

立法會
Legislative Council

LC Paper No. LS 6/02-03

Paper for the LegCo Panels on Security and Administration of Justice and Legal Services

Existing Legislation relevant to the Proposals to implement Article 23 of the Basic Law

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
<p>I. <u>TREASON</u></p> <p>1. To restrict the scope of section 2(1)(c) of the Crimes Ordinance (Cap. 200) to levying war by joining forces with a foreigner with the intent to—</p> <p>(a) overthrow the PRC Government (PRCG);</p> <p>(b) compel PRCG by force or constraint to change its policies or measures;</p> <p>(c) put force or constraint upon PRCG; or</p> <p>(d) intimidate or overawe PRCG.</p> <p><i>(Paragraphs 2.7 and 2.8)[#]</i></p>	<p>"2. Treason</p> <p>(1) A person commits treason if he—</p> <p>(c) levies war against Her Majesty—</p> <p>(i) with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions; or</p> <p>(ii) in order by force or constraint to compel Her Majesty to change Her Measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory."</p> <p><i>(Section 2(1)(c) of the Crimes Ordinance (Cap. 200))</i></p>	<p>Provisions relating to Article 23 of the Basic Law have not been dealt with in the Adaptation of Laws Programme. Terms in existing legislation such as "Her Majesty" and "the Crown" are to be construed in accordance with Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1) from 1 July 1997. See Annex A.</p> <p>According to Halsbury's Laws of Hong Kong, both at common law and in the statutory provisions concerning treason, references to the British Monarch or Sovereign are used in three different senses : references to the Monarch or Sovereign personally; references to the Monarch or Sovereign as head of the Government of the United Kingdom and references to the Monarch or Sovereign as the embodiment of the state.</p> <p>Note 18 of the Consultation Document indicates that the term "PRCG" represents collectively the Central People's Government, and other state organs established under the Constitution. The state organs established under the Constitution of the PRC are—</p> <p>(a) the National People's Congress;</p> <p>(b) the President of the PRC;</p> <p>(c) the State Council;</p> <p>(d) the Central Military Commission;</p> <p>(e) the Local People's Congresses and Local People's Government at various levels;</p> <p>(f) the organs of Self-Government of Ethnic Autonomous Areas;</p> <p>(g) the People's Courts and the People's Procuratorates.</p> <p>The definition of "State" in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) demonstrates how local legislation defines "State". See Annex A.</p> <p>No explanation has been given as to why "Parliament or the legislature of any British territory" is proposed to be changed to "PRCG".</p>
<p>2. To amend section 2(1)(d) of the Crimes Ordinance (Cap. 200) to provide that it is an offence to instigate any foreigner with force to invade the entire territory of the state.</p> <p><i>(Paragraph 2.9)[#]</i></p> <p>"Foreigner" would be defined along the lines of "armed forces which are under the direction and control of a foreign government or which are not based in the PRC".</p>	<p>"2. Treason</p> <p>(1) A person commits treason if he—</p> <p>(d) instigates any foreigner with force to invade the United Kingdom or any British territory."</p> <p><i>(Section 2(1)(d) of Cap. 200)</i></p>	<p>There is no discussion of what "entire territory of the state" means.</p> <p>It will be useful to find out whether "foreigner" referred to in paragraph 2.9[#] includes armed forces based in Taiwan. Under the Societies Ordinance (Cap. 151), separate definitions are given to "foreign political organization" and "political organization of Taiwan". Under the Official Secrets Ordinance (Cap. 521), distinction is made between foreign and Taiwan agents.</p>

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<p>3. To codify the case law position of assisting public enemy at war.</p> <p><i>(Paragraphs 2.10 and 2.11)[#]</i></p>	<p>"2. Treason (1) A person commits treason if he— (e) assists by any means whatever any public enemy at war with Her Majesty." <i>(Section 2(1)(e) of Cap. 200)</i></p>	<p>Section 2(1)(e) of Cap. 200 seems to cover the act but it has not been mentioned in the Consultation Document.</p>
<p>4. To repeal offences against the person of the sovereign or head of state.</p> <p><i>(Paragraph 2.6)[#]</i></p>	<p>"2. Treason (1) A person commits treason if he— (a) kills, wounds or causes bodily harm to Her Majesty, or imprisons or restrains Her; (b) forms an intention to do any such act as is mentioned in paragraph (a) and manifests such intention by an overt act." <i>(Section 2(1)(a) and (b) of Cap. 200)</i></p> <p>"5. Assaults on the Queen Any person who wilfully— (a) produces or has near Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure Her Majesty; (b) with intent to alarm or to injure Her Majesty, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused— (i) discharges, or points, aims or presents any arms at or near Her Majesty; (ii) causes any explosive substance to explode near Her Majesty; (iii) assaults Her Majesty; (iv) throws anything at or upon Her Majesty, or shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years." <i>(Section 5 of Cap. 200)</i></p>	<p>Section 5 of Cap. 200 was to be repealed by the Crimes (Amendment) (No. 2) Ordinance 1997 (89 of 1997) which was enacted but has not, to date, been brought into operation.</p>
<p>5. To repeal treasonable offences.</p> <p><i>(Paragraph 2.13)[#]</i></p>	<p>"3. Treasonable offences (1) Any person who forms an intention to effect any of the following purposes, that is to say— (a) to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions; (b) to levy war against Her Majesty within the United Kingdom or any British territory in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory; or (c) to instigate any foreigner with force to invade the United Kingdom or any British territory, and manifests such intention by an overt act or by publishing any printing or writing, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life. (2) It shall be no defence to a charge under this section that any act proved against the person charged amounts to treason under section 2; but no person convicted or acquitted of an offence under this section shall afterwards be prosecuted for treason under section 2 upon the same facts." <i>(Section 3 of Cap. 200)</i></p>	<p>The proposal is to replace treasonable offences by the offence of attempting, conspiring, aiding and abetting, counselling and procuring the commission of the substantive treason offences.</p> <p>Section 3 of Cap. 200 was to be repealed by the Crimes (Amendment) (No. 2) Ordinance 1997 (89 of 1997) which was enacted but has not, to date, been brought into operation.</p>
<p>6. To provide statutory offences for inchoate and accomplice acts i.e. attempting, conspiring, aiding and abetting, counselling and procuring the commission of substantive treason offences.</p> <p><i>(Paragraph 2.13)[#]</i></p>	<p>"159A. The offence of conspiracy (1) Subject to the following provisions of this Part, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either— (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement; or (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question. (2) Where liability for an offence may be incurred without knowledge on the part of the person</p>	<p>An information paper on inchoate offences generally will be issued in due course.</p> <p>Incitement to commit treason is proposed to be dealt with under sedition.</p>

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	<p>committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection (1) unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.</p> <p>(3) In this section "offence" means any offence triable in Hong Kong and includes murder notwithstanding that the murder in question would not be so triable if committed in accordance with the intentions of the parties to the agreement." (Section 159A of Cap. 200)</p> <p>"159G. Attempting to commit an offence (1) A person who, intending to commit an offence to which this section applies, does an act that is more than merely preparatory to the commission of the offence is guilty of attempting to commit the offence. (2) A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible. (3) Where a person is charged with an offence, he may be convicted of having attempted to commit that offence even though he was not charged with the attempt. (4) In any case where— (a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence; but (b) if the facts of the case had been as he believed them to be, his intention would be so regarded, then, for the purposes of subsection (1), he shall be regarded as having had an intent to commit that offence. (5) This section applies to any offence which, if it were completed, would be triable in Hong Kong other than aiding, abetting, counselling or procuring the commission of an offence." (Section 159G of Cap. 200)</p> <p>"89. Aiders, abettors and accessories Any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence." (Section 89 of the Criminal Procedure Ordinance (Cap. 221))</p>	
<p>7. To codify the common law offence of misprision of treason. (Paragraph 2.14)[#] The proposed penalty is 7 years' imprisonment and an unlimited fine. (Paragraph 9.9)[#]</p>		<p>It is unclear in paragraph 2.14[#] whether the "proper authority" is confined to the Police. In the UK, it is a justice of the peace or other authority; in USA, specified personnel; in Canada, a justice of the peace or other peace officer.</p> <p>In Singapore, it is an offence if the person knowing or having reason to believe that treason has been committed, intentionally omits to give information.</p> <p>The proposed penalty is in line with section 101I(1) of the Criminal Procedure Ordinance (Cap. 221) which provides that where a person is convicted of an indictable offence and for which no penalty is otherwise provided by any Ordinance, he shall be liable to imprisonment for 7 years and a fine.</p>
<p>8. Not to create a specific offence of compounding treason. (Paragraph 2.15)[#]</p>		

