

Rules of the High Court (Amendment) Rules 2008

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

Order 117 – (HK) ORGANIZED AND SERIOUS CRIMES ORDINANCE (Cap. 455)

Remarks:

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

Remarks

PART IV – ENFORCEMENT, ETC. OF CONFISCATION ORDERS

1. Interpretation (O. 117, r. 1)

(1) In this Order “the Ordinance” (條例) means the Organized and Serious Crimes Ordinance (Cap. 455), and a Part or section referred to by number means the Part or 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. Application of this Order (O. 117, r. 2)

This Order applies to applications under Part IV.

3. Assignment of proceedings (O. 117, r. 3)

The jurisdiction of the Court under the Ordinance shall, for the purposes of this Order, be exercised by a judge of the Court in chambers.

3A. Application for confiscation order where person has died or absconded (O. 117, r. 3A)

An application for a confiscation order under section 8 where the defendant has died or absconded may be made by the Secretary for Justice by originating summons.

(90 of 1995 s. 27; L.N. 362 of 1997)

4. Application for restraint order or charging order (O. 117, r. 4)

(1) An application for a restraint order under section 15 or for a charging order under section 16 (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 summons. (L.N. 362 of 1997)

- (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 a specified offence; or
 - (ii) the Court of First Instance will be satisfied as specified in section 20(1A); (90 of 1995 s. 27; 25 of 1998 s. 2)
 - (b) state, as the case may be –
 - (i) that proceedings have been instituted against the defendant for a specified 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 specified offence;
 - (iii) that an application for a confiscation order has been made in respect of the defendant where section 8(1)(a)(ii) or (7A) is applicable; or
 - (iv) that an application has been made under section 20(1A) in respect of a confiscation order made against the defendant; (90 of 1995 s. 27)
 - (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) A 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 of the information or belief.

5. Restraint order and charging order (O. 117, r. 5)

(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 and 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 – (L.N. 362 of 1997)

- (a) 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
- (b) 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)

6. Discharge or variation of order (O. 117, r. 6)

(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 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.

7. Further application by Secretary for Justice (O. 117, r. 7)

(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; 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 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 5(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.

8. Consent order for variation of restraint order or charging order
(O. 117, r. 8)

Order 42, rule 5A shall apply to an order for the variation of a restraint order or a charging order pursuant to rule 6 or 7 as it applies to an order for the dismissal, discontinuance or withdrawal of such an order.

9. Realisation of property (O. 117, r. 9)

(1) An application under section 17 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)

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(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, and a copy of the confiscation order, of any certificate issued by the Court under section 11(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 17, exercise the power conferred by section 18(1) to direct the making of payments by the receiver.

10. Receivers (O. 117, r. 10)

(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 15 or 17.

(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.

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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 –

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

11. Variation of confiscation order (O. 117, r. 11)

(1) The Secretary for Justice or defendant may apply by summons for an order under section 20(1).

(2) The summons 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 20(1A). (90 of 1995 s. 27)

(90 of 1995 s. 27; L.N. 362 of 1997)

12. Compensation (O. 117, r. 12)

An application for an order under section 29 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)

13. Disclosure of information (O. 117, r. 13)

- (1) An application under section 28 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 15 or 17 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 shall state the grounds for believing that the conditions in section 28(4) and, if appropriate, section 28(7) are fulfilled.

14. Statement relating to specified offence or organized crime

(O. 117, r. 14)

- (1) Where in any proceedings the Secretary for Justice or the defendant proposes to tender to the Court any statement or other document under section 10 he shall give a copy of the statement or other document 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.
- (2) A statement tendered to the Court by the Secretary for Justice under section 10(1) shall include the following particulars, namely – (90 of 1995 s. 27; L.N. 362 of 1997)
- (a) the name of the defendant;
 - (b) the name of the person by whom the statement is tendered;
 - (c) if the statement is tendered after the defendant has been convicted, the date on which and the place where the relevant conviction occurred;
 - (d) such information known to the person who made the statement as is relevant to –
 - (i) where section 8(1)(a)(ii) is applicable, the determination –
 - (A) whether the defendant could have been convicted in respect of the specified offence or offences concerned;
 - (B) whether the specified offence or any of the specified offences concerned could have been an organized crime;
 - (ii) the determination whether the defendant has benefited from a specified offence or an organized crime;
 - (iii) the assessment of the value of the defendant's proceeds of a specified offence or an organized crime. (90 of 1995 s. 27)
(L.N. 156 of 1995; L.N. 362 of 1997)