

Panel on Administration of Justice and Legal Services

Consultation on

(a) Special procedures for appeal against proscription

(b) Arrangements for disposal of assets of a proscribed organisation

Purpose

This paper is prepared with a view to seeking views on the Administration's proposals on -

- (a) special procedures for appeal against proscription; and
- (b) arrangements for disposal of assets of a proscribed organisation.

Special procedures for appeal against proscription

2. Part 4 of the National Security (Legislative Provisions) Bill (clauses 13 - 15) contains amendments to the Societies Ordinance (Cap. 151) to confer a power on the Secretary for Security (S for S) to proscribe a local organisation. Under clause 15 of the Bill, the new section 8D of Cap. 151 provides for a right to appeal to the Court of First Instance (CFI) against proscription. The new section 8E provides that the Chief Justice may make rules for appeals which enable the CFI to hold proceedings in the absence of the appellant and any legal representatives appointed by him, and the rules shall also make provision for -

- (a) a power to appoint a legal practitioner to act in the interest of the appellant; and
- (b) the function and responsibility of such legal practitioner.

Relevant extract from the Legislative Council Brief on clause 15 of the Bill is in **Appendix I**.

3. The Administration has subsequently proposed draft Committee Stage amendments (CSAs) to the Bill to introduce a new section 8E of Cap. 151 to provide that the S for S may make regulations for appeals to enable the CFI to

hold proceedings in the absence of the appellant and any legal representatives appointed by him. Where regulations made under section 8E enable the CFI to hold proceedings in the absence of the appellant and any legal representative appointed by him, the regulations shall make provision for matters in paragraph 2(a) and (b) above. The CSAs also propose a new section 8F to provide that a Rules Committee may make rules for appeal. A marked-up copy of the Bill incorporating the relevant CSAs is in **Appendix II**.

4. The Administration has provided a paper to explain the function of the special advocate who represents the interests of an appellant and the selection of the special advocate. The Paper is in **Appendix III**.

Arrangements for disposal of assets of a proscribed organisation

5. The Bill does not contain any express provisions dealing with the assets of a proscribed organisation.

6. The Administration has provided a paper on whether provisions should be added to the Bill relating to assets of an organisation proscribed under the proposed section 8A. The paper is in **Appendix IV**.

7. The Administration has subsequently proposed draft CSAs to provide for a new Schedule 2 to Cap. 151 on matters following proscription of an organisation under proposed section 8A of the Ordinance. The relevant draft CSAs are in **Appendix V**.

Council Business Division 2
Legislative Council Secretariat
19 June 2003

~~bribery~~

Clause 12

Trial by jury for unlawful disclosure offences

20. Clause 12 adds a new section 24A to the Official Secrets Ordinance to provide that anyone accused of an offence of unlawful disclosure under the Ordinance could opt for a trial by jury.

Amendments to the Societies Ordinance

Clause 15

Proscription of organizations endangering national security

21. To thwart organization of activities that would genuinely endanger the state, clause 15 adds a new section 8A to the Societies Ordinance to empower the Secretary for Security to proscribe an organization that endangers national security. This power can only be exercised where it is necessary and proportionate under the standards of the ICCPR to do so in order to protect national security, *and* one of the following circumstances exists -

- (a) the objective, or one of the objectives, of the organization is to engage in acts of treason, secession, sedition, subversion, or spying;
- (b) the organization has committed or is attempting to commit acts of treason, secession, sedition, subversion, or spying; or
- (c) the organization is subordinate to a Mainland organization which has been prohibited in the Mainland by Central Authorities, by means of an open decree and in accordance with the national law on the ground of protecting the security of the People's Republic of China.

A local organization would be subordinate to a Mainland organization only if the former accepts substantial financial contributions from, is directed or controlled by, or has its policies determined by, a Mainland organization. The new section 8C provides that it will be an offence to support or organize activities for a proscribed organization.

22. The new section 8D provides that any person aggrieved by a decision of the Secretary for Security to proscribe an organization will be able to appeal to the Court of First Instance to set aside the proscription. The new section 8E provides that the Chief Justice may make rules governing the proceedings of such appeals.

~~Clause 16~~

23. Clause 16 and the Schedule provide for related and consequential

8D. Appeal against proscription

(1) Any office-bearer or member of an organization proscribed under section 8A who is aggrieved by the proscription may appeal to the Court of First Instance against the proscription within 30 days after the proscription takes effect.

(2) Lodging an appeal under subsection (1) and doing any incidental act shall not be regarded for the purposes of section 8C as acting as an office-bearer or member.

(3) On an appeal lodged under subsection (1) against a proscription, the Court of First Instance shall—

- || (a) if it is satisfied that—
 - (i) the Secretary for Security has ~~not~~ correctly applied the law in the proscription;
 - || (ii) the evidence is ~~insufficient~~ to prove that the organization in question falls within section 8A(2)(a), (b) or (c) ~~or~~ \triangle
 - || (iii) the evidence is ~~insufficient~~ to justify a reasonable belief that the proscription—
 - (A) is necessary in the interests of national security; and
 - (B) is proportionate for such purpose, set aside the proscription; or

|| (b) if it is ~~not~~ so satisfied, dismiss the appeal.
(4) A proscription set aside under subsection (3) shall be deemed to have never been made.

(5) If in the course of any proceedings before the Court of First Instance the Court is satisfied, upon application by the Secretary for Justice, that the publication of any evidence to be given or any statement to be made in the course of the proceedings might prejudice national security, the Court may order that all or any portion of the public shall be excluded during any part of the hearing so as to avoid such publication.

|| (6) In the hearing of an appeal, the Court of First Instance may admit ~~such evidence as may be provided for in rules made under section 8E.~~

↑ not

↓ sufficient

\triangle ; and

↑ any evidence that would, but for this subsection, not be admissible in a court of law.

□ (7) A party to an appeal lodged under subsection (1) may appeal to the Court of Appeal against the decision of the Court of First Instance on any ground involving a question of law.

(8) An appeal may only be lodged under subsection (7) with leave to appeal granted by the Court of First Instance or, where the Court of First Instance refuses to grant such leave, by the Court of Appeal.

|| □ >

8E. ~~Chief Justice may make rules for appeals~~

- ~~(1) The Chief Justice may make rules to provide for—~~
 - (a) the lodgement, hearing and withdrawal of appeals under section 8D;
 - (b) costs in respect of such appeals;
 - (c) the practice and procedure concerning the hearing of such appeals;
 - (d) admissibility of evidence; and
 - (e) such other matters which are incidental to or arise out of the hearing of such appeals.

(2) In making rules under this section, the Chief Justice shall have regard, in particular, to—

- (a) the need to secure that proscriptions which are the subject of appeals are properly reviewed; and
- (b) the need to secure that information is not disclosed to the detriment of national security.

(3) Rules made under this section may make provision—

- (a) enabling proceedings to take place without the appellant being given full particulars of the reasons for the proscription in question;
- (b) enabling the Court of First Instance to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him; and
- (c) enabling the Court of First Instance to give the appellant a summary of any evidence taken in his absence.

