

Organized and Serious Crimes Ordinance

(Cap. 455)

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An Ordinance to create new powers of investigation into organized crimes and certain other offences and into the proceeds of crime of certain offenders; provide for the confiscation of proceeds of crime; make provision in respect of the sentencing of certain offenders; create offences relating to the proceeds of crime or property representing the proceeds of crime; and for ancillary and connected matters.

(Amended 26 of 2002 s. 3)

[2 December 1994]

(Enacting provision omitted—E.R. 2 of 2014)

(Format changes—E.R. 1 of 2017)

Part I

Preliminary

1. Short title

- (1) This Ordinance may be cited as the Organized and Serious Crimes Ordinance.
- (2) *(Omitted as spent—E.R. 2 of 2014)*

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
absconded (潛逃), in relation to a person, includes absconded for any reason whatsoever, and whether or not, before absconding, the person had been—
 - (a) taken into custody; or
 - (b) released on bail; *(Added 90 of 1995 s. 2)*

authorized officer (獲授權人) means—

- (a) any police officer;
- (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap. 342); and
- (c) any other person authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (*Amended L.N. 362 of 1997*)

confiscation order (沒收令) means an order made under section 8(7);

dealing (處理), in relation to property referred to in section 15(1) or 25, includes—

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property;
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); (*Added 90 of 1995 s. 2*)

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

insolvency officer (債務處理人) means—

- (a) the Official Receiver; or
- (b) any person acting as—

- (i) a trustee (including provisional trustee), interim trustee or special manager appointed under the Bankruptcy Ordinance (Cap. 6); or (*Amended 18 of 2005 s. 48*)
- (ii) a liquidator, provisional liquidator or special manager appointed under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); (*Amended 28 of 2012 ss. 912 & 920*)

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

items subject to legal privilege (享有法律特權的品目) means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them,

but excludes any such communications or items held with the intention of furthering a criminal purpose;

material (物料) includes any book, document or other record in any form whatsoever, and any article or substance;

organized crime (有組織罪行) means a Schedule 1 offence that—

- (a) is connected with the activities of a particular triad society;
- (b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or
- (c) is committed by 2 or more persons, involves substantial planning and organization and involves—
 - (i) loss of the life of any person, or a substantial risk of such a loss;
 - (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or
 - (iii) serious loss of liberty of any person;

premises (處所) includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and
- (b) any tent or movable structure;

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

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

reward (酬賞) includes a pecuniary advantage;

Schedule 1 offence (附表1所列罪行) means—

- (a) any of the offences specified in Schedule 1;
- (b) conspiracy to commit any of those offences;

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

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

specified offence (指明的罪行) means—

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

triad society (三合會) includes any society which—

- (a) uses any ritual commonly used by triad societies, any ritual closely resembling any such ritual or any part of any such ritual; or
 - (b) adopts or makes use of any triad title or nomenclature.
- (2) For the purpose of the definition of **organized crime** (有組織罪行) in subsection (1)—
- (a) a conspiracy to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if the pursuit of the agreed course of conduct would at some stage involve that matter;
 - (b) an attempt or incitement to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if what the person attempting or inciting the commission had in view would involve that matter.

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

Expression	Relevant provision
Charging order (押記令)	Section 16(2)
Gift caught by this Ordinance (受本條例圍制的饋贈)	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)
<i>(Amended 90 of 1995 s. 2)</i>	

- (4) This Ordinance applies to property whether it is situated in Hong Kong or elsewhere.
- (5) References in this Ordinance (except in sections 25 and 25A) to offences or organized crimes include a reference to offences or organized crimes committed before the commencement of this Ordinance; but nothing in this Ordinance imposes any duty or confers any power on any court in or in connection with proceedings against a person for an offence instituted before the commencement of this Ordinance. *(Amended 90 of 1995 s. 2)*
- (6) For the purposes of this Ordinance—
- (a) a person's proceeds of an offence are—

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

- (ii) that property; and
 - (iii) that pecuniary advantage. (*Replaced 87 of 1997 s. 36*)
- (8) For the purposes of this Ordinance, a person who has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with the commission of an offence or an organized crime has benefited from that offence or organized crime, as the case may be.
- (9) References in this Ordinance to property received in connection with the commission of an offence or organized crime include a reference to property received both in that connection and in some other connection.
- (10) Subsections (11) to (17) shall have effect for the interpretation of this Ordinance.
- (11) Property is held by any person if he holds any interest in it.
- (12) References to property held by a person include a reference to property vested in his trustee in bankruptcy or in a liquidator.
- (13) References to an interest held by a person beneficially in property include, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by him beneficially if the property were not so vested.
- (14) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (15) Proceedings for an offence are instituted—
 - (a) when a magistrate issues a warrant or summons under section 72 of the Magistrates Ordinance (Cap. 227) in respect of the offence;

- (aa) when a person has been arrested for the offence and released on bail or has refused bail; (*Added 26 of 2002 s. 3*)
- (b) when a person is charged with the offence after being taken into custody without a warrant; or
- (c) when an indictment is preferred by the direction or with the consent of a judge under section 24A(1)(b) of the Criminal Procedure Ordinance (Cap. 221),

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

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

- (f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).
- (16A) An application for a confiscation order made in respect of a defendant where section 8(1)(a)(ii) or (7A) is applicable is concluded—
- (a) if the Court of First Instance or the District Court decides not to make such an order, when it makes that decision; or (*Amended 25 of 1998 s. 2*)
 - (b) if such an order is made as a result of that application, when the order is satisfied. (*Added 90 of 1995 s. 2*)
- (16B) An application under section 20(1A) in respect of a confiscation order made against a defendant is concluded—
- (a) if the Court of First Instance decides not to vary that order, when it makes that decision; or
 - (b) if the Court of First Instance varies that order as a result of that application, when the order is satisfied. (*Added 90 of 1995 s. 2. Amended 25 of 1998 s. 2*)
- (17) An order or verdict (including an order or verdict of acquittal) is subject to appeal or review so long as an appeal, further appeal or review is pending against the order or verdict; and for this purpose an appeal, further appeal or review shall be treated as pending (where one is competent but has not been instituted) until—
- (a) (*Repealed 79 of 1995 s. 50*)
 - (b) the expiration of the time prescribed for instituting the appeal, further appeal or review. (*Amended 79 of 1995 s. 50*)

Organized and Serious Crimes Ordinance

Part I

1-22

Section 2

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- (18) Subject to subsection (19), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege. *(Added 26 of 2002 s. 3)*
- (19) Subsection (18) shall not prejudice the operation of sections 3, 4 and 5. *(Added 26 of 2002 s. 3)*

[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) 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) 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) 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,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. 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) 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) 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) 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) 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.
- (2) Subject to subsection (1), information obtained by any person under or by virtue of section 3, 4 or 5 may be disclosed by any authorized officer—
 - (a) to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption; and
 - (b) where the information appears to the Secretary for Justice to be likely to assist any corresponding person or body to discharge its functions, to that person or body.
- (3) Subsection (2) is without prejudice to any other right to disclose information obtained under or by virtue of section 3, 4 or 5 that may exist apart from subsection (2).

- (4) In this section, *corresponding person or body* (相應的人員或機構) means any person who or body which, in the opinion of the Secretary for Justice, has under the law of a place outside Hong Kong, functions corresponding to any of the functions of any body mentioned in subsection (2)(a).

(Amended L.N. 362 of 1997)

7. Offence of prejudicing investigation

- (1) Where an order under section 3 or 4 has been made or has been applied for and has not been refused or a warrant under section 5 has been issued, a person who, knowing or suspecting that the investigation in relation to which the order has been made or applied for or the warrant has been issued is taking place—
- (a) without lawful authority or reasonable excuse makes any disclosure intending to prejudice the investigation; or
 - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of any material—
 - (i) knowing or suspecting that the material is likely to be relevant to the investigation; and
 - (ii) intending to conceal the facts disclosed by the material from persons carrying out the investigation,
- commits an offence.
- (2) Where a person has been arrested in connection with an investigation specified in subsection (1), that subsection shall not apply as regards any disclosure in respect of the investigation made after such arrest.
- (3) A person who commits an offence under this section is liable—

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- (a) on conviction upon indictment to a fine and to imprisonment for 7 years; or
- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 3 years.

