

## **For Information**

### **Legislative Council Panel on Security**

#### **2023 Implementation Rules for Amending the Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region**

### **PURPOSE**

This paper briefs Members on the 2023 Implementation Rules for Amending the Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("Amendment Rules") (at **Annex A**).

### **BACKGROUND**

2. Since 2021, the Secretary for Security has, by notices in writing, directed relevant persons not to directly or indirectly deal with specified offence related property ("freezing notice") in respect of a number of cases concerning offences endangering national security under section 3 of Schedule 3 to the Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("Implementation Rules"). The validity period of a freezing notice must not exceed two years unless the Court of First Instance grants an extension. For most freezing notices, the related cases concerning offences endangering national security are still under trial or pending trial. However, Schedule 3 to the Implementation Rules has not clearly specified if the validity period of the freezing notices can be extended before conclusion of the related proceedings upon expiry. This may lead to a substantial risk that the validity period of the freezing notices cannot be extended before conclusion of all the related proceedings, thus enabling defendants of cases concerning offences endangering national security to improperly deal with the offence related property before conclusion of the proceedings. There is an urgent need to further improve the relevant legal system and implementation mechanisms.

3. To timely guard against and resolve the above substantial risk, and address the legal and practical issues encountered in the

implementation of Schedule 3 to the Implementation Rules, thereby facilitating the Hong Kong Special Administrative Region (“HKSAR”) to carry out its duties to safeguard national security more effectively, the Chief Executive in conjunction with the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region (“the Committee”) has exercised the power provided under Article 43 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“the National Security Law”) to make the Amendment Rules, in order to amend Schedule 3 to the Implementation Rules. The aim is to put it beyond doubt that freezing notice issued under section 3 of Schedule 3 shall remain valid while the proceedings to which the notice relates are still pending.

## **JUSTIFICATIONS**

### **The Prevailing Law**

4. Pursuant to section 3(1) of Schedule 3 to the Implementation Rules, where the Secretary for Security has reasonable grounds to suspect that any property held by any person is offence related property, the Secretary may, by notice in writing specifying the property (i.e. freezing notice), direct that a person must not, directly or indirectly, deal with the property except under the authority of a licence granted by the Secretary. Under section 1 of Schedule 3 to the Implementation Rules, “offence related property” is defined as follows:

“offence related property (罪行相關財產) means —

(a) the property of a person—

(i) who commits, or attempts to commit, an offence endangering national security; or

(ii) who participates in or facilitates the commission of an offence endangering national security; or

(b) any property that is intended to be used or was used to finance or otherwise assist the commission of an offence endangering national security”

5. As pointed out in a judgment of the Court of First Instance<sup>1</sup>, the freezing notices served the following purposes:

(a) to preserve the property in question so that a confiscation or forfeiture order may be obtained (and enforced) in the future;

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<sup>1</sup> HCMP 956/2021 (date of judgment : 17 September 2021, at paragraphs 54 and 55)

- (b) to prevent the use of the property in question in financing or assisting any offence endangering national security; and
- (c) to prevent any dealing with the property in a manner which may prejudice on-going investigation or proceedings concerning an offence endangering national security.

6. Pursuant to sections 3(3) and (4) of Schedule 3 to the Implementation Rules (original version), the validity period of a freezing notice must not exceed 2 years unless the Court of First Instance has, on application by the Secretary for Security, granted an extension, or an application for restraint order<sup>2</sup>, charging order<sup>3</sup>, confiscation order<sup>4</sup> or forfeiture order<sup>5</sup> has been made in relation to the property, and the application is pending.

7. It is stipulated in section 3(4) of Schedule 3 to the Implementation Rules (original version) that:

“The Secretary for Security may make an application to the Court of First Instance for extending the validity period of the notice

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<sup>2</sup> The Court of First Instance may, on an application made by the Secretary for Justice or an authorised officer, by a restraint order prohibit any person from dealing with any realisable property. Where the Court of First Instance has made a restraint order, police officers may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property. (see sections 7(1) and (4) of Schedule 3 to the Implementation Rules)

<sup>3</sup> The Court of First Instance may, on an application made by the Secretary for Justice or an authorised officer, make a charging order on any realisable property a charge for securing the payment of money to the Government. (see sections 8(1) and (2) of Schedule 3 to the Implementation Rules)

<sup>4</sup> The Court of First Instance may, on an application made by the Secretary for Justice or an authorised officer, order the confiscation of the proceeds of crime of a defendant for an offence endangering national security. If the defendant has benefited from the offence endangering national security of which the defendant is convicted or could have been convicted, the court must determine the amount to be recovered and make a confiscation order, ordering the defendant to pay that amount within a fixed period. If any of that amount is not duly paid within that period, the defendant should be imprisoned. The terms of imprisonment depend on the amount payable, with a maximum of 10 years' imprisonment. (see sections 9(1), (5) and (8) of Schedule 3 to the Implementation Rules)

<sup>5</sup> The Court of First Instance may, on an application made by or on behalf of the Secretary for Justice, order the forfeiture of the offence related property. Any proceeds arising from an offence endangering national security, or property intended to be used or was used to finance or otherwise assist the commission of an offence endangering national security, can be forfeited by court order. (see section 13(1) of Schedule 3 to the Implementation Rules)

mentioned in subsection (3). The Court of First Instance must not grant the extension unless it is satisfied that the investigation of the offence endangering national security, to which the notice relates, could not reasonably have been completed before the expiry of the validity period of the notice. An extension must not exceed such time as is reasonably necessary for the conduct of the investigation (the Secretary may further apply for extension if necessary).”

