

CONTENTS

	<i>Page</i>
<i>Foreword to the First Edition by Joseph Fok</i>	<i>v</i>
<i>Foreword to the First Edition by Baron Serge J Brammertz</i>	<i>vii</i>
<i>Preface to the Second Edition</i>	<i>xi</i>
<i>Preface to the First Edition</i>	<i>xiii</i>
<i>Table of Cases</i>	<i>xxvii</i>
<i>Table of Legislation</i>	<i>li</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)	36
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 Organized Crime 2000 (Palermo Convention)	62
2.3 United Nations Convention Against Corruption 2003 (Merida Convention)	68

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. Key Features 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	86
1.4 Property which is intended to be used as part of an indictable offence	87
1.5 Conduct occurring outside Hong Kong constituting a predicate offence	89
1.6 Other matters	90

PART 3

Fugitive Offenders

Chapter 7: Bilateral Agreements for Fugitive Offenders.....	99
--	-----------

1. The Negotiating Programme	99
2. Agreements in Force.....	101
3. Key Features of Agreements.....	102
4. Application of the Agreements by Subsidiary Legislation....	106

Chapter 8: Multilateral Conventions for Fugitive Offenders	109
1. Applicable Multilateral Conventions.....	109
2. Relevant Provisions of the Conventions for Surrender Purposes	112
3. Application of Multilateral Conventions to Domestic Law.....	113
Chapter 9: Ad Hoc Arrangements for Surrender	115
1. Ad Hoc Arrangements	115
2. The Extradition Bill	116
2.1 Background.....	116
2.2 The Government's proposal.....	117
2.3 Scrutiny of the Bill	120
2.4 Legislative Council Panel on Security	124
3. Other Options – Outgoing Requests and Deportation	126
Chapter 10: Fugitive Offenders Ordinance.....	129
1. The Procedural Framework	129
2. Role of the Judiciary and the Executive	131
3. Role of the Central People's Government	132
4. Persons Liable to be Surrendered	133
5. Restrictions on Surrender and Grounds of Refusal	136
5.1 Restrictions on surrender in section 5 of the FOO.....	136
5.2 Restrictions on surrender in section 13 of the FOO.....	146
5.3 Other grounds of refusal in bilateral agreements	156
6. Relevant Offence	170
6.1 Meaning	170
6.2 List of offences	173
6.3 Dual criminality	174
6.4 Extraterritorial offences	176
6.5 Time of the offence	179
6.6 Some of the offences a ‘relevant offence’, others not	180
7. Evidential Standards and the Prima Facie Case	180
8. Human Rights Issues	188
9. Abuse of Process Jurisdiction.....	195
10. The Stages of the Surrender Process	199
10.1 Requests for provisional arrest and surrender	199
10.2 Arrest, search and seizure.....	202
10.3 Bail	205
10.4 Committal	209

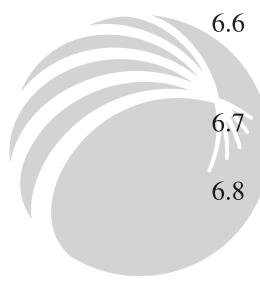
10.5	Statement of case	218
10.6	Application for <i>habeas corpus</i>	218
10.7	Decision on surrender.....	219
10.8	Judicial review	221
10.9	Appeals	222
11.	Surrender of Fugitives to Hong Kong.....	224
11.1	Making of a surrender request.....	224
11.2	Specialty and re-surrender protections	228
11.3	Temporary surrender.....	231
11.4	Restoration of persons not tried or acquitted.....	231
11.5	Costs	232
11.6	Time spent in custody abroad	233
12.	Transit of Fugitives	233
Chapter 11: Arrangements with the Mainland, Macau and Taiwan for Fugitive Offenders.....		235
1.	Introduction	235
2.	The Proposed Arrangements.....	237
2.1	International or local model.....	238
2.2	Jurisdiction	241
2.3	Judicial and executive roles	243
2.4	Contents of the request	244
3.	The Proposed Legislation	245
4.	Informal Surrender	246
PART 4		
Mutual Assistance		
Chapter 12: Bilateral Agreements on Mutual Assistance.....		257
1.	The Negotiating Programme	257
2.	Agreements in Force.....	259
3.	Key Features of Agreements.....	261
4.	Application of Agreements by Subsidiary Legislation.....	263
Chapter 13: Multilateral Conventions on Mutual Assistance.....		267
1.	Applicable Multilateral Conventions.....	267
2.	Relevant Provisions of the Conventions for Mutual Assistance Purposes	269
3.	Application of Multilateral Conventions to Domestic Law.....	270