(4) Where rules made under this section enable the Court of First Instance to hold proceedings in the absence of the appellant and any legal representative appointed by him, the rules shall make provision for—

- (a) a power to appoint a legal practitioner to act in the interests of the appellant; and
- (b) the function and responsibility of such legal practitioner.

↑ Secretary for Security may make regulations

△ (1) The Secretary for Security may, subject to the approval of the Legislative Council, make regulations to provide for the handling of appeals under section 8D including matters which are incidental to or arise out of the hearing of such appeals.

↓ regulations under this section, the Secretary for Security

↑ Regulations

↓ regulations

000003
△

8F. Rules Committee
may make rules
for appeals

The Rules Committee constituted
under section 55 of the High Court
Ordinance (Cap. 4) may, subject to
the regulations made under section
8E, make rules of court to provide
for -

(a) the lodgement, hearing

and withdrawal of

appeals under section

8D;

(b) costs in respect of

such appeals;

(c) the practice and

procedure concerning

the hearing of such

appeals; and

(d) such other procedural

matters which are

incidental to or arise

out of the hearing of

such appeals.

8G. Matters following
proscription

Schedule 2 has effect in
relation to the proscription of an
organization under section 8A.

National Security (Legislative Provisions) Bill : Special Procedures for Appeals against Proscription

This paper explains the proposed functions of a special advocate and how it is proposed that a special advocate should be selected in any particular case.

Background

2. Paragraph 45 of Paper No. 53 explains how it is envisaged that special procedures could be applied in respect of an appeal against a proscription. That paragraph reads as follows.

“45. In particular –

- (1) the Court would decide whether the Secretary for Security may refuse to disclose to the appellant or its legal representative any particular information, reasons or evidence and, before so deciding, a special advocate could make representations on behalf of the appellant;*
- (2) if and to the extent that it would be possible to do so without disclosing information contrary to the interests of the security of the PRC, the Secretary for Security would be required to provide a statement of the undisclosed material in a form which could be shown to the appellant;*
- (3) the Court could only hear the proceedings or any party of them in the absence of the appellant and his legal representative if that was necessary in order to ensure that information was not disclosed contrary to the interests of the security of the PRC;*
- (4) a special advocate could represent the interests of the appellant by –*
 - (a) making submissions to the Court in any proceedings from which the appellant and his legal representative were excluded;*
 - (b) cross-examining witnesses at any such proceedings; and*
 - (c) making written submissions to the Court.”*

Functions of the special advocate

3. It is proposed that the functions of a special advocate would be modelled on English legislation on this subject. This provides that a special

advocate –

- (1) is to represent the interests of an appellant in any relevant proceedings from which the appellant and any legal representative of his are excluded;
- (2) shall not be responsible to the person whose interests he is appointed to represent.

4. The effect of these provisions is that a special advocate is under a *statutory* duty to represent the interests of an appellant, but there is not the usual client/lawyer relationship between the appellant and the special advocate.

5. Details of the functions of a special advocate are found in (for example) the Special Immigration Appeals Commission (Procedure) Rules 1998 (annexed). The following Rules are relevant : rules 7, 10(3), 11, 16, 22(2).

Selection of the special advocate

6. In England, a special advocate is appointed by the Attorney General. However, it is not proposed that a government official should appoint a special advocate under the proposed legislation.

7. The details of the selection process will be contained in subsidiary legislation that will be subject to vetting by the Legislative Council. In preparing that subsidiary legislation, the following principles will need to be taken into account –

- (1) the need to comply with Articles 39 and 35 of the Basic Law;
- (2) the need to ensure that the appellant's interests are represented by an experienced and independent lawyer from the private sector; and
- (3) the need to ensure that information is not disclosed contrary to the interests of national security.

8. The current thinking of the Administration is that these three principles could be satisfied by regulations that allowed the appellant to select a special advocate from a panel of experienced and independent lawyers that had been approved by the Secretary for Justice.

Department of Justice
June 2003

STATUTORY INSTRUMENTS

1998 No. 1881

IMMIGRATION

The Special Immigration Appeals Commission
(Procedure) Rules 1998

Made - - - - - 30th July 1998

Coming into force 31st July 1998

ARRANGEMENT OF RULES

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The Lord Chancellor, in exercise of the powers conferred by sections 5 and 8 of the Special Immigration Appeals Commission Act 1997(a), makes the following Rules of which a draft has, in accordance with sections 5(9) and 8(4), been laid before and approved by resolution of each House of Parliament:—

PART I

GENERAL PROVISIONS

Citation and commencement

1. These Rules may be cited as the Special Immigration Appeals Commission (Procedure) Rules 1998 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Rules—

“the 1971 Act” means the Immigration Act 1971(b);

“the 1997 Act” means the Special Immigration Appeals Commission Act 1997;

“the chairman” means the chairman of the Commission;

“the Commission” means the Special Immigration Appeals Commission; and

“the special advocate” means a person appointed under section 6(1) of the 1997 Act to represent the interests of the appellant.

General duty of Commission

3.—(1) When exercising its functions, the Commission shall secure that information is not disclosed contrary to the interests of national security, the international relations of the United Kingdom, the detection and prevention of crime, or in any other circumstances where disclosure is likely to harm a public interest.

(2) Where the Rules require information not to be disclosed contrary to the public interest, the requirement shall be construed in accordance with paragraph (1).

(a) 1997 c.68.

(b) 1971 c.77, as modified by Schedules 2 and 3 to the Special Immigration Appeals Commission Act 1997.

(3) Subject to paragraphs (1) and (2), the Commission must satisfy itself that the material available to it enables it properly to review decisions.

Delegated powers

4.—(1) The powers of the Commission under the following provisions may be exercised by the chairman or by any other member of the Commission who falls within paragraph 5(a) or (b) of Schedule 1 to the 1997 Act:—

- (a) rule 12(1) and (3) (amendment and supplementary grounds);
- (b) rule 13 (directions);
- (c) rule 25 (application for leave to appeal);
- (d) rules 26 and 27 (bail proceedings).

(2) Instead of exercising a power under paragraph (1), the chairman or member may remit the matter to be dealt with by the Commission.

(3) Where the chairman or member exercises any power of the Commission, references to the Commission in the Rules shall as appropriate include references to him.

Notices etc.

5.—(1) Any document required or authorised to be given or sent to—

- (a) the Commission, shall be directed to the Secretary to the Commission;
- (b) the Secretary of State, shall be directed to the Appeal Support Section of the Asylum Directorate of the Home Office.

(2) The appellant must inform the Commission if an address given under rule 9(3) changes.

PART II

APPEALS

Application of Part II

6. This Part applies to appeals brought under section 2 of the 1997 Act and appeals mentioned at paragraph 5 of Schedule 2 to that Act, but the provisions of this Part shall not—

- (a) prejudice steps already taken in respect of an appeal mentioned at paragraph 5 of that Schedule, or
- (b) require any step to be taken under these Rules which is equivalent to a step which has already been taken in respect of such an appeal.

The special advocate

7.—(1) On receiving a copy of the notice of appeal, the Secretary of State shall inform the relevant law officer of the proceedings before the Commission, with a view to the law officer, if he thinks fit to do so, appointing a special advocate to represent the interests of the appellant in the proceedings.

