

LEGISLATIVE COUNCIL BRIEF

Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and
Organized and Serious Crimes Ordinance (Cap. 455)

DRUG TRAFFICKING AND ORGANIZED CRIMES (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 23 November 1999, the Council ADVISED and the Chief Executive ORDERED that the Drug Trafficking and Organized Crimes (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council to enhance the effectiveness of our anti-money laundering legislation.

BACKGROUND AND ARGUMENT

2. The Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance provide for, amongst others, the tracing, restraining and confiscation of proceeds derived from drug trafficking, organized crimes or specified offences as well as the criminalization of dealing with the proceeds of drug trafficking and other indictable offences. The two Ordinances mirror each other in their confiscation and anti-money laundering provisions.

3. Notwithstanding the fact that the international Financial Action Task Force on Money Laundering (FATF)'s second comprehensive evaluation report on Hong Kong's anti-money laundering regime (in 1998) commended highly on our coordinated and continuous efforts to improve our systems, certain provisions of the two Ordinances still fall short of FATF's requirements in the light of changing circumstances.

4. In a working group comprising law enforcement agencies, financial regulators and professional bodies (such as the Law Society of Hong Kong) to improve the quantity and quality of suspicious transaction reporting, it was agreed that one of the major obstacles for such reporting was the small number of convicted money laundering cases, which in turn discouraged people from reporting those transactions. In fact, according to the Police and Customs' records, there were only 34 persons convicted of money laundering offences and one convicted of failure to disclose suspicious transaction during the years from 1996 to 1999.

5. Specifically, operational experience has revealed the following areas where tightening up of legislation is required to increase the effectiveness of anti-money laundering legislation:

(a) Confiscation orders

In the case of an application for a confiscation order against an absconded person whose exact whereabouts are not known, the prosecution has to try to ascertain that person's whereabouts and give him notice of proceedings. It is only when such attempts fail that the person's whereabouts will be accepted as unknown but the prosecution is still required by legislation to take reasonable steps to give notice of those proceedings to that person. At the operational level, it may be impracticable to notify a person whose whereabouts are not known and it is considered that this requirement is repetitive and requires clarification.

(b) Assessing the proceeds of drug trafficking

The Drug Trafficking (Recovery of Proceeds) Ordinance currently gives the court the power to assume that all property held by the defendant since conviction, or which has passed through the defendant's hands in the last six years, comes from drug trafficking. It then falls to the defendant to show the contrary. From an anti-money laundering point of view, such an assumption should also apply to persons convicted of drug money laundering offences since they

would most likely hold large amounts of proceeds from drug trafficking. Section 4(4) of this Ordinance currently prohibits the court from applying the assumption for persons convicted of drug money laundering.

(c) Application of procedure for enforcing confiscation orders

Sometimes a court will specify in the Certificate of Sentence the period in which the defendant has to pay a confiscation order but sometimes it will not. The payment of confiscated assets may be unduly delayed if the period of payment is not specified.

(d) Cases in which restraint orders and charging orders may be made

Under existing legislation, a restraint or charging order cannot be issued in respect of a person who has been arrested and released on bail. During the lengthy period when evidence is being gathered and the person is released on bail, that person, knowing that he is under investigation and that his property may be restrained in the future, will naturally seek to dispose of, transfer or conceal his property.

(e) Restraint orders and charging orders

(i) At present, there is no penal provision in the Drug Trafficking (Recovery of Proceeds) Ordinance or the Organized and Serious Crimes Ordinance for breaching a restraint or charging order. It is not satisfactory that there is no criminal sanction against a person who breaches a restraint or charging order.

(ii) At present, there is no requirement on any institutions or persons holding any realizable property that is the subject of a restraint or charging order to provide information as to the value of the property. However, the court must have such

information for monitoring the enforcement of the relevant orders, and for hearing the applications for such orders.

(f) Realization of property where amount to be recovered under confiscation order is not more than a prescribed amount

Under existing legislation, the court will appoint a receiver to realize any realizable property and order a person in possession of such property to hand over the property to a receiver. In cases where the amount of the property is small, it is not cost-effective to appoint a receiver to realize the property. It will save time and administration costs if the property realized is directly paid to the Registrar of the High Court.

(g) Dealing with property known or believed to represent proceeds of drug trafficking or indictable offence

(i) Existing section 25 of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance makes it an offence for a person to deal with property if he knows or has reasonable grounds to believe that the property represents the proceeds of drug trafficking or indictable offences. However, past operational experience revealed that in most cases, it was difficult to prove these two mental elements. Owing to the existing narrow coverage of the legislation, prosecutions and convictions were few, despite a relatively large number of investigations in the past few years.

(ii) To deter people from dealing with property known or believed to represent proceeds of drug trafficking, or indictable offences, and to reflect the gravity of the offence in a more appropriate manner, the term of imprisonment for money laundering should be increased.

(h) Disclosure of knowledge or suspicion that property

represents proceeds of drug trafficking or indictable offence

Under section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance where a person knows or suspects that any property represents any person's proceeds of, or was used in connection with, drug trafficking or an indictable offence, he must disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based, to an authorized officer. The level of mens rea is not consistent with that in section 25(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance. Furthermore, the existing penalty level of the offence does not reflect the gravity of the offence for failing to disclose suspicious transactions.

THE PROPOSAL

6. In order to address the inadequacies presented in paragraph 5 above and to enhance the effectiveness of our anti-money laundering regime, it is proposed that the two Ordinances be amended.

THE BILL

7. **Section 3 of Schedules 1 and 2** to the Bill amends the requirement of notifying an absconded defendant along the line that "reasonable steps should be taken to ascertain that person's whereabouts".

8. **Section 4 of Schedule 1** repeals section 4(4) of the Drug Trafficking (Recovery of Proceeds) Ordinance to allow an assumption provision to be applied to defendants who have been convicted of a money laundering offence. **Section 6 of Schedule 1** and **section 5 of Schedule 2** require the court to fix a period within which a defendant is to pay the amount under a confiscation order.

9. **Section 7 of Schedule 1** and **section 6 of Schedule 2** amend

the two Ordinances to allow for issue of a restraint or charging order in relation to the assets of a person who has been arrested for a drug trafficking offence or a specified offence and released on bail. To balance this power, there will be a requirement along the line that the court must be satisfied before the making of such a restraint or charging order that in the circumstances of the case, there is reasonable cause to believe that charges will be brought against that person after further investigation.

10. **Sections 8 and 9 of Schedule 1 and sections 7 and 8 of Schedule 2** require the holder of any realizable property which is subject to a restraint or charging order to provide a statement in writing as to the value of the property. They also introduce penal provisions for breaching a restraint or charging order.

11. **Sections 10 and 11 of Schedule 1 and sections 9 and 10 of Schedule 2** introduce a streamlined procedure for the realisation of property where the amount to be recovered under a confiscation order is not more than \$500,000.

12. **Section 12 of Schedule 1 and section 11 of Schedule 2** create a new offence of dealing in realisable property having reasonable grounds to suspect that the property in whole or in part represents a person's proceeds from drug trafficking or an indictable offence. It also increases the maximum penalty for a money laundering offence from 14 years to 20 years. The proposed increase is in line with similar legislation in other jurisdictions e.g. Australia.

13. **Section 13 of Schedule 1 and section 12 of Schedule 2** change the test for requiring a disclosure under section 25A(1) of both Ordinances from "know or suspect" to "know or has reasonable grounds to suspect". It is also proposed to increase the custodial sanction for a contravention of section 25A(1) of the two Ordinances from 3 months to 12 months, in line with the international trend.

14. **Schedule 3** of the Bill introduces consequential amendments that are required to the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order.

15. The existing provisions which are being amended are at Annex B.

LEGISLATIVE TIMETABLE

16. The legislative timetable approved by the Chief Executive in Council is: -

Publication in the Gazette	3 December 1999
First Reading and commencement of Second Reading debate	15 December 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

COMMENCEMENT

17. The proposed amendments will take effect on a date to be appointed by the Secretary for Security.

BASIC LAW IMPLICATIONS

18. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

19. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

20. The amendments will not affect the current binding effect of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

21. There are no financial and staffing implications relating to the proposed amendments. The proposal to dispense with receivers to realize confiscated property not more than \$500,000 should result in increase in revenue arising from the confiscated property.

ECONOMIC IMPLICATIONS

22. The measures are unlikely to affect normal business activities.

PUBLIC CONSULTATION

23. We have consulted the professional bodies (the Hong Kong Bar Association, the Law Society of Hong Kong and the Hong Kong Society of Accountants), financial regulators, the Action Committee Against Narcotics and the LegCo Panel on Security. They are, in general, supportive of our proposals.

PUBLICITY

24. A press release will be issued on 1 December 1999. A spokesman will be available for answering media enquiries.

ENQUIRIES

25. For any enquiries on the Amendment Bill, please contact Ms Mimi Lee, Principal Assistant Secretary for Security (Narcotics), at 2867 2748.

Security Bureau
1 December 1999
[NCR 3/1/8(G) Pt. 22]

DRUG TRAFFICKING AND ORGANIZED CRIMES

(AMENDMENT) BILL 1999

ANNEXES

- Annex A - Drug trafficking and Organized Crimes (Amendment) Bill 1999

- Annex B - Relevant existing provisions of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and Organized and Serious Crimes Ordinance (Cap. 455)

A BILL

To

Amend the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Drug Trafficking and Organized Crimes (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

2. Amendment of Drug Trafficking (Recovery of Proceeds) Ordinance - (Schedule 1)

The Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) is amended as specified in Schedule 1.

3. Amendment of Organized and Serious Crimes Ordinance - (Schedule 2)

The Organized and Serious Crimes Ordinance (Cap. 455) is amended as specified in Schedule 2.

4. Amendment of Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order - (Schedule 3)

The Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg.) is amended as specified in Schedule 3.

SCHEDULE 1

[s. 2]

AMENDMENT OF DRUG TRAFFICKING (RECOVERY
OF PROCEEDS) ORDINANCE

1. Long title amended

The long title to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) is amended by repealing "the offence of assisting drug traffickers to retain" and substituting "offences relating to those proceeds or property representing".

2. Interpretation

Section 2(11) is amended by adding -

"(aa)when a person has been arrested for the offence and released on bail;".

3. Confiscation orders

Section 3 is amended -

(a) in subsections (2)(c)(ii)(B) and (9)(b)(ii), by repealing "give notice of those proceedings to that person" and substituting "ascertain the person's whereabouts";

(b) by adding -

"(17) Where subsection (1)(a)(ii)(A) or (B) is applicable, the reference in that subsection to "one or more drug trafficking offences" includes any offence previously specified in Schedule 1, and the other provisions of this section and this Ordinance (including paragraphs (b) to (e) of the

definition of "drug trafficking offence" in section 2(1) and any subsidiary legislation) shall be construed accordingly."

4. **Assessing the proceeds of drug trafficking**

Section 4(4) is repealed.

5. **Statements relating to proceeds of drug trafficking**

Section 5 is amended by adding -

"(9) For the avoidance of doubt, it is hereby declared that an allegation may be accepted under this section, and may always have been so accepted, whether or not subsection (7)(b) is applicable to the defendant, and subsection (3) shall be construed accordingly."

6. **Application of procedure for enforcing confiscation orders**

Section 8 is amended -

(a) by repealing subsection (1)(a) and substituting -

"(a) the court shall also make an order -

- (i) subject to subsection (1A), fixing the period within which the amount he is liable to pay under the confiscation order shall be duly paid; and
- (ii) fixing a term of imprisonment which the defendant is to serve if any of that amount is not

duly paid within that period (including paid by way of being recovered); and";

(b) by adding -

"(1A) The court shall not under subsection (1)(a)(i) fix a period longer than 6 months unless it is satisfied that there are special circumstances which justify it doing so."

7. Cases in which restraint orders and charging orders may be made

Section 9 is amended -

(a) in subsection (1) -

(i) in paragraph (b), by repealing "and" at the end;

(ii) by adding -

"(ba)if section 2(11)(aa) is applicable to an offence, the Court of First Instance is satisfied that, in all the circumstances of the case, there is reasonable cause to believe that the defendant may be charged with the offence after further investigation is carried out"; and

(b) in subsection (4), by repealing "subsection (2)" and substituting "section 2(11)(aa) or subsection (2) of this section".

8. Restraint orders

Section 10 is amended by adding -

"(12) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so -

- (a) a statement in writing as to the value of the property;
- (b) documents, or copies of documents, in his possession or control which may assist the authorized officer to determine the value of the property.

(13) A person who receives a notice under subsection (12) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned.

(14) Any person who contravenes subsection (13) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(15) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence.

(16) A person who commits an offence under subsection (15) is liable -

- (a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
- (b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years."

9. Charging orders in respect of land, securities, etc.

Section 11 is amended by adding -

"(9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so -

- (a) a statement in writing as to the value of the property;
- (b) documents, or copies of documents, in his possession or control which may assist the authorized officer to determine the value of the property.

(10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the charging order concerned.

(11) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(12) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence.

(13) A person who commits an offence under subsection (12) is liable -

(a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or

(b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years."

10. Section added

The following is added -

"11A. Realisation of property where amount to be recovered under confiscation order is not more than prescribed amount, etc.

(1) Where -

(a) in proceedings instituted for a drug trafficking offence, a confiscation order is made (including any case where section 3(1)(a)(ii) or (7) is applicable);

(b) the order is not subject to appeal or review within the meaning of section 2(13);

- (c) the proceedings have not been concluded; and
- (d) the amount to be recovered under the order is not more than the prescribed amount,

the Court of First Instance may, and without prejudice to the generality of section 12, on an application by the prosecutor, exercise the power conferred by subsection (2).

- (2) The Court of First Instance may order one or more of the following -
 - (a) a person in possession of realisable property which is cash (in whatever currency) to give possession of it to the Registrar;
 - (b) a person in possession of realisable property which is not cash to pay all or a specified amount of the value of the property to the Registrar;
 - (c) a person in possession of realisable property which is not cash to realise the property in such manner as the Court of First Instance may direct and to pay all or a specified amount of the value of the property so realised to the Registrar;
 - (d) a person holding an interest in realisable property to pay to the Registrar an amount equal to any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Ordinance as the Court of First Instance may direct and the Court of First Instance may, on the

payment being made, by order transfer, grant or extinguish any interest in the property;

- (e) such order relevant to subsection (1) or any other order under paragraph (a), (b), (c) or (d) as the Court of First Instance thinks fit.

(3) The Court of First Instance shall not in respect of any property exercise the power conferred by subsection (2) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court of First Instance.

(4) Subject to subsection (5), any sums in the hands of the Registrar in pursuance of an order under this section shall first be applied in payment of such expenses incurred by a person acting as an insolvency officer as are payable under section 18(2) and then shall, after such payments (if any) as the Court of First Instance may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order in the manner provided by subsection (6).

(5) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of the Registrar, the Registrar shall distribute those sums -

- (a) among such of those who held property which has been realised under this Ordinance; and

- (b) in such proportions,

as the Court of First Instance may direct after giving a reasonable opportunity for such persons to make representations to the Court of First Instance.

(6) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar shall apply the sum received for the purposes specified in this section and in the order so specified.

(7) Any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be paid into the general revenue.

(8) In this section, the prescribed amount is \$500,000.

(9) The Secretary for Justice may, by notice in the Gazette, amend the amount specified in subsection (8)."

**11. Insolvency officers dealing with property
subject to restraint order, etc.**

Section 18(2) is amended by adding "11A(4) or" after "those expenses under section".

**12. Dealing with property known or believed,
etc. to represent proceeds of drug
trafficking**

Section 25 is amended -

(a) by adding -

"(1A) Subject to section 25A, a person commits an offence if, having reasonable grounds to suspect that any property in whole or in part directly or indirectly represents any person's proceeds of drug trafficking, he deals with that property.";

(b) in subsection (2) -

- (i) by adding "or (1A)" after "under subsection (1)";
- (ii) in paragraph (a), by adding "or (1A), as the case may be," after "subsection (1)";
- (c) in subsection (3)(a), by repealing "14" and substituting "20";
- (d) by adding -
 - "(4) A person who commits an offence under subsection (1A) is liable -
 - (a) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years."

**13. Disclosure of knowledge or suspicion
that property represents proceeds,
etc. of drug trafficking**

Section 25A is amended -

- (a) in subsection (1) -
 - (i) by repealing "suspects" and substituting "has reasonable grounds to suspect";
 - (ii) by adding "grounds and any other" after "together with any";
- (b) in subsection (2), by adding "or (1A)" after "section 25(1)";

- (c) in subsection (5), by repealing "suspecting" and substituting "having reasonable grounds to suspect;"
- (d) in subsection (6)(a), by adding "have reasonable grounds to" after "know or";
- (e) in subsection (7), by repealing "3" and substituting "12".

14. Enforcement of external confiscation orders

Section 28(1)(a) is amended by repealing ", subject to such modifications as may be specified, this Ordinance" and substituting "this Ordinance as modified in the order".

15. Drug trafficking offences

Schedule 1 is amended by adding "or suspected" after "believed".

SCHEDULE 2

[s. 3]

AMENDMENT OF ORGANIZED AND SERIOUS
CRIMES ORDINANCE

1. Long title amended

The long title to the Organized and Serious Crimes Ordinance (Cap. 455) is amended by repealing "an offence of assisting a person to retain" and substituting "offences relating to the proceeds of crime or property representing the".

