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LAWS AND REGULATIONS

**PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF
THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES**

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,
the Secretary-General has the honour to communicate the following legislative texts.*

HONG KONG

Communicated by the Government
of the United Kingdom of Great Britain and Northern Ireland

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

E/NL.1989/2

DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE 1989

1989 年販毒(追討得益)條例

* Note by the Secretariat: The present document is a direct reproduction of the text received by the Secretariat.

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DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE 1989

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L.S.

I assent.

David WILSON,
Governor.
13 July 1989

An Ordinance to provide for the tracing, confiscation and recovery of the proceeds of drug trafficking, to create the offence of assisting drug traffickers to retain those proceeds, and for incidental or related matters.

[]

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

PART I PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be cited as the Drug Trafficking (Recovery of Proceeds) Ordinance 1989.

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

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
- “authorized officer” (獲授權人) means—
- any police officer;
 - any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap. 342); and
 - any other person authorized in writing by the Attorney General for the purposes of this Ordinance;
- “confiscation order” (沒收令) means an order made under section 3(6);
- “corresponding law” (相應的法律) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap. 134);
- “dangerous drug” (毒品) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap. 134);
- “defendant” (被告) means a person against whom proceedings have been instituted for a drug trafficking offence (whether or not he has been convicted of that offence);
- “drug trafficking” (販毒) means doing or being concerned in, whether in Hong Kong or elsewhere, any act constituting—
- an offence specified in Schedule 1 (other than an offence under section 25); or
 - an offence punishable under a corresponding law,
- and includes entering into or being otherwise concerned in, whether in Hong Kong or elsewhere, an arrangement whereby—

公印位置

本人批准。

衛奕信，
總督
1989年7月13日

本條例就販毒得益的索究、沒收及追討作出規定，訂立協助毒販保留販毒得益的罪行，以及就各項附帶或有關事宜作出規定。

[]

由香港總督參照立法局意見並得該局同意而制定。

第 I 部 導言

簡稱及生效日期

- (1) 本條例可引稱為《1989年販毒(追討得益)條例》。
- (2) 本條例自總督以憲報公告指定的日期起實施，總督可為不同的條文或不同的目的，指定不同的實施日期。

釋義

2. (1) 在本條例中，除文意另有所指外——
- “沒收令”(confiscation order)指根據第3(6)條而發出的命令；
- “毒品”(dangerous drug)含義與《危險藥物條例》(第134章)第2(1)條所指的“危險藥物”相同；
- “物料”(material)指任何書、文件或其他任何形式的紀錄，以及和以上各物有關的盛器或物品；
- “相應的法律”(corresponding law)含義與《危險藥物條例》(第134章)第2(1)條所指的相同；
- “被告”(defendant)指被提控以任何販毒罪行的人(不論是否已被判有罪)；
- “財產”(property)包括依照《釋義及通則條例》(第1章)第3條所界定的動產與不動產；
- “販毒”(drug trafficking)指在香港或其他地方從事或參與——
- 構成附表1所指明的罪行(除第25條下的罪行外)的作為；或
 - 構成根據相應的法律可判罰的罪行的作為，
- 並包括在香港或其他地方，直接參與或以其他方式參與任何安排，從而——

- (i) the retention or control by or on behalf of another person of that other person's proceeds of drug trafficking is facilitated; or
- (ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at that other person's disposal or are used for that other person's benefit to acquire property by way of investment;

“drug trafficking offence” (販毒罪行) means—

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

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

“material” (物料) means any book, document or other record in any form whatsoever, and any container or article relating thereto;

“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” (經歷司) means the Registrar of the Supreme Court.

(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 Ordinance listed in the right hand column in relation to those expressions.

Expression	Relevant provision
Benefited from drug trafficking (從販毒獲利)	Section 3(4)
Charging order (抵押令)	Section 11(2)
Dealing with property (處理財產)	Section 10(8)
Gift caught by this Ordinance (受本條例限制的饋贈)	Section 7(9)
Making a gift (作出饋贈)	Section 7(10)
Proceeds of drug trafficking (販毒得益)	Section 4(1)(a)
Realisable property (可變現財產)	Section 7(1)
Restraint order (限制令)	Section 10(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值)	Section 7
Value of proceeds of drug trafficking (販毒得益的價值)	Section 4(1)(b)
Value of property (財產的價值)	Section 7(4)

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

- (i) 方便另一人親自或經由代表保留或控制該人的販毒得益；或
- (ii) 使另一人的販毒得益用以確保有資金供該人運用，或用作為該人的利益而以投資方式取得財產；

“販毒罪行” (drug trafficking offence) 指——

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

“經歷司” (Registrar) 指最高法院經歷司；

“獲授權人” (authorized officer) 指——

- (a) 任何警務人員；
- (b) 根據《海關條例》(第 342 章) 第 3 條設立的海關的任何成員；及
- (c) 律政司為本條例的目的而以書面授權的其他人；

“權益” (interest) 對財產來說，包括權利。

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

詞句	有關條文
從販毒獲利 (Benefited from drug trafficking)	第 3(4) 條
抵押令 (Charging order)	第 11(2) 條
處理財產 (Dealing with property)	第 10(8) 條
受本條例限制的饋贈 (Gift caught by this Ordinance)	第 7(9) 條
作出饋贈 (Making a gift)	第 7(10) 條
販毒得益 (Proceeds of drug trafficking)	第 4(1)(a) 條
可變現財產 (Realisable property)	第 7(1) 條
限制令 (Restraint order)	第 10(1) 條
饋贈、付款或酬賞的價值 (Value of gift, payment or reward)	第 7 條
販毒得益的價值 (Value of proceeds of drug trafficking)	第 4(1)(b) 條
財產的價值 (Value of property)	第 7(4) 條

(3) 本條例適用於香港及其他地方的財產。

(4) References in this Ordinance to offences include a reference to offences committed before the commencement of this Ordinance; but nothing in this Ordinance imposes any duty or confers any power on any court in or in connection with proceedings against a person for a drug trafficking offence instituted before the commencement of this Ordinance.

(5) References in this Ordinance to property received in connection with drug trafficking include a reference to property received both in that connection and in some other connection.

(6) Subsections (7) to (13) shall have effect for the interpretation of this Ordinance.

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

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

(9) 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.

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

(11) Proceedings for an offence are instituted in Hong Kong—

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

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

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

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

(12) Proceedings in Hong Kong for an offence are concluded on the occurrence of one of the following events—

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

(b) an order or verdict acquitting the defendant, not being an order or verdict which is subject to appeal or review within the meaning of subsection (13);

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

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

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

(4) 本條例凡提述罪行，所指包括本條例生效之前所犯的罪行；但對於在本條例生效之前已經對某人販毒罪行提起的控訴，或與該訴訟有關的事情，本條例並無委予法庭任何職責，亦無賦予任何權力。

(5) 本條例凡提述因販毒關係而收受的財產，所指包括因該種關係，並因其他某些關係，而收受的財產。

(6) 第(7)至(13)款對解釋本條例有效。

(7) 任何人持有財產的任何權益，即算是持有該財產。

(8) 凡提述一個人所持有的財產，所指包括歸其破產管理人或清盤人名下的財產。

(9) 凡提述一個人在某項財產上實質持有的權益，而該項財產如果已歸其破產管理人或清盤人名下的，則所指包括該項財產如非已歸其破產管理人或清盤人名下，便會是他實質持有的權益。

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

(11) 當以下事情發生時，即算是在香港提起刑事訴訟——

(a) 裁判司就有關罪行根據《裁判司條例》(第227章)第72條簽發令狀或傳票；

(b) 任何人在無令狀的情況下被拘押後被控以有關罪行；或

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

如引用本款會產生多於一個起訴時間，則以這些時間之中最早的一個為起訴時間。

(12) 當以下任何一種情形出現時，即算是在香港進行的刑事訴訟結束——

(a) 因控方提出中止檢控或因其他原因而引致訴訟中止；

(b) 法庭命令或裁定被告無罪釋放，而有關命令或裁決是第(13)款所指的不受上訴或覆核所限的；

(c) 被告的判罪被撤銷，但法庭根據《刑事訴訟程序條例》(第221章)第83E條命令重審被告除外；

(d) 女皇陛下赦免被告所犯罪行的判罪；

(e) 凡律政司沒有申請沒收令，或律政司申請沒收令但沒收令沒有發出，而法庭或裁判司就有關判罪對被告判處刑罰或以其他方式處理；或

- (f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(13) An order or verdict (including an order or verdict of acquittal) is subject to appeal or review so long as an appeal, further appeal or review is pending against the order or verdict; and for this purpose an appeal, further appeal or review shall be treated as pending (where one is competent but has not been instituted) until—

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

PART II

CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING

Confiscation orders

3. (1) Where—

- (a) in proceedings before the High Court or the District Court a person is to be sentenced in respect of one or more drug trafficking offences and has not previously been sentenced in respect of his conviction for the offence, or as the case may be, any of the offences concerned; and
(b) an application is made by or on behalf of the Attorney General for an order under this section,

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

(2) The court shall first—

- (a) impose such period of imprisonment or detention (if any);
(b) make such other order in relation to sentence, not being an order provided for or referred to in subsection (6),

as is appropriate in respect of the offence, or as the case may be, the offences concerned.

