

## **Hong Kong, China: *Mutual Legal Assistance In Criminal Matters Ordinance***

### **CAP 525 MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE**

An Ordinance to regulate the provision and obtaining of assistance in criminal matters between Hong Kong and places outside Hong Kong; and for matters incidental thereto or connected therewith.

[The Ordinance (other than sections 10 and 12 and sections 3, 11 and 15 of Schedule 3        } }  
}

26 September 1997

L.N. 449 of 1997

Sections 10 and 12} 20 February 1998   L.N. 123 of 1998]

(Originally 87 of 1997)

### **PART I PRELIMINARY**

#### **Section 1 Short title and commencement**

- (1) This Ordinance may be cited as the Mutual Legal Assistance in Criminal Matters 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 (including the provisions of Schedule 3).

#### **Section 2 Interpretation**

- (1) In this Ordinance, unless the context otherwise requires-

“ancillary criminal matter” (附帶刑事事宜) means a matter relating to-

- (a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a Hong Kong offence or an external offence; or
- (b) the obtaining, enforcement or satisfaction of a Hong Kong confiscation order or an external confiscation order;

“appropriate authority” (有關當局), in relation to a place outside Hong Kong, means a person whom the Secretary for Justice is satisfied is a person who for the time being may under the law of that place- (Amended L.N. 362 of 1997)

- (a) in the case of a request by Hong Kong to that place for assistance in a criminal matter, receive such a request; or
- (b) in the case of a request by that place to Hong Kong for assistance in a criminal matter, make such a request;

“arrangements for mutual legal assistance” (相互法律協助的安排) means arrangements-

- (a) which are applicable to-
  - (i) the Government and the government of a place outside Hong Kong (other than the Central People's Government or the government of any other part of the People's Republic of China); or
  - (ii) Hong Kong and a place outside Hong Kong (other than any other part of the People's Republic of China); and (Amended 71 of 1999 s. 3)
- (b) for the purposes of the provision and obtaining of assistance in criminal matters between Hong Kong and that place;

“assistance” (協助) includes giving evidence;

“authorized officer” (獲授權人員) 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);
- (c) any officer within the meaning of section 2 of the Independent Commission Against Corruption Ordinance (Cap 204); and
- (d) any other person (including a person belonging to a class of persons) authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)

“court” (法院) includes a tribunal and magistrate;

“criminal matter” (刑事事宜) means-

- (a) an investigation;
- (b) a prosecution; or
- (c) an ancillary criminal matter;

“dealing” (處理), in relation to property, includes-

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

“duly certified” (妥為核證) means (except in sections 29 and 30) duly certified as provided in section 32;

“external confiscation order” (外地沒收令) means an order, made under the law of a place outside Hong Kong, for the purpose of-

- (a) recovering (including forfeiting and confiscating)-
  - (i) payments or other rewards received in connection with an external serious offence or their value;
  - (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with an external serious offence or the value of such property; or

(iii) property used or intended to be used in connection with an external serious offence or the value of such property; or

- (b) depriving a person of a pecuniary advantage obtained in connection with an external serious offence, and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property;

“external law immunity certificate” (外地法律豁免權證明書) means a certificate given, or a declaration made, by a place outside Hong Kong or under a law of a place outside Hong Kong certifying or declaring that, under the law of that place, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required-

- (a) to answer a specified question; or  
(b) to produce a specified document;

“external offence” (外地罪行) means an offence against a law of a place outside Hong Kong;

“external prisoner” (外地囚犯) means a person who is-

- (a) being held in custody pending trial for or sentence for an external offence; or  
(b) under a sentence of imprisonment for an external offence, but does not include a person who is at large having escaped from lawful custody;

“external serious offence” (外地嚴重罪行) means an external offence the maximum penalty for which is death, or imprisonment for not less than 24 months;

“Hong Kong confiscation order” (香港沒收令) means an order, made under a law of Hong Kong, for the purpose of-

- (a) recovering (including forfeiting or confiscating)-  
(i) payments or other rewards received in connection with a Hong Kong serious offence or their value;  
(ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with a Hong Kong serious offence or the value of such property; or  
(iii) property used or intended to be used in connection with a Hong Kong serious offence or the value of such property; or  
(b) depriving a person of a pecuniary advantage obtained in connection with a Hong Kong serious offence, and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property;

“Hong Kong offence” (香港罪行) means an offence against a law of Hong Kong;

“Hong Kong prisoner” (香港囚犯) means a person who is-

- (a) being held in custody pending trial for or sentence for a Hong Kong offence; or  
(b) under a sentence of imprisonment for a Hong Kong offence, but does not include a person who is at large having escaped from lawful custody;

“Hong Kong serious offence” (香港嚴重罪行) means a Hong Kong offence the maximum penalty for which is death, or imprisonment for not less than 24 months;

“investigation” (偵查) means an investigation-

- (a) into a Hong Kong offence or external offence; or

(b) for the purposes of an ancillary criminal matter;

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

“Monetary Authority” (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66);

“premises” (處所) includes-

- (a) a structure (whether or not movable or offshore), building, tent, vehicle, vessel, aircraft or hovercraft;
- (b) a place (whether or not enclosed or built upon); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

“prescribed arrangements” (訂明安排) means arrangements for mutual legal assistance which are the subject of an order under section 4(1) which is in force;

“prescribed place” (訂明地方) means a place outside Hong Kong to or from which assistance in criminal matters may be provided or obtained, as the case may be, pursuant to prescribed arrangements;

“prosecution” (檢控) means a trial of a person for a Hong Kong offence or external offence, and includes any proceedings to determine whether a person should be tried for such an offence;

“relevant auditor” (有關核數師) means a person appointed as an auditor for the purposes of any enactment;

“restrain” (限制), in relation to property, includes seizing the property;

“statement” (陳述) includes evidence;

“tax adviser” (稅務顧問) means a person appointed bona fide to give advice, in the course of his employment or of a business carried on by him, about the tax affairs of another person (whether appointed directly by that other person or another tax adviser of that other person);

“tax document” (稅務文件)-

- (a) in relation to a tax adviser, means a document which falls within Part 1 of Schedule 1;
- (b) in relation to a relevant auditor, means a document which falls within Part 2 of Schedule 1;”thing” (物件) includes material.

(Amended 71 of 1999 s. 3)

(2) For the purposes of this Ordinance-

- (a) the law of a place outside Hong Kong includes the law of any part of that place;
- (b) conduct in-
  - (i) a colony or dependency; or
  - (ii) a vessel, aircraft or hovercraft, of a place outside Hong Kong shall be treated as if the conduct were conduct in the territory of that place.

(3) For the avoidance of doubt, it is hereby declared that any one set of arrangements for mutual legal assistance may be made with any number (including any combination) of-

- (a) governments of places outside Hong Kong;

- (b) places outside Hong Kong, and the other provisions of this Ordinance (including the definition of “arrangements for mutual legal assistance”) which relate, whether directly or indirectly, to arrangements for mutual legal assistance shall be construed accordingly.
- (4) Where arrangements applicable to-
- (a) the Government and the government of a place outside Hong Kong; or
  - (b) Hong Kong and a place outside Hong Kong, are partly for the purposes specified in paragraph (b) of the definition of “arrangements for mutual legal assistance” and partly for other purposes, the arrangements are in this Ordinance arrangements for mutual legal assistance to the extent that they relate to those specified purposes.
- (5) In the definitions of “Hong Kong confiscation order” and “external confiscation order” and in subsection (9), any reference to an order includes any order, decree, direction or judgment, or any part thereof, howsoever described.
- (6) Where a person obtains a pecuniary advantage referred to in paragraph (b) of the definition of “Hong Kong confiscation order” or “external confiscation order”, he is to be treated for the purposes of this Ordinance as if he had obtained in connection with the Hong Kong serious offence or external serious offence, as the case may be, to which the advantage relates a sum of money equal to the value of the advantage, and the other provisions of this Ordinance shall be construed accordingly.
- (7) For the avoidance of doubt, it is hereby declared that this Ordinance shall not entitle a private person, or any person acting on behalf of a private person, to-
- (a) obtain, suppress or exclude any evidence; or
  - (b) impede or otherwise prejudice any request under this Ordinance, in respect of a criminal matter in Hong Kong or a place outside Hong Kong.
- (8) In this Ordinance, any reference (howsoever expressed) to any thing being required to be done, or being done, in relation to a criminal matter also includes a reference to such a thing being required to be done, or being done, in the criminal matter.
- (9) In this Ordinance, any reference to an order being made in a proceeding includes a reference to an order arising out of the proceeding.
- (10) Subject to subsection (11), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege within the meaning of section 13. (Added 26 of 2002 s. 5)
- (11) Subsection (10) shall not prejudice the operation of Part IV.
- (Added 26 of 2002 s. 5)

### Section 3 Application 2

#### Remarks

Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) This Ordinance shall not apply to the provision or obtaining of assistance in criminal matters between Hong Kong and any other part of the People’s Republic of China. (Amended 71 of 1999 s. 3)
- (2) This Ordinance shall not operate to prevent or prejudice the generality of the provision or obtaining of assistance in criminal matters between Hong Kong and a place outside Hong Kong otherwise than-
- (a) as provided for under this Ordinance; or
  - (b) pursuant to arrangements for mutual legal assistance.
- (3) It is hereby declared that the provisions of this Ordinance shall not operate to prejudice the generality of section 4 of the Inland Revenue Ordinance (Cap 112).