2. **Interpretation**

Section 2(15) is amended by adding -

"(aa) where a person has been arrested for the offence and released on bail;"

3. **Confiscation orders**

Section 8 is amended -

(a) in subsections (3)(c)(i)(B)(II) and (7C)(b)(ii), by repealing "give notice of those proceedings to that person" and substituting "ascertain the person's whereabouts";

(b) by adding -

"(10) Where subsection (1)(a)(ii)(A) or (B) is applicable, the reference in that subsection to "one or more specified offences" includes any offence previously specified in Schedule 1 or 2, and the other provisions of this section and this Ordinance (including paragraphs (b) to (e) of the definition of "specified offence" in section 2(1) and any subsidiary legislation) shall be construed accordingly."

4. **Statements, etc. relevant to making confiscation order**

Section 10 is amended by adding -

"(9) For the avoidance of doubt, it is hereby declared that an allegation may be accepted under this section, and may always have been so accepted, whether or not subsection

(7)(b) is applicable to the defendant, and subsection (3) shall be construed accordingly."

**5. Application of procedure for enforcing
confiscation orders**

Section 13 is amended -

(a) by repealing subsection (1)(a) and substituting -

"(a) the court shall also make an order -

- (i) subject to subsection (1A), fixing the period within which the amount he is liable to pay under the confiscation order shall be duly paid; and
- (ii) fixing a term of imprisonment which the defendant is to serve if any of that amount is not duly paid within that period (including paid by way of being recovered); and";

(b) by adding -

"(1A) The court shall not under subsection (1)(a)(i) fix a period longer than 6 months unless it is satisfied that there are special circumstances which justify it doing so."

**6. Cases in which restraint orders and
charging orders may be made**

Section 14 is amended -

(a) in subsection (1) -

- (i) in paragraph (b), by repealing "and" at the end;
- (ii) by adding -

"(ba)if section 2(15)(aa) is applicable to an offence, the Court of First Instance is satisfied that, in all the circumstances of the case, there is reasonable cause to believe that the defendant may be charged with the offence after further investigation is carried out;" and

- (b) in subsection (4), by repealing "subsection (2)" and substituting "section 2(15)(aa) or subsection (2) of this section".

7. **Restraint orders**

Section 15 is amended by adding -

"(12) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so -

- (a) a statement in writing as to the value of the property;
- (b) documents, or copies of documents, in his possession or control which may assist the

authorized officer to determine the value of the property.

(13) A person who receives a notice under subsection (12) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned.

(14) Any person who contravenes subsection (13) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(15) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence.

(16) A person who commits an offence under subsection (15) is liable -

- (a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
- (b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years."

**8. Charging orders in respect of land,
securities, etc.**

Section 16 is amended by adding -

"(9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so -

- (a) a statement in writing as to the value of the property;
- (b) documents, or copies of documents, in his possession or control which may assist the authorized officer to determine the value of the property.

(10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the charging order concerned.

(11) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(12) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence.

(13) A person who commits an offence under subsection (12) is liable -

- (a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in

contravention of that order, whichever is the greater, and to imprisonment for 5 years; or

- (b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years."

9. **Section added**

The following is added -

"16A. Realisation of property where amount to be recovered under confiscation order is not more than prescribed amount, etc.

(1) Where -

- (a) a confiscation order is made (including any case where section 8(1)(a)(ii) or (7A) is applicable);
- (b) the order is not subject to appeal or review within the meaning of section 2(17);
- (c) the proceedings in which it was made have not been concluded; and
- (d) the amount to be recovered under the order is not more than the prescribed amount,

the Court of First Instance may, and without prejudice to the generality of section 17, on an application by the prosecutor, exercise the power conferred by subsection (2).

(2) The Court of First Instance may order one or more of the following -

- (a) a person in possession of realisable property which is cash (in whatever currency) to give possession of it to the Registrar;

- (b) a person in possession of realisable property which is not cash to pay all or a specified amount of the value of the property to the Registrar;
- (c) a person in possession of realisable property which is not cash to realise the property in such manner as the Court of First Instance may direct and to pay all or a specified amount of the value of the property so realised to the Registrar;
- (d) a person holding an interest in realisable property to pay to the Registrar an amount equal to any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Ordinance as the Court of First Instance may direct and the Court of First Instance may, on the payment being made, by order transfer, grant or extinguish any interest in the property;
- (e) such order relevant to subsection (1) or any other order under paragraph (a), (b), (c) or (d) as the Court of First Instance thinks fit.

(3) The Court of First Instance shall not in respect of any property exercise the power conferred by subsection (2) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court of First Instance.

(4) Subject to subsection (5), any sums in the hands of the Registrar in pursuance of an order under this section shall first be applied in payment of such expenses incurred by a person acting as an insolvency officer as are payable under section 23(2) and then shall, after such payments (if any) as the Court of First Instance may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order in the manner provided by subsection (6).

(5) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of the Registrar, the Registrar shall distribute those sums -

- (a) among such of those who held property which has been realised under this Ordinance; and
- (b) in such proportions,

as the Court of First Instance may direct after giving a reasonable opportunity for such persons to make representations to the Court of First Instance.

(6) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar shall apply the sum received for the purposes specified in this section and in the order so specified.

(7) Any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be paid into the general revenue.

(8) In this section, the prescribed amount is \$500,000.

(9) The Secretary for Justice may, by notice in the Gazette, amend the amount specified in subsection (8)."

**10. Insolvency officers dealing with property
subject to restraint order, etc.**

Section 23(2) is amended by adding "16A or" after "those expenses under section".

**11. Dealing with property known or believed,
etc. to represent proceeds of
indictable offence**

Section 25 is amended -

(a) by adding -

"(1A) Subject to section 25A, a person commits an offence if, having reasonable grounds to suspect that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence, he deals with that property.";

(b) in subsection (2) -

(i) by adding "or (1A)" after "under subsection (1)";

(ii) in paragraph (a), by adding "or (1A), as the case may be," after "subsection (1)";

(c) in subsection (3)(a), by repealing "14" and substituting "20";

(d) by adding -

"(3A) A person who commits an offence under subsection (1A) is liable -

- (a) on conviction upon indictment to a fine of \$1,000,000 and to imprisonment for 5 years; or
- (b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years."

**12. Disclosure of knowledge or suspicion
that property represents proceeds,
etc. of indictable offence**

Section 25A is amended -

- (a) in subsection (1) -
 - (i) by repealing "suspects" and substituting "has reasonable grounds to suspect";
 - (ii) by adding "grounds and any other" after "together with any";
- (b) in subsection (2), by adding "or (1A)" after "section 25(1)";
- (c) in subsection (5), by repealing "suspecting" and substituting "having reasonable grounds to suspect";
- (d) in subsection (6)(a), by adding "have reasonable grounds to" after "know or";
- (e) in subsection (7), by repealing "3" and substituting "12".

**13. Offences relevant to definitions of "organized
crime" and "specified offence"**

Schedule 1 is amended, in paragraphs 15 and 16, by adding "or (1A)" after "section 25(1)".

SCHEDULE 3

[s. 4]

AMENDMENT OF DRUG TRAFFICKING (RECOVERY OF PROCEEDS)
(DESIGNATED COUNTRIES AND TERRITORIES) ORDER

**1. Designation of and application of the
Ordinance to countries and territories**

Paragraph 3(2) of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg.) is repealed and the following substituted -

"(2) In relation to a designated country, the Ordinance as modified in Schedule 2 shall apply to external confiscation orders and to proceedings (whether criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or against property) which have been or are to be instituted in the designated country and which may result in an external confiscation order being made there."

2. Repeals

Paragraph 9 and Schedule 2 are repealed.

**3. Drug Trafficking (Recovery of Proceeds)
Ordinance as modified**

Schedule 3 is amended -

(a) by renumbering it as Schedule 2;

(b) in Schedule 2 -

(i) by repealing "[paras. 3(2) & 9]" and substituting "[para. 3(2)]";

(ii) in section 10, by adding -

"(12) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so -

- (a) a statement in writing as to the value of the property;
- (b) documents, or copies of documents, in his possession or control which may assist the authorized officer to determine the value of the property.

(13) A person who receives a notice under subsection (12) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned.

(14) Any person who contravenes subsection (13) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(15) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence.

(16) A person who commits an offence under subsection (15) is liable -

- (a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
- (b) on summary conviction to a fine of \$250,000

and to imprisonment for 2 years.";

(iii) in section 11, by adding -

"(9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so -

- (a) a statement in writing as to the value of the property;
- (b) documents, or copies of documents, in his possession or control which may assist the authorized officer to determine the value of the property.

(10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into

account the nature of the realisable property the subject of the charging order concerned.

(11) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(12) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence.

(13) A person who commits an offence under subsection (12) is liable -

- (a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to

imprisonment for 5 years; or

- (b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years."

Explanatory Memorandum

The purposes of this Bill are to -

- (a) amend the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and its subsidiary legislation and the Organized and Serious Crimes Ordinance (Cap. 455) to introduce the following parallel amendments -
 - (i) to make the long titles of the two Ordinances consistent with their contents (section 1 of Schedules 1 and 2);
 - (ii) to add a further ground specifying when proceedings for an offence are instituted, and to make amendments consequential to that new ground (sections 2 and 7 of Schedule 1 and sections 2 and 6 of Schedule 2);
 - (iii) in the case of applications for confiscation orders against absconded persons whose exact whereabouts are not known, to amend one of the criteria in respect of which the court needs to be

- satisfied before making such an order (section 3(a) of Schedules 1 and 2);
- (iv) in the case of offences which gave rise to applications for confiscation orders against dead or absconded persons, to specify that such offences include offences previously specified in Schedule 1 to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) or Schedule 1 or 2 to the Organized and Serious Crimes Ordinance (Cap. 455) (section 3(b) of Schedules 1 and 2);
 - (v) to put it beyond doubt that allegations in statements submitted by the prosecutor to the court in relation to absconded defendants may be treated as accepted (section 5 of Schedule 1 and section 4 of Schedule 2);
 - (vi) to fix a period within which a defendant is to pay the amount under a confiscation order (section 6 of Schedule 1 and section 5 of Schedule 2);
 - (vii) to require persons to state, or to provide documents to assist in determining, the value of realisable property the subject of a restraint or charging order, to make it an offence for a person to knowingly deal in any

realisable property in contravention of such an order, and to make consequential amendments thereto (sections 8 and 9 of Schedule 1 and sections 7 and 8 of Schedule 2 and section 3(b)(ii) and (iii) of Schedule 3);

(viii) to introduce a streamlined procedure for the realisation of property where the amount to be recovered under a confiscation order is not more than \$500,000, thereby saving costs by dispensing with the need to appoint a receiver (sections 10 and 11 of Schedule 1 and sections 9 and 10 of Schedule 2);

(ix) to create a new offence of dealing in realisable property having reasonable grounds to suspect that the property in whole or in part represents a person's proceeds from certain offences, and to make amendments consequential to the new offences (sections 12(a), (b) and (d), 13(b) and 15 of Schedule 1 and sections 11(a), (b) and (d), 12(b) and 13 of Schedule 2);

(x) to increase from 14 years to 20 years the custodial sanction on conviction upon indictment for a contravention of section 25(1) of each Ordinance (section 12(c) of

Schedule 1 and section 11(c) of Schedule 2);

(xi) to alter the test for requiring a disclosure under section 25A(1) of each Ordinance (that is, that property, inter alia, represents any person's proceeds of drug trafficking or of an indictable offence) from "knows or suspects" to "knows or has reasonable grounds to suspect" (section 13(a), (c) and (d) of Schedule 1 and section 12(a), (c) and (d) of Schedule 2); and

(xii) to increase from 3 months to 12 months the custodial sanction for a contravention of section 25A(1) of each Ordinance (section 13(e) of Schedule 1 and section 12(e) of Schedule 2);

(b) to amend the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) to repeal section 4(4) so that the assumptions that may be made under section 4(2) and (3) by a court (for the purpose of determining whether a defendant has benefited from drug trafficking and the value of the benefit) will apply in a case where the only drug trafficking offence in respect of which the defendant is to be sentenced is an offence under section 25 (section 4 of Schedule 1); and

(c) to amend the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg.) so that that Order need only set out the Ordinance as modified (section 15 of Schedule 1 and sections 1 and 2 of Schedule 3).

Relevant existing provisions of the Drug Trafficking
(Recovery of Proceeds) Ordinance and
Organized and Serious Crimes Ordinance

Annex B

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	
		Heading:	Long title	Version Date:	30/06/1997

To provide for the tracing, confiscation and recovery of the proceeds of drug trafficking, to create the offence of assisting drug traffickers to retain those proceeds, and for incidental or related matters.

(Enacted 1989)

[The Ordinance, except section 25(1), (2), (4) and (5) and paragraph (a) of section 25(3)	}	1 September 1989
Section 25(1), (2), (4) and (5) and paragraph (a) of section 25(3)	}	1 December 1989 <i>L.N. 297 of 1989</i>]

(Originally 35 of 1989)

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	L.N. 449 of 1997
Section:	2	Heading:	Interpretation	Version Date:	26/09/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2; 15 of 1999 s.3

- (1) In this Ordinance, unless the context otherwise requires-
"absconded" (潛逃), in relation to a person, includes absconded for any reason whatsoever, and whether or not, before absconding, the person had been-
- (a) taken into custody; or
 - (b) released on bail; (Added 89 of 1995 s.2)
- "authorized officer" (獲授權人) means-
- (a) any police officer;
 - (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342); and
 - (c) any other person authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)
- "confiscation order" (沒收令) means an order made under section 3(6);
"corresponding law" (相應的法律) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap 134);
"dangerous drug" (毒品) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap 134);
"dealing" (處理), in relation to property referred to in the definition of "drug trafficking", section 10(1) or 25, includes-
- (a) receiving or acquiring the property;
 - (b) concealing or disguising the property (whether by concealing or disguising its nature,

source, location, disposition, movement or ownership or any rights with respect to it or otherwise);

- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property;
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); (Added 89 of 1995 s.2)

"defendant" (被告) means a person against whom proceedings have been instituted for a drug trafficking offence (whether or not he has been convicted of that offence);

"drug trafficking" (販毒) means doing or being concerned in, whether in Hong Kong or elsewhere, any act constituting-

- (a) a drug trafficking offence; or
- (b) an offence punishable under a corresponding law,

and includes dealing, whether in Hong Kong or elsewhere, with any property which in whole or in part directly or indirectly represents any person's proceeds of drug trafficking; (Replaced 89 of 1995 s.2)

"drug trafficking offence" (販毒罪行) means-

- (a) any of the offences specified in Schedule 1;
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences;

"interest" (權益), in relation to property, includes right;

"material" (物料) includes any book, document or other record in any form whatsoever, and any article or substance; (Replaced 87 of 1997 ss.1(2) & 36)

"property" (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);

"Registrar" (司法常務官) means the Registrar of the High Court. (Amended 25 of 1998 s.2)

(2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Ordinance listed in the right hand column in relation to those expressions.

Expression	Relevant provision
Benefited from drug trafficking (從販毒獲利)	Section 3(4)
Charging order (抵押令)	Section 11(2)
Gift caught by this Ordinance (受本條例圍制的饋贈)	Section 7(9)
Making a gift (作出饋贈)	Section 7(10)
Proceeds of drug trafficking (販毒得益)	Section 4(1)(a)
Realisable property (可變現財產)	Section 7(1)
Restraint order (限制令)	Section 10(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值)	Section 7
Value of proceeds of drug trafficking (販毒得益的價值)	Section 4(1)(b)
Value of property (財產的價值)	Section 7(4)

(Amended 89 of 1995 s.2)

(3) This Ordinance applies to property whether it is situated in Hong Kong or elsewhere.

(4) References in this Ordinance to offences include a reference to offences committed before the commencement of this Ordinance; but nothing in this Ordinance imposes any duty or confers any power on any court in or in connection with proceedings against a person for a drug trafficking offence instituted before the commencement of this Ordinance.

(5) References in this Ordinance to property received in connection with drug trafficking include

a reference to property received both in that connection and in some other connection.

(6) Subsections (7) to (13) shall have effect for the interpretation of this Ordinance.

(7) Property is held by any person if he holds any interest in it.

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy or in a liquidator.

(9) References to an interest held by a person beneficially in property include, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by him beneficially if the property were not so vested.