[cf. 1986 c. 32 s. 31 U.K.]

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) 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) or rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg. A)) 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 (*Replaced 26 of 2002 s. 3*)
- (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*)
- (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. (*Added 26 of 2002 s. 3*)

- (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 fits after taking into account any order or orders provided for or referred to in subsection (3)(a)(ii)(B)(I), (II) or (III) which has or have been made in respect of the person. (*Replaced 90 of 1995 s. 6*)
- (7A) Where—
 - (a) a person has been convicted of one or more specified offences;
 - (b) an application for a confiscation order has been made in respect of the person; and

- (c) the person has died or absconded before that application has been concluded,
- then that application may still be concluded notwithstanding that death or abscondment, as the case may be. (*Added 90 of 1995 s. 6*)
- (7B) Where subsection (7A) is applicable in relation to a person who has died—
- (a) subsection (3)(a)(ii)(A) shall not apply in relation to the person;
- (b) the court shall not make a confiscation order against the person unless it is satisfied that the person has died. (*Added 90 of 1995 s. 6*)
- (7C) Where subsection (7A) is applicable in relation to a person who has absconded, the court shall not make a confiscation order against the person unless it is satisfied that—
- (a) the person has absconded; and
- (b) in the case of—
- (i) a person who is known to be outside Hong Kong and whose exact whereabouts are known—
- (A) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned; and
- (B) notice of those proceedings was given to that person in sufficient time to enable him to defend them;
- (ii) 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. A)); 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. (*Replaced 26 of 2002 s. 3*)
- (Added 90 of 1995 s.6)*
- (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. (*Added 26 of 2002 s. 3*)
- (8) For the purposes of subsection (3)(b)(i)(B) or (ii) or (c)(i)(C) or (ii), information may be furnished to the court after the person has died or absconded, as the case may be. (*Replaced 90 of 1995 s. 6*)
- (8A) For the purposes of any Ordinance conferring rights of appeal in criminal cases, a confiscation order made against a person shall be deemed to be a sentence passed on that person in respect of the offence or offences concerned and, in the case of any such person who has died (whether before or after the making of such order), his personal representative may act on his behalf for those purposes. (*Added 90 of 1995 s. 6*)

- (8B) It is hereby declared that the standard of proof required to determine any question arising under this Ordinance as to—
- (a) whether a person has benefited from a specified offence or offences;
 - (b) whether a person has benefited from organized crime; or
 - (c) the amount to be recovered in his case in pursuance of a confiscation order,
- shall be on the balance of probabilities. (*Added 90 of 1995 s. 6*)
- (8C) The fact that—
- (a) under subsection (3)(b)(i)(B) or (c)(i)(C) the court is satisfied that a person could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (b) under subsection (3)(b)(ii) or (c)(ii) the court determines that the offence or any of the offences referred to in subsection (3)(b)(i)(B) or (c)(i)(C) could have been an organized crime,
- shall not be admissible in evidence in any proceedings for an offence. (*Added 90 of 1995 s. 6*)
- (8D) For the avoidance of doubt, it is hereby declared that where an application is made for a confiscation order in any case where subsection (1)(a)(ii)(A) is applicable, the personal representatives of the deceased person concerned shall, for the purposes of opposing the application, be entitled to be heard on the application and to call, examine and cross-examine any witness. (*Added 90 of 1995 s. 6*)
- (8E) Where—
- (a) before the commencement of the Organized and Serious Crimes (Amendment) Ordinance 1995 (90 of 1995), proceedings for one or more specified offences have

been instituted against a person but have not been concluded because that person has absconded; and

- (b) immediately before that commencement, any realisable property of that person is the subject of a charging order or restraint order,

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

(8F) Where—

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

then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person as they would apply in relation to a person to whom subsection (7A) is applicable because he has absconded. (*Added 90 of 1995 s. 6*)

(9) For the purposes of—

- (a) subsection (3)(a)(i), (b)(ii) or (c)(ii), the court shall only have regard to evidence such as would be admissible in criminal proceedings;
 - (b) subsection (3)(a)(i), the court shall only make a determination that a specified offence is an organized crime if it is so satisfied beyond reasonable doubt. *(Amended 90 of 1995 s. 6)*
- (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. *(Added 26 of 2002 s. 3)*

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

9. Assessing the proceeds of crime

- (1) The Court of First Instance or the District Court, as the case may be, may, for the purpose of determining whether— *(Amended 25 of 1998 s. 2)*
- (a) where section 8(1)(a)(i) is applicable, a person convicted of a specified offence and found to have committed an organized crime;
 - (b) where section 8(1)(a)(ii)(A) or (B) is applicable, a person whom the court is satisfied that he could have been convicted of a specified offence being an offence which the court determines that it could have been an organized crime,

has benefited from organized crime, and if he has, of assessing the value of his proceeds of organized crime, make the following assumptions, except to the extent that the defendant (or, in the case of a defendant who has died, his

personal representative on his behalf) shows that any of the assumptions are incorrect in his case. (*Replaced 90 of 1995 s. 7*)

- (2) Those assumptions are—
 - (a) that any property appearing to the court—
 - (i) to have been held by him at any time—
 - (A) since his conviction; or
 - (B) where section 8(1)(a)(ii) is applicable, since the application was made for a confiscation order in his case,
as the case may be; or (*Replaced 90 of 1995 s. 7*)
 - (ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him,
was received by him, at the earliest time at which he appears to the court to have held it, as his proceeds of organized crime; (*Amended 90 of 1995 s. 7*)
 - (b) that any expenditure of his since the beginning of that period was met out of his proceeds of organized crime; and (*Amended 90 of 1995 s. 7*)
 - (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as his proceeds of organized crime, he received the property free of any other interests in it. (*Amended 90 of 1995 s. 7*)
- (3) For the purpose of assessing the value of the defendant's proceeds of organized crime in a case where a confiscation order, or an order under section 3(6) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), has previously been made against him, the court shall leave out of account any proceeds of organized crime that are shown to the court

to have been taken into account in determining the amount to be recovered under that order.

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

10. Statements, etc. relevant to making confiscation order

- (1) Where an application is made for a confiscation order, the prosecutor may tender to the Court of First Instance or the District Court, as the case may be, a statement of matters relevant to any of the following— (*Amended 25 of 1998 s. 2*)
- (a) where section 8(1)(a)(ii) is applicable, determining—
 - (i) whether the defendant could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) whether the offence or any of the offences concerned could have been an organized crime;
 - (b) determining whether the defendant has benefited from a specified offence or an organized crime;
 - (c) assessing the value of the defendant's proceeds of a specified offence or an organized crime. (*Replaced 90 of 1995 s. 8*)
- (1A) Where any statement has been tendered under subsection (1)—
- (a) the prosecutor may at any time tender to the court a further such statement; and
 - (b) the court may at any time require the prosecutor to tender to it a further such statement within such period as it may direct. (*Added 90 of 1995 s. 8*)
- (1B) Where any statement has been tendered under subsection (1) and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant—

- (a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and
 - (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely. *(Added 90 of 1995 s. 8)*
- (1C) Where the court has given a direction under this section, it may at any time vary it by giving a further direction. *(Added 90 of 1995 s. 8)*
- (2) Where the defendant accepts to any extent any allegation in any statement tendered under subsection (1), the court may, for the purposes of—
- (a) where section 8(1)(a)(ii) is applicable, determining—
 - (i) whether the defendant could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) whether the offence or any of the offences concerned could have been an organized crime;
 - (b) determining whether the defendant has benefited from a specified offence or an organized crime; or
 - (c) assessing the value of his proceeds of a specified offence or an organized crime,
- treat his acceptance as conclusive of the matters to which the allegation relates. *(Replaced 90 of 1995 s. 8)*
- (3) If the defendant fails in any respect to comply with a requirement under subsection (1B), he may be treated for the purposes of this section as accepting every allegation in the statement apart from— *(Amended 90 of 1995 s. 8)*
- (a) any allegation in respect of which he has complied with the requirement; *(Replaced 90 of 1995 s. 8)*

