

FIGHTING HONG KONG'S ORGANIZED CRIME, THE ORGANIZED & SERIOUS CRIME ORDINANCE

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I. BACKGROUND

Historically Hong Kong's organized crime were often seen to be associated with activities of triad societies active in the territory. It was therefore no surprise that apart from the array of criminal offences under its Common Law Jurisdiction which dealt with specific acts of the crime, Hong Kong's legal arsenal against triad and organized crime was only to be found in its Societies Ordinance which dealt with the threat of triad societies by declaring them unlawful and outlawing their activities; thus targeting the problem from an organizational perspective.

The Societies Ordinance has been effective in suppressing the growth of triad societies in Hong Kong. Whilst it is widely acknowledged that our triad threats have been contained, the recent decades have seen criminals transcending the traditional boundary of triad societies, forming themselves into organized crime groups. Whereas some members of these organized crime groups may be triads themselves, triad membership is no longer a pre-requisite for joining such criminal enterprise. To effectively deal with these organized crime groups, a new law was needed. Hong Kong first started working on the new legislation by publishing a discussion document in 1986 seeking public views on how to deal with the threats posed by these organized crime groups. A further discussion document on organized crime was published in 1989. The two formed

the basis of the public consultation exercise. These culminated in the introduction of the Organized Crime Bill in 1991 and the revised Organized and Serious Crimes Bill in 1992.

October 1994 marked the enactment of the Organized and Serious Crimes Ordinance in Hong Kong after lengthy discussion and some 70 amendments. Nevertheless, this provided the police with the new weapon which it needed to deal with these newly emerged organized crime groups which could not otherwise be dealt with effectively under the Societies Ordinance. The Ordinance came into full effect in 1995.

II. THE ORDINANCE AT A GLANCE

In the absence of any applicable international protocol or convention, the Ordinance was modeled upon our earlier Drug Trafficking (Recovery of Proceeds) Ordinance enacted in 1989 and other similar legislations available in countries having also Common Law Jurisdiction to facilitate harmonization. It was enacted to :

- (i) Create new powers of investigation;
- (ii) Provide for confiscation of proceeds of crime;
- (iii) Enhance sentencing of certain offenders; and
- (iv) Create new offences of dealing with proceeds of crime.

It created a schedule of offences (Schedule 1) which would become

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organized crime, once they were linked to the activities of triad societies, as well as other organized crime groups which set out to commit such offences in repetition and others which otherwise planned to endanger life, to inflict serious injury or to inflict serious loss of liberty.

The net casted by the Organized and Serious Crimes Ordinance is much wider and the powers provided are much more extensive than the earlier legislations. Dedicated units in the Police and the Department of Justice work together to ensure that this Ordinance is used correctly and effectively in the fight against organized crime.

III. THE INVESTIGATIVE POWER

A. Section 3 - Witness Order

This Section permits the Attorney General to apply to High Court for an order which compels a person to provide information to Police or Customs & Excise officers conducting an investigation of an organized crime. Non-compliance with the order is an offence and is punishable with a fine of up to \$500,000.- and 3 years imprisonment. Effectively, this section removes a person's right of silence and is therefore an exceptional power. Elaborate procedures are in place to guard against abuse. This Section has only been used on 24 occasions by the Police and in the most needed cases since the implementation of the Ordinance. Of note is its recent application in the investigation of a number of Loco-London Gold fraud cases whereby directors of bogus Loco-London Gold trading companies are compelled to provide information on the running of these companies.

B. Section 4 - Production Order

This section permits the Attorney General, the Police or Customs & Excise to apply to the High Court for a production

order which requires a person in possession or control of material, in Hong Kong or overseas, to produce that material to Police or Customs & Excise officers for investigation of an organized crime; proceeds of an organized crime; and proceeds of specified offence included in Schedule 2 of the Ordinance. The creation of Schedule 2 specified offences extends the scope of this investigative power beyond what is defined as organized crime and is therefore a very useful piece of legislation. This is the most widely used Section and has been used in a broad range of offences - from typical triad related offences to money laundering, to tax evasion on totally 342 occasions since the implementation of the Ordinance.

