of FOO.

(a) Current operation of case-based surrender is impracticable

Under the current mechanism, unless a place outside Hong Kong voluntarily agrees to surrender a fugitive to Hong Kong, surrender arrangements must be given effect through making subsidiary legislation with publication in the Gazette. When LegCo scrutinizes a case-based surrender, details of the case would inevitably be publicly disclosed. Even if the personal particulars of the offenders were redacted, given the uniqueness of some case details, such public scrutiny would alarm the offender who would then flee. Further, even if the offender was arrested, he might judicially challenge the authority on the ground that his case details had been divulged and publicly discussed, hence his opportunity for a fair hearing has been compromised. In the event that Hong Kong cannot arrest the suspect because of the disclosure of case details, this would affect the arresting actions of the requesting party. Other places may cast doubts on Hong Kong's commitment in combating serious crimes.

In addition, FOO stipulates that the relevant procedures and orders (inclusive of the arrest procedure) cannot come into effect before LegCo's scrutiny period expires. So even if a request for individual surrender is received from another place during LegCo's scrutiny (i.e. ranging from 28 to 49 days<sup>2</sup>), there is nothing that can be done in the interim, including any provisional arrest. The fugitive would probably flee during this period, as a result of which no subsequent committal or surrender could ever be executed on him. In brief, the existing arrangement is operationally impracticable and not enforceable.

(b) Geographical restriction hinders cooperation with some places outside Hong Kong

At present, the two ordinances are not applicable to SFO and MLA requests between Hong Kong and other parts of the People's Republic of China (PRC)<sup>3</sup>. This makes Hong Kong

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<sup>2</sup> The scrutiny period will be extended further to more than three months if it straddles the end of a LegCo session or dissolution of LegCo.

<sup>3</sup> As defined in the Interpretation and General Clauses Ordinance (Cap. 1), "People's Republic of China" includes Taiwan, the Hong Kong Special Administrative Region and Macau.

unable to tackle the Taiwan homicide case. As fugitives from the Mainland, Macau and Taiwan may make use of this loophole to evade legal responsibility or seek refuge in Hong Kong, there is a need to remove the existing geographical restriction, and make case-based cooperation between Hong Kong and other places possible under the laws for concerted efforts in combating crimes.

8. The Taiwan homicide case has highlighted the loopholes in our existing regimes, including the impracticable operational requirements and geographical restrictions mentioned in paragraph 7 above. The suspect is in Hong Kong while the authorities have no way to handle him. Apart from frustrating due administration of justice, this also poses serious threat to Hong Kong's public safety. We must therefore remove the loopholes, strengthen cooperation with places outside Hong Kong and uphold justice.

## **Proposals**

9. We propose to amend FOO and MLAO to tackle two problems, namely (i) the Taiwan homicide case (see paragraph 7 above) and (ii) at the same time plugging the loopholes in Hong Kong's overall cooperation mechanism in criminal and juridical assistance matters. While preserving the existing frameworks of FOO and MLAO, we propose to remove the loopholes and distinguish the case-based cooperation mechanism clearly from general long-term arrangements. All existing human rights and procedural safeguards provided for in FOO and MLAO will be maintained. References have been drawn to similar case-based surrender arrangements which have been practiced in the United Kingdom and Canada for years, and similar models in countries like New Zealand and South Africa.

10. The Security Bureau has received different views on the proposals. By 4 March 2019, about 4 500 written submissions were received, including about 3 000 in support and about 1 400 in opposition to the proposals. Over the past few weeks, the Secretary for Security and officials of the Department of Justice had been invited to introduce and explain the provisions and items of offences covered by the relevant laws to different sectors and the public, in particular to those who were worried that they might breach the laws inadvertently because of a lack of understanding of the laws in other places. Many views were originated from a lack of understanding about the principle of "double criminality", the details of the

surrender arrangements, the legal procedures and the application of the safeguard provisions. There were suggestions that the Government should first tackle the more serious and less controversial crimes.

11. After taking into account all factors of consideration and views received, we decide that case-based surrender arrangements will only apply to 37 items of offences based on their existing description in Schedule 1 of FOO.<sup>4</sup> We will also raise the threshold for case-based surrender arrangements such that only offences punishable with imprisonment for more than three years and triable on indictment in Hong Kong are covered. We believe that the public will better understand the application of the relevant law and mechanism after the mechanism for giving effect to case-based surrender arrangements has been in operation for a period of time. Between March and December 2018, Taiwan had written to the HKSAR Government on three occasions, requesting legal assistance and surrender of the suspect to Taiwan for trial. We have already communicated with Taiwan about its requests. If the proposed legislative amendments are passed before July 2019, we will then have a legal basis to cooperate with Taiwan with a view to reaching a case-based arrangement in tackling the Taiwan murder case.

12. The nine items of offences in Schedule 1 of FOO not covered in case-based surrender arrangements are –

- (a) item number 10 - offences against bankruptcy law or insolvency law;
- (b) item number 11 - offences against the law relating to companies including offences committed by officers, directors and promoters;
- (c) item number 12 - offences relating to securities and futures trading;
- (d) item number 14 - offences against the law relating to protection of intellectual property, copyrights, patents or trademarks;

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<sup>4</sup> With four of them further limited to the extent they relate to those 37 items.

- (e) item number 21 - offences against the law relating to environmental pollution or protection of public health;
- (f) item number 27 – offences against the law relating to the control of exportation or importation of goods of any type, or the international transfer of funds;
- (g) item number 35 – offences involving the unlawful use of computers;
- (h) item number 36 - offences relating to fiscal matters, taxes or duties; and
- (i) item number 40 - offences against the law relating to false or misleading trade descriptions.

As the items of offences to be covered under general long-term SFO agreements between Hong Kong and other places require mutual agreement, not all the 46 items of offences are covered under the 20 SFO agreements that Hong Kong has entered into. Indeed, the above-mentioned nine items of offences are not included in all SFO agreements that Hong Kong has entered into.<sup>5</sup>

13. Our key proposals are as follows –

In FOO

- (a) to differentiate case-based surrender arrangements (to be defined as “special surrender arrangements”) from general long-term surrender arrangements;
- (b) to stipulate that special surrender arrangements will be applicable to Hong Kong and any place outside Hong Kong, and they will only be considered if there are no applicable long-term surrender arrangements with the concerned jurisdictions;

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<sup>5</sup> In the existing SFO agreements that Hong Kong has entered into, not all of them cover all 46 items of offences under FOO. For example, the agreement with Finland covers 21 items of offences; Canada (27 items); the Netherlands (30 items); Australia (31 items); Germany (46 items).

