

**UNITED NATIONS (ANTI-TERRORISM MEASURES)
ORDINANCE**

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 27 OF 2002

L.S.

TUNG Chee-hwa
Chief Executive
18 July 2002

An Ordinance to further implement a decision of the Security Council of the United Nations in its Resolution 1373 of 28 September 2001 relating to measures for the prevention of terrorist acts; to implement certain of the Special Recommendations on Terrorist Financing of the Financial Action Task Force; and to provide for matters incidental thereto or connected therewith.

[]

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the United Nations (Anti-Terrorism Measures) Ordinance.

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

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“Committee” (聯合國委員會) means—

- (a) the Committee of the United Nations Security Council established pursuant to the United Nations Security Council Resolution 1267 of 15 October 1999; or
- (b) any other committee—
 - (i) of the United Nations;

(ii) established pursuant to a United Nations Security Council Resolution made, or a United Nations Convention which has entered into force, after 15 October 1999; and

(iii) the function of which, in whole or in part, is to designate persons or property as terrorists, terrorist associates or terrorist property, as the case may be;

“entity” (實體) means any body of persons (including individuals), whether corporate or unincorporate;

“functions” (職能) includes powers;

“funds” (資金) includes funds mentioned in the Schedule;

“items subject to legal privilege” (享有法律特權的品目) has the same meaning as in section 2(1) of the Organized and Serious Crimes Ordinance (Cap. 455);

“practicable” (切實可行) means reasonably practicable;

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

“Secretary” (局長) means the Secretary for Security;

“terrorist” (恐怖分子) means a person who commits, or attempts to commit, a terrorist act or who participates in or facilitates the commission of a terrorist act;

“terrorist act” (恐怖主義行為)—

(a) subject to paragraph (b), means the use or threat of action where—

(i) the action (including, in the case of a threat, the action if carried out)—

(A) causes serious violence against a person;

(B) causes serious damage to property;

(C) endangers a person’s life, other than that of the person committing the action;

(D) creates a serious risk to the health or safety of the public or a section of the public;

(E) is intended seriously to interfere with or seriously to disrupt an electronic system; or

(F) is intended seriously to interfere with or seriously to disrupt an essential service, facility or system, whether public or private; and

(ii) the use or threat is—

(A) intended to compel the Government or to intimidate the public or a section of the public; and

(B) made for the purpose of advancing a political, religious or ideological cause;

(b) in the case of paragraph (a)(i)(D), (E) or (F), does not include the use or threat of action in the course of any advocacy, protest, dissent or industrial action;

“terrorist associate” (與恐怖分子有聯繫者) means an entity owned or controlled, directly or indirectly, by a terrorist;

“terrorist property” (恐怖分子財產) means—

(a) the property of a terrorist or terrorist associate; or

(b) any other property consisting of funds that—

(i) is intended to be used to finance or otherwise assist the commission of a terrorist act; or

(ii) was used to finance or otherwise assist the commission of a terrorist act;

“weapons” (武器) includes—

(a) chemical, biological, radiological or nuclear weapons and their precursors;

(b) any arms and related material (including ammunition, military vehicles, military equipment and paramilitary equipment); and

(c) any components of any arms and related material mentioned in paragraph (b).

(2) Any reference in the definition of “terrorist act” to—

(a) an action, person or property includes an action, person or property outside the HKSAR;

(b) the Government or public includes the government, or the public, of a place outside the HKSAR.

(3) For the purposes of this Ordinance, any proceeds of a terrorist or terrorist associate arising from a terrorist act are—

(a) any payments or other rewards received at any time by the terrorist or terrorist associate in connection with the commission of that act;

(b) any property derived or realized, directly or indirectly, by the terrorist or terrorist associate from any of the payments or other rewards; and

(c) any pecuniary advantage obtained in connection with the commission of that act.

(4) For the purposes of this Ordinance, a person who has a prescribed interest in any property shall be deemed to be a person by, for or on behalf of whom the property is or was held.