(3) The court shall then determine whether the person has benefited from drug trafficking.

(4) For the purposes of this Ordinance, a person who has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

(5) If the court determines that he has so benefited, the court shall determine in accordance with section 6 the amount to be recovered in his case by virtue of this section.

(6) The court shall then, in respect of the offence or offences concerned—

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

- (f) 訴訟中所發出的沒收令得到圓滿執行(不論所用方法是繳付命令下須繳的款額,或由被告接受監禁以作抵償)。

(13) 法庭或裁判司的命令或裁決(包括把被告無罪釋放的命令或裁決),在該命令或裁決可能被上訴、再上訴或覆核的期間,即受上訴或覆核所限;為此目的,可能被上訴、再上訴或覆核(即當事人有權提出但未有提出上訴、再上訴或覆核)的期間——

- (a) 對向樞密院上訴的案件來說,指截至有關判決日期(即開始可以申請上訴許可的日期)之後 28 日為止的期間;或
(b) 對其他案件來說,指截至提出上訴、再上訴或覆核的訂明期限結束為止的期間。

第 II 部

沒收販毒得益

沒收令

3. (1) 凡——

- (a) 在高等法院或地方法院審理的訴訟中,任何人就一項或以上販毒罪行接受判處刑罰,而他未曾因該項判罪或該等判罪之中任何一項被判處刑罰;而
(b) 律政司或其代表在本條下提出申請發出命令,

高等法院或地方法院必須依以下規定行事。

(2) 法庭須首先就有關罪行——

- (a) 判處適當的監禁期或拘留期(如有的話);
(b) 發出與判決有關的其他適當命令,而該命令不是第(6)款所規定或提及的。
(3) 法庭然後必須決定該人是否曾經從販毒獲利。

(4) 為本條例的目的,任何人於任何時間(不論是在本條例生效之前或之後),曾經因自己或他人從事販毒而收受任何款項或其他酬賞,即算是曾經從販毒獲利。

(5) 法庭如決定他曾經從販毒獲利,必須依照第 6 條釐定出就他的案件在本條下須追討的款額。

(6) 法庭隨後須就有關罪行——

- (a) 命令他繳付該款額;
(b) 先考慮上述命令才——
(i) 判該人罰款;或
(ii) 發出任何涉及需要該人付款的命令;或

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

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

Assessing the proceeds of drug trafficking

4. (1) For the purposes of this Ordinance—
 - (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Ordinance) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking; and
 - (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.
- (2) The High Court or the District Court, as the case may be, may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that the defendant shows that any of the assumptions are incorrect in his case.
 - (3) Those assumptions are—
 - (a) that any property appearing to the court—
 - (i) to have been held by him at any time since his conviction; or
 - (ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him, was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him or another;
 - (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him or another; and
 - (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a payment or reward, he received the property free of any other interests in it.
 - (4) Subsections (2) and (3) do not apply if the only drug trafficking offence in respect of which the defendant is to be sentenced is an offence under section 25.
 - (5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

Statements relating to proceeds of drug trafficking

5. (1) Where—
 - (a) the prosecutor tenders to the High Court or the District Court, as the case may be, a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking; and

(7) 為施行賦予有關刑事案件的上訴權的條例，根據本條針對某人發出的命令，須作為就有關罪行對該人作出的判決。

販毒得益的評計

4. (1) 為本條例的目的——
 - (a) 任何人在任何時間(不論在本條例生效之前或之後)，因自己或他人從事販毒而收受的款項或其他酬賞，即為他的販毒得益；而
 - (b) 該人的販毒得益的價值，為上述款項或酬賞的價值的總和。
- (2) 高等法院或地方法院為決定被告是否曾經從販毒獲利，及為(如被告曾經獲利)評計他的販毒得益的價值，可作以下假設，但如被告能表明任何假設與其情況不符，則該等假設不能成立。
 - (3) 該等假設為——
 - (a) 依法庭認為是——
 - (i) 被告在定罪之後的任何時間曾經持有的任何財產；或
 - (ii) 自被告被起訴日期6年前起計的以後，曾經移轉予被告的任何財產，都是被告因自己或他人從事販毒而收受的款項或酬賞，收受的時間是法庭認為是被告持有該財產的最早時間；
 - (b) 被告自起訴日期6年前起計，一直以來的任何開支，都是由他因自己或他人從事販毒而收受的款項支付；及
 - (c) 為評定被告在任何時間收受或假設他曾經收受有關款項或酬賞的財產價值，該財產須視作不存有任何其他權益。
 - (4) 如被告接受判處的唯一販毒罪行，屬於第25條下的罪行，第(2)及(3)款則不適用。
 - (5) 為評計被告販毒得益的價值，如法庭過去曾對被告發出沒收令，則法庭在見到證明後，須撤除在該令下決定追討的款額時已計算在內的販毒得益。

與販毒得益有關的陳述書

5. (1) 凡——
 - (a) 檢控官向高等法院或地方法院呈交陳述書，陳述任何與決定被告是否曾經從販毒獲利，或與評計被告的販毒得益的價值有關的事情；而

(b) the defendant accepts to any extent any allegation in the statement, the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which the acceptance relates.

(2) Where—

(a) a statement is tendered under subsection (1)(a); and

(b) the court is satisfied that a copy of that statement has been served on the defendant,

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

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

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

(b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another.

(4) Where—

(a) the defendant tenders to the court a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and

(b) the prosecutor accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which the acceptance relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either—

(a) orally before the court; or

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

(6) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings for an offence.

Amount to be recovered under confiscation order

6. (1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the High Court or the District Court, as the case may be, assesses to be the value of the defendant's proceeds of drug trafficking.

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 5 or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

(b) 被告對陳述書所載的任何指稱，在任何程度上予以承認，

為決定被告是否曾經從販毒獲利及為評計被告的販毒得益的價值，法庭可以把被告所承認的，作為有關事情的定論。

(2) 凡——

(a) 檢控官根據第(1)(a)款呈交陳述書；而

(b) 法庭信納陳述書的複本已經送達被告，

法庭可要求被告表示對陳述書內每一項指稱承認至甚麼程度；如被告不承認其中任何指稱，法庭可要求他表示打算提出甚麼論據。

(3) 被告如在任何方面未有遵行法庭在第(2)款下作出的要求，為本條的目的，可被作為承認陳述書內除以下各項外的每一項指稱——

(a) 被告已因該項指稱遵行法庭要求的任何指稱；及

(b) 任何指被告曾經從販毒獲利，或指被告曾經收受的任何款項或其他酬賞是因自己或他人從事販毒而得來的指稱。

(4) 凡——

(a) 被告向法庭呈交陳述書，陳述任何與決定在發出沒收令時變現可得的款額有關的事情；而

(b) 檢控官對陳述書所載的任何指稱，在任何程度上予以接納，

為決定變現可得的款額的目的，法庭可以把檢控官所接納的，作為有關事情的定論。

(5) 為本條的目的，任何一方接納或承認指稱，或應法庭的要求作出表示，可——

(a) 用口頭在法庭作出；或

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

(6) 被告如根據本條承認曾經因自己或他人從事販毒而收受任何款項或其他酬賞，該項承認不得在任何刑事訴訟中接受為證據。

沒收令下追討的款額

6. (1) 除第(3)款另有規定外，在沒收令下須向被告追討的款額，為高等法院或地方法院評計為被告的販毒得益的價值。

(2) 法庭如信納任何與決定在發出沒收令時變現可得的款額有關的事情(不論是否根據第5條或其他情況所接納或承認的)，可簽發證明書，說明法庭對有關事情的意見；法庭如信納第(3)款所述的情況，則必須簽發證明書。

(3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

Definition of principal terms used

7. (1) In this Ordinance, "realisable property" means, subject to subsection (2)—

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

(2) Property is not realisable property if—

- (a) an order under section 102 or 103 of the Criminal Procedure Ordinance (Cap. 221); 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) For the purposes of sections 5 and 6 the amount that might be realised at the time a confiscation order is made against the defendant is—

- (a) the total of the values at that time of all the realisable property held by the defendant, less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Ordinance.

(4) Subject to the following subsections, for the purposes of this Ordinance the value of property (other than cash) in relation to any person holding the property—

- (a) where any other person holds an interest in the property, is—
 - (i) the market value of the first mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
- (b) in any other case, is its market value.

(5) Subject to subsection (10), references in this Ordinance to the value at any time (referred to in subsection (6) as "the material time") of a gift caught by this Ordinance or of any payment or reward are references to—

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (6) applies, the value there mentioned,

whichever is the greater.