- (c) to specify that the special surrender arrangements will cover 37 items of offences (out of 46 items of offences) based on their existing description in Schedule 1 of FOO<sup>6</sup>, and the offences are punishable with imprisonment for more than three years and triable on indictment in Hong Kong;
- (d) to specify that the procedures in FOO will apply in relation to special surrender arrangements (except that an alternative mechanism for activating the surrender procedures by a certificate issued by the CE is provided as mentioned in paragraph 13(e) below), which may be subject to further limitations on the circumstances in which the person may be surrendered as specified in the arrangements;
- (e) to provide that, a certificate issued by or under the authority of the CE is conclusive evidence of there being special surrender arrangements, such that the certificate will serve as a basis to activate the surrender procedures. Such activation does not mean that the fugitive will definitely be surrendered as the request must go through all statutory procedures, including the issuance of an authority to proceed by the CE, the committal hearing by the court and the eventual making of the surrender order by the CE. Other procedural safeguards such as application for habeas corpus, application for discharge in case of delay, judicial review of CE's decision, etc. as provided under FOO will remain unchanged;

#### In MLAO

- (f) to lift the geographical restriction on the scope of application of the Ordinance; and
- (g) to provide that case-based cooperation premised on the undertaking of reciprocity will be superseded by the long-term MLA arrangements once the latter have been made and become effective.

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<sup>6</sup> With four of them further limited to the extent they relate to those 37 items.



## OTHER OPTIONS

14. The proposals above can only be implemented by legislative means. The following options have been considered but were found not suitable –

- (a) to remove the PRC disapplication in FOO and MLAO with a sunset clause to handle the Taiwan homicide case only. Reasons for not being suitable – the option could only handle one case and cannot remove the loopholes in the current mechanism on SFO and MLA. It is unrealistic to introduce legislative amendments with a sunset clause for each and every time when a serious crime comes up and requires the activation of a case-based surrender and the MLA mechanism;
- (b) to introduce a brand new primary legislation just for the purpose of handling the legal assistance and surrender of the Taiwan homicide case. Reasons for not being suitable – the existing proposed amendments retain the current legislation and regime framework, including all safeguards on human rights and procedures. If a separate primary legislation is introduced only for the purpose of handling a single case, it is still necessary to stipulate provisions relating to human rights and procedural safeguards as well as operational details, etc., which virtually copies the current legislation. Taking into account the legislation scrutiny period required, such practice is ineffective and impracticable in cases that require immediate action. Furthermore, similar to the option of using sunset clause, it is time consuming and impracticable to introduce a brand new primary legislation every time when there is a need to activate case-based surrender or MLA mechanism with serious crimes involving Taiwan, Macau and the Mainland; and
- (c) to amend the Criminal Jurisdiction Ordinance (Cap. 461) (CJO) and other relevant ordinances to extend the jurisdiction of the Hong Kong criminal courts over cases of homicide committed at places outside Hong Kong in which both the murderer and victim are Hong Kong permanent residents, or to include homicide offences under CJO, so that Hong Kong courts would have jurisdictional power over homicide cases with extra-territorial elements. Reasons for not being suitable – if only homicide

offences are included, other serious offences such as arson, robbery, drugs, etc. cannot be handled and surrendered. Even if homicide offences are included under CJO, there remains the question of non-retrospectivity of the relevant legislative amendments, which means the Taiwan homicide case cannot be covered.

## THE AMENDMENT BILL

15. The main provisions of the Amendment Bill are set out below –

(a) Clause 3 amends section 2(1) of FOO to differentiate between –

(i) surrender arrangements of a general nature, for which the exception for other parts of the PRC is retained (the definition of *arrangements for the surrender of fugitive offenders* is proposed to be amended); and

(ii) surrender arrangements that relate to particular circumstances not covered by surrender arrangements of a general nature implemented by an order under section 3, for which the exception for other parts of the PRC is removed (a new definition of *special surrender arrangements* is proposed to be added).

(b) Clause 4 adds a new section 3A to FOO to provide for a mechanism by which FOO applies in relation to special surrender arrangements without the need for making an order under section 3 or other subsidiary legislation. Surrenders from Hong Kong under special surrender arrangements may only cover 37 items of offences, while 9 other items are excluded, based on their existing description in Schedule 1 of FOO<sup>7</sup>, and the offences have to be ones punishable with imprisonment for more than three years or any greater punishment and triable on indictment in Hong Kong. The existing regime (including the offences covered) for applying FOO in relation to surrender arrangements of a general nature through an order under section 3 is not changed;

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<sup>7</sup> With four of them further limited to the extent they relate to those 37 items.

- (c) Clause 8 amends the definition of *arrangements for mutual legal assistance* in section 2(1) of MLAO, and clause 9 repeals section 3(1) of MLAO, to remove the exception for other parts of the PRC in relation to the MLA regime;
- (d) Clause 10 adds a new section 8(3) to MLAO to provide that a request for assistance in a criminal matter covered by bilateral arrangements for MLA that are “prescribed arrangements” may only be made pursuant to the arrangements.

Annex C The existing provisions being amended are at Annex C.

## LEGISLATIVE TIMETABLE

16. Subject to Members’ approval of the introduction of Amendment Bill into the LegCo, the legislative timetable will be –

Publication in the Gazette	29 March 2019
First Reading and commencement of Second Reading debate	3 April 2019
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## PUBLIC CONSULTATION

17. We briefed the LegCo Panel on Security on 15 February 2019 and a motion supporting the proposals was passed. The Security Bureau invited the public to express views on the proposals from 12 February to 4 March 2019. By 4 March 2019, about 4 500 written submissions were received, including about 3 000 in support and about 1 400 in opposition to the proposals. Others were only expressing views or proposing other options.

18. We have compiled the views received. Supporting views came from different sectors of the community, including political parties, associations, and the public, with the main reasons being removal of loopholes (76.5%); do not want Hong Kong to become a place for fugitives

to elude justice (71.4%); the Taiwan homicide case and similar cases must be seriously dealt with (16.8%); the security threats arising from fugitives seeking refuge must be eliminated (3.1%). Opposing views were mainly disagreement with the judicial system in the Mainland (83%); the scope of offences subject to surrender is too broad and should first focus on serious violent crimes (80%).

19. Since the announcement of the proposed legislative amendments, the Secretary for Security has been explaining the amendments to the public on various occasions, including media interviews and responding to media enquiries, meetings with various parties on invitation, e.g. political parties, local and foreign chambers of commerce, consul generals in Hong Kong, different institutions and organisations, etc.

## **PUBLIC REACTION**

20. The proposals are controversial. But as observed from the views collected from consultation, supporting views outnumber those opposing given that the proposals can enhance Hong Kong's SFO and MLA regimes and remove loopholes. There are, however, several areas of concern where attention is warranted, as outlined below.

21. Some are worried about the applicability of all 46 items of offences under the existing FOO in case-based surrender arrangement, especially those with commercial connections with the Mainland. They are worried that they may be surrendered because they are not familiar with Mainland laws and may inadvertently commit a crime. As such, they consider that the Government should remove economic crimes involving unintentional mistakes, or give priority to handling items of offences which are less controversial when implementing case-based surrender arrangements. Some are concerned about "unfair trial" that a fugitive may face in the Mainland, as well as the implications of the legislative proposals on Hong Kong's standing as a core regional business hub. Taking into account that many existing long-term arrangements do not cover all 46 items of offences in the list of extraditable offences, and that the public is not familiar with the actual operation of case-based surrender, we have decided to only handle 37 items of offences in case-based surrender arrangements (see paragraph 11 above). We have also explained that the principle of "double criminality" will apply in the scrutiny of each and every incoming surrender request by both the executive authority and the court. Hong Kong

will refuse such request if the offence concerned is not an offence in Hong Kong. As the public should generally understand what acts in Hong Kong do not constitute a criminal offence, there is no need for them to worry. Besides, the safeguards on individual rights under FOO must also be strictly complied with. In processing a surrender request, the executive authority will fully consider all circumstances. If necessary, additional safeguards/conditions may be included in the case-based surrender arrangements so as to further limit the circumstances in which a person may be surrendered. If the requesting party does not agree to such safeguards/conditions, Hong Kong will refuse the surrender request.

