

SBCR 2/16/1476/74

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20 October 2009

Mr Timothy Tso
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mr Tso,

**Rules of the High Court (Amendment) Rules 2009
(L.N. 186 of 2009)**

I refer to your letter dated 14 October 2009 and set out below our response to the issues raised.

(1) Hearing before the expiry of 28 days for the respondent to file affidavit evidence in opposition - rule 4(4) and (5)

The current court practice is that the first hearing for an originating summons (whether in general or expedited form) is normally fixed before a judge sitting in chambers (which is now an open hearing unless otherwise directed) at which directions as to the further conduct of the proceedings are to be given. Where the first hearing is earlier than the expiration of the 28 days period, parties may apply to the court at the first hearing for any direction, including an order either to enlarge or abridge the time limit for filing the respondent's affidavit. Whether such an order is to be granted will depend on the circumstances and merits of the application in the view of the court.

(2) 7 days vs 14 days notice - Rule 4(4), 7(4) vs Rule 10(3)

When compared with forfeiture applications, it is necessary to deal with the specification applications under section 5(1) more expeditiously to facilitate the operation of certain provisions under Cap.575, e.g. sections 10 and 12. On the other hand, prior to the forfeiture of the property, a terrorist property may already be subject to restraint to prevent its dissipation (it may be the subject of a freezing notice under section 6). Hence, the need for urgency in forfeiture applications may not be as great as in the case of specification applications under section 5(1).

(3) Legal privilege- Rule 16(2) vs Rule 17

Rule 16(2) pertains to sections 12A and 12B of Cap. 575, which deals with situations in which the relevant parties are permitted to gather the specific information or materials, and to furnish/produce them. Rule 17 pertains to section 12C and 12G, which deals with 'urgent' or 'uncooperative' situations. The law enforcement agencies have the power to seize and retain the relevant materials under section 12C or 12G.

Legal privilege claimed materials seized during a search to be kept in a sealed, tamper-proof container and held by the law enforcement agencies until the claim of legal privilege is resolved or unless the law enforcement agencies are otherwise directed by the court is a long standing practice. The container is sealed in the presence of the person from whom the materials are seized, and be kept by law enforcement agencies in accordance with their internal guidelines and procedures. This practice has been operating smoothly in handling such situations. In any event, if all such materials are to be deposited in the court, the court may find it difficult to accommodate and to guard and safe-keep the materials, as the claims for legal privilege can drag on for some time.

(Ms Veronica Wong)
for Secretary for Security

c.c.

DoJ (Attn: Mr Sunny Chan
Miss Selina Lau)

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