

(English translation)

14 May 2019

Mr Timothy TSO
Senior Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr TSO,

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

Thank you for your letter dated 30 April 2019 on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019.

2. Regarding the information requested in your letter, the Government's response is at the Appendix.

Yours sincerely,

(Joceline CHUI)
for Secretary for Security

c.c. Department of Justice

**Response to the request of the Senior Assistant Legal Adviser of
the Legislative Council for information on
the Fugitive Offenders and Mutual Legal Assistance in
Criminal Matters Legislation (Amendment) Bill 2019**

General Matters

Surrender of fugitive offenders agreements with the Mainland
(Paragraphs 1 and 3 of your letter)

The Fugitive Offenders Ordinance (Cap.503) (“FOO”) was enacted before Hong Kong’s return to the Motherland, aiming at localising, through legislation, the extradition law which had been in use when Hong Kong was under British rule. The aim was to establish an appropriate legal framework, so that a local legislation for surrender and negotiation with other jurisdictions on surrender arrangements would be available after Hong Kong’s return to the Motherland. FOO localises the various arrangements which were on the basis of the agreements signed by the United Kingdom (“UK”). The fact that FOO does not apply to the arrangements for surrender of fugitive offenders (“SFO”) between HKSAR and any other part of the People’s Republic of China (“PRC”) reflects the situation that the then localised arrangements did not include PRC, rather than a deliberate exclusion of other parts of PRC when the law was localised. At the meeting of the Bills Committee on the Fugitive Offenders Bill on 14 January 1997, the Chairman enquired about the effects of deleting the words “other than the People’s Republic of China or any part thereof” and the Government replied that “the purpose of the Bill was to localise existing arrangements which were UK based and which did not include the PRC. To delete the said wording would mean that the scope of the Bill would exceed localisation and substantial changes had to be made to the Bill...”.

2. In its remarks at the resumption of the Second Reading debate of FOO in 1997, the Government also indicated that it was negotiating with the Mainland on SFO arrangements between HKSAR and Mainland China. The Legislative Council Brief on the Fugitive Offenders Bill submitted by the Government to the Legislative Council (“LegCo”)

in 1996 and the Official Record of Proceedings of the Legislative Council (extract) regarding the resumption of Second Reading debate and Third Reading passage of the Fugitive Offenders Bill in 1997 are at Annexes I & II respectively.

3. The Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (“the Bill”) aims to deal with a homicide case which happened in Taiwan in early 2018 involving a Hong Kong resident suspected of having murdered another Hong Kong resident with the former subsequently returning to Hong Kong. At the same time, it seeks to plug the loopholes in HKSAR’s overall co-operation mechanism in criminal matters, including the geographical restrictions and impracticable operational procedures under the existing FOO and the Mutual Legal Assistance in Criminal Matters Ordinance (“MLAO”) (Cap. 525). While there is already a mechanism for case-based surrender under the existing FOO, it has not been activated over the past 22 years due to operational difficulties in practice (see paragraphs 7 and 8 below). The proposed amendments of the Bill are not tailor-made for any particular jurisdiction. Instead, they seek to enable HKSAR to effectively handle serious criminal cases, which are considered necessary by both parties, by case-based surrender arrangements with a jurisdiction that does not have any long-term surrender agreements with HKSAR using the same set of standards and under the principle of mutual respect where necessary in the future.

4. The Bill proposes, among others, to improve case-based surrender arrangements (“special surrender arrangements”) under FOO and clearly differentiate such arrangements from general long-term surrender arrangements. Special surrender arrangements apply to all jurisdictions, including any other part of PRC, which have not entered into a long-term surrender agreement with HKSAR. General long-term surrender arrangements will continue to be inapplicable between Hong Kong and any other part of PRC.

5. It remains an important policy objective of the HKSAR Government to enter into long-term surrender agreements with Mainland China (and other jurisdictions). Since long-term arrangements are not single case-based and they will form a framework agreement that can be

adopted for long-term use in the future, there are many details to be considered and a consensus has to be reached (e.g. the need to negotiate on each of the 46 descriptions of offences under FOO and for the parties to study the relevant laws and regulations of each other, etc.). Hence, we still need time to negotiate with the Mainland on long-term surrender arrangements. If the Mainland reaches a long-term surrender agreement with HKSAR, the agreement must go through the open local legislative procedure of LegCo before it takes effect.

6. The LegCo Panel on Security discussed the long-term co-operation arrangements on SFO between the Mainland and HKSAR in 1998. The five principles proposed by the Government back then still apply in the negotiations between HKSAR and the Mainland regarding long-term surrender arrangements. The principles are as follows:

- (a) our approach must be consistent with the requirements of Article 95 of the Basic Law (“BL”) which provides that HKSAR may, through consultations and in accordance with law, maintain juridical relations with other parts of the PRC, and they may render assistance to each other;
- (b) any surrender arrangements must be underpinned by HKSAR legislation;
- (c) any surrender arrangements will have to be acceptable to both HKSAR and the Mainland;
- (d) any surrender arrangements should take into account the principle of “one country, two systems” and the differences in the legal and judicial systems of the two places. It should strike a balance between the need to prevent criminals from escaping justice and the need to safeguard the rights of individuals. The usual safeguards (including double criminality, speciality, protection against resurrender to a third country, death penalty and the general exclusion in relation to political offences and political persecution) in our SFO agreements with other jurisdictions will be of useful reference; and

- (e) any surrender arrangements must be consistent with Article 19 of BL which provides that the HKSAR courts are vested with judicial power and shall have jurisdiction over all offences committed in HKSAR. However, we recognize that in some situations the courts of two places have concurrent jurisdiction over the same case. Our surrender arrangements should also lay down some principles for surrender in such situations, and for determining surrender where cross border crimes are involved.

Current case-based surrender not operationally practicable (paragraphs 2 & 8 of your letter)

7. Approaching the end of the Second Reading resumed on the FOO bill back then, the Government proposed the current case-based surrender under FOO as a supplementary measure to the regime of long-term surrender arrangements for increasing the number of jurisdictions with which the HKSAR could have surrender co-operation. As there was no record in the minutes of meeting indicating deliberation of the proposal by the Bills Committee and the related discussion during the Second Reading debate was very limited, the possibility that the proposal might have been put forward in a rush is not ruled out. Subsequent to the then proposal becoming existing provisions, the interpretation is that case-based arrangements on SFO are handled in the same way as long-term surrender arrangements, i.e. the agreement signed between HKSAR and another jurisdiction would need to be gazetted in the form of subsidiary legislation under section 3 of FOO and subject to negative vetting by the LegCo before the arrangements can be implemented.

8. In practice, each long-term arrangement only involves the co-operation framework and principles that are mutually agreed as well as safeguards and undertakings of both sides, and does not involve sensitive information concerning personal particulars and details of individual cases. For case-based arrangements, however, law enforcement requires a surrender case to be handled in a timely and confidential manner before the suspect is arrested and brought to the court. If prior gazettal of the agreement reached with the requesting party on a particular surrender

case is necessary, particulars of the suspect and details of the case will inevitably be disclosed upon publication in the gazette, alerting the fugitive offender to flee. Moreover, as the suspect cannot be arrested before completion of the scrutiny of the subsidiary legislation (generally ranging from 28 days at least to 49 days at most), law enforcement actions to apprehend the suspect will be seriously hindered. Since the current case-based surrender is operationally impracticable, the Bill proposes to, on the basis of the existing human rights and procedural safeguards under the FOO, replace the making of subsidiary legislation with a certificate issued by CE as conclusive evidence of the existence of special surrender arrangements for the committal hearing by the court, so as to render case-based surrender practicable. The proposed change aims to improve the current case-based surrender. In terms of operation, the legislative amendments, if passed, will replace the current regime of implementing case-based surrender by subsidiary legislation.

Precedents of case-based surrender in foreign countries (paragraph 4 of your letter)

9. There are precedents of case-based surrender in foreign countries such as the United Kingdom (UK), Canada, New Zealand and South Africa.

UK

10. As early as in 1979, the UK confirmed in a law review working group that extradition could not rely on long-term arrangements alone. Consequently, a mechanism was put in place under section 15 of the Extradition Act 1989 for making special or case-based extradition. Subsequently, the UK enacted the Extradition Act 2003 to replace the Extradition Act 1989, but has retained the case-based extradition arrangements. Under section 194(1) of the 2003 Act, the Secretary of State is permitted to make special extradition arrangements with territories which have not made extradition arrangements with the UK; under sections 194(2) and 194(5), a certificate is conclusive evidence of the existence of special extradition arrangements and a separate legislation is unnecessary; under sections 194(3) and 194(4), the Extradition Act 2003 applies in respect of the extradition of the person

specified under special extradition arrangements to the territory specified thereunder.

Canada

11. Section 10 of the Canadian Extradition Act 1999 provides for specific extradition agreements, under which section 10(1) empowers the Minister of Foreign Affairs to enter into a specific agreement on extradition for a particular case and section 10(3) stipulates that a certificate is conclusive evidence of the existence of such agreement. It is understood that the government may enter into specific or non-specific extradition agreements in accordance with the Act, without going through legislative scrutiny.

New Zealand

12. Section 60 of the New Zealand's Extradition Act 1999 applies to any extradition effected in response to a special request and on the basis of reciprocity principle, and the request can be dealt with without being subject to legislative scrutiny. This section also extends the Act to cover individual requests, enabling application for one-off extradition to be made if there is no extradition treaty in force between New Zealand and a non-Commonwealth country or if there is a treaty in force between both countries but the offence concerned is not an extradition offence under the treaty.

South Africa

13. Under section 3(2) of the Extradition Act, 1962, any person accused or convicted of an extraditable offence committed within the jurisdiction of a foreign state which is not a party to an extradition agreement shall be liable to be extradited to such foreign state, if the President has in writing consented to his or her being so extradited. In other words, the extradition mechanism of South Africa confers a discretion on the President to permit special extradition.

Legal and drafting issues

Commencement (*Paragraph 5 of your letter*)

14. We propose that the Bill, once passed, should take effect upon gazettal. The case-based surrender requests that can be handled by the HKSAR Government must be those made after the commencement of the legislative amendments.

15. Same as the procedures for surrender pursuant to long-term arrangements, the procedures under special surrender arrangements are only applicable where there is prima facie evidence in relation to a serious criminal offence committed by a person. For a case-based surrender, the offence committed must fall within the descriptions of offences specified in the new section 3A; be punishable by the law of the requesting party with imprisonment for more than 3 years or any greater punishment; and be an indictable offence punishable with imprisonment for more than 3 years had the conduct occurred in Hong Kong. Moreover, the jurisdiction concerned must have sufficient evidence to prosecute the person concerned, or impose or enforce a sentence on the person, and to make a surrender request in respect of the person; and the request and evidence as well as the jurisdiction's undertaking to safeguard the person's rights have to be sufficient to warrant the making of a special surrender arrangement. The offence concerned may occur before or after the commencement of the ordinance. The procedures under FOO are mainly to decide if a person can be surrendered to a certain place pursuant to a surrender agreement, rather than for trying the person on behalf of the requesting party to determine his guilt or innocence. The latter issue should be dealt with by the requesting party through its own judicial process.

16. The provisions applicable to general long-term arrangements under FOO do not expressly provide for their applicability to conduct or offences which occurred before the commencement of the ordinance in 1997. Since FOO came into operation, the court has approved more than 10 surrender requests in relation to offences which occurred before the commencement of FOO.

17. As for mutual legal assistance in criminal matters (“MLA”), the geographical restriction about “inapplicability to other parts of PRC” in MLAO will be removed after the commencement of the Bill. The HKSAR Government will be able to handle MLA requests made by other parts of PRC after the commencement of the amendment Ordinance in accordance with MLAO, regardless of whether the offence concerned occurred before or after the commencement of the Bill. Since MLAO came into operation, the HKSAR Government has received a number of requests for assistance involving offences which occurred before the commencement of MLAO and handled them in accordance with the Ordinance.

Why an approach similar to that of amending MLAO, i.e. removing the provision of “inapplicable to other parts of PRC” in FOO is not adopted?

(paragraph 6 of your letter)

18. FOO and MLAO are two different pieces of legislation. At present, case-based co-operation under FOO must be based on an agreement reached after negotiation with the requesting party. Following the submission of the agreement to LegCo for making subsidiary legislation, the executive authority will then be able to activate the surrender procedures pursuant to the legislation. Currently, case-based co-operation under MLAO can be activated on the basis of a reciprocity undertaking without making any subsidiary legislation. One thing in common in these two pieces of legislation is that both are inapplicable to other parts of PRC.

19. Our proposal is to remove the geographical restriction in the two Ordinances, so that HKSAR can co-operate, on surrender and MLA, with places which have not entered into any long-term co-operation arrangements with HKSAR, with a view to building up a more effective crime-fighting network to jointly combat serious crimes.

20. In view of the above, we have different amendment proposals in respect of FOO and MLAO. In the former case, besides proposing to remove the geographical restriction on case-based surrender, we also aim to resolve the operational problems of the surrender mechanism and to

clearly differentiate surrenders under case-based and long-term arrangements. In the latter case, we only propose to remove the geographical restriction about “inapplicability to other parts of PRC” in respect of the long-term assistance and case-based assistance in MLAO and to clearly differentiate the general long-term assistance and case-based assistance.

New section 3A of FOO proposed under Clause 4

CE to issue a certificate (paragraph 7 of your letter)

21. Clause 4 of the Bill proposes to add a new section 3A to FOO to provide for the mechanism for case-based surrender. Section 3A(1) provides that if there are special surrender arrangements in respect of a person, the procedures in FOO apply to such special surrender arrangements, and if the arrangements contain provisions which further limit the circumstances in which a person may be surrendered, the procedures in FOO are to be implemented subject to such provisions. Section 3A(2) further provides that a certificate issued by or under the authority of CE is conclusive evidence of the existence and application of a special surrender arrangement. This arrangement has drawn reference from similar case-based surrender arrangements in the UK and Canada. (see paragraphs 10 & 11 above).

22. In any surrender procedures, there must be a sound and robust legal basis that meets operational needs such that law enforcement agencies are permitted to arrest a fugitive offender on court warrant. Operationally, the purpose of replacing the subsidiary legislation with a certificate issued by CE is to plug the operational loopholes of case-based surrender by enabling the Government to bring the case through case-based surrender procedures to the court for handling without alarming the fugitive offender concerned or publicly disclosing case details, and allowing the law enforcement agencies to make an arrest in a timely and confidential manner, the timeliness and confidentiality of which is absolutely essential. Activation of the surrender procedures does not necessarily mean that the fugitive offender concerned must be surrendered as the request must be handled according to the statutory procedures under FOO, which include multiple steps, namely, an

authority to proceed issued by CE, committal proceedings of the court, and finally, issuing of a surrender order by CE. All the procedural safeguards under FOO (e.g. the person concerned may apply for *habeas corpus*, make a representation to CE or apply for judicial review) will remain unchanged.

23. At the frontline for handling surrender requests, the executive authority will, upon receipt of a case-based SFO request, consider if the request should be responded to positively. Relevant considerations include:

- (a) the laws of the requesting party and its SFO-related legislation;
- (b) past juridical co-operation between Hong Kong and the requesting party;
- (c) the requesting party's accession to international agreements or treaties;
- (d) whether the requesting party has entered into long-term agreement or case-based arrangement on SFO with other places;
- (e) whether the requesting party is at war or experiencing social unrest;
- (f) the impact of the case-based surrender on the overall interest of HKSAR, including public order and personal safety;
- (g) the facts of the case and sufficiency of evidence (whether there is prima facie evidence on the commission of the offence against the person involved);
- (h) whether the offence concerned comes within the description of the offences and meets the requirement on the punishment;
- (i) whether the offence involved is subject to refusal for the reasons under FOO, which include:

- (i) double criminality principle (section 2);
- (ii) political offences (section 5(1)(a));
- (iii) conviction in the person's absence (section 5(1)(b));
- (iv) whether the request is made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions (section 5(1)(c));
- (v) whether the person might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions (section 5(1)(d));
- (vi) rule against double jeopardy (section 5(1)(e)); and
- (vii) whether death penalty will be imposed for the offence, or there is an assurance that death penalty, even if imposed, will not be carried out (section 13(5));
- (j) the offence involved has not fallen outside the limitation period of the requesting party and has not lapsed due to a pardon or other reasons, which render the offender not liable to prosecution or punishment;
- (k) whether HKSAR's courts can exercise jurisdiction on the offence involved in the request;
- (l) the impact of the case-based surrender on the international consensus and obligation of HKSAR in combating serious crimes with respect to the international community;
- (m) the impact of the case on HKSAR's fulfilment of its obligations under applicable international agreements/treaties;
- (n) the handling of similar cases by HKSAR; and

- (o) whether the allegation in relation to the offence concerned is genuinely made in the interest of justice.

