立法會
Legislative Council

立法會LS6/02-03號文件

立法會保安事務委員會和司法及法律事務委員會文件

和實施《基本法》第二十三條的建議有關的現行法例

諮詢文件所載建議摘要	**可能有關的現行法例**	**初步觀察所得**
I. 叛國 1. 《刑事罪行條例》(第200章)第2(1)(c)條的範圍限於指與外國人聯手發動戰爭，旨在 —— (a) 推翻中華人民共和國政府； (b) 以武力或強制手段強迫中華人民共和國政府改變其政策或措施； (c) 向中華人民共和國政府施加武力或強制力；或 (d) 向中華人民共和國政府作出恐嚇或威嚇。 ***(第2.7及2.8段)***[#]	**"2.叛逆** (1) 任何人有下述行為，即屬叛逆 —— (c) 向女皇陛下發動戰爭 —— (i) 意圖廢除女皇陛下作為聯合王國或女皇陛下其他領土的君主稱號、榮譽及皇室名稱；或 (ii) 旨在以武力或強制手段強迫女皇陛下改變其措施或意見，或旨在向國會或任何英國屬土的立法機關施加武力或強制力，或向其作出恐嚇或威嚇。" ***(《刑事罪行條例》(第200章)第2(1)(c)條)***	有關《基本法》第二十三條的條文並非在法律適應化計劃中處理。在1997年7月1日後，現行法例中若干用語，例如"女皇陛下"及"官方"，均須按照《釋義及通則條例》(第1章)附表8作出解釋。**請參閱附件A**。 根據《香港夏仕百利法律條文》(Halsbury's Laws of Hong Kong)，在有關叛逆的普通法及法定條文中，對英女皇陛下或君主的提述有3種不同用法：對女皇陛下或君主本人的提述、對女皇陛下或君主作為聯合王國政府元首的提述，以及對女皇陛下或君主作為國家體現的提述。 根據諮詢文件註18所載，"中華人民共和國政府"一詞代表中央人民政府及其他在憲法下確立的國家機構此一整體概念。根據《中華人民共和國憲法》成立的國家機構分別為 —— (a) 全國人民代表大會； (b) 中華人民共和國主席； (c) 國務院； (d) 中央軍事委員會； (e) 地方各級人民代表大會及地方各級人民政府； (f) 民族自治地方的自治機關； (g) 人民法院及人民檢察院。 《釋義及通則條例》(第1章)第3條所訂有關"國家"的定義，可說明本地法例如何界定"國家"。**請參閱附件A**。 並未解釋何以建議把"國會或任何英國屬土的立法機關"修改為"中華人民共和國政府"。

[#] 諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
2. 修訂《刑事罪行條例》(第200章)第2(1)(d)條，訂明鼓動外國人以武力入侵國家的所有領土，即屬犯罪。 ***(第2.9段)*** # "外國人"一詞應大致界定為"受外國政府指揮和控制或並非以中華人民共和國為基地的武裝部隊"。	**"2.叛逆** (1) 任何人有下述行為，即屬叛逆 —— (d) 鼓動外國人以武力入侵聯合王國或任何英國屬土。" ***(第200章第2(1)(d)條)***	並未討論何謂"國家的所有領土"。 研究第2.9段#所述的"外國人"是否包括以台灣為基地的武裝部隊將會有用。根據《社團條例》(第151章)，"外國政治性組織"及"台灣政治性組織"各有不同定義。《官方機密條例》(第521章)亦對外國及台灣特工作出區分。
3. 把有關協助交戰公敵的判例法編纂為成文法則。 ***(第2.10及2.11段)*** #	**"2.叛逆** (1) 任何人有下述行為，即屬叛逆 —— (e) 以任何方式協助與女皇陛下交戰的公敵。" ***(第200章第2(1)(e)條)***	第200章第2(1)(e)條似乎涵蓋有關行為，但諮詢文件對此未有作出任何提述。
4. 廢除針對君主或國家元首作出的罪行。 ***(第2.6段)*** #	**"2.叛逆** (1) 任何人有下述行為，即屬叛逆 —— (a) 殺死或傷害女皇陛下，或導致女皇陛下身體受傷害，或禁錮女皇陛下，或限制女皇陛下的活動； (b) 意圖作出(a)段所述的作為，並以公開的作為表明該意圖。" ***(第200章第2(1)(a)及(b)條)*** **"5.襲擊女皇** 任何人故意 —— (a) 在女皇陛下附近拿出或有任何武器或具破壞性或危險性的物品，意圖用以傷害女皇陛下； (b) (i) 用任何武器向女皇陛下或其附近發射，或以武器指向、瞄準或對著女皇陛下或其附近； (ii) 導致任何爆炸品在女皇陛下附近爆炸； (iii) 襲擊女皇陛下；或 (iv) 將任何物品投向或投中女皇陛下， 意圖使女皇陛下受驚或受傷，或意圖激使社會安寧遭破壞，或因而相當可能會導致社會安寧遭破壞， 即屬犯罪，一經循公訴程序定罪，可處監禁7年。" ***(第200章第5條)***	第200章第5條將根據業已制定但迄今尚未開始生效的《1997年刑事罪行(修訂)(第2號)條例》(1997年第89號條例)予以廢除。
5. 廢除叛逆性質的罪行。 ***(第2.13段)*** #	**"3.叛逆性質的罪行** (1) 任何人意圖達到以下任何目的，即 —— (a) 廢除女皇陛下作為聯合王國或女皇陛下其他領土的君主稱號、榮譽及皇室名稱； (b) 在聯合王國或任何英國屬土境內向女皇陛下發動戰爭，旨在以武力或強制手段強迫女皇陛下改變其措施或意見，或旨在向國會或任何英國屬土的立法機關施加武力或強制力，或向其作出恐嚇或威嚇；或 (c) 鼓動外國人以武力入侵聯合王國或任何英國屬土， 並以任何公開的作為或以發布任何印刷品或文件表明該意圖，即屬犯罪，一經循公訴程序定罪，可處終身監禁。	建議以企圖干犯、串謀、協助及教唆、慫使及促致他人干犯實質叛國罪的罪行，取代叛逆性質的罪行。 第200章第3條將根據業已制定但迄今尚未開始生效的《1997年刑事罪行(修訂)(第2號)條例》(1997年第89號條例)予以廢除。

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
	(2) 就根據本條提出的控罪而言，即使被控人經證實的作為足以構成第2條所指的叛逆，亦不得以此作為免責辯護；但被裁定本條所訂罪行罪名成立或罪名不成立的人，以後不得根據相同事實就第2條所指的叛逆被檢控。” ***(第200章第3條)***	
6. 把初步及從犯行為，即企圖干犯、串謀、協助及教唆、慫使及促致他人干犯實質叛國罪，訂為法定罪行。 ***(第2.13段)*** #	**“159A.串謀罪** (1) 除本部條文另有規定外，如任何人與任何其他人達成作出某項行為的協議，而該項協議如按照他們的意圖得以落實，即出現以下的情況 —— (a) 該項行為必會構成或涉及協議的一方或多於一方犯一項或多於一項罪行；或 (b) 若非存在某些致令不可能犯該罪行或任何該等罪行的事實，該項行為即會構成或涉及犯該罪行或該等罪行， 則該人即屬串謀犯該罪行或該等罪行。 (2) 凡任何罪行是犯該罪行的人在不知悉犯該罪行所需的任何特定事實或情況下仍可招致關於該罪行的法律責任的，則除非該人及協議中最少有其他一方意圖使該事實或情況於構成該罪行的行為發生時存在，或知道該事實或情況將會於該行為發生時存在，否則該人不得憑藉第(1)款而被裁定串謀犯該罪行。 (3) 在本條中，“罪行”(offence)指任何可在香港審訊的罪行，並包括謀殺，即使有關的謀殺如按照協議各方的意圖而作出該項謀殺便不可在香港審訊亦然。” ***(第200章第159A條)*** **“159G.企圖犯罪** (1) 如任何意圖犯本條所適用的罪行的人作出的某項作為已超乎只屬犯該罪行的預備作為者，則該人即屬企圖犯該罪行。 (2) 雖則有關的事實顯示犯本條所適用的罪行並不可能，任何人仍可被裁定企圖犯該罪行。 (3) 凡有人被控犯某項罪行，則即使該人並無被控企圖犯該罪行，亦可被裁定企圖犯該罪行。 (4) 在任何個案中，凡 —— (a) 除根據本款外，某人的意圖不會被視為構成犯罪的意圖；但 (b) 該個案的事實如是一如他所相信者，他的意圖即會被視為構成犯罪的意圖， 則就第(1)款而言，他須被視為已具有犯該罪行的意圖。 (5) 本條適用於任何假若完成的話即會屬可在香港審訊的罪行，但協助、教唆、慫使或促致犯該罪行則除外。” ***(第200章第159G條)*** **“89.協助犯、教唆犯及從犯** 任何人協助，教唆，慫使或促致另一人犯任何罪行，即屬就同一罪行有罪。” ***(《刑事訴訟程序條例》(第221章)第89條)***	將於稍後就初步罪行的一般情況提交資料文件。 建議以煽動叛亂罪處理煽動他人干犯叛國罪行的事宜。

\# 諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
7. 把屬隱匿叛國的普通法罪行編纂為成文法則。 ***(第2.14段)#*** 建議刑罰為監禁7年及不設限額罰款。 ***(第9.9段)#***		第2.14段#並未清楚訂明"適當當局"是否局限於警方。在英國，此語所指的是太平紳士或其他官員；在美國則為指定人員；而在加拿大則指太平紳士或其他管治治安人員。 在新加坡，倘任何人知悉或有理由相信有人作出了叛國行為而蓄意不提供資料，即屬犯罪。 建議刑罰與《刑事訴訟程序條例》(第221章)第101I(1)條的規定一致。該條文訂明，任何人被裁定犯了一項可公訴罪行，而除該條例外，並無任何條例訂定該罪的刑罰，則可處監禁7年及罰款。
8. 不就有代價地對叛逆罪不予檢控訂立特定罪行 ***(第2.15段)#***		
9. 叛國罪適用於 —— (a) 所有自願在香港特區的人； (b) 所有香港特區永久性居民在香港特區以外地方作出的行為。 ***(第2.16至2.18段)#***		《聯合國(反恐怖主義措施)條例》(2002年第27號條例)第7、8、9及10條適用於 —— (a) 任何在香港特區的人；及 (b) 在香港特區以外的任何下述的人 —— (i) 香港永久性居民；或 (ii) 根據香港特區法律成立為法團或組成的團體。 根據《聯合國制裁條例》(第537章)制定的規例的若干部分適用於 —— (a) 在香港特區的人；及 (b) 在其他地方行事的 —— (i) 兼具香港永久性居民及中國公民身分的人；或 (ii) 根據香港特區法律成立為法團或組成的團體。 加拿大的《刑事罪行法典》(Criminal Code)第46條訂明，以加拿大為權利主體而有義務向女皇陛下效忠的加拿大公民或人士，如身在加拿大境內或境外而作出該條文所提述的任何行為，即屬干犯叛國或叛逆罪(視屬何情況而定)。 美國的《美國法典》(USCS)第18篇第1751條訂明，對該條文所禁止的行為將具有域外司法管轄權。 在英國，《1848年叛國重罪法》(Treason Felony Act 1848)所針對的是"在聯合王國境內或境外的任何人"。

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
II. <u>分裂國家</u> 1. 訂明以發動戰爭、使用武力、威脅使用武力或其他嚴重非法手段 —— (a) 把中華人民共和國一部分從其主權中分離出去；或 (b) 抗拒中央人民政府對中華人民共和國一部分行使主權， 即屬觸犯分裂國家罪。 "嚴重非法手段"指 —— (a) 針對人的嚴重暴力； (b) 對財產的嚴重損害; (c) 危害作出該行動的人以外的人的生命； (d) 對公眾人士或部分公眾人士的健康或安全造成嚴重危險; (e) 嚴重干擾或嚴重擾亂電子系統；或 (f) 嚴重干擾或嚴重擾亂基要服務、設施或系統(不論是公共或私人的)。 ***(第3.6及3.7段)#*** 建議刑罰為終身監禁。 ***(第9.9段)#***	**"2.叛逆** (1)任何人有下述行為，即屬叛逆 —— (c) 向女皇陛下發動戰爭 —— (i) 意圖廢除女皇陛下作為聯合王國或女皇陛下其他領土的君主稱號、榮譽及皇室名稱。 (ii) …" ***(第200章第2(1)(c)(i)條)*** **"2.釋義** "恐怖主義行為"(terrorist act) —— (a) 除(b)段另有規定外，指作出或恐嚇作出行動，而 —— (i) 該行動(而如屬恐嚇，則包括假如作出的該行動) —— (A) 導致針對人的嚴重暴力； (B) 導致對財產的嚴重損害； (C) 危害作出該行動的人以外的人的生命； (D) 對公眾人士或部分公眾人士的健康或安全造成嚴重危險； (E) 是擬嚴重干擾或嚴重擾亂電子系統的；或 (F) 是擬嚴重干擾或嚴重擾亂基要服務、設施或系統(不論是公共或私人的)的；及 (ii) 該行動的作出或該恐嚇是 —— (A) 擬強迫特區政府或擬威嚇公眾人士或部分公眾人士的；及 (B) 為推展政治、宗教或思想上的主張而進行的； (b) (如屬(a)(i)(D)、(E)或(F)段的情況)不包括在任何宣揚、抗議、持異見或工業行動的過程中作出或恐嚇作出行動。" ***(《聯合國(反恐怖主義措施)條例》(2002年第27號條例)第2條)***	根據諮詢文件的註23，可提出的一個論點是，第200章第2(1)(c)(i)條適用於構成分裂國家行為的事實。 當局擬以《聯合國(反恐怖主義措施)條例》(2002年第27號條例)所載的"恐怖主義行為"定義，作為制定擬議的"嚴重非法手段"定義的藍本，但兩者具有下述不同之處。 "恐嚇作出行動"並非"嚴重非法手段"的一部分，但"威脅使用武力"是有關罪行的部分行為。 關於干擾或擾亂電子系統或基要服務、設施或系統，以"嚴重干擾或嚴重擾亂"取代"是擬嚴重干擾或嚴重擾亂"。 並無明確提述"恐怖主義行為"定義中的第(a)(ii)及(b)段是否適用。
2. 把初步及從犯行為，即企圖干犯、串謀、協助及教唆、慫使及促致他人干犯實質分裂國家罪，訂為法定罪行。 ***(第3.9段)#***	請參閱上文第I部第6段。	請參閱上文第I部第6段。
3. 分裂國家罪適用於 —— (a) 所有自願在香港特區的人； (b) 所有香港特區永久性居民在香港特區以外地方作出的行為； (c) 所有其他人在香港特區以外地方作出，而按普通法原則或《刑事司法管轄權條例》(第461章)的規定與香港特區有關連的行為。 ***(第3.10至3.12段)#***	請參閱上文第I部第9段。	請參閱上文第I部第9段。

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
III. <u>煽動叛亂</u> 1. 訂明如煽動他人 —— (a) 干犯叛國、分裂國家或顛覆罪實質罪行；或 (b) 製造嚴重危害國家或香港特區穩定的暴力事件或公眾騷亂， 即屬觸犯煽動叛亂罪。 ***(第4.13段)#***		煽動他人干犯叛國罪屬普通法罪行。
2. 訂明如任何人 —— (a) 刊印、發布、出售、要約出售、分發、展示或複製任何刊物；或 (b) 輸入或輸出任何刊物， 而知道或有合理理由懷疑若發布有關刊物，便相當可能會煽動他人干犯叛國、分裂國家或顛覆的罪行，即屬犯罪。 將訂明可以"合理辯解"作為免責辯護。 ***(第4.17段)#*** 建議刑罰為監禁7年及罰款500,000元。有關刊物將被沒收。 ***(第9.9段)#***	**"10.罪行** (1) 任何人 —— (a) 作出、企圖作出、準備作出或與任何人串謀作出具煽動意圖的作為；或 (b) 發表煽動文字；或 (c) 刊印、發布、出售、要約出售、分發、展示或複製煽動刊物；或 (d) 輸入煽動刊物(其本人無理由相信該刊物屬煽動刊物則除外)， 即屬犯罪，第一次定罪可處罰款$5,000及監禁2年，其後定罪可處監禁3年；煽動刊物則予以沒收並歸予官方。" ***(第200章第10(1)條)***	建議的犯罪意圖規定與第200章第10(1)條就煽動罪所訂的犯罪意圖規定有所不同。第200章第10(1)條將根據業已制定但迄今尚未開始生效的《1997年刑事罪行(修訂)(第2號)條例》(1997年第89號條例)作出修訂。有關的修訂是在"即屬"之前加入"意圖導致暴力或製造擾亂公安或公眾騷亂，"，以反映普通法的情況。 美國的《美國法典》(USCS)第18篇第2385條訂明，必須具有意圖推翻或毀滅美國政府或任何州、領土、地區、屬地或政治分區政府的犯罪意圖。 《約翰內斯堡原則》(Johannesburg Principles)第6條訂明，政府只能在證明下述情況時，才可基於其威脅國家安全的理由，對發表個人意見的人士施以懲罰 —— (a) 其發表意見旨在煽動即時發生暴力事件； (b) 該意見極可能煽動此類暴力事件發生；及 (c) 其發表意見與暴力事件的發生或發生的可能性有直接和緊貼的關係。 建議刑罰較現行刑罰嚴厲。
3. 第200章第9(2)條將予保留。 ***(第4.19及4.5段)#***	**"9.煽動意圖** (2) 任何作為、言論或刊物，不會僅因其有下列意圖而具有煽動性 —— (a) 顯示女皇陛下在其任何措施上被誤導或犯錯誤；或 (b) 指出依法成立的香港政府或香港憲制的錯誤或缺點，或法例或司法的錯誤或缺點，而目的在於矯正該等錯誤或缺點；或 (c) 慫恿女皇陛下子民或香港居民嘗試循合法途徑促致改變在香港的依法制定的事項；或 (d) 指出在香港不同階層居民間產生或有傾向產生惡感及敵意的事項，而目的在於將其消除。" ***(第200章第9(2)條)***	

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
4. 訂明如某人管有煽動刊物而知道或有合理理由懷疑若發布該刊物，便相當可能會煽動他人干犯叛國、分裂國家或顛覆的罪行，即屬犯罪。 將訂明可以"合理辯解"作為免責辯護。 ***(第4.18段)***# 建議罰款為第5級(現為50,000元)。 ***(第9.9段)***#	**"10.罪行** (2) 任何人無合法辯解而管有煽動刊物，即屬犯罪，第一次定罪可處罰款$2,000及監禁1年，其後定罪可處監禁2年；該等刊物則予以沒收並歸予官方。" ***(第200章第10(2)條)***	建議的犯罪意圖規定與第200章第10(2)條就管有煽動刊物所訂的犯罪意圖規定有所不同。 根據第200章第10(2)條，控方須承擔舉證責任，在無合理疑點下證明有關的人無合法辯解而管有煽動刊物。建議訂定"合理辯解"作為免責辯護，將把舉證責任轉移至辯方身上，規定其須根據相對可能性的衡量證明其有合理辯解而管有煽動刊物。 監禁期將維持不變，但建議提高罰款額。
5. 廢除《郵政署條例》(第98章)第32(1)(h)條。 ***(第4.18段)***#	**"32.禁寄物品** (1) 任何人不得投寄、交付郵遞或藉郵遞寄送 —— (h) 任何關於煽動罪的成文法則所指的任何煽動性刊物。" ***(《郵政署條例》(第98章)第32(1)(h)條)***	第98章第32(1)(h)條將根據業已制定但迄今尚未開始生效的《1997年刑事罪行(修訂)(第2號)條例》(1997年第89號條例)予以廢除。
6. 第200章第12條將予保留。 ***(第4.20段)***#	**"12.證據** 任何人不得因一名證人所作的未經佐證證供而被裁定犯第10條所訂的罪行。" ***(第200章第12條)***	第200章第12條將根據業已制定但迄今尚未開始生效的《1997年刑事罪行(修訂)(第2號)條例》(1997年第89號條例)作出修訂，藉以規定任何人不得因一名證人所作的未經佐證證供而被裁定觸犯第I部(叛逆)及第II部(其他反英皇罪行)所訂罪行。
7. 煽動叛亂罪適用於 —— (a) 所有自願在香港特區的人； (b) 所有香港特區永久性居民所作出的行為； (c) 所有其他人在香港特區以外地方作出，而按普通法原則或《刑事司法管轄權條例》(第461章)的規定與香港特區有關連的行為。 ***(第4.21段)***#	請參閱上文第II部第3段。	請參閱上文第II部第3段。
IV. <u>顛覆</u> 1. 訂明以發動戰爭、使用武力、威脅使用武力或其他嚴重非法手段 —— (a) 脅迫中華人民共和國政府；或 (b) 推翻中華人民共和國政府，或廢除憲法所確立的國家根本制度， 即屬干犯顛覆罪行。 ***(第5.5段)***# 建議刑罰為終身監禁。 ***(第9.9段)***#		未有詳細解釋"中華人民共和國政府"及"憲法所確立的國家根本制度"的意思為何。請參閱上文第I部第1段。 有關"嚴重非法手段"，請參閱上文第II部第1段。

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
2. 把初步及從犯行為，即企圖干犯、串謀、協助及教唆、慫使及促致他人干犯實質分裂國家罪，訂為法定罪行。 ***(第5.7段)[#]***	請參閱上文第I部第6段。	請參閱上文第I部第6段。
3. 顛覆罪適用於 —— (a) 所有自願在香港特區的人； (b) 所有香港特區永久性居民所作出的行為； (c) 所有其他人在香港特區以外地方作出，而按普通法原則或《刑事司法管轄權條例》(第461章)的規定與香港特區有關連的行為。 ***(第5.8段)[#]***	請參閱上文第II部第3段。	請參閱上文第II部第3段。
V. <u>竊取國家機密</u> **A. <u>一般情況</u>** 1. 在作出修改後，《官方機密條例》(第521章)將以其現行形式予以保留。 ***(第6.14段)[#]*** 和間諜活動有關的罪行(窩藏、未經授權而使用制服或官方文件、妨礙、未能提供資料)的建議刑罰為，一經循公訴程序定罪，可處監禁5年，以及一經循簡易程序定罪，可處監禁3年及第6級罰款(現為100,000元)。 非法披露的建議刑罰為一經循公訴程序定罪，可處監禁5年，以及一經循簡易程序定罪，可處監禁3年，罰款等級則維持不變。 ***(第9.9段)[#]***	**請參閱附件B所載的《官方機密條例》(第521章)的摘錄。**	自1997年7月1日以來，當局並未對《官方機密條例》(第521章)作出任何適應化修改。 和間諜活動有關的罪行的現行刑罰為，一經循公訴程序定罪，可處監禁2年，以及一經循簡易程序定罪，可處監禁3個月及第4級罰款(現為25,000元)。 有關披露的現行刑罰為一經循公訴程序定罪，可處監禁2年及罰款500,000元，以及一經循簡易程序定罪，可處監禁6個月及第5級罰款(現為50,000元)。
B. <u>諜報活動</u> 2. 受保護的資料將包括可能會對敵人有用的資料，而有關資料是為了損害國家或香港特別行政區的安全或利益而取得或披露的。 ***(第6.15及6.19段)[#]***	**"3.諜報活動** (1) 任何人如為有損聯合王國或香港的安全或利益的目的而作出以下作為，即屬犯罪 —— (a) 接近、察看、越過或進入禁地，或處身毗鄰禁地之處； (b) 製作旨在對，可能對或擬對敵人有直接或間接用處的圖片、圖則、模型或紀錄；或	第6.2段[#]建議把《官方機密條例》(第521章)第3條"為有損<u>聯合王國</u>或香港的安全或利益的目的"一語，適應化修改為"為有損<u>中華人民共和國</u>或香港特區的安全或利益的目的"。然而，第6.19(a)段[#]卻使用了"為了損害<u>國家</u>或香港特別行政區的安全或利益"之語。

[#] 諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
	(c) 取得、收集、記錄或發表相當可能對、可能對或擬對敵人有直接或間接用處的任何機密的官方代碼或通行碼、任何圖片、圖則、模型或紀錄或其他文件或資料，或將之傳達予任何其他人。” ***(《官方機密條例》(第521章)第3(1)條)***	第6.4#及6.5#段建議把第521章第5及6條同一語句，適應化修改為“有損國家或香港特區的安全或利益的目的”。該用語取自英國《1911年官方機密法》第1條，當中所採用的語句為“interests of the state”(“國家的利益”)。 相反，就非法披露的行為而言，受保護資料須為性質敏感的資料，而未經授權披露該等資料將會帶來具損害性的後果。
3. 諜報罪行並不具有域外效力。 ***(第6.27段)#***		“禁地”限於該等在香港特區地域管轄權範圍內的地方。
C. 非法披露 4. 訂立新的受保護資料類別，即有關中華人民共和國中央與香港特區之間關係的資料。 ***(第6.18及6.19段)#***	**“16.關乎國際關係的資料** (1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，作出一項具損害性的披露，而所披露的是 —— (a) 關乎國際關係的資料、文件或其他物品；或 (b) 自聯合王國以外的國家或地區或自國際組織取得的任何機密的資料、文件或其他物品， 且該等資料、文件或物品是憑藉他作為公務人員或政府承辦商的身分而由或曾經由他管有的，他即屬犯罪。 (2) 就第(1)款而言，如 —— (a) 披露危害聯合王國或香港在其他地方的利益、嚴重妨礙聯合王國或香港促進或保障該等利益或危害英國國民或香港永久性居民在其他地方的安全；或 (b) 有關的資料、文件或物品的性質屬若被未經授權而披露便相當可能會具有(a)段所描述的任何效果者， 披露即屬具損害性。 (3) 就第(1)(b)款所述的資料、文件或其他物品而言 —— (a) 確定其屬機密此一事實；或 (b) 確定其性質或內容， 可足以為第(2)(b)款的施行而確定該資料、文件或物品的性質屬若被未經授權而披露便相當可能具有該款所述的任何效果者。 (4) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理因由相信 —— (a) 有關的資料、文件或物品屬第(1)款所述者；或 (b) 披露會屬第(2)款所指的具損害性， 即可以此作為免責辯護。 (5) 就本條而言，凡自某地區、國家或組織按某些條款取得資料、文件或物品而該等條款規定它須在機密情況下持有，或在某情況下自某地區、國家或組織取得資料、文件或物品而該情況令該地區、國家或組織期望它在機密情況下持有是合理的，該資料、文件或物品即屬機密。” ***(第521章第16條)***	以下類別資料現時受《官方機密條例》(第521章)所保障 —— (a) 保安及情報資料(第13及14條)； (b) 防務資料(第15條)； (c) 關乎國際關係的資料(第16條)； (d) 關乎犯罪及刑事調查的資料(第17條)。 除了於第6.8段#提及在1997年7月1日前根據第16條(關乎國際關係的資料)受到保護的有關香港及內地之間關係的資料，以此作為提出有關建議的理據外，並無詳細解釋將會加入何種新的資料類別。 未有明確規定披露有關中華人民共和國中央及香港特區之間關係的資料須帶來具損害性的後果，或明確提及將會訂有和第16(4)條所訂相若的免責辯護。 《約翰內斯堡原則》(Johannesburg Principles)第15條訂明，如具有下述情況，任何人均不得基於國家安全的理由而因為披露資料受罰：(a)有關的披露未有真正損害及不大可能損害合法的國家安全利益；或(b)公眾因得知有關資料而獲得的利益較作出披露所造成的損害為大。 根據《約翰內斯堡原則》(Johannesburg Principles)第16條的規定，任何人如披露他憑藉政府服務而得知的資料，而公眾因得知有關資料而獲得的利益較作出披露所造成的損害為大，該人將不可基於國家安全的理由而因為披露有關資料而蒙受任何損害。第521章未有就非法披露的行為訂定上述以公眾利益為理由的免責辯護。 有關建議似乎是適應化修改而非實施《基本法》第二十三條。

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
	“12.釋義 “國際關係”(International relations)指國家與國家之間的關係或國際組織與國際組織之間的關係，或一個或多於一個國家與一個或多於一個國際組織之間的關係，並包括 —— (a) 關乎聯合王國以外的國家或國際組織、並能影響聯合王國與另一國家或某一國際組織的關係的事宜；及 (b) 關乎聯合王國與香港之間的關係或香港的對外關係的事宜。” ***(第521章第12條)***	
5. 就未經授權而(直接或間接)取得的受《官方機密條例》(第521章)第III部保護的資料，作出未經授權及具損害性的披露，將定為新訂的罪行。現行損害性披露的界定準則及第18條所訂的免責辯護，在作出必要修訂後將告適用。 ***(第6.20至6.22段)*** # 建議刑罰與非法披露的建議刑罰相同。 ***(第9.9段)*** # 6. 當局將會修訂第18(2)條，規定有關條文適用於源自現任和前任公務人員及政府承辦商的資料。 ***(第6.24段)*** #	**“18.因未經授權的披露所得的資料或在機密情況下託付的資料** (1) 如有任何資料、文件或其他物品在第(2)款所述的情況下落入某人的管有，而該人知道或有合理因由相信 —— (a) 第13至17條中的任何一條禁止將它披露；及 (b) 它是如第(2)款所述落入他的管有的， 而在沒有合法權限的情況下將它披露，該人即屬犯罪。 (2) 第(1)款所提述的情況為第13至17條中的任何一條禁止披露的資料、文件或其他物品因以下事件以致落入有關人士的管有 —— (a) 某公務人員或政府承辦商在沒有合法權限的情況下將它披露(不論是向該有關人士或另一人披露)； (b) 某公務人員或政府承辦商按某些條款將它託付該有關人士而該等條款規定它須在機密情況下持有，或某公務人員或政府承辦商在某情況下將它託付該有關人士而該情況令該公務人員或政府承辦商能合理地期望它會在機密情況下持有；或 (c) 它如(b)段所述被託付某人而該人在沒有合法權限的情況下將它披露(不論是向該有關人士或另一人披露)。 (3) 就第13至16條中的任何一條禁止披露的資料、文件或物品而言，除非 —— (a) 任何人將之披露是具損害性的；及 (b) 該人知道或有合理因由相信將之披露是具損害性的， 否則該人不屬犯本條所訂罪行。 (4) 披露資料、文件或其他物品是否具損害性此一問題，須為第(3)款的施行，而以就公務人員在違反第14、15或16條的情況下披露該資料、文件或物品裁定該問題的方式，予以裁定。 (5) 凡資料、文件或其他物品因以下事件以致落入某人的管有 —— (a) 它如第(2)(a)款所述被政府承辦商披露；或 (b) 它如第(2)(c)款所述被披露， 則除非該項披露是由英國國民或香港永久性居民作出的或是在香港作出的，否則該人並不就該資料、文件或物品犯本條所訂罪行。 (6) 就本條而言，如任何資料、文件或物品 —— (a) 關乎保安或情報或防務或國際關係，或屬如第16(1)(b)條所述者；或 (b) 是第17條適用的資料、文件或物品， 該資料、文件或物品即屬為第13至17條中的任何一條禁止披露者，而如它符合(a)段的描述，它即屬為第13至16條中的任何一條禁止披露者。 (7) 任何人不得就他披露任何資料、文件或其他物品，而既被裁定犯本條所訂罪行又被裁定犯第13至17條中的任何一條所訂的罪行。” ***(第521章第18條)***	《官方機密條例》第521章所訂的諜報罪行已涵蓋未經授權而取得資料的情況，因當中已包括取得、傳轉、處理及披露從諜報活動所得的資料。 關於非法披露的刑罰，請參閱上文第V部第A.1段。 第521章第14至17條所指的是“屬或曾經屬公務人員或政府承辦商的人”，但第18(2)條則適用於現任公務人員或政府承辦商。

