

Rules of the High Court (Amendment) Rules 2008

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

Order 115A – (HK) MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE (Cap. 525)

Remarks:

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

Remarks

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

(1) In this Order “the Ordinance” (條例) means the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), and a section referred to by number in rules 3 to 12 means the section so numbered in the Ordinance and in rules 13 to 18 means the section so numbered in Schedule 2 to the Ordinance.

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

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

Subject to rule 3, the jurisdiction of the Court under the Ordinance shall be exercised by a judge of the Court in chambers.

3. Exercise of powers under section 28 (O. 115A, r. 3)

The powers conferred on the Court by section 28 may be exercised by a judge in chambers and a Master.

4. Application for registration (O. 115A, r. 4)

An application for registration of an external confiscation order under section 28(1) may be ex parte.

5. Evidence in support of application under section 28(1) (O. 115A, r. 5)

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 place outside Hong Kong concerned, in sufficient time to enable him to defend them;
 - (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, or controls from, Hong Kong, giving the source of the deponent's knowledge.

6. Register of orders (O. 115A, r. 6)

- (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.

7. Notice of registration (O. 115A, r. 7)

- (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.
- (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.

8. Application to vary or set aside registration (O. 115A, r. 8)

An application by the person against whom 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.

9. Enforcement of order (O. 115A, r. 9)

(1) An order registered under the Ordinance shall not be enforced until after the expiration of the period specified in accordance with rule 7(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 8, an order shall not be enforced until after such application is determined.

10. Variation, satisfaction and discharge of registered order (O. 115A, r. 10)

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.

11. Rules to have effect subject to orders (O. 115A, r. 11)

Rules 3 to 10 shall have effect subject to the provisions of any order made under section 27.

12. Investigation or proceeding relating to criminal matter – discharge and variation of orders (O. 115A, r. 12)

(1) An authorized officer shall make an application for an order under section 15 ex parte to a judge by laying an information on oath.

(2) Where an order under section 15 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.

(3) Subject to paragraph (4), where a person proposes to make an application under paragraph (2) 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.

(4) The Court may direct that paragraph (3) 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.

13. Application for restraint order or charging order (O. 115A, r. 13)

(1) An application for a restraint order under section 7 or for a charging order under section 8 (to either of which may be joined an application for the appointment of a receiver) may be made by the Secretary for Justice ex parte by ~~originating motion~~ **originating summons**. (L.N. 362 of 1997)

Rule 77
Rec 14

(2) An application under section 7(4) or 8(3) shall be supported by an affidavit which shall –

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the place outside Hong Kong concerned;
- (b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which section 6(2) applies, indicate when it is intended that proceedings should be instituted in the place outside Hong Kong concerned.

(3) An ~~originating motion~~ **originating summons** under paragraph (1) 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.

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

14. Restraint order and charging order (O. 115A, r. 14)

(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.

(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)

15. Discharge or variation of order (O. 115A, r. 15)

(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 lodged with the Court and 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. 362 of 1997)

(3) Upon the Court being notified that proceedings have been concluded any restraint or charging order shall be discharged.

16. Further application by Secretary for Justice (O. 115A, r. 16)

(1) Where a restraint order or a charging order has been made the Secretary for Justice may apply by summons or, where the case is one of urgency, ex parte – (L.N. 362 of 1997)

- (a) to discharge or vary such order;
- (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 lodged with the Court and 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.

(4) Rule 14(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.

17. Realisation of property (O. 115A, r. 17)

(1) An application under section 9 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~~ **originating summons**. (L.N. 362 of 1997; 25 of 1998 s. 2)

Rule 78
Rec 14

(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 –

- (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.

(4) The Court may, on an application under section 9, exercise the power conferred by section 10(1) to direct the making of payments by the receiver.

18. Receivers (O. 115A, r. 18)

(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 7 or 9.

(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 external 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.

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(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-

Remarks

- (a) the defendant; and
- (b) any other person who held property realised by the receiver.
(87 of 1997 s. 36)