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<p>9. Application of treason offences—</p> <p>(a) to all persons who are voluntarily in the HKSAR; (b) to all HKSAR permanent residents in respect of their actions outside the HKSAR.</p> <p><i>(Paragraphs 2.16 to 2.18)[#]</i></p>		<p>Sections 7, 8, 9 and 10 of the United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002) apply to—</p> <p>(a) any person within the HKSAR; and (b) any person outside the HKSAR who is—</p> <p>(i) a Hong Kong permanent resident; or (ii) a body incorporated or constituted under the law of the HKSAR.</p> <p>Certain parts of the regulations made under the United Nations Sanctions Ordinance (Cap. 537) apply to—</p> <p>(a) a person within the HKSAR; and (b) a person acting elsewhere who is—</p> <p>(i) both a Hong Kong permanent resident and a Chinese national; or (ii) a body incorporated or constituted under the law of the HKSAR.</p> <p>In Canada, section 46 of the Criminal Code provides that a Canadian citizen or a person who owes allegiance to Her Majesty in right of Canada, commits high treason or treason, as the case may be, if while in or out of Canada, he does anything mentioned in that section.</p> <p>In USA, 18 USCS 1751 states that there is extraterritorial jurisdiction over the conduct prohibited by that section.</p> <p>In the UK, the Treason Felony Act 1848 refers to "any person whatsoever, within the United Kingdom or without".</p>
<p>II. <u>SECESSION</u></p> <p>1. To provide that it is an offence of secession to—</p> <p>(a) withdraw a part of the PRC from its sovereignty; or (b) resist CPG in its exercise of sovereignty over a part of China, by levying war, use of force, threat of force or other serious unlawful means.</p> <p>"Serious unlawful means" means—</p> <p>(a) serious violence against a person; (b) serious damage to property; (c) endangering of a person's life, other than that of the person committing the action; (d) creation of a serious risk to the health or safety of the public or a section of the public; (e) serious interference or serious disruption of an electronic system; or (f) serious interference or serious disruption of an essential service, facility or system, whether public or private.</p> <p><i>(Paragraphs 3.6 and 3.7)[#]</i></p>	<p>"2. Treason A person commits treason if he—</p> <p>(c) levies war against Her Majesty—</p> <p>(i) with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions. (ii) ..."</p> <p><i>(Section 2(1)(c)(i) of Cap. 200)</i></p> <p>"2. Interpretation "terrorist act" (恐怖主義行為)—</p> <p>(a) Subject to paragraph (b), means the use or threat of action where—</p> <p>(i) the action (including, in the case of a threat, the action if carried out)—</p> <p>(A) causes serious violence against a person; (B) causes serious damage to property; (C) endangers a person's life, other than that of the person committing the action; (D) creates a serious risk to the health or safety of the public or a section of the public; (E) is intended seriously to interfere with or seriously to disrupt an electronic system; or (F) is intended seriously to interfere with or seriously to disrupt an essential service, facility or system, whether public or private; and</p> <p>(ii) the use or threat is—</p> <p>(A) intended to compel the Government or to intimidate the public or a section of the</p>	<p>According to Note 23 of the Consultation Document, it may be argued that section 2(1)(c)(i) Cap. 200 applies to facts which constitute an act of secession.</p> <p>The proposed definition of "serious unlawful means" is intended to model on the definition of "terrorist act" in the United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002) with the following differences.</p> <p>"Threat of action" is not part of "serious unlawful means" but "threat of force" is part of the offence.</p> <p>In relation to interference with or disruption of an electronic system or an essential service, facility or system, "is intended seriously to interfere with or disrupt" is substituted with "serious interference or serious disruption".</p> <p>There is no express reference whether paragraph (a)(ii) and (b) of</p>

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<p>The proposed penalty is life imprisonment.</p> <p><i>(Paragraph 9.9)[#]</i></p>	<p>public; and (B) made for the purpose of advancing a political, religious or ideological cause; (b) in the case of paragraph (a)(i)(D), (E) or (F), does not include the use or threat of action in the course of any advocacy, protest, dissent or industrial action." <i>(Section 2 of the United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002))</i></p>	<p>the definition of "terrorist act" would be applicable.</p>
<p>2. To provide statutory offences for inchoate and accomplice acts i.e. attempting, conspiring, aiding and abetting, counselling and procuring the commission of substantive secession offences.</p> <p><i>(Paragraph 3.9)[#]</i></p>	<p>See Part I.6 above.</p>	<p>See Part I.6 above.</p>
<p>3. Application of secession offences—</p> <p>(a) to all persons who are voluntarily in the HKSAR; (b) to all HKSAR permanent residents in respect of their actions outside the HKSAR; (c) to all persons in respect of actions outside HKSAR where such actions have a link with the HKSAR under common law or the Criminal Jurisdiction Ordinance (Cap. 461).</p> <p><i>(Paragraphs 3.10 to 3.12)[#]</i></p>	<p>See Part I.9 above.</p>	<p>See Part I.9 above.</p>
<p>III. <u>SEDITION</u></p> <p>1. To provide that it is an offence of sedition to incite others—</p> <p>(a) to commit the substantive offence of treason, secession or subversion; or (b) to cause violence or public disorder which seriously endangers the stability of the state or the HKSAR.</p> <p><i>(Paragraph 4.13)[#]</i></p>		<p>Inciting others to commit treason is a common law offence.</p>
<p>2. To provide that it is an offence if a person—</p> <p>(a) prints, publishes, sells, offers for sale, distributes, displays or reproduces any publication; or (b) imports or exports any publication,</p> <p>knowing or having reasonable grounds to suspect that the publication, if published, would be likely to incite others to commit the offence of treason, secession or subversion.</p> <p>A defence of "reasonable excuse" would be provided.</p> <p><i>(Paragraph 4.17)[#]</i></p> <p>The proposed penalty is 7 years' imprisonment and a fine of \$500,000. Publications would be forfeited.</p>	<p>"10. Offences (1) Any person who— (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or (b) utters any seditious words; or (c) prints, publishes, sells, offers for sale, distributes, displays or reproduces any seditious publication; or (d) imports any seditious publication, unless he has no reason to believe that it is seditious, shall be guilty of an offence and shall be liable for a first offence to a fine of \$5,000 and to imprisonment for 2 years, and for a subsequent offence to imprisonment for 3 years; and any seditious publication shall be forfeited to the Crown." <i>(Section 10(1) of Cap. 200)</i></p>	<p>The proposed mental element required is different from that required for sedition offences under section 10(1) of Cap. 200. Section 10(1) of Cap. 200 was to be amended by the Crimes (Amendment) (No. 2) Ordinance (89 of 1997) which was enacted but has not, to date, been brought into operation. The amendment was to add "with the intention of causing violence or creating public disorder or a public disturbance" after "who" in order to reflect the common law position.</p> <p>In USA, 18 USCS 2385 requires the mental element of intent to cause the overthrow or destruction of the US government or the government of any state, territory, district, possession, or political subdivision.</p> <p>Principle 6 of the Johannesburg Principles provides that expression may be punished as a threat to national security only if a government can demonstrate that— (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and</p>