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
7. 修訂"政府承辦商"的定義，以包括由警方任用以協助保安及情報工作的特工及線人。 ***(第6.25段)***[#]	**"12.釋義** "政府承辦商"(government contractors) —— (2) 除第(3)款另有規定外，在本部中，"政府承辦商"(government contractor) 指任何不是公務人員，但屬 —— (a) 為英皇香港政府、第(1)款所述的任何部門、部隊或團體或任何擔任根據第(1)款訂明的職位的人士的目的，提供貨品或服務(或受僱為該等目的提供貨品或服務)的人；或 (b) 根據以下協議或安排提供貨品或服務(或受僱根據以下協議或安排提供貨品或服務)的人：由總督核證為屬任何地區的政府、任何聯合王國以外的國家的政府或任何國際組織屬其中一方的協議或安排的協議或安排，或根據附屬於任何該等協議或安排的或為執行任何該等協議或安排而訂立的協議或安排。" ***(第521章第12(2)條)***	
8. 保留《官方機密條例》(第521章)第23條。 ***(第6.26段)***[#]	**"23.在海外作出的作為** 任何作為若由英國國民、香港永久性居民或公務人員在香港作出便會根據本部任何條文(第22(1)、(4)或(5)條除外)屬罪行，則該作為如由該人在香港境外作出，即屬該條文所訂的罪行。" ***(第521章第23條)***	域外效力適用於大部分和非法披露有關的罪行。
VI. <u>外國政治性組織</u> 1. 禁止外國政治性組織或台灣政治性組織介入香港特區政治事務的條文將予保留。 ***(第7.11段)***[#]	**"5A.註冊及豁免註冊** (3) 社團事務主任在諮詢保安局局長後，可拒絕任何社團或分支機構註冊或拒絕予其豁免註冊 —— (a) ... (b) 如該社團或該分支機構是政治性團體，並與外國政治性組織或台灣政治性組織有聯繫。" ***(《社團條例》(第151章)第5A(3)(b)條)*** **"5D.取消註冊或註冊豁免** (1) 社團事務主任在諮詢保安局局長後，可取消任何社團或分支機構的註冊或註冊豁免 —— (a) ... (b) 如該社團或該分支機構是政治性團體，並與外國政治性組織或台灣政治性組織有聯繫。" ***(第151章第5D(1)(b)條)*** **"8.禁止社團的運作** (1) 如 —— (a) ... (b) 該社團或該分支機構是政治性團體，並與外國政治性組織或台灣政治性組織有聯繫， 社團事務主任可建議保安局局長作出命令，禁止該社團或該分支機構運作或繼續運作。" ***(第151章第8(1)(b)條)***	《社團條例》(第151章)就"外國政治性組織"及"台灣政治性組織"訂定了不同的定義。

[#] 諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
	"2.釋義 "外國政治性組織"(foreign political organization)包括 —— (a) 外國政府或其政治分部； (b) 外國政府的代理人或外國政府的政治分部的代理人；或 (c) 在外國的政黨或其代理人； "台灣政治性組織"(political organization of Taiwan)包括 —— (a) 台灣地區的政府或其政治分部； (b) 台灣地區的政府的代理人或該政府的政治分部的代理人；或 (c) 在台灣的政黨或其代理人；" ***(第151章第2條)***	
2. 增訂有關組織或支援被禁制組織的活動的新罪行，以應付國家安全的需要。 此罪行須包含知情或有合理理由懷疑的元素。"支援"的概念包括身為被禁制組織的成員；向被禁制組織提供經濟援助、其他財產或協助；以及執行被禁制組織的政策和指示。 ***(第7.14段)***[#]	**"5A.註冊及豁免註冊** (3) 社團事務主任在諮詢保安局局長後，可拒絕任何社團或分支機構註冊或拒絕予其豁免註冊 —— (a) 如他合理地相信拒絕註冊該社團或該分支機構或拒絕予其豁免註冊，是維護國家安全或公共安全、公共秩序或保護他人的權利和自由所需要者；或 (b) …" ***(第151章第5A(3)(a)條)*** **"5D.取消註冊或註冊豁免** (1) 社團事務主任在諮詢保安局局長後，可取消任何社團或分支機構的註冊或註冊豁免 —— (a) 如他合理地相信，取消該社團或該分支機構的註冊或註冊豁免，是維護國家安全或公共安全、公共秩序或保護他人的權利和自由所需要者；或 (b) …" ***(第151章第5D(1)(a)條)*** **"8.禁止社團的運作** (1) 如 —— (a) 社團事務主任合理地相信禁止任何社團或分支機構的運作或繼續運作，是維護國家安全或公共安全、公共秩序或保護他人的權利和自由所需要者；或 (b) … 社團事務主任可建議保安局局長作出命令，禁止該社團或該分支機構運作或繼續運作。" ***(第151章8(1)(a)條)***	《社團條例》(第151章)現時訂有條文，賦權社團事務主任為維護國家安全、公共安全或公共秩序，拒絕註冊任何社團或分支機構或拒絕予其豁免註冊、取消其註冊或註冊豁免，以及禁止其運作。第7.13段[#]訂明，基於國家安全的理由而禁止社團運作的現有權力，已對該等活動作出有效的制裁。 根據第151章第2條，"社團事務主任"指由行政長官按照第3條條文委任的社團事務主任及任何助理社團事務主任。現時的社團事務主任及助理社團事務主任均為警務人員。 第151章第2(4)條訂明，"國家安全"指保衛中華人民共和國的領土完整及獨立自主。 未有解釋何須納入"有合理理由懷疑"作為擬議罪行的元素。
3. 保安局局長禁制一個組織的擬議權力可在以下情況行使 —— (a) 該組織的目的或其中一個目的，是從事任何干犯叛國、分裂國家、煽動叛亂、顛覆或竊取國家機密罪(諜報罪)的行為；或 (b) 該組織已經作出、或正企圖作出任何干犯叛國、分裂國家、煽動叛亂、顛覆或竊取國家機密罪(諜報罪)的行為；或		未有解釋應如何理解"從屬於"的意思。

[#] 諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
(c) 該組織從屬於某個被中央機關根據國家法律，以該組織危害國家安全為理由在內地取締的內地組織。 某內地組織是否對國家安全構成威脅，將由中央機關決定。中央人民政府就某個內地組織已被禁制所作出的正式知會，應可作為該組織已被禁制的最終證明。在行使上文(c)段所訂的禁制權力時，保安局局長必須信納有關從屬關係的證據，且必須合理地相信為維護國家安全或公共安全或公共秩序而有此必要禁制有關的組織。 ***(第7.15及7.16段)***#		
4. 組織的定義是由兩個或以上的人為某共同目的而作出經組織的行動，不論他們是否有正式的組織架構。 ***(第7.15段)***#	**"2.釋義** "社團"(society) —— "社團"指本條例條文適用的任何會社、公司、一人以上的合夥或組織，不論性質或宗旨為何。" ***(第151章第2條)***	
5. 保安局局長有權在合理地相信為維護國家安全、公共安全或公共秩序而必需時，宣布與被禁制組織有聯繫的組織為非法組織。 ***(第7.17段)***#	**"8.禁止社團的運作** (2) 保安局局長獲社團事務主任根據第(1)款作出建議後，可藉在憲報刊登的命令，禁止該社團或該分支機構在香港運作或繼續運作。 (3) 保安局局長如事先沒有給予該社團或該分支機構機會，就為何不應根據第(2)款作出命令而作出該社團或該分支機構認為適當的陳詞或書面申述，則不得作出該命令。 (4) 如保安局局長合理地相信給予該社團或該分支機構機會作出陳詞或書面申述，在該個案的情況下並不切實可行，第(3)款則不適用。 (5) 根據第(2)款作出的命令，須在切實可行範圍內盡快 —— (a) 送達該社團或該分支機構； (b) (如該社團或該分支機構佔用或使用任何建築物或處所)在該社團或該分支機構佔用或使用作為集會地點的建築物或處所以及在該建築物或處所所在的警區中最近的警署，以顯眼方式張貼；及 (c) 在憲報刊登。 (6) 凡根據第(2)款作出命令，即使就該項命令已經有或可能有任何上訴根據第(7)款提出，該項命令一經在憲報刊登，即行生效，而該項命令如指明於較後日期生效，則在該指明日期生效。" ***(第151章第8(2)至(6)條)***	關於禁止社團運作的規定，《社團條例》(第151章)第8條訂明在發出禁止運作的命令前，須給予作出陳詞或申述的機會。
6. "聯繫"的定義包括 —— (a) 該社團尋求或接受被禁制組織的資助、任何形式的財政上的贊助或支援或貸款，反之亦然； (b) 該社團附屬於被禁制組織，反之亦然； (c) 該社團的政策是由被禁制組織釐定，反之亦然；或	**"2.釋義** "聯繫"(connection)就屬政治性團體的社團或分支機構而言，包括以下情況 —— (a) 該社團或該分支機構直接或間接尋求或接受外國政治性組織或台灣政治性組織的資助、任何形式的財政上的贊助或支援或貸款； (b) 該社團或該分支機構直接或間接附屬於外國政治性組織或台灣政治性組織；	"聯繫"一詞的擬議定義的範圍，似乎較第151章第2條所訂的廣泛。

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
(d) 在該社團的決策過程中,被禁制組織作出指示、主使、控制或參與,反之亦然。 ***(第7.17段)#***	(c) 該社團或該分支機構的任何政策是直接或間接由外國政治性組織或台灣政治性組織釐定;或 (d) 在該社團或該分支機構的決策過程中,外國政治性組織或台灣政治性組織直接或間接作出指示、主使、控制或參與。” ***(第151章第2條)***	
7. 訂明任何人如管理非法組織或身為其幹事,即屬犯罪。 ***(第7.17段)#*** 建議刑罰為監禁7年及不設限額罰款。	**“19.非法社團幹事等的罰則** (1) 除第(2)款另有規定外,任何非法社團的幹事或任何自稱或聲稱是非法社團幹事的人,以及任何管理或協助管理非法社團的人,均屬犯罪,一經循公訴程序定罪,可處罰款$100,000及監禁3年。 (2) 任何三合會社團的幹事或任何自稱或聲稱是三合會社團幹事的人,以及任何管理或協助管理三合會社團的人,均屬犯罪,一經循公訴程序定罪,可處罰款$1,000,000及監禁15年。” ***(第151章第19條)***	其他和非法社團有關的罪行包括身為其成員(第20條)、容許非法社團在處所內集會(第21條)、煽惑他人成為非法社團成員(第22條)、為非法社團牟取社團費或援助(第23條)。保安局局長可禁止某些人如無社團事務主任的書面同意,在5年期間內不得成為任何其他社團的幹事。
8. 可就禁制及宣布一個組織為非法組織的決定提出上訴 —— (a) 事實的論點可向獨立的審裁處提出上訴; (b) 法律的論點可向法院提出上訴。 ***(第7.18段)#***	**“8.禁止社團的運作** (7) 根據本條作出的命令涉及的任何社團或任何分支機構,以及該社團中或該分支機構中因保安局局長根據本條作出的命令而感到受屈的幹事或成員,均可在該項命令生效後30天內,就該項命令的作出向行政長官會同行政會議上訴,而行政長官會同行政會議可確認、更改或撤銷該項命令。” ***(第151章第8(7)條)***	諮詢文件未有訂明審裁處的組合。 根據第7.18段#,有關建議的目的是確保公平。 根據《社團條例》(第151章)第8條向行政長官會同行政會議提出的上訴,將會按照《釋義及通則條例》(第1章)第64條處理。行政長官會同行政會議將以施政或行政身分,而非以司法或類似司法身分行事。
9. 上訴程序的規則在確保程序公平之餘,亦須保護機密資料及資料來源,使之免遭披露。 ***(第7.18段)#***		根據《聯合國(反恐怖主義措施)條例》(2002年第27號條例)的規定,除非法庭信納飭令有關的法律程序在內庭或以非公開形式進行的命令基於 —— (a)香港特區的保安、防衛或對外關係的理由;或 (b)秉行公正的理由, 屬合理所需,否則不得作出該命令。
VII. <u>調查權力</u> **A. <u>現有權力</u>** 1. 修訂《刑事罪行條例》(第200章)第14條,規定在非常緊急的情況下可行使沒有手令而移走煽動刊物的權力。 ***(第8.3段)#***	**“14.移走煽動刊物的權力** (1) 任何警務人員或公職人員均可 —— (a) 進入任何處所或地方; (b) 截停及登上任何車輛、電車、火車或船隻, 並從該處移走或清除任何煽動刊物。 (2) 任何警務人員或公職人員均可 —— (a) 破啟其根據本條獲授權進入的處所或地方的外門或內門; (b) 以武力驅逐或移走妨礙其根據本條獲授權行使移走或清除權力的人或物品; (c) 扣留任何車輛、電車、火車或船隻,直至從該處將煽動刊物全部移走或清除為止; (d) 在移走或清除煽動刊物時,將任何人驅離任何車輛、電車、火車或船隻。	廢除如從公眾地方可見有關的煽動刊物便可行使移走煽動刊物權力的條件。 第200章第14條將根據業已制定但迄今尚未開始生效的《1997年刑事罪行(修訂)(第2號)條例》(1997年第89號條例)予以修訂,藉以廢除第14(1)及(2)條所載的“或公職人員”,以便有關權力只可由警務人員行使。

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
	(3) 儘管有第(1)(a)款的規定，如有關的煽動刊物並非從公眾地方可見，則只有在符合下列情況下，方可行使該款所賦予的權力 —— (a) 事先取得有關處所或地方佔用人的准許；或 (b) 根據及按照裁判官為此目的而發出的手令。” ***(第200章第14條)***	
2. 規管就叛逆、煽動及官方機密罪行所作的調查的現行條文將予保留。 ***(第8.2段)***[#]	**“8.搜查及防止發生第7條所訂罪行的權力** (1) 如法官根據經宣誓而作的告發，信納有合理理由懷疑有人犯第7條所訂罪行，並信納會在告發所指明的處所或地方發現犯該罪證據，可批出搜查令，授權一名不低於督察職級的警務人員，連同任何其他警務人員 —— (a) 於搜查令簽發日期起計1個月內隨時進入該處所或地方，在有需要時並可使用武力進入； (b) 搜查該處所或地方，及搜查在場所發現的任何人；及 (c) 檢取在該處所或地方或在上述任何人身上發現，而該警務人員有合理理由懷疑是屬犯該罪行證據的任何物品。 (2) 依據第(1)款批出的搜查令對任何女子作搜查，只可由另一名女子進行。 (3) 儘管有第(1)款的規定 —— (a) 該款所述的搜查令，只可就懷疑在提起告發前3個月內所犯的罪行批出； (b) 如根據第(1)款批出的搜查令已就某處所執行，則進行或指示進行搜查的警務人員 —— (i) 須通知佔用人已進行搜查，並須應要求向該佔用人提供一份從該處所移走的文件或其他物件的列表；及 (ii) 如曾從其他人身上移走任何文件，須向該人提供一份該等文件的列表； (c) 根據第(1)款檢取的物品，可保留一段不超逾1個月的期間，而倘在該段期間內已開始進行第7條所訂罪行的法律程序，則可保留至該等法律程序終結為止；及 (d) 《刑事訴訟程序條例》(第221章)第102條(該條就處置與罪行有關的財產作出規定)適用於根據本條已歸警方管有的財產，猶如該條適用於在該條所述的情況下歸警方管有的財產一樣。” ***(第200章第8條)*** **“11.搜查手令** (1) 裁判官如因經宣誓而作的告發而信納有合理理由懷疑有人已犯或即將犯本部所訂罪行，可授予搜查手令，授權任何警務人員 —— (a) 於任何時間進入該手令所指明的任何處所或地方，在有需要時可使用武力進入； (b) 搜查該處所或地方及於其內發現的每一人； (c) 檢取他在該處所或地方或在該人身上發現的任何圖片、圖則、模型、物品、紀錄、文件或任何性質類似的東西，或任何屬有人已犯或即將犯本部所訂罪行的證據的東西，但先決條件是他有合理理由懷疑有人已就或即將就所檢取的物品犯本部所訂罪行。 (2) 凡警司級人員覺得某個案的情況極其緊急，而且有需要即時採取行動以保障聯合王國或香港的利益，他可藉書面命令向任何警務人員授予與裁判官可根據第(1)款藉手令給予的權限相同的權限。” ***(第521章第11條)***	諮詢文件未有提及會否保留第200章有關搜查令的第13條。第13條將根據業已制定但迄今尚未開始生效的《1997年刑事罪行(修訂)(第2號)條例》(1997年第89號條例)予以廢除。

[#] 諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
	“13.搜查令 如裁判官根據經宣誓而作的告發，信納有合理因由相信有人已經或行將犯第10條所訂罪行，可批出搜查令，授權警務人員，在所需協助下及在有需要時使用武力下進入搜查令所載明的處所或地方，及搜查該處所或地方和每名在場所發現的人，並檢取在該處所或地方發現而該警務人員有合理理由懷疑是屬犯第10條所訂罪行證據的任何物品。” ***(第200章第13條)***	
3. 規定警方在調查若干第二十三條罪行時，可享有緊急進入、搜查及檢取的權力。高級警務人員(例如警司)須有合理理由相信 —— (a) 有人已經觸犯或正在進行有關罪行； (b) 若不採取即時行動，可能會失去對調查該罪行有重要作用的證據； (c) 對有關罪行的調查會因而受到嚴重損害。 ***(第8.5段)#***	**請參閱附件C所載的《有組織及嚴重罪行條例》(第455章)的摘錄及附件D所載的《賭博條例》(第148章)第23和23A條。**	所指的第二十三條罪行是叛國、分裂國家、煽動叛亂、顛覆、組織或支援被禁制組織、初步及從犯罪行。 根據《有組織及嚴重罪行條例》(第455章)第5條，原訟法庭或區域法院如信納已符合第5(2)條所訂的條件，可在接獲由獲授權人提出的申請後簽發手令，授權獲授權人進入及搜查指明的處所，並扣押及扣留任何相當可能與調查有組織罪行有關的物料，或有組織罪行或指明罪行的得益。 第455章第5(2)條所訂的條件中，有部分條件與擬議條件相若。詳情請參閱第5(3)及(4)條。 即使《釋義及通則條例》(第1章)第83條已有規定，上述搜查令可授權為搜尋或扣押被知為或被懷疑是新聞材料的物料的目的而進入處所。 舉例而言，根據《賭博條例》(第148章)第23及23A條，警司或以上職級的警務人員如合理地懷疑任何處所或場所乃賭場，或有人正在或已觸犯使用該處所或場所作推廣或便利收受賭注的罪行，即可書面授權任何警務人員進入及搜查該處所或場所。其他條例亦會基於該條例所特有的政策理由，賦予警方在未有手令下進入及搜查的特定權力。
4. 針對那些可能涉及非法財務支援的第二十三條罪行，規定警方可享有緊急財務調查的權力。警務處處長若合理懷疑有人已經觸犯或正在進行有關罪行，則可在特別緊急的情況下，以及為了國家安全及公眾安全利益，要求銀行或接受存款公司向其披露與調查有關的資料。 ***(第8.6段)#***	**請參閱附件C所載的《有組織及嚴重罪行條例》(第455章)的摘錄及附件E所載的《警隊條例》(第232章)第67條。**	所指的第二十三條罪行是叛國、分裂國家、煽動叛亂、處理煽動刊物、顛覆、組織或支援被禁制組織、初步及從犯罪行。 《警隊條例》(第232章)第67條賦權警務處處長在下述情況下要求銀行或接受存款公司提供若干資料 —— (a) 他覺得有合理因由懷疑有人曾犯可公訴的罪行；及 (b) 為調查該罪行或拘捕該犯罪者而適宜作出上述行動。 第455章第25A條規定，任何人均須披露其知悉或懷疑某財產代表從可公訴罪行的得益，或曾在與可公訴罪行有關的情況下使用，或擬在與可公訴罪行有關的情況下使用。

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
5. 在《有組織及嚴重罪行條例》(第455章)附表1加入若干第二十三條罪行，以便賦予處理該等罪行的額外權力。 *(第8.7段)*[#]	**請參閱附件C所載的《有組織及嚴重罪行條例》(第455章)的摘錄。**	所指的第二十三條罪行是叛國、分裂國家、煽動叛亂、處理煽動刊物、顛覆、組織或支援被禁制組織、初步及從犯罪行，以及非法操練。 訂為附表1所列罪行的作用是 —— (a) 第二十三條罪行將納入“指明的罪行”定義的範圍內； (b) 任何第二十三條罪行，只要是與2名或以上的人的活動有關連，而該等人聯合一起的唯一或部分目的是為作出2項或以上行為，每一項均為附表1所列罪行及涉及相當程度的策劃及組織，該罪行即納入“有組織罪行”定義的範圍內。 根據第455章第3條，原訟法庭如信納已符合第3(4)條所訂的條件，即可應律政司司長單方面提出的申請發出命令，要求某人就合理地看來是與調查有組織罪行有關的事情回答問題或提交物料。 根據第455章第4條，原訟法庭如信納已符合第4(4)條所訂的條件，即可應律政司司長或獲授權人單方面提出的申請發出命令，要求某人提交或讓他人取得相當可能與調查有組織罪行有關的物料(不論有關物料在香港特區境內或其他地方)，或有組織罪行或指明罪行的得益。 關於第455章第5條所訂有關搜查令的規定，請參閱上文第VII部第A.3段(第16頁)。 第455章第3、4及5條明確豁除享有法律特權的品目。然而，任何人不得以提交物料或提供資料會傾向於使其獲罪，或會違反法規或其他規定所施加的保密責任或其他限制為理由，而不提交有關的物料或提供有關的資料。 其他權力包括就犯罪得益發出沒收令(第8條)、限制令(第15條)或押記令(第16條)。《販毒及有組織罪行(修訂)條例》(2002年第26號條例)就該3條條文作出的修訂已標明於附件C所載條文文本內。此等修訂事項將於2003年1月1日開始實施(2002年第145號法律公告)。 第455章第27條訂明，區域法院或原訟法庭在若干情況及其認為適合的情況下，可就指明的罪行對有關的人宣判較若非有本條的規定所宣判的為重的刑罰。有關的刑罰不得超逾法律所容許的對該罪行的最高罰則。

[#] 諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
VIII. 程序及其他事項 **A.　非法誓言及非法操練** 1. 廢除為非法誓言監誓或作出非法誓言的罪行。 ***(第9.2段)***#	**"15.為犯死刑罪而作的非法誓言** 任何人 —— (a) 為任何誓言或屬誓言性質的協定而監誓或在場並同意有關監誓，而該等誓言或屬誓言性質的協定其意是約束作出該等誓言或協定的人必須犯謀殺、叛逆或有暴力的海盜行為的罪行的；或 (b) 並非被強迫而作出上述誓言或協定， 即屬犯罪，一經循公訴程序定罪，可處終身監禁。" ***(第200章第15條)*** **"16.為犯罪而作的其他非法誓言** 任何人 —— (a) 為任何誓言或屬誓言性質的協定而監誓或在場並同意有關監誓，而該等誓言或屬誓言性質的協定其意是約束作出該等誓言或協定的人必須作出下列任何作為 —— (i) 參加任何叛變或煽動性質的計劃； (ii) 犯任何非可懲處死刑的罪行； (iii) 激使社會安寧遭破壞； (iv) 隸屬任何為作出第(i)、(ii)或(iii)節所述的作為而組成的任何聯會或社團； (v) 服從並非依法設立的委員會或團體的命令或指揮，或服從法律上無此權限的領導者或指揮者或其他人的命令或指揮； (vi) 不告發或不提出證據指證任何有關連者或其他人； (vii) 不揭發或透露任何非法聯會或社團或任何已作出或將會作出的非法作為、由其本人或其他人監誓或作出或向其本人或向其他人提出的非法誓言或協定，或該等誓言或協定的意義；或 (b) 並非被強迫而作出上述誓言或協定， 即屬犯罪，一經循公訴程序定罪，可處監禁7年。" ***(第200章第16條)*** **"17.被強迫作非法誓言** 就根據第15或16條提出的控罪而言，即使被控人被強迫作出第15或16條所述的誓言或協定，亦不得以此作為免責辯護，除非 —— (a) 在作出該誓言或協定後14天內；或 (b) 如被強行阻止或受疾病所阻，在阻礙消失後14天內，該被控人 —— (i) 藉在裁判官席前宣誓而作的告發；或 (ii) 如實際服役於英軍，則藉該項告發或給予其指揮官員的通知，聲明其就該事項知道的一切事情，包括為誓言或協定而監誓或作出誓言或協定的人、時間、地點和在場的人。" ***(第200章第17條)***	

諮詢文件內有關段落的編號

諮詢文件所載建議摘要	可能有關的現行法例	初步觀察所得
2. 保留非法操練罪行。 ***(第9.3段)#***	**"18.非法操練** (1) 任何人 —— (a) 未經總督或警務處處長准許而訓練或操練他人使用武器或進行軍事練習或變陣演習；或 (b) 出席未經總督或警務處處長准許舉行的聚會，而該聚會旨在訓練或操練他人使用武器或進行軍事練習或變陣演習， 即屬犯罪，一經循公訴程序定罪，可處監禁7年。 (2) 任何人 —— (a) 在第(1)款所述的聚會中接受訓練或操練使用武器或進行軍事練習或變陣演習；或 (b) 出席任何該等聚會，旨在接受該等訓練或操練， 即屬犯罪，一經循公訴程序定罪，可處監禁2年。" ***(第200章第18條)***	應藉機改善第200章第18條，指明進行訓練或操練的目的。
B. <u>**程序**</u> 3. 廢除就叛國罪及煽動叛亂罪提出檢控的時限。 ***(第9.5段)#***	**"4.對叛逆等的審訊的限制** (1) 除非檢控是在犯罪後3年內開始進行，否則任何人不得就第2或3條所訂的罪行被檢控。" ***(第200章第4(1)條)*** **"11.法律程序** (1) 就第10條所訂罪行提出的檢控，只可於犯罪後6個月內開始進行。" ***(第200章第11(1)條)***	關於循簡易程序定罪的罪行，除非法例訂有不同的檢控時限，否則一般須在6個月的時限內提出檢控：請參閱《裁判官條例》(第227章)第26條。
4. 規定就所有第二十三條罪行提出檢控前必須取得律政司司長同意。 ***(第9.6段)#***	**"11.法律程序** (2) 未經律政司書面同意，不得就第10條所訂罪行提出檢控。" ***(第200章第11(2)條)*** **"9.關於罪行審訊的條文** (1) 就本部所訂罪行而進行的法律程序，只可由律政司司長提起或在律政司司長同意下提起。" ***(第521章第9(1)條)*** **"24.關於罪行審訊的條文** (1) 就本部所訂罪行而進行的法律程序，只可由律政司司長提起或在律政司司長同意下提起。" ***(第521章第24(1)條)***	目前，就煽動、間諜活動或非法披露受保護資料提出檢控前，必須先取得有關方面的同意。 《1997年刑事罪行(修訂)(第2號)條例》(1997年第89號條例)(尚未開始實施)修訂第200章第11(2)條，規定如無律政司的書面同意，不得就第I部(叛逆)及第II部(其他反英皇罪行)所訂罪行提出檢控。

<u>連附件</u>

立法會秘書處
法律事務部
2002年10月17日

\# 諮詢文件內有關段落的編號

"《基本法》" (Basic Law) 指《中華人民共和國香港特別行政區基本法》；　*(由 1998 年第 26 號第 4 條增補)*

"規例" (regulations) 的涵義與附屬法例、附屬法規及附屬立法的涵義相同；　*(由 1998 年第 26 號第 4 條增補)*

"條例" (Ordinance) 指——

(*a*) 由立法會制定的條例；

(*b*) 憑藉《基本法》第一百六十條採用為香港特別行政區法律的條例；

(*c*) 根據任何上述條例訂立的附屬法例，但依據《基本法》第一百六十條宣布為同《基本法》抵觸的任何該等附屬法例除外；及

(*d*) 任何上述條例或附屬法例的任何條文；　*(由 1998 年第 26 號第 4 條增補)*

"條約" (treaty) 指國家之間訂立的條約、公約、協議或協定，以及任何附連於該等條約、公約、協議或協定的議定書或聲明，或獨立於該等條約、公約、協議或協定之外但卻提述該等條約、公約、協議或協定的議定書或聲明；　*(由 1998 年第 26 號第 4 條增補)*

"部門" (department) 就特區政府而言，包括政策局；　*(由 1998 年第 26 號第 4 條增補)*

"國家" (State) 只包括——

(*a*) 中華人民共和國主席；

(*b*) 中央人民政府；

(*c*) 香港特別行政區政府；

(*d*) 行使根據《基本法》由中央人民政府負責行使的職能的中華人民共和國中央當局；

(*e*) 符合以下說明——

(i) 代中央人民政府行使其行政職能，或行使根據《基本法》由中央人民政府負責行使的職能；及

(ii) 沒有行使商業職能，

並且是在獲轉授的權力以及獲轉授的職能範圍內行事的中央人民政府的附屬機關；及

"person" (人、人士、個人、人物、人選) includes any public body and any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word "person" occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation;

"pier" (碼頭) includes every quay, wharf or jetty of whatever description connected to and having direct access to the shore and used or intended to be used for the purposes of a pier, quay, wharf or jetty;

"police officer" (警務人員) and terms or expressions referring to ranks in the Hong Kong Police Force shall bear the meanings respectively assigned to them by the Police Force Ordinance (Cap. 232);　*(Added 26 of 1998 s. 4)*