22. Some from the legal sector and chambers of commerce are concerned if case-based surrender arrangements will replace long-term SFO arrangements or affect those arrangements in force. We have emphasized many times that case-based surrender is a supplementary measure before long-term cooperation arrangements come into effect, and case-based surrender will be adopted only when a jurisdiction does not have any long-term arrangement with Hong Kong. Our proposals will not affect any long-term SFO agreements in force. Hong Kong has the obligation to honour all bilateral arrangements in force and any change to such arrangements must be mutual and agreed by both sides. It remains the key policy goal of the HKSAR Government to pursue long-term arrangements with other places in the combat of crime.

## **PUBLICITY**

23. The Administration will arrange a press conference to introduce the latest proposal and respond to enquiries on 26 March 2019, and issue a LegCo Brief on the same day. We will publish the Amendment Bill in the Gazette on 29 March. A spokesperson will continue to be available to respond to media and public enquiries, so as to facilitate their better understanding of the legislative proposals.

## **BACKGROUND**

24. FOO and MLAO provide the statutory frameworks for SFO and MLA arrangements respectively. Specifically, FOO provides for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence, and for the treatment of persons surrendered to Hong Kong. MLAO regulates the

provision to and obtaining from certain places outside Hong Kong of assistance in the investigation and prosecution of criminal offences, which includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime. So far, Hong Kong has signed MLA agreements with 32 jurisdictions<sup>8</sup> and SFO agreements with 20 jurisdictions<sup>9</sup>.

## **ENQUIRIES**

25. For enquiries on this brief, please contact Ms Joceline Chui, Principal Assistant Secretary for Security at 2810 2329.

**Security Bureau**  
**March 2019**

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<sup>8</sup> Argentina, Australia, Belgium, Canada, Czech, Denmark, France, Finland, Germany, India, Indonesia, Ireland, Israel, Italy, Japan, Malaysia, Mongolia, the Netherlands, New Zealand, the Philippines, Poland, Portugal, the Republic of Korea, Singapore, Sri Lanka, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States of America and Ukraine.

<sup>9</sup> Australia, Canada, Czech, France, Finland, Germany, India, Indonesia, Ireland, Malaysia, the Netherlands, New Zealand, the Philippines, Portugal, the Republic of Korea, Singapore, South Africa, Sri Lanka, the United Kingdom and the United States of America.

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation  
(Amendment) Bill 2019

i

**Fugitive Offenders and Mutual Legal Assistance in  
Criminal Matters Legislation (Amendment) Bill 2019**

**Contents**

Clause	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1. Short title .....	2
2. Enactments amended .....	2
<b>Part 2</b>	
<b>Amendments to Fugitive Offenders Ordinance (Cap. 503)</b>	
3. Section 2 amended (interpretation) .....	3
4. Section 3A added .....	4
3A. Special arrangements for surrender of fugitive offenders .....	4
5. Section 10 amended (proceedings for committal) .....	6
6. Section 23 amended (admissibility of evidence, etc.) .....	7
7. Schedule 1 amended (description of offences) .....	7
<b>Part 3</b>	
<b>Amendments to Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)</b>	

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation  
(Amendment) Bill 2019

ii

Clause	Page
8. Section 2 amended (interpretation) .....	8
9. Section 3 amended (application) .....	8
10. Section 8 amended (requests for assistance to Hong Kong) .....	8

## A BILL

## To

Amend the Fugitive Offenders Ordinance so that the Ordinance applies to special surrender arrangements once they are made between Hong Kong and any other place in relation to particular circumstances not covered by surrender arrangements of a general nature; to provide that in relation to special surrender arrangements, the scope of the offences covered for a surrender from Hong Kong is limited to 37 items of offences, on the basis of their existing descriptions in the Ordinance only, that currently apply in relation to surrender arrangements of a general nature; and to provide that documents authenticated in accordance with surrender arrangements that are prescribed arrangements are deemed as duly authenticated; to amend the Mutual Legal Assistance in Criminal Matters Ordinance so that the Ordinance applies to requests for assistance between Hong Kong and any other place; and to provide that a request for assistance in a criminal matter covered by bilateral arrangements for mutual legal assistance made between Hong Kong and any other place that are prescribed arrangements may only be made pursuant to the arrangements.

Enacted by the Legislative Council.

## Part 1

### Preliminary

**1. Short title**

This Ordinance may be cited as the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Ordinance 2019.

**2. Enactments amended**

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.



## Part 2

### Amendments to Fugitive Offenders Ordinance (Cap. 503)

#### 3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *arrangements for the surrender of fugitive offenders*—

##### Repeal

“arrangements—

- (a) which are applicable”

##### Substitute

“arrangements of a general nature that are—

- (a) applicable”.

- (2) Section 2(1), definition of *prescribed arrangements*—

##### (a) Repeal

“means arrangements”

##### Substitute

“means—

- (a) arrangements”;

- (b) paragraph (a), after “in force;”—

##### Add

“or”;

- (c) after paragraph (a)—

##### Add

“(b) special surrender arrangements;”.

- (3) Section 2(1)—

#### Add in alphabetical order

“*special surrender arrangements* (特別移交安排) means arrangements that are—

- (a) applicable to—

- (i) the Government and the government of a place outside Hong Kong; or

- (ii) Hong Kong and a place outside Hong Kong; and

- (b) for the purposes of the surrender in particular circumstances of a particular person or particular persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of an offence—

- (i) that is an offence against the law of Hong Kong or that place; and

- (ii) that is not an offence in respect of which procedures in this Ordinance apply as between Hong Kong and that place by virtue of an order in force made under section 3(1);”.