(2) Paragraph (1) applies unless—

- (a) the Secretary of State does not intend to oppose the appeal, or
- (b) he does not intend to object to the disclosure of material to the appellant.

(3) If at any stage in proceedings before the Commission, paragraph (2)(b) ceases to apply, the Secretary of State shall immediately notify the relevant law officer as in paragraph (1).

(4) The function of the special advocate is to represent the interests of the appellant by—

- (a) making submissions to the Commission in any proceedings from which the appellant and his representative are excluded;
- (b) cross-examining witnesses at any such proceedings; and
- (c) making written submissions to the Commission.

(5) Except in accordance with paragraphs (6) to (9), the special advocate may not communicate directly or indirectly with the appellant or his representative on any matter connected with proceedings before the Commission.

(6) The special advocate may communicate with the appellant and his representative at any time before the Secretary of State makes material available to him under rule 10(3).

(7) At any time after the Secretary of State has made material available under rule 10(3), the special advocate may seek directions from the Commission authorising him to seek information in connection with the proceedings from the appellant or his representative.

(8) The Commission shall notify the Secretary of State of a request for directions under paragraph (7) and the Secretary of State must, within a period specified by the Commission, give the Commission notice of any objection which he has to the request for information being made or to the form in which it is proposed to be made.

(9) Where the Secretary of State makes an objection under paragraph (8), rule 11 shall apply as appropriate.

Time limit for appealing

8. The appellant must give notice of an appeal no later than—

- (a) 7 days after receiving notice of the decision being appealed in a case where an appellant in the United Kingdom appeals under section 2(1)(g) of the 1997 Act (claim for asylum);
- (b) 14 days after receiving notice of the decision being appealed in a case where an appellant in the United Kingdom appeals otherwise than under section 2(1)(g) of the 1997 Act;
- (c) 42 days after receiving notice of the decision being appealed where an appellant appeals from outside the United Kingdom.

Notice of appeal

9.—(1) An appeal to the Commission is made by sending to the Commission a notice of appeal.

- (2) The notice of appeal must set out the grounds for the appeal.
- (3) The notice of appeal must state the name and address of the appellant and the name and address of any representative of the appellant.
- (4) The appellant or his representative must sign the notice of appeal.
- (5) The appellant must attach to the notice of appeal a copy of the document which informed him of the decision being appealed.
- (6) As soon as practicable after it receives a notice of appeal, the Commission shall send a copy to—
 - (a) the Secretary of State, and
 - (b) where the decision being appealed is a decision to refuse asylum, the United Kingdom Representative of the United Nations High Commissioner for Refugees.

Secretary of State's reply

10.—(1) If the Secretary of State intends to oppose the appeal, he must, no later than 42 days after receiving a copy of the notice of appeal,—

- (a) provide the Commission with a summary of the facts relating to the decision being appealed and the reasons for the decision;
- (b) inform the Commission of the grounds on which he opposes the appeal; and
- (c) provide the Commission with a statement of the evidence which he relies upon in support of those grounds.

(2) Where the Secretary of State objects to material referred to in paragraph (1) being disclosed to the appellant or his representative, he must also—

- (a) state the reasons for his objection; and
- (b) if and to the extent it is possible to do so without disclosing information contrary to the public interest, provide a statement of that material in a form which can be shown to the appellant.

(3) Where he makes an objection under paragraph (2), the Secretary of State must make available to the special advocate, as soon as it is practicable to do so, the material which he has provided to the Commission under paragraphs (1) and (2).

Consideration of Secretary of State's objection

11.—(1) Proceedings under this rule shall take place in the absence of the appellant and his representative.

(2) The Commission shall decide whether to uphold the Secretary of State's objection.

(3) Before doing so, it must invite the special advocate to make written representations.

(4) After considering representations made under paragraph (3), the Commission may—

- (a) invite the special advocate to make oral representations; or
- (b) uphold the Secretary of State's objection without requiring further representations from the special advocate.

(5) Where the Commission is minded to overrule the Secretary of State's objection, or to require him to provide material in a different form from that in which he has provided it under rule 10(2)(b), the Commission must invite the Secretary of State and the special advocate to make oral representations.

(6) Where—

- (a) the Commission overrules the Secretary of State's objection or requires him to provide material in a different form from that which he has provided under rule 10(2)(b), and

(b) the Secretary of State wishes to continue to oppose the appeal,

he shall not be required to disclose any material which was the subject of his unsuccessful objection if he chooses not to rely upon it in opposing the appeal.

Amendment and supplementary grounds

12.—(1) With the leave of the Commission, the appellant may amend his notice of appeal or deliver supplementary grounds of appeal.

(2) Rule 9(6) applies to an amended notice of appeal and to supplementary grounds of appeal provided under paragraph (1).

(3) With the leave of the Commission, the Secretary of State may amend or supplement the material which he has provided under rule 10.

(4) Where the Secretary of State provides further objections under paragraph (3), the Commission shall consider them in accordance with rule 11.

Directions

13.—(1) Subject to any decision which it makes under rule 11 and to the need to secure that information is not disclosed contrary to the public interest, the Commission may give directions for the conduct of proceedings.

(2) Directions may—

- (a) provide for a particular matter to be dealt with as a preliminary issue and for a pre-hearing review to be held;
- (b) limit the length of oral submissions and the time allowed for the examination and cross-examination of witnesses;
- (c) require any party to the appeal to give to the Commission—
 - (i) statements of facts and statements of the evidence which will be called at any hearing, including such statements provided in a modified or edited form;
 - (ii) a skeleton argument which summarises the submissions which will be made and cites all the authorities which will be relied upon, identifying any particular passages to be relied upon;
 - (iii) an estimate of the time which will be needed for any hearing;
 - (iv) a list of the witnesses who will be called to give evidence;
 - (v) a chronology of events;
 - (vi) a statement of any interpretation requirements,
 and to serve any such material on the other parties to the appeal.

(3) The Commission may, subject to any specific provisions of the Rules, specify time limits for steps to be taken in the proceedings and may extend any time limit.

(4) The power to give directions may be exercised in the absence of the parties.

Failure to comply with directions

14.—(1) Where a party fails to comply with a direction, the Commission may send him a notice which states—

- (a) the respect in which he has failed to comply with the relevant direction;
- (b) the time limit for complying with the direction; and
- (c) that the Commission may proceed to determine the appeal on the material available to it if the party fails to comply with the relevant direction within the time specified.

(2) Where the party in default fails to comply with the notice under paragraph (1), the Commission may proceed in accordance with paragraph (1)(c).

Applications by Secretary of State

15.—(1) This rule applies to the notification to the appellant by the Commission of—

- (a) any order or direction made or given in the absence of the Secretary of State,
- (b) any summary prepared under rule 22, and
- (c) its determination under rule 23.

(2) Before the Commission notifies the appellant as mentioned in paragraph (1), it must first notify the Secretary of State.

(3) If the Secretary of State considers that compliance by him with an order or direction or notification to the appellant of any matter under paragraph (1) would cause information to be disclosed contrary to the public interest, he may apply to the Commission to reconsider the order or direction or to review the proposed summary or determination.