"power" (權、權力) includes any privilege, authority and discretion;

"prescribed" (訂明) and "provided" (訂定), when used in or with reference to any Ordinance, mean prescribed or provided by that Ordinance or by subsidiary legislation made under that Ordinance;

"prison" (獄、監獄) means any place or building or portion of a building set apart for the purpose of a prison under any Ordinance relating to prisons;

"property" (財產) includes—

(*a*) money, goods, choses in action and land; and

(*b*) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (*a*) of this definition;

"Provisional Legislative Council" (臨時立法會) means the Provisional Legislative Council of the Hong Kong Special Administrative Region;　*(Added 26 of 1998 s. 4)*

"public" (公眾、公眾人士) includes any class of the public;

"publication" (刊物) means—

(*a*) all written and printed matter;

(*b*) any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically, electronically or electrically produced, reproduced, represented or conveyed;

(*c*) anything whether of a similar nature to the foregoing or not, containing any visible representation, or by its form, shape, or in any manner, capable of producing, reproducing, representing or conveying words or ideas; and

(*d*) every copy and reproduction of any publication as defined in paragraphs (*a*), (*b*) and (*c*) of this definition;

"public body" (公共機構) includes—

(*a*) the Executive Council;

(*b*) the Legislative Council;

(*c*) *(Repealed 78 of 1999 s. 7)*

附件 A Annex A

(*f*) 符合以下説明——
(i) 代 (*d*) 段提述的中華人民共和國中央當局行使中央人民政府的行政職能，或行使根據《基本法》由中央人民政府負責行使的職能；及
(ii) 沒有行使商業職能，
並且是在獲轉授的權力以及獲轉授的職能範圍內行事的該等中央當局的附屬機關； *(由 1998 年第 26 號第 4 條增補)*

"動產" (movable property) 指不動產以外的各類財產；

"區域法院" (District Court) 指香港特別行政區區域法院； *(由 1998 年第 26 號第 4 條增補)*

"區域法院法官" (District Judge) 指區域法院的法官； *(由 1998 年第 26 號第 4 條增補)*

"區議會" (District Council) 具有《區議會條例》(第 547 章) 給予該詞的涵義； *(由 1999 年第 8 號第 89 條代替)*

"終審法院" (Court of Final Appeal) 指由《香港終審法院條例》(第 484 章) 第 3 條設立的香港終審法院； *(由 1995 年第 79 號第 50 條增補)*

"終審法院法官" (judge of the Court of Final Appeal) 指終審法院首席法官、終審法院常任法官及終審法院非常任法官； *(由 1995 年第 79 號第 50 條增補。由 1998 年第 26 號第 37 條修訂)*

"終審法院首席法官" (Chief Justice) 指香港特別行政區終審法院首席法官； *(由 1998 年第 26 號第 4 條增補)*

"街"、"街道" (street) 指——
(*a*) 任何公路、街、街道、路、道路、橋樑、大道、廣場、坊、短巷、巷、里、馬道、行人徑、通道或隧道；及
(*b*) 任何由公眾使用或公眾常到，又或公眾可以進入或獲准進入的露天地方，不論該地方是否位於屬政府租契標的的土地上； *(由 1998 年第 26 號第 4 條增補)*

"裁判官" (magistrate) 指根據《裁判官條例》(第 227 章) 獲委任為常任裁判官或特委裁判官的人； *(由 1997 年第 47 號第 10 條代替)*

"登記"、"註冊" (registered)，用於文件時，指根據任何適用於登記或註冊該類文件的法律條文而登記或註冊；

(*ca*) any District Council; *(Added 42 of 1981 s. 27. Amended 8 of 1999 s. 89)*
(*cb*) *(Repealed 78 of 1999 s. 7)*
(*d*) any other urban, rural or municipal council;
(*e*) any department of the Government; and
(*f*) any undertaking by or of the Government;

"public office" (公職) means any office or employment the holding or discharging of which by a person would constitute that person a public officer;

"public officer" (公職人員) means any person holding an office of emolument under the Government, whether such office be permanent or temporary; *(Added 26 of 1998 s. 4)*

"public place" (公眾地方、公眾場所) means—
(*a*) any public street or pier, or any public garden; and
(*b*) any theatre, place of public entertainment of any kind, or other place of general resort, admission to which is obtained by payment or to which the public have or are permitted to have access;

"public seal" (公印) means the public seal of the Hong Kong Special Administrative Region; *(Added 26 of 1998 s. 4)*

"public servant" (公務員、公務人員) has the same meaning as public officer; *(Added 26 of 1998 s. 4)*

"registered" (登記、註冊), when used with reference to a document, means registered under the provisions of any law applicable to the registration of such a document;

"Registrar of the High Court" (高等法院司法常務官) means the Registrar of the High Court and any Deputy or Assistant Registrar of the High Court; *(Added 26 of 1998 s. 4)*

"regulations" (規例) has the same meaning as subsidiary legislation and subordinate legislation; *(Added 26 of 1998 s. 4)*

"repeal" (廢除) includes rescind, revoke, cancel or replace;

"road" (路、道路) has the same meaning as street; *(Added 26 of 1998 s. 4)*

"rules of court" (法院規則), when used in relation to any court, means rules made by the authority having for the time being power to make rules and orders regulating the practice and procedure of such court;

"Secretary for Justice" (律政司司長) means the Secretary for Justice of the Hong Kong Special Administrative Region; *(Added 26 of 1998 s. 4)*

"sell" (賣、售賣、出售) includes exchange and barter;

"ship" (船、船舶) includes every description of vessel used in navigation not exclusively propelled by oars;

"普通法" (common law) 指在香港施行的普通法； *(由 1998 年第 26 號第 4 條增補)*
"歲"、"年歲"、"年齡" (years of age) 及其他近義詞語，當用於指人的歲數時，指由出生日期起計的歲數； *(由 1998 年第 26 號第 4 條增補)*
"路"、"道路" (road) 的涵義與街、街道的涵義相同； *(由 1998 年第 26 號第 4 條增補)*
"罪"、"罪行"、"罪項"、"犯法行為" (offence) 包括任何刑事罪，和違反、觸犯、不遵守任何訂有罰則的法律條文； *(由 1998 年第 26 號第 4 條增補)*
"新九龍" (New Kowloon) 指附表 5 指定的範圍；
"新界" (New Territories) 指附表 5A 指明或提述的範圍； *(由 1998 年第 26 號第 4 條增補)*
"違反" (contravene)，用於條例所訂明的規定或條件時，或用於根據、憑藉條例而發給的批予、許可證、牌照、租約或權限文件之中所訂明的規定或條件時，包括不遵守該規定或條件；
"獄"、"監獄" (prison) 指根據任何與監獄有關的條例而闢作監獄用途的地方、建築物或建築物的一部分；
"誓言" (oath)、"誓章" (affidavit)，對法例准許或規定以非宗教式宣誓代替宗教式宣誓的人來說，包括非宗教式誓詞；而"宣誓" (swear) 在同樣情形下包括非宗教式宣誓；
"領事" (consul)、"領事館官員" (consular officer) 指任何獲接待國主管當局承認為以該身分受託行使領事職能的人，包括領事館的首長在內；
"賣"、"售賣"、"出售" (sell) 包括交換及以物相易；
"廢除" (repeal) 包括刪除、撤銷、取消或代替；
"碼頭" (pier) 包括與岸連接及可直達岸上的各類埠頭、貨運碼頭或突堤式碼頭，用作或擬用作碼頭、埠頭、貨運碼頭或突堤式碼頭者；
"輸入"、"進口" (import) 指以空運方式或循陸路或水路而運入香港，或導致以空運方式或循陸路或水路而運入香港； *(由 1998 年第 26 號第 4 條增補)*
"輸出"、"出口" (export) 指以空運方式或循陸路或水路而從香港運出，或導致以空運方式或循陸路或水路而從香港運出； *(由 1998 年第 26 號第 4 條增補)*

"sign" (簽名、簽署) includes, in the case of a person unable to write, the affixing or making of a seal, mark, thumbprint or chop;
"sitting", in relation to the Legislative Council, includes meeting; *(Added 26 of 1998 s. 4)*
"solicitor" (律師) means a person admitted before the Court of First Instance to practise as a solicitor; *(Added 26 of 1998 s. 4)*
"State" ("國家") includes only—
(*a*) the President of the People's Republic of China;
(*b*) the Central People's Government;
(*c*) the Government of the Hong Kong Special Administrative Region;
(*d*) the Central Authorities of the People's Republic of China that exercise functions for which the Central People's Government has responsibility under the Basic Law;
(*e*) subordinate organs of the Central People's Government that—
(i) on its behalf, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
(ii) do not exercise commercial functions,
when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; and
(*f*) subordinate organs of the Central Authorities of the People's Republic of China referred to in paragraph (*d*), that—
(i) on behalf of those Central Authorities, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
(ii) do not exercise commercial functions,
when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; *(Added 26 of 1998 s. 4)*
"statutory declaration" (法定聲明), if made—
(*a*) in Hong Kong, means a declaration under the repealed Statutory Declarations Ordinance or the Oaths and Declarations Ordinance (Cap. 11);
(*b*) in any other common law jurisdiction, means a declaration made before a justice of the peace, notary public, or other person having authority therein under any legal provision for the time being in force in the jurisdiction to take or receive a declaration;
(*c*) in the mainland of the People's Republic of China, means a declaration made before a notary pursuant to his notarial functions;

附表8 [第2A(3)條]

原有法律中的詞語和詞句在1997年7月1日及之後的解釋

1. 在任何條文中對女皇陛下、皇室、官方、英國政府或國務大臣(或相類名稱、詞語或詞句)的提述,在條文內容與以下所有權有關或涉及以下事務或關係的情況下,須解釋為對中華人民共和國中央人民政府或其他主管機關的提述——
   (a) 香港特別行政區土地的所有權;
   (b) 中華人民共和國中央人民政府負責處理的事務;
   (c) 中央與香港特別行政區的關係。
2. 在任何條文中對女皇陛下、皇室、官方、英國政府或國務大臣(或相類名稱、詞語或詞句)的提述,在文意並非第1條所指明者的情況下,須解釋為對香港特別行政區政府的提述。
3. 對女皇陛下會同樞密院或對樞密院的提述,在條文的內容與關乎香港的上訴司法管轄權有關的情況下,須解釋為對香港終審法院的提述。
4. 對女皇陛下會同樞密院或對樞密院的提述,在文意並非涉及其上訴司法管轄權的情況下,須以與根據第1及2條解釋對女皇陛下的提述的相同方式,予以解釋。
5. 對名稱中包含"皇家"一詞的政府機構的提述,須——
   (a) 在猶如"皇家"一詞已被刪去的情況下理解;及
   (b) 理解為提述香港特別行政區的相應政府機構。
6. 對殖民地香港(或相類名稱、詞語或詞句)的提述,須解釋為對香港特別行政區的提述,而對殖民地香港的邊界的提述,須解釋為對由中華人民共和國國務院頒布的香港特別行政區行政區域圖所指明的邊界的提述。
7. 對香港最高法院的提述,須解釋為對香港特別行政區高等法院的提述。
8. 對香港上訴法院的提述,須解釋為對香港特別行政區高等法院上訴法庭的提述。
9. 對香港高等法院的提述,須解釋為對香港特別行政區高等法院原訟法庭的提述。
10. 對地方法院的提述,須解釋為對區域法院的提述。
11. 對香港總督的提述,須解釋為對香港特別行政區行政長官的提述;對總督會同行政局的提述,須解釋為對行政長官會同行政會議的提述。
12. 對香港最高法院首席大法官的提述,須解釋為對香港特別行政區高等法院首席法官的提述。
13. 對上訴法院大法官的提述,須解釋為對高等法院上訴法庭法官的提述。
14. 對高等法院大法官的提述,須解釋為對高等法院原訟法庭法官的提述。

SCHEDULE 8 [s. 2A(3)]

CONSTRUCTION ON AND AFTER 1 JULY 1997 OF WORDS AND EXPRESSIONS IN LAWS PREVIOUSLY IN FORCE

1. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) where the content of the provision—
   (a) relates to title to land in the Hong Kong Special Administrative Region;
   (b) involves affairs for which the Central People's Government of the People's Republic of China has responsibility;
   (c) involves the relationship between the Central Authorities and the Hong Kong Special Administrative Region,

   shall be construed as a reference to the Central People's Government or other competent authorities of the People's Republic of China.
2. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) in contexts other than those specified in section 1 shall be construed as a reference to the Government of the Hong Kong Special Administrative Region.
3. Any reference to Her Majesty in Council or to the Privy Council, where the content of the provision relates to appellate jurisdiction in relation to Hong Kong, shall be construed as a reference to the Hong Kong Court of Final Appeal.
4. Any reference to Her Majesty in Council or to the Privy Council in contexts other than its appellate jurisdiction shall be construed in the same manner as references to Her Majesty are construed under sections 1 and 2.
5. Any reference to a Government agency which bears a name which includes the word "Royal" shall be read—
   (a) as if the word "Royal" were omitted; and
   (b) as a reference to the corresponding Government agency of the Hong Kong Special Administrative Region.
6. Any reference to the Colony of Hong Kong (or to similar names, terms or expressions) shall be construed as a reference to the Hong Kong Special Administrative Region and any reference to the boundaries of the Colony of Hong Kong shall be construed as a reference to the boundaries as specified in the map of the administrative division of the Hong Kong Special Administrative Region published by the State Council of the People's Republic of China.
7. Any reference to the Supreme Court of Hong Kong shall be construed as a reference to the High Court of the Hong Kong Special Administrative Region.
8. Any reference to the Court of Appeal of Hong Kong shall be construed as a reference to the Court of Appeal of the High Court of the Hong Kong Special Administrative Region.
9. Any reference to the High Court of Justice of Hong Kong shall be construed as a reference to the Court of First Instance of the High Court of the Hong Kong Special Administrative Region.
10. Any reference to "地方法院" shall be construed as a reference to "區域法院".
11. Any reference to the Governor of Hong Kong or to the Governor in Council shall be construed as a reference to the Chief Executive of the Hong Kong Special Administrative Region or the Chief Executive in Council respectively.
12. Any reference to the Chief Justice of the Supreme Court of Hong Kong shall be read as a reference to the Chief Judge of the High Court of the Hong Kong Special Administrative Region.
13. Any reference to "上訴法院大法官" shall be construed as a reference to "高等法院上訴法庭法官".
14. Any reference to a judge of the High Court shall be construed as a reference to a judge of the Court of First Instance.

附表8 [第2A(3)條]

原有法律中的詞語和詞句在1997年7月1日及之後的解釋

1. 在任何條文中對女皇陛下、皇室、官方、英國政府或國務大臣(或相類名稱、詞語或詞句)的提述，在條文內容與以下所有權有關或涉及以下事務或關係的情況下，須解釋為對中華人民共和國中央人民政府或其他主管機關的提述——
   (*a*) 香港特別行政區土地的所有權；
   (*b*) 中華人民共和國中央人民政府負責處理的事務；
   (*c*) 中央與香港特別行政區的關係。
2. 在任何條文中對女皇陛下、皇室、官方、英國政府或國務大臣(或相類名稱、詞語或詞句)的提述，在文意並非第1條所指明者的情況下，須解釋為對香港特別行政區政府的提述。
3. 對女皇陛下會同樞密院或對樞密院的提述，在條文的內容與關乎香港的上訴司法管轄權有關的情況下，須解釋為對香港終審法院的提述。
4. 對女皇陛下會同樞密院或對樞密院的提述，在文意並非涉及其上訴司法管轄權的情況下，須以與根據第1及2條解釋對女皇陛下的提述的相同方式，予以解釋。
5. 對名稱中包含"皇家"一詞的政府機構的提述，須——
   (*a*) 在猶如"皇家"一詞已被删去的情況下理解；及
   (*b*) 理解為提述香港特別行政區的相應政府機構。
6. 對殖民地香港(或相類名稱、詞語或詞句)的提述，須解釋為對香港特別行政區的提述，而對殖民地香港的邊界的提述，須解釋為對由中華人民共和國國務院頒布的香港特別行政區行政區域圖所指明的邊界的提述。
7. 對香港最高法院的提述，須解釋為對香港特別行政區高等法院的提述。
8. 對香港上訴法院的提述，須解釋為對香港特別行政區高等法院上訴法庭的提述。
9. 對香港高等法院的提述，須解釋為對香港特別行政區高等法院原訟法庭的提述。
10. 對地方法院的提述，須解釋為對區域法院的提述。
11. 對香港總督的提述，須解釋為對香港特別行政區行政長官的提述；對總督會同行政局的提述，須解釋為對行政長官會同行政會議的提述。
12. 對香港最高法院首席大法官的提述，須解釋為對香港特別行政區高等法院首席法官的提述。
13. 對上訴法院大法官的提述，須解釋為對高等法院上訴法庭法官的提述。
14. 對高等法院大法官的提述，須解釋為對高等法院原訟法庭法官的提述。

SCHEDULE 8 [s. 2A(3)]

Construction on and After 1 July 1997 of Words and Expressions in Laws Previously in Force

1. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) where the content of the provision—
   (*a*) relates to title to land in the Hong Kong Special Administrative Region;
   (*b*) involves affairs for which the Central People's Government of the People's Republic of China has responsibility;
   (*c*) involves the relationship between the Central Authorities and the Hong Kong Special Administrative Region,

   shall be construed as a reference to the Central People's Government or other competent authorities of the People's Republic of China.
2. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) in contexts other than those specified in section 1 shall be construed as a reference to the Government of the Hong Kong Special Administrative Region.
3. Any reference to Her Majesty in Council or to the Privy Council, where the content of the provision relates to appellate jurisdiction in relation to Hong Kong, shall be construed as a reference to the Hong Kong Court of Final Appeal.
4. Any reference to Her Majesty in Council or to the Privy Council in contexts other than its appellate jurisdiction shall be construed in the same manner as references to Her Majesty are construed under sections 1 and 2.
5. Any reference to a Government agency which bears a name which includes the word "Royal" shall be read—
   (*a*) as if the word "Royal" were omitted; and
   (*b*) as a reference to the corresponding Government agency of the Hong Kong Special Administrative Region.
6. Any reference to the Colony of Hong Kong (or to similar names, terms or expressions) shall be construed as a reference to the Hong Kong Special Administrative Region and any reference to the boundaries of the Colony of Hong Kong shall be construed as a reference to the boundaries as specified in the map of the administrative division of the Hong Kong Special Administrative Region published by the State Council of the People's Republic of China.
7. Any reference to the Supreme Court of Hong Kong shall be construed as a reference to the High Court of the Hong Kong Special Administrative Region.
8. Any reference to the Court of Appeal of Hong Kong shall be construed as a reference to the Court of Appeal of the High Court of the Hong Kong Special Administrative Region.
9. Any reference to the High Court of Justice of Hong Kong shall be construed as a reference to the Court of First Instance of the High Court of the Hong Kong Special Administrative Region.
10. Any reference to "地方法院" shall be construed as a reference to "區域法院".
11. Any reference to the Governor of Hong Kong or to the Governor in Council shall be construed as a reference to the Chief Executive of the Hong Kong Special Administrative Region or the Chief Executive in Council respectively.
12. Any reference to the Chief Justice of the Supreme Court of Hong Kong shall be read as a reference to the Chief Judge of the High Court of the Hong Kong Special Administrative Region.
13. Any reference to "上訴法院大法官" shall be construed as a reference to "高等法院上訴法庭法官".
14. Any reference to a judge of the High Court shall be construed as a reference to a judge of the Court of First Instance.

15. 在任何法律中文文本中對立法局、司法機關或行政機關或該等機關的人員的提述，須按照《基本法》有關規定解釋。

16. 在任何法律中對立法局的提述，須視情況要求，解釋為包括對臨時立法會的提述。

17. 對中華人民共和國或中國 (或相類名稱、詞語或詞句) 的提述，須解釋為對包括台灣、香港特別行政區及澳門在內的中華人民共和國的提述。

18. 對大陸、台灣、香港或澳門的提述 (不論是單獨提述或同時提述)，須解釋為對作為中華人民共和國一個組成部分的大陸、台灣、香港或澳門 (視屬何情況而定) 的提述。

19. 對外國 (或相類詞語或詞句) 的提述，須解釋為對中華人民共和國以外的國家或地區的提述，或解釋為對香港特別行政區以外的任何地方的提述，視乎有關法律的內容而定。

20. 對外國人或外籍人士 (或相類詞語或詞句) 的提述，須解釋為對並非中華人民共和國公民的人士的提述。

21. 任何保留女皇陛下，其世襲繼承人及繼位人的權利的條文，須解釋為保留中華人民共和國中央人民政府及香港特別行政區政府的根據《基本法》和其他法律的規定所享有的權利。

21A. 對立法局的提述，須解釋為對立法會的提述。 *(由 1998 年第 26 號第 42 條增補)*

21B. 對行政局的提述，須解釋為對行政會議的提述。 *(由 1998 年第 26 號第 42 條增補)*

21C. 對地方法院法官的提述，或對地院法官的提述，須解釋為對區域法院法官的提述。 *(由 1998 年第 26 號第 42 條增補)*

21D. 對大法官的提述，或對大法官或法官的提述，須解釋為對法官的提述。 *(由 1998 年第 26 號第 42 條增補)*

21E. 對政府的提述，須解釋為對特區政府的提述。 *(由 1998 年第 26 號第 42 條增補)*

21F. 對首席法官的提述，或對首席大法官的提述，須解釋為對終審法院首席法官的提述。 *(由 1998 年第 26 號第 42 條增補)*

22. 除文意另有所指外，本附表適用。

(由 1997 年第 110 號第 6 條增補)

附表 9 [第 102 條]

暫時性條文

1. **詞語和詞句的釋義**

"受英國保護人士" (British protected person) 指根據《1981 年英國國籍法令》(1981 c. 61 U.K.)# 具有受英國保護人士身分的人；

並請參閱 1993 年第 308 號法律公告。

15. Any reference in the Chinese version of any law to the Legislative Council, the Judiciary or the Executive Authorities or to the officers of those bodies shall be construed in accordance with the relevant provisions of the Basic Law.

16. Any reference in any law to the Legislative Council shall, as the case may require, be construed as including a reference to the Provisional Legislative Council.

17. Any reference to the People's Republic of China or to China (or to similar names, terms or expressions) shall be construed as a reference to the People's Republic of China as including Taiwan, the Hong Kong Special Administrative Region and Macau.

18. Any reference to the Mainland, Taiwan, Hong Kong or Macau (whether separately or concurrently) shall be construed as a reference to the Mainland, Taiwan, Hong Kong or Macau, as the case may be, as a part of the People's Republic of China.

19. Any reference to a foreign country or foreign state (or to similar terms or expressions) shall be construed as a reference to a country or territory other than the People's Republic of China or as a reference to any place other than the Hong Kong Special Administrative Region, depending on the content of the relevant law.

20. Any reference to an alien (or to similar terms or expressions) shall be construed as a reference to a person other than a citizen of the People's Republic of China.

21. Any provision saving the rights of Her Majesty, Her Heirs and Successors shall be construed as saving the rights of the Central People's Government of the People's Republic of China and the rights of the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws.

21A. Any reference to "立法局" shall be construed as a reference to "立法會". *(Added 26 of 1998 s. 42)*

21B. Any reference to "行政局" shall be construed as a reference to "行政會議". *(Added 26 of 1998 s. 42)*

21C. Any reference to "地方法院法官" or "地院法官" shall be construed as a reference to "區域法院法官". *(Added 26 of 1998 s. 42)*

21D. Any reference to "大法官" or "大法官或法官" shall be construed as a reference to "法官". *(Added 26 of 1998 s. 42)*

21E. Any reference to "政府" shall be construed as a reference to "特區政府". *(Added 26 of 1998 s. 42)*

21F. Any reference to "首席法官" or "首席大法官" shall be construed as a reference to "終審法院首席法官". *(Added 26 of 1998 s. 42)*

22. This Schedule applies unless the context otherwise requires.

(Added 110 of 1997 s. 6)

SCHEDULE 9 [s. 102]

TEMPORARY PROVISIONS

1. **Interpretation of words and expressions**

"British citizen" (英國公民) means a person who has the status of a British citizen under the British Nationality Act 1981 (1981 c. 61 U.K.) #;

Please also see L.N. 308 of 1993.

第 521 章

官方機密條例

本條例旨在管制未經授權而取得或披露官方資料。

[本條例 (第 28 條除外) } 1997 年 6 月 27 日 *1997 年第 369 號法律公告*]

第 I 部

導言

1. 簡稱及生效日期

(1) 本條例可引稱為《官方機密條例》。
(2) 本條例自保安局局長以憲報公告指定的日期起實施。 *(由 1997 年第 362 號法律公告修訂)*

第 II 部

間諜活動

2. 釋義

(1) 在本部中——
"女皇陛下轄下職位" (office under Her Majesty) 包括聯合王國政府、香港政府或任何英國屬地政府的任何部門之內或轄下的任何職位或僱用;
"文件" (document) 包括文件的一部分;

CHAPTER 521

OFFICIAL SECRETS

An Ordinance to control the unauthorized obtaining or disclosure of official information.

[The Ordinance (other than section 28) } 27 June 1997 *L.N. 369 of 1997*]

PART I

PRELIMINARY

1. Short title and commencement

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

PART II

ESPIONAGE

2. Interpretation

(1) In this Part—
"document" (文件) includes part of a document;
"model" (模型) includes design, pattern and specimen;
"munitions" (軍火) includes the whole or any part of any vessel, aircraft, tank or similar engine, arms and ammunition, torpedo or mine, intended or

附件 B Annex B

"本部所訂罪行" (offence under this Part) 包括任何可根據本部懲處的作為、不作為或其他事情；
"軍火" (munitions) 包括擬在戰爭中使用或經改裝以在戰爭中使用的任何船隻、航空器、坦克或類似機器的整體或其任何部分、槍械及彈藥、魚雷、水雷、地雷或空雷，以及任何擬作該用途的其他物品、物料或裝置，不論是實有的或擬有的；
"禁地" (prohibited place) 指任何——

(*a*) 防衛工事、軍火庫、海軍設施、空軍設施或屬於女皇陛下、由女皇陛下佔用或代表女皇陛下佔用的站所、工廠、船塢、坑道、雷場、營舍、船隻或航空器；

(*b*) 屬於女皇陛下、由女皇陛下佔用或代表女皇陛下佔用的電報、電話、無線電或訊號站所或辦公室；

(*c*) 屬於女皇陛下、由女皇陛下佔用或代表女皇陛下佔用，並用於建造、修理、製作或貯存任何供戰時使用的軍火、船隻、航空器、槍械或物料或工具，或用於建造、修理、製作或貯存與之有關的圖片、模型、圖則或文件的地方，或屬於女皇陛下、由女皇陛下佔用或代表女皇陛下佔用，並為在戰時取得任何有用的金屬、石油或礦物的目的而使用的地方；

(*d*) 不屬於女皇陛下的地方，而在該地方內，有任何軍火或與之有關的任何圖片、模型、圖則或文件正根據與女皇陛下或與代表女皇陛下的人訂立的合約而製作、修理、取得或貯存或在其他情況下代表聯合王國而製作、修理、取得或貯存；

(*e*) 屬於女皇陛下或為女皇陛下使用的地方，而該地方在當其時是已由總督以與其有關的資料或對其的損害會對敵人有用處為理由，為施行本條而藉命令宣布為禁地的；

(*f*) 鐵路、道路、通道或航道或其他陸路或水路運輸途徑 (包括屬其一部分或與其有關連的任何設施或構築物)，而該鐵路、道路、通道、航道或途徑在當其時是已由總督以與其有關的資料、其毀壞或對其作出的阻礙或干擾會對敵人有用處為理由，為施行本條而藉命令宣布為禁地的；

(*g*) 為公眾目的而用於氣體、水務或電力設施或其他設施的地方，而該地方在當其時是已由總督以與其有關的資料、其毀壞或對其作出的阻礙或干擾會對敵人有用處為理由，為施行本條而藉命令宣布為禁地的；及

adapted for use in war, and any other article, material or device, whether actual or proposed, intended for such use;
"offence under this Part" (本部所訂罪行) includes any act, omission or other thing that is punishable under this Part;
"office under Her Majesty" (女皇陛下轄下職位) includes any office or employment in or under any department of the Government of the United Kingdom, Hong Kong or any British possession;
"prohibited place" (禁地) means—

(*a*) any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, minefield, camp, vessel or aircraft belonging to or occupied by or on behalf of Her Majesty;

(*b*) any telegraph, telephone, wireless or signal station or office so belonging or occupied;

(*c*) any place belonging to or occupied by or on behalf of Her Majesty and used for the purpose of building, repairing, making or storing any munitions, vessel, aircraft, arms or materials or instruments for use in time of war, or any sketches, models, plans or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;

(*d*) any place not belonging to Her Majesty where any munitions, or any sketches, models, plans or documents relating thereto, are being made, repaired, got or stored under contract with, or with any person on behalf of, Her Majesty or otherwise on behalf of the United Kingdom;

(*e*) any place belonging to or used for the purposes of Her Majesty that is for the time being declared by order of the Governor to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy;

(*f*) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), that is for the time being declared by order of the Governor to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy;

(*g*) any place used for gas, water or electricity works or other works for purposes of a public character that is for the time being declared by order of the Governor to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy; and (*h*) 有任何軍火或與之有關的任何圖片、模型、圖則或文件正並非代表女皇陛下而製作、修理或貯存的地方，而該地方在當其時是已由總督以與其有關的資料、其毀壞或對其作出的阻礙或干擾會對敵人有用處為理由，為施行本條而藉命令宣布為禁地的；

"圖片" (sketch) 包括任何照片或其他表達一處地方或一件物品的方式；

"模型" (model) 包括設計、式樣及樣本；

"警司級人員" (superintendent of police) 包括任何職級相若於警司或職級較警司級為高的警務人員，亦包括獲總督為施行本部而授予警司級人員的權力的任何人。

(2) 在本部中提述警務處處長之處，須解釋為包括提述獲他明示授權在他因疾病、缺勤或其他因由而不能夠為施行本部而行事時，代表他如此行事的任何警務人員。

(3) 在本部中，除文意另有所指外——

(*a*) 提述屬於女皇陛下的地方之處，包括屬於聯合王國政府、香港政府或任何英國屬地政府的部門的地方，不論該地方實際上是否歸屬女皇陛下；

(*b*) 提述傳達的詞句，包括提述任何傳達，不論是全部傳達或部分傳達，亦不論所傳達的是圖片、圖則、模型、物品、紀錄、文件或資料本身或只是傳達其內容或效果或對其所作的描述；

(*c*) 提述取得或保留圖片、圖則、模型、物品、紀錄或文件的詞句，包括複製或安排複製圖片、圖則、模型、物品、紀錄或文件的整體或其任何部分；及

(*d*) 提述傳達圖片、圖則、模型、物品、紀錄或文件的詞句，包括轉移或轉傳圖片、圖則、模型、物品、紀錄或文件。

[*比照 1911 c. 28 ss. 3 & 12 U.K.; 1920 c. 75 s. 6(3) U.K.*]

3. 諜報活動

(1) 任何人如為有損聯合王國或香港的安全或利益的目的而作出以下作為，即屬犯罪——

(*a*) 接近、察看、越過或進入禁地，或處身毗鄰禁地之處；

(*h*) any place where any munitions, or any sketches, models, plans or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of Her Majesty that is for the time being declared by order of the Governor to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy;

"sketch" (圖片) includes any photograph or other mode of representing a place or thing;

"superintendent of police" (警司級人員) includes any police officer of a like or superior rank and any person upon whom the powers of a superintendent of police are for the purposes of this Part conferred by the Governor.

