

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 115 – DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE (CAP. 405)

Remarks:

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

Remarks

1. Interpretation (O. 115, r. 1)

(1) In this Order “the Ordinance” (條例) means the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), and a section referred to by number means the section so numbered in the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance have the same meanings in this Order as in the Ordinance.

2. Assignment of proceedings (O. 115, r. 2)

Subject to Order 32, rule 18, and to rule 12, the jurisdiction of the Court under the Ordinance shall be exercised by a judge of the Court in chambers notwithstanding that the originating process is ~~a motion~~ an originating summons.

(L.N. 296 of 1996)

Rule 72
Rec 14

2A. Application for confiscation order where person has died or absconded (O. 115, r. 2A)

(1) An application for a confiscation order under section 3 where the defendant has died or absconded shall be made by the Secretary for Justice ~~by originating summons~~.

(89 of 1995 s. 30; L.N. 296 of 1996; L.N. 362 of 1997)

Rule 73
Rec 12

(2) An application under paragraph (1) may be made by originating summons in Form No. 10 in Appendix A.

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3. Application for restraint order or charging order (O. 115, r. 3)

(1) An application for a restraint order under section 10 or for a charging order under section 11 (to either of which may be joined an application for the appointment of a receiver) shall be made by the Secretary for Justice ex parte ~~by originating motion~~.

Rule 74
Rec 14

(L.N. 296 of 1996; L.N. 362 of 1997)

(1A) An application under paragraph (1) may be made by originating summons in Form No. 10 in Appendix A.

Rule 74
Rec 12

(2) An application under paragraph (1) shall be supported by an affidavit, which shall –

- (a) state, as the case may be, the grounds for believing that –
 - (i) the defendant has benefited from drug trafficking; or
 - (ii) the Court of First Instance will be satisfied as specified in section 15(1A); (89 of 1995 s. 30; 25 of 1998 s. 2)
- (b) state, as the case may be –
 - (i) that proceedings have been instituted against the defendant for a drug trafficking offence (giving particulars of the offence) and that they have not been concluded;
 - (ii) that, whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence;
 - (iii) that an application for a confiscation order has been made in respect of the defendant where section 3(1)(a)(ii) or (7) is applicable; or
 - (iv) that an application has been made under section 15(1A) in respect of a confiscation order made against the defendant; (89 of 1995 s. 30)
- (c) to the best of the deponent's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (d) where proceedings have not been instituted, verify that the Secretary for Justice is to have the conduct of the proposed proceedings; (L.N. 362 of 1997)
- (e) where proceedings have not been instituted, indicate when it is intended that they should be instituted.

(3) An ~~originating motion under paragraph (1)~~ **originating summons under paragraph (1A)** shall be entitled in the matter of the defendant, naming him, and in the matter of the Ordinance, and all subsequent documents in the matter shall be so entitled.

Rule 74
Rec 14

(4) Unless the Court otherwise directs, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

4. Restraint order and charging order (O. 115, r. 4)

(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to reasonable living expenses and reasonable legal expenses of the defendant, but the Secretary for Justice shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order. (89 of 1995 s. 30)

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the Secretary for Justice shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the Secretary for Justice shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1)(b) to (d) as shall be appropriate.

(L.N. 362 of 1997)

5. Discharge or variation of order (O. 115, r. 5)

(1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be served on the Secretary for Justice and, where he is not the applicant, on the defendant, not less than 2 clear days before the date fixed for the hearing of the summons. (L.N. 296 of 1996; L.N. 362 of 1997)

(3) Upon the Court being notified that proceedings for the offences have been concluded or that the amount payment of which is secured by a charging order has been paid into court, any restraint order or charging order, as the case may be, shall be discharged.

6. Further application by Secretary for Justice (O. 115, r. 6)

(1) Where a restraint order or a charging order has been made the

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Secretary for Justice may apply (and, if so, by summons) or, where the case is one of urgency, ex parte – (L.N. 296 of 1996; L.N. 362 of 1997)

- (a) to discharge or vary such order; or
- (b) for a restraint order or a charging order in respect of other realisable property; or
- (c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is for a restraint order or a charging order, shall to the best of the deponent's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The summons and affidavit in support shall be served on the defendant and, where one has been appointed in the matter, on the receiver, not less than 2 clear days before the date fixed for the hearing of the summons.
(L.N. 296 of 1996)

(4) Rule 4(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

7. Realisation of property (O. 115, r. 7)

~~(1) An application under section 12 shall, where there have been proceedings against the defendant in the Court of First Instance, be made by the Secretary for Justice by summons and shall otherwise be made by originating motion. (L.N. 362 of 1997; 25 of 1998 s. 2)~~

Rule 75
Rec 12

(1) An application under section 12 must be made by the Secretary for Justice.

