

ORGANIZED AND SERIOUS CRIMES ORDINANCE

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有組織及嚴重罪行條例

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HONG KONG

ORDINANCE No. 82 OF 1994

L.S.

I assent.

Christopher PATTEN,
Governor.
20 October 1994

香 港

1994年第82號條例

公印位置

本人批准。

彭定康，
總督
1994年10月20日

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

[]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I**PRELIMINARY****1. Short title and commencement**

(1) This Ordinance may be cited as the Organized and Serious Crimes Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette, and different days may be so appointed for different provisions.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“authorized officer” (獲授權人) means—

- (a) any police officer;
- (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap. 342); and
- (c) any other person authorized in writing by the Attorney General for the purposes of this Ordinance;

本條例旨在增設偵查有組織罪行和某些其他罪行及某些犯罪者的犯罪得益的權力；就沒收犯罪得益作出規定；就某些犯罪者的判刑訂定條文；增訂一項協助他人保留犯罪得益的罪行；及就附帶及相關事宜訂定條文。

[]

由香港總督參照立法局意見並得該局同意而制定。

第 I 部**導言****1. 簡稱及生效日期**

- (1) 本條例可引稱為《有組織及嚴重罪行條例》。
- (2) 本條例自保安司以憲報公告指定的日期起實施，保安司並可為不同條文指定不同的實施日期。

2. 釋義

- (1) 在本條例中，除文意另有所指外——
“三合會”(triad society)包括任何以下社團——
 - (a) 使用三合會普遍使用的任何儀式、任何與該等儀式十分相似的儀式或該等儀式的任何部分的社團；或
 - (b) 採用或利用任何三合會名銜或稱謂術語的社團；
- “司法常務官”(Registrar)指最高法院司法常務官；

“confiscation order” (沒收令) means an order made under section 8(7);
 “defendant” (被告人) means a person against whom proceedings have been instituted for a specified offence (whether or not he has been convicted of that offence);

“insolvency officer” (債務處理人) means—

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

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

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

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

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

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

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

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

“有組織罪行” (organized crime) 指附表 1 所列罪行，而且是——

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

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

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

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

且正由有權管有該等品目的人所管有，

但不包括為意圖助長犯罪目的而持有的品目或作出的通訊；

“附表 1 所列罪行” (Schedule 1 offence) 指——

- (a) 附表 1 所指明的任何罪行；
- (b) 串謀犯任何該等罪行；
- (c) 煽惑他人犯任何該等罪行；
- (d) 企圖犯任何該等罪行；
- (e) 協助、教唆、慫使或促致他人犯任何該等罪行；

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

- (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 Supreme Court;
- “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.

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

“指明的罪行”(specified offence)指——

- (a) 附表1或附表2所指明的任何罪行;
- (b) 串謀犯任何該等罪行;
- (c) 煽惑他人犯任何該等罪行;
- (d) 企圖犯任何該等罪行;
- (e) 協助、教唆、慫使或促使他人犯任何該等罪行;

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

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

“處所”(premises)包括任何地方,尤其是——

- (a) 任何車輛、船隻、航空器、氣墊船或離岸結構物;及
- (b) 任何帳幕或可移動的結構物;

“債務處理人”(insolvency officer)指——

- (a) 破產管理署署長;或
- (b) 用以下身分行事的人——
- (i) 根據《破產條例》(第6章)委任的接管人、臨時接管人、特別經理人或受託人;或
- (ii) 根據《公司條例》(第32章)委任的清盤人、臨時清盤人或特別經理人;

“酬賞”(reward)包括金錢利益;

“獲授權人”(authorized officer)指——

- (a) 任何警務人員;
- (b) 根據《海關條例》(第342章)第3條設立的海關的任何成員;及
- (c) 任何為施行本條例而獲律政司書面授權的人;

“權益”(interest)就財產而言,包括權利。

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

- (a) 如就串謀犯附表1所列罪行而在實行協定的行為過程中會在某階段涉及該定義(c)(i)至(iii)段所提述的事情,則有關的串謀即涉及該事情;
- (b) 如企圖或煽惑犯附表1所列罪行的人所構想的事會涉及該定義(c)(i)至(iii)段所提述的事情,則有關的企圖或煽惑即涉及該事情。

(3) 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)
Dealing with property (處理財產)	Section 15(8)
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)

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

(5) References in this Ordinance (except in section 25) 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.

(6) For the purposes of this Ordinance—

- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Ordinance) in connection with the commission of an offence are his proceeds of that offence; and
- (b) the value of his proceeds of that offence is the aggregate of the values of those payments or other rewards.

(7) For the purposes of this Ordinance—

- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Ordinance) in connection with the commission of one or more organized crimes are his proceeds of organized crime; and
- (b) the value of his proceeds or organized crime is the aggregate of the values of those payments or other rewards.

(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.

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

詞句	有關條文
押記令 (Charging order)	第 16(2) 條
處理財產 (Dealing with property)	第 15(8) 條
受本條例圍制的饋贈 (Gift caught by this Ordinance)	第 12(9) 條
作出饋贈 (Making a gift)	第 12(10) 條
可變現財產 (Realisable property)	第 12(1) 條
限制令 (Restraint order)	第 15(1) 條
饋贈、付款或酬賞的價值 (Value of gift, payment or reward)	第 12 條
財產的價值 (Value of property)	第 12(4) 條

(4) 本條例適用於任何在香港及在其他地方的財產。

(5) 本條例(除第 25 條外)凡提述罪行或有組織罪行，所指包括本條例生效日期前所犯的罪行或有組織罪行；但對於在本條例生效日期前已對某人的罪行所提起的法律程序，或與該法律程序有關的事情，本條例並無委予法庭任何職責，亦無賦予任何權力。

(6) 就本條例而言——

- (a) 任何人於任何時間(不論是在本條例生效日期之前或之後)，因犯某罪行的關係而收受的款項或其他酬賞，都是他從該罪行的得益；及
- (b) 他從該罪行的得益的價值是該等款項或其他酬賞的總和。

(7) 就本條例而言——

- (a) 任何人於任何時間(不論是在本條例生效日期之前或之後)，因犯一項或多於一項有組織罪行的關係而收受的款項或其他酬賞，都是他從有組織罪行的得益；及
- (b) 他從有組織罪行的得益的價值是該等款項或其他酬賞的總和。

(8) 就本條例而言，任何人於任何時間(不論是在本條例生效日期之前或之後)，因犯某罪行或有組織罪行的關係而收受任何款項或其他酬賞，即屬從該罪行或有組織罪行中獲利。

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

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

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

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

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

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

(15) Proceedings for an offence are instituted—

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

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

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

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

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

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

(b) an order or verdict acquitting the defendant, not being an order or verdict which is subject to appeal or review within the meaning of subsection (17);

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

(d) the grant of Her Majesty's pardon in respect of his conviction for the offence;

(e) the court or magistrate sentencing or otherwise dealing with him in respect of his conviction for the offence where the Attorney General either does not apply for a confiscation order, or applies for a confiscation order and the order is not made; or

(9) 本條例凡提述因犯某罪行或有組織罪行的關係而收受的財產，所指包括因該種關係及其他關係而收受的財產。

(10) 第(11)至(17)款適用於本條例的解釋。

(11) 任何人持有財產上的任何權益，即屬持有該財產。

(12) 凡提述任何人所持有的財產，所指包括歸其破產案受託人或清盤人名下的財產。

(13) 凡提述任何人在某項財產上實益持有的權益，而該項財產如果已歸其破產案受託人或清盤人名下者，則所指包括該項財產如非已歸其破產案受託人或清盤人名下，便會是他實益持有的權益。

(14) 一個人將財產上的任何權益移轉或授予另一人，即算是該人將財產移轉給該另一人。

(15) 當以下事情發生時，即是提起刑事法律程序——

(a) 裁判官就有關罪行根據《裁判官條例》(第227章)第72條簽發手令或傳票；

(b) 任何人在無手令的情況下受拘押後被控以有關罪行；或

(c) 根據《刑事訴訟程序條例》(第221章)第24A(1)(b)條在法官指示或同意之下，提起公訴，

如引用本款會產生不止一個提起法律程序時間，則以這些時間之中最早的一個為提起法律程序時間。

(16) 當以下任何一種事情發生時，刑事法律程序即告結束——

(a) 因控方提出中止檢控或其他原因而引致法律程序中止；

(b) 法庭命令或裁定被告人無罪釋放，而有關命令或裁決是第(17)款意指的不上訴或覆核所限的；

(c) 被告人的定罪被撤銷，但法庭根據《刑事訴訟程序條例》(第221章)第83E條命令重審被告人則除外；

(d) 女皇陛下赦免被告人所犯罪行的定罪；

(e) 凡律政司並無申請沒收令，或律政司申請沒收令但並無沒收令發出，而法庭或裁判官就有關定罪對被告人判處刑罰或以其他方式處置；或

(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).

(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) in the case of an appeal to the Privy Council, the expiration of 28 days after the date of the judgment from which leave to appeal may be sought; or
- (b) in any other case, the expiration of the time prescribed for instituting the appeal, further appeal or review.

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

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

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

- (a) 就上訴樞密院的案件而言,指由其判決日期(即開始可以申請上訴許可的日期起)截至判決日期後28日為止的期間;或
- (b) 就其他案件而言,指截至提出上訴、再上訴或覆核的訂明期限結束為止的期間。

[*比照 1986 c. 32 s. 38 U.K.*]

PART II

POWERS OF INVESTIGATION

3. Requirement to furnish information or produce material

(1) The Attorney General may, for the purpose of an investigation into an organized crime, make an ex parte application to the High Court for an order under subsection (2) in relation to a particular person or to persons of a particular description.

(2) The High Court 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.

- (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 Attorney General 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

第II部

偵查的權力

3. 提供資料或提交物料的規定

(1) 為偵查有組織罪行,律政司可向高等法院提出單方面申請,就某人或某類別的人根據第(2)款發出命令。

(2) 高等法院如信納第(4)(a)、(b)及(d)款或第(4)(a)、(c)及(d)款的條件已經符合,可應如此單方面提出的申請,就與申請有關的人或與申請有關的類別的人,發出符合第(3)款規定的命令。

- (3) 根據第(2)款發出的命令須——
 - (a) 說明該正在偵查中的有組織罪行的詳情;
 - (b) 指出命令所針對的人或述明該命令所針對的人的類別;
 - (c) 授權律政司向命令所針對的人或類別的人提出要求,要其——
 - (i) 就獲授權人合理地覺得是與偵查有關的任何事情回答問題或提供資料;或

- (ii) to produce any material that reasonably appears to the Attorney General 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
 - (d) contain such other terms (if any) as the High Court 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.
- (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;
 - (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.