(3) 法庭如信納在發出沒收令時變現可得的款額，少於法庭評計為被告販毒得益價值的款額，則在沒收令下向被告追討的款額，須為法庭認為在發出沒收令時變現可得的款額。

主要詞語的定義

7. (1) 除第(2)款另有規定外，在本條例內“可變現財產”指——

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

(2) 任何財產，如以下的命令對其有效，則不屬於可變現財產——

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

(3) 為第5及6條的目的，在對被告發出沒收令時變現可得的款額，是——

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

加上所有受本條例限制的饋贈在當時的總值。

(4) 除以下各款另有規定外，為本條例的目的，對財產持有人來說，財產(除現金外)的價值——

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

(5) 除第(10)款另有規定外，本條例內提述受本條例限制的饋贈，或任何款項或酬賞在任何時間(在第(6)款稱為“關鍵時間”)的價值，所指為以下一項，而以兩個價值中較大的一個為準——

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

(6) Subject to subsection (10), if at the material time the recipient holds—

- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

(7) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
 - (b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.
- (8) In subsection (7)(b) “the preferential debts”—
- (a) in relation to bankruptcy, means the debts to be paid in priority under section 38 of the Bankruptcy Ordinance (Cap. 6) (assuming the date of the confiscation order to be the date of filing of the petition and of the receiving order made under that Ordinance); and
 - (b) in relation to winding up, means the debts to be paid under section 265 of the Companies Ordinance (Cap. 32) (assuming the date of the confiscation order to be the date of commencement of the winding up and the relevant date for the purpose of that section).

(9) A gift (including a gift made before the commencement of this Ordinance) is caught by this Ordinance if—

- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or
- (b) it was made by the defendant at any time and was a gift of property—
 - (i) received by the defendant in connection with drug trafficking carried on 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.

(10) For the purposes of this Ordinance—

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

(6) 除第(10)款另有規定外，如收受人在關鍵時間持有——

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

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

(7) 為第(3)款的目的，如被告須承擔以下責任，則該等責任在任何時間都有優先權——

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

(8) 在第(7)(b)款內，“優先債項”——

- (a) 對破產來說，指《破產條例》(第6章)第38條規定必須優先償付的債項(假設沒收令日期為提交呈請書日期及根據該條例發出破產管理令的日期)；而
- (b) 對清盤來說，指《公司條例》(第32章)第265條規定償付的債項(假設沒收令日期為清盤生效日期及該條所指有關日期)。

(9) 凡屬以下饋贈(包括本條例生效之前所作的)，都是受本條例圍制的饋贈——

- (a) 由被告在被起訴日期6年前起計的以後任何時間作出的；或
- (b) 由被告在任何時間作出的，而所饋贈的是——
 - (i) 被告因自己或他人從事販毒而收受的財產；或
 - (ii) 在被告手中的財產，而其全部或部分、直接或間接代表他曾因上述關係而收受的。

(10) 為本條例的目的——

- (a) 被告被當為作出饋贈的情況，包括他把財產直接或間接移轉給他人，而索取的代價所值顯著低於他提供的代價所值；及
- (b) 在上述情況下，引用本條以上條文時，須當作被告把有關財產的一部分作為饋贈，而該饋贈佔有關財產整體的比率，等如(a)段所指被告提供的代價所值與他所收代價所值的相差額，在被告提供的代價所值中所佔的比率。

PART III

ENFORCEMENT, ETC. OF CONFISCATION ORDERS

Application of procedure for enforcing fines

8. (1) Subject to this section, where the High Court or the District Court, as the case may be, orders the defendant to pay any amount under section 3—

- (a) the court shall make an order fixing a term of imprisonment which he is to serve if any of the amount which he is liable to pay is not duly paid or recovered; and
- (b) section 114(1), (3), (4), (5), (6) and (7) of the Criminal Procedure Ordinance (Cap. 221) shall apply as if—
 - (i) that amount were a fine imposed upon him by the court; and
 - (ii) the term of imprisonment fixed under this section were a term fixed under section 114(1)(c) of that Ordinance.

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

TABLE

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

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

(4) Where the defendant—

- (a) becomes liable to serve a term of imprisonment fixed under this section in respect of a confiscation order; and
- (b) is also liable to serve a term of imprisonment or detention in respect of the offence or offences concerned,

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

(5) For the purposes of subsection (4)—

- (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
- (b) there shall be disregarded—

(i) any sentence suspended under section 109B of the Criminal Procedure Ordinance (Cap. 221) which has not taken effect at the time the defendant becomes liable to a term of imprisonment under this section; and

第 III 部

沒收令的執行及其他

罰款執行程序的應用

8. (1) 除本條另有規定外，凡高等法院或地方法院根據第 3 條命令被告繳付任何款額——

- (a) 法庭須發出命令，訂定一段監禁期，如被告須繳付的任何款額沒有按時繳付或獲得追討，他便須接受該段期限的監禁；而
- (b) 須引用《刑事訴訟程序條例》(第 221 章)第 114(1)、(3)、(4)、(5)、(6) 及 (7) 條，猶如——
 - (i) 該款額是法庭對他判處的罰款；及
 - (ii) 根據本條訂定的監禁期是根據該條例第 114(1)(c) 條訂定的監禁期。

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

罰款額與監禁期對照表

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

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

(4) 凡被告——

- (a) 就沒收令被判處接受根據本條訂定期限的監禁；且
- (b) 已就有關罪行被判處接受另一期限的監禁或拘留，

(a) 段所述的監禁期限，須在 (b) 段所述的監禁或拘留期限完結後才開始計算。

(5) 為第 (4) 款的目的——

(a) 連續的期限及全部或部分同期執行的期限，須作為一段期限；及

(b) (i) 根據《刑事訴訟程序條例》(第 221 章)第 109B 條緩期執行的判決，而在被告根據本條被判處接受一段期限的監禁時仍未生效的；及

(ii) any term of imprisonment fixed under section 114(1) of the Criminal Procedure Ordinance (Cap. 221) for which the defendant has not at that time been committed.

(6) Section 109A of the Criminal Procedure Ordinance (Cap. 221) shall not apply in relation to fixing a term of imprisonment under this section.

Cases in which restraint orders and charging orders may be made

9. (1) The powers conferred on the High Court by sections 10(1) and 11(1) are exercisable where—

- (a) proceedings have been instituted in Hong Kong against the defendant for a drug trafficking offence;
- (b) the proceedings have not been concluded; and
- (c) the High Court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking.

(2) Those powers are also exercisable where the High Court is satisfied—

- (a) that whether by the laying of an information or otherwise, a person is to be charged in Hong Kong with a drug trafficking offence; and
- (b) that there is reasonable cause to believe that he has benefited from drug trafficking.

(3) For the purposes of sections 10 and 11, in relation to the exercise of those powers at any time before proceedings have been instituted—

- (a) references in this Ordinance to the defendant shall be construed as references to the person referred to in subsection (2)(a);
- (b) references in this Ordinance to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the case for the prosecution in the proposed proceedings; and
- (c) references in this Ordinance to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) for a drug trafficking offence.

(4) Where the High Court has made an order under section 10(1) or 11(1) by virtue of subsection (2), the High Court shall discharge the order if proceedings in respect of the offence are not instituted within such time as the High Court considers reasonable.

Restraint orders

10. (1) The High Court may by order (in this Ordinance referred to as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply—

- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 11.

(ii) 根據《刑事訴訟程序條例》(第221章)第114(1)條訂定，而當時被告仍未被判處的監禁期，

均須不予理會。

(6) 《刑事訴訟程序條例》(第221章)第109A條不適用於法庭根據本條訂定的監禁期。

限制令、抵押令可於甚麼情況下發出

9. (1) 第10(1)及11(1)條賦予高等法院的權力，可於以下情況下行使——

(a) 檢控被告販毒罪行的訴訟已於香港提起；

(b) 該訴訟尚未結束；並且

(c) 高等法院信納有合理理由相信被告曾經從販毒獲利。

(2) 高等法院如信納以下事情，亦可行使該等權力——

(a) 某人將會在香港被控以販毒罪行，不論是以向裁判司告發或其他方式提控；及

(b) 有合理理由相信他曾經從販毒獲利。

(3) 為第10及11條的目的，如在提起訴訟前的任何時間行使該等權力——

(a) 本條例內凡提述被告，須解釋為第(2)(a)款所指的人；

(b) 本條例內凡提述檢控官，須解釋為高等法院信納為將會負責進行檢控的人；及

(c) 本條例內凡提述可變現財產，須當作於緊接該時間之前已對第(2)(a)款所指的人就販毒罪行提起訴訟而予以解釋。

(4) 高等法院根據第(2)款而在第10(1)或11(1)條下發出命令後，如有關販毒罪行的訴訟沒有於它認為合理的時間內提起，高等法院須把命令撤銷。

限制令

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

(2) 限制令可適用於——

(a) 命令內指明的人所持有的所有可變現財產，不論有關財產是否在命令內說明；及

(b) 命令內指明的人所持有的可變現財產，而有關財產是在法庭發出命令後才移轉給他的。

(3) 對於正受在第11條下發出的抵押令所限的財產，本條沒有效力。

(4) A restraint order—

- (a) may be made only on an application by the prosecutor;
- (b) may be made on an ex parte application to a judge in chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the offence are concluded.

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

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

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

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

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

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

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

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

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

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

Charging orders in respect of land, securities, etc.

