

ARRANGEMENTS FOR THE APPLICATION FOR PRODUCTION ORDERS
AND SEARCH WARRANTS IN RESPECT OF JOURNALISTIC
MATERIAL UNDER PART XII OF THE INTERPRETATION
AND GENERAL CLAUSES ORDINANCE (Chapter 1)

Notice is hereby given that the Secretary for Security has promulgated the following arrangements for the application for production orders and search warrants in respect of journalistic material under Part XII of the Interpretation and General Clauses Ordinance (Chapter 1). The arrangements are applicable to the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department and the Independent Commission Against Corruption.

2. Part XII of Chapter 1 provides for access to journalistic material by law enforcement agencies under prescribed circumstances. Under sections 84 and 85 of Chapter 1, an officer may apply to either a District Court or Court of First Instance judge for a production order or a search warrant. Production orders are applied through *inter partes* hearings. Warrants are applied through *ex parte* hearings. The guidelines below apply to the arrangements regarding the level of court for making applications.

3. In general, all applications should be made to the District Court, unless the circumstances clearly warrant seeking a decision from the Court of First Instance at the outset.

Tier One: production order, inter partes hearing, application to District Court

4. An officer may apply for a production order, requiring the person who possesses the journalistic material to produce it or to give the officer access to it. An application for the order shall be made *inter partes*, i.e. with both sides present. The party from whom the journalistic material is required may make his case before the court before a decision is made as to whether the application should be approved. All applications for production orders should be submitted to the District Court.

Tier Two: (seize and seal) search warrant, ex parte hearing, application to District Court or Court of First Instance

5. An officer may make an *ex parte* application for a warrant authorizing him to enter premises and to search for or seize journalistic material. Such applications should under normal circumstances be made to the District Court. Any journalistic material seized pursuant to the warrant has to be sealed. The person from whom the material was seized may make an *inter partes* application for the return of the material. Unless the judge is satisfied that it would be in the public interest that the material be made use of by the authorities, he shall order it to be immediately returned to the person from whom it was seized.

6. In exceptional circumstances, e.g. where there is an imminent risk of serious harm to life and limb, or when it involves cases of utmost sensitivity where confidentiality is of grave importance in the interests of the investigation (for example, serious corruption allegations against senior government servants holding sensitive posts), an officer may apply to the Court of First Instance. The advice of Department of Justice (DoJ) should be sought if officers consider it necessary to submit a case to the Court of First Instance, and such application shall not be made unless the making of it has been approved by the directorate officers of the law enforcement agencies concerned and the Prosecution Division of the DoJ respectively. This is to ensure that the decisions are made at the highest level and that grounds for resorting to this course of action are thoroughly considered and fully justified.

Tier Three: (seize and read) search warrant, ex parte hearing, application to District Court or Court of First Instance

7. If the circumstances so warrant, an officer may go for Tier Three, i.e. to make an *ex parte* application for a warrant and for the immediate use of the journalistic material seized. Applications under this Tier should be made to the District Court, unless requirements in paragraph 6 above are satisfied.