- (ii) 提交任何律政司合理地覺得是與關乎偵查的事情有關的任何物料或某種類的物料，
 - 或要求該人兩者皆作；及
 - (d) 載有高等法院認為符合公眾利益而宜於加上的其他條款，但本段不得解釋為授權法庭未得任何人的同意而命令將該人拘留。
- (4) 第(2)款所指的條件是——
- (a) 有合理理由懷疑有人犯了該正在偵查中的有組織罪行；
 - (b) 如第(1)款申請是針對某人的，有合理理由懷疑該人擁有資料或管有物料，而該等資料或物料相當可能與偵查有關；
 - (c) 如該申請是關於某類別的人，而——
 - (i) 有合理理由懷疑該類別中某些或全部人擁有該等資料或管有該等物料；及
 - (ii) 不論是因偵查需迫切進行、偵查需保密或擁有有關資料或物料的人的身分是難於辨別的，如規定該申請須是就某一一人而作出的，即不能有效地對該有組織罪行進行偵查；
 - (d) 經考慮——
 - (i) 該偵查中的有組織罪行的嚴重性；
 - (ii) 若不根據第(2)款發出命令，能否有效地偵查該有組織罪行；
 - (iii) 披露資料或取得物料後對偵查可能帶來的利益；及
 - (iv) 該人或該等人所可能獲得或持有的資料或物料，是在何種情況下獲得或持有的(包括考慮對該資料或物料的保密責任，以及與該資料或物料所關乎的人的任何家庭關係)，
 有合理理由相信就該人或該等人根據第(2)款發出命令，是符合公眾利益的。

(5) Where an order under subsection (2) authorizes the Attorney General 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 Attorney General 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.

(6) Where an order under subsection (2) authorizes the Attorney General to require a person to produce any material that reasonably appears to the Attorney General to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to him so to relate, the Attorney General 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.

(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 Attorney General by the order; and
 - (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.

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

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

(7) 根據第(5)或(6)款所送達的書面通知，須——

- (a) 說明法庭已根據本條發出命令，並且須——
 - (i) 載有命令的日期；
 - (ii) 說明該有組織罪行的詳情；
 - (iii) 如命令是對該人而發出的，說明此情況；
 - (iv) 如命令是針對某類別的人而發出，而該人是屬於該類別的，說明此情況；
 - (v) 說明命令中授予律政司的權力；及
 - (vi) 說明該命令中與該人有關的其他條款；
- (b) 已夾附根據本條所發出的命令的副本，但該副本可不包括——
 - (i) 在該命令中對該人以外的某人的提述，或對不包括該人在內的某類別的人的提述；及
 - (ii) 在該命令中只與該某人或只與屬該某類別的人有關的任何詳情；及
- (c) 實質上是以附表4所指明的關於該通知的表格作出，此外並須將第(8)至(10)款及第7條的條文在該通知內載列或夾附於該通知。

(8) 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 Attorney General, or a person authorized in writing by the Attorney General 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.

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

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

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

(11) 任何人不得以會有下述情況為理由，而不遵從根據本條提出的要求提供資料或提交物料——

- (a) 提供資料或提交物料會傾向於使該人獲罪；或
- (b) 提供資料或提交物料會違反法規或其他規定所施加的保密責任或對披露資料或物料的其他限制。

(12) 因遵從憑藉本條施加的要求而作的陳述，不可在針對陳述者的刑事法律程序中用於針對他，但在以下情況則除外——

- (a) 在根據第(14)款或《刑事罪行條例》(第200章)第36條提起的法律程序中作為證據；或
- (b) 在有關任何罪行、且該人作出與該陳述不相符的證供的法律程序中，用以對其可信程度提出質疑。

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

(14) 任何人在看來是遵從根據本條施加的要求時——

- (a) 作出他知道在要項上虛假或有誤導成分的陳述；或
- (b) 罔顧後果地作出在要項上虛假或有誤導成分的陳述，

即屬犯罪——

- (i) 循公訴程序定罪後，可處罰款\$500,000及監禁3年；或
- (ii) 循簡易程序定罪後，可處第6級罰款及監禁1年。

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

(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 may obtain a copy of such order.

(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 Attorney General 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 High Court 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 Attorney General, elsewhere.

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

- (a) 則須當該要求為將物料以一種可以帶走的形式提交的要求；
- (b) 獲授權人可藉送達該人的書面通知，要求該人在指明的時間及地點，或在指明的不同時間及地點，以可以看到、可以閱讀及可以帶走的形式提交該物料，獲授權人並可藉同樣的通知解除該人根據該項要求須提交以原來記錄形式記錄的物料的責任。

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

(18) 法庭規則——

- (a) 須就根據本條發出的命令而據此被施加要求的人申請撤銷或更改該等命令的申請事宜，作出規定；
- (b) 可就下述事項作出規定——
 - (i) 關乎根據本條發出的命令的法律程序；
 - (ii) 獲取該命令的副本前所必須符合的條件。

(19) 保安司須就——

- (a) 行使本條所賦予的權力；及
- (b) 執行本條所委以的職責，

制定實務守則，而任何此類守則均須提交立法局會議席上省覽，並須得立法局批准始可頒布。

4. 提交物料令

(1) 為偵查下述事項，律政司或獲授權人可就某物料或某類別的物料，向高等法院提出單方面申請，要求根據第(2)款發出命令，不論有關的物料是在香港或(如申請是由律政司提出的)在其他地方——

- (a) 有組織罪行；或
- (b) 已犯或被懷疑已犯有組織罪行的人從有組織罪行的得益；或
- (c) 已犯或被懷疑已犯指明的罪行的人從該罪行的得益。

(2) 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 of the material holds it,
 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.

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

- (a) 將物料提交給獲授權人帶走；或
- (b) 讓獲授權人取覽該物料。

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

(4) 第(2)款所指的條件是——

- (a) (如偵查是針對某有組織罪行的)有合理理由懷疑有人已犯該有組織罪行；
- (b) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
 - (i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
 - (ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
- (c) 有合理理由相信與申請有關的物料——
 - (i) 相當可能與申請所關的偵查有關者；及
 - (ii) 並不包括享有法律特權的品目，亦並非由該等品目組成；
- (d) 經考慮——
 - (i) 取得物料後對偵查可能帶來的利益；及
 - (ii) 物料管有人在何種情況下持有該物料，有合理理由相信將物料交予獲授權人或讓他們取覽，是符合公眾利益的。

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

(6) 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 of a public body as defined in section 28.

(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.]

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

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

(8) 法庭規則——

(a) 須就受制於根據本條發出的命令的人申請撤銷或更改該等命令的申請事宜，作出規定；

(b) 可就關乎根據本條所發出的命令的法律程序作出規定。

(9) 凡與根據本條提出的申請有關的物料為並非以可閱讀形式記載的資料——

(a) 根據第(2)(a)款發出的命令，須當為一項飭令將物料以一種可以帶走的形式，提交給獲授權人由他帶走的命令；及

(b) 根據第(2)(b)款發出的命令，須當為一項飭令將物料以一種可以看到及可以閱讀的形式，供獲授權人取覽的命令。

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

(11) 根據第(2)款發出的命令——

(a) 不得賦予要求提交或取覽享有法律特權的品目的權力；及

(b) 可就第28條界定的公共機構所管有的物料而發出。

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

(a) 提供資料或提交物料會傾向於使該人獲罪；或

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

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

(14) 獲授權人可將根據本條提交的物料攝影或複印。

[*比照* 1986 c. 32 s. 27 U.K.]

5. 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 High Court or the District Court for a warrant under this section in relation to specified premises.

(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

5. 搜查的權限

(1) 為偵查下述事項，獲授權人可向高等法院或地方法院申請，要求就指明的處所根據本條發出手令——

- (a) 有組織罪行；
- (b) 已犯或被懷疑已犯有組織罪行的人從有組織罪行的得益；
- (c) 已犯或被懷疑已犯指明的罪行的人從該罪行的得益。

(2) 法庭接獲該項申請後，如信納——

- (a) 就某處所內的物料根據第3(6)條施加的要求未予遵從；或
- (b) 根據第4條就處所內的物料發出的命令，未予遵從；或
- (c) 已符合第(3)(a)、(c)及(d)款或第(3)(b)、(c)及(d)款的條件；或
- (d) 已符合第(4)(a)、(c)及(d)款或第(4)(b)、(c)及(d)款的條件，

可簽發手令，授權獲授權人進入處所搜查。

(3) 第(2)(c)款所指的條件是——

- (a) (如偵查是針對某有組織罪行的)有合理理由懷疑有人已犯該有組織罪行；
- (b) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
 - (i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
 - (ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
- (c) 就該處所內任何物料而言，已符合第4(4)(c)及(d)條的條件；
- (d) 由於下列原因，不適宜根據該條就該物料發出命令——
 - (i) 如要聯絡任何有權提交有關物料的人，並不切實可行；或
 - (ii) 如要聯絡任何有權准許別人取覽有關物料的人，或任何有權准許別人進入有關物料所在的處所的人，並不切實可行；或

- (iii) 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.

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

- (iii) 除非獲授權人能立即取覽有關物料，否則與該項申請有關的偵查可能受到嚴重妨害。
- (4) 第(2)(d)款所指的條件是——
- (a) (如偵查是針對某有組織罪行的)有合理理由懷疑有人已犯該有組織罪行；
- (b) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
- (i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
- (ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
- (c) 有合理理由懷疑該處所內相當可能藏有與該申請所關的偵查有關的物料，而在提出申請時不能就該物料作詳細說明；
- (d) (i) 如要聯絡任何有權准許別人進入該處所的人，並不切實可行；或
- (ii) 除非出示手令，否則不會獲准進入該處所；或
- (iii) 除非獲授權人到達該處所時能立即進入該處所，否則該項申請所關的偵查可能受到嚴重妨害。
- (5) 凡獲授權人執行根據本條簽發的手令進入處所後，可扣押及扣留任何相當可能與該手令所關的偵查有關的物料，但享有法律特權的品目則除外。
- (6) 任何人阻撓或妨礙獲授權人執行根據本條簽發的手令，即屬犯罪——
- (a) 循公訴程序定罪後，可處罰款\$250,000及監禁2年；或
- (b) 循簡易程序定罪後，可處第5級罰款及監禁6個月。
- (7) 獲授權人可將根據本條扣押的任何物料攝影或複印。

[比照 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 Attorney General 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 Legal Department, the Royal 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 Attorney General 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 Attorney General, 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).

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.

6. 根據第3、4或5條獲取的資料的披露

(1) 根據或憑藉第3、4或5條而從稅務局局長或稅務局人員根據《稅務條例》(第112章)獲得的受保密責任限制的資料，除為了——

- (a) 檢控任何人犯指明的罪行；
- (b) 申請沒收令；或
- (c) 申請根據第15(1)或16(1)條發出命令，

而可由任何獲授權人向律政司披露外，不得將該等資料披露。

(2) 除第(1)款另有規定外，任何人根據或憑藉第3、4或5條獲取的資料，可由任何獲授權人向下列人員或機構披露——

- (a) 律政署、皇家香港警務處、香港海關、人民入境事務處及總督特派廉政公署；及
- (b) (如律政司覺得資料相當可能有助於任何相應的人員或機構履行職能)該人員或機構。

(3) 並非因為第(2)款而享有的將憑藉或根據第3、4或5條獲取的資料披露的權利，不受第(2)款的影響。

(4) 在本條中，“相應的人員或機構”(corresponding person or body)指律政司認為根據香港以外地方的法律，具有相當於第(2)(a)款中所述機構的任何職能的人員或機構。

7. 妨害偵查罪行

(1) 凡法庭已根據第3或4條發出命令，或已有要求根據第3或4條發出命令的申請提出而申請沒有被拒絕，或法庭已根據第5條簽發手令，任何人知道或懷疑已發出或已申請的命令或已發出的手令所關乎的偵查正在進行，而——

- (a) 並無合法授權或合理辯解而作出意圖妨害偵查的任何披露；或
- (b) 將任何物料竄改、隱藏、毀滅或以其他方式處置，或導致或准許此等情況發生，而且——
 - (i) 知道或懷疑該物料相當可能是與該宗偵查有關的；及
 - (ii) 意圖向進行該宗偵查的人隱藏該物料所披露的事實，

即屬犯罪。

(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—

(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) in proceedings before the High Court or the District Court a person is to be sentenced in respect of a specified offence and has not previously been sentenced in respect of his conviction for that offence; and

(b) an application is made by or on behalf of the Attorney General for an order under this section,

the High Court or the District Court, as the case may be, shall act as follows.