24. In addition to the above considerations and safeguards, when negotiating with the requesting party to the signing of an agreement, the executive authority will also request the requesting party:

- (a) not to re-surrender the fugitive offender to a third place (section 5(5));
- (b) to confine the charge to the offence mentioned in the surrender order (section 5(2));
- (c) to initiate prosecution within a certain period (say, six months); and
- (d) that the case and the arrangements agreed by both parties comply with all provisions and safeguards in FOO.

25. The executive authority will, in light of the circumstances of the case, require the requesting party to provide additional guarantees, such as legal representation, visits by family members, medical care, etc.

26. After signing of the agreement by the executive authority, CE will consider the relevant legal advice, and consider as a whole all the relevant circumstances and considerations for the signing of a case-based surrender agreement as mentioned in paragraphs 23 to 25 above, as well as the content of the agreement, which includes: whether the requesting party's request substantively conforms with the restrictions to surrender and other matters under FOO as well as the guarantees, terms and undertakings required by the HKSAR Government; and whether there is sufficient evidence to support the request for the purpose of deciding to issue a certificate. Having ensured that all the above is in order, CE will issue a certificate for bringing the case through the case-based surrender procedures to the court for handling. A copy of the agreement on the special surrender arrangements concerned must be attached to the certificate. Given that all the restrictions, guarantees, principles and

undertakings related to the case are detailed in the text of the agreement, they will not be set out separately in the certificate.

Further restrictions on circumstances in which a person may be surrendered under section 3A (paragraphs 9, 11 & 12 of your letter)

27. For special surrender arrangements, in addition to being substantially in conformity with all requirements in FOO, the proposed new section 3A also provides that where individual circumstances of special surrender arrangements require, provisions may be added to further limit the circumstances in which the subject may be surrendered. For example, if there are additional guarantees, the relevant restrictions will also apply. As mentioned in paragraph 25 above, such guarantees may include legal representation, visits by family members, medical care, etc. Given that the further restrictions/guarantees depend on the individual circumstances and need of each case, we consider it inappropriate to list them out in FOO. However, relevant details will be provided in the operational guidelines by means of administrative measures in the future.

28. All relevant restrictions to surrender and additional restrictions/guarantees will be drawn up by the requesting and requested parties in the course of negotiating the case-based surrender agreement. Should the requesting party fail to meet HKSAR's requirements, the HKSAR Government has the full right in rejecting the request concerned. The texts of the special surrender arrangements will be submitted to the court at the committal hearing conducted in open court. The public can know the development of the case via the court's open trial.

29. FOO has been in operation for nearly 22 years, and has been offering sufficient human rights protection. Under the present proposals, all existing human rights and procedural safeguards provided for in FOO, which have made with reference to the model treaty on extradition promulgated by the United Nations and are in line with the common practices in juridical mutual assistance overseas, will be maintained under special surrender arrangements. The human rights and procedural safeguards are as follows:

Human rights

- (a) **Satisfies the “double criminality” principle (section 2)** – the act or omission concerned will constitute an offence in both the requesting and requested jurisdictions. For SFO cases, the relevant offences must also come within the 46 descriptions of offences in Schedule 1 to FOO;
- (b) **Rule against “double jeopardy” (section 5)** – an offence that has been tried in one place cannot be tried again in another; the requested party shall refuse the request unless this rule is followed;
- (c) **No surrender for political offences (section 5)** – requests in relation to offences of a political character shall be refused;
- (d) **Refusal of requests based on political and other motives (section 5)** – requests involving persons being prejudiced or prosecuted/punished on account of his race, religion, nationality or political opinions shall be refused;
- (e) **Safeguards against death penalty (section 13)** – for an offence punishable with death, the requesting party shall assure that the death penalty will not be imposed or carried out. Otherwise the request shall be refused; and
- (f) **Specialty protection and restriction against re-surrender (section 5)** – for SFO cases, the person shall not be dealt with for any offence other than the offence(s) for which he was surrendered, and shall not be re-surrendered to any other place;

Procedures

- (g) Where the requesting party requests to prosecute the fugitive offender for offences other than those specified or re-surrender the fugitive to another place after the surrender, the fugitive may make representations to CE (section 5);

- (h) Applying for *habeas corpus* and appeal if his application fails (may appeal to the Court of Final Appeal) (section 12);
- (i) Applying for bail where there are special circumstances (section 12);
- (j) Applying for discharge in case of delay in his surrender (section 14);
- (k) Making a torture claim (may appeal to the Court of Final Appeal) (section 13); and
- (l) Applying for judicial review and, where necessary, legal aid at any time during the course of all proceedings.

30. The existing human rights and procedural safeguards under FOO are applicable to 20 signed long-term SFO agreements, and such arrangements have proven effective. When introducing the Bill for plugging the loopholes in Hong Kong's overall co-operation mechanism in criminal matters, we have to ensure that the proposals will not affect any signed long-term SFO agreements.

Accountability to LegCo (*paragraph 10 of your letter*)

31. The Bill does not change the division of functions between the executive authority and LegCo regarding SFO, for which LegCo is responsible for the enactment of laws on the legal framework while the executive authority and the court are responsible for the implementation of surrender cases.

32. As SFO and MLA involve law enforcement against serious offences, co-operation among relevant jurisdictions must be kept confidential and is time-critical. The Government's current proposal is for plugging the loopholes in the operation of case-based surrenders. Having CE to issue a certificate instead of making subsidiary legislation aims to, without alarming the fugitive offender concerned or publicly disclosing case details, bring the case to the court for handling under the case-based procedures. It is necessary for the executive authority to

ensure timeliness and confidentiality before judicial proceedings of the case commence.

33. Article 64 of BL stipulates that the HKSAR Government must abide by the law and be accountable to LegCo. The term “accountable” therein refers to implementing laws passed by LegCo and already in force, presenting regular policy addresses to LegCo, answering questions raised by LegCo members, and obtaining approval from LegCo for taxation and public expenditure. The Bill does not contravene the above BL provision.

Descriptions of offences covered by special surrender arrangements
(paragraphs 13 to 16 of your letter)

34. Having listened to views from various sectors of the community on the legislative proposal and aware of the concerns of the society, the HKSAR Government hopes to seek the greatest consensus to resolve the issue, and to adopt a justifiable proposal to minimise public worries as far as possible. Regarding the descriptions of offences, some opinions have arisen mainly due to a lack of understanding on the principle of double criminality and the coverage of offences or unfamiliarity with the contents of FOO and its operation. In view of the public concerns and the fact that the public is not familiar with the case-based surrender mechanism, the Government has struck a reasonable balance by proposing that special surrender arrangements will deal with 37 descriptions of offences in Schedule 1 to FOO which are the most serious or are of a relatively more serious nature, involving organised crime, administration of justice and fulfillment of obligations under international treaties (“specified Schedule 1 offences”). After holistic consideration, the reasons for not dealing with the remaining 9 descriptions of offences under special surrender arrangements are mainly because they seldom involve or have never been involved in past surrender requests, or are being reviewed in relation to legal disputes. Furthermore, the existing 20 long-term surrender agreements do not cover all of the 46 descriptions of offences. For future case-based surrenders, only those offences among the 37 items and relevant to the particular case will be dealt with.

35. The 46 descriptions of offences described in Schedule 1 aim to provide a scope or basis for negotiations on long-term surrender arrangements between HKSAR and other jurisdictions. If CE in Council amends Schedule 1 by an order under section 25 in the future, the amendment will apply to the offences which can be handled by special surrender arrangements. Given that the relevant order has legislative effect, it falls within the meaning of “subsidiary legislation” as defined under section 3 of the Interpretation and General Clauses Ordinance (“IGCO”) (Cap. 1) and must be tabled at LegCo for scrutiny pursuant to section 34 of IGCO.

36. Offences to which special surrender arrangements are applicable are provided for in a new section 3A of FOO; the conditions include that the offence is punishable under the law of the requesting party with imprisonment for more than 3 years, or any greater punishment, and that had the conduct occurred in Hong Kong, the offence would be a specified Schedule 1 offence and would be triable in Hong Kong on indictment and punishable with imprisonment for more than 3 years, or any greater punishment. For offences involving extra-territorial effect, special surrender arrangements also apply if such offences meet the above requirements and constitute an offence in Hong Kong.

Proceedings for committal and authentication of documents under FOO
(paragraphs 17 and 19 of your letter)

37. Section 10(6)(b)(iii) of FOO provides the evidential requirements for the committal in the courts of HKSAR of a person sought for prosecution, i.e. “the evidence in relation to the offence would be sufficient to warrant the person’s committal for trial according to the law of HKSAR if the offence had been committed within the jurisdiction of that court or any other court”. The Bill does not change the evidential requirements for committal proceedings in respect of FOO as mentioned in the Government’s paper submitted to the LegCo Panel on Security in 1999.

38. The Bill proposes to add a means for authenticating supporting documents so that “any supporting document or other document is deemed to be duly authenticated if it purports to be signed, certified,

sealed, or otherwise authenticated, in a way provided for by the prescribed arrangements concerned” (new section 23(2A) of FOO). The proposal applies to general long-term surrender arrangements and special surrender arrangements.

39. The proposal makes the arrangement more flexible for authenticating documents for admission as evidence in court and is in line with the spirit of simplifying and minimising the extradition procedures as advocated in section 7 of the United Nations Model Treaty on Extradition. The United Nation General Assembly adopted a resolution on International Cooperation in Criminal Matters in 1997, requesting all Member States, at their discretion, and within the framework of their national legal systems and in the context of the use and application of extradition treaties or other arrangements, to simplify and streamline procedures necessary to execute and initiate requests for extradition, including the provision to requested States of information sufficient to enable extraditions. The proposal of the Bill is also adopted in the Extradition Act 1999 of New Zealand. Section 78 (1)(c) of the Act contains an authentication method similar to that in section 23 (2) of FOO, i.e. documents are to be authenticated by executive or judicial officers of the requesting party with its official seal on them; section 78 (1)(b) contains another method, i.e. documents authenticated in the manner provided for in an applicable extradition treaty.

Transitional provisions in respect of the proposed special surrender arrangements (*paragraph 18 of your letter*)

40. As the current case-based surrender is operationally impracticable, no case-based surrender arrangements have ever been entered into between HKSAR and any other places since FOO came into effect more than 22 years ago. Therefore, no transitional provisions are needed in respect of the special surrender arrangements proposed in the Bill.

Case-based arrangements under the existing MLAO (*paragraph 20 of your letter*)

41. Section 6 of MLAO permits HKSAR to provide assistance under

the Ordinance to places outside Hong Kong, subject to these places meeting such conditions as the Secretary for Justice determines. But if a request is made by a prescribed place (i.e. a place to which an MLA arrangement applies and the arrangement is implemented by an order under section 4(1) of MLAO), no conditions proposed by the Secretary for Justice shall be inconsistent with the provision of the prescribed arrangements. If a request is made by a place which is not a prescribed place under prescribed arrangements, it can be handled on a case-based approach by Hong Kong on the condition that the place has to undertake to comply with a future request by HKSAR to the place for assistance (see section 5(4) of MLAO). Case-based assistance does not require an order to be made under section 4(1) of MLAO by CE in Council. Nevertheless, a court order is generally required in order to provide assistance under MLAO and thus evidence or property holders will receive the relevant order and know the grounds for taking the evidence. Should they object to the taking of evidence, they can raise the objection to the court. Case-based assistance under reciprocity undertaking is a common practice for international legal assistance. The HKSAR Government provides, from time to time, case-based assistance under reciprocity principle to places which have not entered into long-term arrangements on legal assistance in criminal matters with HKSAR. Also, assistance for taking evidence is sought from places outside the territory under the same principle. The relevant operation has proven effective. The current inadequacy of MLAO only lies in its geographical restriction which makes it inapplicable to other parts of PRC, with which HKSAR has a very close relationship. This is also what the Bill proposes to improve.

Co-operation arrangements in criminal matters (paragraphs 21 to 25 of your letter)

42. In addition to SFO and MLA arrangements, the Police and other law enforcement agencies of Hong Kong liaise, exchange views and co-operate with their counterparts in other places from time to time for exchanging intelligence to combat crimes. Also, according to Part VIII of the Evidence Ordinance (Cap.8), HKSAR may, via a request made by the court, seek assistance from the court of other places in criminal matters. Similarly, where other places need HKSAR's assistance in

criminal matters, they may make such an application to the court of HKSAR. Both sides must strictly comply with their respective laws and requirements in liaison and co-operation. As the intelligence obtained through enforcement co-operation generally cannot be produced as evidence in court, there is limitation to the effectiveness of such co-operation. Evidence obtained under the Evidence Ordinance can be adduced in court proceedings, but the assistance provided thereunder is limited to examining witnesses and producing documents or things. In contrast, the scope of MLA under MLAO is far more extensive, covering the abovementioned assistance as well as additional assistance in searching/seizing evidence, freezing/confiscating property, serving legal documents, transferring persons, etc. Besides, requests under the Evidence Ordinance are issued on the basis of comity between the courts of both sides. Neither side is bound by the obligations under any co-operation arrangement, and the outcome of evidence taking is uncertain.

43. Given the geographical restriction of the existing MLAO, there is no legal basis for MLA between HKSAR and any other part of PRC. By proposing to remove the geographical restriction, the Bill extends the application of MLAO to include any other part of PRC. Upon passing of the Bill, HKSAR and any other part of PRC can handle one another's requests for assistance in criminal matters on case basis. The long-term agreement on legal assistance in criminal matters between HKSAR and the Mainland China is still under discussion. If an agreement is reached between both parties in the future, legislation must be made in order for the agreement to come into effect. As regards the mode of the legislation, it will be decided in due course.

44. Section 6 of MLAO provides that assistance under MLAO may be provided subject to such conditions as the Secretary for Justice determines, and if that place is a prescribed place, no such conditions shall be inconsistent with any provision of the prescribed arrangements between HKSAR and that place. According to past experience, the conditions set out by the Department of Justice include:

- (a) restriction on the use of evidence, i.e. the requesting party shall not disclose or use the evidence in any way other than for the

matters mentioned in the request for assistance unless the Department of Justice has given consent;

- (b) returning of the evidential material upon conclusion of the criminal matters; and
- (c) extraordinary expenses incurred in handling the request shall be borne by the requesting party.

The reasons for imposing the above conditions include restricting the use of evidence, protecting the rights of the evidence holders and ensuring the proper use of public money. These conditions will be imposed depending on the needs of individual requests, and apply to requests made under long-term arrangement and case-based arrangement. Under MLAO, an application to the court for an order is usually required for obtaining evidence. If the executive authority fails to take evidence and handle the evidence obtained in a reasonable manner, such acts will be subject to judicial review. The persons affected by the evidence taking measures can apply for judicial review to challenge the procedure. There were relevant precedents in the past.

45. It has always been the HKSAR Government's policy objective to enter into long-term MLA agreements with other different jurisdictions. Clause 10 of the Bill provides that where a criminal matter is covered by bilateral MLA arrangements that are prescribed arrangements, the request relating to that matter may only be made pursuant to the arrangements concerned (new section 8(3) of MLAO). The Bill will not affect the 32 bilateral MLA agreements signed by HKSAR, and the requests handled on a case-based approach at present. No transitional provisions in MLAO are needed for these amendments.