## Section 4 Chief Executive in Council may apply Ordinance

### Remarks

Adaptation amendments retroactively made - see 71 of 1999 s. 3

(1) Subject to subsections (2) and (3), the Chief Executive in Council may, with the approval of the Legislative Council, in relation to any arrangements for mutual legal assistance, by order to which is annexed a copy of the arrangements direct that this Ordinance shall, subject to such modifications thereto as may be specified in the order, apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate. (Amended 71 of 1999 s. 3)

(2) The Chief Executive in Council shall not make an order under subsection (1) unless the arrangements for mutual legal assistance are substantially in conformity with the provisions of this Ordinance.

(Amended 71 of 1999 s. 3)

(3) Where an order under subsection (1) specifies modifications referred to in that subsection, the modifications shall be summarized in a Schedule to the order.

(4) An order under subsection (1) may specify that it shall come into operation on a day-

(a) specified in the order; or

(b) to be appointed by the Secretary for Security by notice in the Gazette.

(5) A copy of an order under subsection (1) shall be conclusive evidence that this Ordinance applies in the case of any place outside Hong Kong to which the order relates.

(6) Where any arrangements for mutual legal assistance cease to relate to, or become related to, a place outside Hong Kong, the Chief Executive may, by notice in the Gazette, amend the order under subsection (1) which relates to those arrangements to specify- (Amended 71 of 1999 s. 3)

(a) that those arrangements have ceased to relate to, or have become related to, as the case may be, that place; and

(b) the date on which the event referred to in paragraph (a) occurred.

(7) Section 35(b) of the Interpretation and General Clauses Ordinance (Cap 1) shall apply to an order under subsection (1) as if for the words “amend the whole or any part” in that section there were substituted the words “repeal the whole”.

## Section 5 Refusal of Assistance

### Remarks

Adaptation amendments retroactively made - see 71 of 1999 s. 3

(1) A request by a place outside Hong Kong for assistance under this Ordinance shall be refused if, in the opinion of the Secretary for Justice-

(a) the granting of the request would impair the sovereignty of the People’s Republic of China or the security or public order of the People’s Republic of China or any part thereof; (Amended 71 of 1999 s. 3)

(b) the request relates to the prosecution or punishment of a person for an external offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;

(c) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Hong Kong, would have constituted an offence under the military law applicable in Hong Kong but not also under the ordinary criminal law of Hong Kong;

- (d) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, nationality or political opinions;
  - (e) the request relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in the place, or has undergone the punishment provided by the law of that place, in respect of that offence or of another external offence constituted by the same act or omission as that offence;
  - (f) the granting of the request would seriously impair the essential interests of Hong Kong; or
  - (g) the request relates to an act or omission that, if it had occurred in Hong Kong, would not have constituted a Hong Kong offence.
- (2) Where the criminal matter to which a request by a place outside Hong Kong for assistance under this Ordinance relates is an investigation into an external offence relating to taxation, then the request shall be refused-
- (a) if the place is not a prescribed place; or
  - (b) unless the Secretary for Justice is supplied with information that satisfies him that the primary purpose of the request is not the assessment or collection of tax.
- (3) A request by a place outside Hong Kong for assistance under this Ordinance may be refused by the Secretary for Justice-
- (a) if that place is not a prescribed place;
  - (b) if that place is a prescribed place, pursuant to the terms of the prescribed arrangements concerned; or
  - (c) if the request relates to an external serious offence punishable with death and-
    - (i) the act or omission constituting that offence, if it had occurred in Hong Kong-
      - (A) would not have constituted a Hong Kong serious offence punishable with death; or
      - (B) would have constituted a Hong Kong serious offence punishable with death in respect of which the punishment was not normally carried out; and
    - (ii) the place outside Hong Kong concerned fails to give an undertaking that satisfies the Secretary for Justice that the death penalty will not be imposed in respect of that external serious offence or, if imposed, will not be carried out.
- (4) Without prejudice to the generality of subsection (3)(a), a request by a place outside Hong Kong for assistance under this Ordinance shall be refused if-
- (a) the place is not a prescribed place; and
  - (b) the appropriate authority of the place fails to give an undertaking to the Secretary for Justice which satisfies the Secretary for Justice that the place will, subject to its law, comply with a future request by Hong Kong to the place for assistance in a criminal matter.

(Amended L.N. 362 of 1997)

### **Section 6 Assistance may be provided subject to conditions**

Assistance under this Ordinance may be provided to a place outside Hong Kong subject to such conditions as the Secretary for Justice determines but, if that place is a prescribed place, no such conditions shall be inconsistent with any provision of the prescribed arrangements between Hong Kong and that place.

(Amended L.N. 362 of 1997)

### **Section 7 Requests for assistance by Hong Kong**

A request by Hong Kong to a place outside Hong Kong for assistance in a criminal matter may be made by the Secretary for Justice.

(Amended L.N. 362 of 1997)

### **Section 8 Requests for assistance to Hong Kong**

(1) A request by a place outside Hong Kong to Hong Kong for assistance in a criminal matter may be made to the Secretary for Justice. (Amended L.N. 362 of 1997)

(2) A request under subsection (1) shall be accompanied by-

- (a) the name of the authority concerned with the criminal matter to which the request relates;
- (b) a description of the nature of the criminal matter (in particular, details of the external offence to which the criminal matter relates) and a statement setting out a summary of the relevant facts and laws;
- (c) a description of the purpose of the request and of the nature of the assistance being sought;
- (d) details of the procedure that the place outside Hong Kong concerned wishes to be followed by Hong Kong in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the place pursuant to the request;
- (e) a statement setting out the wishes of the place concerning the confidentiality of the request and the reason for those wishes;
- (f) details of the period within which the place wishes the request be complied with;
- (g) if the request involves a person travelling from Hong Kong to the place, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person, while the person is in the place pursuant to the request;
- (h) a statement setting out the maximum penalty for the external offence to which the criminal matter relates; and
- (i) any other information that may assist in giving effect to the request.

## **PART II ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF THINGS**

### **Section 9 Requests by Hong Kong for taking of evidence, etc.**

#### Remarks

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) The Secretary for Justice may request an appropriate authority of a place outside Hong Kong to arrange for-

- (a) evidence to be taken in the place and the transmission of the evidence to Hong Kong; or
- (b) a thing (including a thing belonging to a class of things) in the place to be produced and the transmission of the thing to Hong Kong, for the purposes of a criminal matter in Hong Kong.

(2) The provisions of sections 77F and 77G of the Evidence Ordinance (Cap 8) shall, with all necessary modifications, apply to and in relation to any deposition, together with any thing exhibited or annexed thereto, which is received by the Secretary for Justice pursuant to a request under subsection (1) as if-

- (a) that request were a letter of request issued by the Registrar of the High Court under section 77E of that Ordinance; (Amended 25 of 1998 s. 2)
- (b) that deposition, together with any thing exhibited or annexed thereto, were received by that Registrar pursuant to such letter; and
- (c) any references in those provisions to criminal proceedings were references to-
  - (i) where the criminal matter concerned is an investigation to which paragraph (a) of the definition of “investigation” is applicable, a prosecution arising out of the investigation;
  - (ii) where the criminal matter concerned is an investigation to which paragraph (b) of the definition of “investigation” is applicable, the ancillary criminal matter to which the investigation relates;
  - (iii) where the criminal matter concerned is an ancillary criminal matter, the ancillary criminal matter,

and the other provisions of that Ordinance, or of any other Ordinance, which relate, whether directly or indirectly, to sections 77F and 77G of the Evidence Ordinance (Cap 8) shall be construed accordingly.

(Amended L.N. 362 of 1997)

### **Section 10 Requests to Hong Kong for taking of evidence, etc.**

- (1) Where a request is made by an appropriate authority of a place outside Hong Kong that-
  - (a) evidence be taken in Hong Kong;
  - (b) evidence be taken by way of a live television link from a person in Hong Kong; or
  - (c) a thing (including a thing belonging to a class of things) in Hong Kong be produced, for the purposes of a criminal matter in the place, the Secretary for Justice may authorize in writing-
    - (i) where paragraph (a) applies, the taking of evidence and the transmission of the evidence to that place;
    - (ii) where paragraph (b) applies, the taking of evidence by way of a live television link from the person concerned; or
    - (iii) where paragraph (c) applies, the production of the thing and, subject to subsection (14), the transmission of the thing to that place. (Replaced 23 of 2003 s. 20)
- (2) Where the Secretary for Justice authorizes the taking of evidence or the production of a thing under subsection (1)-
  - (a) in the case of the taking of evidence under subsection (1)(i), a magistrate may take the evidence on oath or otherwise than on oath of each witness appearing before the magistrate to give evidence in relation to the matter, and a magistrate who takes any such evidence shall-

(Amended 23 of 2003 s. 20)

    - (i) cause the evidence to be put in writing and certify that the evidence was taken by the magistrate; and
    - (ii) cause the writing so certified to be sent to the Secretary for Justice; (Amended 23 of 2003 s. 20)
  - (aa) in the case of the taking of evidence under subsection (1)(ii), a magistrate shall be present during the taking of the evidence and the magistrate shall-
    - (i) identify the witness;