(10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(11) Proceedings for an offence are instituted in Hong Kong-

(a) when a magistrate issues a warrant or summons under section 72 of the Magistrates Ordinance (Cap 227) in respect of the offence;

(b) when a person is charged with the offence after being taken into custody without a warrant; or

(c) when an indictment is preferred by the direction or with the consent of a judge under section 24A(1)(b) of the Criminal Procedure Ordinance (Cap 221),

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(12) Proceedings in Hong Kong for an offence are concluded on the occurrence of one of the following events-

(a) the discontinuance of the proceedings whether by entry of a nolle prosequi or otherwise;

(b) an order or verdict acquitting the defendant, not being an order or verdict which is subject to appeal or review within the meaning of subsection (13);

(c) the quashing of his conviction for the offence except where, under section 83E of the Criminal Procedure Ordinance (Cap 221), an order is made that he be retried;

(d) the grant of the Chief Executive's pardon in respect of his conviction for the offence; (Amended 15 of 1999 s.3)

(e) the court sentencing or otherwise dealing with him in respect of his conviction for the offence where the Secretary for Justice either does not apply for a confiscation order, or applies for a confiscation order and the order is not made; or (Amended 89 of 1995 s.2; L.N. 362 of 1997)

(f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(12A) An application for a confiscation order made in respect of a defendant where section 3(1)(a)(ii) or (7) is applicable is concluded-

(a) if the Court of First Instance or the District Court decides not to make such an order, when it makes that decision; or (Amended 25 of 1998 s.2)

(b) if such an order is made as a result of that application, when the order is satisfied. (Added 89 of 1995 s.2)

(12B) An application under section 15(1A) in respect of a confiscation order made against a defendant is concluded-

(a) if the Court of First Instance decides not to vary that order, when it makes that decision; or

(b) if the Court of First Instance varies that order as a result of that application, when the order is satisfied. (Added 89 of 1995 s.2. Amended 25 of 1998 s.2)

(13) An order or verdict (including an order or verdict of acquittal) is subject to appeal or review so long as an appeal, further appeal or review is pending against the order or verdict; and for this purpose an appeal, further appeal or review shall be treated as pending (where one is competent but has not been instituted) until-

(a) (Repealed 79 of 1995 s.50)

(b) the expiration of the time prescribed for instituting the appeal, further appeal or review.

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	L.N.362 of 1997; 25 of 1998
Section:	3	Heading:	Confiscation orders	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2

PART II

CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING

(1) Where-

(a) either-

- (i) in proceedings before the Court of First Instance or the District Court a person is to be sentenced in respect of one or more drug trafficking offences and has not previously been sentenced in respect of his conviction for the offence, or as the case may be, any of the offences concerned; or
- (ii) proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded because the person-
 - (A) has died; or
 - (B) has absconded; and

- (b) an application is made by or on behalf of the Secretary for Justice for a confiscation order, (Amended L.N.362 of 1997)

the Court of First Instance or the District Court, as the case may be, shall act as follows. (Replaced 89 of 1995 s.3. Amended 25 of 1998 s.2)

(2) The court shall first-

(a) where subsection (1)(a)(i) is applicable-

- (i) impose on the person such period of imprisonment or detention (if any) as is appropriate in respect of the offence, or as the case may be, the offences concerned;
- (ii) make such order or orders (other than a confiscation order) in relation to sentence as is appropriate in respect of the offence, or as the case may be, the offences concerned, and such order or orders may be or include any order-
 - (A) imposing any fine on the person;
 - (B) involving any payment by the person; or
 - (C) under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134), or under section 72, 84A, 102 or 103 of the Criminal Procedure Ordinance (Cap 221);

(b) where subsection (1)(a)(ii)(A) is applicable, be satisfied that-

- (i) the person has died; and
- (ii) having regard to all relevant matters before it, the person could have been convicted in respect of the offence, or as the case may be, the offences concerned;

(c) where subsection (1)(a)(ii)(B) is applicable, be satisfied that-

- (i) the person has absconded and that not less than 6 months have elapsed beginning

with the date which is, in the opinion of the court, the date on which the person absconded;

(ii) in the case of-

(A) a person who is known to be outside Hong Kong and whose exact whereabouts are known-

(I) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned;

(II) if that person is in custody outside Hong Kong for purposes other than the purposes referred to in sub-sub-paragraph (I), he is in such custody by virtue of conduct which would constitute an indictable offence if it had occurred in Hong Kong; and

(III) notice of those proceedings was given to that person in sufficient time to enable him to defend them;

(B) a person whose exact whereabouts are not known, reasonable steps have been taken to give notice of those proceedings to that person; and

(iii) having regard to all relevant matters before it, the person could have been convicted in respect of the offence, or as the case may be, the offences concerned. (Replaced 89 of 1995 s.3)

(3) The court shall then determine whether the person has benefited from drug trafficking.

(4) For the purposes of this Ordinance, a person who has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

(5) If the court determines that he has so benefited, the court shall determine in accordance with section 6 the amount to be recovered in his case by virtue of this section.

(6) The court shall then, in respect of the offence or offences concerned, order the person to pay-

(a) that amount; or

(b) without prejudice to the generality of paragraph (a), such proportion of that amount as it thinks fit after taking into account any order or orders provided for or referred to in subsection (2)(a)(ii)(A), (B) or (C) which has or have been made in respect of the person. (Replaced 89 of 1995 s.3)

(7) Where-

(a) a person has been convicted of one or more drug trafficking offences;

(b) an application for a confiscation order has been made in respect of the person; and

(c) the person has died or absconded before that application has been concluded,

then that application may still be concluded notwithstanding that death or abscondment, as the case may be. (Replaced 89 of 1995 s.3)

(8) Where subsection (7) is applicable in relation to a person who has died-

(a) subsection (2)(a)(i) shall not apply in relation to the person;

(b) the court shall not make a confiscation order against the person unless it is satisfied that the person has died. (Added 89 of 1995 s.3)

(9) Where subsection (7) is applicable in relation to a person who has absconded, the court shall not make a confiscation order against the person unless it is satisfied that-

(a) the person has absconded; and

(b) in the case of-

(i) a person who is known to be outside Hong Kong and whose exact whereabouts are known-

(A) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned; and

(B) notice of those proceedings was given to that person in sufficient time to enable him to defend them;

(ii) a person whose exact whereabouts are not known, reasonable steps have been taken to give notice of those proceedings to that person. (Added 89 of 1995 s.3)

(10) For the purposes of subsection (2)(b)(ii) or (c)(iii), information may be furnished to the court after the person has died or absconded, as the case may be. (Added 89 of 1995 s.3)

(11) For the purposes of any Ordinance conferring rights of appeal in criminal cases, a confiscation order made against a person shall be deemed to be a sentence passed on that person in respect of the offence or offences concerned and, in the case of any such person who has died (whether before or after the making of such order), his personal representative may act on his behalf for those purposes. (Added 89 of 1995 s.3)

(12) It is hereby declared that the standard of proof required to determine any question arising under this Ordinance as to-

- (a) whether a person has benefited from drug trafficking; or
- (b) the amount to be recovered in his case in pursuance of a confiscation order,

shall be on the balance of probabilities. (Added 89 of 1995 s.3)

(13) The fact that under subsection (2)(b)(ii) or (c)(iii) the court is satisfied that a person could have been convicted in respect of the offence, or as the case may be, the offences concerned shall not be admissible in evidence in any proceedings for an offence. (Added 89 of 1995 s.3)

(14) For the avoidance of doubt, it is hereby declared that where an application is made for a confiscation order in any case where subsection (1)(a)(ii)(A) is applicable, the personal representatives of the deceased person concerned shall, for the purposes of opposing the application, be entitled to be heard on the application and to call, examine and cross-examine any witness. (Added 89 of 1995 s.3)

(15) Where-

- (a) before the commencement of the Drug Trafficking (Recovery of Proceeds) (Amendment) Ordinance 1995 (89 of 1995), proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded because that person has absconded; and
- (b) immediately before that commencement, any realisable property of that person is the subject of a charging order or restraint order,

then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person as they would apply in relation to a person against whom, on or after that commencement, proceedings for one or more drug trafficking offences have been instituted but have not been concluded because that last-mentioned person has absconded. (Added 89 of 1995 s.3)

(16) Where-

- (a) before the commencement of the Drug Trafficking (Recovery of Proceeds) (Amendment) Ordinance 1995 (89 of 1995)-
 - (i) a person has been convicted of one or more drug trafficking offences;
 - (ii) an application for a confiscation order has been made in respect of the person; and
 - (iii) the person has absconded before that application has been concluded; and
- (b) immediately before that commencement, and realisable property of that person is the subject of a charging order or restraint order,

then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person as they would apply in relation to a person to whom subsection (7) is applicable because he has absconded. (Added 89 of 1995 s.3)

[cf.1986 c.32 s.1 U.K.]

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	L.N.449 of 1997
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Remarks:

Amendments retroactively made-see 25 of 1998 s.2

-
- (1) For the purposes of this Ordinance-
- (a) a person's proceeds of drug trafficking are-
 - (i) any payments or other rewards received by him at any time (whether before or after 1 December 1989) in connection with drug trafficking carried on by him or another;
 - (ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and
 - (iii) any pecuniary advantage obtained in connection with drug trafficking carried on by him or another; and
 - (b) the value of the person's proceeds of drug trafficking is the aggregate of the values of-
 - (i) the payments or other rewards;
 - (ii) that property; and
 - (iii) that pecuniary advantage. (Replaced 87 of 1997 ss. 1(2) & 36)

(2) The Court of First Instance or the District Court, as the case may be, may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that the defendant (or, in the case of a defendant who has died, his personal representative on his behalf) shows that any of the assumptions are incorrect in his case. (Amended 89 of 1995 s.4; 25 of 1998 s.2)

- (3) Those assumptions are-
- (a) that any property appearing to the court-
 - (i) to have been held by him at any time-
 - (A) since his conviction; or
 - (B) where section 3(1)(a)(ii) is applicable, since the application was made for a confiscation order in his case, as the case may be; or (Replaced 89 of 1995 s.4)
 - (ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him, was received by him, at the earliest time at which he appears to the court to have held it, as his proceeds of drug trafficking;
 - (b) that any expenditure of his since the beginning of that period was met out of his proceeds of drug trafficking; and
 - (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as his proceeds of drug trafficking, he received the property free of any other interests in it. (Amended 89 of 1995 s.4)

(4) Subsections (2) and (3) do not apply if the only drug trafficking offence in respect of which the defendant is to be sentenced is an offence under section 25.

(5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order, or an order under section 8(7) of the Organized and Serious Crimes Ordinance (Cap 455), has previously been made against him, the court shall leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order. (Amended 82 of 1994 s.36)

[cf.1986 c.32 s.2 U.K.]

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	25 of 1998 s.2
Section:	5	Heading:	Statements relating to proceeds of drug trafficking, etc.	Version Date:	01/07/1997

Remarks:

Amendments retroactively made-see 25 of 1998 s.2

(1) Where an application is made for a confiscation order, the prosecutor may tender to the Court of First Instance or the District Court, as the case may be, a statement of matters relevant to any of the following- (Amended 25 of 1998 s.2)

- (a) where section 3(1)(a)(ii) is applicable, determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;
- (b) determining whether the defendant has benefited from drug trafficking;
- (c) assessing the value of the defendant's proceeds of drug trafficking. (Replaced 89 of 1995 s.5)

(1A) Where any statement has been tendered under subsection (1)-

- (a) the prosecutor may at any time tender to the court a further such statement; and
- (b) the court may at any time require the prosecutor to tender to it a further such statement within such period as it may direct. (Added 89 of 1995 s.5)

(1B) Where any statement has been tendered under subsection (1) and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant-

- (a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and
- (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely. (Added 89 of 1995 s.5)

(1C) Where the court has given a direction under this section, it may at any time vary it by giving a further direction. (Added 89 of 1995 s.5)

(2) Where the defendant accepts to any extent any allegation in any statement tendered under subsection (1), the court may, for the purposes of-

- (a) where section 3(1)(a)(ii) is applicable, determining whether the defendant could have been convicted in respect of the offence, or as the case may be, the offences concerned;
- (b) determining whether the defendant has benefited from drug trafficking; or
- (c) assessing the value of his proceeds of drug trafficking, treat his acceptance as conclusive of the matters to which the allegation relates. (Replaced 89 of 1995 s.5)

(3) If the defendant fails in any respect to comply with a requirement under subsection (1B) he may be treated for the purposes of this section as accepting every allegation in the statement apart from- (Amended 89 of 1995 s.5)

- (a) any allegation in respect of which he has complied with the requirement; (Replaced 89 of 1995 s.5)
- (b) where section 3(1)(a)(ii) is applicable, any allegation that he could have been convicted in respect of the offence, or as the case may be, the offences concerned; (Replaced 89 of 1995 s.5)
- (c) any allegation that he has benefited from drug trafficking; and (Added 89 of 1995 s.5)
- (d) any allegation that any payment or other reward was received by him in connection with drug trafficking carried on by him or another. (Added 89 of 1995 s.5)

(4) Where-

- (a) the defendant tenders to the court a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and

(b) the prosecutor accepts to any extent any allegation in the statement, the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which the acceptance relates.

(5) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in writing in a form acceptable to the court. (Replaced 89 of 1995 s.5)

(6) No acceptance by the defendant under this section that-

- (a) where section 3(1)(a)(ii) is applicable, he could have been convicted in respect of the offence, or as the case may be, the offences concerned; or
- (b) any payment or other reward was received by him in connection with drug trafficking carried on by him or another,

shall be admissible in evidence in any proceedings for an offence. (Replaced 89 of 1995 s.5)

(7) In any proceedings on an application made for a confiscation order where section 3(1)(a)(ii) or (7) is applicable-

- (a) if the defendant has died, subsection (1B) shall have effect as if it required a copy of the statement tendered under subsection (1) to be served on the defendant's personal representative;
- (b) if the defendant has absconded and section 3(2)(c)(ii)(A) or (9)(b)(i) is not applicable to him, this section shall have effect as if a copy of the statement tendered under subsection (1) had been served on the defendant. (Added 89 of 1995 s.5)

(8) For the avoidance of doubt, it is hereby declared that, where section 3(1)(a)(ii) is applicable, this section shall not prejudice the generality of section 3(10). (Added 89 of 1995 s.5)

[cf.1986 c.32 s.3 U.K.]

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	25 of 1998 s.2
Section:	8	Heading:	Application of procedure for enforcing confiscation orders	Version Date:	01/07/1997

Remarks:

Amendments retroactively made-see 25 of 1998 s.2

PART III

ENFORCEMENT, ETC. OF CONFISCATION ORDERS

(1) Subject to this section, where the Court of First Instance or the District Court, as the case may be, makes a confiscation order- (Amended 89 of 1995 s.9; 25 of 1998 s.2)

- (a) the court shall also make an order fixing a term of imprisonment which the defendant is to serve if any of the amount which he is liable to pay under the confiscation order is not duly paid or recovered; and (Replaced 89 of 1995 s.9)
- (b) section 114(1),(3),(4),(5),(6) and (7) of the Criminal Procedure Ordinance (Cap 221) shall apply as if-
 - (i) that amount were a fine imposed upon him by the court; and
 - (ii) the term of imprisonment fixed under this section were a term fixed under section 114(1)(c) of that Ordinance.

(2) The terms set out in the second column of the following table shall be the maximum terms of

imprisonment under subsection (1) applicable respectively to the amounts set out opposite thereto.

TABLE

An amount not exceeding \$200000.....	12 months
An amount exceeding \$200000 but not exceeding \$500000.....	18 months
An amount exceeding \$500000 but not exceeding \$1 million.....	2 years
An amount exceeding \$1 million but not exceeding \$2.5 million.....	3 years
An amount exceeding \$2.5 million but not exceeding \$10 million.....	5 years
An amount exceeding \$10 million.....	10 years

(3) Subsections (1) and (2) shall apply in relation to the District Court. (Replaced 89 of 1995 s.9)

(3A) For the avoidance of doubt, it is hereby declared that no limitation on the jurisdiction of the District Court as to the imposition of penalties set out in section 82 of the District Court Ordinance (Cap 336) shall be construed so as to prejudice the operation of subsection (3). (Added 89 of 1995 s.9)

(4) Where the defendant-

- (a) becomes liable to serve a term of imprisonment fixed under this section in respect of a confiscation order; and
- (b) is also liable to serve a term of imprisonment or detention in respect of the offence or offences concerned,

the term of imprisonment mentioned in paragraph (a) shall not begin to run until after the end of the term of imprisonment or detention mentioned in paragraph (b).

(5) For the purposes of subsection (4)-

- (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
- (b) there shall be disregarded-
 - (i) any sentence suspended under section 109B of the Criminal Procedure Ordinance (Cap 221) which has not taken effect at the time the defendant becomes liable to a term of imprisonment under this section; and
 - (ii) any term of imprisonment fixed under section 114(1) of the Criminal Procedure Ordinance (Cap 221) for which the defendant has not at that time been committed.

(6) Sections 86 and 109A of the Criminal Procedure Ordinance (Cap 221) shall not apply in relation to fixing a term of imprisonment under this section. (Amended 89 of 1995 s.9)

(7) This section shall not apply in relation to a confiscation order where section 3(1)(a)(ii) or (7) is applicable. (Added 89 of 1995 s.9)

(8) At the end of each day's sitting of the Court of First Instance or the District Court, the Registrar of the High Court or District Court, as the case may be, shall deliver (or cause to be delivered) to the Commissioner of Correctional Services a certificate, in the form specified in Schedule 3, in respect of each term of imprisonment fixed under this section. (Added 89 of 1995 s.9. Amended 25 of 1998 s. 2)

(9) A certificate referred to in subsection (8) shall be a sufficient warrant to the Commissioner of Correctional Services for receiving into his custody the defendant named in the certificate and for carrying into effect the term of imprisonment fixed under this section in respect of that defendant. (Added 89 of 1995 s.9)

[cf.1986 c.32 s.6 U.K.]