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

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

(4) 限制令——

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

(5) 限制令——

- (a) 可就任何財產予以撤銷或更改；及
 - (b) 在有關的刑事訴訟結束之後，必須撤銷。
- (6) 撤銷或更改限制令的申請，可由任何受該命令影響的人提出。

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

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

高等法院並可要求任何管有有關財產（即在本條下委任接管人接管的財產）的人，把該財產交予接管人接管。

(8) 為本條的目的，處理任何人持有的財產，在該詞句的一般性含義不受影響下，包括——

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

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

(10) 根據第(9)款扣押的財產，須依循高等法院的指示處理。

(11) 限制令內指明的任何財產如為不動產，為《田土註冊條例》(第128章)的目的，該命令須——

- (a) 視為涉及土地的法律文件；及
- (b) 可根據該條例，以田土註冊署長認為適當的方式，在田土註冊署註冊為涉及土地的法律文件。

就土地、證券等財產發出抵押令

11. (1) 高等法院可就可變現財產發出抵押令，以作為向政府繳付以下款額的抵押——

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

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

(3) A charging order—

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

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

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance—
 - (i) in any asset of a kind specified in Schedule 2; or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first mentioned trust.

(5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind specified in Schedule 2, the High Court may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset.

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

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

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

Realisation of property

12. (1) Where—

- (a) in proceedings instituted for a drug trafficking offence, a confiscation order is made;
- (b) the order is not subject to appeal or review within the meaning of section 2(13); and
- (c) the proceedings have not been concluded,

the High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6).

(2) 為本條例的目的，“抵押令”指根據本條發出、以命令內指明的可變現財產作為抵押以擔保向政府繳付款項的命令。

(3) 抵押令——

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

(4) 除第(6)款另有規定外，抵押令祇可用以下財產作為抵押——

- (a) 可變現財產的任何權益，而是由被告實質持有的，或是由被告直接或間接向他作出受本條例固制的饋贈的人實質持有的，而且是——

(i) 屬於附表2指明的資產類別的；或

(ii) 在任何信託形式下持有的；或

- (b) 由一個人以受託人身份持有的可變現財產的權益，但須是屬於該資產的，或須是屬於另一個信託下的，而根據(a)段可以抵押令將最先提及的信託之下的全部實質權益作為抵押的。

(5) 如抵押令把屬於附表2所指明類別的資產的權益作為抵押，高等法院可規定將就有關資產而交付的利息、股息、其他分發的利益，以及派發的紅利，包括在抵押物之內。

(6) 高等法院可發出命令撤銷或更改抵押令；如有關刑事訴訟已經結束，或抵押令所擔保交付的款額已經交付高等法院，高等法院必須發出命令撤銷抵押令。

(7) 撤銷或更改抵押令的申請，可由受該命令影響的任何人提出。

(8) 除本條例另有規定外，抵押令所施加的抵押，與由實質權益持有人或受託人以書面親筆簽署定立的衡平法抵押一樣，具有相同效力，並可以相同方式執行。

財產的變現

12. (1) 凡——

- (a) 高等法院在審訊販毒罪行的刑事訴訟中發出沒收令；
- (b) 該命令是第2(13)條所指的不受上訴或覆核所限；並且
- (c) 訴訟未曾結束，

經檢控官提出申請，高等法院可行使第(2)至(6)款所賦予的權力。

- (2) The High Court may appoint a receiver in respect of realisable property.
- (3) The High Court may empower a receiver appointed under subsection (2), under section 10 or in pursuance of a charging order—
- (a) to enforce any charge imposed under section 11 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 11, to take possession of the property subject to such conditions or exceptions as may be specified by the High Court.
- (4) The High Court may order any person having possession of realisable property to give possession of it to any such receiver.
- (5) The High Court may empower any such receiver to realise any realisable property in such manner as the High Court may direct.
- (6) The High Court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Ordinance as the High Court may direct and the High Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 11.
- (8) The High Court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the High Court.

Application of proceeds of realisation and other sums

13. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 10 or 12 or in pursuance of a charging order, that is—
- (a) the proceeds of the enforcement of any charge imposed under section 11;
 - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 10 or 12; 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 18(2) and then shall, after such payments (if any) as the High Court may direct have been made out of those sums—
- (i) be payable to the Registrar; and
 - (ii) be applied on the defendant's behalf towards the satisfaction of the confiscation order in the manner provided by subsection (3).
- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums—
- (a) among such of those who held property which has been realised under this Ordinance; and
 - (b) in such proportions,
- as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the High Court.

- (2) 高等法院可委任接管人，接管可變現財產。
- (3) 高等法院可授權予根據第(2)款、第10條或抵押令而委任的接管人——
- (a) 執行任何第11條下施加於可變現財產上，就該筆財產所繳付利息、股息、其他分發的利益，以及派發的紅利；及
- (b) 就不屬於在第11條下受抵押令所限的可變現財產，在不抵觸高等法院所指定的條件或例外情況下，接管該等財產。
- (4) 高等法院可命令任何管有可變現財產的人，把可變現財產交予上述任何接管人。
- (5) 高等法院可授權予上述任何接管人，依照高等法院指示的方式，把任何可變現財產變現。
- (6) 高等法院可命令任何持有可變現財產的權益的人，就被告或受本條例限制的饋贈的收受人所持有的實質權益，將高等法院所指示的款項交付接管人；款項交付後，高等法院可下令將有關財產的任何權益予以移轉、授予或取消。
- (7) 第(4)至(6)款不適用於正在受第11條下的抵押令所限的財產。
- (8) 在有關財產的權益持有人未獲得合理機會向高等法院申述意見之前，高等法院不得就任何財產行使第(3)(a)、(5)或(6)款所賦予的權力。

變現得益及其他款項的運用

13. (1) 除第(2)款另有規定外，在根據第10或12條或抵押令而委任的接管人手下的以下款項，即——
- (a) 因執行根據第11條施加的任何抵押權而獲得的得益；
 - (b) 因根據第10或12條把任何財產變現而獲得的得益(因執行抵押權而獲得的得益除外)；及
 - (c) 屬於被告所持有的財產的任何其他款項，
- 須首先用以支付以債務處理人身分行事的人所引致，而根據第18(2)條須支付的開支，然後須在依照高等法院的指示扣除任何支出之後——
- (i) 交付與經歷司；並
 - (ii) 依照第(3)款規定的方式，為被告繳付根據沒收令所須付的款項。
- (2) 如根據沒收令須繳的款額全數清償後，仍有款項在接管人手中，接管人須於有關人等獲得合理機會向高等法院申述意見之後，把款項——
- (a) 分發予高等法院所指示的而曾持有根據本條例變現的財產的人；並且
 - (b) 依照高等法院所指示的比率分發。

(3) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar shall apply the sum received for the purposes specified in this section and in the order so specified.

(4) The Registrar shall first pay any expenses incurred by a person acting as an insolvency officer and payable under section 18(2) but not already paid under subsection (1).

(5) If the sum was paid to the Registrar by a receiver appointed under section 10 or 12 or in pursuance of a charging order the Registrar shall next pay the receiver's remuneration and expenses.

(6) After making—

(a) any payment required by subsection (4); and

(b) in a case to which subsection (5) applies, any payment required by that subsection,

the Registrar shall reimburse any amount paid under section 19(2).

(7) Any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be disposed of under section 93 of the Interpretation and General Clauses Ordinance (Cap. 1) as if it were a fine imposed under the authority of an Ordinance.

Exercise of powers by High Court or receiver

14. (1) The following subsections apply to the powers conferred on the High Court by sections 10 to 13, or on a receiver appointed under section 10 or 12 or in pursuance of a charging order.

(2) Subject to subsections (3), (4), (5) and (6), the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

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

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

Variation of confiscation orders

15. (1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the High Court shall make an order—

(3) 經歷司收到的任何就沒收令繳付的款項，須用作扣除要繳付的款項中的相同數額，但經歷司須將收到的款項，用於本條指明的用途，及依本條指明的次序使用。

(4) 經歷司須首先支付以債務處理人身分行事的人所引致的開支，而這些開支是根據第 18(2) 條須支付但尚未根據第 (1) 款支付的。

(5) 如該款項是由根據第 10 或 12 條或是依照抵押令委任的接管人交付經歷司的，則經歷司接着須支付接管人的薪酬及開支。

(6) 經歷司——

(a) 在作出第 (4) 款規定的付款後；及

(b) 在第 (5) 款適用的情況下，作出該款規定的付款後，

須償付根據第 19(2) 條支付的數額。

(7) 在經歷司作出上述各款所規定的付款後的餘款，須依照《釋義及通則條例》(第 1 章) 第 93 條處置，猶如它是依據任何條例的權限而判處的罰款。

高等法院或接管人權力的行使

14. (1) 以下各款適用於第 10 至 13 條所賦予高等法院，或賦予根據第 10 或 12 條或抵押令而委任的接管人的權力。

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

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

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

(5) 對於政府所欠債項，可由高等法院發出命令，亦可採取其他辦法處理。

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

沒收令的更改

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

- (a) substituting for the amount to be recovered under the confiscation order such lesser amount as the High Court thinks just in all the circumstances of the case; and
 - (b) substituting for the term of imprisonment fixed under section 8 in respect of the amount to be recovered under the confiscation order a shorter term determined in accordance with that section in respect of the lesser amount.
- (2) For the purposes of subsection (1)—
- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the High Court shall take into account the extent to which any property held by him may be distributed among creditors; and
 - (b) the High Court may disregard any inadequacy in the realisable property which appears to the High Court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Ordinance from any risk of realisation under this Ordinance.

