

**Drug Trafficking and Organized Crime  
(Amendment) Bill 2000**

At the meetings of the Bills Committee on the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 held on 22 and 27 February 2002 and 4 March 2002, Members discussed the following issues :

- (a) threshold for making charges;
- (b) notification of abscondee of confiscation order proceedings;
- (c) assessment of drug trafficking proceeds;
- (d) issue of a confiscation order against a deceased or absconded defendant on a civil standard of proof;
- (e) application of procedure for enforcing confiscation order;
- (f) punishment for non-compliance with restraint orders and charging orders; and
- (g) provision of information about value of property.

Following the discussions, Members requested additional information and clarification on a number of issues. The Administration's response to the Bills Committee's requests is set out below.

Threshold for Making Charges

2. Under section 2(11) of the Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP) (Cap 405) and section 2(15) of the Organized and Serious Crimes Ordinance (OSCO) (Cap 455), a restraint order cannot be applied against a person who has been arrested for a drug trafficking offence or a specified offence, and released on bail. During the period when such person is released on bail, knowing that he is under investigation and that his property may be restrained in future, he will naturally seek to dispose of, transfer or conceal his property. The Administration therefore proposes to amend DTROP and OSCO so that a restraint order may be applied against a person who has been arrested and released on bail. To balance this power, it is proposed that the court must be satisfied before making the order that in the circumstances of the case, there is reasonable cause to believe that charges will be brought against the person after further investigation. In the context of this proposal, at Members' request, the Administration has further

considered the feasibility of the following two options regarding the threshold of making charges :-

- (a) amending new section 9(1)(ba) of DTROP and new section 14(1)(ba) of OSCO to the effect that the Court of First Instance must be satisfied that a holding charge could not be laid in that case; and
- (b) applying a lower threshold to make restraint order for a limited period of time, and to apply a higher threshold if that period of time was to be extended.

3. Having regard to the need to take prompt action against the property of a person who has been arrested for a drug trafficking offence or a specified offence, and released on bail, the Administration considers that option (b) above represents a more practical way forward. As explained at the Bills Committee meeting previously, the purpose of a holding charge is not for restraining property. However, it is now being used for that purpose. In addition, in some cases, should the prosecution find sufficient evidence to make a holding charge, it is very likely that the enforcement agencies have conducted lengthy, extensive investigations resulting in sufficient evidence for a charge already.

4. In view of the above and taking into account Members' views, the Administration **agrees** that section 7 of Schedule 1 and section 6 of Schedule 2 to the Bill should be amended along the line of option (b) above. More specifically, the Administration proposes that such amendment should be to the effect that a restraint order or charging order which arises from the ground mentioned in the new section 9(1)(ba) of DTROP and new section 14(1)(ba) of OSCO shall expire one year from the date on which it is made. The restraint order or charging order may be extended by application to the Court of First Instance only if the latter is satisfied that the defendant will be charged with the offence concerned after further investigation is carried out. The extension shall be limited to a maximum of six months. A draft Committee Stage Amendment reflecting these amendments in respect of DTROP is at section (c) of Annex A. If Members agree to this proposal, the amendment will be extended to the relevant section of OSCO.

## Notifying the Abscondee of Proceedings in respect of a Confiscation Order

5. Section 3(a) of Schedules 1 and 2 of the Bill seeks to amend section 3(2)(c)(ii)(B) of DTROP and section 8(3)(c)(i)(B)(II) of OSCO to make it clear that in the case of issuing a confiscation order in respect of a person whose exact whereabouts are unknown, reasonable steps should be taken to ascertain that person's whereabouts. In this context, the Administration was requested to provide further information of 'substituted service' and 'deemed service' provisions.

### *Substituted service*

6. Substituted service is governed by Order 65 rule 4 of the Rules of High Court (Cap 4A), which provides the following -

- (a) If, in the case of any document which by virtue of any provision of these rules is required to be served personally or in the case of a document to which Order 10, rule 1, applies, it appears to the court that it is impracticable for any reason to serve that document in the manner prescribed on that person, the court may make an order for substituted service of that document.
- (b) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.
- (c) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the court may direct to bring the document to the notice of the person to be served.

7. Common substituted services include advertising on local newspaper, or leaving a document at the last known address or service by post to the last known address of the recipient. Application for substituted service is made ex parte and such service is often used in cases when a defendant in a civil proceedings evades service of a document.

## *Deemed Service*

8. Deemed service refers to manners to serve documents, which, on proof of such service, a document is assumed to have been served on a person. An example of deemed service is section 26 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap 566) which stipulates that -

"A notice or other document (howsoever described) authorized or required to be served on a person under this Ordinance ***shall be deemed to be so served*** (our emphasis) if-

- (a) in the case of an individual, it is-
  - (i) delivered to him;
  - (ii) left at his last known address; or
  - (iii) sent by post to him at such address;
  
- (b) in the case of a body corporate, it is-
  - (i) given to or served on a director of the body corporate;
  - (ii) left at the body corporate's last known address; or
  - (iii) sent by post to the body corporate at such address;and
  
- (c) in the case of a partnership, it is-
  - (i) delivered, left or sent in accordance with paragraph (a) on any partner who is an individual; or
  - (ii) given, served, left or sent in accordance with paragraph (b) on any partner which is a body corporate."

Similar provisions can be found in section 3 of the Import and Export Ordinance (Cap 60) and section 16 of the Dogs and Cats Ordinance (Cap 167).

## *Considerations*

9. As the power to order substituted service is vested with the court, the court can monitor the process and give directions in accordance with specific situations. Hence, substituted service can be taken as having more flexibility. However, its major disadvantage is that it usually takes longer and requires more resources to enforce. Normally, the required proof includes several visits to a known contact address of the recipient within a set period of time as one or a few visits may fail to support the application. Further, inquiries must also be made to the known contacts of the recipient, e.g. his friends, family, etc. It therefore normally takes weeks or more, with several attempts of such 'outreach' in order for the court to be persuaded to grant substituted service. By contrast, deemed service has the advantage that once the prescribed manner of service is proved, the document is deemed to have been served. Thus, it saves both time and resources and is more efficient. This is also proportionate to what the Administration sets out to achieve by the proposed amendment in respect of section 3(a) of Schedules 1 and 2.

10. Having balanced the pros and cons of substituted service and deemed service, the Administration considers that deemed service would efficiently and effectively serve the policy objective to provide greater clarity to both the law enforcement and judiciary sectors. As an improvement to the current proposal in section 3(a) of Schedule 2 to the Bill, the Administration **is ready to amend** the section to provide a deemed service provision of publishing the notice of the confiscation proceedings in a Chinese language newspaper and an English language newspaper that are widely circulated. A relevant draft Committee Stage Amendment (CSA) in respect of DTROP is at section (a) of Annex A. Similar amendment will be made to OSCO if Members agree to the thrust of this CSA.

## Assessing the Proceeds of Drug Trafficking

11. In considering section 4 of Schedule 1 of the Bill, Members requested the Administration to provide court precedents in which the court had applied the assumptions in section 4(2) and (3) of DTROP in respect of a restraint order.

12. The case Re Lau Koon-chiu [1990]1HKC377 addresses Members' request mentioned in paragraph 11 above. This case concerns the assumptions in section 4 of DTROP and section 9 of OSCO, which are nearly the same. The defendant in this case was charged with the offence of conspiracy to traffic in dangerous drugs and conspiracy to accept advantages. The proceeds of drug trafficking amounted to an estimated HK\$1.5 million. A restraint order was obtained and all assets of the defendant, about HK\$5 million, were frozen. The defendant then applied to vary the order for his living and legal expenses. He also objected to the freezing of all his assets when the amount he received through drug trafficking was alleged to be HK\$1.5 million.

13. In this case, Mr Justice Ryan held that in considering what property ought to be confiscated, the Government gets assistance in establishing what payments or rewards were so received from the assumption in section 4(3) of DTROP. He went on to say that the court should be reluctant to release any property from restraint, and certainly not property received within the six year period (i.e. the presumptions) until the proceedings are concluded. Mr Justice Ryan also considered that at the restraint stage, the court has no power to decide whether the defendant can rebut the assumptions. Consequently, the Government can apply the presumptions in section 4 of DTROP for the application of a restraint order. The court can only determine whether such presumptions are rebutted at the confiscation stage. A copy of the judgement delivered by Mr Justice Ryan is at Annex B.

#### Issue of a Confiscation Order against a Deceased or Absconded Defendant on a Civil Standard of Proof

14. In discussing section 5 of Schedule 1 and section 4 of Schedule 2 of the Bill, Members requested information on the court case which demonstrates the need for the proposed amendments. The case in point is Secretary for the Justice v Lee Chau-ping HCMP 4412/96, which shows that two judges, namely Mr Justice Finlay and Deputy High Court Judge Lugar-Mawson (as he then was) held different interpretations of the provision of section 5 of DTROP. The Administration's current proposal is to achieve clarity in the relevant law.

15. The respondents in the case were involved in the trafficking in and manufacturing of dangerous drugs into Hong Kong. A warrant of arrest containing 20 counts was issued. The defendant disappeared when she discovered that she was wanted by the Police. Confiscation under section 3 of DTROP was applied. The matter was first heard by Mr Justice Findlay in 1997. The issue was whether a statement made under section 5 was evidence for the hearing in confiscation order. On 25 April 1997, in rejecting the section 5 statement as evidence, Mr Justice Findlay commented that the then section 5 had its difficulties in interpretation. In relation to section 5(7), Mr Justice Finlay said,

“It is difficult to understand what purpose is served by subsection(7). Nothing flows from the provision except the effect of subsection(3). But subsection (3) only kicks in if there has been a requirement under subsection (1B). But even if such a requirement had been illogically imposed, with the obvious consequence of the respondents failing to comply, subsection 3 says the respondents may be treated as accepting every allegation in the statement apart from some of the very allegations on which the applicant seeks to rely.”

16. The problem as appeared to Mr Justice Findlay was that, if a defendant absconded, the court can treat the defendant as having been served with a section 5 statement pursuant to section 5(7). However, the deemed acceptance provision in section 5(3) is inoperable since section 5(3) is only operable if a section 5(1B) direction has been given to a defendant, which is clearly impossible in cases where the defendants have been absconded. Consequently, nothing can be deemed to be accepted by the defendant. There is no appeal against the judgement of Mr Justice Findlay.

17. The same case was heard by Deputy High Court Judge Lugar-Mawson in October 1998 and he delivered his ruling on 3 December 1998. Differing from the opinion of Mr Justice Findlay, he found that by the operation of section 5(7), the court can consider a section 5 statement in cases where the defendant absconded. He concluded that sections 5(1B), (1C), (2), (3), (4), (5) and (6) were inapplicable. The only relevant provisions were sub-sections 5(1), (1A) and (8). Copies of the relevant judgements are at Annexes C and D respectively.

18. Apart from the above, the Administration has also considered Members' suggestion and **agreed** that the proposed amendments in section 5 of Schedule 1 and section 4 of Schedule 2 to the Bill should also cover the situation where the defendant has died. A draft CSA for this purpose in respect of DTROP is at section (b) of Annex A. Similar amendment will be made to OSCO.

### Application of Procedure for Enforcing Confiscation Orders

19. As pointed out in previous Bills Committee meetings, the present section 8(1) of DTROP and section 13(1)(a) of OSCO are inadequate because they do not provide any framework for the court to set out a clear timeframe within which a confiscation order has to be complied with. As a result, while the court normally specifies in the Certificate of Sentence the period within which the defendant has to pay a confiscation order, sometimes it does not. Indeed, there have been cases in which the court did not think it had the power to stipulate a timeframe for payment. R v. Kong Kwong-por (Re : DCCC No. 587 of 1996) was a case in point. In this case, His Honourable Judge Christie made a confiscation order under section 8(7)(a) of OSCO for the defendant to pay HK\$2 million. He made the observation that OSCO makes no provision for fixing time for payment of a confiscation order under section 8 (see the letter dated 23 April 1997 from the Registrar, District Court at Annex E). Therefore, in order to ensure consistency in judiciary interpretations, and that confiscation orders are paid in good time, it is necessary to amend section 8(1)(a) of DTROP and section 13(1)(a) of OSCO to provide clearer guidance in this respect.

20. As regards the situation in the UK, according to the Home Office's Working Group on Confiscation's Third Report on Criminal Assets, at present there is no limit on the time that may be allowed for a confiscation order to be paid. It is not uncommon for judges to grant a period of time anywhere up to three years to pay a confiscation order even though assets might be readily available in a defendant's bank account.<sup>1</sup> This creates unwelcome and unnecessary delays in the enforcement process and is contrary to the purpose of the confiscation legislation which is to deprive

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<sup>1</sup> The Report does not mention the names of the cases in which confiscation orders with three years for payment were made. The Working Group made its observation on the basis of a questionnaire survey.



offenders of the proceeds of their crime. In view of this, the UK Government has proposed in the Proceeds of Crime Bill that the relevant legislation be amended to provide that the amount is to be paid immediately, unless the defendant can demonstrate to the court that he needs time to pay. If the court is satisfied that it is required, the court may allow up to six months to pay, and up to a further six months if there are exceptional reasons justifying the extension. The Proceeds of Crime Bill, which was introduced into the House of Commons in late 2000, is currently being scrutinized by a Bills Committee.

21. In Hong Kong, the court will often order a defendant to pay the confiscation order within a specified period of time, ranging from one month to a few months, depending on the nature of property involved. If the property is cash or other liquid assets, a shorter time will be ordered. If the property is real property, a longer time will be ordered. The judge is not required to give reason regarding the period specified for the defendant to satisfy the order. It is usually proposed by counsel for the Secretary for Justice. The only consideration appears to be "reasonableness".

#### Punishment for Non-compliance with Restraint Orders and Charging Orders

22. Under section 14C of the Prevention of Bribery Ordinance (POBO) (Cap. 201), if a person does not comply with a restraint order issued by the court, he shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 or to the value of the property disposed of or otherwise dealt with, whichever is greater, and to imprisonment for one year. A copy of section 14C of POBO is at Annex E. In this connection, Members may note that subsection 6 which sets out the penalties was added to POBO in 1974 through the Prevention of Bribery (Amendment) Ordinance (No. 9 of 1974) and these penalties essentially reflect the need at the time. On the other hand, the penalties proposed in the Bill for non-compliance of restraint orders or charging orders under DTROP and OSCO (sections 8 and 9 of Schedule 1, sections 7 and 8 of Schedule 2 and section 3(b)(ii) and (iii) of Schedule 3) were drawn up having regard to present day circumstances. Such proposed penalties commensurate with the gravity of the offences in DTROP and OSCO and the value of the property involved.

23. Members may wish to note that there is no reported judgement as to how civil contempt proceedings may prejudice criminal trials. From an operational point of view, contempt proceedings against a respondent who is also the subject of criminal proceedings may create undue pressure on him and thus may be perceived as being oppressive.

#### Provision of Information about Value of Property

24. The Administration **agrees** with Members' proposal to add clarity to section 10 of DTROP and section 15 of OSCO by amending the Bill to the effect that information referred to in the two sections about the value of property relates only to what is readily available, e.g. bank account balance, and an assessment of the value of property is not required.

25. Regarding protection of a person who made a disclosure under the new subsection proposed in this context, if that person has acted in accordance with the guidelines issued by the relevant regulatory authorities, e.g. the Hong Kong Monetary Authority, he would have been protected from any claim of liabilities by third parties. Nevertheless, taking into account Members' concern, the Administration **is ready to propose** an amendment to section 8 of Schedule 1, section 7 of Schedule 2 and section 3 of Schedule 3 to the Bill to provide protection to a person who made a disclosure under the new section 10(12) of DTROP and new section 15(12) of OSCO, similar to that currently provided under section 25A of DTROP. Under the proposed amendment, a disclosure made in order to comply with a requirement under the new section 10(12) and new section 15(12) will not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision. The disclosure will also not render the person who made it liable in damages for any loss arising out of the disclosure or any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

26. Draft CSAs for the purpose of effecting the proposed amendments as set out in paragraphs 24 and 25 in respect of the DTROP are at Annex G. Subject to Members' agreement, they will be extended to the relevant section(s) of OSCO.