Chapter: 405	Title: DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number: 25 of 1998 s.2
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Remarks:

Amendments retroactively made-see 25 of 1998 s.2

(1) The powers conferred on the Court of First Instance by sections 10(1) and 11(1) are exercisable where-

- (a) proceedings have been instituted in Hong Kong against the defendant for a drug trafficking offence or-
 - (i) and application for a confiscation order has been made in respect of the defendant where section 3(1)(a)(ii) or (7) is applicable; or
 - (ii) an application has been made under section 15(1A) in respect of a confiscation order made against the defendant; (Replaced 89 of 1995 s.10)
- (b) the proceedings have not, or the application has not, as the case may be, been concluded; and (Replaced 89 of 1995 s.10)
- (c) the Court of First Instance is satisfied that there is reasonable cause to believe-
 - (i) in the case of an application referred to in paragraph (a)(ii), that the Court of First Instance will be satisfied as specified in section 15(1A);
 - (ii) in any other case, that the defendant has benefited from drug trafficking. (Replaced 89 of 1995 s.10)

(2) Those powers are also exercisable where the Court of First Instance is satisfied-

- (a) that whether by the laying of an information or otherwise, a person is to be charged in Hong Kong with a drug trafficking offence; and
- (b) that there is reasonable cause to believe that he has benefited from drug trafficking.

(3) For the purposes of sections 10 and 11, in relation to the exercise of those powers at any time before proceedings have been instituted-

- (a) references in this Ordinance to the defendant shall be construed as references to the person referred to in subsection (2)(a);
- (b) references in this Ordinance to the prosecutor shall be construed as references to the person who the Court of First Instance is satisfied is to have the conduct of the case for the prosecution in the proposed proceedings; and
- (c) references in this Ordinance to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) for a drug trafficking offence.

(4) Where the Court of First Instance has made an order under section 10(1) or 11(1) by virtue of subsection (2), the Court of First Instance shall discharge the order if proceedings in respect of the offence are not instituted within such time as the Court of First Instance considers reasonable.

(Amended 25 of 1998 s.2)
[cf.1986 c.32 s.7 U.K.]

Chapter: 405	Title: DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number: 25 of 1998 s.2
Section: 10	Heading: Restraint orders	Version Date: 01/07/1997

Remarks:

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- (1) The Court of First Instance may by order (in this Ordinance referred to as a "restraint order" (限制令)) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order. (Amended 25 of 1998 s.2)
- (2) A restraint order may apply-
- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (3) This section shall not have effect in relation to any property for the time being subject to a charge under section 11.
- (4) A restraint order-
- (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order-
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged on the conclusion of the proceedings or application concerned. (Replaced 89 of 1995 s.11)
- (6) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (7) Where the Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver-
- (a) to take possession of any realisable property; and
 - (b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the Court of First Instance; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver. (Amended 25 of 1998 s.2)
- (8) (Repealed 89 of 1995 s.11)
- (9) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property. (Amended 25 of 1998 s.2)
- (10) Property seized under subsection (9) shall be dealt with in accordance with the directions of the Court of First Instance. (Amended 25 of 1998 s.2)
- (11) Where any property specified in a restraint order is immovable property the order shall, for the purposes of the Land Registration Ordinance (Cap 128)-
- (a) be deemed to be an instrument affecting land; and
 - (b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit. (Amended 8 of 1993 ss.2 & 3)

[cf.1986 c.32 s.8 U.K.]

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	25 of 1998 s.2
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Remarks:

Amendments retroactively made-see 25 of 1998 s.2

(1) The Court of First Instance may make a charging order on realisable property for securing the payment to the Government-

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Ordinance, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

(3) A charging order-

- (a) may be made only on an application by the prosecutor;
- (b) may be made on an ex parte application to a judge in chambers;
- (c) shall provide for notice to be given to persons affected by the order; and
- (d) may be made subject to such conditions as the Court of First Instance thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(4) Subject to subsection (6), a charge may be imposed by a charging order only on-

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance-
 - (i) in any asset of a kind specified in Schedule 2; or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first mentioned trust.

(5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind specified in Schedule 2, the Court of First Instance may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset.

(6) In relation to a charging order, the Court of First Instance-

- (a) may make an order discharging or varying it; and
- (b) shall make an order discharging the charging order-
 - (i) on the conclusion of the proceedings or application concerned; or
 - (ii) on payment into the Court of First Instance of the amount payment of which is secured by the charge. (Replaced 89 of 1995 s.12)

(7) An application for the discharge or variation of a charging order may be made by any person affected by it.

(8) Subject to the provisions of this Ordinance, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustee, by writing under his hand.

(Amended 25 of 1998 s.2)
[cf.1986 c.32 s.9 U.K.]

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	
Section:	18	Heading:	Insolvency officers dealing with property subject to restraint order	Version Date:	30/06/1997

(1) Without prejudice to the generality of any provision contained in the Bankruptcy Ordinance (Cap 6), the Companies Ordinance (Cap 32) or any other Ordinance, where-

- (a) any insolvency officer seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property,

he shall not be liable to any other person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence; and the insolvency officer shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any insolvency officer who incurs expenses-

- (a) in respect of such property as is mentioned in subsection (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 13(1) or (3).

(3) In this section "insolvency officer" (債務處理人) means-

- (a) the Official Receiver; or
- (b) any person acting as-
 - (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap 6); or
 - (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap 32).

(Enacted 1989)

[cf.1986 c.32 s.17A U.K.]

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	
Section:	25	Heading:	Dealing with property known or believed to represent proceeds of drug trafficking	Version Date:	30/06/1997

PART V

PROHIBITED ACTS IN RELATION TO PROCEEDS OF DRUG TRAFFICKING

- (1) Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of drug trafficking, he deals with that property.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence to prove that-
- (a) he intended to disclose to an authorized officer such knowledge, suspicion or matter as is mentioned in section 25A(1) in relation to the act in contravention of subsection (1) concerned; and
 - (b) there is reasonable excuse for his failure to make disclosure in accordance with section 25A(2).
- (3) A person who commits an offence under subsection (1) is liable-
- (a) on conviction upon indictment to a fine of \$5000000 and to imprisonment for 14 years; or
 - (b) on summary conviction to a fine of \$500000 and to imprisonment for 3 years.
- (Replaced 89 of 1995 s.21)
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Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	
Section:	25A	Heading:	Disclosure of knowledge or suspicion that property represents proceeds, etc. of drug trafficking	Version Date:	30/06/1997

- (1) Where a person knows or suspects that any property-
- (a) in whole or in part directly or indirectly represents any person's proceeds of;
 - (b) was used in connection with; or
 - (c) is intended to be used in connection with,
- drug trafficking, he shall as soon as it is reasonable for him to do so disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based, to an authorized officer.
- (2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 25(1) (whether before or after such disclosure), and the disclosure relates to that act, he does not commit an offence under that section if-
- (a) that disclosure is made before he does that act and he does that act with the consent of an authorized officer; or
 - (b) that disclosure is made-
 - (i) after he does that act;
 - (ii) on his initiative; and
 - (iii) as soon as it is reasonable for him to make it.
- (3) A disclosure referred to in subsection (1)-
- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
 - (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

(4) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.

(5) A person commits an offence if, knowing or suspecting that a disclosure has been made under subsection (1) or (4), he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.

(6) In proceedings against a person for an offence under subsection (5), it is a defence to prove-

(a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in that subsection; or

(b) that he had lawful authority or reasonable excuse for making that disclosure.

(7) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

(8) A person who commits an offence under subsection (5) is liable-

(a) on conviction upon indictment to fine of \$500000 and to imprisonment for 3 years; or

(b) on summary conviction to a fine of at level 6 and to imprisonment for 1 year.

(Added 89 of 1995 s.21)

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	L.N. 449 of 1997
Section:	28	Heading:	Enforcement of external confiscation orders	Version Date:	26/09/1997

Remarks:

Amendments retroactively made - see 15 of 1999 s.3

(1) The Chief Executive in Council may, with the approval of the Legislative Council, by order- (Amended 15 of 1999 s.3)

(a) direct in relation to a country, territory or place outside Hong Kong designated by the order ("a designated country") that, subject to such modifications as may be specified, this Ordinance shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there; (Amended 15 of 1999 s.3)

(b) make-

(i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; and

(ii) such provision as to evidence or proof of any matter for the purposes of this section and section 29; and

(iii) such incidental, consequential and transitional provision, as appears to him to be expedient; and

(c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds arising out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) An order under this section may make different provision for different cases or classes of case.

(3) The power to make an order under this section includes power to modify this Ordinance in such a way as to confer power on a person to exercise a discretion.

(3A) An order under this section shall not operate, or be construed, to prevent a designated country from making a request under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525), including a request under section 27 of that Ordinance. (Added 87 of 1997 ss. 1(2) & 36)

(4) In this section and section 29-

"external confiscation order" (外地沒收令) means an order made by a court in a designated country for the purpose of-

- (a) recovering (including forfeiting and confiscating)-
 - (i) payments or other rewards received in connection with drug trafficking or their value;
 - (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with drug trafficking or the value of such property; or
 - (iii) property used or intended to be used in connection with drug trafficking or the value of such property; or
- (b) depriving a person of a pecuniary advantage obtained in connection with drug trafficking, and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property; (Replaced 87 of 1997 ss. 1(2) & 36)

"modifications" (修改) includes additions, alterations and omissions.

(Enacted 1989)
[cf.1986 c.32 s.26 U.K.]

Chapter:	405	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number:	
Section:	1	Heading:	DRUG TRAFFICKING OFFENCES	Version Date:	30/06/1997

[section 2]

Offence	Description*
section 4(1), Dangerous Drugs Ordinance (Cap 134)	trafficking in a dangerous drug
section 4A, Dangerous Drugs Ordinance (Cap 134)	trafficking in purported dangerous drug
section 5(1), Dangerous Drugs Ordinance (Cap 134)	supplying or procuring a dangerous drug to or for unauthorized persons
section 6(1), Dangerous Drugs Ordinance (Cap 134)	manufacturing a dangerous drug

section 9(1), (2) and (3), Dangerous Drugs Ordinance (Cap 134)	cultivating, supplying, procuring, dealing in, importing, exporting, or possessing cannabis plant or opium poppy
section 35, Dangerous Drugs Ordinance (Cap 134)	keeping or managing a divan for the taking of dangerous drugs
section 37, Dangerous Drugs Ordinance (Cap 134)	permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
section 40(1)(c), Dangerous Drugs Ordinance (Cap 134)	aiding, etc. offence under a corresponding law
section 25, Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405)	dealing with property known or believed to represent the proceeds of drug trafficking

*Note: The short description of offences in this Schedule is for ease of reference only.

(Amended 52 of 1992 s.12; 89 of 1995 s.28)

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	
Section:		Heading:	Long title	Version Date:	30/06/1997

An Ordinance to create new powers of investigation into organized crimes and certain other offences and into the proceeds of crime of certain offenders; provide for the confiscation of proceeds of crime; make provision in respect of the sentencing of certain offenders; create an offence of assisting a person to retain proceeds of crime; and for ancillary and connected matters.

(Enacted 1994)

[Sections 2, 25 to 27, 30, 32 to 35 and Schedules 1 and 2	}	2 December 1994	<i>L.N. 651 of 1994</i>
The Ordinance, other than sections 2, 25 to 27, 30, 32 to 35 and Schedules 1 and 2	}	28 April 1995	<i>L.N. 157 of 1995]</i>

(Originally 82 of 1994)

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	L.N. 449 of 1997
Section:	2	Heading:	Interpretation	Version Date:	26/09/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2; 13 of 1999 s.3

- (1) In this Ordinance, unless the context otherwise requires-
- "absconded" (潛逃), in relation to a person, includes absconded for any reason whatsoever, and whether or not, before absconding, the person had been-
- (a) taken into custody; or
 - (b) released on bail; (Added 90 of 1995 s.2)
- "authorized officer" (獲授權人) means-
- (a) any police officer;
 - (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342); and
 - (c) any other person authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)
- "confiscation order" (沒收令) means an order made under section 8(7);
- "dealing" (處理), in relation to property referred to in section 15(1) or 25, includes-
- (a) receiving or acquiring the property;
 - (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
 - (c) disposing of or converting the property;
 - (d) bringing into or removing from Hong Kong the property;

- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); (Added 90 of 1995 s.2)
- "defendant" (被告人) means a person against whom proceedings have been instituted for a specified offence (whether or not he has been convicted of that offence);
- "insolvency officer" (債務處理人) means-
- (a) the Official Receiver; or
 - (b) any person acting as-
 - (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap 6); or
 - (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap 32);
- "interest" (權益), in relation to property, includes right;
- "items subject to legal privilege" (享有法律特權的品目) means-
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
 - (c) items enclosed with or referred to in such communications and made-
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,when they are in the possession of a person who is entitled to possession of them, but excludes any such communications or items held with the intention of furthering a criminal purpose;
- "material" (物料) includes any book, document or other record in any form whatsoever, and any article or substance;
- "organized crime" (有組織罪行) means a Schedule 1 offence that-
- (a) is connected with the activities of a particular triad society;
 - (b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or
 - (c) is committed by 2 or more persons, involves substantial planning and organization and involves-
 - (i) loss of the life of any person, or a substantial risk of such a loss;
 - (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or
 - (iii) serious loss of liberty of any person;
- "premises" (處所) includes any place and, in particular, includes-
- (a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and
 - (b) any tent or movable structure;
- "property" (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);
- "Registrar" (司法常務官) means the Registrar of the High Court; (Amended 25 of 1998 s.2)
- "reward" (酬賞) includes a pecuniary advantage;
- "Schedule 1 offence" (附表 1 所列罪行) means-
- (a) any of the offences specified in Schedule 1;
 - (b) conspiracy to commit any of those offences;
 - (c) inciting another to commit any of those offences;

- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences;

"society" (社團) has the same meaning as in section 2(1) of the Societies Ordinance (Cap 151);

"specified offence" (指明的罪行) means-

- (a) any of the offences specified in Schedule 1 or Schedule 2;
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences.

"triad society" (三合會) includes any society which-

- (a) uses any ritual commonly used by triad societies, any ritual closely resembling any such ritual or any part of any such ritual; or
- (b) adopts or makes use of any triad title or nomenclature;

(2) For the purpose of the definition of "organized crime" (有組織罪行) in subsection (1)-

- (a) a conspiracy to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if the pursuit of the agreed course of conduct would at some stage involve that matter;
- (b) an attempt or incitement to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if what the person attempting or inciting the commission had in view would involve that matter.

(3) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Ordinance listed in the right-hand column in relation to those expressions.

Expression	Relevant provision
Charging order (押記令)	Section 16(2)
Gift caught by this Ordinance (受本條例限制的饋贈)	Section 12(9)
Making a gift (作出饋贈)	Section 12(10)
Realisable property (可變現財產)	Section 12(1)
Restraint order (限制令)	Section 15(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值)	Section 12
Value of property (財產的價值)	Section 12(4)

(Amended 90 of 1995 s.2)

(4) This Ordinance applies to property whether it is situated in Hong Kong or elsewhere.

(5) References in this Ordinance (except in sections 25 and 25A) to offences or organized crimes include a reference to offences or organized crimes committed before the commencement of this Ordinance; but nothing in this Ordinance imposes any duty or confers any power on any court in or in connection with proceedings against a person for an offence instituted before the commencement of this Ordinance. (Amended 90 of 1995 s.2)

(6) For the purposes of this Ordinance-

- (a) a person's proceeds of an offence are-
 - (i) any payments or other rewards received by him at any time (whether before or after 2 December 1994) in connection with the commission of that offence;
 - (ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and
 - (iii) any pecuniary advantage obtained in connection with the commission of that offence;
- (b) the value of the person's proceeds of that offence is the aggregate of the values of-
 - (i) the payments or other rewards;

- (ii) that property; and
 - (iii) that pecuniary advantage. (Replaced 87 of 1997 ss. 1(2) & 36)
- (7) For the purposes of this Ordinance-
- (a) a person's proceeds of organized crime are-
 - (i) any payments or other rewards received by him at any time (whether before or after 2 December 1994) in connection with the commission of one or more organized crimes;
 - (ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and
 - (iii) any pecuniary advantage obtained in connection with the commission of one or more organized crimes;
 - (b) the value of the person's proceeds of organized crime is the aggregate of the values of-
 - (i) the payments or other rewards;
 - (ii) that property; and
 - (iii) that pecuniary advantage. (Replaced 87 of 1997 ss. 1(2) & 36)

(8) For the purposes of this Ordinance, a person who has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with the commission of an offence or an organized crime has benefited from that offence or organized crime, as the case may be.

(9) References in this Ordinance to property received in connection with the commission of an offence or organized crime include a reference to property received both in that connection and in some other connection.

(10) Subsections (11) to (17) shall have effect for the interpretation of this Ordinance.

(11) Property is held by any person if he holds any interest in it.

(12) References to property held by a person include a reference to property vested in his trustee in bankruptcy or in a liquidator.

(13) References to an interest held by a person beneficially in property include, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by him beneficially if the property were not so vested.

