

## **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 17 June 2002, Members discussed the draft Committee Stage Amendments (CSAs) prepared by the Administration [LC Paper No. CB (2) 2282/01-02(01) refers] and made some suggestions to revise the CSAs. During the discussion, Members requested additional information on a few issues, in the context of the proposals for section 25A of Drug Trafficking (Recovery of Proceeds) Ordinance (DTROP)(Cap. 405) and the Organized and Serious Crimes Ordinance (OSCO)(Cap. 455). The Administration's response to the points raised is set out below.

### **Committee Stage Amendments**

2. After further consideration, the Administration has revised the CSAs. A set of the revised CSAs is at Annex A. The revisions made have been highlighted in the margin for Members' easy reference.

### **Legal Expenses of a Defendant Whose Assets are Subject to a Restraint Order**

3. A restraint order application respondent's right to legal expenses is provided for under the Rules of the High Court (Cap. 4A). Order 115 rule 4(1) (for DTROP) provides that : -

“(1) A restraint order may be made **subject to conditions and exceptions**, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and **exceptions relating to reasonable living expenses and reasonable legal expenses** of the defendant, but the Secretary for Justice shall not be required to give an undertaking to abide by any order as to damages

sustained by the defendant as a result of the restraint order.”  
(our emphasis)

Rules of High Court, Order 117, rule 5(1) has similar provision in respect of the OSCO. Copy of Orders 115 and 117 are at Annex B. A respondent may also apply for legal expenses prior to the inter partes hearing before a judge in chambers.

4. A respondent who makes an application under Order 115 or Order 117 is required to prove on balance of probabilities that he/she has exhausted all other assets save for those under restraint and that the amount he/she asked for is “reasonable”. The court will, after considering the foregoing two criteria, decide whether funds from the restrained assets should be set aside for legal expenses. A synopsis of a recent case in which the defendant made a number of applications to vary the restraint order for payments of legal fees is at Annex C. A draft restraint order is at Annex D. The value of properties under restraint is normally set out in paragraph 1(c) of the order.

### **Payment Received from a Client Whose Assets is Subject to a Restraint Order**

5. The position in relation to a legal representative in receiving payment/money from a respondent whose assets is subject to a restraint order is the same as any ordinary person. The mere act of receiving payment/money is not an offence unless at the time of receiving the payment/money, the legal representative knows or has reasonable grounds to believe the payment/money represents proceeds of drug trafficking or of an indictable offence.

### **Report of Suspicious Transaction by Legal Representatives**

6. In relation to the duty to report suspicious transactions by legal representatives, in particular, whether a legal representative is required to disclose privileged communication under section 25A of both DTROP and OSCO, there is no relevant court decision. However, it should be pointed out that the provisions of the two section 25A do not alter the common law position governing legal privileges. Moreover, the right to confidential legal advice is guaranteed under Article 35 of the Basic Law

which stipulates :-

“Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies.

Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.”

### **Legal Aid for a Defendant whose Assets are Subject to a Restraint Order**

7. An applicant whose assets are subject to a restraint order will undergo the same means tests as any other applicants who apply for criminal legal aid. The restrained assets would also be included in the computation of his financial resources. If his financial resources exceed the related statutory maximum, provided the Director of Legal Aid (the Director) is satisfied that it is desirable in the interests of justice to grant legal aid, the Director may exercise his discretion to offer legal aid despite over on means, subject to payment of legal aid contribution. In those circumstances, the applicant would be advised to approach the Department of Justice with the Director’s offer and seek the latter’s consent for him to apply for payment out of a sum for payment of legal aid contribution from the restrained accounts. According to the Director of Legal Aid, so far the Department of Justice has not raised any objection to such application by his applicants for releasing money to his department towards payment of legal aid contribution.

Narcotics Division  
Security Bureau  
June 2002

**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

Long title      By adding “, and to consequentially amend the Mutual Legal Assistance in Criminal Matters Ordinance” after “Crimes Ordinance”.