Chapter 14: Reciprocity, Comity and Other Arrangements.....	273
1. Reciprocity and the MLAO	273
2. Comity and Letters of Request.....	275
3. Other Arrangements – MOUs and Law Enforcement	277
Chapter 15: Mutual Legal Assistance in Criminal Matters Ordinance	281
1. The Procedural Framework	281
2. Role of the Judiciary and the Executive	283
3. Role of the Central People’s Government.....	285
4. Parameters of Available Assistance	288
4.1 Criminal matters – investigation, prosecution or ancillary criminal matters	288
4.2 Thresholds – external serious offence and Hong Kong serious offence	290
5. Restrictions on Assistance and Grounds of Refusal.....	291
5.1 Sovereignty, security and public order of the PRC	292
5.2 Offences of a political character.....	294
5.3 Military offences.....	299
5.4 Discriminatory grounds.....	300
5.5 Double jeopardy	301
5.6 Essential interests	303
5.7 Dual criminality	303
5.8 Investigations into external offences relating to taxation	307
5.9 Death penalty	311
5.10 Terms of the prescribed arrangements.....	313
5.11 Reciprocity	314
5.12 Legal privilege	314
6. Human Rights Issues	316
7. Incoming Requests for Mutual Legal Assistance	321
7.1 Making a request to the HKSAR.....	321
7.2 Contents of a request	323
7.3 Confidentiality of requests.....	325
7.4 Presence of foreign investigators, prosecutors or judges	331
7.5 Taking of evidence (including by live television link)	335
7.6 Search and seizure	339

7.7	Production of material	351
7.8	Assistance in relation to confiscation of proceeds of crime.....	357
8.	Outgoing Requests for Assistance	399
8.1	Making a request	400
8.2	Contents of the request	401
8.3	Types of request.....	402
8.4	Limitations on use	421
8.5	Admissibility of evidence received.....	423
Chapter 16: Evidence Ordinance		433
1.	Incoming Requests To Take Evidence.....	434
2.	Outgoing Requests to Take Evidence	437
Chapter 17: Drug Trafficking (Recovery of Proceeds) Ordinance.....		445
1.	Incoming Requests to Enforce External Confiscation Orders.....	447
Chapter 18: Mutual Assistance Arrangements with the Mainland, Macau and Taiwan		451
1.	Introduction	451
2.	The Proposed Arrangements.....	454
2.1	International or local model.....	455
2.2	Jurisdiction	456
2.3	Judicial and executive roles	457
2.4	Types of assistance	458
3.	The Proposed Legislation	459
4.	Informal Cooperation	460
Chapter 19: Cooperation between Law Enforcement Agencies		465
1.	Exchange of Intelligence	467
2.	Exchange of Material	472
3.	Data Privacy Exemptions	477
PART 5		
Prisoner Transfer		
Chapter 20: Bilateral Agreements for the Transfer of Prisoners		485
1.	The Negotiating Programme	485
2.	Agreements in Force.....	487
3.	Key Features of Agreements.....	487
4.	Implementation of Agreements	492

