

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

At the Bills Committee meeting on the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 held on 3 May 2002, Members discussed proposals to improve the restraint order and confiscation order provisions in the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) (DTROP) and the Organized and Serious Crimes Ordinance (Cap 455) (OSCO), and the Administration's response to the various issues raised at previous Bills Committee meetings [LC Paper No. CB (2) 1764/01-02(01) refers]. During the discussion, Members requested additional information on a few issues. The Administration's response to these issues is given below.

### Threshold for Making Charges

2. During the discussion on the proposed expiration date of a restraint order or a charging order for persons who are arrested but released on bail, Members considered that the proposed one year period might be too long and requested the Administration to reconsider the proposal. A review was subsequently conducted. Operational experience shows that normally a fair amount of time and efforts are needed to gather the necessary evidence and to carry out the required analyses before a charge can be made. The period of time required depends on the complexity of the case. For complicated cases, it may take about 6 months or longer to have the necessary work completed. While the Administration is ready to **accept** the Bills Committee's proposal to shorten the expiration date of one year in the proposed section 9(1A) (for restraint/charging orders obtained under the "after arrest but released on bail" provision), it proposes that the period be revised to 6 months. Subject to agreement by Members, the revised CSAs reflecting this proposal are at section (c) of Schedule 1 and section (d) of Schedule 2 at Annex A. With these amendments, the proposal to repeal "subsection (2)" in section 9(4) of DTROP and section 14(4) of OSCO (Clause 7(b) in

Schedule 1 and Clause 6(b) in Schedule 2 of the Bill) and the proposed substitution therein are no longer necessary and hence should be deleted. CSAs to amend the Bill to this effect are at section (c)(iii) of Schedule 1 and section (d)(iii) of Schedule 2 of Annex A.

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

3. Section 3(a) of Schedule 1 and section 3(a) of Schedule 2 to the Bill serve to clarify that, in the case of an application for a confiscation order under section 3(2)(c)(ii)(B) and (9)(b)(ii) of DTROP and section 8(3)(c)(i)(B)(II) and (7C)(b)(ii) of OSCO against an absconded person, reasonable steps should be taken to ascertain his whereabouts. At the last Bills Committee meeting, Members agreed in principle to the proposal of a deemed service provision whereby a notice of the notification order is published in newspapers, but proposed that such provision should be incorporated in the existing provision as an additional step to ascertaining the abscondee's whereabouts. The Administration **agrees** to Members' proposal and has revised the relevant CSAs accordingly (see section (a) of Schedule 1 and section (b) of Schedule 2 at Annex A).

4. During the discussion, Members also requested supplementary information on examples of service of court documents that might be effected through deemed service. Members would also like to know if there are other ways of notifying the abscondee of the confiscation order proceedings, apart from substituted service and deemed service.

5. Regarding the first point mentioned in paragraph 4 above, Members may wish to note that service of court documents is generally governed by Order 65 of the High Court Ordinance (Cap 4). Order 65 rule 5(1) provides that –

"(1) Service of any document, not being a document which by virtue of any provision of these rules is required to be served personally or a document to which Order 10, rule 1 (which is related to service of writs), applies, may be effected -

- (a) by leaving the document at the proper address of the person to be served, or
- (b) by post, or
- (c) where the proper address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents every business day to that document exchange, or
- (d) in such other manner as the court may direct."

Furthermore, a charging order *nisi* to show cause made under Order 50 or a garnishee order made under Order 49 of the Rules of the High Court may also be served in the manner prescribed by Order 65 rule 5(1).

6. As regards the second point mentioned in paragraph 4, i.e. possible alternative methods on service of notice of confiscation order proceedings, apart from the established ones, e.g., service by post, leaving the notice at the last known address, publication in Gazette, etc. the Administration is not aware of any other options that may meet its policy objective in this respect.

#### Application of Procedure for Enforcing Confiscation Order

7. Section 6 of Schedule 1 and Section 5 of Schedule 2 to the Bill amends section 8(1)(a) of DTROP and section 13(1)(a) of OSCO respectively to give the court the power to fix a period within which a defendant is to pay the amount under a confiscation order. Indeed, in some cases when the property involved is cash or assets readily available, the setting of a time limit for payment will help discharge the order effectively and efficiently. Apart from this, the purpose of the amendment is to provide clearer guideline to the court and to ensure consistency in judiciary interpretations. To illustrate the need for the amendment, the case of R v Kong Kwong-por (Re: DCCC No. 587 of 1996) was cited as an illustration where the court did not think it had the power to stipulate a timeframe for the payment of a confiscation order.