(2) If the prosecution so requests, the court shall first determine whether the specified offence of which the person stands convicted is an organized crime.

(3) The court shall then or, where no request has been made under subsection (2), the court shall first—

(a) impose such period of imprisonment or detention (if any);

(b) make such other order in relation to sentence, not being an order provided for or referred to in subsection (7),

as is appropriate in respect of the offence concerned.

(4) The court shall then determine 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, and, if he has, whether his proceeds of that specified offence or offences are in total at least \$100,000.

(5) If the court has determined—

(a) under subsection (2), that the specified offence of which the person stands convicted is an organized crime; and

(b) 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,

(2) 凡有人因第(1)款所指明的偵查的關係而被捕，則該款對逮捕後就該宗偵查所作的披露並不適用。

(3) 任何人犯本條所訂的罪行——

(a) 循公訴程序定罪後，可處罰款及監禁7年；或

(b) 循簡易程序定罪後，可處罰款\$500,000及監禁3年。

[*比照* 1986 c. 32 s. 31 U.K.]

第III部

沒收犯罪得益

8. 沒收令

(1) 凡——

(a) 在高等法院或地方法院審理的法律程序中，任何人就一項未予判處刑罰的指明的罪行接受判處刑罰；及

(b) 律政司或其代表根據本條提出申請要求發出命令，

高等法院或地方法院必須依以下規定行事。

(2) 如控方提出有關要求，法庭須首先裁定該人被定罪的指明的罪行是否有組織罪行。

(3) 法庭然後須就有關的罪行(或如控方沒有根據第(2)款而提出要求，則法庭須首先就有關罪行)——

(a) 判處適當的監禁期或拘留期(如有的話)；

(b) 就刑罰發出其他適當命令，而該命令並非第(7)款所規定或提述的。

(4) 法庭然後必須裁定該人是否曾經從有關的指明的罪行或從該人在同一的法律程序中任何指明的罪行一同被定罪的該罪行中獲利，或該人是否從法庭擬在釐定其刑罰時一併考慮的指明的罪行或該罪行中獲利；而若他曾如此獲利，則須裁定其從該等指明的罪行的得益總計是否最少達\$100,000。

(5) 如法庭已——

(a) 根據第(2)款，裁定該人所被定罪的指明的罪行是有組織罪行；及

(b) 根據第(4)款，裁定該人從該款所提述的該等指明的罪行的得益，總計不少於該款所指明的款額，

the court shall then determine whether the person has benefited from organized crime.

(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 concerned—

- (a) order him to pay that amount;
- (b) take account of the order before—
 - (i) imposing any fine on him; or
 - (ii) making any order involving any payment by him; or
 - (iii) making any order under section 38F or 56 of the Dangerous Drugs Ordinance (Cap. 134), or section 72, 84A, 102 or 103 of the Criminal Procedure Ordinance (Cap. 221).

(8) For the purposes of any Ordinance conferring rights of appeal in criminal cases, an order made against a person under this section shall be treated as a sentence passed on that person in respect of the offence or offences concerned.

(9) For the purposes of subsection (2)—

- (a) the court shall only have regard to evidence such as would be admissible in criminal proceedings;
- (b) the court shall only make a determination that a specified offence is an organized crime if it is so satisfied beyond reasonable doubt.

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

9. Assessing the proceeds of crime

(1) The High Court or the District Court, as the case may be, may, for the purpose of determining whether a person convicted of a specified offence and found to have committed 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 shows that any of the assumptions are incorrect in his case.

(2) Those assumptions are—

- (a) that any property appearing to the court—
 - (i) to have been held by him at any time since his conviction; or
 - (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 a payment or reward in connection with the commission of an organized crime;

則法庭須裁定該人是否有從有組織罪行中獲利。

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

(7) 法庭隨後須就該有關的罪行——

- (a) 命令他繳付該款額；
- (b) 先考慮上述命令才——
 - (i) 判該人罰款；或
 - (ii) 發出任何涉及需要該人付款的命令；或
 - (iii) 根據《危險藥物條例》(第134章)第38F或56條或《刑事訴訟程序條例》(第221章)第72、84A、102或103條，發出任何命令。

(8) 為施行賦予有關刑事案件的上訴權的條例，根據本條針對某人發出的命令，須視為是一項對該人就有關的罪行而作出的判刑。

(9) 就第(2)款而言——

- (a) 法庭只可考慮可在刑事法律程序中接納為證據的證據；
- (b) 法庭須在無合理疑點的情況下信納某指明的罪行是有組織罪行，方可裁定該指明的罪行是有組織罪行。

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

9. 犯罪得益的評計

(1) 高等法院或地方法院為決定就指明的罪行被定罪及被判定犯有組織罪行的人是否曾經從有組織罪行中獲利，及(如該人曾如此獲利)為評計該人從有組織罪行的得益，可作出以下的假設，但如被告人能表明任何假設與其情況不符，則該等假設不能成立。

(2) 該等假設為——

- (a) 依法庭覺得是——
 - (i) 被告人在定罪之後的任何時間曾經持有的任何財產；或
 - (ii) 自被告人被起訴日期6年前起計的以後，曾經移轉予被告人的任何財產，
 均為被告人因犯有組織罪行的關係而收受的款項或酬賞，收受的時間是法庭覺得被告人持有該財產的最早時間；

- (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with the commission of an organized crime; and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a payment or reward, he received the property free of any other interests in it.

(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—
 - (a) the prosecutor tenders to the High Court or the District Court, as the case may be, a statement as to any matters relevant—
 - (i) to determining whether the defendant has benefited from a specified offence or an organized crime; or
 - (ii) to an assessment of the value of the defendant's proceeds of a specified offence or an organized crime; and
 - (b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purposes of so determining or making such an assessment, treat his acceptance as conclusive of the matters to which it relates.

- (2) Where—
 - (a) a statement is tendered under subsection (1)(a); and
 - (b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement apart from—

- (a) any allegation in respect of which he has complied with the requirement; and

- (b) 被告人自起訴日期6年前起計，一直以來的任何開支，都是由他因犯有組織罪行的關係所收受的款項中支付；及
- (c) 為評定他在任何時間收受或假設他曾經收受有關款項或酬賞的財產價值，該財產須視作不存有任何其他權益。

(3) 為評計被告人從有組織罪行的得益的價值，如法庭過去曾對被告人發出沒收令或根據《販毒(追討得益)條例》(第405章)第3(6)條發出命令，則法庭在見到證明後，須撤除根據該令決定追討的款額時已計算在內的從有組織罪行的得益。

[*比照 1986 c. 32 s. 2 U.K.*]

10. 與發出沒收令有關的陳述書等

- (1) 凡——
 - (a) 檢控官向高等法院或地方法院呈交陳述書，陳述關於下述第(i)或(ii)節的事項時——
 - (i) 決定被告人是否曾經從指明的罪行或有組織罪行中獲利；或
 - (ii) 評計被告人從指明的罪行或有組織罪行的得益的價值；及
 - (b) 被告人對陳述書所載的任何指稱，在任何程度上予以承認，
 則法庭為決定被告人是否曾經從該指明的罪行或有組織罪行中獲利或評計被告人從指明的罪行或有組織罪行的得益的價值，可將被告人所承認的，視為有關事情的定論。

- (2) 凡——
 - (a) 檢控官根據第(1)(a)款呈交陳述書；及
 - (b) 法庭信納陳述書的複本已送達被告人，
 法庭可要求被告人表示對陳述書內每一項指稱承認至甚麼程度；如被告人不承認其中任何指稱，法庭可要求他表示打算提出甚麼論據。

(3) 被告人如在任何方面未有遵從法庭根據第(2)款作出的要求，為施行本條，可視為承認陳述書內除以下各項指稱外的每一項指稱——

- (a) 被告人已遵從法庭的要求的指稱；及

(b) any allegation that he has benefited from a specified offence or organized crime or that any payment or other reward was received by him in connection with the commission of a specified offence or an organized crime.

(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 a matter indicated for the purposes of this section either—

(a) orally before the court; or

(b) in writing in accordance with rules of court or, in the absence of such rules, in a form acceptable to the court.

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

[*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 High Court 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(2) that a specified offence is an organized crime, all organized crime which he has committed.

(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 the amount appearing to the court to be the amount that might be so realised.

[*cf.* 1986 c. 32 s. 4 U.K.]

(b) 任何指被告人曾經從指明的罪行或有組織罪行中獲利，或指被告人曾經收受的任何款項或其他酬賞是因犯指明的罪行或有組織罪行的關係而收受的指稱。

(4) 凡——

(a) 由被告人向法院呈交陳述書，陳述任何與決定在發出沒收令時變現可得的款額有關的事情；及

(b) 檢控官對陳述書所載的任何指稱，在任何程度上予以接納，

則法庭為決定變現可得的款額，可將檢控官所接納的，視為有關事情的定論。

(5) 為施行本條，任何一方接納或承認指稱，或應法庭的要求作出表示，可——

(a) 在法庭上口頭作出；或

(b) 依照法庭規則以書面作出；如並無該等規則，則以法庭認為可以接納的形式作出。

(6) 如被告人根據本條承認曾經因犯指明的罪行或有組織罪行的關係而收受任何款項或其他酬賞，該項承認不得在任何刑事法律程序中接納為證據。

[*比照* 1986 c. 32 s. 3 U.K.]

11. 根據沒收令追討的款額

(1) 除第(3)款另有規定外，根據沒收令須向被告人追討的款額是高等法院或地方法院評計為被告人從第8(4)條所適用的任何指明的罪行或(如法庭根據第8(2)條決定某指明的罪行是有組織罪行)其所犯的所有有組織罪行的得益的價值。

(2) 法庭如信納任何與決定發出沒收令時變現可得的款額有關的事情(不論是否根據第10條或其他情況所接納或承認的)，可簽發證明書，說明法庭對有關事情的意見；法庭如信納第(3)款所述的情況，則必須簽發證明書。

(3) 法庭如信納在發出沒收令時變現可得的款額少於法庭為施行第(1)款而評計為被告人的得益價值的款額，則根據沒收令向被告人追討的款額，須為法庭覺得在發出沒收令時變現可得的款額。

[*比照* 1986 c. 32 s. 4 U.K.]

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; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance.

