

立法會
Legislative Council

LC Paper No. CB(3) 678/18-19

Ref : CB(3)/B/S/2 (18-19)

Tel : 3919 3300

Date : 10 June 2019

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 12 June 2019

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

Amendments proposed by 22 Members

In accordance with the President's ruling under LC Paper No. CB(3) 676/18-19 issued earlier today, subject to the Bill receiving Second Reading, the following 22 Members are allowed to move proposed amendments to the Bill:

Mover of amendment(s) (set out in the order of receipt of amendment(s))	Number of admissible amendment(s)	Appendix
Hon James TO	21	1
Dr Hon Helena WONG	6	2
Hon LAM Cheuk-ting	8	3
Hon KWONG Chun-yu	6	4
Hon HUI Chi-fung	4	5
Hon Dennis KWOK	10	6
Dr Hon Fernando CHEUNG	6	7
Hon Charles Peter MOK	3	8
Hon IP Kin-yuen	1	9
Dr Hon CHENG Chung-tai	4	10
Hon Gary FAN	9	11

Mover of amendment(s) (set out in the order of receipt of amendment(s))	Number of admissible amendment(s)	Appendix
Prof Hon Joseph LEE	2	12
Dr Hon KWOK Ka-ki	3	13
Hon Alvin YEUNG	6	14
Hon Jeremy TAM	5	15
Hon CHAN Chi-chuen	25	16
Hon Kenneth LEUNG	10	17
Hon Claudia MO	2	18
Hon Andrew WAN	11	19
Hon WU Chi-wai	7	20
Hon AU Nok-hin	2	21
Hon CHU Hoi-dick	2	22

2. For paper saving, the admissible amendments set out in the above Appendices are issued to Members **by email only**. The amendments (together with this circular) will also be uploaded onto the Legislative Council website.

3. Members will be informed of the debate and voting arrangements for the Bill as soon as possible.

(Dora WAI)
for Clerk to the Legislative Council

Encl.

Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation

(Amendment) Bill 2019

Committee Stage

Amendments to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>By deleting the proposed section 3A(2) and substituting—</p> <p>“(2) Subject to subsection (3), a certificate issued by or under the authority of the Chief Executive (<i>certificate</i>) stating the following matters is conclusive evidence of them—</p> <ul style="list-style-type: none">(a) that there are special surrender arrangements in respect of a person;(b) the special surrender arrangements mentioned in paragraph (a) is requested by the Supreme People’s Procuratorate of the People’s Republic of China; and(c) 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.”.

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

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>By deleting the proposed section 3A(2) and substituting —</p> <p>“(2) Subject to subsection (3), a certificate issued by or under the authority of the Chief Executive (<i>certificate</i>) stating the following matters is conclusive evidence of them—</p> <ul style="list-style-type: none">(a) that there are special surrender arrangements in respect of a person;(b) the special surrender arrangements mentioned in paragraph (a) is requested by the Central People’s Government of the People’s Republic of China; and(c) 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.”.

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

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

- 3(3) In the proposed definition of *special surrender arrangements*, by adding—
“(c) not applicable to aliens who also have Chinese nationality:”.

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

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

4

By deleting the proposed section 3A(5)(a) and substituting——

- (a) the offence is punishable under that law with imprisonment for more than 14 years, or any greater punishment; and”.

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

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

4 By deleting the proposed section 3A(6) and substituting ——

“(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 an offence described in item 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 or 46 of that Schedule.”.

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

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

4 By deleting the proposed section 3A(6) and substituting —

“(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 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43 or 44 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).”.

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

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendments Proposed</u>
4	<p>By deleting the proposed section 3A(2) and substituting —</p> <p>“(2) Subject to subsection (3), a certificate issued by or under the authority of the Chief Executive (<i>certificate</i>) stating the following matters is conclusive evidence of them—</p> <ul style="list-style-type: none">(a) that there are special surrender arrangements in respect of a person;(b) that, in respect of the special surrender arrangements, the Chief Executive is satisfied that it is in compliance with Article 2 or 3 of section 8 (Hong Kong Bill of Rights) of the Hong Kong Bill of Rights Ordinance (Cap. 383) to surrender the person to the prescribed place to which the arrangements relate; and(c) 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.”.

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

Committee Stage

Amendments to be moved by the Honourable James TO Kun-sun

Clause

Amendments Proposed

4

In the proposed section 3A, by adding ——

- “(7) If there are special surrender arrangements in respect of a person, the Chief Executive must not issue a certificate in relation to a request for the surrender of the person if it would be a breach of Article 2 or Article 3 of section 8 (Hong Kong Bill of Rights) of the Hong Kong Bill of Rights Ordinance (Cap. 383) to surrender the person to the prescribed place to which the arrangements relate in respect of the person.”.

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

Committee Stage

Amendment to be moved by the Honourable To Kun-sun

Clause

Amendment Proposed

4

By adding ——

“3B. Section 3A shall not have retrospective effect

The special surrender arrangements in section 3A must not be exercised with retrospective effect, special surrender arrangements are not applicable to any offences committed before the commencement of section 3A.”.

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

Committee Stage

Amendments to be moved by the Honourable James TO Kun-sun

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By adding “with provision of additional human rights and judicial procedure protection;” after “a general nature;” ”.
4	<p>In the proposed section 3A, by adding ——</p> <p>“(7) If there are special surrender arrangements in respect of a person, then in respect of the person and the relevant offence determined in subsection (4), the Chief Executive must not issue a certificate in relation to a request for the surrender of the person if the person states to the satisfaction of the Chief Executive that he was not present when the offence was committed.”.</p>

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

Committee Stage

Amendments to be moved by the Honourable James TO Kun-sun

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3(2)(c) | In the proposed (b), by deleting “special surrender arrangements” and substituting “special Taiwan surrender arrangements”. |
| 3(3) | By deleting subclause (3) and substituting——
“(3) Section 2(1)——
Add in alphabetical order
“ <i>special Taiwan surrender arrangements</i> (特別移交台灣安排)
means arrangements that are——
(a) applicable to——
(i) the Government and the government of Taiwan; or
(ii) Hong Kong and Taiwan; 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 | By deleting the clause and substituting——
“ 4. Section 3A added
After section 3——
Add |

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

- (1) If there are special Taiwan surrender arrangements in respect of a person, the procedures in this Ordinance apply as between Hong Kong and Taiwan 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 Taiwan 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 Taiwan 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 Taiwan surrender arrangements referred to in it.
- (4) In determining whether an offence is a relevant offence in relation to special Taiwan 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).”.”.

“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)”;

Substitute

“(other than the Central People’s Government or the government of Mainland or Macau of the People’s Republic of China)”

(b) paragraph (a)(ii)——

Repeal

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

Substitute

“(other than Mainland or Macau of the People’s Republic of China”.’”.

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

Committee Stage

Amendment to be moved by the Honourable To Kun-sun

Clause

Amendment Proposed

4 by adding—

“3B. Additional restrictions on special surrender arrangements

(1) A person must not be surrendered to a prescribed place pursuant to this section, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority — If there are special surrender arrangements in respect of a person, then in respect of the person and the offence determined in section 3A(4), the appropriate authority can receive evidence to its satisfaction that the time limit for prosecuting the offence in that prescribed place has expired.”.

(2) In this section, —

appropriate authority (主管當局) means—

- (a) the Chief Executive;
- (b) the court of committal; or
- (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.

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

Committee Stage

Amendment to be moved by the Honourable To Kun-sun

Clause

Amendment Proposed

4

By adding—

“3B. Additional restrictions on special surrender arrangements

(1) A person must not be surrendered to a prescribed place pursuant to this section, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority—If that person obtains admission, registration, or other forms of approval to his profession under any law enforce in Hong Kong, and to the satisfaction of the appropriate authority that the act or omission of that person is only in relation to professional misconduct or negligence, and not related to the offences under section 3A(4).

(2) In this section —

appropriate authority (主管當局) means—

- (a) the Chief Executive;
- (b) the court of committal; or
- (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.

