

C047-E

A Bill To

Amend the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Drug Trafficking and Organized Crimes (Amendment) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Amendment of Drug Trafficking (Recovery of Proceeds) Ordinance---(Schedule 1)

The Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) is amended as specified in Schedule 1.

3. Amendment of Organized and Serious Crimes Ordinance---(Schedule 2)

The Organized and Serious Crimes Ordinance (Cap. 455) is amended as specified in Schedule 2.

4. Amendment of Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order---(Schedule 3)

The Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg.) is amended as specified in Schedule 3.

SCHEDULE 1 [s. 2]

Amendment of Drug Trafficking (Recovery of Proceeds) Ordinance

1. Long title amended

The long title to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) is amended by repealing "the offence of assisting drug traffickers to retain" and substituting "offences relating to those proceeds or property representing".

2. Interpretation

Section 2(11) is amended by adding---

"(aa) when a person has been arrested for the offence and released on bail;".

3. Confiscation orders

Section 3 is amended---

(a) in subsections (2)(c)(ii)(B) and (9)(b)(ii), by repealing "give notice of those proceedings to that person" and substituting "ascertain the person's whereabouts";

(b) by adding---

"(17) Where subsection (1)(a)(ii)(A) or (B) is applicable, the reference in that subsection to "one or more drug trafficking offences" includes any offence previously specified in Schedule 1, and the other provisions of this section and this Ordinance (including paragraphs (b) to (e) of the definition of "drug trafficking

offence" in section 2(1) and any subsidiary legislation) shall be construed accordingly. "

4. Assessing the proceeds of drug trafficking

Section 4(4) is repealed.

5. Statements relating to proceeds of drug trafficking

Section 5 is amended by adding---

"(9) For the avoidance of doubt, it is hereby declared that an allegation may be accepted under this section, and may always have been so accepted, whether or not subsection (7) (b) is applicable to the defendant, and subsection (3) shall be construed accordingly. "

6. Application of procedure for enforcing confiscation orders

Section 8 is amended---

(a) by repealing subsection (1)(a) and substituting---

"(a) the court shall also make an order---

(i) subject to subsection (1A), fixing the period within which the amount he is liable to pay under the confiscation order shall be duly paid; and

(ii) fixing a term of imprisonment which the defendant is to serve if any of that amount is not duly paid within that period (including paid by way of being recovered); and";

(b) by adding---

"(1A) The court shall not under subsection (1)(a)(i) fix a period longer than 6 months unless it is satisfied that there are special circumstances which justify it doing so. "

7. Cases in which restraint orders and charging orders may be made

Section 9 is amended---

(a) in subsection (1)---

(i) in paragraph (b), by repealing "and" at the end;

(ii) by adding---

"(ba) if section 2(11)(aa) is applicable to an offence, the Court of First Instance is satisfied that, in all the circumstances of the case, there is reasonable cause to believe that the defendant may be charged with the offence after further investigation is carried out; and";

(b) in subsection (4), by repealing "subsection (2)" and substituting "section 2(11)(aa) or subsection (2) of this section".

8. Restraint orders

Section 10 is amended by adding---

"(12) 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) 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.

(13) A person who receives a notice under subsection (12) 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) 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.

(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.".

9. Charging orders in respect of land, securities, etc.

Section 11 is amended 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) 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) 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) 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.

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

(13) A person who commits an offence under subsection (12) 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."

10. Dealing with property known or believed, etc. to represent proceeds of drug trafficking

Section 25 is amended---

(a) by adding---

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

(b) in subsection (2)---

(i) by adding "or (1A)" after "under subsection (1)";

(ii) in paragraph (a), by adding "or (1A), as the case may be," after "subsection (1)";

(c) in subsection (3)(a), by repealing "14" and substituting "20";

(d) by adding---

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

(a) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 5 years; or

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

11. Disclosure of knowledge or suspicion that property represents proceeds, etc. of drug trafficking

Section 25A is amended---

(a) in subsection (1)---

(i) by repealing "suspects" and substituting "has reasonable grounds to suspect";

(ii) by adding "grounds and any other" after "together with any";

(b) in subsection (2), by adding "or (1A)" after "section 25(1)";

(c) in subsection (5), by repealing "suspecting" and substituting "having reasonable grounds to suspect";

(d) in subsection (6)(a), by adding "have reasonable grounds to" after "know or";

(e) in subsection (7), by repealing "3" and substituting "12".

12. Enforcement of external confiscation orders

Section 28(1)(a) is amended by repealing ", subject to such modifications as may be specified, this Ordinance" and substituting "this Ordinance as modified in the order".