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 2, in the proposed section 2(11)(aa), by adding "or has refused bail" after "bail".
- (b) By deleting section 3(a) and substituting -
  - "(a) by repealing subsection (2)(c)(ii)(B) and substituting -
    - "(B) subject to subsection (2A), a person whose exact whereabouts are not known -
      - (I) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)); and
      - (II) 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." ;

(aa) by adding -

"(2A) Where subsection  
(2)(c)(ii)(B) is applicable, and  
notwithstanding that the court is  
satisfied as mentioned in that  
subsection, the court may, if it is  
satisfied that it is in the interests  
of justice to do so, require that  
notice of the proceedings mentioned  
in that subsection be given to the  
person mentioned in that subsection  
in such additional manner as the  
court may direct." ;

(ab) by repealing subsection (9)(b)(ii) and  
substituting -

"(ii) subject to subsection (9A), a  
person whose exact whereabouts  
are not known -  
(A) reasonable steps have been  
taken to ascertain the  
person's whereabouts  
(including, if appropriate,  
a step mentioned in  
paragraph (a), (b) or (c)

of rule 5(1) of Order 65  
of the Rules of the High  
Court (Cap. 4 sub. leg.);  
and

(B) 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." ;

(ac) by adding -

"(9A) Where subsection (9)(b)(ii)  
is applicable, and notwithstanding  
that the court is satisfied as  
mentioned in that subsection, the  
court may, if it is satisfied that it  
is in the interests of justice to do  
so, require that notice of the  
proceedings mentioned in that  
subsection be given to the person  
mentioned in that subsection in such  
additional manner as the court may  
direct." ."

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

"subsection (7)(a) or (b)".

(d) 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), where a power conferred on the Court of First Instance by section 10(1) or 11(1) is exercisable only on the ground mentioned in subsection (1)(ba), then the Court of First Instance shall specify a date on which any restraint order or charging order arising from that ground shall expire, being a date -

(a) subject to paragraph (b), not later than is reasonably necessary for the purposes of the investigation



concerned  
mentioned in  
subsection

(1)(ba); and

- (b) in any case, not  
later than 6  
months after the  
date on which  
that order 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;
- (b) subject to

paragraph (c),  
not longer than  
is reasonably  
necessary for  
the purposes of  
that  
investigation;  
and

(c) in any case, for  
not more than 6  
months."."

(iii) by deleting paragraph (b).

(e) In section 8 -

(i) in the proposed section 10(12), by  
deleting every thing after "to do so" and  
substituting ", documents, or copies of  
documents, or any other information (in  
whatever form), in his possession or  
control which may assist the authorized  
officer to determine the value of the  
property.";

(ii) 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.".

(f) In section 9 -

(i) in the proposed section 11(9), by deleting

every thing after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.";

(ii) 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."

Schedule 2

(a) In section 2, in the proposed section 2(15)(aa) -

(i) by deleting "where" and substituting "when";

(ii) by adding "or has refused bail" after "bail".

(b) By deleting section 3(a) and substituting -

"(a) by repealing subsection (3)(c)(i)(B)(II) and substituting -

"(II) subject to subsection (3A), a person whose exact whereabouts are not known, reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a),

(b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)) 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." ;

(aa) by adding -

"(3A) Where subsection (3)(c)(i)(B)(II) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct." ;

(ab) by repealing subsection (7C)(b)(ii) and substituting -

"(ii) subject to subsection (7D), a person whose exact whereabouts

are not known -

(A) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)); and

(B) 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." ;

(ac) by adding -

"(7D) Where subsection (7C)(b)(ii) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the

proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct."."

(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), where a power conferred on the Court of First Instance by section 15(1) or (16)(1) is exercisable only on the ground mentioned in subsection (1)(ba), then the Court of First Instance shall specify a date on which any restraint order or charging order arising from that ground shall expire, being a date -

(a) subject to



paragraph (b),  
not later than  
is reasonably  
necessary for  
the purposes of  
the  
investigation  
concerned  
mentioned in  
subsection

(1)(ba); and

(b) in any case, not  
later than 6  
months after the  
date on which  
that order 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;

(b) subject to  
paragraph (c),  
not longer than  
is reasonably  
necessary for  
the purposes of  
that  
investigation;  
and

(c) in any case, for  
not more than 6  
months.".";

(iii) by deleting paragraph (b).

(e) In section 7 -

(i) in the proposed section 15(12), by  
deleting every thing after "to do so" and  
substituting ", documents, or copies of  
documents, or any other information (in  
whatever form), in his possession or  
control which may assist the authorized  
officer to determine the value of the

property.";

(ii) 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), by deleting every thing after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.";

(ii) 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) dealing with  
or (1A) 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), by

deleting every thing after "to do so"  
and substituting ", documents, or  
copies of documents, or any other  
information (in whatever form), in  
his possession or control which may  
assist the authorized officer to  
determine the value of the property.";

(ii) 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), by deleting every thing after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.";
- (ii) 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]

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, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.