46. In respect of the criminal legal assistance arrangements on a case-based approach, HKSAR has the full discretion as to whether the request should be acceded to. Depending on the need of individual cases, HKSAR may request for additional safeguards and impose such safeguards in the relevant case-based agreements. This approach has been working effectively and the Bill does not propose any changes to it.

LEGISLATIVE COUNCIL BRIEF

FUGITIVE OFFENDERS BILL

INTRODUCTION

At the meeting of the Executive Council on 22 October 1996, the Council ADVISED and the Governor ORDERED that the Fugitive Offenders Bill, at Annex, should be introduced into the Legislative Council.

BACKGROUND

Existing arrangement

2. Surrender of fugitive offenders concerns the return by one jurisdiction to another of fugitives who are accused or convicted of serious criminal offences in the jurisdiction which requests surrender.

3. Hong Kong currently has arrangements for the surrender of fugitive offenders with some 90 countries. These are based on bilateral and multilateral treaties which the UK has extended to Hong Kong, and on arrangements between Commonwealth countries which are given effect by means of reciprocal domestic legislation. These UK-based arrangements will lapse on 1 July 1997.

New arrangements

4. With the agreement of the Chinese side in the Joint Liaison Group, we are now negotiating a network of bilateral agreements for the surrender of fugitive offenders which will remain in force after 1997. To date, we have signed agreements with five countries i.e. the Netherlands, Canada, Australia, Malaysia and Philippines, and are awaiting signature with India, the US and Indonesia. In addition, we are pressing ahead with our negotiations with a number of other negotiating partners. The new bilateral agreements are similar to the existing UK-based arrangements which apply to Hong Kong. They provide for the surrender of accused or

convicted persons in accordance with accepted procedures and subject to various conditions to safeguard the rights of those persons.

The Need for Localised Fugitive Offenders Legislation

5. The existing fugitive offenders legislation as applied to Hong Kong is derived from the UK and will also lapse on 1 July 1997. Therefore, we need to introduce localised fugitive offenders legislation which can continue after the handover to provide appropriate legal backing for our new bilateral agreements. At JLG XXXVII in September 1996, the two sides confirmed their agreement to this localisation of laws item.

The Requirements the Localised Legislation Must Meet

6. The localised fugitive offenders legislation needs to -
- (a) provide a mechanism for implementing the new agreements and the fugitive offenders provisions in multilateral agreements which will continue to apply to Hong Kong; and
 - (b) set out the conditions and procedures under which Hong Kong will surrender fugitives under those agreements, and the treatment which will be afforded to returned fugitives.

7. On 6(a) above, we intend that when a new bilateral agreement is signed and ready to be brought into force (or when it is agreed that a multilateral treaty with fugitive offenders provisions should continue to apply to Hong Kong after 30 June 1997), an Order should be made by the Governor in Council giving effect to the relevant provisions of that agreement under the new legislation. The Governor in Council's Order would, at the same time, disapply the relevant Orders in Council which extend any UK-based arrangements to Hong Kong.

8. On conditions for surrender, our policy is to surrender individuals only for specified, serious offences. These are listed in our bilateral agreements and in the localised legislation. The localised legislation also sets out the following grounds for refusing the surrender of a fugitive -

- (a) **double criminality:** where the offence in question would not have been an offence had it been committed in Hong Kong;
- (b) **political offences:** where the offence in question is political in nature;
- (c) **prejudice:** where it appears that the request for surrender has been made for the purpose of punishing the fugitive on account of his race, religion, nationality or political opinions, or that he might be prejudiced at his trial on these grounds;
- (d) **conviction in absentia:** where the person was convicted in his absence and, if surrendered, would not have an opportunity to be re-tried in his presence for the offence in question;
- (e) **double jeopardy:** where the fugitive has already been tried and acquitted - or convicted and served his sentence - for the offence in question;
- (f) **specialty:** where there is no guarantee that the fugitive would not be tried for a crime other than that for which his surrender was granted;
- (g) **resurrender:** where there is no guarantee that the fugitive would not be resurrendered to a third jurisdiction; and

- (h) **prima facie rule:** where the evidence against the fugitive would be insufficient to justify his committal for trial if the offence had been committed in Hong Kong.

9. The Governor has a general discretion to refuse surrender. This discretion will be exercised in accordance with the provisions in the relevant bilateral agreements. Examples are -

- (a) **nationals:** where the person sought is a national of the sovereign power; and
- (b) **the death penalty:** where the offence for which surrender is requested is punishable by death under the law of the requesting jurisdiction, unless satisfactory assurances are given that the death penalty will not be carried out.

10. On procedures, the legislation preserves the existing arrangements for handling requests for surrender. These arrangements involve a three-stage decision-making process. First, the Governor will consider the request and decide whether or not proceedings for surrender should be launched. Second, if the Governor decides to launch proceedings, the fugitive will be brought before a magistrate. The magistrate will decide whether the fugitive can lawfully be surrendered under the provisions of the legislation, taking into account the mandatory restrictions referred to in paragraph 8 above. Third, if the magistrate commits the fugitive (and his decision is upheld in any subsequent appeal), the Governor then has the final say as to whether he should be surrendered. The Governor has the discretion to refuse surrender, which he will exercise having regard to the restrictions referred to in paragraphs 8 and 9 above or instructions from the sovereign power (see paragraph 13 (d) below). The key features of the procedures are as follows -

- (a) **authority to proceed:** after a jurisdiction has requested surrender, proceedings before a magistrate may only commence after the Governor has issued an authority to proceed (which he will not do if he considers that surrender cannot lawfully be granted);
- (b) **arrest:** powers are needed for the arrest and detention of the fugitive so that he can be brought before the court;
- (c) **search and seizure:** powers are also needed to seize property under the control of the arrested person which constitutes evidence or which has been acquired as a result of the offence in question;
- (d) **committal proceedings:** the proceedings before the magistrate, including the requirement for producing sufficient evidence to warrant the fugitive's committal for trial (paragraph 8(h) above), need to be specified;
- (e) **appeals:** an avenue of appeal is laid down, both for the requesting jurisdiction (in the event that the magistrate does not commit the fugitive for surrender) and for the fugitive (in the event that the magistrate commits him for surrender); and
- (f) **Governor's decision:** the legislation must give the Governor discretion to approve or reject a request for surrender in the event that a fugitive is committed for surrender.

11. Provision is also made for the treatment of fugitives returned to Hong Kong. In particular, the legislation provides guarantees on specialty and re-surrender (see paragraph 8(f) and (g) above).

12. Finally, the Bill provides for procedures for notifying the sovereign power of requests for surrender and the role to be played by the Governor (and, after 30 June 1997, the Chief Executive) in this process (see details at paragraph 13 (d) below).

THE BILL

13. The main provisions of the Bill are as follows -

- (a) **Part I (clauses 1 to 5)** contains preliminary provisions. **Clause 2(2)**, as read with **Schedule 1**, provides for the offences for which Hong Kong will normally grant SFO. The clause also provides that double criminality (paragraph 8 (a) above) must exist. **Clause 3** provides for the Ordinance to be applied to a particular jurisdiction to give effect to arrangements for the surrender of fugitive offenders. **Clause 5** specifies the mandatory restrictions on surrender listed at paragraph 8 (b) to (g) above.
- (b) **Part II (clauses 6 to 16)** sets out the procedures for the surrender of persons from Hong Kong to other jurisdictions. The main features are highlighted at paragraph 10 (a) to (f) above. **Clause 13** confers on the Governor a discretionary power to surrender a person who has been committed by the magistrate. However, the Governor may not order surrender if such surrender is prohibited by the other provisions of the Bill;
- (c) **Part III (clauses 17 to 19)** deals with persons surrendered to Hong Kong. **Clause 17** places restrictions on the offences in respect of which such a person may be tried, and on the person's surrender from Hong Kong to other jurisdictions in respect of which Hong Kong has entered into arrangements for the surrender of fugitive offenders; and

- (d) **Part IV (clauses 20 to 29)** contains miscellaneous provisions. **Clause 25** deals with the procedures for notifying the sovereign power of requests for surrender. The Governor is to notify the Secretary of State of requests by Hong Kong; of requests to Hong Kong where an order of committal has been made; and of requests for transit of fugitive offenders through Hong Kong. The Governor is required to comply with an instruction issued by the Secretary of State under **clause 25(3)** (on the ground that if it were not complied with the defence or foreign affairs interests of the sovereign state would be significantly affected) unless he is prohibited from doing so by virtue of another provision of the Bill.

14. Hong Kong is determined that criminals cannot escape justice by fleeing to or from Hong Kong. It is important that the localised fugitive offenders legislation should be in place before the handover so that when the UK-based legislation and agreements lapse on 1 July 1997, there will not be any gap in our co-operation with other jurisdictions in this area.

PUBLIC CONSULTATION

15. The Bill has not been the subject of public consultation, since it preserves, rather than changes, the existing framework for the surrender of fugitive offenders.

BILL OF RIGHTS IMPLICATIONS

16. The Attorney General's Chambers have advised that the provisions of the Bill are not inconsistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.

FINANCIAL AND STAFFING IMPLICATIONS

17. The Bill has no financial or staffing implications.

LEGISLATIVE TIMETABLE

18. The legislative timetable will be -
- | | |
|--|-----------------|
| Publication in the Gazette | 25 October 1996 |
| First Reading and commencement of the Second Reading debate | 6 November 1996 |
| Resumption of the Second Reading debate, committee stage and Third Reading | to be notified |

PUBLICITY

19. A press release will be issued on 23 October 1996.

Enquiries

20. Enquiries on the Bill should be directed to:
- | | <u>Telephone No.</u> |
|---|----------------------|
| Mr Clement Leung
Principal Assistant Security for Security | 2810 2329 |
| Mr Alan Chu
Assistant Secretary for Security | 2810 2448 |

Security Branch
File Ref.: SBCR 1/2716/89
23 October 1996

FUGITIVE OFFENDERS BILL

CONTENTS

Clause		Page
PART I		
PRELIMINARY		
1.	Short title and commencement	1
2.	Interpretation	1
3.	Governor in Council may apply Ordinance	6
4.	Persons liable to be surrendered	9
5.	General restrictions on surrender	10
PART II		
PROCEDURE		
6.	Request for surrender and authority to proceed	12
7.	Arrest for purposes of committal	13
8.	Power of search and seizure	15
9.	Disposal of property seized under section 8	16
10.	Proceedings for committal	17
11.	Statement of case by court of committal	21
12.	Application for habeas corpus, etc.	25
13.	Order for surrender	29
14.	Discharge in case of delay	30
15.	Surrender of persons liable to serve sentences of imprisonment	31
16.	Custody in relation to orders for surrender	34

Clause		Page
PART III		
TREATMENT OF PERSONS SURRENDERED FROM PRESCRIBED PLACE		
17.	Restrictions upon proceedings for other offences	35
18.	Restoration of persons not tried or acquitted	36
19.	Persons kept in custody pursuant to undertakings given to prescribed places	37
PART IV		
MISCELLANEOUS		
20.	Transit	38
21.	Escapes from custody	39
22.	Form of orders, etc.	39
23.	Admissibility of evidence, etc.	40
24.	Attorney General entitled to be heard in any proceedings under this Ordinance	41
25.	Governor to give notice to Secretary of State in relation to certain matters, etc.	41
26.	Amendment of Schedules	43
27.	Regulations	43
28.	Transitional	44
29.	Repeal and consequential amendments	51
Schedule 1	Description of offences	51
Schedule 2	Imperial enactments which may be amended or repealed under section 3	56
Schedule 3	Consequential amendments	56

A BILL

To

Make provision for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the laws of those places; for the treatment of persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the law of Hong Kong who are surrendered from such places; and for matters incidental thereto or connected therewith.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

1. Short title and commencement

- (1) This Ordinance may be cited as the Fugitive Offenders Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires -
"arrangements for the surrender of fugitive offenders" (移交逃犯安排) means arrangements -
 - (a) which are applicable to -
 - (i) the Government and the government of a place outside Hong Kong (other than the

People's Republic of China or any part thereof);
or

(ii) Hong Kong and a place outside Hong Kong
(other than the People's Republic of China or any
part thereof); and

(b) for the purposes of the surrender of persons wanted for
prosecution, or for the imposition or enforcement of a sentence,
in respect of an offence against the law of Hong Kong or that
place;

"authority to proceed" (授權進行書) means an order of the Governor authorizing a
person to be dealt with under Part II;

"authorized officer" (獲授權人員) means -

(a) any police officer;
(b) any member of the Customs and Excise Service established by
section 3 of the Customs and Excise Service Ordinance (Cap.
342);

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

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

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

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

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

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

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

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

"Secretary of State" (國務大臣) means Her Majesty's Principal Secretary of State who for the time being may under the law of the United Kingdom instruct the Governor in respect of matters relating to the surrender of fugitive offenders;

"supporting documents" (支持文件) means -

- (a) in relation to an offence in respect of which a person is wanted for prosecution -
 - (i) a warrant of arrest (or a copy thereof) issued in the prescribed place which has made the request for surrender concerned; and
 - (ii) other documents which provide evidence of -
 - (A) the offence;
 - (B) the penalty which may be imposed in respect of the offence; and
 - (C) the conduct constituting the offence;
- (b) in relation to an offence in respect of which a person is wanted for the imposition or enforcement of a sentence, documents which provide evidence of -
 - (i) the offence;
 - (ii) the penalty which may be imposed in respect of the offence;

- (iii) the conduct constituting the offence;
- (iv) the conviction;
- (v) the sentence imposed or the intention to impose a sentence; and
- (vi) the extent to which a sentence imposed has not been carried out;

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

(2) For the purposes of this Ordinance, an offence by a person against the law of a prescribed place is a relevant offence against that law if -

- (a) the offence is punishable under that law with imprisonment for more than 12 months, or any greater punishment; and
- (b) the acts or omissions constituting the conduct in respect of which the person's surrender to that place is sought amount to conduct which, if the conduct had occurred in Hong Kong, would constitute an offence -
 - (i) coming within any of the descriptions specified in Schedule 1; and
 - (ii) punishable in Hong Kong with imprisonment for more than 12 months, or any greater punishment.

(3) For the purposes of subsection (2) -

- (a) the law of a prescribed place includes the law of any part of that place; and
- (b) conduct in -
 - (i) a colony or dependency; or
 - (ii) a vessel, aircraft or hovercraft,

of a prescribed place shall be treated as if the conduct were conduct in the territory of that place.

(4) For the avoidance of doubt, it is hereby declared that any one set of arrangements for the surrender of fugitive offenders may be made with any number (including any combination) of -

- (a) governments of places outside Hong Kong;
- (b) places outside Hong Kong,

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

(5) Where arrangements applicable to -

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

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

(6) Where, but for this subsection, many arrangements are not arrangements for the surrender of fugitive offenders only because they are for the purposes of the surrender of persons accused or convicted of an offence against the law of Hong Kong or a place outside Hong Kong (or words to the like effect), then, by virtue of this subsection and for the purposes of this Ordinance, such arrangements shall be deemed to be arrangements for the surrender of fugitive offenders as if -

- (a) any reference in such arrangements to the surrender of persons accused of an offence (or words to the like effect) were a reference to the surrender of persons wanted for prosecution in respect of an offence; and
- (b) any reference in such arrangements to the surrender of persons convicted of an offence (or words to the like effect) were a reference to the surrender of persons wanted for the imposition or enforcement of a sentence in respect of an offence,

and the provisions of this Ordinance shall apply to any such arrangements accordingly.

(7) Where under this Ordinance any act is required to be, or may be, done by a prescribed place, that act may be done by a person on behalf of that place, and the provisions of this Ordinance shall be construed accordingly.

3. Governor in Council may apply Ordinance

(1) Subject to subsection (8), the Governor in Council may, in relation to any arrangements for the surrender of fugitive offenders, by order -

- (a) reciting or embodying the terms of the arrangements;
- (b) specifying the extent, if any, to which any relevant enactment specified in the order is to be repealed or amended,

direct that the procedures in this Ordinance shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the order.