(4) At the same time as he makes his application, or as soon as practicable afterwards, the Secretary of State must send a copy of it to the special advocate.

(5) An application by the Secretary of State must be made within 14 days of receipt of notification under paragraph (2), and the Commission shall not notify the appellant as mentioned in paragraph (1) before the time for applying has expired.

(6) Rule 11 shall apply as appropriate to the Commission's consideration of the Secretary of State's application.

Notification of hearing

16. The Secretary to the Commission must send notice of the date, time and place fixed for any hearing to the special advocate and every party entitled to attend that hearing.

Parties

17.—(1) The parties to an appeal shall be the appellant and the Secretary of State.

(2) If the United Kingdom Representative of the United Nations High Commissioner for Refugees (the "United Kingdom Representative") gives written notice that he wishes to be treated as a party to the appeal, he shall be so treated from the date of the notice.

(3) Any restriction imposed by or under these Rules in relation to the appellant as to the disclosure of material, attendance at hearings, notification of directions or decisions and communications with the special advocate, applies to the United Kingdom Representative.

Representation of parties

18.—(1) The appellant may act in person or be represented or appear by—

- (a) a person having a qualification referred to in section 6(3) of the 1997 Act,
- (b) a person appointed by any voluntary organisation for the time being in receipt of a grant under section 23 of the 1971 Act, or
- (c) with the leave of the Commission, any other person.

(2) The Secretary of State and the United Kingdom Representative may be represented by any person appointed by them respectively for that purpose.

Proceedings in private

19.—(1) Where the Commission considers it necessary for the appellant and his representative to be excluded from the proceedings or any part of them in order to secure that information is not disclosed contrary to the public interest, it must—

- (a) direct accordingly, and
- (b) hear the proceedings, or that part of it from which the appellant and his representative are excluded, in private.

(2) The Commission may hear the proceedings or part of them in private for any other good reason.

Evidence

20.—(1) In any proceedings on an appeal, the evidence of witnesses may be given either—

- (a) orally, before the Commission, or
- (b) in writing, in which case it shall be given in such a manner and at such time as the Commission has directed.

(2) The Commission may also receive evidence in documentary or any other form.

(3) The Commission may receive evidence that would not be admissible in a court of law.

(4) No person shall be compelled to give evidence or produce a document which he could not be compelled to give or produce on the trial of an action in the part of the United Kingdom in which the proceedings before the Commission are taking place.

(5) Every party shall be entitled to adduce evidence and to cross-examine witnesses during any part of the hearing of the appeal from which he and his representative are not excluded.

(6) The Commission may require a witness to give evidence on oath.

Summoning of witnesses

21.—(1) Subject to rules 3 and 20(4) and paragraph (2) of this rule, the Commission may require any person in the United Kingdom to attend as a witness at any proceedings before the Commission and to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal.

(2) No person shall be required to travel more than 16 kilometres from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.

(3) Where a party requests the attendance of a witness, that party must pay or tender those expenses.

Notification to appellant before determination

22.—(1) Where the appellant or his representative have been excluded from the hearing of the appeal or any part of it, the Commission must, before it makes a determination, give the appellant a summary of the submissions and evidence received in his absence if and to the extent it is possible to do so without disclosing information contrary to the public interest.

(2) Where the Commission provides such a summary, it shall afford the special advocate and the parties an opportunity to make representations and adduce evidence or further evidence to the Commission in respect of the material contained in it.

Promulgation of determination

23.—(1) The Commission must record its determination and, if and to the extent it is possible to do so without disclosing information contrary to the public interest, the reasons for it.

(2) The Commission shall publish its determination and send written notice of it to the special advocate and the parties.

PART III**LEAVE TO APPEAL FROM COMMISSION****Application of Part III**

24. This Part applies to applications for leave to appeal, on a question of law, to the Court of Appeal, the Court of Session or the Court of Appeal in Northern Ireland, as the case may be, from a final determination of an appeal by the Commission.

Application for leave to appeal

25.—(1) An application to the Commission for leave to appeal shall be made not later than 10 days after the party seeking to appeal has received written notice of the determination.

(2) The Commission may decide an application for leave without a hearing unless it considers there are special circumstances which make a hearing necessary or desirable.

PART IV**BAIL APPLICATIONS****Application for bail: procedure**

26.—(1) Subject to the provisions of this rule and rule 27, these Rules apply to—

(a) applications for bail by a person who brings an appeal under section 2 of the 1997 Act, and

(b) applications to the Commission under paragraphs 22 to 24 of Schedule 2 to the 1971 Act,

with appropriate modifications.

(2) References in the Rules to the appellant shall be read, in relation to bail applications, as if they were references to the applicant.

(3) Rules 8 and 9 shall not apply to bail applications.

(4) Rule 10(1) (time limit for Secretary of State to reply) shall apply as if "14 days" were substituted for "42 days".

(5) An application to the Commission to be released on bail must be made in writing and shall contain the following particulars—

- (a) the full name of the applicant;
- (b) the address of the place where, and the reason why, the applicant is detained at the time when the application is made;
- (c) the date of any notice of appeal which has been given;
- (d) the address where the applicant would reside if his application for bail were to be granted;
- (e) the amount of the recognizance in which he would agree to be bound;
- (f) the full names, addresses and occupations of two persons who might act as sureties for the applicant if his application for bail were to be granted, and the amounts of the recognizances in which those persons might agree to be bound; and
- (g) the grounds on which the application is made and, where a previous application has been refused, particulars of any change in circumstances which has occurred since that refusal.

(6) In its application to Scotland, this rule shall have effect as if, for paragraph (5)(e) and (f), there were substituted—

- “(e) the amount, if any, to be deposited if bail is granted;
- (f) the full names, addresses and occupations of such persons if any, who offer to act as cautioners if the applicant's application for bail were to be granted;”

(7) A bail application shall be signed by the applicant or by a person duly authorised by him for that purpose or, in the case of an applicant who is a minor or who is for any reason incapable of acting, by any person acting on his behalf.

(8) The application must be delivered, or sent by post, to the Commission.

Release on bail

27.—(1) Where the Commission directs the release of an applicant on bail and the taking of the recognizance is postponed under paragraph 22(3) or 29(6) of Schedule 2 to the 1971 Act, it shall certify in writing that the applicant has been granted bail and shall include in the certificate—

- (a) particulars of the conditions to be endorsed on the recognizance with a view to the recognizance being taken subsequently;
- (b) the amounts in which the applicant and any sureties are to be bound; and
- (c) the date of issue of the certificate.

(2) The person having custody of an applicant shall release him—

- (a) on receipt of a certificate signed by the Commission stating that the recognizances of any sureties required have been taken or on being otherwise satisfied that all such recognizances have been taken, and
- (b) on being satisfied that the applicant has entered into his recognizance.

