

For discussion

Sub-Committee on Rules of the High Court (Amendment) Rules 2009 (L.N. 186)

Purpose

In exercise of the power under section 54 of the High Court Ordinance (Cap. 4) and section 20 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“the Ordinance”), the Rules Committee of the High Court (“the Rules Committee”) has made the Rules of the High Court (Amendment) Rules 2009 (the “Amendment Rules”) (at Annex) for the Ordinance. This paper explains the proposed Amendment Rules made by the Rules Committee for Members’ consideration.

Background

2. The Ordinance was enacted in 2002 to give effect to the mandatory elements of United Nations Security Council Resolution (UNSCR) 1373¹ and the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF)².

3. Subsequently, the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 (“the Amendment Ordinance”) was enacted in July 2004 to amend the Ordinance to -

- (a) give full effect to the requirements of UNSCR 1373;
- (b) implement the FATF Special Recommendations on freezing non-fund terrorist property; and

¹ UNSCR 1373 passed on 28 September 2001 aims at combatting international terrorism on various fronts, including measures against terrorist financing. UNSCR 1373 is binding on all Member States. The Central People’s Government gave instructions to the HKSARG in October 2001 to implement the resolution.

² Hong Kong has been an active member of the FATF, an inter-governmental body which recommends standards and best practices in countering money laundering and terrorist financing. On 31 October 2001, FATF made eight Special Recommendations, setting out the key legislative and regulatory steps that the FATF considers countries/territories should adopt to stop terrorist financing. In October 2004, FATF made the ninth Special Recommendation.

- (c) implement other international conventions against terrorism, namely, the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.
4. The purpose of the Ordinance and the Amendment Ordinance is to fulfil Hong Kong's international obligations to combat terrorist financing and acts of terrorism under UNSCR 1373, the Special Recommendations of the FATF and the relevant Conventions.
5. The following sections of the Ordinance (as amended by the Amendment Ordinance) can only take effect when the Amendment Rules providing for the related procedural matters commence operation-
- (a) *section 5* empowering the Court of First Instance (CFI) by order to specify terrorists, terrorist associates and terrorist property not designated by the United Nations. Section 5(9) specifies that an application to the CFI must be made inter partes except where the application falls within the circumstances specified in Amendment Rules made for section 5. These include situations where there exist circumstances of urgency or the whereabouts of the intended respondent(s) are not known to the applicant;
 - (b) *section 6* empowering the Secretary for Security (S for S) to freeze suspected terrorist property. Section 6(1) provides that S for S may direct that a person shall not deal with the frozen property except under the authority of a licence granted by S for S. Further, section 6(10) provides that S for S may give a direction that an authorized officer may, for the purpose of preventing the frozen property being removed from the HKSAR, seize the property, and give directions to deal with the property concerned;
 - (c) *section 8* prohibiting the making of any funds or financial services available to or for the benefit of terrorists or terrorist associates except under the authority of a licence granted by S for S;
 - (d) *sections 12A to 12E* providing for various powers of investigation, such as making an application for an order to require particular persons(s) to furnish information or produce material or to make material available or for a warrant to enter and search of premises;

- (e) *sections 12F to 12J* providing for the seizure and detention of property suspected to be terrorist property;
- (f) *section 13* empowering the CFI to order the forfeiture of terrorist property representing proceeds arising from a terrorist act, or which was or intended to be used to finance or otherwise assist the commission of a terrorist act;
- (g) *section 14(2),(3),(7E) to (7J)* relating to the offences and penalties of contravening sections 6 and 12A to 12G;
- (h) *section 15* on the supplementary provisions applicable to the licences mentioned in section 6(1) or 8;
- (i) *section 17* providing for applications to the CFI to revoke an order made under section 5 or a freezing notice issued under section 6, or to grant or vary a licence mentioned in section 6(1) or 8;
- (j) *section 18* on compensation that the CFI may order the Government to pay to an affected party under specified circumstances;
- (k) *section 18A* preserving the common law remedies for an affected person.

6. The Administration briefed the Panel on Security on the salient features of the Amendment Rules to be made for the Ordinance at its meeting on 2 December 2008.

The Amendment Rules

7. The Amendment Rules have been made by the Rules Committee on 28 September 2009. The purpose of the Amendment Rules is to add a new Order 117A to the Rules of the High Court (Cap. 4 sub. leg. A), setting out the procedures for applications to the CFI under section 5, 12A, 12B, 12C, 12G, 12H, 13, 17 or 18 of the Ordinance. Furthermore, the Amendment Rules also amend Order 1, rule 2(3) of the principal Rules to ensure that other provisions of the principal Rules, if appropriate, apply in respect of applications that may be made under the Ordinance.

8. Section 2 of the Ordinance provides that for the purposes of the Ordinance, a person having a “prescribed interest” in any property is

deemed to be a person by, for or on behalf of whom the property is or was held, and that rules of court may prescribe the meaning of “prescribed interest”. Accordingly, the meaning of “prescribed interest” is set out under rule 1 of the new Order 117A.