(5) Nothing in this Ordinance shall—

(a) require the disclosure of any items subject to legal privilege;

(b) authorize the search or seizure of any items subject to legal privilege; or

(c) restrict the privilege against self-incrimination.

(6) Without prejudice to the powers of the Court of First Instance under the Rules of the High Court (Cap. 4 sub. leg.), the Court of First Instance may of its own motion or on application order that any person who may be affected by an application—

- (a) under section 5 in the case of an application under section 5(1) made *inter partes*; or
 - (b) under section 13, 17 or 18, be joined as a party to the proceedings.
- (7) For the avoidance of doubt, it is hereby declared—
- (a) that section 14 of the High Court Ordinance (Cap. 4) shall apply to any judgment or order of the Court of First Instance arising from proceedings—
 - (i) under section 5 in the case of an application under section 5(1) made *inter partes*; or
 - (ii) under section 13, 17 or 18;
 - (b) the provisions of this Ordinance shall be subject to the operation of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1).

3. Application of certain provisions outside HKSAR

Sections 7, 8, 9 and 10 shall apply to—

- (a) any person within the HKSAR; and
- (b) any person outside the HKSAR who is—
 - (i) a Hong Kong permanent resident; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.

PART 2

SPECIFICATION OF TERRORISTS, TERRORIST ASSOCIATES AND TERRORIST PROPERTY AND FREEZING OF FUNDS

4. Specification by Chief Executive of persons and property as terrorists, terrorist associates or terrorist property

(1) Where a person is designated by the Committee as a terrorist, the Chief Executive may publish a notice in the Gazette specifying the name or names of the person.

(2) Where a person is designated by the Committee as a terrorist associate, the Chief Executive may publish a notice in the Gazette specifying the name or names of the person.

(3) Where any property is designated by the Committee as terrorist property, the Chief Executive may publish a notice in the Gazette specifying the property.

(4) For the avoidance of doubt, it is hereby declared that a notice under subsection (1), (2) or (3) is not subsidiary legislation.

(5) For the purposes of this Ordinance, it shall be presumed, in the absence of evidence to the contrary, that—

- (a) a person specified in a notice under subsection (1) is a terrorist;
- (b) a person specified in a notice under subsection (2) is a terrorist associate;
- (c) property specified in a notice under subsection (3) is terrorist property.

(6) Where—

- (a) a person or property is specified in a notice under subsection (1), (2) or (3), as the case may be; and
- (b) the person or property ceases to be designated by the Committee as a terrorist, terrorist associate or terrorist property, as the case may be,

then—

- (c) immediately upon the occurrence of that cesser, the notice shall be deemed to be revoked to the extent that it relates to the person or property, as the case may be; and
- (d) the Chief Executive shall, as soon as is practicable and for information purposes, publish a notice in the Gazette stating that the first-mentioned notice has been revoked to the extent that it relates to the person or property, as the case may be (or words to the like effect).

5. Specification by Court of First Instance of persons and property as terrorists, terrorist associates or terrorist property

(1) The Chief Executive may make an application to the Court of First Instance for an order to specify—

- (a) the person the subject of the application as a terrorist or terrorist associate; or
- (b) the property the subject of the application as terrorist property.

(2) Where an application is made under subsection (1), the Court of First Instance shall only make the order sought by the application if it is satisfied that the person or property the subject of the application is a terrorist, terrorist associate or terrorist property, as the case may be.

(3) The Chief Executive shall cause an order under subsection (2) to be published in the Gazette.

(4) Where an order under subsection (2) is published in the Gazette, then, subject to section 17(3)(a), for the purposes of this Ordinance, it shall be presumed, in the absence of evidence to the contrary, that—

- (a) a person specified in the order as a terrorist is a terrorist;
- (b) a person specified in the order as a terrorist associate is a terrorist associate;
- (c) property specified in the order as terrorist property is terrorist property.