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<i>(Paragraph 9.9)[#]</i>		(c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence. The proposed penalty is more severe than the existing one.
3. Section 9(2) of Cap. 200 would be retained. <i>(Paragraph 4.19 and 4.5)[#]</i>	"9. Seditious intention (2) An act, speech or publication is not seditious by reason only that it intends— (a) to show that Her Majesty has been misled or mistaken in any of Her measures; or (b) to point out errors or defects in the government or constitution of Hong Kong as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or (c) to persuade Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure by lawful means the alteration of any matter in Hong Kong as by law established; or (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Hong Kong." <i>(Section 9(2) of Cap. 200)</i>	
4. To provide that it is an offence to possess seditious publications knowing or having reasonable grounds to suspect that the publication, if published, would be likely to incite others to commit the offence of treason, secession or subversion. A defence of "reasonable excuse" would be provided. <i>(Paragraph 4.18)[#]</i> The proposed fine is level 5 (currently \$50,000). <i>(Paragraph 9.9)[#]</i>	"10. Offences (2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall be liable for a first offence to a fine of \$2,000 and to imprisonment for 1 year, and for a subsequent offence to imprisonment for 2 years; and such publication shall be forfeited to the Crown." <i>(Section 10(2) of Cap. 200)</i>	The proposed mental element required is different from that required for possession of seditious publications under section 10(2) of Cap. 200. Under section 10(2) of Cap. 200, the onus is on the prosecution to prove beyond reasonable doubt that there is no lawful excuse. The proposal to provide a defence of "reasonable excuse" would shift the burden of proof. It would be for the accused to prove on the balance of probabilities that there is a reasonable excuse. The term of imprisonment remains the same, but an increase of fine is proposed.
5. To repeal section 32(1)(h) of the Post Office Ordinance (Cap. 98). <i>(Paragraph 4.18)[#]</i>	"32. Prohibited articles (1) No person shall post, tender for posting or send by post— (h) any seditious publication within the meaning of any enactment relating to sedition." <i>(Section 32(1)(h) of the Post Office Ordinance (Cap. 98))</i>	Section 32(1)(h) of Cap. 98 was to be repealed by the Crimes (Amendment) (No. 2) Ordinance 1997 (89 of 1997) which was enacted but has not, to date, been brought into operation.
6. Section 12 of Cap. 200 would be retained. <i>(Paragraph 4.20)[#]</i>	"12. Evidence No person shall be convicted for an offence under section 10 on the uncorroborated testimony of one witness." <i>(Section 12 of Cap. 200)</i>	Section 12 of Cap. 200 was to be amended by the Crimes (Amendment) (No. 2) Ordinance (89 of 1997) which was enacted but has not, to date, been brought into operation. The effect of the amendment is such that no person shall be committed for an offence under Part I (treason) and Part II (other offences against the Crown) on the uncorroborated testimony of one witness.
7. Application of sedition offences— (a) to all persons who are voluntarily in HKSAR; (b) to all HKSAR permanent residents in respect of their action; (c) to all persons in respect of actions outside HKSAR where such actions have a link with the HSKAR under common law or the Criminal Jurisdiction Ordinance (Cap. 461). <i>(Paragraph 4.21)[#]</i>	See Part II.3 above.	See Part II.3 above.

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<p>IV. <u>SUBVERSION</u></p> <p>1. To provide that it is an offence of subversion—</p> <p>(a) to intimidate the PRCG; or</p> <p>(b) to overthrow the PRCG or disestablish the basic system of the State as established by the Constitution, by levying war, use of force, threat of force, or other serious unlawful means.</p> <p><i>(Paragraph 5.5)[#]</i></p> <p>The proposed penalty is life imprisonment.</p> <p><i>(Paragraph 9.9)[#]</i></p> <p>2. To provide statutory offences for inchoate and accomplice acts i.e. attempting, conspiring, aiding and abetting, counselling and procuring the commission of substantive secession offences.</p> <p><i>(Paragraph 5.7)[#]</i></p> <p>3. Application of subversion offences—</p> <p>(a) to all persons who are voluntarily in HKSAR;</p> <p>(b) to all HKSAR permanent residents in respect of their action;</p> <p>(c) to all persons in respect of actions outside HKSAR where such actions have a link with the HSKAR under common law or the Criminal Jurisdiction Ordinance (Cap. 461).</p> <p><i>(Paragraph 5.8)[#]</i></p>	<p></p> <p>See Part I.6 above.</p> <p>See Part II.3 above.</p>	<p>There is no detailed explanation of what "PRCG" and "basic system of the State as established by the Constitution" mean. See Part I.1 above.</p> <p>See Part II.1 above for "serious unlawful means".</p> <p>See Part I.6 above.</p> <p>See Part II.3 above.</p>
<p>V. <u>THEFT OF STATE SECRETS</u></p> <p>A. General</p> <p>1. Subject to refinements, the Official Secrets Ordinance (Cap. 521) would be retained in its present form.</p> <p><i>(Paragraph 6.14)[#]</i></p> <p>The proposed penalties for offences relating to espionage (harbouring, unauthorized use of uniforms or official documents, obstruction, failure to provide information) are 5 years' imprisonment on conviction on indictment, and 3 years' imprisonment and a level 6 fine (currently \$100,000) on summary conviction.</p> <p>The proposed penalties for unlawful disclosure are 5 years' imprisonment for conviction on indictment, and 3 years'</p>	<p>See extracts of the Official Secrets Ordinance (Cap. 521) at Annex B.</p>	<p>No adaptation of the Official Secrets Ordinance (Cap. 521) has been carried out since 1 July 1997.</p> <p>The existing penalties for offences relating to espionage are 2 years' imprisonment on conviction on indictment, 3 months' imprisonment and a level 4 fine (currently \$25,000) on summary conviction.</p> <p>The existing penalties for disclosure are 2 years' imprisonment and \$500,000 fine on conviction on indictment, 6 months' imprisonment and a level 5 fine (currently \$50,000) on summary conviction.</p>