(12) 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.

(13) 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.

(14) Any person who contravenes subsection (12) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

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

(16) A person who commits an offence under subsection (15) 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, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.

(10) 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 of the charging order concerned.

(11) 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.

(12) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

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

(14) A person who commits an offence under subsection (13) 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."."



4. Restraint order and charging order (O. 115, r. 4)

(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to reasonable living expenses and reasonable legal expenses of the defendant, but the Secretary for Justice shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order. (89 of 1995 s. 30)

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the Secretary for Justice shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the Secretary for Justice shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1)(b) to (d) as shall be appropriate.

5. Restraint order and charging order (O. 117, r. 5)

(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to reasonable living and legal expenses of the defendant, but the Secretary for Justice shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the Secretary for Justice shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the Secretary for Justice shall- (L.N. 362 of 1997)

(a) unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person; and

(b) serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1)(b) to (d) as shall be appropriate.

(L.N. 362 of 1997)

## **Case No. HCCC 62 of 2001**

### **Summary of the Case**

The defendant was arrested on 11 September 2000 for trafficking in dangerous drug after a seizure of 61,000 tablets of MDMA with an estimated value of HK\$18.3 million. She was subsequently charged, convicted and sentenced on 26 October 2001 to imprisonment for 19 years and 6 months.

### **Applications for Variation of Restraint Order**

2. On 21 September 2000, upon an ex parte application by the Secretary for Justice, the Court of First Instance granted an order to freeze the defendant's account in a bank (with deposit of HK\$840,000) until 4 October 2000. On 30 September 2000, the defendant filed her first affirmation explaining the source of the deposit in her restrained bank account and applied to discharge the restraint order. On 4 October 2000, at an inter partes hearing, the Court of First Instance order that the restraint order be extended and a sum of HK\$40,000 be released from her account for her legal expenses.

3. On 30 January 2001, the defendant filed a second affirmation and applied for a variation of the restraint order for release of fund for legal expenses but the application was dismissed by the Court after an inter partes hearing on 6 March 2001.

4. The defendant filed a third affirmation on 27 September 2001 applying for releasing of fund for legal expenses. At the inter partes hearing on 28 September 2001, the Court ordered that a sum of HK\$350,000 be released from the account in question to defendant's solicitor for matters relating to the criminal proceedings.

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE

MISCELLANEOUS PROCEEDINGS NO. OF 2001

IN THE MATTER OF THE DRUG TRAFFICKING  
(RECOVERY OF PROCEEDS) ORDINANCE (CAP. 405)

AND

IN THE MATTER OF

Respondent

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RESTRAINT ORDER PROHIBITING  
DISPOSAL OF ASSETS WITHIN HONG KONG  
[S. 10 of the Drug Trafficking (Recovery of Proceeds) Ordinance, Cap. 405]

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IMPORTANT NOTICE TO THE RESPONDENT

- (1) This Order prohibits you from dealing with your property in Hong Kong or outside Hong Kong.
- (2) The Order is subject to any exceptions that are set out in the Order. You should read the whole of this document carefully. You are advised to consult a solicitor as soon as possible. You have the right to ask the Court to vary or discharge this Order.
- (3) If you disobey this order you may be found guilty of contempt of court and you may be sent to prison or fined or your property may be seized.

ORDER

An application was made on the \_\_\_\_\_ day of \_\_\_\_\_ 2002 by Government Counsel for the Secretary for Justice, to the Judge who read the draft order and the affirmation listed in Schedule 1. The Counsel accepted the undertaking in Schedule 2 at the end of this Order. After hearing the application, the Judge made the following Order.

**RESTRICTION ON DISPOSAL OF PROPERTY**

1. The Respondents must not :

(a) remove from Hong Kong any of their property which is located in Hong Kong whether in their own names or not, and whether solely or jointly owned, and

(b) in any way dispose of, or deal with, or diminish the value of any of their property, which is located within Hong Kong, whether in their own names or not, and whether solely or jointly owned. This prohibition includes the following property in particular :

(c) in any case, the value of properties under restrained shall not exceed HK\$

**CAVEAT**

2. Nothing in this order shall:

a. prevent any person affected by this order, including any financial institution, from paying any money restrained by this Order to the party responsible for enforcement of

any Confiscation Order which may hereafter be made by the Court of First Instance or District Court against the Respondent in satisfaction in part or the whole of the said Confiscation Order.

b. prevent the levy of distress upon any goods subject to this Order for the purpose of enforcement of any Confiscation Order which may hereafter be made by the Court of First Instance or District Court.