At the last meeting, Members enquired if any appeal had been made against the decision of the court in that case. According to Department of Justice's records, no appeal had been made in that case.

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

8. Under sections 8 and 9 of Schedule 1, sections 7 and 8 of Schedule 2 and section 3(b)(ii) and (iii) of Schedule 3 to the Bill, it is proposed that the maximum penalty for non-compliance with a restraint order or a charging order is a fine of \$500,000 and imprisonment of five years. The proposed penalty was borne out of careful consideration that drug trafficking and money laundering are serious crimes, and restraint and charging orders are to stop criminals from disposing of, transferring or concealing their assets. Having regard to this, the Administration considers that the deliberate violation of an order is a serious matter and the proposed penalty duly reflects the gravity of such offence, as well as gives the necessary deterrent effect.

9. At the last meeting, when discussing penalties, Members requested information on offences in other legislation which are attached with similar levels of punishment. In this regard, Members may wish to note that a number of offences under the DTROP (Cap 405), OSCO (Cap 455), Dangerous Drugs Ordinance (Cap 134), Money Lenders Ordinance (Cap 163), Import and Export Ordinance (Cap 60), Legal Practitioners Ordinance (Cap 159) and Commodities Trading Ordinance (Cap 250), etc, are attached with the same or similar levels of penalty. These offences and their corresponding penalties are set out at Annex B.

### Provision of Information about the Value of Property

10. At the last meeting, the Administration **agreed** to Members' proposal of adding 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 the property relates only to what is readily available. Members also requested the Administration to make it clear that it is not necessary for a person to whom such a request is made to incur much extra resources in providing the requisite information. The Administration **agrees** to these proposals in principle and the

relevant CSAs were revised at section (d) of Schedule 1, section (e) of Schedule 2 and section (a) of Schedule 3 at Annex A.

### Consequential Amendments to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525)

11. The amendments proposed in the Bill call for consequential amendments to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525) which contains similar restraint, charging and confiscation provisions. The relevant CSAs are given in the new Schedule 4 at Annex A.

### Miscellaneous Amendments

12. Apart from the above proposals, the opportunity is taken to rectify an oversight to amend the descriptions at paragraphs 15 and 16 of Schedule 1 to OSCO when section 25 of DTROP and section 25 of OSCO were introduced in 1995. The proposed amendments seek to include the offence in the existing section 25 of DTROP and OSCO to paragraphs 15 and 16 of Schedule 1 to OSCO. The relevant CSAs are set out in section (g) of Schedule 2 at Annex A.

Narcotics Division  
Security Bureau  
May 2002

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**Composite CSAs not relating to  
sections 10 and 11 of Schedule 1 or  
sections 9 and 10 of Schedule 2**

DRUG TRAFFICKING AND ORGANISED CRIMES (AMENDMENT) BILL 2000

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Security

Clause

Amendment Proposed

New

By adding -

**"5. Consequential amendments to  
Mutual Legal Assistance in  
Criminal Matters Ordinance  
- (Schedule 4)**

The Mutual Legal Assistance in Criminal Matters  
Ordinance (Cap. 525) is amended as specified in  
Schedule 4."

Schedule 1

(a) In section 3(a), by adding "and 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".

(b) In section 5, in the proposed section 5(9), by deleting "subsection 7(b)" and substituting "subsection (7)(a) or (b)".

(c) In section 7 -

(i) in paragraph (a)(ii), in the proposed section 9(1)(ba), by adding "subject to subsection (1A)," before "if";

(ii) by adding -

"(aa) by adding -

"(1A) Subject to subsection (1B), a restraint order or charging order which arises only from the ground mentioned in subsection (1)(ba) shall expire immediately upon the effluxion of 6 months after 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  
investigation is  
carried out; and

(b) for not more  
than 6  
months."."

(iii) by deleting paragraph (b).

(d) In section 8 -

(i) in the proposed section 10(12)(a), by  
adding "subject to subsection (12A),"  
before "a statement";

(ii) 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) either -

(i) 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; or

- (ii) the value of  
the property  
to which the  
requirement  
relates is  
not readily  
ascertain-

able by the  
person." ;

(iii) 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.".

(e) In section 9 -

(i) in the proposed section 11(9)(a), by  
adding "subject to subsection (9A),"  
before "a statement";

(ii) by adding after the proposed section  
11(9) -

"(9A) It is hereby declared that  
it is not practicable for a person to  
comply with a requirement under  
subsection (9)(a) if -

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

(b) either -

(i) 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; or

(ii) the value of  
the property  
to which the  
requirement  
relates is  
not readily  
ascertain-  
able by the  
person." ;

(iii) by adding after the proposed section

"(10A) A disclosure made in order to comply with a requirement under subsection (9) -

(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.”.