27. On the question of penalty for giving false information under section 10 of DTROP and section 15 of OSCO, section 36 of the Crimes Ordinance (Cap 200) stipulates that any person who knowingly and wilfully makes a statement false in a material particular in a statutory declaration, or in a document or any oral declaration or oral answer which is required to be made by any enactment for the time in force, shall be guilty of an offence. The person who commits such an offence shall be liable on conviction upon indictment to imprisonment for 2 years and a fine. In effect, therefore, if a person who knowingly and wilfully makes a statement false in a material particular in complying with a requirement under new section 10(12) of DTROP and new section 15(12) of OSCO would commit an offence by virtue of paragraph(b) of section 36 of the Crimes Ordinance. A copy of section 36 of the Crimes Ordinance is at Annex H for Members' reference.

Narcotics Division  
Security Bureau  
April 2002

Proposed CSAs in response to C. for N.'s  
memo dated 18.3.2002 (ref. NCR 3/1/8 (G))

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1	<p>(a) In section 3(a), by adding “or notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong” after “whereabouts”.</p> <p>(b) In section 5, in the proposed section 5(9), by deleting “subsection 7(b)” and substituting “subsection (7) (a) or (b)”.</p> <p>(c) In section 7 -</p> <p>(i) in paragraph (a)(ii), in the proposed section 9(1)(ba), by adding “subject to <u>subsection (1A)</u>,” before “if”;-</p> <p>(ii) by adding –</p> <p>“(aa) by adding –</p> <p>“(1A) Subject to <u>subsection (1B)</u>, a restraint order to charging order which</p>

arises only from the ground  
mentioned in subsection (1)(ba)  
shall expire on the 1st  
anniversary of the date on  
which it is made.

(1B) The Court of First  
Instance may extend a restraint  
order or charging order  
mentioned in subsection (1A) –

(a) on the  
ground  
only that  
the Court  
of First  
Instance is  
satisfied  
that the  
defendant  
will be  
charged  
with the  
offence  
concerned  
after  
further  
investiga-

tion is

carried

out; and

(b) for not

more than

6

months.” .

” .

**A RE LAU KOON CHIU**

HIGH COURT – MISCELLANEOUS PROCEEDINGS NO 3085 OF 1989

RYAN J

1. 8 MARCH 1990.

**B Criminal Law and Procedure – Dangerous drugs – Trafficking – Recovery of proceeds – Application for variation order to enable payment of maintenance expenses and legal fees – Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) s 4(3)**

- C** On the same day in which the applicant was charged with, inter alia, the offence of conspiracy to traffic in dangerous drugs, the Crown obtained an ex parte restraint order freezing all the applicant's assets (approximately \$5m in value). The applicant then applied for a variation of that order to enable payment of maintenance expenses for himself and his family and legal fees. The applicant also submitted that it was wrong to freeze all his assets when the amount alleged to have been received through drug trafficking was only \$1.5m.
- D**

**Held, allowing the application:**

- E** (1) The value of proceeds from drug trafficking was directed at 'any payments or rewards received at any time in connection with drug trafficking' and was not limited to payments or rewards directly connected with the charges upon which the person was convicted.
- (2) The court should be reluctant to release any property from restraint until the proceedings are concluded, except for funds necessary for maintenance costs and legal expenses.
- F** (3) The judge hearing an application to vary a restraint order has no power at that point in the proceedings to decide whether the applicant can rebut the presumptions in s 4(3) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (the Ordinance).
- G** (4) Section 27 of the Ordinance has set out the conditions under which the High Court has power to award compensation but such power is limited to cases where there has been serious default on the part of any party connected with the investigation or prosecution.
- (5) The bill for legal expenses incurred to the date of hearing could be taxed forthwith and the Crown should not be shut out from the taxation.

- H** **Legislation referred to**  
Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) ss 3, 4, 5, 6, 9, 10, 27

**Application**

- I** This was an application made by the applicant for variation of a restraint order made under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405). The facts appear sufficiently in the following judgment.

*GJX McCoy (Woo Kwan Lee & Lo) for the applicant.*  
*M Boucaut (Crown Prosecutor) for the respondent.*

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Ryan J: The applicant was on 16 November 1989 charged with the offences of conspiracy to traffic in dangerous drugs and with conspiracy to accept advantages. The offences are alleged to have been committed between 1 January 1979 and 30 June 1983 whilst the applicant was a customs senior inspector stationed at Kai Tak Airport. He is alleged to have received the sum of \$3,000 per pound as a reward for assisting drug traffickers to traffic in heroin through the airport. These payments are said to total approximately \$1.5m. A B

The Crown obtained ex parte a restraint order on 16 November 1989 freezing all of the applicant's assets. These are estimated to be approximately \$5m in value. C

The applicant has applied for a variation of that order to enable payment of maintenance expenses for himself and his family and legal fees. In addition, it is submitted that it is wrong for the court to freeze his total estate when the amount alleged to have been received through drug trafficking is only \$1.5m. D

Section 9 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (the Ordinance) confers powers on the High Court to make a restraint order where (a) proceedings have been instituted in Hong Kong against the defendant for a drug trafficking offence; (b) the proceedings have not been concluded; and (c) the High Court is satisfied that there is a reasonable cause to believe that the defendant has benefited from drug trafficking. E

Section 10 of the Ordinance states that the High Court may, by order, prohibit any person from dealing with any realizable property subject to such conditions and exceptions as may be specified in the order. The court, therefore, has a discretion as to what property is to be made the subject of the order. F

In considering what property ought to be restrained, it is necessary to refer to other provisions in the Ordinance. Section 3 provides as follows: G

(1) Where —

- (a) In proceedings before the High Court or the District Court a person is to be sentenced in respect of one or more drug trafficking offences and has not previously been sentenced in respect of his conviction for the offence, or as the case may be, any of the offences concerned; and
- (b) an application is made by or on behalf of the Attorney General for an order under this section, the High Court or the District Court, as the case may be, shall act as follows. H

(2) The court shall first — I

- (a) impose such period of imprisonment or detention (if any);
- (b) make such other order in relation to sentence, not being an order provided for or referred to in subsection (6);



A as is appropriate in respect of the offence, or as the case may be, the offences concerned.

(3) The court shall then determine whether the person has benefited from drug trafficking.

B (4) For the purposes of this Ordinance, a person who has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

(5) If the court determines that he has so benefited, the court shall determine in accordance with section 6 the amount to be recovered in his case by virtue of this section.

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Section 6 provides:

(1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the High Court or the District Court, as the case may be, assesses to be the value of the defendant's proceeds of drug trafficking.

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Section 4 of the Ordinance sets out how the proceeds of drug trafficking are to be assessed. It is stated:

(1) For the purposes of this Ordinance —

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(a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Ordinance) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking; and

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(b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The High Court or the District Court, as the case may be, may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that the defendant shows that any of the assumptions are incorrect in his case.

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(3) Those assumptions are —

(a) that any property appearing to the court —

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(i) to have been held by him at any time since his conviction; or  
(ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him, was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him or another;

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(b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him or another; and

- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a payment or reward, he received the property free of any other interests in it. A

The inquiry as to the value of proceeds from drug trafficking is directed at 'any payments or rewards received at any time in connection with drug trafficking' and is not limited to payments or rewards directly connected with the charges upon which the person has been convicted. The Crown gets assistance in establishing what payments or rewards were so received from the assumptions in s 4(3). The court should, in my judgment, be reluctant to release any property from restraint (and certainly not property received within the six year period) until the proceedings are concluded, except for funds necessary for maintenance costs and legal expenses. B C

Mr McCoy further argues that a person can, at any time after the restraint order is made, show that the assumptions are incorrect in his case. I do not agree. The procedures set out in s 3 are that after conviction, the High Court or District Court proceeds to sentencing and then to a determination of whether the convicted person benefited from drug trafficking. It is then, and only then, that the provisions of s 6 and s 4 come into play. The judge hearing an application to vary a restraint order has no power, at that point in the proceedings, to decide whether the applicant can rebut the assumptions. D E

Section 27 gives the High Court power to award compensation to a person where proceedings are not instituted or the person is acquitted or, if convicted, the conviction is quashed or he receives a pardon. This power is, however, limited to cases where there has been some serious default on the part of any party connected with the investigation or prosecution. F

I propose only to release from restraint funds sufficient to enable the payment to the applicant of maintenance costs and legal expenses. The maintenance payments have been agreed between the parties.

In respect of the legal expenses, as I advised at the earlier hearing, I agree with Mr McCoy that the applicant's legal advisers should not have to wait until the proceedings have been concluded, which might not be until 1991, before receiving any remuneration. The bill for legal expenses incurred to date can be taxed forthwith by a Master and thereafter at three-monthly intervals. The only matter which remains to be resolved is Mr McCoy's request for an order that the Crown be not entitled to appear at the taxation hearings. His submission is that the bill could reveal details of the applicant's line of defence and other privileged matters. I do not accept that the Crown should be shut out from the taxation. The Crown is a party to the proceedings and is entitled to be concerned that there is not an unnecessary or unjustified dilution of the assets. It will be for the Master to decide questions of privilege should they arise. G H I

Reported by Raymond Lo Wai Keung

IN THE SUPREME COURT OF HONG KONG  
HIGH COURT

IN THE MATTER of the Drug  
Trafficking (Recovery of Proceeds)  
Ordinance, Chapter 405

BETWEEN

THE ATTORNEY GENERAL

Applicant

and

LEE CHAU PING

First Respondent

TAM WAI HUNG

Second Respondent

Before the Hon Mr Justice Findlay, in Chambers

Dates of hearing: 17 and 23 April 1997

Date of handing down of judgment: 25 April 1997

Mr MC Blanchflower, Senior Assistant Crown Prosecutor, and Ms Louisa Lai,  
Senior Crown Counsel, for the applicant.

JUDGMENT

I have before me an ex parte originating summons taken out by the applicant dated 17 December 1996 under the Drug Trafficking (Recovery of Proceeds) Ordinance, Chapter 405 (the Ordinance) and rule 2A of Order 115 of the Supreme Court Rules. The applicant asks for orders that the first respondent pay \$22,830,000, and the second respondent pay \$630,000, to the Registrar.

In terms of Order 115, this application was heard in chambers, but, with the agreement of the applicant, I adjourn the matter into court for the purposes of delivering this judgment.

From an abundance of caution, in February 1997, notice of these proceedings was given to Mr Cheuk Tak-wah, the husband of the first respondent, Madame Hui Hoi-wah, a business associate of both respondents, Madame Luk So-ngor, the mother of the first respondent, and the court appointed receiver of the property of both respondents. Mr Lee Wai Kong, a brother of the first respondent, appeared at the request of Madame Luk So-ngor and Mr Cheuk Tak-wah, but they did not wish to make a representations; just to be told the outcome of the proceedings. Madame Hui Hoi-wah appeared by Mr Paul Leung of counsel, but he agreed that his client had no standing in these proceedings. That, to me, appears to be the position; that only the respondents, or the personal representatives of a deceased defendant, have standing to be heard in proceedings for a confiscation order. It may be, as in this case, that other persons claim an interest in property said to have been derived or realised from payments received in connection with drug trafficking, but they have the opportunity of being heard when the Attorney General takes steps to realise the property under section 12.

The scheme of Part II of the Ordinance, so far as it is relevant to this matter, is that, under section 3(1), where “proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded because the person has absconded and an application is made by or on behalf of the Attorney General for a confiscation order”, the court must follow a specific procedure.

On such an application, the court has to determine whether the person has benefited from drug trafficking. In the circumstances of this case, there are several things regarding which the court must be satisfied before it is able to proceed to the step of determining whether the person has benefited from drug trafficking –

1. The person against whom the order is sought has absconded;
2. not less than six months have elapsed beginning with the date which is, in the opinion of the court, the date on which that person absconded;

3. the exact whereabouts of the person are not known;
4. reasonable steps have been taken to give notice of “those proceedings” to that person;
5. having regard to all the relevant matters before it, the person could have been convicted in respect of the offence or offences concerned.

In the context, “those proceedings” referred to in item 4. seem to refer to the prosecution proceedings for a drug trafficking offence, not the proceedings for a confiscation order, in spite of the fact that this does not make much sense.

Once the court is so satisfied, the court then determines whether the person has benefited from drug trafficking; that is, whether he has received any payment or other reward in connection with drug trafficking carried on by him or another.

“If the court determines that he has so benefited, the court shall determine in accordance with section 6 the amount to be recovered”, and shall order the person to pay that amount.

Section 4 provides that a person’s proceeds of drug trafficking are any payments or other rewards received by him in connection with drug trafficking and any property derived or realised, directly or indirectly, by him from any of the payments or other rewards. The value of the proceeds is the aggregate of the values of the payments or other rewards and that property.

This section seems clear enough, although its effect seems to be that, if a defendant sells drugs for \$50 million and buys a house with that money, the proceeds of drug trafficking are both the \$50 million and the house, and the value of the proceeds is \$100 million.

Under section 6, the amount to be recovered shall be the amount the court assesses to be the value of the proceeds of the trafficking. If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made, whether by an acceptance under section 5 or otherwise, the court may issue a certificate giving the court’s opinion as to the matters concerned.

The standard of proof required to determine any question as to whether a person has benefited from drug trafficking or the amount to be recovered shall be on the balance of probabilities.

In the ordinary course, the way in which a court is satisfied about something is by evidence. In this case, no evidence has been presented. I have before me a meticulously prepared statement by Detective Senior Inspector Tse Leung-wah, together with many box files of witness statements and exhibits to which the inspector refers in his statement. This statement by Inspector Tse is said to be prepared for the purposes of section 5. There is no doubt that what Inspector Tse says, supported by the documents to which he refers, would, if admissible for this purpose, satisfy me to a high degree of everything in respect of which the applicant is required to satisfy me. The applicant clearly rests his case on this section 5 statement; there is nothing else upon which it can rest. The question is: Is the statement admissible for the purposes of satisfying the court of the essential facts?

Section 5 is not free from difficulties in construction. It is clear that amendments made in 1995 were designed to adapt the provisions for that case where the defendant had died or absconded, but the end product does not achieve this objective very well, if at all, I hasten to say that this may not be the fault of the draftsman. I know how pressures from legislators and unwelcome contributions to the drafting process during the legislative process can sometimes destroy a carefully crafted legislative structure.

Section 5(1) reads:

“(1) Where an application is made for a confiscation order, the prosecutor may tender to the High Court or the District Court, as the case may be, a statement of matters relevant to any of the following –

- a) where section 3(1)(a)(ii) is applicable, determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;
- b) determining whether the defendant has benefited from drug trafficking;
- c) assessing the value of the defendant’s proceeds of drug trafficking.”

Section 5(1B) says –

“(1B) Where any statement has been tendered under subsection (1) and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant –

- a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and
- b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposed to rely.”

No such requirement has been imposed in this case. This is not surprising. The whereabouts of the respondents is unknown. It would not make much sense to impose such a requirement in these circumstances.

If the defendant accepts any allegation, the court may, for the purposes of determining whether the defendant could have been convicted, whether the defendant benefited from drug trafficking and assessing the value of the proceeds, as conclusive.

Under section 5(3), if the defendant fails to comply with a requirement under subsection (1B), he may be treated for the purposes of this section as accepting every allegation in the statement *apart from*, as far as is relevant here, any allegation that he could have been convicted, any allegation that he has benefited from drug trafficking and any allegation that any payment or other reward was received by him in connection with drug trafficking.

Section 5(7) provides, as far as relevant, that in a case such as this, section 5 “shall have effect as if a copy of the statement tendered under subsection (1) had been served on the defendant.”