- (ii) upon the conclusion of the taking of the evidence, draw up minutes indicating the date on which the evidence is taken, the place where the evidence is taken, and whether or not an oath or affirmation has been administered to the witness;
  - (iii) certify that the minutes were drawn up by the magistrate; and
  - (iv) cause the minutes so certified to be sent to the Secretary for Justice; or (Added 23 of 2003 s. 20)
- (b) in the case of the production of a thing under subsection (1)(iii), a magistrate may require the production of the thing and, where the thing is produced, the magistrate shall certify that the thing was produced to the magistrate and shall send the thing (which, in the case of a document, may be a copy of the document certified by the magistrate to be a true copy) to the Secretary for Justice. (Amended L.N. 362 of 1997; 23 of 2003 s. 20)
- (2A) A magistrate may only take the evidence of a witness under subsection (2)(a) otherwise than on oath where this is asked for by the appropriate authority of the place outside Hong Kong. (Added 23 of 2003 s. 20)
- (3) A proceeding under subsection (2) shall be held in open court except where-
- (a) the magistrate is satisfied that it is necessary for the proceeding to be held in camera in order to comply with any prescribed arrangements relating to the proceeding;
  - (b) the magistrate exercises a power pursuant to the provisions of any other Ordinance whereby he may hold the proceeding in camera; (Amended 23 of 2003 s. 20)
  - (c) the criminal matter outside Hong Kong to which the proceeding relates is an investigation and the magistrate is satisfied that there are reasonable grounds for believing that-
    - (i) it is in the interest of the person required to give evidence, or produce a thing, for the purposes of that matter that the proceeding be held in camera; or
    - (ii) that matter would be substantially prejudiced if the proceeding were held in open court; or (Amended 23 of 2003 s. 20)
  - (d) in the case of the taking of evidence under subsection (1)(ii)-
    - (i) the criminal matter outside Hong Kong to which the proceeding relates is a prosecution;
    - (ii) the appropriate authority of the place concerned requests that the proceeding be held in camera; and
    - (iii) the proceedings in the place concerned in which the evidence is to be received will be held in camera. (Added 23 of 2003 s. 20)
- (4) The magistrate conducting a proceeding under subsection (2) shall permit-
- (a) the person to whom the criminal matter in the place outside Hong Kong concerned relates;
  - (b) any other person giving evidence or producing a thing at the proceeding before the magistrate; and
  - (c) the appropriate authority of that place, to appear, or have legal representation, or both, at the proceeding before the magistrate.
- (5) The certificate by the magistrate under subsection (2) shall state whether, when the evidence was taken or the thing was produced, any of the following persons were present-
- (a) the person to whom the criminal matter in the place outside Hong Kong concerned relates or his legal representative, if any;
  - (b) any other person giving evidence or producing a thing or his legal representative, if any.

(6) For the purposes of this section, the person to whom the criminal matter in the place outside Hong Kong concerned relates is competent but not compellable to give evidence.

(7) For the purposes of this section, a person who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong, is not compellable to answer a question, or produce a thing, that the person is not compellable to answer or produce, as the case may be, in the criminal matter in that place.

(8) A duly certified external law immunity certificate is admissible in proceedings under this section as evidence of the facts stated in the certificate.

(9) Subsection (7) does not apply in a case where its application would be inconsistent with any provision of prescribed arrangements, if any, between Hong Kong and the prescribed place concerned.

(10) For the purposes of this section, a person who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong, is not compellable to give evidence, or produce a thing, that the person could not be compelled to give or produce, as the case may be, in Hong Kong-

- (a) if that matter were a trial of a person for a Hong Kong offence or proceedings to determine whether a person should be tried for such an offence; or
- (b) without prejudice to the generality of paragraph (a)-
  - (i) on the ground that to do so might tend to incriminate him; and
  - (ii) if-
    - (A) the provisions of any Ordinance which qualify a person's right not to incriminate himself had never been enacted; and
    - (B) that matter were a trial of a person for a Hong Kong offence or proceedings to determine whether a person should be tried for such an offence.

(11) Without prejudice to the generality of subsection (10), for the purposes of this section, a tax adviser or relevant auditor who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong which is an investigation into an external offence relating to taxation, is not compellable to give evidence, or produce a thing, to the extent that the evidence or thing, as the case may be, relates to, or is, a tax document which-

- (a) is the property of that tax adviser or relevant auditor, as the case may be; and
- (b) in the case of a tax adviser, originates from him, or from his client or another tax adviser of the client, for or in connection with the giving or obtaining of advice about the tax affairs of the client.

(12) For the purposes of this section, and without prejudice to the operation of subsection (6), (7), (9), (10) or (11), a person who is required to give evidence, or produce a thing, for the purposes of a criminal matter in a place outside Hong Kong, shall not be required-

- (a) to state what things relevant to that matter are or have been in his possession or control; or
- (b) to produce any things other than particular things specified by the magistrate conducting the proceedings concerned under subsection (2), or things belonging to a particular class of things specified by that magistrate, as being things, or a class of things, as the case may be, appearing to that magistrate to be, or to be likely to be, in his possession or control.

(13) It is hereby declared that evidence taken for the purposes of this section shall not be admissible in evidence, or otherwise used, for the purposes of any criminal matter, civil proceedings, disciplinary proceedings, or other proceedings, in Hong Kong except any prosecution of the person who gave that evidence for the offence of perjury, or contempt of court, in respect of that evidence.

(14) The Secretary for Justice shall not authorize under subsection (1) the transmission of the original of a thing to a place outside Hong Kong unless-

- (a) the appropriate authority of the place has, not more than 1 month after the thing was produced, given the Secretary for Justice a notice in writing setting out the grounds on which the original of the thing is required for the purposes of the criminal matter concerned in that place; and
- (b) in any case where the Secretary for Justice is of the opinion, after considering all the circumstances, that the original of the thing should be returned to Hong Kong upon the conclusion of the proceedings relating to that criminal matter, the appropriate authority has given an unqualified undertaking to the Secretary for Justice that the original of the thing will be so returned. (Amended L.N. 362 of 1997)

(15) In this section, “live television link” (電視直播聯繫) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time. (Added 23 of 2003 s. 20)

### **PART III ASSISTANCE IN RELATION TO SEARCH AND SEIZURE**

#### **Section 11 Requests by Hong Kong for search and seizure**

(1) This section applies to a criminal matter involving a Hong Kong serious offence if there are reasonable grounds to believe that a thing (including a thing belonging to a class of things) relevant to the criminal matter may be located in a place outside Hong Kong.

(2) Where this section applies to a criminal matter, the Secretary for Justice may request an appropriate authority of the place outside Hong Kong concerned to, in accordance with the law of that place, search for a thing relevant to the criminal matter, and, if such a thing, or any other thing that is or may be relevant to the criminal matter is found pursuant to such a search, the seizure of that thing and its onward transmission to Hong Kong. (Amended L.N. 362 of 1997)

#### **Section 12 Requests to Hong Kong for search and seizure**

(1) Where-

- (a) a criminal matter involving an external serious offence has commenced in a place outside Hong Kong;
- (b) there are reasonable grounds to believe that a thing (including a thing belonging to a class of things) relevant to the criminal matter is located in Hong Kong; and
- (c) an appropriate authority of that place requests the Secretary for Justice to arrange for the issue of a search warrant under this section in relation to that thing,

the Secretary for Justice may nominate in writing an authorized officer to apply to a magistrate for the search warrant so requested. (Amended L.N. 362 of 1997)

(2) Where an authorized officer nominated under subsection (1) has reason to believe that the thing to which the request relates is, or will, at a specified time, be-

- (a) on a person;
- (b) in the clothing that is being worn by a person;
- (c) otherwise in a person’s effective control;
- (d) upon any land; or

- (e) upon or in any premises, the relevant officer may-
  - (i) lay before a magistrate an information on oath setting out the grounds for that belief; and
  - (ii) apply for the issue of a warrant under this section.
- (3) Where an application is made under subsection (2), the magistrate shall, subject to subsection (4), issue a warrant authorizing an authorized officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable to do such of the following as are specified in the warrant-
  - (a) to search a person specified in the warrant for the thing;
  - (b) to enter upon land, or upon or into premises, specified in the warrant;
  - (c) to search any such land or premises for the thing; and
  - (d) to seize any thing found in the course of any such search that the relevant officer believes, on reasonable grounds, to be relevant to the criminal matter in the place outside Hong Kong concerned.
- (4) A magistrate shall not issue a warrant under this section unless-
  - (a) the informant or some other person has given to the magistrate either orally on oath or by affidavit, such further information, if any, as the magistrate requires concerning the grounds on which the issue of the warrant is sought; and
  - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (5) There shall be stated in a warrant issued under this section-
  - (a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorized;
  - (b) whether the search is authorized at any time of the day or night or during specified hours of the day or night;
  - (c) a description of the kind of things authorized to be seized; and
  - (d) a day, not being later than one month after the issue of the warrant, on which the warrant ceases to have effect.
- (6) If, in the course of searching, under a warrant issued under this section, for a thing of a kind specified in the warrant, the authorized officer finds another thing that the authorized officer believes on reasonable grounds-
  - (a) to be relevant to the criminal matter in the place outside Hong Kong concerned or to afford evidence as to the commission of a Hong Kong offence; and
  - (b) is likely to be concealed, lost, destroyed or altered if it is not seized, the warrant shall be deemed to authorize the authorized officer to seize the other thing.
- (7) Where an authorized officer finds, as a result of a search in accordance with a warrant issued under this section, a thing which the authorized officer seizes wholly or partly because he believes the thing on reasonable grounds to be relevant to the criminal matter in the place outside Hong Kong concerned, the authorized officer shall deliver the thing into the custody and control of the Commissioner.
- (8) Where a thing is delivered into the custody and control of the Commissioner under subsection (7), the Commissioner shall arrange for the thing to be kept for a period not exceeding one month from the day on which the thing was seized pending a direction in writing from the Secretary for Justice as to the manner in which the thing is to be dealt with (which may include, subject to subsection (11), a direction that the thing be sent to an appropriate authority of a place outside Hong Kong). (Amended L.N. 362 of 1997)

(9) An authorized officer who executes a search warrant issued under this section shall, as soon as practicable after the execution of the warrant, give to the person, or give to the owner or occupier of the land or premises or leave in a prominent position on the land or at the premises, as the case requires-

- (a) a notice setting out-
  - (i) the name and rank of the authorized officer;
  - (ii) the name of the magistrate who issued the warrant and the day on which it was issued; and
  - (iii) a description of any thing seized and removed in accordance with the warrant; and
- (b) in the case of any such thing which is a document, a copy of the document if that person, owner or occupier, as the case may be, so requests.

