

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 Gazetted

The Chief Executive, in conjunction with the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region (Committee), has exercised the power given under Article 43 of the National Security Law to make 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). The Amendment Rules were gazetted today (December 15) and took effect on the same day.

Under 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 Secretary for Security may issue a freezing notice to freeze offence related property. The freezing notices serve the following purposes:

1. to preserve the property in question so that a confiscation or forfeiture order may be obtained (and enforced) in the future;
2. to prevent the use of the property in question in financing or assisting any offence endangering national security; and
3. to prevent any dealing with the property in a manner which may prejudice on-going investigation or proceedings concerning an offence endangering national security.

The validity period of a freezing notice must not exceed two years, and the Court may only grant an extension if the investigation of the offence endangering national security could not reasonably have been completed before the expiry of the validity period of the freezing notice. The Implementation Rules have not clearly specified whether the validity period of a freezing notice can be extended before conclusion of the related proceedings (especially proceedings of criminal prosecutions).

The Implementation Rules, as amended, have put it beyond doubt that a freezing notice issued under Schedule 3 is valid while the proceedings to which it relates are pending and remains so until the conclusion of the proceedings. The amendments reflect the aforementioned purposes of the freezing notice regime, and can more effectively avoid the national security risks arising from improper dealing with offence related property by the defendants of cases concerning offences endangering national security before

conclusion of the proceedings. The detailed provisions of the Amendment Rules can be accessed via this [website](#).

"The amendments are technical in nature and the scope of the proposed amendments is extremely narrow: it only aims at making clear provisions in respect of the validity period of freezing notice, without changing the basis or principle for issuing such notice. If the related proceedings are not yet concluded, it is only natural that the notices should remain valid in the meantime. Hence, the amendments are a matter of necessity, with a view to enabling the HKSAR Government to continue to effectively prevent and suppress acts and activities endangering national security," the Government spokesman said.

The Government spokesman also pointed out that "after the amendment, the property right of the suspects and defendants of cases concerning offences endangering national security remains protected in accordance with the law. Same as the prevailing arrangement, persons affected by the freezing notices may apply to the Court of First Instance for the revocation of the notices or for the grant of a licence or variation of a licence for dealing with the property under the Implementation Rules. The licence regime already provides a balance between the prevention and suppression of acts or activities endangering national security and the protection of property right."

Article 43 of the National Security Law stipulates the various measures that law enforcement authorities of the HKSAR may take in handling cases concerning offence endangering national security. The Chief Executive is authorised, in conjunction with the Committee, to make relevant implementation rules for the purpose of applying the measures under Article 43. The Implementation Rules first made by the Chief Executive in conjunction with the Committee took effect on July 7 2020.