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

Committee Stage

Amendments to be moved by the Honourable James TO Kun-sun

Clause

Amendments Proposed

4

In the proposed section 3A, by adding ——

“(7) If there are special surrender arrangements in respect of a person wanted for prosecution, then in respect of the person and the relevant offence to which the arrangements relate, the Chief Executive must not issue a certificate in relation to a request for the surrender of the person if the person states to the satisfaction of the Chief Executive that the principal act of the relevant offence was committed in Hong Kong.”.

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

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

4 In the proposed section 3A, by adding ——

“ (7) If there are special surrender arrangements in respect of a person, then in respect of the person and the offence determined in subsection (4), the Chief Executive must not issue a certificate in relation to a request for the surrender of a person if the person states to the satisfaction of the Chief Executive that the time limit for prosecuting the offence in that prescribed place has expired.”.

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

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

4 By adding ——

“3B. Additional restrictions on special surrender arrangements

(1) A person must not be surrendered to a prescribed place pursuant to section 3A, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority — that if there are special surrender arrangements in respect of a person wanted for prosecution, then in respect of the person and the relevant offence to which the arrangements relate, an appropriate authority after receiving evidence, is satisfied that the time limit for prosecuting the offence in that prescribed place when counted from the date of commission of the offence has expired.

(2) In this section, —

appropriate authority (主管當局) means—

- (a) the Chief Executive;
- (b) the court of committal; or
- (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.

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

Committee Stage

Amendment to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

4

In proposed section 3A,
by adding ——

“(7) If there are special surrender arrangements in respect of a person wanted for prosecution, then in respect of the person and the relevant offence to which the arrangements relate, the Chief Executive must not issue a certificate in relation to a request for the surrender of the person if the person states to the satisfaction of the Chief Executive that the time limit for prosecuting the offence in that prescribed place when counted from the date of commission of the offence has expired.”.

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

Committee Stage

Amendment to be moved by Dr the Honourable Helena WONG Pik-wan

<u>Clause</u>	<u>Amendment Proposed</u>
3(3)	In the proposed definition of <i>special surrender arrangements</i> , by adding— “(c) not applicable to— (i) permanent residents of the Hong Kong Special Administrative Region; and (ii) any alien;”.

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

Committee Stage

Amendment to be moved by Dr the Honourable Helena WONG Pik-wan

Clause

Amendment Proposed

8 By deleting the clause.

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

Committee Stage

Amendment to be moved by Dr the Honourable Helena WONG Pik-wan

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) If the offence in respect of which such surrender is sought is an offence of obstruction freedom of publication character (and irrespective of how that offence is described in the prescribed arrangements concerned), the Chief Executive must not issue the certificate in relation to the request for surrender from the prescribed place.”.

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

Committee Stage

Amendment to be moved by Dr the Honourable Helena WONG Pik-wan

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) If the prescribed place is not the one of the top 50 performers in the latest report released by the World Justice Project Rule of Law Index when a request for surrender is made by the prescribed place, the Chief Executive must not issue the certificate in relation to the request for surrender from the prescribed place.”.

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

Committee Stage

Amendment to be moved by Dr the Honourable Helena WONG Pik-wan

Clause

Amendment Proposed

- 4 In the proposed section 3A, by adding—
- “ (7) If the prescribed place is not the one of the top 50 performers in the latest corruption perceptions index report released by the Transparency International when a request for surrender is made by the prescribed place, the Chief Executive must not issue the certificate in relation to the request for surrender from the prescribed place.”.

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

Committee Stage

Amendment to be moved by Dr the Honourable Helena WONG Pik-wan

Clause

Amendment Proposed

4 By adding—

“3B. Additional restrictions on special surrender arrangements

- (1) A person must not be surrendered to a prescribed place pursuant to this section, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority—if there are special surrender arrangements in respect of a person, then in respect of the person and the relevant offence to which the arrangements relate, notwithstanding to other provisions in this Ordinance, an appropriate authority after receiving evidence, is satisfied that it would obstruct his freedom of publication to surrender him to the prescribed place to which the arrangements relate.

(2) In this section—

appropriate authority (主管當局) means—

- (a) the Chief Executive;
- (b) the court of committal; or
- (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.

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

Committee Stage

Amendment to be moved by the Honourable LAM Cheuk-ting

Clause

Amendment Proposed

- 4 By deleting the proposed section 3A(2) and substituting —
- “(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;
 - (b) that, in respect of the special surrender arrangements, the Chief Executive is satisfied that the person, if surrendered, would be entitled to a fair trial; and
 - (c) 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.”.

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

Committee Stage

Amendment to be moved by the Honourable LAM Cheuk-ting

Clause

Amendment Proposed

4

In the proposed section 3A, by adding —

“(7) If there are special surrender arrangements in respect of a person, then in respect of the person, the Chief Executive must not issue a certificate to the request of surrender of the person if the person states to the satisfaction of the Chief Executive that it is likely to cause him to be denied a fair trial to surrender him to the prescribed place to which the special surrender arrangements concerned.”.

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

Committee Stage

Amendment to be moved by the Honourable LAM Cheuk-ting

Clause

Amendment Proposed

4

By deleting the proposed section 3A(2) and substituting —

“(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;
- (b) that, in respect of the arrangements, the Chief Executive is satisfied that the person would be entitled to a fair trial to surrender the person to the prescribed place to which the arrangements relate; and
- (c) 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.”.

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

Committee Stage

Amendment to be moved by the Honourable LAM Cheuk-ting

Clause

Amendment Proposed

4

In the proposed section 3A, by adding ——

“(7) If there are special surrender arrangements in respect of a person, the Chief Executive must not issue certificate in relation to a request for the surrender of the person if the person states to the satisfaction of the Chief Executive that it is likely to cause the person to be denied a fair trial to surrender the person to the prescribed place to which the arrangements relate in respect of the person.”.

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

Committee Stage

Amendment to be moved by the Honourable LAM Cheuk-ting

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>In the proposed section 3A, by adding —</p> <p>“(7) If the offence in respect of which such surrender is sought is an offence of obstruction freedom of the press character (and irrespective of how that offence is described in the prescribed arrangements concerned), the Chief Executive must not issue the certificate in relation to the request for surrender from the prescribed place.”.</p>

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

Committee Stage

Amendment to be moved by the Honourable LAM Cheuk-ting

Clause

Amendment Proposed

4

By adding —

“3B. Additional restrictions on special surrender arrangements

- (1) A person must not be surrendered to a prescribed place pursuant to section 3A, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority that if there are special surrender arrangements in respect of a person, then in respect of the person, an appropriate authority after receiving evidence, is satisfied that the person, if surrendered, is likely to be denied a fair trial.
- (2) In this section, appropriate authority (主管當局) means—
 - (a) the Chief Executive;
 - (b) the court of committal; or
 - (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.

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

Committee Stage

Amendment to be moved by the Honourable LAM Cheuk-ting

Clause

Amendment Proposed

4

In the proposed section 3A, by adding ——

“(7) If there are special surrender arrangements in respect of a person, the Chief Executive must not issue a certificate in relation to a request for the surrender of the person if the person states to the satisfaction of the Chief Executive that it would cause the person to be on trial without a legal representative to surrender the person to the prescribed place to which the arrangements relate in respect of the person.”.

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

Committee Stage

Amendment to be moved by the Honourable LAM Cheuk-ting

Clause

Amendment Proposed

4

By deleting the proposed section 3A(2) and substituting ——

“(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;
- (b) that, in respect of the special surrender arrangements, the Chief Executive is satisfied that it would not cause the person to be on trial without a legal representative to surrender the person to the prescribed place to which the arrangements relate; and
- (c) 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.”.

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

Committee Stage

Amendment to be moved by the Honourable KWONG Chun-yu

Clause

Amendment Proposed

4

By deleting the proposed section 3A(5)(a) and substituting——

“(a) the offence is punishable under that law with imprisonment for more than 20 years, or any greater punishment; and”.

