

# CRIMINAL PROCEDURE IN HONG KONG

THIRD EDITION

Cancy Liu



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SWEET & MAXWELL

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Criminal procedure is a complex and technical area of law in which the consequences of error may be grave if the legal practitioner does not have a full and accurate understanding of its many facets. In this Third Edition, Cancy Liu has strengthened the coverage that distinguished the earlier editions and produced an up-to-date and authoritative account of this important field. It is an excellent legal text and continues to serve as an invaluable and essential resource for the practice and study of criminal litigation in Hong Kong.

Since the Second Edition, there have been further significant developments in both legislation and case law, and this edition reflects those changes with the same clarity and care that have characterised the work from its inception. It incorporates a consolidated, clear and practical account of recent legislative developments arising from the National Security Law and the Safeguarding National Security Ordinance, providing a structured overview of the principal updates affecting cases endangering national security. These developments are addressed where the relevant instruments confer specific powers or modify or replace existing powers, thereby furnishing readers with a ready reference to the current legal framework in this area.

This volume remains an invaluable reference for both students and practitioners. It combines detailed doctrinal analysis with practical guidance and offers step by step coverage of criminal procedures, addressing legal questions and the issues that commonly arise in day-to-day practice. The extensive references to statutory and regulatory provisions, practice directions, other instruments and case law provide ready answers to many of the problems confronting the inquiring mind or the busy practitioner.

From the Foreword by the **Honourable Mr Justice Zervos JA**

**Cancy Liu** was admitted as a barrister in Hong Kong in 2001. She specialised in criminal litigation and appeared as counsel in a wide range of criminal matters, including *Z v HKSAR* (2007) 10 HKCFAR 183 and *HKSAR v Chan Kau Tai* (HCCC 319/2005). She later joined the Faculty of Law at the University of Hong Kong as non-clinical lecturer in Criminal Law and was subsequently appointed as the course-coordinator and lecturer of Criminal Procedure. She obtained her LLM (Distinction) from the University of Hong Kong and graduated top of the class.



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Archbold Hong Kong	<i>Archbold Hong Kong: Criminal Law, Pleadings, Evidence and Practice 2026</i>
art./arts.	Article/articles
Bar Code or Code of Conduct	<i>Code of Conduct</i> of the Hong Kong Bar Association
Basic Law/BL	Basic Law of the HKSAR
C&E	Customs and Excise Department
CA	Court of Appeal of the High Court
CACC	Court of Appeal Appeal Case (Criminal)
Cap.	Chapter
CAR	Criminal Appeal Rules (Cap.221A, Sub.Leg.)
CCO	Costs in Criminal Cases Ordinance (Cap.492)
CCCR	Costs in Criminal Cases Rules (Cap.492A, Sub.Leg.)
CE	Chief Executive of the HKSAR
Central People's Government	Central People's Government of the People's Republic of China 中華人民共和國中央人民政
CEO	Customs and Excise Service Ordinance (Cap.342)
FA	Court of Final Appeal
FI	Court of First Instance of the High Court
GIS	Communal Information System of the HKPF
J	Chief Justice of the CFA
JHC	Chief Judge of the High Court
JO	Criminal Jurisdiction Ordinance (Cap.461)
O	Crimes Ordinance (Cap.200)
Constitution	Constitution of the People's Republic of China 中華人民共和國憲法
PETO	Court Proceedings (Electronic Technology) Ordinance (Cap.638)
PO	Criminal Procedure Ordinance (Cap.221)
RHO	Courts (Remote Hearing) Ordinance (Cap.654)
RO	Certificate of previous conviction (Criminal record summary) issued under CPO (Cap.221) s.63 and Sch.1 Form 6, more commonly known as Criminal Record Office number

### CHAPTER 3

## INVESTIGATION PROCESS OF AN ALLEGED CRIME

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## 1. GENERALLY

- Lawyers are often instructed to advise and accompany lay clients, ie, accused persons, during the investigation process by law enforcement agencies. The lawyer's role is to ensure that the lay client is aware of his rights, that the client's rights are protected and, ultimately, that the accused may receive a fair trial. 3.001
- Basic Law art.28,<sup>1</sup> Hong Kong Bill of Rights (HKBOR) art.5(1),<sup>2</sup> and common law<sup>3</sup> ensure that no persons shall be subjected to arbitrary or unlawful search of the body, arrest and restriction of freedom including detention or imprisonment. 3.002
- Basic Law art. 29<sup>4</sup> and HKBOR art.14<sup>5</sup> ensure that no persons shall be subjected to arbitrary or unlawful search of homes or other premises or have their privacy violated. 3.003
- NSL art.4 ensures that human rights should be "respected and protected in safeguarding national security in the HKSAR." However, NSL art.4 has to be read together with NSL art.2 in that "when anyone exercises his rights and freedom, he cannot refuse to recognize HKSAR is an inalienable part of PRC, or that HKSAR enjoys only a high degree of autonomy rather than complete autonomy."<sup>6</sup> "Freedoms and rights of individuals in a society underpinned by the rule of law were neither infinite nor absolute. Otherwise, their destructive and disruptive force would be self-evident."<sup>7</sup> 3.004
- In order for law enforcement agencies to investigate crimes, keep the peace and bring criminals to justice, specific powers of investigation are conferred to law enforcement agencies in the NSL and legislation. 3.005
- Investigation of suspected criminal activity triable in Hong Kong is carried out by law enforcement agencies including, *inter alia*, the Hong Kong Police Force (HKPF), Independent Commission against Corruption (ICAC), Customs and Excise Department (C&E), Immigration Department, Securities and Futures Commission (SFC), the Labour Department, Inland Revenue Department, Food and Environmental Hygiene Department, Fire Services Department, Mass Transit Railway and Housing Authority. 3.006
- See also Chapter 2: Section 5: Office for Safeguarding National Security of the Central People's Government in the HKSAR for the powers of the OSNS under NSL, SNSO and its subsidiary legislation. 3.007
- A clear understanding by the legal representatives of the general powers conferred to each law enforcement agency helps ensure that officers of the relevant law enforcement agency act within the scope of specific powers as provided under the legislation and that the rights of the accused are protected. 3.008

<sup>1</sup> See para. 1.009

<sup>2</sup> See para. 1.009.