(5) Where—

- (a) a person or property is specified in an order under subsection (2) published in the Gazette; and
- (b) the Chief Executive receives information which causes him to have reasonable grounds to believe that the person or property is not, or is no longer, a terrorist, terrorist associate or terrorist property, as the case may be,

then the Chief Executive shall, as soon as is practicable, make an application to the Court of First Instance for the order to be revoked to the extent that it relates to the person or property, as the case may be.

(6) The Court of First Instance shall grant an application under subsection (5).

(7) Where—

- (a) a person or property is specified in an order under subsection (2) published in the Gazette; and
- (b) the Court of First Instance has granted an application—
 - (i) under subsection (6) which relates to the person or property, as the case may be; or
 - (ii) under section 17(3)(b) which relates to the person or property, as the case may be,

then the Chief Executive shall, as soon as is practicable, cause a notice to be published in the Gazette specifying that the order has been revoked to the extent that it relates to the person or property, as the case may be.

(8) An order under subsection (2) published in the Gazette which has not been revoked in its entirety by virtue of the granting of an application under subsection (6) or section 17(3)(b) shall expire on the 2nd anniversary of the date of its publication in the Gazette.

(9) For the avoidance of doubt, it is hereby declared that an application under subsection (1) shall be made inter partes except where the application falls within the circumstances specified in rules of court made for the purposes of this section.

6. Freezing of funds

(1) Where the Secretary has reasonable grounds to suspect that any funds held by any person are terrorist property, the Secretary may, by notice in writing specifying the funds, direct that the funds not be made available, directly or indirectly, to any person except under the authority of a licence granted by the Secretary.

(2) Where—

(a) funds are specified in a notice under subsection (1); and

(b) either—

(i) the Secretary ceases to have reasonable grounds to suspect that the funds are terrorist property; or

(ii) the Court of First Instance has granted an application under section 17 which relates to the funds,

then the Secretary shall, as soon as is practicable, by notice in writing revoke the notice to the extent that it relates to the funds.

(3) Subject to subsection (4), a notice under subsection (1) which has not been revoked under subsection (2) shall expire on the 2nd anniversary of the date on which it was signed by the Secretary.

(4) Where an application under section 13 has been made to the Court of First Instance—

(a) in respect of funds, or part thereof, specified in a notice under subsection (1); and

(b) before the expiration of the notice under subsection (3),

then, subject to subsection (2), the notice shall not expire in relation to the funds, or part thereof, as the case may be, until the date, if any, on which—

(c) proceedings relating to the application (including proceedings relating to any appeal) are no longer pending; and

(d) the funds, or part thereof, as the case may be, have not been forfeited in consequence of those proceedings.

(5) Where a notice under subsection (1) has been revoked under subsection (2) or has expired under subsection (3) or (4), the Secretary shall not again exercise the power under subsection (1) in respect of the funds specified in the notice unless there has been a material change in the grounds in respect of which the Secretary proposes to again exercise that power in respect of the funds.

(6) For the avoidance of doubt, it is hereby declared that the revocation under subsection (2), or the expiry under subsection (3) or (4), of a notice under subsection (1) shall not affect the application of section 8 to the funds which were specified in the notice.

(7) A notice under subsection (1) or (2) shall be given to the person holding the funds concerned (“the recipient”), and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or for or on whose behalf the funds are held (“the owner”).

(8) A recipient shall be treated as complying with subsection (7) if, without delay, he sends a copy of the notice mentioned in that subsection to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

PART 3

PROHIBITIONS RELATING TO TERRORISTS, TERRORIST ASSOCIATES AND TERRORIST PROPERTY

7. Prohibition on supply of funds to terrorists and terrorist associates

A person shall not provide or collect, by any means, directly or indirectly, funds—

- (a) with the intention that the funds be directly or indirectly supplied to or otherwise used by; or
 - (b) knowing or having reasonable grounds to believe that the funds will be directly or indirectly supplied to or otherwise used by,
- a person who the first-mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate.