Bankruptcy of defendant, etc.

16. (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 10(7) or 12(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 12,

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 High Court by sections 10 to 13 shall not be exercised in relation to—

- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap. 6); and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 30(3) of the Bankruptcy Ordinance (Cap. 6).

(3) Nothing in the Bankruptcy Ordinance (Cap. 6) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the High Court by sections 10 to 13.

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

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

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

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

- (a) 以高等法院認為在案件所有情況下算是公平的較低款額，替代根據沒收令須追討的款額；及
 - (b) 按上述較低款額，依照第 8 條定出較短監禁期，以替代原本按根據沒收令須追討的款額而依照該條訂定的監禁期。
- (2) 為第 (1) 款的目的——
- (a) 如可變現財產的持有人已被裁定破產，或該人的產業已被暫時扣押，高等法院須考慮他所持有的財產中可被分發予債權人的程度；及
 - (b) 如高等法院認為可變現財產的不足，可完全或部分歸因於被告曾作出任何行動，以保留他曾直接或間接作出受本條例限制的饋贈的人所持有的任何財產，使其不因本條例而被變現，則對於因此引致的不足，可不予理會。

被告破產及其他

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

- (a) 當時正受限制令所限的財產，而限制令是在裁定破產令之前發出的；及
- (b) 當時已根據第 10 或 12 條委任的接管人手中，憑藉第 10(7)、12(5) 或 (6) 條把財產變現而獲得的任何得益。

(2) 任何人被裁定破產後，第 10 至 13 條賦予高等法院的權力即不得就以下財產行使——

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

(3) 《破產條例》(第 6 章)的任何規定，不得視為限制第 10 至 13 條所賦予高等法院的權力的行使，或使該等權力的行使受到限制。

(4) 抵押令如——

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

則第 (2) 款不影響該抵押令的執行。

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

(6) 凡任何人被裁定破產，而他又曾經直接或間接作出受本條例限制的饋贈——

- (a) a court shall not make an order under—
- (i) section 31, 47 or 49 of the Bankruptcy Ordinance (Cap. 6); or
 - (ii) section 60 of the Conveyancing and Property Ordinance (Cap. 219),
- in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under any of those sections after the conclusion of the proceedings shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made.

Winding up of company holding realisable property

17. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 10(7) or 12(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 12.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 10 to 13 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

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

(3) Nothing in the Companies Ordinance (Cap. 32) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the High Court by sections 10 to 13.

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

(5) In this section—

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

“the relevant time” means—

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

- (a) 法庭不得在提控他販毒罪行的訴訟結束前，或在饋贈收受人的財產受限制令或抵押令所限期間，就所作出的饋贈根據以下條文發出命令——

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

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

可變現財產持有公司的清盤

17. (1) 凡一間公司持有可變現財產，而清盤命令已就該公司發出或該公司已通過決議自行清盤，則清盤人(或任何暫委清盤人)的職能不得就以下財產行使——

- (a) 當時正受限制令所限的財產，而限制令是在有關時間前發出的；及
- (b) 當時已根據第10或12條委任的接管人手中，憑藉第10(7)、12(5)或(6)條把財產變現而獲得的任何得益。

(2) 對一間公司來說，如第(1)款所指的命令已經發出，或該款所指的決議已經通過，則第10至13條賦予高等法院的權力，不得行使於該公司所持有而清盤人可對其行使職能的任何可變現財產上——

- (a) 以限制清盤人行使他的職能，以期把公司持有的任何財產分發予公司的債權人；或
- (b) 以阻止從任何財產中支付在清盤過程中就該等財產正當支出的費用(包括清盤人或暫委清盤人的薪酬)。

(3) 《公司條例》(第32章)的任何規定，不得視為限制第10至13條所賦予高等法院的權力的行使，或使該等權力的行使受到限制。

(4) 第(2)款不影響在有關時間前所發出的抵押令的執行，亦不影響在有關時間受限制令所限的財產作抵押的抵押令的執行。

(5) 在本條內——

“公司”指任何可以根據《公司條例》(第32章)進行清盤的公司；

“有關時間”的意思——

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

Insolvency officers dealing with property subject to restraint order

18. (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 other person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence; and the insolvency officer shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any insolvency officer who incurs expenses—

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

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 13(1) or (3).

(3) In this section “insolvency officer” 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).

Receivers: supplementary provisions

19. (1) Where a receiver appointed under section 10 or 12 or in pursuance of a charging order takes any action—

- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 13(3), be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

債務處理人處理受限制令規限的財產

18. (1) 凡——

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

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

(2) 債務處理人在以下情況下引致開支（不論他是否已扣押或處置有關財產，以便享有第(1)(a)款下的留置權），即有權根據第13(1)或(3)條獲得償還該等開支——

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

(3) 在本條內，“債務處理人”指——

- (a) 破產管理官；或
- (b) 用以下身分行事的人——
 - (i) 根據《破產條例》（第6章）委任的接管人、暫委接管人、特別經理人或破產管理人；或
 - (ii) 根據《公司條例》（第32章）委任的清盤人、暫委清盤人或特別經理人。

接管人：補充條文

19. (1) 凡根據第10或12條或抵押令而委任的接管人——

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

則除因他的疏忽而造成的損失外，他不須對他的行動所引致的損失向任何人負責。

(2) 接管人的薪酬及開支，如在第13(3)條下沒有款項可供支付，須由檢控官支付；在沒有提起審訊販毒罪訴訟的情況下，則該等開支須由提出申請而就其申請引致接管人被委任的人支付。

PART IV

INVESTIGATIONS INTO DRUG TRAFFICKING

Order to make material available

20. (1) An authorized officer may, for the purpose of an investigation into drug trafficking, apply to a court for an order under subsection (2) in relation to particular material or material of a particular description.

(2) Subject to section 23(10), the court may, if on such an application it is satisfied that the conditions in subsection (4) are fulfilled, make an order that the person who appears to the court to be in possession of the material to which the application relates shall—

- (a) produce the material to an authorized officer for him to take away; or
- (b) give an authorized officer access to it,

within such period as the order may specify.

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

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

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) 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 investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it,that the material should be produced or that access to it should be given.

(5) Where a court makes an order under subsection (2)(b) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to 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.

(6) Rules of court may provide for—

- (a) the discharge and variation of orders under this section; and
- (b) proceedings relating to such orders.

(7) 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) 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

第IV部

偵查販毒

提交物料令

20. (1) 為偵查販毒的目的，獲授權人可就某一物料或某一種類的物料，向法院申請第(2)款下的命令。

(2) 除第23(10)條另有規定外，法庭接獲該項申請後，如信納已經符合第(4)款的條件，可發出命令，飭令法庭認為是管有與申請有關的物料的人在命令內所指明的期限之內——

- (a) 把物料交給獲授權人帶走；或
- (b) 讓獲授權人取覽該物料。

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

(4) 第(2)款所指的條件，是——

- (a) 有合理理由懷疑指明的人曾經從事販毒或從販毒獲利；
- (b) 有合理理由相信與申請有關的物料——

(i) (不論是物料本身或連同其他物料)對與申請有關的偵查，相當可能有重大價值；及

(ii) 沒有包括享有法律特權的品目，亦不是由該等品目組成；並且

(c) 經考慮——

- (i) 取得物料後對偵查可能帶來的利益；及
- (ii) 物料管有人在甚麼情況下持有該物料，

有合理理由相信把物料交予獲授權人或讓他們取覽，是符合公眾利益的。

(5) 凡法庭根據第(2)(b)款就任何房產內的物料發出命令，法庭並可應獲授權人在同一或隨後的申請，命令獲授權人認為是有權准許別人進入房產的人，准許獲授權人進入房產以取覽有關物料。

(6) 法庭規則可就以下兩項作出規定——

- (a) 根據本條所發出的命令的撤銷及更改；及
- (b) 與該等命令有關的訴訟。

(7) 凡與在本條下提出的申請有關的物料為數據設備儲存或可藉數據設備取覽的資料——

- (a) 根據第(2)(a)款發出的命令，須當為飭令把物料以一種可以帶走、可以看到及可以閱讀的形式，交給獲授權人帶走的命令；及

- (b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (8) In subsection (7), "data equipment" 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).
- (9) An order under subsection (2)—
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
 - (c) may be made in relation to material in the possession of a public body as defined in section 23.

Authority for search

21. (1) An authorized officer may, for the purpose of an investigation into drug trafficking, apply to a court for a warrant under this section in relation to specified premises.

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

- (a) that an order made under section 20 in relation to material on the premises has not been complied with; or
 - (b) that the conditions in subsection (3) are fulfilled; or
 - (c) that the conditions in subsection (4) are fulfilled.
- (3) The conditions referred to in subsection (2)(b) are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
 - (b) that the conditions in section 20(4)(b) and (c) are fulfilled in relation to any material on the premises; and
 - (c) that it would not be appropriate to make an order under that section in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material; or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material.