- Schedule 2
- (a) In section 2, in the proposed section 2(15)(aa), by deleting “where” and substituting “when”.
  - (b) In section 3(a), by adding “and 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”.
  - (c) In section 4, in the proposed section 10(9), by deleting “subsection (7)(b)” and substituting “subsection (7)(a) or (b)”.
  - (d) In section 6 -
    - (i) in paragraph (a)(ii), in the proposed section 14(1)(ba), by adding “subject to subsection (1A), before “if”;
    - (ii) by adding -
      - “(aa) by adding -
        - “(1A) Subject to subsection (1B), a restraint order or charging order which arises only from the ground mentioned in subsection (1)(ba) shall expire immediately upon the effluxion of 6 months after 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 investigation is carried out; and

(b) for not more than 6 months."."

(iii) by deleting paragraph (b).

(e) In section 7 -

(i) in the proposed section 15(12)(a), by adding "subject to subsection (12A)," before "a statement";

(ii) by adding after the proposed section 15(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) either -

(i) 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; or

(ii) the value of  
the property  
to which the  
requirement  
relates is  
not readily  
ascertain-  
able by the  
person.”;

(iii) by adding after the proposed section

15(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."

(f) In section 8 -

- (i) in the proposed section 16(9)(a), by adding "subject to subsection (9A)," before "a statement";
- (ii) by adding after the proposed section 16(9) -

"(9A) It is hereby declared that it is not practicable for a person to comply with a requirement under subsection (9)(a) if -

- (a) the person does not

know the value of the  
property to which the  
requirement relates;  
and

(b) either -

- (i) 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; or
- (ii) the value of

the property  
to which the  
requirement  
relates is  
not readily  
ascertain-  
able by the  
person." ;

(iii) by adding after the proposed section

16(10) -

"(10A) A disclosure made in order  
to comply with a requirement under  
subsection (9) -

(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."

(g) By deleting section 11(b) and substituting -

"(b) by repealing paragraphs 15 and 16 and substituting -

"15. Drug

Trafficking

(Recovery of

Proceeds)

Ordinance

(Cap. 405)

section 25(1)

or (1A)

dealing with

property

known,

believed or

suspected to

represent  
proceeds of  
drug  
trafficking

16. Organized and  
Serious Crimes  
Ordinance  
(Cap. 455)

section 25(1) dealing with  
or (1A) property  
known,  
believed or  
suspected to  
represent  
proceeds of  
indictable  
offence".".

Schedule 3 In section 3, in paragraph (b) -

(a) in subparagraph (ii) -

(i) in the proposed section 10(12)(a), by  
adding "subject to subsection (12),"  
before "a statement";

(ii) 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) either -

(i) 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; or

(ii) the value of the property to which the requirement relates is not readily ascertainable by the person.”;

(iii) 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.";

(b) in subparagraph (iii) -

- (i) in the proposed section 11(9)(a), by  
adding "subject to subsection (9A),"  
before "a statement";
- (ii) by adding after the proposed section  
11(9) -

"(9A) It is hereby declared that  
it is not practicable for a person to  
comply with a requirement under  
subsection (9)(a) if -

- (a) the person does not  
know the value of the

property to which the  
requirement relates;  
and

(b) either -

(i) 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; or

(ii) the value of  
the property

to which the  
requirement  
relates is  
not readily  
ascertain-  
able by the  
person.”;

(iii) by adding after the proposed section  
11(10) -

“(10A) A disclosure made in order  
to comply with a requirement under  
subsection (9) -

(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."

New By adding -

"SCHEDULE 4 [s. 5]

CONSEQUENTIAL AMENDMENTS TO MUTUAL  
LEGAL ASSISTANCE IN CRIMINAL  
MATTERS ORDINANCE

1. **Enforcement, etc. of external  
confiscation order**

Schedule 2 to the Mutual Legal Assistance in  
Criminal Matters Ordinance (Cap. 525) is amended -

(a) in section 7, by adding -

"(11) An authorized officer may,  
by notice in writing served on a  
person who holds any realisable  
property the subject of a restraint  
order, require the person to deliver  
to the authorized officer, to the

extent that it is practicable to do  
so -

- (a) subject to subsection (12), a statement in writing as to the value of the property;
- (b) documents, or copies of documents, in his possession or control which may assist the authorized officer to determine the value of the property.