13. Drug trafficking offences

Schedule 1 is amended---

(a) by repealing "[s. 2]" and substituting "[ss. 2 & 3]";

(b) by adding "or suspected" after "believed".

SCHEDULE 2 [s. 3]

Amendment of Organized and Serious Crimes Ordinance

1. Long title amended

The long title to the Organized and Serious Crimes Ordinance (Cap. 455) is amended by repealing "an offence of assisting a person to retain" and substituting "offences relating to the proceeds of crime or property representing the".

2. Interpretation

Section 2(15) is amended by adding---

"(aa) where a person has been arrested for the offence and released on bail;"

3. Confiscation orders

Section 8 is amended---

(a) in subsections (3)(c)(i)(B)(II) and (7C)(b)(ii), by repealing "give notice of those proceedings to that person" and substituting "ascertain the person's whereabouts";

(b) by adding---

"(10) Where subsection (1)(a)(ii)(A) or (B) is applicable, the reference in that subsection to "one or more specified offences" includes any offence previously specified in Schedule 1 or 2, and the other provisions of this section and this Ordinance (including paragraphs (b) to (e) of the definition of "specified offence" in section 2(1) and any subsidiary legislation) shall be construed accordingly. "

4. Statements, etc. relevant to making confiscation order

Section 10 is amended by adding---

"(9) For the avoidance of doubt, it is hereby declared that an allegation may be accepted under this section, and may always have been so accepted, whether or not subsection (7)(b) is applicable to the defendant, and subsection (3) shall be construed accordingly. "

5. Application of procedure for enforcing confiscation orders

Section 13 is amended---

(a) by repealing subsection (1)(a) and substituting---

"(a) the court shall also make an order---

(i) subject to subsection (1A), fixing the period within which the amount he is liable to pay under the confiscation order shall be duly paid; and

(ii) fixing a term of imprisonment which the defendant is to serve if any of that amount is not duly paid within that period (including paid by way of being recovered); and";

(b) by adding---

"(1A) The court shall not under subsection (1) (a) (i) fix a period longer than 6 months unless it is satisfied that there are special circumstances which justify it doing so."

6. Cases in which restraint orders and charging orders may be made

Section 14 is amended---

(a) in subsection (1)---

(i) in paragraph (b), by repealing "and" at the end;

(ii) by adding---

"(ba) if section 2(15) (aa) is applicable to an offence, the Court of First Instance is satisfied that, in all the circumstances of the case, there is reasonable cause to believe that the defendant may be charged with the offence after further investigation is carried out; and";

(b) in subsection (4), by repealing "subsection (2)" and substituting "section 2(15) (aa) or subsection (2) of this section".

7. Restraint orders

Section 15 is amended by adding---

"(12) 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) 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.

(13) A person who receives a notice under subsection (12) 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) 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.

(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."

8. Charging orders in respect of land, securities, etc.

Section 16 is amended 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) 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) 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) 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.

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

(13) A person who commits an offence under subsection (12) 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."

9. Dealing with property known or believed, etc. to represent proceeds of indictable offence

Section 25 is amended---

(a) by adding---

"(1A) Subject to section 25A, a person commits an offence if, having reasonable grounds to suspect 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. ";

(b) in subsection (2)---

(i) by adding "or (1A)" after "under subsection (1)";

(ii) in paragraph (a), by adding "or (1A), as the case may be," after "subsection (1)";

(c) in subsection (3)(a), by repealing "14" and substituting "20";

(d) by adding---

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

- (a) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 5 years; or

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

10. Disclosure of knowledge or suspicion that property represents proceeds, etc. of indictable offence

Section 25A is amended---

(a) in subsection (1)---

(i) by repealing "suspects" and substituting "has reasonable grounds to suspect";

(ii) by adding "grounds and any other" after "together with any";

(b) in subsection (2), by adding "or (1A)" after "section 25(1)";

(c) in subsection (5), by repealing "suspecting" and substituting "having reasonable grounds to suspect";

(d) in subsection (6)(a), by adding "have reasonable grounds to" after "know or";

(e) in subsection (7), by repealing "3" and substituting "12".

11. Offences relevant to definitions of "organized crime" and "specified offence"

Schedule 1 is amended---

(a) by repealing "[ss. 2 & 31]" and substituting "[ss. 2, 8 & 31]";

(b) in paragraphs 15 and 16, by adding "or (1A)" after "section 25(1)".