It is difficult to understand what purpose is served by subsection (7). Nothing flows from the provision except the effect of subsection (3). But subsection (3) only kicks in if there has been a requirement under subsection (1B). But even if such a requirement has been illogically imposed, with the obvious consequence of the respondents failing to comply, subsection 3 says the respondents may be treated as accepting every allegation in the statement *apart from* the some of the very allegations on which the applicant seeks to rely.

Frankly, section 5 leaves me baffled. It does not seem to be effective in achieving what I assume the 1995 amendments set out to achieve. I do not know how I can construe the section so that the statement can be used to satisfy the court on the points on which it must be satisfied.

The effect of section 5 was not argued before me on 17 April 1997. It was assumed, I think, by Mr Blanchflower that the section worked as it seems it was intended to work, and I did not spot the difficulties during the course of argument. I thought I might have overlooked some way out of the problem. I believed the applicant should have the opportunity of addressing further argument to me on the point. Accordingly, I invited Mr Blanchflower to address further argument to me. He did so on 23 April 1997.

Mr Blanchflower agrees that he cannot rely on section 5(3). He argues, however, that the legislation contemplates that I can use the section 5 statement to satisfy myself on the matters upon which I am required to be satisfied although it cannot be said that there is an implied acceptance of any of the contents of the statement by the respondents. In other words, Mr Blanchflower contends that the section 5 statement can be used by the court although it is not evidence and although there is no express provision in the legislation allowing me to do this.

I can understand the convenience of doing this, but I cannot follow this course if the law does not allow it. Unfortunately, I do not think the law does allow it.

The legislation is peppered with requirement that I be “satisfied” of various things. Normally, a court cannot be satisfied of anything unless it is so satisfied by evidence, or the law clearly contemplates otherwise. Here, in my view the legislation does not clearly contemplate otherwise. Mr Blanchflower says that the court may have “regard to all the relevant matters before it”. This, in my judgment, means “all relevant matters before it” by means of evidence or as provided for in section 5. If the legislature contemplated that a court could have regard to the section 5 statement without more, there would be no need at all for the elaborate provisions of section 5.



In the result, I find there is nothing properly before me on which I can act in this matter. The failure of section 5 to operate in this case means that there must be evidence on which I can act. It seems to me that this evidence may be by way of affidavit in support of the originating summons, but, because this is not an interlocutory matter, the affidavits may not contain hearsay evidence.

The applicant may wish to proceed on the basis of evidence. Accordingly, I adjourn this matter *sine die*, with liberty to set the matter down for further hearing for directions or the hearing of evidence.

JK FINDLAY  
Judge of the High Court



# Court of First Instance of Hong Kong

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## SECRETARY FOR JUSTICE v. LEE CHAU PING AND ANOTHER HCMP004412/1996 - [1998] HKCFI 771 (3 December 1998)

HCMP004412/1996

HCMP4412/96

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
MISCELLANEOUS PROCEEDINGS NO.4412 OF 1996

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BETWEEN	{	{
{	SECRETARY FOR JUSTICE	Applicant
{	{	{
{	AND	{
{	{	{
	LEE CHAU PING	1st Defendant
{	TAM WAI HUNG	2nd Defendant

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Coram : Deputy Judge Lugar Mawson in Court

Dates of hearing : 12, 13, 14 and 16 October 1998

Date of delivery of judgment : 3 December 1998

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J U D G M E N T

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This is an application made under s.5 of the *Drug Trafficking (Recovery of Proceeds) Ordinance Cap. 405* for confiscation orders under s.3 of the ordinance against the defendants, Lee Chau Ping and Tam Wai Hung. Lee Chau Ping and Tam Wai Hung absconded from criminal proceedings brought against them in Hong Kong and the prosecution does not know their whereabouts. As the facts in relation to both defendants are common, the applications are made concurrently.

Three preliminary issues arise for my determination :

1. The sufficiency of a statement made under s.5 of the Ordinance to satisfy me of the condition in s.3(2)(c)(iii) of the Ordinance, that the defendants, Lee Chau Ping and Tam Wai Hung, could have been convicted of a drug trafficking offence.
2. The standard of proof applicable under s.3(2)(c)(iii) of the Ordinance, in relation to the question of my being satisfied that an absconded person could have been convicted in respect of a drug trafficking offence
3. The standing of third parties in applications for confiscation orders under the Ordinance.

#### *Sufficiency of the s.5 statement*

In relation to the first preliminary issue, Findlay J., who first dealt with this application, said the Secretary for Justice could not rely on a statement made under s.5 of the Ordinance. In his judgment of 25 April 1997 he said:

"Mr Blanchflower ... argues, however, that the legislation contemplates that I can use the section 5 statement to satisfy myself on the matters upon which I am required to be satisfied, although it cannot be said that there is an implied acceptance of any of the contents of the statement by the respondents. In other words, Mr Blanchflower contends that the court can use the section 5 statement although it is not evidence and although there is no express provision in the legislation allowing me to do this.

I can understand the convenience of doing this, but I cannot follow this course if the law does not allow it. Unfortunately, I do not think the law does allow it.

The legislation is peppered with the requirement that I be 'satisfied' of various things. Normally, a court cannot be satisfied of anything unless it is so satisfied by evidence, or the law clearly contemplates otherwise. Here, in my view the legislation does not clearly contemplate otherwise. Mr Blanchflower says that the court may have 'regard to all the relevant matters before it'. This, in my judgment, means 'all relevant matters before it' by means of evidence, or as provided for in section 5. If the legislature contemplated that a court could have regard to the section 5 statement without more, there would be no need at all for the elaborate provisions of section 5.

In the result, I find there is nothing properly before me on which I can act in this matter. The failure of section 5 to operate in this case means that there must be evidence on which I can act. It seems to me that this evidence may be by way of affidavit in support of the originating summons, but, because this is not an interlocutory matter, the affidavits may not contain hearsay evidence."

Findlay J.'s judgment was not appealed, since it was made in a criminal cause or matter, and there is no

jurisdiction for the Court of Appeal to hear an appeal from it under s.13(3) of the *High Court Ordinance, Cap. 4*.

Mr Michael Blanchflower, who again appears for the Secretary for Justice, has raised the issue with me again and after having heard his argument, I am of the view that the Secretary for Justice can rely on the s.5 statement to satisfy me of the condition in s.3(2)(c) of the *Ordinance*, as well as all the other conditions on which I must be satisfied.

My reasons are :

Before September 1995, s.5 read :

"5(1) Where -

(a) the prosecutor tenders to the High Court or the District Court, as the case may be, a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking; and

(b) the defendant accepts to any extent any allegation in the statement, the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which the acceptance relates.

(2) Where -

(a) a statement is tendered under subsection (1) (a); and

(b) the court is satisfied that a copy of that statement has been served on the defendant, the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2) he may be treated for the purposes of this section as accepting every allegation in the statement apart from -

(a) any allegation in respect of which he has complied with the requirement; and

(b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another."

In September 1995 the *Ordinance* was amended to provide, amongst other things, for the making of confiscation orders against persons who had died, or had absconded. One protection afforded to the personal representatives of a deceased person and to an absconded person, was the condition that the court must first be satisfied that a person "could have been convicted" of the drug trafficking offence in respect of which proceedings had been instituted. In particular s.3(2)(c)(iii) reads :

"...having regard to all relevant matters before it, the person could have been convicted in respect of the offence, or as the case may be, the offences concerned."

Section 5 was amended to allow the court to be satisfied of the condition in s.3(2)(c)(iii) by means of a s.5 statement. Section 5(1) reads :

"(1) Where an application is made for a confiscation order, the prosecutor may tender to the High Court or the District Court, as the case may be, a statement of matters relevant to any of the following -

- a) where s.3(1)(a)(ii) is applicable, in determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;
- b) determining whether the defendant has benefited from drug trafficking;
- c) assessing the value of the defendant's proceeds of drug trafficking."

In s.5(1) the phrase, "*a statement of matters*" parallels the introductory words in s.3(2)(c)(iii), "*having regard to all relevant matters before it*". The reason for the parallel wording is that it was intended that the s.5 statement would be either the only, or the prime source, of the matters referred to in the introductory words.

Section 5(1) must be read with O.115, r.22(2)(c) of the *Rules of the High Court*, which reads :

"(2) Any statement tendered to the Court by the Secretary for Justice under s. 5(1) shall include the following particulars, namely -

(a) ...

(b) ...

(c) ... such information known to the person who made the statement as is relevant to -

(i) where s. 3(1)(a)(ii) [that is an application for a confiscation order against a dead or absconded defendant] is applicable, the determination whether the defendant could have been convicted in respect of the drug trafficking offence or offences concerned;

(ii) the determination whether the defendant has benefited from drug trafficking;

(iii) the assessment of the value of the defendant's proceeds of drug trafficking."

There is no reference in either s.3(2)(c)(iii), s.5(1), or O.115, r.22, to "*evidence*". This must be a deliberate choice of words : to make it clear that evidence is not required to be produced to a court in order for it to be satisfied of the condition in s.3(2)(c)(iii). If it had been intended that the court had to be satisfied by way of evidence, then the introductory words to s.3(2)(c)(iii) would have read "*having regard to all relevant evidence before it*".

Other parts of s.5 support this view :

See :

"5(1B). Where any statement has been tendered under subsection (1) and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant -

(a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and

(b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely."

And :

"5(2). Where the defendant accepts to any extent any allegation in any statement tendered under subsection (1), the court may, for the purposes of -

(a) where s.3(1) (a)(ii) is applicable, determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;

(b) determining whether the defendant has benefited from drug trafficking; or

(c) assessing the value of his proceeds of drug trafficking, treat his acceptance as conclusive of the matters to which the allegation relates."

And :

"5(3). If the defendant fails in any respect to comply with a requirement under subsection (1B) he may be treated for the purposes of this section as accepting every allegation in the statement apart from -

(a) any allegation in respect of which he has complied with the requirement;

(b) where s.3(1) (a) (ii) is applicable, any allegation that he could have been convicted in respect of the offence, or as the case may be, the offences concerned;

(c) any allegation that he has benefited from drug trafficking; and

(d) any allegation that any payment or other reward was received by him in connection with drug trafficking carried on by him, or another."

And :

"Section 5(7). In any proceedings on an application made for a confiscation order where s.3(1)(a) (ii) or (7) is applicable -

(a) if the defendant has died, subsection (1B) shall have effect as if it required a copy of the statement tendered under subsection (1) to be served on the defendant's personal representative;

(b) if the defendant has absconded and s.3(2)(c)(ii)(A) or (9)(b)(i) is not applicable to him, this section shall have effect as if a copy of the statement tendered under subsection (1) had been served on the defendant."

Where an application for a confiscation order is made after a defendant has been convicted of a drug trafficking offence, the prosecution may rely upon a s.5 statement or the evidence in the trial or both for the purpose of the court determining whether the defendant benefited from drug trafficking. They may also use it for the purpose of asking the court to ascertain the value of that benefit and his proceeds from drug trafficking. In these circumstances, when the prosecutor tenders the statement to the court, a copy is served upon the defendant. And under s.5(1B) the court may require the defendant to indicate whether he accepts the allegations in the statement and if he doesn't, to give particulars of any matters on which he proposes to rely. Then, ss.5(2) and (3) come into operation.

In the case of a deceased person, under s.3(14), his personal representatives are entitled to be heard on the application for the purpose of opposing it, and to call, examine and cross-examine witnesses. In order for them to do this s.5(7)(a) requires service of the s.5 statement upon them and under s.5(1B) the court may require them

to file a reply statement. Then, ss.5(2) and (3) come into operation.

However, in the case of an absconded person whose whereabouts are unknown, there is no one upon whom a s.5 statement can be served. Here, s.5(7)(b) permits the confiscation hearing to proceed in the absence of the defendant and the provisions of "*this section*" that is s.5 to have effect.

Sub-sections 5(2) and 5(3) are inapplicable in the case of an absconded person whose whereabouts are unknown. Since he was not served with a s.5 statement and directed by the court to file a reply to it, he can not fail to comply with s.5(1B). There is no question of an implied acceptance by him of any of the allegations in the statement.

In s.5(3)(b) the reference to "*where s.3(1)(a)(ii) is applicable*" is either to a person who has died [s.3(1)(a)(ii)(A)], or a person who absconded and whose whereabouts are known [s.3(2)(c)(ii)(A)(III) and s.3(9)(a)(b)(i)]. In their cases, the court is left to determine whether they could have been convicted of a drug trafficking offence on the basis of the s.5 statement.

Although the scheme of s.5 contemplates that the statement is served upon the defendant, the purpose of s.5(7)(b) is to prevent the statement being disregarded by the court, because it was not served on him. In the case of an absconded person whose whereabouts are unknown, service of the statement is impossible and to prevent non-service being a reason for the court to reject the statement, s.5(7)(b) deems the defendant to have been served with it. It is reasonable to assume that s.5(7)(b) was designed to bring into play the provisions which operate in this case. If s.5(7)(b) was not in s.5, there would be a risk of the court disregarding the s.5 statement, because it had not been served on the defendant, notwithstanding that it was impossible to do so.

I am satisfied that in an application of this kind, where the defendant is an absconded person whose whereabouts are unknown, the provisions of sub-sections 5(1B), (1C), (2), (3), (4), (5) (in part) and (6) are irrelevant because there is no defendant present. The only relevant provisions are sub-sections 5(1), (1A) and (8).

In conclusion, I am satisfied that in the case of an absconded person whose whereabouts were not known, I may determine :

- (a) whether an absconded person could have been convicted of a drug trafficking offence
- (b) his benefit from drug trafficking
- (c) the value of his proceeds of drug trafficking,

on the basis of the contents of a s.5 statement.

In deference to Findlay J, it is, I believe, correct to say that in April 1997 Mr Blanchflower did not have the luxury of time to mount the persuasive argument he advanced to me and in consequence Findlay J. was deprived of its assistance in arriving at his conclusion.

### ***The standard of proof***

The second preliminary issue concerns the standard of proof applicable under s.3(2)(c)(iii) of the *Ordinance*, in relation to the question of my being satisfied that an absconded person could have been convicted in respect of a drug trafficking offence. As the *Ordinance* is silent on the matter, Mr Blanchflower has asked me to rule upon it.

In doing so, it is necessary to consider the :

- nature of a confiscation hearing,
- purpose of a confiscation order,
- other sections of the *Ordinance*,
- nature of application.

As to their nature, s.3(11) of the *Ordinance* provides that a confiscation hearing is a criminal proceeding and a confiscation order is part of the sentence in a criminal case.

As to their purpose, a confiscation order made in relation to a deceased or absconded person affects property belonging to that person, or the persons holding it. The legislature's intention behind s.3(2)(c)(iii) is to ensure that a confiscation order is only made in a case where the court is satisfied that had the person not died or absconded, a confiscation order could have been made against him.

Other sections of the *Ordinance* expressly specify the standard of proof : s.3(12) provides that the applicable standard when determining : (a) whether a person has benefited from drug trafficking, or (b) the amount to be recovered, is on a balance of probabilities. Similarly in s.24D which relates to the forfeiture of seized property if a court is satisfied that the property (a) represents any person's proceeds of drug trafficking, (b) has been used in drug trafficking, or (c) is intended for use in drug trafficking subsection (4) provides that the standard of proof is on a balance of probabilities.

As to the nature of the application, a number of factors distinguish proceedings for an application for a confiscation order against an absconded person, from a criminal trial or a contested committal hearing.

In a criminal trial :

- The defendant is present.
- It is an adversarial process in which witnesses are examined and cross-examined.
- Common law and statutory rules of evidence apply.
- The prosecution must prove their case beyond a reasonable doubt.
- If convicted the defendant is at risk of being imprisoned.