#### 4. Section 3A added

After section 3—

##### Add

#### “3A. Special arrangements for surrender of fugitive offenders

- (1) If there are special surrender arrangements in respect of a person, the procedures in this Ordinance apply as between Hong Kong and the place outside Hong Kong

- to which the arrangements relate in respect of the person, subject to any provision contained in the arrangements that, in addition to the procedures, further limits the circumstances in which the person may be surrendered.
- (2) Subject to subsection (3), a certificate issued by or under the authority of the Chief Executive (*certificate*) stating the following matters is conclusive evidence of them—
- (a) that there are special surrender arrangements in respect of a person; and
  - (b) that, in respect of the person, the procedures in this Ordinance apply in the case of the place outside Hong Kong to which the arrangements relate and (if applicable) the application of the procedures is subject to the provisions contained in the arrangements that, in addition to the procedures, further limit the circumstances in which the person may be surrendered.
- (3) The certificate must annex a copy of the special surrender arrangements referred to in it.
- (4) In determining whether an offence is a relevant offence in relation to special surrender arrangements—
- (a) subsection (5) applies instead of section 2(2); and
  - (b) section 2(3) applies as if the reference in it to “subsection (2)” were a reference to “section 3A(5)”.
- (5) For the purposes of this Ordinance, an offence by a person against the law of a prescribed place is a relevant offence against that law if—

- (a) the offence is punishable under that law with imprisonment for more than 3 years, or any greater punishment; and
  - (b) the acts or omissions constituting the conduct in respect of which the person’s surrender to that place is sought amount to conduct which, if the conduct had occurred in Hong Kong, would constitute an offence that is—
    - (i) a specified Schedule 1 offence;
    - (ii) triable in Hong Kong on indictment; and
    - (iii) punishable in Hong Kong with imprisonment for more than 3 years, or any greater punishment.
- (6) In subsection (5)—
- specified Schedule 1 offence*** (指明的附表 1 罪行) means an offence coming within any of the descriptions specified in Schedule 1 other than—
- (a) an offence described in item 10, 11, 12, 14, 21, 27, 35, 36 or 40 of that Schedule; or
  - (b) an offence described in item 41, 42, 45 or 46 of that Schedule to the extent it relates to an offence mentioned in paragraph (a).”.

**5. Section 10 amended (proceedings for committal)**

Section 10(4)—

**Repeal**

everything after “prescribed arrangements”

**Substitute**

“pursuant to which the request for surrender in respect of that person was made.”.

6. **Section 23 amended (admissibility of evidence, etc.)**

After section 23(2)—

**Add**

“(2A) Also, any supporting document or other document is deemed to be duly authenticated if it purports to be signed, certified, sealed, or otherwise authenticated, in a way provided for by the prescribed arrangements concerned.”.

7. **Schedule 1 amended (description of offences)**

Schedule 1—

**Repeal**

“[ss. 2(2)”

**Substitute**

“[ss. 2(2), 3A”.

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**Part 3**

**Amendments to Mutual Legal Assistance in Criminal  
Matters Ordinance (Cap. 525)**

8. **Section 2 amended (interpretation)**

Section 2(1), definition of *arrangements for mutual legal assistance*—

(a) paragraph (a)(i)—

**Repeal**

“(other than the Central People’s Government or the government of any other part of the People’s Republic of China)”;

(b) paragraph (a)(ii)—

**Repeal**

“(other than any other part of the People’s Republic of China)”.

9. **Section 3 amended (application)**

Section 3—

**Repeal subsection (1).**

10. **Section 8 amended (requests for assistance to Hong Kong)**

After section 8(2)—

**Add**

“(3) If—

(a) a request by a place outside Hong Kong made under subsection (1) relates to a criminal matter in

- respect of which this Ordinance applies as between Hong Kong and that place by virtue of an order in force made under section 4(1); and
- (b) the prescribed arrangements concerned are arrangements for mutual legal assistance that were made bilaterally between Hong Kong and that place,
- the request may only be made pursuant to the prescribed arrangements concerned.”.
- 

### Explanatory Memorandum

The main purposes of this Bill are—

- (a) to amend the Fugitive Offenders Ordinance (Cap. 503) (*FOO*) in relation to special surrender arrangements (see paragraph 3(b)) made between Hong Kong and any other place so that the arrangements, once made, may be given effect according to the procedures in the FOO and any further protection for the surrender of a person as may be provided for by the arrangements; and
- (b) to amend the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (*MLAO*) so that arrangements for mutual legal assistance made between Hong Kong and any other part of the People’s Republic of China (*PRC*) may be given effect.

### Amendments to FOO

2. Currently—

- (a) arrangements for the surrender of fugitive offenders (*surrender arrangements*), not being such arrangements made between Hong Kong and other parts of the PRC, may be given effect under the FOO; and
- (b) in order to give effect to such arrangements, it is necessary for the Chief Executive in Council to make an order under section 3 of the FOO (*section 3 order*) so that the FOO applies in relation to the arrangements.

3. Clause 3 amends section 2(1) of the FOO to differentiate between—

- (a) surrender arrangements of a general nature, for which the exception for other parts of the PRC is retained (see

the amended definition of *arrangements for the surrender of fugitive offenders*); and

- (b) surrender arrangements that relate to particular circumstances not covered by surrender arrangements of a general nature implemented by a section 3 order that is in force, for which the exception for other parts of the PRC is removed (see the new definition of *special surrender arrangements*).

4. Clause 4 adds a new section 3A to the FOO to provide for a mechanism by which the FOO applies in relation to special surrender arrangements without the need for making a section 3 order or other subsidiary legislation. The scope of the offences covered for a surrender from Hong Kong in such a case is limited in that only 37 items of offences currently described in Schedule 1 to the FOO are included while 9 other items are excluded. The inclusion of the 37 items is based on their existing descriptions only, and 4 of them are further limited in that they are excluded to the extent they relate to those 9 excluded items. Moreover, the offence has to be one that is triable on indictment and punishable with imprisonment for more than 3 years or any greater punishment. On the other hand, the existing regime (including the offences covered) for applying the FOO in relation to surrender arrangements of a general nature through a section 3 order is not changed.
5. Clause 5 amends section 10(4) of the FOO so that the section applies in relation to surrender arrangements of a general nature as well as special surrender arrangements.
6. Clause 6 adds a new subsection (2A) to section 23 of the FOO to provide that documents authenticated in accordance with “prescribed arrangements” (as defined by section 2(1) of the FOO)

are deemed as duly authenticated for the purposes of any proceedings under the FOO.

#### Amendments to MLAO

7. Currently, arrangements for mutual legal assistance, not being such arrangements made between Hong Kong and other parts of the PRC, may be given effect under the MLAO.
8. Clause 8 amends section 2(1) of the MLAO (see the amended definition of *arrangements for mutual legal assistance*), and clause 9 repeals section 3(1) of the MLAO, to remove the exception for other parts of the PRC.
9. Clause 10 adds a new subsection (3) to section 8 of the MLAO to provide that a request for assistance in a criminal matter covered by bilateral arrangements for mutual legal assistance that are “prescribed arrangements” (as defined by section 2(1) of the MLAO) may only be made pursuant to the arrangements.

**Schedule 1 of FOO**

**Description of Offences**

1. Murder or manslaughter, including criminal negligence causing death; culpable homicide; assault with intent to commit murder.
2. Aiding, abetting, counselling or procuring suicide.
3. Maliciously wounding; maiming; inflicting grievous or actual bodily harm; assault occasioning actual bodily harm; threats to kill; intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise; offences relating to unlawful wounding or injuring.
4. Offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; statutory sexual offences.
5. Gross indecency with a child, a mental defective or an unconscious person.
6. Kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage.
7. Criminal intimidation.
8. Offences against the law relating to dangerous drugs including narcotics, psychotropic substances, precursors and essential chemicals used in the illegal manufacture of narcotics and psychotropic substances; offences relating to the proceeds of drug trafficking.
9. Obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering); embezzlement; blackmail; extortion; unlawful handling or receiving of property; false accounting; any other offence in respect of property or fiscal matters involving fraud; any offence against the law relating to unlawful deprivation of property.
10. Offences against bankruptcy law or insolvency law.
11. Offences against the law relating to companies including offences committed by officers, directors and promoters.