(2) Property is not realisable property if—

- (a) an order under section 102 or 103 of the Criminal Procedure Ordinance (Cap. 221);
- (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 sections 10 and 11 the amount that might be realised at the time a confiscation order is made against the defendant is—

- (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,

12. 主要詞語的定義

(1) 除第(2)款另有規定外，在本條例內“可變現財產”(realisable property)指——

- (a) 被告人持有的任何財產；及
- (b) 被告人曾經對他直接或間接作出受本條例限制的饋贈的人所持有的任何財產。

(2) 任何財產，如以下的命令對其有效，則不屬於可變現財產——

- (a) 根據《刑事訴訟程序條例》(第221章)第102或103條發出的命令；
- (b) 根據《危險藥物條例》(第134章)第38F或56條發出的命令；或
- (c) 根據《防止賄賂條例》(第201章)第12AA(1)條發出的命令。

(3) 為施行第10及11條，在對被告人發出沒收令時變現可得的款額是——

- (a) 被告人持有的所有可變現財產在當時的總值，減去
- (b) 為履行當時任何須優先履行的責任而須支付的款項的總額，

加上所有受本條例限制的饋贈在當時的總值。

(4) 除第(5)至(10)款另有規定外，為施行本條例，就財產持有人而言，財產(除現金外)的價值——

- (a) 如他人持有該財產的權益，是——
 - (i) 該財產持有人就該財產所持有的實益權益的市值，減去
 - (ii) 用以消除該權益的任何附帶承擔(除押記令外)所須支付的款額；及
- (b) 在任何其他情況下，是該財產的市值。

(5) 除第(10)款另有規定外，本條例內提述受本條例限制的饋贈，或任何款項或酬賞在任何時間(在第(6)款內稱為“關鍵時間”(the material time))的價值，所指為以下的一項，而以兩個價值中較大的一個為準——

- (a) 饋贈、付款或酬賞在收受的時候對收受人的價值，但該價值須隨事後的幣值轉變而調整；或
- (b) 如第(6)款適用，該款所述的價值。

(6) 除第(10)款另有規定外，如收受人在關鍵時間持有——

- (a) 他曾收受的財產(現金除外)；或
- (b) 在他手中的財產，而其全部或部分、直接或間接代表他曾收受的，

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 receiving order made under that Ordinance); and
- (b) in relation to winding up, means the debts to be paid under section 265 of the Companies 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).

(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.

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

則第(5)(b)款所指的價值，即是(a)段所述財產於關鍵時間對他的價值，或(b)段所述財產於關鍵時間在代表他所收受的財產的範圍內對他的價值；無論在上述任何一種情況下，都不得對任何押記令予以理會。

(7) 為施行第(3)款，如被告人須承擔以下責任，則該等責任在任何時間均有優先權——

- (a) 繳付因法庭在定罪後判處的罰款或發出的其他命令而須繳付的款額，而該罰款或命令是在沒收令之前判處或發出的；或
- (b) 繳付被告人被裁定破產或被清盤時，即會成為優先債項的款項。

(8) 在第(7)(b)款內，“優先債項”(the preferential debts)——

- (a) 就破產而言，指《破產條例》(第6章)第38條規定必須優先償付的債項(假設沒收令日期為提交呈請書日期及根據該條例發出接管令的日期)；及
- (b) 就清盤而言，指《公司條例》(第32章)第265條規定償付的債項(假設沒收令日期為清盤生效日期及該條所指的有關日期)。

(9) 凡屬以下饋贈(包括本條例生效日期之前所作出的饋贈的)，都是受本條例限制的饋贈——

- (a) 由被告人在被起訴日期6年前起計的以後任何時間作出的；或
- (b) 由被告人在任何時間作出的，而所饋贈的是被告人因自己或他人犯指明的罪行或有組織罪行的關係而收受的財產；或
- (c) 由被告人在任何時間作出的，而所饋贈的是在被告人手中的財產，而其全部或部分、直接或間接代表他曾因上述關係而收受的。

(10) 為施行本條例——

- (a) 被告人被視為作出饋贈的情況，包括他將財產直接或間接移轉給他人，而所得的代價所值顯著低於他提供的代價所值；及
- (b) 在上述情況下，引用本條以上條文時，須視作被告人將有關財產的一部分作為饋贈，而該饋贈佔有關財產整體的比率，等如(a)段所指被告人提供的代價所值與他所收代價所值的相差額，在被告人提供的代價所值中所佔的比率。

[比照1986 c. 32 s. 5 U.K.]

PART IV

第IV部

ENFORCEMENT, ETC. OF CONFISCATION ORDERS

沒收令的執行及其他

13. Application of procedure for enforcing fines

13. 罰款執行程序的應用

(1) Subject to this section, where the High Court or the District Court, as the case may be, orders the defendant to pay any amount under section 8—

(1) 除本條另有規定外，凡高等法院或地方法院根據第8條命令被告人繳付任何款額——

(a) the court shall make an order fixing a term of imprisonment which he is to serve if any of the amount which he is liable to pay is not duly paid or recovered; and

(a) 法庭須發出命令，訂定一段監禁期，如被告人須繳付的任何款額沒有按時繳付或獲得追討，他便須接受該段期限的監禁；及

(b) section 114(1), (3), (4), (5), (6) and (7) of the Criminal Procedure Ordinance (Cap. 221) shall apply as if—

(b) 須引用《刑事訴訟程序條例》(第221章)第114(1)、(3)、(4)、(5)、(6)及(7)條，猶如——

(i) that amount were a fine imposed upon him by the court; and

(i) 該款額是法庭對他判處的罰款；及

(ii) the term of imprisonment fixed under this section were a term fixed under section 114(1)(c) of that Ordinance.

(ii) 根據本條訂定的監禁期即根據該條例第114(1)(c)條訂定的監禁期。

(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.

(2) 下表右欄列出的期限，為根據第(1)款分別就左欄相對所列款額可訂定的最高監禁期。

TABLE

罰款額與監禁期對照表

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

\$20萬及以下	12個月
\$20萬以上至\$50萬	18個月
\$50萬以上至\$100萬	2年
\$100萬以上至\$250萬	3年
\$250萬以上至\$1,000萬	5年
\$1,000萬以上	10年

(3) Subsections (1) and (2) shall apply in relation to the District Court notwithstanding any limitation on the jurisdiction of that court as to the imposition of penalties set out in section 82 of the District Court Ordinance (Cap. 336).

(3) 第(1)及(2)款適用於地方法院，而不受《地方法院條例》(第336章)第82條對地方法院在判處刑罰方面的審判權所列舉的任何限制所限。

(4) Where the defendant—

(4) 凡被告人——

(a) becomes liable to serve a term of imprisonment fixed under this section in respect of a confiscation order; and

(a) 就沒收令被判處接受根據本條訂定期限的監禁；及

(b) is also liable to serve a term of imprisonment or detention in respect of the offence or offences concerned,

(b) 已就有關的罪行被判處接受另一期限的監禁或拘留，

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).

(a)段所述的監禁期限，須在(b)段所述的監禁或拘留期限完結後才開始計算。

- (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) Section 109A of the Criminal Procedure Ordinance (Cap. 221) shall not apply in relation to fixing a term of imprisonment under this section.
- [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 High Court by sections 15(1) and 16(1) are exercisable where—
- (a) proceedings have been instituted against the defendant for a specified offence;
 - (b) the proceedings have not been concluded; and
 - (c) the High Court is satisfied that there is reasonable cause to believe that the defendant has benefited from that specified offence.
- (2) Those powers are also exercisable where the High Court 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 High Court 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.

- (5) 為施行第(4)款——
- (a) 連續的期限及全部或部分同期執行的期限，須視為一段期限；及
 - (b) (i) 根據《刑事訴訟程序條例》(第221章)第109B條緩期執行的判決，而在被告人根據本條被判處接受一段期限的監禁時仍未生效的；及
 - (ii) 根據《刑事訴訟程序條例》(第221章)第114(1)條訂定，而當時被告人仍未被判處的監禁期，均須不予理會。
- (6) 《刑事訴訟程序條例》(第221章)第109A條不適用於法庭根據本條訂定的監禁期。

[比照 1986 c. 32 s. 6 U.K.]

14. 限制令、押記令可於甚麼情況下發出

- (1) 第15(1)及16(1)條賦予高等法院的權力，可於以下情況下行使——
- (a) 檢控被告人指明的罪行的法律程序已提起；
 - (b) 該法律程序尚未結束；及
 - (c) 高等法院信納有合理理由相信被告人曾經從該指明的罪行中獲利。
- (2) 該等權力亦可於以下情況下行使——
- (a) 高等法院信納某人將會被控以指明的罪行，不論是以告發或其他方式提控；及
 - (b) 高等法院信納有合理理由相信該人曾從該指明的罪行中獲利。
- (3) 為施行第15及16條，如在提起法律程序前的任何時間行使該等權力，則在本條例中——
- (a) 凡提述被告人，須解釋為第(2)(a)款所指的人；
 - (b) 凡提述檢控官，須解釋為高等法院信納為將會負責進行檢控的人；及
 - (c) 凡提述可變現財產，須當作於緊接該時間之前已對第(2)(a)款所指的人就指明的罪行提起法律程序而予以解釋。

(4) Where the High Court has made an order under section 15(1) or 16(1) by virtue of subsection (2), the High Court shall discharge the order if proceedings in respect of the offence are not instituted within such time as the High Court considers reasonable.

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

15. Restraint orders

(1) The High Court 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.

(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 when proceedings for the offence are concluded.

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

(7) Where the High Court has made a restraint order, the High Court may at any time appoint a receiver—

- (a) to take possession of any realisable property; and
- (b) in accordance with the High Court’s directions, 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 High Court; 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.

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

[*比照 1986 c. 32 s. 7 U.K.*]

15. 限制令

(1) 高等法院可藉命令(在本條例稱為“限制令”(restraint order))禁止任何人處理任何可變現財產；命令可附帶條件及例外情況，容許在符合該等條件或例外情況下處理可變現財產。

(2) 限制令可適用於——

- (a) 命令內指明的人所持有的所有可變現財產，不論有關財產是否在命令內說明；及
- (b) 命令內指明的人所持有的可變現財產，而有關財產是在法庭發出命令後才移轉給他的。

(3) 對於正受根據第16條發出的押記令所限的財產，本條並無效力。

(4) 限制令——

- (a) 只可在檢控官提出申請後發出；
- (b) 可由法官在內庭應單方面申請而發出；及
- (c) 須附有向受該命令影響的人發出通知的規定。

(5) 限制令——

- (a) 可就任何財產予以撤銷或更改；及
- (b) 在有關的刑事法律程序結束之後，必須撤銷。

(6) 撤銷或更改限制令的申請，可由任何受該命令影響的人提出。

(7) 高等法院發出限制令之後，可隨時委任接管人，在不違背高等法院所指明的條件或例外情況下——

- (a) 接管任何可變現財產；及
- (b) 依照高等法院的指示，管理或以其他方式處理他受委接管的任何財產，

高等法院並可要求任何管有有關財產(即根據本條委任接管人接管的人)的人，將該財產交予接管人接管。

(8) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)—

- (a) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt;
- (b) making or receiving a gift of the property; and
- (c) removing the property from Hong Kong.

(9) Where the High Court 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.

(10) Property seized under subsection (9) shall be dealt with in accordance with the High Court's directions.

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

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

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

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

(1) The High Court may make a charging order on realisable property for securing the payment to the Government—

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

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

(3) A charging order—

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

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

(8) 為施行本條，處理任何人所持有的財產，在該詞句的一般性含義不受影響下，包括——

- (a) 如財產是他人欠該人的債項，付款予任何人以減少或完全清償該債項；
- (b) 作出或收受有關財產的饋贈；及
- (c) 將有關財產調離香港。

(9) 高等法院發出限制令之後，獲授權人為防止任何可變現財產調離香港，可將有關財產扣押。

(10) 根據第(9)款扣押的財產，須依照高等法院的指示處理。

(11) 限制令內指明的任何財產如為不動產，為施行《土地註冊條例》(第128章)，該命令——

- (a) 須視為涉及土地的文書；及
- (b) 可根據該條例，以土地註冊處處長認為適當的方式，在土地註冊處註冊為涉及土地的文書。

[*比照 1986 c. 32 s. 8 U.K.*]

16. 就土地、證券等財產發出押記令

(1) 高等法院可就可變現財產發出押記令，以作為向政府繳付以下款額的押記——

- (a) 如沒收令未曾發出，相等於押記財產不時價值的款額；及
- (b) 在其他情形下，不超過根據沒收令所須繳付的款額。

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

(3) 押記令——

- (a) 只可在檢控官提出申請後發出；
- (b) 可由法官在內庭應單方面申請而發出；
- (c) 須附有向受該命令影響的人發出通知的規定；及
- (d) 可符合某些條件下發出，這些條件是高等法院認為適當的條件以及(在不影響本段的一般性規定下)高等法院認為在押記生效時間方面適當的條件。

(4) 除第(6)款另有規定外，押記令只可用以下財產作為押記——

- (a) 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 High Court may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset.