- (b) 根據第(2)(b)款發出的命令，須當為飭令把物料以一種可以看到及可以閱讀的形式，供獲授權人取覽的命令。
- (8) 在第(7)款中，“數據設備”指——
 - (a) 自動處理資料的任何設備；
 - (b) 自動記錄或儲存資料的任何設備；
 - (c) 能用以使資料在其他設備(不論位於何處)自動記錄、儲存或以其他方法處理的任何設備；
 - (d) 能用以翻查資料的任何設備，不論這些資料是由設備本身或由其他設備(不論位於何處)記錄或儲存。
- (9) (a) 根據第(2)款發出的命令，不得賦予要求提交或取覽享有法律特權的品目的權力；
- (b) 縱使法規或其他方面規定有保密責任或對資料的披露有其他限制，根據第(2)款所發的命令的效力不受影響；
- (c) 根據第(2)款發出的命令，可就第23條所界定的公共機構所管有的物料發出。

搜查的權限

21. (1) 為偵查販毒的目的，獲授權人可向法庭申請就指明的房產發出本條下的令狀。

(2) 法庭接獲該項申請後，如信納——

- (a) 根據第20條就該房產內的物料發出的命令，未予遵行；或
- (b) 已符合第(3)款的條件；或
- (c) 已符合第(4)款的條件，

可以簽發令狀，授權獲授權人進入房產搜查。

(3) 第(2)(b)款所指的條件，是——

- (a) 有合理理由懷疑指明的人曾經從事販毒或從販毒獲利；及
- (b) 對該房產內的任何物料來說，已符合第20(4)(b)及(c)條的條件；及
- (c) 由於以下原因，不適宜根據該條就該物料發出命令——

- (i) 如要聯絡任何有權提交有關物料的人，並不切實可行；或
- (ii) 如要聯絡任何有權准許別人取覽有關物料的人，或任何有權准許別人進入有關物料所在房產的人，並不切實可行；或
- (iii) 除非獲授權人能立即取覽有關物料，否則與該項申請有關的偵查可能受到嚴重妨害。

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

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
- (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized; and
- (c) that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.

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

(6) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable—

- (a) on conviction upon indictment to a fine of \$250,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine of \$50,000 and to imprisonment for 6 months.

Supplementary provisions to sections 20 and 21

22. (1) An authorized officer may photograph or make copies of any material—

- (a) produced or to which access is given under section 20; or
- (b) seized under section 21.

(2) In sections 20 and 21—

“court” means the High Court and the District Court;

“items subject to legal privilege” 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

(4) 第(2)(c)款所指的條件，是——

- (a) 有合理理由懷疑指明的人曾經從事販毒或從販毒獲利；及
- (b) 有合理理由懷疑該房產內藏有與該指明的人有關或與販毒有獲的物料，而該物料（不論是物料本身或連同其他物料）對與申請有關的偵查，相當可能有重大價值，但在提出申請時不能就該物料詳細說明；及
- (c) (i) 如要聯絡任何有權准許別人進入該房產的人，並不切實可行；或
(ii) 除非出示令狀，否則不會獲准進入該房產；或
(iii) 除非獲授權人到達該房產時能立即進入該房產，否則與該項申請有關的偵查可能受到嚴重妨害。

(5) 凡獲授權人執行根據本條簽發的令狀進入房產後，可以扣押及扣留任何（不論是物料本身或連同其他物料）對與該令狀有關的偵查相當可能有重大價值的物料，但享有法律特權的品目除外。

(6) 任何人阻撓或妨礙獲授權人執行根據本條簽發的令狀，即屬犯罪——

- (a) 循公訴程序定罪，可處罰款 \$250,000 及監禁 2 年；或
- (b) 循簡易程序定罪，可處罰款 \$50,000 及監禁 6 個月。

第 20 及 21 條的補充條文

22. (1) 獲授權人可把以下物料攝影或複印——

- (a) 根據第 20 條向他提交或讓他取覽的物料；及
- (b) 根據第 21 條扣押的物料。

(2) 在第 20 及 21 條內——

“法庭”指高等法院或地方法院；

“享有法律特權的品目”指——

- (a) 專業法律顧問和他的當事人或當事人代表之間，與向當事人提供法律意見有關的通訊；
- (b) 專業法律顧問和他的當事人或當事人代表之間，或該等顧問、當事人或當事人代表和任何其他人士之間，就有關法律訴訟或在預期進行訴訟的情況下及為該等訴訟的目的而作出的通訊；及

- (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;

“premises” includes any place and, in particular, includes—

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

Disclosure of information held by public bodies

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

- (2) The power to make an order under subsection (1) is exercisable if—
- (a) the powers conferred on the High Court by sections 10(1) and 11(1) are exercisable by virtue of section 9(1); or
 - (b) those powers are exercisable by virtue of section 9(2) and the High Court has made a restraint or charging order which has not been discharged,

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 9(3) shall apply for the purposes of this section as it applies for the purposes of sections 10 and 11.

- (3) The material referred to in subsection (1) is any material which—
- (a) has been submitted to an officer of a public body by the defendant or by a person who has at any time held property which was realisable property;
 - (b) has been made by an officer of a public body in relation to the defendant or such a person; or
 - (c) is correspondence which passed between an officer of a public body and the defendant or such a person,

and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the body concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the High Court by sections 10 to 12 or on a receiver appointed under section 10 or 12 in pursuance of a charging order.

(5) The High Court may by order authorize the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the High Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the public body to make representations to the High Court.

- (c) 該等通訊中所附有或提及的品目，而該等品目又是——
- (i) 與提供法律意見有關而作出；或
 - (ii) 就有關法律訴訟或在預期進行法律訴訟的情況下及為該等訴訟的目的而作出，
- 且正由有權管有它們的人所管有，但無論在任何情況下，都不包括為意圖助長犯罪目的而持有的品目或作出的通訊；

“房產”包括任何地方，尤其包括——

- (a) 任何車輛、船隻、飛行器、汽墊船或離岸結構；及
- (b) 任何帳幕或可移動的結構。

公共機構所持有的資料的披露

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

- (2) 根據第(1)款發出命令的權力，可在以下情況下行使——
- (a) 可憑藉第9(1)條行使第10(1)及11(1)條賦予高等法院的權力；或
 - (b) 可憑藉第9(2)條行使該等權力，及高等法院已經發出限制令或抵押令，而該等命令未曾撤銷。

但如根據第(1)款發出命令的權力是單獨憑藉(b)段而可行使，則第9(3)條可以為本條的目的而引用，一如它可以為第10及11條的目的而引用。

- (3) 第(1)款所指的物料，是——
- (a) 由被告，或由在任何時間曾經持有可變現財產的人，交給公共機構人員的任何物料；
 - (b) 由公共機構人員就被告或該人而造的任何物料；或
 - (c) 屬於公共機構人員和被告或該人之間的通信的任何物料，

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

(4) 除非高等法院認為有關物料相當可能包含某些資料，而這些資料有助於高等法院行使第10至12條所賦予的權力，或有助於根據第10或12條或抵押令而委任的接管人行使所獲賦的權力，否則不得藉第(1)款下的命令飭令提交任何物料。

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

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Ordinance of the receiver or the High Court.

(7) The High Court may by order authorize the disclosure to an authorized officer of any material produced under subsection (1) or any part of such material; but the High Court shall not make an order under this subsection unless—

- (a) a reasonable opportunity has been given for an officer of the public body to make representations to the High Court; and
- (b) it appears to the High Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.

(8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.

(9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(10) An order under subsection (1) and, in the case of material in the possession of a public body, an order under section 20(2) may require any officer of the public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Crown.

(11) In this section “public body” means—

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

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

Offence of prejudicing investigation

24. (1) Where, in relation to an investigation into drug trafficking, an order under section 20 has been made or has been applied for and has not been refused or a warrant under section 21 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation commits an offence.

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

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
 - (b) that he had lawful authority or reasonable excuse for making the disclosure.
- (3) A person who commits an offence under this section is liable—
- (a) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 3 years; or
 - (b) on summary conviction to a fine of \$100,000 and to imprisonment for 1 year.