12. Offences relating to securities and futures trading.
13. Offences relating to counterfeiting; offences against the law relating to forgery or uttering what is forged.
14. Offences against the law relating to protection of intellectual property, copyrights, patents or trademarks.
15. Offences against the law relating to bribery, corruption, secret commissions and breach of trust.
16. Perjury and subornation of perjury.
17. Offence relating to the perversion or obstruction of the course of justice.
18. Arson; criminal damage or mischief including mischief in relation to computer data.
19. Offences against the law relating to firearms.
20. Offences against the law relating to explosives.
21. Offences against the law relating to environmental pollution or protection of public health.
22. Mutiny or any mutinous act committed on board a vessel at sea.
23. Piracy involving ships or aircraft.
24. Unlawful seizure or exercise of control of an aircraft or other means of transportation.
25. Genocide or direct and public incitement to commit genocide.
26. Facilitating or permitting the escape of a person from custody.
27. Offences against the law relating to the control of exportation or importation of goods of any type, or the international transfer of funds.
28. Smuggling; offences against the law relating to import and export of prohibited items, including historical and archaeological items.
29. Immigration offences including fraudulent acquisition or use of a passport or visa.

30. Arranging or facilitating for financial gain, the illegal entry of persons into a jurisdiction.
31. Offences relating to gambling or lotteries.
32. Offences relating to the unlawful termination of pregnancy.
33. Stealing, abandoning, exposing or unlawfully detaining a child; any other offences involving the exploitation of children.
34. Offences against the law relating to prostitution and premises kept for the purposes of prostitution.
35. Offences involving the unlawful use of computers.
36. Offences relating to fiscal matters, taxes or duties.
37. Offences relating to unlawful escape from custody; mutiny in prison.
38. Bigamy.
39. Offences relating to women and girls.
40. Offences against the law relating to false or misleading trade descriptions.
41. Offences relating to the possession or laundering of proceeds obtained from the commission of any offence described in this Schedule.
42. Impeding the arrest or prosecution of a person who has or is believed to have committed an offence described in this Schedule.
43. Offences for which persons may be surrendered under multi-lateral international conventions; offences created as a result of decisions of international organizations.
44. Conspiracy to commit fraud or to defraud.
45. Conspiracy to commit, or any type of association to commit, any offence described in this Schedule.
46. Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit an offence described in this Schedule.



Chapter:	503	Fugitive Offenders Ordinance	Gazette Number	Version Date
Section:	2	Interpretation	E.R. 1 of 2013	25/04/2013

(1) In this Ordinance, unless the context otherwise requires-

**arrangements for the surrender of fugitive offenders** (移交逃犯安排) means arrangements-

- (a) which are applicable to-
  - (i) the Government and the government of a place outside Hong Kong (other than the Central People's Government or the government of any other part of the People's Republic of China); or
  - (ii) Hong Kong and a place outside Hong Kong (other than any other part of the People's Republic of China); and (Amended 71 of 1999 s. 3)
- (b) for the purposes of the surrender of a person or persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of an offence against the law of Hong Kong or that place;

**authority to proceed** (授權進行書) means an order of the Chief Executive authorizing a person to be dealt with under Part 2; (Amended 71 of 1999 s. 3)

**authorized officer** (獲授權人員) means-

- (a) any police officer;
- (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342);
- (c) any officer within the meaning of section 2 of the Independent Commission Against Corruption Ordinance (Cap 204);

**court of committal** (負責交付拘押的法院) means any magistrate before whom is brought a person arrested pursuant to a warrant under section 7 (1), whether in the first instance or subsequently;

**imprisonment** (監禁) includes any form of detention;

**order of surrender** (移交令) means an order under section 13(1) for the surrender of a person to a prescribed place;

**order of committal** (拘押令) means an order under section 10(6);

**prescribed arrangements** (訂明安排) means arrangements for the surrender of fugitive offenders which are the subject of an order under section 3(1) which is in force;

**prescribed place** (訂明地方) means a place outside Hong Kong to or from which a person may be surrendered pursuant to prescribed arrangements;

**provisional warrant** (臨時手令) means a warrant under section 7(1)(b);

**request for surrender** (移交要求) means a request for the surrender of a person to a prescribed place;

**supporting documents** (支持文件) means-

- (a) in relation to an offence in respect of which a person is wanted for prosecution-
  - (i) a warrant of arrest (or a copy thereof) issued in the prescribed place which has made the request for surrender concerned; and
  - (ii) other documents which provide evidence of-
    - (A) the offence;
    - (B) the penalty which may be imposed in respect of the offence; and
    - (C) the conduct constituting the offence;
- (b) in relation to an offence in respect of which a person is wanted for the imposition or enforcement of a sentence, documents which provide evidence of-
  - (i) the offence;
  - (ii) the penalty which may be imposed in respect of the offence;
  - (iii) the conduct constituting the offence;
  - (iv) the conviction;
  - (v) the sentence imposed or the intention to impose a sentence; and
  - (vi) the extent to which a sentence imposed has not been carried out;

**torture claim** (酷刑聲請), in relation to a person, means a torture claim as defined by section 37U(1) of the Immigration Ordinance (Cap 115); (Added 23 of 2012 s. 15)

**torture claimant** (酷刑聲請人) means a person who falls within the meaning of **claimant** as defined by section

37U(1) of the Immigration Ordinance (Cap 115); (Added 23 of 2012 s. 15)

**warrant** (手令), in relation to a prescribed place, includes any judicial document authorizing the arrest of a person wanted for prosecution in respect of an offence.

(Amended 71 of 1999 s. 3)