(3) In its application to Scotland, this rule shall have effect as if for paragraph (2), there were substituted—

- “(2) The person having custody of an appellant shall release him—
 - (a) on receipt of a certified copy of the decision to grant bail, and
 - (b) on being satisfied that the amount, if any, to be deposited has been so deposited.”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the practice and procedure to be followed on appeals and bail applications under the Special Immigration Appeals Commission Act 1997. They include provision for—

- (a) appeals to be heard in the absence of the appellant and his representative where necessary;
- (b) the circumstances in which a special advocate is to be appointed to represent the interests of the appellant;
- (c) the right of the appellant to be legally represented; and
- (d) applications for leave to appeal on a point of law from the Commission's determination.

National Security (Legislative Provisions) Bill : Assets of a Proscribed Organization

This paper considers whether provisions should be added to the Bill relating to the assets of an organization proscribed under the proposed section 8A of the Societies Ordinance.

Current position under the Bill

2. At present, the Bill does not contain any express provision dealing with the assets of a proscribed organization. It follows that the distribution of those assets would be governed by any relevant legislation or common law principles relating to the type of organization involved. For example, if the proscribed organization were a partnership, Part X of the Companies Ordinance (Cap 32) would apply. Under Part X, an unregistered company may be wound up in specified circumstances and the assets distributed in accordance with the Ordinance. Some organizations that are established under specific Ordinances (e.g. credit unions) are subject to winding up provisions under those Ordinances.

3. In general, the existing law is able to deal adequately with the winding up of a proscribed organization and the distribution of its assets. However, there are two areas in respect of which specific provisions may be desirable.

Unregistered companies

4. The circumstances in which an unregistered company may be wound up under the Companies Ordinance are found in section 327(3) of Cap 32 and are as follows –

- (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
- (b) if the company is unable to pay its debts;
- (c) if the court is of opinion that it is just and equitable that the company should be wound up.

5. Since a proscription of an unregistered company would make it impossible for the organization to carry on its activities, it might be appropriate to add proscription under section 8A of the Societies Ordinance to the above grounds for winding up. And, in order to facilitate a winding up where this is appropriate, the Registrar of Companies could be given the power to apply to

the Court for a winding up of a proscribed unregistered company. Since a proscription would make further activities of the unregistered company unlawful, it is considered that the Court should be required to wind up a proscribed unregistered company where an application is made to it.

Companies registered under Cap 32

6. The Schedule to the Bill includes an amendment to the Companies Ordinance (item 2), the effect of which is that a proscribed organization that is a company registered under the Companies Ordinance would be struck off the companies register and dissolved. Under section 292 of Cap 32, the general rule is that all the property and rights vested in, or held in trust for, a dissolved company vest in the Government. However, it may not be appropriate to apply that rule in the current context, since (e.g.) bona fide creditors of the company would be prejudiced.

7. A similar provision for striking-off and dissolving a company is found in section 360C of Cap 32. That section empowers the CE in Council to order the striking-off of a company which would, if it were a society, be liable to be prohibited under section 8 of the Societies Ordinance. However, a section 360C striking-off is governed by sections 360D to 360M which provide (amongst other things) for the distribution of the assets of the company to creditors etc by the Official Receiver (see annex).

8. On the face of it, those sections provide a much more elaborate, and a fairer, system for dealing with a company that is proscribed under section 8A than the provisions dealing with the dissolution of defunct companies. It may therefore be appropriate to apply them to a section 8A dissolution.

Organizations registered under other Ordinances

9. An organization proscribed under section 8A might be registered under an Ordinance other than the Companies Ordinance. In such a case, that registration ought to be cancelled. In order to ensure that this is the case, it may be appropriate to provide that the person responsible for maintaining the relevant register shall cancel the registration of the proscribed organization.

10. After such cancellation, the winding up of the organization could be achieved either under the relevant Ordinance or, if that Ordinance does not contain winding up provisions, under the Companies Ordinance.

Department of Justice
June 2003

- (3) (*Repealed 3 of 1997 s. 54*)
 (3A) The Financial Secretary may, by order published in the Gazette, amend the table of fees in the Eighth Schedule and the Fourteenth Schedule. (*Added 30 of 1994 s. 9*)
 (4) The amount of any fee prescribed under this section shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in relation to providing the service to which such fee relates. (*Added 41 of 1989 s. 4*)
 (5) The Financial Secretary may, by order published in the Gazette, amend the Sixteenth Schedule. (*Added 30 of 1999 s. 33*)
 (*Replaced 6 of 1984 s. 250*)
 [*cf. 1948 c. 38 s. 454 U.K.*]

PART XIII

PREVENTION OF EVASION OF THE SOCIETIES ORDINANCE

360A. (*Repealed 30 of 1999 s. 34*)

360B. Power of Chief Executive in Council to order Registrar to refuse registration if satisfied that a company is being formed to evade the Societies Ordinance

If the Registrar suspects that the memorandum and articles of association of a company delivered to him in accordance with section 15 relate to a company which is being formed with the object of circumventing—

- (a) the refusal of the Societies Officer to register or to exempt from registration a society under the Societies Ordinance (Cap. 151); or
 (b) the cancellation by the Societies Officer of the registration or exemption from registration of a society registered or exempted under the Societies Ordinance (Cap. 151); or
 (c) the prohibition of the operation or continued operation of a society by the Secretary for Security under section 8 of the Societies Ordinance (Cap. 151),

or for the purpose of otherwise evading or defeating the provisions of the Societies Ordinance (Cap. 151) or anything done thereunder, it shall be lawful for him to withhold registration of the same pending the receipt of the instructions of the Chief Executive in Council with respect thereto. In the event

- (3) (*由 1997 年第 3 號第 54 條廢除*)
 (3A) 財政司司長可藉憲報刊登的命令，將附表 8 及附表 14 的費用表修訂。
 (*由 1994 年第 30 號第 9 條增補。由 1997 年第 362 號法律公告修訂*)
 (4) 根據本條訂明的任何費用的款額，不得藉參照因提供該等費用有關的服務而招致或相當可能會招致的行政或其他費用的款額而受到限制。
 (*由 1989 年第 41 號第 4 條增補*)
 (5) 財政司司長可藉憲報刊登的命令修訂附表 16。
 (*由 1999 年第 30 號第 33 條增補*)
 (*由 1984 年第 6 號第 250 條代替*)
 [*比照 1948 c. 38 s. 454 U.K.*]

第 XIII 部

防止規避《社團條例》的管制

360A. (*由 1999 年第 30 號第 34 條廢除*)

360B. 行政長官會同行政會議如信納一間公司正為規避《社團條例》的管制而組成即有權命令處長拒絕註冊

如處長懷疑某間公司按照第 15 條向其交付的組織章程大綱及章程細則乃關於一間正在組成的公司，而該公司組成的目的乃在於避免——

- (a) 社團事務主任根據《社團條例》(第 151 章)拒絕註冊社團或拒絕予其豁免註冊；或
 (b) 社團事務主任取消已根據《社團條例》(第 151 章)獲註冊或豁免的社團的註冊或註冊豁免；或
 (c) 保安局局長根據《社團條例》(第 151 章)第 8 條禁止社團的運作或繼續運作；