Chapter 21: Multilateral and Ad Hoc Arrangements for the Transfer of Prisoners	493
1. Multilateral Arrangements.....	493
2. Ad Hoc Arrangements	494
Chapter 22: Transfer of Sentenced Persons Ordinance	497
1. The Procedural Framework	497
2. Transitional Provisions	498
3. Role of the Security Bureau	500
4. Role of the Central People’s Government	501
5. Meaning of ‘Sentenced Person’	502
6. Power to Transfer and Restrictions on Transfer	503
6.1 Dual criminality	503
6.2 Permanent residents, nationals and persons having close ties	504
6.3 Life, indeterminate period and fixed period sentences.....	505
6.4 Final judgment.....	506
6.5 Consent	507
7. Continued Enforcement of Sentences	507
8. Review of Judgment, Amnesty and Pardon.....	513
9. Human Rights Issues.....	516
10. Requests to Transfer out of Hong Kong	519
11. Requests for Transfer into Hong Kong.....	521
Chapter 23: Arrangements with the Mainland, Macau and Taiwan for Transfer of Prisoners	523
1. Macau	523
1.1 The bilateral arrangement.....	523
1.2 Implementation under the TSPO	525
2. Mainland China	528
3. Taiwan	530
PART 6	
United Nations Sanctions	
Chapter 24: The UN Sanctions Regime	537
1. United Nations Security Council Resolutions.....	537
2. Sanctions on Terrorism.....	538
2.1 Sanctions on ISIL (Da’esh) and Al-Qaida	538
2.2 Sanctions on the Taliban	540

3.	Security Council Resolutions on Financing of Terrorism	541
3.1	Financing of terrorism	541
3.2	Foreign terrorist fighters	543
4.	International Convention for the Suppression of Financing of Terrorism.....	544
5.	FATF Standards on the Financing of Terrorism	546
6.	Sanctions on the Proliferation of Weapons of Mass Destruction	548
6.1	Iran.....	548
6.2	Democratic People's Republic of Korea	549
6.3	Non-state actors	551
7.	FATF Standards on Proliferation Financing	552
8.	Implementation of Targeted Financial Sanctions in the HKSAR.....	553
Chapter 25: United Nations Sanctions Ordinance.....		561
1.	Introduction	561
2.	Scope of Ordinance and Regulation Making Powers	561
3.	United Nations Sanctions (Afghanistan) Regulation.....	563
3.1	Relevant person and relevant entity	563
3.2	Supply, sale or transfer of certain goods.....	564
3.3	Carriage of certain goods.....	565
3.4	Provision of certain advice, assistance or training ..	566
3.5	Making funds available or dealing with funds	566
3.6	Entry or transit of certain persons	569
3.7	Enforcement	569
4.	United Nations Sanctions (ISIL and Al-Qaida) Regulation	570
4.1	Relevant person and relevant entity	570
4.2	Supply of goods	571
4.3	Carriage of goods	572
4.4	Provision of assistance.....	573
4.5	Making available or dealing with economic assets ..	573
4.6	Entry or transit of persons	576
4.7	Enforcement	576
5.	United Nations Sanctions (Joint Comprehensive Plan of Action – Iran) Regulation	577
5.1	Relevant person and relevant entity	579
5.2	Making funds available or dealing with funds	580
5.3	Duration of Annex B to UNSCR 2231	583



6.	United Nations Sanctions (Democratic People's Republic of Korea) Regulation.....	583
6.1	Relevant person and relevant entity.....	586
6.2	Making funds available or dealing with funds	588
6.3	Prohibition against engaging in certain financial transactions	591
6.4	Prohibition against provision of financial services or transfer of funds	592
6.5	Prohibition against certain banking activities in the HKSAR.....	593
6.6	Prohibition against certain activities of financial institutions in DPRK or in connection with DPRK banks	593
6.7	Prohibition against opening or maintaining certain bank accounts	594
6.8	Prohibition against provision of financial support for trade with persons connected with the DPRK	595
Chapter 26: United Nations (Anti-Terrorism Measures) Ordinance.....		597
1.	Introduction	597
2.	Specification of Terrorists, Terrorist Associates and Terrorist Property.....	601
2.1	Section 4 specifications by the Chief Executive.....	603
2.2	Section 5 specifications by the Court of First Instance	604
3.	Freezing of and Prohibition on Dealing with Terrorist Property.....	609
3.1	Section 6 of the UNATMO	610
3.2	Section 8A of the UNATMO	613
4.	Prohibition on Provision or Collection of Funds to Commit Terrorist Acts	615
5.	Prohibition on Making Property Available to Terrorists or Terrorist Associates	616
6.	Prohibitions Relating to Travel for a Specified Purpose.....	618
6.1	Prohibition on travelling for a specified purpose.....	619
6.2	Prohibition on providing or collecting property to finance travel for a specified purpose	620
6.3	Prohibition on organising or facilitating travel for a specified purpose	621
7.	Disclosure of Knowledge or Suspicion that Property is Terrorist Property	622
8.	Forfeiture of Certain Terrorist Property.....	626
9.	Compensation	630