- (2) For the purposes of this Ordinance, an offence by a person against the law of a prescribed place is a relevant offence against that law if-
- (a) the offence is punishable under that law with imprisonment for more than 12 months, or any greater punishment; and
  - (b) the acts or omissions constituting the conduct in respect of which the person's surrender to that place is sought amount to conduct which, if the conduct had occurred in Hong Kong, would constitute an offence-
    - (i) coming within any of the descriptions specified in Schedule 1; and
    - (ii) punishable in Hong Kong with imprisonment for more than 12 months, or any greater punishment.
- (3) For the purposes of subsection (2)-
- (a) the law of a prescribed place includes the law of any part of that place; and
  - (b) conduct in-
    - (i) a colony or dependency; or
    - (ii) a vessel, aircraft or hovercraft,of a prescribed place shall be treated as if the conduct were conduct in the territory of that place.
- (4) For the avoidance of doubt, it is hereby declared that any one set of arrangements for the surrender of fugitive offenders may be made with any number (including any combination) of-
- (a) governments of places outside Hong Kong;
  - (b) places outside Hong Kong,
- and the other provisions of this Ordinance (including the definition of **arrangements for the surrender of fugitive offenders**) which relate, whether directly or indirectly, to arrangements for the surrender of fugitive offenders shall be construed accordingly.
- (5) Where arrangements applicable to-
- (a) the Government and the government of a place outside Hong Kong; or
  - (b) Hong Kong and a place outside Hong Kong,
- are partly for the purposes specified in paragraph (b) of the definition of **arrangements for the surrender of fugitive offenders** and partly for other purposes, the arrangements are in this Ordinance arrangements for the surrender of fugitive offenders to the extent that they relate to those specified purposes.
- (6) Where, but for this subsection, any arrangements are not arrangements for the surrender of fugitive offenders only because they are for the purposes of the surrender of persons accused or convicted of an offence against the law of Hong Kong or a place outside Hong Kong (or words to the like effect), then, by virtue of this subsection and for the purposes of this Ordinance, such arrangements shall be deemed to be arrangements for the surrender of fugitive offenders as if-
- (a) any reference in such arrangements to the surrender of persons accused of an offence (or words to the like effect) were a reference to the surrender of persons wanted for prosecution in respect of an offence; and
  - (b) any reference in such arrangements to the surrender of persons convicted of an offence (or words to the like effect) were a reference to the surrender of persons wanted for the imposition or enforcement of a sentence in respect of an offence,
- and the provisions of this Ordinance shall apply to any such arrangements accordingly.
- (7) Where under this Ordinance any act is required to be, or may be, done by a prescribed place, that act may be done by a person on behalf of that place, and the provisions of this Ordinance shall be construed accordingly.

(Amended E.R. 1 of 2013)

Section:	10	Proceedings for committal	E.R. 1 of 2013	25/04/2013
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- (1) A person arrested pursuant to a warrant under section 7 shall (unless previously discharged under subsection (2)(b) of that section) be brought as soon as practicable before a magistrate.
- (2) For the purposes of proceedings under this section, the court of committal shall-
- (a) hear the case in the like manner, and have the like jurisdiction and powers, as nearly as may be, including, subject to subsection (5) and section 11(2), power to remand in custody or on bail, as if the person brought before it is charged with an indictable offence committed in Hong Kong;

- (b) receive any evidence relevant to the exercise of its jurisdiction under section 5.
- (3) Where the person arrested is in custody by virtue of a provisional warrant and-
  - (a) he has not consented to his surrender pursuant to subsection (6)(a);
  - (b) he is not liable to serve a sentence of imprisonment in Hong Kong; and
  - (c) no authority to proceed has been received in respect of him,
 the court of committal may, subject to subsection (4), fix a reasonable period (of which the court shall give notice to the Chief Executive) after which he will be discharged from custody unless such an authority has been received. (Amended 71 of 1999 s. 3)
- (4) In exercising the power conferred by subsection (3) in respect of the person arrested, the court of committal shall have regard to the period, if any, specified for the purpose in the terms of the prescribed arrangements-
  - (a) recited or embodied in the order under section 3(1) which relates to the arrangements; and
  - (b) pursuant to which the request for surrender in respect of that person was made.
- (5) Notwithstanding any other law of Hong Kong, neither the court of committal nor any other court shall remand on bail the person arrested unless it is satisfied that there are special circumstances justifying such remand. (Amended 23 of 2002 s. 12)
- (6) Where-
  - (a) subject to subsection (7), at any time the person arrested informs the court of committal, and whether or not-
    - (i) an authority to proceed has been issued in respect of him; or
    - (ii) the court is proceeding under paragraph (b),
 that he consents to his surrender to the prescribed place by which the request for surrender concerned was made; or
  - (b) an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied-
    - (i) that the offence to which the authority relates is a relevant offence;
    - (ii) that the supporting documents in relation to the offence-
      - (A) have been produced; and
      - (B) are duly authenticated;
    - (iii) where the person is wanted for prosecution in respect of the offence, that the evidence in relation to the offence would be sufficient to warrant the person's committal for trial according to the law of Hong Kong if the offence had been committed within the jurisdiction of that court or any other court; and
    - (iv) where the person has been prosecuted for the offence, a conviction obtained and-
      - (A) no sentence has been imposed, that there is an intention to impose a sentence;
      - (B) a sentence of imprisonment has been imposed, that either-
        - (I) the sentence has not been carried out; or
        - (II) in the case of a term of imprisonment, not less than 6 months of the term remain to be served,
 the court shall (unless the person's committal is prohibited by any other provision of this Ordinance) by order commit him to custody-
  - (i) to await the Chief Executive's decision as to his surrender to the prescribed place by which the request for surrender concerned was made; and (Amended 71 of 1999 s. 3)
  - (ii) if the Chief Executive decides that he shall be surrendered to that place, to await such surrender. (Amended 71 of 1999 s. 3)
- (7) Where pursuant to subsection (6)(a) a person informs the court of committal of his consent to surrender, the court shall-
  - (a) if it has reason to believe that the consent was not given voluntarily, reject that consent and proceed, or continue to proceed, as the case may be, under subsection (6)(b);
  - (b) in any other case-
    - (i) inform the person in ordinary language-
      - (A) that the effect of that consent is that, without any further proceedings, an order will be made committing him to custody; and
      - (B) of the effect of that order by stating the substance of subsection (6)(i) and (ii); and
    - (ii) after so informing that person, reject that consent and proceed, or continue to proceed, as the case may be, under subsection (6)(b) unless that person informs it that he still so consents.
- (8) For the purposes of this section, a person in respect of whom a conviction has been obtained in his absence in a

prescribed place shall be treated as a person wanted for prosecution in respect of the offence of which he is convicted.

- (9) If-
- (a) the court of committal is not satisfied as referred to in subsection (6)(b) in relation to the person arrested; or
  - (b) the committal of the person arrested is prohibited by a provision of this Ordinance,
- the court shall discharge him.

Section:	23	Admissibility of evidence, etc.	E.R. 1 of 2013	25/04/2013
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- (1) Any supporting document or other document which is duly authenticated is admissible in evidence in any proceedings under this Ordinance without further proof.
- (2) Any supporting document or other document shall be deemed to be duly authenticated if it-
  - (a) purports to be signed or certified by a judge, magistrate or officer of the prescribed place concerned; and
  - (b) purports to be sealed with the official or public seal of a competent authority of that place.
- (3) Subject to subsection (4), in any proceedings under this Ordinance, nothing in this Ordinance shall prejudice either-
  - (a) the admission in evidence of any document which is admissible in evidence; or
  - (b) the proof of any matter,under any other law of Hong Kong.
- (4) Without prejudice to the generality of section 10(2)(b) or 12(4), in any proceedings under this Ordinance, any evidence which contradicts an allegation that a person sought to be surrendered under this Ordinance to a prescribed place has engaged in conduct which constitutes a relevant offence for which such surrender is sought is inadmissible and, accordingly-
  - (a) that person is not entitled to adduce such evidence; and
  - (b) any court is not entitled to receive such evidence.
- (5) Without prejudice to the generality of subsection (4), in proceedings under this Ordinance evidence may be adduced for the purposes of showing that a person brought before the court of committal or any other court is not the person identified in the request for surrender to which the proceedings relate.
- (6) In this section, **document** (文件) includes a copy of a document.