(2) An order under subsection (1) 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.

(3) The Legislative Council may, within the period of 28 days beginning on the date it is laid, by resolution, repeal an order under subsection (1).

(4) If the period referred to in subsection (3) would, but for this subsection, expire at the end of a session or a dissolution of the Legislative Council and before the second sitting day in the next session, that period shall be extended and shall expire on the day after the second sitting day.

(5) The Legislative Council may, before the expiry of the period to repeal an order under subsection (1), by resolution, extend the period for repealing the order to the next sitting.

(6) A resolution under subsection (3) or (5) shall be published in the Gazette within 14 days after it is passed or such further period as the Governor may allow.

(7) An order under subsection (1) shall come into operation, if the Legislative Council does not repeal the order, on the expiry of the period for repealing the order.

(8) The Governor in Council shall not make an order under subsection (1) unless the arrangements for the surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of this Ordinance.

(9) Any relevant enactment specified in an order under subsection (1) is hereby repealed or amended -

- (a) to the extent specified in the order; and
- (b) with effect on the day on which the order comes into operation.

(10) Subject to section 28, sections 23, 24 and 25 of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply in relation to the repeal under subsection (9) of a relevant enactment which is an imperial enactment as they would apply to the repeal of an Ordinance.

(11) A copy of an order under subsection (1) shall be conclusive evidence that -

- (a) the arrangements for the surrender of fugitive offenders to which the order relates are substantially in conformity with the provisions of this Ordinance; and
- (b) the procedures in this Ordinance apply in the case of any place outside Hong Kong to which the order relates.

(12) Where a provision of any enactment (including any imperial enactment so far as it is part of the law of Hong Kong) makes any reference to any relevant enactment which has been repealed or amended under subsection (9), that provision shall be read and have effect with such modifications as may be necessary to take account of such repeal or amendment and, accordingly, that reference may, where appropriate, be read and have effect as if it were a reference to this Ordinance or to the arrangements for the surrender of fugitive offenders to which the order under subsection (1) which gave rise to such repeal or amendment relates.

(13) Where any arrangements for the surrender of fugitive offenders cease to relate to, or become related to, a place outside Hong Kong, the Governor may, by notice in the Gazette, amend the order under subsection (1) which relates to those arrangements to specify -

- (a) that those arrangements have ceased to relate to, or have become related to, as the case may be, that place; and
- (b) the date on which the event referred to in paragraph (a) occurred.

(14) Sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to a notice under subsection (13).

(15) In this section -

"relevant enactment" (有關成文法則) means -

- (a) any Ordinance relating to the surrender of fugitive offenders;
- (b) any imperial enactment -
 - (i) so far as it is part of the law of Hong Kong;
 - (ii) relating to the surrender of fugitive offenders; and
 - (iii) specified in Schedule 2,

and, without prejudice to the definition of "Ordinance" or "imperial enactment" in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), includes any part or provision of any such Ordinance or imperial enactment;

"sitting" (會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper.

4. Persons liable to be surrendered

A person in Hong Kong who is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in

respect of a relevant offence against the law of that place may be arrested and surrendered to that place in accordance with the provisions of this Ordinance.

5. General restrictions on surrender

(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) 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 prescribed arrangements concerned);
- (b) that -
 - (i) the offence in respect of which such surrender is sought was prosecuted in his absence and a conviction obtained; and
 - (ii) the person -
 - (A) has not had an opportunity of being tried in his presence for that offence; and
 - (B) if surrendered, he would not have an opportunity of being re-tried in his presence for that offence;
- (c) that the request for surrender concerned (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions;

- (d) that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or
- (e) that if the offence had occurred in Hong Kong, the law of Hong Kong relating to previous acquittal or conviction would preclude the prosecution, or the imposition or enforcement of a sentence, in respect of that offence.

(2) A person shall not be surrendered to a prescribed place, or committed to or kept in custody for the purposes of such surrender, unless provision is made by the law of the place, or by an arrangement made with that place, for securing that he will not, unless he has first had an opportunity to leave that place, be dealt with in that place for or in respect of any offence committed before his surrender to it other than -

- (a) the offence in respect of which his surrender is ordered;
- (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); or
- (c) subject to subsection (3), any other offence being a relevant offence in respect of which the Governor may consent to his being dealt with.

(3) The Governor shall not give consent under subsection (2)(c) in respect of an offence in relation to which it appears to him that an order for surrender in relation to the person concerned could not lawfully be made, or would not in fact be made.

(4) A person shall not be surrendered to a prescribed place, or committed to or kept in custody for the purposes of such surrender, unless provision is made by the law of the place, or by an arrangement made with that place, for securing that he will not be re-surrendered by that place to any other place outside Hong Kong for any offence committed before his surrender unless -

- (a) he has first had an opportunity to leave that first-mentioned place; or
- (b) the Governor consents to that re-surrender.

(5) In this section, "appropriate authority" (主管當局) means -

- (a) the Governor;
- (b) the court of committal; or
- (c) the High Court on an application for habeas corpus or for judicial review of the order of committal.

PART II

PROCEDURE

6. Request for surrender and authority to proceed

(1) Subject to the provisions of this Ordinance relating to provisional warrants, a person shall not be dealt with under this Part except pursuant to an authority to proceed issued pursuant to a request for surrender -

- (a) made by -
 - (i) a person recognized by the Secretary of State as a diplomatic or consular representative of the prescribed place which made the request; or

- (ii) any other person approved by the Secretary of State as a person who may make such a request in respect of that place; and
- (b) transmitted through -
 - (i) the diplomatic channel; or
 - (ii) any other channel approved by the Secretary of State as a channel through which such a request may be transmitted.

(2) On receipt of a request for surrender, the Governor may issue an authority to proceed unless it appears to him that an order for surrender in relation to the person concerned could not lawfully be made, or would not in fact be made.

(3) A certificate purporting to be signed by or on behalf of the Secretary of State stating that -

- (a) a person specified in the certificate is recognized by the Secretary of State as a diplomatic or consular representative of a prescribed place specified in the certificate;
- (b) a person specified in the certificate is approved by the Secretary of State as a person who may make a request for surrender in respect of a prescribed place specified in the certificate; or
- (c) a channel specified in the certificate is approved by the Secretary of State as a channel through which a request for surrender may be transmitted,

shall be conclusive evidence of that fact.

7. Arrest for purposes of committal

(1) For the purposes of this Ordinance, a warrant for the arrest of a person may be issued by a magistrate -

- (a) on the receipt of an authority to proceed and, if the person is liable to serve a sentence of imprisonment in Hong Kong, where the magistrate is satisfied that section 15 would not be contravened if the person were brought before the court of committal;
 - (b) without such an authority, where, on application made by an authorized officer, the magistrate is satisfied by information given on oath (whether or not by that authorized officer) that -
 - (i) the person -
 - (A) is or is believed to be in or on his way to Hong Kong; and
 - (B) is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in respect of a relevant offence; or
 - (ii) if the person is liable to serve a sentence of imprisonment in Hong Kong -
 - (A) that the person is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in respect of a relevant offence; and
 - (B) that section 15 would not be contravened if the person were brought before the court of committal.
- (2) Where a provisional warrant is issued -
- (a) the magistrate by whom the warrant is issued shall forthwith give notice to the Governor that he has done so;

- (b) the Governor -
 - (i) may in any case;
 - (ii) shall if -
 - (A) he decides not to issue an authority to proceed in respect of the person to whom the warrant relates; and
 - (B) that person has not consented to his surrender pursuant to section 10(6)(a),
- by order cancel the warrant and, if that person has been arrested pursuant to the warrant and is not liable to serve a sentence of imprisonment in Hong Kong, discharge that person from custody.

(3) A warrant issued under this section may be executed by any person to whom it is directed or by any authorized officer.

8. Power of search and seizure

(1) Where a person or authorized officer who arrests a person pursuant to this Ordinance has reasonable grounds for suspecting that there is property on or under the apparent control of the arrested person that -

- (a) may be material as evidence in proving an offence to which the request for surrender concerned relates; or
- (b) has been acquired as a result of such an offence,

that person or authorized officer may, with such assistants as may be necessary, search for and seize any such property.

(2) A magistrate may, if satisfied by information on oath that there are reasonable grounds for suspecting that there is likely to be found in any place any property that -

- (a) may be material as evidence in proving an offence to which a request for surrender relates; or

(b) has been acquired as the result of such an offence, issue a warrant authorizing any authorized officer, with such assistants as may be necessary, at any time to enter such place, by force if necessary, and there search for and seize any such property.

(3) This section shall be without prejudice to any powers conferred on authorized officers by any other law.

(4) In this section, "place" (地方) includes any vessel, aircraft, hovercraft, vehicle and domestic premises.

9. Disposal of property seized under section 8

(1) Any property seized under section 8 by an authorized officer shall be retained until the property is disposed of pursuant to an order under subsection (2).

(2) The Governor may by order direct any property seized under section 8 to be disposed of -

(a) where the property -

(i) is material as evidence in proving an offence to which the request for surrender in consequence of which the property was so seized relates; or

(ii) has been acquired as the result of such an offence, by being sent to the prescribed place which made the request (and whether or not the person to which the request relates is surrendered under this Ordinance to that place) or in such other manner as may be specified in the order;

(b) in any other case, by being delivered to a person specified in the order, being a person who in the opinion of the Governor is entitled to possession of the property.

10. Proceedings for committal

(1) A person arrested pursuant to a warrant under section 7 shall (unless previously discharged under subsection (2)(b) of that section) be brought as soon as practicable before a magistrate.

(2) For the purposes of proceedings under this section, the court of committal shall -

- (a) hear the case in the like manner, and have the like jurisdiction and powers, as nearly as may be, including, subject to subsection (5) and section 11(2), power to remand in custody or on bail, as if the person brought before it is charged with an indictable offence committed in Hong Kong;
- (b) receive any evidence relevant to the exercise of its jurisdiction under section 5.

(3) Where the person arrested is in custody by virtue of a provisional warrant and -

- (a) he has not consented to his surrender pursuant to subsection (6)(a);
 - (b) he is not liable to serve a sentence of imprisonment in Hong Kong; and
 - (c) no authority to proceed has been received in respect of him,
- the court of committal may, subject to subsection (4), fix a reasonable period (of which the court shall give notice to the Governor) after which he will be discharged from custody unless such an authority has been received.

(4) In exercising the power conferred by subsection (3) in respect of the person arrested, the court of committal shall have

regard to the period, if any, specified for the purpose in the terms of the prescribed arrangements -

- (a) recited or embodied in the order under section 3(1) which relates to the arrangements; and
- (b) pursuant to which the request for surrender in respect of that person was made.

(5) Notwithstanding any other law of Hong Kong, the court of committal shall not remand on bail the person arrested unless it is satisfied that there are special circumstances justifying such remand.

(6) Where -

- (a) subject to subsection (7), at any time the person arrested informs the court of committal, and whether or not -
 - (i) an authority to proceed has been issued in respect of him; or
 - (ii) the court is proceeding under paragraph (b), that he consents to his surrender to the prescribed place by which the request for surrender concerned was made; or
- (b) an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied -
 - (i) that the offence to which the authority relates is a relevant offence;
 - (ii) that the supporting documents in relation to the offence -
 - (A) have been produced; and
 - (B) are duly authenticated;

- (iii) where the person is wanted for prosecution in respect of the offence, that the evidence in relation to the offence would be sufficient to warrant the person's committal for trial according to the law of Hong Kong if the offence had been committed within the jurisdiction of that court or any other court; and
- (iv) where the person has been prosecuted for the offence, a conviction obtained and -
 - (A) no sentence has been imposed, that there is an intention to impose a sentence;
 - (B) a sentence of imprisonment has been imposed, that either -
 - (I) the sentence has not been carried out; or
 - (II) in the case of a term of imprisonment, not less than 6 months of the term remain to be served,

the court shall (unless the person's committal is prohibited by any other provision of this Ordinance) by order commit him to custody -

- (i) to await the Governor's decision as to his surrender to the prescribed place by which the request for surrender concerned was made; and
- (ii) if the Governor decides that he shall be surrendered to that place, to await such surrender.

(7) Where pursuant to subsection (6)(a) a person informs the court of committal of his consent to surrender, the court shall -

- (a) if it has reason to believe that the consent was not given voluntarily, reject that consent and proceed, or continue to proceed, as the case may be, under subsection (6)(b);
- (b) in any other case -
 - (i) inform the person in ordinary language -
 - (A) that the effect of that consent is that, without any further proceedings, an order will be made committing him to custody; and
 - (B) of the effect of that order by stating the substance of subsection (6)(i) and (ii); and
 - (ii) after so informing that person, reject that consent and proceed, or continue to proceed, as the case may be, under subsection (6)(b) unless that person informs it that he still so consents.

(8) For the purposes of this section, a person in respect of whom a conviction has been obtained in his absence in a prescribed place shall be treated as a person wanted for prosecution in respect of the offence of which he is convicted.

(9) If -

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

the court shall discharge him.

11. Statement of case by court of committal

(1) If the court of committal refuses to make an order of committal in relation to a person in respect of the offence or, as the case may be, any of the offences, to which the authority to proceed concerned relates, the prescribed place seeking the surrender of that person to it may question by way of appeal the proceeding on the ground that it is wrong in law by making an application to the court, not later than 15 days after such refusal, to state a case for the opinion of the High Court on the question of law involved.

(2) If, immediately upon a refusal referred to in subsection (1), the prescribed place seeking the surrender of the person to whom the refusal relates informs the court of committal that it intends to make an appeal under that subsection, the court shall make an order providing for that person's detention.

(3) On an appeal under subsection (1), the High Court shall have power -

(a) to remit the case to the court of committal to decide it according to the opinion of the High Court on the question of law involved; or

(b) to dismiss the appeal.

(4) Where the High Court dismisses an appeal under subsection (1) relating to an offence, it shall by order declare that that offence is not an offence in respect of which the Governor has power to make an order for surrender in respect of the person whose surrender was requested.

(5) An appeal shall lie as of right to the Court of Appeal from any decision of the High Court under -

- (a) subsection (3)(a); or
 - (b) subsection (3)(b).
- (6) An order under subsection (2) shall cease to have effect if -
- (a) the High Court dismisses the appeal under subsection (1) in respect of the offence or all the offences to which the order relates and -
 - (i) immediately upon that dismissal, the prescribed place seeking surrender does not inform the High Court that it intends to appeal to the Court of Appeal; or
 - (ii) that place does so inform the High Court but, immediately thereafter, the High Court does not declare that the order shall continue to have effect;
 - (b) where there is an appeal by the prescribed place to the Court of Appeal, the Court of Appeal dismisses the appeal in respect of that offence or all those offences and -
 - (i) immediately upon that dismissal, that place does not -
 - (A) apply for leave to appeal to the Privy Council; or
 - (B) inform the Court of Appeal that it intends to apply for such leave; or
 - (ii) that place does so apply or inform the Court of Appeal but, immediately thereafter, the Court of Appeal does not declare that the order shall continue to have effect;

- (c) leave to appeal to the Privy Council is refused; or
- (d) where there is an appeal by the prescribed place to the Privy Council, the Privy Council dismisses the appeal in respect of that offence or all those offences,

whichever first occurs.

(7) Notwithstanding any other law of Hong Kong but subject to subsection (8) -

- (a) the High Court may by order specify a period within which proceedings for an appeal to the Court of Appeal referred to in subsection (5)(b) may be instituted;
- (b) the Court of Appeal may by order specify a period within which proceedings for an appeal to the Privy Council referred to in subsection (6)(b)(i)(A) may be instituted,

and, in any such case, if the period so specified expires without such proceedings having been instituted, the order concerned under subsection (2) shall cease to have effect.

(8) No order under subsection (7) shall specify a period within which proceedings for an appeal referred to in that subsection may be instituted which is longer than the maximum period within which, if that subsection were omitted from this Ordinance, such proceedings may have been instituted under the law of Hong Kong.

