

**Bills Committee on  
Drug Trafficking and Organized Crimes (Amendment) Bill 2000**

**Summary of the views given by professional bodies  
on proposals in respect of provisions other than section 25 and section 25A of  
the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455)  
(as at 7 January 2002)**

<u>Proposal</u>	<u>The Hong Kong Bar Association</u>	<u>Administration's response</u>	<u>The Law Society of Hong Kong</u>	<u>Administration's response</u>
I. Confiscation orders (Sections 3 & 5 of Schedule 1 and sections 3 & 4 of Schedule 2 to the Bill)	<p>[LC Paper No. CB(2)916/00-01(01) issued on 22 February 2001]</p> <p>(a) The requirement of attempted notification of confiscation proceedings should not be replaced by simply taking reasonable steps to ascertain the whereabouts of the absconded person.</p> <p>(b) The police should be able to discharge easily the burden of showing that reasonable steps have been taken to bring proceedings to the attention of the absconded person if, as in civil cases involving property rights, they depose to the fact that they are not sure of a person's exact whereabouts but have, for example, left notices of the proceedings in a newspaper published in Hong Kong.</p>	<p>[LC Paper No. CB(2)1073/00-01(05) issued on 15 March 2001]</p> <p>(a) The proposed amendment is merely intended to clarify what is required of the prosecution. The prosecution still has to try to ascertain the whereabouts of the absconded person and give him notice of proceedings. It is only when such attempts fail that the person's whereabouts will be accepted as unknown.</p> <p>(b) Whether the steps taken by the prosecution to ascertain a person's whereabouts is sufficient should be decided by the court.</p>	<p>[LC Paper No. CB(2)1100/00-01(01) issued on 15 March 2001]</p> <p>– The phrase "and may always have been so accepted" in section 5 of Schedule 1 and section 4 of Schedule 2 should be deleted as these words allow no objection to be raised whatsoever.</p>	<p>[LC Paper No. CB(2)1266/00-01(01) issued on 17 April 2001]</p> <p>– If the words are deleted, the operation of the two sections concerned prior to the enactment of the Bill will remain in doubt.</p>

<u>Proposal</u>	<u>The Hong Kong Bar Association</u>	<u>Administration's response</u>	<u>The Hong Kong Association of Banks</u>	<u>Administration's response</u>
<p>II. Assessing the proceeds of drug trafficking (Section 4 of Schedule 1 to the Bill)</p>	<p><i>[LC Paper No. CB(2)916/00-01(01) issued on 22 February 2001]</i></p> <p>(a) It is unsatisfactory to propose the repeal of a statutory prohibition on making assumptions about property held by convicted drug traffickers be extended to persons convicted of drug money laundering offences.</p> <p>(b) The legislative history of the statutory prohibition should be explored and explanations for why it is no longer applicable should be given.</p>	<p><i>[LC Paper No. CB(2)1073/00-01(05) issued on 15 March 2001]</i></p> <p>(a) Section 25 of Cap. 405 is included as a "drug trafficking offence" under section 2(1) of Cap. 405. Since drug money launders commit a "drug trafficking" offence, they should be treated the same persons convicted of other offences of "drug trafficking". At present, Cap. 455 allows the court to apply such assumption to persons convicted of money laundering offence under that Ordinance, the proposal will bring Cap. 405 in step with Cap. 455.</p> <p>(b) It will be in the public interest if the assets of a person who is convicted of money laundering offence can be confiscated.</p>	<p><i>[LC Paper No. CB(2)1073/00-01(07) issued on 15 March 2001]</i></p> <p>No comment with respect to the proposed repeal.</p>	

	<p><i>[LC Paper No. CB(2)1808/00-01(01) issued on 13 June 2001]</i></p> <p>– With the Administration's legal policy justification for the proposal, the Association sees that there are grounds for change.</p>			
<u>Proposal</u>	<u>The Hong Kong Bar Association</u>	<u>Administration's response</u>		
<p>III. Application of procedure for enforcing confiscation orders (<i>Section 6 of Schedule 1 and section 5 of Schedule 2 to the Bill</i>)</p>	<p><i>[LC Paper No. CB(2)916/00-01(01) issued on 22 February 2001]</i></p> <p>No objection to the proposal.</p>			