<sup>3</sup> *Collins v Wilcock* [1984] 1 WLR 1172, 1177.

<sup>4</sup> See para. 1.009.

<sup>5</sup> See para. 1.009.

<sup>6</sup> *HKSAR v Lai Man Ling* [2022] 4 HKLRD 657, [107].

<sup>7</sup> Translated from *HKSAR v Ma Chun Man* [2021] HKDC 1325, [47]: 「所有人都會接受在一個法治社會中任何個人的自由和權利都不是無止境的，都不是絕對的，否則其破壞力及顛覆性不言而喻。」 See [https://www.hknsllannot.gov.hk/en/home/pdf/DCCC\\_122\\_2021\\_en.pdf](https://www.hknsllannot.gov.hk/en/home/pdf/DCCC_122_2021_en.pdf).

3.009 In this chapter, some of the main powers conferred to the law enforcement agencies are discussed. For the full extent of the powers of each law enforcement agency, see the relevant legislation.

3.010 During the investigation process in Hong Kong, it is vital to bear in mind some of the main principles of criminal defence discussed in Chapter 1: Section 2: Fundamental Principles of Defence, which include, *inter alia*:

- (1) Presumption of innocence of an accused person (BL art.87, NSL art.14);<sup>8</sup> HKBOR art.11(1));
- (2) Unless otherwise stated, the burden of proof lies on the prosecution;
- (3) Right to remain silent, ie. right to not be compelled to testify against himself or to confess guilt (HKBOR art.11(2)(g));<sup>8</sup>
- (4) Right not to be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence (BL art.29, HKBOR art.14(1));
- (5) Right not to be subjected to arbitrary or lawful arrest, detention or imprisonment (BL art.28, HKBOR art.5(1));
- (6) Right to fair trial, without undue delay (BL art.87);
- (7) Right to confidential legal advice, access to the courts, choice of lawyer, timely protection of their lawful rights and interests or for representation before the courts and to judicial remedies (BL art.35);<sup>9</sup>
- (8) Right to be informed promptly, at the time of arrest, and in detail in a language which he understands of the reasons for his arrest and nature and cause of the charge against him (HKBOR arts.5(2) and 11(2)(a));
- (9) Right to be brought promptly before the courts after being arrested or charged on a criminal charge (HKBOR art.5(3));
- (10) Right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing (HKBOR art.11(2)(b));
- (11) Right to defend himself in person or through legal assistance of his own choosing (HKBOR art.11(2)(d));
- (12) Right to be informed, if he does not have legal assistance, of right to have legal assistance (HKBOR art.11(2)(d));

- (13) Right to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it (HKBOR art.11(2)(d)).

Where applicable and if possible, legal representatives may also assist the accused in securing his release from the detention of the law enforcement agency, in the form of bail or otherwise. 3.011

To summarise, the main objectives of legal representatives when instructed during the investigation process of an alleged crime against the accused include, *inter alia*: 3.012

- (1) advising the accused of his rights;
- (2) ensuring that the accused's rights are protected;
- (3) securing the release of the accused from detention, where applicable; and
- (4) ultimately, ensuring that the accused may receive a fair trial.

An overview of the powers of the various law enforcement agencies referred herein include, *inter alia*: 3.013

Power	Immigration Service <sup>10</sup>	Police Force <sup>11</sup>	Customs and Excise Service <sup>12</sup>	Independent Commission against Corruption <sup>13</sup>
To investigate criminal offences under (non-exhaustive)	(a) Immigration Ordinance (Cap.115) (b) Immigration Service Ordinance (Cap.331) and Col.2, Sch.2 Offences	Any offence, subject to exceptions	(a) Customs and Excise Service Ordinance (Cap.342) and Sch.2 Offences (b) Dangerous Drugs Ordinance (Cap.134) (c) Organized and Serious Crimes Ordinance (Cap.455) (d) Drug Trafficking (Recovery of Proceeds) Ordinance (Cap.405)	(a) Independent Commission Against Corruption Ordinance (Cap.204) (ICACO) (b) Prevention of Bribery Ordinance (Cap.201) (c) offences under ICACO s.10(5) (d) Elections (Corrupt and Illegal Conduct) Ordinance (Cap.554)

<sup>8</sup> Unless abrogated by law or legislation. For examples, see Implementation Rules for Article 43 of the Law of the Hong Kong Special Administrative Region on Safeguarding National Security in the HKSAR Sch. 3, 5 & 7, Road Traffic Ordinance (Cap. 374) s.63, Prevention of Bribery Ordinance (Cap. 201) ss.13 and 14, Organized and Serious Crimes Ordinance (Cap.455) ss.3 and 4. See also *Commissioner of the ICAC (2012) 15 HKCFAR 362*.  
<sup>9</sup> Subject to exceptions for cases endangering national security. See Chapter 3: Section 11(i): Cases endangering national security.

<sup>10</sup> See Sections 6 and 13.  
<sup>11</sup> See Sections 3, 7, 8 and 11 to 13.  
<sup>12</sup> See Sections 5, 7, 8 and 13.  
<sup>13</sup> See Sections 4 and 13.

