

CONTENTS

	<i>Page</i>
<i>Foreword by Joseph Fok</i>	<i>v</i>
<i>Foreword by Baron Serge J Brammertz</i>	<i>vii</i>
<i>Preface</i>	<i>xi</i>
<i>Table of Cases</i>	<i>xxiii</i>
<i>Table of Legislation</i>	<i>xliii</i>
<i>Table of Subsidiary Legislation</i>	<i>lvii</i>
<i>Table of Foreign Legislation</i>	<i>lxv</i>
<i>Table of International Treaties and Conventions</i>	<i>lxix</i>

PART 1

Preliminary Matters

Chapter 1: The Constitutional and Legal Background..... 13

1. Application of United Kingdom Arrangements to Hong Kong Prior to 1 July 1997	13
1.1 Extradition	13
1.2 Mutual assistance.....	16
1.3 Prisoner transfer.....	18
1.4 United Nations sanctions	19
2. The Sino-British Joint Declaration and the Basic Law of Hong Kong	20
2.1 Article 13 of the Basic Law	21
2.2 Article 96 of the Basic Law	21
2.3 Article 153 of the Basic Law	23
2.4 Article 48(8) of the Basic Law	24
3. The Sino-British Joint Liaison Group and Related Matters	25

Chapter 2: The New Ordinances (FOO, MLAO, TSPO and UNSO)..... 29

1. Fugitive Offenders Ordinance (Cap 503)	29
2. Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525)	35
3. Transfer of Sentenced Persons Ordinance (Cap 513).....	40
4. United Nations Sanctions Ordinance (Cap 537)	41
5. Continued Application of the Ordinances to the HKSAR.....	43

Chapter 3: Recognition of the Hong Kong Special Administrative Region by Foreign Courts 45

1. Recognition of the Validity of Bilateral Surrender Treaties by Foreign Courts	46
--	----

2. Recognition of Requests Made by the HKSAR under Multilateral Conventions	51
---	----

PART 2

Cross-Border Crime and Money Laundering

Chapter 4: Cross-Border Crime.....	59
---	-----------

1. What is Cross-Border Crime?	59
2. Multilateral Conventions and Cross-Border Crime.....	60
2.1 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention).....	60
2.2 United Nations Convention Against Transnational Organised Crime 2000 (Palermo Convention)	62
2.3 United Nations Convention Against Corruption 2003 (Merida Convention)	67

Chapter 5: Money Laundering Standards and Cross-Border Crime	71
--	-----------

1. FATF Standards on Money Laundering.....	72
2. FATF Mutual Evaluations.....	75

Chapter 6: Hong Kong Offences of Money Laundering	79
--	-----------

1. Elements of the Offence	80
1.1 Whether the property is proceeds of an indictable offence	80
1.2 Knowing or having reasonable grounds to believe.....	82
1.3 Duplicity in charging the offence	84
1.4 Property which is intended to be used as part of an indictable offence	85
1.5 Conduct occurring outside Hong Kong constituting a predicate offence	86
1.6 Other elements.....	88

PART 3

Fugitive Offenders

Chapter 7: Bilateral Agreements for Fugitive Offenders.....	95
--	-----------

1. The Negotiating Programme	95
2. Agreements in Force.....	97
3. Key Features of Agreements.....	98
4. Application of the Agreements by Subsidiary Legislation	102

Chapter 8: Multilateral Conventions for Fugitive Offenders	103
1. Applicable Multilateral Conventions.....	103
2. Relevant Provisions of the Conventions for Surrender Purposes	106
3. Application of Multilateral Conventions to Domestic Law.....	107
Chapter 9: Ad Hoc Arrangements for Surrender	109
1. Ad Hoc Arrangements	109
2. Other Options – Outgoing Requests and Deportation	110
Chapter 10: Fugitive Offenders Ordinance.....	113
1. The Procedural Framework	113
2. Role of the Judiciary and the Executive	115
3. Role of the Central People’s Government	116
4. Persons Liable to be Surrendered.....	117
5. Restrictions on Surrender and Grounds of Refusal	119
5.1 Restrictions on surrender in section 5 of the FOO....	120
5.2 Restrictions on surrender in section 13 of the FOO	129
5.3 Other grounds of refusal in bilateral agreements.....	140
6. Relevant Offence	153
6.1 Meaning.....	153
6.2 List of offences	156
6.3 Dual criminality.....	158
6.4 Extraterritorial offences.....	159
6.5 Time of the offence.....	162
6.6 Some of the offences a relevant offence, others not	163
7. Evidential Standards and the Prima Facie Case	163
8. Human Rights Issues	171
9. Abuse of Process Jurisdiction.....	177
10. The Stages of the Surrender Process	181
10.1 Requests for provisional arrest and surrender	181
10.2 Arrest, search and seizure.....	184
10.3 Bail	186
10.4 Committal	191
10.5 Statement of case	199
10.6 Application for habeas corpus	200
10.7 Decision on surrender.....	201
10.8 Judicial review	203
10.9 Appeals	204