8. Section 4 of Schedule 3 provides for matters including those relating to application for the revocation of a freezing notice, as well as application for the grant or variation of a licence to deal with the property made by the people affected to the Court of First Instance. The original legal provisions of sections 3 and 4 of Schedule 3 are at **Annex B**.

### **Problems encountered in the implementation of the prevailing law**

9. Taking into account the three purposes of a freezing notice as mentioned above, if the related proceedings are not yet concluded, the notice should remain valid to preserve the property in question so that an application for a confiscation or forfeiture order may be made when the proceedings are concluded, to prevent the use of the property in question in financing or assisting any offence endangering national security, and to prevent any improper dealing with the property which may prejudice police investigation or any proceedings.

10. However, the original provisions of Schedule 3 to the Implementation Rules have not clearly specified whether a freezing notice can be extended before conclusion of the related proceedings (especially proceedings of criminal prosecutions). Whether the validity period of a freezing notice can be extended depends on whether the court is satisfied that “the investigation of the offence endangering national security could not reasonably have been completed before the expiry of the validity period of the notice”. For cases that have been committed to the court for trial or those that even have proceeded to trial, there is room for dispute over whether the “investigation” of the offence endangering national security has been “completed”. If the court considers that the investigation should reasonably have been completed, it would not have the power to grant an extension. In such event, however, the offence related property may be improperly dealt with before conclusion of the related proceedings, thus resulting in national security risks.



## Specific Amendments

11. The Chief Executive is authorised, in conjunction with the Committee, under Article 43 of the National Security Law to make the Implementation Rules. The scope of the authorisation necessarily includes making amendments to the Implementation Rules from time to time in the light of the practical needs of safeguarding national security, in order to improve the legal system and enforcement mechanisms for safeguarding national security.

12. In this regard, the Chief Executive, in conjunction with the Committee, has made the Amendment Rules to amend the provisions relating to the validity period of a freezing notice as set out in Schedule 3 to the Implementation Rules. The aim is to put it beyond doubt that a freezing notice is valid while the proceedings to which it relates are pending and remains so until the conclusion of the proceedings.

13. In brief, after the amendments, the validity period of a freezing notice concerned will be extended should any of the circumstances specified under the new subsections (4A), (4B) or (4C) of section 3 of Schedule 3 arise:

- (a) The first circumstance is where, on the expiry of the validity period of a freezing notice, the Secretary for Security has made an application for the extension of the validity period under subsection (4)<sup>6</sup>, and the proceedings for the application have not been concluded. Under such circumstance, the validity period of the notice is to be extended until the expiry of the extended period as granted by the court, or the period of 14 days beginning on the day on which the proceedings for the application are concluded. (new subsection (4A))
- (b) The second circumstance is where, on the expiry of the validity period of a freezing notice, proceedings for an offence endangering national security that relates to the notice have been instituted, and the proceedings<sup>7</sup> have not been concluded. Under such circumstance, the validity period of the notice is to be

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<sup>6</sup> This refers to an application to the Court of First Instance for extending the validity period on the ground that “the investigation of the offence endangering national security, to which the notice relates, could not reasonably have been completed before the expiry of the validity period of the notice”.

<sup>7</sup> Including the proceedings for an application for a confiscation order made in the proceedings concerned.

extended until the expiry of the period of 28 days beginning on the day on which all of the proceedings are concluded. (new subsection (4B))

- (c) The third circumstance is where, on the expiry of the validity period of a freezing notice, an application for a restraint order, charging order or forfeiture order has been made in relation to any part of the property specified in the notice, and any proceedings for the application have not been concluded. Under such circumstance, the validity period of the notice is to be extended until the expiry of the period of 14 days beginning on the day on which all of the proceedings are concluded. (new subsection (4C))

14. In order for a person affected by a freezing notice to have a clear idea of the validity period of the notice upon extension and not to unwittingly deal with the offence related property in contravention of the notice, a new subsection (4E) is added to section 3 of Schedule 3 to stipulate that the Secretary for Security must, as soon as reasonably practicable after the validity period of the notice concerned is extended each time and after the notice expires, notify the person holding the property concerned<sup>8</sup>. The amended section 1(2) and the new subsection (10) of section 3 also provide a clear definition for what is meant by institution of proceedings for an offence<sup>9</sup> and when the proceedings

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<sup>8</sup> If the extension of the validity period of the freezing notice is granted by the Court upon an application under section 3(4), and other circumstances leading to an extension of the validity period do not exist, then such freezing notice will become invalid on the expiry of the extended period as granted by the court. Hence, it is not necessary for the Secretary for Security to notify the person holding the property concerned separately.

<sup>9</sup> Institution of proceedings for an offence refers to the following:

- (a) a magistrate issues a warrant or summons against the person under section 72 of the Magistrates Ordinance (Cap. 227) in respect of the offence;
- (b) the person has been arrested for the offence (whether or not the person is released on bail); [*Note – not applicable to section 3(4B) (i.e. the circumstance concerning the extension of the validity period of the freezing notice)*]
- (c) the person is charged with the offence after being taken into custody without a warrant; or
- (d) an indictment charging the person with the offence is preferred by the direction or with the consent of a judge under section 24A(1)(b) of the Criminal Procedure Ordinance (Cap. 221).

concerned are concluded<sup>10</sup>.