Rules 3, 4, 6 and 7 – Application to specify person as terrorist or terrorist associate or to specify property as terrorist property under section 5(1)

9. An application under section 5(1) may be made ex parte and using an ex parte originating summons supported by an affidavit if –

- (a) there exist circumstances of urgency; or
- (b) the whereabouts of the intended respondent are not known to the applicant or, in the case of an application under section 5(1)(b), where there are more than one intended respondent, the whereabouts of none of them are known to the applicant, the applicant has taken reasonable steps to ascertain the whereabouts of such intended respondent, and has published notice of the applicant’s intention to make the application in a Chinese newspaper and an English newspaper which circulate generally in Hong Kong.

10. Otherwise, the application is to be made inter partes by an expedited originating summons supported by an affidavit. The Amendment Rules specify the timeframe for serving the summons and affidavit by the applicant as well as for the serving of any affidavit evidence in opposition by the respondent.

Rules 9, 10 and 11 – Application for forfeiture of certain terrorist property under section 13

11. Where the circumstances for ex parte applications as described in rule 9(1)(a) and (b) exist, an application under section 13 is to be made by a summons supported by an affidavit (if in the court there are existing proceedings conducted under the Ordinance in respect of the property) or by an ex parte originating summons supported by an affidavit (if there are no such proceedings). Otherwise, the application is to be made inter partes by a summons supported by an affidavit (if in the court there are existing proceedings conducted under the Ordinance in respect of the property) or by an expedited originating summons supported by an affidavit (if there are no such proceedings). The Amendment Rules specify the timeframe for serving the summons and affidavit by the

applicant as well as for the serving of any affidavit evidence in opposition by the respondent.

Rules 5, 8 and 12 – Where certain respondent's whereabouts are not known or have become unknown in an inter partes application under section 5(1) or 13

12. In an inter partes application under section 5(1) or 13, if the applicant cannot serve the summons or expedited originating summons (as the case may be) on a respondent because the whereabouts of the respondent have become unknown after the application is made, or (in the case of an application under section 5(1)(b) or 13) if there are more than one intended respondent and the whereabouts of one or more, but not all, of the intended respondents are not known, the applicant may, after having taken reasonable steps to ascertain the whereabouts of the respondent(s) or intended respondent(s) and published notice of the applicant's intention to make or proceed with the application in a Chinese newspaper and an English newspaper which generally circulate in Hong Kong, file with the court an additional affidavit stating the relevant facts. Where such an additional affidavit is filed, the court may direct that the application be heard in the absence of the respondent(s) whose whereabouts are not known or have become unknown if, having regard to the nature and circumstances of the application, it thinks it just and expedient so to do.

Rules 3(4), 5(5), 6(4) 8(6) 9(3) and 12(6) – Service of order obtained ex parte or in the absence of respondent under section 5(2) or 13

13. Where an order under section 5(2) or 13 has been obtained by an ex parte application or by an application heard in the absence of any respondent(s), the applicant must publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong. If the whereabouts of the respondent(s) are known or have become known to the applicant, the applicant must serve the order, the summons or ex parte originating summons (as the case may be) and a copy of the affidavit in support on the respondent(s) .

Rule 13 – Revocation of order specifying person as terrorist or terrorist associate or specifying property as terrorist property

14. An application under section 5(5) to revoke, in whole or in part, an order under section 5(2) is to be made ex parte by a summons supported by an affidavit.

Rule 14 – Application under section 12A, 12B, 12C or 12G

15. An application for an order under section 12A(1) (to furnish information or produce material) or 12B(1) (to make material available) or for a warrant under section 12C(1) (for entry and search of premises) or 12G(1) (for entry and search of premises and seizure, removal and detention of terrorist property) is to be made by laying an information on oath.

Rule 15 – Revocation or variation of order made under section 12A or 12B

16. An application under section 12A(13) for the revocation or variation of an order under section 12A(2), or an application under section 12B(8) for the revocation or variation of an order under section 12B(2) or (7), is to be made by a summons supported by an affidavit.

Rules 16 and 17 – Claim of legal privilege in relation to an order under section 12A or 12B or a warrant under section 12C or 12G

17. The Amendment Rules specify the handling procedures if a claim of legal privilege is made in respect of any relevant information/material/thing in the following circumstances:

- (a) in the course of the exercise of powers conferred by an order under section 12A to require any person(s) to answer questions or otherwise furnish information;
- (b) in the course of the exercise of powers conferred by an order under section 12A or 12B to require any person(s) to produce material or to give an authorized officer access to material; and
- (c) in the course of the execution by an authorized officer of a warrant issued under section 12C or 12G.

18. The Amendment Rules stipulate the procedures for the person making the claim to apply to the court by a summons supported by an affidavit for a declaration that the information/material/thing in question is an item subject to legal privilege and for the material/thing for which a claim is made to be secured meanwhile.

Rule 18 – Application to be heard in camera

19. An application under section 12A, 12B, 12C or 12G must be heard in camera.

Rules 19, 20, 21 and 22 – Application for continued and further detention and release of seized property under section 12H

20. An application under section 12H(2) for an order to authorize the continued detention of seized property is to be made by an ex parte originating summons supported by an affidavit.