In a contested committal hearing :

- The defendant is present.
- It is an adversarial process in which witnesses are examined and cross-examined.
- Common law and statutory rules of evidence apply.
- The prosecution must adduce evidence which establishes a *prima facie* case.
- If committed for trial, the defendant is at risk of being convicted of the offence.

In contrast, in an application for a confiscation order against an absconded person :



- The court must have regard to "relevant matters". The *Ordinance* deliberately uses the words "relevant matters", not "evidence".
- The relevant matters are intended to be contained in a s.5 statement. The *Ordinance*, therefore, expects the court to receive written submissions and not hear witnesses, assess credibility, weigh evidence, or rule upon the admissibility of evidence.
- Under s.3(2) (c) the court must be "satisfied" of other matters. For example : that the person has absconded, and if the person's whereabouts are known, that reasonable steps have been taken to secure his return.
- Under s.3(13) a finding that a person could have been convicted of the offence is not admissible in any proceedings for the offence.
- If the absconded person returns to Hong Kong he can be prosecuted for the drug trafficking offence which was the subject of the application for the confiscation order, see : s.27(1). A previous finding by a court under s.3(2)(c)(iii) is not a bar to prosecution.

In an application against a deceased or absconded person, there are four possible standards of proof :

- beyond reasonable doubt.
- balance of probabilities.
- a *prima facie* case.
- judicial standard.

### ***Beyond reasonable doubt***

I am satisfied that the legislature did not intend that I must be satisfied beyond a reasonable doubt that the absconded person could have been convicted of the offence, for these reasons :

- In applications of this kind there is no other person present in the proceedings, neither is their liberty at stake.
- The *Ordinance* neither impliedly, or expressly, requires a witness to give oral evidence at the hearing of the application. This is in contrast to a criminal trial, where the trier of fact must observe the demeanour of witnesses and assesses their credibility.
- In a criminal trial, only admissible evidence is received. In a confiscation hearing, hearsay evidence is admissible. In *R. v. Lum Wai Ming* H.C. No. 75 of 1991 (unreported) Deputy Judge Burrell (as he then was) said, at p.4 :

"The enquiry is not governed by strict application of rules of evidence. Matters may be taken into account which might be inadmissible in a criminal trial if, in the view of the court, they are of assistance in the enquiry, provided they are admitted within the scope of Cap. 405 and considered judicially."

- Order 115 r.22(2)(c) of the *Rules of the High Court* provides that :

"Any statement tendered to the High Court by the Secretary for Justice under section 5(1) should include the following particulars, namely - (*inter alia*)

(a)...

(b)....

(c) such information known to the person who made the statement as is relevant to -

...

(iii) where section 3(1)(a)(ii) is applicable, the determination whether the defendant could have been convicted in respect of the drug trafficking offence or offences concerned; "

In O.115 r.22 the word "information", not "evidence", is used, indicating that information which would be inadmissible in a criminal trial may be admitted and considered in these applications.

By contrast, in *R. v. Tam Kit Nim* [1982] HKC 40, O'Connor J, in obiter interpreted the word "satisfied" in s.45(1)(a)(iii) of the *Mental Health Ordinance*, Cap 136 [which empowers a magistrate to commit a mentally disordered person to a psychiatric centre, where the person is charged before a magistrate with an act or omission as an offence punishable on summary conviction by imprisonment and the magistrate is satisfied that such person did the act or omission] to mean satisfied beyond reasonable doubt. He said at p.42 A-B

"...a detention order under s.45 disposes of the charge once and for all. It would have the same effect as a conviction or acquittal, in so far as the possibility of further proceedings are concerned. The detention order may be for any period not exceeding the length of sentence which could have been imposed following a conviction. From a consideration of those factors, it would appear that the order is not an interlocutory order, but is one aimed at the final determination of criminal proceedings in a manner resulting in incarceration of the defendant. One would expect that the standard of proof required would be the standard in criminal cases and that the rules of evidence would apply."

I am satisfied that these applications are distinguishable from a mental health order applications, because :

- there is no final determination,
- a person's liberty is not at stake,
- the rules of evidence do not apply.

### ***Balance of probabilities***

As to the standard of proof of a balance of probabilities : in the earlier proceedings before Findlay J. it was accepted, without argument, by both judge and counsel, that this was the applicable standard. This standard means that evidence is weighed to see whether it is more likely than not, that the issue to be decided has been proved. In these applications, where the defendant has absconded and his whereabouts are not known, there is only one party before the court and it cannot weigh a defendant's case to see whether it is more likely than not that he committed the offence.

Where the *Ordinance* intends the standard of proof of a balance of probabilities to apply, it expressly provides so. For example, when the court is asked to determine whether a person benefited from drug trafficking [s.3(3)],

or the amount to be recovered [s.3(5)], the standard of proof is stated to be a balance of probabilities, see : s.3(12). Likewise, in other provisions in the Ordinance, it is expressly provided that the word "satisfied" requires a standard of proof of a balance of probabilities. For example, when the court is asked to make a forfeiture order of property related to drug trafficking under s.24(D), it must be satisfied of the tainted source of the property on a balance of probabilities, see : s.24(D)(4). However, in these forfeiture proceedings there are two parties to the proceedings the Secretary for Justice and the person from whom the property was seized or a person who has an interest in the property this is not the case here.

### ***Prima facie case***

As to the standard of a *prima facie* case : in Murray v. Director of Public Prosecutions [1994] 99 CAR 396 (HL), Lord Mustill defined a "*prima facie* case" in these terms, at p.399 :

"...it seems to me, therefore, that the expression 'a *prima facie* case' was intended to denote a case which is strong enough to go to a jury i.e. a case consisting of direct evidence which, if believed and combined with legitimate inferences based upon it, could lead a properly directed jury to be satisfied beyond reasonable doubt (or whatever formula is preferred) that each of the essential elements of the offence is proved."

In R. v. Alick Au Shui Yuen [1993] 2 HKC 219, the Court of Appeal decided that a *prima facie* test applied in deciding whether the words and acts of the appellant's co-conspirators were admissible against him, on the basis that those words and acts were in furtherance of the conspiracy. They rejected the standard of balance of probabilities, Sir T.L. Yang C.J. saying at p.226 E :

"This is a concept normally associated with the final determination of a case, after weighing (on balance) both the evidence for one party and that for the other. '*Prima facie* case' seems to us to be preferable because it does not imply a final determination. It is also preferable to 'reasonable evidence' because it is precise and readily understood and applicable."

In this application there is no final determination of any one's guilt. The proceedings were instituted against Lee Chau Ping and Tam Wai Hung when magistrates issued warrants for their arrest, however, there are no charges in an indictment for them to plead to.

In hearing this application I am asked to conduct an inquiry : I have to be satisfied whether or not the absconded defendant could have been convicted of a drug trafficking offence. My role, in some respects, is similar to the role I have in determining applications by a defendant under s.16 of the *Criminal Procedure Ordinance, Cap. 221*, for his discharge on the basis that the evidence disclosed in the documents handed to the Court under s.80(1) of the *Magistrates Ordinance, Cap. 227*, is insufficient to establish a *prima facie* case against him. But, with this difference, in this application, the relevant matters I will consider are not evidence and there is no other party to the proceedings from whom I can hear representations.

### ***Judicial standard***

Instead of identifying a particular known standard, the fourth alternative is for me to adopt a judicial standard. That is : can I be satisfied, or can I make up my mind, upon the material presented in the s.5 statement, that Lee Chau Ping and Tam Wai Hung, could have been convicted of a drug trafficking offence? It would be dangerous for me to do this, because there are no known bounds to that approach.

I was initially of the view that the standard I should apply is that of a *prima facie* case. As Sir T.L. Yang C.J. said in Alick Au Shui Yuen, that standard is "*precise and readily understood*". However, that standard is usually applied in applications where the consequence of a finding adverse to the defendant is that he is compelled to go

on to a further stage in the judicial process. For example, committal for trial in the Court of First Instance after a preliminary hearing before a magistrate.

Here, although there is no question of Lee Chau Ping and Tam Wai Hung being found guilty of a drug trafficking offence, the consequence of my finding that they could have been found guilty the s.3(2)(c)(iii) test is that I will make an order confiscating their identified assets. This is a considerable penalty and I had reservations about applying a standard of proof commonly associated with preliminary issues to a matter, which has such weighty consequences.

### ***Conclusion***

At the preliminary hearing on October 1998, Mr Blanchflower argued that it was consistent with the scheme of the *Ordinance* for the standard to be the balance of probabilities. In the absence of clearer guidance, I agreed, but not without the reservations expressed above. I therefore accept that as being the standard applicable to the question of my being satisfied that Lee Chau Ping and Tam Wai Hung could have been convicted in respect of a drug trafficking offence at the hearing of the substantive application.

### ***The standing of third parties***

I turn to the third preliminary issue. As I have said, under s.3(1)(a)(ii) and s.3(1)(b), an application for a confiscation order may be made against a deceased or absconding person. In the case of a deceased person, under s.3(14), the personal representatives of the deceased are entitled to be heard on the application and to call, examine and cross-examine any witness for the purposes of opposing the application. In the case of an absconding person there is no specific provision governing the representation for, or on behalf of, the absconding person. Section 5(7)(b), already quoted, suggests that there is no such representation. Since the s.5 statement is deemed to be served on the defendant, the Secretary for Justice can proceed with the application without the absconding person or his representatives being present

In these applications, if I make the confiscation orders sought, then the certificates made pursuant to s.6(2) will contain particulars of Lee Chau Ping and Tam Wai Hung's property that may be realised to satisfy the confiscation orders.

Since third parties appear to have an interest in some of Lee Chau Ping and Tam Wai Hung's property, and gifts or dispositions were made by Lee Chau Ping to third parties, the former Attorney General in February 1997 notified the following third parties of the April 1997 hearing before Findlay J. and the fact that property in which they appear to have an interest may be included in a certificate made under s.6(2).

1. Cheuk Tak Wah - Lee Chau Ping's husband.
2. Hui Hoi Wah - a so called 'office assistant' formerly employed by Lee and Tam.
3. Luk Soo Ngor - Lee Chau Ping's mother.
4. Kenneth Morrison - The court appointed receiver of Lee and Tam's property.

On 11 March 1997 Mr Morrison notified the Attorney General that he did not intend to make any representations to the Court.

In his judgment of 25 April 1997 at p.22 A-J, Findlay J. commented upon the standing of third parties in the applications, as follows :

"From an abundance of caution, in February 1997, notice of these proceedings was given to Mr Cheuk Tak-wah, the husband of the first respondent, Madame Hui Hoi-wah, a business associate of both respondents, Madame Luk Soo-ngor, the mother of the first respondent, and the court appointed receiver of the property of both respondents. Mr Lee Wai-kwong, a brother of the first respondent, appeared at the request of Madame Luk Soo-ngor and Mr Cheuk Tak-wah, but they did not wish to make representations; just to be told the outcome of the proceedings. Madame Hui Hoi-wah appeared by Mr. Paul Leung of counsel, but he agreed that his client had no standing in these proceedings. That, to me, appears to be the Position; that only the respondents, or the personal representatives of a deceased defendant, have standing to be heard in proceedings for a confiscation order. It may be, as in this case, that other persons claim an interest in property said to have been derived or realised from payments received in connection with drug trafficking, but they have the opportunity of being heard when the Attorney General takes steps to realise the property under section 12."

I respectfully agree with Findlay J., third parties have no standing in an application by the Secretary for Justice for a confiscation order against an absconding person. They cannot make representations on the conditions of making a confiscation order; for example, whether Lee Chau Ping and Tam Wai Hung could have been convicted of drug trafficking offences, or whether they benefited from drug trafficking and, if they did, the amount of their benefit. If confiscation orders are made against Lee Chau Ping and Tam Wai Hung, then an application under s.12 is made to the Court of First Instance for an order appointing a receiver to realise their property and pay the realised amounts to the Registrar of the High Court. Under s.12(8) the Court must not exercise this power unless a reasonable opportunity has been given to persons holding any interest in the property to make representations to the Court. That is the subsection, which protects third parties' interests in Lee Chau Ping, and Tam Wai Hung's property.

### ***The substantive application***

I turn now to the substantive application.

To recap, in applications against absconding persons, such as Lee Chau Ping and Tam Wai Hung are said to be, the conditions on which I must be satisfied are :

- (1) That the application is made by the Secretary for Justice [s.3(1)(b)].
- (2) Proceedings for one or more drug trafficking offences have been instituted against them [s.3(1)(a)(ii)].
- (3) Those proceedings have not been concluded [s.3(1)(a)(ii)].
- (4) They have absconded [s.3(1)(a)(ii)(B)].
- (5) Six months have elapsed from the date they absconded [s.3(2)(c)(i)].
- (6) Their exact whereabouts are not known and reasonable steps have been taken to give them notice of the proceedings [s.3(2)(c)(ii)(B)].
- (7) They could have been convicted of a drug trafficking offence or offences [s.3(2)(c)(iii)].
- (8) They benefited from drug trafficking [s.3(3)].

If items (1) to (8) are satisfied, then I have to determine :

(A) The value of their benefit [ss.3(5), 5, & 6(1)].

(B) The amounts of the confiscation orders [s.3(6)].

(C) The amounts that might be realised for the purposes of the making of the certificates [s.6(2)].

In *R. v. Ko Chi Yuen* [1993] 2 HKCLR 101 at p.104, Leonard J. suggested how the s.5 statement should be drafted, he said :

"In my view, a s.5 statement should be drafted in the same way as a Notice to Admit Facts. The prosecution should set out clearly and simply in a series of numbered paragraphs the allegations of fact upon which it relies. There should be no recital of hearsay or expression of opinion. Schedules and annexures, such as bank statements may be incorporated by reference."

Leonard J.'s views were made before the 1995 amendments permitting a confiscation order to be made against dead or absconding persons. In such cases, the conditions that must be satisfied, i.e. the person has absconded or the person could have been convicted of a drug trafficking offence, must, by necessity, be put forward in hearsay form.

In these applications the Secretary for Justice has filed and relies on the s.5 statement of Detective Senior Inspector Tse Leung Wah, dated 14 October 1998. I have also heard oral evidence from :

(1) Lee Wai Kwong, Lee Chau Ping's brother.

(2) Tsang Pui Sheung, Tam Wai Hung's estranged wife.

(3) Yu Yem Kin.

(4) Senior Inspector Ho Tze Ming, of the Hong Kong Police Force.

(5) Sgt. Thomas Hansen, of the Royal Canadian Mounted Police.

(6) Chief Inspector Cheung Yui Mo, of the Hong Kong Police Force.

(7) Mark Bowra a Certified Public Accountant with the Forensic Accounting Division of Messrs Peat Marwick, Certified Public Accountants in Hong Kong.

***That the application is made by the Secretary for Justice***

As to the first condition, I am satisfied that the application is made by the Secretary for Justice. Order 115, r.2A of the Rules of the High Court provides for the Secretary for Justice to make an application by way of originating summons for a confiscation order under s.3 where the person has died or absconded. An ex-parte originating summons in these applications was filed in the High Court by the former Attorney General on 23 December 1996.

***That proceedings for a drug trafficking offence have been commenced against the defendants***

As to the second condition, s.2(1) of the *Ordinance* defines a "drug trafficking offence" to mean :

"(a) any of the offences specified in Schedule 1;

(b) conspiracy to commit any of those offences;

.....

(e) aiding, abetting, counseling or procuring the commission of any of those offences."

Section 2(11) defines when proceedings for an offence have been instituted in Hong Kong. It includes under s.2(11)(a), when a magistrate issues a warrant or summons under s.72 of the *Magistrates Ordinance* in respect of the offence.

Warrants for Lee Chau Ping's arrest were issued on 30 September 1992, containing two counts (Exhibit 5) and 11 December 1992, containing 20 counts (Exhibit 6) alleging that she committed offences of conspiracy to manufacture a dangerous drug, conspiracy to traffic in a dangerous drug, and trafficking in a dangerous drug. A warrant for Tam Wai Hung's arrest was issued on 14 November 1992 (Exhibit 7) alleging that he committed an offence of conspiracy to manufacture a dangerous drug and an offence of conspiracy to traffic in a dangerous drug. These are all drug trafficking offences listed in Schedule 1 of the *Ordinance*. I am satisfied that the second condition has been proved.