15. Section 3(4) of Schedule 3 is retained in principle after the amendments. In other words, if, on the expiry of the validity period of a freezing notice, no proceedings referred to in subsections (4B) or (4C) of section 3 have been instituted and there is a need for extension of the validity period of the freezing notice, it would still be necessary for the Secretary for Security to make an application to the Court of First Instance. The Court of First Instance would only grant the extension if it is satisfied that the investigation of offences endangering national security could not reasonably have been completed before the expiry of the validity period of the freezing notice.

16. The amendments do not affect section 4 of Schedule 3, i.e. affected persons may still make applications to the Court of First Instance for the freezing notice to be revoked, or make applications for the grant of a licence or variation of the licence to deal with the property.

## **IMPLEMENTATION TIMETABLE**

17. The Chief Executive, in conjunction with the Committee, has already made the Amendment Rules. The Chinese and English texts of the Amendment Rules have been published in the Gazette on 15 December 2023 and have taken effect for implementation upon gazettal.

18. With reference to the arrangements of the Implementation Rules, the Chinese text of the Amendment Rules is the authentic text, and the Amendment Rules are to be construed accordingly. The English translation text is for reference only.

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<sup>10</sup> The proceedings concerned are concluded under the following circumstances –

- (a) the party that instituted the proceedings withdraws or discontinues the proceedings;
- (b) the court makes the final judgment or decision in respect of the proceedings, and the judgment or decision is not appealable or reviewable;
- (c) the prescribed period for making an appeal or review against the final judgment or decision made in respect of the proceedings expires, and no appeal or review is made by any party; or
- (d) in the case of proceedings for an application for a confiscation order or forfeiture order—the confiscation order or forfeiture order made in the proceedings is satisfied (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

## **IMPLICATIONS OF THE AMENDMENTS**

19. The amendments are in conformity with the Basic Law, including the provisions concerning human rights :

- (a) the amendments are technical in nature and the scope of the amendments is extremely narrow. It only addresses the validity period of freezing notice, without changing the basis for issuing such notice. Overall speaking, the amended Schedule 3 to the Implementation Rules stipulates more clearly the validity period of the freezing notice issued by the Secretary for Security;
- (b) the primary purpose of a freezing notice is to preserve the offence related property so that confiscation or forfeiture could be effected when the relevant proceedings are concluded. As such, if the related proceedings are not yet concluded, it is only natural that the notice should remain valid in the meantime in order to prevent the use of the property concerned in financing or assisting the commission of any offence endangering national security, and to prevent any improper dealing with the property which may prejudice police investigation or any proceedings; and
- (b) Same as the prevailing arrangement, the power to freeze property is subject to scrutiny by the Court of First Instance. The person affected by a freezing notice may make an application to the Court of First Instance for the freezing notice to be revoked, or for the grant of a licence or variation of a licence to deal with the property under section 4. The Court of First Instance may also order compensation to be paid by the Government under specified circumstances in accordance with section 14. Their property right remains protected in accordance with the law. The Court of First Instance has pointed out in a case that the existence of the licence exception in the freezing notice regime provides a balance between the abovementioned purposes and the protection of property right.<sup>11</sup>

## **BACKGROUND INFORMATION**

20. Paragraph 1 of Article 43 of the National Security Law stipulates that, when handling cases concerning offence endangering national security, the department for safeguarding national security of the Police

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<sup>11</sup> HCMP 956/2021 (date of judgment : 17 September 2021, at paragraph 63)

Force may take measures that law enforcement authorities, including the Police Force, are allowed to apply under the laws in force in the HKSAR in investigating serious crimes, and may also take the seven measures stipulated in the Article. These include:

“(3) freezing of, applying for restraint order, charging order and confiscation order in respect of, and forfeiture of property used or intended to be used for the commission of the offence, proceeds of crime, or other property relating to the commission of the offence”.

21. The Committee shall be responsible for supervising the implementation of the measures stipulated in the abovementioned Article by the Hong Kong Police Force.

22. Under paragraph 3 of Article 43 of the National Security Law, the Chief Executive is authorised, in conjunction with the Committee, to make relevant implementation rules for the purpose of applying the measures under the paragraph 1 of Article 43. In this regard, the Chief Executive, in conjunction with the Committee, made the Implementation Rules (including the seven Schedules) at the first meeting of the Committee convened on 6 July 2020. The Implementation Rules were gazetted on the same date and took effect on 7 July 2020.

**Security Bureau**  
**December 2023**

2023 Implementation Rules for Amending the Implementation Rules for Article 43  
of the Law of the People's Republic of China on Safeguarding National Security in  
the Hong Kong Special Administrative Region L.N. 166 of 2023

Rule 1

B4337

**L.N. 166 of 2023**

**2023 Implementation Rules for Amending the  
Implementation Rules for Article 43 of the Law of the  
People's Republic of China on Safeguarding National  
Security in the Hong Kong Special Administrative Region**

(Made by the Chief Executive in conjunction with the Committee for  
Safeguarding National Security of the Hong Kong Special  
Administrative Region under the third paragraph of Article 43 of the  
Law of the People's Republic of China on Safeguarding National  
Security in the Hong Kong Special Administrative Region)

**1. Commencement**

These Implementation Rules come into operation on  
15 December 2023.