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

Committee Stage

Amendment to be moved by the Honourable KWONG Chun-yu

Clause

Amendment Proposed

- 4 By deleting the proposed section 3A(2) and substituting—
- “(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;
 - (b) that, in respect of the special surrender arrangements, the Chief Executive is satisfied that it is in compliance with the Hong Kong Bill of Rights Ordinance (Cap. 383) to surrender the person to the prescribed place to which the arrangements relate; and
 - (c) 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.”.

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

Committee Stage

Amendment to be moved by the Honourable KWONG Chun-yu

Clause

Amendment Proposed

- | | |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | In the proposed section 3A, by adding——
“(7) Special surrender arrangements is applicable only to offences committed within two years immediately before the commencement of the procedure in subsection (2).”. |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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

Committee Stage

Amendments to be moved by the Honourable KWONG Chun-yu

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) In the proposed section 3A(5)(b)(i), by deleting “a specified Schedule 1 offence” and substituting “a specified Schedule 1 Type A offence”.</p> <p>(b) By deleting the proposed section 3A(6) and substituting—</p> <p>“(6) In subsection (5)—</p> <p><i>specified Schedule 1 Type A offence</i> (指明的附表 1 的甲類罪行) means an offence coming within any of the descriptions specified in Schedule 1 other than—</p> <p>(a) an offence described in item 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 or 44 of that Schedule; or</p> <p>(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).”.</p>

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

Committee Stage

Amendment to be moved by the Honourable KWONG Chun-yu

Clause

Amendment Proposed

4

In the proposed section 3A, by adding—

“(7) If there are special surrender arrangements in respect of a person, the Chief Executive must not issue a certificate in relation to a request for the surrender of the person if it would be a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) to surrender the person to the prescribed place to which the arrangements relate in respect of the person.”.

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

Committee Stage

Amendment to be moved by the Honourable KWONG Chun-yu

Clause

Amendments Proposed

4

By adding—

“3B. Additional restrictions on special surrender arrangements

- (1) A person must not be surrendered to a prescribed place pursuant to section 3A, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority—

that if there are special surrender arrangements in respect of a person, an appropriate authority after receiving evidence, is satisfied that it would be a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) to surrender the person to the prescribed place to which the arrangements relate in respect of the person.

- (2) In this section—

appropriate authority (主管當局) means—

- (a) the Chief Executive;
- (b) the court of committal; or
- (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.

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

Committee Stage

Amendment to be moved by the Honourable HUI Chi-fung

Clause

Amendment Proposed

- 4 By deleting the proposed section 3A(5)(a) and substituting ——
- (a) the offence is punishable under that law with imprisonment for more than 30 years, or any greater punishment; and”.

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

Committee Stage

Amendment to be moved by the Honourable HUI Chi-fung

Clause

Amendment Proposed

4

In the proposed section 3A, by adding ——

“(7) Notwithstanding the provision of section 9, any property seized under section 8 by an authorized officer must not be sent to any prescribed place outside Hong Kong during the necessary procedures subsequent to the commencement of 3A.”.

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

Committee Stage

Amendment to be moved by the Honourable Hui Chi-fung

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) In the proposed section 3A(5)(b)(i), by deleting “a specified Schedule 1 offence” and substituting “a specified Schedule 1 Type A offence”.</p> <p>(b) By deleting the proposed section 3A(6) and substituting—</p> <p>“(6) In subsection (5)—</p> <p><i>specified Schedule 1 Type A offence</i> (指明的附表 1 的甲類罪行) means an offence coming within any of the descriptions specified in Schedule 1 other than—</p> <p>(a) an offence described in item 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 or 44 of that Schedule; or</p> <p>(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).”.</p>

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

Committee Stage

Amendment to be moved by the Honourable HUI Chi-fung

Clause

Amendment Proposed

- 4 In the proposed section 3A, by adding -
- “ (7) A person must not be surrendered to a prescribed place, or committed to or kept in custody for the purposes of such surrender, if it appears to the Court that if the person surrendered is convicted of an offence in the prescribed place and will need to serve a term of imprisonment, the treatment of the person during imprisonment is worse than that of a Hong Kong prisoner serving the person sentence.”.

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

Committee Stage

Amendment to be moved by the Honourable Dennis KWOK Wing-hang

Clause

Amendment Proposed

4

In the proposed section 3A(2), by adding “, subject to authentication by the court of committal,” after “following matters is”.

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

Committee Stage

Amendment to be moved by the Honourable Dennis KWOK Wing-hang

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>In the proposed section 3A, by adding—</p> <p>“(3A) To avoid doubt, the decision to issue a certificate by the Chief Executive or under the Chief Executive’s authority is subject to judicial review.”.</p>

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

Committee Stage

Amendment to be moved by the Honourable Dennis KWOK Wing-hang

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>In the proposed section 3A, by adding—</p> <p>“(7) Section 37X(5) of the Immigration Ordinance (Cap. 115) does not apply to a person subject to surrender pursuant to special surrender arrangements.”.</p>

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

Committee Stage

Amendment to be moved by the Honourable Dennis KWOK Wing-hang

Clause

Amendment Proposed

4

In the proposed section 3A, by adding—

“(7) To avoid doubt, any special surrender arrangements under this Ordinance must be consistent with Article 19 of the Basic Law which states that the courts of the Hong Kong Special Administrative Region shall have jurisdiction over all offences committed in the Region.”.

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

Committee Stage

Amendments to be moved by the Honourable Dennis KWOK Wing-hang

<u>Clause</u>	<u>Amendment Proposed</u>
5	<p>(a) By renumbering the clause as clause 5(3).</p> <p>(b) By adding—</p> <p style="padding-left: 40px;">“(1) Section 10(2)(b)—</p> <p style="padding-left: 80px;">Repeal the full stop</p> <p style="padding-left: 80px;">Substitute a semicolon.</p> <p style="padding-left: 40px;">(2) After section 10(2)(b)—</p> <p style="padding-left: 80px;">Add</p> <p style="padding-left: 80px;">“(c) receive any evidence relevant to the exercise of its jurisdiction under subsection (9) if the proceedings are pursuant to special surrender arrangements.”.”.</p> <p>(c) By adding—</p> <p style="padding-left: 40px;">“(4) Section 10(9)(a)—</p> <p style="padding-left: 80px;">Repeal</p> <p style="padding-left: 80px;">“or”.</p> <p style="padding-left: 40px;">(5) Section 10(9)(b)—</p> <p style="padding-left: 80px;">Repeal the comma</p> <p style="padding-left: 80px;">Substitute</p> <p style="padding-left: 80px;">“; or”.</p> <p style="padding-left: 40px;">(6) After section 10(9)(b)—</p> <p style="padding-left: 80px;">Add</p> <p style="padding-left: 80px;">“(c) the court of committal is not satisfied that the person’s surrender pursuant to special surrender arrangements would be compatible with the rights as enshrined within the Hong Kong Bill of Rights Ordinance (Cap. 383), the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,”.”.</p>

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

Committee Stage

Amendments to be moved by the Honourable Dennis KWOK Wing-hang

<u>Clause</u>	<u>Amendment Proposed</u>
5	<p>(a) By renumbering the clause as clause 5(3).</p> <p>(b) By adding—</p> <p style="padding-left: 40px;">“(1) Section 10(2)(b)— Repeal the full stop Substitute a semicolon.</p> <p style="padding-left: 40px;">(2) After section 10(2)(b)— Add “(c) receive any evidence relevant to the exercise of its jurisdiction under subsection (9) if the proceedings are pursuant to special surrender arrangements.”.”.</p> <p>(c) By adding—</p> <p style="padding-left: 40px;">“(4) Section 10(9)(a)— Repeal “or”.</p> <p style="padding-left: 40px;">(5) Section 10(9)(b)— Repeal the comma Substitute “; or”.</p> <p style="padding-left: 40px;">(6) After section 10(9)(b)— Add “(c) the court of committal is not satisfied that the person’s surrender pursuant to special surrender arrangements would be compatible with the rights as enshrined within the Hong Kong Bill of Rights Ordinance (Cap. 383),”.”.</p>

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

Committee Stage

Amendments to be moved by the Honourable Dennis KWOK Wing-hang

<u>Clause</u>	<u>Amendment Proposed</u>
5	(a) By renumbering the clause as clause 5(1).
	(b) By adding—
	“(2) After section 10(4)—
	Add
	“(4A) The court of committal may stay the proceedings to give a reasonable chance for the person arrested pursuant to special surrender arrangements to make application for legal aid.”.”.