Power	Immigration Service <sup>10</sup>	Police Force <sup>11</sup>	Customs and Excise Service <sup>12</sup>	Independent Commission on Corruption <sup>13</sup>
Stop, search and detain without warrant	Immigration Service Ordinance s.12	Police Force Ordinance (Cap.232) s.54	Customs and Excise Service Ordinance s.17A	X
Inspect travel, identification documents	Immigration Ordinance ss.17C and 17D		Customs and Excise Service Ordinance s.17BB	X
Enter, search premises without warrant	Immigration Service Ordinance s.13 and Immigration Ordinance s.56	PFO s.50(3)–50(6)	Customs and Excise Service Ordinance ss.17B and 17BA	X
Enter, search premises with warrant	Immigration Ordinance s.56AA	PFO s.50(7)	X	ICACO s.10B
Arrest without warrant	Immigration Service Ordinance s.12	PFO s.50(1)–50(1B)	Customs and Excise Service Ordinance s.17A	ICACO s.10
Arrest without warrant	Criminal Procedure Ordinance (Cap.221) ss.101 and 101A for arrestable offence and use of reasonable force in making arrest			
Traffic offences	X	Road Traffic Ordinance (Cap.374)	X	X
Dangerous drugs	X	Dangerous Drugs Ordinance		X
Obtain information, material and restraint order	X	Organized and Serious Crimes Ordinance and Drug Trafficking (Recovery of Proceeds) Ordinance		Prevention of Terrorism Ordinance ss.13A–13C, 14 and 14C
Detention after arrest	Immigration Service Ordinance s.13A	PFO s.52	Customs and Excise Service Ordinance s.17C	ICACO s.10A
Offences endangering National Security	X	NSL <sup>14</sup> IR43 <sup>15</sup> SNSO <sup>16</sup>	Customs & Excise Service Ordinance ss.17–17BB <sup>17</sup>	X

<sup>10</sup> <https://www.hknsiannot.gov.hk/en/home/index.html>

<sup>11</sup> <https://www.elegislation.gov.hk/hk/A303>

<sup>12</sup> <https://www.elegislation.gov.hk/hk/A305>

<sup>13</sup> Powers extended to offences endangering national security by SNSO ss.156–160

## 2. ACCEPTANCE OF INSTRUCTIONS BY SOLICITORS AND BARRISTERS

A lay person and/or his representative may retain legal representation for himself (or for the accused) by, *inter alia*, contacting and instructing a firm of solicitors registered with the Law Society of Hong Kong.<sup>18</sup> 3.014

After initial contact is made by an accused (or by his representative) with a solicitor,<sup>19</sup> 3.015 the solicitor should obtain the following information forthwith, *inter alia*:

- (1) Personal particulars of the accused, including *inter alia*, full name, address, contact information and identification document number (and copy, if necessary);
- (2) Background of the arrest, including *inter alia*, date, time and place of the arrest, general particulars of the alleged offence and location of the accused at present, if he is presently detained, which law enforcement agency made the arrest;
- (3) Particulars of officer in charge of the case including full name, rank, UI, team and station attached to, if known;
- (4) Personal particulars of the representative, if applicable, including *inter alia*, full name, address, contact information, identification document number (and copy if necessary) and relationship with the accused; and
- (5) Conflict of interest check.

Furthermore, where a solicitor firm acts for an accused person who is privately funded 3.016 in relation to criminal matters, the solicitor in charge of the matter shall comply with, *inter alia*, Solicitors' Practice Rules (Cap.159H, Sub.Leg.) r.5D.

### Solicitors' Practice Rules (Cap.159H, Sub.Leg)

#### 5D. Steps to be taken in criminal matters<sup>(2006/2019)</sup>

Where a firm acts for a client in relation to that client's criminal litigation the solicitor in charge of that matter shall take the following steps—

- (a) as soon as practicable and not more than 7 days after receiving instructions the firm shall confirm by letter to the client—
  - (i) the instructions given by the client;
  - (ii) the services to be provided by the firm;
  - (iii) the name of the solicitor in charge of the matter;
  - (iv) the fee to be charged or an estimate of such fee; and
  - (v) the name of counsel, his fee and any refreshers, or an estimate of such fee and refreshers,

<sup>18</sup> See <https://www.hklawsoc.org.hk/en/serve-the-public/the-law-list/hong-kong-law-firms>.

<sup>19</sup> Solicitor listed under the List of Members with Practising Certificate of the Law Society in Hong Kong who hold current practising certificates in Hong Kong and who subscribe to the membership of the Law Society of Hong Kong, see <https://www.hklawsoc.org.hk/en/serve-the-public/the-law-list/members-with-practising-certificate>.

- and the firm shall secure the written and signed agreement of the client to those terms;
- (b) if any material change occurs to the information contained in the letter provided to the client (for example, the identity of counsel) the firm shall within 7 days notify the client in writing of that change and secure the client's written and signed agreement to the change;
- (c) at the end of the case the firm shall promptly deliver to the client an account signed by a solicitor personally, which includes—
- the name and court number of the case;
  - the name of any counsel retained;
  - the dates of any court appearances;
  - a note of any fees paid to counsel; and
  - the solicitor's profit costs and disbursements;
- (d) when money is received from a client in payment of fees or on account of costs or disbursements, the firm shall deliver a receipt to the client;
- (e) as soon as practicable, and in any event both before the relevant hearing and not more than 7 days after counsel has been instructed, the firm shall deliver a backsheet or other written instruction to counsel on which shall be endorsed (*inter alia*)—
- the name and personal signature of the solicitor in charge of the matter;
  - the name of the firm;
  - the name of the case (and the court number if known at the time);
  - the name of counsel; and
  - the agreed fee and any agreed refreshers;
- (f) the firm shall only pay a counsel after receipt of a fee note, and payment shall only be made by cheque drawn on the office or client account of the firm;
- (g) the firm shall retain copies of all the above documents for not less than 2 years after the completion of the matter.

(L.N. 138 of 1993)

### Legal Practitioners Ordinance (Cap.159)

#### Part I Short Title and Interpretation

#### 2. Interpretation<sup>(24/08/2025)</sup>

- (1) In this Ordinance, unless the context otherwise requires—

**barrister** (大律師) means a person who is enrolled as a barrister on the roll of barristers and who, at the material time, is not suspended from practice;

**client** (當事人), except in relation to non-contentious business, includes any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs;

**costs** (訟費、事務費) includes fees, charges, disbursements, expenses and remuneration;

**Court** (法院) means the Court of First Instance; (*Amended 92 of 1975 s.59; 25 of 1998 s.2*)

**solicitor** (律師) means a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice;

**solicitor advocate** (訟辯律師) means a person who has higher rights of audience under Part IIIB; (*Added 2 of 2010 s.3*)

**unqualified person** (不合資格人士) means a person who is not a solicitor.

(Amended 70 of 1991 s.2; 61 of 1992 s.2)

[Note: other definitions and sub-ss. (1A) to (3) are omitted]

Barristers,<sup>20</sup> subject to the exceptions under the Bar Code, may not act, whether for a fee or otherwise, in a professional capacity except upon the instructions of a solicitor. 3.017

#### Code of Conduct

#### 5. Practising Barristers – General Principles<sup>21</sup>

##### Acting only upon Instructions from Solicitors or Other Approved Persons

5.16 (a) Subject to the exceptions provided for in paragraph 5.17, a practising barrister may not act, whether for a fee or otherwise, in a professional capacity except upon the instructions of a solicitor.