***That the proceedings against the defendants have not concluded***

As to the third condition, s.2(12A) defines when proceedings have concluded in respect of persons who have absconded

"An application for a confiscation order made in respect of a defendant where section 3(1)(a) (ii) or (7) [defendant dies or absconds after conviction] is applicable is concluded -

(a) if the High Court (now the Court of First Instance of the High Court) or the District Court decides not to make such an order, when it makes that decision; or

(b) if such an order is made as a result of that application, when the order is satisfied."

No order has yet been made by the Court of First Instance and I am satisfied that the proceedings have not been concluded.

Section 3(15) permits the 1995 amendments to operate against persons who absconded before 1 September 1995. It reads :

"(15) Where -

(a) before the commencement of the *Drug Trafficking (Recovery of Proceeds) (Amendment) Ordinance 1995*, proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded because that person has absconded; and

(b) immediately before that commencement, any realizable property of that person is the subject of a charging order or restraint order,

- then the provisions of this *Ordinance* as amended by that *Ordinance* shall apply in relation to that person ..."

I am satisfied that the s.3(15) conditions are proved. Proceedings against Lee Chau Ping and Tam Wai Hung were instituted by the issue of the warrants for their arrest. They have not concluded, because they absconded. On 29 September 1992 the High Court made an ex-parte restraint order in respect of their realizable property

and on 9 October 1992 an inter partes restraint order was made. On 22 October 1992 an ex-parte restraint order was made against Gooders Trading Ltd. and on 4 November 1992 an inter partes restraint order was made against Gooders Trading Ltd. None of the restraint orders have been discharged. On 15 March 1994 an order was made appointing receivers to manage the property covered by the restraint orders.

***That the defendants have absconded***

As to the fourth condition, s.2(1) defines "absconded" as follows :

"absconded', in relation to a person, includes absconded for any reason whatsoever, and whether or not, before absconding, the person had been -

(a) taken into custody; or

(b) released on bail."

Here, the following facts are relevant. Lai Chi Ming ("Ming Ming") who helped with the first ice factory in Jiangmen was arrested in the mainland on 19 May 1992. On 9 September 1992 Wong Moon Chi's residence was searched.

Chief Inspector Cheng testified that Yu Yem Kin's flat at Grandeur Villa was searched on 14 September 1992. A man, Yu Wing Kwong, who was wanted in a murder case in the USA, was arrested and several women were taken in for questioning. The search was reported in the newspapers. Newspaper articles that refer to this search were found in Lee Chau Ping's house in Vancouver. [*Exhibit 27/B/494-501*]

Yu Yem Kin was arrested on 21 September 1992. On 21 September in Vancouver, that is 22 September in Hong Kong, a Hong Kong lawyer told Lee Chau Ping that Yu had been arrested. [*s.5 statement, p.58, para.244*]

On 28 September 1992 Tam Wai Hung called Au Keung Wah, and said that he was in trouble and had to leave Hong Kong. [*s.5 statement, p.57, para.240*] He has not been heard of since.

On 29 September 1992, when the Royal Canadian Mounted Police searched her residence in Vancouver, Lee Chau Ping knew that she was wanted by the Hong Kong Police and was suspected of committing offences in Canada. She has not been heard of since 10 October 1992 when Hui Hoi Wah saw her in Thailand.

I am satisfied that the evidence shows that Lee Chau Ping and Tam Wai Hung absconded in September - October 1992. A strong inference may be drawn that they absconded because they knew that other members of their ice manufacturing and trafficking syndicate had been arrested in Hong Kong and the mainland, and that their arrests were imminent.

***That the defendants have absconded for not less than six months***

As to the fifth condition, under s.3(2)(c)(i), I must be satisfied that the defendants absconded and that not less than six months have elapsed beginning with the date, which in my opinion, is the date on which they did so. I am satisfied that more than six months have elapsed since Lee Chau Ping and Tam Wai Hung absconded in September - October 1992.

That the exact whereabouts of the defendants are not known and reasonable steps have been taken to give them notice of the proceedings

As to the sixth condition, s.3(2)(c)(ii)(B) provides that, if a person's exact whereabouts are not known, then



reasonable steps must have been taken to give him notice of "those proceedings". In his judgment, Findlay J., at p.3 D-F, observed that the phrase "those proceedings" appears to refer to the proceedings for the prosecution of a drug trafficking offence, not the proceedings for an application for a confiscation order.

Lee Chau Ping's brother, Lee Wai Kwong, does not know where she is and Tam Wai Hung's estranged wife, Tsang Pui Sheung, does not know where he is.

Evidence of the steps taken to notify Lee Chau Ping and Tam Wai Hung of the proceedings was given by Chief Inspector Cheng Yiu Mo, Senior Inspector Ho Tze Ming of the Hong Kong Police Force and Sgt. Tom Hansen of the Royal Canadian Mounted Police. It includes the facts that :

- Warrants for their arrest have been issued.
- Lee Chau Ping is the subject of an Interpol Red Notice.
- Both are on the "wanted" list of the Criminal Record Bureau.
- Both are on the Immigration Department's "stop" list.
- The Immigration Department's movement records do not show that they have entered Hong Kong in recent years.
- Repeated unsuccessful enquiries have been made of their family members as to their whereabouts.
- The Narcotics Bureau have requested assistance to locate them from the Public Security Bureau in the mainland, The Royal Thai Police, The Royal Canadian Mounted Police, the United States Drugs Enforcement Agency office in Bangkok and the Investigation Bureau of the Taiwanese Ministry of Justice.

Sgt. Hansen's statement, at para.11, which he read out to me, lists the exhaustive efforts of the Royal Canadian Mounted Police to arrest Lee Chau Ping.

I am satisfied that Lee Chau Ping and Tam Wai Hung's exact whereabouts are not known and that reasonable steps have been taken to notify them of the criminal proceedings instituted against them.

### ***That the defendants could have been convicted of drug trafficking offences***

As to the seventh condition; I have already ruled that the applicable standard of proof in relation to this issue is the civil standard of a balance of probabilities.

### ***Summary***

The following is a summary of the evidence put before me on this issue :

Yu Yem Kin said he first met Lee Chau Ping in 1978. He identified her photograph. She then worked in the medical clinic of a Dr Yu Hung Kei.

In 1982, in Japan, Yu was convicted of trafficking in ice and sentenced to five years' imprisonment. While in prison he met a Taiwanese prisoner who gave him a detailed hand written formula for making ice [Exhibit 35]. After serving his sentence he returned to Hong Kong and met Lee Chau Ping again.

## PNK Development Ltd.

At the end of 1988, Au Keung Wah (a friend of Lee Chau Ping) introduced Tam Wai Hung to Hui Hoi Wah. Lee Chau Ping was present at the introduction. They agreed to set up a business to purchase cloth in China and sell it in Hong Kong. PNK Development Ltd. was incorporated on 22 November 1988 and commenced business on 12 December 1988. PNK's directors were: Tam Wai Hung, Hui Hoi Wah, Au Keung Wah and Cheuk Tak Wah (Lee Chau Ping's husband). Yu said that PNK's directors were all friends or relatives of Lee Chau Ping. Its first three employees were Tam Wai Hung, Hui Hoi Wah, and a receptionist. PNK only did two or three small transactions in cloth and after June 1989 this side of the business ceased.

On 30 November 1988 Lee Chau Ping bought premises at 11th floor, Good Dragon Building, Ki Lung Street, Sham Shui Po, in the name of Newpark Development Ltd., another company she owned. PNK moved into the premises in April 1989.

Lee Chau Ping paid PNK's expenses and the employees' salaries. She made all decisions relating to PNK. Lee Chau Ping and Tam Wai Hung made deposits in PNK's bank account. Lee Chau Ping treated PNK's bank accounts as her own.

In June 1991 Cheung Wing Yan, was hired as a clerk. It was her impression that PNK was a trading company; Tam Wai Hung was the director; and Hui Hoi Wah the manager. When Lee Chau Ping and Yu Yem Kin came to the company they spoke with Tam Wai Hung and Hui. Cheung issued PNK's cheques upon Hui's instructions. The cheques were signed by Tam Wai Hung and Hui.

Yu Yem Kin identified photographs of different equipment and materials found in factories in China, and said that they were purchased by PNK.

On two occasions, 26 October 1989 and 23 August 1990, Lee Chau Ping asked Hui to order silica gel from Leon Trading Company in Castle Peak, Kowloon. Silica gel is used to extract humidity from goods in order to keep them dry. On another occasion Lee Chau Ping asked Hui and Tam Wai Hung to purchase silica gel from a supermarket. Lee Chau Ping paid for the gel. It was taken to PNK's offices and later removed. Yu Yem Kin said that silica gel was packed with the manufactured ice.

Lee Chau Ping asked Hui to order vacuum pumps from Hong Kong Scientific Supplies Ltd. The pumps were delivered to PNK's offices, then they disappeared. Hui never saw any documents relating to the sale of these goods by PNK.

Sometime after June 1989 Lee Chau Ping came to PNK's offices with samples of palladium chloride, funnels and raw silk and asked Hui to look for them.

Hui, instructed Cheung Wing Yan, to order pumps, goggles and funnels from Hong Kong Scientific Company. Hui said they were to be sent to China.

Lee Chau Ping asked Hui to look for palladium chloride in Hong Kong. Hui found that Johnson Matthey Hong Kong Ltd. supplied it, and placed orders for it with them. Between September 1989 to August 1992 Johnson Matthey supplied PNK with 110 kilogrammes of palladium chloride. It came in 100 gram plastic bottles each with a Johnson Matthey label. If the quantity ordered was small, Hui would collect the order; if it was large it would be delivered to PNK's offices. Lee Chau Ping asked PNK employees including Hui to divide it into 50 gram or 25 gram bottles. The palladium chloride was placed in a safe to which Tam Wai Hung and Hui had access.

On 28 April 1992 PNK ordered 45 kilogrammes of palladium chloride from Johnson Matthey. PNK paid for the

order. Hui, collected 15 kilogrammes in May 1992 and 5 kilogrammes in July 1992; the balance of 15 kilogrammes was not collected.

Hui said she never saw any documentation relating to the sale of palladium chloride by PNK. Neither did she see anybody take the palladium chloride from PNK's office.

Yu Yem Kin said that during the manufacture of ice, 50 gm and 25 gm of palladium chloride were added to 10 kilogrammes and 5 kilogrammes of ephedrine.

Bottles of palladium chloride sold by Johnson Matthey are shown in photograph no. 36 of Exhibit 13 of the photographs taken of the equipment and material in the Jiangmen factory.

Chan Man Fai, a Government Chemist, said that palladium chloride is used with hydrochloric acid as a catalyst in the manufacture of ice. Twenty grammes of palladium chloride is needed to make one kilogramme of methylamphetamine (ice).

In early 1990 Lee Chau Ping introduced Hui to Chui Lap Man of the Kou Hing Hong Scientific Supplies Ltd. in Hong Kong. From late 1989 to mid-1992, Kou Hing Hong Scientific Supplies Ltd. supplied PNK with funnels, rubber stoppers, face masks, plastic goggles, filters, test papers and vacuum pumps. The goods were ordered by Hui and delivered to PNK's office. Lee Chau Ping arranged for payment for these goods. There are no records of sales of these goods by PNK.

Vacuum pumps and test papers sold on 4 March 1992 by Kou Hing Hong Scientific Supplies Ltd are shown in photographs 31 and 35 of the photographs of the Jiangmen factory. Yu Yem Kin identified the test papers shown in the photographs.

Plastic stoppers sold on 30 March 1992 by Kou Hing Hong Scientific Supplies Ltd. are shown in photograph 30 of the photographs of the Jiangmen factory.

Porcelain funnels sold on 21 May 1992 by Kou Hing Hong Scientific Supplies Ltd. are shown in photograph 31 of the photographs of the Jiangmen factory.

Cheung Wing Yan saw Tam Wai Hung help to move pumps, goggles and funnels purchased from Hong Kong Scientific Supplies Ltd. and Kou Hing Hong Scientific Supplies Ltd. from PNK's offices.

### ***The ice factories***

Yu said that in 1988 he found the formula for manufacturing ice [Exhibit 31] which had been given to him by the Taiwanese prisoner in Japan. He asked Lee Chau Ping if she was interested in the formula. She said she was, and Yu gave the formula to her.

In 1988 Yu met his friend, Wat Tan, and Lee Chau Ping at the Ramada Hotel, Wan Chai, Hong Kong. Lee Chau Ping and Wat Tan talked about manufacturing ice. After Lee Chau Ping asked Yu if he was interested in the ice business. He said he was not, but then Lee Chau Ping said she would do it herself and Yu asked for a one third share.

### ***At Jiangmen***

Yu said that Lee Chau Ping decided to find a place in the mainland to manufacture ice. Lee Chau Ping was responsible for locating this; Lai Chi Ming ("Ming Ming") assisted her. They found a factory at Jiangmen.

Ming Ming employed the workers for the factory. They were friends of his and natives of Jiangmen.

Ming Ming had connections with the Jiangmen Medicine Factory. He was responsible for purchasing the materials for manufacturing ice, such as ephedrine, palladium chloride, and sodium hydroxide.

At first, the factory was unsuccessful. Yu said that once the Jiangmen factory was successfully producing ice Lee Chau Ping spoke to him about running the business and sharing the profits. Lee Chau Ping was to find customers and receive 66.6% of the profits, she agreed to give him 33.3% of profits, after deducting expenses

Tam Wai Hung helped her. He received and delivered the ice in Hong Kong. Yu identified Tam's photograph.

Most of the materials and equipment for the factory at Jiangmen were purchased in the mainland. It produced about 1400-1500 kg of ice. Yu received about HK\$10,000,000 from the sale of this ice. Lee Chau Ping's 66.6% share of the profit from the Jiangmen factory would have been about \$20,000,000.

### ***At Shilong***

Yu said that Lee Chau Ping spoke to him about problems at the Jiangmen factory. It was very smoky which aroused suspicion, and Ming Ming had secretly sold some of the ice. Lee Chau Ping wanted to get rid of Ming Ming, and she asked Yu to move the factory to another place. She also asked Chan Wai Tong (nicknamed "Li Chai"), Wong Moon Chi and Wong Pui to help. Yu said it was Wong Moon Chi who found the factory in Shilong.

Chan Wai Tong arranged for the equipment and one ton of chemicals to be moved from the Jiangmen factory to Shilong. The factory was set up in about July-August 1991. Lee Chau Ping taught the workers how to make ice. Yu said Lee Chau Ping and he visited the factory about 3-4 times. Later he took over running the Shilong factory, including buying equipment and materials. There were difficulties in obtaining suitable equipment and materials in China. Lee Chau Ping purchased them in Hong Kong in PNK's name.

Yu arranged for his friend, Chiu Man Song, to smuggle the ice from Shilong to Sha Tau Kok and hand it over to NG Man Shing. He smuggled it to Hong Kong, where it was handed to Tam Wai Hung. Yu had a buyer, Lam Kwok Chan. At first, Lam placed orders for ice with Yu, later, he approached Tam Wai Hung directly. He bought about 500-600 kilogrammes of ice and paid Tam Wai Hung in cash. If Lam placed an order for more than 30 kilogrammes of ice, Tam Wai Hung would notify Yu. Later, Lee Chau Ping asked Lam to carry ice to the Philippines to hand it to her buyer there. He was paid \$7,000 per kilogramme for doing this.

Yu said that the Shilong factory produced about 500 kg of ice in the first one or two months of operation, Lee Chau Ping and he shared the profits equally. They agreed to give 3% of the ice to Wong Pui, 3% to another and 6% to Chan Wai Tong. After paying expenses, he earned about \$2,000,000 from the sale of his share of the ice made at Shilong. Lee Chau Ping's share of the profits would have been about \$4,000,000.