- (b) where section 8(1)(a)(ii) is applicable—
 - (i) any allegation that he could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) any allegation that the offence or any of the offences concerned could have been an organized crime; (*Replaced 90 of 1995 s. 8*)
 - (c) any allegation that he has benefited from a specified offence or organized crime; and (*Added 90 of 1995 s. 8*)
 - (d) any allegation that any payment or other reward was received by him in connection with the commission of a specified offence or an organized crime. (*Added 90 of 1995 s. 8*)
- (4) Where—
- (a) the defendant tenders to the court a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
 - (b) the prosecutor accepts to any extent any allegation in the statement,
- the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.
- (5) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in writing in a form acceptable to the court. (*Replaced 90 of 1995 s. 8*)
 - (6) No acceptance by the defendant under this section that—
 - (a) where section 8(1)(a)(ii) is applicable—

- (i) he could have been convicted in respect of the offence or, as the case may be, the offences concerned;
 - (ii) the offence or any of the offences concerned could have been an organized crime; or
 - (b) any payment or other reward was received by him in connection with the commission of a specified offence or an organized crime,
- shall be admissible in evidence in any proceedings for an offence. (*Replaced 90 of 1995 s. 8*)
- (7) In any proceedings on an application made for a confiscation order where section 8(1)(a)(ii) or (7A) is applicable—
 - (a) if the defendant has died, subsection (1B) shall have effect as if it required a copy of the statement tendered under subsection (1) to be served on the defendant's personal representative;
 - (b) if the defendant has absconded and section 8(3)(c)(i)(B)(I) or (7C)(b)(i) is not applicable to him, this section shall have effect as if a copy of the statement tendered under subsection (1) had been served on the defendant. (*Added 90 of 1995 s. 8*)
 - (8) For the avoidance of doubt, it is hereby declared that, where section 8(1)(a)(ii) is applicable, this section shall not prejudice the generality of section 8(8). (*Added 90 of 1995 s. 8*)
 - (9) For the avoidance of doubt, it is hereby declared that an allegation may be accepted under this section, and may always have been so accepted, whether or not subsection (7)(a) or (b) is applicable to the defendant, and subsection (3) shall be construed accordingly. (*Added 26 of 2002 s. 3*)

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

11. Amount to be recovered under confiscation order

- (1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court of First Instance or the District Court, as the case may be, assesses to be the value of the defendant's proceeds of any specified offence to which section 8(4) applies or, where the court has determined under section 8(3)(a)(i) that a specified offence is an organized crime or under section 8(3)(b)(ii) or (c)(ii) that a specified offence could have been an organized crime, all organized crime which he has committed. (*Amended 90 of 1995 s. 9; 25 of 1998 s. 2*)
- (2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 10 or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).
- (3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's proceeds for the purpose of subsection (1), the amount to be recovered in the defendant's case under the confiscation order shall be—
 - (a) the amount appearing to the court to be so realised; or
 - (b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might be so realised is nil. (*Amended 90 of 1995 s. 9*)
[cf. 1986 c. 32 s. 4 U.K.]

11A. Interest on amounts to be recovered under confiscation orders

- (1) The amount to be recovered under a confiscation order shall be treated as a judgment debt for the purposes of—
- (a) where the order was made by the Court of First Instance, section 49 of the High Court Ordinance (Cap. 4); (*Amended 25 of 1998 s. 2*)
 - (b) where the order was made by the District Court, section 50 of the District Court Ordinance (Cap. 336),
- and, for those purposes, the date of the confiscation order shall be treated as the date of the judgment debt.
- (2) Where by virtue of subsection (1) any interest accrues on the amount to be recovered under a confiscation order, the defendant shall be liable to pay that interest and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

(Added 90 of 1995 s. 10)

12. Definition of principal terms used

- (1) In this Ordinance, ***realisable property*** (可變現財產) means, subject to subsection (2)—
- (a) any property held by the defendant; (*Amended 90 of 1995 s. 11*)
 - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance; and (*Amended 90 of 1995 s. 11*)
 - (c) any property that is subject to the effective control of the defendant. (*Added 90 of 1995 s. 11*)
- (2) Property is not realisable property if—
- (a) an order under section 102 or 103 of the Criminal Procedure Ordinance (Cap. 221);

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- (b) an order under section 38F or 56 of the Dangerous Drugs Ordinance (Cap. 134); or
- (c) an order under section 12AA(1) of the Prevention of Bribery Ordinance (Cap. 201),
- is in force in respect of the property.
- (3) For the purposes of this Ordinance the amount that might be realised at the time a confiscation order is made against the defendant is— (*Amended 90 of 1995 s. 11*)
- (a) the total of the values at that time of all the realisable property held by the defendant, less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,
- together with the total of the values at that time of all gifts caught by this Ordinance.
- (4) Subject to subsections (5) to (10), for the purposes of this Ordinance the value of property (other than cash) in relation to any person holding the property—
- (a) where any other person holds an interest in the property, is—
- (i) the market value of the first-mentioned person's beneficial interest in the property, less
- (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
- (b) in any other case, is its market value.
- (5) Subject to subsection (10), references in this Ordinance to the value at any time (referred to in subsection (6) as *the material time* (關鍵時間)) of a gift caught by this Ordinance or of any payment or reward are references to—

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
 - (b) where subsection (6) applies, the value there mentioned, whichever is the greater.
- (6) Subject to subsection (10), if at the material time the recipient holds—
 - (a) the property which he received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received, the value referred to in subsection (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it so represents the property which he received, but disregarding in either case any charging order.
- (7) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to—
 - (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
 - (b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.
- (8) In subsection (7)(b), *the preferential debts* (優先債項)—
 - (a) in relation to bankruptcy, means the debts to be paid in priority under section 38 of the Bankruptcy Ordinance (Cap. 6) (assuming the date of the confiscation order to be the date of filing of the petition and of the bankruptcy order made under that Ordinance); and (*Amended 37 of 1998 s. 11*)

- (b) in relation to winding up, means the debts to be paid under section 265 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (assuming the date of the confiscation order to be the date of commencement of the winding up and the relevant date for the purpose of that section). (*Amended 28 of 2012 ss. 912 & 920*)
- (9) A gift (including a gift made before the commencement of this Ordinance) is caught by this Ordinance if—
- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or
 - (b) it was made by the defendant at any time and was a gift of property received by the defendant in connection with a specified offence or an organized crime committed by him or another; or
 - (c) it was made by the defendant at any time and was a gift of property which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (10) For the purposes of this Ordinance—
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and

- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.
- (11) For the purposes of subsection (1)—
- (a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has—
- (i) a legal or equitable estate or interest in the property; or
 - (ii) a right, power or privilege in connection with the property;
- (b) without limiting the generality of any other provision of this Ordinance, in determining—
- (i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or
 - (ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant, regard may be had to—
- (A) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
 - (B) a trust that has a relationship to the property; and

(C) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in subparagraph (A) or trusts of the kind referred to in subparagraph (B), and other persons. *(Added 90 of 1995 s. 11)*

- (12) Where a person obtains a pecuniary advantage in connection with the commission of an offence, or the commission of one or more organized crimes, he is to be treated for the purposes of this Ordinance as if he had obtained in connection with that offence or those crimes, as the case may be, a sum of money equal to the value of that advantage, and the other provisions of this Ordinance shall be construed accordingly. *(Added 87 of 1997 s. 36)*

[cf. 1986 c. 32 s. 5 U.K.]