C. Section 5 - Search Warrant

This Section permits the High Court or District Court to issue search warrants for the same types of investigations as found in Section 4 on application by Police or Customs & Excise officers. This Section has since been used on 69 occasions. The offence for unauthorized disclosure of information and for prejudicing the investigation under Section 7 provides Section 3, 4, 5 with additional clout which is not normally found in other legislations. The maximum penalty under Section 7 is a fine of \$500,000.- and imprisonment for 7 years.

D. Section 6 - Disclosure of Information

The Organized and Serious Crime Ordinance is designed to deal with organized crime at both a national and transnational level. Section 6 of the Ordinance permits disclosure of information obtained under Section 3 to 5 to other investigative authorities both in Hong Kong and overseas, thus allowing the sharing of information in the fight against organized crime.

IV. CONFISCATION OF PROCEEDS OF CRIME

A. Section 8 - Confiscation Order

Section 8 permits the High Court or District Court where a person has been convicted of a specified offence defined under this Ordinance including both Schedule 1 and 2 offence, to make a confiscation order in relation to the person's proceeds of that specified offence where the proceeds exceed \$100,000.-. This threshold being in place to disable the use of such provision in lesser offence. By including Schedule 2 offences this covers most serious crimes as well as organized crime.

If a person is convicted of an organized crime and the proceeds from that offence exceed \$100,000.-, then the court can order the confiscation of the value for all the person's proceeds from organized crime, the amount is not limited to the proceeds of the actual crime with which the person is charged. There are statutory assumptions under Section 9 for assessing the proceeds of crime which can go back 6 years from the date the person is charged. There is also Restraint Order under Section 15 and Charging Order under Section 16 to help ensure that the criminal charged or to be charged with the specified offences are not able to dispose of their realizable property and that any earnings from these property are paid to the Government before any applications for Confiscation Orders are determined. Since implementation, around \$10 million have been confiscated; \$107 million have been restrained/charged; and \$24 million discharged subsequently in favour of victims.

B. Section 13 - Enforcing Confiscation Orders

Whenever the High Court or the District Court makes a confiscation order it will also make an order fixing a term of imprisonment which the defendant is to

serve if any of the amount which he is liable to pay under the confiscation order is not duly paid or recovered. Depending on the amount the additional sentence can range from 12 months to 10 years. This provides a strong incentive for the defendants to handover their proceeds of crime. There has only been 1 instance since the introduction of the Ordinance where the defendant refused to pay up, the proceeds having been transferred overseas. He served an additional sentence of 3 years as a result.

V. ENHANCED SENTENCING

Section 27 permits prosecuting counsel to present information in the High Court or District Court in respect of a person convicted of a specified offence for the purpose of having the court impose a greater sentence than would otherwise have been imposed. The information may relate to such matters as it being an organized crime; it being triad related; its prevalence; its impact upon the victim or the community; or otherwise its pecuniary significance. The additional sentence imposed can be as much as one third of the usual tariff. At the same time that there are provision in the Ordinance to deal with proceeds of crime, this provision provide further deterrence to would be criminals. Since its implementation, the police has secured enhancing sentencing in 25 cases involving 68 defendants.

VI. DEALING WITH PROCEEDS OF CRIME

Section 25 makes it an offence for a person to deal with another person's proceeds of an indictable offence. This further expands the scope of the Ordinance beyond organized crime and specified offence, creating the offence of money laundering as long as the property represent proceeds of an indictable offence. Section 25A further makes disclosure of

knowledge or suspicions that property represent proceeds of indictable offence mandatory and creates an offence for prejudicing the investigation. To protect the confidentiality of such disclosures, Section 26 provides restriction on revealing disclosures under Section 25A in both civil and criminal proceedings. The maximum penalty for money laundering under Section 25 is a fine of \$5 million and imprisonment for 14 years. A total of 35 defendants in 30 cases have since been convicted of money laundering offences.