**2. Implementation Rules for Article 43 of the Law of the People's  
Republic of China on Safeguarding National Security in the  
Hong Kong Special Administrative Region amended**

The Implementation Rules for Article 43 of the Law of the  
People's Republic of China on Safeguarding National Security  
in the Hong Kong Special Administrative Region are amended  
as set out in rule 3.

**3. Schedule 3 amended (rules relating to freezing, restraint,  
confiscation and forfeiture of property)**

(1) Schedule 3, section 1—

**Repeal subsection (2)**

**Substitute**

“(2) For the purposes of this Schedule, proceedings for an offence are instituted against a person if—

- (a) a magistrate issues a warrant or summons against the person under section 72 of the Magistrates Ordinance (Cap. 227) in respect of the offence;
- (b) the person has been arrested for the offence (whether or not the person is released on bail);
- (c) the person is charged with the offence after being taken into custody without a warrant; or
- (d) an indictment charging the person with the offence is preferred by the direction or with the consent of a judge under section 24A(1)(b) of the Criminal Procedure Ordinance (Cap. 221).

(2A) However, when subsection (2) is applied in construing section 3(4B)(a) of this Schedule, that subsection is to be read as if paragraph (b) of that subsection did not exist.”.

(2) Schedule 3, section 3—

**Repeal subsection (3)**

**Substitute**

“(3) The Secretary for Security must, in a notice under subsection (1), specify the validity period of the notice.

(3A) The validity period specified under subsection (3) must not exceed 2 years.”.

(3) Schedule 3, section 3(4)—

**Repeal**

“the notice mentioned in subsection (3)”

**Substitute**

“a notice under subsection (1)”.

(4) Schedule 3, after section 3(4)—

**Add**

“(4A) If, on the expiry of the validity period of a notice under subsection (1), the Secretary for Security has made an application under subsection (4) and the proceedings for the application have not been concluded, the validity period of the notice is to be extended until the expiry of—

- (a) if the court grants the extension—the extended period as granted by the court; or
- (b) otherwise—the period of 14 days beginning on the day on which the proceedings for the application are concluded.

(4B) If, on the expiry of the validity period of a notice under subsection (1)—

- (a) proceedings for an offence endangering national security that relates to the notice have been instituted; and
- (b) any of the proceedings (including the proceedings for an application for a confiscation order made in the first-mentioned proceedings) have not been concluded,

the validity period of the notice is to be extended until the expiry of the period of 28 days beginning on the day on which all of the proceedings are concluded.

(4C) If, on the expiry of the validity period of a notice under subsection (1)—



- (a) an application for a restraint order, charging order or forfeiture order has been made in relation to any part of the property specified in the notice; and
- (b) any proceedings for the application have not been concluded,

the validity period of the notice is to be extended until the expiry of the period of 14 days beginning on the day on which all of the proceedings are concluded.

- (4D) To avoid doubt, if the validity period of a notice is extended under more than one subsection among subsections (4A), (4B) and (4C), the validity period of the notice is the one that expires the latest.

- (4E) The Secretary for Security must—

- (a) if the validity period of a notice is extended under subsection (4) or (4A)(a)—as soon as is reasonably practicable after the validity period of the notice is extended each time; and
- (b) if the validity period of a notice is extended under subsection (4A)(b), (4B) or (4C)—as soon as is reasonably practicable after the validity period of the notice is extended each time and after the notice expires,

issue a notice in writing to the person holding the property concerned.”.

- (5) Schedule 3, section 3(5)—

**Repeal**

“The notice”

**Substitute**

“A notice issued under subsection (1), (2) or (4E)”.

- (6) Schedule 3, section 3—

**Repeal subsection (6)**

**Substitute**

“(6) If—

- (a) any property specified in a notice issued under subsection (1) involves immovable property; or
- (b) any property relating to a notice issued under subsection (2) or (4E) involves immovable property,

the notice is taken to be an instrument affecting land and is registrable under the Land Registration Ordinance (Cap. 128) in the way that the Land Registrar considers appropriate.”.

- (7) Schedule 3, section 3(7)—

**Repeal**

“the notice will”

**Substitute**

“a notice under subsection (1) will”.

- (8) Schedule 3, after section 3(9)—

**Add**

“(10) For the purposes of subsections (4A), (4B) and (4C), the proceedings are concluded if—

- (a) the party that instituted the proceedings withdraws or discontinues the proceedings;
- (b) the court makes the final judgment or decision in respect of the proceedings, and the judgment or decision is not appealable or reviewable;

- (c) the prescribed period for making an appeal or review against the final judgment or decision made in respect of the proceedings expires, and no appeal or review is made by any party; or
  - (d) in the case of proceedings for an application for a confiscation order or forfeiture order—the confiscation order or forfeiture order made in the proceedings is satisfied (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).
- (11) To avoid doubt, this Schedule as amended by the 2023 Implementation Rules for Amending the Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (*amending Rules*) applies to notices that are issued under subsection (1) before, and are still effective on, the day on which the amending Rules come into operation.”.

#### 4. **Authentic text of Implementation Rules**

The Chinese text of these Implementation Rules is an authentic text, and these Implementation Rules are to be construed accordingly. The English translation text is for reference only.