### ***At Taixu***

Yu then had a disagreement over money with Chan Wai Tong, he told Lee Chau Ping that she should look for another factory.

Yu said that Chiu Man Song suggested going to his home town in Taixu, Fuzhou. Chiu found a place in Taixu, and the factory in Shilong was closed. Chiu employed the workers at the factory and Lee Chau Ping taught them how to make ice. Once it was operational, Lee Chau-ping purchased one ton of materials from Ming Ming. The factory produced about 500 kg of ice from these.

Lee Chau Ping and Yau Cho Yick were responsible for transporting the ice from the factory by boat.

Chiu Man Song and another worker at the factory, Yu Chin Pang, received 15% of ice made at Taixu. Yu said he and Lee Chau Ping shared the profits equally, he got about \$3,000,000, her share would also have been about \$3,000,000.

Yu said that subsequently, "Siu-Ko", the officer-in-charge of Public Security Bureau office in Taixu changed, and there were complaints about the smell from the factory.

### ***At Longmen Village***

Chiu Man Song suggested moving the factory to a factory in Changle, Xian. He and "Siu-Ko" were from that village. Yu inspected the place and asked Chiu to build the factory. The equipment from the Taixu factory was moved to Longmen.

Lee Chau Ping came to the factory and taught the workers how to manufacture ice. At first, they were unsuccessful and there was a lot of smoke. Lee Chau Ping asked her friend, Yung So Chat, ("Ah Kwok"), a Thai, for technical assistance. This worked and the factory made 1000 kg of ice from about two tons of raw material. Public Security Bureau officers found about 300 kilogrammes of this when they raided the factory. About 700 kilogrammes of ice was sold.

Yu and Lee Chau Ping were to have shared the profits equally, but Yu didn't receive his share because he was arrested in September 1992. Yu estimated that Lee Chau Ping's net profit from the ice sold to be about \$10,000,000.

### ***At Zhanggang***

During the time ice was being made at Longmen Village, Yu set up another ice factory in Zhanggang in a former salt factory. He said this factory only made ice up to the first stage of the manufacturing process.

### ***The involvement of Chiu Pak Wing***

Chiu Pak Wing had been a drug trafficker since 1988. He transported ice from Hong Kong to the Philippines for sale there.

In November 1989 he was introduced to Peter Chan ("Chan"). They gambled together and Chan borrowed money from Chiu. Chan told Chiu that he had a friend, "Ah Chi", in Hong Kong who could repay the money owed and supply him with ice.

In December 1989, after Chiu returned to Hong Kong, Wong Moon Chi, also known as "Ah Chi", called him and said he was Chan's friend. They met at the '123 Restaurant' in Mongkok. Chiu asked for repayment of the money Chan owed him; Wong said he would be repaid. Chiu told Wong he could sell 30 to 40 kilogrammes of ice in the Philippines every month. Wong said his syndicate could supply it and his boss "Ah Che" would talk to Chiu. When Chiu returned home at midnight Wong called him and told him to go to the Pok Hong Restaurant, Shatin, that day. Chiu went to the restaurant and met Wong who took him to a table where Lee Chau Ping and a man were seated. She was introduced to Chiu as "Ah Che" and gave Chiu the money Chan owed him. He told her that he needed 30 to 40 kilogrammes of ice a month, but the price had to be low and the ice of good quality. Lee Chau Ping said that she could meet his needs as she had a factory in China. She said she transported "goods" to the Philippines and Japan and buyers found her ice was good. She said she could supply any quantity of ice at HK\$29,000 per kilogramme.

## Charges 1 and 2 warrant dated 11 December 1992.

About two days later Chiu picked up about 30 grammes of ice from Wong as a sample given by Lee Chau Ping. He took it home, tested it and found it to be good quality ice. He confirmed this with Wong and said he would order an initial 10 kilogrammes.

### *Charges 3 and 4*

In mid-January 1990 Chiu met Wong to discuss the first order. They drove to the Chuk Yuen Estate with an unknown man. He left the car and returned with a bag that he put in the boot of Chiu's car. Chiu examined the ice inside the bag and handed HK\$290,000 to Wong. Packed within the 10 kilogrammes of ice were paper bags of silica gel. Chiu took the ice to the Philippines in a karaoke machine and handed it to P.K. Yuen.

### *Charges 5 and 6*

In March 1990 Chiu placed a second order for 10 kilogrammes of ice with Ah Chi. Chiu parked his car in Middle Road Carpark, Tsimshatsui, and gave the parking permit, the car key and HK\$290,000 to Ah Chi. The next day Ah Chi called Chiu and told him where his car was. He went there, inside the car's boot he found a bag containing ice. He took the ice to the Philippines and gave it to P.K. Yuen.

After this transaction, there was a period of six months during which Chiu had no transactions with Ah Chi.

### *Charges 7 and 8*

In October 1990 Chiu telephoned Wong to arrange a third order of 10 kilogrammes of ice for HK\$290,000. Chiu parked his car in the Energy Plaza Car Park and handed Wong the keys and \$290,000. The next day Wong called and told him to pick up his car at the Middle Road Car Park. Chiu took the ice to the Philippines in a karaoke machine and gave it to P.K. Yuen.

### *Charges 9 and 10*

In October 1990, shortly after the third order, Chiu called Wong and asked for more ice. He met Wong at the Energy Plaza and gave him HK\$290,000 and the car keys. The next morning Wong called and said that the car was at Middle Road Car Park. Inside the boot of the car was a black bag with 10 packets of ice. Chiu hid the ice in a karaoke machine and took it to the Philippines where he gave it to P.K. Yuen.

### *Charges 11 and 12*

In late October 1990 Chiu phoned Wong to place a fifth order of 10 kilogrammes of ice. Wong did not answer the call and Chiu left a message. Later, Lee Chau Ping called Chiu and said that she would deal with this transaction as Wong was not in Hong Kong. At an arranged time and place, Chiu met Lee Chau Ping and gave her HK\$290,000, the car keys and the parking permit. The next day Lee Chau Ping telephoned Chiu and told him where the car was. In it were 10 packets of ice packed in an identical manner to those in the earlier transactions with Wong. Later, Lee Chau Ping telephoned Chiu and asked if things were all right. Chiu hid the ice in a karaoke machine and took it to the Philippines.

### *Charges 13 and 14*

In mid-January 1991 Chiu telephoned Ah Chi and placed a sixth order for 20 kilogrammes of ice. Later, Lee Chau Ping called Chiu and arranged a meeting at Hotel Nikko in Hong Kong. Chiu parked his car at Middle

Road Car Park and took a taxi to the hotel. There he gave Lee Chau Ping a manila envelope containing HK\$580,000, the car keys and the parking permit. During their discussion, Lee Chau Ping offered to supply ice directly to Chiu in the Philippines at the rate of 100 kilogrammes per month at a price of HK\$42,000 per kilogramme.

The next day Lee Chau Ping called Chiu telling him where his car was. Chiu picked up the car and found 20 packets of ice in two black bags inside it. The ice was shipped in the usual manner to the Philippines.

### ***Charges 15 and 16***

In March 1991 Chiu ordered a seventh shipment of ice. He told Lee Chau Ping he wanted 10 kilogrammes on credit because he didn't have money. Later, Lee Chau Ping met Chiu at the Energy Plaza and collected his car keys and parking permit. She gave him her bank account number and her surname and agreed that he could remit the purchase price to her from the Philippines. The next morning she phoned him and said his car was at the Middle Road Car Park. Inside the boot of the car was a black bag containing ice. Chiu took it to the Philippines and there remitted HK\$290,000 to Lee Chau Ping's bank account.

### ***Charges 17 and 18***

In May 1991 Chiu phoned Wong to place an eighth order for 10 kilogrammes of ice. Wong met Chiu and collected the money and the car keys. The next day, 10 kilogrammes of ice were transferred in the same manner as before. Chiu hid the ice in a karaoke machine and took it to the Philippines, where he handed it to P.K. Yuen.

### ***Charges 19 and 20***

On 20 June 1991 CHIU called Ah Chi to place the ninth order for 10 kilogrammes of ice. Ah Chi met Chiu at Middle Road Car Park and collected the money, the car key and parking permit. In the afternoon of 21 June 1991 Chiu went to Middle Road car park and met Ah Chi. They examined the ice in the boot of the car. Chiu took the ice home and packed it in a karaoke machine. Later that day the Police arrested him.

Yu Yem Kin said that Wong Moon Chi purchased ice from Lee Chau Ping and him.

### ***Shipments of ice to the Philippines***

In early 1991 PW 2, Yau Cho Yick, met Lee Chau Ping in Aberdeen. They had known each other years' before. He told her that he had a fishing boat and could carry goods and asked her if she had any business for him. Yau's partner in the boat was So Leung. She told him to visit her office in Guangzhou City. He went there in mid-1991 and met Lee Chau Ping and Yu Yem Kin. Lee Chau Ping said Yu was her partner.

In early 1992 Lee Chau Ping asked him to transport ice for her from China by sea, she would pay him \$2,000 per kilogramme. Yau refused, because he did not want to take the risk.

Between April and July 1992 Yau moved goods such as taps, light bulbs, and plastic basins from PNK's offices to Lee Chau Ping's factories in China.

Around May 1992 Lee Chau Ping told Yau to carry "raw materials" from China to waters near the Philippines. He asked So to take their fishing boat to Gangkou, China. There Lee Chau Ping's associates, Ching Chung Ying and Ah Fei, loaded four fruit boxes onto the boat. So sailed to the Philippines with Ah Fei on board supervising the trip. They planned to hand the boxes to another vessel at sea off the Philippines. The boat arrived at the destination and stayed there for three days, but Ah Fei could not contact the other vessel by radio. They returned to Gangkou and the four boxes were returned to Ching Chung Ying and So returned to Hong Kong.

Between May-June 1992, S0 made three attempts to deliver the boxes to vessels at sea off the Philippines. On the fourth attempt, the other vessel arrived and picked up the boxes. During the transfer four packages fell into the sea but were retrieved. So asked Ah Fei what was inside the packages, he said it was ice and the total quantity was about 100 kilogrammes.

Yu Yem Kin said that he paid Yau \$50,000 for making these trips to the Philippines.

In August 1992 Lee Chau Ping telephoned Yau Cho Yick and asked him to transport "raw materials" and "finished products" from Fuzhou City to a vessel at sea. Yau knew that by "finished products" she meant ice. He learnt from "Ah Ying", Lee's associate in Fuzhou, that there were two tons of ephedrine and 310 kilogrammes of ice. In September 1992, on Yau's instruction, So went to Fuzhou City to hire a boat to transport the ice from Fuzhou City to Xisha. While he was in Fuzhou City Ching Chung Ying, another of Lee's associates told him, that the Public Security Bureau was watching him (Ching). So told Yau about this and then went to Gangkou from where he returned to Hong Kong by boat. On returning to Hong Kong, on 29 September 1992, he was arrested.

### *Arrests and Searches*

On 25 May 1992 Lee Chau Ping and her family left Hong Kong and immigrated to Canada. After she arrived in Canada she telephoned Hui Hoi Wah and told her that she wanted to wind-up PNK. She told Hui to call Yu Yem Kin concerning the disposal of the 15 kilogrammes of palladium chloride stored in PNK's offices. Yu told Hui to give the palladium chloride to Tam Wai Hung.

In late May 1992 Lai Chi Ming ("Ming Ming") was arrested in the mainland.

On 19 May 1992 Public Security Bureau officers in Jiangmen City, searched the factory in Jiangmen. They arrested a number of people, and seized 112.9 kilogrammes of ice and chemicals, including ephedrine. On 28 August a sample of 250 grammes was analysed at the Criminal Scientific Technology Identification Section, of the Public Security Bureau, the analysis confirmed it to be ice.

On 19 August 1992 Narcotics Bureau officers went to Jiangmen and took photographs of the factory and the ice seized by the Public Security Bureau. The photographs were shown to Ho Tak Ching, who worked for Johnson Matthey. She recognized the containers of palladium chloride to be Johnson Matthey's products. Chiu Lap Man, who worked for Kou Hing Hong Scientific Supplies Ltd. recognized the laboratory equipment as being that sold by Kou Hing Hong Scientific Supplies Ltd. to PNK.

The photographs were also shown to Yu Yem Kin. He said :

1. photograph no. 4 - shows the steel bucket used after the first manufacturing process, ephedrine, palladium chloride and hydrogen were put in the bucket;
2. photograph no. 26 - shows light bulbs used to dry the ice;
3. photograph 31 - shows the vacuum pump purchased from Hong Kong Scientific Company, and glass bottles similar to those purchased from Kau Hing Scientific Company; and
4. photograph no. 35 - shows test papers purchased from Kau Hing Scientific Equipment.

On 24 August 1992 Narcotics Bureau officers searched PNK's office and took photographs and seized a bundle of documents containing information on different kinds of chemicals and chemical equipment. The office was abandoned. Yu Yem Kin was shown these documents, he said they were records of expenses for purchasing



materials for the manufacture of ice at the Jiangmen factory.

On 9 September 1992, Narcotics Bureau officers searched Wong Moon Chi's residence at Prince Edward Road, and seized two invoices for the purchase of a refrigerator and chemicals, including hydrochloric acid, sodium hydrochloride, sodium hydroxide and sodium chloride. All these chemicals are used to manufacture ice.

On 30 September 1992, Narcotics Bureau officers searched Hui Hoi Wah's flat in Hong Kong and four invoices sent by Kou Hing Scientific Supplied Ltd. to PNK between 4 March 1992 and 21 May 1992, and PNK's Cash Book.

On 30 September 1992, acting upon the information provided by Narcotics Bureau, Public Security Bureau officers searched the abandoned factory at Longmen village. They found five refrigerators, a generator, four ventilation fans, 31 boxes of ice; each containing 10 packets, 140 boxes of ephedrine, an electronic scale and a sealing machine. On 1 October 1992 they searched the factory at Zhanggang and found a quantity of ice and ephedrine.

On 6 November 1992 NB officers searched PNK's office for the second time. They found photographs of Yu Yem Kin, 16 chemistry books, scales, and four sheets of technical notes. The Government Chemist said these describe the process of converting ephedrine into ice.

Yu Yem Kin was shown the notes and said they were the formula for manufacturing ice that he had obtained from the Taiwanese prisoner in Japan and later given to Lee Chau Ping.

On 24 November 1992 Narcotics Bureau officers went to Fuzhou City to investigate Lee Chau Ping's case and took photographs of the exhibits and the ice seized by the Public Security Bureau. Yu Yem Kin was shown these, he said that :

1. photograph 3 showed bottles purchased from Kau Hing Scientific Equipments,
2. photographs 5-8 showed sundries and switches purchased from the Yuen Kee Metal Co,
3. photograph 15 - showed silica gel purchased by PNK in Hong Kong,
4. photograph 16 showed electric light bulbs used to dry ice, and
5. photograph 23 - showed a shaking machine used to shake the steel bucket after chemicals were added.

### ***Tam Wai Hung's escape***

On 28 September 1992 Tam Wai Hung telephoned Au Keung Wah, and said that he was in trouble and had to leave Hong Kong.

On 29 September 1992 Narcotics Bureau officers searched Tam Wai Hung's flat at A, 7/F, Block 4, Grandeur Villa, Yau Yat Chuen, Kowloon. Inside were Tam Wai Hung's estranged wife, Tsang Pui Sheung, and two other people, Tam was not there. During the search of the premises invoices and receipts from Kou Hing Hong Scientific Supplies Ltd. were found.

### ***Lee Chau Ping's escape***

On 14 September 1992 Narcotics Bureau officers searched Yu Yem Kin's residence and on 21 September 1992 he was arrested in Hong Kong.

