

SBCR 2/16/1476/74

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6 November 2009

Clerk to the Subcommittee on
Rules of the High Court (Amendment) Rules 2009
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Miss Mary So)

Dear Miss So,

**Subcommittee on Rules of the High Court
(Amendment) Rules 2009**

I refer to the meeting of the captioned Subcommittee held on 3 November 2009 during which Members requested that the Administration to consider whether the definition of “prescribed interest” under Rule 1 of the new Order 117A in the Rules of the High Court (Amendment) Rules 2009 (“the Amendment Rules”) could be amended to take into account Members’ views to ensure that the coverage of the definition would be as wide as possible for the purpose of its application in the United Nations (Anti-Terrorism Measures) Ordinance (Cap.575) (“the Ordinance”). The Administration’s response is set out in the following paragraphs.

During the passage of the United Nations (Anti-Terrorism Measures) Bill in 2002, the Administration considered that the meaning of “prescribed interest” should be prescribed by rules of court, and that the meaning prescribed by rules of court would provide the basis for the interpretation of the relevant provisions under the UNATMO. Hence, the Administration proposed, and Members agreed that a person who has a prescribed interest in any property shall be deemed to be a person by, for or on behalf of whom the property is or was held. “Prescribed interest” means interest in the property prescribed by rules to be made under clause 17 (i.e. section 17 of the Ordinance). Accordingly, section 2(1) of the Ordinance provides that –

“prescribed interest” (訂明權益), in relation to any property, means an interest in the property prescribed by rules of court as an interest for the purposes of this Ordinance.

Further, section 2(4) of the Ordinance provides that-

“a person who has a prescribed interest in any property shall be deemed to be a person by, for or on behalf of whom the property is or was held.”.

The expression “by, for or on behalf of whom the property is held” (and similar expressions) (“relevant provisions”) is used in sections 6, 12H(4)(a)(ii), 15(1)(b), 17 and 18 of the Ordinance. It is clear that the legislative intention is that there shall be a definition for “prescribed interest” and that the meaning of “prescribed interest” is to be prescribed by rules of court, and that the meaning prescribed by rules of court will provide the basis for the interpretation of the relevant provisions. Given the clear intention, the suggestion of not providing a definition in the court rules would create ambiguity in the interpretation of the relevant provisions.

As a matter of fact, section 2(6) of the Ordinance provides that the Court may order that any person who “may be affected” by an application (a) under section 5(1) made inter partes or (b) under section 13, 17 or 18 may join as a party to the proceedings. This in effect means that even though a person may not have a prescribed interest in the property concerned, the person may be joined as a party to the proceedings to present his claim to the Court. We believe the provision would have addressed Members’ concern.

In respect of the formulation of the definition of “prescribed interest” in the Amendment Rules, it covers any interest in property which is enforceable in the courts. As explained before, the formulation is modelled on the definition of “interest” under section 43(5) of the United Nations Office on Drugs and Crime Model provisions on Money laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime (for common law legal systems) 2009 and such model provisions are drafted as model domestic law to prevent, detect and effectively sanction money laundering, the financing terrorism and the proceeds of crime. We also note that the formulation has been adopted and put to operation by Australia in its Proceeds of Crime Act 2002. As such, the Administration considers that the current formulation in the Amendment Rules necessary and appropriate.

Yours sincerely,

(David Lau)
for Secretary for Security