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<p>imprisonment on summary conviction. The level of fines remains the same.</p> <p><i>(Paragraph 9.9)[#]</i></p>		
<p>B. Spying</p> <p>2. Information to be protected would include that which is likely to be useful to an enemy, and is obtained or disclosed for a purpose prejudicial to the safety or interest of the state or the HKSAR.</p> <p><i>(Paragraphs 6.15 and 6.19)[#]</i></p>	<p>"3. Spying</p> <p>(1) A person commits an offence if he, for a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong—</p> <ul style="list-style-type: none"> (a) approaches, inspects, passes over or is in the neighbourhood of, or enters, a prohibited place; (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." <p><i>(Section 3(1) of the Official Secrets Ordinance (Cap. 521)</i></p> 	<p>Paragraph 6.2[#] proposes to adapt the phrase "for a purpose prejudicial to the safety or interest of <u>the United Kingdom</u> or Hong Kong" to "for a purpose prejudicial to the safety or interest of <u>the PRC</u> or the HKSAR" in section 3 of the Official Secrets Ordinance (Cap. 521). In paragraph 6.19(a)[#], however, the phrase "for a purpose prejudicial to the safety or interest of <u>the state</u> or the HKSAR" is used.</p> <p>Paragraphs 6.4[#] and 6.5[#] propose to adapt the same phrase to "for a purpose prejudicial to the safety or interest of <u>the state</u> or the HKSAR" in sections 5 and 6 of Cap. 521. The phrase is taken from section 1 of the UK Official Secrets Act 1911 in which "interests of <u>the state</u>" is used.</p> <p>In contrast, where unlawful disclosure is concerned, the information to be protected is of a sensitive nature and the unauthorized disclosure has to be damaging.</p>
<p>3. No extra-territorial application to spying offences.</p> <p><i>(Paragraph 6.27)[#]</i></p>		<p>"Prohibited place" is confined to those under the territorial jurisdiction of the HKSAR.</p>
<p>C. Unlawful disclosure</p> <p>4. A new class of information relating to relations between the Central Authorities of the PRC and the HKSAR would be protected.</p> <p><i>(Paragraphs 6.18 and 6.19)[#]</i></p>	<p>"16. Information related to international relations</p> <p>(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—</p> <ul style="list-style-type: none"> (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. <p>(2) For the purposes of subsection (1), a disclosure is damaging if—</p> <ul style="list-style-type: none"> (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 (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). <p>(3) In the case of information or a document or other article mentioned in subsection (1)(b)—</p> <ul style="list-style-type: none"> (a) to establish as a fact that it is confidential; or (b) to establish its nature or contents, <p>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.</p> <p>(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—</p>	<p>The following types of information are now protected under the Official Secrets Ordinance (Cap. 521)—</p> <ul style="list-style-type: none"> (a) security and intelligence information (sections 13 and 14); (b) defence information (section 15); (c) information related to international relations (section 16); (d) information related to the commission of offences and criminal investigations (section 17). <p>There is no detailed explanation as to what the new class of information would include, except that the information relating to the relationship between HK and the Mainland used to be protected under section 16 (information related to international relations) prior to 1 July 1997 is mentioned in paragraph 6.8[#], apparently as a justification for the proposal.</p> <p>There is no express reference that the disclosure of information relating to the relations between the Central Authorities of the PRC and the HKSAR has to be damaging or that a defence similar to section 16(4) would be available.</p> <p>Principle 15 of the Johannesburg Principles provides that no person may be punished on national security grounds for disclosure of information if</p> <ul style="list-style-type: none"> (a) the disclosure does not actually harm and is not likely to harm a

[#] Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
	<p>(a) the information, document or article in question was such as is mentioned in subsection (1); or</p> <p>(b) the disclosure would be damaging within the meaning of subsection (2).</p> <p>(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."</p> <p><i>(Section 16 of Cap. 521)</i></p> <p>"12. Interpretation</p> <p>"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—</p> <p>(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</p> <p>(b) any matter relating to the relations between the United Kingdom and Hong Kong or the external relations of Hong Kong."</p> <p><i>(Section 12 of Cap. 521)</i></p>	<p>legitimate national security interest; or (b) the public interest in knowing the information outweighs the harm from disclosure.</p> <p>Under Principle 16, no person may be subjected to any detriment on national security grounds for disclosing information that he learned by virtue of government service if the public interest in knowing the information outweighs the harm from disclosure. No such defence on public interest ground is available for unlawful disclosure under Cap. 521.</p> <p>The proposal seems to be an adaptation rather than an implementation of Article 23 of the Basic Law.</p>
<p>5. To create a new offence of making an unauthorized and damaging disclosure of information protected under Part III of the Official Secrets Ordinance (Cap. 521) that is obtained (directly or indirectly) by unauthorized access to it. The existing damaging disclosure test and defences in section 18 would, with necessary modification, apply.</p> <p><i>(Paragraphs 6.20 to 6.22)[#]</i></p> <p>The proposed penalty is the same as that for unlawful disclosure.</p> <p><i>(Paragraph 9.9)[#]</i></p> <p>6. Section 18(2) would be amended so that the provision applies to information deriving from present and past public servants and government contractors.</p> <p><i>(Paragraph 6.24)[#]</i></p>	<p>"18. Information resulting from unauthorized disclosures or information entrusted in confidence</p> <p>(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—</p> <p>(a) it is protected against disclosure by any of sections 13 to 17; and</p> <p>(b) it has come into his possession as mentioned in subsection (2).</p> <p>(2) The circumstances referred to in subsection (1) are where any information, document or other article protected against disclosure by any of sections 13 to 17 has come into a person's possession as a result of it having been—</p> <p>(a) disclosed (whether to him or another) by a public servant or government contractor without lawful authority;</p> <p>(b) entrusted to him by a public servant or government contractor on terms requiring it to be held in confidence or in circumstances in which the public servant or government contractor could reasonably expect that it would be so held; or</p> <p>(c) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted as mentioned in paragraph (b).</p> <p>(3) In the case of information or a document or article protected against disclosure by sections 13 to 16, a person does not commit an offence under this section unless—</p> <p>(a) the disclosure by him is damaging; and</p> <p>(b) he makes it knowing, or having reasonable cause to believe, that it would be damaging.</p> <p>(4) The question whether a disclosure of information or of a document or other article is damaging shall be determined for the purposes of subsection (3) as it would be determined in relation to a disclosure of that information, document or article by a public servant in contravention of section 14, 15 or 16.</p> <p>(5) A person does not commit an offence under this section in respect of information or a document or other article that has come into his possession as a result of it having been disclosed—</p> <p>(a) as mentioned in subsection (2)(a) by a government contractor; or</p> <p>(b) as mentioned in subsection (2)(c),</p> <p>unless that disclosure was by a British national or Hong Kong permanent resident or took place in Hong Kong.</p> <p>(6) For the purposes of this section, information or a document or article is protected against disclosure by any of sections 13 to 17 if—</p> <p>(a) it relates to security or intelligence, defence or international relations or is such as is mentioned in section 16(1)(b); or</p>	<p>The offence of spying under the Official Secrets Ordinance (Cap. 521) covers unauthorized access since it includes access to, transmission of, dealing with and disclosure of information resulting in spying.</p> <p>See Part V.A.1 for penalties for unlawful disclosure.</p> <p>Sections 14 to 17 of Cap. 521 refer to "a person who is or has been a public servant or government contractor". Section 18(2) applies to incumbent public servants and government contractors instead.</p>

[#] Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
	<p>(b) it is information or a document or article to which section 17 applies, and information or a document or article is protected against disclosure by sections 13 to 16 if it falls within paragraph (a).</p> <p>(7) No person shall be convicted for both an offence under this section and an offence under any of sections 13 to 17 in relation to the disclosure by him of any information or document or other article." <i>(Section 18 of Cap. 521)</i></p>	
<p>7. To amend the definition of "government contractor" to include agents and informants engaged by the Police to assist in their security and intelligence work.</p> <p><i>(Paragraph 6.25)[#]</i></p>	<p>"12. Interpretation "government contractors" (政府承辦商)—</p> <p>(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—</p> <p>(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</p> <p>(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."</p> <p><i>(Section 12(2) of Cap. 521)</i></p>	
<p>8. To retain section 23 of the Official Secrets Ordinance (Cap. 521).</p> <p><i>(Paragraph 6.26)[#]</i></p>	<p>"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." <i>(Section 23 of Cap. 521)</i></p>	<p>Extra-territorial application applies to most offences related to unlawful disclosure.</p>
<p>VI. <u>FOREIGN POLITICAL ORGANIZATIONS</u></p> <p>1. Provisions prohibiting foreign political organizations or political organizations of Taiwan from taking part in the political process of the HKSAR would be retained.</p> <p><i>(Paragraph 7.11)[#]</i></p>	<p>"5A. Registration and exemption from registration (3) The Societies Officer may, after consultation with the Secretary for Security, refuse to register or to exempt from registration a society or a branch—</p> <p>(a) ...</p> <p>(b) if the society or the branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan."</p> <p><i>(Section 5A(3)(b) of the Societies Ordinance (Cap. 151))</i></p> <p>"5D. Cancellation of registration or exemption from registration (1) The Societies Officer may, after consultation with the Secretary for Security, cancel the registration or exemption from registration of a society or a branch—</p> <p>(a) ...</p> <p>(b) if the society or the branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan."</p> <p><i>(Section 5D(1)(b) of Cap. 151)</i></p> <p>"8. Prohibition of operation of societies (1) The Societies Officer may recommend to the Secretary for Security to make an order prohibiting the operation or continued operation of the society or the branch—</p> <p>(a) ...</p> <p>(b) if the society or the branch is a political body that has a connection with a foreign</p>	<p>"Foreign political organization" and "political organization of Taiwan" have separate definitions in the Societies Ordinance (Cap. 151).</p>