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

Committee Stage

Amendments to be moved by the Honourable Dennis KWOK Wing-hang

<u>Clause</u>	<u>Amendment Proposed</u>
5	(a) By renumbering the clause as clause 5(1).
	(b) By adding—
	“(2) Section 10(5), after “such remand.”—
	Add
	“This subsection does not apply to a person arrested pursuant to special surrender arrangements.”.”.

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

Committee Stage

Amendments to be moved by the Honourable Dennis KWOK Wing-hang

<u>Clause</u>	<u>Amendment Proposed</u>
6	(a) By renumbering the clause as clause 6(1). (b) By adding— “(2) After section 23(3)— Add “(3A) In any proceedings pursuant to this Ordinance, including in a court of committal, a person whose surrender was requested pursuant to special surrender arrangements (<i>the applicant</i>) may apply to the court to cross examine a witness who gave evidence in support of the request. The court must deal with such applications for cross-examination as it thinks fit and in accordance with the need to ensure fairness to the applicant.”.”.

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

Committee Stage

Amendments to be moved by the Honourable Dennis KWOK Wing-hang

<u>Clause</u>	<u>Amendment Proposed</u>
6	(a) By renumbering the clause as clause 6(1).
	(b) By adding—
	“(2) After section 23(6)—
	Add
	“(7) To avoid doubt, the evidence presented in any proceedings pursuant to special surrender arrangements must be admissible evidence in accordance with Hong Kong law.”.”.

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

Committee Stage

Amendment to be moved by Dr the Honourable Fernando CHEUNG Chiu-hung

Clause

Amendment Proposed

New

By adding—

“5A. Section 10A added

After section 10—

Add

“10A. Hong Kong Bill of Rights

- (1) Where there are special surrender arrangements in respect of a person, before making an order of committal under section 10(6), the court must decide whether the person’s surrender would be compatible with the rights and freedoms recognized in the Hong Kong Bill of Rights set out in the Hong Kong Bill of Rights Ordinance (Cap. 383).
- (2) If the court decides the question in subsection (1) in the negative it must order the person’s discharge.”.”.

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

Committee Stage

Amendments to be moved by Dr the Honourable Fernando CHEUNG Chiu-hung

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “and to provide that documents authenticated in accordance with surrender arrangements that are prescribed arrangements are deemed as duly authenticated;”.
3(3)	(a) In the proposed definition of <i>special surrender arrangements</i> , in paragraph (a)(i), by adding “ (other than the Central People’s Government or the Government of the Macao Special Administrative Region)” after “ the government of a place outside Hong Kong”. (b) In the proposed definition of <i>special surrender arrangements</i> , in paragraph (a)(ii), by adding “ (other than the Mainland or Macau)” after “a place outside Hong Kong”.
6	By deleting the clause.
8	(a) By deleting “China);” and substituting — “China)” Substitute “(other than the Central People’s Government or the government of Macau);”. (b) By deleting “China).” and substituting — “China)” Substitute “(other than the Mainland or Macau).”

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

Committee Stage

Amendment to be moved by Dr the Honourable Fernando CHEUNG Chiu-hung

Clause

Amendment Proposed

New

By adding—

“4A. Section 5A added (general restrictions on special surrender arrangements)

Part 1, after section 5—

Add

“5A. General restrictions on special surrender arrangements

(1) A person shall not be surrendered to a prescribed place, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority—

- (a) in the case of a person whose surrender is sought for the purposes of trial, that person would not receive at trial in the prescribed place the minimum guarantees contained in Article 14 of the International Covenant on Civil and Political Rights or, in the case of a person whose surrender is sought for an offence of which that person has been convicted, that person did not receive such guarantees at trial;
- (b) that the offence for which surrender is sought is punishable according to the law of the prescribed place by the death penalty;
- (c) in the circumstances of the case, that the surrender would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought; or
- (d) that the surrender of the person might place Hong Kong in breach of its obligations under international treaties.

(2) In this section —

appropriate authority (主管當局) means—

- (a) the Chief Executive;
- (b) the court of committal; or
- (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.

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

Committee Stage

Amendments to be moved by the Honourable Charles Peter MOK, JP

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	<p>(a) By adding “excluding the Central People’s Government or any governmental authorities within the People’s Republic of China, except Taiwan,” after “applies to special surrender arrangements once they are made between Hong Kong and any other place”;</p> <p>(b) after “requests for assistance between Hong Kong and any other place”, by adding—</p> <p>“excluding the Central People’s Government or any governmental authorities within the People’s Republic of China, except Taiwan”;</p> <p>(c) after “bilateral arrangements for mutual legal assistance made between Hong Kong and any other place”, by adding—</p> <p>“excluding the Central People’s Government or any governmental authorities within the People’s Republic of China, except Taiwan”.</p>

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

Committee Stage

Amendments to be moved by the Honourable Charles Peter MOK, JP

<u>Clause</u>	<u>Amendment Proposed</u>
3(3)	<p>In the proposed definition of “<i>special surrender arrangements</i>” –</p> <ul style="list-style-type: none">(a) in paragraph (a)(i), by deleting “the Government and the government of a place outside Hong Kong” and substituting “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, but including the government of Taiwan)”;(b) in paragraph (a)(ii), by deleting “Hong Kong and a place outside Hong Kong” and substituting “Hong Kong and a place outside Hong Kong (other than any other part of the People’s Republic of China, but including Taiwan)”.
8	<p>By deleting the clause.</p>

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

Committee Stage

Amendment to be moved by the Honourable IP Kin-yuen

Clause

Amendment Proposed

4

In the proposed section 3A(2), by deleting “issued by or under the authority of the Chief Executive” and substituting “issued by or under the authority of the Chief Executive in Council”.

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

Committee Stage

Amendments to be moved by Dr the Honourable CHENG Chung-tai

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) In the proposed section 3A(2), by adding “, and approved by the Legislative Council,” after “(<i>certificate</i>)”.</p> <p>(b) In the proposed section 3A(5)(a), by deleting “3 years” and substituting “10 years”.</p> <p>(c) In the proposed section 3A(5)(b)(iii), by deleting “3 years” and substituting “10 years”.</p>
5	By deleting the clause.
6	By deleting the clause.
8	By deleting the clause and substituting—
	<p>“8. Section 2 amended (interpretation) Section 2(1), definition of <i>arrangements for mutual legal assistance</i> —</p> <p>(a) paragraph (a)(i)—</p> <p>Repeal “(other than the Central People’s Government or the government of any other part of the People’s Republic of China)”</p> <p>Substitute “(other than the Central People’s Government or the government of Macau)”;</p> <p>(b) paragraph (a)(ii)—</p> <p>Repeal “(other than any other part of the People’s Republic of China)”</p> <p>Substitute “(other than the Mainland of China and Macau)”.”.</p>

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

Committee Stage

Amendments to be moved by the Honourable Gary FAN Kwok-wai

<u>Clause</u>	<u>Amendment Proposed</u>
3	By deleting the clause.
4	By deleting the clause.
6	By deleting the clause.
7	By deleting the clause.

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

Committee Stage

Amendments to be moved by the Honourable Gary FAN Kwok-wai

<u>Clause</u>	<u>Amendment Proposed</u>
8	By deleting the clause.
9	By deleting the clause.
10	By deleting the clause.