(b) For the avoidance of doubt:

- (i) Provided that the criteria set out in the definition of “solicitor” in paragraph 2.2(aq) are satisfied, a practising barrister may accept instructions from a solicitor:

- who is not practising in, from or with a firm of solicitors but who, under a contract of employment, works in-house and provides legal services exclusively to his employer; and
- who is giving instructions in the course of such employment.

(ii) A practising barrister who receives instructions from such a solicitor should:

- decline to act if, or (having accepted instructions) to act further at any stage when, he considers it in the interests of the lay client that a firm of solicitors be instructed, having regard to all relevant circumstances including but not limited to the nature and complexity of the matter of the instructions and the capacity and

<sup>20</sup> See barristers listed under the Bar List with current Practising Certificate issued by the Hong Kong Bar Association at <https://www.hkba.org/bar-list>.

<sup>21</sup> Hong Kong Bar Association, Code of Conduct, Bar Code, <http://www.hkba.org/content/code-conduct> (Accessed 1 November 2025).

and the firm shall secure the written and signed agreement of the client in those terms;

- (b) if any material change occurs to the information contained in the letter provided to the client (for example, the identity of counsel) the firm shall within 7 days notify the client in writing of that change and secure the client's written and signed agreement to the change;
- (c) at the end of the case the firm shall promptly deliver to the client an account signed by a solicitor personally, which includes—
- the name and court number of the case;
  - the name of any counsel retained;
  - the dates of any court appearances;
  - a note of any fees paid to counsel; and
  - the solicitor's profit costs and disbursements;
- (d) when money is received from a client in payment of fees or on account of costs or disbursements, the firm shall deliver a receipt to the client;
- (e) as soon as practicable, and in any event both before the relevant hearing and not more than 7 days after counsel has been instructed, the firm shall deliver a backsheet or other written instruction to counsel on which shall be endorsed (*inter alia*)—
- the name and personal signature of the solicitor in charge of the matter;
  - the name of the firm;
  - the name of the case (and the court number if known at the time);
  - the name of counsel; and
  - the agreed fee and any agreed refreshers;
- (f) the firm shall only pay a counsel after receipt of a fee note, and payment shall only be made by cheque drawn on the office or client account of the firm;
- (g) the firm shall retain copies of all the above documents for not less than 2 years after the completion of the matter.

(L.N. 138 of '96)

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- (1) In this Ordinance, unless the context otherwise requires—

**barrister** (大律師) means a person who is enrolled as a barrister on the roll of barristers and who, at the material time, is not suspended from practice;

**client** (當事人), except in relation to non-contentious business, includes any person who as principal or on behalf of another person retains or employs, or is intended to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs;

**costs** (訟費、事務費) includes fees, charges, disbursements, expenses and remuneration;

**Court** (法院) means the Court of First Instance; (*Amended 92 of 1975 s.59; 25 of 1998 s.2*)

**solicitor** (律師) means a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice;

**solicitor advocate** (訟辯律師) means a person who has higher rights of audience under Part IIIB; (*Added 2 of 2010 s.3*)

**unqualified person** (不合資格人士) means a person who is not a solicitor.

(*Amended 70 of 1991 s.2; 61 of 1992 s.2*)

[Note: other definitions and sub-ss. (1A) to (3) are omitted]

Barristers,<sup>20</sup> subject to the exceptions under the Bar Code, may not act, whether for a fee or otherwise, in a professional capacity except upon the instructions of a solicitor. 3.017

### Code of Conduct

#### 5. Practising Barristers – General Principles<sup>21</sup>

##### Acting only upon Instructions from Solicitors or Other Approved Persons

- 5.16 (a) Subject to the exceptions provided for in paragraph 5.17, a practising barrister may not act, whether for a fee or otherwise, in a professional capacity except upon the instructions of a solicitor.
- (b) For the avoidance of doubt:
- Provided that the criteria set out in the definition of "solicitor" in paragraph 2.2(aq) are satisfied, a practising barrister may accept instructions from a solicitor:
    - who is not practising in, from or with a firm of solicitors but who, under a contract of employment, works in-house and provides legal services exclusively to his employer; and
    - who is giving instructions in the course of such employment.
  - A practising barrister who receives instructions from such a solicitor should:
    - decline to act if, or (having accepted instructions) to act further at any stage when, he considers it in the interests of the lay client that a firm of solicitors be instructed, having regard to all relevant circumstances including but not limited to the nature and complexity of the matter of the instructions and the capacity and

<sup>20</sup> See barristers listed under the Bar List with current Practising Certificate issued by the Hong Kong Bar Association at <http://www.hkba.org/bar-list>.

<sup>21</sup> Hong Kong Bar Association, Code of Conduct, Bar Code, <http://www.hkba.org/content/code-conduct> (Accessed 1 November 2025).

capability of the instructing solicitor in handling the same work;  
retaining a firm of solicitors; and

(2) be particularly mindful of paragraph 5.19.

#### Work that should not be undertaken by a Practising Barrister

- 5.19 A practising barrister should not accept any instructions to:-
- receive, disburse or otherwise handle clients' money, securities or other assets other than by receiving payment of his fees;
  - do any work by way of the management, administration or general conduct of a lay client's business or affairs;
  - do any work by way of the management, administration or general conduct of the litigation or matter that is the subject-matter of the instructions;
  - do *inter partes* work of a kind not normally performed by a practising barrister in Hong Kong; or
  - undertake any work usually performed exclusively by solicitors or members of other professions.