(14) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(15) Proceedings for an offence are instituted-

- (a) when a magistrate issues a warrant or summons under section 72 of the Magistrates Ordinance (Cap 227) in respect of the offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant; or
- (c) when an indictment is preferred by the direction or with the consent of a judge under section 24A(1)(b) of the Criminal Procedure Ordinance (Cap 221),

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(16) Proceedings for an offence are concluded on the occurrence of one of the following events-

- (a) the discontinuance of the proceedings whether by entry of a nolle prosequi or otherwise;
- (b) an order or verdict acquitting the defendant, not being an order or verdict which is subject to appeal or review within the meaning of subsection (17);
- (c) the quashing of his conviction for the offence except where, under section 83E of the Criminal Procedure Ordinance (Cap 221), an order is made that he be retried;
- (d) the grant of the Chief Executive's pardon in respect of the conviction for the offence; (Amended 13 of 1999 s.3)
- (e) the court or magistrate sentencing or otherwise dealing with him in respect of his conviction for the offence where the Secretary for Justice either does not apply for a confiscation order, or applies for a confiscation order and the order is not made; or (Amended L.N. 362 of 1997)

- (f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(16A) An application for a confiscation order made in respect of a defendant where section 8(1)(a)(ii) or (7A) is applicable is concluded-

- (a) if the Court of First Instance or the District Court decides not to make such an order, when it makes that decision; or (Amended 25 of 1998 s.2)
- (b) if such an order is made as a result of that application, when the order is satisfied. (Added 90 of 1995 s.2)

(16B) An application under section 20(1A) in respect of a confiscation order made against a defendant is concluded-

- (a) if the Court of First Instance decides not to vary that order, when it makes that decision; or
- (b) if the Court of First Instance varies that order as a result of that application, when the order is satisfied. (Added 90 of 1995 s.2. Amended 25 of 1998 s.2)

(17) An order or verdict (including an order or verdict of acquittal) is subject to appeal or review so long as an appeal, further appeal or review is pending against the order or verdict; and for this purpose an appeal, further appeal or review shall be treated as pending (where one is competent but has not been instituted) until-

- (a) (Repealed 79 of 1995 s.50)
- (b) the expiration of the time prescribed for instituting the appeal, further appeal or review. (Amended 79 of 1995 s.50)

(Enacted 1994)
[cf.1986 c.32 s.38 U.K.]

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	L.N. 362 of 1997; 25 of 1998 s.2
Section:	8	Heading:	Confiscation orders	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2

PART III

CONFISCATION OF PROCEEDS OF CRIME

- (1) where-
 - (a) either-
 - (i) in proceedings before the Court of First Instance or the District Court a person is to be sentenced in respect of one or more specified offences and has not previously been sentenced in respect of his conviction for the offence or, as the case may be, any of the offences concerned; or
 - (ii) proceedings for one or more specified offences have been instituted against a person but have not been concluded because the person-
 - (A) has died; or
 - (B) has absconded; and
 - (b) an application is made by or on behalf of the Secretary for Justice for a confiscation order, (Amended L.N. 362 of 1997)

the Court of First Instance or the District Court, as the case may be, shall act as follows. (Replaced 90 of 1995 s.6. Amended 25 of 1998 s.2)

(2) (Repealed 90 of 1995 s.6)

(3) The court shall-

- (a) where subsection (1)(a)(i) is applicable-
 - (i) first determine, if the prosecution so requests, whether the specified offence or any of the specified offences of which the person stands convicted is an organized crime;
 - (ii) then, or where no request has been made under subparagraph (i), first-
 - (A) impose on the person such period of imprisonment or detention (if any) as is appropriate in respect of the offence or, as the case may be, the offences concerned;
 - (B) make such order or orders (other than a confiscation order) in relation to sentence as is appropriate in respect of the offence or, as the case may be, the offences concerned, and such order or orders may be or include any order-
 - (I) imposing any fine on the person;
 - (II) involving any payment by the person; or
 - (III) under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134), or under section 72, 84A, 102 or 103 of the Criminal Procedure Ordinance (Cap 221);
- (b) where subsection (1)(a)(ii)(A) is applicable-
 - (i) first be satisfied that-
 - (A) the person has died; and
 - (B) having regard to all relevant matters before it, the person could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) then, where the court is satisfied under subparagraph (i), determine, if the prosecution so requests, whether the offence or any of the offences concerned could have been an organized crime;
- (c) where subsection (1)(a)(ii)(B) is applicable-
 - (i) first be satisfied that-
 - (A) the person has absconded and that not less than 6 months have elapsed beginning with the date which is, in the opinion of the court, the date on which the person absconded;
 - (B) in the case of-
 - (I) a person who is known to be outside Hong Kong and whose exact whereabouts are known-
 - (aa) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned;
 - (bb) if that person is in custody outside Hong Kong for purposes other than the purposes referred to in sub-sub-sub-subparagraph (aa), he is in such custody by virtue of conduct which would constitute an indictable offence if it had occurred in Hong Kong; and
 - (cc) notice of those proceedings was given to that person in sufficient time to enable him to defend them;
 - (II) a person whose exact whereabouts are not known, reasonable steps have been taken to give notice of those proceedings to that person; and
 - (C) having regard to all relevant matters before it, the person could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) then, where the court is satisfied under subparagraph (i), determine, if the

prosecution so requests, whether the offence or any of the offences concerned could have been an organized crime. (Replaced 90 of 1995 s.6)

- (4) The court shall then determine-
- (a) where subsection (1)(a)(i) is applicable, whether the person has benefited from the specified offence or from that offence taken together with any specified offence of which he is convicted in the same proceedings, or which the court proposes to take or has taken into consideration in determining his sentence;
 - (b) where subsection (1)(a)(ii) is applicable, whether the person has benefited from the specified offence of which the court is satisfied that he could have been convicted or from that offence taken together with any specified offence of which the court is satisfied that he could have been convicted in the same proceedings or which the court could have taken into consideration in determining his sentence if he had not died or absconded, as the case may be,

and, if he has, whether his proceeds of that specified offence or offences are in total at least \$100000. (Replaced 90 of 1995 s.6)

- (5) If the court has determined-
- (a) where subsection (1)(a)(i) is applicable-
 - (i) under subsection (3)(a)(i), that the specified offence or any of the specified offences of which the person stands convicted is an organized crime; and
 - (ii) under subsection (4), that his proceeds of the specified offence or offences referred to in that subsection are in total at least the amount specified in that subsection;
 - (b) where subsection (1)(a)(ii) is applicable-
 - (i) under subsection (3)(b)(ii) or (c)(ii), as the case may be, that the specified offence or any of the specified offences concerned could have been an organized crime; and
 - (ii) under subsection (4), that his proceeds of the specified offence or offences referred to in that subsection are in total at least the amount specified in that subsection,

the court shall then determine whether the person has benefited from organized crime. (Replaced 90 of 1995 s.6)

(6) If the court determines that his proceeds of the specified offence or offences are in total at least the amount specified in subsection (4), the court shall determine in accordance with section 11 the amount to be recovered in his case by virtue of this section.

- (7) The court shall then, in respect of the offence or offences concerned, order the person to pay-
- (a) that amount; or
 - (b) without prejudice to the generality of paragraph (a), such proportion of that amount as it thinks fits after taking into account any order or orders provided for or referred to in subsection (3)(a)(ii)(B)(I), (II) or (III) which has or have been made in respect of the person. (Replaced 90 of 1995 s.6)

(7A) Where-

- (a) a person has been convicted of one or more specified offences;
- (b) an application for a confiscation order has been made in respect of the person; and
- (c) the person has died or absconded before that application has been concluded,

then that application may still be concluded notwithstanding that death or abscondment, as the case may be. (Added 90 of 1995 s.6)

(7B) Where subsection (7A) is applicable in relation to a person who has died-

- (a) subsection (3)(a)(ii)(A) shall not apply in relation to the person;
- (b) the court shall not make a confiscation order against the person unless it is satisfied that the person has died. (Added 90 of 1995 s.6)

(7C) Where subsection (7A) is applicable in relation to a person who has absconded, the court shall not make a confiscation order against the person unless it is satisfied that-

- (a) the person has absconded; and
- (b) in the case of-
 - (i) a person who is known to be outside Hong Kong and whose exact whereabouts are

known-

- (A) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned; and
- (B) notice of those proceedings was given to that person in sufficient time to enable him to defend them;

(ii) a person whose exact whereabouts are not known, reasonable steps have been taken to give notice of those proceedings to that person. (Added 90 of 1995 s.6)

(8) For the purposes of subsection (3)(b)(i)(B) or (ii) or (c)(i)(C) or (ii), information may be furnished to the court after the person has died or absconded, as the case may be. (Replaced 90 of 1995 s.6)

(8A) For the purposes of any Ordinance conferring rights of appeal in criminal cases, a confiscation order made against a person shall be deemed to be a sentence passed on that person in respect of the offence or offences concerned and, in the case of any such person who has died (whether before or after the making of such order), his personal representative may act on his behalf for those purposes. (Added 90 of 1995 s.6)

(8B) It is hereby declared that the standard of proof required to determine any question arising under this Ordinance as to-

- (a) whether a person has benefited from a specified offence or offences;
- (b) whether a person has benefited from organized crime; or
- (c) the amount to be recovered in his case in pursuance of a confiscation order,

shall be on the balance of probabilities. (Added 90 of 1995 s.6)

(8C) The fact that-

- (a) under subsection (3)(b)(i)(B) or (c)(i)(C) the court is satisfied that a person could have been convicted in respect of the offence or, as the case may be, the offences concerned;
- (b) under subsection (3)(b)(ii) or (c)(ii) the court determines that the offence or any of the offences referred to in subsection (3)(b)(i)(B) or (c)(i)(C) could have been an organized crime,

shall not be admissible in evidence in any proceedings for an offence. (Added 90 of 1995 s.6)

(8D) For the avoidance of doubt, it is hereby declared that where an application is made for a confiscation order in any case where subsection (1)(a)(ii)(A) is applicable, the personal representatives of the deceased person concerned shall, for the purposes of opposing the application, be entitled to be heard on the application and to call, examine and cross-examine any witness. (Added 90 of 1995 s.6)

(8E) Where-

- (a) before the commencement of the Organized and Serious Crimes (Amendment) Ordinance 1995 (90 of 1995), proceedings for one or more specified offences have been instituted against a person but have not been concluded because that person has absconded; and
- (b) immediately before that commencement, any realisable property of that person is the subject of a charging order or restraint order,

then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person as they would apply in relation to a person against whom, on or after that commencement, proceedings for one or more specified offences have been instituted but have not been concluded because that last-mentioned person has absconded. (Added 90 of 1995 s.6)

(8F) Where-

- (a) before the commencement of the Organized and Serious Crimes (Amendment) Ordinance 1995 (90 of 1995)-
 - (i) a person has been convicted of one or more specified offences;
 - (ii) an application for a confiscation order has been made in respect of the person; and
 - (iii) the person has absconded before that application has been concluded; and
- (b) immediately before that commencement, any realisable property of that person is the subject of a charging order or restraint order,

then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person

as they would apply in relation to a person to whom subsection (7A) is applicable because he has absconded.
(Added 90 of 1995 s.6)

(9) For the purposes of-

- (a) subsection (3)(a)(i), (b)(ii) or (c)(ii), the court shall only have regard to evidence such as would be admissible in criminal proceedings;
- (b) subsection (3)(a)(i), the court shall only make a determination that a specified offence is an organized crime if it is so satisfied beyond reasonable doubt. (Amended 90 of 1995 s. 6)

(Enacted 1994)

[cf.1986 c.32 s.1 U.K.; 1988 c.33 s.72 U.K.]

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	25 of 1998 s.2
Section:	10	Heading:	Statements, etc. relevant to making confiscation order	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2

(1) Where an application is made for a confiscation order, the prosecutor may tender to the Court of First Instance or the District Court, as the case may be, a statement of matters relevant to any of the following-
(Amended 25 of 1998 s.2)

- (a) where section 8(1)(a)(ii) is applicable, determining-
 - (i) whether the defendant could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) whether the offence or any of the offences concerned could have been an organized crime;
- (b) determining whether the defendant has benefited from a specified offence or an organized crime;
- (c) assessing the value of the defendant's proceeds of a specified offence or an organized crime.
(Replaced 90 of 1995 s.8)

(1A) Where any statement has been tendered under subsection (1)-

- (a) the prosecutor may at any time tender to the court a further such statement; and
- (b) the court may at any time require the prosecutor to tender to it a further such statement within such period as it may direct. (Added 90 of 1995 s.8)

(1B) Where any statement has been tendered under subsection (1) and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant-

- (a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and
- (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely. (Added 90 of 1995 s.8)

(1C) Where the court has given a direction under this section, it may at any time vary it by giving a further direction. (Added 90 of 1995 s.8)

(2) Where the defendant accepts to any extent any allegation in any statement tendered under subsection (1), the court may, for the purposes of-

- (a) where section 8(1)(a)(ii) is applicable, determining-
 - (i) whether the defendant could have been convicted in respect of the offence or, as the

case may be, the offences concerned;

- (ii) whether the offence or any of the offences concerned could have been an organized crime;
- (b) determining whether the defendant has benefited from a specified offence or an organized crime; or
- (c) assessing the value of his proceeds of a specified offence or an organized crime,

treat his acceptance as conclusive of the matters to which the allegation relates. (Replaced 90 of 1995 s. 8)

(3) If the defendant fails in any respect to comply with a requirement under subsection (1B), he may be treated for the purposes of this section as accepting every allegation in the statement apart from- (Amended 90 of 1995 s.8)

- (a) any allegation in respect of which he has complied with the requirement; (Replaced 90 of 1995 s.8)
- (b) where section 8(1)(a)(ii) is applicable-
 - (i) any allegation that he could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) any allegation that the offence or any of the offences concerned could have been an organized crime; (Replaced 90 of 1995 s.8)
- (c) any allegation that he has benefited from a specified offence or organized crime; and (Added 90 of 1995 s.8)
- (d) any allegation that any payment or other reward was received by him in connection with the commission of a specified offence or an organized crime. (Added 90 of 1995 s.8)

(4) Where-

- (a) the defendant tenders to the court a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the prosecutor accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

(5) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in writing in a form acceptable to the court. (Replaced 90 of 1995 s.8)

(6) No acceptance by the defendant under this section that-

- (a) where section 8(1)(a)(ii) is applicable-
 - (i) he could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) the offence or any of the offences concerned could have been an organized crime; or
- (b) any payment or other reward was received by him in connection with the commission of a specified offence or an organized crime,

shall be admissible in evidence in any proceedings for an offence. (Replaced 90 of 1995 s.8)

(7) In any proceedings on an application made for a confiscation order where section 8(1)(a)(ii) or (7A) is applicable-

- (a) if the defendant has died, subsection (1B) shall have effect as if it required a copy of the statement tendered under subsection (1) to be served on the defendant's personal representative;
- (b) if the defendant has absconded and section 8(3)(c)(i)(B)(I) or (7C)(b)(i) is not applicable to him, this section shall have effect as if a copy of the statement tendered under subsection (1) had been served on the defendant. (Added 90 of 1995 s.8)

(8) For the avoidance of doubt, it is hereby declared that, where section 8(1)(a)(ii) is applicable, this section shall not prejudice the generality of section 8(8). (Added 90 of 1995 s.8)

(Enacted 1994)

[cf.1986 c.32 s.3 U.K.]

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	25 of 1998 s.2
Section:	13	Heading:	Application of procedure for enforcing confiscation orders	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2

PART IV

ENFORCEMENT, ETC. OF CONFISCATION ORDERS

(1) Subject to this section, where the Court of First Instance or the District Court, as the case may be, makes a confiscation order- (Amended 90 of 1995 s.12; 25 of 1998 s.2)

- (a) the court shall also make an order fixing a term of imprisonment which the defendant is to serve if any of the amount which he is liable to pay under the confiscation order is not duly paid or recovered; and (Replaced 90 of 1995 s.12)
- (b) section 114(1),(3),(4),(5),(6) and (7) of the Criminal Procedure Ordinance (Cap 221) shall apply as if-
 - (i) that amount were a fine imposed upon him by the court; and
 - (ii) the term of imprisonment fixed under this section were a term fixed under section 114(1)(c) of that Ordinance.

(2) The terms set out in column 2 of the following table shall be the maximum terms of imprisonment under subsection (1) applicable respectively to the amounts set out opposite thereto.

TABLE

An amount not exceeding \$200000	12 months
An amount exceeding \$200000 but not exceeding \$500000	18 months
An amount exceeding \$500000 but not exceeding \$1000000	2 years
An amount exceeding \$1000000 but not exceeding \$2500000	3 years
An amount exceeding \$2500000 but not exceeding \$10000000	5 years
An amount exceeding \$10000000	10 years

(3) Subsections (1) and (2) shall apply in relation to the District Court. (Replaced 90 of 1995 s. 12)

(3A) For the avoidance of doubt, it is hereby declared that no limitation on the jurisdiction of the District Court as to the imposition of penalties set out in section 82 of the District Court Ordinance (Cap 336) shall be construed so as to prejudice the operation of subsection (3). (Added 90 of 1995 s.12)

(4) Where the defendant-

- (a) becomes liable to serve a term of imprisonment fixed under this section in respect of a confiscation order; and
- (b) is also liable to serve a term of imprisonment or detention in respect of the offence or offences concerned,

the term of imprisonment mentioned in paragraph (a) shall not begin to run until after the end of the term of imprisonment or detention mentioned in paragraph (b).