(9) The High Court and the Court of Appeal may each -

- (a) from time to time by order vary an order under subsection (2) (including vary by releasing on bail the person the subject of the second-mentioned order) -

- (i) which has not ceased to have effect (including any case where it does not cease to have effect by virtue of subsection (6)(a)(ii) or (b)(ii)); and
- (ii) in the case of -
 - (A) the High Court, at any time before the Court of Appeal;
 - (B) the Court of Appeal, at any time on or after it, begins to hear an appeal, if any, in respect of the decision concerned referred to in subsection (5)(b);
- (b) declare an order under subsection (2) to cease to have effect -
 - (i) if it is satisfied that the case is no longer pending; and
 - (ii) in the case of -
 - (A) the High Court, at any time before the Court of Appeal;
 - (B) the Court of Appeal, at any time on or after it, begins to hear an appeal, if any, in respect of the decision concerned referred to in subsection (5)(b).

(10) The Court of Appeal may, in relation to an appeal to it referred to in subsection (5)(b), exercise any power of the High Court under subsection (3) and, accordingly, subsection (4) shall apply to the Court of Appeal as it applies to the High Court.

(11) An order under subsection (2) shall not cease to have effect except pursuant to subsection (6), (7) or (9)(b).

(12) For the purposes of this section, a case is pending (unless proceedings are discontinued) until (disregarding any power of a court to grant leave to take any step out of time) there is no step that the prescribed place that applied for the case to be stated can take.

12. Application for habeas corpus, etc.

(1) Where the court of committal makes an order of committal in relation to a person, it shall -

- (a) inform him in ordinary language of his right to make an application for habeas corpus; and
- (b) forthwith give notice of the order to the Governor.

(2) A person in relation to whom an order of committal has been made shall not be surrendered under this Ordinance -

- (a) subject to subsection (3), in any case, until the expiration of 15 days beginning with the day on which the order was made;
- (b) if an application for habeas corpus is made in his case, so long as proceedings on that application are pending.

(3) Subsection (2)(a) shall not apply in the case of an order of committal made in relation to a person by virtue of that person's consent to surrender pursuant to section 10(6)(a).

(4) On an application for habeas corpus made in the case of a person in relation to whom an order of committal has been made, the High Court may receive additional evidence relevant to the exercise of its jurisdiction under section 5.

(5) Where -

- (a) an application for habeas corpus is made in the case of a person in relation to whom an order of committal has been made;
- (b) the High Court decides that application by ordering the release of that person; and
- (c) immediately upon the High Court making that decision, the prescribed place seeking surrender informs the High Court that it intends to appeal to the Court of Appeal against that decision,

then the High Court shall make an order providing for the continued detention or release on bail of that person (and notwithstanding that decision).

(6) An order under subsection (5) providing for the continued detention or release on bail of a person shall cease to have effect if -

- (a) the Court of Appeal dismisses the appeal against the decision concerned referred to in subsection (5)(b) and -
 - (i) immediately upon that dismissal, the prescribed place seeking surrender does not -
 - (A) apply for leave to appeal to the Privy Council; or
 - (B) inform the Court of Appeal that it intends to apply for such leave; or
 - (ii) that place does so apply or inform the Court of Appeal but, immediately thereafter, the Court of Appeal does not declare that the order shall continue to have effect;

- (b) leave to appeal to the Privy Council is refused, or
- (c) the Privy Council dismisses the appeal concerned,

whichever first occurs.

(7) Notwithstanding any other law of Hong Kong but subject to subsection (8) -

- (a) the High Court may by order specify a period within which proceedings for an appeal to the Court of Appeal referred to in subsection (5)(c) may be instituted;
- (b) the Court of Appeal may by order specify a period within which proceedings for an appeal to the Privy Council referred to in subsection (6)(a)(i)(A) may be instituted,

and, in any such case, if the period so specified expires without such proceedings having been instituted, the order concerned under subsection (5) shall cease to have effect.

(8) No order under subsection (7) shall specify a period within which proceedings for an appeal referred to in that subsection may be instituted which is longer than the maximum period within which, if that subsection were omitted from this Ordinance, such proceedings may have been instituted under the law of Hong Kong.

(9) The High Court and the Court of Appeal may each -

- (a) from time to time by order vary an order under subsection (5) (including vary by releasing on bail the person the subject of that second-mentioned order where such order is for the detention of that person) -
 - (i) which has not ceased to have effect (including any case where it does not cease

to have effect by virtue of subsection (6)(a)(ii)); and

- (ii) in the case of -
 - (A) the High Court, at any time before the Court of Appeal;
 - (B) the Court of Appeal, at any time on or after it, begins to hear an appeal, if any, against the decision concerned referred to in subsection (5)(b);

(b) declare an order under subsection (5) to cease to have effect -

- (i) if it is satisfied that proceedings on the application for habeas corpus concerned are no longer pending; and
- (ii) in the case of -
 - (A) the High Court, at any time before the Court of Appeal;
 - (B) the Court of Appeal, at any time on or after it, begins to hear an appeal, if any, against the decision concerned referred to in subsection (5)(b).

(10) An order under subsection (5) shall not cease to have effect except pursuant to subsection (6), (7) or (9)(b).

(11) For the purposes of this section, proceedings on an application for habeas corpus shall be treated as pending (unless they are discontinued) until -

- (a) a court has finally dealt with any such proceedings before it; and

- (b) no appeal has been instituted to have any such proceedings brought before any other court.

13. Order for surrender

(1) Where a person who has been committed pursuant to an order of committal is not discharged under section 14, the Governor may by warrant order him to be surrendered to the prescribed place by which the request for surrender concerned was made and shall specify in the warrant the relevant offence or, as the case may be, relevant offences in respect of which the person's surrender is so ordered, unless -

- (a) the person's surrender is prohibited, or prohibited for the time being, by this Ordinance; or
- (b) the Governor decides under this section to make no such order in that person's case.

(2) An order for surrender shall not be made in the case of a person who is charged with an offence in Hong Kong until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file.

(3) The Governor may decide to make no order for surrender in the case of a person committed in consequence of a request for surrender if -

- (a) another request for surrender has been made in respect of the person; and
- (b) it appears to the Governor, having regard to all the circumstances of the case and in particular the prescribed arrangements pursuant to which either request is made, that preference should be given to that other request.

(4) The Governor may decide to make no order for surrender in the case of a person who is a national of the state which is responsible for the foreign affairs relating to Hong Kong.

14. Discharge in case of delay

(1) If a person who has been committed pursuant to an order of committal is still in Hong Kong after the expiration of the relevant period, he may make an application to the High Court for his discharge.

(2) The relevant period for the purpose of making an application referred to in subsection (1) is -

- (a) in the case of a person to whom paragraph (b) does not apply -
 - (i) where no order for surrender has been made in relation to him, the period of 2 months beginning with the first day on which he could have been surrendered, and having regard to section 12(2);
 - (ii) where an order for surrender has been made in relation to him, the period of 1 month beginning with the day on which the order was made;
- (b) in the case of a person who has instituted proceedings for judicial review of the Governor's decision under section 13 to make an order for surrender in relation to him, the period expiring 1 month after the proceedings end.

(3) Proceedings for judicial review end for the purposes of this section if they are discontinued or -

- (a) a court has finally dealt with any such proceedings before it;
and
- (b) no appeal has been instituted to have any such proceedings brought before any other court.

(4) If upon an application under this section the High Court is satisfied that reasonable notice of the proposed application has been given to the Governor, the High Court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged and, if an order for his surrender has been made in relation to him, quash that order.

15. Surrender of persons liable to serve sentences of imprisonment

(1) Notwithstanding any other provision of this Ordinance, no person liable to serve a sentence of imprisonment in Hong Kong shall be brought before the court of committal in consequence of a request for surrender made by a prescribed place -

- (a) if he is only wanted in that place for the enforcement of a sentence in respect of the offence to which the request relates;
- (b) in any other case, unless and until that place gives an undertaking that, if that person is surrendered to it -
 - (i) he will be kept in custody whilst in that place; and
 - (ii) he will be returned to Hong Kong immediately after there are no proceedings pending in that place in respect of the offence to which the request relates, and

whether or not he is liable to serve any sentence of imprisonment in that place in respect of that or any other offence.

(2) Notwithstanding any other provision of this Ordinance or any other law of Hong Kong, where a person who is liable to serve a sentence of imprisonment in Hong Kong is brought before the court of committal, neither that court nor any other court shall remand or release him on bail.

(3) Notwithstanding any other law of Hong Kong, it is hereby declared that the period for which a person is liable to serve a sentence of imprisonment in Hong Kong continues to run whilst he is in custody in consequence of a request for surrender, and whether or not he is in custody in or outside Hong Kong.

(4) Where a person who is the subject of an undertaking referred to in subsection (1)(b) -

- (a) has been surrendered to the prescribed place which gave the undertaking; and
- (b) ceases to be liable to serve a sentence of imprisonment in Hong Kong,

the Governor shall by notice in writing inform that place that the undertaking no longer binds that place.

(5) Where -

- (a) a person who has been surrendered to a prescribed place which has given an undertaking referred to in subsection (1)(b) is liable to serve a sentence of imprisonment in that place in respect of any offence for which he was so surrendered;
- (b) the person is returned to Hong Kong pursuant to that undertaking;

(c) on or before that person ceases to be liable to serve a sentence of imprisonment in Hong Kong, a request for surrender is made by that place in respect of that person; and

(d) the request referred to in paragraph (c) is only made for the purposes of enforcing the sentence referred to in paragraph (a),

then the Governor may, on or before that person ceases to be liable to serve a sentence of imprisonment in Hong Kong, make an order for surrender in relation to that person to that place for the purposes referred to in paragraph (d) -

(i) as if the order of committal referred to in section 13(1) were the order of committal made in consequence of the request for surrender which gave rise to the surrender referred to in paragraph (a);

(ii) as if the request for surrender referred to in that section were the request for surrender referred to in paragraph (c).

(6) Where an order for surrender made in relation to a person has been made pursuant to subsection (5), that order shall, notwithstanding any other provision of this Ordinance, be sufficient authority for continuing to keep that person in custody to await his surrender to the prescribed place concerned and, accordingly, section 14(1) shall in the case of that person be construed as if the reference therein to an order of committal were a reference to that order for surrender.

(7) For the avoidance of doubt, it is hereby declared that -

(a) an order for surrender made in relation to a person pursuant to subsection (5) shall not authorize the

surrender of that person to the prescribed place concerned before he has finished serving any sentence of imprisonment he is liable to serve in Hong Kong;

- (b) subsection (5) shall not operate to prejudice the operation of section 5.

(8) For the purposes of this section, proceedings in a prescribed place in respect of the relevant offence for which a person was surrendered to that place shall be treated as pending (unless they are discontinued) until -

- (a) a court (howsoever described) in that place has finally dealt with any such proceedings before it; and
- (b) no appeal has been instituted to have any such proceedings brought before any other court (howsoever described) in that place.

16. Custody in relation to orders for surrender

An order for surrender made in relation to a person shall be sufficient authority for -

- (a) any person who holds the person in custody to release that person into the custody of an authorized officer;
- (b) the authorized officer to transport the person in custody so as to enable the person to be placed in the custody of a foreign escort officer, or other appropriate officer, for the purpose of the person's surrender to the prescribed place concerned.

PART III

TREATMENT OF PERSONS SURRENDERED FROM PRESCRIBED PLACE

17. Restrictions upon proceedings for other offences

(1) Where any person is surrendered to Hong Kong by a prescribed place pursuant to prescribed arrangements, he shall not, unless he has -

- (a) had an opportunity of leaving Hong Kong and has not done so within -
 - (i) subject to subparagraph (ii), 40 days of having been free to do so; or
 - (ii) such longer period, if any, as is specified in the arrangements; or
- (b) returned voluntarily to Hong Kong after having left Hong Kong,

be triable or tried for any offence committed in Hong Kong before such surrender, other than -

- (i) an offence in respect of which he was surrendered;
- (ii) any equivalent or lesser offence -
 - (A) disclosed by the particulars furnished to that place on which his surrender is grounded; and
 - (B) in respect of which the surrender of a person to Hong Kong by that place pursuant to the arrangements is permitted;
- (iii) any other offence in respect of which -
 - (A) that place consents to his being tried; and
 - (B) the surrender of a person to Hong Kong by that place pursuant to the arrangements is permitted.

(2) Where any person is surrendered to Hong Kong by a prescribed place pursuant to prescribed arrangements, he shall not be surrendered under this Ordinance to any other prescribed place

for or in respect of an offence committed before such surrender unless -

- (a) that first-mentioned place consents thereto; or
- (b) the person has -
 - (i) had an opportunity of leaving Hong Kong and has not done so within -
 - (A) subject to sub-subparagraph (B), 40 days of having been free to do so; or
 - (B) such longer period, if any, as is specified in the arrangements; or
 - (ii) returned voluntarily to Hong Kong after having left Hong Kong.

18. Restoration of persons not tried or acquitted

(1) This section applies to any person wanted for prosecution in respect of an offence against the law of Hong Kong who is surrendered to Hong Kong by a prescribed place pursuant to prescribed arrangements.

- (2) If in the case of a person to whom this section applies either -
 - (a) proceedings against him for the offence for which he was surrendered are not begun within the period of 6 months beginning with the day of his arrival in Hong Kong on being surrendered; or
 - (b) on his trial for that offence, he is acquitted or discharged under -
 - (i) section 107(1) of the Criminal Procedure Ordinance (Cap. 221); or
 - (ii) section 36(1) of the Magistrates Ordinance (Cap. 227),

the Governor may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the prescribed place from which he was surrendered.

19. Persons kept in custody pursuant to undertakings given to prescribed places

Where -

- (a) a person is surrendered to Hong Kong by a prescribed place pursuant to prescribed arrangements;
- (b) the Governor has given an undertaking to that place that the person will be kept in custody whilst in Hong Kong; and
- (c) but for that undertaking, that person is not required by any other provision of this Ordinance or any other law of Hong Kong to be kept in such custody,

then -

- (i) notwithstanding any other provision of this Ordinance or any other law of Hong Kong but subject to paragraph (ii), that person shall -
 - (A) continue to be kept in such custody for a period of 30 days (or such shorter period as the Governor may by order specify) commencing on the day on which, but for that undertaking, he is not required to be kept in such custody; and
 - (B) immediately upon the expiration of that period, be discharged from such custody;
- (ii) paragraph (i) shall cease to apply to that person if, on or before the expiration of the period referred to

in that paragraph, that person is required to be kept in such custody pursuant to another provision of this Ordinance or any other law of Hong Kong.

PART IV
MISCELLANEOUS

20. Transit

(1) Where a prescribed place wishes to transport in custody through Hong Kong a person who is being surrendered to that place by another place outside Hong Kong (and whether or not that other place is a prescribed place) -

- (a) that person may be transported in custody through Hong Kong for the purposes of being so surrendered;
- (b) an authorized officer may, for the purposes of such transport, hold that person in custody for not more than -
 - (i) 48 hours; or
 - (ii) such further period as is permitted by a warrant under subsection (2).

(2) A magistrate may, if satisfied by information on oath that it is reasonable and necessary for a person referred to in subsection (1) to be held in custody by an authorized officer for more than 48 hours for the purposes of facilitating the transport referred to in that subsection, issue a warrant authorizing any authorized officer to hold that person in custody for such further period -

- (a) as is specified in the warrant; and
- (b) that the magistrate is satisfied is reasonable and necessary for those purposes.

21. Escapes from custody

If any person who is in custody by virtue of this Ordinance (including in custody by virtue of an order for surrender) escapes out of custody, he may be retaken in Hong Kong in like manner as a person escaping from custody under a warrant for his arrest issued in Hong Kong in respect of an offence committed in Hong Kong.

22. Form of orders, etc.

(1) Any order, warrant or certificate to which this section applies shall be in the prescribed form.