11.	Surrender of Fugitives to Hong Kong	206
11.1	Making of a surrender request.....	206
11.2	Specialty and re-surrender protections	209
11.3	Temporary surrender.....	212
11.4	Restoration of persons not tried or acquitted.....	213
11.5	Costs	213
11.6	Time spent in custody abroad.....	215
12.	Transit of Fugitives.....	215
Chapter 11: Arrangements with the Mainland, Macau and Taiwan for Fugitive Offenders.....		217
1.	Introduction	217
2.	The Proposed Arrangements.....	219
2.1	International or local model.....	219
2.2	Jurisdiction	222
2.3	Judicial and executive roles	224
2.4	Contents of the request	225
3.	The Proposed Legislation	226
4.	Informal Surrender	227
PART 4		
Mutual Assistance		
Chapter 12: Bilateral Agreements on Mutual Assistance.....		237
1.	The Negotiating Programme	237
2.	Agreements in Force.....	239
3.	Key Features of Agreements.....	241
4.	Application of Agreements by Subsidiary Legislation.....	243
Chapter 13: Multilateral Conventions on Mutual Assistance.....		245
1.	Applicable Multilateral Conventions.....	245
2.	Relevant Provisions of the Conventions for Mutual Assistance Purposes	247
3.	Application of Multilateral Conventions to Domestic Law.....	249
Chapter 14: Reciprocity, Comity and Other Arrangements.....		251
1.	Reciprocity and the MLAO	251
2.	Comity and Letters of Request.....	253
3.	Other Arrangements – MOUs and Law Enforcement	255

11.	Surrender of Fugitives to Hong Kong	206
11.1	Making of a surrender request.....	206
11.2	Specialty and re-surrender protections	209
11.3	Temporary surrender.....	212
11.4	Restoration of persons not tried or acquitted.....	213
11.5	Costs	213
11.6	Time spent in custody abroad.....	215
12.	Transit of Fugitives.....	215
Chapter 11: Arrangements with the Mainland, Macau and Taiwan for Fugitive Offenders.....		217
1.	Introduction	217
2.	The Proposed Arrangements.....	219
2.1	International or local model.....	219
2.2	Jurisdiction	222
2.3	Judicial and executive roles	224
2.4	Contents of the request	225
3.	The Proposed Legislation	226
4.	Informal Surrender	227
PART 4		
Mutual Assistance		
Chapter 12: Bilateral Agreements on Mutual Assistance.....		237
1.	The Negotiating Programme	237
2.	Agreements in Force.....	239
3.	Key Features of Agreements.....	241
4.	Application of Agreements by Subsidiary Legislation.....	243
Chapter 13: Multilateral Conventions on Mutual Assistance.....		245
1.	Applicable Multilateral Conventions.....	245
2.	Relevant Provisions of the Conventions for Mutual Assistance Purposes	247
3.	Application of Multilateral Conventions to Domestic Law.....	249
Chapter 14: Reciprocity, Comity and Other Arrangements.....		251
1.	Reciprocity and the MLAO	251
2.	Comity and Letters of Request.....	253
3.	Other Arrangements – MOUs and Law Enforcement	255

8.	Outgoing Requests for Assistance	374
8.1	Making a request	375
8.2	Contents of the request	377
8.3	Types of request.....	377
Chapter 16: Evidence Ordinance		407
1.	Incoming Requests To Take Evidence.....	408
2.	Outgoing Requests to Take Evidence	411
Chapter 17: Drug Trafficking (Recovery of Proceeds) Ordinance.....		419
1.	Incoming Requests to Enforce External Confiscation Orders	421
Chapter 18: Mutual Assistance Arrangements with the Mainland, Macau and Taiwan		425
1.	Introduction	425
2.	The Proposed Arrangements.....	428
2.1	International or local model.....	428
2.2	Jurisdiction	430
2.3	Judicial and executive roles	431
2.4	Types of assistance	432
3.	The Proposed Legislation	432
4.	Informal Cooperation	433
Chapter 19: Cooperation between Law Enforcement Agencies		439
1.	Exchange of Intelligence	441
2.	Exchange of Material	446
3.	Data Privacy Exemptions	451
PART 5		
Prisoner Transfer		
Chapter 20: Bilateral Agreements for the Transfer of Prisoners		457
1.	The Negotiating Programme	457
2.	Agreements in Force.....	459
3.	Key Features of Agreements.....	459
4.	Implementation of Agreements	464
Chapter 21: Multilateral and Ad Hoc Arrangements for the Transfer of Prisoners		465
1.	Multilateral Arrangements.....	465
2.	Ad Hoc Arrangements	466