或在於以其他方式規避《社團條例》(第 151 章)的條文管制或使該等條文失效，或規避根據該條例所做的任何事情或使根據該條例所作的任何事情失效，則處長可在等待接獲行政長官會同行政會議就此事作出的指示期間，暫時不將該組織章程大綱及章程細則註冊。行政長官會同行政會議如信納該公司乃為任何上述目的而組成，可命令處長

of the Chief Executive in Council being satisfied that the company is being formed with any such object or for any such purpose, he may order the Registrar to refuse registration of the memorandum and articles, and upon receipt of such order, the Registrar shall, notwithstanding the provisions of section 15, refuse registration of the memorandum and articles.
(Amended 75 of 1992 s. 33; 118 of 1997 s. 18; 23 of 1999 s. 3)

360C. Power of the Chief Executive in Council to order company engaging in undesirable activities to be struck off

(1) If the Chief Executive in Council is satisfied that a company formed and registered under this Ordinance or any former Companies Ordinance would, if it were a society in respect of which the Societies Ordinance (Cap. 151) applied, be liable to have its registration or exemption from registration cancelled under section 5D or its operation or continued operation prohibited by the Secretary for Security under section 8 of that Ordinance, the Chief Executive in Council may order the Registrar of Companies to strike such company off the register of companies. (Amended 75 of 1992 s. 34; 118 of 1997 s. 19; 23 of 1999 s. 3)

(2) The Registrar shall thereupon strike the name of the company off the register, and shall publish notice thereof in the Gazette, and on such publication the company shall be dissolved:

Provided that the liability, if any, of every director, officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(3) A copy of such notice shall be sent to such company, and may either be sent by post or be delivered by hand addressed to the company at its registered office, or if no office has been registered, addressed to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar, the notice may be sent or delivered to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum, but if none of such addresses is available or if for any other reason the Registrar considers it unlikely that any notice sent in pursuance of this subsection will come to the knowledge of the addressee, it shall be sufficient compliance with this subsection that notice in the Gazette shall have been published in accordance with subsection (2).

360D. Certain sections not to apply

Sections 290, 291(7) and 292 shall not apply in the case of a company struck off the register under section 360C.

拒絕將該公司的章程大綱及章程細則註冊，而處長在接獲該命令後，須拒絕將該公司的章程大綱及章程細則註冊，儘管有第 15 條的規定。
(由 1992 年第 75 號第 33 條修訂；由 1997 年第 118 號第 18 條修訂；由 1999 年第 23 號第 3 條修訂)

360C. 行政長官會同行政會議有權命令將從事不良活動的公司剔除

(1) 行政長官會同行政會議如信納一間根據本條例或任何前項《公司條例》組成及註冊的公司，假若該《社團條例》(第 151 章)所適用的社團，其註冊或註冊豁免本可根據該條例第 5D 條取消者，或是保安局局長本可根據該條例第 8 條禁止其運作或繼續運作者，則行政長官會同行政會議可命令公司註冊處處長將該公司自公司登記冊中剔除。
(由 1992 年第 75 號第 34 條修訂；由 1997 年第 118 號第 19 條修訂；由 1999 年第 23 號第 3 條修訂)

(2) 處長須隨即將有關公司的名稱自該登記冊中剔除，並須在憲報刊登有關該項除名的公告，而當憲報刊登該公告時，有關公司即告解散：

但該公司的每名董事、高級人員及成員的法律責任(如有的話)仍然持續並可強制執行，猶如該公司未曾解散一樣。

(3) 上述的公告副本須送交該公司，並可以郵遞方式送往或由專人交付該公司的註冊辦事處(註明該公司為收件人)，如該公司並無已註冊的辦事處，則可註明交由該公司的某名董事或高級人員轉交該公司。如處長並不知道該公司的任何董事或高級人員的姓名或名稱及地址，則該份公告可按組織章程大綱內所述的地址，送交或交付稱名在章程大綱內簽署認購股份的人並註明由該人收件；如章程大綱並無此等地址，或如處長基於任何其他理由而認為任何依據本款發送的公告均相當可能不會為收件人知道，則只要按照第 (2) 款在憲報刊登該公告，即為充分遵從本款的規定。

360D. 某些條文並不適用

第 290、291(7) 及 292 條不適用於根據第 360C 條自登記冊中剔除的公司。

360E. Vesting and disposal of property of company struck off

(1) Where a company is struck off the register and dissolved under section 360C, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall vest in the Official Receiver.

(2) The Official Receiver shall with all due dispatch wind up the affairs of the company, and after realizing the said property and rights shall apply the sum so realized—

First, in paying all fees, costs, charges and expenses properly incurred in preserving, realizing or getting in the said property and rights.

Next, in paying all necessary fees, costs, charges and expenses incurred by the Official Receiver in and upon the winding up of the affairs of the company.

Next, in paying to the Government a sum equal to the fees which the Official Receiver could lawfully have charged if he had acted as liquidator of the company in a winding up thereof by the court.

Next, in paying the creditors of the company who shall have proved their debts within such time as shall have been limited by him not being less than 1 month from the date of publication of notice thereof in the Gazette and 2 or more local newspapers of which at least 1 shall be a Chinese newspaper, according to their respective rankings and priorities as if the company had been a company being wound up by the court by virtue of a winding up order dated the day of its dissolution under section 360C.

Next, in paying or distributing the surplus to or among the persons entitled thereto under the company's memorandum and articles of association.

360F. Provisions applicable to winding up of company struck off under section 360C

The provisions contained in sections 360G to 360M shall apply to the winding up by the Official Receiver of the affairs of a company struck off the register of companies under section 360C.

360G. Certain sections to apply

Sections 170 to 175, 190, 211, 221, 263 to 277, 281 to 283 and 285 shall apply *mutatis mutandis* as if on the day of the dissolution of the company under section 360C an order had been made for the winding up of the company by the court and as if the Official Receiver were the liquidator thereof.

360E. 被剔除公司的財產的歸屬及處置

(1) 凡公司根據第 360C 條自登記冊中被剔除及予以解散，在緊接其解散前歸屬公司或以信託形式代公司持有的所有財產及權利(包括批租土地財產，但不包括公司以信託形式代任何其他人士持有的財產)，均須歸屬破產管理署署長。

(2) 破產管理署署長須盡速將該公司的事務結束，並且在將上述財產及權利變現後，須將如此變現的款項運用於——

第一，支付在保存、變現或取得上述財產及權利時所適當地招致的一切費用。

其次，支付破產管理署署長因結束該公司的事務並在結束該公司的事務時所招致的一切所需的費用。

再其次，向政府繳付一筆款項，數額相等於破產管理署署長假若在法院將該公司清盤時曾充當該公司清盤人本可合法地收取的費用。

再其次，按照該公司的債權人各自的順序償還次序及優先權向該等債權人償付債項，但該等債權人須於破產管理署署長所限定的時間內(不少於由有關此事的公告在憲報及兩份或多於兩份本地報章(其中最少一份為中文報章)內刊登之日起計 1 個月)證明其債權，猶如該公司曾屬一間由法院憑藉一項在該公司根據第 360C 條解散之日作出的清盤令進行清盤的公司一樣。

再其次，將盈餘支付予或派發予根據該公司的組織章程大綱及章程細則有權獲支付或派發該項盈餘的人。

360F. 適用於根據第 360C 條被剔除公司的清盤的條文

第 360G 至 360M 條所載的條文，適用於破產管理署署長結束任何根據第 360C 條自公司登記冊中被剔除的公司的業務。

360G. 某些條文適用

第 170 至 175、190、211、221、263 至 277、281 至 283 及 285 條在加以必要的變通後即告適用，猶如在公司根據第 360C 條解散之日，法院曾作出一項有關該公司由法院清盤的清盤令一樣，而且猶如破產管理署署長是該公司的清盤人一樣。

410 CAP. 32 Companies

360H. Calls on contributories

The Official Receiver shall have the same rights and powers to settle a list of the contributories of the company, to make and enforce calls on the contributories on the list so settled, and to compromise calls and liabilities to calls, as if the company were being wound up by the court and he were the liquidator thereof.