(10) Where subsection (3)(a) is applicable to a warrant issued under this section-

- (a) an authorized officer acting in accordance with the warrant may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person under the warrant;
- (b) a person shall not be searched pursuant to the warrant except by a person of the same sex;
- (c) nothing in this section shall be taken to authorize an authorized officer to carry out a search by way of an examination of a body cavity of a person;
- (d) an authorized officer may also search-
  - (i) the clothing that is being worn by a person; and
  - (ii) any property in, or apparently in, the person's effective control.

(11) The Secretary for Justice shall not give a direction under subsection (8) that the original of a thing be sent to the appropriate authority of a place outside Hong Kong unless-

- (a) the appropriate authority of the place has, not more than 1 month after the thing was seized, given the Secretary for Justice a notice in writing setting out the grounds on which the original of the thing is required for the purposes of the criminal matter concerned in that place; and
- (b) in any case where the Secretary for Justice is of the opinion, after considering all the circumstances, that the original of the thing should be returned to Hong Kong upon the conclusion of the proceedings relating to that criminal matter, the appropriate authority has given an unqualified undertaking to the Secretary for Justice that the original of the thing will be so returned. (Amended L.N. 362 of 1997)

(12) In this section, "Commissioner" (部門首長) means, where the authorized officer concerned is an authorized officer by virtue of-

- (a) paragraph (a) or (d) of the definition of "authorized officer", Commissioner within the meaning of the Police Force Ordinance (Cap 232);
- (b) paragraph (b) of the definition of "authorized officer", Commissioner within the meaning of the Customs and Excise Service Ordinance (Cap 342);
- (c) paragraph (c) of the definition of "authorized officer", Commissioner within the meaning of the Independent Commission Against Corruption Ordinance (Cap 204).

(13) For the purposes of this section, in the case of a criminal matter in a place outside Hong Kong which is an investigation into an external offence relating to taxation, "thing" does not include a tax document which-

- (a) is the property of a tax adviser or relevant auditor; and
- (b) in the case of a tax adviser, originates from him, or from his client or another tax adviser of the client, for or in connection with the giving or obtaining of advice about the tax affairs of the client.

## PART IV ASSISTANCE IN RELATION TO PRODUCTION, ETC. OF MATERIAL

### Section 13 Interpretation

(1) In this Part-

“court” (法院) means the Court of First Instance and the District Court; (Amended 25 of 1998 s. 2)

“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 excluding, in any case, any communications or item held with the intention of furthering a criminal purpose.

(2) For the avoidance of doubt, it is hereby declared that the provisions of this Part shall not operate to prejudice the operation of the provisions of Part III and, accordingly-

- (a) the Secretary for Justice may make a request under section 11 in respect of material whether or not that material is the subject of a request under section 14; (Amended L.N. 362 of 1997)
- (b) a place outside Hong Kong may make a request under section 12 in respect of material whether or not that material is the subject of a request under section 15.

### Section 14 Requests by Hong Kong for production, etc. of material

(1) This section applies to a criminal matter involving a Hong Kong serious offence if there are reasonable grounds to believe that particular material or material of a particular description relevant to the criminal matter may be-

- (a) located in a place outside Hong Kong; or
- (b) likely to become located in a place outside Hong Kong.

(2) Where this section applies to a criminal matter, the Secretary for Justice may request an appropriate authority of the place outside Hong Kong concerned to obtain an order or other instrument- (Amended L.N. 362 of 1997)

- (a) where subsection (1)(a) is applicable, requiring the person who appears to be in possession or control of the material to which the request relates;
- (b) where subsection (1)(b) is applicable, requiring the person who appears likely to come into possession or control of the material to which the request relates, when the person comes into possession or control of any such material, to-
  - (i) produce the material for the purposes of-
    - (A) its onward transmission to Hong Kong; or

- (B) enabling photographs or copies of the material to be taken or made and the onward transmission to Hong Kong of those photographs or copies; or
- (ii) give access to the material for the purposes of enabling photographs or copies of the material to be taken or made and the onward transmission to Hong Kong of those photographs or copies.

### **Section 15 Requests to Hong Kong for production, etc. of material**

#### Remarks

Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) Where-
  - (a) a criminal matter involving an external serious offence has commenced in a place outside Hong Kong;
  - (b) there are reasonable grounds to believe that particular material or material of a particular description relevant to the criminal matter may be-
    - (i) located in Hong Kong; or
    - (ii) likely to become located in Hong Kong; and
  - (c) that place requests the Secretary for Justice to obtain an order under this section in relation to that material, then the Secretary for Justice may nominate in writing an authorized officer to make an application to the court for the order so requested. (Amended L.N. 362 of 1997)
- (2) Subject to subsection (10), the court may, if on an application referred to in subsection (1) made by an authorized officer nominated under subsection (1) it is satisfied that the conditions in subsection (5) are fulfilled, make an order-
  - (a) that the person who appears to the court to be in possession or control of the material to which the application relates shall-
    - (i) produce the material to an authorized officer-
      - (A) for him to take away and transmit to the place outside Hong Kong which made the request under subsection (1) which gave rise to the application; or
      - (B) to enable him to take photographs or make copies of the material for the onward transmission to that place of those photographs or copies; or
    - (ii) give an authorized officer access to the material to enable him to take photographs or make copies of the material for the onward transmission to that place of those photographs or copies, within such period as the order may specify;
  - (b) that the person who appears to the court likely to come into possession or control of the material to which the application relates shall, when the person comes into possession or control of any such material-
    - (i) produce the material to an authorized officer-
      - (A) for him to take away and transmit to the place outside Hong Kong which made the request under subsection (1) which gave rise to the application; or
      - (B) to enable him to take photographs or make copies of the material for the onward transmission to that place of those photographs or copies; or
    - (ii) give an authorized officer access to the material to enable him to take photographs or make copies of the material for the onward transmission to that place of those photographs or copies, within such period as the order may specify; or

- (c) in terms both of paragraphs (a) and (b).
- (3) An order under subsection (2), in so far as it is in terms of paragraph (b) of that subsection, shall cease to have effect upon the expiration of 3 months after the day on which the order is made, or upon the expiration of such lesser period, if any, as is specified in the order for the purpose, but nothing in this subsection shall-
- (a) affect any obligation incurred under that order prior to its expiration;
  - (b) prevent, in relation to the person required to comply with that order, any further order being made under that subsection in respect of that person (including before the expiration of that first-mentioned order).
- (4) 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.
- (5) The conditions referred to in subsection (2) are-
- (a) that there are reasonable grounds for believing that the material to which the application relates-
    - (i) is likely to be of substantial value (whether by itself or together with other material) to the criminal matter for the purpose of which the application is made; and
    - (ii) does not consist of or include items subject to legal privilege; and
  - (b) 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 criminal matter, if the material is obtained; and
    - (ii) to the circumstances under which the person-
      - (A) in possession or control of the material holds or controls it, as the case may be; or
      - (B) likely to come into possession or control of the material will hold or control it, as the case may be, if he comes into such possession or control,as the case may be,that the material should be produced or that access to it should be given; and
- (c) in the case of an order proposed to be made under subsection (2)(a)(i)(A) or (b)(i)(A), the Secretary for Justice has advised that- (Amended L.N. 362 of 1997)
- (i) the appropriate authority of the place outside Hong Kong concerned has given him a notice in writing setting out the grounds on which the original of the material is required for the purposes of the criminal matter; and
  - (ii) either-
    - (A) because he is of the opinion, after considering all the circumstances, that the original of the material should be returned to Hong Kong upon the conclusion of the proceedings relating to the criminal matter, he has sought and received from the appropriate authority an unqualified undertaking that the original of the material will be so returned; or
    - (B) he is not of that opinion.
- (6) Where a court makes an order under subsection (2)(a)(ii) or (b)(ii) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer nominated under subsection (1), order any person who appears to him 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) Rules of court may provide for-
- (a) the discharge and variation of orders under this section; and

- (b) proceedings relating to such orders.
- (8) Where the material to which an application under this section relates consists of information contained in or accessible by means of any data equipment-
- (a) an order under subsection (2)(a)(i) or (b)(i) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
  - (b) an order under subsection (2)(a)(ii) or (b)(ii) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (9) An order under subsection (2)-
- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
  - (b) where-
    - (i) the person to which the order relates is a tax adviser or relevant auditor; and
    - (ii) the criminal matter to which the order relates is an investigation into an external offence relating to taxation, shall not confer any right to production of, or access to, items which are tax documents and-
      - (A) the property of the tax adviser or relevant auditor, as the case may be; and
      - (B) in the case of a tax adviser, originate from him, or from his client or another tax adviser of the client, for or in connection with the giving or obtaining of advice about the tax affairs of the client;
- (c) subject to section 3(3), shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise if the Secretary for Justice is satisfied that it is in the public interest of Hong Kong that it have such effect; and (Amended L.N. 362 of 1997)
- (d) may be made in relation to material in the possession of a public body if the Secretary for Justice is satisfied that it is in the public interest of Hong Kong that it may be so made. (Amended L.N. 362 of 1997)
- (10) In the case of material in the possession of a public body, an order under subsection (2) may require any officer of the public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Government.
- (11) In this section-
- “data equipment” (數據設備) means any equipment which-
- (a) automatically processes information;
  - (b) automatically records or stores information;
  - (c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated);
  - (d) can be used to retrieve information, whether the information is recorded or stored in the equipment itself or in other equipment (wherever situated);
- “public body” (公共機構) means-
- (a) any Government department; and
  - (b) any body specified by the Chief Executive under subsection (12). (Amended 71 of 1999 s. 3)
- (12) The Chief Executive may, by notice in the Gazette, specify a body to be a public body for the purposes of this section. (Amended 71 of 1999 s. 3)