(2) References in this Part to the Commissioner of Police shall be construed as including references to any police officer expressly authorized by him to act on his behalf for the purposes of this Part when by reason of illness, absence or other cause he is unable to do so.

(3) In this Part, unless the context otherwise requires—

(*a*) a reference to a place belonging to Her Majesty includes a place belonging to a department of the Government of the United Kingdom, Hong Kong or any British possession, whether or not the place is actually vested in Her Majesty;

(*b*) expressions referring to communicating include any communicating, whether in whole or in part, and whether the sketch, plan, model, article, note, document or information itself or the substance, effect, or description thereof only be communicated;

(*c*) expressions referring to obtaining or retaining any sketch, plan, model, article, note or document include copying or causing to be copied the whole or any part of a sketch, plan, model, article, note or document; and

(*d*) expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document.

[*cf.* *1911 c. 28 ss. 3 & 12 U.K.; 1920 c. 75 s. 6(3) U.K.*]

3. Spying

(1) A person commits an offence if he, for a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong—

(*a*) approaches, inspects, passes over or is in the neighbourhood of, or enters, a prohibited place;

(b) 製作旨在對、可能對或擬對敵人有直接或間接用處的圖片、圖則、模型或紀錄；或

(c) 取得、收集、記錄或發表相當可能對、可能對或擬對敵人有直接或間接用處的任何機密的官方代碼或通行碼、任何圖片、圖則、模型或紀錄或其他文件或資料，或將之傳達予任何其他人。

(2) 在就本條所訂罪行而對某人提起的法律程序中，無須證明他犯有顯示有損聯合王國或香港的安全或利益的任何特定作為，而即使沒有證明他犯有該等作為，但如從案件的情況、他的行徑或經證明的他為人所知的品格看來，他的目的看似是有損聯合王國或香港的安全或利益的作為的目的，則他仍可被定罪。

(3) 在就本條所訂罪行而對某人提起的法律程序中，他曾經與或曾經企圖與在香港或其他地方的外國或台灣特工通訊此一事實，即為他曾為有損聯合王國或香港的安全或利益的目的而取得(或曾企圖為該目的而取得)旨在對、可能對或擬對敵人有直接或間接用處的資料的證據。

(4) 在不損害第 (3) 款的一般性的原則下，就該款而言——

(a) 任何人曾在香港或其他地方——

(i) 造訪外國或台灣特工的地址或與外國或台灣特工交往或與外國或台灣特工有聯繫；

(ii) 被發現管有外國或台灣特工的姓名或地址或關於外國或台灣特工的任何其他資料；或

(iii) 將外國或台灣特工的姓名或地址或關於外國或台灣特工的任何其他資料給予任何其他人，或從任何其他人處取得該等姓名、地址或資料，

則在沒有相反證據的情況下，該人須當作曾與外國或台灣特工通訊；及

(b) 任何被合理地懷疑是用於接收擬給予外國或台灣特工的通訊的在香港或其他地方的地址，或外國或台灣特工所居住或經營任何業務的地址，或外國或台灣特工為發出或接收通訊而使用的地址，須當作為外國或台灣特工的地址，而致予該等地址的通訊則須當作為與外國或台灣特工的通訊。

(b) makes a sketch, plan, model or note that is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or

(c) obtains, collects, records or publishes, or communicates to any other person, any secret official code word or password, or any sketch, plan, model or note, or other document or information, that is likely to be or might be or is intended to be directly or indirectly useful to an enemy.

(2) In any proceedings against a person for an offence under this section, it shall not be necessary to show that he was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong.

(3) In any proceedings against a person for an offence under this section, the fact that he has been in communication with, or attempted to communicate with, a foreign or Taiwan agent in Hong Kong or elsewhere, shall be evidence that he has, for a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong, obtained or attempted to obtain information that is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(4) For the purpose of subsection (3) but without prejudice to the generality of that subsection—

(a) a person shall, in the absence of evidence to the contrary, be deemed to have been in communication with a foreign or Taiwan agent if he has, in Hong Kong or elsewhere—

(i) visited the address of a foreign or Taiwan agent or consorted or associated with a foreign or Taiwan agent;

(ii) been found in possession of the name or address of, or any other information regarding, a foreign or Taiwan agent; or

(iii) supplied to any other person, or obtained from any other person, the name or address of, or any other information regarding, a foreign or Taiwan agent; and

(b) any address, in Hong Kong or elsewhere, reasonably suspected of being an address used for the receipt of communications intended for a foreign or Taiwan agent, or any address at which a foreign or Taiwan agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign or Taiwan agent, and communications addressed to such an address to be communications with a foreign or Taiwan agent.

(5) 在本條中，"外國或台灣特工" (foreign or Taiwan agent) 包括——
(*a*) 受或曾經受或被合理地懷疑是受或曾經受外國或台灣直接或間接僱用，以在香港或其他地方作出有損聯合王國或香港的安全或利益的作為的人；或
(*b*) 已經或已企圖或被合理地懷疑已經或已企圖在香港或其他地方為外國或台灣的利益作出該等作為的人。

(由 1998 年第 23 號第 2 條修訂)
[*比照 1911 c. 28 s. 1 U.K.; 1920 c. 75 s. 2 U.K.*]

4. 窩藏

任何人如作出以下作為，即屬犯罪——
(*a*) 在知道或有合理理由推測另一人即將或已經犯第 3 條所訂罪行的情況下，明知而窩藏該另一人；
(*b*) 明知而准許任何該等人士於他所佔用或控制的處所會面或集會；或
(*c*) 在已經窩藏任何該等人士或已准許任何該等人士於他所佔用或控制的處所會面或集會的情況下，故意不向或拒絕向警司級人員披露在他權力範圍內所能就任何該等人士提供的資料。

[*比照 1911 c. 28 s. 7 U.K.*]

5. 未經授權而使用制服、偽造等

(1) 任何人如為取得或協助另一人取得進入禁地的許可的目的或為任何其他有損聯合王國或香港的安全或利益的目的，作出以下作為，即屬犯罪——
(*a*) 在沒有合法權限的情況下，使用或穿着任何海軍、軍事、空軍、警察或其他官方制服，或使用或穿著與該等制服相似至屬旨在欺騙的任何制服，或虛假地表示自己是有權或曾有權使用或穿着該等制服的人；
(*b*) 在任何聲明或申請中，或在他所簽署或他人代表他簽署的任何文件中，明知而以口頭或書面作出任何虛假陳述或作出任何遺漏，或縱容他人作出任何虛假陳述或作出任何遺漏；

(5) In this section "foreign or Taiwan agent" (外國或台灣特工) includes a person who—
(*a*) is or has been or is reasonably suspected of being or having been employed by a foreign state or Taiwan either directly or indirectly for the purpose of committing an act, in Hong Kong or elsewhere, prejudicial to the safety or interests of the United Kingdom or Hong Kong; or
(*b*) has or is reasonably suspected of having, in Hong Kong or elsewhere, committed or attempted to commit such an act in the interests of a foreign state or Taiwan.

(Amended 23 of 1998 s. 2)
[*cf. 1911 c. 28 s. 1 U.K.; 1920 c. 75 s. 2 U.K.*]

4. Harbouring

A person commits an offence if he—
(*a*) knowingly harbours another person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under section 3;
(*b*) knowingly permits any such persons to meet or assemble in any premises in his occupation or under his control; or
(*c*) having harboured any such person, or having permitted any such persons to meet or assemble in any premises in his occupation or under his control, wilfully omits or refuses to disclose to a superintendent of police any information that it is in his power to give in relation to any such person.

[*cf. 1911 c. 28 s. 7 U.K.*]

5. Unauthorized use of uniforms, forgery, etc.

(1) A person commits an offence if he, for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place, or for any other purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong—
(*a*) uses or wears, without lawful authority, any naval, military, airforce, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform;
(*b*) orally or in writing, in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission;

(c) 偽造、竄改或干擾任何護照或任何海軍、軍事、空軍、警察或官方通行證、許可證、證明書、執照、牌照或性質相若的文件(在本條中稱為官方文件),或使用或管有任何該等偽造的、經竄改的或有問題的官方文件;
(d) 假冒或虛假地表示自己是正擔任女皇陛下轄下職位的人或該等人士的僱員,或假冒或虛假地表示自己是或不是已獲妥善地發給或傳達官方文件或機密的官方代碼或通行碼的人,或意圖為自己或他人取得官方文件或機密的官方代碼或通行碼,明知而作出任何虛假陳述;
(e) 在沒有有關政府部門或主管當局的授權下,使用、管有或控制——
(i) 任何政府部門或由女皇陛下委任的或在女皇陛下授權下行事的任何外交、海軍、軍事或空軍主管當局的任何印模、印章或印戳,或屬於該等部門或主管當局的印模、印章或印戳,或由該等部門或主管當局所使用、製作或提供的印模、印章或印戳;或
(ii) 與第(i)節所述的印模、印章或印戳相似至屬旨在欺騙的任何印模、印章或印戳;或
(f) 偽製(e)(i)段所述的任何印模、印章或印戳,或使用、管有或控制任何該等偽製的印模、印章或印戳。

(2) 如就本條所訂罪行而對某人提起的法律程序涉及證明有損聯合王國或香港的安全或利益的目的,第3(2)條如同適用於根據該條提起的法律程序般適用。

[比照 1920 c. 75 s. 1(1) & (3) U.K.]

6. 未經授權而使用官方文件等

(1) 任何人作出以下作為或有以下不作為,即屬犯罪——
(a) 在沒有保留官方文件(不論是否已完成或已為供使用而發出)的權利之時或在保留該等文件屬違反其責任之時,為任何有損聯合王國或香港的安全或利益的目的而保留該等文件;或沒有遵從由聯合王國政府任何部門、香港政府任何部門或獲該等部門授權的任何人就交回或處置該等文件而發出的任何指示;

(c) forges, alters or tampers with any passport or any naval, military, airforce, police, or official pass, permit, certificate, licence or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered or irregular official document;
(d) impersonates, or falsely represents himself to be a person holding, or in the employment of a person holding, office under Her Majesty, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word, whether for himself or any other person, knowingly makes any false statement;
(e) uses, or has in his possession or under his control, without the authority of the Government department or the authority concerned—
(i) any die, seal or stamp of or belonging to, or used, made or provided by any Government department or by any diplomatic, naval, military or airforce authority appointed by or acting under the authority of Her Majesty; or
(ii) any die, seal or stamp so nearly resembling any die, seal or stamp mentioned in subparagraph (i) as to be calculated to deceive; or
(f) counterfeits any die, seal or stamp mentioned in paragraph (e)(i), or uses, or has in his possession or under his control, any such counterfeited die, seal or stamp.

(2) In the case of any proceedings against a person for an offence under this section involving the proof of a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong, section 3(2) applies in like manner as it applies to proceedings under that section.

[*cf.* 1920 c. 75 s. 1(1) & (3) U.K.]

6. Unauthorized use of official documents, etc.

(1) A person commits an offence if he—
(a) retains for any purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong any official document, whether or not completed or issued for use, when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any department of the Government of the United Kingdom or Hong Kong or any person authorized by such department with regard to the return or disposal thereof;

(b) 容許另一人管有任何僅為供他一人使用而發出的官方文件；或傳達任何如此發出的機密的官方代碼或通行碼；或在沒有合法權限或辯解的情況下，管有任何為供任何其他人使用而發出的官方文件或機密的官方代碼或通行碼；或在藉拾獲或其他方式而取得由某人或某主管當局發出或為供某人或某主管當局使用而發出的任何官方文件的管有後，忽略或沒有將該文件歸還該人、該主管當局或警務人員；或

(c) 在沒有合法權限或辯解的情況下，製造、售賣或為售賣而管有第 5(1)(e) 或 (f) 條所述的任何印模、印章或印戳。

(2) 如就本條所訂罪行而對某人提起的法律程序涉及證明有損聯合王國或香港的安全或利益的目的，第 3(2) 條如同適用於根據該條提起的法律程序般適用。

[比照 1920 c. 75 s. 1(2) & (3) U.K.]

7. 妨礙

任何人在禁地附近妨礙、明知而誤導或以其他方式干預或阻礙以下人士，即屬犯罪——

(a) 警務處處長、警司級人員或其他警務人員；或

(b) 正在就該禁地執行護衛、放哨、巡邏或其他類似職務的女皇陛下部隊成員。

[比照 1920 c. 75 s. 3 U.K.]

8. 提供資料的責任

(1) 凡警務處處長信納——

(a) 有合理理由懷疑有人已犯第 3 條所訂罪行；及

(b) 有合理理由相信任何人能夠提供關於該罪行或懷疑已犯的罪行的資料，

他可向總督申請，准許他行使第 (2) 款所賦權力。

(2) 如總督授予第 (1) 款所述的准許，警務處處長可授權一名警司級人員或任何職級不低於督察級的警務人員要求被相信是能夠提供資料的人——

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of any person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any die, seal or stamp mentioned in section 5(1)(e) or (f).

(2) In the case of any proceedings against a person for an offence under this section involving the proof of a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong, section 3(2) applies in like manner as it applies to proceedings under that section.

[cf. 1920 c. 75 s. 1(2) & (3) U.K.]

7. Obstruction

A person commits an offence if he, in the vicinity of a prohibited place, obstructs, knowingly misleads or otherwise interferes with or impedes—

(a) the Commissioner of Police or a superintendent of police or other police officer; or

(b) a member of Her Majesty's forces engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place.

[cf. 1920 c. 75 s. 3 U.K.]

8. Duty to give information

(1) The Commissioner of Police may apply to the Governor for permission to exercise the powers conferred by subsection (2) where the Commissioner is satisfied that there is—

(a) reasonable ground for suspecting that an offence under section 3 has been committed; and

(b) reasonable ground for believing that any person is able to furnish information as to the offence or suspected offence.

(2) If the Governor grants the permission mentioned in subsection (1), the Commissioner of Police may authorize a superintendent of police, or any police officer not below the rank of inspector, to require the person believed to be able to furnish information—

(3) 法庭除具有命令不許公眾旁聽任何法律程序的權力外，在不損害該等權力的原則下，如在法庭進行的有關本部所訂罪行的法律程序或上訴時的法律程序中，或在就本部所訂罪行而審訊某人的審訊過程中，控方以發布行將在法律程序中提出的證據或作出的陳述會有損聯合王國或香港的安全為理由，申請在聆訊的任何部分不許全部或部分公眾旁聽，法庭可作出具有此效力的命令，但在任何情況下均須公開宣布判刑。

(由 1997 年第 362 號法律公告修訂)
[*比照 1911 c. 28 s. 8 U.K.; 1920 c. 75 s. 8 U.K.*]

10. 罰則

(1) 任何人犯第 3 條所訂罪行，一經循公訴程序定罪，可處監禁 14 年。
(2) 任何人犯第 4 至 8 條中任何一條所訂罪行——
(*a*) 一經循公訴程序定罪，可處監禁 2 年；
(*b*) 一經循簡易程序定罪，可處第 4 級罰款及監禁 3 個月。

[*比照 1920 c. 75 s. 8 U.K.*]

11. 搜查手令

(1) 裁判官如因經宣誓而作的告發而信納有合理理由懷疑有人已犯或即將犯本部所訂罪行，可授予搜查手令，授權任何警務人員——
(*a*) 於任何時間進入該手令所指明的任何處所或地方，在有需要時可使用武力進入；
(*b*) 搜查該處所或地方及於其內發現的每一人；
(*c*) 檢取他在該處所或地方或在該人身上發現的任何圖片、圖則、模型、物品、紀錄、文件或任何性質類似的東西，或任何屬有人已犯或即將犯本部所訂罪行的證據的東西，但先決條件是他有合理理由懷疑有人已就或即將就所檢取的物品犯本部所訂罪行。

認可活頁版，由香港特別行政區政府印務局局長印刷及發行

(3) In addition and without prejudice to any powers that a court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a court against any person for an offence under this Part or the proceedings on appeal, or in the course of the trial of a person for an offence under this Part, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the United Kingdom or Hong Kong, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(Amended L.N. 362 of 1997)
[*cf. 1911 c. 28 s. 8 U.K.; 1920 c. 75 s. 8 U.K.*]

10. Penalties

(1) A person who commits an offence under section 3 is liable on conviction on indictment to imprisonment for 14 years.
(2) A person who commits an offence under any of sections 4 to 8 is liable—
(*a*) on conviction on indictment to imprisonment for 2 years;
(*b*) on summary conviction to a fine at level 4 and to imprisonment for 3 months.

[*cf. 1920 c. 75 s. 8 U.K.*]

11. Search warrants

(1) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Part has been or is about to be committed, he may grant a search warrant authorizing any police officer to—
(*a*) enter at any time any premises or place named in the warrant, if necessary by force;
(*b*) search the premises or place and every person found therein;
(*c*) seize any sketch, plan, model, article, note, document or anything of a like nature or anything that is evidence of an offence under this Part having been or being about to be committed, that he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Part has been or is about to be committed.

Authorized Loose-leaf Edition, Printed and Published by the Government Printer, Hong Kong Special Administrative Region

(2) 凡警司級人員覺得某個案的情況極其緊急，而且有需要即時採取行動以保障聯合王國或香港的利益，他可藉書面命令向任何警務人員授予與裁判官可根據第 (1) 款藉手令給予的權限相同的權限。

[比照 1911 c. 28 s. 9 U.K.]

第 III 部

非法披露

12. 釋義

(1) 在本部中——

"公務人員" (public servant) 指——

(a) 在英皇香港政府下擔任受薪職位的人，不論該職位屬永久或臨時性質；

(b) 任何受僱在英皇聯合王國政府公務員體制 (包括女皇陛下外交部及女皇陛下海外公務員系統) 內工作的人；

(c) 武裝部隊任何成員；

(d) 訂明團體或屬訂明類別的團體的成員或僱員，而他本身是為施行本段而被訂明的或是屬於任何該等團體的訂明成員或僱員類別的；

(e) 擔任訂明職位人士或該等人士的僱員，而他本身是為施行本段而被訂明的或是屬於訂明僱員類別的；

"地區" (territory) 指香港以外的不屬國家的地區；

"防務" (defence) 指——

(a) 武裝部隊的規模、狀況、組織、後勤、戰鬥序列、部署、行動、戒備狀態及訓練；

(2) Where it appears to a superintendent of police that the case is one of great emergency and that in the interests of the United Kingdom or Hong Kong immediate action is necessary, he may by a written order give to any police officer the like authority as may be given by the warrant of a magistrate under subsection (1).

[*cf.* 1911 c. 28 s. 9 U.K.]

PART III

UNLAWFUL DISCLOSURE

12. Interpretation

(1) In this Part—

"armed forces" (武裝部隊) means the armed forces of the Crown;

"British national" (英國國民) means a British citizen, a British Overseas citizen, a British Dependent Territories citizen, a British National (Overseas) or a British protected person;

"defence" (防務) means—

(*a*) the size, shape, organization, logistics, order of battle, deployment, operations, state of readiness and training of the armed forces;

(*b*) the weapons, stores or other equipment of the armed forces and the invention, development, production and operation of such equipment and research relating to it;

(*c*) defence policy and strategy and military planning and intelligence;

(*d*) plans and measures for the maintenance of essential supplies and services that are or would be needed in time of war;

"disclose" and "disclosure" (披露), in relation to a document or other article, include parting with possession of it;

"Hong Kong permanent resident" (香港永久性居民) has the meaning assigned to that term by section 2(1) of the Immigration Ordinance (Cap. 115);

"international relations" (國際關係) means the relations between States, between international organizations or between one or more States and one or more such organizations and includes—

(*a*) any matter relating to a State other than the United Kingdom or to an international organization that is capable of affecting the relations of the United Kingdom with another State or with an international organization; and

(b) 武裝部隊的武器、補給品或其他裝備，以及該等裝備的發明、研製、生產及操作和與之有關的研究；
(c) 防衛政策和策略以及軍事規劃和情報；
(d) 維持在戰時需要或會在戰時需要的供應品和服務的計劃及措施；

"武裝部隊" (armed forces) 指英皇的武裝部隊；
"披露" (disclose, disclosure) 就文件或其他物品而言，包括放棄對該文件或物品的管有；
"訂明" (prescribed) 指由總督訂立的命令所訂明；
"香港永久性居民" (Hong Kong permanent resident) 具有《人民入境條例》(第 115 章) 第 2(1) 條給予該詞的涵義；
"英國國民" (British national) 指英國公民、英國海外公民、英國屬土公民、英國國民 (海外) 或受英國保護人士；
"國家" (State) 包括一個國家的政府及其政府的任何機構；
"國際關係" (international relations) 指國家與國家之間的關係或國際組織與國際組織之間的關係，或一個或多於一個國家與一個或多於一個國際組織之間的關係，並包括——
(a) 關乎聯合王國以外的國家或國際組織、並能影響聯合王國與另一國家或某一國際組織的關係的事宜；及
(b) 關乎聯合王國與香港之間的關係或香港的對外關係的事宜。

(2) 除第 (3) 款另有規定外，在本部中，"政府承辦商" (government contractor) 指任何不是公務人員，但屬——
(a) 為英皇香港政府、第 (1) 款所述的任何部門、部隊或團體或任何擔任根據第 (1) 款訂明的職位的人士的目的，提供貨品或服務 (或受僱為該等目的提供貨品或服務) 的人；或
(b) 根據以下協議或安排提供貨品或服務 (或受僱根據以下協議或安排提供貨品或服務) 的人：由總督核證為屬任何地區的政府、任何聯合王國以外的國家的政府或任何國際組織屬其中一方的協議或安排的協議或安排，或根據附屬於任何該等協議或安排的或為執行任何該等協議或安排而訂立的協議或安排。

(3) 凡為施行第 (1) 款而訂立的命令訂明任何團體或任何擔任職位人士的僱員或僱員類別，以下人士須當作不是就本部而言的政府承辦商——
(a) 該團體或擔任該職位人士的未經訂明僱員，或該團體或該人士的僱員但不屬於訂明僱員類別者；及

(b) any matter relating to the relations between the United Kingdom and Hong Kong or the external relations of Hong Kong;

"prescribed" (訂明) means prescribed by an order made by the Governor;
"public servant" (公務人員) means—
(a) any person who holds an office of emolument under the Crown in right of the Government of Hong Kong, whether such office is permanent or temporary;
(b) any person employed in the civil service of the Crown in right of the United Kingdom, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;
(c) any member of the armed forces;
(d) any person who is a member or employee of a prescribed body or a body of a prescribed class and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of members or employees of any such body;
(e) any person who holds a prescribed office or who is an employee of such a person and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of such employees;

"State" (國家) includes the government of a State and any organ of its government;
"territory" (地區) means any territory, not being a State, outside Hong Kong.

(2) In this Part, "government contractor" (政府承辦商) means, subject to subsection (3), any person who is not a public servant but who provides, or is employed in the provision of, goods or services—
(a) for the purposes of the Crown in right of the Government of Hong Kong, of any of the services, forces or bodies mentioned in subsection (1) or of the holder of any office prescribed under subsection (1); or
(b) under an agreement or arrangement certified by the Governor as being an agreement or arrangement to which the Government of a territory, the Government of a State, other than the United Kingdom, or an international organization is a party or which is subordinate to, or made for the purposes of implementing, any such agreement or arrangement.

(3) Where an employee or a class of employees of any body, or of any holder of an office, is prescribed by an order made for the purposes of subsection (1), the following persons shall be deemed not to be a government contractor for the purposes of this Part—
(a) any employee of that body, or of the holder of that office, who is not prescribed or is not within the prescribed class of employees; and

(b) 並非為執行該團體或擔任該職位的人士的某職能的目的而提供貨品或服務 (或並非受僱為該目的而提供貨品或服務) 的人，而該僱員或該訂明類別的僱員是就該職能而被任用的。

(4) 除第 (5) 款另有規定外而在符合第 (6) 款的規定下，在本部中，“國際組織” (international organization) 指其成員僅限於國家或國家及地區的組織，亦包括提述該等組織轄下的機構。

(5) 在第 (4) 款中，提述國際組織之處，包括提述任何該等組織 (不論其成員是否僅限於國家或國家及地區)，並包括商業組織。

(6) 在為本條的施行而決定某一組織的成員是否僅限於國家或國家及地區時，任何成員如本身屬成員僅限於國家的組織，或本身屬該等組織轄下的機構，須視為國家。

(7) 在本部中，“保安或情報” (security or intelligence) 指保安或情報部門或其任何部分的工作或支援該等部門的工作，而提述關乎保安或情報的資料之處，包括提述由該等部門、支援該等部門的人或該等部門的任何部分所持有或轉傳的資料。

[比照 1989 c. 6 ss. 1(9), 2(4), 3(5), 12 & 13 U.K.]

13. 保安及情報資料——部門成員及獲知會人士

(1) 任何屬或曾經屬——

(a) 保安及情報部門的成員的人士；或

(b) 獲知會受本款條文規限的人士，

如在沒有合法權限的情況下，披露憑藉他作為任何該等部門的成員的身分或於該項知會有效或曾經有效期間在其工作過程中而由或曾經由他管有，並關乎保安或情報的資料、文件或其他物品，即屬犯罪。

(2) 第 (1) 款中提述披露關乎保安或情報的資料之處，包括提述作出本意是披露該等資料的陳述，亦包括提述作出擬被其所致予的人視為該等披露的陳述。

(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理因由相信有關的資料、文件或物品是關乎保安或情報的，即可以此作為免責辯護。

(b) any person who does not provide, or is not employed in the provision of, goods or services for the purposes of the performance of those functions of the body or the holder of the office in connection with which the employee or prescribed class of employees is engaged.

(4) In this Part, "international organization" (國際組織) means, subject to subsections (5) and (6), an organization of which only States or States and territories are members and includes a reference to any organ of such an organization.

(5) In subsection (4) the reference to an international organization includes a reference to any such organization whether or not one of which only States or States and territories are members and includes a commercial organization.

(6) In determining for the purposes of this section whether only States or States and territories are members of an organization, any member that is itself an organization of which only States are members, or that is an organ of such an organization, shall be treated as a State.

(7) In this Part, "security or intelligence" (保安或情報) means the work of, or in support of, the security or intelligence services or any part of them, and references to information relating to security or intelligence include references to information held or transmitted by those services or by persons in support of them, or any part of them.

[cf. 1989 c. 6 ss. 1(9), 2(4), 3(5), 12 & 13 U.K.]

13. Security and intelligence information—members of services and persons notified

(1) A person who is or has been—

(a) a member of the security and intelligence services; or

(b) a person notified that he is subject to the provisions of this subsection,

commits an offence if without lawful authority he discloses any information, document or other article relating to security or intelligence that is or has been in his possession by virtue of his position as a member of any of those services or in the course of his work while the notification is or was in force.

(2) The reference in subsection (1) to disclosing information relating to security or intelligence includes a reference to making any statement that purports to be a disclosure of such information or is intended to be taken by those to whom it is addressed as being such a disclosure.

(3) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that the information, document or article in question related to security or intelligence.

(4) 某人受第 (1) 款規限的知會，須以總督送達該人的書面通知而作出，而總督如認為有關人士所承擔的工作屬或包括與保安或情報部門有關連，且其性質是為保障聯合王國的國家安全或香港的安全的需要，該人宜受該款規限，則總督可送達該等通知。

(5) 除第 (6) 款另有規定外，為施行第 (1) 款而作出的知會，在自其送達日期起計的 5 年期內有效，但該項知會可藉根據第 (4) 款送達的另一通知而續期，每次可續期 5 年。

(6) 為施行第 (1) 款而作出的知會可隨時藉由總督送達有關人士的另一書面通知而撤銷，而總督如認為該人所承擔的工作不再屬第 (4) 款所述者，即須送達該另一通知。

[*比照 1989 c. 6 s. 1 U.K.*]

14. 保安及情報資料——公務人員及承辦商

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，作出一項具損害性的披露，而所披露的是憑藉他作為公務人員或政府承辦商的身分 (但並非第 13(1) 條所述者) 而由或曾經由他管有，並關乎保安或情報的資料、文件或其他物品，即屬犯罪。

(2) 就第 (1) 款而言，如——

(*a*) 披露導致對保安或情報部門或其任何部分的工作的損害；

(*b*) 有關資料、文件或物品的性質屬若被未經授權而披露便相當可能會導致該等損害者；或

(*c*) 某種類或類別的資料、文件或物品被未經授權而披露便相當可能會具有該效果，而有關的資料、文件或物品屬於該種類或類別，

披露即屬具損害性。

(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理因由相信——

(*a*) 有關的資料、文件或物品關乎保安或情報；或

(*b*) 披露會屬第 (2) 款所指的具損害性，

即可以此作為免責辯護。

[*比照 1989 c. 6 s. 1 U.K.*]

(4) Notification that a person is subject to subsection (1) shall be effected by a notice in writing served on him by the Governor, and such a notice may be served if, in the Governor's opinion, the work undertaken by the person in question is or includes work connected with the security or intelligence services and its nature is such that the interests of the national security of the United Kingdom or the security of Hong Kong require that he should be subject to that subsection.

(5) Subject to subsection (6), a notification for the purposes of subsection (1) shall be in force for the period of 5 years beginning with the day on which it is served but may be renewed by further notices under subsection (4) for periods of 5 years at a time.

(6) A notification for the purposes of subsection (1) may at any time be revoked by a further notice in writing served by the Governor on the person concerned and the Governor shall serve such a further notice as soon as, in his opinion, the work undertaken by that person ceases to be such as is mentioned in subsection (4).

[*cf. 1989 c. 6 s. 1 U.K.*]

14. Security and intelligence information—public servants and contractors

(1) A person who is or has been a public servant or government contractor commits an offence if without lawful authority he makes a damaging disclosure of any information, document or other article relating to security or intelligence that is or has been in his possession by virtue of his position as such but otherwise than as mentioned in section 13(1).

