

**DRUG TRAFFICKING AND ORGANIZED CRIMES
(AMENDMENT) ORDINANCE 2002**

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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

[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 is amended—

(a) in subsection (11), by adding—

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

3. Confiscation orders

Section 3 is amended—

(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; and”;

(b) 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.”;

(c) by repealing subsection (9)(b)(ii) and substituting—

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“(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.”;

(d) 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.”;

(e) 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)(a) or (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)—

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- (i) in paragraph (b), by repealing “and” at the end;
- (ii) by adding—

“(ba) subject to subsection (1A), 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) 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.”.

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, 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.

(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) 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.

(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.”.

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, 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.”.

10. 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”.

11. Drug trafficking offences

Schedule 1 is amended by repealing “[s. 2]” and substituting “[ss. 2 & 3]”.

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 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.”.

3. Confiscation orders

Section 8 is amended—

(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; and”;

(b) 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.”;

(c) 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.”;

(d) 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.”;

(e) 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)(a) or (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) subject to subsection (1A), 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) 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.”.

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, 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.

(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) 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.

(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.”.

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, 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.

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- (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.”.

9. **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) 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 believed to represent proceeds of indictable offence”.

10. **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, 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.

(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) 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.

(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.”;

- (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, 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;

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- (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.”.

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 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)—

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(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.”.