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

Committee Stage

Amendments to be moved by the Honourable Gary FAN Kwok-wai

<u>Clause</u>	<u>Amendment Proposed</u>
3(3)	In the proposed definition of <i>special surrender arrangements</i> , in paragraph (a)(i), by deleting “the Government and the government of a place outside Hong Kong;” and substituting “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 excepting the government of Taiwan);”.
4	<p>In the proposed section 3A, by adding —</p> <p>“(7) A certificate under subsection (2) shall be published in the Gazette and shall be laid on the table of the Legislative Council at the next sitting day after it is published.</p> <p>(8) The Legislative Council may, within the period of 28 days beginning on the date it is laid, by resolution, repeal a certificate under subsection (2).</p> <p>(9) A resolution under subsection (7) shall be published in the Gazette within 14 days after it is passed or such further period as the Chief Executive may allow.</p> <p>(10) A certificate under subsection (2) shall not come into operation before the expiry of the period within which the Legislative Council may under this section repeal the order.</p> <p>(11) This section expires at midnight on 31 December 2019.”.</p>

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

Committee Stage

Amendments to be moved by Prof the Honourable Joseph LEE Kok-long

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>In the proposed section 3A(5) —</p> <p>(a) by deleting paragraph (a) and substituting —</p> <p>“(a) the offence is punishable under that law with imprisonment for life, or any greater punishment; and”;</p> <p>(b) by deleting paragraph (b)(iii) and substituting—</p> <p>“(iii) punishable in Hong Kong with imprisonment for life, or any greater punishment.”.</p>
8	<p>By deleting the clause and substituting —</p> <p>“8. Section 2 amended (interpretation)</p> <p>Section 2(1), definition of <i>arrangements for mutual legal assistance</i> —</p> <p>(a) paragraph (a)(i) —</p> <p>Repeal</p> <p>“(other than the Central People's Government or the government of any other part of the People's Republic of China)”</p> <p>Substitute</p> <p>“(other than the Central People’s Government or the government of Macau)”;</p> <p>(b) paragraph (a)(ii) —</p> <p>Repeal</p> <p>“(other than any other part of the People's Republic of China)”</p> <p>Substitute</p> <p>“(other than the Mainland of China and Macau)”.”.</p>

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

Committee Stage

Amendments to be moved by Dr the Honourable KWOK Ka-ki

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>In the proposed section 3A(5)(b)—</p> <p>(a) in subparagraph (ii), by deleting “and”;</p> <p>(b) in subparagraph (iii), by deleting the full stop and substituting “; and”;</p> <p>(c) by adding—</p> <p>“(iv) not a specified Schedule 4 offence.”.</p>
New	<p>By adding after clause 7 of Part 2—</p> <p>By adding —</p> <p>“7A. Schedule 4 added</p> <p>At the end of the Ordinance—</p> <p>Add</p> <p>“Schedule 4</p> <p>[s. 3A]</p>

Description of Offences Not Applicable under Special Surrender Arrangements

1. Treason; subversion; secession; offences against national security law.
2. Collusion with an enemy of the state, domestic or external.
3. Espionage; acquisition or dissemination of official secrets or intelligence.
4. Riot; sabotage; disruption of government functions; disruption of the use of services by the public; prevention of land, marine, or air traffic; offences against public order law.
5. Assault on police officers.
6. Sedition to treason, subversion, secession, or collusion; incitement of riot, sabotage, disruption of government functions, disruption of the use of services by the public, prevention of land, marine, or air traffic; publication, broadcasting, and dissemination of treasonous, subversive or secessionist materials.
7. Organization of and participation in meetings, public meetings or public processions for political, social, recreational, cultural, academic, educational,

religious or charitable purposes, or for the purpose of a funeral or celebration, lawful or unlawful.

8. Founding and operation of societies of political, social, recreational, cultural, academic, educational, religious, charitable, professional, business or commercial character.
9. Offences against martial law.
10. Offences against military law.
11. Offences against religious law.
12. Counter-revolutionary and reactionary offences.”.”.

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

Committee Stage

Amendment to be moved by Dr the Honourable KWOK Ka-ki

Clause

Amendment Proposed

8 By deleting the clause and substituting—

“8. Section 2 amended (interpretation)

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

- (a) paragraph (a)(i), after “any other part of the People’s Republic of China”—

Add

“except Taiwan”;

- (b) paragraph (a)(ii), after “any other part of the People’s Republic of China”—

Add

“except Taiwan”.’.

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

Committee Stage

Amendments to be moved by the Honourable Alvin YEUNG

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>In the proposed section 3A(5)(b)—</p> <ul style="list-style-type: none">(a) in subparagraph (ii), by deleting “and”;(b) in subparagraph (iii), by deleting the full stop and substituting “; and”;(c) by adding — “(iv) committed within the past 2 years from the date the request for surrender is made.”.

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

Committee Stage

Amendment to be moved by the Honourable Alvin YEUNG

Clause

Amendment Proposed

4

In the proposed section 3A, by adding —

- “(5A) For the purposes of this Ordinance, a person must not be surrendered under special surrender arrangements if the person is a Hong Kong permanent resident or ordinarily resides in Hong Kong.
- (5B) Where a person’s surrender is prohibited, or prohibited for the time being, under subsection (5A), that person may be inquired of, tried, determined, and punished in Hong Kong for the acts or omissions constituting the conduct in respect of which the person’s surrender to that place is sought in the same manner in all respects as if such acts or omissions had been wholly committed in Hong Kong.”.

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

Committee Stage

Amendment to be moved by the Honourable Alvin YEUNG

Clause

Amendment Proposed

4

In the proposed section 3A, by adding —

“(5A) Where a person’s surrender under special surrender arrangements is prohibited, or prohibited for the time being, under section 5 or any other provisions of this Ordinance, that person may be inquired of, tried, determined, and punished in Hong Kong for the acts or omissions constituting the conduct in respect of which the person’s surrender is sought to that place in the same manner in all respects as if such acts or omissions had been wholly committed in Hong Kong.”.

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

Committee Stage

Amendment to be moved by the Honourable Alvin YEUNG

Clause

Amendment Proposed

New By adding—

“4A. Section 5 amended (general restrictions on surrender)

(1) Section 5, heading, after “**surrender**”—

Add

“under Fugitive Offenders Orders”.

(2) Before section 5(1)—

Add

“(1A) This section applies to surrenders which are—

(a) made under an order under section 3(1) which is in force; and

(b) not made under special surrender arrangements.”.

4B. Section 5A added

Part 1, after section 5—

Add

“5A. General restrictions on surrender under special surrender arrangements

(1) This section applies to surrenders that are—

(a) made under special surrender arrangements; and

(b) not made under an order under section 3(1) which is in force.

(2) A person must not be surrendered under special surrender arrangements, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority—

(a) that the offence in respect of which such surrender is sought is an offence of a political character (and irrespective of how that offence is described in the special surrender arrangements concerned);

- (b) that—
 - (i) the offence in respect of which such surrender is sought was prosecuted in the person's absence and a conviction obtained; and
 - (ii) the person—
 - (A) has not had an opportunity of being tried in the presence for that offence; and
 - (B) if surrendered, would not have an opportunity of being re-tried in the presence for that offence;
- (c) that the request for the surrender concerned (though purporting to be made on the account of a relevant offence) is in fact made for the purpose of prosecuting or punishing the person on account of—
 - (i) the person's sex;
 - (ii) the person's sexual orientation;
 - (iii) the person's disabilities;
 - (iv) the person's social origin;
 - (v) the person's language;
 - (vi) the person's nationality;
 - (vii) the person's race;
 - (viii) the person's religion;
 - (ix) the person's political opinions; or
 - (x) the person's being of any status protected by the following legislation, instruments or treaties—
 - (A) the Bill of Rights;
 - (B) the International Covenant on Civil and Political Rights; or
 - (C) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (d) that the person might, if surrendered, be prejudiced at the trial or punished, detained, restricted in his or her personal liberty by reason of—

