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

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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”.

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.