On 21 September 1992 Hui Hoi Wah visited Lee Chau Ping in Vancouver. Hui intended to return to Hong Kong on 29 September 1992.

On 21 September 1992, in Vancouver (22 September in Hong Kong), Lee Chau Ping received a telephone call from a lawyer in Hong Kong telling her that Yu Yem Kin had been arrested. Lee Chau Ping told Hui, that PNK was being investigated.

On 29 September 1992 Sgt. Hansen and other Royal Canadian Mounted Police officers searched Lee Chau Ping's house at 151 West 45th Avenue, Vancouver, Canada. Lee Chau Ping, her parents, and Hui Hoi Wah, were there. Sgt. Hansen spoke of the seizure of exhibits inside the residence, including a note book and sheets of accounts. Yu Yem Kin identified entries in these. He said that the accounts sheet, were signed "Mei", a name used by Hui Hoi Wah. The message at the bottom was addressed to "Elder Sister", Hui called Lee Chau Ping her elder sister.

After the Royal Canadian Mounted Police search on 29 September 1992 Lee Chau Ping was seen to leave the house and not return until the next morning. She told HUI that she needed to go away for a while and told Hui to go to Thailand.

Sgt. Hansen said that on 30 September 1992 Royal Canadian Mounted Police surveillance officers observed Lee Chau Ping in Vancouver. She visited a bank safety deposit box in the Canadian Imperial Bank of Commerce on Main Street and a law office in Chinatown.

On or about 1 October 1992 Hui, in Vancouver called her husband, in Hong Kong. He told her that if she returned to Hong Kong she would be arrested.

Sgt. Hansen said that when he conducted a second search of Lee Chau Ping's house on 7 October 1992, her parents and Hui were present. Her mother said that on 29 September the day after the previous search Lee had left the house saying she was going to get groceries, she never returned.

On 7 or 8 October 1992 Hui went to Thailand and met Lee Chau Ping. Lee Chau Ping told her that Ming Ming ("LAI Chi Ming") had been arrested in China for manufacturing ice. Lee Chau Ping told Hui that when Yu Yem Kin was in prison in Japan he obtained the formula for making ice and she had taught the formula to Ming Ming in Jiangmen, and to people in Fuzhou City.

Hui also said that at the end of 1992, when she was in Singapore, she had watched a television program about ice and seen Ming Ming featured in the programme. Lee Chau Ping had then telephoned her and told her that she, Lee Chau Ping, had to go because everything had been exposed.

### ***Immigration Department records***

Immigration Department records for the period 1 January 1987 to 31 December 1997 show that Lee Chau Ping and Tam Wai Hung frequently traveled to the mainland and Macau and that they traveled together on seven occasions between 6 September 1990 to 10 February 1992.

### ***Determination***

From the above, I am satisfied that the evidence is sufficient to prove on a balance of probabilities that Lee Chau Ping could have been convicted of the drug trafficking offences set out in the two warrants of arrest against her. Likewise, I am satisfied that the evidence is sufficient to prove on a balance of probabilities that Tam Wai Hung could have been convicted of the two drug trafficking offences set out in the warrant of arrest against him.

## *That the defendants benefited from drug trafficking*

### *Definitions*

As to the eighth condition, s.3(3) refers to "drug trafficking" not to "drug trafficking offence of which he was convicted". "Drug trafficking" is defined in s.2 to mean :

"doing or being concerned in, whether in Hong Kong or elsewhere, any act constituting a 'drug trafficking offence', or an offence punishable under a corresponding law, committed in Hong Kong, as well as an offence committed elsewhere."

Therefore, my determination of whether Lee Chau Ping and Tam Wai Hung benefited from drug trafficking is not confined to the proceeds arising from the particular offences of which each could have been convicted. For which I rely on the English authorities of *R. v. Dickens* [1990] 2 WLR 1385 (CA) and *R. v. Tredwen* [1994] 99 CAR 154 (CA) at 157. Though in these applications the distinction is not relevant since their benefits relate to the offences of which they are accused.

Section 4(1) defines a person's proceeds of drug trafficking :

"4(1). For the purposes of this *Ordinance* -

(a) a person's proceeds of drug trafficking are -

- (i) any payments or other rewards received by him at any time...in connection with drug trafficking carried on by him or another; and
- (ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and

(b) the value of the persons proceeds of drug trafficking is the aggregate of the values of -

- (i) the payments or other rewards; and
- (ii) that property."

Under s.3(4) a person who has at anytime received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

### *Assumptions*

For the purpose of determining whether Lee Chau Ping and Tam Wai Hung benefited from drug trafficking, and if they did, of assessing the value of their proceeds of drug trafficking, I may make the assumptions contained in s.4(3), namely :

"(a) that any property appearing to the court -

(1) to have been held by him at any time

(A) since his conviction;

(B) where section 3(1)(a)(ii) [person absconded or died] is applicable, since the application was made for a confiscation order in his case; or

(ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him -

was received by him, at the earliest time at which he appears to the court to have held it, as his proceeds of drug trafficking.

(b) that any expenditure of his since the beginning of that period was met out of his proceeds of drug trafficking; and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as his proceeds of drug trafficking, he received the property free of any other interests in it."

The burden is upon the defendant to prove, on a balance of probabilities, that the assumptions are incorrect. In these applications, since Lee Chau Ping and Tam Wai Hung are not present to rebut the assumptions, they must stand. However, it is not necessary for me to rely solely upon the assumptions since I have Yu Yem Kin's evidence of Lee Chau Ping's and Tam Wai Hung's profits from drug trafficking.

### ***Standard of Proof***

Under s.3(12) the standard of proof required to determine whether person benefited from drug trafficking is a balance of probabilities. [see R. v. Dickens at p.1388]

### ***Benefit***

#### ***Lee Chau Ping***

The following is a summary of the estimated quantity of ice manufactured at the various ice factories set up by Lee Chau Ping and Yu Yem Kin, and the net profit Yu claimed to have received :

Location	Established	Quantity of Ice Produced	Yu's Share of the profit	Percentage share
Jiangmen	mid 1989	1400-1500 kg	\$10,000,000	33.3%
Shilong	July/Aug 1991	500 kg	\$2,000,000	50%
Taixu	late 1991	500 kg	\$3,000,000	50%
Longmen Village	early 1992	1,000 kg (700 kg sold)	Nil	Nil

Yu did not share in the proceeds of the 1,000 kg of ice manufactured at the factory in Longmen Village because he was arrested in September 1992. According to Yu, Lee Chau Ping's net profit from the 700 kg of ice produced and disposed of by this factory before it was raided by the Public Security Bureau, was \$10,000,000.

Based upon Yu's evidence, Lee Chau Ping's estimated profit from manufacturing ice is :

<i>Factory Location</i>	<u><i>%Share Of Profit</i></u>	<i>Net Proceed</i>
1st ice factory Jiangmen	2/3	\$20,000,000
{ 2nd ice factory Shilong	{ 1/2	{ \$4,000,000
{ 3rd ice factory Taixu	{ 1/2	{ \$3,000,000
{ 4th ice factory Longmen village	{ Whole	{ \$10,000,000
{ Total	{	{ \$37,000,000

The 5th ice factory at Zhanggang, failed to produce any ice suitable for sale.

### ***Tam Wai Hung***

Yu said Tam Wai Hung paid Lee Chau Ping and him about \$23,000 per kilogramme, and Tam sold it for about \$30,000 per kilogramme. Yu said that Tam purchased about 2,000 kilogrammes of ice from them. Based on that, Tam's estimated net proceeds of drug trafficking would be at least  $(\$30,000 - \$23,000) \times 2,000 \text{ kg} = \$14,000,000$ .

I am satisfied that Yu Yem Kin's evidence shows on a balance of probabilities that Lee Chau Ping and Tam Wai Hung benefited from drug trafficking.

### ***The value of the benefit***

As may be seen from the preceding paragraphs, the information before me shows that Lee Chau Ping's proceeds of drug trafficking was approximately \$37,000,000 and Tam Wai Hung's approximately \$14,000,000.

### ***The amounts of the confiscation orders***

I must now, under s.3(5) of the Ordinance determine in accordance with s.6 the amount to be recovered by means of confiscation orders.

Section 6(1) provides that the amount to be recovered under the confiscation order is the value of the person's proceeds of drug trafficking. Or, under s.6(3), if the amount that might be realised at the time of the confiscation order is made is less than the amount the Court assesses to be the value of his proceeds of drug trafficking, then the amount to be recovered is :

"(a) the amount appearing to the court to be so realised, or

(b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might be so realised is nil."

The onus is upon the defendant to prove on a balance of probabilities under s.6(3) that the amount that might be

realised is less than the value of his proceeds of drug trafficking. See: R. v. Ko Chi Yuen [1993] 2 HKCLR 101, at p.111. In these applications Lee Chau Ping and Tam Wai Hung are not present to take advantage of s.6(3) and to seek to prove that the amounts that might be realised are less than their proceeds of drug trafficking.

There are two means for calculating the amounts of the confiscation orders. Under s.6(1) I can make the orders in the respective amounts of Lee Chau Ping's and Tam Wai Hung's proceeds of drug trafficking, and issue a certificate under s.6(2) of the amounts that might be realised. Alternatively, under s.6(3), I can make the orders for the respective amount that might be realised from the realisation of Lee Chau Ping's and Tam Wai Hung's property and issue a certificate under s.6(2) of the amounts that might be realised. Mr. Blanchflower submits that I should make the orders under s.6(1) as Lee Chau Ping and Tam Wai Hung are unable to satisfy me that the amounts that might be realised is less than their proceeds of drug trafficking.

### ***Amounts that might be realised***

#### *Definitions*

For purposes of a certificate made under s.6(2) the amount that might be realised at the time a confiscation order is made against the person is defined in s.7(3) to mean :

- "(a) the total of the values at that time of all the realisable property held by the person, less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total of the values at that time of all gifts caught by this *Ordinance*."

Section 7(7) defines when an obligation has priority where court orders have been made against the person. It reads :

- "(7) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to
- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts."

Central to the determination of the amounts that might be realised is the definition of "realisable property" in s.7(1), the definition of that term is :

- "(a) any property held by the defendant;
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this *Ordinance*; and
- (c) any property that is subject to the effective control of the defendant."

"Property" is defined in s.2 to include both movable and immovable property within the meaning of s.3 of the *Interpretation and General Clauses Ordinance*.

### ***Lee Chau Ping***

I turn now to Lee Chau Ping's property.

Firstly there is the property she held in her own name. Section 7(1)(a) relates to this and for the purposes of that sub-section, s.2(7) provides that property is "held" by any person if he holds any interest in it. Under s.2(1) an "interest" in relation to property, includes a right. The sum of \$409,242,73 is held by the Receiver's in a bank account, together with the accrued interest, this represents Lee Chau Ping's property and is an amount that can be realised. [*s.5 statement, p.79 para.329*]

### ***Companies***

Secondly there is the property held in various companies she controlled. The evidence and information before me and particularly that of Mr Mark Bowra, who sets out the relationship between Lee Chau Ping and these companies shows that PNK Development Ltd., Newpark Investment Ltd., Wah Luen Hong, King Development Ltd., Youthtown Investment Ltd., and Gooders Trading Ltd., were all owned or controlled by Lee Chau Ping.

The general common law principle is that a company is a separate legal entity and must be treated like any other independent person with its own rights and liabilities distinct from those of its shareholders. See : *Salmon v. Salmon & Co* [1897] AC 22 (HL). However, the corporate veil may be lifted if there is a *prima facie* case that a defendant controlled the company, or that the company has been used for crime and that the company's accounts benefited a defendant. In *Re H and others (restraint order : realisable property)* [1996] 2 All ER 391, Rose LJ said at p. 402, line A :

"As to the evidence, it provides a prima facie case that the defendants control these companies; that the companies have been used for fraud, in particular the evasion of excise duty on a large scale; that the defendants regard the companies as carrying on a family business, and that company cash has benefited the defendants in substantial amounts."

He concluded at p.402 e

"In all the circumstances, I am entirely satisfied that it is appropriate to lift the corporate veil in this case and to treat the stock in the companies' warehouses and the motor vehicles as property held by the defendants."

PNK was principally used for Lee Chau Ping's drug trafficking activities. It was used to purchase equipment and chemicals used to manufacture ice. For example, from October 1989 to April 1992 PNK paid Johnson Matthey \$2 million for palladium chloride. Her proceeds from manufacturing and trafficking in ice paid PNK's expenses and she treated PNK's accounts as hers. The other companies were financed from the proceeds of her drug trafficking, and were controlled by her and used for her convenience and profit. I am satisfied that the property belonging to these companies is Lee Chau Ping's property and represent amounts that might be realised.

### ***Gifts***

Thirdly there are gifts she made to her husband, Cheuk Tak Wah, and to Hui Hoi Wah her so-called "office assistant".

A gift is caught under s.7(9) if :

"(a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or

(b) it was made by the defendant at any time and was a gift of property -

- (i) received by the defendant in connection with drug trafficking carried on by him or another; or
- (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection."

The value of a gift caught by the *Ordinance* is calculated in accordance with the provisions of s.7(5), which provides :

"(5) Subject to subsection (10), references in this *Ordinance* to the value at any time (referred to in subsection (6) as "the material time") of a gift caught by this *Ordinance* or of any payment or reward are references to -

*(a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or*

*(b) where subsection (6) applies, the value there mentioned, whichever is the greater."*

and s.7(10) provides :

'(10) For the purposes of this *Ordinance* -

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and ..."

It is not necessary that the gift is still in the possession of the recipient, so long as it comes within s.7(9), see *R. v. Dickens* (above) at 1392D-1393

### ***Cheuk Tak Wah***

At pages 79-83 (paras. 332-349), the s.5 statement gives details of the gifts Lee Chau Ping made to her husband Cheuk Tak Wah. For the purposes of s.7(10)(a), I note that on 5 July 1988 one of her limited companies Youthtown Ltd., purchased a flat and car parking space at Dragon Court in Waterloo Road for \$870,000 and "sold" it to Cheuk on 22 November 1989 for the same price - \$870,000. I am satisfied that Lee Chau Ping made gifts to Cheuk Tak Wah in the sum of \$973,909.09 and that this amount might be realised. The value of the gifts she made to Cheuk Tak Wah have increased due to the accrual of interest. Applying s.7(5), the value of those gifts is their present value, not their value when made.

### ***Hui Hoi Wah***

Lee Chau Ping placed substantial sums of money in the hands of this woman.

Under s.7(1)(c) "realisable property" includes property which is subject to the "effective control" of a defendant. Section 7(11) defines what is meant by "effective control" :

"(11) For the purposes of subsection (1) [definition of "realisable property"] -



(a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has -

(i) a legal or equitable estate or interest in the property; or

(ii) a right, power or privilege in connection with the property;

(b) without limiting the generality of any other provision of this Ordinance, in determining -

(i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or

(ii) whether or not there are grounds to believe that property, or an interest in property, is subject to the effective control of the defendant

regard may be had to -

(A) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;

(B) a trust that has a relationship to the property; and

(C) family, domestic and business relationships between person having an interest in the property, or in companies of the kind referred to in sub-paragraph (A) or trusts of the kind referred to in sub-paragraph (B), and other persons."

There can be no doubt that Hui's property which is now subject to restraint was under Lee Chau Ping's effective control [*s.5 statement, pp.87-90*]. The evidence shows that after Lee Chau Ping emigrated to Canada on 25 May 1992, PNK Ltd. was wound down. Hui effectively became Lee Chau Ping's "treasurer" in Hong Kong, receiving and dispersing her money, and accounting to Lee for it in Vancouver. This may be seen from the following items of evidence :

Hui had two bank accounts, a Hang Seng Bank Savings Account No. 329-6-020609, which was opened on 28 January 1992 EX 277/1/2885-2886 and a Hang Seng Bank Flexiphone Account No. 329-043160-888, which was opened 20 July 1992 EX 277/1/2887-2898.