(12) It is hereby declared that it is not practicable for a person to comply with a requirement under subsection (11)(a) if -

- (a) the person does not know the value of the property to which the requirement relates; and
- (b) either -
  - (i) 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; or

(ii) the value of  
the property  
to which the  
requirement  
relates is  
not readily  
ascertain-  
able by the  
person.

(13) A person who receives a

notice under subsection (11) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned.

(14) A disclosure made in order to comply with a requirement under subsection (11) -

(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.

(15) Any person who contravenes subsection (13) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(16) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence.

(17) A person who commits an offence under subsection (16) is liable -

(a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property



the subject of the  
restraint order  
concerned which has  
been dealt with in  
contravention of that  
order, whichever is  
the greater, and to  
imprisonment for 5  
years; or

(b) on summary conviction  
to a fine of \$250,000  
and to imprisonment  
for 2 years.";

(b) in section 8, by adding -

"(9) An authorized officer may,  
by notice in writing served on a  
person who holds any realisable  
property the subject of a charging  
order, require the person to deliver  
to the authorized officer, to the  
extent that it is practicable to do  
so -

(a) subject to subsection  
(10), a statement in  
writing as to the  
value of the property;  
(b) documents, or copies

of documents, in his possession or control which may assist the authorized officer to determine the value of the property.

(10) It is hereby declared that it is not practicable for a person to comply with a requirement under subsection (9)(a) if -

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

(b) either -

(i) 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; or

(ii) the value of  
the property  
to which the  
requirement  
relates is  
not readily  
ascertain-  
able by the  
person.

(11) A person who receives a  
notice under subsection (9) shall, as  
soon as is practicable after receipt  
of the notice, comply with the notice  
to the extent that it is practicable  
to do so taking into account the  
nature of the realisable property the  
subject to the charging order

concerned.

(12) A disclosure made in order to comply with a requirement under subsection (9) -

(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.

(13) Any person who contravenes subsection (11) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(14) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence.

(15) A person who commits an offence under subsection (14) is liable -

(a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to

imprisonment for 5  
years; or

(b) on summary conviction  
to a fine of \$250,000  
and to imprisonment  
for 2 years."."

## Drug Trafficking & Organized Crimes (Amendment) Bill 2000

Offences in other ordinances which on conviction carry the same or similar levels of penalties as those proposed for non-compliance of a restraint order or charging order under sections 8 and 9 of Schedule 1, sections 7 and 8 of Schedule 2 and section 3(b)(ii) and (iii) of Schedule 3 to the Bill -

/	<b>Title of Ordinance</b>	<b>Nature of Offence and Section No.</b>	<b>Penalty on conviction</b>
1	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)	Dealing with property known or believed to be proceeds of drug trafficking (S.25(3))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 3 years (on summary conviction)</li> </ul>
2	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)	Disclosure prejudicing investigation (S.25A(8))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 3 years (on indictment)</li> </ul>
3	Organized and Serious Crimes Ordinance (Cap. 455)	Dealing with properties known or believed to represent proceeds of an indictable offence (S.25(3))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 3 years (on summary conviction)</li> </ul>
4	Organized and Serious Crimes Ordinance (Cap. 455)	Disclosure prejudicing investigation (S.25A(8))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 3 years (on indictment)</li> </ul>
5	Organized and Serious Crimes Ordinance (Cap. 455)	Offence of prejudicing investigation (S.7(3)(b))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 3 years (on summary conviction)</li> </ul>
6	Dangerous Drugs Ordinance (Cap. 134)	Trafficking in dangerous drug (S.4(3))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 3 years (on summary conviction).</li> <li>• Fine of \$5,000,000 and to imprisonment for life (on indictment)</li> </ul>
7	Dangerous Drugs Ordinance (Cap. 134)	Trafficking in purported dangerous drug (S.4A(3))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 7 years (on indictment)</li> </ul>

8	Dangerous Drugs Ordinance (Cap. 134)	Manufacture of dangerous drugs not in accordance with the provisions of the Ordinance (S6(2))	<ul style="list-style-type: none"> <li>• Fine of \$5,000,000 and to imprisonment for life (on indictment).</li> </ul>
9	Money Lenders Ordinance (Cap. 163)	Prohibition of excessive interest rates (S.24(4)(a))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 2 years (on summary conviction)</li> </ul>
10	Import and Export Ordinance (Cap. 60)	In breach of restriction on carriage, etc. of prescribed articles in Hong Kong waters (S.6E(7))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 2 years (on summary conviction)</li> </ul>
11	Legal Practitioners Ordinance (Cap. 159)	Unqualified persons preparing certain instruments, etc. (S.47(1))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 (on summary conviction)</li> </ul>
12	Commodities Trading Ordinance (Cap. 250)	Person trading as commodities trader without registration (S.26(5))	<ul style="list-style-type: none"> <li>• Fine of HK\$500,000 and imprisonment for 5 years (on indictment)</li> </ul>

Note: Copies of the relevant sections are enclosed.