VII. OVERALL EVALUATION

The Organized and Serious Crime Ordinance has provided law enforcement officers in Hong Kong with the powers to deal with organized crime of both a national and transnational nature. The Police investigative capability to combat triads and organized crime groups has been enhanced by these new provisions. The power to compel the production of documents and statements from victims and witness has been particularly useful in breaking through 'the wall of silence' which hitherto has hampered the Police efforts in their investigations. The confiscation of proceeds of crime from these criminals not only served to restore justice but also crippled the operation of these criminal fraternities which could otherwise continue to thrive on their wealth. Enhanced sentences for those criminals convicted in connection with triad and organized crime offences not only removed them from the streets for much longer periods, but also act as a deterrent to those who would otherwise follow in their footsteps.

VIII. CONCLUSION

Whilst Hong Kong accumulates its experience in the use of this new legislation, there are lessons which we have learned from drafting the legislation to implementing the provisions. The many amendments to the Ordinance since its enactment is testimony to this learning process. There are still other amendments which we will introduce to the legislature next year in order to enhance the effectiveness of this very important legislation. It is the wish of the author that such valuable experience are shared and that this paper has taken the matter one step further in the right direction.

Appendix A

ORGANIZED AND SERIOUS CRIMES ORDINANCE

SCHEDULE 1 OFFENCES

Common law offences

1. murder
2. kidnapping
3. false imprisonment
4. conspiracy to pervert the course of justice

Statutory offences

<u>Offence</u>	<u>Description</u>
5. Import and Export Ordinance (Cap. 60) section 6A section 6C section 6D(1) and (2) section 6E section 18	import and export of strategic commodities import of certain prohibited articles export of certain articles in Hong Kong carriage, etc. of prescribed articles in Hong Kong waters importing or exporting unmanifested cargo
6. Immigration Ordinance (Cap. 115) section 37D(1) section 38(4) section 42(1) and (2)	arrange passage to Hong Kong of unauthorized entrants carrying an illegal immigrant false statements, forgery of documents and use and possession of forged documents
7. Dangerous Drugs Ordinance (Cap. 134) section 4(1) section 4A(1) section 6(1)	trafficking in dangerous drugs trafficking in purported dangerous drugs manufacturing a dangerous drug
8. Gambling Ordinance (Cap. 148) section 5 section 7(1)	operating, managing or controlling gambling establishment bookmaking

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Appendix A

9. Societies Ordinance (Cap. 151)
- section 19 penalties on an office-bearer, etc. of an unlawful society
 - section 21 allowing a meeting of an unlawful society to be held on premises
 - section 22 inciting etc., a person to become a member of an unlawful society
10. Money Lenders Ordinance (Cap. 163)
- section 24(1) lending money at an excessive interest rate
11. Crimes Ordinance (Cap. 200)
- section 24 threatening a person with intent
 - section 25 assaulting with intent to cause certain acts to be done or omitted
 - section 53 causing explosion likely to endanger life or property
 - section 54 attempt to cause explosion, or making or keeping explosive with intent to endanger life or property
 - section 55 making or possession of explosive
 - section 60 destroying or damaging property
 - section 61 threats to destroy or damage property
 - section 71 forgery
 - section 75(1) possessing a false instrument with intent
 - section 98(1) counterfeiting notes and coins with intent
 - section 100(1) custody or control of counterfeit notes and coins with intent
 - section 105 importation and exportation of counterfeit notes and coins
 - section 118 rape
 - section 119 procurement of person by threats
 - section 120 procurement of person by false pretences
 - section 129 trafficking to or from Hong Kong in persons
 - section 130 control over person for purpose of unlawful sexual act or prostitution
 - section 131 causing prostitution of person
 - section 134 detention of person for unlawful sexual act or in vice establishment
 - section 137 living on earnings of prostitution
 - section 139 keeping a vice establishment