8. Prohibition on making funds, etc. available to terrorists and terrorist associates

No person shall, except under the authority of a licence granted by the Secretary, make any funds or financial (or related) services available, directly or indirectly, to or for the benefit of a person who the first-mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate.

9. Prohibition on supply of weapons to terrorists and terrorist associates

A person shall not provide or collect, by any means, directly or indirectly, weapons—

- (a) with the intention that the weapons be directly or indirectly supplied to or otherwise used by; or
- (b) knowing or having reasonable grounds to believe that the weapons will be directly or indirectly supplied to or otherwise used by,

a person who the first-mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate.

10. Prohibition on recruitment, etc. to persons specified in notices under section 4(1) and (2)

(1) A person shall not—

- (a) recruit another person to become a member of, or to serve in any capacity with; or
- (b) become a member of, or begin to serve in any capacity with,

a person specified in a notice under section 4(1) or (2).

(2) Where a person is a member of, or is serving in any capacity with, a person specified in a notice under section 4(1) or (2) immediately before the date of publication in the Gazette of the notice, the first-mentioned person shall take all practicable steps to cease to be such a member or to cease to so serve, as the case may be.

11. Prohibition against false threats of terrorist acts

(1) A person shall not communicate or make available by any means any information which he knows or believes to be false to another person with the intention of causing alarm to the public or a section of the public by a false belief that a terrorist act has been, is being or will be carried out.

(2) A person shall not—

- (a) place any article or substance in any place; or
- (b) despatch any article or substance by post, rail or by any other means of sending things from one place to another,

with the intention of causing alarm to the public or a section of the public by a false belief that—

- (c) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or
- (d) the article contains or the substance consists of—

- (i) any dangerous, hazardous, radioactive or harmful substance;
- (ii) any toxic chemical; or
- (iii) any microbial or other biological agent, or toxin, that is likely to cause death, disease or personal injury or damage to property.

PART 4

DISCLOSURE OF KNOWLEDGE OR SUSPICION THAT PROPERTY IS TERRORIST PROPERTY

12. Disclosure of knowledge or suspicion that property is terrorist property

(1) Where a person knows or suspects that any property is terrorist property, then the person shall disclose to an authorized officer the information or other matter—

- (a) on which the knowledge or suspicion is based; and
- (b) as soon as is practicable after that information or other matter comes to the person's attention.

(2) If a person who has made a disclosure referred to in subsection (1) does any act in contravention of section 7 or 8 (whether before or after the disclosure), and the disclosure relates to that act, the person does not commit an offence under section 14(1) in respect of that contravention if—

- (a) that disclosure is made before the person does that act and the person does that act with the consent of an authorized officer; or
- (b) that disclosure is made—
 - (i) after the person does that act;
 - (ii) on the person's initiative; and
 - (iii) as soon as it is practicable for the person 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) Where a person knows or suspects that a disclosure has been made under subsection (1) or (4), the person shall not disclose to another person any information or other matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.

(6) In this section, “authorized officer” (獲授權人員) means a public officer authorized in writing by the Secretary for the purposes of this section.

PART 5

FORFEITURE AND OFFENCES

13. Forfeiture of certain terrorist property

(1) The Court of First Instance may, if satisfied on an application made by or on behalf of the Secretary for Justice that any property specified in the application is terrorist property—

(a) mentioned in paragraph (a) of the definition of “terrorist property” and which also—

(i) in whole or in part directly or indirectly represents any proceeds arising from a terrorist act;

(ii) is intended to be used to finance or otherwise assist the commission of a terrorist act; or

(iii) was used to finance or otherwise assist the commission of a terrorist act; or

(b) mentioned in paragraph (b) of the definition of “terrorist property”,

order, subject to subsection (2), the forfeiture of the property.