(1A) The application may, where there have been proceedings against the defendant in the Court of First Instance, be made by summons and may otherwise be made by originating summons in Form No. 10 in Appendix A.

(2) The summons or ~~originating motion~~ **originating summons**, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the summons on –

Rule 75
Rec 14

- (a) the defendant;
- (b) any person holding any interest in the realisable property to which the application relates; and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by an affidavit, which shall, to the best of the deponent's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property,

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and a copy of the confiscation order, of any certificate issued by the Court under section 6(2) and of any charging order made in the matter shall be exhibited to such affidavit.

(4) The Court may, on an application under section 12, exercise the power conferred by section 13(1) to direct the making of payments by the receiver.

8. Receivers (O. 115, r. 8)

(1) Subject to this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under section 10 or 12.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Ordinance, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by ~~summons for directions~~ case management summons as to the distribution of such sums.

(4) A summons under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the summons on –

- (a) the defendant; and
- (b) any other person who held property realised by the receiver.

9. Variation of confiscation order (O. 115, r. 9)

(1) The Secretary for Justice or defendant may apply by summons for an order under section 15(1).

(2) A summons under paragraph (1) shall be served, with any supporting evidence, not less than 7 days before the date fixed for the hearing of the summons on –

- (a) where the Secretary for Justice is making the application, the defendant;
- (b) where the defendant is making the application, the Secretary for Justice,

and, in either case, on the receiver, where one has been appointed in the matter.

(3) The Secretary for Justice may apply by summons for an order under section 15(1A). (89 of 1995 s. 30)

(89 of 1995 s. 30; L.N. 362 of 1997)

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10. Compensation (O. 115, r. 10)

An application for an order under section 27 shall be made by summons, which shall be served, with any supporting evidence, on the person alleged to be in default and on the Secretary for Justice not less than 7 days before the date fixed for the hearing of the summons.
(L.N. 362 of 1997)

11. Disclosure of information (O. 115, r. 11)

(1) An application under section 23 shall be made by the Secretary for Justice by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 10 or 12 or in pursuance of a charging order or to an authorized officer. (L.N. 362 of 1997)

(2) The summons and affidavit in support shall be served on the public body –
(a) not less than 7 days before the date fixed for the hearing of the summons; and
(b) where the public body is a Government Department, in accordance with Order 77, rule 4.

(3) The affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 23(4) and, if appropriate, section 23(7) are fulfilled.

12. Exercise of powers under section 29 (O. 115, r. 12)

The powers conferred on the Court by section 29 may be exercised by a judge in chambers and a Master.

13. Application for registration (O. 115, r. 13)

An application for registration of an external confiscation order under section 29(1) may be ex parte.

15. Evidence in support of application under section 29(1) (O. 115, r. 15)

An application for registration of an external confiscation order must be supported by an affidavit –

(a) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the

- English language, a translation thereof into English certified by a notary public or authenticated by affidavit; and
- (b) stating –
- (i) that the order is in force and is not subject to appeal;
 - (ii) where the person against whom, or in relation to whose property, the order was made did not appear in the proceedings, that he received notice of the proceedings, in accordance with the law of the designated country concerned, in sufficient time to enable him to defend them; (89 of 1995 s. 30)
 - (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered; and
 - (iv) to the best of the deponent's knowledge, particulars of what property the person against whom, or in relation to whose property, the order was made holds in Hong Kong, giving the source of the deponent's knowledge. (89 of 1995 s. 30)

16. Register of orders (O. 115, r. 16)

- (1) The Registrar shall keep a register of the orders registered under the Ordinance.
- (2) There shall be included in such register particulars of any variation or setting aside of a registration, of any variation, satisfaction or discharge of a registered order, and of any execution issued on such an order.

17. Notice of registration (O. 115, r. 17)

- (1) Notice of the registration of an order must be served on the person against whom, or in relation to whose property, it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct. (89 of 1995 s. 30)
- (2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.
- (3) The notice shall state the period within which an application may be made to vary or set aside the registration and that the order will not be enforced until after the expiration of that period.

18. Application to vary or set aside registration (O. 115, r. 18)

An application by the person against whom, or in relation to whose property, an order was made to vary or set aside the registration of an order must be made to a judge by summons supported by affidavit.