(2) For the purposes of subsection (1), a disclosure is damaging if—

(*a*) the disclosure causes damage to the work of, or any part of, the security or intelligence services;

(*b*) the information, document or article in question is of such a nature that its unauthorized disclosure would be likely to cause such damage; or

(*c*) the information, document or article in question falls within a class or description of information, documents or articles the unauthorized disclosure of which would be likely to have that effect.

(3) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that—

(*a*) the information, document or article in question related to security or intelligence; or

(*b*) the disclosure would be damaging within the meaning of subsection (2).

[*cf. 1989 c. 6 s. 1 U.K.*]

15. 防務資料

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，作出一項具損害性的披露，而所披露的是憑藉他作為公務人員或政府承辦商的身分而由或曾經由他管有，並關乎防務的資料、文件或其他物品，即屬犯罪。

(2) 就第(1)款而言，如——

(*a*) 披露對武裝部隊或其任何部分執行其任務的能力有損害；

(*b*) 披露引致武裝部隊成員死亡或受傷，或引致武裝部隊的裝備或裝置受嚴重損害；

(*c*) 披露危害(但並非以(*a*)及(*b*)段所述方式危害)聯合王國或香港在其他地方的利益、嚴重妨礙聯合王國或香港促進或保障該等利益或危害英國國民或香港永久性居民在其他地方的安全；或 *(由1998年第23號第2條修訂)*

(*d*) 有關的資料、文件或物品的性質屬若被未經授權而披露便相當可能會具有(*a*)至(*c*)段所描述的任何效果者，

披露即屬具損害性。

(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理因由相信——

(*a*) 有關的資料、文件或物品關乎防務；或

(*b*) 披露會屬第(2)款所指的具損害性，

即可以此作為免責辯護。

[比照1989 c. 6 s. 2 U.K.]

16. 關乎國際關係的資料

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，作出一項具損害性的披露，而所披露的是——

(*a*) 關乎國際關係的資料、文件或其他物品；或

(*b*) 自聯合王國以外的國家或地區或自國際組織取得的任何機密的資料、文件或其他物品，

且該等資料、文件或物品是憑藉他作為公務人員或政府承辦商的身分而由或曾經由他管有的，他即屬犯罪。

(2) 就第(1)款而言，如——

15. Defence information

(1) A person who is or has been a public servant or government contractor commits an offence if without lawful authority he makes a damaging disclosure of any information, document or other article relating to defence that is or has been in his possession by virtue of his position as such.

(2) For the purposes of subsection (1), a disclosure is damaging if—

(*a*) the disclosure damages the capability of, or any part of, the armed forces to carry out their tasks;

(*b*) the disclosure leads to loss of life or injury to members of the armed forces or serious damage to the equipment or installations of those forces;

(*c*) otherwise than as mentioned in paragraphs (*a*) and (*b*), the disclosure endangers the interests of the United Kingdom or Hong Kong elsewhere, seriously obstructs the promotion or protection by the United Kingdom or Hong Kong of those interests or endangers the safety of British nationals or Hong Kong permanent residents elsewhere; or *(Amended 23 of 1998 s. 2)*

(*d*) the information, document or article in question is of such a nature that its unauthorized disclosure would be likely to have any of the effects described in paragraphs (*a*) to (*c*).

(3) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that—

(*a*) the information, document or article in question related to defence; or

(*b*) the disclosure would be damaging within the meaning of subsection (2).

[cf. 1989 c. 6 s. 2 U.K.]

16. Information related to international relations

(1) A person who is or has been a public servant or government contractor commits an offence if without lawful authority he makes a damaging disclosure of—

(*a*) any information, document or other article relating to international relations; or

(*b*) any confidential information, document or other article that was obtained from a territory or a State, other than the United Kingdom, or an international organization,

being information or a document or article that is or has been in his possession by virtue of his position as a public servant or government contractor.

(2) For the purposes of subsection (1), a disclosure is damaging if—

(*a*) 披露危害聯合王國或香港在其他地方的利益、嚴重妨礙聯合王國或香港促進或保障該等利益或危害英國國民或香港永久性居民在其他地方的安全；或 *(由 1998 年第 23 號第 2 條修訂)*

(*b*) 有關的資料、文件或物品的性質屬若被未經授權而披露便相當可能會具有 (*a*) 段所描述的任何效果者，

披露即屬具損害性。

(3) 就第 (1)(*b*) 款所述的資料、文件或其他物品而言——

(*a*) 確定其屬機密此一事實；或

(*b*) 確定其性質或內容，

可足以為第 (2)(*b*) 款的施行而確定該資料、文件或物品的性質屬若被未經授權而披露便相當可能具有該款所述的任何效果者。

(4) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理因由相信——

(*a*) 有關的資料、文件或物品屬第 (1) 款所述者；或

(*b*) 披露會屬第 (2) 款所指的具損害性，

即可以此作為免責辯護。

(5) 就本條而言，凡自某地區、國家或組織按某些條款取得資料、文件或物品而該等條款規定它須在機密情況下持有，或在某情況下自某地區、國家或組織取得資料、文件或物品而該情況令該地區、國家或組織期望它在機密情況下持有是合理的，該資料、文件或物品即屬機密。

[*比照 1989 c. 6 s. 3 U.K.*]

17. 關乎犯罪及刑事調查的資料

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，披露本條適用並憑藉他作為公務人員或政府承辦商身分而由或曾經由他管有的資料、文件或其他物品，即屬犯罪。

(2) 本條適用於——

(*a*) 若被披露便——

(i) 導致犯罪的資料、文件或其他物品；

(*a*) the disclosure endangers the interests of the United Kingdom or Hong Kong elsewhere, seriously obstructs the promotion or protection by the United Kingdom or Hong Kong of those interests or endangers the safety of British nationals or Hong Kong permanent residents elsewhere; or *(Amended 23 of 1998 s. 2)*

(*b*) the information, document or article in question is of such a nature that its unauthorized disclosure would be likely to have any of the effects described in paragraph (*a*).

(3) In the case of information or a document or other article mentioned in subsection (1)(*b*)—

(*a*) to establish as a fact that it is confidential; or

(*b*) to establish its nature or contents,

may be sufficient to establish for the purpose of subsection (2)(*b*) that the information, document or article is of such a nature that its unauthorized disclosure would be likely to have any of the effects described in that subsection.

(4) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that—

(*a*) the information, document or article in question was such as is mentioned in subsection (1); or

(*b*) the disclosure would be damaging within the meaning of subsection (2).

(5) For the purposes of this section, any information, document or article obtained from a territory, State or organization is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the territory, State or organization to expect that it would be so held.

[*cf. 1989 c. 6 s. 3 U.K.*]

17. Information related to commission of offences and criminal investigations

(1) A person who is or has been a public servant or government contractor commits an offence if without lawful authority he discloses any information, document or other article to which this section applies and that is or has been in his possession by virtue of his position as such.

(2) This section applies to—

(*a*) any information, document or other article the disclosure of which—

(i) results in the commission of an offence;

(ii) 利便某人逃離合法羈押或作出對受合法羈押的人的穩當看管有損害的作為的資料、文件或其他物品；或
(iii) 阻礙防止或偵查罪行，或阻礙拘捕或檢控疑犯的資料、文件或其他物品；
(*b*) 其性質屬若被未經授權而披露便相當可能會具有 (*a*) 段所述的任何效果的資料、文件或其他物件；
(*c*) 因為根據在《電訊條例》(第 106 章) 第 33 條下發出的命令採取的行動而取得的資料；
(*d*) 因為根據在《郵政署條例》(第 98 章) 第 13(1) 條下發出的手令採取的行動而取得的資料；或
(*e*) 關乎因為如 (*c*) 或 (*d*) 段所述採取行動而取得的資料，以及被或曾經被用於 (或被或曾經被持有以用於) 該等行動的或因為該等行動而取得的文件或其他物品。

(3) 就符合第 (2)(*a*) 款的描述的披露而被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理因由相信該項披露會有該款所述的任何效果，即可以此作為免責辯護。

(4) 就任何其他披露而被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理因由相信有關的資料、文件或物品是本條適用的資料、文件或物品，即可以此作為免責辯護。

(5) 在本條中，“合法羈押” (legal custody) 包括依據任何成文法則或任何根據成文法則作出的文書而作的拘留。

[*比照 1989 c. 6 s. 4 U.K.*]

18. 因未經授權的披露所得的資料或在機密情況下託付的資料

(1) 如有任何資料、文件或其他物品在第 (2) 款所述的情況下落入某人的管有，而該人知道或有合理因由相信——
(*a*) 第 13 至 17 條中的任何一條禁止將它披露；及
(*b*) 它是如第 (2) 款所述落入他的管有的，
而在沒有合法權限的情況下將它披露，該人即屬犯罪。

認可活頁版，由香港特別行政區政府印務局局長印刷及發行

(ii) facilitates an escape from legal custody or the doing of any other act prejudicial to the safekeeping of persons in legal custody; or
(iii) impedes the prevention or detection of offences or the apprehension or prosecution of suspected offenders;
(*b*) any information, document or other article the nature of which is such that its unauthorized disclosure would be likely to have any of the effects mentioned in paragraph (*a*);
(*c*) any information obtained by reason of action taken under an order issued under section 33 of the Telecommunications Ordinance (Cap. 106); *(Amended 36 of 2000 s. 28)*
(*d*) any information obtained by reason of action taken under a warrant issued under section 13(1) of the Post Office Ordinance (Cap. 98); or
(*e*) any information relating to the obtaining of information by reason of action taken as mentioned in paragraph (*c*) or (*d*) and any document or other article that is or has been used or held for use in, or has been obtained by reason of, any such action.

(3) It is a defence for a person charged with an offence under this section in respect of a disclosure falling within subsection (2)(*a*) to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that the disclosure would have any of the effects mentioned in that subsection.

(4) It is a defence for a person charged with an offence under this section in respect of any other disclosure to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that the information, document or article in question was information or a document or article to which this section applies.

(5) In this section "legal custody" (合法羈押) includes detention in pursuance of any enactment or any instrument made under an enactment.

[*cf. 1989 c. 6 s. 4 U.K.*]

18. Information resulting from unauthorized disclosures or information entrusted in confidence

(1) A person who comes into possession of any information, document or other article in circumstances mentioned in subsection (2) commits an offence if he discloses it without lawful authority and knowing, or having reasonable cause to believe, that—
(*a*) it is protected against disclosure by any of sections 13 to 17; and
(*b*) it has come into his possession as mentioned in subsection (2).

Authorized Loose-leaf Edition, Printed and Published by the Government Printer, Hong Kong Special Administrative Region

19. 因諜報活動所得的資料

任何人如在沒有合法權限的情況下，披露他知道或有合理因由相信是因違反第 3 條以致落入他的管有的任何資料、文件或其他物品，即屬犯罪。

[比照 1989 c. 6 s. 5(6) U.K.]

20. 在機密情況下託付予地區、國家或國際組織的資料

(1) 如有任何資料、文件或其他物品在第 (2) 款所述的情況下落入某人的管有，而該人知道或有合理因由相信——

(a) 它是如第 (2)(a) 款所述在機密情況下傳達的；
(b) 它是如第 (2)(b) 款所述落入他的管有的；及
(c) 將它披露會具損害性，

而將它作具損害性的披露，即屬犯罪。

(2) 第 (1) 款所提述的情況為關乎保安或情報或防務或國際關係的任何資料、文件或其他物品——

(a) 被聯合王國政府或香港政府在機密情況下傳達予某地區、國家或國際組織，或被人代表聯合王國政府或香港政府在機密情況下傳達予某地區、國家或國際組織；及
(b) 因為被人在沒有該地區、國家或組織或 (如屬組織) 組織的成員的授權的情況下披露，以致落入某一人的管有 (不論該項披露是向該某一人或其他人作出的)。

(3) 在以下情況，有關人士不屬犯第 (1) 款所訂罪行——

(a) 該人在合法權限下披露有關的資料、文件或物品；或
(b) 有關的資料、文件或物品已於過去在有關地區、國家或組織或 (如屬組織) 組織的成員的授權下提供予公眾。

(4) 就本條而言，披露資料、文件或物品是否具損害性此一問題，須以就公務人員在違反第 14、15 或 16 條的情況下披露該資料、文件或物品裁定該問題的會採用方式，予以裁定。

(5) 就本條而言，如任何資料、文件或物品——

認可活頁版，由香港特別行政區政府印務局局長印刷及發行

19. Information resulting from spying

A person commits an offence if without lawful authority he discloses any information, document or other article that he knows, or has reasonable cause to believe, to have come into his possession as a result of a contravention of section 3.

[*cf. 1989 c. 6 s. 5(6) U.K.*]

20. Information entrusted in confidence to territories, States or international organizations

(1) A person who comes into possession of any information, document or other article in circumstances mentioned in subsection (2) commits an offence if he makes a damaging disclosure of it knowing, or having reasonable cause to believe, that—

(*a*) it has been communicated in confidence as mentioned in subsection (2)(*a*);
(*b*) it has come into his possession as mentioned in subsection (2)(*b*); and
(*c*) its disclosure would be damaging.

(2) The circumstances referred to in subsection (1) are where any information, document or other article relating to security or intelligence, defence or international relations—

(*a*) has been communicated in confidence by or on behalf of the Government of the United Kingdom or Hong Kong to a territory or State or an international organization; and
(*b*) has come into a person's possession as a result of it having been disclosed (whether to him or another) without the authority of that territory, State or organization or, in the case of an organization, of a member of it.

(3) A person does not commit an offence under subsection (1) if the information, document or article—

(*a*) is disclosed by him with lawful authority; or
(*b*) has previously been made available to the public with the authority of the territory, State or organization concerned or, in the case of an organization, of a member of it.

(4) For the purposes of this section, the question whether a disclosure is damaging shall be determined as it would be determined in relation to a disclosure of the information, document or article in question by a public servant in contravention of section 14, 15 or 16.

(5) For the purposes of this section, information or a document or article is communicated in confidence if it is communicated—

Authorized Loose-leaf Edition, Printed and Published by the Government Printer, Hong Kong Special Administrative Region

(*a*) 按某些條款傳達而該等條款規定它須在機密情況下持有；或
(*b*) 在某情況下傳達而該情況令傳達者能合理地期望它會在機密情況下持有，

該資料、文件或物品即屬在機密情況下傳達。

(6) 任何人不得就他披露任何資料、文件或其他物品，而既被裁定犯本條所訂罪行又被裁定犯第 13 至 18 條中的任何一條所訂的罪行。

[*比照 1989 c. 6 s. 6 U.K.*]

21. 經授權的披露

(1) 就本部而言，如——
(*a*) 公務人員；或
(*b*) 既非公務人員亦非政府承辦商，但受制於一項第 13(1) 條所指的有效知會的人，

按照其公務上的職責作出披露，該項披露即屬在合法權限下作出，亦僅在該等情況下該項披露方屬在合法權限下作出。

(2) 就本部而言，如政府承辦商——
(*a*) 按照正式授權作出披露；或
(*b*) 憑藉某職能而屬政府承辦商，而他在沒有違反正式限制的情況下為該職能的目的作出披露，

該項披露即屬在合法權限下作出，亦僅在該等情況下該項披露方屬在合法權限下作出。

(3) 就本部而言，如任何其他人所作出的披露——
(*a*) 是由公務人員為他作為公務人員的職能的目的而作出的；或
(*b*) 是按照正式授權作出的，

該項披露即屬在合法權限下作出，亦僅在該等情況下該項披露方屬在合法權限下作出。

(4) 被控犯第 13 至 20 條中的任何一條所訂的罪行的人如證明在指稱的罪行發生時，他相信他有合法權限作出有關的披露而亦沒有合理因由相信情況並非如此，即可以此作為免責辯護。

(5) 除第 (6) 款另有規定外，在本條中，"正式授權" (official authorization) 及 "正式限制" (official restriction) 指由公務人員或政府承辦商妥為給予或施加的授權或限制，或由訂明團體或屬於訂明類別的團體妥為給予或施加 (或由他人代表訂明團體或屬於訂明類別的團體妥為給予或施加) 的授權或限制。

(6) 就第 20 條而言，"正式授權" (official authorization) 包括由有關地區、國家或組織或 (如屬組織) 組織的成員妥為給予 (或由他人代表有關該等地區、國家、組織或成員妥為給予) 的授權。

[*比照 1989 c. 6 s. 7 U.K.*]

(*a*) on terms requiring it to be held in confidence; or
(*b*) in circumstances in which the person communicating it could reasonably expect that it would be so held.

(6) No person shall be convicted for both an offence under this section and an offence under any of sections 13 to 18 in relation to the disclosure by him of any information or document or other article.

[*cf. 1989 c. 6 s. 6 U.K.*]

21. Authorized disclosures

(1) For the purposes of this Part, a disclosure by—
(*a*) a public servant; or
(*b*) a person, not being a public servant or government contractor, in whose case a notification for the purposes of section 13(1) is in force,

is made with lawful authority if, and only if, it is made in accordance with his official duty.

(2) For the purposes of this Part, a disclosure by a government contractor is made with lawful authority if, and only if, it is made—
(*a*) in accordance with an official authorization; or
(*b*) for the purposes of the functions by virtue of which he is a government contractor and without contravening an official restriction.

(3) For the purposes of this Part, a disclosure by any other person is made with lawful authority if, and only if, it is made—
(*a*) by a public servant for the purposes of his functions as such; or
(*b*) in accordance with an official authorization.

(4) It is a defence for a person charged with an offence under any of sections 13 to 20 to prove that at the time of the alleged offence he believed that he had lawful authority to make the disclosure in question and had no reasonable cause to believe otherwise.

(5) In this section "official authorization" (正式授權) and "official restriction" (正式限制) mean, subject to subsection (6), an authorization or restriction duly given or imposed by a public servant or government contractor or by or on behalf of a prescribed body or a body of a prescribed class.

(6) In relation to section 20, "official authorization" (正式授權) includes an authorization duly given by or on behalf of the territory, State or organization concerned or, in the case of an organization, a member of it.

[*cf. 1989 c. 6 s. 7 U.K.*]

22. 資料的保障

(1) 凡公務人員或政府承辦商憑藉他作為公務人員或政府承辦商的身分，管有或控制任何若被他在沒有合法權限的情況下披露便會屬犯第 13 至 21 條中的任何一條所訂的罪行的文件或其他物品，如——

(*a*) (就公務人員而言) 他在違反其公務上的職責的情況下保留該文件或物品；或

(*b*) (就政府承辦商而言) 他沒有遵從關於該文件或物品的交回或處置的正式指示，

或沒有採取可合理地期望一名處於其位置的人會採取的謹慎措施，以防止該文件或物品在未經授權下披露，他即屬犯罪。

(2) 被控犯第 (1)(*a*) 款所訂罪行的公務人員如證明在指稱的罪行發生時，他相信他是按照其公務上的職責行事而亦沒有合理因由相信情況並非如此，即可以此作為免責辯護。

(3) 在第 (1) 及 (2) 款中，提述公務人員之處，包括既非公務人員亦非政府承辦商但受制於一項第 13(1) 條所指的有效知會的人。

(4) 凡任何人管有或控制任何若被他在沒有合法權限的情況下披露便會屬犯第 18 或 19 條所訂罪行的文件或其他物品，如——

(*a*) 他沒有遵從關於該文件或物品的交回或處置的正式指示；或

(*b*) 他按某些條款自公務人員或政府承辦商處取得該文件或物品而該等條款規定它須在機密情況下持有，或他在某情況下自公務人員或政府承辦商處取得該文件或物品而該情況令該公務人員或政府承辦商能夠合理地期望它會在機密情況下持有，而他沒有採取可合理地期望處於其位置的人會採取的謹慎措施，以防止該文件或物品在未經授權下披露，

他即屬犯罪。

(5) 凡任何人管有或控制任何若被他在沒有合法權限的情況下披露便會屬犯第 20 條所訂罪行的文件或其他物品，他如沒有遵從關於該文件或物品的交回或處置的正式指示，即屬犯罪。

(6) 凡有任何官方資料、文件或其他物品能被人用於取覽被第 13 至 21 條禁止披露的任何資料、文件或其他物品，則任何人披露該資料、文件或物品，而從作出該項披露的情況來看，預期該資料、文件或物品可能被人在沒有權限下用於該目的是合理的，該人即屬犯罪。

22. Safeguarding of information

(1) Where a public servant or government contractor, by virtue of his position as such, has in his possession or under his control any document or other article which it would be an offence under any of sections 13 to 21 for him to disclose without lawful authority, he commits an offence if—

(*a*) being a public servant, he retains the document or article contrary to his official duty; or

(*b*) being a government contractor, he fails to comply with an official direction for the return or disposal of the document or article,

or if he fails to take such care to prevent the unauthorized disclosure of the document or article as a person in his position may reasonably be expected to take.

(2) It is a defence for a public servant charged with an offence under subsection (1)(*a*) to prove that at the time of the alleged offence he believed that he was acting in accordance with his official duty and had no reasonable cause to believe otherwise.

(3) In subsections (1) and (2) references to a public servant include any person, not being a public servant or government contractor, in whose case a notification for the purposes of section 13(1) is in force.

(4) Where a person has in his possession or under his control any document or other article that it would be an offence under section 18 or 19 for him to disclose without lawful authority, he commits an offence if—

(*a*) he fails to comply with an official direction for its return or disposal; or

(*b*) where he obtained it from a public servant or government contractor on terms requiring it to be held in confidence or in circumstances in which that servant or contractor could reasonably expect that it would be so held, he fails to take such care to prevent its unauthorized disclosure as a person in his position may reasonably be expected to take.

(5) Where a person has in his possession or under his control any document or other article that it would be an offence under section 20 for him to disclose without lawful authority, he commits an offence if he fails to comply with an official direction for its return or disposal.

(6) A person commits an offence if he discloses any official information, document or other article that can be used for the purpose of obtaining access to any information, document or other article protected against disclosure by sections 13 to 21 and the circumstances in which it is disclosed are such that it would be reasonable to expect that it might be used for that purpose without authority.

(7) 就第 (6) 款而言，如有以下情況，有關人士所披露的資料、文件或物品即屬官方資料、文件或物品——

(*a*) 他憑藉其作為公務人員或政府承辦商的身分或曾經憑藉該身分而管有該資料、文件或物品；或

(*b*) 他知道或有合理因由相信某公務人員或政府承辦商憑藉其作為公務人員或政府承辦商的身分或曾經憑藉該身分而管有該資料、文件或物品。

(8) 第 18(6) 條為本條第 (6) 款的施行而適用，如同其為該條的施行而適用。

(9) 在本條中，"正式指示" (official direction) 指由公務人員或政府承辦商妥為給予的指示，或由訂明團體或屬於訂明類別的團體妥為給予 (或由他人代表訂明團體或屬於訂明類別的團體妥為給予) 的指示。

[比照 1989 c. 6 s. 8 U.K.]

23. 在海外作出的作為

任何作為若由英國國民、香港永久性居民或公務人員在香港作出便會根據本部任何條文 (第 22(1)、(4) 或 (5) 條除外) 屬罪行，則該作為如由該人在香港境外作出，即屬該條文所訂的罪行。

[比照 1989 c. 6 s. 14 U.K.]

24. 關於罪行審訊的條文

(1) 就本部所訂罪行而進行的法律程序，只可由律政司司長提起或在律政司司長同意下提起。 *(由 1997 年第 362 號法律公告修訂)*

(2) 法庭除具有命令不許公眾旁聽任何法律程序的權力外，在不損害該等權力的原則下，如在法庭進行的有關本部所訂罪行 (第 22(1)、(4) 或 (5) 條所訂罪行除外) 的法律程序或上訴時的法律程序中，或在就本部所訂罪行而審訊某人的審訊過程中，控方以發布行將在法律程序中提出的證據或作出的陳述會有損聯合王國或香港的安全為理由，申請在聆訊的任何部分不許全部或部分公眾旁聽，法庭可作出具有此效力的命令，但在任何情況下均須公開宣布判刑。

[比照 1989 c. 6 ss. 9 & 11(2) U.K.]

25. 罰則

(1) 任何人犯本部任何條文 (第 22(1)、(4) 或 (5) 條除外) 所訂罪行——

(7) For the purposes of subsection (6), a person discloses information or a document or article that is official if—

(*a*) he has or has had it in his possession by virtue of his position as a public servant or government contractor; or

(*b*) he knows or has reasonable cause to believe that a public servant or government contractor has or has had it in his possession by virtue of his position as such.

(8) Section 18(6) applies for the purposes of subsection (6) of this section as it applies for the purposes of that section.

(9) In this section "official direction" (正式指示) means a direction duly given by a public servant or government contractor or by or on behalf of a prescribed body or a body of a prescribed class.

[cf. 1989 c. 6 s. 8 U.K.]

23. Acts done abroad

Any act done by a British national, a Hong Kong permanent resident or a public servant outside Hong Kong shall, if it would be an offence by that person under any provision of this Part other than section 22(1), (4) or (5) when done by him in Hong Kong, be an offence under that provision.

[cf. 1989 c. 6 s. 14 U.K.]

24. Provisions as to trial of offences

(1) Proceedings for an offence under this Part shall not be instituted except by or with the consent of the Secretary for Justice. *(Amended L.N. 362 of 1997)*

(2) In addition and without prejudice to any powers that a court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a court against any person for an offence under this Part, other than an offence under section 22(1), (4) or (5), or the proceedings on appeal, or in the course of the trial of a person for an offence under this Part, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the United Kingdom or Hong Kong, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

[cf. 1989 c. 6 ss. 9 & 11(2) U.K.]

25. Penalties

(1) A person who commits an offence under any provision of this Part other than section 22(1), (4) or (5) shall be liable—

(a) 一經循公訴程序定罪，可處罰款$500,000及監禁2年；
(b) 一經循簡易程序定罪，可處第5級罰款及監禁6個月。

(2) 任何人犯第22(1)、(4)或(5)條所訂罪行，一經循簡易程序定罪，可處第4級罰款及監禁3個月。

[比照 *1989 c. 6 s. 10 U.K.*]

26. 搜查手令

裁判官如因經宣誓而作的告發而信納有合理理由懷疑有人已犯或即將犯本部所訂罪行(第22(1)、(4)或(5)條所訂罪行除外)，可授予搜查手令，授權任何警務人員——

(a) 於任何時間進入該手令所指明的任何處所或地方，在有需要時可使用武力進入；
(b) 搜查該處所或地方及於其內發現的每一人；
(c) 檢取他在該處所或地方或在該人身上發現的任何圖片、圖則、模型、物品、紀錄、文件或任何性質類似的東西，或任何屬有人已犯或即將犯本部所訂罪行的證據的東西，但先決條件是他有合理理由懷疑有人已就或即將就所檢取的物品犯本部所訂罪行。

[比照 *1989 c. 6 s. 11(1) U.K.*]

第IV部

廢除及相應修訂

27. 《官方機密法令》等的廢除

(1) 《官方機密法令》中於緊接本條生效前在香港適用或適用範圍擴及香港的條文，於該等條文與本條例的條文相抵觸的範圍內，現予廢除。

(2) 《1989年官方機密法令1992(香港)令》(S.I. 1992 No. 1301)現予廢除。

(3) 《釋義及通則條例》(第1章)第23至25條就藉第(1)或(2)款對聯合王國成文法則的條文所作的廢除而適用，如同它們就條例的條文的廢除而適用。

認可活頁版，由香港特別行政區政府印務局局長印刷及發行

(a) on conviction on indictment to a fine of $500,000 and to imprisonment for 2 years;
(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(2) A person who commits an offence under section 22(1), (4) or (5) shall be liable on summary conviction to a fine at level 4 and to imprisonment for 3 months.

[*cf. 1989 c. 6 s. 10 U.K.*]

26. Search warrants

If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Part, other than under section 22(1), (4) or (5), has been or is about to be committed, he may grant a search warrant authorizing any police officer to—

(a) enter at any time any premises or place named in the warrant, if necessary by force;
(b) search the premises or place and every person found therein;
(c) seize any sketch, plan, model, article, note, document or anything of a like nature or anything that is evidence of an offence under this Part having been or being about to be committed, that he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Part has been or is about to be committed.

[*cf. 1989 c. 6 s. 11(1) U.K.*]

PART IV

REPEALS AND CONSEQUENTIAL AMENDMENTS

27. Repeal of Official Secrets Acts, etc.

(1) The provisions of the Official Secrets Acts as applied in or extended to Hong Kong immediately before the commencement of this section are hereby repealed so far as they are inconsistent with the provisions of this Ordinance.

(2) The Official Secrets Act 1989 (Hong Kong) Order 1992 (S.I. 1992 No. 1301) is repealed.

(3) Sections 23 to 25 of the Interpretation and General Clauses Ordinance (Cap. 1) apply in relation to the repeal of a provision of a United Kingdom enactment effected by subsection (1) or (2) as they apply in relation to the repeal of a provision of an Ordinance.