(2) Where the Court of First Instance makes an order under subsection (1) in respect of any property, the Court shall specify in the order so much, if any, of the property in respect of which the Court is not satisfied as mentioned in that subsection.

(3) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the property concerned is connected.

(4) The standard of proof on an application under this section shall be the standard of proof applicable to civil proceedings in a court of law.

(5) Subject to section 20(3), Order 115, rule 29, of the Rules of the High Court (Cap. 4 sub. leg.) shall, with all necessary modifications, apply to and in relation to subsection (1) as it applies to and in relation to section 24D(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

14. Offences

(1) Any person who contravenes section 7, 8 or 9 commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 14 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 2 years.

(2) A person who contravenes a notice under section 6(1) commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 7 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(3) A person who, without reasonable excuse, contravenes a requirement under section 6(7) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 months.

(4) A person who contravenes section 10(1) or (2) or 11(1) or (2) commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 7 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(5) A person who contravenes section 12(1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

(6) A person who contravenes section 12(5) commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 3 years;
- (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(7) In proceedings against a person for an offence under subsection (6), 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 section 12(5); or
- (b) that he had lawful authority or reasonable excuse for making that disclosure.

(8) Summary proceedings for an offence under this Ordinance, being an offence alleged to have been committed outside the HKSAR, may be commenced at any time not later than 12 months from the date on which the person charged first enters the HKSAR after committing the offence.

(9) No proceedings for an offence under this Ordinance shall be instituted in the HKSAR except by or with the consent of the Secretary for Justice.

PART 6

MISCELLANEOUS

15. Supplementary provisions applicable to licences mentioned in section 6(1) or 8

(1) Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 6(1)—

- (a) such conditions may relate to specifying the manner in which the funds to which the licence relates shall be held from time to time; and
- (b) such exceptions may relate but are not limited to—
 - (i) the reasonable living expenses;
 - (ii) the reasonable legal expenses; and
 - (iii) the payments liable to be made under the Employment Ordinance (Cap. 57),

of any person by, for or on behalf of whom the funds are held.

(2) Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 8, such exceptions may relate to the reasonable living expenses, reasonable legal expenses and the payments liable to be made under the Employment Ordinance (Cap. 57) of the person second-mentioned in that section to which the licence relates.

16. Delegations

(1) The Chief Executive may, to such extent and subject to such restrictions and conditions as the Chief Executive may think proper, delegate or authorize the delegation of any of the Chief Executive's functions under this Ordinance to any public officer, or class or description of public officers, approved by the Chief Executive, and references in this Ordinance to the Chief Executive shall be construed accordingly.

(2) The Secretary may, to such extent and subject to such restrictions and conditions as the Secretary may think proper, delegate or authorize the delegation of any of the Secretary's functions under this Ordinance to any public officer, or class or description of public officers, approved by the Secretary, and references in this Ordinance to the Secretary shall be construed accordingly.

17. Applications to Court of First Instance

(1) Where—

(a) an application under section 5(1) has been made *ex parte* and in consequence thereof an order under section 5(2) has been published in the Gazette, then—

(i) any person specified in the order, or any person acting for or on behalf of the person so specified, may at any time make an application to the Court of First Instance for the order to be revoked to the extent that it relates to the person so specified;

(ii) any person by, for or on behalf of whom any property specified in the order is held, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the order, may at any time make an application to the Court of First Instance for the order to be revoked to the extent that it relates to the property so specified;

(b) a notice has been given under section 6(1), then any person by, for or on behalf of whom any funds specified in the notice are held, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the notice, may at any time make an application to the Court of First Instance for the notice to be revoked to the extent that it relates to the funds so specified.

(2) A person who makes an application under subsection (1) shall give a copy of the application (and an affidavit, if any, and other relevant documents, if any, in support)—

(a) to the Secretary for Justice and, in the case of an application under subsection (1)(a)(ii) or (b), to any other person by, for or on behalf of whom the property or funds concerned is or are held; and

(b) not later than 7 days before the date fixed for the hearing of the application or such shorter period as the Court of First Instance may permit pursuant to rules of court.