Schedule:	1	Description of Offences	E.R. 1 of 2013	25/04/2013
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[sections 2(2) & 25]

- 1. Murder or manslaughter, including criminal negligence causing death; culpable homicide; assault with intent to commit murder.
- 2. Aiding, abetting, counselling or procuring suicide.
- 3. Maliciously wounding; maiming; inflicting grievous or actual bodily harm; assault occasioning actual bodily harm; threats to kill; intentional or reckless endangering of life whether by means of a weapon, a dangerous substance or otherwise; offences relating to unlawful wounding or injuring.
- 4. Offences of a sexual nature including rape; sexual assault; indecent assault; unlawful sexual acts on children; statutory sexual offences.
- 5. Gross indecency with a child, a mental defective or an unconscious person.
- 6. Kidnapping; abduction; false imprisonment; unlawful confinement; dealing or trafficking in slaves or other persons; taking a hostage.
- 7. Criminal intimidation.

8. Offences against the law relating to dangerous drugs including narcotics, psychotropic substances, precursors and essential chemicals used in the illegal manufacture of narcotics and psychotropic substances; offences relating to the proceeds of drug trafficking.
9. Obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering); embezzlement; blackmail; extortion; unlawful handling or receiving of property; false accounting; any other offence in respect of property or fiscal matters involving fraud; any offence against the law relating to unlawful deprivation of property.
10. Offences against bankruptcy law or insolvency law.
11. Offences against the law relating to companies including offences committed by officers, directors and promoters.
12. Offences relating to securities and futures trading.
13. Offences relating to counterfeiting; offences against the law relating to forgery or uttering what is forged.
14. Offences against the law relating to protection of intellectual property, copyrights, patents or trademarks.
15. Offences against the law relating to bribery, corruption, secret commissions and breach of trust.
16. Perjury and subornation of perjury.
17. Offence relating to the perversion or obstruction of the course of justice.
18. Arson; criminal damage or mischief including mischief in relation to computer data.
19. Offences against the law relating to firearms.
20. Offences against the law relating to explosives.
21. Offences against the law relating to environmental pollution or protection of public health.
22. Mutiny or any mutinous act committed on board a vessel at sea.
23. Piracy involving ships or aircraft.
24. Unlawful seizure or exercise of control of an aircraft or other means of transportation.
25. Genocide or direct and public incitement to commit genocide.
26. Facilitating or permitting the escape of a person from custody.
27. Offences against the law relating to the control of exportation or importation of goods of any type, or the international transfer of funds.
28. Smuggling; offences against the law relating to import and export of prohibited items, including historical and archaeological items.
29. Immigration offences including fraudulent acquisition or use of a passport or visa.
30. Arranging or facilitating for financial gain, the illegal entry of persons into a jurisdiction.
31. Offences relating to gambling or lotteries.

32. Offences relating to the unlawful termination of pregnancy.
33. Stealing, abandoning, exposing or unlawfully detaining a child; any other offences involving the exploitation of children.
34. Offences against the law relating to prostitution and premises kept for the purposes of prostitution.
35. Offences involving the unlawful use of computers.
36. Offences relating to fiscal matters, taxes or duties.
37. Offences relating to unlawful escape from custody; mutiny in prison.
38. Bigamy.
39. Offences relating to women and girls.
40. Offences against the law relating to false or misleading trade descriptions.
41. Offences relating to the possession or laundering of proceeds obtained from the commission of any offence described in this Schedule.
42. Impeding the arrest or prosecution of a person who has or is believed to have committed an offence described in this Schedule.
43. Offences for which persons may be surrendered under multi-lateral international conventions; offences created as a result of decisions of international organizations.
44. Conspiracy to commit fraud or to defraud.
45. Conspiracy to commit, or any type of association to commit, any offence described in this Schedule.
46. Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit an offence described in this Schedule.

Chapter:	525	MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE	Gazette Number	Version Date
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Section:	2	Interpretation	L.N. 145 of 2002	01/01/2003
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(1) In this Ordinance, unless the context otherwise requires-

"ancillary criminal matter" (附帶刑事事宜) means a matter relating to-

- (a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a Hong Kong offence or an external offence; or
- (b) the obtaining, enforcement or satisfaction of a Hong Kong confiscation order or an external confiscation order;

"appropriate authority" (有關當局), in relation to a place outside Hong Kong, means a person whom the Secretary for Justice is satisfied is a person who for the time being may under the law of that place- (Amended L.N. 362 of 1997)

- (a) in the case of a request by Hong Kong to that place for assistance in a criminal matter, receive such a request; or
- (b) in the case of a request by that place to Hong Kong for assistance in a criminal matter, make such a request;

"arrangements for mutual legal assistance" (相互法律協助的安排) means arrangements-

- (a) which are applicable to-
  - (i) the Government and the government of a place outside Hong Kong (other than the Central People's Government or the government of any other part of the People's Republic of China); or
  - (ii) Hong Kong and a place outside Hong Kong (other than any other part of the People's Republic of China); and (Amended 71 of 1999 s. 3)
- (b) for the purposes of the provision and obtaining of assistance in criminal matters between Hong Kong and that place;

"assistance" (協助) includes giving evidence;

"authorized officer" (獲授權人員) means-

- (a) any police officer;
- (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342);
- (c) any officer within the meaning of section 2 of the Independent Commission Against Corruption Ordinance (Cap 204); and
- (d) any other person (including a person belonging to a class of persons) authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)

"court" (法院) includes a tribunal and magistrate;

"criminal matter" (刑事事宜) means-

- (a) an investigation;
- (b) a prosecution; or
- (c) an ancillary criminal matter;

"dealing" (處理), in relation to property, includes-

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property;
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise);

"duly certified" (妥為核證) means (except in sections 29 and 30) duly certified as provided in section 32;

"external confiscation order" (外地沒收令) means an order, made under the law of a place outside Hong Kong, for the purpose of-

- (a) recovering (including forfeiting and confiscating)-

- (i) payments or other rewards received in connection with an external serious offence or their value;
- (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with an external serious offence or the value of such property; or
- (iii) property used or intended to be used in connection with an external serious offence or the value of such property; or

(b) depriving a person of a pecuniary advantage obtained in connection with an external serious offence, and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property;

"external law immunity certificate" (外地法律豁免權證明書) means a certificate given, or a declaration made, by a place outside Hong Kong or under a law of a place outside Hong Kong certifying or declaring that, under the law of that place, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required-

- (a) to answer a specified question; or
- (b) to produce a specified document;

"external offence" (外地罪行) means an offence against a law of a place outside Hong Kong;

"external prisoner" (外地囚犯) means a person who is-

- (a) being held in custody pending trial for or sentence for an external offence; or
- (b) under a sentence of imprisonment for an external offence,

but does not include a person who is at large having escaped from lawful custody;