(5) For the purposes of subsection (4)-

- (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a

- single term; and
- (b) there shall be disregarded-
 - (i) any sentence suspended under section 109B of the Criminal Procedure Ordinance (Cap 221) which has not taken effect at the time the defendant becomes liable to a term of imprisonment under this section; and
 - (ii) any term of imprisonment fixed under section 114(1) of the Criminal Procedure Ordinance (Cap 221) for which the defendant has not at that time been committed.

(6) Sections 86 and 109A of the Criminal Procedure Ordinance (Cap 221) shall not apply in relation to fixing a term of imprisonment under this section. (Amended 90 of 1995 s.12)

(7) This section shall not apply in relation to a confiscation order where section 8(1)(a)(ii) or (7A) is applicable. (Added 90 of 1995 s.12)

(8) At the end of each day's sitting of the Court of First Instance or the District Court, the Registrar of the High Court or District Court, as the case may be, shall deliver (or cause to be delivered) to the Commissioner of Correctional Services a certificate, in the form specified in Schedule 5, in respect of each term of imprisonment fixed under this section. (Added 90 of 1995 s.12. Amended 25 of 1998 s. 2)

(9) A certificate referred to in subsection (8) shall be a sufficient warrant to the Commissioner of Correctional Services for receiving into his custody the defendant named in the certificate and for carrying into effect the term of imprisonment fixed under this section in respect of that defendant. (Added 90 of 1995 s.12)

(Enacted 1994)

[cf.1986 c.32 s.6 U.K.]

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	25 of 1998 s.2
Section:	14	Heading:	Cases in which restraint orders and charging orders may be made	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2

(1) The powers conferred on the Court of First Instance by sections 15(1) and 16(1) are exercisable where-

- (a) proceedings have been instituted in Hong Kong against the defendant for a specified offence or-
 - (i) an application for a confiscation order has been made in respect of the defendant where section 8(1)(a)(ii) or (7A) is applicable; or
 - (ii) an application has been made under section 20(1A) in respect of a confiscation order made against the defendant; (Replaced 90 of 1995 s.13)
- (b) the proceedings have not, or the application has not, as the case may be, been concluded; and (Replaced 90 of 1995 s.13)
- (c) the Court of First Instance is satisfied that there is reasonable cause to believe-
 - (i) in the case of an application referred to in paragraph (a)(ii), that the Court of First Instance will be satisfied as specified in section 20(1A);
 - (ii) in any other case, that the defendant has benefited from that specified offence. (Replaced 90 of 1995 s.13)

- (2) Those powers are also exercisable where the Court of First Instance is satisfied-
- (a) that, whether by the laying of an information or otherwise, a person is to be charged with a specified offence; and
 - (b) that there is reasonable cause to believe that he has benefited from that specified offence.
- (3) For the purposes of sections 15 and 16, in relation to the exercise of those powers at any time before proceedings have been instituted, references in this Ordinance-
- (a) to the defendant shall be construed as references to the person referred to in subsection (2)(a);
 - (b) to the prosecutor shall be construed as references to the person who the Court of First Instance is satisfied is to have the conduct of the case for the prosecution in the proposed proceedings; and
 - (c) to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) for a specified offence.
- (4) Where the Court of First Instance has made an order under section 15(1) or 16(1) by virtue of subsection (2), the Court of First Instance shall discharge the order if proceedings in respect of the offence are not instituted within such time as the Court of First Instance considers reasonable.

(Enacted 1994. Amended 25 of 1998 s.2)

[cf.1986 c.32 s.7 U.K.]

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	25 of 1998 s.2
Section:	15	Heading:	Restraint orders	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2

- (1) The Court of First Instance may by order (referred to in this Ordinance as a "restraint order" (限制令)) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order. (Amended 25 of 1998 s.2)
- (2) A restraint order may apply-
- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (3) This section shall not have effect in relation to any property for the time being subject to a charge under section 16.
- (4) A restraint order-
- (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order-
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged on the conclusion of the proceedings or application concerned. (Replaced 90 of 1995 s.14)
- (6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver-

- (a) to take possession of any realisable property; and
- (b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court of First Instance; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver. (Amended 25 of 1998 s.2)

(8) (Repealed 90 of 1995 s.14)

(9) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property. (Amended 25 of 1998 s.2)

(10) Property seized under subsection (9) shall be dealt with in accordance with the directions of the Court of First Instance. (Amended 25 of 1998 s.2)

(11) Where any property specified in a restraint order is immovable property the order shall, for the purposes of the Land Registration Ordinance (Cap 128)-

- (a) be deemed to be an instrument affecting land; and
- (b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit.

(Enacted 1994)
[cf.1986 c.32 s.8 U.K.]

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	25 of 1998 s.2
Section:	16	Heading:	Charging orders in respect of land, securities, etc.	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s.2

(1) The Court of First Instance may make a charging order on realisable property for securing the payment to the Government- (Amended 25 of 1998 s.2)

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Ordinance, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

(3) A charging order-

- (a) may be made only on an application by the prosecutor;
- (b) may be made on an ex parte application to a judge in chambers;
- (c) shall provide for notice to be given to persons affected by the order; and
- (d) may be made subject to such conditions as the Court of First Instance thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective. (Amended 25 of 1998 s.2)

(4) Subject to subsection (6), a charge may be imposed by a charging order only on-

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance-
 - (i) in any asset of a kind specified in Schedule 3; or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first mentioned trust.

(5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind specified in Schedule 3, the Court of First Instance may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset. (Amended 25 of 1998 s.2)

- (6) In relation to a charging order, the Court of First Instance-
 - (a) may make an order discharging or varying it; and
 - (b) shall make an order discharging the charging order-
 - (i) on the conclusion of the proceedings or application concerned; or
 - (ii) on payment into the Court of First Instance of the amount payment of which is secured by the charge. (Replaced 90 of 1995 s.15. Amended 25 of 1998 s.2)

(7) An application for the discharge or variation of a charging order may be made by any person affected by it.

(8) Subject to the provisions of this Ordinance, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustee, by writing under his hand.

(Enacted 1994)
[cf.1986 c.32 s.9 U.K.]

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	
Section:	23	Heading:	Insolvency officers dealing with property subject to restraint order	Version Date:	30/06/1997

(1) Without prejudice to the generality of any provision contained in the Bankruptcy Ordinance (Cap 6), the Companies Ordinance (Cap 32) or any other Ordinance, where-

- (a) any insolvency officer seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property,

he shall not be liable to any other person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence; and the insolvency officer shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

- (2) Any insolvency officer who incurs expenses-
- (a) in respect of such property as is mentioned in subsection (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
 - (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 18(1) or (4).

(Enacted 1994)

[cf.1986 c.32 s.17A U.K.]

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	
Section:	25	Heading:	Dealing with property known or believed to represent proceeds of indictable offence	Version Date:	30/06/1997

PART V

MISCELLANEOUS

(1) Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence, he deals with that property.

(2) In proceedings against a person for an offence under subsection (1), it is a defence to prove that-

- (a) he intended to disclose to an authorized officer such knowledge, suspicion or matter as is mentioned in section 25A(1) in relation to the act in contravention of subsection (1) concerned; and
- (b) there is reasonable excuse for his failure to make disclosure in accordance with section 25A(2).

(3) A person who commits an offence under subsection (1) is liable-

- (a) on conviction upon indictment to a fine of \$5000000 and to imprisonment for 14 years; or
- (b) on summary conviction to a fine of \$500000 and to imprisonment for 3 years.

(4) In this section and section 25A, references to an indictable offence include a reference to conduct which would constitute an indictable offence if it had occurred in Hong Kong.

(Enacted 1994. Replaced 90 of 1995 s.22)

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	
Section:	25A	Heading:	Disclosure of knowledge or suspicion that property represents proceeds, etc. of indictable offence	Version Date:	30/06/1997

- (1) Where a person knows or suspects that any property-
- (a) in whole or in part directly or indirectly represents any person's proceeds of;
 - (b) was used in connection with; or
 - (c) is intended to be used in connection with,
- an indictable offence, he shall as soon as it is reasonable for him to do so disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based, to an authorized officer.
- (2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 25(1) (whether before or after such disclosure), and the disclosure relates to that act, he does not commit an offence that section if-
- (a) that disclosure is made before he does that act and he does that act with the consent of an authorized officer; or
 - (b) that disclosure is made-
 - (i) after he does that act;
 - (ii) on his initiative; and
 - (iii) as soon as it is reasonable for him to make it.
- (3) A disclosure referred to in subsection (1)-
- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
 - (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.
- (4) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.
- (5) A person commits an offence if, knowing or suspecting that a disclosure has been made under subsection (1) or (4), he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.
- (6) In proceedings against a person for an offence under subsection (5), it is a defence to prove-
- (a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in that subsection; or
 - (b) that he had lawful authority or reasonable excuse for making that disclosure.
- (7) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (8) A person who commits an offence under subsection (5) is liable-
- (a) on conviction upon indictment to a fine of \$500000 and to imprisonment for 3 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(Enacted 1994. Added 90 of 1995 s.22)

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	45 of 1999
Section:	1	Heading:	OFFENCES RELEVANT TO DEFINITIONS OF "ORGANIZED CRIME" AND "SPECIFIED OFFENCE"	Version Date:	16/07/1999

[sections 2 & 31]

Common law offences

1. murder
2. kidnapping
3. false imprisonment
4. conspiracy to pervert the course of justice

Statutory offences

Offence	Description*
5. Import and Export Ordinance (Cap 60)	
section 6A	import or export of strategic commodities
section 6C	import of certain prohibited articles
section 6D(1) and (2)	export of certain prohibited articles
section 6E	carriage, etc. of prescribed articles in Hong Kong waters
section 18	importing or exporting unmanifested cargo
6. Immigration Ordinance (Cap 115)	
section 37D(1)	arranging passage to Hong Kong of unauthorized entrants
section 38(4)	carrying an illegal immigrant
section 42(1) and (2)	false statements, forgery of documents and use and possession of forged documents
7. Dangerous Drugs Ordinance (Cap 134)	
section 4(1)	trafficking in dangerous drugs
section 4A(1)	trafficking in purported dangerous drugs
section 6(1)	manufacturing a dangerous drug
8. Gambling Ordinance (Cap 148)	
section 5	operating, managing or controlling gambling establishment
section 7(1)	bookmaking
9. Societies Ordinance (Cap 151)	
section 19	penalties on an office-bearer, etc. of an unlawful society
section 21	allowing a meeting of an unlawful society to be held on premises
section 22	inciting etc., a person to become a member of an unlawful society
10. Money Lenders Ordinance (Cap 163)	
section 24(1)	lending money at an excessive interest rate

11. Crimes Ordinance (Cap 200)	
section 24	threatening a person with intent
section 25	assaulting with intent to cause certain acts to be done or omitted
section 53	causing explosion likely to endanger life or property
section 54	attempt to cause explosion, or making or keeping explosive with intent to endanger life or property
section 55	making or possession of explosive
section 60	destroying or damaging property
section 61	threats to destroy or damage property
section 71	forgery
section 75(1)	possessing a false instrument with intent
section 98(1)	counterfeiting notes and coins with intent
section 100(1)	custody or control of counterfeit notes and coins with intent
section 105	importation and exportation of counterfeit notes and coins
section 118	rape
section 119	procurement of person by threats
section 120	procurement of person by false pretences
section 129	trafficking to or from Hong Kong in persons
section 130	control over person for purpose of unlawful sexual act or prostitution
section 131	causing prostitution of person
section 134	detention of person for unlawful sexual act or in vice establishment
section 137	living on earnings of prostitution
section 139	keeping a vice establishment
12. Theft Ordinance (Cap 210)	
section 9	theft
section 10	robbery
section 11(1)	burglary
section 16A	fraud (Added 45 of 1999 s.6)
section 17	obtaining property by deception
section 18	obtaining a pecuniary advantage by deception
section 18D	procuring false entry in certain records
section 19	false accounting
section 23(1) and (4)	blackmail
section 24(1)	handling stolen goods
13. Offences against the Person Ordinance (Cap 212)	
section 17	shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm
14. Firearms and Ammunition Ordinance (Cap 238)	
Section 13	possession of arms or ammunition without licence
Section 14	dealing in arms or ammunition without a licence
15. Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405)	

section 25(1)	assisting another to retain the benefit of drug trafficking
16. Organized and Serious Crimes Ordinance (Cap 455)	
section 25(1)	assisting a person to retain proceeds of indictable offence
17. Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap 526)	
section 4	providing services that assist the development, production, acquisition or stockpiling of weapons of mass destruction (Added 90 of 1997 s.15)

* Note: The short description of offences in this Schedule is for ease of reference only.

(Enacted 1994)

Chapter:	405A	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (DESIGNATED COUNTRIES AND TERRITORIES) ORDER	Gazette Number:	15 of 1999
Section:	3	Heading:	Designation of and application of the Ordinance to countries, territories and places	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 15 of 1999 s. 3

- (1) Each of the countries, territories and places-
- (a) specified in Schedule 1; or
 - (b) in relation to which the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is applicable (and whether or not such country, territory or place is specified in Schedule 1),

is designated for the purposes of sections 28 and 29 of the Ordinance. (L.N. 308 of 1997; 15 of 1999 s. 3)

(2) In relation to a designated country, the Ordinance shall apply, subject to the modifications specified in Schedule 2, to external confiscation orders and to proceedings (whether criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or against property) which have been or are to be instituted in the designated country and which may result in an external confiscation order being made there, and, accordingly, in relation to such orders and such proceedings, the Ordinance shall have effect as set out in Schedule 3. (L.N. 247 of 1993)

(Enacted 1991)

Chapter:	405A	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (DESIGNATED COUNTRIES AND TERRITORIES) ORDER	Gazette Number:	
Section:	9	Heading:	Modified Ordinance	Version Date:	30/06/1997

The provisions of the Ordinance with modifications as set out in Schedule 2 are reproduced in Schedule 3.

(Enacted 1991)

Chapter:	405A	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (DESIGNATED COUNTRIES AND TERRITORIES) ORDER	Gazette Number:	L.N. 449 of 1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2; 15 of 1999 s. 3

[paragraphs 3(2) & 9]

1. Section 1 shall be omitted.
2. In section 2-
 - (a) in subsection (1)-
 - (i) the definitions of "absconded", "confiscation order", "defendant", "drug trafficking offence" and "material" shall be omitted; (89 of 1995 s. 32)
 - (ia) in the definition of "dealing" for the words ", section 10(1) or 25" there shall be substituted "or section 10(1)"; (89 of 1995 s. 32)
 - (ii) in the definition of "drug trafficking", for paragraph (a) there shall be substituted-

"(a) an offence specified in Schedule 1; or"; (89 of 1995 s. 32)
 - (b) in subsection (2) for the list of expressions and relevant provisions there shall be substituted-

"Expression	Relevant provision
Charging order (抵押令)	Section 11(2)
Defendant (被告)	Section 3(3)
External confiscation order (外地沒收令)	Section 3(1)
Gift caught by this Ordinance (受本條例圍制的饋贈)	Section 7(9)
Making a gift (作出饋贈)	Section 7(10)
Realisable property (可變現財產)	Section 7(1)
Restraint order (限制令)	Section 10(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值)	Section 7
Value of property (財產的價值)	Section 7(4); (89 of 1995 s. 32)
 - (c) subsection (4) shall be omitted;
 - (d) in subsection (5) the words "other connection" shall be omitted and the words "other connection, and whether received before or after the commencement of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap 405 sub. leg.) and whether received in connection with drug trafficking carried on by the recipient or some other person" shall be substituted;
 - (e) for subsections (11), (12), (12A), (12B) and (13), there shall be substituted- (89 of 1995 s. 32)

"(11) Proceedings are instituted in a designated country when-

 - (a) under the law of the designated country concerned one of the steps specified in relation to that country in column 2 of Schedule 1A has been taken there in respect of alleged drug trafficking by the defendant; or
 - (b) an application has been made to a court in a designated country for an external confiscation order,

and where the application of this subsection would result in there being more than

one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(12) Proceedings are concluded-

- (a) when, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an external confiscation order being made in the proceedings;
- (b) on the satisfaction of an external confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

(13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside."

3. For section 3 there shall be substituted-

"3. External confiscation orders

(1) An order made by a court in a designated country for the purpose of-

- (a) recovering (including forfeiting and confiscating)-
 - (i) payments or other rewards received in connection with drug trafficking or their value;
 - (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with drug trafficking or the value of such property; or
 - (iii) property used or intended to be used in connection with drug trafficking or the value of such property; or
- (b) depriving a person of a pecuniary advantage obtained in connection with drug trafficking,

and whether the proceedings which gave rise to the order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property, is referred to in this Ordinance as an "external confiscation order" (外地沒收令). (87 of 1997 ss. 1(2) & 36)

(2) In subsection (1) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person (however described in the proceedings in the designated country) against whom, or in relation to whose property, an external confiscation order has been, or may be, made is referred to in this Ordinance as "the defendant" (被告)". (L.N. 247 of 1993)

4. Sections 4 to 6 shall be omitted.

4A. For section 6A there shall be substituted-

"6A. Interest on amounts to be recovered
under external confiscation orders

(1) Where a fixed amount is payable under an external confiscation order, that amount shall be treated as a judgment debt for the purposes of section 49 of the High Court Ordinance (Cap 4) and, for those purposes, the date on which the external confiscation order was registered under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) shall be treated as the date of the judgment debt. (25 of 1998 s. 2)

(2) Where by virtue of subsection (1) any interest accrues on the amount payable under an external confiscation order, the defendant shall be liable to pay that interest and the amount of the interest shall for the purposes of enforcement be treated as part of the amount payable under the

external confiscation order."