## **PART V TRANSFER OF PERSONS TO GIVE ASSISTANCE IN RELATION TO CRIMINAL MATTERS**

### **Section 16 Requests for removal to Hong Kong**

- (1) Where-
- (a) a criminal matter has commenced in Hong Kong; and
  - (b) the Secretary for Justice is of the opinion that a person who is in a place outside Hong Kong-
    - (i) is an external prisoner;
    - (ii) is capable of giving assistance in relation to the criminal matter; and
    - (iii) has consented to being removed to Hong Kong for the purpose of giving such assistance, then the Secretary for Justice may request that place to authorize the removal of that person to Hong Kong for that purpose.
- (2) Where the Secretary for Justice makes a request under subsection (1), he may make arrangements with an appropriate authority of the place outside Hong Kong concerned for the purposes of-
- (a) the removal of the person to Hong Kong;
  - (b) the custody of the person while in Hong Kong;
  - (c) the return of the person to that place; and
  - (d) other relevant matters.
- (3) For the purposes of subsection (2)(b), the Secretary for Justice may direct in writing the Commissioner, within the meaning of the Prisons Ordinance (Cap 234), or other appropriate person to keep in custody a person referred to in that subsection, and the Commissioner or that other appropriate person, as the case may be, shall comply with any such direction. (Amended L.N. 362 of 1997)

### **Section 17 Immunities**

- (1) Where a person is in Hong Kong-
- (a) pursuant to a request under section 16; or
  - (b) to give assistance in relation to a criminal matter, pursuant to a request made by the Secretary for Justice (not being a request under section 16) to a place outside Hong Kong for assistance in the criminal matter, (Amended L.N. 362 of 1997) then the person, subject to subsection (3), shall not-
    - (i) be detained, prosecuted or punished in Hong Kong for any Hong Kong offence that is alleged to have been committed, or that was committed, before the person's departure from the place outside Hong Kong concerned pursuant to the request;
    - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from the place outside Hong Kong concerned pursuant to the request, being a civil suit to which the person could not be subjected if the person were not in Hong Kong;
    - (iii) be required to give assistance in relation to any criminal matter in Hong Kong other than the criminal matter to which the request relates;
    - (iv) be required, in relation to the criminal matter to which the request relates, to answer any question that the person would not be required to answer in relation to the criminal matter in the place outside Hong Kong concerned; or

- (v) be required, in relation to the criminal matter to which the request relates, to produce a thing that the person would not be required to produce in relation to the criminal matter in the place outside Hong Kong concerned.
- (2) A duly certified external law immunity certificate is admissible in proceedings as evidence of the matters stated in the certificate.
- (3) Subsection (1) ceases to apply to a person if-
- (a) the person has left Hong Kong; or
  - (b) the person has had an opportunity of leaving Hong Kong and has remained in Hong Kong otherwise than for-
    - (i) the purpose to which the request relates; or
    - (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Secretary for Justice to be a criminal matter in relation to which it is desirable that the person give assistance. (Amended L.N. 362 of 1997)
- (4) Subsection (1)(iv) or (v) does not apply in a case where its application would be inconsistent with any provision of prescribed arrangements, if any, between Hong Kong and the prescribed place concerned.
- (5) A certificate given by the Secretary for Justice for the purposes of subsection (3)(b)(ii) has effect from the day specified in the certificate (which may be a day before the day on which the certificate is given). (Amended L.N. 362 of 1997)

### **Section 18 Status of person prosecuted for Hong Kong offence committed after departure from place outside Hong Kong**

- (1) Where a person has come to Hong Kong pursuant to a request under section 16, the person shall be taken, for the purposes of this Ordinance, to be in Hong Kong pursuant to the request during any period during which the person remains in Hong Kong for the purpose of being tried for a Hong Kong offence that the person is alleged to have committed after the person's departure from the place outside Hong Kong concerned.
- (2) Without limiting the generality of subsection (1), the person shall be kept in such custody as the Secretary for Justice directs under section 16(3). (Amended L.N. 362 of 1997)

### **Section 19 Limitation on use of statement made by certain persons**

Where-

- (a) a person is in Hong Kong-
  - (i) pursuant to a request under section 16; or
  - (ii) to give assistance in relation to a criminal matter pursuant to a request made by the Secretary for Justice (not being a request under section 16), to a place outside Hong Kong for assistance in the criminal matter; and (Amended L.N. 362 of 1997)
- (b) the person has made a statement in relation to the criminal matter to which the request relates or in relation to a criminal matter certified by the Secretary for Justice under section 17(3)(b)(ii) in relation to the person, (Amended L.N. 362 of 1997) then that statement-
  - (i) shall not be admitted or otherwise used in any prosecution of the person for a Hong Kong offence other than an offence under section 36 of the Crimes Ordinance (Cap 200);

- (ii) may be admitted or used against him for the purpose of impeaching his credibility in criminal proceedings in respect of a Hong Kong offence where in giving evidence he makes a statement inconsistent with it.

### **Section 20 Release of certain persons upon request by place outside Hong Kong**

Where-

- (a) a person is being held in custody in accordance with a direction of the Secretary for Justice under section 16(3); and
- (b) the place outside Hong Kong from which the person has been brought requests the release of the person from custody, then the Secretary for Justice shall direct that the person be released from custody. (Amended L.N. 362 of 1997)

### **Section 21 Escaping**

Any person who escapes from lawful custody while in Hong Kong pursuant to a request under section 16 commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

### **Section 22 Arrest of person who has escaped from custody**

- (1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person-
  - (a) has been brought to Hong Kong pursuant to a request under section 16; and
  - (b) has escaped from lawful custody while in Hong Kong pursuant to the request.
- (2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with this Ordinance.

### **Section 23 Requests for removal from Hong Kong**

- (1) Where-
    - (a) a criminal matter has commenced in a place outside Hong Kong;
    - (b) that place requests that a Hong Kong prisoner (whether or not in custody) or other person in Hong Kong travel to that place to give assistance in relation to the criminal matter;
    - (c) there are reasonable grounds to believe that the prisoner or other person is capable of giving such assistance; and
    - (d) the Secretary for Justice is satisfied that-
      - (i) that place has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (2); and
      - (ii) the prisoner or other person has been given a copy of those undertakings and has subsequently consented to giving such assistance in that place,
- then the Secretary for Justice may-
- (i) in the case of a Hong Kong prisoner who is being held in custody-
    - (A) direct that the prisoner be released from custody for the purpose of travelling to that place to give such assistance; and

- (B) subject to the making or giving of any necessary directions or approvals in relation to the release of the prisoner, make arrangements for the travel of the prisoner to that place in the custody of a police or prison officer appointed by the Secretary for Justice for the purpose;
  - (ii) in the case of a Hong Kong prisoner, having been released from custody on a parole or other order or licence to be at large, who is not being held in custody-
    - (A) approve the travel of the prisoner to that place to give such assistance and obtain such approvals, authorities, permissions or variations to the parole or other order or licence to be at large as may be required; and
    - (B) subject to the obtaining of any necessary approvals, authorities, permissions or variations to the parole or other order or licence to be at large, make arrangements for the travel of the prisoner to that place;
  - (iii) in the case of any other person, make arrangements for the travel of the person to that place.
- (2) The matters in relation to which undertakings are to be given by a place outside Hong Kong for the purpose of a request that a person give assistance referred to in subsection (1) in the place are-
- (a) that the person shall not-
    - (i) be detained, prosecuted or punished for any external offence that is alleged to have been committed, or that was committed, before the person's departure from Hong Kong;
    - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Hong Kong, being a civil suit to which the person could not be subjected if the person were not in the place; or
    - (iii) be required to give assistance in relation to a criminal matter in the place other than the criminal matter to which the request relates,unless-
    - (A) the person has left the place; or
    - (B) the person has had the opportunity of leaving the place and has remained in that place otherwise than for the purpose of giving assistance in relation to the criminal matter to which the request relates;
  - (b) that any statement made by the person in relation to the criminal matter to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an external offence other than-
    - (i) perjury; or
    - (ii) contempt of court;
  - (c) that the person will be returned to Hong Kong in accordance with arrangements agreed by the Secretary for Justice;
  - (d) in a case where the person is being held in custody in Hong Kong and the Secretary for Justice requests the place to make arrangements for the keeping of the person in custody while the person is in that place-
    - (i) the making of appropriate arrangements for that purpose;
    - (ii) that the person-

- (A) will not be released from custody in the place unless the Secretary for Justice notifies an appropriate authority of the place that the person is entitled to be released from custody under the law of Hong Kong;
  - (B) where the Secretary for Justice so notifies the appropriate authority, will be released from custody in the place; and
  - (iii) if the person is released in the place as mentioned in subparagraph (ii), that the person's accommodation and expenses pending the completion of the criminal matter to which the request relates will be paid for by the place; and
- (e) such other matters, if any, as the Secretary for Justice thinks appropriate.
- (Amended L.N. 362 of 1997)

### **Section 24 Effect of removal to place outside Hong Kong on prisoner's term of imprisonment**

Where a Hong Kong prisoner who is serving a term of imprisonment for a Hong Kong offence is released from custody pursuant to a request under section 23, the prisoner shall, while in custody in connection with the request (including custody outside Hong Kong), be deemed to be continuing to serve that term of imprisonment.