Part IV

Enforcement, etc of Confiscation Orders

13. Application of procedure for enforcing confiscation orders

- (1) Subject to this section, where the Court of First Instance or the District Court, as the case may be, makes a confiscation order— (*Amended 90 of 1995 s. 12; 25 of 1998 s. 2*)
- (a) the court shall also make an order—
- (i) subject to subsection (1A), fixing the period within which the amount he is liable to pay under the confiscation order shall be duly paid; and
- (ii) fixing a term of imprisonment which the defendant is to serve if any of that amount is not duly paid within that period (including paid by way of being recovered); and (*Replaced 26 of 2002 s. 3*)
- (b) section 114(1), (3), (4), (5), (6) and (7) of the Criminal Procedure Ordinance (Cap. 221) shall apply as if—
- (i) that amount were a fine imposed upon him by the court; and
- (ii) the term of imprisonment fixed under this section were a term fixed under section 114(1)(c) of that Ordinance.
- (1A) The court shall not under subsection (1)(a)(i) fix a period longer than 6 months unless it is satisfied that there are special circumstances which justify it doing so. (*Added 26 of 2002 s. 3*)

Organized and Serious Crimes Ordinance

Part IV

4-4

Section 13

Cap. 455

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

TABLE

An amount not exceeding \$200,000	12 months
An amount exceeding \$200,000 but not exceeding \$500,000	18 months
An amount exceeding \$500,000 but not exceeding \$1 million	2 years
An amount exceeding \$1 million but not exceeding \$2.5 million	3 years
An amount exceeding \$2.5 million but not exceeding \$10 million	5 years
An amount exceeding \$10 million	10 years

- (3) Subsections (1) and (2) shall apply in relation to the District Court. (*Replaced 90 of 1995 s. 12*)
- (3A) For the avoidance of doubt, it is hereby declared that no limitation on the jurisdiction of the District Court as to the imposition of penalties set out in section 82 of the District Court Ordinance (Cap. 336) shall be construed so as to prejudice the operation of subsection (3). (*Added 90 of 1995 s. 12*)
- (4) Where the defendant—
- (a) becomes liable to serve a term of imprisonment fixed under this section in respect of a confiscation order; and
 - (b) is also liable to serve a term of imprisonment or detention in respect of the offence or offences concerned,

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

- (5) For the purposes of subsection (4)—
 - (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
 - (b) there shall be disregarded—
 - (i) any sentence suspended under section 109B of the Criminal Procedure Ordinance (Cap. 221) which has not taken effect at the time the defendant becomes liable to a term of imprisonment under this section; and
 - (ii) any term of imprisonment fixed under section 114(1) of the Criminal Procedure Ordinance (Cap. 221) for which the defendant has not at that time been committed.
- (6) Sections 86 and 109A of the Criminal Procedure Ordinance (Cap. 221) shall not apply in relation to fixing a term of imprisonment under this section. *(Amended 90 of 1995 s. 12)*
- (7) This section shall not apply in relation to a confiscation order where section 8(1)(a)(ii) or (7A) is applicable. *(Added 90 of 1995 s. 12)*
- (8) At the end of each day's sitting of the Court of First Instance or the District Court, the Registrar of the High Court or District Court, as the case may be, shall deliver (or cause to be delivered) to the Commissioner of Correctional Services a certificate, in the form specified in Schedule 5, in respect of each term of imprisonment fixed under this section. *(Added 90 of 1995 s. 12. Amended 25 of 1998 s. 2)*
- (9) A certificate referred to in subsection (8) shall be a sufficient warrant to the Commissioner of Correctional

Services for receiving into his custody the defendant named in the certificate and for carrying into effect the term of imprisonment fixed under this section in respect of that defendant. (*Added 90 of 1995 s. 12*)

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

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

- (1) The powers conferred on the Court of First Instance by sections 15(1) and 16(1) are exercisable where—
- (a) proceedings have been instituted in Hong Kong against the defendant for a specified offence or—
 - (i) an application for a confiscation order has been made in respect of the defendant where section 8(1)(a)(ii) or (7A) is applicable; or
 - (ii) an application has been made under section 20(1A) in respect of a confiscation order made against the defendant; (*Replaced 90 of 1995 s. 13*)
 - (b) the proceedings have not, or the application has not, as the case may be, been concluded; (*Replaced 90 of 1995 s. 13. Amended 26 of 2002 s. 3*)
 - (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 (*Added 26 of 2002 s. 3*)
 - (c) the Court of First Instance is satisfied that there is reasonable cause to believe—

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- (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*)
 - (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. (*Added 26 of 2002 s. 3*)
 - (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. (*Added 26 of 2002 s. 3*)
 - (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—
 - (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.
- (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. *(Added 26 of 2002 s. 3)*

- (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. *(Added 26 of 2002 s. 3)*
- (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. *(Added 26 of 2002 s. 3)*
- (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. *(Added 26 of 2002 s. 3)*
- (16) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence. *(Added 26 of 2002 s. 3)*
- (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. *(Added 26 of 2002 s. 3)*

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

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.

- (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. *(Added 26 of 2002 s. 3)*
- (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. *(Added 26 of 2002 s. 3)*
- (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. *(Added 26 of 2002 s. 3)*
- (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. *(Added 26 of 2002 s. 3)*
- (13) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence. *(Added 26 of 2002 s. 3)*

- (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. (*Added 26 of 2002 s. 3*)
- [cf. 1986 c. 32 s. 9 U.K.]*

17. Realisation of property

- (1) Where—
- (a) a confiscation order is made (including any case where section 8(1)(a)(ii) or (7A) is applicable); (*Amended 90 of 1995 s. 16*)
 - (b) the order is not subject to appeal or review within the meaning of section 2(17); and
 - (c) the proceedings in which it was made have not been concluded,
- the Court of First Instance may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6).
- (2) The Court of First Instance may appoint a receiver in respect of realisable property.
 - (3) The Court of First Instance may empower a receiver appointed under subsection (2), under section 15 or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 16 on realisable property or on any interest, dividend or other distribution payable and any bonus issue in respect of such property; and
 - (b) in relation to any realisable property other than property for the time being subject to a charge under section 16, to take possession of the property subject to such conditions or exceptions as may be specified by the Court of First Instance.
- (4) The Court of First Instance may order any person having possession of realisable property to give possession of it to any such receiver.
 - (5) The Court of First Instance may empower any such receiver to realise any realisable property in such manner as the Court of First Instance may direct.
 - (6) The Court of First Instance may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Ordinance as the Court of First Instance may direct and the Court of First Instance may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
 - (7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 16.
 - (8) The Court of First Instance shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court of First Instance.

(Amended 25 of 1998 s. 2)

[cf. 1986 c. 32 s. 11 U.K.]

18. Application of proceeds of realisation and other sums

- (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 15 or 17 or in pursuance of a charging order, that is—
- (a) the proceeds of the enforcement of any charge imposed under section 16;
 - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 15 or 17; and
 - (c) any other sums, being property held by the defendant, shall first be applied in payment of such expenses incurred by a person acting as an insolvency officer as are payable under section 23(2) and then shall, after such payments (if any) as the Court of First Instance may direct have been made out of those sums— (*Amended 25 of 1998 s. 2*)
 - (i) be payable to the Registrar; and
 - (ii) be applied on the defendant's behalf towards the satisfaction of the confiscation order in the manner provided by subsection (3).
- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums—
- (a) among such of those who held property which has been realised under this Ordinance; and
 - (b) in such proportions,
- as the Court of First Instance may direct after giving a reasonable opportunity for such persons to make representations to the Court of First Instance. (*Amended 25 of 1998 s. 2*)

- (3) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar shall apply the sum received for the purposes specified in this section and in the order so specified.
- (4) The Registrar shall first pay any expenses incurred by a person acting as an insolvency officer and payable under section 23(2) but not already paid under subsection (1).
- (5) If the sum was paid to the Registrar by a receiver appointed under section 15 or 17 or in pursuance of a charging order, the Registrar shall next pay the receiver's remuneration and expenses.
- (6) After making—
 - (a) any payment required by subsection (4); and
 - (b) in a case to which subsection (5) applies, any payment required by that subsection,the Registrar shall reimburse any amount paid under section 24(2).
- (7) Any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be paid into the general revenue. (*Amended 90 of 1995 s. 17*)

[cf. 1986 c. 32 s. 12 U.K.]