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<p>IV. Cases in which restraint orders and charging orders may be made (Sections 2 &amp; 7 of Schedule 1 and sections 2 &amp; 6 of Schedule 2 to the Bill)</p>	<p>[LC Paper No. CB(2)916/00-01(01) issued on 22 February 2001]</p> <p>(a) It is very serious to interfere with property rights on the basis of suspected criminal offences when there is insufficient evidence to charge, given the police are not required to compensate persons affected if criminal proceedings are not later brought.</p> <p>(b) The proposal runs counter to the legal policy implicit in the freezing provisions in Cap. 405 and Cap. 455 that the power to restrain property against the possibility of a confiscation order being made later is a draconian power and that interference with property rights can only be justified if criminal proceedings have also been started, or will definitely be started, and will be conducted expeditiously.</p>	<p>[LC Paper No. CB(2)1073/00-01(05) issued on 15 March 2001]</p> <p>(a) The proposal is to overcome problems with a suspect's property being hidden, removed or dissipated while an investigation is underway. Similar power has been provided to the court under the Prevention of Bribery Ordinance.</p> <p>(b) The restraint or charging orders under Cap. 405 and Cap. 455 do not involve taking away the relevant owners' title to their properties. The proposed measure will not be regarded as a de facto deprivation of property, but as an interference with property rights. The Administration has put forward various reasons to support its view that the proposed measure is proportionate to the general interest of the public.</p>	<p>[LC Paper No. CB(2)1100/00-01(01) issued on 15 March 2001]</p> <p>(a) As the proposal would considerably widen the scope for making restraint and charging orders and extend the present definition of institution of proceedings, the Society does not support it unless the Administration can provide more justifiable grounds for such an extension.</p> <p>(b) Should the relevant law enforcement agency have sufficient evidence, a charge should be able to ensue fairly promptly.</p>	<p>[LC Paper No. CB(2)1266/00-01(01) issued on 17 April 2001]</p> <p>Protection is offered as follows -</p> <p>(a) the court must be satisfied before making a restraint or charging order that in the circumstances of the case, there is reasonable cause to believe that charge will be brought against the relevant person after further investigation;</p> <p>(b) the person under investigation may apply to the court for compensation if it turns out that he is acquitted or not charged; and</p> <p>(c) any person affected by a restraint or charging order may apply to the court for</p>

	<p>(c) It seems wrong to dilute the protection the law customarily affords property rights on account of unspecified difficulties in conducting police investigations. Police officers should not seek to invoke the powers of the court unless and until they have sufficient cause to make arrests or can satisfy a court that proceedings will soon take place within a specified time.</p> <p><i>[LC Paper No. CB(2)1808/00-01(01) issued on 13 June 2001]</i></p> <p>(a) Although constitutional property clauses frequently make the distinction between confiscation and seizure, constitutional issues will arise when police powers are used to seize property that is not later confiscated. If that property depreciates in value due to the temporary suspension of powers of ownership, there will be a strong case on compensation.</p>	<p>No further response has been received from the Administration.</p>		<p>its discharge or variation.</p>
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	<p>(b) Powers of arrest should not be exercised with a view to facilitating further inquiries or questioning. As the person arrested can decline police bail, it is odd to found a seizure power on a state of affairs that depends on the person whose property may be affected by accepting an offer of bail or decline it.</p> <p>(c) If the proposal becomes law, it is doubted whether the police, when offering bail to a suspect, will inform the suspect that if he accepts the offer, his property may be frozen until the criminal proceedings are started.</p> <p>(d) The new power sought in the proposal is seen as a source of injustice.</p>			
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<u>Proposal</u>	<u>The Hong Kong Bar Association</u>	<u>Administration's response</u>	<u>The Hong Kong Association of Banks</u>	<u>Administration's response</u>
<p>V. Restraint orders and charging orders (Sections 8 &amp; 9 of Schedule 1, sections 7 &amp; 8 of Schedule 2 and section 3(b)(ii) &amp; (iii) of Schedule 3 to the Bill)</p>	<p>[LC Paper No. CB(2)916/00-01(01) issued on 22 February 2001]</p> <p>(a) When a person disobeys an order requiring him to deal with property in a certain way, he has committed a civil contempt. As such, the creation of a new criminal offence which overlaps with the court's civil contempt jurisdiction to enforce its own orders should not be countenanced, without first being satisfied that the civil jurisdiction is inadequate or there is anything expelling it.</p> <p>(b) Should a new criminal offence be countenanced, a person should not be prosecuted both for the new offence and for contempt on the same set of facts.</p> <p>(c) Since the policy behind the requirement for a person holding property having to provide a value judgement about the value of that</p>	<p>[LC Paper No. CB(2)1073/00-01(05) issued on 15 March 2001]</p> <p>– Contempt of court is a civil proceeding, which normally entails lighter punishment. It is more appropriate and more effective if the judge who made the order, who is familiar with the case, deals with the breach and that a penalty is provided for breach within the same provision empowering the making of the order.</p>	<p>[LC Paper No. CB(2)1073/00-01(07) issued on 15 March 2001]</p> <p>(a) The Bill should be amended to exempt the person from whom a valuation is required from all liabilities to any other persons arising from a valuation provided in good faith.</p> <p>(b) Hong Kong Monetary Authority should issue guidelines to make it clear that banks need not provide any valuation of real property, bonds, securities etc. but will be expected to provide documents already in their possession such as bank account statements.</p>	<p>No response has been received from the Administration.</p>

	<p>property is not sufficiently explained, it is impossible to say whether this power is really necessary.</p> <p><i>[LC Paper No. CB(2)1808/00-01(01) issued on 13 June 2001]</i></p> <p>Despite the Administration's explanation, the Association does not consider the proposed new offence desirable on the grounds that -</p> <p>(a) since the legislature has chosen to use the civil procedures of the Court of First Instance (CFI) to secure assets for confiscation purpose, those procedures should be protected by the existing jurisdiction instead of creating a new criminal offence of non-compliance of the CFI's orders triable by courts at a lower level; and</p> <p>(b) the purpose of contempt proceedings is not so much to punish for disobedience but to ensure that there is no interference with the due administration of justice. If</p>	<p>No further response has been received from the Administration.</p>		
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	the situation warrants a court order to be obeyed, the CFI already has power to commit a person to prison until he complies with the order.			
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