21. An application under section 12H(3) for an order to authorize the further detention of seized property is to be made by a summons supported by an affidavit.

22. An application under section 12H(4)(a) for the release of seized property detained by an order under section 12H(2) or (3) is to be made by a summons supported by an affidavit stating the grounds on which the application is made. An application under section 12H(4)(b) for the release of seized property detained by an order under section 12H(2) or (3) is to be made ex parte by a summons supported by an affidavit stating the grounds on which the application is made.

23. The Amendment Rules specify the timeframe for the serving of summons, affidavit and order, as applicable, in respect of an application under sections 12H(2), 12H(3) and 12H(4)(a).

Rule 23 – Application to court to revoke order made under section 5(2) or notice given under section 6(1)

24. An application under section 17(1)(a) to revoke, in whole or in part, an order under section 5(2) which has been made ex parte is to be made by a summons.

25. An application under section 17(1)(b) to revoke, in whole or in part, a notice under section 6(1) is to be made , if in the court there are existing proceedings conducted under the Ordinance in respect of the property that are the subject of the application, by a summons, or if there are no such proceedings, by an expedited originating summons.

Rule 24 – Application concerning direction mentioned in section 6(10) or licence mentioned in section 6(1) or 8

26. An application under section 17(4) for revocation or variation of a direction mentioned in section 6(10), or for the grant of a licence or the variation of a licence mentioned in section 6(1) or 8 is to be made, if in the court there are existing proceedings conducted under the Ordinance in respect of the property, funds or financial services that is or are the subject of the application, by a summons, or if there are no such proceedings, by an expedited originating summons.

Rule 25 – Application for compensation under section 18

27. An application for an order for compensation under section 18 is to be made , if in the court there are existing proceedings conducted under the Ordinance in respect of the person or property to whom or which the application relates, by a summons, or if there are no such proceedings, by an expedited originating summons. The Amendment Rules specify the timeframe for serving the summons or expedited originating summons, and affidavit in support, if any, on the Secretary for Justice and any other person on whose part, it is alleged, there has been default, as well as for the serving of any affidavit in opposition by the Secretary for Justice.

Rule 27 – Service out of jurisdiction

28. The service of any document under the Amendment Rules out of the jurisdiction is permissible with the leave of the court.

Commencement

29. The Amendment Rules will come into operation on the day appointed by S for S for the commencement of sections 5, 6, 8, 13, 17 and 18 of the Ordinance and of sections 5, 7, 12, 13, 16 and 17 of the Amendment Ordinance.

RULES OF THE HIGH COURT (AMENDMENT) RULES 2009

CONTENTS

Rule		Page
1.	Commencement	1
2.	Application	1
3.	Order 117A added	

ORDER 117A

**(HK) UNITED NATIONS (ANTI-TERRORISM
MEASURES) ORDINANCE (CAP. 575)**

1.	Interpretation	1
2.	Judge to exercise jurisdiction	2
3.	Ex parte application to specify person as terrorist or terrorist associate	2
4.	Inter partes application to specify person as terrorist or terrorist associate	4
5.	Additional affidavit procedure for application under section 5(1)(a)	4
6.	Ex parte application to specify property as terrorist property	6
7.	Inter partes application to specify property as terrorist property	7
8.	Additional affidavit procedure for application under section 5(1)(b)	8
9.	Ex parte application for forfeiture of certain terrorist property	10
10.	Inter partes application for forfeiture of certain terrorist property	11
11.	Contents of affidavit in support for application under section 13	12
12.	Additional affidavit procedure for application under section 13	13

13.	Revocation of order specifying person as terrorist or terrorist associate or specifying property as terrorist property	15
14.	Application under section 12A, 12B, 12C or 12G	16
15.	Revocation or variation of order made under section 12A or 12B	16
16.	Claim of legal privilege in relation to order under section 12A or 12B	17
17.	Claim of legal privilege in relation to warrant under section 12C or 12G	18
18.	Application to be heard in camera	18
19.	Application for continued detention of seized property under section 12H(2)	19
20.	Application for further detention of seized property under section 12H(3)	20
21.	Application for release of seized property under section 12H(4)	21
22.	Release of seized property	21
23.	Application to Court to revoke order made under section 5(2) or notice given under section 6(1)	22
24.	Application concerning direction mentioned in section 6(10) or licence mentioned in section 6(1) or 8	22
25.	Application for compensation	23
26.	Affidavits containing statements of information or belief	24
27.	Service out of jurisdiction	24

RULES OF THE HIGH COURT (AMENDMENT) RULES 2009

(Made by the Rules Committee of the High Court under
section 54 of the High Court Ordinance (Cap. 4) and
section 20 of the United Nations (Anti-Terrorism
Measures) Ordinance (Cap. 575))

1. Commencement

These Rules come into operation on the day appointed for the commencement of sections 5, 6, 8, 13, 17 and 18 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) and of sections 5, 7, 12, 13, 16 and 17 of the United Nations (Anti-Terrorism Measures)(Amendment) Ordinance 2004 (21 of 2004).