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

- (1) This section applies to the powers conferred on the Court of First Instance by sections 15 to 18, or on a receiver appointed under section 15 or 17 or in pursuance of a charging order. (*Amended 25 of 1998 s. 2*)
- (2) Subject to subsections (3), (4), (5) and (6), the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation

order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

- (3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.
- (5) An order may be made or other action taken in respect of a debt owed by the Government.
- (6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

[cf. 1986 c. 32 s. 13 U.K.]

20. Variation of confiscation orders

- (1) If, on an application by the prosecutor or the defendant (or, in the case of a defendant who has died, his personal representative on his behalf) in respect of a confiscation order, the Court of First Instance is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the Court of First Instance shall make an order— (*Amended 90 of 1995 s. 19*)
 - (a) substituting for the amount to be recovered under the confiscation order such lesser amount as the Court of First Instance thinks just in all the circumstances of the case; and

- (b) substituting for the term of imprisonment fixed under section 13 in respect of the amount to be recovered under the confiscation order a shorter term determined in accordance with that section in respect of the lesser amount.
- (1A) If, on an application by the prosecutor made in respect of a confiscation order, the Court of First Instance is satisfied that any of the conditions referred to in subsection (1B) are fulfilled, the Court of First Instance may make an order—
 - (a) substituting for the amount to be recovered under the confiscation order such greater amount as the Court of First Instance thinks just in all the circumstances of the case; and
 - (b) substituting for the term of imprisonment fixed under section 13 in respect of the amount to be recovered under the confiscation order a greater term determined in accordance with that section in respect of the greater amount. (*Added 90 of 1995 s. 19*)
- (1B) The conditions referred to in subsection (1A) are—
 - (a) the value of the defendant's proceeds of any specified offence or offences or organized crime was greater than the value of the defendant's proceeds of the specified offence or offences or organized crime, as the case may be, assessed by the Court of First Instance or the District Court, as the case may be, at the time of the making of the confiscation order;
 - (b) the prosecutor becomes aware of realisable property, the existence of which was not known to him at the time of the making of the confiscation order;
 - (c) the amount realised from the defendant's proceeds of the specified offence or offences or organized crime, as the case may be, is greater than the amount the Court

of First Instance or the District Court, as the case may be, assessed to be the amount to be recovered under the confiscation order. (*Added 90 of 1995 s. 19*)

- (2) For the purposes of this section— (*Amended 90 of 1995 s. 19*)
- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the Court of First Instance shall take into account the extent to which any property held by him may be distributed among creditors; and
 - (b) the Court of First Instance may disregard any inadequacy in the realisable property which appears to the Court of First Instance to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Ordinance from any risk of realisation under this Ordinance.
- (3) No application shall be entertained by the Court of First Instance under subsection (1A) if it is made after the end of the period of 6 years beginning with the date on which the confiscation order concerned was made. (*Added 90 of 1995 s. 19*)

(Amended 25 of 1998 s. 2)

[cf. 1986 c. 32 s. 14 U.K.]

21. Bankruptcy of defendant, etc.

- (1) Where a person who holds realisable property is adjudged bankrupt—
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and

- (b) any proceeds of property realised by virtue of section 15(7) or 17(5) or (6) for the time being in the hands of a receiver appointed under section 15 or 17, are excluded from the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap. 6).
- (2) Where a person has been adjudged bankrupt, the powers conferred on the Court of First Instance by sections 15 to 18 shall not be exercised in relation to— (*Amended 25 of 1998 s. 2*)
- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap. 6); and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 30A(9) of the Bankruptcy Ordinance (Cap. 6). (*Amended 76 of 1996 s. 97*)
- (3) Nothing in the Bankruptcy Ordinance (Cap. 6) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 15 to 18. (*Amended 25 of 1998 s. 2*)
- (4) Subsection (2) does not affect the enforcement of a charging order—
- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim trustee stands appointed under section 13 of the Bankruptcy Ordinance (Cap. 6) and any property of the debtor is subject to a restraint order, the powers conferred on the interim trustee by virtue of that Ordinance do not apply to property for the

time being subject to the restraint order. (*Amended 18 of 2005 s. 48*)

- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance—
- (a) a court shall not make an order under—
- (i) section 49 or 50 of the Bankruptcy Ordinance (Cap. 6); or (*Amended 76 of 1996 s. 97*)
 - (ii) section 60 of the Conveyancing and Property Ordinance (Cap. 219),
- in respect of the making of a gift at any time when—
- (A) proceedings for a specified offence have been instituted against him but have not been concluded;
- (B) an application—
- (I) for a confiscation order has been made in respect of the person where section 8(1)(a)(ii) or (7A) is applicable; or
 - (II) has been made under section 20(1A) in respect of a confiscation order made against the person,
- and the application has not been concluded; or
- (C) property of the person to whom the gift was made is subject to a restraint order or charging order; and (*Replaced 90 of 1995 s. 20*)
- (b) any order made under any of the sections referred to in paragraph (a)(i) or (ii) after the conclusion of the proceedings or application shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made. (*Replaced 90 of 1995 s. 20*)

[*cf. 1986 c. 32 s. 15 U.K.*]

22. Winding up of company holding realisable property

- (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
 - (a) property for the time being subject to a restraint order made before the relevant time; and
 - (b) any proceeds of property realised by virtue of section 15(7) or 17(5) or (6) for the time being in the hands of a receiver appointed under section 15 or 17.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court of First Instance by sections 15 to 18 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable— (*Amended 25 of 1998 s. 2*)
 - (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Companies Ordinance (Cap. 622) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 15 to 18. (*Amended 25 of 1998 s. 2; 28 of 2012 ss. 912 & 920*)

(3A) Subsection (3) shall apply to any proceedings relating to an appeal, further appeal or review against any exercise of the powers referred to in that subsection as if the court hearing the appeal, further appeal or review, as the case may be, were the Court of First Instance. (*Added 90 of 1995 s. 21. Amended 25 of 1998 s. 2*)

(4) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this section—

company (公司) means any company which may be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); (*Amended 28 of 2012 ss. 912 & 920*)

the relevant time (有關時間) means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court of First Instance, such a resolution had been passed by the company, the time of the passing of the resolution; and (*Amended 25 of 1998 s. 2*)
- (c) in any other case where such an order has been made, the time of the making of the order.

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

23. Insolvency officers dealing with property subject to restraint order

(1) Without prejudice to the generality of any provision contained in the Bankruptcy Ordinance (Cap. 6), the Companies

(Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) or any other Ordinance, where— (*Amended 28 of 2012 ss. 912 & 920*)

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

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

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

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

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

24. Receivers: supplementary provisions

- (1) Where a receiver appointed under section 15 or 17 or in pursuance of a charging order takes any action—
 - (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 18(5), be paid by the prosecutor or, in a case where proceedings for a specified offence are not instituted, by the person on whose application the receiver was appointed.

[cf. 1986 c. 32 s. 18 U.K.]

Part IVA

(Repealed 15 of 2011 s. 87)

24A. *(Repealed 15 of 2011 s. 87)*

24B. *(Repealed 15 of 2011 s. 87)*

24C. *(Repealed 15 of 2011 s. 87)*

24D. *(Repealed 15 of 2011 s. 87)*

24E. *(Repealed 15 of 2011 s. 87)*

Part V

Miscellaneous

25. Dealing with property known or believed to represent proceeds of indictable offence

- (1) Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence, he deals with that property.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence to prove that—
 - (a) he intended to disclose to an authorized officer such knowledge, suspicion or matter as is mentioned in section 25A(1) in relation to the act in contravention of subsection (1) concerned; and
 - (b) there is reasonable excuse for his failure to make disclosure in accordance with section 25A(2).
- (3) A person who commits an offence under subsection (1) is liable—
 - (a) on conviction upon indictment to a fine of \$5,000,000 and to imprisonment for 14 years; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (4) In this section and section 25A, references to an indictable offence include a reference to conduct which would constitute an indictable offence if it had occurred in Hong Kong.