(89 of 1995 s. 30)

19. Enforcement of order (O. 115, r. 19)

(1) An order registered under the Ordinance shall not be enforced until after the expiration of the period specified in accordance with rule 17(3) or, if that period has been extended by the Court, until after the expiration of the period so extended.

(2) If an application is made under rule 18, an order shall not be enforced until after such application is determined.

20. Variation, satisfaction and discharge of registered order (O. 115, r. 20)

Upon the Court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

21. Rules to have effect subject to orders (O. 115, r. 21)

Rules 12 to 20 shall have effect subject to the provisions of any order made under section 28.

22. Statement relating to drug trafficking (O. 115, r. 22)

(HK)(1) Where the Secretary for Justice or the defendant proposes to tender to the Court any statement or other document under section 5 he shall give a copy thereof as soon as practicable to the defendant or the Secretary for Justice, as the case may be, and to the appropriate officer of the Court. (89 of 1995 s. 30)

(2) Any statement tendered to the Court by the Secretary for Justice under section 5(1) shall include the following particulars, namely – (L.N. 362 of 1997)

- (a) the name of the defendant;
- (b) the name of the person who made the statement;
- (c) such information known to the person who made the statement as is relevant to –

- (i) where section 3(1)(a)(ii) is applicable, the determination whether the defendant could have been convicted in respect of the drug trafficking offence or offences concerned;
 - (ii) the determination whether the defendant has benefited from drug trafficking;
 - (iii) the assessment of the value of the defendant's proceeds of drug trafficking. (89 of 1995 s. 30)
- (L.N. 362 of 1997)

23. Investigation into drug trafficking – discharge and variation of orders (O. 115, r. 23)

(1A) An authorized officer shall make an application for an order under section 20 or a warrant under section 21 ex parte to a judge by laying an information on oath. (L.N. 142 of 1990)

(HK)(1) Where an order under section 20 has been made, the person required to comply with it may apply in writing to the appropriate officer of the Court for the order to be discharged or varied, and on hearing such an application the Court may discharge the order or make such variations to it as it thinks fit.

(2) Subject to paragraph (3), where a person proposes to make an application under paragraph (1) for the discharge or variation of an order, he shall give a copy of the application, not later than 48 hours before the making of the application, to the authorized officer by whom the application for an order was made, or if such officer is not known or cannot be found, to another authorized officer, together with a notice indicating the time and place at which the application for discharge or variation is to be made.

(3) The Court may direct that paragraph (2) need not be complied with if it is satisfied that the person making the application has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

(L.N. 282 of 1989)

24. Application for continued detention of seized property
(O. 115, r. 24)

(1) An application under section 24C(2) for an order to authorize the continued detention of seized property ~~shall be made by ex parte originating motion in Form No. 107 in Appendix A~~ may be made by originating summons in Form No. 10 in Appendix A.

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(2) An application under paragraph (1) shall be supported by an affidavit, which shall –

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- (a) state what the seized property consists of (including, in the case of money, the amount and currency thereof) and the date on which and the place at which it was seized;
- (b) state the grounds for suspecting that the seized property is specified property; and
- (c) give particulars, in terms of the matters referred to in section 24C(2)(b), as to why the continued detention of the seized property is justified.

(L.N. 296 of 1996)

25. Order for continued detention of seized property (O. 115, r. 25)

(1) Where an order is made under section 24C(2), the applicant shall, as soon as is practicable, serve a copy of the order on each person affected by the order.

(2) An order under section 24C(2) shall be in Form No. 108 in Appendix A.

(3) In rules 26(3) and (4), 27, 28(2) and 29(3) and (4), “affected person” (受影響的人), in relation to any summons or order referred to in those rules, means a person –

- (a) on whom a copy of an order made under section 24C(2) has been served pursuant to paragraph (1) where the seized property (or any part thereof) the subject of the summons or first-mentioned order is or was the subject of the second-mentioned order; or
- (b) in respect of whom the Court has made an order under rule 31 in connection with the summons or first-mentioned order.

(L.N. 296 of 1996)

26. Application for further detention of seized property (O. 115, r. 26)

(1) An application under section 24C(3) for an order to authorize the further detention of seized property shall be made by summons in the proceedings commenced under rule 24.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall –

- (a) state the grounds for suspecting that the seized property is specified property; and
- (b) give particulars, in terms of the matters referred to in section 24C(2)(b), as to why the continued detention of the seized property is justified.