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**Section of Enactment**

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Chapter : 405      Title : DRUG TRAFFICKING  
(RECOVERY OF PROCEEDS)  
ORDINANCE      Gazette Number :  
Section : 25      Heading : **Dealing with property  
known or believed to  
represent proceeds of drug  
trafficking**      Version Date : 30/06/1997

PART V

PROHIBITED ACTS IN RELATION TO PROCEEDS OF DRUG TRAFFICKING

- (1) Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of drug trafficking, he deals with that property.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence to prove that-
- (a) he intended to disclose to an authorized officer such knowledge, suspicion or matter as is mentioned in section 25A(1) in relation to the act in contravention of subsection (1) concerned; and
- (b) there is reasonable excuse for his failure to make disclosure in accordance with section 25A(2).
- (3) A person who commits an offence under subsection (1) is liable-
- (a) on conviction upon indictment to a fine of \$5000000 and to imprisonment for 14 years; or
- (b) on summary conviction to a fine of \$500000 and to imprisonment for 3 years.

(Replaced 89 of 1995 s. 21)

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**Section of Enactment**

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Chapter :	405	Title :	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number :	
Section :	25A	Heading :	<b>Disclosure of knowledge or suspicion that property represents proceeds, etc. of drug trafficking</b>	Version Date :	30/06/1997

- (1) Where a person knows or suspects that any property-
- (a) in whole or in part directly or indirectly represents any person's proceeds of;
  - (b) was used in connection with; or
  - (c) is intended to be used in connection with, drug trafficking, he shall as soon as it is reasonable for him to do so disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based, to an authorized officer.
- (2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 25(1) (whether before or after such disclosure), and the disclosure relates to that act, he does not commit an offence under that section if-
- (a) that disclosure is made before he does that act and he does that act with the consent of an authorized officer; or
  - (b) that disclosure is made-
    - (i) after he does that act;
    - (ii) on his initiative; and
    - (iii) as soon as it is reasonable for him to make it.
- (3) A disclosure referred to in subsection (1)-
- (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.
- (4) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.
- (5) A person commits an offence if, knowing or suspecting that a disclosure has been made under subsection (1) or (4), he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.
- (6) In proceedings against a person for an offence under subsection (5), it is a defence to prove-
- (a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in that subsection; or
  - (b) that he had lawful authority or reasonable excuse for making that disclosure.
- (7) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (8) A person who commits an offence under subsection (5) is liable-
- (a) on conviction upon indictment to a fine of \$500000 and to imprisonment for 3 years; or
  - (b) on summary conviction to a fine of at level 6 and to imprisonment for 1 year.

(Added 89 of 1995 s. 21)

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**Section of Enactment**

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Chapter : 455   Title : ORGANIZED AND SERIOUS CRIMES ORDINANCE   Gazette Number :  
Section : 25   Heading : **Dealing with property known or believed to represent proceeds of indictable offence**   Version Date : 30/06/1997

PART V

MISCELLANEOUS

(1) Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence, he deals with that property.

(2) In proceedings against a person for an offence under subsection (1), it is a defence to prove that-

(a) he intended to disclose to an authorized officer such knowledge, suspicion or matter as is mentioned in section 25A(1) in relation to the act in contravention of subsection (1) concerned; and

(b) there is reasonable excuse for his failure to make disclosure in accordance with section 25A(2).

(3) A person who commits an offence under subsection (1) is liable-

(a) on conviction upon indictment to a fine of \$5000000 and to imprisonment for 14 years; or

(b) on summary conviction to a fine of \$500000 and to imprisonment for 3 years.

(4) In this section and section 25A, references to an indictable offence include a reference to conduct which would constitute an indictable offence if it had occurred in Hong Kong.

