

For information

**Sub-Committee on
Rules of the High Court (Amendment) Rules 2009**

**Supplementary information on issues raised at the
Sub-Committee meeting held on 3 November 2009**

Purpose

At the Sub-committee meeting held on 3 November 2009, Members requested the Administration to provide further information in regard to the definition of “prescribed interest” as prescribed by the Rules of the High Court (Amendment) Rules 2009 (the “Amendment Rules”) for the purposes of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“the Ordinance”). This note provides the requested information.

Whether persons joined as a party to the proceedings under section 2(6) of the Ordinance to an application under section 18 of the same could be awarded compensation to be paid by the Government

2. Section 18(1)(d) and (2A) provides for the categories of person who may make an application for compensation in respect of the specification of terrorist property under section 5 or the seizure of property under section 12G. Section 2(6) further provides that the Court may order that any person who “may be affected” by an application under, among others, section 18, be joined as a party to the proceedings.

3. The Ordinance does not define under what circumstances a person (say “X”) is regarded as “affected” within the meaning of section 2(6). Obviously, if X has a prescribed interest in the property concerned which competes with the prescribed interest of another person (say ‘Y’) who has taken out an application under section 18 for statutory compensation, X is properly to be regarded as “affected” by the said application. In that event, it makes sense for the court to have the power to join X as the “affected” person in the proceedings already commenced by Y without the need of X to start another set of proceedings under section 18. Any such fresh proceedings commenced would most likely be consolidated

with the first set of proceedings for the court to dispose of all the claims for statutory compensation of X and Y in one go.

4. Alternative to the above example, if, after Y has taken out an application under section 18, the court is satisfied that X, though not having a prescribed interest in the property concerned, may be a person affected by the application within the meaning of section 2(6), the court may allow X to join as a party to the section 18 proceedings commenced by Y. Absent any prescribed interest in the property concerned, X is not entitled to claim statutory compensation in the proceedings. Section 18A(1) provides that, subject to subsection (2) thereof, nothing in section 18 affects any remedy to a person at common law. If X asserts any claim for damages at common law in the section 18 proceedings commenced by Y, the court can deal with X's claim in the proceedings.

5. If no application under section 18 in respect of any property concerned has ever been commenced by any one, a person who has no prescribed interest in the property concerned but who asserts a claim for damages at common law may take out an application on his own for the court's adjudication in accordance with general legal principles.

Whether the scope of "prescribed interest" covered adverse possessory title to a property

6. Adverse possession is the process of acquiring title to land by dispossessing the owner and occupying the land until his right to recover it is time-barred under the law. After the expiry of the limitation period, the person in adverse possession obtains a new possessory title and an interest in the land and will fall within the existing definition of "prescribed interest" in Order 117A of the Amendment Rules.

**Security Bureau
November 2009**