(2) This section applies to -

- (a) an authority to proceed;
- (b) a warrant (including a provisional warrant) under section 7(1);
- (c) an order under section 7(2)(b);
- (d) a warrant under section 8(2);
- (e) an order under section 9(2);
- (f) an order of committal;
- (g) an order under section 11(2);
- (h) an order under section 11(4);
- (i) an order under section 11(7)(a);
- (j) an order under section 11(7)(b);
- (k) an order under section 11(9)(a);
- (l) an order under section 12(5);
- (m) an order under section 12(7)(a);
- (n) an order under section 12(7)(b);
- (o) an order under section 12(9)(a);
- (p) an order for surrender;

- (q) an order under section 14(4);
 - (r) an order under section 19(i);
 - (s) a warrant under section 20(2).
- (3) The Governor in Council may, by order, amend subsection (2).

23. Admissibility of evidence, etc.

(1) Any supporting document or other document which is duly authenticated is admissible in evidence in any proceedings under this Ordinance without further proof.

(2) Any supporting document or other document shall be deemed to be duly authenticated if it -

- (a) purports to be signed by a judge, magistrate or officer of the prescribed place where the document was issued; and
- (b) purports to be certified by being sealed with the official seal of a competent authority of that place.

(3) Subject to subsection (4), in any proceedings under this Ordinance, nothing in this Ordinance shall prejudice either -

- (a) the admission in evidence of any document which is admissible in evidence; or
- (b) the proof of any matter,

under any other law of Hong Kong.

(4) In any proceedings under this Ordinance, any evidence which contradicts an allegation that a person sought to be surrendered under this Ordinance to a prescribed place has engaged in conduct which constitutes a relevant offence for which such surrender is sought is inadmissible and, accordingly -

- (a) that person is not entitled to adduce such evidence; and

(b) any court is not entitled to receive such evidence.

(5) In this section, "document" (文件) includes a copy of a document.

**24. Attorney General entitled to be heard
in any proceedings under this Ordinance**

In any proceedings under this Ordinance the Attorney General shall be entitled to be heard on the matter to which the proceedings relate and to call, examine and cross-examine any witness and, if he so thinks fit, support or oppose the making of any application to which the proceedings relate.

**25. Governor to give notice to Secretary
of State in relation to
certain matters, etc.**

(1) Subject to subsection (2), the Governor shall cause the Secretary of State to be given notice of -

- (a) any proceedings that have been instituted for the surrender of a person to Hong Kong from a prescribed place pursuant to prescribed arrangements;
- (b) any proceedings that have been instituted for the surrender of a person from Hong Kong to a prescribed place pursuant to prescribed arrangements where an order of committal has been made in relation to the person;
- (c) where a person is to be surrendered to Hong Kong from a prescribed place pursuant to prescribed arrangements, the place or places, if any, between the prescribed place and Hong Kong through which it is proposed to transport the person for the purposes of so surrendering him;

- (d) where a person is to be surrendered from Hong Kong to a prescribed place, the place or places, if any, between Hong Kong and the prescribed place through which it is proposed to transport the person for the purposes of so surrendering him;
- (e) any proposed transport through Hong Kong of a person who is being surrendered to a place outside Hong Kong by another place outside Hong Kong (and whether or not either such place is a prescribed place).

(2) A notice under subsection (1) shall -

- (a) be accompanied by the prescribed documents and contain the prescribed particulars; and
- (b) be given in the prescribed manner.

(3) Where the Secretary of State issues an instruction to the Governor to take, or not to take, an action -

- (a) in relation to any matter referred to in paragraph (a), (b), (c), (d) or (e) of subsection (1); and
- (b) on the ground that if the instruction were not complied with the interests of the United Kingdom in matters of defence or foreign affairs would be significantly affected,

then the Governor shall comply with that instruction, but no such instruction shall operate to affect the responsibilities that the Governor shall discharge in accordance with law in dealing with any case to which this subsection applies.

(4) For the purposes of this section, proceedings have been instituted for the surrender of a person -

- (a) to Hong Kong from a prescribed place, where there has been issued to that place -

- (i) an application for the issue of a warrant for the provisional arrest of the person in relation to the offence for which such surrender is sought; or
 - (ii) a request for the surrender of the person to Hong Kong in respect of the offence for which such surrender is sought;
- (b) from Hong Kong to a prescribed place, where a warrant (whether provisional or otherwise) has been issued in Hong Kong for the arrest of the person in relation to the offence for which such surrender is sought.

26. Amendment of Schedules

The Governor in Council may, by order, amend Schedule 1 or 2.

27. Regulations

The Governor in Council may make regulations -

- (a) prescribing anything that is required or permitted to be prescribed under this Ordinance;
- (b) prescribing the form of any order, warrant or certificate required by section 22 to be in the prescribed form (including prescribing 2 or more forms of any such order, warrant or certificate, whether as alternatives, or to provide for particular circumstances or particular cases);
- (c) generally for the better and more effectual carrying out of the provisions of this Ordinance, including incidental, consequential, evidential and supplemental provisions.

28. Transitional

(1) Where -

- (a) proceedings have been instituted for the surrender of a person ("the relevant person") from Hong Kong to a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
- (b) before those proceedings have been concluded, the relevant arrangements cease, by whatever means (other than by virtue of an order under section 3(1) coming into operation in respect of the relevant place), to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person from Hong Kong to the relevant place,

then, notwithstanding any other law of Hong Kong, for the purposes of continuing and concluding those proceedings -

- (i) the provisions of -
 - (A) the relevant arrangements; and
 - (B) any relevant enactment which, but for the cesser referred to in paragraph (b), could apply in relation to those proceedings,
as in force immediately before that cesser came into operation or otherwise took effect, shall continue to apply in relation to those proceedings as if that cesser had never come into operation or otherwise taken effect; and
- (ii) without prejudice to the generality of paragraph (i), any act, matter or thing that has been done in

relation to those proceedings which had any force or effect or was in operation immediately before that cesser came into operation or otherwise took effect shall continue to have force or effect or be in operation as if that cesser had never come into operation or otherwise taken effect.

(2) Where -

- (a) proceedings have been instituted for the surrender of a person ("the relevant person") from Hong Kong to a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
- (b) before those proceedings have been concluded, the relevant arrangements cease, by virtue of an order under section 3(1) coming into operation in respect of the relevant place, to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person from Hong Kong to the relevant place,

then, notwithstanding any other law of Hong Kong, for the purposes of continuing and concluding those proceedings -

- (i) the provisions of the prescribed arrangements the subject of the order referred to in paragraph (b), and of this Ordinance, shall apply in relation to those proceedings as if those proceedings had been instituted under those prescribed arrangements and, accordingly, for those purposes those provisions shall be read and have effect with such modifications as may be necessary;

- (ii) without prejudice to the generality of paragraph (i), any act, matter or thing that has been done in relation to those proceedings which had any force or effect or was in operation immediately before the cesser referred to in paragraph (b) came into operation or otherwise took effect shall continue to have force or effect or be in operation -
 - (A) as if that cesser had never come into operation or otherwise taken effect; and
 - (B) with such modifications as may be necessary to take into account the application in relation to those proceedings of the provisions referred to in paragraph (i).

(3) Where -

- (a) proceedings have been instituted for the surrender of a person ("the relevant person") to Hong Kong from a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
- (b) before or on the day, if any, on which the relevant person is so surrendered, the relevant arrangements cease, by whatever means (other than by virtue of an order under section 3(1) coming into operation in respect of the relevant place), to be arrangements pursuant to which any new proceeding may be instituted for the surrender of a person to Hong Kong from the relevant place,

then, notwithstanding any other law of Hong Kong, for the purposes of the treatment to be accorded the relevant person on and after the day, if any, on which he is so surrendered, the provisions of this Ordinance applicable to the surrender of a person to Hong Kong from a prescribed place pursuant to prescribed arrangements shall apply in relation to the relevant person and, accordingly, for those purposes -

- (i) those provisions shall be read and have effect with such modifications as may be necessary; and
- (ii) without prejudice to the generality of paragraph (i) the relevant place and the relevant arrangements shall be deemed to be a prescribed place and prescribed arrangements respectively.

(4) Where -

- (a) proceedings have been instituted for the surrender of a person ("the relevant person") to Hong Kong from a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
- (b) before or on the day, if any, on which the relevant person is so surrendered, the relevant arrangements cease, by virtue of an order under section 3(1) coming into operation in respect of the relevant place, to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person to Hong Kong from the relevant place,

then, notwithstanding any other law of Hong Kong, for the purposes of the treatment to be accorded the relevant person on and after the

day, if any, on which he is so surrendered, the provisions of the prescribed arrangements the subject of the order referred to in paragraph (b), and of this Ordinance, applicable to the surrender of a person to Hong Kong from the relevant place pursuant to those arrangements shall apply in relation to the relevant person and, accordingly, for those purposes those provisions shall be read and have effect with such modifications as may be necessary.

- (5) Without prejudice to the operation of subsection (3), where -
- (a) a person ("the relevant person") has been surrendered to Hong Kong from a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
 - (b) on or after the day on which the relevant person is so surrendered, the relevant arrangements cease, by whatever means (other than by virtue of an order under section 3(1) coming into operation in respect of the relevant place), to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person to Hong Kong from the relevant place,

then, notwithstanding any other law of Hong Kong, for the purposes of the treatment to be accorded the relevant person on and after the day on which the cesser referred to paragraph (b) comes into operation, the provisions of this Ordinance applicable to the surrender of a person to Hong Kong from a prescribed place pursuant to prescribed arrangements shall apply in relation to the relevant person and, accordingly, for those purposes -

- (i) those provisions shall be read and have effect with such modifications as may be necessary; and
 - (ii) without prejudice to the generality of paragraph (i), the relevant place and the relevant arrangements shall be deemed to be a prescribed place and prescribed arrangements respectively.
- (6) Without prejudice to the operation of subsection (4), where -
- (a) a person ("the relevant person") has been surrendered to Hong Kong from a place outside Hong Kong ("the relevant place") pursuant to arrangements for such surrender ("the relevant arrangements") which are not prescribed arrangements; and
 - (b) on or after the day on which the relevant person is so surrendered, the relevant arrangements cease, by virtue of an order under section 3(1) coming into operation in respect of the relevant place, to be arrangements pursuant to which any new proceedings may be instituted for the surrender of a person to Hong Kong from the relevant place,

then, notwithstanding any other law of Hong Kong, for the purposes of the treatment to be accorded the relevant person on and after the day on which the cesser referred to paragraph (b) comes into operation, the provisions of the prescribed arrangements the subject of the order referred to in that paragraph, and of this Ordinance, applicable to the surrender of a person to Hong Kong from the relevant place pursuant to the prescribed arrangements shall apply in relation to the relevant person and, accordingly, for those purposes those provisions shall be read and have effect with such modifications as may be necessary.

(7) For the purposes of this section, proceedings have been instituted for the surrender of a person -

- (a) from Hong Kong to a place outside Hong Kong, where -
 - (i) a warrant (whether provisional or otherwise) has been issued in Hong Kong for the arrest of the person in relation to the offence for which such surrender is sought; or
 - (ii) an authorization, howsoever described, has been given for the person to be dealt with under the provisions of a relevant enactment relating to such surrender in respect of the offence for which such surrender is sought;
- (b) to Hong Kong from a place outside Hong Kong, where -
 - (i) a warrant (whether provisional or otherwise) has been issued in that place for the arrest of the person in relation to the offence for which such surrender is sought; or
 - (ii) an authorization, howsoever described, has been given for the person to be dealt with under the provisions of the law of that place relating to such surrender in respect of the offence for which such surrender is sought.

(8) In this section, "relevant enactment" (有關成文法則) means an enactment which is, or was, a relevant enactment within the meaning of section 3(15).

29. Repeal and consequential amendments

- (1) The Extradition (Hong Kong) Ordinance (Cap. 236) is repealed.
- (2) The enactments specified in column 1 of Schedule 3 are amended in the manner set out in column 2 of that Schedule.

SCHEDULE 1

[ss. 2(2) & 26]

DESCRIPTION OF OFFENCES

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

7. Criminal intimidation.
8. Offences against the law relating to dangerous drugs including narcotics, psychotropic substances, precursors and essential chemicals used in the illegal manufacture of narcotics and psychotropic substances; offences relating to the proceeds of drug trafficking.
9. Obtaining property or pecuniary advantage by deception; theft; robbery; burglary (including breaking and entering); embezzlement; blackmail; extortion; unlawful handling or receiving of property; false accounting; any other offence in respect of property or fiscal matters involving fraud; any offence against the law relating to unlawful deprivation of property.
10. Offences against bankruptcy law or insolvency law.
11. Offences against the law relating to companies including offences committed by officers, directors and promoters.
12. Offences relating to securities and futures trading.
13. Offences relating to counterfeiting; offences against the law relating to forgery or uttering what is forged.
14. Offences against the law relating to protection of intellectual property, copyrights, patents or trademarks.

15. Offences against the law relating to bribery, corruption, secret commissions and breach of trust.
16. Perjury and subornation of perjury.
17. Offence relating to the perversion or obstruction of the course of justice.
18. Arson; criminal damage or mischief including mischief in relation to computer data.
19. Offences against the law relating to firearms.
20. Offences against the law relating to explosives.
21. Offences against the law relating to environmental pollution or protection of public health.
22. Mutiny or any mutinous act committed on board a vessel at sea.
23. Piracy involving ships or aircraft.
24. Unlawful seizure or exercise of control of an aircraft or other means of transportation.
25. Genocide or direct and public incitement to commit genocide.
26. Facilitating or permitting the escape of a person from custody.

27. Offences against the law relating to the control of exportation or importation of goods of any type, or the international transfer of funds.
28. Smuggling; offences against the law relating to import and export of prohibited items, including historical and archaeological items.
29. Immigration offences including fraudulent acquisition or use of a passport or visa.
30. Arranging or facilitating for financial gain, the illegal entry of persons into a jurisdiction.
31. Offences relating to gambling or lotteries.
32. Offences relating to the unlawful termination of pregnancy.
33. Stealing, abandoning, exposing or unlawfully detaining a child; any other offences involving the exploitation of children.
34. Offences against the law relating to prostitution and premises kept for the purposes of prostitution.
35. Offences involving the unlawful use of computers.
36. Offences relating to fiscal matters, taxes or duties.

37. Offences relating to unlawful escape from custody; mutiny in prison.
38. Bigamy.
39. Offences relating to women and girls.
40. Offences against the law relating to false or misleading trade descriptions.
41. Offences relating to the possession or laundering of proceeds obtained from the commission of any offence described in this Schedule.
42. Impeding the arrest or prosecution of a person who has or is believed to have committed an offence described in this Schedule.
43. Offences for which persons may be surrendered under multi-lateral international conventions; offences created as a result of decisions of international organizations.
44. Conspiracy to commit fraud or to defraud.
45. Conspiracy to commit, or any type of association to commit, any offence described in this Schedule.
46. Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting to commit an offence described in this Schedule.

SCHEDULE 2

[ss. 3(15) & 26]

IMPERIAL ENACTMENTS WHICH MAY BE
AMENDED OR REPEALED UNDER
SECTION 3

SCHEDULE 3

[s. 29(2)]

CONSEQUENTIAL AMENDMENTS

Enactment	Amendment
1. Legal Officers Ordinance (Cap. 87)	In section 4(1)(c), repeal " extradition" and substitute " surrender of fugitive offenders".
2. Magistrates Ordinance (Cap. 227)	In section 104A, add - " "(4) In this section, "person accused or convicted

of an offence" (被控人或被定罪的人) includes a person wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of an offence."

3. Prison Rules
(Cap. 234 sub. leg.)

In rule 188(1), add -

"(db) on their detention in any proceedings under the Fugitive Offenders Ordinance (of 1997);".

Explanatory Memorandum

The object of this Bill is to provide for the surrender of fugitive offenders between Hong Kong and places outside Hong Kong (except the People's Republic of China), in particular in view of the fact that the legislation of the United Kingdom which presently provides for such surrender cannot continue to apply to Hong Kong on or after 1 July 1997. The provisions of the Bill are to a large extent based on the provisions of the Extradition Act 1989 of the United Kingdom (c. 33).