PART 7
National Security

Chapter 27: The National Security Law	635
1. Application of Chinese National Laws to the HKSAR	635
2. Promulgation of the National Security Law	636
3. Interpretation of the National Security Law	638
4. Scope of the National Security Law	639
5. Principal Offences	643
5.1 Secession	644
5.2 Subversion	644
5.3 Terrorist Activities	645
5.4 Collusion.....	645
6. Related Offence: Provision of Funds for Terrorist Activities	646
6.1 Terrorist organisation, terrorist and terrorist activities.....	646
6.2 Provision of funds.....	648
6.3 <i>Mens rea</i>	649
6.4 Penalties.....	650
6.5 Relationship to UNATMO.....	652
7. Related Offences: Provision of Pecuniary or Other Financial Assistance or Property for Secession and Subversion.....	652
8. Related Offence: Receipt of Funding for Secession and Subversion	653
9. Principal Offence: Receipt of Funding for Collusion.....	654
10. Principal Offence: Receiving Instructions for Imposition of Sanctions and Collusion.....	655
11. Confiscation and Forfeiture of Property	656
11.1 Rules relating to freezing, restraint, confiscation and forfeiture of property	657
11.2 Definition: proceeds of an offence.....	658
11.3 Definition: offence related property	658
11.4 Definition: realisable property	659
11.5 <i>In rem</i> forfeiture and <i>in personam</i> confiscation.....	659
11.6 Freezing of property	660
11.7 Forfeiture of property	661

11.8	Restraint of property	663
11.9	Confiscation of property	664
11.10	Disclosure and reporting requirements.....	665
12.	Liability of Persons and Corporations	666
12.1	Territorial liability.....	666
12.2	Extra-territorial liability.....	667
12.3	Suspension of operation or revocation of business licence	668
13.	Bail	669
Chapter 28: Sanctions Imposed on the HKSAR.....		673
1.	The Hong Kong Human Rights and Democracy Act 2019	673
2.	The Hong Kong Autonomy Act 2020.....	674
2.1	Definitions	675
2.2	Identification of foreign persons and foreign financial institutions.....	676
2.3	Sanctions with respect to foreign persons	678
2.4	Sanctions with respect to foreign financial institutions	679
2.5	Waiver and termination	680
2.6	Listings to date	681
3.	Executive Order on Hong Kong Normalization	682
3.1	Asset blocking	683
3.2	Travel ban	687
3.3	Relationship between the HKEO and the HKAA.....	687
Chapter 29: Effect Upon International Arrangements with the HKSAR		689
1.	Extradition	689
2.	Mutual Legal Assistance.....	692
3.	Transfer of Sentenced Persons.....	695
APPENDICES		
Fugitive Offenders Ordinance (Cap 503).....		699
Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525).....		745
Transfer of Sentenced Persons Ordinance (Cap 513)		815
United Nations Sanctions Ordinance (Cap 537).....		829
Schedule of Bilateral Agreements.....		833

Schedule of Multilateral Conventions.....	839
The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region	843
Hong Kong Autonomy Act	861
Executive Order 13936: The President's Executive Order on Hong Kong Normalization.....	883
<i>Index</i>	891