Authorized Loose-leaf Edition, Printed and Published by the Government Printer, Hong Kong Special Administrative Region

(a) 使用三合會普遍使用的任何儀式、任何與該等儀式十分相似的儀式或該等儀式的任何部分的社團；或
(b) 採用或利用任何三合會名銜或稱謂術語的社團；

"司法常務官" (Registrar) 指高等法院司法常務官； *(由 1998 年第 25 號第 2 條修訂)*

"有組織罪行" (organized crime) 指附表 1 所列罪行，而且是——
(a) 與某三合會的活動相關的；
(b) 與 2 名或以上的人的活動有關連的，而該等人聯合一起的唯一或部分目的是為作出 2 項或以上行為，每一項均為附表 1 所列罪行及涉及相當程度的策劃及組織的；或
(c) 由 2 名或以上的人所犯的，而且涉及相當程度的策劃及組織，以及——
(i) 有人喪失生命或有人有喪失生命的相當程度的危險；
(ii) 有人在身體或心理上受嚴重傷害或有人有受該等傷害的相當程度的危險；或
(iii) 有人嚴重喪失自由；

"沒收令" (confiscation order) 指根據第 8(7) 條發出的命令；

"享有法律特權的品目" (items subject to legal privilege) 指——
(a) 專業法律顧問和他的當事人或當事人代表之間，就有關向當事人提供法律意見而作出的通訊；
(b) 專業法律顧問和他的當事人或當事人代表之間，或該等顧問、當事人或當事人代表和任何其他人之間，就有關法律程序或在預期進行法律程序的情況下及為該等法律程序而作出的通訊；及
(c) 該等通訊中所附有或提及的品目，而該等品目又是——
(i) 與提供法律意見有關而作出的；或
(ii) 就有關法律程序或在預期進行法律程序的情況下及為該等法律程序而作出的，

且正由有權管有該等品目的人所管有，

但不包括為意圖助長犯罪目的而持有的品目或作出的通訊；

"附表 1 所列罪行" (Schedule 1 offence) 指——
(a) 附表 1 所指明的任何罪行；
(b) 串謀犯任何該等罪行；

(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

附件 C
Annex C

(*c*) 煽惑他人犯任何該等罪行；
(*d*) 企圖犯任何該等罪行；
(*e*) 協助、教唆、慫使或促致他人犯任何該等罪行；

"物料" (material) 包括任何書、文件或其他任何形式的紀錄，以及任何物品或物質；

"社團" (society) 的涵義與《社團條例》(第 151 章) 第 2(1) 條中該詞的涵義相同；

"指明的罪行"(specified offence) 指——
(*a*) 附表 1 或附表 2 所指明的任何罪行；
(*b*) 串謀犯任何該等罪行；
(*c*) 煽惑他人犯任何該等罪行；
(*d*) 企圖犯任何該等罪行；
(*e*) 協助、教唆、慫使或促致他人犯任何該等罪行；

"被告人" (defendant) 指已就指明的罪行提起的法律程序中被檢控的人 (不論該人是否被定罪)；

"財產" (property) 包括依照《釋義及通則條例》(第 1 章) 第 3 條所界定的動產與不動產；

"處所" (premises) 包括任何地方，尤其是——
(*a*) 任何車輛、船隻、航空器、氣墊船或離岸結構物；及
(*b*) 任何帳幕或可移動的結構物；

"處理" (dealing)，就第 15(1) 或 25 條所提述的財產而言，包括——
(*a*) 收受或取得該財產；
(*b*) 隱藏或掩飾該財產 (不論是隱藏或掩飾該財產的性質、來源、所在位置、處置、調動或擁有權或與其有關的任何權利或其他方面的事宜)；
(*c*) 處置或轉換該財產；
(*d*) 將該財產運入香港或調離香港；
(*e*) 以該財產借貸，或作保證 (不論是藉押記、按揭或質押或其他方式)； *(由 1995 年第 90 號第 2 條增補)*

(*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;

"債務處理人" (insolvency officer) 指——

(*a*) 破產管理署署長；或

(*b*) 用以下身分行事的人——

(i) 根據《破產條例》(第 6 章) 委任的接管人、臨時接管人、特別經理人或受託人；或

(ii) 根據《公司條例》(第 32 章) 委任的清盤人、臨時清盤人或特別經理人；

"酬賞" (reward) 包括金錢利益；

"潛逃" (absconded)，就任何人而言，包括因任何理由而潛逃，而不論該人在潛逃之前是否——

(*a*) 已被拘押；或

(*b*) 已獲保釋；　*(由 1995 年第 90 號第 2 條增補)*

"獲授權人" (authorized officer) 指——

(*a*) 任何警務人員；

(*b*) 根據《海關條例》(第 342 章) 第 3 條設立的海關的任何成員；及

(*c*) 任何為施行本條例而獲律政司司長書面授權的人；　*(由 1997 年第 362 號法律公告修訂)*

"權益" (interest) 就財產而言，包括權利。

(2) 就第(1) 款的 "有組織罪行" (organized crime) 的定義而言——

(*a*) 如就串謀犯附表 1 所列罪行而在實行協定的行為過程中會在某階段涉及該定義 (*c*)(i) 至 (iii) 段所提述的事情，則有關的串謀即涉及該事情；

(*b*) 如企圖或煽惑犯附表 1 所列罪行的人所構想的事會涉及該定義 (*c*)(i) 至 (iii) 段所提述的事情，則有關的企圖或煽惑即涉及該事情。

(3) 下表左欄所列詞句的含義，分別由右欄相對列出的條文界定，或依照右欄所列條文的內容而解釋：

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

(由 1995 年第 90 號第 2 條修訂)

"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 (受本條例囿制的饋贈)	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)

(*f*) 法律程序中所發出的沒收令得到圓滿執行 (不論所用方法是繳付根據命令須繳的款額，或由被告人接受監禁以作抵償)。

(16A) 在第 8(1)(*a*)(ii) 或 (7A) 條適用的情況下，若就被告人而提出申請發出沒收令——

(*a*) 如原訟法庭或區域法院決定不發出沒收令，則在原訟法庭或區域法院作出該項決定時；或 *(由 1998 年第 25 號第 2 條修訂)*

(*b*) 如因該項申請而發出沒收令，則在該命令得到圓滿執行時，

該項申請即算是結束。 *(由 1995 年第 90 號第 2 條增補)*

(16B) 就針對被告人的沒收令而根據第 20(1A) 條提出的申請——

(*a*) 如原訟法庭決定不更改該命令，則在原訟法庭作出該項決定時；或

(*b*) 如原訟法庭因該項申請而更改該命令，則在該命令得到圓滿執行時，

該項申請即算是結束。 *(由 1995 年第 90 號第 2 條增補。由 1998 年第 25 號第 2 條修訂)*

(17) 法庭或裁判官的命令或裁決 (包括判令被告人無罪釋放的命令或裁決)，在該命令或裁決可能被上訴、再上訴或覆核的期間，即受上訴或覆核所限；為此目的，可能被上訴、再上訴或覆核 (即當事人有權提出但未有提出上訴、再上訴或覆核) 的期間——

(*a*) *(由 1995 年第 79 號第 50 條廢除)*

(*b*) 指截至提出上訴、再上訴或覆核的訂明期限結束為止的期間。 *(由 1995 年第 79 號第 50 條修訂)*

[比照 1986 c. 32 s. 38 U.K.]

第 II 部

偵查的權力

3. 提供資料或提交物料的規定

(1) 為偵查有組織罪行，律政司司長可向原訟法庭提出單方面申請，就某人或某類別的人根據第(2)款發出命令。 *(由 1997 年第 362 號法律公告修訂；由 1998 年第 25 號第 2 條修訂)*

(2) 原訟法庭如信納第 (4)(*a*)、(*b*) 及 (*d*) 款或第 (4)(*a*)、(*c*) 及 (*d*) 款的條件已經符合，可應如此單方面提出的申請，就與申請有關的人或與申請有關的類別的人，發出符合第 (3) 款規定的命令。 *(由 1998 年第 25 號第 2 條修訂)*

(*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)*

[cf. 1986 c. 32 s. 38 U.K.]

PART II

POWERS OF INVESTIGATION

3. Requirement to furnish information or produce material

(1) The Secretary for Justice may, for the purpose of an investigation into an organized crime, make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to a particular person or to persons of a particular description. *(Amended L.N. 362 of 1997; 25 of 1998 s. 2)*

(2) The Court of First Instance may, if on such an application it is satisfied that the conditions in subsection (4)(*a*), (*b*) and (*d*) or subsection (4)(*a*), (*c*) and (*d*) are fulfilled, make an order complying with subsection (3) in respect of the particular person, or persons of the particular description, to whom the application relates. *(Amended 25 of 1998 s. 2)*

(3) 根據第 (2) 款發出的命令須——
(*a*) 說明該正在偵查中的有組織罪行的詳情;
(*b*) 指出命令所針對的人或述明該命令所針對的人的類別;
(*c*) 授權律政司司長向命令所針對的人或類別的人提出要求,要其——
(i) 就獲授權人合理地覺得是與偵查有關的任何事情回答問題或提供資料;或
(ii) 提交任何律政司司長合理地覺得是與關乎偵查的事情有關的任何物料或某種類的物料,
或要求該人兩者皆作;及 *(由 1997 年第 362 號法律公告修訂)*
(*d*) 載有原訟法庭認為符合公眾利益而宜於加上的其他條款,但本段不得解釋為授權法庭未得任何人的同意而命令將該人拘留。 *(由 1998 年第 25 號第 2 條修訂)*
(4) 第 (2) 款所指的條件是——
(*a*) 有合理理由懷疑有人犯了該正在偵查中的有組織罪行;
(*b*) 如第 (1) 款申請是針對某人的,有合理理由懷疑該人擁有資料或管有物料,而該等資料或物料相當可能與偵查有關;
(*c*) 如該申請是關於某類別的人,而——
(i) 有合理理由懷疑該類別中某些或全部人擁有該等資料或管有該等物料;及
(ii) 不論是因偵查需迫切進行、偵查需保密或擁有有關資料或物料的人的身分是難於辨別的,如規定該申請須是就某一人而作出的,即不能有效地對該有組織罪行進行偵查;
(*d*) 經考慮——
(i) 該偵查中的有組織罪行的嚴重性;
(ii) 若不根據第 (2) 款發出命令,能否有效地偵查該有組織罪行;

(3) An order under subsection (2) shall—
(*a*) give particulars of the organized crime under investigation;
(*b*) identify the particular person, or state the particular description of persons, in respect of whom the order is made;
(*c*) authorize the Secretary for Justice to require the person or persons in respect of whom the order is made—
(i) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation; or
(ii) to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him so to relate,
or both; and *(Amended L.N. 362 of 1997)*
(*d*) contain such other terms (if any) as the Court of First Instance considers appropriate in the public interest, but nothing in this paragraph shall be construed as authorizing the court to order the detention of any person in custody without that person's consent. *(Amended 25 of 1998 s. 2)*
(4) The conditions referred to in subsection (2) are—
(*a*) that there are reasonable grounds for suspecting that the organized crime under investigation has been committed;
(*b*) where the application relates to a particular person, that there are reasonable grounds for suspecting that the person has information, or is in possession of material, likely to be relevant to the investigation;
(*c*) where the application relates to persons of a particular description, that—
(i) there are reasonable grounds for suspecting that some or all persons of that description have such information or are in possession of such material; and
(ii) the organized crime could not effectively be investigated if the application was required to relate to a particular person, whether because of the urgency of the investigation, the need to keep the investigation confidential or the difficulty in identifying a particular person who has relevant information or material; *(Amended 90 of 1995 s. 3)*
(*d*) that there are reasonable grounds for believing that it is in the public interest, having regard—
(i) to the seriousness of the organized crime under investigation;
(ii) to whether or not the organized crime could be effectively investigated if an order under subsection (2) is not made;

(iii) 披露資料或取得物料後對偵查可能帶來的利益；及
(iv) 該人或該等人所可能獲得或持有的資料或物料，是在何種情況下獲得或持有的(包括考慮對該資料或物料的保密責任，以及與該資料或物料所關乎的人的任何家族關係)，*(由 1995 年第 90 號第 3 條修訂)*

有合理理由相信就該人或該等人根據第 (2) 款發出命令，是符合公眾利益的。

(5) 凡根據第 (2) 款發出的命令，授權律政司司長要求某人就獲授權人合理地覺得是與偵查有關的任何事情，回答問題或提供資料，律政司司長可藉向該人送達書面通知，要求該人在指定的時間、地點到某獲授權人席前，就該獲授權人合理地覺得是與該偵查有關的任何事情回答問題或提交資料。 *(由 1997 年第 362 號法律公告修訂)*

(6) 凡根據第 (2) 款發出的命令，授權律政司司長要求某人將律政司司長合理地覺得是與關乎偵查的事項有關的物料或某一種類的物料提交，律政司司長可向該人送達書面通知，要求該人在指定的時間、地點將律政司司長合理地覺得是與關乎偵查的事情有關的任何指明的物料或指明的某一種類的物料提交。 *(由 1997 年第 362 號法律公告修訂)*

(7) 根據第 (5) 或 (6) 款所送達的書面通知，須——
(*a*) 説明法庭已根據本條發出命令，並且須——
(i) 載有命令的日期；
(ii) 説明該有組織罪行的詳情；
(iii) 如命令是針對該人而發出的，説明此情況； *(由 1995 年第 90 號第 3 條修訂)*
(iv) 如命令是針對某類別的人而發出，而該人是屬於該類別的，説明此情況；
(v) 説明命令中授予律政司司長的權力；及 *(由 1997 年第 362 號法律公告修訂)*
(vi) 説明該命令中與該人有關的其他條款；

(iii) to the benefit likely to accrue to the investigation if the information is disclosed or the material obtained; and
(iv) to the circumstances under which the person or persons may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates),

that an order under subsection (2) should be made in respect of that person or those persons.

(5) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to an investigation, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to attend before an authorized officer at a specified time and place, or at specified times and places, and answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation. *(Amended L.N. 362 of 1997)*

(6) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to him so to relate, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to produce at a specified time and place, or at specified times and places, any specified material that reasonably appears to him so to relate or any material of a specified class that reasonably appears to him so to relate. *(Amended L.N. 362 of 1997)*

(7) A notice in writing imposing a requirement on a person under subsection (5) or (6) shall—
(*a*) state that a court order has been made under this section and include—
(i) the date of the order;
(ii) the particulars of the organized crime under investigation;
(iii) where the order is made in respect of that particular person, a statement to that effect;
(iv) where the order is made in respect of persons of a particular description and that person is of that particular description, a statement to that effect;
(v) a statement of the authorization given to the Secretary for Justice by the order; and *(Amended L.N. 362 of 1997)*
(vi) a statement of any other terms of the order relevant to that person;

(b) 已夾附根據本條所發出的命令的副本，但該副本可不包括——
(i) 在該命令中對該人以外的某人的提述，或對不包括該人在內的某類別的人的提述；及
(ii) 在該命令中只與該某人或只與屬該某類別的人有關的任何詳情；及
(c) 實質上是以附表 4 所指明的關於該通知的表格作出，此外並須將第 (8) 至 (10) 款及第 7 條的條文在該通知內載列或夾附於該通知。

(8) 對於為遵從根據本條所提要求而提交的任何物料，獲授權人可將該物料攝影或複印。

(9) 任何人不得根據本條被要求提供或提交任何與享有法律特權的品目有關的資料或物料，但律師 (包括大律師) 則可被要求提供其客戶的姓名、名稱及地址。

(10) 根據第 (2) 款所發出的命令或根據第 (5) 或 (6) 款就施加要求所作的書面通知，可就關乎第 28 條界定的公共機構所持有的資料或管有的物料而作出。

(11) 任何人不得以會有下述情況為理由，而不遵從根據本條提出的要求提供資料或提交物料——
(a) 提供資料或提交物料會傾向於使該人獲罪；或
(b) 提供資料或提交物料會違反法規或其他規定所施加的保密責任或對披露資料或物料的其他限制。

(12) 因遵從憑藉本條施加的要求而作的陳述，不可在針對陳述者的刑事法律程序中用於針對他，但在以下情況則除外——
(a) 在根據第 (14) 款或《刑事罪行條例》(第 200 章) 第 36 條提起的法律程序中作為證據；或
(b) 在有關任何罪行、且該人作出與該陳述不相符的證供的法律程序中，用以對其可信程度提出質疑。

(13) 任何人無合理辯解而不遵從根據本條向他施加的要求，即屬犯罪，可處第 6 級罰款及監禁 1 年。

(14) 任何人在看來是遵從根據本條施加的要求時——
(a) 作出他知道在要項上虛假或有誤導成分的陳述；或
(b) 罔顧後果地作出在要項上虛假或有誤導成分的陳述，

(b) have annexed to it a copy of the order made under this section, but there may be excluded from such copy—
(i) any reference in the order to a particular person other than that person, or to persons of a particular description not including that person; and
(ii) any details in the order that relate only to such particular person or persons of a particular description; and
(c) be substantially in the form specified in Schedule 4 in relation to such notice and in addition shall set out or have annexed to it subsections (8) to (10) and section 7.

(8) An authorized officer may photograph or make copies of any material produced in compliance with a requirement under this section.

(9) A person shall not under this section be required to furnish any information or produce any material relating to items subject to legal privilege, except that a lawyer may be required to furnish the name and address of his client.

(10) An order under subsection (2), and a notice in writing imposing a requirement under subsection (5) or (6), may be made in relation to information held by, and material in the possession of, a public body as defined in section 28.

(11) A person is not excused from furnishing information or producing any material required under this section on the ground that to do so—
(a) might tend to incriminate him; or
(b) would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise.

(12) A statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings against him except as follows—
(a) in evidence in proceedings under subsection (14) or section 36 of the Crimes Ordinance (Cap. 200); or
(b) for the purpose of impeaching his credibility in proceedings in respect of any offence where in giving evidence he makes a statement inconsistent with it.

(13) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

(14) Any person who, in purported compliance with a requirement under this section—
(a) makes a statement that he knows to be false or misleading in a material particular; or
(b) recklessly makes a statement that is false or misleading in a material particular,

即屬犯罪——

(i) 循公訴程序定罪後，可處罰款 $500,000 及監禁 3 年；或

(ii) 循簡易程序定罪後，可處第 6 級罰款及監禁 1 年。

(15) 凡一項命令已根據第 (2) 款發出，律政司司長或其為本款的目的而書面授權的代表，可在符合法庭規則就此事而訂明的條件後，獲取該命令的副本；但除在符合本款前述部分及第 (7)(*b*) 款的規定的情況外，任何人均無權獲取該命令的整份或任何部分的副本。 *(由 1997 年第 362 號法律公告修訂)*

(16) 凡根據本條施加於任何人的要求所關乎的物料為並非以可閱讀形式記錄的資料——

(*a*) 則須當該要求為將物料以一種可以帶走的形式提交的要求；

(*b*) 獲授權人可藉送達該人的書面通知，要求該人在指明的時間及地點，或在指明的不同時間及地點，以可以看到、可以閱讀及可以帶走的形式提交該物料，獲授權人並可藉同樣的通知解除該人根據該項要求須提交以原來記錄形式記錄的物料的責任。

(17) 撤銷或更改根據本條發出的命令的申請，可由根據該項命令被施加要求的人提出。

(18) 法庭規則——

(*a*) 須就根據本條發出的命令而據此被施加要求的人申請撤銷或更改該等命令的申請事宜，作出規定；

(*b*) 可就下述事項作出規定——

(i) 關乎根據本條發出的命令的法律程序；

(ii) 第 (15) 款所指的人 (包括律政司司長) 獲取該命令的副本前所必須符合的條件。 *(由 1995 年第 90 號第 3 條修訂；由 1997 年第 362 號法律公告修訂)*

(19) 保安局局長須就—— *(由 1997 年第 362 號法律公告修訂)*

(*a*) 行使本條所賦予的權力；及

(*b*) 執行本條所委以的職責，

制定實務守則，而任何此類守則均須提交立法會會議席上省覽，並須得立法會批准始可頒布。 *(由 1999 年第 13 號第 3 條修訂)*

commits an offence and is liable—

(i) on conviction upon indictment to a fine of $500,000 and to imprisonment for 3 years; or

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

(15) Where an order under subsection (2) has been made the Secretary for Justice, or a person authorized in writing by the Secretary for Justice for the purpose of this subsection, may, after satisfying any conditions that may be prescribed by rules of court in this respect, obtain a copy of the order; but subject to the foregoing part of this subsection and to subsection (7)(*b*), no person is entitled to obtain a copy of the order or any part of the order. *(Amended L.N. 362 of 1997)*

(16) Where a requirement imposed on a person under this section relates to material which consists of information recorded otherwise than in legible form—

(*a*) the requirement shall have effect as a requirement to produce the material in a form in which it can be taken away;

(*b*) an authorized officer may by notice in writing served on the person require the person to produce at a specified time and place, or at specified times and places, the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the requirement to produce the material in the form in which it is recorded.

(17) An application for the discharge or variation of an order made under this section may be made by any person on whom a requirement is imposed under the order.

(18) Rules of court—

(*a*) shall provide for applications by any person on whom a requirement is imposed under an order made under this section for the discharge or variation of such order;

(*b*) may provide for—

(i) proceedings relating to orders under this section;

(ii) conditions that must be satisfied before a person (including the Secretary for Justice) referred to in subsection (15) may obtain a copy of such order. *(Amended 90 of 1995 s. 3; L.N. 362 of 1997)*

(19) The Secretary for Security shall prepare a code of practice in connection with—

(*a*) the exercise of any of the powers conferred; and

(*b*) the discharge of any of the duties imposed,

by this section, and any such code shall be laid before the Legislative Council and shall not be promulgated until the code has been approved by the Legislative Council.

4. 提交物料令

(1) 為偵查下述事項，律政司司長或獲授權人可就某物料或某類別的物料，向原訟法庭提出單方面申請，要求根據第 (2) 款發出命令，不論有關的物料是在香港或 (如申請是由律政司司長提出的) 在其他地方—— *(由 1997 年第 362 號法律公告修訂；由 1998 年第 25 號第 2 條修訂)*

(*a*) 有組織罪行；或

(*b*) 已犯或被懷疑已犯有組織罪行的人從有組織罪行的得益；或

(*c*) 已犯或被懷疑已犯指明的罪行的人從該罪行的得益。

(2) 除第 (5) 款及第 28(10) 條另有規定外，法庭接獲該項申請後，如信納已經符合第 (4)(*a*)、(*c*) 及 (*d*) 款或第 (4)(*b*)、(*c*) 及 (*d*) 款的條件，可發出命令，飭令其覺得是管有或控制與申請有關的物料的人，在命令內所指明的期限內——

(*a*) 將物料提交給獲授權人帶走；或

(*b*) 讓獲授權人取覽該物料。

(3) 除非法庭覺得就個別申請的特別情況適宜給予較長或較短期限，否則根據第 (2) 款發出的命令內指明的期限為 7 日。

(4) 第 (2) 款所指的條件是——

(*a*) (如偵查是針對某有組織罪行的) 有合理理由懷疑有人已犯該有組織罪行；

(*b*) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——

(i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及

(ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；

(*c*) 有合理理由相信與申請有關的物料——

4. Order to make material available

(1) The Secretary for Justice or an authorized officer may, for the purpose of an investigation into—

(*a*) an organized crime; or

(*b*) the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime; or

(*c*) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,

make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to particular material or material of a particular description, whether in Hong Kong or, in the case of an application by the Secretary for Justice, elsewhere. *(Amended L.N. 362 of 1997; 25 of 1998 s. 2)*

(2) Subject to subsection (5) and section 28(10), the court may, if on such an application it is satisfied that the conditions in subsection (4)(*a*), (*c*) and (*d*) or subsection (4)(*b*), (*c*) and (*d*) are fulfilled, make an order that the person who appears to the court to be in possession or control of the material to which the application relates shall—

(*a*) produce the material to an authorized officer for him to take away; or

(*b*) give an authorized officer access to it,

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are—

(*a*) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;

(*b*) where the investigation is into the proceeds of organized crime or a specified offence of a person—

(i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and

(ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;

(*c*) that there are reasonable grounds for believing that the material to which the application relates—

(i) 相當可能與申請所關的偵查有關者；及
(ii) 並不包括享有法律特權的品目，亦並非由該等品目組成；
(*d*) 經考慮——
(i) 取得物料後對偵查可能帶來的利益；及
(ii) 管有或控制物料的人在何種情況下持有或控制 (視屬何情況而定) 該物料，　*(由 1995 年第 90 號第 4 條代替)*
有合理理由相信將物料交予獲授權人或讓他們取覽，是符合公眾利益的。

(5) 凡根據第 (1) 款提出的申請是關乎某類別的物料的，則第 (2) 款所指的命令只可在就某物料提出申請並不合理地切實可行的情況才可發出。

(6) 凡法庭根據第 (2)(*b*) 款就任何處所內的物料發出命令，法庭可應獲授權人在同一或隨後的申請，命令獲授權人覺得是有權准許別人進入處所的人，准許獲授權人進入處所以取覽有關物料。

(7) 要求撤銷或更改根據第 (2) 或 (6) 款發出的命令的申請，可由受制於該命令的人提出。

(8) 法庭規則——
(*a*) 須就受制於根據本條發出的命令的人申請撤銷或更改該等命令的申請事宜，作出規定；，
(*b*) 可就關乎根據本條所發出的命令的法律程序作出規定。

(9) 凡與根據本條提出的申請有關的物料為並非以可閱讀形式記載的資料——
(*a*) 根據第 (2)(*a*) 款發出的命令，須當為一項飭令將物料以一種可以帶走的形式，提交給獲授權人由他帶走的命令；及
(*b*) 根據第 (2)(*b*) 款發出的命令，須當為一項飭令將物料以一種可以看到及可以閱讀的形式，供獲授權人取覽的命令。

(10) 凡根據第 (2)(*a*) 款發出的命令所關乎的資料並非以可閱讀形式記錄，獲授權人可藉書面通知，要求有關的人以可以看到、可以閱讀及可以帶走的形式提交該物料，獲授權人並可藉同樣的通知解除該人根據該項要求須提交以原來記錄形式記錄的物料的責任。

(i) is likely to be relevant to the investigation for the purpose of which the application is made; and
(ii) does not consist of or include items subject to legal privilege;
(*d*) that there are reasonable grounds for believing that it is in the public interest, having regard—
(i) to the benefit likely to accrue to the investigation if the material is obtained; and
(ii) to the circumstances under which the person in possession or control of the material holds or controls it, as the case may be,　*(Amended 90 of 1995 s. 4)*
that the material should be produced or that access to it should be given.

(5) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) shall only be made where an application in relation to particular material is not reasonably practicable.

(6) Where a court makes an order under subsection (2)(*b*) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material.

(7) An application for the discharge or variation of an order made under subsection (2) or (6) may be made by any person who is subject to the order.

(8) Rules of court—
(*a*) shall provide for applications by any person who is subject to an order made under this section for the discharge or variation of such order;
(*b*) may provide for proceedings relating to orders under this section.

(9) Where material to which an application under this section relates consists of information recorded otherwise than in legible form—
(*a*) an order under subsection (2)(*a*) shall have effect as an order to produce the material in a form in which it can be taken away; and
(*b*) an order under subsection (2)(*b*) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(10) Where an order made under subsection (2)(*a*) relates to information recorded otherwise than in legible form, an authorized officer may by notice in writing require the person to produce the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the order to produce the material in the form in which it was recorded.

(11) 根據第 (2) 款發出的命令——

(*a*) 不得賦予要求提交或取覽享有法律特權的品目的權力；及

(*b*) 可就第 28 條界定的公共機構所管有或控制的物料而發出 *(由 1995 年第 90 號第 4 條修訂)*

(12) 任何人不得以若提交物料會出現下述情況為理由，而不提交與根據第 (2) 款發出的命令有關的物料——

(*a*) 提供資料或提交物料會傾向於使該人獲罪；或

(*b*) 提供資料或提交物料會違反法規或其他規定所施加的保密責任或對披露資料或物料的其他限制。

(13) 任何人無合理辯解而不遵從根據第 (2) 款發出的命令，即屬犯罪，可處第 6 級罰款及監禁 1 年。

(14) 獲授權人可將根據本條提交的物料攝影或複印。

[比照 1986 c. 32 s. 27 U.K.]

5. 搜查的權限

(1) 為偵查下述事項，獲授權人可向原訟法庭或區域法院申請，要求就指明的處所根據本條發出手令—— *(由 1998 年第 25 號第 2 條修訂)*

(*a*) 有組織罪行；

(*b*) 已犯或被懷疑已犯有組織罪行的人從有組織罪行的得益；

(*c*) 已犯或被懷疑已犯指明的罪行的人從該罪行的得益。

(2) 法庭接獲該項申請後，如信納——

(*a*) 就某處所內的物料根據第 3(6) 條施加的要求未予遵從；或

(*b*) 根據第 4 條就處所內的物料發出的命令，未予遵從；或

(*c*) 已符合第 (3)(*a*)、(*c*) 及 (*d*) 款或第 (3)(*b*)、(*c*) 及 (*d*) 款的條件；或

(*d*) 已符合第(4)(*a*)、(*c*) 及 (*d*) 款或第 (4)(*b*)、(*c*) 及 (*d*) 款的條件，

可簽發手令，授權獲授權人進入處所搜查。

(11) An order under subsection (2)—

(*a*) shall not confer any right to production of, or access to, items subject to legal privilege; and

(*b*) may be made in relation to material in the possession or control of a public body as defined in section 28. *(Amended 90 of 1995 s. 4)*

(12) A person is not excused from producing any material in relation to which an order under subsection (2) is made on the ground that to do so—

(*a*) might tend to incriminate him; or

(*b*) would breach an obligation as to secrecy or another restriction upon the disclosure of information imposed by statute or otherwise.

(13) Any person who without reasonable excuse fails to comply with an order made under subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

(14) An authorized officer may photograph or make copies of any material produced under this section.

[cf. 1986 c. 32 s. 27 U.K.]

5. Authority for search

(1) An authorized officer may, for the purpose of an investigation into—

(*a*) an organized crime;

(*b*) the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime;

(*c*) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,

apply to the Court of First Instance or the District Court for a warrant under this section in relation to specified premises. *(Amended 25 of 1998 s. 2)*

(2) On such application the court may issue a warrant authorizing an authorized officer to enter and search the premises if it is satisfied—

(*a*) that a requirement imposed under section 3(6) in relation to material on the premises has not been complied with; or

(*b*) that an order made under section 4 in relation to material on the premises has not been complied with; or

(*c*) that the conditions in subsection (3)(*a*), (*c*) and (*d*) or subsection (3)(*b*), (*c*) and (*d*) are fulfilled; or

(*d*) that the conditions in subsection (4)(*a*), (*c*) and (*d*) or subsection (4)(*b*), (*c*) and (*d*) are fulfilled.