(Enacted 1994. Replaced 90 of 1995 s. 22)

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**Section of Enactment**

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Chapter :	455	Title :	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number :	
Section :	25A	Heading :	<b>Disclosure of knowledge or suspicion that property represents proceeds, etc. of indictable offence</b>	Version Date :	30/06/1997

- (1) Where a person knows or suspects that any property-
- (a) in whole or in part directly or indirectly represents any person's proceeds of;
  - (b) was used in connection with; or
  - (c) is intended to be used in connection with, an indictable offence, he shall as soon as it is reasonable for him to do so disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based, to an authorized officer.
- (2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 25(1) (whether before or after such disclosure), and the disclosure relates to that act, he does not commit an offence under that section if-
- (a) that disclosure is made before he does that act and he does that act with the consent of an authorized officer; or
  - (b) that disclosure is made-
    - (i) after he does that act;
    - (ii) on his initiative; and
    - (iii) as soon as it is reasonable for him to make it.
- (3) A disclosure referred to in subsection (1)-
- (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.
- (4) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.
- (5) A person commits an offence if, knowing or suspecting that a disclosure has been made under subsection (1) or (4), he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.
- (6) In proceedings against a person for an offence under subsection (5), it is a defence to prove-
- (a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in that subsection; or
  - (b) that he had lawful authority or reasonable excuse for making that disclosure.
- (7) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (8) A person who commits an offence under subsection (5) is liable-
- (a) on conviction upon indictment to a fine of \$500000 and to imprisonment for 3 years; or
  - (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(Enacted 1994. Added 90 of 1995 s. 22)

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**Section of Enactment**

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Chapter : 455      Title : ORGANIZED AND SERIOUS CRIMES ORDINANCE      Gazette Number :  
Section : 7      Heading : **Offence of prejudicing investigation**      Version Date : 30/06/1997

- (1) Where an order under section 3 or 4 has been made or has been applied for and has not been refused or a warrant under section 5 has been issued, a person who, knowing or suspecting that the investigation in relation to which the order has been made or applied for or the warrant has been issued is taking place-
- (a) without lawful authority or reasonable excuse makes any disclosure intending to prejudice the investigation; or
  - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of any material-
  - (i) knowing or suspecting that the material is likely to be relevant to the investigation; and
  - (ii) intending to conceal the facts disclosed by the material from persons carrying out the investigation, commits an offence.
- (2) Where a person has been arrested in connection with an investigation specified in subsection (1), that subsection shall not apply as regards any disclosure in respect of the investigation made after such arrest.
- (3) A person who commits an offence under this section is liable-
- (a) on conviction upon indictment to a fine and to imprisonment for 7 years; or
  - (b) on summary conviction to a fine of \$500000 and to imprisonment for 3 years.

(Enacted 1994)  
[cf. 1986 c. 32 s. 31 U.K.]

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**Section of Enactment**

Chapter :	134	Title :	DANGEROUS DRUGS ORDINANCE	Gazette Number :	
Section :	4	Heading :	<b>Trafficking in dangerous drug</b>	Version Date :	30/06/1997

PART II

CONTROL OF IMPORT, EXPORT, PROCURING, SUPPLY,  
DEALING IN OR WITH, MANUFACTURE AND  
POSSESSION OF DANGEROUS DRUGS

- (1) Save under and in accordance with this Ordinance or a licence granted by the Director hereunder, no person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Hong Kong-
- (a) traffic in a dangerous drug;
  - (b) offer to traffic in a dangerous drug or in a substance he believes to be a dangerous drug; or
  - (c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug or in a substance he believes to be a dangerous drug. (Amended 37 of 1980 s. 2)
- (2) Subsection (1) shall apply whether or not the dangerous drug is in Hong Kong or is to be imported into Hong Kong or is ascertained, appropriated or in existence.
- (3) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable-
- (a) on conviction on indictment, to a fine of \$5000000 and to imprisonment for life; and
  - (b) on summary conviction, to a fine of \$500000 and to imprisonment for 3 years. (Amended 43 of 1974 s. 2)
- (4) This section does not apply to-
- (a) a preparation specified in Part II of the First Schedule; or
  - (b) a dangerous drug which is in transit and-
    - (i) is in course of transit from a country from which it may lawfully be exported to another country into which it may lawfully be imported; and
    - (ii) was exported from a country which is a party to the Conventions and is accompanied by a valid export authorization or diversion certificate, as the case may be. (Replaced 7 of 1984 s. 2)

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**Section of Enactment**

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Chapter : 134      Title : DANGEROUS DRUGS      Gazette Number : L.N. 362 of 1997  
ORDINANCE  
Section : 4A      Heading : **Trafficking in purported**      Version Date : 01/07/1997  
**dangerous drug**

(1) No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Hong Kong-

(a) traffic in any substance represented or held out by him to be a dangerous drug but which is not in fact a dangerous drug;

(b) offer to traffic in any substance represented or held out by him to be a dangerous drug but which is not in fact a dangerous drug; or

(c) do or offer to do an act preparatory to or for the purpose of trafficking in any substance represented or held out by him to be a dangerous drug but which is not in fact a dangerous drug.