(89 of 1995 s. 32)

5. In section 7-

- (a) for subsection (1) there shall be substituted-

"(1) In this Ordinance, "realisable property" (可變現財產) means, subject to subsection (2)-

- (a) in relation to an external confiscation order-

- (i) made in respect of specified property, the property which is specified in the order;
- (ii) which may be made as the result of proceedings which have been, or are to be, instituted in a designated country, the property which may be specified in the order; and (L.N. 247 of 1993)

- (b) in any other case-

- (i) any property held by the defendant;
- (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance; and
- (iii) any property that is subject to the effective control of the defendant."; (89 of 1995 s. 32)

- (b) subsections (3), (7) and (8) shall be omitted;

- (c) in subsection (9) for the words "this Ordinance" where they first occur there shall be substituted the words "the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap 405 sub. leg.)";

- (d) for subsection (12) there shall be substituted-

"(12) Where a person obtains a pecuniary advantage referred to in section 3(1)(b), he is to be treated for the purposes of this Ordinance as if he had obtained in connection with the drug trafficking to which the advantage relates a sum of money equal to the value of the advantage, and the other provisions of this Ordinance shall be construed accordingly.". (87 of 1997 ss. 1(2) & 36)

6. Section 8 shall be omitted.

7. In section 9-

- (a) for subsection (1)(a) there shall be substituted-

"(a) proceedings have been instituted in a designated country;";

- (ab) for subsection (1)(b) there shall be substituted-

"(b) the proceedings have not been concluded; and"; (89 of 1995 s. 32)

- (b) for subsection (1)(c) there shall be substituted-

"(c) either an external confiscation order has been made in the proceedings or it appears to the Court of First Instance that there are reasonable grounds for believing that an external confiscation order may be made in them.";

- (c) for subsection (2) there shall be substituted-

"(2) Those powers are also exercisable where the Court of First Instance is satisfied that proceedings are to be instituted in a designated country or territory and it appears to the court that an external confiscation order may be made in them.";

- (d) subsection (3) shall be omitted;

- (e) for subsection (4) there shall be substituted-

"(4) Where the Court of First Instance has made an order under section 10(1) or 11(1) by virtue of subsection (2), it shall discharge the order if the proposed proceedings are not instituted within such time as the Court of First Instance

considers reasonable."

(25 of 1998 s. 2)

8. In section 10-

- (a) for subsection (2) there shall be substituted-

"(2) A restraint order may apply to any realisable property, including property transferred to a person after the making of the order."; (L.N. 247 of 1993)

- (b) in subsection (4)(a) for the words "the prosecutor" there shall be substituted the words "or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), by a receiver appointed under section 12 or the Secretary for Justice"; (L.N. 247 of 1993; L.N. 362 of 1997)

- (c) for subsection (4)(c) there shall be substituted-

"(c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg.), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct."; (25 of 1998 s. 2)

- (d) for subsection (5)(b) there shall be substituted-

"(b) shall be discharged when the proceedings in relation to which the order was made are concluded."

9. In section 11-

- (a) for subsection (1)(a) and (b) there shall be substituted-

"(a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and

(b) in any other case, of an amount equal to the value from time to time of the property charged.";

- (b) in subsection (3)(a) for the words "the prosecutor" there shall be substituted the words "or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), by a receiver appointed under section 12 or the Secretary for Justice"; (L.N. 247 of 1993; L.N. 362 of 1997)

- (c) for subsection (3)(c) there shall be substituted-

"(c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg.), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct; and"; (25 of 1998 s. 2)

- (d) for subsection (6) there shall be substituted-

"(6) The Court of First Instance may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings in the designated country or territory are concluded or the amount payment of which is secured by the charge is paid into the Court of First Instance.". (89 of 1995 s. 32; 25 of 1998 s. 2)

10. After section 11 there shall be added-

"11A. Applications for restraint and charging orders

(1) Order 115 of the Rules of the High Court (Cap 4 sub. leg.) shall apply to applications made under this Ordinance subject to the modifications set out in subsections (1A) to (7). (89 of 1995 s. 32; 25 of 1998 s. 2)

(1A) Rule 2A shall be omitted. (89 of 1995 s. 32)

(2) For the rule 3(2) there shall be substituted-

"(2) An application under section 10(4) or 11(3) shall be supported by an affidavit which shall-

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;
- (b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which section 9(2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned."

(3) (Repealed 89 of 1995 s. 32)

(4) For rule 5(3) there shall be substituted-

"(3) Upon the Court being notified that proceedings have been concluded any restraint or charging order shall be discharged."

(5) In rule 7(3) for everything after "such property" there shall be substituted a full stop.

(6) In rule 8(3) before the words "confiscation order" there shall be added "external".

(7) Rules 9 to 23 shall be omitted."

(L.N. 247 of 1993)

11. In section 12, for subsection (1) there shall be substituted-

"(1) Where an external confiscation order has been registered in the Court of First Instance under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), the Court of First Instance may, on an application by the Secretary for Justice, exercise the powers conferred by subsections (2) to (6)."

(L.N. 247 of 1993; L.N. 362 of 1997; 25 of 1998 s. 2)

12. In section 13-

- (a) in subsection (1), for the words after "sums", in the last place where it occurs, to the end of the subsection, there shall be substituted the words "be paid to the Registrar and applied for the purposes specified in subsections (4) to (6) and in the order so specified.";
- (b) in subsection (2), for the words "If, after the amount payable under the confiscation order", there shall be substituted the words "Where a fixed amount is payable under the external confiscation order and, after that amount";
- (c) subsection (3) shall be omitted;
- (d) in subsection (4), for the words "The Registrar shall first", there shall be substituted the words "Any sums paid to the Registrar under subsection (1) or otherwise in satisfaction of an external confiscation order shall be first applied to"; (89 of 1995 s. 32)
- (e) for subsection (7) there shall be substituted-

"(7) Subject to subsections (8) and (9)-

- (a) any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be deposited in an interest-bearing account;
- (b) upon the expiration of 5 years beginning with the day on which such balance was so deposited, the Registrar shall arrange for such balance, together with any interest earned thereon, to be paid into the general revenue.

(8) On an application made by or on behalf of the government of a designated country before the expiration of the period referred to in subsection (7)(b) in respect of any balance referred to in that subsection, the Secretary for Justice may direct the Registrar to pay to that government such proportion of that balance as is specified in the direction and the Registrar shall, as soon as is reasonably practicable after the receipt of that direction- (L.N. 362 of 1997)

- (a) comply with the direction; and
- (b) pay any remainder of that balance, together with any interest earned on that balance, into the general revenue.

(9) The Registrar shall not comply with subsection (7)(b) in respect of any balance referred to in that subsection (including any interest earned thereon) until any application referred to in subsection (8) made in respect of that balance has been determined, whether by a direction under subsection (8) or otherwise.". (89 of 1995 s. 32)

13. In section 14-

- (a) in subsection (2), for the words from and including "making available" to the end of the subsection, there shall be substituted the words "recovering property which is liable to be recovered under an external confiscation order registered in the Court of First Instance under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made."; (L.N. 247 of 1993; 25 of 1998 s. 2)
- (b) in subsection (4), for the word "The" there shall be substituted the words "In the case of realisable property other than realisable property referred to in section 7(1)(a), the";
- (c) in subsection (6), after the word "the" in the fourth place where it occurs, there shall be added the word "external".

14. Section 15 shall be omitted.

15. In section 16-

- (a) in subsection (2)(b), for "30(3)" there shall be substituted "30A(9)";
- (b) for subsection (6) there shall be substituted-
 - "(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance-
 - (a) a court shall not make an order under-
 - (i) section 49 or 50 of the Bankruptcy Ordinance (Cap 6); or
 - (ii) section 60 of the Conveyancing and Property Ordinance (Cap 219),in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a restraint order or charging order; and
 - (b) any order made under any of those sections after the discharge of the restraint order or charging order shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made.".

(87 of 1997 ss. 1(2) & 36)

16. In section 19(2), for "13(3)" there shall be substituted "13(5)" and the words "by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted," shall be omitted.

(L.N. 247 of 1993)

17. Section 20 to 29 shall be omitted.

(L.N. 247 of 1993)

18. For section 31 there shall be substituted-

"31. Amendment of Schedules

The Chief Executive in Council may, by order, amend Schedule 1, 1A or 2.".

19. In Schedule 1-

- (a) the items shall be numbered 1, 2, 3, 4, 5, 6, 7, 7A and 8 respectively; (89 of 1995 s. 32)
- (b) item 8 (relating to section 25, Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405)) shall be omitted; and
- (c) the following shall be added after item 8-
 - "9. conspiracy to commit any of the offences specified in items 1 to 7 -
 - 10. inciting another to commit any of the offences specified in items 1 to 7 -
 - 11. attempting to commit any of the offences specified in items 1 to 7 -
 - 12. aiding, abetting, counselling or procuring the commission of any of the offences specified in items 1 to 7 -".

20. After Schedule 1 there shall be added-

"SCHEDULE 1A

[section 2(11)]

INSTITUTION OF PROCEEDINGS

Designated country

Point at which proceedings are instituted

Australia	<ul style="list-style-type: none"> (a) where an information has been laid before a justice of the peace; (b) when a person is charged with the offence after having been taken into custody without a warrant; or (c) when a bill of indictment is preferred.
Canada	When an information has been laid or an indictment is preferred.
England and Wales	<ul style="list-style-type: none"> (a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence; or (c) when a bill of indictment is preferred.
Gibraltar	When a person is charged within an offence, whether by the laying of an information or otherwise. (L.N. 446 of 1991)
Guernsey	When a person is charged with an offence.
Isle of Man	<ul style="list-style-type: none"> (a) where a justice of the peace issues a summons under section 13 of the Petty Sessions and Summary Jurisdiction Act 1927, when the complaint in relation to the offence is made to him; (b) where a justice of the peace issues a warrant for the arrest of any person under section, when the complaint in relation to the offence is made to him; (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody; or (d) where an information is preferred by the Secretary for Justice in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917. (L.N. 362 of 1997)
Jersey	<ul style="list-style-type: none"> (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island; (b) when a person is arrested and charged with an offence; (c) when a summons in respect of an offence is served on a person at the instance of the Secretary for Justice; or (L.N. 362 of 1997) (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law 1949.
Kingdom of Thailand	When a complaint or a denunciation is lodged with the inquiry official or other competent official, whether or not the suspect has been identified. (L.N. 282 of 1996)
Malaysia	<ul style="list-style-type: none"> (a) when an action that may lead to the making of an order for the purpose of confiscating the proceeds or instrumentalities of drug trafficking is commenced in a court; or (b) when a person is charged with an offence after having been taken into custody without a warrant. (L.N. 12 of 1993)

- Northern Ireland (a) when a summons or warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981;
 (b) when a person is charged with an offence after being taken into custody without a warrant; or
 (c) when an indictment is presented under section 2(2)(c),
 (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.
- Scotland (a) when a petition warrant is granted; or
 (b) when a person has been charged with an offence after having been arrested without a warrant.
- United States of America When an indictment, information or complaint has been filed against a person in respect of an offence.".
- (L.N. 247 of 1993)

21. Schedules 3 and 4 shall be omitted.

(89 of 1995 s. 32)
 (Enacted 1991)

Chapter:	405A	Title:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (DESIGNATED COUNTRIES AND TERRITORIES) ORDER	Gazette Number:	L.N. 449 of 1997
Section:	3	Heading:	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE AS MODIFIED	Version Date:	26/09/1997

Remarks:
 Amendments retroactively made - see 25 of 1998 s. 2; 15 of 1999 s. 3

[paragraphs 3(2) & 9]

1.
 2. Interpretation
 - (1) In this Ordinance, unless the context otherwise requires-
 "authorized officer" (獲授權人) means-
 - (a) any police officer;
 - (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342); and
 - (c) any other person authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (L.N. 362 of 1997)
- "corresponding law" (相應的法律) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap 134);
 "dangerous drug" (毒品) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap 134);
 "dealing" (處理), in relation to property referred to in the definition of "drug trafficking" or section

10(1), includes-

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property;
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); (89 of 1995 s. 33)

"drug trafficking" (販毒) means doing or being concerned in, whether in Hong Kong or elsewhere, any act constituting-

- (a) an offence specified in Schedule 1; or
- (b) an offence punishable under a corresponding law,

and includes dealing, whether in Hong Kong or elsewhere, with any property which in whole or in part directly or indirectly represents any person's proceeds of drug trafficking; (89 of 1995 s. 33)

"interest" (權益) in relation to property, includes right;

"property" (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);

"Registrar" (司法常務官) means the Registrar of the High Court. (89 of 1995 s. 33; 25 of 1998 s. 2)

(2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Ordinance listed in the right hand column in relation to those expressions.

Expression	Relevant provision
Charging order (抵押令)	Section 11(2)
Defendant (被告)	Section 3(3)
External confiscation order (外地沒收令)	Section 3(1)
Gift caught by this Ordinance (受本條例圍制的饋贈)	Section 7(9)
Making a gift (作出饋贈)	Section 7(10)
Realisable property (可變現財產)	Section 7(1)
Restraint order (限制令)	Section 10(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值)	Section 7
Value of property (財產的價值)	Section 7(4)

(89 of 1995 s. 33)

(3) This Ordinance applies to property whether it is situated in Hong Kong or elsewhere.

(4)

(5) References in this Ordinance to property received in connection with drug trafficking include a reference to property received both in that connection and in some other connection, and whether received before or after the commencement of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap 405 sub. leg.) and whether received in connection with drug trafficking carried on by the recipient or some other person.

(6) Subsections (7) to (13) shall have effect for the interpretation of this Ordinance.

(7) Property is held by any person if he holds any interest in it.

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy or in a liquidator.

(9) References to an interest held by a person beneficially in property include, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by

him beneficially if the property were not so vested.

(10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(11) Proceedings are instituted in a designated country when-

- (a) under the law of the designated country concerned one of the steps specified in relation to that country in column 2 of Schedule 1A has been taken there in respect of alleged drug trafficking by the defendant; or
- (b) an application has been made to a court in a designated country for an external confiscation order,

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(12) Proceedings are concluded-

- (a) when, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an external confiscation order being made in the proceedings;
- (b) on the satisfaction of an external confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

(13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is not further possibility of an appeal on which the order could be varied or set aside.

3. External confiscation orders

(1) An order made by a court in a designated country for the purpose of-

- (a) recovering (including forfeiting and confiscating)-
 - (i) payments or other rewards received in connection with drug trafficking or their value;
 - (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with drug trafficking or the value of such property; or
 - (iii) property used or intended to be used in connection with drug trafficking or the value of such property; or
- (b) depriving a person of a pecuniary advantage obtained in connection with drug trafficking,

and whether the proceedings which gave rise to the order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property, is referred to in this Ordinance as an "external confiscation order" (外地沒收令). (87 of 1997 ss. 1(2) & 36)

(2) In subsection (1) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person (however described in the proceedings in the designated country) against whom, or in relation to whose property, an external confiscation order has been, or may be, made is referred to in this Ordinance as "the defendant" (被告). (L.N. 247 of 1993)

4-6.

6A. Interest on amounts to be recovered under external confiscation orders

(1) Where a fixed amount is payable under an external confiscation order, that amount shall be treated as a judgment debt for the purposes of section 49 of the High Court Ordinance (Cap 4) and, for those purposes, the date on which the external confiscation order was registered under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) shall be treated as the date of the judgment debt. (25 of 1998 s. 2)

(2) Where by virtue of subsection (1) any interest accrues on the amount payable under an external confiscation order, the defendant shall be liable to pay that interest and the amount of the

interest shall for the purposes of enforcement be treated as part of the amount payable under the external confiscation order.

(89 of 1995 s. 33)

7. Definition of principal terms used

- (1) In this Ordinance, "realisable property" (可變現財產) means, subject to subsection (2)-
 - (a) in relation to an external confiscation order-
 - (i) made in respect of specified property, the property which is specified in the order;
 - (ii) which may be made as the result of proceedings which have been, or are to be, instituted in a designated country, the property which may be specified in the order; and (L.N. 247 of 1993)
 - (b) in any other case-
 - (i) any property held by the defendant;
 - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance; and
 - (iii) any property that is subject to the effective control of the defendant. (89 of 1995 s. 33)
- (2) Property is not realisable property if-
 - (a) an order under section 102 or 103 of the Criminal Procedure Ordinance (Cap 221); or
 - (b) an order under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134),

is in force in respect of the property.

- (3)
- (4) Subject to the following subsections, for the purposes of this Ordinance the value of property (other than cash) in relation to any person holding the property-
 - (a) where any other person holds an interest in the property, is-
 - (i) the market value of the first mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
 - (b) in any other case, is its market value.

(5) Subject to subsection (10), references in this Ordinance to the value at any time (referred to in subsection (6) as "the material time" (關鍵時間)) of a gift caught by this Ordinance or of any payment or reward are references to-

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (6) applies, the value there mentioned,

whichever is the greater.