[#] Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
	<p>political organization or a political organization of Taiwan." (Section 8(1)(b) of Cap. 151)</p> <p>"2. Interpretation "foreign political organization" (外國政治性組織) includes— (a) a government of a foreign country or a political subdivision of a government of a foreign country; (b) an agent of a government of a foreign country or an agent of a political subdivision of the government of a foreign country; or (c) a political party in a foreign country or its agent;</p> <p>"political organization of Taiwan" (台灣政治性組織) includes— (a) the administration of Taiwan or a political subdivision of the administration; (b) an agent of the administration of Taiwan or an agent of a political subdivision of the administration; or (c) a political party in Taiwan or its agent;" (Section 2 of Cap. 151)</p>	
<p>2. To create a new offence for organizing or supporting activities of a proscribed organization in order to address national security concerns.</p> <p>The element of knowledge or reasonable suspicion would be included. The concept of "support" includes being a member of; providing financial assistance, other property or facilitation to; and carrying out policies and directives.</p> <p>(Paragraph 7.14)[#]</p>	<p>"5A. Registration and exemption from registration (3) The Societies Officer may, after consultation with the Secretary for Security, refuse to register or to exempt from registration a society or a branch— (a) if he reasonably believes that the refusal is necessary in the interests of national security or public safety, public order (<i>ordre public</i>) or the protection of the rights and freedoms of others; or (b) ..." (Section 5A(3)(a) of the Societies Ordinance (Cap. 151))</p> <p>"5D. Cancellation of registration or exemption from registration (1) The Societies Officer may, after consultation with the Secretary for Security, cancel the registration or exemption from registration of a society or a branch— (a) if he reasonably believes that the cancellation is necessary in the interests of national security or public safety, public order (<i>ordre public</i>) or the protection of the rights and freedoms of others; or (b) ..." (Section 5D(1)(a) of Cap. 151)</p> <p>"8. Prohibition of operation of societies (1) The Societies Officer may recommend to the Secretary for Security to make an order prohibiting the operation or continued operation of the society or the branch— (a) if he reasonably believes that the prohibition of the operation or continued operation of a society or a branch is necessary in the interests of national security or public safety, public order (<i>ordre public</i>) or the protection of the rights and freedoms of others; or (b) ..." (Section 8(1)(a) of Cap. 151)</p>	<p>There are existing provisions in the Societies Ordinance (Cap. 151) empowering the Societies Officer to refuse to register or to exempt from registration, cancel the registration or exemption and prohibit the operation of a society or branch in the interests of national security, public safety or public order (<i>ordre public</i>). Paragraph 7.13[#] states that the existing power to prohibit the operation of a society on national security grounds already provides effective sanctions against such activities.</p> <p>Under section 2 of Cap. 151, "Societies Officer" means the Societies Officer and any Assistant Societies Officer appointed by name or office by the Chief Executive in accordance with section 3 of Cap. 151. The Societies Officer and Assistant Societies Officer are currently police officers.</p> <p>Section 2(4) of Cap. 151 provides that "national security" means the safeguarding of the territorial integrity and the independence of the People's Republic of China.</p> <p>There is no explanation why "reasonable suspicion" should be included as an element of the offence being proposed.</p>
<p>3. The proposed power of the Secretary for Security to proscribe an organization may be exercised if—</p> <p>(a) the objective, or one of the objectives, of the organization is to engage in any act of treason, secession, sedition, subversion or theft of state secrets (espionage); or (b) the organization has committed or is attempting to commit any act of treason, secession, sedition, subversion or theft</p>		<p>There is no explanation of how "affiliated" should be understood.</p>

[#] Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
<p>of state secrets (espionage); or</p> <p>(c) the organization is affiliated with a Mainland organization which has been proscribed in the Mainland by the Central Authorities, in accordance with national law on the ground that it endangers national security.</p> <p>Whether a Mainland organization endangers national security is a decision of the Central Authorities. Formal notification by the Central People's Government that a Mainland organization has been proscribed would be conclusive. To exercise the power to proscribe under (c), the Secretary must be satisfied by evidence of the affiliation, and must reasonably believe that it is necessary in the interests of national security or public safety or public order to proscribe the organization.</p> <p><i>(Paragraphs 7.15 and 7.16)[#]</i></p>		
<p>4. An organization would be defined as an organized effort by two or more people to achieving a common objective, irrespective of whether there is a formal organizational structure.</p> <p><i>(Paragraph 7.15)[#]</i></p>	<p>"2. Interpretation "society" (社團)— "society" (社團) means any club, company, partnership or association of persons, whatever the nature or objects, to which the provisions of this Ordinance apply;"</p> <p><i>(Section 2 of Cap. 151)</i></p>	
<p>5. The Secretary for Security has the power to declare an organization that has a connection with a proscribed organization unlawful, if he or she reasonably believes that this is necessary in the interests of national security, public safety or public order.</p> <p><i>(Paragraph 7.17)[#]</i></p>	<p>"8. Prohibition of operation of societies (2) On the recommendation by the Societies Officer under subsection (1), the Secretary for Security may by order published in the Gazette prohibit the operation or continued operation of the society or the branch in Hong Kong. (3) The Secretary for Security shall not make an order under subsection (2) without first affording the society or the branch an opportunity to be heard or to make representations in writing as the society or the branch thinks fit as to why such an order should not be made. (4) Subsection (3) shall not apply where the Secretary for Security reasonably believes that affording the society or the branch an opportunity to be heard or to make representations in writing would not be practicable in the circumstances of that case. (5) An order made under subsection (2) shall as soon as practicable be— (a) served on the society or the branch; (b) (where the society or the branch occupies or uses any building or premises) affixed in a conspicuous manner on any building or premises occupied or used as a place of meeting by the society or the branch and at the nearest police station of the police district in which such building or premises are situated; and (c) published in the Gazette. (6) An order made under subsection (2) shall take effect on publication in the Gazette or, if the order specifies a subsequent date for its taking effect, shall take effect on that specified date, notwithstanding that an appeal has been or may be made against the order under subsection (7)."</p> <p><i>(Section 8(2) to (6) of Cap. 151)</i></p>	<p>In relation to the prohibition of operation of societies, section 8 of the Societies Ordinance (Cap. 151) provides an opportunity to be heard or to make representations before a prohibition order is made.</p>
<p>6. "Connection" would be defined to include— (a) solicitation or acceptance by the association of financial contributions, financial sponsorships or financial support of any kind or loans from a proscribed organization, or vice versa; (b) affiliation with a proscribed organization, or vice versa; (c) determination of the association's policies by a proscribed organization, or vice versa; or</p>	<p>"2. Interpretation "connection" (聯繫), in relation to a society or a branch, that is a political body, includes the following circumstances— (a) if the society or the branch solicits or accepts financial contributions, financial sponsorships or financial support of any kind or loans, directly or indirectly, from a foreign political organization or a political organization of Taiwan; (b) if the society or the branch is affiliated directly or indirectly with a foreign political organization or a political organization of Taiwan;</p>	<p>The proposed definition of "connection" appears to be wider in scope than that provided for in section 2 of Cap. 151.</p>