"external serious offence" (外地嚴重罪行) means an external offence the maximum penalty for which is death, or imprisonment for not less than 24 months;

"Hong Kong confiscation order" (香港沒收令) means an order, made under a law of Hong Kong, for the purpose of-

- (a) recovering (including forfeiting or confiscating)-
  - (i) payments or other rewards received in connection with a Hong Kong serious offence or their value;
  - (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with a Hong Kong serious offence or the value of such property; or
  - (iii) property used or intended to be used in connection with a Hong Kong serious offence or the value of such property; or

(b) depriving a person of a pecuniary advantage obtained in connection with a Hong Kong serious offence, and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property;

"Hong Kong offence" (香港罪行) means an offence against a law of Hong Kong;

"Hong Kong prisoner" (香港囚犯) means a person who is-

- (a) being held in custody pending trial for or sentence for a Hong Kong offence; or
- (b) under a sentence of imprisonment for a Hong Kong offence,

but does not include a person who is at large having escaped from lawful custody;

"Hong Kong serious offence" (香港嚴重罪行) means a Hong Kong offence the maximum penalty for which is death, or imprisonment for not less than 24 months;

"investigation" (偵查) means an investigation-

- (a) into a Hong Kong offence or external offence; or
- (b) for the purposes of an ancillary criminal matter;

"material" (物料) includes any books, document or other record in any form whatsoever, and any article or substance;

"Monetary Authority" (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66);

"premises" (處所) includes-

- (a) a structure (whether or not movable or offshore), building, tent, vehicle, vessel, aircraft or hovercraft;
- (b) a place (whether or not enclosed or built upon); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

"prescribed arrangements" (訂明安排) means arrangements for mutual legal assistance which are the subject of an order under section 4(1) which is in force;



"prescribed place" (訂明地方) means a place outside Hong Kong to or from which assistance in criminal matters may be provided or obtained, as the case may be, pursuant to prescribed arrangements;

"prosecution" (檢控) means a trial of a person for a Hong Kong offence or external offence, and includes any proceedings to determine whether a person should be tried for such an offence;

"relevant auditor" (有關核數師) means a person appointed as an auditor for the purposes of any enactment;

"restrain" (限制), in relation to property, includes seizing the property;

"statement" (陳述) includes evidence;

"tax adviser" (稅務顧問) means a person appointed bona fide to give advice, in the course of his employment or of a business carried on by him, about the tax affairs of another person (whether appointed directly by that other person or another tax adviser of that other person);

"tax document" (稅務文件)-

(a) in relation to a tax adviser, means a document which falls within Part 1 of Schedule 1;

(b) in relation to a relevant auditor, means a document which falls within Part 2 of Schedule 1;

"thing" (物件) includes material.

(Amended 71 of 1999 s. 3)

(2) For the purposes of this Ordinance-

(a) the law of a place outside Hong Kong includes the law of any part of that place;

(b) conduct in-

(i) a colony or dependency; or

(ii) a vessel, aircraft or hovercraft,

of a place outside Hong Kong shall be treated as if the conduct were conduct in the territory of that place.

(3) For the avoidance of doubt, it is hereby declared that any one set of arrangements for mutual legal assistance may be made with any number (including any combination) of-

(a) governments of places outside Hong Kong;

(b) places outside Hong Kong,

and the other provisions of this Ordinance (including the definition of "arrangements for mutual legal assistance") which relate, whether directly or indirectly, to arrangements for mutual legal assistance shall be construed accordingly.

(4) Where arrangements applicable to-

(a) the Government and the government of a place outside Hong Kong; or

(b) Hong Kong and a place outside Hong Kong,

are partly for the purposes specified in paragraph (b) of the definition of "arrangements for mutual legal assistance" and partly for other purposes, the arrangements are in this Ordinance arrangements for mutual legal assistance to the extent that they relate to those specified purposes.

(5) In the definitions of "Hong Kong confiscation order" and "external confiscation order" and in subsection (9), any reference to an order includes any order, decree, direction or judgment, or any part thereof, howsoever described.

(6) Where a person obtains a pecuniary advantage referred to in paragraph (b) of the definition of "Hong Kong confiscation order" or "external confiscation order", he is to be treated for the purposes of this Ordinance as if he had obtained in connection with the Hong Kong serious offence or external serious offence, as the case may be, to which the advantage relates a sum of money equal to the value of the advantage, and the other provisions of this Ordinance shall be construed accordingly.

(7) For the avoidance of doubt, it is hereby declared that this Ordinance shall not entitle a private person, or any person acting on behalf of a private person, to-

(a) obtain, suppress or exclude any evidence; or

(b) impede or otherwise prejudice any request under this Ordinance,

in respect of a criminal matter in Hong Kong or a place outside Hong Kong.

(8) In this Ordinance, any reference (howsoever expressed) to any thing being required to be done, or being done, in relation to a criminal matter also includes a reference to such a thing being required to be done, or being done, in the criminal matter.

(9) In this Ordinance, any reference to an order being made in a proceeding includes a reference to an order arising out of the proceeding.

(10) Subject to subsection (11), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege within the meaning of section 13. (Added 26 of 2002 s. 5)

(11) Subsection (10) shall not prejudice the operation of Part IV. (Added 26 of 2002 s. 5)

Section:	3	Application	L.N. 449 of 1997	26/09/1997
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Remarks:

Adaptation amendments retroactively made - see 71 of 1999 s. 3

(1) This Ordinance shall not apply to the provision or obtaining of assistance in criminal matters between Hong Kong and any other part of the People's Republic of China. (Amended 71 of 1999 s. 3)

(2) This Ordinance shall not operate to prevent or prejudice the generality of the provision or obtaining of assistance in criminal matters between Hong Kong and a place outside Hong Kong otherwise than-

- (a) as provided for under this Ordinance; or
- (b) pursuant to arrangements for mutual legal assistance.

(3) It is hereby declared that the provisions of this Ordinance shall not operate to prejudice the generality of section 4 of the Inland Revenue Ordinance (Cap 112).

Section:	8	Requests for assistance to Hong Kong	L.N. 449 of 1997	26/09/1997
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(1) A request by a place outside Hong Kong to Hong Kong for assistance in a criminal matter may be made to the Secretary for Justice. (Amended L.N. 362 of 1997)

(2) A request under subsection (1) shall be accompanied by-

- (a) the name of the authority concerned with the criminal matter to which the request relates;
- (b) a description of the nature of the criminal matter (in particular, details of the external offence to which the criminal matter relates) and a statement setting out a summary of the relevant facts and laws;
- (c) a description of the purpose of the request and of the nature of the assistance being sought;
- (d) details of the procedure that the place outside Hong Kong concerned wishes to be followed by Hong Kong in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the place pursuant to the request;
- (e) a statement setting out the wishes of the place concerning the confidentiality of the request and the reason for those wishes;
- (f) details of the period within which the place wishes the request be complied with;
- (g) if the request involves a person travelling from Hong Kong to the place, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person, while the person is in the place pursuant to the request;
- (h) a statement setting out the maximum penalty for the external offence to which the criminal matter relates; and
- (i) any other information that may assist in giving effect to the request.