[SIGNED ON THE CHINESE  
TEXT]

Chief Executive

12 December 2023

Instrument  
A406A

Implementation Rules for Article  
43 of the Law of the People's  
Republic of China on  
Safeguarding National Security in  
the Hong Kong Special  
Administrative Region

07/07/2020

## Schedule 3

[r. 2 & Sch. 7]

### Rules Relating to Freezing, Restraint, Confiscation and Forfeiture of Property

#### 1. Interpretation

(1) In this Schedule—

**authorized officer** (獲授權人員) means a legal officer authorized in writing by the Secretary for Justice for the purposes of any application under this Schedule;

**defendant** (被告人) means a person against whom proceedings have been instituted for an offence endangering national security (whether or not the person has been convicted of that offence);

**offence related property** (罪行相關財產) means—

(a) the property of a person—

(i) who commits, or attempts to commit, an offence endangering national security; or

(ii) who participates in or facilitates the commission of an offence endangering national security; or

(b) any property that is intended to be used or was used to finance or otherwise assist the commission of an offence endangering national security;

**property** (財產) includes movable property and immovable property as defined by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);

**realisable property** (可變現財產) has the meaning given by section 12 of the Organized and Serious Crimes Ordinance (Cap. 455) with the following modifications—

(a) a reference in that section to “specified offence” or “organized crime” is a reference to “offence endangering national security”;

- (b) a reference in that section to “this Ordinance” is a reference to “this Schedule”;
  - (c) a reference in that section to “defendant” has the meaning as defined by this subsection; and
  - (d) a reference in subsection (9) of that section to proceedings are instituted is to be construed in accordance with subsection (2).
- (2) In this Schedule, a reference to proceedings for an offence are instituted against a person includes a reference to a person having been arrested for an offence (whether or not the person is released on bail).
- (3) For the purposes of this Schedule—
  - (a) a person’s proceeds of an offence endangering national security are—
    - (i) any payments or other rewards received by the person at any time in connection with the commission of an offence endangering national security;
    - (ii) any property derived or realized, directly or indirectly, by the person from any of the payments or other rewards; and
    - (iii) any pecuniary advantage obtained in connection with the commission of an offence endangering national security; and
  - (b) the value of the person’s proceeds of an offence endangering national security is the aggregate of the values of—
    - (i) the payments or other rewards;
    - (ii) that property; and
    - (iii) that pecuniary advantage.
- (4) For the purposes of this Schedule, a person who has at any time (whether before or after the commencement\* of this Schedule) received any payment or other reward in connection with the commission of an offence endangering national security has benefited from that offence.
- (5) References in this Schedule to property received in connection with the commission of an offence endangering national security include a reference to property received both in that connection and in some other connections.
- (6) Property is held by any person if the person holds any interest in it.

## **2. Property to which this Schedule applies**

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

## **3. Freezing of property**

- (1) Where the Secretary for Security has reasonable grounds to suspect that any property held by any person is offence related property, the Secretary may, by notice in writing specifying the property, direct that a person must not, directly or indirectly, deal with the property except under the authority of a licence granted by the Secretary.
- (2) If the Secretary for Security ceases to have reasonable grounds to suspect that the property specified in the notice, or part of the property, is offence related property, or the Court of First Instance has granted an application under section 4(1) of this Schedule which relates to the property or part of the property, then the Secretary must, as soon as is reasonably practicable, by notice in writing revoke the notice or a relevant part of it.
- (3) Subject to subsection (4), the validity period of the notice must not exceed 2 years unless an application for restraint order, charging order, confiscation order or forfeiture order has been made in relation to the property, and the application is pending.
- (4) The Secretary for Security may make an application to the Court of First Instance for extending the validity period of the notice mentioned in subsection (3). The Court of First Instance must not grant the extension unless it is satisfied that the investigation of the offence endangering national security, to which the notice relates, could not reasonably have been completed before the expiry of the validity period of the notice. An extension must not exceed such time as is reasonably necessary for the conduct of the investigation (the Secretary may further apply for extension if necessary).
- (5) The notice must be served on the person holding the property concerned (*recipient*) and must require the recipient to send a copy of the notice without delay to each person, if any, whose property it is, or for or on behalf of whom the property is held.

- (6) If any property specified in the notice involves immovable property, the notice is taken to be an instrument affecting land and is registrable under the Land Registration Ordinance (Cap. 128) in the way that the Land Registrar considers appropriate.
- (7) If the Secretary for Security has reasonable cause to suspect that any property specified in the notice will be removed from Hong Kong, the Secretary may in the notice—
  - (a) give a direction that a police officer may, for the purpose of preventing the property from being removed from Hong Kong, seize the property;
  - (b) give directions in accordance with which the property so seized is to be dealt with.
- (8) A person who knowingly contravenes a notice under subsection (1) commits an offence and is liable on conviction on indictment to a fine and to imprisonment for 7 years.
- (9) A person who, without reasonable excuse, contravenes a requirement under subsection (5) commits an offence and is liable on conviction to a fine of \$100,000 and to imprisonment for 3 months.

#### **4. Applications to Court of First Instance**

- (1) Where a notice has been served under section 3 of this Schedule, then—
  - (a) any person by, for or on behalf of whom any property specified in the notice is held, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the notice, may make an application to the Court of First Instance for the notice to be revoked to the extent that it relates to the property so specified; and
  - (b) the Court of First Instance must grant the application unless it is satisfied that there are reasonable grounds to suspect that the property is offence related property.
- (2) Any person affected by a notice served under section 3 of this Schedule (including a person affected by the operation of that section) may make an application to the Court of First Instance for the grant or variation of a licence mentioned in section 3(1) of this Schedule, or the revocation or variation of a direction mentioned in section 3(7) of this Schedule. The Court of First Instance must not grant the application unless it is satisfied that it is reasonable in all the circumstances of the case to do so.

