

DRUG TRAFFICKING AND ORGANIZED 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, section 2 By deleting the section and substituting -

 "2. Interpretation

 Section 2 is amended -

 (a) in subsection (11), by adding -

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

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refused bail;”;

(b) by adding -

“(14) Subject to subsection (15), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege within the meaning of section 22.

(15) Subsection (14) shall not prejudice the operation of sections 20, 21 and 22.”.”.

Schedule 1,
section 3

By deleting paragraph (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

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(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; and”;

(aa) by adding -

“(2A) Where subsection (2)(c)(ii)(B) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, 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 -

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(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 that actions have been taken, 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.”;

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Schedule 1,
section 5

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

Schedule 1,
section 7

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

(b) 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

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(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

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

(c) By deleting paragraph (b).

Schedule 1,
section 8

(a) In the proposed section 10(12), by deleting everything 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."

(b) 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

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property concerned in
consequence of the
disclosure.”.

(c) In the Chinese text, by deleting the proposed
section 10(16) and substituting -

“(16) 任何人犯第(15)款所訂的罪行 -

(a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款
額為\$500,000 或屬有關限制令的標的而在違反該限
制令的情況下被處理的可變現財產的價值，兩者以
款額較大者為準；或

(b) 一經循簡易程序定罪，可處罰款\$250,000 及監禁 2
年。”。

Schedule 1,
section 9

(a) In the proposed section 11(9), by deleting
everything 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.”.

(b) 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

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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.”.

(c) In the Chinese text, by deleting the proposed section 11(13) and substituting -

“(13) 任何人犯第(12)款所訂的罪行 -

(a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款額為\$500,000 或屬有關抵押令的標的而在違反該抵押令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或

(b) 一經循簡易程序定罪，可處罰款\$250,000 及監禁 2 年。”。

Schedule 1,
sections 10,
11 and 13(b)

By deleting the sections.

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Schedule 2,
section 2

By deleting the section and substituting -

"2. Interpretation

Section 2 is amended -

(a) in subsection (15), by adding -

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

(b) by adding -

"(18) Subject to subsection
(19), nothing in this Ordinance
shall require the disclosure of
any items subject to legal
privilege.

(19) Subsection (18) shall
not prejudice the operation of
sections 3, 4 and 5."."

Schedule 2,
section 3

By deleting paragraph (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

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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; and”;

(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 that actions have been taken, 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 -

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(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 that actions have been taken, 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.”;

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Schedule 2,
section 4

In the proposed section 10(9), by deleting "subsection (7)(b)" and substituting "subsection (7)(a) or (b)".

Schedule 2,
section 6

(a) In paragraph (a)(ii), in the proposed section 14(1)(ba), by adding "subject to subsection (1A), before "if".

(b) 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

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- (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

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

(c) By deleting paragraph (b).

Schedule 2,
section 7

(a) In the proposed section 15(12), by deleting everything 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."

(b) 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

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property concerned in
consequence of the
disclosure.”.

- (c) In the Chinese text, by deleting the proposed
section 15(16) and substituting -

“(16) 任何人犯第(15)款所訂的罪行 -

- (a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款
額為\$500,000 或屬有關限制令的標的而在違反該限
制令的情況下被處理的可變現財產的價值，兩者以
款額較大者為準；或
- (b) 一經循簡易程序定罪，可處罰款\$250,000 及監禁 2
年。”。

Schedule 2,
section 8

- (a) In the proposed section 16(9), by deleting
everything 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.”.

- (b) 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

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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."

(c) In the Chinese text, by deleting the proposed section 16(13) and substituting -

"(13) 任何人犯第(12)款所訂的罪行 -

(a) 一經循公訴程序定罪，可處監禁5年及罰款，罰款額為\$500,000或屬有關押記令的標的而在違反該押記令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或

(b) 一經循簡易程序定罪，可處罰款\$250,000及監禁2年。"。"

Schedule 2,
sections 9
and 10

By deleting the sections.

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Schedule 2,
section 11

By deleting paragraph (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

property

known or

believed to

represent

proceeds of

drug

trafficking

16. Organized and

Serious Crimes

Ordinance

(Cap. 455)

section

25(1)

dealing with

property

known or

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believed to
represent
proceeds of
indictable
offence".

Schedule 3,
section 3

(a) In paragraph (b)(ii) -

(i) in the proposed section 10(12), by deleting everything 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

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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.”;

(iii) in the Chinese text, by deleting the
proposed section 10(16) and substituting -

“(16) 任何人犯第(15)款所訂的罪行 -

(a) 一經循公訴程序定罪，可處監禁5年
及罰款，罰款額為\$500,000 或屬有關
限制令的標的而在違反該限制令的情
況下被處理的可變現財產的價值，兩

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者以款額較大者為準；或

(b) 一經循簡易程序定罪，可處罰款

\$250,000 及監禁 2 年。”；”。

(b) In paragraph (b) (iii) -

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

ALL PASSED

(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.”;

(iii) in the Chinese text, by deleting the proposed section 11(13) and substituting -

“(13) 任何人犯第(12)款所訂的罪行 -

- (a) 一經循公訴程序定罪，可處監禁5年及罰款，罰款額為\$500,000或屬有關抵押令的標的而在違反該抵押令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或

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(b) 一經循簡易程序定罪，可處罰款

\$250,000 及監禁 2 年。 ”。 ”。

New By adding -

“SCHEDULE 4

[s. 5]

CONSEQUENTIAL AMENDMENTS TO MUTUAL
LEGAL ASSISTANCE IN CRIMINAL
MATTERS ORDINANCE

1. Interpretation

Section 2 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) is amended by adding -

“(10) Subject to subsection (11), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege within the meaning of section 13.

(11) Subsection (10) shall not prejudice the operation of Part IV.”.

2. Enforcement, etc. of external confiscation orders

Schedule 2 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

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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

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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.

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(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.”;

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(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) -

ALL PASSED

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

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

(i) the disclosure;

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

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(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

ALL PASSED

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

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