2. Application

Order 1, rule 2(3) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended by adding “Order 117A,” after “Order 117.”

3. Order 117A added

The following is added –

“ORDER 117A

(HK) UNITED NATIONS (ANTI-TERRORISM MEASURES) ORDINANCE (CAP. 575)

1. Interpretation (O. 117A, r. 1)

(1) In this Order –

- “ex parte originating summons” (單方面原訴傳票) means an originating summons in Form No. 11 in Appendix A;
- “expedited originating summons” (速辦原訴傳票) means an originating summons in Form No. 10 in Appendix A;

“holder” (持有人), in relation to any subject property, means a person whom the applicant can reasonably ascertain to be a person by, for or on behalf of whom the property is held;

“the Ordinance” (《條例》) means the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575);

“subject person” (標的人士), in relation to an application under section 5(1)(a), means the person who is the subject of the application;

“subject property” (標的財產), in relation to an application under section 5(1)(b) or 13, means the property that is the subject of the application.

(2) An expression used in this Order that is used in the Ordinance has the same meaning in this Order as in the Ordinance.

(3) A section referred to by number in this Order means the section so numbered in the Ordinance.

(4) For the purposes of the Ordinance (under which a person who has a prescribed interest in any property is deemed to be a person by, for or on behalf of whom the property is or was held), “prescribed interest” (訂明權益), in relation to any property, means –

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege in connection with the property.

2. Judge to exercise jurisdiction

(O. 117A, r. 2)

The jurisdiction of the Court under the Ordinance must, for the purposes of this Order, be exercised by a judge of the Court.

3. Ex parte application to specify person as terrorist or terrorist associate

(O. 117A, r. 3)

(1) An application under section 5(1)(a) for an order to specify a person as a terrorist or terrorist associate may be made ex parte if –

- (a) there exist circumstances of urgency; or
- (b) the whereabouts of the subject person are not known to the applicant, and –
 - (i) the applicant has taken reasonable steps to ascertain the whereabouts of the subject person; and
 - (ii) a notice of the applicant's intention to make the application, addressed to the subject person, has been published in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.

(2) The ex parte application must be made by an ex parte originating summons supported by an affidavit.

(3) The affidavit in support must state the grounds for believing that –

- (a) this rule applies; and
- (b) the subject person is a terrorist or terrorist associate.

(4) As soon as practicable after obtaining an order under section 5(2) on an ex parte application, the applicant must –

- (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
- (b) if the whereabouts of the subject person are known or have become known to the applicant, serve the order, the ex parte originating summons

and a copy of the affidavit in support on the subject person.

4. Inter partes application to specify person as terrorist or terrorist associate (O. 117A, r. 4)

(1) This rule applies if an application under section 5(1)(a) is made other than in the circumstances referred to in rule 3(1)(a) and (b).

(2) The application must be made by an expedited originating summons supported by an affidavit.

(3) The affidavit in support must state the grounds for believing that the subject person is a terrorist or terrorist associate.

(4) The expedited originating summons and a copy of the affidavit in support must be served on the subject person not less than 7 clear days before the date fixed for the hearing of the application.

(5) If a subject person served with the expedited originating summons wishes to adduce any affidavit evidence in opposition to it, the person must, within 28 days after the service, file an affidavit of evidence with the Court and serve a copy of the affidavit on the Secretary for Justice.

5. Additional affidavit procedure for application under section 5(1)(a)
(O. 117A, r. 5)

(1) This rule applies if, after the application referred to in rule 4 is made, the applicant cannot serve the expedited originating summons on the subject person because the whereabouts of the subject person have become unknown to the applicant.

(2) The applicant may file with the Court an additional affidavit that complies with paragraph (3) if the applicant –

- (a) has taken reasonable steps to ascertain the whereabouts of the subject person; and
 - (b) has published a notice of the applicant's intention to proceed with the application, addressed to the subject person, in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.
- (3) The additional affidavit referred to in paragraph (2) must –
- (a) state that the applicant believes that this rule applies; and
 - (b) state the facts showing that the applicant has done the acts referred to in paragraph (2)(a) and (b).
- (4) The Court may direct that the application be heard in the absence of the subject person, if the Court –
- (a) is satisfied that –
 - (i) this rule applies; and
 - (ii) the applicant has done the acts referred to in paragraph (2)(a) and (b); and
 - (b) having regard to the nature and circumstances of the application, thinks it just and expedient so to do.
- (5) As soon as practicable after obtaining an order under section 5(2) on an application to which this rule applies, the applicant must –
- (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
 - (b) if the whereabouts of the subject person have become known to the applicant, serve the order, the expedited originating summons, a copy of the

affidavit in support and a copy of the additional affidavit on the subject person.

6. Ex parte application to specify property as terrorist property
(O. 117A, r. 6)

(1) An application under section 5(1)(b) for an order to specify any property as terrorist property may be made ex parte if –

- (a) there exist circumstances of urgency; or
- (b) the whereabouts of the holder are not known to the applicant, or if there is more than one holder, the whereabouts of none of them are known to the applicant, and –
 - (i) the applicant has taken reasonable steps to ascertain the whereabouts of that holder or those holders; and
 - (ii) a notice of the applicant's intention to make the application, addressed to that holder or those holders, has been published in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.