- (i) the person's sex;
 - (ii) the person's sexual orientation;
 - (iii) the person's disabilities;
 - (iv) the person's social origin;
 - (v) the person's language;
 - (vi) the person's nationality;
 - (vii) the person's race;
 - (viii) the person's religion;
 - (ix) the person's political opinions; or
 - (x) the person's being of any status protected by the following legislation, instruments or treaties—
 - (A) the Bill of Rights;
 - (B) the International Covenant on Civil and Political Rights; or
 - (C) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (e) that the person might, if surrendered, be subjected to death penalty or corporal punishment, unless provision is made by the law of the place making the request for surrender, or by the special surrender arrangements concerned, for securing that death penalty or corporal punishment will not be imposed or executed on the person; or
- (f) that the person might, if surrendered, be subjected to any other treatment not specified in subsection (2)(d) and (e) that deprives him or her of his or her rights and liberties enjoyed under the following legislation, instruments or treaties—
- (i) the Bill of Rights;
 - (ii) the International Covenant on Civil and Political Rights; or
 - (iii) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- (3) A person must not be surrendered under special surrender arrangements, or committed to or kept in custody for the purposes of such surrender, unless provision is made by the law of the place making the request for surrender, or by the special surrender arrangements concerned, for securing that the person will not, unless he or she has first had an opportunity to leave that place, be dealt with in that place for or in respect of any offence committed before the surrender other than—
- (a) the offence in respect of which the surrender is ordered; or
 - (b) any equivalent or lesser relevant offence which is disclosed by the particulars contained in the supporting documents in relation to the offence referred to in paragraph (a).
- (4) A person must not be surrendered under special surrender arrangements, or committed to or kept in custody for the purposes of such surrender, unless provision is made by the law of the place making the request for surrender, or by the special surrender arrangements concerned, for securing that the person will not be re-surrendered by that place to any other place outside Hong Kong for any offence committed before the surrender.
- (5) In this section—

appropriate authority (主管當局) means—

- (a) the Chief Executive;
- (b) the court of committal; or
- (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal;

Bill of Rights (《人權法案》) means the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383);

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (《禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約》) means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984;

International Covenant on Civil and Political Rights
(《公民權利和政治權利國際公約》) means the
International Covenant on Civil and Political
Rights adopted by the General Assembly of the
United Nations on 16 December 1966.”.”.

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

Committee Stage

Amendments to be moved by the Honourable Alvin YEUNG

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	(a) By adding “and” after “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;”.
	(b) By deleting “and to provide that documents authenticated in accordance with surrender arrangements that are prescribed arrangements are deemed as duly authenticated;”.
6	By deleting the clause.

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

Committee Stage

Amendments to be moved by the Honourable Jeremy TAM Man-ho

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>(a) In the heading, by adding “, commencement and expiry” after “title”.</p> <p>(b) By renumbering the clause as clause 1(1).</p> <p>(c) By adding—</p> <p>“(2) This Ordinance comes into operation on the day on which it is published in the Gazette, and expires at midnight on 1 July 2020.”.</p>

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

Committee Stage

Amendment to be moved by the Honourable Jeremy TAM Man-ho

Clause

Amendment Proposed

- 4 In the proposed section 3A, by adding—
- “(3A) Within 28 days after the certificate is issued, a copy of the special surrender arrangements referred to in it must be published by notice in the Gazette.”.

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

Committee Stage

Amendments to be moved by the Honourable Jeremy TAM Man-ho

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “so that the Ordinance applies to requests for assistance between Hong Kong and any other place; and”.
8	By deleting the clause.
9	By deleting the clause.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) If a person had not enjoyed the right which is listed in the special surrender arrangements relating to that person after that person was surrendered to a place which made the request for surrender of that person, the Chief Executive must not issue any further certificate relating to any request for surrender made by that place.”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) The Chief Executive must publish the certificate in relation to special surrender arrangements in respect of a person in the Gazette within 7 days after that person is arrested pursuant to a warrant issued under section 7.”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding —

“(7) The Chief Executive must not issue the certificate in relation to the request for surrender made by a place which has not acceded to, succeeded to or ratified article 14 of the International Covenant on Civil and Political Rights (other than a common law jurisdiction).”.

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

8 By deleting the clause and substituting —

“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)”

Substitute

“(other than the government of a place which has not acceded to, succeeded to or ratified the International Covenant on Civil and Political Rights and is not a common law jurisdiction)” ;

(b) paragraph (a)(ii)—

Repeal

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

Substitute

“(other than a place which has not acceded to, succeeded to or ratified the International Covenant on Civil and Political Rights and is not a common law jurisdiction)”.’.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

- “(7) The Chief Executive must not issue the certificate in relation to the request for surrender from a place if—
- (a) the operating rules and procedures of the court or tribunal of that place have departed from internationally recognized principles of law; or
 - (b) the court or tribunal of that place has failed to conduct trials in accordance with internationally recognized principles of law within 5 years before the request was made by that place.”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) The Chief Executive must not issue the certificate in relation to the request for surrender made by a place if the offence relating to that request for surrender is an offence under military law which is not also an offence under ordinary criminal law. ”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) The Chief Executive must not issue any further certificate relating to any request for surrender made by a place if a person had not been tried in open court in that place within 6 months after the Chief Executive surrendered that person (who was the subject of the request for surrender made by that place and a certificate was issued) to that place previously.”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) The Chief Executive must not issue any further certificate in relation to any request for surrender made by a place if a person who was surrendered to that place previously had not received the minimum guarantees in criminal proceedings, as contained in article 14 of the International Covenant on Civil and Political Rights.”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) The Chief Executive must not issue the certificate in relation to the request for surrender made by a place which has not ratified the International Covenant on Civil and Political Rights.”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

- | | |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | In the proposed section 3A(5)(a), by adding “, and that offence was committed within 3 years before the request for surrender is made by the prescribed place” after “greater punishment”. |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

New

By adding—

“6A. Section 29 added

At the end of Part 4 –

Add

“29. Expiry date of provision(s) relating to special surrender arrangements

Relevant provisions of special surrender arrangements under section 3A is to expire on 1 July 2020.”. ”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

New

By adding—

“6A. Section 29 added

At the end of Part 4 –

Add

“29. Expiry date of provision(s) relating to special surrender arrangements

Relevant provisions of special surrender arrangements under section 3A is to expire on 31 December 2019.”. ”.

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

Committee Stage

Amendments to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 By deleting the proposed section 3A(5) and (6) and substituting—

“(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 10 years, or any greater punishment (in respect of a specified Schedule 1 Type A offence), or is punishable under that law with imprisonment for more than 15 years, or any greater punishment (in respect of a specified Schedule 1 Type B offence); 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 Type A offence or a specified Schedule 1 Type B offence;

(ii) triable in Hong Kong on indictment; and

(iii) punishable in Hong Kong—

(A) with imprisonment for more than 10 years, or any greater punishment (in respect of a specified Schedule 1 Type A offence); or

(B) with imprisonment for more than 15 years, or any greater punishment (in respect of a specified Schedule 1 Type B offence).

(6) In subsection (5)—

specified Schedule 1 Type A offence (指明的附表 1 甲類罪行) means an offence coming within any of the descriptions specified in Schedule 1 other than—

- (a) an offence described in item 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 35, 36, 38, 40 or 44 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);

specified Schedule 1 Type B offence (指明的附表 1 乙類罪行) means an offence coming within any of the descriptions specified in Schedule 1 other than—

- (a) an offence described in item 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 14, 19, 20, 21, 25, 27, 32, 33, 34, 35, 36, 37, 38, 39, 40 or 43 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).”.