### 7. Administration of Practice

#### Regarding Acceptance and Preservation of Records of Instructions

7.4 In the case of instructions other than from a person authorised by custom or the Bar Council as set out in Annex 3 or from a Qualifying Instructing Member or Officer of a Recognised Direct Access Body as set out in Annex 4, the first point of contact in instructing a barrister (or a member of his staff authorised to accept instructions on his behalf) in any matter must be by the instructing solicitor personally and not by a member of his staff. A barrister may not accept instructions from a solicitor or solicitors' firm without having made this first point of contact.

3.018 Under the Bar Code, persons or bodies authorised by the Bar Council to instruct barristers directly without the intervention of a solicitor include, *inter alia*, the Director of Hong Kong, the Department of Justice (DOJ), the Director of Legal Aid, the Lawyer Service for appearance in the Magistrates Courts, Juvenile Courts and Coroner's Courts, for provision of legal advisory service at its Legal Advice Centres, for provision of legal assistance under its Convention against Torture Scheme and the Bar Free Legal Service.<sup>22</sup>

3.019 Subject to exceptions, a barrister may not appear in Court, or discuss a case or give instructions from or give advice to his lay client unless the instructing solicitor or his representative is present.

### 10. Conduct of Professional Work<sup>23</sup>

#### Attendance of Instructing Persons or Their Representatives

10.19 Subject to paragraphs 10.20 to 10.22, a practising barrister

- may not appear in Court, or discuss a case or take instructions from or give advice to, his lay client unless the person instructing him or his representative is present;
- unless he is Prosecuting Counsel (to whom paragraph 10.67 applies), may, if necessary, interview his lay client's potential witnesses, and discuss the case or clarify matters with them, provided that the person instructing him or his representative is present.

10.20 Provided that he is satisfied that the interests of the lay client and the interests of justice will not be prejudiced (as where the barrister reasonably takes the view that it will not be necessary in the course of a Court hearing to take instructions from or otherwise seek the assistance of the solicitor or person instructing the barrister), a practising barrister may agree with the person instructing him that the attendance in Court of that person or of his representatives may be dispensed with for all or part of any hearing. It is solely the responsibility of the barrister to decide whether and to what extent the attendance in Court of his professional client or his professional client's representative may be dispensed with.

10.21 Notwithstanding that neither the solicitor nor the person instructing the barrister nor their representatives are present:

- if the attendance of the person instructing the barrister or of his representative has been dispensed with pursuant to paragraph 10.20; or
- if the barrister arrives at Court for a case in which he has been instructed by a person authorised to instruct him in the matter but neither such person nor his representative is present, and if there are no other grounds on which to request an adjournment and no practicable alternative, a practising barrister may:-

- conduct the case on behalf of the lay client; and
- exceptionally, interview supporting witnesses and take proofs of evidence if these are not already available in which case he should inform his opponent.

10.22 In a criminal case or in matters where the lay client is detained pursuant to the provisions of the Immigration Ordinance (Cap.115), a practising barrister may discuss the case with or take instructions from or give advice to the lay client although the person instructing him in the matter or his representative is unable to be present, if such person has given his approval to the communication taking place or the circumstances make it necessary.

### 3. GENERAL POWERS OF THE POLICE

#### (a) To stop and search a person or conveyance without warrant

Legislation confers powers to the police to stop and search persons in Hong Kong under particular circumstances. 3.020

<sup>22</sup> *Ibid.*, Annex 3.  
<sup>23</sup> *Ibid.*

3.021 Power of a police officer to stop, detain and search a person who is acting in any street or public place, including, *inter alia*, in any conveyance, Police Force Ordinance (Cap.232) (PFO) s.54(1)

Police Force Ordinance (Cap.232)

Part VII Miscellaneous Provisions

54. Power to stop, detain and search<sup>(24/08/2025)</sup>

- (1) If a police officer finds any person in any street or other public place, or on board any vessel, or in any conveyance, at any hour of the day or night, who acts in a suspicious manner, it shall be lawful for the police officer—
- to stop the person for the purpose of demanding that he produce proof of his identity for inspection by the police officer;
  - to detain the person for a reasonable period while the police officer enquires whether or not the person is suspected of having committed any offence at any time; and
  - if the police officer considers it necessary to do so—
    - to search the person for anything that may present a danger to the police officer; and
    - to detain the person during such period as is reasonably required for the purpose of such a search.

Part I Preliminary

3. Interpretation<sup>(24/08/2025)</sup>

In this Ordinance, unless the context otherwise requires—

**Commissioner** (處長) means the Commissioner of Police of Hong Kong or deputy commissioner; (Replaced 13 of 1953 s.2. Amended 76 of 1999 s.3)

**police constable or constable** (警員) means a police officer under the rank of sergeant and also means detective police constable or detective constable (Amended 42 of 1977 s.2)

**police officer** (警務人員) includes any member of the police force; (Amended 1 of 1974 s.2; 58 of 1999 s.3)

[Note: other definitions are omitted]

Interpretation and General Clauses Ordinance (Cap.1)

Part II Interpretation of Words and Expressions

3. Interpretation of Words and Expressions<sup>(18/08/2024)</sup>

**public place** (公眾地方、公眾場所) means—

- any public street or pier, or any public garden; and
- any theatre, place of public entertainment of any kind, or other place of general resort, admission to which is obtained by payment or to which the public have or are permitted to have access;

**street** (街、街道) means—

- any highway, street, road, bridge, thorough-fare, parade, square, court, alley, lane, bridle-way, footway, passage or tunnel; and
- any open place, whether or not situate on land the subject of a Government lease, used or frequented by the public or to which the public have or are permitted to have access; (Added 26 of 1998 s. 4)

[Note: other definitions are omitted]

Power of a police officer to stop, detain and search a person in any street or public place, including, *inter alia*, in any conveyance whom he reasonably suspects of committing an offence is provided under PFO s.54(2). 3.022

Police Force Ordinance (Cap.232)

Part VII Miscellaneous Provisions

54. Power to stop, detain and search<sup>(24/08/2025)</sup>

- (2) If a police officer finds any person in any street or other public place, or on board any vessel, or in any conveyance, at any hour of the day or night, whom he reasonably suspects of having committed or of being about to commit or of intending to commit any offence, it shall be lawful for the police officer—
- to stop the person for the purpose of demanding that he produce proof of his identity for inspection by the police officer;
  - to detain the person for a reasonable period while the police officer enquires whether or not the person is suspected of having committed any offence at any time;
  - to search the person for anything that is likely to be of value (whether by itself or together with anything else) to the investigation of any offence that the person has committed, or is reasonably suspected of having committed or of being about to commit or of intending to commit; and
  - to detain the person during such period as is reasonably required for the purpose of such a search.
- (3) In this section, **proof of identity** (身分證明文件) has the same meaning as in section 17B of the Immigration Ordinance (Cap.115).