(2) The ex parte application must be made by an ex parte originating summons supported by an affidavit.

(3) The affidavit in support must –

- (a) state the grounds for believing that –
 - (i) this rule applies; and
 - (ii) the subject property is terrorist property; and
- (b) specify the holder, or if there is more than one holder, specify all the holders.

(4) As soon as practicable after obtaining an order under section 5(2) on an ex parte application, the applicant must –

- (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
- (b) if the whereabouts of the holder or holders specified in the affidavit in support are known or have become known to the applicant, serve the order, the ex parte originating summons and a copy of the affidavit in support on that holder or each of those holders.

7. Inter partes application to specify property as terrorist property
(O. 117A, r. 7)

(1) This rule applies if an application under section 5(1)(b) is made other than in the circumstances referred to in rule 6(1)(a) and (b).

(2) The application must be made by an expedited originating summons supported by an affidavit.

(3) The affidavit in support must –

- (a) state the grounds for believing that the subject property is terrorist property; and
- (b) specify the holder, or if there is more than one holder, specify all the holders, and their whereabouts (if known to the applicant).

(4) The expedited originating summons and a copy of the affidavit in support must be served on the holder, or each holder specified in the affidavit whose whereabouts are known to the applicant, not less than 7 clear days before the date fixed for the hearing of the application.

(5) If a person served with the expedited originating summons wishes to adduce any affidavit evidence in opposition to it, the person must,

within 28 days after the service, file an affidavit of evidence with the Court and serve a copy of the affidavit –

- (a) on the Secretary for Justice; and
- (b) on any other holder specified in the affidavit in support whose whereabouts are known to the applicant.

(6) The person who files an affidavit of evidence under paragraph (5) may also serve a copy of the affidavit on any other person whom that person believes to be a person by, for or on behalf of whom the subject property is held.

(7) The service under paragraph (6) must be effected within the period referred to in paragraph (5).

8. Additional affidavit procedure for application under section 5(1)(b)
(O. 117A, r. 8)

(1) This rule applies if –

- (a) in the application referred to in rule 7, there is more than one holder and the whereabouts of one or more (but not all) of the holders are not known to the applicant at the time the application is made; or
- (b) after the application referred to in rule 7 is made, the applicant cannot serve the expedited originating summons on the holder, or if there is more than one holder, on one or more of them, because the whereabouts of that holder or those holders have become unknown to the applicant.

(2) The applicant may file with the Court an additional affidavit that complies with paragraph (3) if the applicant –

- (a) has taken reasonable steps to ascertain the whereabouts of the holder or holders that are not known or have become unknown; and
 - (b) has published a notice of the applicant's intention to make or proceed with the application, addressed to the holder or holders whose whereabouts are not known or have become unknown, in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.
- (3) The additional affidavit referred to in paragraph (2) must –
- (a) state that the applicant believes that this rule applies; and
 - (b) state the facts showing that the applicant has done the acts referred to in paragraph (2)(a) and (b).
- (4) The applicant must, within 7 days after filing the additional affidavit, serve a copy of the additional affidavit on each holder whose whereabouts are known to the applicant (if any).
- (5) The Court may direct that the application be heard in the absence of a holder whose whereabouts are not known or have become unknown to the applicant, if the Court –
- (a) is satisfied that –
 - (i) this rule applies; and
 - (ii) the applicant has done the acts referred to in paragraph (2)(a) and (b); and
 - (b) having regard to the nature and circumstances of the application, thinks it just and expedient so to do.
- (6) As soon as practicable after obtaining an order under section 5(2) on an application to which this rule applies, the applicant must –

- (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
- (b) if the whereabouts of the holder or holders in whose absence the application was heard have become known to the applicant, serve the order, the expedited originating summons, a copy of the affidavit in support and a copy of the additional affidavit on that holder or each of those holders.

9. Ex parte application for forfeiture of certain terrorist property
(O. 117A, r. 9)

- (1) An application under section 13 for an order to forfeit any terrorist property may be made ex parte if –
 - (a) there exist circumstances of urgency; or
 - (b) the whereabouts of the holder are not known to the applicant, or if there is more than one holder, the whereabouts of none of them are known to the applicant, and –
 - (i) the applicant has taken reasonable steps to ascertain the whereabouts of that holder or those holders; and
 - (ii) a notice of the applicant's intention to make the application, addressed to that holder or those holders, has been published in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.
- (2) The ex parte application must be made –

- (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the subject property, by a summons supported by an affidavit that complies with rule 11; or
- (b) if there are no such proceedings, by an ex parte originating summons supported by an affidavit that complies with rule 11.

(3) As soon as practicable after obtaining an order under section 13 on an ex parte application, the applicant must –

- (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
- (b) if the whereabouts of the holder or holders specified in the affidavit in support are known or have become known to the applicant, serve the order, the summons or ex parte originating summons (as the case may be) and a copy of the affidavit in support on that holder or each of those holders.