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

Committee Stage

Amendments to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

- | | |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | (a) In the proposed section 3A(5)(a), by deleting “imprisonment for more than 3 years, or any greater punishment” and substituting “life imprisonment”. |
| | (b) In the proposed section 3A(5)(b)(iii), by deleting “imprisonment for more than 3 years, or any greater punishment” and substituting “life imprisonment”. |

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

- 4 In the proposed section 3A(6), in the definition of *specified Schedule 1 offence*, in paragraph (a), by adding “, 38” after “36”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

- 4 In the proposed section 3A(6), in the definition of *specified Schedule 1 offence*, in paragraph (a), by deleting “or 40” and substituting “, 40 or 41”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

- 4 In the proposed section 3A(6), in the definition of *specified Schedule 1 offence*, in paragraph (a), by adding “, 15” after “14”.

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

- “(1A) Special surrender arrangements must contain the provisions which can ensure that the person who is surrendered to the place which made the request for surrender can examine the prosecution witnesses during the relevant trial in that place.
- (1B) If the place mentioned in subsection (1A) cannot fulfil the requirements set out in subsection (1A), the Chief Executive must not issue further certificates in relation to any request for surrender from that place.”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) The Chief Executive must not issue the certificate relating to the request for surrender from a place if official documents issued in that place show that the judicial system of that place has to act in accordance with the instructions of a political party of that place within 5 years before the request for surrender is made by that place.”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(1A) Special surrender arrangements must contain a written certification issued by a registered medical practitioner in the full time employment of Government or the Hospital Authority within the meaning of the Hospital Authority Ordinance (Cap. 113) concerning the conditions of health of the person who is to be surrendered to a place which made the request for surrender to the effect that the person is fit for surrender.”.

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(1A) If a registered medical practitioner in the full time employment of Government or the Hospital Authority within the meaning of the Hospital Authority Ordinance (Cap. 113) provides a written certification concerning the conditions of health of a person who is to be surrendered to a place to the effect that the person is not fit for surrender within a certain period of time, the Chief Executive must set out provisions in the special surrender arrangements to the effect that the special surrender arrangements must not come into effect before the expiration of that period specified in the written certification .”.

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

Committee Stage

Amendments to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

- 3(3) In the proposed definition of *special surrender arrangements*—
- (a) in paragraph (a)(ii), by deleting “; and” and substituting a semicolon;
 - (b) in paragraph (b)(ii), by deleting the semicolon and substituting “; and”;
 - (c) by adding—
 - “(c) not applicable to the surrender of a person who transits through Hong Kong;”.

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

Committee Stage

Amendments to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

- 3(3) In the proposed definition of *special surrender arrangements*—
- (a) in paragraph (a)(ii), by deleting “; and” and substituting a semicolon;
 - (b) in paragraph (b)(ii), by deleting the semicolon and substituting “; and”;
 - (c) by adding—
 - “(c) not applicable to the surrender of a person who is a permanent resident of the Hong Kong Special Administrative Region;”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) The Chief Executive may only issue the certificate in relation to the request for surrender made by a place which has acceded to, succeeded to or ratified the International Covenant on Civil and Political Rights or is a common law jurisdiction.”.

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

Committee Stage

Amendment to be moved by the Honourable CHAN Chi-chuen

Clause

Amendment Proposed

4 In the proposed section 3A, by adding—

“(7) The Chief Executive must not issue the certificate in relation to the request for surrender made by a place if that place did not try any person publicly more than one year after that person was arrested in that place within 5 years before the request for surrender was made.”.

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

Committee Stage

Amendment to be moved by the Honourable Kenneth LEUNG

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>In the proposed section 3A, by adding ——</p> <p>“(7) The Chief Executive must submit a certificate issued under subsection (2) and the annexed special surrender arrangements to a standing committee of the Legislative Council, within a period of 2 days beginning on the date of issuance of the certificate under subsection (2). The committee referred to this subsection is formed under the Rules of Procedure of the Legislative Council and comprised of no more than 7 members of the Legislative Council.</p> <p>(8) The committee referred to subsection (7) may, within a period of 3 days beginning on the date of submission of the certificate issued under subsection (2) and the annexed special surrender arrangements, by resolution, repeal the certificate and the annexed special surrender arrangements (<i>the relevant period</i>).</p> <p>(9) If a decision to repeal the certificate and the annexed special surrender arrangements is made by the committee within the relevant period as stated in subsection (8), the certificate becomes null and void and the special surrender arrangements cease to exist.”.</p>

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

Committee Stage

Amendments to be moved by the Honourable Kenneth LEUNG

<u>Clause</u>	<u>Amendment Proposed</u>
3(3)	In the proposed definition of <i>special surrender arrangements</i> , in paragraph (a)(i), by adding “listed in Schedule 4” after “outside Hong Kong”.
3(3)	In the proposed definition of <i>special surrender arrangements</i> , in paragraph (a)(ii), by adding “listed in Schedule 5” after “outside Hong Kong”.
New	<p>By adding ——</p> <p>“6A. Section 25 amended (amendment of Schedules)</p> <p>(1) Section 25 —</p> <p style="padding-left: 40px;">Renumber the section as section 25(1).</p> <p>(2) After section 25(1) —</p> <p style="padding-left: 40px;">Add</p> <p style="padding-left: 80px;">“(2) The Chief Executive in Council may, subject to the approval of the Legislative Council, amend Schedule 4 and Schedule 5 by notice published in the Gazette.”.”.</p>
New	<p>By adding ——</p> <p>“7A. Schedules 4 and 5 added</p> <p style="padding-left: 40px;">At the end of the Ordinance——</p> <p style="padding-left: 80px;">Add</p> <p style="padding-left: 120px;">“Schedule 4</p> <p style="text-align: right;">[s. 2(1)]</p> <p style="text-align: center;">Governments of Places Outside Hong Kong to which Special Surrender Arrangements Apply</p> <p style="padding-left: 40px;">1. The government of Taiwan</p> <hr style="width: 25%; margin-left: auto; margin-right: auto;"/>

Schedule 5

[s. 2(1)]

Places Outside Hong Kong to which Special Surrender Arrangements Apply

1. Taiwan”.”.

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

Committee Stage

Amendments to be moved by the Honourable Kenneth LEUNG

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “37 items” and substituting “34 items”.
4	In the proposed section 3A(6), in the definition of <i>specified Schedule 1 offence</i> , in paragraph (a), by adding “16, 17,” after “14, ”.
4	In the proposed section 3A(6), in the definition of <i>specified Schedule 1 offence</i> , in paragraph (a), by adding “31,” after “27, ”.

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

Committee Stage

Amendments to be moved by the Honourable Kenneth LEUNG

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	(a) By adding “and” before “to provide that in relation to special surrender arrangements”.
	(b) By deleting “and to provide that documents authenticated in accordance with surrender arrangements that are prescribed arrangements are deemed as duly authenticated;”.
6	By deleting the clause.

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

Committee Stage

Amendments to be moved by the Honourable Claudia MO

<u>Clause</u>	<u>Amendment Proposed</u>
4	In the proposed section 3A(6), in of the definition <i>specified Schedule 1 offence</i> in paragraph (a), by deleting “an offence described in item 10, 11, 12, 14, 21, 27, 35, 36 or 40 of that Schedule; or” and substituting “an offence described in item 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43 or 44 of that Schedule; or”.
8	<p>By deleting the clause and substituting——</p> <p>“8. Section 2 amended (interpretation)</p> <p>Section 2(1), definition of <i>arrangements for mutual legal assistance</i> ——</p> <p>(a) Paragraph (a)(i) ——</p> <p>Repeal</p> <p>“other than the Central People's Government or the government of any other part of the People's Republic of China) ”</p> <p>Substitute</p> <p>“(other than the Central People’s Government or the government of Macau)”.</p> <p>(b) Paragraph (a)(ii) ——</p> <p>Repeal</p> <p>“(other than any other part of the People's Republic of China) ”</p> <p>Substitute</p> <p>“(other than the Mainland of China and Macau)”.”</p>

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

Committee Stage

Amendments to be moved by the Honourable Andrew WAN Siu-Kin

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) In the proposed section 3A(5)(b)(i), by deleting “a specified Schedule 1 offence” and substituting “a specified Schedule 1 Type A offence” ;</p> <p>(b) By deleting the proposed section 3A(6) and substituting—</p> <p>“(6) In subsection (5)—</p> <p><i>specified Schedule 1 Type A offence</i> (指明的附表 1 的甲類罪行) means an offence coming within any of the descriptions specified in Schedule 1 other than—</p> <p>(a) an offence described in item 9, 10, 11, 12, 13, 14, 15, 16, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 or 44 of that Schedule; or</p> <p>(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).”.</p>

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

Committee Stage

Amendments to be moved by the Honourable Andrew WAN Siu-kin

<u>Clause</u>	<u>Amendment Proposed</u>
3	By deleting the clause.
4	By deleting the clause.
7	By deleting the clause.