(Replaced 57 of 1992 s.5)

In applying PFO s.54(1) and 54(2), when a police officer stops and searches a person, Jeremy Poon J (as he then was) in *Wong Tze Yam v Commissioner of Police*<sup>24</sup> summarized the position as follows: 3.023

15. ... When a police officer stops and searches a person:
- If he relies on section 54(1), he must have relevant [objective] evidence to support his [subjective] judgment that the person is acting in a suspicious manner.

<sup>24</sup> [2009] 5 HKLRD 836 (CFI).

CHAPTER 4

COMMENCEMENT OF CRIMINAL PROCEEDINGS

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## 1. CLASSIFICATION OF CRIMINAL OFFENCES

### (a) Generally

There are only two types of offences, namely those which are summary and those which are indictable.<sup>1</sup> 4.001

Under the Magistrates Ordinance (Cap.227) (MO), an indictable offence (可公訴罪) is defined in MO s.2 as "any crime or offence for which a magistrate is authorized or empowered or required to commit the accused person to prison for trial before the court". 4.002

All criminal cases commence in the Magistrates Courts. The venue where subsequent criminal proceedings (trial and sentence) can be dealt with, ie, Magistrates Courts, District Court or in the Court of First Instance (CFI), is primarily determined by the relevant ordinance, namely, whether the specific offence states that is triable: 4.003

- (1) on indictment only;
- (2) summarily only; or
- (3) either way.

Criminal offences tried in the District Court or CFI are tried upon indictment in accordance with Criminal Procedure Ordinance (Cap.221) (CPO) s.41(1).<sup>2</sup> 4.004

Inferred from the definitions of the terms *triable summarily* and *summary conviction* in Interpretation and General Clauses Ordinance (Cap.1) s.3, criminal offences tried in the Magistrates Courts are tried summarily. 4.005

### Interpretation and General Clauses Ordinance (Cap.1)

#### Part II Interpretation of Words and Expressions

##### 1. Interpretation of words and expressions<sup>(18/08/2024)</sup>

*summary conviction* (簡易程序定罪) means a summary conviction by a magistrate in accordance with the provisions of the Magistrates Ordinance (Cap.227);  
*triable summarily* (可循簡易程序審訊) means triable by a magistrate, in accordance with the provisions of the Magistrates Ordinance (Cap.227);

[Note: other definitions are omitted]

Where an offence is triable in more than one court, the decision as to the venue of the subsequent criminal proceedings rests primarily with the Secretary for Justice (SJ) of the Department of Justice who has control of criminal prosecutions in Hong Kong in accordance with Basic Law art.63, free from any interference.<sup>3</sup> 4.006

<sup>1</sup> See *Shek Chun Kong Investment Co Ltd v Securities and Futures Commission* (1999) 2 HKCFAR 490, 499. See para.1.202.  
<sup>2</sup> Courts for cases which fall under NSL art.55. See para.1.032.

## Basic Law

## Chapter IV Political Structure

## Section 2 The Executive Authorities

## Article 63

The Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference.

4.007 The modes of trial within the courts are defined in CPO ss.14A and 41<sup>4</sup> and National Security Law (NSL) art(s).41(3), 45 and 46, and are summarised as follows:

Court	Mode of trial	Form of complaint	Procedural ordinance
Magistrates Courts	Summarily, before a Magistrate	Charge sheet (控罪書) or summons (傳票) (under Magistrates Ordinance)	MO, CPO, NSL and SNSO
District Court	Upon indictment, before a District Judge	Charge sheet (under District Court Ordinance)	DCO, CPO, NSL and SNSO
Court of First Instance	Upon indictment, before a CFI judge and jury	Indictment (公訴書)	CPO, NSL and SNSO
	Upon indictment, before three Designated Judges without jury under NSL art.46		CPO, NSL and SNSO

## Criminal Procedure Ordinance (Cap.221)

## Part II Proceedings Preliminary to Trial

## Institution of proceedings

14A. Trial of offences<sup>(14/04/2025)</sup>

- (1) Where any provision in any Ordinance creates, or results in the creation of, an offence, the offence shall be triable summarily only, unless—
  - (a) *(Repealed 6 of 2024 s. 142)*
  - (b) the words “upon indictment” or “on indictment” appear, or *(Amended L.N. 54 of 1989)*
  - (c) *(Repealed 50 of 1991 s.4(1))*
  - (d) the offence is transferred to the District Court in accordance with Part IV of the Magistrates Ordinance (Cap.227). *(Added 16 of 1970 Schedule)*
- (2) Where any provision in any Ordinance creates, or results in the creation of, an offence and subject to subsection (4), the words “upon indictment” or “on indictment” appear, the offence is triable only on indictment. *(Replaced 6 of 2024 s. 142)*

<sup>4</sup> See para.2.202.

(3) *(Repealed 50 of 1991 s.4(1))*

(4) Where any provision in any Ordinance creates, or results in the creation of, an offence and the offence is declared to be triable either summarily or upon indictment or to be punishable on summary conviction or on indictment, the offence shall be triable either on indictment or summarily.

(5) Nothing in this section shall affect—

- (a) the powers conferred upon a magistrate by the Magistrates Ordinance (Cap.227) or by any other law to try an indictable offence summarily; or
- (b) the powers conferred upon the District Court by any law to try indictable offences.