2. Part I (clauses 1 to 5) contains preliminary provisions. Clause 2(1) defines the terms used in the Bill. The definition of "arrangements for the surrender of fugitive offenders" is of particular importance, as the procedures in the Bill relating to the surrender of fugitive offenders can only apply to Hong Kong and a

place outside Hong Kong where there are such arrangements. Clause 2(2), together with Schedule 1, specifies the offences against the law of a prescribed place (see the definition of "prescribed place" in clause 2(1)) which are relevant offences for the purposes of the Bill. It should be noted that no person can be surrendered from Hong Kong to a prescribed place unless he is wanted in that place for the prosecution, or the imposition or enforcement of a sentence, in respect of a relevant offence (clause 4). However, clause 2(6) enables the definition of "arrangements for the surrender of fugitive offenders" to encompass arrangements which use the terminology "accused or convicted of an offence against the law of Hong Kong or a place outside Hong Kong" instead of the terminology used in paragraph (b) of that definition. The reason for this is that situations may arise where the provisions of the Bill are required to apply to arrangements which use that alternative terminology.

3. Clause 3(1) empowers the Governor in Council to make an order, in relation to any arrangements for the surrender of fugitive offenders, to the effect that the procedures in the Bill relating to the surrender of fugitive offenders shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. However, clause 3(8) provides that no such order shall be made unless the arrangements are substantially in conformity with the provisions of the Bill. An order under clause 3(1), as read with clause 3(9) and (15), may provide for the repeal or amendment of any Hong Kong or United Kingdom enactment where that is required in view of the "prescribed arrangements" (see the definition of "prescribed arrangements" in clause 2(1)) to which the order relates. Clause 3(12) permits any reference in an enactment to a Hong Kong or United

Kingdom enactment which has been repealed or amended under clause 3(9) to be read and have effect to take account of that repeal or amendment.

4. Clause 4 states the basis on which a person in Hong Kong may be arrested and surrendered to a prescribed place. Clause 5 sets out various restrictions on the surrender of persons to prescribed places. In particular, a person shall not be surrendered if it appears to an appropriate authority (see the definition of "appropriate authority" in clause 5(5)) that the offence in respect of which such surrender is sought is an offence of a political character (clause 5(1)(a)), or that the request for his surrender (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions.

5. Part II (clauses 6 to 16) sets out the procedure for the surrender of persons from Hong Kong to places outside Hong Kong pursuant to prescribed arrangements. Clause 6 provides, subject to certain exceptions relating to provisional warrants issued under clause 7(1)(b), that a person shall not be dealt with under Part II except pursuant to an authority to proceed issued by the Governor pursuant to a request for surrender made by, inter alia, a diplomatic or consular representative of the prescribed place seeking the surrender of that person. (See the definitions of "authority to proceed" and "request for surrender" in clause 2(1)). Clause 7 empowers a magistrate to issue a warrant for the arrest of a person in respect of whom an authority to proceed has been issued, or in respect of whom certain information has been given on oath. Clause 8 sets out the power of search and seizure that may be exercised by an authorized officer who arrests a person pursuant to

the Bill. Clause 9 specifies how any property seized under clause 8 is to be disposed of. Clause 10(1) provides that a person arrested pursuant to a warrant issued under clause 7 shall "be brought as soon as practicable before a magistrate". Such a magistrate, and any subsequent magistrate before whom the arrested person is brought, is referred to in the Bill as the "court of committal". The court of committal is required to commit the arrested person to custody to await the Governor's decision as to his surrender if that person consents to his surrender (see clause 10(6)(a) and (7)) or the court is satisfied as to certain matters (see clause 10(6)(b)). If the court of committal is not so satisfied, or the committal of the arrested person is prohibited by another provision of the Bill, the court is required to discharge him.

6. Clause 11 provides that where the court of committal refuses to make an order of committal in respect of a person (see the definition of "order of committal" in clause 2(1)), the prescribed place seeking that person's surrender may apply to the court to state a case for the opinion of the High Court on the question of law involved. The High Court has power to remit the case to the court of committal to decide it according to its opinion on the question of law involved. If the High Court dismisses the appeal, the prescribed place may appeal to the Court of Appeal. (See clause 11(5)(b)). The arrested person may be detained or released on bail while the case is pending unless the High Court or Court of Appeal declines to declare that the order for such detention or release on bail shall continue to have effect. (See clause 11(6)(a)(ii) and (b)(ii)). Clause 12 provides that a person in respect of whom the court of committal has made an order of committal shall be informed by the court in of daily language of his right to make an

application for habeas corpus. The person shall not be surrendered so long as any proceedings in respect of his application for habeas corpus are pending. The clause also provides for the continued detention or release on bail of that person if there is to be an appeal to the Court of Appeal against any successful application for habeas corpus. Clause 13 empowers the Governor to order the surrender to a prescribed place of a person who has not been discharged under clause 14. Clause 14 empowers a person who has been committed pursuant to an order of committal to make an application to the High Court for his discharge if he is still in Hong Kong after the "relevant period" referred to in clause 14(2). Clause 15 contains provisions applicable to the surrender to a prescribed place, and the return to Hong Kong, of a person liable to serve a sentence of imprisonment in Hong Kong. Clause 16 provides for various forms of custody in respect of a person in relation to whom an order for surrender has been made.

7. Part III (clauses 17, 18 and 19) deals with persons surrendered to Hong Kong from prescribed places. Clause 17 places restrictions on the offences in respect of which such a person may be tried, and on his surrender from Hong Kong to any other prescribed place. Clause 18 provides that such a person may be sent back free of charge to the place from which he was surrendered if proceedings against him are not instituted within 6 months from his arrival in Hong Kong, or where he is acquitted or discharged. Clause 19 provides for the continued detention of a person who has been surrendered to Hong Kong from a prescribed place to which the Governor has given an undertaking that the person will be kept in custody whilst in Hong Kong.

8. Part IV (clauses 20 to 29) contains miscellaneous provisions. Clause 20 permits a prescribed place to transport in custody through Hong Kong a person who is being surrendered to that place by another place outside Hong Kong. Clause 21 relates to the retaking into custody of persons who have escaped from any custody provided for in the Bill. Clause 22 specifies the orders, warrants and certificates to be issued or made under the Bill which shall be in the prescribed form. Clause 23 relates to the admissibility of evidence in any proceedings under the Bill. Clause 24 provides that the Attorney General is entitled to be heard in any proceedings under the Bill. Clause 25(3) requires the Governor to comply with certain instructions of the Secretary of State in relation to any matters referred to in clause 25(1) where that instruction is issued on the ground that if it were not complied with the interests of the United Kingdom in matters of defence or foreign affairs would be significantly affected. Clause 26 empowers the Governor in Council to amend Schedules 1 and 2. Clause 27 empowers the Governor in Council to make regulations, in particular to prescribe the form of any order, warrant or certificate required by clause 22 to be in the prescribed form. Clause 28 contains transitional provisions applicable to, inter alia, proceedings for the surrender of a person which have been instituted under existing arrangements but have not been concluded before those arrangements ceased to operate, whether by virtue of an order under clause 3(1) or otherwise. Clause 29 and Schedule 3 provide for the consequential amendments necessitated by the Bill.

OFFICIAL RECORD OF PROCEEDINGS

(Extract)

Wednesday, 19 March 1997

The Council met at half-past Two o'clock

FUGITIVE OFFENDERS BILL

Resumption of debate on Second Reading which was moved on 6 November 1996

MR JAMES TO (in Cantonese): Mr President, the main purpose of the Fugitive Offenders Bill is to provide an appropriate legal framework to enable Hong Kong to implement its new bilateral agreements with other jurisdictions for the surrender of fugitive offenders which will remain in force after 30 June 1997. This is a localization of law item which has the agreement of the Chinese side. The background to this Bill have been explained by the Secretary for Security when he introduced it into this Council on 6 November 1996.

A Bills Committee which I chaired was formed to study this Bill. We commenced our work on 20 November 1996. We have met the Administration and considered the views expressed by the Hong Kong Bar Association and the Law Society of Hong Kong.

The Bills Committee agrees with the Administration on the urgent need to give effect to this localized legislation. Its early enactment would enhance the confidence of the international community in the future of the rule of law in Hong Kong and our criminal judicial system. The main concern of the members is whether there are sufficient safeguards to protect the basic rights of the individuals involved. I just wish to highlight a few of them here.

The Bill sets out in clause 5 the grounds for refusing the surrender of a fugitive. The Governor has a general discretion to make no order for surrender where a person has been committed pursuant to an order of committal. This discretion will be exercised in accordance with the provisions in the relevant bilateral agreements. All the bilateral agreements so far signed by Hong Kong, except the agreement with Malaysia, contains a provision to the effect that an extradition will not be granted for offences carrying a death penalty unless the requesting jurisdiction gives such assurances as the requested jurisdiction considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. An order made pursuant to clause 3(1) will annex the relevant bilateral agreements. The death penalty exception will accordingly qualify the procedures in the Ordinance. The Governor will have to consider the death penalty exception when deciding whether or not an order for surrender should be made.

Members, however, consider it a better safeguard if the death penalty exception could be expressly stated in the principle legislation. After further consideration, the Administration agreed to add a provision to reflect the death penalty exception.

As regards bail, the Administration explained that most fugitives are bail risks. A fugitive can be remanded on bail but he must be able to establish special circumstances justifying such remand.

Members feel that the principles in respect of bail should be applied in both extradition and non-extradition cases. In fact, in many non-extradition cases, the suspects concerned are also bail risks. The court, in deciding whether bail should be granted, should consider the various risk factors of the case. The onus should not be shifted to the fugitive in applying bail in extradition cases.

We noted the Administration's explanation that the presumption against bail is not unusual in the context of extradition proceedings. Making reference to overseas jurisdictions and relevant case laws, members consider the provision regarding bail acceptable.

Under clause 24, Attorney General (AG) should be entitled to be heard in any committal proceedings. The Administration explained that normally, AG through a member of the Attorney General's Chambers will represent the requesting jurisdiction. Since AG acts for the Hong Kong Government in all criminal and civil matters in which the Government has an interest, this provision enables AG, even in extremely rare cases where the requesting jurisdiction is privately represented, to appear and be heard.

Members are concerned that a separate representation of AG would be unfair to the fugitive since it would mean that there could be two counsels representing the same interest of the requesting jurisdiction. Notwithstanding the Administration's explanation on the reasons for AG to appear in committal proceedings, we are still concerned about the question of fairness. After considerable discussion, the Administration agreed to delete clause 24.

The Committee stage amendments to be moved by the Secretary for Security later today have the support of the Bills Committee. Many of them involve the procedural aspects, and it can be said that the majority were proposed through the Bills Committee.

Mr President, the Bills Committee is in support for the early enactment of the Bill so as to bring Hong Kong's various new agreements concerning the surrender of fugitive offenders into operation. With these remarks, I commend the Bill to this Council.

MR ALBERT HO (in Cantonese): Thank you, Mr President. On behalf of the Democratic Party, I support the resumption of the Second Reading of the Fugitive Offenders Bill and its passage together with the amendments as proposed by the Government.

I remember that at the beginning of the scrutiny of the Bill, Members raised the question as to whether other laws would be invoked to handle the surrender and extradition of fugitive offenders between mainland China and Hong Kong in future and what the relevant legislative process was, as arrangements in this regard could be related to,

and have bearing on our consideration of this Bill. Government officials said that there had not been any decision or agreement in this respect yet, and everything was still under discussion. The Government, however, hoped very much that the Bill, if passed, would become a frame of reference of great value to both the Chinese and Hong Kong governments in future.

As such, we bore it in mind when scrutinizing the Bill. On the one hand, we hoped that the Bill could be passed as soon as possible so that Hong Kong would have a piece of localized legislation on the surrender of fugitives, whose application could be extended beyond 1997. On the other hand, we also hoped that the Bill could serve as a good example for consideration by the Chinese Government when formulating the future policy and legislation on the surrender of fugitives between Hong Kong and mainland China.

During the scrutiny process, members of the Bills Committee were particularly concerned about the following issues. The first one was about the fulfilment of obligations under international conventions. We have demanded that every suspect who might be affected and thus be surrendered, repatriated or extradited, must enjoy adequate legal rights and protection. Secondly, the procedures must be clearly defined. Thirdly, the handling of matters concerning the surrender of a fugitive must be consistent with current international practice.

When examining the contents of the Bill, we were of the view that a few principles were very important. The first one is that the current practice must be preserved. In other words, the surrender of any fugitive must be authorized by the court in the form of an extradition order or a removal order. This is an essential requirement. The surrender of a suspect between two governments must not be allowed to proceed simply on the basis of some agreements reached between both sides. It must go through legal proceedings in order to let the court consider whether there are any grounds for refusing the surrender of a fugitive. As regards the grounds for refusing the surrender of a suspect, in our opinion, the following points which we have spent much time studying are very

important. Firstly, no one should be extradited for offences of a political nature, which falls in line with all international practices. The same treatment should also be accorded to political prisoners or persons who have committed offences of a political nature.

Secondly, no fugitive shall be subject to punishment or be prejudiced on grounds of race, religion and nationality after being surrendered or extradited.

Thirdly, which we all consider very important, the offence committed by the fugitive must be regarded as a criminal offence in both places concerned, that is the so-called "double criminality".

Fourthly, consideration must be given as to whether the convicted person whose extradition is requested by the other side has been put on trial in his absence; whether he has been formally put on trial; and whether he will be charged with other offences and put on trial or convicted by the requesting country after being surrendered, which we consider unacceptable because the trial and offences of the person whose extradition is requested have been spelt out when the request for his extradition is made. Therefore, when he is returned to his country, he cannot be charged with other offence at will by the requesting country. The request for the surrender of a fugitive must undergo a certain legal process before it is submitted to the Governor, and that is the future Chief Executive of the Hong Kong Special Administrative Region (SAR), in order to give the fugitive an opportunity to make representations.

Another very important point is that a request for extradition of a fugitive is normally not granted if the request comes from a country where death penalty is still in force, unless assurance is given by the requesting country that death penalty will not be carried out on the fugitive in question.

These are all very basic and important grounds. After scrutinizing all relevant provisions, the Bills Committee agreed that a fugitive should be given a chance to be heard through legal proceedings to appeal against his extradition or removal by invoking some of the above-mentioned grounds.

The second principle concerns the process of an appeal. If the verdict handed down by the court in the first instance is found to be improper in some ways as judged by the above-mentioned grounds, the fugitive can institute an appeal. Moreover, every procedure in the whole process, from the detention of a person to the laying of charge and the institution of an appeal and so on, must be governed by certain time limits. The time limit for each process must be clearly and strictly stipulated. No one shall be detained indefinitely to await his repatriation or such process, as all these practices are unacceptable.

The third one concerns the principle for applying bail. As mentioned earlier by the Honourable James TO, Chairman of the Bills Committee, we are very concerned about this because it will be very difficult for fugitives to be granted bail under the principle in respect of bail as found in the Bill. I had demanded some amendments as suggested by the Bills Committee be adopted but this was rejected by the Administration. However, it later gave us some cases for our reference from which I have found that such a principle is indeed adopted in many advanced countries because fugitives have a strong inclination to escape. Therefore, when they apply for bail, they are required to give strong grounds. After studying international practice in this respect, I finally accepted the relevant provisions. However, we will keep a close watch on how this legislation is enforced.

The fourth principle concerns the provision of legal aid. As we know, legal aid is also available to such extradition cases. In other words, if the relevant trial is conducted before a magistrate, lawyers from the Duty Lawyers Scheme will be on hand to offer help; if the trial is conducted before the High Court, the fugitive can apply to the Legal Aid Department for assistance.

Any agreement for the surrender of fugitive offenders signed between Hong Kong and another country must be approved by the Governor, and promulgated in the form of legislation, and then incorporated in the applicable laws. As it is gazetted in some form of subsidiary legislation, the Legislative Council therefore has the right to scrutinize it. Quite often, the Legislative Council respects the decisions

of the Administration, and it will also give careful consideration to the operation of the legal system in the country with which it has signed an agreement for the surrender of fugitive offenders and whether the rule of law is respected in that country and so on. However, the ultimate right to monitor the situation rests with Legislative Council. The final monitoring is achieved through negative vetting and the process of examination.