(6) The High Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into the High Court.

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

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

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

17. Realisation of property

(1) Where—

- (a) a confiscation order is made;
- (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 High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6).

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

(3) The High Court 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

- (a) 可變現財產的任何權益，而是由被告人實益持有的，或是由被告人直接或間接向他作出受本條例圍制的饋贈的人實益持有的，而且是——
- (i) 屬於附表3指明的資產類別的；或
- (ii) 在任何信託形式下持有的；或
- (b) 由一個人以受託人身分持有的可變現財產的權益，但須是屬於該資產的，或須是屬於另一個信託下的，而憑藉(a)段可以押記令將最先提及的信託之下的全部實益權益作為押記的。

(5) 如押記令將屬於附表3所指明類別的資產的權益作為押記，高等法院可規定將就有關資產而交付的利息、股息、其他分發的利益，以及派發的紅利，包括在押記物之內。

(6) 高等法院可發出命令撤銷或更改押記令；如有關刑事法律程序已經結束，或押記令所擔保交付的款額已經交付高等法院，高等法院必須發出命令撤銷押記令。

(7) 撤銷或更改押記令的申請，可由受該命令影響的任何人提出。

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

[*比照* 1986 c. 32 s. 9 U.K.]

17. 財產的變現

(1) 凡——

- (a) 沒收令已經發出；
- (b) 該命令不受第2(17)條所指的上訴或覆核所限；及
- (c) 發出沒收令的法律程序未曾結束，

經檢控官提出申請，高等法院可行使第(2)至(6)款所賦予的權力。

(2) 高等法院可委任接管人，接管可變現財產。

(3) 高等法院可授權予根據第(2)款、第15條或押記令而委任的接管人——

- (a) 執行任何根據第16條施加於可變現財產上的押記，和執行根據第16條施加於就該筆財產而交付的利息、股息、其他分發的利益以及派發的紅利的押記；及

(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 High Court.

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

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

(6) The High Court 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 High Court may direct and the High Court 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 High Court 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 High Court.

[*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 High Court may direct have been made out of those sums—

- (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—

(b) 就不受根據第16條發出的押記令所限的可變現財產，在不抵觸高等法院所指明的條件或例外情況下，接管該等財產。

(4) 高等法院可命令任何管有可變現財產的人，將可變現財產交予上述任何接管人。

(5) 高等法院可授權予上述任何接管人，依照高等法院指示的方式，將任何可變現財產變現。

(6) 高等法院可命令任何持有可變現財產的權益的人，就被告人或受本條例圍制的饋贈的收受人所持有的實益權益，將高等法院所指示的款項交付接管人；款項交付後，高等法院可下令將有關財產的任何權益予以移轉、授予或取消。

(7) 第(4)至(6)款不適用於正受根據第16條發出的抵押令所限的財產。

(8) 在有關財產的權益持有人未獲得合理機會向高等法院申述意見之前，高等法院不得就任何財產行使第(3)(a)、(5)或(6)款所賦予的權力。

[*比照 1986 c. 32 s. 11 U.K.*]

18. 變現得益及其他款項的運用

(1) 除第(2)款另有規定外，在根據第15或17條或押記令而委任的接管人手中的以下款項，即——

- (a) 因執行根據第16條施加的任何押記權而獲得的得益；
- (b) 因根據第15或17條將任何財產變現而獲得的得益（因執行押記權而獲得的得益除外）；及
- (c) 屬於被告人所持有的財產的任何其他款項，

須首先用以支付以債務處理人身分行事的人所招致，而根據第23(2)條須支付的開支，然後須在依照高等法院的指示扣除任何支出之後——

- (i) 交付予司法常務官；及
- (ii) 依照第(3)款規定的方式，為被告人繳付根據沒收令所須付的款項。

(2) 如根據沒收令須繳的款額全數清償後，仍剩有款項在接管人手中，接管人須於有關人等獲得合理機會向高等法院申述意見之後，將款項——

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

(b) in such proportions,

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

(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 disposed of under section 93 of the Interpretation and General Clauses Ordinance (Cap. 1) as if it were a fine imposed under the authority of an Ordinance.

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

19. Exercise of powers by High Court or receiver

(1) This section applies to the powers conferred on the High Court by sections 15 to 18, or on a receiver appointed under section 15 or 17 or in pursuance of a charging order.

(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.

(a) 分發予高等法院所指示的而曾持有根據本條例變現的財產的人；及

(b) 依照高等法院所指示的比率分發。

(3) 司法常務官收到的任何就沒收令繳付的款項，須用作扣除要繳付的款項中的相同數額，但司法常務官須將收到的款項用於本條指明的用途，及依本條指明的次序使用。

(4) 司法常務官須首先支付以債務處理人身分行事的人所招致的開支，而這些開支是根據第23(2)條須支付但尚未根據第(1)款支付的。

(5) 如該款項是由根據第15或17條或押記令而委任的接管人交付司法常務官的，則司法常務官接着須支付接管人的薪酬及開支。

(6) 司法常務官——

(a) 在作出第(4)款規定的付款後；及

(b) 在第(5)款適用的情況下，作出該款規定的付款後，

須償付根據第24(2)條支付的數額。

(7) 在司法常務官作出上述各款所規定的付款後的餘款，須根據《釋義及通則條例》(第1章)第93條予以處置，猶如它是根據任何條例的權限而判處的罰款。

[*比照 1986 c. 32 s. 12 U.K.*]

19. 高等法院或接管人權力的行使

(1) 本條適用於第15至18條所賦予高等法院，或賦予根據第15或17條或押記令而委任的接管人的權力。

(2) 除第(3)、(4)、(5)及(6)款另有規定外，當行使上述權力時，須以將任何人持有的可變現財產變現，從而獲取該等財產當時的價值，用作繳付就被告人而發出的沒收令所須付的款項為目標。

(3) 如某人持有的可變現財產是由被告人直接或間接向他作出的饋贈，而該饋贈是受本條例限制的，當行使上述權力時，須以變現可得款額不超過該饋贈當時的價值為目標。

(4) 當行使上述權力時，須以容許被告人及上述饋贈收受人以外的任何人保留或追討他所持有的任何財產的價值為目標。

(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 defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the High Court shall make an order—

- (a) substituting for the amount to be recovered under the confiscation order such lesser amount as the High Court 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.
- (2) For the purposes of subsection (1)—
- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the High Court shall take into account the extent to which any property held by him may be distributed among creditors; and
 - (b) the High Court may disregard any inadequacy in the realisable property which appears to the High Court 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.

[*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).

(5) 對於政府所欠債項，可由高等法院發出命令，亦可採取其他辦法處理。

(6) 行使該等權力時，不須理會被告人或上述饋贈的收受人所承擔的任何與圓滿執行沒收令的責任相抵觸的其他責任。

[*比照* 1986 c. 32 s. 13 U.K.]

20. 沒收令的更改

(1) 如經被告人就沒收令提出申請，高等法院信納有關可變現財產不足以清償根據該沒收令尚須追討的餘額，便須發出命令——

- (a) 以高等法院認為在案件所有情況下算是公平的較低款額，替代根據沒收令須追討的款額；及
- (b) 按上述較低款額，依照第13條定出較短監禁期，以替代原本按根據沒收令須追討的款額而依照該條訂定的監禁期。

(2) 為施行第(1)款——

- (a) 如可變現財產的持有人已被裁定破產，或該人的產業已被暫時扣押，高等法院須考慮他所持有的財產可被分發予債權人的程度；及
- (b) 如高等法院覺得可變現財產的不足，可完全或部分歸因於被告人曾作出任何行動，以保留他曾直接或間接作出受本條例圍制的饋贈的人所持有的任何財產，使其不因本條例而被變現，則對於因此引致的不足，可不予理會。

[*比照* 1986 c. 32 s. 14 U.K.]

21. 被告人破產及其他

(1) 凡持有可變現財產的人被裁定破產，為施行《破產條例》(第6章)，以下財產不算入破產人財產之內——

- (a) 當時正受限制令所限的財產，而限制令是在裁定破產令之前發出的；及
- (b) 當時已在根據第15或17條委任的接管人手中，憑藉第15(7)或17(5)或(6)條將財產變現而獲得的任何得益。

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 15 to 18 shall not be exercised in relation to—

- (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 30(3) of the Bankruptcy Ordinance (Cap. 6).

(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 High Court by sections 15 to 18.

(4) Subsection (2) does not affect the enforcement of a charging order—

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 13 of the Bankruptcy Ordinance (Cap. 6) and any property of the debtor is subject to a restraint order, the powers conferred on the interim receiver by virtue of that Ordinance do not apply to property for the time being subject to the restraint order.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance—

- (a) a court shall not make an order under—
 - (i) section 31, 47 or 49 of the Bankruptcy Ordinance (Cap. 6); or
 - (ii) section 60 of the Conveyancing and Property Ordinance (Cap. 219),

in respect of the making of the gift at any time when proceedings for a specified offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order; and

- (b) any order made under any of those sections after the conclusion of the proceedings shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made.

[*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—

(2) 任何人被裁定破產後，第15至18條賦予高等法院的權力不得就以下財產而行使——

- (a) 為施行《破產條例》(第6章)，當時包括在破產人財產內的財產；及
- (b) 因憑藉《破產條例》(第6章)第30(3)條施加的條件而須為債權人的利益運用的財產。

(3) 《破產條例》(第6章)的任何規定，不得視為限制第15至18條所賦予高等法院的權力的行使，或使該等權力的行使受到限制。

(4) 押記令如——

- (a) 在裁定有關的人破產的命令發出之前已發出；或
- (b) 在裁定破產令發出時，供押記的財產已經受到限制令所限，

則第(2)款不影響該押記令的執行。

(5) 凡在債務人方面已根據《破產條例》(第6章)第13條委出臨時接管人，而債務人有任何財產正受限制令規限，則臨時接管人藉該條例而獲賦的權力，不適用於當時受限制令規限的財產。

(6) 凡任何人被裁定破產，而他又曾經直接或間接作出受本條例圍制的饋贈——

- (a) 法庭不得在提控他指明的罪行的法律程序結束前，或在饋贈收受人的財產受限制令或押記令所限期間，就所作出的饋贈根據以下條文發出命令——

- (i) 《破產條例》(第6章)第31、47或49條；或
- (ii) 《物業轉易及財產條例》(第219章)第60條；及

- (b) 在法律程序結束後，根據上述任何一條條文發出的任何命令，須顧及根據本條例對饋贈收受人所持有的財產的任何變現。

[*比照* 1986 c. 32 s. 15 U.K.]

22. 可變現財產持有公司的清盤

(1) 凡一間公司持有可變現財產，而清盤命令已就該公司發出或該公司已通過決議自動清盤，則清盤人(或任何臨時清盤人)的職能不得就以下財產履行——

- (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 High Court 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—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies Ordinance (Cap. 32) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the High Court by sections 15 to 18.