## **PART VI ASSISTANCE IN RELATION TO CONFISCATION, ETC. OF PROCEEDS OF CRIME**

### **Section 25 Requests by Hong Kong for enforcement of Hong Kong confiscation order**

The Secretary for Justice may request an appropriate authority of a place outside Hong Kong to make arrangements- (Amended L.N. 362 of 1997)

- (a) for the enforcement of a Hong Kong confiscation order; or
- (b) where a Hong Kong confiscation order may be made in a proceeding which has been or is to be instituted in Hong Kong, to restrain dealing in any property against which the order may be enforced or which may be available to satisfy the order.

### **Section 26 Satisfaction of Hong Kong confiscation order**

- (1) Where, in execution of a Hong Kong confiscation order pursuant to a request under section 25, property is recovered in a place outside Hong Kong but the order requires an amount specified therein to be payable, then that amount shall be treated as reduced by the value of property so recovered.
- (2) For the purposes of this section and without prejudice to the admissibility of any evidence which may be admissible apart from this subsection, a certificate purporting to be issued by or on behalf of an appropriate authority of a place outside Hong Kong stating that property has been recovered there in execution of a request under section 25, stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in Hong Kong, be admissible as evidence of the facts so stated.
- (3) Where the value of property recovered as described in subsection (1) is expressed in a currency other than that of Hong Kong, the extent to which the amount payable under the Hong Kong confiscation order is to be reduced under that subsection shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the place outside Hong Kong concerned.

(4) For the purposes of subsection (3), a certificate purporting to be signed by the Monetary Authority and stating the exchange rate prevailing on a specified date shall be admissible in any proceedings as evidence of the facts so stated.

### **Section 27 Requests to Hong Kong for enforcement of external confiscation order**

#### Remarks

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Where a place outside Hong Kong requests the Secretary for Justice to make arrangements-

- (a) for the enforcement of an external confiscation order; or
- (b) where an external confiscation order may be made in a proceeding which has been or is to be instituted in that place, to restrain dealing in any property against which the order may be enforced or which may be available to satisfy the order,

then the Secretary for Justice may, in relation to that request, act for that place under the provisions of Schedule 2.

(2) A request under subsection (1) shall, unless the contrary is shown, be deemed to constitute the authority of the place outside Hong Kong concerned for the Secretary for Justice to act on its behalf in any proceedings in the Court of First Instance under section 28 or under any provision of Schedule 2. (Amended 25 of 1998 s. 2) (Amended L.N. 362 of 1997)

### **Section 28 Registration of external confiscation orders**

#### Remarks

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) On an application made by the Secretary for Justice, the Court of First Instance may register an external confiscation order if- (Amended L.N. 362 of 1997; 25 of 1998 s. 2)

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where any person against whom, or in relation to whose property, the order is made does not appear in the proceedings, that he received notice of the proceedings, in accordance with the law of the place outside Hong Kong concerned, in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in Hong Kong

would not be contrary to the interests of justice.

(2) In subsection (1), “appeal” (上訴) includes-

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(3) For the purposes of this section, an external confiscation order is subject to appeal so long as an appeal, further appeal or review is pending against the order; 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 the expiration of the time prescribed for instituting the appeal, further appeal or review under the law of the place outside Hong Kong concerned.

(4) The Court of First Instance shall cancel the registration of an external confiscation order if it appears to the Court of First Instance that the order has been satisfied by- (Amended 25 of 1998 s. 2)

- (a) payment of the amount due under it or by the person against whom it was made serving imprisonment in default of such payment;
- (b) recovery of property specified in it (or the value of such property) or by the person against whom it was made serving imprisonment in default of such recovery; or
- (c) any other means.

(5) Where an amount of money, if any, payable or remaining to be paid under an external confiscation order registered in the Court of First Instance under this section is expressed in a currency other than that of Hong Kong, for the purpose of any action taken in relation to that order under Schedule 2 the amount shall be converted into the currency of Hong Kong on the basis of the exchange rate prevailing on the date of registration of the order. (Amended 25 of 1998 s. 2)

(6) For the purposes of subsection (5), a certificate purporting to be signed by or on behalf of the Monetary Authority and stating the exchange rate prevailing on a specified date shall be admissible in any proceedings as evidence of the facts so stated.

### **Section 29 Proof of orders and judgments of court in place outside Hong Kong**

(1) For the purposes of sections 27 and 28 and Schedule 2-

- (a) any order made or judgment given by a court in a place outside Hong Kong purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly certified, which purports to be a copy of any order made or judgment given by a court in a place outside Hong Kong shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court in a place outside Hong Kong is duly certified for the purpose of subsection (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the place outside Hong Kong concerned.

### **Section 30 Evidence in relation to proceedings and orders in place outside Hong Kong**

#### Remarks

Amendments retroactively made - see 25 of 1998 s. 2

(1) For the purposes of sections 27 and 28 and Schedule 2, a certificate purporting to be issued by or on behalf of the appropriate authority of a place outside Hong Kong stating-

- (a) that a proceeding has been instituted and has not been concluded, or that a proceeding is to be instituted, in the place;
- (b) that an external confiscation order is in force and is not subject to appeal;
- (c) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in the place, or that other property recoverable under an external confiscation order remains unrecovered in the place;
- (d) that any person has been notified of any proceeding in accordance with the law of the place; or
- (e) that an order (however described) made by a court in the place has the purpose of-
  - (i) recovering (including forfeiting and confiscating)-
    - (A) payments or other rewards received in connection with an external serious offence or their value;

- (B) property derived or realised, directly or indirectly, from payments or other rewards received in connection with an external serious offence or the value of such property; or
  - (C) property used or intended to be used in connection with an external serious offence or the value of such property; or
- (ii) depriving a person of a pecuniary advantage obtained in connection with an external serious offence, shall, in any proceeding in the Court of First Instance, be admissible as evidence of the facts so stated. (Amended 25 of 1998 s. 2)

(2) In any such proceeding a statement contained in a document, duly certified, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a place outside Hong Kong, shall be admissible as evidence of any fact stated therein.

(3) A document is duly certified for the purposes of subsection (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the place outside Hong Kong concerned, or by or on behalf of an appropriate authority of the place, to have been received in evidence or to be a copy of a document so received or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in this section shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this section.

## **PART VII MISCELLANEOUS**

### **Section 31 Service of documents**

(1) Where a place outside Hong Kong requests the Secretary for Justice to arrange for the service in Hong Kong of a process relating to a criminal matter in that place, then the Secretary for Justice may arrange for the service of the process. (Amended L.N. 362 of 1997)

(2) Without limiting the manner in which the service of a document in a place outside Hong Kong may be proved in Hong Kong, service of such a document may be proved by affidavit of the person who served the document.

(3) Any failure to comply with any process referred to in this section is not an offence under the law of Hong Kong.

### **Section 32 Certification of documents**

(1) In a criminal matter to which this Ordinance relates, any document that is duly certified is admissible in evidence.

(2) A document is duly certified for the purposes of subsection (1) if it purports to be authenticated by the oath of a witness or an officer of the government of the place outside Hong Kong concerned or to be sealed with an official or public seal of the place or of a minister of state, or of a department or officer of the government, of the place.

(3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other provision of this Ordinance or law of Hong Kong.

### Section 33 Regulations

The Chief Executive in Council may make regulations- (Amended 71 of 1999 s. 3)

- (a) prescribing anything that is required or permitted to be prescribed under this Ordinance;
- (b) generally for the better and more effectual carrying out of the provisions of this Ordinance, including incidental, consequential, evidential and supplemental provisions, and, in particular-
  - (i) prescribing the practice and procedure in relation to the performance by magistrates of functions under this Ordinance, including the summoning of witnesses, the production of documents, the taking of evidence on oath or otherwise than on oath, the administering of oaths, the payment of expenses and allowances of witnesses and the protection and immunity of magistrates, of barristers and solicitors appearing before magistrates and of witnesses; and (Amended 23 of 2003 s. 21)
  - (ii) prescribing penalties not exceeding a fine at level 3 or imprisonment for 6 months for offences against the regulations.

### Section 34 Chief Executive to give notice to Central People's Government in relation to Hong Kong requests and external requests

#### Remarks

Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) The Chief Executive shall cause the Central People's Government to be given notice of every Hong Kong request and external request.
- (2) Where the Central People's Government issues an instruction to the Chief Executive to take, or not to take, an action-
  - (a) in relation to a Hong Kong request or external request; and
  - (b) on the ground that if the instruction were not complied with the interests of the People's Republic of China in matters of sovereignty, security or public order would be significantly affected, then the Chief Executive and the Secretary for Justice shall comply with that instruction, but no such instruction shall operate to affect the responsibility that the Chief Executive or the Secretary for Justice shall discharge in accordance with law in dealing with any case to which this subsection applies. (Amended L.N. 362 of 1997)
- (3) A notice under subsection (1) shall-
  - (a) in the case of a Hong Kong request, be given before the request is made unless the request is urgent, in which case the notice shall be given at the same time as the request is made;
  - (b) in the case of an external request, be given as soon as reasonably practicable after receipt of the request and before the request is processed unless the request is urgent;
  - (c) be accompanied by-
    - (i) a copy of the request;
    - (ii) copies of the accompanying documents;
    - (iii) a summary of the material facts supporting the request; and
    - (iv) such other documents relevant to the request as may be required by the Central People's Government;
  - (d) in the case of an external request-
    - (i) state advice with reasons whether the request may be complied with; and

- (ii) give details of the assistance which will be, or in the case of an urgent request has been, provided.