(3) 第 (2)(*c*) 款所指的條件是——
(*a*) (如偵查是針對某有組織罪行的) 有合理理由懷疑有人已犯該有組織罪行；
(*b*) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
(i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
(ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
(*c*) 就該處所內任何物料而言，已符合第 4(4)(*c*) 及 (*d*) 條的條件；
(*d*) 由於下列原因，不適宜根據該條就該物料發出命令——
(i) 如要聯絡任何有權提交有關物料的人，並不切實可行；或
(ii) 如要聯絡任何有權准許別人取覽有關物料的人，或任何有權准許別人進入有關物料所在的處所的人，並不切實可行；或
(iii) 除非獲授權人能立即取覽有關物料，否則與該項申請有關的偵查可能受到嚴重妨害。
(4) 第 (2)(*d*) 款所指的條件是——
(*a*) (如偵查是針對某有組織罪行的) 有合理理由懷疑有人已犯該有組織罪行；
(*b*) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
(i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
(ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
(*c*) 有合理理由懷疑該處所內相當可能藏有與該申請所關的偵查有關的物料，而在提出申請時不能就該物料作詳細說明；

(3) The conditions referred to in subsection (2)(*c*) are—
(*a*) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
(*b*) where the investigation is into the proceeds of organized crime or a specified offence of a person—
(i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
(ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
(*c*) that the conditions in section 4(4)(*c*) and (*d*) are fulfilled in relation to any material on the premises;
(*d*) that it would not be appropriate to make an order under that section in relation to the material because—
(i) it is not practicable to communicate with any person entitled to produce the material; or
(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material.
(4) The conditions referred to in subsection (2)(*d*) are—
(*a*) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
(*b*) where the investigation is into the proceeds of organized crime or a specified offence of a person—
(i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
(ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
(*c*) that there are reasonable grounds for suspecting that there is on the premises material which is likely to be relevant to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized;

(d) (i) 如要聯絡任何有權准許別人進入該處所的人，並不切實可行；或
(ii) 除非出示手令，否則不會獲准進入該處所；或
(iii) 除非獲授權人到達該處所時能立即進入該處所，否則該項申請所關的偵查可能受到嚴重妨害。

(5) 凡獲授權人執行根據本條簽發的手令進入處所後，可扣押及扣留任何相當可能與該手令所關的偵查有關的物料，但享有法律特權的品目則除外。

(6) 任何人阻撓或妨礙獲授權人執行根據本條簽發的手令，即屬犯罪——
(a) 循公訴程序定罪後，可處罰款 $250,000 及監禁 2 年；或
(b) 循簡易程序定罪後，可處第 5 級罰款及監禁 6 個月。

(7) 獲授權人可將根據本條扣押的任何物料攝影或複印。

(8) 即使《釋義及通則條例》(第 1 章) 第 83 條已有規定，但在符合本條的規定下，法庭可根據本條發出手令，授權為搜尋或扣押被知為或被懷疑是新聞材料的物料的目的而進入處所。 *(由 1995 年第 88 號第 6 條增補)*

[比照 1986 c. 32 s. 28 U.K.]

6. 根據第 3、4 或 5 條獲取的資料的披露

(1) 根據或憑藉第 3、4 或 5 條而從稅務局局長或稅務局人員根據《稅務條例》(第 112 章) 獲得的受保密責任限制的資料，除為了——
(a) 檢控任何人犯指明的罪行；
(b) 申請沒收令；或
(c) 申請根據第 15(1) 或 16(1) 條發出命令，
而可由任何獲授權人向律政司司長披露外，不得將該等資料披露。

(d) that—
(i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
(ii) entry to the premises will not be granted unless a warrant is produced; or
(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.

(5) Where an authorized officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be relevant to the investigation for the purpose of which the warrant was issued.

(6) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable—
(a) on conviction upon indictment to a fine of $250,000 and to imprisonment for 2 years; or
(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(7) An authorized officer may photograph or make copies of any material seized under this section.

(8) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap. 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material. *(Added 88 of 1995 s. 6)*

[cf. 1986 c. 32 s. 28 U.K.]

6. Disclosure of information obtained under section 3, 4 or 5

(1) Where any information subject to an obligation of secrecy under the Inland Revenue Ordinance (Cap. 112) has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or by virtue of section 3, 4 or 5, that information may be disclosed by any authorized officer to the Secretary for Justice for the purposes of—
(a) any prosecution of a specified offence;
(b) any application for a confiscation order; or
(c) any application for an order under section 15(1) or 16(1),
but may not otherwise be disclosed.

第 III 部

沒收犯罪得益

8. 沒收令

(1) 凡——

(*a*) 有以下情況——

(i) 在原訟法庭或區域法院審理的法律程序中，某人就一項或一項以上的指明的罪行接受判處刑罰，而他過去未曾因該有關的罪行或任何該等有關的罪行的定罪被判處刑罰；或

(ii) 已就一項或一項以上的指明的罪行對某人提起法律程序，但由於以下原因該等法律程序尚未結束——

(A) 該人已死；或

(B) 該人已潛逃；而

(*b*) 律政司司長或其代表申請發出沒收令， *(由 1997 年第 362 號法律公告修訂)*

原訟法庭或區域法院須按以下規定行事。 *(由 1995 年第 90 號第 6 條代替。由 1998 年第 25 號第 2 條修訂)*

(2) *(由 1995 年第 90 號第 6 條廢除)*

(3) 法庭——

(*a*) 在第 (1)(*a*)(i) 款適用的情況下——

(i) 如控方提出有關要求，須先裁定該人被定罪的指明的罪行或任何該等指明的罪行是否有組織罪行；

(ii) 然後 (或如控方沒有根據第 (i) 節提出有關要求，則先) 須就有關的罪行——

(A) 對該人判以適當的監禁或拘留期限 (如有的話)；

(B) 發出一項或一項以上與判處刑罰有關的適當命令 (沒收令除外)，而該命令或該等命令可以是或可以包括——

(I) 對該人判以罰款的任何命令；

(II) 涉及須由該人付款的任何命令；或

(III) 根據《危險藥物條例》(第 134 章) 第 38F 或 56 條，或《刑事訴訟程序條例》(第 221 章) 第 72、 84A 、 102 或 103 條發出的任何命令；

(*b*) 在第 (1)(*a*)(ii)(A) 款適用的情況下——

(i) 須先——

(A) 信納該人已死；及

(B) 在考慮向該法庭提出的一切有關事項後，信納該人本可就有關的罪行被定罪；

(ii) 然後凡法庭根據第 (i) 節信納有關事項，(如控方提出有關要求) 須裁定該有關的罪行或任何該等有關的罪行是否本可是有組織罪行；

(*c*) 在第 (1)(*a*)(ii)(B) 款適用的情況下——

(i) (A) 須先信納該人已潛逃，而且自法庭認為是該人潛逃之日起已過了不少於 6 個月的時間；

(B) 如——

(I) 該人為人所知是在香港以外地方，而且其確實下落亦為人所知，亦須先信納——

(*aa*) 已為了有關的法律程序的目的而採取合理步驟使該人能解回香港，但並不成功；

(*bb*) (如該人是為 (*aa*) 次小分節所指目的以外的目的而被拘押在香港以外地方的) 他是憑藉若在香港發生即會構成可公訴罪行的行為而被如此拘押；及

(*cc*) 已向該人發出關於該等法律程序的充分事先通知以令他能夠提出答辯；

~~(II) 該人的確實下落不為人所知，亦須先信納已採取合理步驟給予該人關於該等法律程序的通知；及~~

(II) (在不抵觸第 (3A) 款的條文下) 該人的確實下落不為人所知，亦須先信納已採取合理步驟 (如適當的話，包括《高等法院規則》(第 4 章，附屬法例) 第 65 號命令第 5(1) 條規則的 (*a*)、(*b*) 或 (*c*) 段所述的步驟)，追尋該人的下落並已於在香港普遍行銷的中英文報章各一份刊登致予該人的關於該等訴訟的通知；及

(C) 亦須先在考慮向該法庭提出的一切有關事項後信納該人本可就有關的罪行被定罪；

(ii) 然後凡法庭根據第 (i) 節信納有關事項，(如控方提出有關要求) 須裁定該有關的罪行或任何該等有關的罪行是否本可是有組織罪行。

(由 1995 年第 90 號第 6 條代替)

(3A) 在第 (3)(*c*)(i)(B)(II) 款適用的情況下，即使法庭如該款所述信納已採取行動，如法庭信納規定將該款所述的訴訟通知，以其指示的額外方式給予該款所述的人，屬有利於司法公正，則法庭可作出該規定。

(4) 然後法庭——

(a) 在第(1)(a)(i)款適用的情況下，須裁定該人是否曾經從該指明的罪行中獲利，或該人是否曾經從該指明的罪行及與該罪行在同一的法律程序中一同被定罪的任何指明的罪行中獲利，或該人是否曾經從首述的指明的罪行及法庭擬在或已經在決定對其判處的刑罰時一併考慮的任何指明的罪行中獲利；

(b) 在第(1)(a)(ii)款適用的情況下，須裁定該人是否曾經從法庭信納假如他沒有死亡或潛逃(視屬何情況而定)的話他本可被定罪的指明的罪行中獲利，或該人是否曾經從該指明的罪行及法庭信納本可與該罪行一同被定罪的任何指明的罪行中獲利，或該人是否曾經從首述的指明的罪行及法庭本可在決定對其判處的刑罰時一併考慮的任何指明的罪行中獲利，

而若他曾如此獲利，則須裁定他從該指明的罪行或該等指明的罪行的得益總計是否達$100,000或以上。 *(由1995年第90號第6條代替)*

(5) 如法庭——

(a) 在第(1)(a)(i)款適用的情況下——

(i) 已根據第(3)(a)(i)款裁定該人被定罪的指明的罪行或任何該等指明的罪行是有組織罪行；及

(ii) 已根據第(4)款裁定他從該款所提述的該指明的罪行或該等指明的罪行的得益總計達該款所指明的款額或以上；

(b) 在第(1)(a)(ii)款適用的情況下——

(i) 已根據第(3)(b)(ii)或(c)(ii)款裁定該指明的罪行或任何該等指明的罪行本可是有組織罪行；及

(ii) 已根據第(4)款裁定他從該款所提述的該指明的罪行或該等指明的罪行的得益總計達該款所指明的款額或以上，

法庭然後須裁定該人是否曾經從有組織罪行中獲利。 *(由1995年第90號第6條代替)*

(6) 法庭如決定他從該等指明的罪行得益總計不少於第(4)款所指明的款額，必須依照第11條釐定出就他的案件憑藉本條須追討的款額。

(7) 法庭然後須就有關的罪行，命令該人——

(a) 繳付該款額；或

(b) 在不影響(a)段的一般性的規定下，繳付該款額的一部分，而該部分的款額是法庭在考慮到已就該人發出的第(3)(a)(ii)(B)(I)、(II)或(III)款所

規定或提述的任何命令後認為是適當的。 *(由 1995 年第 90 號第 6 條代替)*

(7A) 凡——

(*a*) 某人已就一項或一項以上的指明的罪行被定罪；

(*b*) 已就該人申請發出沒收令；及

(*c*) 在該項申請結束前該人已死或已潛逃，

則縱使該人已死或已潛逃 (視屬何情況而定)，該項申請仍可結束。 *(由 1995 年第 90 號第 6 條增補)*

(7B) 在第 (7A) 款就已死的人而適用的情況下——

(*a*) 第 (3)(*a*)(ii)(A) 款不得就該人而適用；

(*b*) 除非法庭信納該人已死，否則它不得針對該人而發出沒收令。 *(由 1995 年第 90 號第 6 條增補)*

(7C) 在第 (7A) 款就已潛逃的人而適用的情況下，除非——

(*a*) 法庭信納該人已潛逃；及

(*b*) 如——

(i) 該人為人所知是在香港以外地方，而且其確實下落亦為人所知，法庭亦信納——

(A) 已為了有關的法律程序的目的而採取合理步驟使該人能解回香港，但並不成功；及

(B) 已向該人發出關於該等法律程序的充分事先通知以令他能夠提出答辯；

~~(ii) 該人的確實下落不為人所知，法庭亦信納已採取合理步驟給予該人關於該等法律程序的通知，~~

否則法庭不得針對該人而發出沒收令。 *(由 1995 年第 90 號第 6 條增補)*

(8) 為第 (3)(*b*)(i)(B) 或 (ii) 或 (*c*)(i)(C) 或 (ii) 款的目的，有關的資料可在該人死後或潛逃後 (視屬何情況而定) 向法庭提供。 *(由 1995 年第 90 號第 6 條代替)*

(8A) 為任何賦予有關刑事案件的上訴權的條例的目的，針對某人而發出的沒收令，須視為就有關的罪行對該人判處的刑罰，而如該人已死 (不論是在該命令發出之前或之後)，則其遺產代理人可為該等目的代表該人行事。 *(由 1995 年第 90 號第 6 條增補)*

(8B) 現聲明：在決定因本條例而引起的關乎以下事項的任何問題時，須以相對可能性的衡量為舉證的準則——

(ii) (在不抵觸第(7D) 款的條文下) 該人的確實下落不為人所知，法庭亦信納——

(A) 已採取合理步驟 (如適當的話，包括《高等法院規則》(第 4 章，附屬法例) 第 65 號命令第 5(1) 條規則的 (*a*)、(*b*) 或 (*c*) 段所述的步驟)，追尋該人的下落；及

(B) 已於在香港普遍行銷的中英文報章各一份刊登致予該人關於該等訴訟的通知，

(7D) 在第(7C)(*b*)(ii) 款適用的情況下，即使法庭如該款所述信納已採取行動，如法庭信納規定將該款所述的訴訟通知，以其指示的額外方式給予該款所述的人，屬有利於司法公正，則法庭可作出該規定。

(*a*) 某人是否曾經從一項或一項以上的指明的罪行中獲利；
(*b*) 某人是否曾經從有組織罪行中獲利；或 *(由 1997 年第 80 號第 102 條修訂)*
(*c*) 就該人的案件而依據沒收令須追討的款額。 *(由 1995 年第 90 號第 6 條增補)*

(8C) 如——
(*a*) 根據第 (3)(*b*)(i)(B) 或 (*c*)(i)(C) 款法庭信納某人本可就有關的罪行被定罪；
(*b*) 法庭根據第 (3)(*b*)(ii) 或 (*c*)(ii) 款裁定第 (3)(*b*)(i)(B) 或 (*c*)(i)(C) 款所提述的該罪行或任何該等罪行本可是有組織罪行，

則法庭如此信納或裁定此一事實不得在任何刑事法律程序中接納為證據。 *(由 1995 年第 90 號第 6 條增補)*

(8D) 為免生疑問，現聲明：凡在第 (1)(*a*)(ii)(A) 款適用的任何情況下有要求發出沒收令的申請提出，則為反對該項申請的目的，有關的死者的遺產代理人有權就該項申請陳詞，並有權傳喚、訊問及盤問任何證人。 *(由 1995 年第 90 號第 6 條增補)*

(8E) 凡——
(*a*) 在《1995 年有組織及嚴重罪行 (修訂) 條例》(1995 年第 90 號) 生效之前，已就一項或一項以上指明的罪行對某人提起法律程序，但該等程序因該人已潛逃而尚未結束；及
(*b*) 在緊接該條例生效之前，該人的任何可變現財產為一項押記令或限制令的標的，

則經該條例修訂的本條例條文即就該人而適用，一如該等條文就符合以下說明的人而適用：在該條例生效之時或之後，已就一項或一項以上的指明的罪行對該人提起法律程序，但該等程序因該人已潛逃而尚未結束。 *(由 1995 年第 90 號第 6 條增補)*

(8F) 凡——
(*a*) 在《1995 年有組織及嚴重罪行 (修訂) 條例》(1995 年第 90 號) 生效之前——
(i) 某人已就一項或一項以上的指明的罪行被定罪；
(ii) 已就該人申請發出沒收令；及

(iii) 在該項申請結束前該人已潛逃；及

(*b*) 在緊接該條例生效之前，該人的任何可變現財產為一項押記令或限制令的標的，

則經該條例修訂的本條例條文即就該人而適用，一如該等條文就一名因已潛逃以致第 (7A) 款對其適用的人而適用。 *(由 1995 年第 90 號第 6 條增補)*

(9) 就——

(*a*) 第 (3)(*a*)(i)、(*b*)(ii) 或 (*c*)(ii) 款而言，法庭只可考慮可在刑事法律程序中接納為證據的證據；

(*b*) 第 (3)(*a*)(i) 款而言，法庭須在無合理疑點的情況下信納某指明的罪行是有組織罪行，方可裁定該指明的罪行是有組織罪行。 *(由 1995 年第 90 號第 6 條修訂)*

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

"(10) 在第 (1)(*a*)(ii)(A) 或 (B) 款適用的情況下，該款中對"一項或一項以上的指明的罪行"的提述，包括任何先前曾於附表 1 或 2 中指明的罪行，而本條的其他條文及本條例的其他條文 (包括第 2(1) 條"指明的罪行"的定義 (*b*) 至 (*e*) 段及任何附屬法例) 均須據此解釋。"。

(ii) 已根據第 20(1A) 條就針對被告人而發出的沒收令提出申請；　*(由 1995 年第 90 號第 13 條代替)*

(b) 該等法律程序或該項申請尚未結束；~~及~~ *(由 1995 年第 90 號第 13 條代替)*

(c) 如有關的情況——

(i) 屬 (a)(ii) 段所指的申請時，原訟法庭信納有合理理由相信原訟法庭會如第 20(1A) 條所指明般表示信納；

(ii) 屬任何其他情況時，原訟法庭信納有合理理由相信被告人曾經從該指明的罪行中獲利。　*(由 1995 年第 90 號第 13 條代替)*

(2) 該等權力亦可於以下情況下行使——

(a) 原訟法庭信納某人將會被控以指明的罪行，不論是以告發或其他方式提控；及

(b) 原訟法庭信納有合理理由相信該人曾從該指明的罪行中獲利。

(3) 為施行第 15 及 16 條，如在提起法律程序前的任何時間行使該等權力，則在本條例中——

(a) 凡提述被告人，須解釋為第 (2)(a) 款所指的人；

(b) 凡提述檢控官，須解釋為原訟法庭信納為將會負責進行檢控的人；及

(c) 凡提述可變現財產，須當作於緊接該時間之前已對第 (2)(a) 款所指的人就指明的罪行提起法律程序而予以解釋。

(4) 原訟法庭憑藉第 (2) 款而根據第 15(1) 或 16(1) 條發出命令後，如有關該罪行的法律程序沒有在它認為合理的時間內提起，原訟法庭須將命令撤銷。

(由 1998 年第 25 號第 2 條修訂)

[比照 1986 c.32 s. 7 U.K.]

15. 限制令

(1) 原訟法庭可藉命令 (在本條例稱為“限制令”(restraint order)) 禁止任何人處理任何可變現財產；命令可附帶條件及例外情況，容許在符合該等條件或例外情況下處理可變現財產。　*(由 1998 年第 25 號第 2 條修訂)*

(2) 限制令可適用於——

(ba) 在第 2(15)(aa) 條適用於某罪行的情況並在第 (1A) 款的規限下，原訟法庭信納就案件的所有情況而言，有合理理由相信經進一步偵查後，被告人有可能被控以該罪行；及

(1A) 除第(1B) 款另有規定外，如第 15(1) 或 16(1) 條賦予原訟法庭的權力只可基於第(1)(ba) 款的情況而可行使，則原訟法庭須指明因該情況而產生的限制令或押記令的有效期的屆滿日期，而該日期——

(a) 在符合 (b) 段的規定下，不得超過為進行第 (1)(ba) 款所述的有關偵查而合理地需用的時間；及

(b) 無論如何，不得超過該命令作出之日後 6 個月。

(1B) 原訟法庭可延長第 (1A) 款所述的限制令或押記令的有效期，該項延期——

(a) 只可基於原訟法庭信納在作出進一步的偵查後，被告人將會被控以有關罪行；

(b) 在符合 (c) 段的規定下，不得超過為進行該偵查而合理地需用的時間；及

(c) 無論如何，不得超過 6 個月。

(a) 命令內指明的人所持有的所有可變現財產，不論有關財產是否在命令內說明；及
(b) 命令內指明的人所持有的可變現財產，而有關財產是在法庭發出命令後才移轉給他的。
(3) 對於正受根據第 16 條發出的押記令所限的財產，本條並無效力。
(4) 限制令——
(a) 只可在檢控官提出申請後發出；
(b) 可由法官在內庭應單方面申請而發出；及
(c) 須附有向受該命令影響的人發出通知的規定。
(5) 限制令——
(a) 可就任何財產予以撤銷或更改；及
(b) 在有關的法律程序或申請結束之後，必須撤銷。 *(由 1995 年第 90 號第 14 條代替)*
(6) 撤銷或更改限制令的申請，可由任何受該命令影響的人提出。
(7) 原訟法庭發出限制令之後，可隨時委任接管人，在不違背原訟法庭所指明的條件或例外情況下——
(a) 接管任何可變現財產；及
(b) 依照原訟法庭的指示，管理或以其他方式處理他受委接管的任何財產，原訟法庭並可要求任何管有有關財產(即根據本條委任接管人接管的財產)的人，將該財產交予接管人接管。 *(由 1998 年第 25 號第 2 條修訂)*
(8) *(由 1995 年第 90 號第 14 條廢除)*
(9) 原訟法庭發出限制令之後，獲授權人為防止任何可變現財產調離香港，可將有關財產扣押。 *(由 1998 年第 25 號第 2 條修訂)*
(10) 根據第 (9) 款扣押的財產，須依照原訟法庭的指示處理。 *(由 1998 年第 25 號第 2 條修訂)*
(11) 限制令內指明的任何財產如為不動產，為施行《土地註冊條例》(第 128 章)，該命令——
(a) 須視為涉及土地的文書；及
(b) 可根據該條例，以土地註冊處處長認為適當的方式，在土地註冊處註冊為涉及土地的文書。

[比照 1986 c. 32 s. 8 U.K.]

(12) 如任何人持有任何屬限制令標的之可變現財產，獲授權人可藉送達該人的書面通知，規定該人在切實可行範圍內向該獲授權人交付該人所管有或控制的、可協助該獲授權人評定該財產的價值的文件、文件副本或任何其他資料 (不論屬何形式)。
(13) 任何持有屬有關限制令標的之可變現財產的人如接獲第 (12) 款所指的通知，須在其後於切實可行範圍內盡快遵從該通知的規定，並在顧及該財產的性質下屬切實可行範圍內遵從該等規定。
(14) 為遵從第 (12) 款的規定而作出的披露——
(a) 不得當為違反合約或任何成文法則、操守規則或其他條文對披露資料所施加的任何規限；
(b) 不得令作出披露的人承擔以下事情而引致的任何損失負上支付損害賠償的法律責任——
(i) 該項披露；
(ii) 該項披露所引致的就有關財產而作出的作為或不作為。
(15) 任何人違反第 (13) 款，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 1 年。
(16) 任何人明知而在違反限制令的情況下處理任何可變現財產，即屬犯罪。
(17) 任何人犯第 (16) 款所訂的罪行——
(a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款額為 $500,000 或屬有關限制令的標的而在違反該限制令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或
(b) 一經循簡易程序定罪，可處罰款 $250,000 及監禁 2 年。

16. 就土地、證券等財產發出押記令

(1) 原訟法庭可就可變現財產發出押記令，以作為向政府繳付以下款額的押記—— *(由1998年第25號第2條修訂)*

(a) 如沒收令未曾發出，相等於押記財產不時價值的款額；及

(b) 在其他情形下，不超過根據沒收令所須繳付的款額。

(2) 為施行本條例，"押記令"指根據本條發出、以命令內指明的可變現財產作為押記以擔保向政府繳付款項的命令。

(3) 押記令——

(a) 只可在檢控官提出申請後發出；

(b) 可由法官在內庭應單方面申請而發出；

(c) 須附有向受該命令影響的人發出通知的規定；及

(d) 可符合某些條件下發出，這些條件是原訟法庭認為適當的條件以及(在不影響本段的一般性規定下)原訟法庭認為在押記生效時間方面適當的條件。 *(由1998年第25號第2條修訂)*

(4) 除第(6)款另有規定外，押記令只可用以下財產作為押記——

(a) 可變現財產的任何權益，而是由被告人實益持有的，或是由被告人直接或間接向他作出受本條例鬮制的饋贈的人實益持有的，而且是——

(i) 屬於附表3指明的資產類別的；或

(ii) 在任何信託形式下持有的；或

(b) 由一個人以受託人身分持有的可變現財產的權益，但須是屬於該資產的，或須是屬於另一個信託下的，而憑藉(a)段可以押記令將最先提及的信託之下的全部實益權益作為押記的。

(5) 如押記令將屬於附表3所指明類別的資產的權益作為押記，原訟法庭可規定將就有關資產而交付的利息、股息、其他分發的利益，以及派發的紅利，包括在押記物之內。 *(由1998年第25號第2條修訂)*

(6) 對於押記令，原訟法庭——

(a) 可發出命令將之撤銷或更改；及

(*b*) 須在以下情況發出命令將之撤銷——
(i) 有關的法律程序或申請已經結束；或
(ii) 押記令所保證交付的款額已經交付原訟法庭。 *(由 1995 年第 90 號第 15 條代替。由 1998 年第 25 號第 2 條修訂)*

(7) 撤銷或更改押記令的申請，可由受該命令影響的任何人提出。

(8) 除本條例另有規定外，押記令所施加的押記，與由實益權益持有人或受託人以書面親筆簽署定立的衡平法押記一樣，具有相同效力，並可以相同方式執行。

[比照 1986 c. 32 s. 9 U.K.]

(9) 如任何人持有任何屬押記令標的之可變現財產，獲授權人可藉送達該人的書面通知，規定該人在切實可行範圍內向該獲授權人交付該人所管有或控制的、可協助該獲授權人評定該財產的價值的文件、文件副本或任何其他資料 (不論屬何形式)。

(10) 任何持有屬有關押記令標的之可變現財產的人如接獲第 (9) 款所指的通知，須在其後於切實可行範圍內盡快遵從該通知的規定，並在顧及該財產的性質下屬切實可行範圍內遵從該等規定。

(11) 為遵從第 (9) 款的規定而作出的披露——
(*a*) 不得當為違反合約或任何成文法則、操守規則或其他條文對披露資料所施加的任何規限；
(*b*) 不得令作出披露的人承擔以下事情而引致的任何損失負上支付損害賠償的法律責任——
(i) 該項披露；
(ii) 該項披露所引致的就有關財產而作出的作為或不作為。

(12) 任何人違反第 (10) 款，即屬犯罪，一經定罪，可處第 5 級罰款及監禁 1 年。

(13) 任何人明知而在違反押記令的情況下處理任何可變現財產，即屬犯罪。

(14) 任何人犯第 (13) 款所訂的罪行——
(*a*) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款額為 $500,000 或屬有關押記令的標的而在違反該押記令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或
(*b*) 一經循簡易程序定罪，可處罰款 $250,000 及監禁 2 年。

PART III

CONFISCATION OF PROCEEDS OF CRIME

8. Confiscation orders

(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 sub-paragraph (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)*

(II) subject to subsection (3A), a person whose exact whereabouts are not known, reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (*a*), (*b*) or (*c*) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)) and notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong; and

"(3A) Where subsection (3)(*c*)(i)(B)(II) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct.

(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 orwhich 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 $100,000. *(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 fit 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—

(ii) subject to subsection (7D), a person whose exact whereabouts are not known—

(A) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (*a*), (*b*) or (*c*) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)); and

(B) notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong.

(7D) Where subsection (7C)(*b*)(ii) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct.'

(*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)*

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

'(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.'

(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.

(Amended 25 of 1998 s. 2)

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

15. Restraint orders

(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—

"(*ba*) subject to subsection (1A), 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".

"(1A) Subject to subsection (1B), where a power conferred on the Court of First Instance by section 15(1) or 16(1) is exercisable only on the ground mentioned in subsection (1)(*ba*), then the Court of First Instance shall specify a date on which any restraint order or charging order arising from that ground shall expire, being a date—

(*a*) subject to paragraph (*b*), not later than is reasonably necessary for the purposes of the investigation concerned mentioned in subsection (1)(*ba*); and

(*b*) in any case, not later than 6 months after the date on which that order is made.

(1B) The Court of First Instance may extend a restraint order or charging order mentioned in subsection (1A)—

(*a*) on the ground only that the Court of First Instance is satisfied that the defendant will be charged with the offence concerned after further investigation is carried out;

(*b*) subject to paragraph (*c*), not longer than is reasonably necessary for the purposes of that investigation; and

(*c*) in any case, for not more than 6 months."

(*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.

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

(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, documents, or copies of documents, or any other information (in whatever form), 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) A disclosure made in order to comply with a requirement under subsection (12)—

(*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.

(15) 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.

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

(17) A person who commits an offence under subsection (16) 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.

16. 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— *(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.

[*cf.* *1986 c. 32 s. 9 U.K.*]

(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, documents, or copies of documents, or any other information (in whatever form), 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) A disclosure made in order to comply with a requirement under subsection (9)—

(*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.

(12) 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.

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

(14) A person who commits an offence under subsection (13) 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.'

(a) 檢控披露人犯第 25 或 25A 條所訂的罪行的法律程序；或 *(由 1995 年第 90 號第 23 條修訂)*
(b) 審訊本條所訂的罪行的法律程序。

(6) 法庭或裁判官如信納如此做法有利於司法公正，可藉命令將第 (3) 款的規限免除至命令內指明的限度。

(7) 如有資料在違反第 (3) 款的情況下出版或廣播，以下各人都屬犯罪，經定罪後，可處第 5 級罰款及監禁 6 個月——
(a) (如果出版的資料是報章或期刊的一部分) 報章或期刊的東主、編輯、出版人及發行人；
(b) (如果出版的資料不是報章或期刊的一部分) 出版或發行該出版資料的人；
(c) (如果是廣播資料) 廣播資料的人，及在資料屬於節目內容的情況下，傳播或提供節目的人，以及在該節目中擔任相當於報章或期刊編輯的職能的人。

(8) 未經律政司司長同意，不得提起檢控本條所訂的罪行的法律程序。 *(由 1997 年第 362 號法律公告修訂)*

(9) 在本條中——
"出版" (publish) 指以文字出版；
"廣播" (broadcast) 包括以無線電訊、電影、錄像帶或電視廣播。

27. 指明的罪行的判刑

(1) 凡在區域法院或原訟法庭的法律程序中，有人就指明的罪行被定罪，本條即予適用。 *(由 1998 年第 25 號第 2 條修訂)*

(2) 控方可向法庭提供關於下述全部或任何事項的資料—— *(由 1995 年第 90 號第 24 條修訂)*
(a) 該人被如此定罪所據的作為直接或間接導致他人受損害的性質及程度；
(b) 因該作為而對該人或任何其他人直接或間接帶來的利益或希望藉此帶來的利益 (不論是否財務上的利益) 的性質及程度；
(c) 該指明的罪行的普遍程度；

(a) against the person making the disclosure for an offence under section 25 or 25A; or *(Amended 90 of 1995 s. 23)*
(b) for an offence under this section.

(6) The court or a magistrate may, if satisfied that it is in the interests of justice to do so, by order dispense with the requirements of subsection (3) to such extent as may be specified in the order.

(7) If information is published or broadcast in contravention of subsection (3), each of the following persons—
(a) in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor thereof;
(b) in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it;
(c) in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(8) Proceedings for an offence under this section shall not be instituted except with the consent of the Secretary for Justice. *(Amended L.N. 362 of 1997)*

(9) In this section—
"broadcast" (廣播) includes broadcast by radio, film, videotape or television;
"publish" (出版) means publish in writing.