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

(5) In this section—

“company” (公司) means any company which may be wound up under the Companies Ordinance (Cap. 32);

“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 High Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

[*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 Ordinance (Cap. 32) or any other Ordinance, where—

- (a) 當時正受限制令所限的財產，而限制令是在有關時間前發出的；及
- (b) 當時已在根據第15或17條委任的接管人手中，憑藉第15(7)或17(5)或(6)條將財產變現而獲得的任何得益。

(2) 就一間公司而言，如第(1)款所指的命令已經發出，或該款所指的決議已經通過，則第15至18條賦予高等法院的權力，不得行使於該公司所持有而清盤人可對其行使職能的任何可變現財產上——

- (a) 以限制清盤人履行他的職能，以期將公司持有的任何財產分發予公司的債權人；或
- (b) 以阻止從任何財產中支付在清盤過程中就該等財產正當支出的費用(包括清盤人或臨時清盤人的薪酬)。

(3) 《公司條例》(第32章)的任何規定，不得視為限制第15至18條所賦予高等法院的權力的行使，或使該等權力的行使受到限制。

(4) 第(2)款不影響在有關時間前所發出的押記令的執行，亦不影響在有關時間以受限制令所限的財產作押記的押記令的執行。

(5) 在本條內——

“公司”(company)指任何可以根據《公司條例》(第32章)進行清盤的公司；

“有關時間”(the relevant time)的意思——

- (a) 如沒有對有關公司發出清盤命令，是指通過自動清盤的決議的時間；
- (b) 如上述命令已經發出，而在向高等法院提出稟狀申請將有關公司清盤前，該公司已通過自動清盤的決議，則是指通過該決議的時間；及
- (c) 在上述命令已經發出的其他情況下，是指發出該命令的時間。

[*比照*1986 c. 32 s. 17 U.K.]

23. 債務處理人處理受限制令所限的財產

(1) 凡——

- (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.]

- (a) 任何債務處理人扣押或處置任何財產，但因該財產當時受限制令所限，他是不能對它行使職能的；及
- (b) 在扣押或處置該財產時，他相信並且有合理理由相信他有權（無論是依據法庭的命令或其他原因）扣押或處置該財產，

則除因他的疏忽而造成的損失外，債務處理人不須對因扣押或處置而造成的損失向任何其他人負責；而債務處理人對該財產或售賣該財產的得益，有權留置足以支付他用於有關的清盤、破產或其他指稱是與扣押或處置該財產有關的法律程序上的開支，以及支付他的薪酬中可以合理地歸因於與上述法律程序有關的工作的部分。但本款不影響《破產條例》(第6章)、《公司條例》(第32章)及其他條例中任何條文的一般性含義。

(2) 債務處理人在以下情況下招致開支(不論他是否已扣押或處置有關財產，以便享有根據第(1)(a)款而有的留置權)，即有權根據第18(1)或(4)條獲得償還該等開支——

- (a) 他就第(1)(a)款所述的財產招致開支，而當時他不知道，亦無合理理由相信，該財產是正受限制令所限的；或
- (b) 非因第(1)(a)款所述財產而招致開支，而若非限制令的效力，該等開支是可能藉接管有關財產及將它變現而支付的。

[*比照* 1986 c. 32 s. 17A U.K.]

24. 接管人：補充條文

(1) 凡根據第15或17條或押記令而委任的接管人——

- (a) 對並非可變現的財產採取任何行動，而如果該財產屬於可變現財產，該項行動是他有權採取的；
- (b) 他相信，並且有合理理由相信，他有權就該財產採取該項行動，

則除因他的疏忽而造成的損失外，他不須對他的行動所引致的損失向任何人負責。

(2) 接管人的薪酬及開支，如沒有款項可供司法常務官根據第18(5)條支付，須由檢控官支付；在沒有提起審訊指明的罪行的法律程序的情況下，則該等開支須由提出申請而就其申請引致接管人被委任的人支付。

[*比照* 1986 c. 32 s. 18 U.K.]

PART V

第V部

MISCELLANEOUS

雜項

25. Assisting a person to retain proceeds of indictable offence

(1) Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement whereby—

- (a) the retention or control by or on behalf of another (“the relevant person” (有關的人)) of the relevant person’s proceeds of an indictable offence is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) the relevant person’s proceeds of an indictable offence—
 - (i) are used to secure funds that are placed at the relevant person’s disposal; or
 - (ii) are used for the relevant person’s benefit to acquire property by way of investment,

knowing or having reasonable grounds to believe that the relevant person is a person who has committed or has benefited from an indictable offence, commits an offence.

(2) In this section, references to any person’s proceeds of an indictable offence include a reference to any property which, in whole or in part, directly or indirectly, represented in his hands his proceeds of an indictable offence.

(3) Where a person discloses to an authorized officer a suspicion or belief that any funds or investments are derived from or used in connection with an indictable offence or any matter on which such a suspicion or belief is based—

- (a) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is—
 - (i) it is made before he does the act concerned, being an act done with the consent of the authorized officer; or
 - (ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it;
- (b) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by rules of professional conduct; and
- (c) he shall not be 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 funds or investments in consequence of the disclosure.

25. 協助他人保留從可公訴罪行的得益

(1) 除第(3)款另有規定外，任何人知道或有合理理由相信另一人(“有關的人”(the relevant person))曾犯可公訴罪行或曾從該罪行中獲利，而直接參與或以其他方式參與任何安排，從而——

- (a) 方便有關的人或其代表(不論是以隱藏、調離法律管限範圍、移轉予代理人或其他方法)，保留或控制有關的人從可公訴罪行的得益；或
- (b) 使有關的人從可公訴罪行的得益——
 - (i) 被用作保證，以確保有資金供有關的人運用；或
 - (ii) 被用作為有關的人的利益而以投資方式取得財產，

該人即屬犯罪。

(2) 在本條中，凡提述任何人從可公訴罪行的得益，所指包括在該人手中全部或部分、直接或間接代表他從可公訴罪行的得益的任何財產。

(3) 凡任何人向獲授權人披露他懷疑或相信某些資金或投資是從可公訴罪行中得來或被用於與可公訴罪行有關的用途上，或披露該項懷疑或信念所根據的任何事情——

- (a) 如他有任何違反第(1)款的作為，而該項披露與該款所指的安排有關，又如該項披露是按照本段作出的，即是——
 - (i) 在他作出有關作為之前披露，而有關作為是在獲授權人同意下作出的；或
 - (ii) 在他作出有關作為之後披露，但卻是由他主動在合理情況下盡早披露的，
 該人不算犯本條所訂的罪行；
- (b) 該項披露不得視為違反合約或專業操守規則就披露資料施加的任何規限；及
- (c) 對於以下事情引致的任何損失，該人不須負責賠償——
 - (i) 該項披露；
 - (ii) 該項披露引致就有關資金或投資而作出的作為或不作為。

(4) In proceedings against a person for an offence under this section, it is a defence to prove—

- (a) that he did not know or suspect that the arrangement related to any person's proceeds of an indictable offence; or
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of the relevant person of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1); or
- (c) that—
 - (i) he intended to disclose to an authorized officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; but
 - (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(a).

(5) A person who commits an offence under this section 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.

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

[*cf.* 1986 c. 32 s. 24 U.K.]

26. Restriction on revealing disclosure under section 25

(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 25(3);
- (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 this section; or
- (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—

(4) 在檢控任何人犯本條所訂的罪行的法律程序中，被告人可證明以下事情作為免責辯護——

- (a) 他不知道亦無懷疑該項安排與任何人從可公訴罪行的得益有關；或
- (b) 他不知道亦無懷疑該項安排曾經方便有關的人或其代表保留或控制任何財產，或他不知道亦無懷疑任何財產曾經藉該項安排依照第(1)款所述的方式而運用；或
- (c) (i) 他曾意圖向獲授權人就該項安排披露第(3)款所述的懷疑、信念或事情；但
- (ii) 對於未能按照第(3)(a)款作出披露一事，他有合理辯解。

(5) 任何人犯本條所訂的罪行——

- (a) 循公訴程序定罪後，可處罰款 \$5,000,000 及監禁 14 年；或
- (b) 循簡易程序定罪後，可處罰款 \$500,000 及監禁 3 年。

(6) 在本條中，對可公訴罪行的提述包括對任何若在香港發生便會構成可公訴罪行的行為的提述。

[*比照* 1986 c. 32 s. 24 U.K.]

26. 限制將根據第 25 條所作的披露公開

(1) 除第(2)款另有規定外，在任何民事或刑事法律程序中，不得迫使任何證人——

- (a) 公開有人曾經根據第25(3)條作出披露；
- (b) 公開某人為披露人；或
- (c) 回答任何問題，如答案會直接或間接引致公開(a)或(b)段所指的任何事情。

(2) 在任何法律程序中，如有以下情況，則第(1)款不適用——

- (a) 所檢控的是第25條或本條所訂的罪行；或
- (b) 法庭認為必須公開該項披露或某人為披露人，方能在各當事人之間秉行公正。

(3) 除第(4)、(5)及(6)款另有規定外，無論何人，均不得出版或廣播任何引致以下後果的資料——

- (a) that a disclosure was made under section 25(3); or
 (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
 (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 Attorney General.
- (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 High Court, a person has been convicted of a specified offence.
- (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;

- (a) 公開或暗示有人曾經根據第25(3)條作出披露；或
 (b) 公開或暗示某人為披露人。
- (4) 在第(3)款中，“資料”(information)——
 (a) 包括任何民事或刑事法律程序的報導；
 (b) 不包括為統計目的由政府出版或經政府批准而出版的資料。
- (5) 第(3)款不適用於——
 (a) 檢控披露人犯第25條所訂的罪行的法律程序；或
 (b) 審訊本條所訂的罪行的法律程序。
- (6) 法庭或裁判官如信納如此做法有利於司法公正，可藉命令將第(3)款的規限免除至命令內指明的限度。
- (7) 如有資料在違反第(3)款的情況下出版或廣播，以下各人都屬犯罪，經定罪後，可處第5級罰款及監禁6個月——
 (a) (如果出版的資料是報章或期刊的一部分)報章或期刊的東主、編輯、出版人及發行人；
 (b) (如果出版的資料不是報章或期刊的一部分)出版或發行該出版資料的人；
 (c) (如果是廣播資料)廣播資料的人，及在資料屬於節目內容的情況下，傳播或提供節目的人，以及在該節目中擔任相當於報章或期刊編輯的職能的人。
- (8) 未經律政司同意，不得提起檢控本條所訂的罪行的法律程序。
- (9) 在本條中——
 “出版”(publish)指以文字出版；
 “廣播”(broadcast)包括以無線電訊、電影、錄像帶或電視廣播。

27. 指明的罪行的判刑

- (1) 凡在地方法院或高等法院的法律程序中，有人就指明的罪行被定罪，本條即予適用。
- (2) 控方可向法院提供關於下述全部或何任事項的資料——
 (a) 該人被如此定罪所據的作為直接或間接導致他人受損害的性質及程度；

- (b) 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.

- (b) 因該作為而對該人或任何其他人士直接或間接帶來的利益或希望藉此帶來的利益(不論是否財務上的利益)的性質及程度;
- (c) 該指明的罪行的普遍程度;
- (d) 因最近發生的該指明的罪行而直接或間接導致社區受損害的性質及程度;
- (e) 因最近發生的該指明的罪行而對任何人直接或間接帶來的總利益(不論是否財務上的利益)的性質及程度。

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

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

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

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

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

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

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

(10) 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 High Court 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 High Court within such period as the High Court may specify.