12. Other specified Offences

Schedule 2 is amended by repealing "[ss. 2 & 31]" and substituting "[ss. 2, 8 & 31]".

SCHEDULE 3 [s. 4]

Amendment of Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order

1. Designation of and application of the Ordinance to countries, territories and places

Paragraph 3(2) of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg.) is repealed and the following substituted---

"(2) In relation to a designated country, the Ordinance as modified in Schedule 2 shall apply to external confiscation orders and to proceedings (whether criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or against property) which have been or are to be instituted in the designated country and which may result in an external confiscation order being made there."

2. Repeals

Paragraph 9 and Schedule 2 are repealed.

3. Drug Trafficking (Recovery of Proceeds) Ordinance as modified

Schedule 3 is amended---

(a) by renumbering it as Schedule 2;

(b) in Schedule 2 (as so renumbered)---

(i) by repealing "[paras. 3(2) & 9]" and substituting "[para. 3(2)]";

(ii) in section 10, by adding---

"(12) 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) 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.

(13) A person who receives a notice under subsection (12) 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) 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.

(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. ";

(iii) in section 11, 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) 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) 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) 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.

(12) A person who knowingly deals in any realisable property in contravention

of a charging order commits an offence.

(13) A person who commits an offence under subsection (12) 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.".

Explanatory Memorandum

The purposes of this Bill are ---

(a) to amend the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and its subsidiary legislation and the Organized and Serious Crimes Ordinance (Cap. 455) to introduce the following parallel amendments---

(i) to make the long titles of the two Ordinances consistent with their contents (section 1 of Schedules 1 and 2);

(ii) to add a further ground specifying when proceedings for an offence are instituted, and to make amendments consequential to that new ground (sections 2 and 7 of Schedule 1 and sections 2 and 6 of Schedule 2);

(iii) in the case of applications for confiscation orders against absconded persons whose exact whereabouts are not known, to amend one of the criteria in respect of which the court needs to be satisfied before making such an order (section 3(a) of Schedules 1 and 2);

(iv) in the case of offences which gave rise to applications for confiscation orders against dead or absconded persons, to specify that such offences include offences previously specified in Schedule 1 to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) or Schedule 1 or 2 to the Organized and Serious Crimes Ordinance (Cap. 455) (section 3(b) of Schedules 1 and 2);

(v) to put it beyond doubt that allegations in statements submitted by the prosecutor to the court in relation to absconded defendants may be treated as accepted (section 5 of Schedule 1 and section 4 of Schedule 2);

(vi) to fix a period within which a defendant is to pay the amount under a confiscation order (section 6 of Schedule 1 and section 5 of Schedule 2);

(vii) to require persons to state, or to provide documents to assist in determining, the value of realisable property the subject of a restraint or charging order, to make it an offence for a person to knowingly deal in any realisable property in contravention of such an order, and to make consequential amendments thereto (sections 8 and 9 of Schedule 1, sections 7 and 8 of Schedule 2 and section 3(b) (ii) and (iii) of Schedule 3);

(viii) to create a new offence of dealing in realisable property having

reasonable grounds to suspect that the property in whole or in part represents a person's proceeds from certain offences, and to make amendments consequential to the new offences (sections 10(a), (b) and (d), 11(b) and 13 of Schedule 1 and sections 9(a), (b) and (d), 10(b) and 11 of Schedule 2);

(ix) to increase from 14 years to 20 years the custodial sanction on conviction upon indictment for a contravention of section 25(1) of each Ordinance (section 10(c) of Schedule 1 and section 9(c) of Schedule 2);

(x) to alter the test for requiring a disclosure under section 25A(1) of each Ordinance (that is, that property, inter alia, represents any person's proceeds of drug trafficking or of an indictable offence) from "knows or suspects" to "knows or has reasonable grounds to suspect" (section 11(a), (c) and (d) of Schedule 1 and section 10(a), (c) and (d) of Schedule 2); and

(xi) to increase from 3 months to 12 months the custodial sanction for a contravention of section 25A(1) of each Ordinance (section 11(e) of Schedule 1 and section 10(e) of Schedule 2);

(b) to amend the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) to repeal section 4(4) so that the assumptions that may be made under section 4(2) and (3) by a court (for the purpose of determining whether a defendant has benefited from drug trafficking and the value of the benefit) will apply in a case where the only drug trafficking offence in respect of which the defendant is to be sentenced is an offence under section 25 (section 4 of Schedule 1); and

(c) to amend the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg.) so that that Order need only set out the Ordinance as modified (section 12 of Schedule 1 and sections 1 and 2 of Schedule 3).