(Replaced 90 of 1995 s. 22)

25A. Disclosure of knowledge or suspicion that property represents proceeds, etc. of indictable offence

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

- (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.
- (4) In the case of a person who was in employment at the relevant time, this section shall have effect in relation to disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as it has effect in relation to disclosures to an authorized officer.
- (5) A person commits an offence if, knowing or suspecting that a disclosure has been made under subsection (1) or (4), he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.
- (6) In proceedings against a person for an offence under subsection (5), it is a defence to prove—
 - (a) that he did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in that subsection; or
 - (b) that he had lawful authority or reasonable excuse for making that disclosure.
- (7) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (8) A person who commits an offence under subsection (5) is liable—
 - (a) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 3 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 1 year.

- (9) Information obtained under or by virtue of a disclosure referred to in subsection (1) may be disclosed—
- (a) by any authorized officer to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department, and the Independent Commission Against Corruption, for the purpose of combating crime; and
 - (b) by any authorized officer to the authorities or persons responsible for investigating or preventing crime, or handling the disclosure of knowledge or suspicion on property relating to crime, of any place outside Hong Kong which the authorized officer thinks fit, for the purpose of combating crime. *(Added 21 of 2004 s. 24)*
- (10) Subsection (9) is without prejudice to any other right to disclose information obtained under or by virtue of a disclosure referred to in subsection (1) that may exist apart from subsection (9). *(Added 21 of 2004 s. 24)*
- (Added 90 of 1995 s. 22)*

26. Restriction on revealing disclosure under section 25A

- (1) Subject to subsection (2), no witness in any civil or criminal proceedings shall be obliged—
- (a) to reveal that a disclosure was made under section 25A(1) or (4); *(Amended 90 of 1995 s. 23)*
 - (b) to reveal the identity of any person as the person making the disclosure; or
 - (c) to answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b).
- (2) Subsection (1) shall not apply in any proceedings—

-
- (a) for an offence under section 25 or 25A or this section; or (*Amended 90 of 1995 s. 23*)
- (b) where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.
- (3) Subject to subsections (4), (5) and (6), no person shall publish or broadcast any information so as to reveal or suggest—
- (a) that a disclosure was made under section 25A(1) or (4); or (*Amended 90 of 1995 s. 23*)
- (b) the identity of any person as the person making the disclosure.
- (4) In subsection (3), **information** (資料)—
- (a) includes a report of any civil or criminal proceedings;
- (b) does not include information published for statistical purposes by, or under the authority of, the Government.
- (5) Subsection (3) shall not apply in respect of proceedings—
- (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) 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) 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
 - (c) is correspondence which passed between an officer of a public body and the defendant or such a person,
- and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the body concerned.
- (4) An order under subsection (1) shall not require the production of any material unless it appears to the Court of First Instance that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court of First Instance by sections 15 to 17 or on a receiver appointed under section 15 or 17 or in pursuance of a charging order.
- (5) The Court of First Instance may by order authorize the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the Court of First Instance shall not make an order under this subsection unless a reasonable opportunity has been given for an officer

of the public body to make representations to the Court of First Instance.

- (6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Ordinance of the receiver or the Court of First Instance.
- (7) The Court of First Instance may by order authorize the disclosure to an authorized officer of any material produced under subsection (1) or any part of such material; but the Court of First Instance shall not make an order under this subsection unless—
 - (a) a reasonable opportunity has been given for an officer of the public body to make representations to the Court of First Instance; and
 - (b) it appears to the Court of First Instance that the material is likely to be relevant in exercising functions relating to the investigation of specified offences.
- (8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of specified offences.
- (9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (10) An order under subsection (1) and, in the case of material in the possession of a public body, an order under section 4(2) may require any officer of the public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil

proceedings against the Government. (*Amended 13 of 1999 s. 3*)

- (11) In this section, **public body** (公共機構) means—
- (a) any Government department; and
 - (b) any body specified by the Chief Executive under subsection (12). (*Amended 13 of 1999 s. 3*)
- (12) The Chief Executive may, by notice in the Gazette, specify a body to be a public body for the purposes of this section. (*Amended 13 of 1999 s. 3*)

(*Amended 25 of 1998 s. 2*)

[*cf. 1986 c. 32 s. 30 U.K.*]

29. Compensation

- (1) If an investigation is begun against a person for a specified offence or offences and any of the following circumstances occur, namely—
- (a) no proceedings are instituted against that person;
 - (b) proceedings are instituted against that person but do not result in his conviction for any specified offence (including any proceedings referred to in section 8(1)(a)(ii) where no confiscation order is made against that person);
 - (ba) that person absconds after proceedings are instituted against him and subsequently—
 - (i) he ceases to be an absconder; and
 - (ii) either—
 - (A) those proceedings are continued or reinstated but do not result in his conviction for any specified offence; or

- (B) those proceedings are not continued or reinstated within a reasonable period after it is known to the Secretary for Justice that he has ceased to be an absconder; or (*Added 90 of 1995 s. 25. Amended L.N. 362 of 1997*)
- (c) proceedings are instituted against that person and he is convicted of one or more specified offences, but
- (i) the conviction or convictions concerned are quashed; or
 - (ii) he is granted a pardon in respect of the conviction or convictions concerned,

the Court of First Instance may, on application by a person who held property which was realisable property (or, in the case of such a person who has died, his personal representative on his behalf), order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

- (2) The Court of First Instance shall not order compensation to be paid under subsection (1) unless it is satisfied—
- (a) subject to subsection (3A), that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court of First Instance under sections 15 to 17.
- (3) Subject to subsection (3A), the Court of First Instance shall not order compensation to be paid under subsection (1) in any case where it appears to the Court of First Instance that the investigation would have been continued, or the proceedings

would have been instituted or continued, as the case may be, if the serious default had not occurred.

- (3A) Subsections (2)(a) and (3) shall not apply to any case to which subsection (1)(ba) is applicable. (*Added 90 of 1995 s. 25*)
- (4) Without prejudice to subsection (1), where—
- (a) a disclosure is made by any person in accordance with section 25A(2) in relation to any property;
 - (b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of a specified offence or offences any act is done or omitted to be done in relation to that property; and
 - (c) no proceedings are instituted against any person in respect of that offence or those offences or no order is made by the Court of First Instance under section 15 or 16 in relation to that property,

the Court of First Instance may, on application by a person who held the property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

- (5) The Court of First Instance shall not order compensation to be paid under subsection (4) unless it is satisfied—
- (a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned and that, but for that default, the act or omission referred to in subsection (4)(b) would not have occurred; and
 - (b) the applicant has, in consequence of the act or omission referred to in subsection (4)(b), suffered loss in relation to the property.

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

(Amended 90 of 1995 s. 25; 25 of 1998 s. 2)

[cf. 1986 c. 32 ss. 19 & 24(3) U.K.]

30. Rules of court

The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) shall include power to make rules of court for the purposes of this Ordinance.

(Amended 25 of 1998 s. 2)

31. Amendment of amount in section 8(4) and Schedules

Subject to the approval of the Legislative Council, the Chief Executive in Council may by order amend the amount specified in section 8(4) and the Schedules.

(Amended 13 of 1999 s. 3)

32. Savings

This Ordinance operates without prejudice to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405).