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

Committee Stage

Amendment to be moved by the Honourable Andrew WAN Siu-kin

Clause

Amendment Proposed

4 In the proposed section 3A(6), by adding—

“(7) If the prescribed place cannot provide proof that the person surrendered will not be subjected to inhuman treatment during arrest, detention and trial under the jurisdiction of the prescribed place when a request for surrender is made by the prescribed place, the Chief Executive must not issue the certificate in relation to the request for surrender from the prescribed place.”.

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

Committee Stage

Amendments to be moved by the Honourable Andrew WAN Siu-kin

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>(a) In the heading, by deleting “<i>section 3A</i>” and substituting “<i>sections 3A and 3B</i>”.</p> <p>(b) By adding—</p> <p>“3B. Additional restrictions on special surrender arrangements</p> <p>(1) A person must not be surrendered to a prescribed place pursuant to this section, or committed to or kept in custody for the purposes of such surrender, unless it appears to an appropriate authority that the surrender of the person would be compatible with the basic rights as protected by the Basic Law.</p> <p>(2) In this section,</p> <p><i>appropriate authority</i> (主管當局) means—</p> <p>(a) the Chief Executive;</p> <p>(b) the court of committal; or</p> <p>(c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.</p>

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

Committee Stage

Amendments to be moved by the Honourable Andrew WAN Siu-kin

Clause

Amendment Proposed

- 3(3) In the proposed definition of *special surrender arrangements*,
by deleting paragraph (a) and substituting—
- “(a) applicable to—
- (i) the Government and the government of a place outside Hong Kong (other than the Central People’s Government and Macao Government); or
 - (ii) Hong Kong and a place outside Hong Kong (other than the Mainland and Macao of the People’s Republic of China); and”.

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

Committee Stage

Amendments to be moved by the Honourable Andrew WAN Siu-kin

<u>Clause</u>	<u>Amendment Proposed</u>
3(3)	Before the proposed definition of <i>special surrender arrangements</i> , by adding— “ Mainland (內地) means any parts of the People’s Republic of China other than Hong Kong, Macau and Taiwan;”.
4	(a) In the heading, by deleting “ section 3A ” and substituting “ sections 3A and 3B ”.
	(b) By adding— “ 3B. Additional restrictions on special surrender arrangements (1) A person must not be surrendered to a prescribed place pursuant to section 3A, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority—that if there are special surrender arrangements in respect of a person from the Supreme People’s Court of the People’s Republic of China or the Supreme People’s Procuratorate of the People’s Republic of China and the relevant offence to which the arrangements relate was committed in places outside Mainland, then in respect of the person, an appropriate authority after receiving evidence, is satisfied that he not only has right of abode in Mainland at the time when the arrangements made. (2) In this section, appropriate authority (主管當局) means— (a) the Chief Executive; (b) the court of committal; or (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.

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

Committee Stage

Amendments to be moved by the Honourable Andrew WAN Siu-kin

Clause

Amendment Proposed

- 4 After the proposed section 3A(6), by adding—
- “ (7) If there are special surrender arrangements in respect of a person from the Supreme People’s Court of the People’s Republic of China or the Supreme People’s Procuratorate of the People’s Republic of China and the relevant offence to which the arrangements relate was committed in places outside Mainland, then in respect of the person, the Chief Executive must not issue a certificate in relation to a request for the surrender of the person unless the person only has right of abode in Mainland at the time when the arrangements made.”.

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

Committee Stage

Amendments to be moved by the Honourable Andrew WAN Siu-kin

Clause

Amendment Proposed

- 4 By deleting the proposed section 3A(4) and substituting—
- “(4) In determining whether an offence is a relevant offence in relation to special surrender arrangements—
- (a) the offence was committed in Mainland if there are special surrender arrangements from the Supreme People’s Court of the People’s Republic of China or the Supreme People’s Procuratorate of the People’s Republic of China;
 - (b) subsection (5) applies instead of section 2(2); and
 - (c) section 2(3) applies as if the reference in it to “subsection (2)” were a reference to “section 3A(5)”.’.

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

Committee Stage

Amendment to be moved by the Honourable WU Chi-wai

Clause

Amendment Proposed

1

By deleting the clause and substituting ——

“1. Short title and commencement

- (1) This Ordinance may be cited as the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Ordinance 2019.
- (2) This Ordinance comes into operation on the following day to be appointed by the Secretary for Security by notice published in the Gazette: the day on which the National People’s Congress of the People’s Republic of China incorporates the provisions of the International Covenant on Civil and Political Rights into the national law as applied to the Mainland of China.”.

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

Committee Stage

Amendment to be moved by the Honourable WU Chi-wai

Clause

Amendment Proposed

1

By deleting the clause and substituting ——

“1. Short title and commencement

- (1) This Ordinance may be cited as the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Ordinance 2019.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.”.

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

Committee Stage

Amendment to be moved by the Honourable WU Chi-wai

Clause

Amendment Proposed

10 By deleting the clause.

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

Committee Stage

Amendment to be moved by the Honourable WU Chi-wai

Clause

Amendment Proposed

4 In the proposed section 3A, by adding -

“(7) If the prescribed place has not ratified or acceded to the International Covenant on Civil and Political Rights and taken measures to implement the rights in the International Covenant on Civil and Political Rights when a request for surrender is made by the prescribed place, the Chief Executive must not issue the certificate in relation to the request for surrender from the prescribed place.”.

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

Committee Stage

Amendment to be moved by the Honourable WU Chi-wai

Clause

Amendment Proposed

4

By adding ——

“3B. Additional restrictions on special surrender arrangements

(1) A person must not be surrendered to a prescribed place pursuant to section 3A, or committed to or kept in custody for the purposes of such surrender, if it appears to an appropriate authority that if there are special surrender arrangements in respect of a person, then in respect of the person and the offence determined in section 3A(4), the person states to the satisfaction of an appropriate authority that he was not present when the offence was committed.

(2) In this section——

appropriate authority (主管當局) means——

- (a) the Chief Executive;
- (b) the court of committal; or
- (c) the Court of First Instance on an application for habeas corpus or for judicial review of the order of committal.”.

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

Committee Stage

Amendment to be moved by the Honourable WU Chi-wai

Clause

Amendment Proposed

4

In the proposed section 3A, by adding ——

“(7) Any request to surrender a person to the Mainland of China through special surrender arrangement must be made by the Supreme People’s Court of the People’s Republic of China, otherwise the Chief Executive cannot issue a certificate pursuant to subsection (2).”.

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

Committee Stage

Amendment to be moved by the Honourable WU Chi-wai

Clause

Amendment Proposed

4 In the proposed section 3A, by adding -

“(7) If the offence in respect of which such surrender is sought is an offence of obstruction freedom of artistic expression and creativity character (and irrespective of how that offence is described in the prescribed arrangements concerned), the Chief Executive must not issue the certificate in relation to the request for surrender from the prescribed place.”.

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

Committee Stage

Amendments to be moved by the Honourable AU Nok-hin

<u>Clause</u>	<u>Amendment Proposed</u>
4	By deleting the clause.
8	By deleting the clause.

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

Committee Stage

Amendments to be moved by the Honourable CHU Hoi-dick

<u>Clause</u>	<u>Amendment Proposed</u>
8	By deleting the clause.
9	By deleting the clause.