(6) 根據第(5)款下的命令而披露的物料，除命令內另有條件規限外，為接管人或高等法院履行本條例下的職能，可進一步披露。

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

- (a) 該公共機構的人員已經獲得合理機會向高等法院申述意見；及
- (b) 高等法院認為該物料可能對行使與販毒有關的職能有重大價值，

否則高等法院不得根據本款發出命令。

(8) 根據第(7)款下的命令而披露的資料，除命令內另有條件規限外，為與販毒有關的職能的目的，可進一步披露。

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

(10) 第(1)款下的命令及(在物料由公共機構管有的情況下)第20(2)款下的命令，可以飭令公共機構內當時管有該有關物品的任何人員(不論該人員的姓名是否在命令內說明)履行命令；而該命令的送達方式，恰如在控告政府的民事訴訟程序所採用的。

(11) 在本條內，“公共機構”指——

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

(12) 總督可藉憲報公告，指明任何機構為本條所指的公共機構。

妨害偵查罪行

24. (1) 對有關販毒的偵查來說，凡法庭已發出第20條下的命令，或檢控官已提出申請第20條下的命令而申請沒有被拒絕，或法庭已簽發第21條下的令狀，任何人知道或懷疑偵查正在進行而作出可能妨害偵查的任何披露，即屬犯罪。

(2) 在檢控任何人犯本條下的罪行的訴訟中，被告可證明以下事情作為免責辯護——

- (a) 他不知道亦沒有懷疑該項披露可能妨害偵查；或
 - (b) 他有合法權限作出該項披露或對作出該項披露有合理解釋。
- (3) 任何人犯本條下的罪行——
- (a) 循公訴程序定罪，可處罰款\$500,000及監禁3年；或
 - (b) 循簡易程序定罪，可處罰款\$100,000及監禁1年。

Assisting another to retain the benefit of drug trafficking

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

- (a) the retention or control by or on behalf of another ("the relevant person") of the relevant person's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) the relevant person's proceeds of drug trafficking—
 - (i) are used to secure that funds are placed at the relevant person's disposal; or
 - (ii) are used for the relevant person's benefit to acquire property by way of investment,

knowing or having reasonable grounds to believe that the relevant person is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, commits an offence.

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

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

- (a) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is—
 - (i) it is made before he does the act concerned, being an act done with the consent of the authorized officer; or
 - (ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it;
 - (b) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by rules of professional conduct; and
 - (c) he shall not be liable in damages for any loss arising out of—
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the funds or investments in consequence of the disclosure.
- (4) In proceedings against a person for an offence under this section, it is a defence to prove—
- (a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking; or
 - (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of the relevant person of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1); or

協助他人保留販毒利益

25. (1) 除第(3)款另有規定外，任何人知道或有合理理由相信另一人("有關的人")從事販毒、曾經從事販毒或曾經從販毒獲利，而直接參與或以其他方式參與任何安排，從而——

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

該人即屬犯罪。

(2) 在本條內，凡提述任何人的販毒得益，所指包括在該人手中全部或部分、直接或間接代表他的販毒得益的任何財產。

(3) 凡任何人向獲授權人披露他懷疑或相信某些資金或投資是從販毒得來或被用於與販毒有關的用途上，或披露該項懷疑或信念所根據的任何事情——

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

(4) 在檢控任何人犯本條下的罪行的訴訟中，被告可證明以下事情作為免責辯護——

- (a) 他不知道亦沒有懷疑該項安排與任何人的販毒得益有關；或
- (b) 他不知道亦沒有懷疑該項安排曾經方便有關的人或其代表保留或控制任何財產，或他不知道亦沒有懷疑任何財產曾經藉該項安排依照第(1)款所述的方式而運用；或

(c) that—

(i) he intended to disclose to an authorized officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; but

(ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(a).

(5) A person who commits an offence under this section is liable—

(a) on conviction upon indictment to a fine of \$5,000,000 and to imprisonment for 14 years; or

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 3 years.

Restriction on revealing disclosure under section 25

26. (1) Subject to subsection (2), no witness in any civil or criminal proceedings shall be obliged—

(a) to reveal that a disclosure was made under section 25(3);

(b) to reveal the identity of any person as the person making the disclosure; or

(c) to answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b).

(2) Subsection (1) shall not apply in any proceedings—

(a) for an offence under section 25 or this section; or

(b) where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.

(3) Subject to subsections (4), (5) and (6), no person shall publish or broadcast any information so as to reveal or suggest—

(a) that a disclosure was made under section 25(3); or

(b) the identity of any person as the person making the disclosure.

(4) In subsection (3) “information”—

(a) includes a report of any civil or criminal proceedings;

(b) does not include information published for statistical purposes by, or under the authority of, the Government.

(5) Subsection (3) shall not apply in respect of proceedings—

(a) against the person making the disclosure for an offence under section 25; or

(b) for an offence under this section.

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

(c) (i) 他曾意圖向獲授權人就該項安排披露第(3)款所述的懷疑、信念或事情；但

(ii) 對於未能依照第(3)(a)款作出披露，他有合理解釋。

(5) 任何人犯本條下的罪行——

(a) 循公訴程序定罪，可處罰款 \$5,000,000 及監禁 14 年；或

(b) 循簡易程序定罪，可處罰款 \$500,000 及監禁 3 年。

限制公開第 25 條下的披露

26. (1) 除第(2)款另有規定外，在任何民事或刑事訴訟中，不得迫使任何證人——

(a) 公開有人曾經根據第 25(3) 條作出披露；

(b) 公開某人為披露人；或

(c) 回答任何問題，如答案會直接或間接引致公開 (a) 或 (b) 段所指的任何事情的。

(2) 在任何訴訟中，如有以下情況，則第(1)款不適用——

(a) 所檢控的是第 25 或本條下的罪行；或

(b) 法庭認為必須公開該項披露或某人為披露人，方能在各當事人之間秉行公正。

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

(a) 公開或暗示有人曾經根據第 25(3) 條作出披露；或

(b) 公開或暗示某人為披露人。

(4) 在第(3)款內，“資料”——

(a) 包括任何民事或刑事訴訟的報導；

(b) 不包括為統計目的由政府出版或經政府批准而出版的資料。

(5) 第(3)款不適用於——

(a) 檢控披露人犯第 25 條下的罪行的訴訟；或

(b) 審訊本條下的罪行的訴訟。

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

(7) If information is published or broadcast in contravention of subsection (3), each of the following persons—

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

commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 6 months.

(8) Proceedings for an offence under this section shall not be instituted except with the consent of the Attorney General.

(9) In this section—

“broadcast” includes broadcast by radio, film, videotape or television;

“publish” means publish in writing.

Compensation

27. (1) If an investigation is begun against a person for a drug trafficking offence or offences and any of the following circumstances occur, namely—

- (a) no proceedings are instituted against that person;
- (b) proceedings are instituted against that person but do not result in his conviction for any drug trafficking offence; or
- (c) proceedings are instituted against that person and he is convicted of one or more drug trafficking offences, but—
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is granted a pardon in respect of the conviction or convictions concerned,

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

(2) The High Court shall not order compensation to be paid under subsection (1) unless it is satisfied—

- (a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the High Court under sections 10 to 12.

(3) The High Court shall not order compensation to be paid under subsection (1) in any case where it appears to the High Court that the investigation would have been continued, or the proceedings would have been instituted or continued, as the case may be, if the serious default had not occurred.

(7) 如有資料在違反第(3)款的情況下出版或廣播，以下各人都屬犯罪，一經定罪，可處罰款\$50,000及監禁6個月——

- (a) (如果出版資料是報章或期刊的一部分)報章或期刊的東主、編輯、出版人及發行人；
- (b) (如果出版資料不是報章或期刊的一部分)出版或發行該出版資料的人；
- (c) (如果是廣播資料)廣播資料的人，及在資料屬於節目內容的情況下，傳播或提供節目的人，及在該節目中擔任相當於報章或期刊編輯的職能的人。
- (8) 未得律政司同意，不得提起檢控本條下罪行的訴訟。

(9) 在本條內——

“廣播”包括以無線電訊、電影、錄像帶或電視廣播；

“出版”指以文字出版。

賠償

27. (1) 如在對任何人就一項或以上販毒罪行展開偵查之後，有以下任何一種情形出現——

- (a) 沒有起訴該人；
- (b) 曾起訴該人，但結果沒有裁定他任何販毒罪名成立；或
- (c) 曾起訴該人，而他被判一項或以上販毒罪名成立，但——
 - (i) 有關的判罪被推翻；或
 - (ii) 他被赦免有關的判罪，

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

(2) 高等法院除非信納以下兩項，否則不得根據第(1)款命令作出賠償——

- (a) 參與調查或檢控有關罪行的任何人曾犯嚴重錯失；及
- (b) 因遵照或根據第10至12條下的高等法院命令而就該財產所作出的任何行動，已引致申請人蒙受損失。

(3) 在參與調查或檢控有關罪行的任何人曾犯嚴重錯失的情況下，即使高等法院認為假若該嚴重錯失沒有發生，偵查便會繼續，或訴訟便會提起或繼續，亦不得根據第(1)款命令作出賠償。

- (4) Without prejudice to subsection (1), where—
- (a) a disclosure is made by any person in accordance with section 25(3) in relation to any property;
 - (b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of a drug trafficking offence or offences any act is done or omitted to be done in relation to that property; and
 - (c) no proceedings are instituted against any person in respect of that offence or offences or no order is made by the High Court under section 10 or 11 in relation to that property,

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

(5) The High Court shall not order compensation to be paid under subsection (4) unless it is satisfied—

- (a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence or offences concerned and that, but for that default, the act or omission referred to in subsection (4)(b) would not have occurred; and
- (b) the applicant has, in consequence of the act or omission referred to in subsection (4)(b), suffered loss in relation to the property.