**10. Inter partes application for forfeiture
of certain terrorist property**
(O. 117A, r. 10)

- (1) This rule applies if an application under section 13 is made other than in the circumstances referred to in rule 9(1)(a) and (b).
- (2) The application must be made –
 - (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the subject property, by a summons supported by an affidavit that complies with rule 11; or

(b) if there are no such proceedings, by an expedited originating summons supported by an affidavit that complies with rule 11.

(3) The summons or expedited originating summons, and a copy of the affidavit in support, must be served on the holder, or each holder specified in the affidavit whose whereabouts are known to the applicant, not less than 14 clear days before the date fixed for the hearing of the application.

(4) If a person served with the summons or expedited originating summons wishes to adduce any affidavit evidence in opposition to it, the person must, within 28 days after the service, file an affidavit of evidence with the Court and serve a copy of the affidavit –

(a) on the Secretary for Justice; and
(b) on any other holder specified in the affidavit in support whose whereabouts are known to the applicant.

(5) The person who files an affidavit of evidence under paragraph (4) may also serve a copy of the affidavit on any other person whom that person believes to be a person by, for or on behalf of whom the subject property is held.

(6) The service under paragraph (5) must be effected within the period referred to in paragraph (4).

11. Contents of affidavit in support for application under section 13
(O. 117A, r. 11)

(1) The affidavit in support referred to in rule 9(2) must state the grounds for believing that rule 9 applies.

(2) The affidavit in support referred to in rules 9(2) and 10(2) must state the grounds –

- (a) for believing that the subject property is terrorist property referred to in paragraph (a) of the definition of "terrorist property" in section 2(1) and for believing that it also –
 - (i) in whole or in part, directly or indirectly, represents any proceeds arising from a terrorist act;
 - (ii) is intended to be used to finance or otherwise assist the commission of a terrorist act; or
 - (iii) was used to finance or otherwise assist the commission of a terrorist act; or
- (b) for believing that the subject property is terrorist property referred to in paragraph (b) of that definition.

(3) The affidavit in support referred to in rules 9(2) and 10(2) must also specify the holder, or if there is more than one holder, specify all the holders, and their whereabouts (if known to the applicant).

12. Additional affidavit procedure for application under section 13
(O. 117A, r. 12)

- (1) This rule applies if –
 - (a) in the application referred to in rule 10, there is more than one holder and the whereabouts of one or more (but not all) of the holders are not known to the applicant at the time the application is made; or
 - (b) after the application referred to in rule 10 is made, the applicant cannot serve the summons or expedited originating summons on the holder, or

if there is more than one holder, on one or more of them, because the whereabouts of that holder or those holders have become unknown to the applicant.

(2) The applicant may file with the Court an additional affidavit that complies with paragraph (3) if the applicant –

(a) has taken reasonable steps to ascertain the whereabouts of the holder or holders that are not known or have become unknown; and

(b) has published a notice of the applicant's intention to make or proceed with the application, addressed to the holder or holders whose whereabouts are not known or have become unknown, in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.

(3) The additional affidavit referred to in paragraph (2) must –

(a) state that the applicant believes that this rule applies; and

(b) state the facts showing that the applicant has done the acts referred to in paragraph (2)(a) and (b).

(4) The applicant must, within 7 days after filing the additional affidavit, serve a copy of the additional affidavit on each holder whose whereabouts are known to the applicant (if any).

(5) The Court may direct that the application be heard in the absence of a holder whose whereabouts are not known or have become unknown to the applicant, if the Court –

(a) is satisfied that –

(i) this rule applies; and

- (ii) the applicant has done the acts referred to in paragraph (2)(a) and (b); and
 - (b) having regard to the nature and circumstances of the application, thinks it just and expedient so to do.
- (6) As soon as practicable after obtaining an order under section 13 on an application to which this rule applies, the applicant must –
- (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
 - (b) if the whereabouts of the holder or holders in whose absence the application was heard have become known to the applicant, serve the order, the summons or expedited originating summons (as the case may be), a copy of the affidavit in support and a copy of the additional affidavit on that holder or each of those holders.

13. Revocation of order specifying person as terrorist or terrorist associate or specifying property as terrorist property (O. 117A, r. 13)

- (1) An application under section 5(5) to revoke, in whole or in part, an order under section 5(2) may be made ex parte.
- (2) The ex parte application must be made by a summons supported by an affidavit.
- (3) The affidavit in support must state the circumstances that have caused the applicant to have reasonable grounds to believe that the person who or the property that is the subject of the application is not, or is no longer, a terrorist, terrorist associate or terrorist property (as the case may be).

**14. Application under section 12A, 12B,
12C or 12G (O. 117A, r. 14)**

- (1) This rule applies to an application for –
 - (a) an order under section 12A(1);
 - (b) an order under section 12B(1);
 - (c) a warrant under section 12C(1); or
 - (d) a warrant under section 12G(1).
- (2) An application to which this rule applies must be made by laying an information on oath.
- (3) The application may, if a judge so directs, be heard at a place other than within the court premises.
- (4) At the hearing of the application, the Court may receive evidence from the applicant.