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

(a) the powers conferred on the High Court 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 High Court 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.

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

(11) 除第(12)及(13)款另有規定外，凡法庭——

(a) 在無合理疑點的情況下信納該指明的罪行屬有組織罪行；或

(b) 在無合理疑點的情況下信納根據第(2)或(8)款提供的資料，

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

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

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

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

(15) 對任何就本條生效日期前所犯的指明的罪行被定罪的人，本條並不適用。

28. 公共機構所持有的資料的披露

(1) 除第(4)款另有規定外，高等法院可應檢控官的申請，命令將公共機構所管有而又屬於第(3)款所述的任何物料，在高等法院指明的限期內，提交高等法院。

(2) 根據第(1)款發出命令的權力，可在以下情況下行使——

(a) 可憑藉第14(1)條行使第15(1)及16(1)條賦予高等法院的權力；或

(b) 可憑藉第14(2)條行使該等權力，及高等法院已經發出限制令或押記令，而該等命令未曾撤銷，

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

- (3) 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 High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the High Court by sections 15 to 17 or on a receiver appointed under section 15 or 17 or in pursuance of a charging order.

(5) The High Court 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 High Court 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 High Court.

(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 High Court.

(7) The High Court 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 High Court 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 High Court; and
- (b) it appears to the High Court 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 Crown.

- (3) 第(1)款所指的物料，是——

- (a) 由被告人，或由在任何時間曾經持有可變現財產的人，呈交公共機構人員的任何物料；
- (b) 由公共機構人員就被告人或該人而造的任何物料；或
- (c) 屬於公共機構人員和被告人或該人之間的通信的任何物料，

而根據該款發出的命令，可飭令提交有關機構所管有的該等物料的全部，或是該等物料中的某一類別。

(4) 除非高等法院覺得有關物料相當可能包含某些資料，而這些資料有助於高等法院行使第15至17條所賦予的權力，或有助於根據第15或17條或押記令而委任的接管人行使所獲賦予的權力，否則不得藉根據第(1)款發出的命令飭令提交任何物料。

(5) 高等法院可藉命令批准向該接管人披露根據第(1)款提交的任何物料，或物料的任何部分；但高等法院必須先給予該公共機構的人員合理機會向高等法院申述意見，方可根據本款發出命令。

(6) 依據第(5)款發出的命令而披露的物料，除命令內另有條件規限外，為接管人或高等法院履行本條例賦予的職能，可進一步披露。

(7) 高等法院可藉命令批准向獲授權人披露根據第(1)款提交的任何物料，或物料的任何部分；但除非——

- (a) 該公共機構的人員已經獲得合理機會向高等法院申述意見；及
- (b) 高等法院覺得該物料相當可能與行使關於偵查指明的罪行的職能有關係的，

否則高等法院不得根據本款發出命令。

(8) 依據第(7)款發出的命令而披露的物料，除命令內另有條件規限外，為了與偵查指明的罪行有關的職能，可進一步披露。

(9) 縱使法規或其他方面規定有保密責任或對資料的披露有其他限制，仍可依據本條提交或披露物料。

(10) 根據第(1)款發出的命令及(在物料由公共機構管有的情況下)根據第4(2)條發出的命令，可以飭令公共機構內當其時管有該有關物料的任何人員(不論該人員的姓名是否在命令內說明)履行命令；而該命令的送達方式，恰如在控告政府的民事法律程序所採用的。

(11) In this section, “public body” (公共機構) means—

- (a) any Government department; and
- (b) any body specified by the Governor under subsection (12).

(12) The Governor may, by notice in the Gazette, specify a body to be a public body for the purposes of this section.

[*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; or
- (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 High Court may, on application by a person who held property which was realisable 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.

(2) The High Court shall not order compensation to be paid under subsection (1) 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
- (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 High Court under sections 15 to 17.

(3) The High Court shall not order compensation to be paid under subsection (1) in any case where it appears to the High Court 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.

(4) Without prejudice to subsection (1), where—

- (a) a disclosure is made by any person in accordance with section 25(3) 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

(11) 在本條中，“公共機構”(public body)指——

- (a) 任何政府部門；及
- (b) 任何由總督根據第(12)款指明的機構。

(12) 總督可藉憲報公告，指明任何機構為本條所指的公共機構。

[*比照 1986 c. 32 s. 30 U.K.*]

29. 賠償

(1) 如在對任何人就一項或更多指明的罪行展開偵查之後，有以下任何一種情形出現——

- (a) 沒有起訴該人；
- (b) 曾起訴該人，但結果並無就任何指明的罪行將他定罪；或
- (c) 曾起訴該人，而他就一項或更多指明的罪行被定罪，但——
 - (i) 有關的定罪被推翻；或
 - (ii) 他被赦免有關的定罪，

高等法院如在考慮所有情況後認為適宜，可應曾持有可變現財產的人的申請，命令政府對申請人作出賠償。

(2) 高等法院除非信納以下兩項，否則不得根據第(1)款命令作出賠償——

- (a) 參與調查或檢控該罪行的任何人曾犯嚴重錯失；及
- (b) 因遵照或依據高等法院根據第15至17條發出的命令而就該財產所作出的任何行動，已引致申請人蒙受損失。

(3) 在參與調查或檢控該罪行的任何人曾犯嚴重錯失的情況下，即使高等法院覺得假若該嚴重錯失沒有發生，偵查便會繼續，或法律程序便會提起或繼續，亦不得根據第(1)款命令作出賠償。

(4) 在不影響第(1)款的施行的情況下，凡——

- (a) 任何人按照第25(3)條就任何財產作出披露；
- (b) 由於該項披露，及為了對指明的罪行作出偵查或提起檢控，就該財產作出任何作為或不作為；及

(c) no proceedings are instituted against any person in respect of that offence or those offences or no order is made by the High Court under section 15 or 16 in relation to that property, the High Court 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 High Court 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 High Court thinks just in all the circumstances of the case.

[*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 Supreme Court Ordinance (Cap. 4) shall include power to make rules of court for the purposes of this Ordinance.

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

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

32. Savings

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

(c) 沒有就該罪行起訴任何人，高等法院亦無根據第15或16條就該財產發出命令，

高等法院如在考慮所有情況後認為適宜，可應曾持有該財產的人的申請，命令政府對申請人作出賠償。

(5) 高等法院除非信納以下兩項，否則不得根據第(4)款命令作出賠償——

(a) 參與調查或檢控該罪行的任何人曾犯嚴重錯失，而如無該錯失，第(4)(b)款所指的作為或不作為便不會發生；及

(b) 因第(4)(b)款所指的作為或不作為，已引致申請人在該財產方面蒙受損失。

(6) 根據本條須付的賠償額，為高等法院認為根據案件所有情況屬於公平的款額。

[*比照 1986 c. 32 ss. 19 及 24(3) U.K.*]

30. 法庭規則

根據《最高法院條例》(第4章)第54條訂定法院規則的權力，包括為施行本條例訂定法庭規則的權力。

31. 修訂第8(4)條的款額及附表

總督會同行政局可在立法局同意下藉命令修訂第8(4)條指明的款額及附表。

32. 保留條文

本條例的實施對《販毒(追討得益)條例》(第405章)並無影響。

Consequential Amendments**Money Lenders Ordinance****33. Prohibition of excessive interest rates**

Section 24(4) of the Money Lenders Ordinance (Cap. 163) is amended by repealing everything after “shall be” and substituting—
“liable—

- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 10 years.”.

34. Time limitation for instituting certain proceedings

Section 32A is amended by repealing “24 or”.

Customs and Excise Service Ordinance**35. Ordinances referred to in sections 17 and 17A**

Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342) is amended by adding—
“Organized and Serious Crimes Ordinance (82 of 1994)”.

Drug Trafficking (Recovery of Proceeds) Ordinance**36. Assessing the proceeds of drug trafficking**

Section 4(5) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) is amended by adding “, or an order under section 8(7) of the Organized and Serious Crimes Ordinance (82 of 1994),” after “confiscation order”.

SCHEDULE 1

[ss. 2 & 31]

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

相應修訂**《放債人條例》****33. Prohibition of excessive interest rates**

《放債人條例》(第163章)第24(4)條現予修訂，廢除“shall be”之後所有的字句而代以——
“liable—

- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 10 years.”。

34. Time limitation for instituting certain proceedings

第32A條現予修訂，廢除“24 or”。

《海關條例》**35. Ordinances referred to in sections 17 and 17A**

《海關條例》(第342章)附表2現予修訂，加入——
“Organized and Serious Crimes Ordinance (82 of 1994)”。

《販毒(追討得益)條例》**36. 販毒得益的評計**

《販毒(追討得益)條例》(第405章)現予修訂，在第4(5)條中，在“沒收令”之後加入“或根據《有組織及嚴重罪行條例》(1994年第82號)第8(7)條發出命令”。

附表1

〔第2及31條〕

與“有組織罪行”及“指明的罪行”的定義有關的罪行

普通法罪行

1. 謀殺
2. 綁架
3. 非法禁錮
4. 串謀妨礙司法公正

Statutory offences

Offence	Description*	罪行	法定罪行	述要*
5. Import and Export Ordinance (Cap. 60) section 6A section 6C section 6D(1) and (2) section 6E section 18	import or export of strategic commodities import of certain prohibited articles export of certain prohibited articles carriage, etc. of prescribed articles in Hong Kong waters importing or exporting unmanifested cargo	5. 《進出口條例》 (第60章) 第6A條 第6C條 第6D(1)及(2)條 第6E條 第18條		輸入或輸出戰略商品 輸入某些禁制品 輸出某些禁制品 在香港水域內訂明的物品的運載等 輸入或輸出未列艙單貨物
6. Immigration Ordinance (Cap. 115) section 37D(1) section 38(4) section 42(1) and (2)	arranging passage to Hong Kong of unauthorized entrants carrying an illegal immigrant false statements, forgery of documents and use and possession of forged documents	6. 《人民入境條例》 (第115章) 第37D(1)條 第38(4)條 第42(1)及(2)條		安排未獲授權進境者前來香港的旅程 載有非法入境者 虛假陳述、偽造證件、使用及管有偽造證件
7. Dangerous Drugs Ordinance (Cap. 134) section 4(1) section 4A(1) section 6(1)	trafficking in dangerous drugs trafficking in purported dangerous drugs manufacturing a dangerous drug	7. 《危險藥物條例》 (第134章) 第4(1)條 第4A(1)條 第6(1)條		危險藥物的販運 販運宣稱為危險藥物的物質 製造危險藥物
8. Gambling Ordinance (Cap. 148) section 5 section 7(1)	operating, managing or controlling gambling establishment bookmaking	8. 《賭博條例》 (第148章) 第5條 第7(1)條		營辦、管理或控制賭場 收受賭注
9. Societies Ordinance (Cap. 151) section 19 section 21 section 22	penalties on an office-bearer, etc. of an unlawful society allowing a meeting of an unlawful society to be held on premises inciting etc., a person to become a member of an unlawful society	9. 《社團條例》 (第151章) 第19條 第21條 第22條		對非法社團職員等的懲罰 允許非法社團在樓宇內舉行會議 煽惑他人成為非法社團成員等
10. Money Lenders Ordinance (Cap. 163) section 24(1)	lending money at an excessive interest rate	10. 《放債人條例》 (第163章) 第24(1)條		以過高利率貸款
11. Crimes Ordinance (Cap. 200) section 24 section 25 section 53 section 54 section 55 section 60 section 61	threatening a person with intent assaulting with intent to cause certain acts to be done or omitted causing explosion likely to endanger life or property attempt to cause explosion, or making or keeping explosive with intent to endanger life or property making or possession of explosive destroying or damaging property threats to destroy or damage property	11. 《刑事罪行條例》 (第200章) 第24條 第25條 第53條 第54條 第55條 第60條 第61條		蓄意威脅他人 襲擊他人意圖導致其作出或不作出某些作為 引起可能危害生命財產的爆炸 企圖引起爆炸或製造、藏有炸藥意圖危害生命或令財物受損 製造或管有炸藥 摧毀或損壞財產 威脅將財產摧毀或損壞