(2) Subsection (1) shall apply whether or not the substance represented or held out to be a dangerous drug is in Hong Kong or is to be imported into Hong Kong or is ascertained, appropriated or in existence.

(3) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable-

(a) on conviction on indictment, to a fine of \$500000 and to imprisonment for 7 years; and

(b) on summary conviction, to a fine of \$100000 and to imprisonment for 1 year.

(4) No prosecution for an offence under this section shall be instituted without the consent in writing of the Secretary for Justice, but this subsection shall not prevent the arrest, or the issue of a warrant for the arrest, of a person for any such offence, or the remand in custody or on bail of a person charged with such an offence.

(Amended L.N. 362 of 1997)

(Added 37 of 1980 s. 3)

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**Section of Enactment**

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Chapter : 134

Title : DANGEROUS DRUGS  
ORDINANCE

Gazette Number :

Section : 6

Heading : **Manufacture of dangerous  
drug**

Version Date : 30/06/1997

(1) Save under and in accordance with this Ordinance or under and in accordance with a licence granted by the Director thereunder and on the premises specified in such licence, no person shall-

(a) manufacture a dangerous drug; or

(b) do or offer to do an act preparatory to or for the purpose of manufacturing a dangerous drug.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$5000000 and to imprisonment for life.

(Amended 43 of 1974 s. 3)

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**Section of Enactment**

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Chapter :	163	Title :	MONEY LENDERS ORDINANCE	Gazette Number :	
Section :	24	Heading :	<b>Prohibition of excessive interest rates</b>	Version Date :	30/06/1997

PART IV

EXCESSIVE INTEREST RATES

- (1) Any person (whether a money lender or not) who lends or offers to lend money at an effective rate of interest which exceeds 60 per cent per annum commits an offence.
- (2) No agreement for the repayment of any loan or for the payment of interest on any loan and no security given in respect of any such agreement or loan shall be enforceable in any case in which the effective rate of interest exceeds the rate specified in subsection (1).
- (3) The Legislative Council may by resolution alter the rate specified in subsection (1):  
Provided that in relation to any agreement for the repayment of any loan or for the payment of interest on any loan which is in force at the date when such rate is so altered, the rate so specified as at the coming into force of such agreement shall continue to apply.
- (4) Any person who commits an offence under this section shall be liable-
- (a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;
  - (b) on conviction on indictment to a fine of \$5000000 and to imprisonment for 10 years. (Amended 82 of 1994 s. 33)
- (5) Nothing in this section shall apply to-
- (a) a loan specified in paragraph 12 in Part 2 of Schedule 1; or
  - (b) as respects such loan, any person who makes such loan. (Replaced 69 of 1988 s. 20)

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**Section of Enactment**

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Chapter :	60	Title :	IMPORT AND EXPORT ORDINANCE	Gazette Number :	64 of 1999
Section :	<b>6E</b>	Heading :	<b>Restriction on carriage, etc. of prescribed articles in Hong Kong waters</b>	Version Date :	05/11/1999

Remarks:

Adaptation amendments retroactively made - see 66 of 2000 s. 3

(1) A person shall not, without lawful excuse, place on board, or cause to be placed on board, or possess on board, a vessel within the waters of Hong Kong a prescribed article.

(2) The owner of a vessel within the waters of Hong Kong shall not permit a prescribed article to be placed on board, or carried on, his vessel without lawful excuse.

(3) A person shall not, without lawful excuse, use a vessel to carry on board the vessel, or use a vessel to tow on board another vessel, a prescribed article within the waters of Hong Kong.

(4) A person shall not, without lawful excuse, use a vessel to tow otherwise than on board another vessel a prescribed article within the waters of Hong Kong.

(5) For the purposes of subsections (1), (2) and (3), "lawful excuse" (合法辯解) means the article is placed on board, or carried on, or carried or towed by use of, a vessel-

(a) which vessel is of or more than 250 gross tons and the article is for bona fide import or export;

(b) for delivery to a vessel of or more than 250 gross tons within Hong Kong and the article is for bona fide import or export purposes and is accompanied by a shipping document;

(c) from another vessel within Hong Kong which is of or more than 250 gross tons and the article is for bona fide import or export purposes and is accompanied by a shipping document;

(d) which is a passenger vessel of or more than 250 gross tons other than a ferry vessel;

(e) which is a ferry vessel as defined in regulation 2 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap 313 sub. leg.) operating between-

(i) a terminal in Hong Kong and a place in Macau; or

(ii) a terminal in Hong Kong and another place in China; (Amended 64 of 1999 s. 3; 66 of 2000 s. 3)