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

Enforcement of external orders

28. (1) The Governor in Council may, with the approval of the Legislative Council, by order—

- (a) direct in relation to a country or territory outside Hong Kong designated by the order (“a designated country”) that, subject to such modifications as may be specified, this Ordinance shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make—
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; and
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 29; and
 - (iii) such incidental, consequential and transitional provision, as appears to him to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds arising out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) An order under this section may make different provision for different cases or classes of case.

(4) 在不影響第(1)款的施行下，凡——

- (a) 任何人依照第25(3)條就任何財產作出披露；
- (b) 由於該項披露，及為了對販毒罪行作出偵查或提起檢控的目的，就該財產作出任何作為或不作為；及
- (c) 沒有就該販毒罪行起訴任何人，高等法院亦沒有根據第10或11條就該財產發出命令，

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

(5) 高等法院除非信納以下兩項，否則不得根據第(4)款命令作出賠償——

- (a) 參與調查或檢控有關罪行的任何人曾犯嚴重錯失，而如無該錯失，第(4)(b)款所指的作為或不作為便不會發生；及
 - (b) 因第(4)(b)款所指的作為或不作為，已引致申請人在該財產方面蒙受損失。
- (6) 在本條下須付的賠償額，為高等法院認為根據案件所有情況屬於公平的款額。

外地命令的執行

28. (1) 總督會同行政局在立法局批准下——

- (a) 就命令內指定的外國或外地(“指定國家”)，藉命令指示本條例在作出命令可指明的修改後，適用於外地沒收令，亦適用於已經或將會在該指定國家提起並可能導致在該國家發出沒收令的訴訟；
 - (b) 可藉命令制定以下他認為適當的條文——
 - (i) 與在指定國家採取行動有關的條文，目的在使沒收令得以圓滿執行；及
 - (ii) 為本條及第29條的目的，制定與任何事情的證據及舉證有關的條文；及
 - (iii) 制定附帶、相應及過渡性的條文；及
 - (c) 在不影響本款的一般性含義下，可藉命令指示在指明的情況下，為使沒收令得以圓滿執行而在指定國家採取行動所獲得，而又存留在該地的得益，須當為用以減少沒收令下須付的款額至指明的限度。
- (2) 根據本條發出的命令，可就不同案件或不同種類案件，制定不同的條文。

(3) The power to make an order under this section includes power to modify this Ordinance in such a way as to confer power on a person to exercise a discretion.

(4) In this section and section 29—

“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value;

“modifications” includes additions, alterations and omissions.

Registration of external confiscation orders

29. (1) On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if—

- (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 the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings 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” 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) The High Court shall cancel the registration of an external confiscation order if it appears to the High Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

Evidence of corresponding law

30. Section 43 of the Dangerous Drugs Ordinance (Cap. 134) shall apply in relation to proceedings under this Ordinance as it applies in relation to proceedings for an offence under that Ordinance.

Amendment of Schedules

31. The Governor in Council may, by order, amend Schedules 1 and 2.

Consequential Amendments

Bankruptcy Ordinance

Effect of order of discharge

32. Section 32(1) of the Bankruptcy Ordinance (Cap. 6) is amended by adding after paragraph (a)—

“(aa) from any liability to pay any amount under a confiscation order made under the Drug Trafficking (Recovery of Proceeds) Ordinance 1989 (35 of 1989); or”.

(3) 根據本條發出命令的權力，包括修改本條例，藉以授權某人行使酌情決定權的權力。

(4) 在本條及第 29 條內——

“外地沒收令”指爲了追討因販毒而收受的款項或其他酬賞或其價值，而由指定國家的法庭發出的命令；

“修改”包括增補、改動及刪削。

外地沒收令的登記

29. (1) 在以下情況下，高等法院可應指定國家的政府或其代表提出的申請，登記在該國家發出的外地沒收令——

- (a) 它信納在登記時，該命令是有效而又不受上訴規限的；
 - (b) 如該命令所針對的人沒有在訴訟中出席，它信納該人曾收到訴訟的通知，並有充份時間提出答辯；及
 - (c) 它認爲在香港執行該命令不會與司法公正相違背。
- (2) 在第(1)款內，“上訴”包括——
- (a) 任何爲撤銷或取消法庭判決而進行的訴訟；及
 - (b) 要求重審或停止執行法庭判決的申請。

(3) 如高等法院認爲外地沒收令所追討的款項已繳付，或該命令所針對的人經以監禁抵償未繳的款項，或該命令經以其他方法獲得圓滿執行，則高等法院須取消該命令的登記。

相應法律的證據

30. 《危險藥物條例》(第 134 章)第 43 條適用於本條例下的訴訟，一如它適用於提控該條例下罪行的訴訟。

修訂附表

31. 總督會同行政局可藉命令修訂附表 1 及附表 2。

相應修訂

《破產條例》

解除破產令的效力

32. 《破產條例》(第 6 章)第 32(1)條現予修訂，在(a)段後增補——

“(aa) from any liability to pay any amount under a confiscation order made under the Drug Trafficking (Recovery of Proceeds) Ordinance 1989 (35 of 1989); or”。

Customs and Excise Service Ordinance

Second Schedule amended

33. The Second Schedule to the Customs and Excise Service Ordinance (Cap. 342) is amended by adding at the end thereof—

“Drug Trafficking (Recovery of Proceeds) Ordinance 1989 (35 of 1989).”.

SCHEDULE 1

[s. 2]

DRUG TRAFFICKING OFFENCES

Offence	Description*
section 4(1), Dangerous Drugs Ordinance (Cap. 134)	trafficking in a dangerous drug
section 5(1), Dangerous Drugs Ordinance	supplying or procuring a dangerous drug to or for unauthorized persons
section 6(1), Dangerous Drugs Ordinance	manufacturing a dangerous drug
section 7(1), Dangerous Drugs Ordinance	possessing a dangerous drug for purpose of unlawful trafficking
section 9(1), (2) and (3), Dangerous Drugs Ordinance	Cultivating, supplying, procuring, dealing in, importing, exporting, or possessing cannabis plant or opium poppy
section 35, Dangerous Drugs Ordinance	keeping or managing a divan for the taking of dangerous drugs
section 37, Dangerous Drugs Ordinance	permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
section 25, Drug Trafficking (Recovery of Proceeds) Ordinance 1989 (35 of 1989)	assisting another to retain the benefit of drug trafficking

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

SCHEDULE 2

[s. 11]

ASSETS ON WHICH A CHARGING ORDER MAY BE IMPOSED

- Land in Hong Kong.
- Securities of any of the following kinds—
 - Government stock;
 - stock of any body incorporated in Hong Kong;
 - stock of any body incorporated outside Hong Kong or of any state or territory outside Hong Kong, being stock registered in a register kept at any place within Hong Kong;
 - units of any unit trust in respect of which a register of the unit holders is kept at any place within Hong Kong.
- In this Schedule—
 - the terms “Government stock” and “land” have the same meaning as in section 2 of the Supreme Court Ordinance (Cap. 4);
 - the terms “stock” and “unit trust” have the same meaning as in section 20A of that Ordinance.

《海關條例》

修訂第2附表

33. 《海關條例》(第342章)第2附表現予修訂，在下面加上——

“Drug Trafficking (Recovery of Proceeds) Ordinance 1989 (35 of 1989).”。

附表1

[第2條]

販毒罪行

罪行	說明*
《危險藥物條例》(第134章)第4(1)條	販賣毒品
《危險藥物條例》第5(1)條	向非獲授權人供應或為其採辦危險藥物
《危險藥物條例》第6(1)條	製造毒品
《危險藥物條例》第7(1)條	藏有毒品作非法販賣用途
《危險藥物條例》第9(1)、(2)及(3)條	種植、供應、採辦、經營、輸入、輸出或藏有大麻屬植物或鴉片罌粟
《危險藥物條例》第35條	開設或經營煙格作吸毒用途
《危險藥物條例》第37條	容許房產用作非法販賣、製造或貯存毒品用途
《1989年販毒(追討得益)條例》(1989年第35號)第25條	協助他人保留販毒利益

*註：本附表內的罪行簡單說明，祇為方便參考。

附表2

[第11條]

可施加抵押令的資產

- 香港境內土地。
- 以下各種證券：
 - 政府證券；
 - 在香港成立的任何公司的股份；
 - 在香港以外成立的公司的股份，或香港以外任何國家、地區的股份，而已登記在存放在香港境內的登記冊上的；
 - 任何單位信託基金的單位，而單位持有人的登記冊是存放在香港境內的。
- 在本附表內——
 - “政府證券”及“土地”兩詞的含義，與《最高法院條例》(第4章)第2條所指相同；
 - “股份”及“單位信託基金”兩詞的含義，與該條例第20A條所指相同。

Passed by the Hong Kong Legislative Council this 12th day of July 1989.

1989年7月12日由香港立法局通過。

LAW Kam-sang,
Clerk to the Legislative Council.

羅錦生，
立法局秘書

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

本人已將這印刷本與條例草案小心核對，並認為它是上述條例草案真實及印刷正確的版本。

LAW Kam-sang,
Clerk to the Legislative Council.

羅錦生，
立法局秘書