The Royal Canadian Mounted seized from Lee Chau Ping's house in Vancouver :

1. EX 277/1/2884, 2894-2898, statements of Hui's Hang Seng Bank Accounts.
2. EX 26/B/488-493 a "Campus" brand notebook.
3. EX 278/J/3257 a Hang Seng Bank Customer's Receipt dated 1 July 1992 showing a transfer of CND\$100,000 (HK\$644,700) from HUI to LEE Chau-ping. This was found in her purse.
4. EX 295/J/3331-3333 a hand written accounting sheet, which was found in purple folder in her bedroom.
5. EX 296/J/3334 a Hang Seng Bank Customer's Receipt dated 12 August 1992, showing a transfer of CDN\$20,000 (HK\$130,440) from Hui to Lee.

6. EX 297/J/3335-3336 a copy of the front and back of a Hang Seng Bank cheque no. 092733 for \$150,000 issued by Yu Wing Kwong

Hui's Hang Seng Bank Account No. 329-6-020609 shows the following transactions :

1. A deposit of \$900,000 on 30 June 1992. Yu Yem Kin said that he paid this money into the account. The figure is shown in the "Campus" notebook as "30/6 paid Hui HK nine hundred thousand" EX 26/B/489. It is also shown in the Accounting Sheet as "30/6 Yu paid HK dollars" [EX 295/J/3332].
2. A withdrawal on 1 July 1992 of \$644,800, this was for a transfer of CND\$100,000 (HK\$644,700 plus \$100 cable charge) from Hui to Lee EX293/J/3324/6. The copy of the Customer's Receipt found in Lee's house relates to this transfer. EX 278/J/3257. And the transfer is shown in the Accounting Sheet as "1/7 telegraphic transfer CND\$100,000" [EX 295/J/3332]. Sgt. Hansen said that this transfer was used to purchase Lee Chau Ping's house at 151 West 45th Avenue, Vancouver on 16 July 1992.
3. Withdrawals of \$15,000 and \$31,500 on 1 July 1992. These are recorded in the Accounting Sheet as "Mr Yu withdraw interest on behalf of Tung" and "Pay for Fat Boy's 3 air tickets" [EX 295/J/3332].
4. Deposits on 17 July 1992, these came from Tung Hon Ling, Chau Chi Wing (Tung's husband) and Lai Kei Beauty House. In her statement, Tung said that sometimes Hui gave her money to deposit into PNK's bank account, Tung also said that Lee was a customer of Lai Kei Beauty House, her beauty salon.
5. A deposit on 17 July 1992 of \$250,000, this deposit of a cheque drawn on TUNG Hon-ling's Hang Seng Bank account.

Hui's Hang Seng Bank Flexiphone Account No. 043160-888 shows the following transactions :

1. A transfer on 20 July 1992 of \$975,000 to a time deposit account. This sum was transferred from Hui's Hang Seng Bank Account no. 329-6-020609 to her Hang Seng Flexiphone Account and then deposited into the time deposit as CND\$150,000 [EX 277/1/2886; 2895 (b)]. The time deposit is recorded in the Accounting Sheet as "20/7 fixed term 150,000 CDN" [EX 295/J/3332].
2. A deposit of \$150,000 on 1 September 1992. A cheque drawn on the account of Yu Wing Kwong dated 28 or 29 August 1992 for \$150,000 has endorsed on its reverse "329-043160-888", the number of the Flexiphone Account, [EX 297/J/3335-3336]. Yu Yem Kin said that Yu Wing Kwong borrowed \$200,000 - \$300,000 from Lee Chau Ping and that the cheque was a part repayment to her.
3. A withdrawal of \$130,440 on 12 August 1992, this withdrawal came after cash deposits of \$130,440 made into the savings account [EX 277/1/2894] were transferred to another account. On 12 August HUI transferred CND\$20,000 (HK\$130,440 plus \$100 cable charges) to Lee Chau Ping. The transfer is recorded in the Accounting Sheet as "12/8 telegraphic transfer 20,000" [EX 296/J/3334 & EX 295/J/3333]. Yu Yem Kin said that this represented a remittance to Lee Chau-ping after he sold his flat. This transfer is recorded in the "Campus" Notebook as "Remittance (Canada) twenty thousand (Yu)" [EX 26/B/491]. The copy of the Customer's Receipt found in Lee Chau Ping's bedroom relates to this transfer. Sgt. Hansen said that this sum was used to pay Lee Chau Ping's mortgage payments on her house in Vancouver.

***Tam Wai Hung***

I now turn to Tam Wai Hung's property, this comprises of monies held by the receivers in a bank account amounting to \$691,138.24, together with accrued interest. Property found in safe deposit box no. 2733 maintained in Tam Wai Hung's name at the Standard Chartered Bank's Shek Kip Mei branch includes :

- (1) Two Dupont cigarette lighters.
- (2) A gold plate with a dragon pattern.
- (3) Four pieces of jade.
- (4) A coin.
- (5) A number of low denomination banknotes in various currencies.
- (6) A private car, a Mitsubishi station wagon, registered number EF 122.

### ***Certificate***

Section 6(2) provides that if I am satisfied as to any matter relevant for determining the amount that might be realised at the time of the confiscation order is made, I may issue a certificate giving my opinion as to the matters concerned. And must do so if I am satisfied that the amount that might be realised at the time of the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking. The latter part of s.6(2) is only relevant where a defendant satisfies the court that the value of his property is less than his benefit from drug trafficking, and is not applicable to these applications.

I am satisfied that I should issue the certificates and make the confiscation orders requested by the Secretary for Justice.

In Lee Chau Ping's case the property that is to be realised and included in the certificate is summarised below. The amounts in the bank accounts include accrued interest.

1.	Bank Balances	\$409,242.73
2.	Gifts to CHEUK Tak Wa	\$973,909.09
3.	Monies held by Hui Hoi Wah	\$160,868.87
{	{	CND\$198,216.75
4.	Companies under Lee Chau Ping's effective control	{
{	PNK Development Ltd	\$478,201.95
{	Newpark Investments Ltd	\$17,577,221.00
{	Wah Luen Hong Ltd	\$33,201.12
{	Gooders Trading Ltd	\$3,215,445.96
{	Kingwick Development Ltd	\$1,790.86
{	Youthtown Investments Ltd	\$96.01

In Tam Wai Hung's case the property that is to be realised and included in the certificate is summarised below. The amount in the bank account includes accrued interest.

- |     |   |              |
|-----|---|--------------|
| (1) | Bank balance  | \$691,138.24 |
| {   | {   | {            |
| (2) | The Property found in safe deposit box no. 2733 at the Standard Chartered Bank's Shek Kip Mei Branch. |              |
| {   | {   | {            |
| (3) | The private car, registered number EF 122.  |              |
| {   |   |              |

	(G. J. Lugar-Mawson)
	Deputy Judge of the Court of First Instance, High Court

Representation:

Mr. M.C. Blancherflower and Miss E. Liu for Applicant

1st and 2nd Defendants (in person) absent

ENQUIRIES : 25825324  
詢問處  
IN REPLYING PLEASE : DCCC 587/96  
QUOTE THIS REFERENCE  
覆函請敘明此檔號

23rd April 1997

Attorney General's Chambers,  
Asset Recovery Unit,  
7/F., High Block,  
Queensway Government Offices  
(Attn: Ms. Lynda M.A. Shine)

Dear Madam,

**Re: DCCC No. 587 of 1996**  
**R. v. KONG Kwong-por**

I refer to your letter dated 16.4.1997.

I send you herewith a copy of the Schedule 5 Certificate for your retention. His Honour Judge Christie has made the following observations:

- Cap 455 makes no provision for fixing time for payment of a confiscation order under s. 8.
- The Court does have power to allow time for payment, pursuant to s. 114(1)(a) Cap. 221, which applies to confiscation orders by virtue of s. 13(1)(b) Cap.455.
- The power is discretionary.
- In a case where the defendant is liable to serve a term of imprisonment for the offences concerned, an order under s. 114(1)(a) Cap. 221 is unnecessary because s.13(4) Cap. 455 provides that imprisonment in respect of the confiscation order will commence after the term of imprisonment for such offences.
- In this case there are sentences of terms of imprisonment for the offences concerned, so I make no order for time to pay pursuant to s. 114(I)(a) Cap. 221 Therefore the words "**on or before the ... day of .... 19.**" where they appear at the end of the prescribed form in Schedule 5 have no application to this case and should be deleted.

(S. W. LI)(Ms.)  
for Registrar, District Council

c.c. Mr. Bernard Chung of counsel

IN THE DISTRICT COURT OF HONG KONG

CRIMINAL JURISDICTION

R. v. KONG Kwong-por

CERTIFICATE OF SENTENCE IN RESPECT OF TERM OF IMPRISONMENT  
FIXED UNDER SECTION 13 OF THE ORGANIZED AND SERIOUS  
CRIMES ORDINANCE (CAP 455)

To the Commissioner of Correctional Services.

Whereas the District Court -

(a) on the 12th day of November 1996


(i) sentenced the defendant KONG Kwong-por in respect of the specified offences, within the meaning of the Organized and Serious Crimes Ordinance (Cap. 455), of 3 counts of Conspiracy to defraud; and

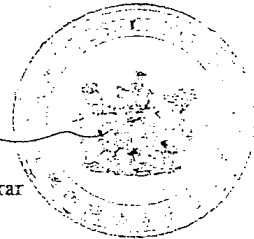
(ii) imposed a period of imprisonment of five and a half (5 1/2) years in respect of those offences; and

(b) on the 8th day of April 1997, His Honour Judge Christie, District Judge, made a confiscation order under section 8(7)(a) of the Organised and Serious Crimes Ordinance (Cap. 455) that that defendant pay the amount of \$2,000,000.00 less costs to be taxed if not agreed.

This is to certify that on 8th day of April 1997, His Honour Judge Christie, District Judge, made an order under section 13 of the Organized and Serious Crimes Ordinance (Cap. 455) fixing a term of imprisonment of fifteen (15) months which that person is to serve if any of the amount to be paid under that confiscation order is not paid or recovered, such imprisonment to be served consecutively to the sentence of 5 1/2 years imposed on 12th November 1996.

Dated the 8th day of April 1997.

  
Assistant Registrar



0000345

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*Section of Enactment*

Chapter :	201	Title :	PREVENTION OF BRIBERY ORDINANCE	Gazette Number :	25 of 1998 s. 2
Section :	14C	Heading :	* <b>Restraining orders</b>	Version Date :	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) If, on application ex parte by or on behalf of the Commissioner, the court is satisfied that-
- (a) any property is in the possession of or under the control of or is due to a person (hereinafter in this section and in sections 14D and 14E referred to as the "suspected person"), who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Ordinance or against whom a prosecution for such an offence has been instituted, from another person (hereinafter so referred to as the "third party"); or
- (b) a third party is holding any property for or on behalf of or to the order of a suspected person, the court may make an order under this subsection (hereinafter so referred to as a "restraining order").
- (2) In making a restraining order the court may-
- (a) impose such conditions; or
- (b) exempt such property from the operation thereof (including periodic payments of money), as it thinks fit, but subject as aforesaid, the suspected person and any third party on whom a restraining order is served in accordance with subsection (3) shall not dispose of or otherwise deal with any property specified in the restraining order save in accordance with directions of the court.
- (2A) A restraining order shall, if so provided in the order, apply to the income from any property specified therein as it applies to the property itself. (Added 50 of 1987 s. 8)
- (3) A restraining order shall be served on the suspected person and any third party to whom it is directed and may be served by delivering it to him or them personally or may, where the court is satisfied that such person cannot be found or is not in Hong Kong, be served in such other manner as the court may direct on application ex parte by or on behalf of the Commissioner. (Amended 15 of 1976 s. 3)
- (3A) Where any property specified in a restraining order is immovable property, such order shall be deemed to be an instrument affecting land and shall be registrable as such in the Land Registry under the Land Registration Ordinance (Cap 128) in such manner as the Land Registrar thinks fit. (Added 28 of 1980 s. 10. Amended 8 of 1993 ss. 2 & 3)
- (3B) Where any property specified in a restraining order includes any debt or obligation due by a bank or deposit-taking company to the person to whom the notice is given the Commissioner may serve on such bank or deposit-taking company a copy of that restraining order which copy restraining order shall have the effect of directing the bank or deposit-taking company with respect to the person specified in the copy restraining order not to pay, liquidate, satisfy, settle or discharge that debt or obligation either in whole or in part without the consent of the court. (Added 48 of 1996 s. 7)
- (4) Subject to subsection (5), a restraining order with respect to property-

(a) of the description mentioned in subsection (1)(a) shall continue in force for a period of 12 months from the making thereof, but on application by or on behalf of the Commissioner the court may extend its operation for periods of 12 months at a time;

(b) of the description mentioned in subsection (1)(b) shall continue in force for a period of 6 months from the making thereof, but on application by or on behalf of the Commissioner the court may extend its operation for periods of 3 months at a time. (Replaced 48 of 1996 s. 7)

(5) Where-

(a) a restraining order is made with respect to a third party or a suspected person against whom a prosecution for an offence under this Ordinance has been instituted; or

(b) a restraining order is in force with respect to a third party or a suspected person against whom a prosecution for such an offence is instituted, the restraining order shall, except in the case of a prosecution against a third party, continue in force until the proceedings on such prosecution have been finally determined and, if an order is made against that person under section 12(3) or 12AA, until that order has been set aside, complied with or enforced, as the case may be. (Amended 50 of 1987 s. 8)

(5A) Nothing in subsection (4) or (5) shall prevent the court from making a further restraining order in respect of the same property on application ex parte by or on behalf of the Commissioner. (Added 50 of 1987 s. 8)

(6) A suspected person or third party on whom a copy of a restraining order has been served in accordance with subsection (3) or (3B) of this section or section 14D(5) shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 or to the value of the property disposed of or otherwise dealt with, whichever is greater, and to imprisonment for 1 year if, during the continuance in force of the order, he knowingly disposes of or otherwise deals with any property specified in the restraining order otherwise than in accordance with directions of the court.

(7) In this section and in sections 14D and 14E, "court" (法庭) means the Court of First Instance. (Added 48 of 1996 s. 7. Amended 25 of 1998 s. 2)

*(Added 9 of 1974 s. 7. Amended 48 of 1996 s. 7)*

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\* Please see the saving provisions contained in s. 18 of 48 of 1996, which section is reproduced immediately after the Schedule.

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Proposed CSAs to Drug Trafficking and Organized  
Crimes (Amendment) Bill 2000

Schedule 1,  
Section 8

(a) In the proposed section 10(12)(a), by adding “subject to subsection (12A),” before “a statement”.

(b) By adding after the proposed section 10(12) –

“12A” It is hereby declared that it is not practicable for a person to comply with a requirement under subsection (12)(a) if –

(a) the person does not know the value of the property to which the requirement relates; and

(b) the person does not, in the course of the trade, profession, business or employment carried on or undertaken by the person, ascertain the value of property of the kind to which the property mentioned in paragraph (a) belongs.”.

(c) By adding after the proposed section 10(13) –

“(13A) A disclosure made in order to

comply with a requirement under subsection

(12) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of –

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.”.

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<hr/> <i>Section of Enactment</i> <hr/>				
Chapter : 200	Title :	CRIMES ORDINANCE	Gazette Number :	
Section : 36	Heading :	<b>False statutory declarations and other false statements without oath</b>	Version Date :	30/06/1997

Any person who knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, such statement being made-

(a) in a statutory declaration; or

(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorized or required to make, attest or verify, by any enactment for the time being in force; or

(c) in any oral declaration or oral answer which he is required to make by, under or in pursuance of any enactment for the time being in force,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years and to a fine.

(21 of 1922 s. 7 incorporated. Amended 5 of 1924 Schedule)

[cf. 1911 c. 6 s. 5 U.K.]

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