**15. Revocation or variation of order
made under section 12A or 12B
(O. 117A, r. 15)**

- (1) An application under –
 - (a) section 12A(13) for the revocation or variation of an order under section 12A(2); or
 - (b) section 12B(8) for the revocation or variation of an order under section 12B(2) or (7),
- (2) The summons and affidavit in support must state the grounds on which the applicant seeks the revocation or variation of the order.
- (3) The summons and a copy of the affidavit in support must be served on the Secretary for Justice not less than 3 clear days before the date fixed for the hearing of the application.

(4) At the hearing of the application, the Court may revoke the order or make such variation as it thinks fit.

**16. Claim of legal privilege in relation to
order under section 12A or 12B**
(O. 117A, r. 16)

(1) If, in the course of the exercise of powers conferred by an order under section 12A to require a person to answer questions or otherwise furnish information, a claim of legal privilege is made in respect of any information, the person making the claim must –

- (a) within 3 days of making the claim, apply to the Court by a summons supported by an affidavit for a declaration that the information is an item subject to legal privilege; and
- (b) not less than 3 clear days before the date fixed for the hearing of the application, serve the summons and a copy of the affidavit in support on the Secretary for Justice.

(2) If, in the course of the exercise of powers conferred by an order under section 12A or 12B to require a person to produce material or to give an authorized officer access to it, a claim of legal privilege is made in respect of any material, the person making the claim must –

- (a) in the presence of an authorized officer, secure the material in a sealed container;
- (b) immediately deposit the sealed container with the Court;
- (c) within 3 days of depositing the material with the Court, apply to the Court by a summons supported by an affidavit for a declaration that the material is an item subject to legal privilege; and

- (d) not less than 3 clear days before the date fixed for the hearing of the application, serve the summons and a copy of the affidavit in support on the Secretary for Justice.

17. Claim of legal privilege in relation to warrant under section 12C or 12G
(O. 117A, r. 17)

If, in the course of the execution by an authorized officer of a warrant issued under section 12C or 12G, a claim of legal privilege is made in respect of any thing, the person making the claim must —

- (a) in the presence of the authorized officer, secure the thing in a sealed container and hand the sealed container to the authorized officer for safe keeping pending an application by the person under this rule;
- (b) within 3 days of making the claim, apply to the Court by a summons supported by an affidavit for a declaration that the thing is an item subject to legal privilege; and
- (c) not less than 3 clear days before the date fixed for the hearing of the application, serve the summons and a copy of the affidavit in support on the authorized officer and the Secretary for Justice.

18. Application to be heard in camera
(O. 117A, r. 18)

- (1) An application under section 12A, 12B, 12C or 12G must be heard in camera.
- (2) The information and all other documents relating to the application must be treated as confidential and must, immediately on the

determination of the application, be placed in a packet and sealed by order of the judge by whom the application was heard.

(3) The packet must be kept in the custody of the Court in a place to which the public has no access or in such other place as the judge may authorize and –

- (a) must not be opened nor must its contents be removed except by order of a judge; and
- (b) must not be destroyed except pursuant to an order of the Court.

19. Application for continued detention of seized property under section 12H(2)
(O. 117A, r. 19)

(1) An application under section 12H(2) for an order to authorize the continued detention of seized property must be made by an ex parte originating summons supported by an affidavit.

(2) The affidavit in support must –

- (a) state what the seized property consists of (including, for money, the amount and currency of the money) and the date on which and the place at which it was seized;
- (b) state the grounds for suspecting that the seized property is terrorist property; and
- (c) give particulars, in terms of the matters referred to in section 12H(2)(b), as to why the continued detention of the seized property is justified.

(3) If an order is made under section 12H(2) in respect of any seized property, the applicant for the order must, as soon as practicable, serve the order –

- (a) on the person from whom the property was seized; and

(b) on each person whom the applicant can reasonably ascertain to be a person by, for or on behalf of whom the property was held immediately before it was seized.

20. Application for further detention of seized property under section 12H(3)
(O. 117A, r. 20)

(1) An application under section 12H(3) for an order to authorize the further detention of seized property must be made by a summons supported by an affidavit in the proceedings commenced under rule 19.

(2) The affidavit in support must –

- (a) state the grounds for suspecting that the seized property is terrorist property; and
- (b) give particulars, in terms of the matters referred to in section 12H(2)(b), as to why the further detention of the seized property is justified.

(3) The summons and a copy of the affidavit in support must be served not less than 5 clear days before the date fixed for the hearing of the application on each affected person.

(4) If a person served with the summons wishes to adduce any affidavit evidence in opposition to it, the person must, not less than 2 clear days before the date fixed for the hearing of the application, file an affidavit of evidence with the Court and serve a copy of the affidavit –

- (a) on the Secretary for Justice; and
- (b) on every other affected person.

(5) If an order is made under section 12H(3), the applicant for the order must, as soon as practicable, serve the order on each affected person.