On the whole, we have proposed various technical amendments. I am also very glad that government officials have attended meetings and joined the detailed discussions. They have been open-minded and given some reasonable responses which have led to some amendments. I believe that the Chairman, Mr James TO, will agree with me. I think both of us should thank them.

As such, we support the passage of this Bill. In the meantime, we also urge the Government to negotiate with the Chinese side as soon as possible so as to reach an agreement for the surrender of fugitive offenders between Hong Kong and mainland China. Of course, one may argue that Hong Kong and mainland China will soon become one country and wonder if these are applicable. I believe all of us agree that, although Hong Kong and mainland China will belong to the same sovereignty, we should not forget the concept of "one country, two systems". The "two systems" do not refer to two jurisdictions. They mean two different legal systems. I believe such an assurance will give an important boost to the confidence among the people of Hong Kong, and our legal system will also provide important protection for our rights. Therefore, I hope that we will be able to complete the next stage quickly by reaching an agreement for the surrender of fugitive offenders between Hong Kong and mainland China so that relevant legislation can be introduced.

Mr President, these are my remarks and I call on my colleagues to support the Second and Third Readings of this Bill, together with the amendments proposed by the Government.

Thank you.

SECRETARY FOR SECURITY: Mr President, I would like to thank the Honourable James TO, Chairman of the Bills Committee, and the other members of the Committee for their close examination of this important Bill, and the useful suggestions they made to enhance the clarity of the Bill in many areas. In the light of the constructive suggestions made by the Bills Committee, I shall move amendments to this Bill at the Committee stage.

Mr President, the Bill provides a statutory framework to implement Hong Kong's own bilateral agreements for the surrender of fugitive offenders, and sets out the conditions and procedures under which Hong Kong will surrender fugitives as well as the treatment which will be afforded to returned fugitives. This is essential to enable Hong Kong to maintain and enhance co-operation with other jurisdictions, in preventing criminals from escaping justice by moving from one jurisdiction to another. The Bill reflects existing practices, procedures and restrictions for handling requests for surrender. These procedures involve decisions by the courts and by the Executive, with channels of appeal for the fugitive offender.

We have responded positively to the suggestions of the Bills Committee for further refinements to the Bill; the Committee stage amendments that I will introduce later reflect this. I shall explain the more significant amendments here.

On the scope of the Bill, the Administration will move an amendment to the definition of "arrangements for the surrender of fugitive offenders" in clause 2(1). The purpose is to permit arrangements to be made for the surrender of a particular person with a jurisdiction with which Hong Kong does not have a bilateral agreement. Such ad hoc arrangements will supplement the system of bilateral agreements for the surrender of fugitive offenders. For practical reasons, the provision of ad hoc surrender in the Bill would increase the number of jurisdictions with which we can co-operate on this important issue. Of course, all the procedures and safeguards in the Bill will apply to such ad hoc surrenders.

On safeguards for the fugitive offenders, the Bill itself already contains provisions to ensure that they are only surrendered for specified, serious offences. The Bill also contains fundamental safeguards to the rights of the affected persons. These safeguards, for example, include rule on *prima facie* evidence, double criminality, specialty protection, protection against political offences and re-surrender to a third jurisdiction. While members of the Bills Committee are content with these safeguards, they have requested that the death penalty exception should be expressly provided for in the Bill. I wish to stress that even without an express provision in the Bill, the Governor will have to consider the death penalty exceptions in accordance with the provisions in the bilateral agreements which are to be annexed to the order made pursuant to clause 3(1) as subsidiary legislation. Nevertheless, the Administration is prepared to expressly provide the death penalty exception in clause 13 of the Bill in order to address the concerns of the Bills Committee.

On procedural matters, the key amendments that I will propose at Committee stage are related to the following matters:

Firstly, representation to the Governor by a fugitive. The new provision of clause 5(3A) and (4A) are added to ensure that a fugitive will be given a chance to be heard, before the Governor makes a decision as to whether or not to consent to his being dealt with by the requesting jurisdiction in respect of offences other than those for which he was surrendered, or before the Governor makes a decision as to whether or not to consent to his being resurrendered by that jurisdiction to a third jurisdiction.

Secondly, time limit for appeal by the requesting jurisdiction. Clause 11(7) is to be amended to set a clear period of 14 days within which the requesting jurisdiction may institute proceedings to appeal against a decision of the High Court, or the Court of Appeal, to dismiss an appeal by that jurisdiction. Similar amendments will also be made to clause 12(7).

Thirdly, discharge in case of delay. New clause 14(5) will put it beyond doubt that a person who is discharged in case of delay will not be arrested and surrendered for the same offence in respect of which his surrender was sought.

Fourthly, identity of the person sought. New clause 23(4A) will be added to make it clear that the magistrate has to be satisfied that the person brought before him is in fact the person named in the request for surrender.

These amendments to the Bill, plus other technical amendments which I will propose during the Committee stage, strike a balance between an individual's right to liberty and the need to prevent criminals from escaping justice. They do not affect the main substance of the provisions in the Bill. The Bills Committee has recommended support for the Bill subject to these amendments. With the enactment of this Bill, Hong Kong will have established a landmark: for the first time in our history, we shall have our own legislation governing the surrender of fugitive offenders. It marks our maturity as an independent jurisdiction, as well as Hong Kong's autonomy in the field of international law enforcement co-operation.

I note the remarks made by the Honourable Albert HO on the question of rendition, that is, the surrender of fugitives between Hong Kong and mainland China in the future. As this is under discussion with the appropriate mainland authorities, all I will say at this stage is that we share the community's concern that there should be adequate protection for the rights of the individual.

Mr President, with these remarks, I recommend the Bill to this Council.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Committee Stage of Bills

Council went into Committee.

FUGITIVE OFFENDERS BILL

Clauses 1, 4, 10 and 25 to 29 were agreed to.

Clauses 2, 3, 5 to 9 and 11 to 24

SECRETARY FOR SECURITY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members.

Apart from the key proposals which I have referred to in my Second Reading debate speech, most of the amendments are drafting and technical in nature. They serve to remove ambiguities, and introduce minor procedural changes to better reflect current practices. All the proposed amendments have been agreed by the Bills Committee. Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2(1) be amended —

- (a) in the definition of "arrangements for the surrender of fugitive offenders", in paragraph (b), by adding "a person or" after "surrender of".
- (b) in the definition of "authorized officer", by adding -
 - "(c) any officer within the meaning of section 2 of the Independent Commission Against Corruption Ordinance (Cap. 204);".

Clause 3

That clause 3 be amended —

- (a) by deleting subclause (4) and substituting -
 - "(4) If the period referred to in subsection (3) would but for this subsection expire -
 - (a) after the last sitting before the end of a session or dissolution of the Legislative Council; but
 - (b) on or before the day of the second sitting of the Legislative Council in the next session,
- that period shall be deemed to extend to and expire on the day after that second sitting."
- (b) in subclause (5), by deleting "to repeal an order under subsection (1)" and substituting "referred to in subsection (3) to repeal an order under subsection (1) (including that period as extended by virtue of subsection (4))".
 - (c) by deleting subclause (7) and substituting -

"(7) An order under subsection (1) shall not come into operation before the expiry of the period within which the Legislative Council may under this section repeal the order."

(d) by adding -

"(7A) Without prejudice to the operation of subsection (7), an order under subsection (1) may specify that it shall come into operation on a day -

(a) specified in the order; or

(b) to be appointed by the Secretary for Security by notice in the Gazette."

Clause 5

That clause 5 be amended —

(a) in subclause (2) -

(i) by deleting "an arrangement made with that place" and substituting "the prescribed arrangements concerned";

(ii) in paragraph (c), by deleting "subsection (3)" and substituting "subsections (3) and (3A)".

(b) in subclause (3), by adding "under the provisions of this Ordinance" after "lawfully be made".

(c) by adding -

"(3A) Without prejudice to the generality of subsection (3), the Governor shall, before making a decision whether or not to give consent under subsection (2)(c) in respect of an offence referred to in that subsection -

(a) give notice in writing to the person referred to in that subsection (or his representative) -

(i) stating particulars of the offence; and

(ii) advising that person (or his representative) that he has 21 days following receipt of the notice to make representations to the Governor concerning whether or not the Governor should give such consent; and

(b) take into account the representations, if any, so made."

(d) in subclause (4) -

(i) by deleting "an arrangement made with that place" and substituting "the prescribed arrangements concerned";

(ii) in paragraph (b), by adding "subject to subsection (4A)," before "the".

(e) by adding -

"(4A) The Governor shall, before making a decision whether or not to give consent under subsection (4)(b) in respect of the re-surrender of the person referred to in that subsection for an offence referred to in that subsection -

(a) give notice in writing to that person (or his representative) -

(i) stating particulars of the offence; and

(ii) advising that person (or his representative) that he has 21 days following receipt of the notice to make representations to the Governor concerning whether or not the Governor should give such consent; and

(b) take into account the representations, if any, so made."

Clause 6

That clause 6(2) be amended, by adding "under the provisions of this Ordinance" after "lawfully be made".

Clause 7

That clause 7(3) be amended, by deleting "any person to whom it is directed or by".

Clause 8

That clause 8 be amended —

- (a) in subclause (1) -
 - (i) by deleting "a person or" and substituting "an";
 - (ii) in paragraph (a), by deleting "request for surrender" and substituting "warrant (including a provisional warrant) under section 7(1)";
 - (iii) by deleting "person or".
- (b) in subclause (2)(a), by adding "which has been received, or in respect of which the magistrate is satisfied will be received within the period provided for its receipt under the prescribed arrangements concerned," after "surrender".

Clause 9

That clause 9 be amended, by deleting subclause (2) and substituting —

"(2) Where any property has been seized under section 8, a magistrate may by order direct the property to be disposed of -

- (a) if the magistrate is satisfied that the property -
 - (i) is material as evidence in proving an offence to which the request for surrender concerned relates; or
 - (ii) has been acquired as the result of such an offence,

by being sent to the prescribed place which made the request (and whether or not the person to whom the request relates is surrendered under this Ordinance to that place) or in such other manner as may be specified in the order;

- (b) in any other case, by being delivered to -
 - (i) the person to whom the request
 - (ii) another person specified in the

relates; or

order,

being, in each case, the person who the magistrate is satisfied is entitled to possession of the property."

Clause 11

That clause 11 be amended, by deleting subclauses (7) and (8) and substituting —

"(7) Notwithstanding any other law of Hong Kong -

- (a) the period within which proceedings may be instituted for an appeal to the Court of Appeal referred to in

subsection (5)(b), or for an appeal to the Privy Council referred to in subsection (6)(b)(i)(A), is 14 days after the decision or dismissal, as the case may be, referred to in that subsection;

- (b) if that period expires without any such proceedings having been instituted, the order concerned under subsection (2) shall cease to have effect."

Clause 12

That clause 12 be amended, by deleting subclauses (7) and (8) and substituting —

"(7) Notwithstanding any other law of Hong Kong -

- (a) the period within which proceedings may be instituted for an appeal to the Court of Appeal referred to in subsection (5)(c), or for an appeal to the Privy Council referred to in subsection (6)(a)(i)(A), is 14 days after the decision or dismissal, as the case may be, referred to in that subsection;
- (b) if that period expires without any such proceedings having been instituted, the order concerned under subsection (5) shall cease to have effect."

Clause 13

That clause 13 be amended —

- (a) in subclause (1) -

- (i) by deleting "by warrant";
- (ii) by deleting "the warrant" and substituting "the order";
- (iii) by deleting "relevant" where it twice appears.

(b) by adding -

"(5) Where -

- (a) a person is wanted in a prescribed place for prosecution, or for the imposition or enforcement of a sentence, in respect of a relevant offence against the law of that place; and
- (b) that offence is punishable with death,

then an order for surrender may only be made in the case of that person if that place gives an assurance which satisfies the Governor that that punishment will not be imposed on that person or, if so imposed, not carried out."

Clause 14

That clause 14 be amended —

- (a) by deleting subclause (3)(b) and substituting -

"(b) disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an appeal."

(b) by adding -

"(5) For the avoidance of doubt, it is hereby declared that a person referred to in subsection (1) who is discharged under this section shall not under the provisions of this Ordinance be subsequently arrested and surrendered to the prescribed place concerned in respect of the relevant offence or, as the case may be, relevant offences to which the order of committal referred to that subsection relates."

Clause 15

That clause 15(8) be amended, by deleting paragraph (b) and substituting

—

"(b) disregarding any power of a court (howsoever described) in that place to grant leave to appeal out of time, there is no further possibility of an appeal."

Clause 16

That clause 16(b) be amended, by deleting ", or other appropriate officer,".

Clause 17

That clause 17 be amended, by adding —

"(3) A person who is surrendered to Hong Kong shall be given a copy of this section (in both the English and Chinese languages) as soon as practicable after he is so surrendered but, in any case, before the completion of the proceedings relating to the offence or offences in respect of which he was so surrendered."

Clause 18

That clause 18(2) be amended, by deleting "may, if he thinks fit" and substituting "shall".

Clause 19

That clause 19 be amended —

- (a) by renumbering it as clause 19(1).
- (b) by adding -

"(2) Notwithstanding any other provision of this Ordinance or any other law of Hong Kong but without prejudice to the operation of subsection (1)(i)(B), no magistrate or court shall remand or release on bail a person who is the subject of an undertaking referred to in subsection (1) which has not ceased to be binding.

(3) An undertaking referred to in subsection (1) which has not ceased to be binding shall be sufficient authority for -

- (a) any person who holds in custody the person who is the subject of the undertaking to release that person into the custody of an authorized

officer upon the occurrence of an event specified in the undertaking as an event the occurrence of which requires the return of the person to the prescribed place concerned;

- (b) the authorized officer to transport the person in custody so as to enable the person to be placed in the custody of a foreign escort officer for the purpose of the person's return to the prescribed place."

Clause 20

That clause 20 be amended —

- (a) in subclause (1)(b)(ii), by deleting "a warrant" and substituting "an order".
- (b) by deleting subclause (2) and substituting -

"(2) The Governor may, if satisfied that it is reasonable and necessary for a person referred to in subsection (1) to be held in custody by an authorized officer for more than 48 hours for the purposes of facilitating the transport referred to in that subsection, by order authorize any authorized officer to hold that person in custody for such further period -

- (a) as is specified in the order; and

- (b) that the Governor is satisfied is reasonable and necessary for those purposes."

Clause 21

That clause 21 be amended, by deleting "custody under a warrant for his arrest issued in Hong Kong" and substituting "any custody under which he may be held".

Clause 22

That clause 22 be amended —

- (a) in subclause (1), by deleting "certificate" and substituting "document".
- (b) in subclause (2), by deleting paragraphs (e) to (s) and substituting -

- "(e) an order of committal;

- (f) an order for surrender;

- (g) an order under section 19(1)(i);

- (h) an order under section 20(2)."

Clause 23

That clause 23 be amended —

- (a) by deleting subclause (2)(a) and (b) and substituting -

- "(a) purports to be signed or certified by a judge, magistrate or officer of the prescribed place concerned; and
 - (b) purports to be sealed with the official or public seal of a competent authority of that place."
- (b) in subclause (4), by deleting "In" and substituting "Without prejudice to the generality of section 10(2)(b) or 12(4), in".
- (c) by adding -

"(4A) Without prejudice to the generality of subsection (4), in proceedings under this Ordinance evidence may be adduced for the purposes of showing that a person brought before the court of committal or any other court is not the person identified in the request for surrender to which the proceedings relate."

Clause 24

That clause 24 be amended, by deleting the clause.

Question on the amendments put and agreed to.

Question on clauses 2, 3, 5 to 9 and 11 to 24, as amended, put and agreed to.

Schedules 1, 2 and 3 were agreed to.

Council then resumed.

Third Reading of Bills

THE SECRETARY FOR SECURITY reported that the

FUGITIVE OFFENDERS BILL

had passed through Committee with amendments. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.