- (3) A person who makes an application under subsection (1) or (2) must give notice of the application to the Secretary for Justice and any other person affected in accordance with the rules of court that are applicable under section 15 of this Schedule.
- (4) The Secretary for Security must, as soon as is reasonably practicable, cause a determination made by the Court of First Instance under this section to be implemented.

**5. Disclosure of knowledge or suspicion that property is offence related property etc.**

- (1) Where a person knows or suspects that any property is offence related property, then the person must disclose to a police officer the information or other matter—
  - (a) on which the knowledge or suspicion is based; and
  - (b) as soon as is reasonably practicable after that information or other matter comes to the person's attention.
- (2) If a person who has made a disclosure referred to in subsection (1) does any act relating to financing or assisting the commission of an offence endangering national security, and the disclosure relates to that act, the person does not commit that offence if the condition specified in paragraph (a) or (b) is satisfied—
  - (a) the disclosure is made before the person does the act and the person does the act with the consent of a police officer;
  - (b) the disclosure is made—
    - (i) after the person does the act;
    - (ii) on the person's initiative; and
    - (iii) as soon as it is reasonably practicable for the person to make the disclosure.
- (3) In the case of a person who was in employment at the relevant time, this section has effect in relation to disclosures to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures as it has effect in relation to disclosures to a police officer.
- (4) Where a person knows or suspects that a disclosure has been made under subsection (1) or (3), the person must not disclose to another person any information or other matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.



- (5) Information obtained under or by virtue of a disclosure referred to in subsection (1) may be disclosed—
- (a) by any police officer to the Department of Justice and other police officers for the purpose of preventing and suppressing acts or activities endangering national security; and
  - (b) by any police officer to the authorities or persons responsible for investigating or preventing acts or activities endangering national security, or handling the disclosure of knowledge or suspicion that any property is offence related property, of any place outside Hong Kong which the police officer considers appropriate, for the purpose of preventing and suppressing acts or activities endangering national security.
- (6) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 3 months.
- (7) A person who contravenes subsection (4) commits an offence and is liable on conviction on indictment to a fine and to imprisonment for 3 years.
- (8) In proceedings against a person for an offence under subsection (7), it is a defence to prove—
- (a) that the person did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in subsection (4); or
  - (b) that the person had lawful authority or reasonable excuse for making that disclosure.

## **6. Applications for restraint orders and charging orders**

- (1) The Secretary for Justice or an authorized officer may make an application to the Court of First Instance for a restraint order or charging order, subject to the following conditions—
- (a) any of the following circumstances is present—
    - (i) proceedings have been instituted against the defendant for an offence endangering national security, or an application under section 9 of this Schedule for a confiscation order to be made against the defendant or an application under section 10 of this Schedule for variation of a confiscation order has been made, and the proceedings have not, or the application has not been concluded;

- (ii) a person (*defendant*) has been arrested for an offence endangering national security, and the Court of First Instance is satisfied that, in all the circumstances of the case, there is reasonable ground to believe that the defendant may be charged with the offence after further investigation is carried out;
  - (iii) the Court of First Instance is satisfied that a person (*defendant*) is to be charged with an offence endangering national security; and
- (b) the Court of First Instance is satisfied that there is reasonable ground to believe—
  - (i) if an application for variation of a confiscation order has been made—that the Court of First Instance will be satisfied of the matters specified in section 10(2) of this Schedule; or
  - (ii) in any other case—that the defendant has benefited from that offence.
- (2) A restraint order or charging order may be made on an ex parte application to the Court of First Instance in chambers.
- (3) An application for the discharge or variation of a restraint order or charging order may be made by any person affected by it to the Court of First Instance. The Court of First Instance must not grant the application unless it is satisfied that it is reasonable in all the circumstances of the case to do so.
- (4) A police officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order or charging order, require the person to deliver to the police officer, to the extent that it is reasonably practicable to do so, documents, or copies of documents, or any other information (in whatever form), in the person's possession or control which may assist the police officer to determine the value of the property.
- (5) A person who receives a notice under subsection (4) must, as soon as is reasonably practicable after receipt of the notice, comply with the notice to the extent that it is reasonably practicable to do so taking into account the nature of the realisable property concerned.
- (6) Any person who contravenes subsection (5) commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 1 year.

- (7) A person who knowingly deals in any realisable property in contravention of a restraint order or charging order commits an offence.
- (8) A person who commits an offence under subsection (7) is liable on conviction on indictment to a fine of \$500,000 or to the value of the realisable property the subject of the restraint order or charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years.

## **7. Restraint orders**

- (1) The Court of First Instance may by 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 to all realisable property held by a person specified in the order, whether the property is described in the order or not, or is transferred to the person after the making of the order.
- (3) Where the Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver—
  - (a) to take possession of any realisable property; and
  - (b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which the receiver is appointed,subject to such conditions and exceptions as may be specified by the Court of First Instance; and may require any person having possession of the property to give possession of it to the receiver.
- (4) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property.
- (5) If a restraint order concerns immovable property, the order is taken to be an instrument affecting land and is registrable under the Land Registration Ordinance (Cap. 128) in the way that the Land Registrar considers appropriate.