[#] Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
<p>(d) direction, dictation, control or participation in the association's decision making process by a proscribed organization, or vice versa.</p> <p><i>(Paragraph 7.17)[#]</i></p>	<p>(c) if the society's or the branch's policies or any of them are determined directly or indirectly by a foreign political organization or a political organization of Taiwan; or</p> <p>(d) if a foreign political organization or a political organization of Taiwan directs, dictates, controls or participates, directly or indirectly in the decision making process of the society or the branch;"</p> <p><i>(Section 2 of Cap. 151)</i></p>	
<p>7. To provide that it is an offence for anyone to manage or be an office-bearer of an unlawful organization.</p> <p><i>(Paragraph 7.17)[#]</i></p> <p>The proposed penalty is 7 years' imprisonment and an unlimited fine.</p>	<p>"19. Penalties on office-bearer, etc. of an unlawful society"</p> <p>(1) Save as is provided in subsection (2), any office-bearer or any person professing or claiming to be an office-bearer and any person managing or assisting in the management of any unlawful society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$100,000 and to imprisonment for 3 years.</p> <p>(2) Any office-bearer or any person professing or claiming to be an office-bearer and any person managing or assisting in the management of any triad society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 15 years."</p> <p><i>(Section 19 of Cap. 151)</i></p>	<p>Other offences relating to unlawful society include being a member (section 20), allowing unlawful society on premises (section 21), inciting a person to become a member (section 22), procuring subscription or aid (section 23). The Secretary for Security may prohibit certain persons from being an office bearer of any other societies for 5 years without the written consent of the Societies Officer (section 25).</p>
<p>8. The decision to proscribe and to declare an organization unlawful would be subject to appeal—</p> <p>(a) on points of facts to an independent tribunal;</p> <p>(b) on points of law to the court.</p> <p><i>(Paragraph 7.18)[#]</i></p>	<p>"8. Prohibition of operation of societies"</p> <p>(7) A society or a branch in relation to which an order is made under this section and any office-bearer or member of the society or the branch who is aggrieved by an order of the Secretary for Security made under this section may appeal to the Chief Executive in Council against the making of the order within 30 days after the order takes effect and the Chief Executive in Council may confirm, vary or revoke the order."</p> <p><i>(Section 8(7) of Cap. 151)</i></p>	<p>The composition of the tribunal is not provided for in the Consultation Document.</p> <p>According to paragraph 7.18[#], the purpose of the proposal is to ensure fairness.</p> <p>An appeal to the Chief Executive in Council under section 8 of the Societies Ordinance (Cap. 151) is dealt with pursuant to section 64 of the Interpretation and General Clause Ordinance (Cap. 1). The Chief Executive in Council would be acting in an administrative or executive capacity and not in a judicial or quasi-judicial capacity.</p>
<p>9. Rules of procedures of appeal would protect confidential material and sources from disclosure while ensuring procedural fairness.</p> <p><i>(Paragraph 7.18)[#]</i></p>		<p>Under the United Nations (Anti-Terrorism Measures) Ordinance (27 of 2002), the court shall not make an order for the relevant proceedings to be held in chambers or in camera unless the court is satisfied that the order is reasonably necessary in the interests of—</p> <p>(a) the security, defence or external relation of the HKSAR; or</p> <p>(b) the administration of justice.</p>
<p><u>VII. INVESTIGATION POWERS</u></p> <p>A. Existing Powers</p> <p>1. To amend section 14 of the Crimes Ordinance (Cap. 200) so that the power to remove seditious publication without a warrant may be exercised in case of great emergency.</p> <p><i>(Paragraph 8.3)[#]</i></p>	<p>"14. Power to remove seditious publications"</p> <p>(1) Any police officer or public officer may—</p> <p>(a) enter any premises or place;</p> <p>(b) stop and board any vehicle, tramcar, train or vessel, and remove therefrom or obliterate any seditious publication.</p> <p>(2) Any police officer or public officer may—</p> <p>(a) break open any outer or inner door of any premises or place which he is empowered by this section to enter;</p> <p>(b) remove by force any person or thing obstructing any removal or obliteration which he is empowered by this section to make;</p> <p>(c) detain any vehicle, tramcar, train or vessel until any seditious publication has been removed or obliterated therefrom;</p>	<p>The condition to exercise the power to remove seditious publication if the publication is visible from a public place would be repealed.</p> <p>Section 14 of Cap. 200 was to be amended by the Crimes (Amendment) (No. 2) Ordinance 1997 (89 of 1997) which was enacted but has not, to date, been brought into operation. The amendment was to repeal "or public officer" in section 14(1) and (2) so that the power could only be exercised by a police officer.</p>

[#] Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
	<p>(d) remove any person from any vehicle, tramcar, train or vessel while any seditious publication is removed or obliterated.</p> <p>(3) Notwithstanding anything contained in subsection (1)(a), the powers conferred thereby shall, if the seditious publication is not visible from a public place, only be exercised—</p> <p>(a) with the prior permission of the occupier of the premises or place; or</p> <p>(b) under and in accordance with a warrant issued by a magistrate for such purpose."</p> <p><i>(Section 14 of Cap. 200)</i></p>	
<p>2. Existing provision governing investigation into treason, sedition and official secrets would be retained.</p>	<p>"8. Power to search and prevent offences under section 7</p> <p>(1) If a judge is satisfied by information on oath that there is reasonable ground for suspecting that an offence under section 7 has been committed, and that evidence of the commission thereof is to be found at any premises or place specified in the information, he may grant a search warrant authorizing a police officer not below the rank of inspector, together with any other police officers—</p> <p>(a) to enter the premises or place at any time within 1 month from the date of the warrant, if necessary by force;</p> <p>(b) to search the premises or place and any person found therein; and</p> <p>(c) to seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of such an offence.</p> <p>(2) A woman shall not be searched, in pursuance of a warrant granted under subsection (1), except by a woman.</p> <p>(3) Notwithstanding anything contained in subsection (1)—</p> <p>(a) a warrant shall only be granted under subsection (1) in respect of an offence suspected to have been committed within the 3 months prior to the laying of the information thereof;</p> <p>(b) if a warrant under subsection (1) has been executed on any premises, the police officer who has conducted or directed the search shall—</p> <p>(i) notify the occupier that the search has taken place, and supply him on request with a list of any documents or other objects which have been removed from the premises; and</p> <p>(ii) where any documents have been removed from any other person, supply that person with a list of such documents;</p> <p>(c) anything seized under subsection (1) may be retained for a period not exceeding 1 month, or if within that period proceedings are commenced for an offence under section 7, until the conclusion of those proceedings; and</p> <p>(d) section 102 of the Criminal Procedure Ordinance (Cap. 221) (which makes provision for the disposal of property connected with offences) shall apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in that section."</p> <p><i>(Section 8 of Cap. 200)</i></p> <p>"11. Search warrants</p> <p>(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—</p> <p>(a) enter at any time any premises or place named in the warrant, if necessary by force;</p> <p>(b) search the premises or place and every person found therein;</p> <p>(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.</p> <p>(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</p>	<p>It is not mentioned in the Consultation Document whether section 13 of Cap. 200 on search warrant would be retained. Section 13 was to be repealed by the Crimes (Amendment) (No. 2) Ordinance 1997 (89 of 1997) which was enacted but has not, to date, been brought into operation.</p>

Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
	<p>written order give to any police officer the like authority as may be given by the warrant of a magistrate under subsection (1)." (Section 11 of Cap. 521)</p> <p>"13. Search warrant If a magistrate is satisfied by information on oath that there is reasonable cause to believe that an offence under section 10 has been or is about to be committed he may grant a search warrant authorizing any police officer to enter any premises or place named in the warrant, with such assistance as may be necessary, and if necessary by force, and to search the premises or place and every person found therein, and to seize anything found on the premises or place which the officer has reasonable ground for suspecting to be evidence of an offence under section 10." (Section 13 of Cap. 200)</p>	
<p>3. To provide an emergency entry, search and seizure power to the Police for investigating certain Article 23 offences. A senior police officer (e.g. a superintendent) must reasonably believes that—</p> <p>(a) a relevant offence has been committed or is being committed;</p> <p>(b) unless immediate action is taken evidence of substantial value to the investigation of the offence would be lost; and</p> <p>(c) the investigation of the relevant offence would be seriously prejudiced as a result.</p> <p>(Paragraph 8.5)[#]</p>	<p>See extracts of the Organized and Serious Crimes Ordinance (Cap. 455) at Annex C and sections 23 and 23A of the Gambling Ordinance (Cap. 148) at Annex D.</p>	<p>The Article 23 offences referred to are treason, secession, sedition, subversion organizing or supporting proscribed organization, inchoate and accomplice offences.</p> <p>Under section 5 of the Organized and Serious Crimes Ordinance (Cap. 455), the Court of First Instance or the District Court may, if it is satisfied that the conditions in section 5(2) are fulfilled, issue a warrant on an application by an authorized officer authorizing him to enter and search specified premises and to seize and retain any material which is likely to be relevant to an investigation into an organized crime or proceeds of an organized crime or of a specified offence.</p> <p>Some of the conditions in section 5(2) of Cap. 455 are similar to the proposed conditions. For details, please see section 5(3) and (4).</p> <p>Such a search warrant may authorize entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap. 1).</p> <p>As an example, under sections 23 and 23A of the Gambling Ordinance (Cap. 148), a police officer of or above the rank of superintendent may authorize in writing any police officer to enter and search any premises or place if he reasonably suspects that the premises or place are or is a gambling establishment, or that an offence of promoting or facilitating bookmaking is being or has been committed in the premises or place. There would be other ordinances which confer on the Police specific powers of entry and search without a warrant for policy reasons peculiar to the respective ordinances.</p>
<p>4. To provide emergency financial investigation powers to the Police where illicit financial backing may be relevant for certain Article 23 offences. Where there is reasonable suspicion that the relevant offence has been committed or is being committed, the Commissioner of Police, in cases of exceptional emergency and in the interests of national security or public safety, may require a bank or a deposit-taking company to disclose to him information relevant to the investigation.</p>	<p>See extracts of the Organized and Serious Crimes Ordinance (Cap. 455) at Annex C and section 67 of the Police Force Ordinance (Cap. 232) at Annex E.</p>	<p>The Article 23 offences referred to are treason, secession, sedition, dealing with seditious publications, subversion organizing or supporting proscribed organization, inchoate and accomplice offences.</p> <p>Section 67 of the Police Force Ordinance (Cap. 232) empowers the Commissioner of Police to require banks or deposit-taking companies to furnish certain information where—</p> <p>(a) it appears to him that there is reasonable cause to suspect that an indictable offence has been committed; and</p> <p>(b) that it is expedient for the purpose of investigating such offence or</p>

[#] Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
<i>(Paragraph 8.6)[#]</i>		<p>apprehending the offender.</p> <p>Section 25A of Cap. 455, requires the disclosure of knowledge or suspicion that a property represents proceeds of or was used in connection with or is intended to be used in connection with an indictable offence.</p>
<p>5. To include certain Article 23 offences under Schedule 1 to the Organized and Serious Crimes Ordinance (Cap. 455) to confer additional powers for dealing with those offences.</p> <p><i>(Paragraph 8.7)[#]</i></p>	<p>See extracts of the Organized and Serious Crimes Ordinance (Cap. 455) at Annex C.</p>	<p>The Article 23 offences referred to are treason, secession, sedition, dealing with seditious publications, subversion, organizing or supporting proscribed organization, inchoate and accomplice offences and unlawful drilling.</p> <p>The effect of becoming a Schedule 1 offence is that—</p> <p>(a) the Article 23 offences would fall within the definition of "specified offence";</p> <p>(b) any of the Article 23 offences would fall within the definition of "organized crime" if it 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.</p> <p>Under section 3 of Cap. 455, the Court of First Instance may, if it is satisfied that the conditions in section 3(4) are fulfilled, make an order on an ex parte application by the Secretary for Justice to require a person to answer questions or furnish material that reasonably appears to be relevant to an investigation of an organized crime.</p> <p>Under section 4 of Cap. 455, the Court of First Instance may, if it is satisfied that the conditions in section 4(4) are fulfilled, make an order on an ex parte application by the Secretary for Justice or an authorized officer to require a person to produce material (whether in the HKSAR or elsewhere) or to grant access to material which is likely to be relevant to an investigation into an organized crime or proceeds of an organized crime or of a specified offence.</p> <p>Please refer to Part VII.B.3 above (on page 15) for search warrant under section 5 of Cap. 455.</p> <p>Sections 3, 4, and 5 of Cap. 455 expressly exclude items subject to legal privilege. However, a person is not excused from producing any material or furnishing any information that might tend to incriminate him or would breach an obligation as to secrecy or another restriction imposed by statute or otherwise.</p> <p>Other powers include the making of a confiscation order (section 8), a restraint order (section 15) or a charging order (section 16) on crime proceeds. A marked up copy of the amendments to these three sections introduced by the Drug Trafficking and Organized Crimes (Amendment) Ordinance (26 of 2002) is included in Annex C. These amendments shall come into operation on 1 January 2003 (L.N. 145 of 2002).</p> <p>Section 27 of Cap. 455 provides that the District Court or the Court of First Instance may, under certain circumstances and if it thinks fit, pass a</p>

[#] Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
		sentence on the person for the specified offence that is more severe than the sentence it would have passed but for this section. The sentence shall not exceed the maximum penalty permitted by law for the offence.
<p><u>VIII. PROCEDURAL AND MISCELLANEOUS MATTERS</u></p> <p>A. Unlawful Oaths and Unlawful Drilling</p> <p>1. To repeal the offences relating to the administration or taking of unlawful oaths.</p> <p><i>(Paragraph 9.2)[#]</i></p>	<p>"15. Unlawful oaths to commit capital offences Any person who—</p> <p>(a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit an offence of murder, treason or piracy with violence; or</p> <p>(b) takes any such oath or engagement, not being compelled to do so, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life."</p> <p><i>(Section 15 of Cap. 200)</i></p> <p>"16. Other unlawful oaths to commit offences Any person who—</p> <p>(a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the following ways, that is to say—</p> <p>(i) to engage in any mutinous or seditious enterprise;</p> <p>(ii) to commit any offence not punishable with death;</p> <p>(iii) to provoke a breach of the peace;</p> <p>(iv) to be of any association or society, formed for the purpose of doing any act mentioned in sub-paragraph (i), (ii) or (iii);</p> <p>(v) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;</p> <p>(vi) not to inform or give evidence against any associate or other person;</p> <p>(vii) not to reveal or discover any unlawful association or society or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or</p> <p>(b) takes any such oath or engagement, not being compelled to do so, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years."</p> <p><i>(Section 16 of Cap. 200)</i></p> <p>"17. Compulsion in taking unlawful oaths It shall be no defence to a charge under section 15 or 16 that the person charged was compelled to take any oath or engagement mentioned therein, unless—</p> <p>(a) within 14 days after taking it; or</p> <p>(b) if prevented by actual force or sickness, within 14 days after the termination of such prevention, the person charged declares—</p> <p>(i) by information on oath before a magistrate; or</p> <p>(ii) if he is on actual service in Her Majesty's forces, either by such information or by informing his commanding officer,</p> <p>of all he knows concerning the matter, including any person by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken."</p> <p><i>(Section 17 of Cap. 200)</i></p>	