33-36. *(Omitted as spent—E.R. 1 of 2017)*

Schedule 1

[ss. 2, 8 & 31]

(Replaced 26 of 2002 s. 3)

Offences Relevant to Definitions of *Organized Crime* and *Specified Offence*

Common law offences

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

Statutory offences

Offence	Description#
5. Import and Export Ordinance (Cap. 60)	
section 6A	import or export of strategic commodities
section 6C	import of certain prohibited articles
section 6D(1) and (2)	export of certain prohibited articles
section 6E	carriage, etc. of prescribed articles in Hong Kong waters
section 18	importing or exporting unmanifested cargo

Organized and Serious Crimes Ordinance

Schedule 1

S1-4

Cap. 455

	Offence	Description#
6.	Immigration Ordinance (Cap. 115)	
	section 37D(1)	arranging passage to Hong Kong of unauthorized entrants
	section 38(4)	carrying an illegal immigrant
	section 42(1) and (2)	false statements, forgery of documents and use and possession of forged documents
7.	Dangerous Drugs Ordinance (Cap. 134)	
	section 4(1)	trafficking in dangerous drugs
	section 4A(1)	trafficking in purported dangerous drugs
	section 6(1)	manufacturing a dangerous drug
8.	Gambling Ordinance (Cap. 148)	
	section 5	operating, managing or controlling gambling establishment
	section 7(1)	bookmaking
9.	Societies Ordinance (Cap. 151)	
	section 19	penalties on an office-bearer, etc. of an unlawful society
	section 21	allowing a meeting of an unlawful society to be held on premises
	section 22	inciting etc., a person to become a member of an unlawful society

Organized and Serious Crimes Ordinance

Schedule 1

S1-6

Cap. 455

Offence	Description#
10. Money Lenders Ordinance (Cap. 163)	
section 24(1)	lending money at an excessive interest rate
11. Crimes Ordinance (Cap. 200)	
section 24	threatening a person with intent
section 25	assaulting with intent to cause certain acts to be done or omitted
section 53	causing explosion likely to endanger life or property
section 54	attempt to cause explosion, or making or keeping explosive with intent to endanger life or property
section 55	making or possession of explosive
section 60	destroying or damaging property
section 61	threats to destroy or damage property
section 71	forgery
section 75(1)	possessing a false instrument with intent
section 98(1)	counterfeiting notes and coins with intent
section 100(1)	custody or control of counterfeit notes and coins with intent
section 105	importation and exportation of counterfeit notes and coins
section 118	rape

Organized and Serious Crimes Ordinance

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Cap. 455

Offence	Description#
section 119	procurement of person by threats
section 120	procurement of person by false pretences
section 129	trafficking to or from Hong Kong in persons
section 130	control over person for purpose of unlawful sexual act or prostitution
section 131	causing prostitution of person
section 134	detention of person for unlawful sexual act or in vice establishment
section 137	living on earnings of prostitution
section 139	keeping a vice establishment
12. Theft Ordinance (Cap. 210)	
section 9	theft
section 10	robbery
section 11(1)	burglary
section 16A	fraud (<i>Added 45 of 1999 s. 6</i>)
section 17	obtaining property by deception
section 18	obtaining a pecuniary advantage by deception
section 18D	procuring false entry in certain records
section 19	false accounting
section 23(1) and (4)	blackmail
section 24(1)	handling stolen goods

Organized and Serious Crimes Ordinance

Schedule 1

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Offence	Description#
13. Offences against the Person Ordinance (Cap. 212)	
section 17	shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm
14. Firearms and Ammunition Ordinance (Cap. 238)	
section 13	possession of arms or ammunition without licence
section 14	dealing in arms or ammunition without a licence
14A. Trade Descriptions Ordinance (Cap. 362)	
section 9(1) and (2)	offences in respect of infringement of trade mark rights
section 12 (provided that for the purpose of this Ordinance, an offence under section 12 of the Trade Descriptions Ordinance does not include an offence relating only to false trade description)	import or export of goods bearing forged trade mark

Organized and Serious Crimes Ordinance

Schedule 1

S1-12

Cap. 455

Offence	Description#
section 22 (provided that for the purpose of this Ordinance, “offence under this Ordinance” referred to in section 22 of the Trade Descriptions Ordinance only means an offence under— (a) section 9(1) or (2) of that Ordinance; or (b) section 12 of that Ordinance, excluding any offence relating only to false trade description)	being accessory to certain offences committed outside Hong Kong (<i>Added L.N. 11 of 2000</i>)
15. Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) section 25(1)	dealing with property known or believed to represent proceeds of drug trafficking (<i>Replaced 26 of 2002 s. 3</i>)
16. Organized and Serious Crimes Ordinance (Cap. 455)	

Organized and Serious Crimes Ordinance

Schedule 1

S1-14

Cap. 455

Offence	Description#
section 25(1)	dealing with property known or believed to represent proceeds of indictable offence (<i>Replaced 26 of 2002 s. 3</i>)
17. Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526)	
section 4	providing services that assist the development, production, acquisition or stockpiling of weapons of mass destruction (<i>Added 90 of 1997 s. 15</i>)
18. Copyright Ordinance (Cap. 528)	
section 118(1), (4) and (8) (provided that for the purpose of this Ordinance, “infringing copy” referred to in section 118(1) and (4) of the Copyright Ordinance does not include a copy of a work which is an infringing copy by virtue only of section 35(3) of that Ordinance and which was lawfully made in the country, territory or area where it was made)	offences relating to making or dealing with infringing copies

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Schedule 1

S1-16

Cap. 455

Offence	Description#
section 120(1), (2), (3) and (4) (provided that for the purpose of this Ordinance, “infringing copy” referred to in section 120(1) and (3) of the Copyright Ordinance does not include a copy of a work which is an infringing copy by virtue only of section 35(3) of that Ordinance and which was lawfully made in the country, territory or area where it was made)	offences relating to making infringing copies outside Hong Kong (<i>Added L.N. 11 of 2000. Amended 15 of 2007 s. 77</i>)
19. Chemical Weapons (Convention) Ordinance (Cap. 578)	

Organized and Serious Crimes Ordinance

Schedule 1

S1-18

Cap. 455

Offence	Description#
section 5	prohibition against using, developing or producing, acquiring, stockpiling, retaining, participating in the transfer of, engaging in military preparations, or in preparations of a military nature, intending to use, chemical weapons, or assisting, encouraging or inducing anyone to engage in any activity prohibited by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed at Paris on 13 January 1993 (<i>Added 26 of 2003 s. 44</i>)
20. Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586)	
section 5	illegal import of a specimen of an Appendix I species
section 6	illegal introduction from the sea of a specimen of an Appendix I species
section 7	illegal export of a specimen of an Appendix I species
section 8	illegal re-export of a specimen of an Appendix I species

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Schedule 1

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Cap. 455

Offence	Description#
section 9	illegal possession or control of a specimen of an Appendix I species
section 11	illegal import of a specimen of an Appendix II or III species
section 12	illegal introduction from the sea of a specimen of an Appendix II species
section 13	illegal export of a specimen of an Appendix II or III species
section 14	illegal re-export of a specimen of an Appendix II or III species
section 15	illegal possession or control of a specimen of an Appendix II species (<i>Added 23 of 2021 s. 3</i>)

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

Schedule 2

[ss. 2, 8 & 31]

(Replaced 26 of 2002 s. 3)

Other Specified Offences

Common law offences

1. manslaughter
2. conspiracy to defraud

Statutory offences

Offence	Description#
3. Import and Export Ordinance (Cap. 60)	
section 14	alteration of vessel, aircraft or vehicle for the purpose of smuggling
section 14A	construction, etc., of vessels for the purpose of smuggling
section 18A	assisting, etc., in export of unmanifested cargo
section 35A	assisting, etc., in carriage of prohibited, etc., articles
4. Immigration Ordinance (Cap. 115)	
section 37DA(1)	assisting unauthorized entrant to remain
5. Dangerous Drugs Ordinance (Cap. 134)	