Appendix A

12. Theft Ordinance (Cap. 210)
- | | |
|-----------------------|--|
| section 9 | theft |
| section 10 | robbery |
| section 11(1) | burglary |
| section 16(A) | fraud |
| section 17 | obtaining property by deception |
| section 18 | obtaining a pecuniary advantage by deception |
| section 18D | procuring false entry in certain records |
| section 19 | false accounting |
| section 23(1) and (4) | blackmail |
| section 24 (1) | handling stolen goods |
13. Offences against the Person Ordinance (Cap. 212)
- | | |
|------------|---|
| section 17 | shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm |
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14. Firearms and Ammunition Ordinance (Cap. 238)
- | | |
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| section 13 | possession of arms or ammunition without licence |
| section 14 | dealing in arms or ammunition without a licence |

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Appendix A

14A. Trade Descriptions Ordinance (Cap. 362)

section 9(1) and (2)

offences in respect of infringement of trade mark rights
import or export of goods bearing forged trade mark

section 12

(provided that for the purpose of this Ordinance, an offence under section 12 of the Trade Descriptions Ordinance does not include an offence relating only to false trade description)

being accessory to certain offences committed outside Hong Kong

section 22

(provided that for the purpose of this Ordinance, 'offence under this Ordinance' referred to in section 22 of the Trade Descriptions Ordinance only means an offence under -

(a) section 9(1) or (2) of that Ordinance;

or

(b) section 12 of that Ordinance, excluding any offence relating only to false trade description)

15. Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)

section 25(1)

assisting another to retain the benefit of drug trafficking

16. Organized and Serious Crimes Ordinance (Cap. 455)

section 25(1)

assisting a person to retain proceeds of indictable offence

17. Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526)

section 4

providing services that assist the development, production, acquisition or stockpiling of weapons of mass destruction

Appendix A

18. Copyright Ordinance (Cap. 528) section 118(1), (4) and (8) (provided that for the purpose of this Ordinance, 'infringing copy' referred to in section 118(1) and (4) of the Copyright Ordinance does not include a copy of a work which is an infringing copy by virtue only of section 35(3) of that Ordinance)
- section 120(1), (2), (3) and (4) (provided that for the purpose of this Ordinance, 'infringing copy' Referred to in section 120(1) and (3) of the Copyright Ordinance does not include a copy of a work which is an infringing copy by virtue only of section 35(3) of that Ordinance)
- offences relating to making or dealing with infringing copies
- offences relating to making infringing copies outside Hong Kong

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Appendix B

ORGANIZED AND SERIOUS CRIMES ORDINANCE

SCHEDULE 2 OFFENCES

Common law offences

1. manslaughter
2. conspiracy to defraud

Statutory offences

<u>Offence</u>	<u>Description</u>
3. Import and Export Ordinance	
section 14	(Cap. 60) alteration of vessels, aircraft or vehicles for the purpose of smuggling
section 14A	construction, etc., of vessels for the purpose of smuggling
section 18A	assisting, etc., in export of unmanifested cargo
section 35A	assisting, etc., in carriage of prohibited, etc., articles
4. Immigration Ordinance (Cap. 115)	
section 37DA(1)	assisting unauthorized entrant to remain
5. Dangerous Drugs Ordinance (Cap. 134)	
section 5 (1)	supplying or procuring a dangerous drug to or for unauthorized persons
section 9(1), (2) and (3)	offence relating to cannabis plant or opium poppy
section 35(1)	keeping or managing a divan for the taking of dangerous drugs
section 37(1)	permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
6. Gambling Ordinance (Cap. 148)	
section 14	providing money for unlawful gambling or for an unlawful lottery
section 15(1)	permitting premises to be used as gambling establishment