- (3) On an application under subsection (1)—
 - (a) in the case of an application under subsection (1)(a)(i) or (ii), the presumption mentioned in section 5(4) shall not be applicable, whether for the purposes of the proceedings or otherwise, immediately upon the initiation of the proceedings and until the conclusion of the proceedings (including the conclusion of any appeal arising out of the proceedings); and
 - (b) the Court of First Instance shall grant the application unless—
 - (i) where subsection (1)(a)(i) is applicable, the Court of First Instance is satisfied that the person specified in the order concerned under section 5(2) is a terrorist or terrorist associate, as the case may be;
 - (ii) where subsection (1)(a)(ii) is applicable, the Court of First Instance is satisfied that the property specified in the order concerned under section 5(2) is terrorist property;
 - (iii) where subsection (1)(b) is applicable, the Court of First Instance is satisfied that there are reasonable grounds to suspect that the funds specified in the notice concerned under section 6(1) are terrorist property.
- (4) An application for—
 - (a) the grant of a licence mentioned in section 6(1) or 8 may be made by any person affected by the operation of that section; or
 - (b) the variation of a licence mentioned in section 6(1) or 8 may be made by any person affected by the licence.
- (5) A person who makes an application under subsection (4) shall give a copy of the application (and affidavit, if any, and other relevant documents, if any, in support)—
 - (a) to the Secretary for Justice and to any other person affected by the operation concerned of section 6(1) or 8, or the licence concerned, as the case may be; and
 - (b) not later than 7 days before the date fixed for the hearing of the application or such shorter period as the Court of First Instance may permit pursuant to rules of court.
- (6) The Court of First Instance shall not grant an application under subsection (4) unless it is satisfied that it is reasonable in all the circumstances of the case to do so.
- (7) Where—
 - (a) proceedings relating to an application under subsection (4)(including proceedings relating to any appeal) are no longer pending; and

- (b) the licence to which the application relates—
 - (i) is, or is still, required to be granted; or
 - (ii) is, or is still, required to be varied,as the case may be,

then the Secretary shall, as soon as is practicable, cause the licence to be granted or varied, as the case may be, accordingly.

18. Compensation

- (1) Subject to subsection (2), where—
 - (a) a person has ceased to be specified as a terrorist or terrorist associate under section 5(2); or
 - (b) property has ceased to be—
 - (i) specified as terrorist property under section 5(2); or
 - (ii) specified in a notice under section 6(1),

then the Court of First Instance may, on application by—

- (c) in the case of paragraph (a), the person who was so specified, or any person acting for or on behalf of the person who was so specified;
- (d) where paragraph (b) is applicable, any person by, for or on behalf of whom the property that was so specified is held,

order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court of First Instance shall not order compensation to be paid under subsection (1) unless it is satisfied—

- (a) where subsection (1)(a) is applicable, that at no time when the person concerned was specified as a terrorist or terrorist associate under section 5(2) was the person either a terrorist or terrorist associate;
- (b) where subsection (1)(b) is applicable, that at no time when the property was specified as terrorist property under section 5(2), or was specified in a notice under section 6(1), as the case may be, was the property terrorist property;
- (c) that there has been some serious default on the part of any person concerned in obtaining the relevant specification under section 5(2) or 6(1); and
- (d) the applicant has, in consequence of the relevant specification and the default mentioned in paragraph (c), suffered loss.

(3) The amount of compensation to be paid under this section shall be such as the Court of First Instance thinks just in all the circumstances of the case.