- (6) Subject to subsection (10), if at the material time the recipient holds-
 - (a) the property which he received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

(7)-(8)

(9) A gift (including a gift made before the commencement of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap 405 sub. leg.)) is caught by this Ordinance if-

- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or
- (b) it was made by the defendant at any time and was a gift of property-

- (i) received by the defendant in connection with drug trafficking carried on by him or another; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (10) For the purposes of this Ordinance-
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
 - (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.
- (11) For the purposes of subsection (1)-
- (a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has-
 - (i) a legal or equitable estate or interest in the property; or
 - (ii) a right, power or privilege in connection with the property;
 - (b) without limiting the generality of any other provision of this Ordinance, in determining-
 - (i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or
 - (ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant, regard may be had to-
 - (A) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
 - (B) a trust that has a relationship to the property; and
 - (C) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in subparagraph (A) or trusts of the kind referred to in subparagraph (B), and other persons. (89 of 1995 section 33)

(12) Where a person obtains a pecuniary advantage referred to in section 3(1)(b), he is to be treated for the purposes of this Ordinance as if he had obtained in connection with the drug trafficking to which the advantage relates a sum of money equal to the value of the advantage, and the other provisions of this Ordinance shall be construed accordingly. (87 of 1997 ss. 1(2) & 36)

8.

9. Cases in which restraint orders and charging orders may be made

(1) The powers conferred on the Court of First Instance by sections 10(1) and 11(1) are exercisable where-

- (a) proceedings have been instituted in a designated country;
- (b) the proceedings have not been concluded; and
- (c) either an external confiscation order has been made in the proceedings or it appears to the Court of First Instance that there are reasonable grounds for believing that an external confiscation order may be made in them.

(2) Those powers are also exercisable where the Court of First Instance is satisfied that proceedings are to be instituted in a designated country or territory and it appears to the court that an external confiscation order may be made in them.

(3)

(4) Where the Court of First Instance has made an order under section 10(1) or 11(1) by virtue of

subsection (2), it shall discharge the order if the proposed proceedings are not instituted within such time as the Court of First Instance considers reasonable.

(25 of 1998 s. 2)

10. Restraint orders

(1) The Court of First Instance may by order (in this Ordinance referred to as a "restraint order" (限制令)) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order. (25 of 1998 s. 2)

(2) A restraint order may apply to any realisable property, including property transferred to a person after the making of the order. (L.N. 247 of 1993)

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 11.

(4) A restraint order-

(a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), by a receiver appointed under section 12 or the Secretary for Justice; (L.N. 247 of 1993; L.N. 362 of 1997)

(b) may be made on an ex parte application to a judge in chambers; and

(c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg.), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct. (25 of 1998 s. 2)

(5) A restraint order-

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged when the proceedings in relation to which the order was made are concluded.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver-

(a) to take possession of any realisable property; and

(b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court of First Instance; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver. (25 of 1998 s. 2)

(8) (Repealed 89 of 1995 s. 33)

(9) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property. (25 of 1998 s. 2)

(10) Property seized under subsection (9) shall be dealt with in accordance with the directions of the Court of First Instance. (25 of 1998 s. 2)

(11) Where any property specified in a restraint order is immovable property the order shall, for the purposes of the Land Registration Ordinance (Cap 128)-

(a) be deemed to be an instrument affecting land; and

(b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit. (8 of 1993 s. 30)

11. Charging orders in respect of land, securities, etc.

(1) The Court of First Instance may make a charging order on realisable property for securing the

payment to the Government- (25 of 1998 s. 2)

- (a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and
- (b) in any other case, of an amount equal to the value from time to time of the property charged.

(2) For the purposes of this Ordinance, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

(3) A charging order-

- (a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), by a receiver appointed under section 12 or the Secretary for Justice; (L.N. 247 of 1993; L.N. 362 of 1997)
- (b) may be made on an ex parte application to a judge in chambers;
- (c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg.), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct; and
- (d) may be made subject to such conditions as the Court of First Instance thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective. (25 of 1998 s. 2)

(4) Subject to subsection (6), a charge may be imposed by a charging order only on-

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance-
 - (i) in any asset of a kind specified in Schedule 2; or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first mentioned trust.

(5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind specified in Schedule 2, the Court of First Instance may provide for the charge to extend to any interest, divided or other distribution payable and any bonus issue in respect of the asset. (25 of 1998 s. 2)

(6) The Court of First Instance may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings in the designated country or territory are concluded or the amount payment of which is secured by the charge is paid into the Court of First Instance. (25 of 1998 s. 2)

(7) An application for the discharge or variation of a charging order may be made by any person affected by it.

(8) Subject to the provisions of this Ordinance, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustee, by writing under his hand.

11A. Applications for restraint and charging orders

(1) Order 115 of the Rules of the High Court (Cap 4 sub. leg.) shall apply to applications made under this Ordinance subject to the modifications set out in subsections (1A) to (7). (89 of 1995 s. 33; 25 of 1998 s. 2)

(1A) Rule 2A shall be omitted. (89 of 1995 s. 33)

(2) For rule 3(2) there shall be substituted-

"(2) An application under section 10(4) or 11(3) shall be supported by an affidavit which

shall-

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;
 - (b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
 - (c) in a case to which section 9(2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned."
- (3) (Repealed 89 of 1995 s. 33)
 - (4) For the rule 5(3) there shall be substituted-
"(3) Upon the Court being notified that proceedings have been concluded any restraint or charging order shall be discharged."
 - (5) In rule 7(3) for everything after "such property" there shall be substituted a full stop.
 - (6) In rule 8(3) before the words "confiscation order" there shall be added "external".
 - (7) Rules 9 to 23 shall be omitted.

(L.N. 247 of 1993)

12. Realisation of property

(1) Where an external confiscation order has been registered in the Court of First Instance under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), the Court of First Instance may, on an application by the Secretary for Justice, exercise the powers conferred by subsections (2) to (6). (L.N. 247 of 1993; L.N. 362 of 1997)

(2) The Court of First Instance may appoint a receiver in respect of realisable property.

(3) The Court of First Instance may empower a receiver appointed under subsection (2), under section 10 or in pursuance of a charging order-

- (a) to enforce any charge imposed under section 11 on realisable property or on any interest, dividend or other distribution payable and any bonus issue in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 11, to take possession of the property subject to such conditions or exceptions as may be specified by the Court of First Instance.

(4) The Court of First Instance may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The Court of First Instance may empower any such receiver to realise any realisable property in such manner as the Court of First Instance may direct.

(6) The Court of First Instance may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Ordinance as the Court of First Instance may direct and the Court of First Instance may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 11.

(8) The Court of First Instance shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court of First Instance.

(25 of 1998 s. 2)

13. Application of proceeds of realisation and other sums

- (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under

section 10 or 12 or in pursuance of a charging order, that is-

- (a) the proceeds of the enforcement of any charge imposed under section 11;
- (b) the proceeds of the realisation, other than by enforcement of such a charge, of any property under section 10 or 2; and
- (c) any other sums, being property held by the defendant,

shall first be applied in payment of such expenses incurred by a person acting as an insolvency officer as are payable under section 18(2) and then shall, after such payments (if any) as the Court of First Instance may direct have been made out of those sums be paid to the Registrar and applied for the purposes specified in subsections (4) to (6) and in the order so specified. (25 of 1998 s. 2)

(2) Where a fixed amount is payable under the external confiscation order and, after that amount has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums-

- (a) among such of those who held property which has been realised under this Ordinance; and
- (b) in such proportions,

as the Court of First Instance may direct after giving a reasonable opportunity for such persons to make representations to the Court of First Instance. (25 of 1998 s. 2)

(3)

(4) Any sums paid to the Registrar under subsection (1) or otherwise in satisfaction of an external confiscation order shall be first applied to pay any expenses incurred by a person acting as an insolvency officer and payable under section 18(2) but not already paid under subsection (1).

(5) If the sum was paid to the Registrar by a receiver appointed under section 10 or 12 or in pursuance of a charging order the Registrar shall next pay the receiver's remuneration and expenses.

(6) After making-

- (a) any payment required by subsection (4); and
- (b) in a case to which subsection (5) applies, any payment required by that subsection,

the Registrar shall reimburse any amount paid under section 19(2).

(7) Subject to subsections (8) and (9)-

- (a) any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be deposited in an interest-bearing account;
- (b) upon the expiration of 5 years beginning with the day on which such balance was so deposited, the Registrar shall arrange for such balance, together with any interest earned thereon, to be paid into the general revenue. (89 of 1995 s. 33)

(8) On an application made by or on behalf of the government of a designated country before the expiration of the period referred to in subsection (7)(b) in respect of any balance referred to in that subsection, the Secretary for Justice may direct the Registrar to pay to that government such proportion of that balance as is specified in the direction and the Registrar shall, as soon as is reasonably practicable after the receipt of that direction- (L.N. 362 of 1997)

- (a) comply with the direction; and
- (b) pay any remainder of that balance, together with any interest earned on that balance, into the general revenue. (89 of 1995 s. 33)

(9) The Registrar shall not comply with subsection (7)(b) in respect of any balance referred to in that subsection (including any interest earned thereon) until any application referred to in subsection (8) made in respect of that balance has been determined, whether by a direction under subsection (8) or otherwise. (89 of 1995 s. 33)

14. Exercise of powers by Court of First Instance or receiver

(1) The following subsections apply to the powers conferred on the Court of First Instance by sections 10 to 13, or on a receiver appointed under section 10 or 12 or in pursuance of a charging order. (25 of 1998 s. 2)

(2) Subject to subsections (3), (4), (5) and (6), the powers shall be exercised with a view to

recovering property which is liable to be recovered under an external confiscation order registered in the Court of First Instance under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made. (L.N. 247 of 1993; 25 of 1998 s. 2)

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) In the case of realisable property other than realisable property referred to in section 7(1)(a), the powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Government.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the external confiscation order.

15.

16. Bankruptcy of defendant, etc.

- (1) Where a person who holds realisable property is adjudged bankrupt-
 - (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
 - (b) any proceeds of property realised by virtue of section 10(7) or 12(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 12,

are excluded from the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6).

(2) Where a person has been adjudged bankrupt, the powers conferred on the Court of First Instance by sections 10 to 13 shall not be exercised in relation to- (25 of 1998 s. 2)

- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6); and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 30A(9) of the Bankruptcy Ordinance (Cap 6). (87 of 1997 ss. 1(2) & 36)

(3) Nothing in the Bankruptcy Ordinance (Cap 6) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 10 to 13. (25 of 1998 s. 2)

- (4) Subsection (2) does not affect the enforcement of a charging order-
 - (a) made before the order adjudging the person bankrupt; or
 - (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 13 of the Bankruptcy Ordinance (Cap 6) and any property of the debtor is subject to a restraint order, the powers conferred on the interim receiver by virtue of that Ordinance do not apply to property for the time being subject to the restraint order.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance-

- (a) a court shall not make an order under-
 - (i) section 49 or 50 of the Bankruptcy Ordinance (Cap 6); or (87 of 1997 ss. 1(2) & 36)
 - (ii) section 60 of the Conveyancing and Property Ordinance (Cap 219), in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under any of those sections after the discharge of the restraint order or

charging order shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made.

17. Winding up of company holding realisable property

(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to-

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 10(7) or 12(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 12.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court of First Instance by sections 10 to 13 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable-

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies Ordinance (Cap 32) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 10 to 13.

(3A) Subsection (3) shall apply to any proceedings relating to an appeal, further appeal or review against any exercise of the powers referred to in that subsection as if the court hearing the appeal, further appeal or review, as the case may be, were the Court of First Instance. (89 of 1995 s. 33)

(4) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this section-

"company" (公司) means any company which may be wound up under the Companies Ordinance (Cap 32); and "the relevant time" (有關時間) means-

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court of First Instance, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

(25 of 1998 s. 2)

18. Insolvency officers dealing with property subject to restraint order

(1) Without prejudice to the generality of any provision contained in the Bankruptcy Ordinance (Cap 6), the Companies Ordinance (Cap 32) or any other Ordinance, where-

- (a) any insolvency officer seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence; and the insolvency officer shall have a

lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

- (2) Any insolvency officer who incurs expenses-
 - (a) in respect of such property as is mentioned in subsection (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
 - (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property, shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 13(1) or (3).
- (3) In this section "insolvency officer" (債務處理人) means-
 - (a) the Official Receiver; or
 - (b) any person acting as-
 - (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap 6); or
 - (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap 32).

19. Receivers: supplementary provisions

- (1) Where a receiver appointed under section 10 or 12 or in pursuance of a charging order takes any action-
 - (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 13(5), be paid by the person on whose application the receiver was appointed. (L.N. 247 of 1993)

20-28.

29. (Repealed L.N. 247 of 1993)

30. Evidence of corresponding law

Section 43 of the Dangerous Drugs Ordinance (Cap 134) shall apply in relation to proceedings under this Ordinance as it applies in relation to proceedings for an offence under that Ordinance.

31. Amendment of Schedules

The Chief Executive in Council may, by order, amend Schedule 1, 1A or 2. (89 of 1995 s.33; 15 of 1999 s.3)

DRUG TRAFFICKING OFFENCES

Item	Offence	Description*
1.	section 4(1), Dangerous Drugs Ordinance (Cap 134)	trafficking in a dangerous drug
2.	Section 4A, Dangerous Drugs Ordinance (Cap 134)	trafficking in purported dangerous drug
3.	section 5(1), Dangerous Drugs Ordinance (Cap 134)	supplying or procuring a dangerous drug to or for unauthorized persons
4.	section 6(1), Dangerous Drugs Ordinance (Cap 134)	manufacturing a dangerous drug
5.	section 9(1), (2) and (3), Dangerous Drugs Ordinance (Cap 134)	cultivating, supplying, procuring, dealing in, importing, exporting, or possessing cannabis plant or opium poppy
6.	section 35, Dangerous Drugs Ordinance (Cap 134)	keeping or managing a divan for the taking of dangerous drugs
7.	section 37, Dangerous Drugs Ordinance (Cap 134)	permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
7A.	section 40(1)(c), Dangerous Drugs Ordinance (Cap 134)	aiding, etc. offence under a corresponding law
8.	-
9.	conspiracy to commit any of the offences specified in items 1 to 7	-
10.	inciting another to commit any of the offences specified in items 1 to 7	-
11.	attempting to commit any of the offences specified in items 1 to 7	-
12.	aiding, abetting, counselling or procuring the commission of any of the offences specified in items 1 to 7	-

*Note: The short description of offences in this Schedule is for ease of reference only.

(89 of 1995 s. 33)

SCHEDULE 1A

[section 2(11)]

INSTITUTION OF PROCEEDINGS

Designated country	Point at which proceedings are instituted
Australia	(a) where an information has been laid before a justice of the peace; (b) when a person is charged with the offence after having been taken into custody without a warrant; or (c) when a bill of indictment is preferred.
Canada	When an information has been laid or an indictment is preferred.
England and Wales	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence; or (c) when a bill of indictment is preferred.
Gibraltar	When a person is charged with an offence, whether by the laying of an information or otherwise.
Guernsey	When a person is charged with an offence.
Isle of Man	(a) where a justice of the peace issues a summons under section 13 of the Petty Sessions and Summary Jurisdiction Act 1927, when the complaint in relation to the offence is made to him; (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him; (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody; or (d) where an information is preferred by the Secretary for Justice in a case where there have been no committal when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917. (L.N. 362 of 1997)
Jersey	(a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island; (b) when a person is arrested and charged with an offence; (c) when a summons in respect of an offence is served on a person at the instance of the Secretary for Justice; or (L.N. 362 of 1997) (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law 1949.
Kingdom of Thailand	When a complaint or a denunciation is lodged with the inquiry official or other competent official, whether or not the suspect has been identified. (L.N. 282 of 1996)
Malaysia	(a) when an action that may lead to the making of an order for the purpose of confiscating the proceeds or instrumentalities of drug trafficking is commenced in a court; or (b) when a person is charged with an offence after having been taken into custody without a warrant. (L.N. 12 of 1993)

Northern Ireland	(a) when a summons or warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981;
	(b) when a person is charged with an offence after being taken into custody without a warrant; or
	(c) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.
Scotland	(a) when a petition warrant is granted; or
	(b) when a person has been charged with an offence after having been arrested without a warrant.
United States of America	When an indictment, information or complaint has been filed against a person in respect of an offence.

SCHEDULE 2

[section 11]

ASSETS ON WHICH A CHARGING ORDER MAY BE IMPOSED

1. Land in Hong Kong.
2. Securities of any of the following kinds-
 - (a) Government stock;
 - (b) stock of any body incorporated in Hong Kong;
 - (c) stock of any body incorporated outside Hong Kong or of any state or territory outside Hong Kong, being stock registered in a register kept at any place within Hong Kong;
 - (d) units of any unit trust in respect of which a register of the unit holders is kept at any place within Hong Kong.
3. In this Schedule-
 - (a) the terms "Government stock" (政府證券) and "land" (土地) have the same meaning as in section 2 of the High Court Ordinance (Cap 4); (25 of 1998 s. 2)
 - (b) the terms "stock" (股份) and "unit trust" (單位信託基金) have the same meaning as in section 20A of that Ordinance.

(Enacted 1991)