Organized and Serious Crimes Ordinance

Schedule 2

S2-4

Cap. 455

Offence	Description#
section 5(1)	supplying or procuring a dangerous drug to or for unauthorized persons
section 9(1), (2) and (3)	offences relating to cannabis plant or opium poppy
section 35(1)	keeping or managing a divan for the taking of dangerous drugs
section 37(1)	permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
6. Gambling Ordinance (Cap. 148)	
section 14	providing money for unlawful gambling or for an unlawful lottery
section 15(1)	permitting premises to be used as gambling establishment
7. Registration of Persons Ordinance (Cap. 177)	
section 7A	possession of forged identity cards
8. Crimes Ordinance (Cap. 200)	
section 72	copying a false instrument
section 73	using a false instrument
section 74	using a copy of a false instrument
section 76	making or possessing equipment for making a false instrument
section 99(1)	passing, etc. counterfeit notes and coins

Organized and Serious Crimes Ordinance

Schedule 2

S2-6

Cap. 455

Offence	Description#
section 101	making or custody or control of counterfeiting materials and implements
9. Prevention of Bribery Ordinance (Cap. 201)	
section 4(1)	bribery of public servant
section 4(2)	soliciting or accepting bribes in the capacity of a public servant (<i>Added L.N. 229 of 2007</i>)
section 4(2A)	bribery of Chief Executive (<i>Added 22 of 2008 s. 6</i>)
section 4(2B)	soliciting or accepting bribes in the capacity of Chief Executive (<i>Added 22 of 2008 s. 6</i>)
section 5(1)	bribery of public servant for giving assistance, etc. in regard to contracts (<i>Replaced 22 of 2008 s. 6</i>)
section 5(2)	soliciting or accepting bribes in the capacity of a public servant for giving assistance, etc. in regard to contracts (<i>Added L.N. 229 of 2007</i>)
section 5(3)	bribery of Chief Executive for giving assistance, etc. in regard to contracts (<i>Added 22 of 2008 s. 6</i>)
section 5(4)	soliciting or accepting bribes in the capacity of Chief Executive for giving assistance, etc. in regard to contracts (<i>Added 22 of 2008 s. 6</i>)

Organized and Serious Crimes Ordinance

Schedule 2

S2-8

Cap. 455

Offence	Description#
section 6(1)	bribery for procuring withdrawal of tenders
section 6(2)	soliciting or accepting bribes for withdrawal of tenders (<i>Added L.N. 229 of 2007</i>)
section 9(1)	soliciting or accepting bribes in the capacity of an agent (<i>Added L.N. 229 of 2007</i>)
section 9(2)	bribery of agent
10. Theft Ordinance (Cap. 210)	
section 12(1)	aggravated burglary
section 18A	obtaining services by deception
11. Offences against the Person Ordinance (Cap. 212)	
section 19	wounding or inflicting grievous bodily harm
12. Criminal Procedure Ordinance (Cap. 221)	
section 90(1)	doing an act with intent to impede apprehension or prosecution of offender
13. Securities and Futures Ordinance (Cap. 571)	
section 291	insider dealing
section 295	false trading
section 296	price rigging

Organized and Serious Crimes Ordinance

Schedule 2

S2-10

Cap. 455

Offence	Description#
section 297	disclosure of information about prohibited transactions
section 298	disclosure of false or misleading information inducing transactions
section 299	stock market manipulation (<i>Added 6 of 2014 s. 69</i>)

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

Schedule 3

[ss. 16 & 31]

Assets on which a Charging Order may be Imposed

1. Land in Hong Kong.
2. Securities of any of the following kinds—
 - (a) Government stock;
 - (b) stock of any body incorporated in Hong Kong;
 - (c) stock of any body incorporated outside Hong Kong or of any state or territory outside Hong Kong, being stock registered in a register kept at any place within Hong Kong;
 - (d) units of any unit trust in respect of which a register of the unit holders is kept at any place within Hong Kong.
3. In this Schedule—
 - (a) the terms **Government stock** (政府證券) and **land** (土地) have the same meaning as in section 2 of the High Court Ordinance (Cap. 4);
 - (b) the terms **stock** (股份) and **unit trust** (單位信託基金) have the same meaning as in section 20A of that Ordinance.

(Amended 25 of 1998 s. 2)

Schedule 4

[s. 3(7)(c)]

Organized and Serious Crimes Ordinance (Cap. 455)

SECTION 3

NOTICE REQUIRING ATTENDANCE TO ANSWER
QUESTIONS OR FURNISH INFORMATION

To:
(name and address of person)

1. On....., in the Court of First Instance, Hong Kong an
(date)

order was made by the Hon. Mr. Justice under
section 3 of the Organized and Serious Crimes Ordinance (Cap. 455)
for the purpose of an investigation into an organized crime. A copy of
the order as it relates to you is annexed to this Notice.

2. Particulars of the organized crime under investigation are—

- (a) offence :
- (b) Date of offence :
- (c) Place of offence :
- (d) Other particulars :

*3. The order was made in respect of you.

Organized and Serious Crimes Ordinance

Schedule 4

S4-4

Cap. 455

or

*3. The order was made in respect of ,
(description of persons)

and you are a person of that description.

4. The order authorizes the Secretary for Justice to require a person referred to in paragraph 3 above—

*(a) 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;

*(b) 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 to so relate.

5. This Notice requires you—

*(a) to attend before ,
(name and description of authorized officer)

at
(place of interview)

on
(date and time of interview)

to answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation;

Organized and Serious Crimes Ordinance

Schedule 4

S4-6

Cap. 455

*(b) to produce at
(time(s) and place(s))

the following material or class of material—
.....

6. The order also requires
(other terms of the order relevant to the person)

7. **NOTE:**
1. **This Notice has important legal consequences. It is in your interests to read the provisions of the Ordinance set out with this Notice, and to seek legal advice in relation to your rights and obligations under the Notice.**
 2. **You may be accompanied by a solicitor and a barrister when you attend to answer questions or furnish information in compliance with paragraph 5(a) of the Notice, or to produce material in compliance with paragraph 5(b) of the Notice.**

Dated this day of 19 .

.....
for and on behalf of the
Secretary for Justice.

* Delete as appropriate.

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

Schedule 5

[ss. 13(8) & 31]

Certificate of Sentence in respect of Term of Imprisonment Fixed under Section 13 of the Organized and Serious Crimes Ordinance (Cap. 455)

To the Commissioner of Correctional Services.

Whereas the Court of First Instance/District Court*—

(a) on the day of 19—

(i) sentenced (name of defendant) in respect of the specified offence/offences*, within the meaning of the Organized and Serious Crimes Ordinance (Cap. 455), of.....
.....
.....

(particulars of offence/offences*); and

(ii) imposed a period of imprisonment/detention of months/years* in respect of that offence/those offences*; and

(b) on the day of 19 made a confiscation order under section 8(7)(a) of the Organized and Serious Crimes Ordinance (Cap. 455) that that defendant pay the amount of \$..... :

Organized and Serious Crimes Ordinance

Schedule 5

S5-4

Cap. 455

This is to certify that on the day of
..... 19 the Court of First Instance/District Court* made
an order under section 13 of the Organized and Serious Crimes Ordinance
(Cap. 455) fixing a term of imprisonment of months/years*
which that person is to serve if any of the amount to be paid under that
confiscation order is not paid or recovered on or before the
day of 19

Dated this day of 19

.....
*Registrar of the
High Court/District Court*.*

* Delete where inapplicable.

Note: Section 13(4) of the Organized and Serious Crimes Ordinance
(Cap. 455) provides that where a person becomes liable to serve a
term of imprisonment fixed under section 13 of that Ordinance in
respect of a confiscation order and is also liable to serve a term of
imprisonment (or detention) in respect of the specified offence or
offences concerned, that first-mentioned term of imprisonment shall
not begin to run until after the end of that second-mentioned term
of imprisonment (or detention).

(Schedule 5 added 90 of 1995 s. 26. Amended 25 of 1998 s. 2)

Schedule 6

(Repealed 17 of 2018 s. 121)