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

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

- (a) where a confiscation order has not been made—of an amount equal to the value from time to time of the property charged; and
  - (b) in any other case—of an amount not exceeding the amount payable under the confiscation order.
- (2) A charging order is an order made under this section imposing on any realisable property that is specified in the order a charge for securing the payment of money to the Government.
- (3) A charge may be imposed by a charging order only on—
  - (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Schedule—
    - (i) in any asset of a kind specified in subsection (4); 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.
- (4) The kind of asset mentioned in subsection (3)(a)(i) is any of the following—
  - (a) land in Hong Kong;
  - (b) Government stock;
  - (c) stock of any body incorporated in Hong Kong;
  - (d) 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;
  - (e) units of any unit trust in respect of which a register of the unit holders is kept at any place within Hong Kong.
- (5) The Court of First Instance may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset concerned.
- (6) A charging order is registrable and enforceable in accordance with the laws of Hong Kong.

## **9. Confiscation orders**

- (1) The Secretary for Justice or an authorized officer may make an application to the Court of First Instance or the District Court for a confiscation order if—

- (a) in proceedings before the Court of First Instance or the District Court a defendant is to be sentenced in respect of an offence endangering national security and has not previously been sentenced in respect of the defendant's conviction for the offence concerned; or
  - (b) proceedings for an offence endangering national security have been instituted against a defendant but have not been concluded because the defendant has died or absconded.
- (2) Where subsection (1)(a) is applicable, the court must first impose on the defendant such period of imprisonment or detention (if any) as is appropriate and make such order or orders (other than a confiscation order) in relation to sentence as is appropriate in accordance with the laws of Hong Kong.
- (3) Where subsection (1)(b) is applicable, the court must first be satisfied that—
  - (a) the defendant has died; or
  - (b) the defendant has absconded for not less than 6 months, and—
    - (i) if the exact whereabouts of the defendant are known—reasonable steps have been taken to give notice to that defendant and to obtain the return of that defendant to Hong Kong but have been unsuccessful; or
    - (ii) if the exact whereabouts of the defendant are not known—reasonable steps have been taken to ascertain the defendant's whereabouts and notice of those proceedings, addressed to that defendant, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong,and the court, having regard to all relevant matters before it, is also satisfied that the defendant could have been convicted in respect of the offence concerned.
- (4) The court must then determine whether the defendant has benefited from the offence endangering national security of which the defendant is convicted or could have been convicted.

- (5) If the court determines that the defendant has benefited from the offence endangering national security of which the defendant is convicted or could have been convicted, the court must determine the amount to be recovered in the defendant's case by virtue of this section. The amount to be recovered is the amount the court assesses to be the value of the defendant's proceeds of the offence endangering national security which the defendant has committed, but if the court is satisfied that the amount that might be realized at the time the confiscation order is made is less than the amount the court assesses to be such value, the court may determine the amount to be recovered to be—
- (a) the amount appearing to the court to be so realized; or
  - (b) if it appears to the court (on the information available to it at the time) that the amount that might be so realized is nil—a nominal amount.
- (6) After determining the amount to be recovered, the court must then make a confiscation order, ordering the defendant to pay that amount within a fixed period.
- (7) The court must not fix a period longer than 6 months unless it is satisfied that there are special circumstances which justify it doing so.
- (8) The court must also in the confiscation order fix a term of imprisonment, in accordance with the following Table, which the defendant is to serve if any of that amount is not duly paid within that period (the terms of imprisonment set out in column 2 of the Table are the maximum terms of imprisonment applicable respectively to the amounts set out in column 1 of the Table opposite to the terms).

**Table**

Column 1	Column 2
Amount payable	Term of imprisonment
An amount not exceeding \$200,000	1 year
An amount exceeding \$200,000 but not exceeding \$500,000	18 months
An amount exceeding \$500,000 but not exceeding \$1,000,000	2 years
An amount exceeding \$1,000,000 but not exceeding \$2,500,000	3 years
An amount exceeding \$2,500,000 but not exceeding \$10,000,000	5 years
An amount exceeding \$10,000,000	10 years

- (9) At the end of each day's sitting of the court, the Registrar of the High Court or the District Court (as the case may be) must cause to be delivered to the Commissioner of Correctional Services a certificate in respect of each term of imprisonment fixed under this section for the Commissioner to carry into effect the term of imprisonment fixed under this section in respect of that defendant.
- (10) An authorized officer or the defendant may, in respect of an application for confiscation order, tender to the court a statement of matters relevant to the application.
- (11) The amount to be recovered under a confiscation order is to be treated as a judgment debt under the laws of Hong Kong, and as such, interest may accrue, and the amount of the interest is to be treated, for the purposes of enforcement, as part of the amount to be recovered from the defendant under the confiscation order.

#### **10. Variation of confiscation orders**

- (1) An authorized officer or the defendant (or, in the case of a defendant who has died, the defendant's personal representative) may make an application for variation in respect of a confiscation order. If the Court of First Instance is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, it must make an order that such lesser amount as the court thinks just in all the circumstances of the case be substituted, and that a shorter term fixed in accordance with section 9(8) of this Schedule be substituted.
- (2) An authorized officer may make an application for variation in respect of a confiscation order. If the Court of First Instance is satisfied that—
  - (a) the value of the defendant's proceeds of any offence endangering national security was greater than the value of the defendant's proceeds of the offence assessed by the Court of First Instance or the District Court, as the case may be, at the time of the making of the confiscation order;
  - (b) an authorized officer becomes aware of realisable property, the existence of which was not known to the officer at the time of the making of the confiscation order; or

- (c) the amount realized from the defendant's proceeds of that offence is greater than the amount the Court of First Instance or the District Court, as the case may be, assessed to be the amount to be recovered under the confiscation order,

the court must make an order that such greater amount as the court thinks just in all the circumstances of the case be substituted, and that a greater term fixed in accordance with section 9(8) of this Schedule be substituted.