19. Regulations

- (1) The Secretary may make regulations for the purposes of enabling persons to be prohibited from dealing with any property (other than funds)—
 - (a) that the Secretary has reasonable grounds to suspect is terrorist property; and
 - (b) except under the authority of a licence granted by the Secretary for the purposes of the regulations.
- (2) The Secretary may make regulations for the purposes of—
 - (a) facilitating the obtaining of evidence and information for the purpose of securing compliance with or detecting evasion of this Ordinance;
 - (b) facilitating the obtaining of evidence in relation to the commission of an offence under this Ordinance; and
 - (c) enabling property suspected of being terrorist property to be seized and detained while its origin or derivation is further investigated or consideration is given to the institution (whether in the HKSAR or elsewhere) of proceedings—
 - (i) against any person in relation to an offence with which the property is connected; or
 - (ii) which may result in the property being specified in a notice under section 6(1) or which may result in the forfeiture or other confiscation of the property.
- (3) The Secretary may make regulations for the purposes of authorizing public officers to perform functions or exercise powers under regulations made under this section.
- (4) The Secretary may make regulations for the purposes of providing compensation to be paid, on grounds specified in the regulations, to a person who has suffered loss in consequence of any act done or omission made under regulations made under this section in respect of any property.
- (5) Regulations made under this section may provide for applications to be made to, and orders to be made by, a magistrate or court for any purposes mentioned in subsection (1), (2) or (4).
- (6) Regulations made under this section may—
 - (a) prescribe offences in respect of contraventions of the regulations (including contravention of any orders made under the regulations); and
 - (b) provide for the imposition in respect of any such offence of—
 - (i) on conviction on indictment, a fine and imprisonment for not more than 7 years;
 - (ii) on summary conviction, a fine at not more than level 6 and imprisonment for not more than 1 year.

(7) Regulations made under this section shall be subject to the approval of the Legislative Council.

20. Procedure

- (1) Provision may be made by rules of court—
 - (a) with respect to applications under—
 - (i) section 5;
 - (ii) section 13;
 - (iii) section 17;
 - (iv) section 18; or
 - (v) regulations made under section 19;
 - (b) without limiting the generality of paragraph (a), with respect to the circumstances in which applications mentioned in that paragraph shall be made *ex parte*;
 - (c) without limiting the generality of paragraph (a), with respect to expediting, on grounds specified in the rules, the hearing of applications mentioned in that paragraph;
 - (d) with respect to the division, conversion or disposal of property for the purposes of satisfying an order under section 13(1) to which the property is subject where—
 - (i) section 13(2) is applicable; and
 - (ii) the property is not readily divisible for those purposes;
 - (e) without limiting the generality of paragraph (a), prescribing interests for the purposes of the definition of “prescribed interest”;
 - (f) generally with respect to the procedure under this Ordinance before any court.
- (2) Subsection (1) is without prejudice to the generality of any existing power to make rules.
- (3) Rules made under this section may—
 - (a) state that they supersede, in whole or in part, any rules that apply to procedure under this Ordinance by virtue of section 13(5);
 - (b) for the purposes of reflecting a supersession mentioned in paragraph (a), amend section 13(5).

21. Proceedings inter partes shall be held in open court unless otherwise ordered by the court

(1) Subject to subsection (2), proceedings inter partes in respect of applications mentioned in section 20(1)(a) shall be held in open court unless the court otherwise orders, upon application made by any party to the proceedings, that all or part of the proceedings shall be held in chambers or in camera.

(2) The court shall not make an order that proceedings mentioned in subsection (1) shall be held in chambers or in camera unless the court is satisfied that the order is reasonably necessary in the interests of—

- (a) the security, defence or external relations of the HKSAR; or
- (b) the administration of justice.

(3) In this section, “court” (法庭) includes a magistrate.

SCHEDULE

[s. 2(1)]

FUNDS

1. Gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments.
2. Deposits with financial institutions or other entities, balances on accounts, debts and debt obligations.
3. Securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts).
4. Interest, dividends or other income on or value accruing from or generated by property.
5. Credit, rights of set-off, guarantees, performance bonds or other financial commitments.
6. Letters of credit, bills of lading and bills of sale.
7. Documents evidencing an interest in funds or financial resources, and any other instrument of export financing.