27. Sentencing in respect of specified offences

(1) This section applies where, in proceedings in the District Court or the Court of First Instance, a person has been convicted of a specified offence. *(Amended 25 of 1998 s. 2)*

(2) The prosecution may furnish information to the court regarding any or all of the following—
(a) the nature and extent of any harm caused, directly or indirectly, to any person by the act in respect of which the person has been so convicted;
(b) the nature and extent of any benefit, whether financial or otherwise, that accrued or was intended to accrue, directly or indirectly, to that or any other person from that act;
(c) the prevalence of that specified offence;

(*d*) 因最近發生的該指明的罪行而直接或間接導致社區受損害的性質及程度；

(*e*) 因最近發生的該指明的罪行而對任何人直接或間接帶來的總利益 (不論是否財務上的利益) 的性質及程度。

(3) 只有可在刑事法律程序 (包括就判刑而進行的法律程序) 中接納為證據的資料，才可根據第 (2) 款向法庭提供。

(4) 如控方提出請求，法庭須對在審訊時提出的證據或 (如定罪是在承認控罪後作出的情況下) 法庭在定罪前所接受的事項，是否顯示該指明的罪行為有組織罪行，作出裁定。

(5) 控方不得根據第 (4) 款請求法庭作出裁定，除非控方已向有關的人發出通知，謂控方擬尋求獲得此裁定，及除非此通知是在該人上次就控罪作出回答之前或在法庭根據第 (6) 款所容許的較長時限之內發出的。

(6) 如某人已就某項指明的罪行認罪，而法庭在顧及控方獲通知謂被告人擬承認控罪的時間後，覺得容許控方有較長的時限以發出第 (5) 款規定的通知是有利於司法公正的，法庭可據此發出命令，並可為該目的而指明其認為在有關情況下屬合理的期間，而如有通知依據法庭根據本款所發命令而發出，法庭可容許被告人撤回承認控罪。

(7) 除非在法庭接獲根據第 (5) 款所須發出的通知後，被定罪的人已獲給予機會就有關事項陳詞，否則法庭不得根據第 (4) 款裁定其所犯的指明的罪行屬有組織罪行。

(8) 在根據第 (4) 款作出裁定時，如法庭裁定有關的指明的罪行因為與某三合會的活動有關連而屬有組織罪行，控方可就該等活動的性質及程度，以及該罪行如何與該等活動有關連，向法庭提供資料。

(9) 法庭可就第 (8) 款所提述的事項而收取及考慮其認為在有關的情況下是可靠的資料。

(10) 凡控方尋求根據本條就第 (2) 或 (8) 款所提述的任何事項向法庭提供資料，法庭須讓被定罪的人有機會就該資料的收取提出反對；如該等資料被法庭收取，法庭須讓該人有機會就同一事項提供資料。

(*d*) the nature and extent of any harm, whether direct or indirect, caused to the community by recent occurrences of that specified offence;

(*e*) the nature and extent of the total benefit, whether financial or otherwise, accruing directly or indirectly to any person from recent occurrences of that specified offence.

(3) Only information that would be admissible in evidence in criminal proceedings (including proceedings in respect of sentencing) may be furnished to the court under subsection (2).

(4) If the prosecution so requests, the court shall determine whether the evidence adduced at the trial or, if the conviction followed a plea of guilty, the matters accepted by the court prior to conviction show that the specified offence was an organized crime.

(5) The prosecution shall not request a determination under subsection (4) unless it has given notice to the person of its intention to seek such a determination, and unless such notice has been given prior to the plea last entered by the person or within such further time as may have been allowed by the court under subsection (6).

(6) If a person has pleaded guilty to a specified offence and it appears to the court, having regard to the time at which the prosecution was informed of the accused's intention to plead guilty, that it would be in the interests of justice to allow the prosecution further time within which to give the notice provided for in subsection (5), the court may order accordingly and may specify such period for that purpose as it considers reasonable in the circumstances, and if notice is given pursuant to an order under this subsection the court may allow the accused to withdraw his plea of guilty.

(7) The court shall not make a determination under subsection (4) that a specified offence was an organized crime unless, subsequent to his receipt of the notice required to be given under subsection (5), the person convicted has been given an opportunity to be heard on the matter.

(8) If in making a determination under subsection (4) the court determines that the specified offence was an organized crime by reason of its connection with the activities of a particular triad society, the prosecution may furnish information to the court regarding the nature and extent of those activities and the way in which the offence was connected with those activities.

(9) The court may receive and take into account regarding a matter referred to in subsection (8) any information which it considers reliable in the circumstances.

(10) Where the prosecution seeks to furnish information to a court under this section regarding any matter referred to in subsection (2) or (8), the court shall allow the person convicted an opportunity to object to the reception of the information, and where any such information is received by the court the court shall allow the person an opportunity to furnish information regarding that same matter.

(11) 除第 (12) 及 (13) 款另有規定外，凡法庭——

(a) 在無合理疑點的情況下信納該指明的罪行屬有組織罪行；或

(b) 在無合理疑點的情況下信納根據第 (2) 或 (8) 款提供的資料，

或凡該等事項為被定罪的人所同意，則法庭就有關的指明的罪行對該人宣判刑罰時，須顧及該等事項，並可在其認為適合的情況下，就該罪行對該人宣判較會在沒有該事項時所宣判的為重的刑罰。

(12) 如有人根據第 8 條提出沒收令的申請，就第 (11) 款而言，法庭不得顧及該沒收令的申請所涉及的指明的罪行或有組織罪行的任何得益。

(13) 依據第 (11) 款所判處的刑罰不得超逾法律所容許的對該罪行的最高罰則。

(14) 本條的實施並不影響在任何人被判刑前，可向法庭提供的任何其他資料，或法庭在對任何人的罪行判刑時，法庭須顧及或可顧及的任何其他資料。

(15) 對任何就本條生效日期前所犯的指明的罪行被定罪的人，本條並不適用。

28. 公共機構所持有的資料的披露

(1) 除第 (4)款另有規定外，原訟法庭可應檢控官的申請，命令將公共機構所管有而又屬於第 (3) 款所述的任何物料，在原訟法庭指明的限期內，提交原訟法庭。

(2) 根據第 (1) 款發出命令的權力，可在以下情況下行使——

(a) 可憑藉第 14(1) 條行使第 15(1) 及 16(1) 條賦予原訟法庭的權力；或

(b) 可憑藉第 14(2) 條行使該等權力，及原訟法庭已經發出限制令或押記令，而該等命令未曾撤銷，

但如根據第 (1) 款發出命令的權力是單獨憑藉 (b) 段而可行使，則第 14(3) 條可為施行本條而予以引用，一如它可為施行第 15 及 16 條而予以引用。

(3) 第 (1) 款所指的物料，是——

(a) 由被告人，或由在任何時間曾經持有可變現財產的人，呈交公共機構人員的任何物料；

(b) 由公共機構人員就被告人或該人而造的任何物料；或

(11) Subject to subsections (12) and (13), where a court is satisfied beyond reasonable doubt—

(a) that the specified offence was an organized crime; or

(b) as to any information furnished under subsection (2) or (8),

or where any such matter is agreed by the person convicted, the court shall have regard to such matter when it passes a sentence on the person for the relevant specified offence and may, if it thinks fit, pass a sentence on the person for that offence that is more severe than the sentence it would, in the absence of such matter, have passed.

(12) If an application has been made for a confiscation order under section 8, the court shall not have regard for the purpose of subsection (11) to any proceeds of a specified offence or organized crime to which the application for the confiscation order relates.

(13) A sentence passed pursuant to subsection (11) shall not exceed the maximum penalty permitted by law for the offence.

(14) This section operates without prejudice to any other information that may be furnished to a court before a person is sentenced, or to any other information to which a court shall or may have regard when sentencing a person for any offence.

(15) This section does not apply to a person who is convicted of a specified offence committed before the commencement of this section.

28. Disclosure of information held by public bodies

(1) Subject to subsection (4), the Court of First Instance may, on an application by the prosecutor, order any material mentioned in subsection (3) which is in the possession of a public body to be produced to the Court of First Instance within such period as the Court of First Instance may specify.

(2) The power to make an order under subsection (1) is exercisable if—

(a) the powers conferred on the Court of First Instance by sections 15(1) and 16(1) are exercisable by virtue of section 14(1); or

(b) those powers are exercisable by virtue of section 14(2) and the Court of First Instance has made a restraint or charging order which has not been discharged,

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 14(3) shall apply for the purposes of this section as it applies for the purposes of sections 15 and 16.

(3) The material referred to in subsection (1) is any material which—

(a) has been submitted to an officer of a public body by the defendant or by a person who has at any time held property which was realisable property;

(b) has been made by an officer of a public body in relation to the defendant or such a person; or

(3) 在收取根據第 (2) 款繳付的費用後，處長必須在切實可行範圍內盡快將該等費用撥付警察福利基金，並必須安排該等費用每月結帳一次。 *(由 1999 年第 58 號第 3 條代替)*

(4) 根據第 (2) 款須繳付的費用可作為拖欠警務處處長法團的債項，通過在具有司法管轄權的法院提起法律程序予以追討。 *(由 1999 年第 58 號第 3 條增補)*

67. 處長向銀行及接受存款公司要求資料的權力

(1) 凡處長覺得——

(*a*) 有合理因由懷疑有人曾犯可公訴的罪行；及

(*b*) 為調查該罪行或拘捕該犯罪者而適宜行使本款所授予的權力，

則處長可發出書面通知，規定在通知內指明的銀行或接受存款公司，按他所指明的方式及在合理期限內，向他知會——

(i) 通知內指明的人是否擁有，或就該銀行或公司的紀錄所披露，曾否在香港擁有該銀行或接受存款公司的帳戶；或

(ii) 如接獲通知的是銀行，該銀行——

(A) 有否提供，或就該銀行的紀錄所披露，曾否向該人提供一個在香港的保險箱或按照銀行紀錄該人獲准開啓的在香港的保險箱；或

(B) 有否，或就該銀行的紀錄所披露，曾否在香港為該人保管任何財產或保管按照銀行紀錄該人獲准使用的財產。

(2) 根據第 (1) 款發出的通知所指明的期限屆滿前，處長可以書面通知延長期限，以他認為恰當的較長期限代替原來期限。而第 (4) 款所提述有關通知的規定，在關於上述期限的規定方面，須解釋為提述關於該已予如此延長的期限的規定。

(3) 根據本條發出的通知，可用掛號郵遞送達。如一封載有通知的信件，以掛號郵遞寄交以下地點或人士，則該通知須當作已經妥為送達任何銀行或接受存款公司——

(3) As soon as practicable after receiving fees payable under subsection (2), the Commissioner must pay the fees into the Police Welfare Fund and must arrange for them to be accounted for monthly. *(Replaced 58 of 1999 s. 3)*

(4) Fees payable under subsection (2) are recoverable by proceedings brought in a court of competent jurisdiction as a debt due to the Commissioner of Police Incorporated. *(Added 58 of 1999 s. 3)*

67. Power of Commissioner to require information from banks and deposit-taking companies

(1) Where it appears to the Commissioner—

(*a*) that there is reasonable cause to suspect that an indictable offence has been committed; and

(*b*) that it is expedient for the purpose of investigating such offence or apprehending the offender to exercise the power conferred by this subsection,

the Commissioner may, by notice in writing, require any bank or deposit-taking company specified in the notice to notify him in such manner and within such reasonable period as may be so specified whether—

(i) any person specified in the notice has or, so far as the bank's or company's records disclose, has had an account in Hong Kong with such bank or deposit-taking company; or

(ii) in the case of a bank, such bank—

(A) provides or, so far as the bank's records disclose, did provide a safety deposit box in Hong Kong for such person or to which such person is, according to the bank's records, permitted to have access; or

(B) holds or, so far as the bank's records disclose, has held in its custody in Hong Kong any property for such person or to which such person is, according to the bank's records, permitted to have access.

(2) Before the period specified in a notice under subsection (1) expires, the Commissioner may by notice in writing extend such period by substituting therefor such longer period as he may deem appropriate; and a reference in subsection (4) to the requirements of a notice shall, in respect of a requirement relating to such period, be construed as a reference to a requirement relating to such period as so extended.

(3) A notice under this section may be served by registered post, and any such notice shall be deemed to have been properly served on any bank or deposit-taking company if a letter containing the notice is sent by registered post addressed—

附件 D
Annex D

(*a*) 如屬在香港成立的銀行或接受存款公司，寄交該銀行或接受存款公司在香港的註冊辦事處；

(*b*) 如屬其他情況，以根據《公司條例》(第 32 章) 第 XI 部規定須向公司註冊處處長呈報的地址，寄交獲授權在香港代表該銀行或接受存款公司接受送達法律程序文件的居港人士：

但如不能按照 (*b*) 段規定的方式，將通知送達並非在香港成立的銀行或接受存款公司，則可將通知送達該銀行或接受存款公司在香港設立的任何營業地點的經理或其他掌管人。

(4) 任何銀行或接受存款公司，在獲送達根據本條發出的通知後，如無合理辯解而——

(*a*) 不遵守該通知的任何規定；或

(*b*) 在看來是遵守任何該等規定時，提供在要項上屬虛假的資料，

該銀行或接受存款公司即屬犯罪——

(i) 循公訴程序定罪後，可處罰款 $100,000；

(ii) 循簡易程序定罪後，可處罰款 $50,000。

(5) 凡任何獲送達根據本條發出的通知的銀行或接受存款公司，在任何時候及在任何個別人士同意或默許下——

(*a*) 不遵守該通知的任何規定；或

(*b*) 在看來是遵守任何該等規定時，提供在要項上屬虛假的資料，

而在當時——

(A) 該個別人士是該銀行或接受存款公司的董事、經理、秘書或類同的主管人員；或

(B) 該個別人士看來是出任該銀行或接受存款公司的上述主管人員或代理人；或

(C) 該銀行或接受存款公司是由其成員管理，而該個別人士是成員之一，

則不論第 (4) 款所訂的罪行是否已被觸犯，該個別人士即屬犯本款所訂罪行——

(i) 循公訴程序定罪後，可處罰款 $50,000 及監禁 1 年；

(ii) 循簡易程序定罪後，可處罰款 $10,000 及監禁 6 個月。

(6) 凡銀行或接受存款公司獲送達根據本條發出的通知，而有任何個別人士蓄意導致或促致該銀行或接受存款公司——

(*a*) in the case of a bank or deposit-taking company incorporated in Hong Kong, to its registered office in Hong Kong;

(*b*) in any other case, to any person resident in Hong Kong who is authorized to accept service of process in Hong Kong on behalf of the bank or deposit-taking company, at the address required to be delivered to the Registrar of Companies under Part XI of the Companies Ordinance (Cap. 32):

Provided that where it is not practicable to serve, in the manner provided in paragraph (*b*), a bank or deposit-taking company which is not incorporated in Hong Kong, the notice may be served on the manager or other person in charge of any place of business established in Hong Kong by the bank or deposit-taking company.

(4) If any bank or deposit-taking company on which a notice under this section is served, without reasonable excuse—

(*a*) fails to comply with any of the requirements of such notice; or

(*b*) in purported compliance with any such requirement, furnishes any information which is false in a material particular,

such bank or deposit-taking company shall be guilty of an offence and shall be liable—

(i) on conviction upon indictment, to a fine of $100,000;

(ii) on summary conviction, to a fine of $50,000.

(5) Where a bank or deposit-taking company on which a notice under this section is served, at any time—

(*a*) fails to comply with any of the requirements of such notice; or

(*b*) in purported compliance with any such requirement, furnishes any information which is false in a material particular,

with the consent or connivance of any individual, the individual shall, whether or not an offence under subsection (4) is committed, be guilty of an offence under this subsection if at that time—

(A) he is a director, manager, secretary or similar officer of the bank or deposit-taking company; or

(B) he is purporting to act as such officer or as agent of the bank or deposit-taking company; or

(C) the bank or deposit-taking company is managed by its members, of whom he is one,

and shall be liable—

(i) on conviction upon indictment, to a fine of $50,000 and to imprisonment for 1 year;

(ii) on summary conviction, to a fine of $10,000 and to imprisonment for 6 months.

(6) Where a notice under this section is served on a bank or deposit-taking company, any individual who wilfully causes or procures the bank or deposit-taking company—

(*a*) 不遵守該通知的任何規定；或
(*b*) 在看來是遵守任何該等規定時，提供在要項上屬虛假的資料，
則不論第 (4) 款所訂的罪行是否已被觸犯，該個別人士即屬犯本款所訂罪行——
(i) 循公訴程序定罪後，可處罰款 $50,000 及監禁 1 年；
(ii) 循簡易程序定罪後，可處罰款 $10,000 及監禁 6 個月。

(7) 第 7 條的規定，就第 (1) 或 (2) 款所授予的權力而言，並不適用；但任何職級不低於助理處長的警務人員或職級不低於助理總監的香港海關成員，在處長以書面就此作出的授權下，則可行使該權力。而為施行本條，任何上述警務人員或香港海關人員行使該權力時，除非相反證明成立，否則須推定該警務人員或海關人員已獲授權行使該權力。

(8) 在本條中——
"接受存款公司" (deposit-taking company) 指《銀行業條例》(第 155 章) 第 2 條所指的接受存款公司或有限制牌照銀行；
"銀行" (bank) 指《銀行業條例》(第 155 章) 第 2 條所指的銀行。 *(由 1995 年第 49 號第 53 條代替)*

(由 1983 年第 54 號第 2 條增補)

附表 1　　[第 26 條]

就職誓言或宣言

本人 ....

謹向全能之主發誓 / 謹以至誠作出宣言　本人會竭誠依法為香港特別行政區政府效力為警務人員，遵從支持及維護香港特別行政區的法律，以不畏懼、不徇私、不對他人懷惡意、不敵視他人及忠誠努力的態度行使職權，執行職務，並且毫不懷疑地服從上級長官的一切合法命令。

....
簽署

(*a*) to fail to comply with any of the requirements of such notice; or
(*b*) in purported compliance with any such requirement, to furnish any information which is false in a material particular,

shall, whether or not an offence under subsection (4) is committed, be guilty of an offence under this subsection and shall be liable—
(i) on conviction upon indictment to a fine of $50,000 and to imprisonment for 1 year;
(ii) on summary conviction to a fine of $10,000 and to imprisonment for 6 months.

(7) Section 7 shall not apply in relation to the power conferred by subsection (1) or (2), but such power may be exercised by any police officer not below the rank of assistant commissioner or any member of the Customs and Excise Service not below the rank of assistant commissioner authorized in writing by the Commissioner in that behalf; and, for the purposes of this section, where such power is exercised by any such police officer or member of the Customs and Excise Service it shall be presumed unless the contrary is proved that such police officer or member is so authorized to exercise such power.

(8) In this section—
"bank" (銀行) means a bank within the meaning of section 2 of the Banking Ordinance (Cap. 155);
"deposit-taking company" (接受存款公司) means a deposit-taking company or restricted licence bank within the meaning of section 2 of the Banking Ordinance (Cap. 155). *(Replaced 49 of 1995 s. 53)*

(Added 54 of 1983 s. 2)

SCHEDULE 1　　[s. 26]

OATH OR DECLARATION OF OFFICE

I, ...

swear by Almighty God / do solemnly and sincerely declare　that I will well and faithfully serve the Government of Hong Kong Special Administrative Region according to law as a police officer, that I will obey uphold and maintain the laws of the Hong Kong Special Administrative Region, that I will execute the powers and duties of my office honestly, faithfully and diligently without fear of or favour to any person and with malice or ill-will toward none, and that I will obey without question all lawful orders of those set in authority over me.

....
Signature.

(a) 牌照的條件遭違反，不論是否有人被裁定犯有第 (6) 款所訂罪行；或
(b) 影視及娛樂事務管理處處長認為由於公眾利益須取消牌照。

(5) 影視及娛樂事務管理處處長根據本條作出的決定的書面通知，須由影視及娛樂事務管理處處長向就其作出該項決定的人發出。 *(由 1994 年第 6 號第 44 條代替)*

(5A) 根據第 (5) 款發出的通知，除有關發出牌照或將牌照續期或施加其他條件的決定外，須附有說明作出該決定的理由的陳述書。 *(由 1994 年第 6 號第 44 條增補)*

(5B) 任何人如因影視及娛樂事務管理處處長根據本條就其作出的決定而感到受屈，可在收到該決定的通知後 28 日內，向行政上訴委員會提出上訴。 *(由 1994 年第 6 號第 44 條增補)*

(5C) 除非影視及娛樂事務管理處處長認為下述的暫緩生效會違反公眾利益，而有關該決定的通知載有意思如此的陳述，否則任何根據第 (5B) 款遭上訴反對的決定，須自提出上訴之日起暫緩生效，直至該項上訴獲得解決、撤回或放棄為止。 *(由 1994 年第 6 號第 44 條增補)*

(6) 如該等牌照的條件遭違反，持牌人即屬犯罪，除非他證明該違反行為並非在其同意或縱容下發生，而他已作出一切應盡的努力加以防止。

(7) 任何人如犯有第 (6) 款所訂的罪行，經定罪後，可處罰款 $50,000 及監禁 2 年。

23. 搜查懷疑為賭場的地方

(1) 警司或以上職級的警務人員，如合理地懷疑任何處所或場所乃賭場，可書面授權任何警務人員進入及搜查該處所或場所。

(2) 任何取得根據第 (1) 款發出的授權書的警務人員，以及任何受其指揮的其他警務人員，可——

(a) 進入或必要時強行進入授權書內指明的處所或場所，並加以搜查；
(b) 逮捕任何被發現在該處所或場所內的人或逃離該處所或場所的人；
(c) 搜查任何被發現在該處所或場所內的人或逃離該處所或場所的人；

認可活頁版，由香港特別行政區政府印務局局長印刷及發行

(a) if a condition of the licence is contravened whether or not any person has been convicted of an offence under subsection (6); or
(b) he considers that the public interest so requires.

(5) Notice in writing of a decision of the Commissioner for Television and Entertainment Licensing under this section shall be given by the Commissioner for Television and Entertainment Licensing to the person in respect of whom it is made. *(Replaced 6 of 1994 s. 44)*

(5A) A notice under subsection (5) shall, except in the case of a decision to grant or to renew a licence or to impose other conditions, be accompanied by a statement of the reasons for the decision. *(Added 6 of 1994 s. 44)*

(5B) Any person aggrieved by a decision of the Commissioner for Television and Entertainment Licensing made in respect of him under this section may, within 28 days after receiving notice of the decision, appeal to the Administrative Appeals Board. *(Added 6 of 1994 s. 44)*

(5C) A decision that is appealed against under subsection (5B) shall be suspended in its operation as from the day on which the appeal is made until such appeal is disposed of, withdrawn or abandoned unless such suspension would, in the opinion of the Commissioner for Television and Entertainment Licensing, be contrary to the public interest and the notice of the decision contains a statement to that effect. *(Added 6 of 1994 s. 44)*

(6) Where a condition of any such licence is contravened, the person to whom the licence was issued commits an offence unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it.

(7) Any person who commits an offence under subsection (6) is liable on conviction to a fine of $50,000 and to imprisonment for 2 years.

23. Search of suspected gambling establishments

(1) A police officer of or above the rank of superintendent may, if he reasonably suspects that any premises or place are or is a gambling establishment, authorize in writing any police officer to enter and search the premises or place.

(2) A police officer to whom an authorization is issued under subsection (1), and any other police officer acting under his direction, may—

(a) enter, by force if necessary, the premises or place specified in the authorization and search the same;
(b) arrest any person who is found in such premises or place or who escapes from such premises or place;
(c) search any person who is found in such premises or place or who escapes from such premises or place;

附件 E
Annex E

Authorized Loose-leaf Edition, Printed and Published by the Government Printer, Hong Kong Special Administrative Region

(*d*) 檢取及扣留在該處所或場所內被發現的賭博設備，或在該處所或場所內的人身上發現或在逃離該處所或場所的人身上發現的賭博設備；

(*e*) 檢取及扣留——

(i) 在該處所或場所內用於賭博，或為賭博而使用或與賭博有關而使用的任何金錢或其他財產；

(ii) 在該等樓宇或場所內營辦、管理或以其他方式控制任何賭場的人身上發現的金錢或其他財產，或在協助營辦、管理或以其他方式控制該賭場的人身上發現的金錢或其他財產；或 *(由 2002 年第 12 號第 13 條修訂)*

(iii) 在該等處所或場所內被發現的人身上的金錢或其他財產，而警務人員根據 (*a*) 段進入該處所或場所時曾遭阻止、阻撓或拖延。

(3) 根據本條對任何人作搜查，只可由與該人性別相同的人進行。

(4) 任何人如阻撓根據第 (1) 款獲授權的任何警務人員或阻撓任何受其指揮的其他警務人員進入授權書內指明的處所或場所，即屬犯罪，經定罪後，可處罰款 $50,000 及監禁 2 年。 *(由 1990 年第 42 號第 11 條增補)*

(5) 凡任何人拖延第 (4) 款所提述的任何警務人員進入該款所提述的任何處所或場所，則直至相反證明成立，須推定該人乃為阻撓該等警務人員進入該處所或場所而將他們拖延。 *(由 1990 年第 42 號第 11 條增補)*

23A. 搜查用於推廣或便利收受賭注等用途的處所或場所

(1) 警司或以上職級的警務人員，如合理地懷疑——

(*a*) 有人正就或已就任何處所或場所犯第 16A 條所訂罪行；或

(*b*) 有人正在或已在任何處所或場所犯第 16B 條所訂罪行，

可書面授權任何警務人員進入及搜查該處所或場所。

(2) 任何取得根據第 (1) 款發出的授權書的警務人員，以及任何受其指揮的其他警務人員，可——

(*a*) 進入或必要時強行進入授權書內指明的處所或場所，並加以搜查；

(*b*) 逮捕任何被發現在該處所或場所內的人或逃離該處所或場所的人；

(*d*) seize and detain any gambling equipment found in such premises or place or found on any person in such premises or place or found on any person who escapes from such premises or place;

(*e*) seize and detain any money or other property—

(i) being used in or for or in connexion with gambling in such premises or place;

(ii) found on any person operating, or managing or otherwise controlling, any gambling establishment in such premises or place or on any person assisting in the operation or in the management or other control of any such establishment; or

(iii) found on any person found in such premises or place where entry under paragraph (*a*) is prevented, obstructed or delayed.

(3) No person shall be searched under this section except by a person of the same sex.

(4) Any person who obstructs any police officer authorized under subsection (1) or any other police officer acting under his direction from entering the premises or place specified in the authorization commits an offence and is liable on conviction to a fine of $50,000 and to imprisonment for 2 years. *(Added 42 of 1990 s. 11)*

(5) Where a person delays the entry of any police officer referred to in subsection (4) into any premises or place so referred to, he shall be presumed, until the contrary is proved, to have delayed entry for the purpose of obstructing such police officer from entering such premises or place. *(Added 42 of 1990 s. 11)*

23A. Search of premises or place for promoting or facilitating bookmaking, etc.

(1) A police officer of or above the rank of superintendent may, if he reasonably suspects that—

(*a*) an offence under section 16A is being or has been committed in relation to; or

(*b*) an offence under section 16B is being or has been committed in,

any premises or place, authorize in writing any police officer to enter and search the premises or place.

(2) A police officer to whom an authorization is issued under subsection (1), and any other police officer acting under his direction, may—

(*a*) enter, by force if necessary, the premises or place specified in the authorization and search the same;

(*b*) arrest any person who is found in such premises or place or who escapes from such premises or place;

(c) 搜查任何被發現在該處所或場所內的人或逃離該處所或場所的人；
(d) 檢取及扣留在該處所或場所內被發現的正在或曾經用於與第 16A 或 16B 條所禁制的作為有關的用途的物件，或在該處所或場所內的人身上發現或在逃離該處所或場所的人身上發現的該等物件；
(e) 檢取及扣留——
(i) 屬以下性質的金錢——
(A) 依據向收受賭注者作出的賭注而支付者；
(B) 就賭注而贏取的收益；或
(C) 全部或部分為賭注而支付的按金；
(ii) 在營辦、管理或以其他方式控制該處所或場所的人身上發現的金錢，或在協助營辦、管理或以其他方式控制該處所或場所的人身上發現的金錢；或
(iii) 在該處所或場所內被發現的人身上的金錢，而警務人員根據 (a) 段進入該處所或場所時曾遭阻止、阻撓或拖延。

(3) 根據本條對任何人作搜查，只可由與該人性別相同的人進行。

(4) 任何人如阻撓根據第 (1) 款獲授權的任何警務人員或阻撓任何受其指揮的其他警務人員進入授權書內指明的處所或場所，即屬犯罪，經定罪後，可處罰款 $50,000 及監禁 2 年。

(5) 凡任何人拖延第 (4) 款所提述的任何警務人員進入該款所提述的任何處所或場所，則直至相反證明成立，須推定該人乃為阻撓該等警務人員進入該處所或場所而將他們拖延。

(由 2002 年第 12 號第 14 條增補)

24. 在犯有第 13 條所訂罪行時檢取設備等

如警務人員合理地懷疑有人正在或曾在第 13 條所提述的場所內或任何街道上，犯有第 13 條所訂罪行，該警務人員即可檢取及扣留——
(a) 在該場所內或街道上發現的任何賭博設備，或該警務人員合理地懷疑犯有或曾犯有該罪行的人所管有的賭博設備；及

認可活頁版，由香港特別行政區政府印務局局長印刷及發行

(c) search any person who is found in such premises or place or who escapes from such premises or place;
(d) seize and detain any thing found in such premises or place or found on any person in such premises or place or found on any person who escapes from such premises or place, which is being or has been used in connexion with an act prohibited by section 16A or 16B;
(e) seize and detain any money—
(i) being—
(A) money paid pursuant to a bet with a bookmaker;
(B) winnings on such a bet; or
(C) a deposit paid wholly or partly for the purpose of such a bet;
(ii) found on any person operating, managing or otherwise controlling such premises or place or on any person assisting in the operation, management or other control of such premises or place; or
(iii) found on any person found in such premises or place where entry under paragraph (a) is prevented, obstructed or delayed.

(3) No person shall be searched under this section except by a person of the same sex.

(4) Any person who obstructs any police officer authorized under subsection (1) or any other police officer acting under his direction from entering the premises or place specified in the authorization commits an offence and is liable on conviction to a fine of $50,000 and to imprisonment for 2 years.

(5) Where a person delays the entry of any police officer referred to in subsection (4) into any premises or place so referred to, he shall be presumed, until the contrary is proved, to have delayed entry for the purpose of obstructing such police officer from entering such premises or place.

(Added 12 of 2002 s. 14)

24. Seizure of equipment etc. in case of offence under section 13

If a police officer reasonably suspects that an offence under section 13 is being or has been committed in any place referred to in that section or in any street, he may seize and detain—
(a) any gambling equipment found in such place or street or in the possession of any person whom he reasonably suspects of committing or having committed any such offence; and

Authorized Loose-leaf Edition, Printed and Published by the Government Printer, Hong Kong Special Administrative Region