Chapter 22: Transfer of Sentenced Persons Ordinance	469
1. The Procedural Framework	469
2. Transitional Provisions	470
3. Role of the Security Bureau	472
4. Role of the Central People's Government	473
5. Meaning of 'Sentenced Person'	474
6. Power to Transfer and Restrictions on Transfer	475
6.1 Dual criminality.....	475
6.2 Permanent residents, nationals and persons having close ties	476
6.3 Life, indeterminate period and fixed period sentences.....	477
6.4 Final judgment.....	478
6.5 Consent.....	479
7. Continued Enforcement of Sentences	479
8. Review of Judgment, Amnesty and Pardon.....	485
9. Human Rights Issues	488
10. Requests to Transfer out of Hong Kong	491
11. Requests for Transfer into Hong Kong.....	493
Chapter 23: Arrangements with the Mainland, Macau and Taiwan for Transfer of Prisoners	495
1. Macau	495
1.1 The bilateral arrangement.....	495
1.2 Implementation under the TSPO	497
1.3 Requests to transfer into or out of Hong Kong.....	499
2. Mainland China	500
3. Taiwan	502
PART 6	
United Nations Sanctions	
Chapter 24: The UN Sanctions Regime	507
1. United Nations Security Council Resolutions	507
2. Sanctions on Terrorism	508
2.1 Sanctions on ISIL (Da'esh) and Al-Qaida	508
2.2 Sanctions on the Taliban	510
3. Security Council Resolutions on Financing of Terrorism	511
3.1 Financing of terrorism	511
3.2 Foreign terrorist fighters	512

4.	International Convention for the Suppression of Financing of Terrorism.....	513
5.	FATF Standards on the Financing of Terrorism	516
6.	Sanctions on the Proliferation of Weapons of Mass Destruction	517
6.1	Iran.....	517
6.2	Democratic People's Republic of Korea	519
6.3	Non-state actors	520
7.	FATF Standards on Proliferation Financing	521
8.	Implementation of Targeted Financial Sanctions in the HKSAR.....	522
Chapter 25: United Nations Sanctions Ordinance		531
1.	Introduction	531
2.	Scope of Ordinance and Regulation Making Powers.....	531
3.	United Nations Sanctions (Afghanistan) Regulation	533
3.1	Relevant person and relevant entity	533
3.2	Supply, sale or transfer of certain goods.....	534
3.3	Carriage of certain goods.....	535
3.4	Provision of certain advice, assistance or training	536
3.5	Making funds available or dealing with funds	536
3.6	Entry or transit of certain persons	539
3.7	Enforcement	539
4.	United Nations Sanctions (Joint Comprehensive Plan of Action – Iran) Regulation	540
4.1	Relevant person and relevant entity	542
4.2	Making funds available or dealing with funds	543
4.3	Duration of Annex B to UNSCR 2231	545
5.	United Nations Sanctions (Democratic People's Republic of Korea) Regulation.....	546
5.1	Relevant person and relevant entity	549
5.2	Making funds available or dealing with funds	551
5.3	Prohibition against engaging in certain financial transactions	553
5.4	Prohibition against provision of financial services or transfer of funds	554
5.5	Prohibition against certain banking activities in the HKSAR.....	555

5.6	Prohibition against certain activities of financial institutions in DPRK or in connection with DPRK banks	556
5.7	Prohibition against opening or maintaining certain bank accounts	556
5.8	Prohibition against provision of financial support for trade with persons connected with the DPRK	557
Chapter 26: United Nations (Anti-Terrorism Measures) Ordinance.....		559
1.	Introduction	559
2.	Specification of Terrorists, Terrorist Associates and Terrorist Property.....	563
2.1	Section 4 specifications by the Chief Executive.....	564
2.2	Section 5 specifications by the Court of First Instance	566
3.	Freezing of and Prohibition on Dealing with Terrorist Property	571
3.1	Section 6 of the UNATMO	571
3.2	Section 8A of the UNATMO	575
4.	Prohibition on Provision or Collection of Funds to Commit Terrorist Acts	576
5.	Prohibition on Making Property Available to Terrorists or Terrorist Associates	577
6.	Prohibitions Relating to Travel for Specified Purpose	579
6.1	Prohibition on travelling for a specified purpose	580
6.2	Prohibition on providing or collecting property to finance travel for a specified purpose	581
6.3	Prohibition on organizing or facilitating travel for a specified purpose	582
7.	Disclosure of Knowledge or Suspicion that Property is Terrorist Property	583
8.	Forfeiture of Certain Terrorist Property.....	587
9.	Compensation	591
APPENDICES		
Fugitive Offenders Ordinance (Cap 503).....		595
Mutual Legal Assistance In Criminal Matters Ordinance (Cap 525).....		641

Contents

Transfer of Sentenced Persons Ordinance (Cap 513)	711
United Nations Sanctions Ordinance (Cap 537).....	725
Schedule of Bilateral Agreements.....	729
Schedule of Multilateral Conventions.....	735
 <i>Index</i>	
	739