#### **DURATION OF THIS ORDER**

3. This Order will remain in force until it is varied or discharged by a further Order of the Court. The inter partes hearing for the continuation of this Order shall be heard on the Return Date before the Honourable Mr Justice on the 25<sup>th</sup> day of March, 2002 at 9:30 am.

#### **DISCLOSURE OF INFORMATION**

4. On or before the day of 2002, the Respondent shall serve upon the Secretary for Justice affidavit /affirmation (s) disclosing the full value of any salary or other earnings, together with any money, goods or other assets whatsoever which are held by them, whether in their own names or on their behalves by some other person or company, and whether located within or outside Hong Kong, and identifying with full particularity the nature and location of such assets and in whose name those assets are held and the sources from which such assets are derived and without prejudice to the generality of the foregoing:-

(a) details of all accounts held with banks, deposit taking companies or other financial institutions whether located within or outside Hong Kong, including details sufficient to identify the account, the present balance of the account and any encumbrances on the account;

(b) particulars, including addresses, of all real property, whether freehold or leasehold, in which the Respondents have any proprietary interest, the nature and extent of that

interest and details of any mortgage or charge thereon stipulating any sums loaned in respect of such property and how much is outstanding. Full particulars of any rent paid to them, their servants or agents by any person including which account such rent is paid into or how such rent is otherwise applied;

(c) particulars of all securities, including but not limited to, unit trusts, shares or debentures in any company or corporation, public or private, whether incorporated in Hong Kong or elsewhere, insurance policies and any other deposit or investment held by them;

(d) particulars of any personal property, including but not limited to, jewellery, cash, motor vehicles, antiques or other items of value;

(e) particulars of any monies owed to them by other persons or companies.

5. No disclosure made in compliance with this order shall be used as evidence against any Respondent in any criminal prosecution of any Respondent who is required to make that disclosure, except in proceedings under section 31 of the Crimes Ordinance (Cap. 200).

6. The information disclosed in compliance with this order shall not be used for any purposes, other than these proceedings and confiscation proceedings and shall not be disclosed or otherwise divulged to any third party without the leave of the court.

#### **EFFECT OF THIS ORDER**

7. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

#### **THIRD PARTIES**





## SCHEDULE 1

### Affirmation

The Judge read the first affirmation of \_\_\_\_\_ dated 2002 before making this Order.

## SCHEDULE 2

### Undertaking given to the Court by the

Secretary for Justice through the said Counsel :

1. To serve upon any banks which may hold accounts belonging to the Respondents and any third parties of which the Secretary for Justice may be given notice, a copy of this Order.
2. To pay the reasonable costs, damages, and expenses of any person or body, other than the Respondent, to whom notice of this Order may be given in ascertaining whether any assets that are the subject of the Order are within his possession or control or which are incurred by him in complying with the terms of this Order.
3. If for any reason this Order ceases to have effect, the Secretary for Justice will forthwith take all reasonable steps to inform, in writing, any person or company to whom he has given notice of this Order, or who he has reasonable grounds for supposing may act upon this Order, that it has ceased to have effect.
4. Nothing in this Order shall:
  - (a) prevent any person affected by this Order, including any financial institution, from paying any money restrained by this Order to the party responsible for enforcement of any Confiscation Order which may hereafter be made by the Court of First Instance or District Court against the Respondent in satisfaction of part or the whole of the said



HCMP / 2001

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATION REGION  
COURT OF FIRST INSTANCE

HIGH COURT MISCELLANEOUS PROCEEDINGS  
NO.                      OF 2001

IN THE MATTER OF THE DRUG TRAFFICKING  
(RECOVERY OF PROCEEDS)  
ORDINANCE CAP. 405

AND

Respondent

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ORDER

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Filed the            day of            2001  
Dated the           day of            2001

Department of Justice Chambers,  
7/F, Queensway Government Offices,  
Hong Kong.  
(Attn.            )

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