360I. Continuation of pending legal proceedings

Where any legal proceeding instituted by or against a company is pending at the date of its dissolution, such proceeding may be continued by or against the Official Receiver as representing such company.

360J. Obstruction of Official Receiver

Every person who—

- (a) without lawful excuse refuses to hand over to the Official Receiver or any person authorized by him in that behalf any key, safe, document, account book, or other thing of any nature whatsoever belonging to the company of which he may have the custody or possession; or
- (b) without lawful excuse in any way obstructs the Official Receiver or any person authorized by him in that behalf in taking possession of any premises occupied by the company prior to its dissolution,

shall be guilty of an offence and shall be liable on conviction to a fine and imprisonment. (*Amended 7 of 1990 s. 2*)

360K. Control of Official Receiver

(1) Subject to the provisions of this Part, the Official Receiver shall conform to any directions which may be given to him by the Chief Executive for the purposes of this Part. (*Amended 23 of 1999 s. 3*)

(2) The Official Receiver shall with the permission of the Chief Executive be entitled to apply by originating summons to the court for directions on any matter arising out of the winding up. (*Amended 23 of 1999 s. 3*)

(3) Any such application shall be heard and determined in such manner as the court may direct, and it shall be lawful for the court to hear such parties and persons as it may think fit.

(4) Without prejudice to the generality of subsection (3) the court may if it sees fit direct that the proceedings or any part thereof be heard in camera.

第 32 章 公司條例

360H. 向分擔人催繳股款

破產管理署署長有權議定一份公司的分擔人列表，有權向該份如此議定的列表上所列的分擔人催繳股款並加以強制執行，以及有權對催繳股款及催繳股款的法律責任作出妥協，猶如有關公司正由法院清盤以及破產管理署署長是其清盤人一樣。

360I. 待決的法律程序的延展

如某公司所提起的法律程序或他人所提起針對某公司的法律程序在該公司解散之日待決，該項法律程序可由破產管理署署長代表該公司繼續進行，或可由他人繼續進行該項針對代表該公司的破產管理署署長的法律程序。

360J. 對破產管理署署長的妨礙

任何人——

- (a) 如在沒有合法辯解的情況下，拒絕將任何屬於公司而其本人可有權保管或管有的鑰匙、保險箱、文件、帳簿或其他任何性質的物件，移交破產管理署署長或就此授權的人；或
- (b) 如在沒有合法辯解的情況下，以任何方式妨礙破產管理署署長或就此授權的人取得管有該公司在解散前所佔用的處所，

即屬犯罪，一經定罪，可處罰款及監禁。 (*由 1990 年第 7 號第 2 條修訂*)

360K. 對破產管理署署長的控制

(1) 除本部的條文另有規定外，破產管理署署長須依從行政長官為施行本部而向其發出的任何指示。 (*由 1999 年第 23 號第 3 條修訂*)

(2) 破產管理署署長如獲行政長官許可，即有權就清盤中產生的事宜，藉原訴傳票向法院申請發出指示。 (*由 1999 年第 23 號第 3 條修訂*)

(3) 任何此等申請均須以法院所指示的方式審理及裁定，而法院可聆聽其認為合適的人士或各方的陳詞。

(4) 在不損害第(3)款的概括性的原則下，法院如認為適合，可指示以非公開形式聆訊有關法律程序或其任何部分。

(5) If any person is aggrieved by any act or decision of the Official Receiver, that person may apply by originating summons to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

360L. Audit of Official Receiver's accounts

(1) The accounts of the Official Receiver with respect to the winding up shall be audited in such manner as the Chief Executive may direct, and the cost of such audit shall be charged as an expense of the winding up. (Amended 23 of 1999 s. 3)

(2) In the event of the accounts being audited by a public servant there shall be paid to the Government in respect of such audit a sum equal to the fee which would have been chargeable on the audit of the Official Receiver's accounts if the winding up had been a winding up by the court.

360M. Protection of Official Receiver

(1) The Official Receiver shall not incur any personal liability in respect of the winding up of any company under this Part.

(2) No legal proceeding of any kind whatsoever, civil or criminal, shall without the permission of the Chief Executive be brought against the Official Receiver in respect of any act or omission connected in any manner whatsoever with any winding up under this Part. (Amended 23 of 1999 s. 3)

360N. Companies to which Part XI applies

If the Chief Executive in Council is satisfied that a company to which Part XI applies would, if it were a society in respect of which the Societies Ordinance (Cap. 151) applied, be liable to have— (Amended 23 of 1999 s. 3)

- (a) its registration or exemption from registration cancelled under section 5D of the Societies Ordinance (Cap. 151); or
- (b) its operation or continued operation prohibited by the Secretary for Security under section 8 of that Societies Ordinance (Cap. 151).

the Chief Executive in Council may order the company to cease to carry on business within Hong Kong, and such company shall thereupon cease to carry on business within Hong Kong and in the case of paragraph (b), the company is deemed to be an unlawful society within the meaning of and for the purposes of the Societies Ordinance (Cap. 151): (Amended 75 of 1992 s. 35; 118 of 1997 s. 20; 23 of 1999 s. 3)

(5) 任何人如因破產管理署署長的任何作為或決定而感到受屈，可藉原訴傳票向法院提出申請，而法院可確認、推翻或修改所投訴的作為或決定，並可在此方面作出其認為公正的命令。

360L. 破產管理署署長帳目的審計

(1) 破產管理署署長關於清盤的帳目，須按行政長官指示的方式予以審計，而審計費用須列為清盤的一項支出。 (由 1999 年第 23 號第 3 條修訂)

(2) 如帳目由一名公務員審計，則須就上述審計向政府支付一筆款項，數額等於清盤假若是一宗由法院作出的清盤不會就審計破產管理署署長的帳目所徵收的費用。

360M. 對破產管理署署長的保障

(1) 破產管理署署長無須就根據本部進行的任何公司清盤，招致任何個人法律責任。

(2) 未經行政長官許可，不得就任何與根據本部進行的清盤在任何方式上有關連的作為或不作為，針對破產管理署署長提出任何性質的民事或刑事法律程序。 (由 1999 年第 23 號第 3 條修訂)

360N. 第 XI 部適用的公司

如行政長官會同行政會議信納，第 XI 部所適用的公司假若是《社團條例》(第 151 章)所適用的社團—— (由 1999 年第 23 號第 3 條修訂)

- (a) 其註冊或註冊豁免本可根據《社團條例》(第 151 章)第 5D 條取消者；或
- (b) 保安局局長本可根據《社團條例》(第 151 章)第 8 條禁止其運作或繼續運作者。

則行政長官會同行政會議可命令有關公司停止在香港內經營業務，而該公司須隨即停止在香港內經營業務；如該公司屬 (b) 段所指的公司，則並須當作《社團條例》(第 151 章)所指的非法社團，而且就該條例而言，該公司須當作非法社團： (由 1992 年第 75 號第 35 條修訂；由 1997 年第 118 號第 20 條修訂；由 1999 年第 23 號第 3 條修訂)

Provided that a person shall not be liable to prosecution for an offence against the Societies Ordinance (Cap. 151) by reason only that he is a member of a company which has been ordered to cease to carry on business under this section.