*(Amended 50 of 1991 s.4(1))*

## National Security Law

## Chapter IV Jurisdiction, Applicable Law and Procedure

## Article 41(3)

Cases concerning offence endangering national security within the jurisdiction of the Hong Kong Special Administrative Region shall be tried on indictment.

## Article 45

Unless otherwise provided by this Law, magistrates' courts, the District Court, the High Court and the Court of Final Appeal shall handle proceedings in relation to the prosecution for offences endangering national security in accordance with the laws of the Hong Kong Special Administrative Region.

## Article 46

In criminal proceedings in the Court of First Instance of the High Court concerning offences endangering national security, the Secretary for Justice may issue a certificate directing that the case shall be tried without a jury on the grounds of, among others, the protection of State secrets, involvement of foreign factors in the case, and the protection of personal safety of jurors and their family members. Where the Secretary for Justice has issued the certificate, the case shall be tried in the Court of First Instance without a jury by a panel of three judges.

Where the Secretary for Justice has issued the certificate, the reference to “a jury” or “a verdict of the jury” in any provision of the laws of the Hong Kong Special Administrative Region applicable to the related proceedings shall be construed as referring to the judges or the functions of the judge as a judge of fact.

Where an offence is not created under the ordinances of Hong Kong, ie, an offence at common law such as murder, conspiracy or incitement to commit an offence, conspiracy to defraud, etc, whether the offence is triable summarily or on indictment is derived from the offence itself. 4.008

**(b) Offences triable summarily**

4.009 According to CPO Pt.II s.14A, a criminal offence created under the ordinances of Hong Kong is deemed to be triable summarily only, unless the words *upon indictment* or *on indictment* appear or the offence is transferred to the District Court in accordance with MO Pt.IV.<sup>5</sup>

**Criminal Procedure Ordinance (Cap.221)****Part II Proceedings Preliminary to Trial****Institution of proceedings****14A. Trial of offences<sup>(14/04/2025)</sup>**

- (1) Where any provision in any Ordinance creates, or results in the creation of, an offence, the offence shall be triable summarily only, unless—
- (a) *(Repealed 6 of 2024 s. 142)*
  - (b) the words “upon indictment” or “on indictment” appear; or *(Amended L.N. 54 of 1989)*
  - (c) *(Repealed 50 of 1991 s.4(1))*
  - (d) the offence is transferred to the District Court in accordance with Part IV of the Magistrates Ordinance (Cap.227). *(Added 16 of 1970 Schedule)*

[Note: other *sub-ss* are omitted]

4.010 An offence triable summarily only is tried in the Magistrates Courts, unless transferred to the District Court under MO s.88(1)(b)<sup>6</sup> or transferred to the CFI under CPO s.79F<sup>7</sup>

4.011 “While summary offences are not normally transferable [to the District Court or CFI], MO s.88(1)(b) allows the magistrate to order transfer of a summary offence ‘piggybacking’ on the transfer of an indictable offence to the District Court. Allowing the indictable and summary offences to be transferred for trial together plainly provides for procedural economy. It would be senseless to have a defendant tried for indictable offences in one court and separately for summary offences in another, especially where they may arise out of the same or related circumstances.”<sup>8</sup>

4.012 Furthermore, CPO s.14A(1)(d) “envisages summary offences transferred ‘piggyback’ under MO s.88(1)(b) so that while classified as summary offences, they are not treated as “triable summarily only” but are susceptible to trial after transfer to the District Court.”

4.013 Procedure in the Magistrates Courts in relation to offences triable summarily is set out in MO Pt.II ss.7D–68.

For example, loitering, contrary to Crimes Ordinance (Cap.200) Pt.XIII s.160(1), is an offence triable summarily only, as the words *upon indictment* or *on indictment* are not mentioned. 4.014

**Crimes Ordinance (Cap.200)****Part XIII Miscellaneous Offences****160. Loitering<sup>(23/03/2024)</sup>**

- (1) A person who loiters in a public place or in the common parts of any building with intent to commit an arrestable offence commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months. *(Replaced 74 of 1992 s. 3. Amended E.R. 4 of 2021)*

[Note: *sub-ss.* (2) to (4) are omitted]

**Interpretation and General Clauses Ordinance (Cap.1)****Part II Interpretation of Words and Expressions****1. Interpretation of words and expressions<sup>(18/08/2024)</sup>**

*arrestable offence* (可逮捕的罪行) means an offence for which the sentence is fixed by law or for which a person may under or by virtue of any law be sentenced to imprisonment for a term exceeding 12 months, and an attempt to commit any such offence; *(Added 30 of 1971 s. 2)*

[Note: other definitions are omitted]

Generally, the maximum sentencing jurisdiction of a Magistrate is two years imprisonment for one indictable offence.<sup>10</sup> Specifically, the offence of loitering, contrary to Crimes Ordinance s.160(1), provides that upon conviction, the maximum sentence a Magistrate may impose for one count is six-month imprisonment. 4.015

On the other hand, the maximum sentence a Magistrate may impose for a particular summary offence may exceed two years, where it is specifically provided for. 4.016

To illustrate, an offence contrary to Firearms and Ammunition Ordinance (Cap.238) s.20(2) states: 4.017

**Firearms and Ammunition Ordinance (Cap.238)****Part III Offences relating to Possession of Arms or Ammunition etc.****20. Possession of an imitation firearm<sup>(27/07/2025)</sup>**

- (1) Subject to subsections (2) and (3), any person who is in possession of an imitation firearm commits an offence and is liable to imprisonment for 2 years.
- (2) Any person who, within 10 years of being convicted of an offence specified in the Schedule or of an offence under this Ordinance, commits an offence under subsection (1) is liable to imprisonment for 7 years.

[Note: *sub-ss.* (3) and (4) are omitted]

<sup>10</sup> MO s.92 at para.2.144.

<sup>5</sup> See also *HKSAR v Lung Po Chak* [2008] 1 HKLRD 644 (CA).

<sup>6</sup> See paras.4.027, 5.176 and 5.178.

<sup>7</sup> See Chapter 5: Section 6(d): Transfer of proceedings to the CFI under CPO s.79F.