#### **11. Realisation of property and application**

- (1) For the purposes of enforcing any confiscation order that has been made, the Court of First Instance may appoint a receiver in respect of realisable property, and order or empower the receiver to exercise the powers similar to those under section 17 of the Organized and Serious Crimes Ordinance (Cap. 455) (with the necessary modifications).
- (2) The Court of First Instance, the Registrar of the High Court or the District Court (as the case may be) and the receiver have the powers, obligations and protection similar to those under sections 18, 19 and 24 of the Organized and Serious Crimes Ordinance (Cap. 455) (with the necessary modifications).

#### **12. Bankruptcy of defendant and winding up of company holding other realisable property**

- (1) Where—
  - (a) a person who holds realisable property is adjudged bankrupt; or
  - (b) 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 provisions under sections 21, 22 and 23 of the Organized and Serious Crimes Ordinance (Cap. 455) apply with the necessary modifications.

- (2) The references in those provisions to restraint order, charging order and confiscation order and relevant provisions are to be understood as references to restraint order, charging order and confiscation order and relevant provisions in this Schedule.

#### **13. Forfeiture of offence related property**



- (1) The Court of First Instance may, if satisfied on an application made by or on behalf of the Secretary for Justice that any property specified in the application is offence related property —
- (a) mentioned in paragraph (a) of the definition of *offence related property* in section 1(1) of this Schedule and which also—
    - (i) in whole or in part directly or indirectly represents any proceeds arising from an offence endangering national security;
    - (ii) is intended to be used to finance or otherwise assist the commission of an offence endangering national security; or
    - (iii) was used to finance or otherwise assist the commission of an offence endangering national security; or
  - (b) mentioned in paragraph (b) of the definition of *offence related property* in section 1(1) of this Schedule,
- order, subject to subsection (2), the forfeiture of the property.
- (2) Where the Court of First Instance makes an order under subsection (1) in respect of any property, the Court of First Instance must specify in the order so much, if any, of the property in respect of which the Court of First Instance is not satisfied as mentioned in that subsection.
- (3) An order may be made under this section whether or not proceedings are instituted against any person for an offence with which the property concerned is connected.
- (4) The standard of proof on an application under this section is the standard of proof applicable to civil proceedings in a court of law.

#### **14. Compensation**

- (1) If an investigation is begun against a person for an offence endangering national security and any of the following circumstances occurs, namely—
- (a) no proceedings are instituted against that person;
  - (b) proceedings are instituted against that person but do not result in that person's conviction for any offence endangering national security;
  - (c) that person absconds after proceedings are instituted against that person and subsequently—
    - (i) ceases to be an absconder; and

- (ii) either—
  - (A) those proceedings are continued or reinstituted but do not result in that person's conviction for any offence endangering national security; or
  - (B) those proceedings are not continued or reinstituted within a reasonable period after it is known to the Secretary for Justice that that person has ceased to be an absconder;
- (d) proceedings are instituted against that person and that person is convicted of an offence endangering national security, but—
  - (i) the conviction concerned is quashed; or
  - (ii) that person is granted a pardon in respect of the conviction concerned,

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

- (2) The Court of First Instance must 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 concerned; and
  - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court of First Instance under this Schedule.
- (3) The Court of First Instance must not order compensation to be paid under subsection (1) in any case where it appears to the Court of First Instance that the investigation would have been continued, or the proceedings would have been instituted or continued if the serious default had not occurred.
- (4) Without prejudice to subsection (1), where—
  - (a) a disclosure is made by any person in accordance with section 5(2) of this Schedule in relation to any property;

- (b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of an offence endangering national security 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 no restraint order or charging order is made by the Court of First Instance in relation to that property,

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

- (5) The Court of First Instance must 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 concerned and that, but for that default, the act or omission referred to in subsection (4)(b) would not have occurred; and
  - (b) that the applicant has, in consequence of the act or omission referred to in subsection (4)(b), suffered loss in relation to the property.
- (6) Subject to subsection (7), where property has ceased to be specified in a notice under section 3(1) of this Schedule, then the Court of First Instance may, on application by any person by, for or on behalf of whom the property that was so specified is held, 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.
- (7) The Court of First Instance must not order compensation to be paid under subsection (6) unless it is satisfied—
  - (a) that at no time when the property was specified in a notice under section 3(1) of this Schedule was the offence related property;
  - (b) that there has been some default on the part of any person concerned in obtaining the relevant specification under section 3(1) of this Schedule; and
  - (c) that the applicant has, in consequence of the relevant specification and the default mentioned in paragraph (b), suffered loss.

- (8) The amount of compensation to be paid under this section is an amount that the Court of First Instance thinks just in all the circumstances of the case.

**15. Rules of court**

For the rules of court applicable to any application made under this Schedule, reference may be made to the rules of court applicable to similar applications under the laws of Hong Kong (in particular, the Rules of the High Court made under section 30 of the Organized and Serious Crimes Ordinance (Cap. 455) and section 20 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)) with the necessary modifications.