(4) Where an external request has been complied with, the Chief Executive shall, if the Central People's Government so requires, provide the Central People's Government with particulars of any evidence or documents provided pursuant to the request.

(5) For the purposes of this section-

- (a) a Hong Kong request is urgent if it is a request under section 11 or 25;
- (b) an external request is urgent if it is a request under section 12 or 27.

(6) In this section-

“external request” (外地請求) means-

- (a) any request under any arrangements for mutual legal assistance, whether or not the arrangements are prescribed arrangements; or
- (b) any other request-
  - (i) by-
    - (A) the government of a place outside Hong Kong; or
    - (B) a place outside Hong Kong;
  - (ii) for assistance in a criminal matter; and
  - (iii) compliance with which requires the exercise of any power under an enactment of Hong Kong;

“Hong Kong request” (香港請求) means-

- (a) any request under any arrangements for mutual legal assistance, whether or not the arrangements are prescribed arrangements; or
- (b) any other request-
  - (i) by the Government or Hong Kong;
  - (ii) for assistance in a criminal matter; and
  - (iii) compliance with which requires the exercise of any power under an enactment of a place outside Hong Kong.

(Amended 71 of 1999 s. 3)

### **Section 35 Amendment of Schedules**

#### **Remarks**

Adaptation amendments retroactively made - see 71 of 1999 s. 3

(1) The Legislative Council may, by resolution, amend Schedule 1.

(2) The Chief Executive in Council may, by notice in the Gazette, amend Schedule 2. (Amended 71 of 1999 s. 3)

### **Section 36 Consequential and other amendments**

The enactments specified in Schedule 3 are amended as set out in that Schedule.

**SCHEDULE 1 TAX DOCUMENTS**

[sections 2(1) &amp; 35]

**PART 1 TAX DOCUMENTS OF TAX ADVISERS**

Any document which is a communication between a tax adviser and-

- (a) a person (“client”) in relation to whose tax affairs he has been appointed as a tax adviser; or
- (b) any other tax adviser of the client, the purpose of which is the giving or obtaining of advice about any of those tax affairs, but excluding any information giving the identity or address of the client or of any tax adviser.

**PART 2 TAX DOCUMENTS OF TAX ADVISERS**

Any document relating to tax which was created by or on behalf of a relevant auditor for or in connection with the performance of his functions under any enactment.

**SCHEDULE 2 ENFORCEMENT, ETC. OF EXTERNAL CONFISCATION ORDERS**

[sections 27, 28, 29, 30 &amp; 35]

**1. Interpretation**

(1) In this Schedule, unless the context otherwise requires-

“interest” (權益), in relation to property, includes right; “property” (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);

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

“relevant asset” (有關資產) means-

- (a) any land, within the meaning of section 2 of the High Court Ordinance (Cap 4), in Hong Kong; (Amended 25 of 1998 s. 2)
- (b) any Government stock within the meaning of section 2 of that Ordinance;
- (c) any stock, within the meaning of section 20A of that Ordinance, of any body incorporated in Hong Kong;
- (d) any stock, within the meaning of section 20A of that Ordinance, of any body incorporated outside Hong Kong or of any place outside Hong Kong, being stock registered in a register kept at any place within Hong Kong; or
- (e) any units of any unit trust, within the meaning of section 20A of that Ordinance, in respect of which a register of the unit holders is kept at any place within Hong Kong.

(2) 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 Schedule listed in the right hand column in relation to those expressions.

Expression	Relevant provision
Charging order (押記令) .....	Section 8(2)

Defendant (被告人) .....	Section 3
Gift caught by this Schedule (受本附表圍制的饋贈) .....	Section 5(6)
Making a gift (作出饋贈) .....	Section 5(7)
Realisable property (可變現財產) .....	Section 5(1)
Restraint order (限制令) .....	Section 7(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值) .....	... Section 5(4)
Value of property (財產的價值) .....	Section 5(3)

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

(4) References in this Schedule to property received in connection with an external serious offence include a reference to property received both in that connection and in some other connection, and whether received before or after the commencement of this Schedule and whether received in connection with an external serious offence committed by the recipient or some other person.

(5) Subsections (6) to (11) shall have effect for the interpretation of this Schedule.

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

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

(8) 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.

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

(10) Proceedings are concluded in a place outside Hong Kong-

- (a) when, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an external confiscation order being made in the proceedings;
- (b) on the satisfaction of an external confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

(11) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

## 2. Application

This Schedule shall not apply to an external confiscation order except an external confiscation order-

- (a) the subject of a request under section 27 of this Ordinance; and
- (b) in relation to which the Secretary for Justice has decided to act, for the place which made the request, under the provisions of this Schedule.

(Amended L.N. 362 of 1997)

### 3. Defendants under external confiscation orders

A person (however described in the proceedings in the place outside Hong Kong concerned) against whom, or in relation to whose property, an external confiscation order has been, or may be, made is referred to in this Schedule as “the defendant” (被告人).

### 4. Interest on amounts to be recovered under external confiscation orders

(1) Where a fixed amount is payable under an external confiscation order, that amount shall be treated as a judgment debt for the purposes of section 49 of the High Court Ordinance (Cap 4) and, for those purposes, the date on which the external confiscation order was registered under section 28 of this Ordinance shall be treated as the date of the judgment debt. (Amended 25 of 1998 s. 2)

(2) Where by virtue of subsection (1) any interest accrues on the amount payable under an external confiscation order, the defendant shall be liable to pay that interest and the amount of the interest shall for the purposes of enforcement be treated as part of the amount payable under the external confiscation order.

### 5. Definition of principal terms used

(1) In this Schedule, “realisable property” (可變現財產) means, subject to subsection (2)-

(a) in relation to an external confiscation order-

(i) made in respect of specified property, the property which is specified in the order;

(ii) which may be made as the result of proceedings which have been, or are to be, instituted in a place outside Hong Kong, the property which may be specified in the order; and

(b) in any other case-

(i) any property held by the defendant;

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Schedule; and

(iii) any property that is subject to the effective control of the defendant.

(2) Property is not realisable property if-

(a) an order under section 102 or 103 of the Criminal Procedure Ordinance (Cap 221); or

(b) an order under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134), is in force in respect of the property.

(3) Subject to the following subsections, for the purposes of this Schedule 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.

(4) Subject to subsection (7), references in this Schedule to the value at any time (referred to in subsection (5) as “the material time” (關鍵時間)) of a gift caught by this Schedule 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 (5) applies, the value there mentioned, whichever is the greater.
- (5) Subject to subsection (7), if at the material time the recipient holds-
- (a) the property which he received (not being cash); or
  - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received, the value referred to in subsection (4)(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.
- (6) A gift (including a gift made before the commencement of this Schedule) is caught by this Schedule 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-
    - (i) received by the defendant in connection with an external serious offence committed by him or another; or
    - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (7) For the purposes of this Schedule-
- (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.
- (8) For the purposes of subsection (1)-
- (a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has-
    - (i) a legal or equitable estate or interest in the property; or
    - (ii) a right, power or privilege in connection with the property;
  - (b) without limiting the generality of any other provision of this Schedule, in determining-
    - (i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or
    - (ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant, regard may be had to-
      - (A) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
      - (B) a trust that has a relationship to the property; and

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

## 6. Cases in which restraint orders and charging orders may be made

- (1) The powers conferred on the Court of First Instance by sections 7(1) and 8(1) are exercisable where-
  - (a) proceedings have been instituted in a place outside Hong Kong;
  - (b) the proceedings have not been concluded; and
  - (c) either an external confiscation order has been made in the proceedings or it appears to the Court of First Instance that there are reasonable grounds for believing that an external confiscation order may be made in them.
- (2) Those powers are also exercisable where the Court of First Instance is satisfied that proceedings are to be instituted in a place outside Hong Kong and it appears to the court that an external confiscation order may be made in them.
- (3) Where the Court of First Instance has made an order under section 7(1) or 8(2) by virtue of subsection (2), it shall discharge the order if the proposed proceedings are not instituted within such time as the Court of First Instance considers reasonable.

(Amended 25 of 1998 s. 2)

## 7. Restraint orders

- (1) The Court of First Instance may by order (in this Schedule referred to 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 to any realisable property, including property transferred to a person 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 8.
- (4) A restraint order-
  - (a) may be made only on an application by the Secretary for Justice or, in a case where an external confiscation order has been registered under section 28 of this Ordinance, by a receiver appointed under section 9 or the Secretary for Justice; (Amended L.N. 362 of 1997)
  - (b) may be made on an ex parte application to a judge in chambers; and
  - (c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg.), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct.
- (5) A restraint order-
  - (a) may be discharged or varied in relation to any property; and
  - (b) shall be discharged when the proceedings in relation to which the order was made 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 Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver-

- (a) to take possession of any realisable property; and
- (b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such conditions and exceptions as may be specified by the Court of First Instance; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(8) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property.

(9) Property seized under subsection (8) shall be dealt with in accordance with the directions of the Court of First Instance. (Amended 71 of 1999 s. 3)

(10) 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.