(3) The summons and the affidavit in support shall be served on each affected person not less than 5 clear days before the date fixed for the

hearing of the summons.

(4) Affidavit evidence in response to the summons shall be served by an affected person on –

(a) the Secretary for Justice on behalf of the applicant; and (L.N. 362 of 1997)

(b) each other affected person,

not less than 2 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

27. Order for further detention of seized property (O. 115, r. 27)

Where an order is made under section 24C(3), the applicant shall, as soon as is practicable, serve a copy of the order on each affected person.

(L.N. 296 of 1996)

28. Application for release of seized property (O. 115, r. 28)

(1) An application under section 24C(4)(a) for the release of seized property detained by an order under section 24C(2) or (3) shall be made by summons which shall state the grounds on which the application is made.

(2) The summons and any affidavit in support shall be served on –

(a) the Secretary for Justice on behalf of the authorized officer who obtained the order by virtue of which the seized property is detained; and (L.N. 362 of 1997)

(b) each other affected person,

not less than 5 clear days before the date fixed for the hearing of the summons.

(3) Any affidavit in opposition to the summons shall be served on –

(a) the person who made the application under paragraph (1); and

(b) each of the other persons referred to in paragraph (2)(a) and (b),

not less than 2 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

29. Application for forfeiture of seized property (O. 115, r. 29)

(1) An application under section 24D(1) for the forfeiture of seized property shall be made by summons in the proceedings under which any order under rule 24 has been obtained.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall state the grounds for believing that the seized property –

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- (a) in whole or in part directly or indirectly represents any person's proceeds of drug trafficking;
- (b) has been used in drug trafficking; or
- (c) is intended for use in drug trafficking.

(3) The summons and the affidavit in support referred to in paragraphs (1) and (2) shall be served on each affected person not less than 14 clear days before the date fixed for the hearing of the summons.

(4) Any affidavit in opposition to the summons shall be served by an affected person on –

- (a) the Secretary for Justice on behalf of the applicant; and (L.N. 362 of 1997)
- (b) each other affected person,

not less than 5 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

30. Release of seized property (O. 115, r. 30)

Where in relation to any seized property –

- (a) an order under section 24C(2) expires without an order being made under section 24C(3);
- (b) an order under section 24C(3) expires without a further order being made thereunder; or
- (c) a direction is obtained under section 24C(4),

then, unless the Court has directed that an issue be stated and tried as between affected persons, the property shall be forthwith released on such terms, if any, as the Court thinks fit to the person from whom the property was seized or to such other person as appears to be entitled to it.

(L.N. 296 of 1996)

31. Joinder and payment into Court (O. 115, r. 31)

(1) Without prejudice to its powers under Order 15, rule 6, the Court may either of its own motion or on application order that any person who may be affected by any order made by it be joined as a party to the proceedings.

(2) The Court may order that the property which is the subject of an application or order shall be paid into or lodged in Court on such terms as it thinks fit.

(L.N. 296 of 1996)

32. Service of documents (O. 115, r. 32)

(1) Without prejudice to Order 65, any documents required to be served

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on a party under rules 25 to 29 may be served in accordance with the provisions of this rule.

(2) Where documents are required to be served on a party from whom property has been seized and that party has provided an authorized officer with an address or facsimile number at which any such document may be served, the documents may be served by leaving them at or sending them by registered mail to that address or by sending it by facsimile to the number provided.

(3) If that party has refused to provide an authorized officer with any such address or facsimile number and there is no other method of serving him or if it is otherwise not possible to serve a party, the documents may be served on that party by exhibiting them on a notice board at a place to which the public have access on the ground floor of the High Court Building but where any application made under rule 25, 26, 27, 28 or 29 is so served, the applicant shall state in his affidavit of service why this method of service has been adopted and the Court shall consider whether to give directions for some other form of service (including substituted service) by the applicant. (25 of 1998 s. 2)

(4) A body corporate which is not incorporated in Hong Kong and which is not registered under Part XI of the Companies Ordinance (Cap. 32) may be served by leaving the document to be served at or by sending it by registered mail to the registered office or principal place of business of that body corporate.

(L.N. 296 of 1996)

33. Power to extend or abridge time (O. 115, r. 33)

Rules 26(3) and (4), 28(2) and (3), and 29(3) and (4) shall not operate to prejudice the power of the Court under Order 3, rule 5, to extend or abridge the period within which a person is required or authorized by any of those rules to do any act in any proceedings.

(L.N. 296 of 1996)