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Appendix B

7. Registration of Persons Ordinance (Cap. 177)
 - section 7A possession of forged identity cards

8. Crimes Ordinance (Cap. 200)
 - section 72 copying a false instrument
 - section 73 using a false instrument
 - section 74 using a copy of a false instrument
 - section 76 making or possessing equipment for making a false instrument

 - section 99(1) passing, etc., counterfeit notes and coins
 - section 101 making or custody or control of counterfeiting materials and implements

9. Prevention of Bribery Ordinance (Cap. 201)
 - section 4(1) bribery of public servant
 - section 5(1) bribery for giving assistance, etc., in regard to contracts

 - section 6(1) bribery for procuring withdrawal of tenders
 - section 9(2) bribery of agent

10. Theft Ordinance (Cap. 210)
 - section 12(1) aggravated burglary
 - section 18A obtaining services by deception

11. Offences against the Person Ordinance (Cap. 212)
 - section 19 wounding or inflicting grievous bodily harm

12. Criminal Procedure Ordinance (Cap. 221)
 - section 90(1) doing an act with intent to impede apprehension or prosecution of offender

Appendix C

ORGANIZED & SERIOUS CRIME ORDINANCE

INTERPRETATION

1. "organized crime" means a Schedule I offence that -
 - (a) is connected with the activities of a particular triad society;
 - (b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or
 - (c) is committed by 2 or more persons, involves substantial planning and organization and involves -
 - (i) loss of the life of any person, or a substantial risk for such a loss;
 - (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or
 - (iii) serious loss of liberty of any person.
2. "Schedule 1 offence" means -
 - (a) any of the offences specified in Schedule 1;
 - (b) conspiracy to commit any of those offences;
 - (c) inciting another to commit any of those offences;
 - (d) attempting to commit any of those offences;
 - (e) aiding, abetting, counselling or procuring the commission of any of those offences.
3. "specified offence" means -
 - (a) any of the offences specified in Schedule 1 or Schedule 2;
 - (b) conspiracy to commit any of those offences;
 - (c) inciting another to commit any of those offences;
 - (d) attempting to commit any of those offences.
 - (e) aiding, abetting, counselling or procuring the commission of any of those offences;
4. "triad society" includes any society which -
 - (a) uses any ritual commonly used by triad societies, any ritual closely resembling any such ritual or any part of any such ritual; or
 - (b) adopts or makes use of any triad title or nomenclature.

Appendix D

MILESTONE OF THE ORGANIZED & SERIOUS CRIMES ORDINANCE

21 October 1994	OSCO enacted
2 December 1994	Provisions relating to money laundering and enhanced sentencing came into force
28 April 1995	Other provisions relating to investigative powers and confiscation of crime proceeds took effect
27 July 1995	Organized and Serious Crimes (Amendment) Ordinance 1995 which improves the confiscation and money laundering provisions of the OSCO was passed by the Legislative Council
1 September 1995	Organized and Serious Crimes (Amendment) Ordinance 1995 brought into operation
27 June 1997	Offence under S.4 of the Weapons of Mass Destruction (Control of Provision of Services) Ordinance [Cap. 525] were added into Schedule 1 of OSCO following the enactment of Cap. 525
16 July 1999	'Fraud' under S. 16(A) of the Theft Ordinance was added into Schedule 1 of OSCO following the amendment of the Theft Ordinance
12 January 2000	Offences under the Trade Descriptions Ordinance [Cap. 362] and Copyright Ordinance [Cap. 528] were added into Schedule 1 of OSCO
27 January 2000	Organized and Serious Crimes (Amendment) Ordinance 2000 which requires any person or company involved in remitting money into or out of Hong Kong to be registered with police and to keep proper records of all transactions for the amount over HK\$ 20,000 was passed by the Legislative Council
1 June 2000	Organized and Serious Crimes (Amendment) Ordinance 2000 came into force