(f) which is a ferry vessel-

(i) licensed by the Director of Marine under the Merchant Shipping (Launches and Ferry Vessels) Regulations (Cap 281 sub. leg.) for the conveyance of passengers and articles;

(ii) permitted by the Commissioner for Transport under the Ferry Services Ordinance (Cap 104) to ply between 2 or more points within the waters of Hong Kong; and

(iii) travelling on a permitted route except a route which includes a stopping point on an island other than Hong Kong Island;

(g) by a passenger, or as part of his baggage, for his own use other than for trade or business, which vessel is a ferry vessel-

(i) licensed by the Director of Marine under the Merchant Shipping (Launches and Ferry Vessels) Regulations (Cap 281 sub. leg.) for the conveyance of passengers and articles;

(ii) permitted by the Commissioner for Transport under the Ferry Services Ordinance (Cap 104) to ply between 2 or more points within the waters of Hong Kong; and

(iii) travelling on a permitted route;

(h) by a passenger, or as part of his baggage, for his own use other than for trade or business, which vessel is licensed by the Director of Marine for the carriage of passengers within the waters of Hong Kong-

(i) as a Class IV trading boat or a Class V trading junk under the Merchant Shipping (Miscellaneous Craft) Regulations (Cap 281 sub. leg.); or

(ii) as a launch under the Merchant Shipping (Launches and Ferry Vessels) Regulations (Cap 281 sub. leg.);

- (i) under an export licence issued for the purposes of section 6D(2);
- (j) for the personal use of a crew member or a passenger while he is on board the vessel;
- (k) under a carriage licence issued by the Commissioner under the Import and Export (Carriage of Articles) Regulations (Cap 60 sub. leg.), and includes possessing a prescribed article on board the vessel in any of the circumstances set out in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k).
- (6) For the purposes of subsection (4), "lawful excuse" means the article is towed by use of a vessel, under a carriage licence issued by the Commissioner under the Import and Export (Carriage of Articles) Regulations (Cap 60 sub. leg.).
- (7) Any person who contravenes subsection (1), (2), (3) or (4) shall be guilty of an offence and shall be liable-
- (a) on summary conviction to a fine of \$500000 and to imprisonment for 2 years;
- (b) on conviction on indictment to a fine of \$2000000 and to imprisonment for 7 years.
- (8) In this section, unless the context otherwise requires-
- "ferry vessel" (渡輪船隻) means a vessel which piles regularly for the carriage of passengers and articles between 2 or more points within the waters of Hong Kong;
- "prescribed article" (訂明物品) means an article prescribed in the Schedule to the Import and Export (Carriage of Articles) Regulations (Cap 60 sub. leg.);
- "shipping company" (航運公司) means a company that carries on the business of transporting articles or arranging transport of articles for import or export purposes;
- "shipping document" (裝運單據) means a document issued by a shipping company or its agent in Hong Kong-
- (a) authorizing the delivery in Hong Kong of imported articles; or
- (b) instructing the master of a vessel in Hong Kong to accept and export articles out of Hong Kong.

(Added 1 of 1994 s. 5)

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**Section of Enactment**

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Chapter :	159	Title :	LEGAL PRACTITIONERS ORDINANCE	Gazette Number :	
Section :	47	Heading :	<b>Unqualified person not to prepare certain instruments, etc.</b>	Version Date :	30/06/1997

(1) Any unqualified person, not being a barrister or a notary public, who, unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly-

(a) draws or prepares any instrument relating to movable or immovable property or to any legal proceeding; or  
(b) draws or prepares any memorial or other document for the purposes of the Land Registration Ordinance (Cap 128) or the New Territories Ordinance (Cap 97) or makes any application or lodges any testimony for registration under either of those Ordinances at the Land Registry or at any District Land Registry, (Amended 8 of 1993 s. 2) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500000. (Amended 46 of 1989 s. 14)

(2) This section shall not extend to-

(a) any public officer drawing or preparing instruments in the course of his duty;  
(b) any person employed merely to engross or copy any instrument or proceeding; or  
(c) an unqualified person who, while acting in the course of bona fide employment and supervised by a qualified person, draws or prepares any instrument, memorial or other document in the name of the qualified person. (Added 60 of 1994 s. 36)

(3) For the purposes of this section, "instrument" (文書) does not include-

(a) a will or other testamentary instrument; or  
(b) an agreement under hand only; or  
(c) a letter of power of attorney; or  
(d) a transfer of stock containing no trust or limitation thereof

(Amended 60 of 1994 s. 36)  
[cf. 1957 c. 27 s. 20 U.K.]

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