(Part XIII added 6 of 1984 s. 251)

PART XIV

SAVINGS

361. Saving

(1) Without prejudice to the provisions of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1)—

- (a) nothing in the repeal of the Companies Ordinance 1911 (58 of 1911), shall affect any order in council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such order in council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Ordinance, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Ordinance shall have effect as if made, passed, given, taken, issued or done under this Ordinance;
(b) any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Ordinance;
(c) any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Ordinance;
(d) all funds and accounts constituted under this Ordinance shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(2) In this section, "former enactment relating to companies" (與公司有關的前有成文法則) means the Companies Ordinance 1911 (58 of 1911), and any enactment repealed thereby.

但任何人不得僅因身為一間已根據本條被命令停業的公司的成員，而被檢控《社團條例》(第 151 章)所訂的罪行。

(第 XIII 部由 1984 年第 6 號第 251 條增補)

第 XIV 部

保留條文

361. 保留條文

(1) 在不損害《釋義及通則條例》(第 1 章)第 23 條的條文下——

- (a) 《1911 年公司條例》*(1911 年第 58 號)的廢除，並不影響根據任何與公司有關的前有成文法則而作出的樞密院頒令、命令、訂立的規則、規例、費用表、作出的委任、訂立的轉易契、按揭、契據或協議、通過的決議、發出的指示、採取的法律程序、發出的文書或做出的事情，但任何此等樞密院頒令、命令、規則、規例、費用表、委任、轉易契、按揭、契據、協議、決議、指示、法律程序、文書或事情，如在本條例生效時有效，則持續有效，而任何此等樞密院頒令、命令、規則、規例、費用表、委任、轉易契、按揭、契據、協議、決議、指示、法律程序、文書或事情，只要有可能根據本條例作出、訂立、通過、採取、發出或做出，即具有效力，猶如是根據本條例作出、訂立、通過、採取、發出或做出一樣；
(b) 任何人根據或憑藉任何與公司有關的前有成文法則獲委任任何職位，須當作已根據或憑藉本條例獲委任該職位；
(c) 根據任何與公司有關的前有成文法則備存的任何登記冊，須當作是根據本條例的相應條文備存的登記冊的一部分；
(d) 所有根據本條例成立的基金及賬目，均須當作是根據與公司有關的前有成文法則成立的相應基金及賬目的延續。

(2) 在本條中，“與公司有關的前有成文法則”(former enactment relating to companies)指《1911 年公司條例》*(1911 年第 58 號)及由該條例廢除的任何成文法則。

* “《1911 年公司條例》”乃“Companies Ordinance 1911”之譯名。

~~Schedule By deleting the subheading immediately before
section 2.~~

Schedule By deleting section 2.

Schedule By adding -

"11A. "Schedule 1" substituted for
"the Schedule"

Sections 2(2), (2B) and (3), 9(1)(c)
and 14A(2) are amended by repealing "the
Schedule" and substituting "Schedule 1".

Schedule,
section 8 By deleting "under section 8D(3)" and
substituting "on an appeal under section 8D(1)".

Schedule,
section 12 By deleting paragraph (a) and substituting -
"(a) by repealing -
"SCHEDULE [s. 2]"
and substituting -
"SCHEDULE 1 [ss. 2, 8A, 9
& 14A]"

Schedule By adding immediately after section 12 -

"12A. Schedule 2 added

The following is added -

"SCHEDULE 2 [s. 8G]

MATTERS FOLLOWING PROSCRIPTION
OF AN ORGANIZATION UNDER
SECTION 8A OF THIS
ORDINANCE

1. **Companies registered
under Companies
Ordinance**

(1) If a company registered under the Companies Ordinance (Cap. 32) is proscribed under section 8A of this Ordinance, the Registrar of Companies shall -

(a) strike the name of such company off the register of companies kept by the Registrar; and

(b) publish a notice of the striking off in the Gazette,

and upon the publication of the notice such company shall be dissolved.

(2) The Registrar of Companies may defer taking action under subsection (1) if he is satisfied that the right to take legal action against the proscription has not been exhausted.

(3) On an application of the Registrar of Companies to the Court

of First Instance, a company struck off the register under subsection (1) shall be wound up and sections 360D, 360E, 360F, 360G, 360H, 360I, 360J, 360K, 360L and 360M of the Companies Ordinance (Cap. 32) shall apply to such company as if such company were a company struck off the register and dissolved under section 360C of that Ordinance.

**2. Unregistered companies
under Companies
Ordinance**

(1) An unregistered company within the meaning of section 326 of the Companies Ordinance (Cap. 32) which is proscribed under section 8A of this Ordinance shall for the purpose of section 327(3) of the Companies Ordinance (Cap. 32) be regarded as having been dissolved.

(2) On an application of the Registrar of Companies to the Court of First Instance, the company referred to in subsection (1) shall be wound up and Part X of the

Companies Ordinance (Cap. 32) shall apply to such company.

3. Other types of organizations

(1) If an organization that is proscribed under section 8A of this Ordinance is not registered under the Companies Ordinance (Cap. 32) but is registered under any other Ordinance, the appropriate authority shall -

- (a) cancel the registration of that organization and (if applicable under that other Ordinance) remove or strike its name off the relevant register or any other similar record; and
- (b) publish a notice of the cancellation in the Gazette,

and upon the publication of the notice -

- (c) that organization shall be dissolved for the purposes of that

other Ordinance and
all other purposes;
and

(d) the provisions (if
any) of that other
Ordinance applicable
to -

(i) the
dissolution
of that
organization
shall apply
as if it
were
dissolved
under that
other
Ordinance;

(ii) the winding
up of
organizations
shall apply
to that
organization.

(2) Subject to subsection
(1)(d), an organization referred to
in subsection (1) shall, on an

application of the appropriate authority to the Court of First Instance, be wound up and Part X of the Companies Ordinance (Cap. 32) shall apply as if such organization were an unregistered company within the meaning of section 326 of that Ordinance.

(3) The appropriate authority may defer taking action under subsection (1) if he is satisfied that the right to take legal action against the proscription has not been exhausted.

(4) In this section,
"appropriate authority" means -

- (a) where a person has authority under the relevant Ordinance to cancel the registration of the relevant organization under that Ordinance, that person; or
- (b) in any other case, the Registrar of Companies."