(11) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property. (Added 26 of 2002 s. 5)

(12) A person who receives a notice under subsection (11) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned. (Added 26 of 2002 s. 5)

(13) A disclosure made in order to comply with a requirement under subsection (11)-

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of-
  - (i) the disclosure;
  - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (Added 26 of 2002 s. 5)

(14) Any person who contravenes subsection (12) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year. (Added 26 of 2002 s. 5)

(15) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence. (Added 26 of 2002 s. 5)

(16) A person who commits an offence under subsection (15) is liable-

- (a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
- (b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years. (Added 26 of 2002 s. 5)

(Amended 25 of 1998 s. 2)

## 8. Charging orders in respect of land, securities, etc.

- (1) The Court of First Instance may make a charging order on realisable property for securing the payment to the Government-
- (a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and
  - (b) in any other case, of an amount equal to the value from time to time of the property charged.
- (2) For the purposes of this Schedule, 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 Secretary for Justice or, in a case where an external confiscation order has been registered under section 28 of this Ordinance, by a receiver appointed under section 9 or the Secretary for Justice; (Amended L.N. 362 of 1997)
  - (b) may be made on an ex parte application to a judge in chambers;
  - (c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg.), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct; and
  - (d) may be made subject to such conditions as the Court of First Instance thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6), a charge may be imposed by a charging order only on-
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Schedule-
    - (i) in any relevant asset; 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 a relevant asset, the Court of First Instance may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset.
- (6) The Court of First Instance may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings in the place outside Hong Kong are concluded or the amount payment of which is secured by the charge is paid into the Court of First Instance.
- (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 Schedule, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustee, by writing under his hand.
- (9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in

his possession or control which may assist the authorized officer to determine the value of the property. (Added 26 of 2002 s. 5)

(10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the charging order concerned. (Added 26 of 2002 s. 5)

(11) A disclosure made in order to comply with a requirement under subsection (9)-

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of-
  - (i) the disclosure;
  - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (Added 26 of 2002 s. 5)

(12) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year. (Added 26 of 2002 s. 5)

(13) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence. (Added 26 of 2002 s. 5)

(14) A person who commits an offence under subsection (13) is liable-

- (a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
- (b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years. (Added 26 of 2002 s. 5) (Amended 25 of 1998 s. 2)

## **9. Realisation of property**

(1) Where an external confiscation order has been registered under section 28 of this Ordinance, the Court of First Instance may, on an application by the Secretary for Justice, exercise the powers conferred by subsections (2) to (6). (Amended L.N. 362 of 1997)

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

(3) The Court of First Instance may empower a receiver appointed under subsection (2), under section 7 or in pursuance of a charging order-

- (a) to enforce any charge imposed under section 8 on realisable property or on any interest, dividend or other distribution payable and any bonus issue in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 8, to take possession of the property subject to such conditions or exceptions as may be specified by the Court of First Instance.

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

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

(6) The Court of First Instance may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Schedule as the Court of First Instance may direct and the Court of

First Instance may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 8.

(8) The Court of First Instance shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court of First Instance. (Amended 25 of 1998 s. 2)

## 10. 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 7 or 9 or pursuant to a charging order, that is-

- (a) the proceeds of the enforcement of any charge imposed under section 8;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 7 or 9; 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 14(2) and then shall, after such payments, if any, as the Court of First Instance may direct have been made out of those sums be paid to the Registrar and applied for the purposes specified in subsections (3) to (5) and in the order so specified. (Amended 25 of 1998 s. 2)

(2) Where a fixed amount is payable under the external confiscation order and, after that amount has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums-

- (a) among such of those who held property which has been realised under this Schedule; and
- (b) in such proportions, as the Court of First Instance may direct after giving a reasonable opportunity for such persons to make representations to the Court of First Instance. (Amended 25 of 1998 s. 2)

(3) Any sums paid to the Registrar under subsection (1) or otherwise in satisfaction of an external confiscation order shall be first applied to pay any expenses incurred by a person acting as an insolvency officer and payable under section 14(2) but not already paid under subsection (1).

(4) If the sum was paid to the Registrar by a receiver appointed under section 7 or 9 or pursuant to a charging order the Registrar shall next pay the receiver's remuneration and expenses.

(5) After making-

- (a) any payment required by subsection (3); and
- (b) in a case to which subsection (4) applies, any payment required by that subsection, the Registrar shall reimburse any amount paid under section 15(2).

(6) Subject to subsections (7) and (8)-

- (a) any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be deposited in an interest-bearing account;
- (b) upon the expiration of 5 years beginning with the day on which such balance was so deposited, the Registrar shall arrange for such balance, together with any interest earned thereon, to be paid into the general revenue.

(7) On an application made by or on behalf of the government of a prescribed place before the expiration of the period referred to in subsection (6)(b) in respect of any balance referred to in that subsection, the Secretary for Justice may direct the Registrar to pay to that government such proportion of

that balance as is specified in the direction and the Registrar shall, as soon as is reasonably practicable after the receipt of that direction- (Amended L.N. 362 of 1997)

- (a) comply with the direction; and
- (b) pay any remainder of that balance, together with any interest earned on that balance, into the general revenue.

(8) The Registrar shall not comply with subsection (6)(b) in respect of any balance referred to in that subsection (including any interest earned thereon) until any application referred to in subsection (7) made in respect of that balance has been determined, whether by a direction under subsection (7) or otherwise.

(9) Where an application under subsection (8) of the relevant section has not been determined before the relevant day, then this section shall, with all necessary modifications, apply to and in relation to the application as if the application were an application under subsection (7), and the other provisions of this Ordinance shall be construed accordingly.

(10) In this section-

“relevant day” (有關日期) means the day on which section 14 of Schedule 3 comes into operation;

“relevant Order” (有關命令) means the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap 405 sub. leg.) as in force immediately before the relevant day;

“relevant section” (有關條文) means section 13 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) as applied under paragraph 3(2) of the relevant Order.

## **11. Exercise of powers by Court of First Instance or receiver**

(1) The following subsections apply to the powers conferred on the Court of First Instance by sections 7 to 10, or on a receiver appointed under section 7 or 9 or pursuant to a charging order. < \* Note - Exp. X-Ref.: Sections 7, 8, 9, 10 \* > (Amended 25 of 1998 s. 2)

(2) Subject to subsections (3), (4), (5) and (6), the powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered under section 28 of this Ordinance or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under an external confiscation order which may be made.

(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 Schedule, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) In the case of realisable property other than realisable property referred to in section 5(1)(a), the powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Government.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the external confiscation order.

## **12. 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 7(7) or 9(5) or (6) for the time being in the hands of a receiver appointed under section 7 or 9,

are excluded from the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6).

(2) Where a person has been adjudged bankrupt, the powers conferred on the Court of First Instance by sections 7 to 10 shall not be exercised in relation to- < \* Note - Exp. X-Ref.: Sections 7, 8, 9, 10 \* > (Amended 25 of 1998 s. 2)

- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6); and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 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 Court of First Instance by sections 7 to 10. < \* Note - Exp. X-Ref.: Sections 7, 8, 9, 10 \* > (Amended 25 of 1998 s. 2)

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

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

(5) Where, in the case of a debtor, an interim 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 had directly or indirectly made a gift caught by this Schedule-

- (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 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 discharge of the restraint order or charging order shall take into account any realisation under this Schedule of property held by the person to whom the gift was made.

(7) After the relevant day-

- (a) subsection (2)(b) shall be read as if “30(3)” were omitted and “30A(9)” were substituted therefor;
- (b) subsection (6)(a)(i) shall be read as if “31, 47 or 49” were omitted and “49 or 50” were substituted therefor.

(8) In this section, “relevant day” (有關日期) means the day on which section 87 of the Bankruptcy (Amendment) Ordinance 1996 (76 of 1996) comes into operation.

### 13. 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 the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to-

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 7(7) or 9(5) or (6) for the time being in the hands of a receiver appointed under section 7 or 9.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court of First Instance by sections 7 to 10 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- < \* Note - Exp. X-Ref.: Sections 7, 8, 9, 10 \* >

- (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 Court of First Instance by sections 7 to 10. < \* Note - Exp. X-Ref.: Sections 7, 8, 9, 10 \* >

(4) Subsection (3) shall apply to any proceedings relating to an appeal, further appeal or review against any exercise of the powers referred to in that subsection as if the court hearing the appeal, further appeal or review, as the case may be, were the Court of First Instance.

(5) 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.

(6) 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 Court of First Instance, 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.

(Amended 25 of 1998 s. 2)

### 14. 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) 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 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 10(1).

- (3) In this section “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).

## 15. Receivers: supplementary provisions

- (1) Where a receiver appointed under section 7 or 9 or pursuant to 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 10(4), be paid by the person on whose application the receiver was appointed.

## SCHEDULE 3 CONSEQUENTIAL AND OTHER AMENDMENTS

### Remarks

sections 3, 11 & 15 not yet in operation

[sections 1(2) & 36]

**Rules of the High Court**

- 1-2. (Omitted as spent)
- 3. Drug Trafficking (Recovery of Proceeds)  
Ordinance (Cap 405)  
Order 115, rules 12 to 21 are repealed.
- 4-6. (Omitted as spent)

**Drug Trafficking (Recovery of Proceeds) Ordinance**

- 7-10. (Omitted as spent)
- 11. Sections repealed  
Sections 28 and 29 are repealed.

**Drug Trafficking (Recovery of Proceeds)****(Designated Countries and Territories) Order**

- 12-14. (Omitted as spent)
- 15. Repeal  
The Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order is repealed.
- 16-18. (Omitted as spent)