[#] Paragraph numbers in the Consultation Document

Summary of the Proposals in the Consultation Document	Existing Legislation which may be relevant	Preliminary Observations
<p>2. To retain the offence of unlawful drilling.</p> <p><i>(Paragraph 9.3)[#]</i></p>	<p>"18.Unlawful drilling</p> <p>(1) Any person who—</p> <p>(a) without the permission of the Governor or the Commissioner of Police, trains or drills any other person in the use of arms or the practice of military exercises or evolutions; or</p> <p>(b) is present at any meeting of persons, held without the permission of the Governor or the Commissioner of Police for the purpose of training or drilling any other persons in the use of arms or the practice of military exercises or evolutions,</p> <p>shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.</p> <p>(2) Any person who—</p> <p>(a) at any meeting mentioned in subsection (1) is trained or drilled in the use of arms or the practice of military exercises or evolutions; or</p> <p>(b) is present at any such meeting for the purpose of being so trained or drilled,</p> <p>shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years."</p> <p><i>(Section 18 of Cap. 200)</i></p>	<p>Opportunity should be taken to improve section 18 of Cap. 200 by specifying the purpose of training or drilling.</p>
<p>B. Procedures</p> <p>3. To remove the time limits for bringing prosecutions against treason and sedition.</p> <p><i>(Paragraph 9.5)[#]</i></p>	<p>"4. Limitations as to trial for treason, etc.</p> <p>(1) A person shall not be prosecuted for any offence under section 2 or 3 unless the prosecution is commenced within 3 years after the offence is committed."</p> <p><i>(Section 4(1) of Cap 200)</i></p> <p>"11.Legal proceedings</p> <p>(1) No prosecution for an offence under section 10 shall be begun except within 6 months after the offence is committed."</p> <p><i>(Section 11(1) of Cap. 200)</i></p>	<p>For summary offences, a limitation of six months for commencing prosecution is imposed generally, unless a different limitation period is provided for by law : see section 26 of the Magistrates Ordinance (Cap. 227).</p>
<p>4. To require the consent of the Secretary of Justice for bringing prosecutions in all of the Article 23 offences.</p> <p><i>(Paragraph 9.6)[#]</i></p>	<p>"11.Legal proceedings</p> <p>(2) No prosecution for an offence under section 10 shall be instituted without the written consent of the Attorney General."</p> <p><i>(Section 11(2) of Cap. 200)</i></p> <p>"9. Provisions as to trial of offences</p> <p>(1) Proceedings for an offence under this Part shall not be instituted except by or with the consent of the Secretary for Justice."</p> <p><i>(Section 9(1) of Cap. 521)</i></p> <p>"24.Provisions as to trial of offences</p> <p>(1) Proceedings for an offence under this Part shall not be instituted except by or with the consent of the Secretary for Justice."</p> <p><i>(Section 24(1) of Cap. 521)</i></p>	<p>At present, consent has to be obtained before prosecutions for sedition, espionage or unlawful disclosure of protected information are instituted.</p> <p>The Crimes (Amendment) (No. 2) Ordinance 1997 (89 of 1997) (which has not come into operation) amends section 11(2) of Cap. 200 such that no prosecution for an offence under Part I (treason) and Part II (other offences against the Crown) shall be instituted without the written consent of the Attorney General.</p>

Encl

Prepared by

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[#] Paragraph numbers in the Consultation Document

“《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)

(f) 符合以下說明——

- (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關作監獄用途的地方、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

CHAPTER 521

官方機密條例

OFFICIAL SECRETS

本條例旨在管制未經授權而取得或披露官方資料。

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

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

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

第 I 部

PART I

導言

PRELIMINARY

1. 簡稱及生效日期

1. Short title and commencement

(1) 本條例可引稱為《官方機密條例》。

(1) This Ordinance may be cited as the Official Secrets Ordinance.

(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)

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

第 II 部

PART II

間諜活動

ESPIONAGE

2. 釋義

2. Interpretation

(1) 在本部中——

(1) In this Part—

“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；

“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

“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. Harboursing

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士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。

(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.

(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,而提述關於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,並關於保安或情報的資料、文件或其他物品,即屬犯罪。

(2) 第(1)款中提述披露關於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理由相信有關的資料、文件或物品是關於保安或情報的,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理由相信——

- (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理由相信——

- (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理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理由相信有關的資料、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理由相信——

- (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。

- (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).

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理由相信是因違反第 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理由相信——

- (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——

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—

- (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，如任何其他人士所作出的披露——
 - (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理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理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) 他知道或有合理理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。

(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.

(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士之間，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

- (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、慫使或促使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、慫使或促使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
受本條例限制的饋贈 (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 (受本條例限制的饋贈).....	Section 12(9)
Making a gift (作出饋贈).....	Section 12(10)
Realisable property (可變現財產).....	Section 12(1)
Restraint order (限制令).....	Section 15(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值).....	Section 12
Value of property (財產的價值).....	Section 12(4)

(Amended 90 of 1995 s. 2)

(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) 說明法庭已根據本條發出命令，並且須——

- (i) 載有命令的日期；
- (ii) 說明該有組織罪行的詳情；
- (iii) 如命令是針對該人而發出的，說明此情況；（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，說明此情況；
- (v) 說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) 說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有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~~

(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)

||□>

△ (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

□ (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大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)向法院提供。(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.]

△ (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限，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。

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——

- (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限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 subparagraph (i), first—

(A) impose on the person such period of imprisonment or detention (if any) as is appropriate in respect of the offence or, as the case may be, the offences concerned;

(B) make such order or orders (other than a confiscation order) in relation to sentence as is appropriate in respect of the offence or, as the case may be, the offences concerned, and such order or orders may be or include any order—

(I) imposing any fine on the person;

(II) involving any payment by the person; or

(III) under section 38F or 56 of the Dangerous Drugs Ordinance (Cap. 134), or under section 72, 84A, 102 or 103 of the Criminal Procedure Ordinance (Cap. 221);

(b) where subsection (1)(a)(ii)(A) is applicable—

(i) first be satisfied that—

(A) the person has died; and

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

(ii) then, where the court is satisfied under subparagraph (i), determine, if the prosecution so requests, whether the offence or any of the offences concerned could have been an organized crime;

(c) where subsection (1)(a)(ii)(B) is applicable—

(i) first be satisfied that—

(A) the person has absconded and that not less than 6 months have elapsed beginning with the date which is, in the opinion of the court, the date on which the person absconded;

(B) in the case of—

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

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

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

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

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

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

(ii) then, where the court is satisfied under subparagraph (i), determine, if the prosecution so requests, whether the offence or any of the offences concerned could have been an organized crime. (Replaced 90 of 1995 s. 6)

|| □ >

△ (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 or which the court could have taken into consideration in determining his sentence if he had not died or absconded, as the case may be,

and, if he has, whether his proceeds of that specified offence or offences are in total at least \$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.

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- (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士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)款向法院提供。

(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，向法院提供資料。

(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院提供資料，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) 有合理理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—

- (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使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。^{↑ 罰款 1/2}
 (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 } 本人會竭誠依法為香港特別行政區政府效力為
 謹以至誠作出宣言 }
 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 } that I will well and faithfully serve the Government of
 do solemnly and sincerely declare }
 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 he 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；

(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;

- (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——
- 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；
 - 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）
 - 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也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）

13A. 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——

- 有人正就或已就任何處所或場所犯第 16A 條所訂罪行；或
- 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——

- 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；
- 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—

- being used in or for or in connexion with gambling in such premises or place;
- 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
- 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

- (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