Offence	Description*	罪行	述要*
section 71	forgery	第 71 條	偽造
section 75(1)	possessing a false instrument with intent	第 75(1) 條	管有虛假文書意圖不軌
section 98(1)	counterfeiting notes and coins with intent	第 98(1) 條	仿製鈔票及硬幣意圖不軌
section 100(1)	custody or control of counterfeit notes and coins with intent	第 100(1) 條	保管或控制仿製鈔票及硬幣意圖不軌
section 105	importation and exportation of counterfeit notes and coins	第 105 條	輸入及輸出仿製鈔票及硬幣
section 118	rape	第 118 條	強姦
section 119	procurement of person by threats	第 119 條	以威脅促使他人與人性交
section 120	procurement of person by false pretences	第 120 條	以欺詐促使他人與人性交
section 129	trafficking to or from Hong Kong in persons	第 129 條	販運人口進入或離開香港
section 130	control over person for purpose of unlawful sexual act or prostitution	第 130 條	控制他人為使其作出非法的性行為或賣淫
section 131	causing prostitution of person	第 131 條	導致他人賣淫
section 134	detention of person for unlawful sexual act or in vice establishment	第 134 條	禁錮他人於賣淫場所或為使其作出非法的性行為
section 137	living on earnings of prostitution	第 137 條	依靠賣淫收入為生
section 139	keeping a vice establishment	第 139 條	經營賣淫場所
12. Theft Ordinance (Cap. 210)		12. 《盜竊罪條例》 (第 210 章)	
section 9	theft	第 9 條	盜竊
section 10	robbery	第 10 條	搶劫
section 11(1)	burglary	第 11(1) 條	入屋犯法
section 17	obtaining property by deception	第 17 條	以欺騙手段取得財產
section 18	obtaining a pecuniary advantage by deception	第 18 條	以欺騙手段取得金錢利益
section 18D	procuring false entry in certain records	第 18D 條	促使在某些紀錄裏產生虛假項目
section 19	false accounting	第 19 條	偽造帳目
section 23(1) and (4)	blackmail	第 23(1) 及 (4) 條	勒索
section 24(1)	handling stolen goods	第 24(1) 條	處理贓物
13. Offences against the Person Ordinance (Cap. 212)		13. 《侵害人身罪條例》 (第 212 章)	
section 17	shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm	第 17 條	意圖造成身體嚴重傷害而射擊、企圖射擊、傷人或打人
14. Firearms and Ammunition Ordinance (Cap. 238)		14. 《火器及彈藥條例》 (第 238 章)	
section 13	possession of arms or ammunition without licence	第 13 條	無牌管有槍械或彈藥
section 14	dealing in arms or ammunition without a licence	第 14 條	無牌經營槍械或彈藥
15. Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)		15. 《販毒(追討得益)條例》 (第 405 章)	
section 25(1)	assisting another to retain the benefit of drug trafficking	第 25(1) 條	協助他人保留販毒利益
16. Organized and Serious Crimes Ordinance (82 of 1994)		16. 《有組織及嚴重罪行條例》 (1994 年第 82 號)	
section 25(1)	assisting a person to retain proceeds of indictable offence	第 25(1) 條	協助他人保留從可公訴罪行的得益

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

* 備註：本附表就各罪行所作的簡單述要僅供參考用。

SCHEDULE 2

[ss. 2 & 31]

附表2

[第2及31條]

OTHER SPECIFIED OFFENCES

其他的指明的罪行

Common law offences

普通法罪行

1. manslaughter
2. conspiracy to defraud

1. 誤殺
2. 串謀詐騙

Statutory offences

法定罪行

Offence	Description*
3. Import and Export Ordinance (Cap. 60) section 14 section 14A section 18A section 35A	alteration of vessel, aircraft or vehicle for the purpose of smuggling construction, etc., of vessels for the purpose of smuggling assisting, etc., in export of unmanifested cargo 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) section 5(1) section 9(1), (2) and (3) section 35(1) section 37(1)	supplying or procuring a dangerous drug to or for unauthorized persons offences relating to cannabis plant or opium poppy keeping or managing a divan for the taking of dangerous drugs permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
6. Gambling Ordinance (Cap. 148) section 14 section 15(1)	providing money for unlawful gambling or for an unlawful lottery 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 section 73 section 74 section 76 section 99(1) section 101	copying a false instrument using a false instrument using a copy of a false instrument making or possessing equipment for making a false instrument passing, etc. counterfeit notes and coins making or custody or control of counterfeiting materials and implements

罪行	述要*
3. 《進出口條例》 (第60章) 第14條 第14A條 第18A條 第35A條	船隻、飛機或車輛改装以作走私用途 建造船隻作走私用途等 協助輸出未列艙單貨物等 協助運載禁制物品等
4. 《人民入境條例》 (第115章) 第37DA(1)條	協助未獲授權進境者留下
5. 《危險藥物條例》 (第134章) 第5(1)條 第9(1)、(2)及(3)條 第35(1)條 第37(1)條	向未獲授權人供應危險藥物或為未獲授權人獲取危險藥物 關於大麻植物或鴉片罌粟的罪行 經營或管理煙窩以供人在其內吸食危險藥物 准許處所作非法販運、製造或儲存危險藥物之用
6. 《賭博條例》 (第148章) 第14條 第15(1)條	提供金錢以用於非法賭博或非法獎券遊戲 准許處所使用作為賭場
7. 《人事登記條例》 (第177章) 第7A條	管有偽造身分證
8. 《刑事罪行條例》 (第200章) 第72條 第73條 第74條 第76條 第99(1)條 第101條	複製虛假文書 使用虛假文書 使用虛假文書的副本 製造或管有用以製造虛假文書的設備 以仿製鈔票及硬幣亂真 製造、保管或控制仿製用的材料及用具

Offence	Description*	罪行	述要*
9. Prevention of Bribery Ordinance (Cap-201)		9. 《防止賄賂條例》 (第201章)	
section 4(1)	bribery of public servant	第4(1)條	賄賂公職人員
section 5(1)	bribery for giving assistance, etc. in regard to contracts	第5(1)條	為合約事務上給予協助等而作的賄賂
section 6(1)	bribery for procuring withdrawal of tenders	第6(1)條	為使他人撤回投標而作的賄賂
section 9(2)	bribery of agent	第9(2)條	賄賂代理人
10. Theft Ordinance (Cap. 210)		10. 《盜竊罪條例》 (第210章)	
section 12(1)	aggravated burglary	第12(1)條	嚴重入屋犯法
section 18A	obtaining services by deception	第18A條	以欺騙手段取得服務
11. Offences against the Person Ordinance (Cap. 212)		11. 《侵害人身罪條例》 (第212章)	
section 19	wounding or inflicting grievous bodily harm	第19條	傷人或對他人身體加以嚴重傷害
12. Criminal Procedure Ordinance (Cap. 221)		12. 《刑事訴訟程序條例》 (第221章)	
section 90(1)	doing an act with intent to impede apprehension or prosecution of offender	第90(1)條	作出作為意圖阻礙捉拿或起訴犯罪者

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

* 備註：本附表就各罪行所作的簡單述要僅供參考用。

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 Supreme 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.

附表3

[第16及31條]

可予施加押記令的資產

1. 在香港的土地。
2. 以下各種證券——
 - (a) 政府證券；
 - (b) 在香港成立的任何公司的股份；
 - (c) 在香港以外成立的公司的股份，或香港以外任何國家或地區的股份，而已登記在存放在香港境內的登記冊上的；
 - (d) 任何單位信託基金的單位，而單位持有人的登記冊是存放在香港境內的。
3. 在本附表中——
 - (a) “政府證券”(Government stock)及“土地”(land)的含義與《最高法院條例》(第4章)第2條所指的相同；
 - (b) “股份”(stock)及“單位信託基金”(unit trust)兩詞的含義，與該條例第20A條所指的相同。

SCHEDULE 4

[s. 3(7)(c)]

附表4

[第3(7)(c)條]

ORGANIZED AND SERIOUS CRIMES ORDINANCE (82 OF 1994)

有組織及嚴重罪行條例(1994年第82號)

SECTION 3

第3條

NOTICE REQUIRING ATTENDANCE TO ANSWER QUESTIONS OR FURNISH INFORMATION

要求出席回答問題或提供資料的通知

To:
(name and address of person)

致:
(有關的人的姓名及地址)

1. On, in the High Court, Hong Kong an order was made by the
(date)

1. 於 在香港高等法院
(日期)

Hon. Mr. Justice under section 3 of the Organized and Serious Crimes Ordinance (82 of 1994) 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.

大法官根據《有組織及嚴重罪行條例》(1994年第82號)第3條為偵查有組織罪行發出命令，該命令有關於你的部分現夾附於本通知中。

2. Particulars of the organized crime under investigation are—

2. 現正偵查的有組織罪行詳情如下——

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

- (a) 罪行 :
- (b) 犯罪日期 :
- (c) 犯罪地點 :
- (d) 其他詳情 :

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

*3. 該命令是就你而發出的。

or

或

*3. The order was made in respect of, and you are a person of
(description of persons)
that description.

*3. 該命令是就 而發出的，而你是該類別的人。
(有關的類別的人)

4. The order authorizes the Attorney General to require a person referred to in paragraph 3 above—

4. 該命令授權律政司向上述第3段中所提述的人提出要求，要其——

- *(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 Attorney General to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him to so relate.

- *(a) 就獲授權人合理地覺得是與偵查有關的任何事情回答問題或提供資料；
- *(b) 提交任何律政司合理地覺得是與關乎偵查的事情有關的任何物料，或屬律政司合理地覺得是與關乎偵查的事情有關的某種類的物料。

5. This Notice requires you—

5. 本通告要求你——

- *(a) to attend before
(name and description of authorized officer)
at
(place of interview)
on
(date and time of interview)

- *(a) 於
(會面的日期及時間)
在
(會面地點)
到
(獲授權人的姓名及描述)

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;

席前，就該獲授權人合理地覺得是與該偵查有關的任何事情回答問題或提供資料；

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

- *(b) 於
(時間及地點)

the following material or class of material—

提交以下物料或以下的種類的物料——

.....

.....

- 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
Attorney General.

* Delete as appropriate.

- 6. 本命令並要求.....
(本命令中與該人有關的其他條款)
- 7. 註：
 - 1. 本通知具有重要的法律後果，為你的利益着想，你應閱讀本通知所載的本條例的條文，並就你根據本通知所享有的權利和負擔的義務，尋求法律意見。
 - 2. 你在遵從本通知第5(a)段出席回答問題或提供資料時，或在遵從本通知第5(b)段提交物料時，可由律師及大律師陪同。

日期：19 年 月 日。

.....
律政司
(代行)

* 刪去不適用者。