(6) In this rule and rules 21 and 22, “affected person” (受影響的人), in relation to the seized property, means a person on whom an order has been served under rule 19(3) in respect of that property.

21. Application for release of seized property under section 12H(4)
(O. 117A, r. 21)

(1) An application under section 12H(4)(a) for the release of seized property detained by an order under section 12H(2) or (3) must be made by a summons supported by an affidavit stating the grounds on which the application is made.

(2) The summons and a copy of the affidavit in support must be served not less than 5 clear days before the date fixed for the hearing of the application –

- (a) on the Secretary for Justice; and
- (b) on each affected person.

(3) An application under section 12H(4)(b) for the release of seized property detained by an order under section 12H(2) or (3) must be made ex parte by a summons supported by an affidavit stating the grounds on which the application is made.

22. Release of seized property
(O. 117A, r. 22)

If, in relation to any seized property –

- (a) an order under section 12H(2) expires without an order being made under section 12H(3);
- (b) an order under section 12H(3) expires without a further order being made under that section; or
- (c) a direction is obtained under section 12H(4),

then, subject to section 12H(5) and unless the Court has directed that an issue be stated and tried as between the affected persons, the property must

be forthwith released, on such terms, if any, as the Court thinks fit, to the person from whom the property was seized or to such other person as appears to be entitled to it.

23. Application to Court to revoke order made under section 5(2) or notice given under section 6(1) (O. 117A, r. 23)

(1) An application under section 17(1)(a) to revoke, in whole or in part, an order under section 5(2) that has been made ex parte must be made by a summons.

(2) For the purposes of paragraph (1) and section 17(1)(a), if an order under section 5(2) has been obtained by an application heard in the absence of the subject person or a holder under rule 5 or 8, in relation to that subject person or holder only, the application and the order are regarded to have been made ex parte.

(3) An application under section 17(1)(b) to revoke, in whole or in part, a notice under section 6(1) must be made –

- (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the property that is the subject of the application, by a summons; or
- (b) if there are no such proceedings, by an expedited originating summons.

24. Application concerning direction mentioned in section 6(10) or licence mentioned in section 6(1) or 8 (O. 117A, r. 24)

(1) An application under section 17(4) for the revocation or variation of a direction mentioned in section 6(10) or for the grant or variation of a licence mentioned in section 6(1) or 8 must be made –

- (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the property, funds or financial (or related) services that is or are the subject of the application, by a summons; or
- (b) if there are no such proceedings, by an expedited originating summons.

(2) If any affidavit in opposition to the summons or expedited originating summons has been filed with the Court, a copy of the affidavit must be served on the applicant not less than 3 clear days before the date fixed for the hearing of the application.

25. Application for compensation
(O. 117A, r. 25)

(1) An application under section 18 for an order for compensation must be made –

- (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the person or property to whom or which the application relates, by a summons; or
- (b) if there are no such proceedings, by an expedited originating summons.

(2) The summons or expedited originating summons, and a copy of any affidavit in support, must be served not less than 14 clear days before the date fixed for the hearing of the application –

- (a) on the Secretary for Justice; and
- (b) on any other person on whose part, it is alleged, there has been default.

(3) If any affidavit in opposition to the summons or expedited originating summons has been filed with the Court, a copy of the affidavit

must be served by the Secretary for Justice on the applicant not less than 7 clear days before the date fixed for the hearing of the application.

26. Affidavits containing statements of information or belief (O. 117A, r. 26)

If an affidavit referred to in this Order contains a statement of information or belief, it must also contain the sources and grounds of the information or belief unless the Court otherwise directs.

**27. Service out of jurisdiction
(O. 117A, r. 27)**

The service of any document under this Order out of the jurisdiction is permissible with the leave of the Court.”.

Made this 28th day of September 2009.

The Hon. Mr. Justice MA
Chief Judge of the High Court

The Hon. Mr. Justice A. CHEUNG

The Hon. Mr. Justice REYES

Mr. Rimsky YUEN

Ms. Liza Jane CRUDEN

Mr. Thomas SO

Mr. Nigel FRANCIS

Mr. Wesley WONG

Mr. Kim-wan LUNG
Secretary

Explanatory Note

Under section 20 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“the Ordinance”), the procedure for applications to the Court of First Instance under section 5, 12A, 12B, 12C, 13, 17 or 18 of the Ordinance may be provided by rules of court. These Rules add a new Order 117A (“new Order”) to the Rules of the High Court (Cap. 4 sub. leg. A) (“principal Rules”) setting out the procedure for those applications. The new Order also sets out the procedure for applications under sections 12G and 12H of the Ordinance. Furthermore, these Rules amend Order 1, rule 2(3) of the principal Rules to ensure that other provisions of the principal Rules, if appropriate, apply in respect of applications that may be made under the Ordinance.

2. Section 2 of the Ordinance provides that for the purposes of the Ordinance, a person having a “prescribed interest” in any property is deemed to be a person by, for or on behalf of whom the property is or was held, and that rules of court may prescribe the meaning of “prescribed interest”. Accordingly, the meaning of “prescribed interest” is prescribed by the new Order.