<sup>8</sup> *HKSAR v Tam Tak Chi* (2025) 28 HKCFAR 122, [13].

<sup>9</sup> *HKSAR v Tam Tak Chi* (2025) 28 HKCFAR 122, [17].

- 4.018 In accordance with the definition in CPO s.14A, a single count contrary to Firearms and Ammunition Ordinance s.20(2) may be tried summarily in the Magistrates Courts only as the words *upon indictment* or *on indictment* are not mentioned in s.20(2).<sup>11</sup>
- 4.019 Thus, the maximum sentence a Magistrate may impose on a single count contrary to Firearms and Ammunition Ordinance s.20(2) is seven years, which is the sentence specifically provided for for that particular offence.
- 4.020 The time limit for making any complaint or laying any information for offences triable summarily only is six months, as provided in MO s.26,<sup>12</sup> if no time limit is provided for in respect of such offence.<sup>13</sup>

### Magistrates Ordinance (Cap.227)

#### Part II Procedure in respect of Summary Offences

##### General

#### 26. Limit of time for complaint or information<sup>(31/05/2025)</sup>

In any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within 6 months from the time when the matter of such complaint or information respectively arose.

(Amended 25 of 1998 s.2)  
[cf. 1848 c.43 s.11 U.K.]

- 4.021 Where a complaint is made or information is laid out of time for an offence other than an indictable offence, namely, exceeding six months<sup>14</sup> from the time when such matter arose, a Magistrate has no jurisdiction to deal with such complaint or information.<sup>15</sup>

##### (c) Offences triable upon indictment

- 4.022 According to CPO s.14A(2), a criminal offence is triable upon indictment where the words *upon indictment* or *on indictment* appear.

### Criminal Procedure Ordinance (Cap.221)

#### Part II Proceedings Preliminary to Trial

##### Institution of proceedings

#### 14A. Trial of offences<sup>(14/04/2025)</sup>

- (2) Where any provision in any Ordinance creates, or results in the creation of, an offence and subject to subsection (4), the words "upon indictment" or "on

<sup>11</sup> Approved by the CA in *R v Tong Yuen* [1989] 2 HKLR 301 (CA); *HKSAR v Oi San Kok Lo Oi Ho* [2001] 4 HKLR 208 (CA).

<sup>12</sup> See also MO s.26A for limitation of time in respect of certain summary offences concerning aviation.

<sup>13</sup> *New Chuan Kong Investment Co Ltd v Securities and Futures Commission* (1999) 2 HKCFAR 490, 500.

<sup>14</sup> Where no time limit is provided for in respect of such offence.

<sup>15</sup> *Cheung Kwok Cheung v R* [1982] HKLR 126 (CA).

"indictment" appear, the offence is triable only on indictment. (Replaced 6 of 2024 s. 142)

[Note: other sub-ss are omitted]

Maximum sentence for an offence triable on indictment for which no penalty is otherwise provided is provided under CPO s.101I, namely imprisonment for seven years and a fine. 4.023

### Part VI Miscellaneous

#### Attempts, penalties, proceedings, etc

#### 101I. Punishment of indictable offences<sup>(14/04/2025)</sup>

- (1) Subject to subsections (2) and (5), where a person is convicted of an offence which is an indictable offence and for which no penalty is otherwise provided by any Ordinance, he shall be liable to imprisonment for 7 years and a fine. (Amended 12 of 1986 s.2; 50 of 1991 s.4(1); 49 of 1996 s.6; 10 of 2008 s.15)

- (2) Where a person is convicted of—

(a) (Repealed 12 of 1986 s.2)

(b) (Repealed 49 of 1996 s.6)

(c) incitement,

to commit an offence for which a maximum penalty is provided by any Ordinance, and no penalty is otherwise provided by any Ordinance for such conspiracy or incitement, he shall be liable to be sentenced to that maximum penalty. (Amended 12 of 1986 s.2)

- (3) (Repealed 24 of 1993 s.14)

- (4) (Repealed 49 of 1996 s.6)

- (5) Where a person is convicted of an offence of perverting the course of justice at common law, he shall be liable to be sentenced at the discretion of the court to imprisonment for any term and a fine of any amount, subject to any limitations as to the maximum term or terms of imprisonment and the maximum fine which such court may lawfully impose under the District Court Ordinance (Cap.336) or the Magistrates Ordinance (Cap.227). (Added 10 of 2008 s.15)

- (6) In subsection (5), *court* (法院) includes the District Court and a magistrate. (Added 10 of 2008 s.15)

(Replaced 64 of 1983 s.3)

Although murder, manslaughter and conspiracy to defraud are common law offences, their respective penalties are prescribed in the ordinances.<sup>16</sup> 4.024

For example, Offences against the Person Ordinance (Cap.212) (OAPO) s.2 stipulates that any person who was 18 years old or older at the time of the commission of murder shall be imprisoned for life. 4.025

<sup>16</sup> Offences against the Person Ordinance ss.2 and 7; Crimes Ordinance s.159C.

- 4.026 Unless otherwise stated, indictable offences may be tried upon indictment or summarily.
- 4.027 However, subject to MO s.88(3), certain indictable offences under MO Sch.2 and offenses endangering national security must be transferred under MO s.88 to the District Court and/or CFI for trial and/or sentence upon indictment as a result of the constraints under MO ss.88, 91, 92, Sch.2<sup>17</sup> and NSL art.41(3).

**Magistrates Ordinance (Cap.227)**

**Part IV Transfer of Offences to the District Court**

**88. Transfer of certain indictable offences<sup>(31/05/2025)</sup>**

- (1) Notwithstanding anything contained in any other provision of this Ordinance but subject to subsection (3), whenever any person is accused before a magistrate of any indictable offence not included in any of the categories specified in Part III of the Second Schedule, the magistrate, upon application made by or on behalf of the Secretary for Justice— (Amended 59 of 1992 s.15; L.N. 362 of 1997)
- (a) shall make an order transferring the charge or complaint in respect of the indictable offence to the District Court; and
- (b) may, if the person is also accused of any offence triable summarily only, make an order transferring the charge or complaint in respect of the summary offence to the District Court. (Replaced 16 of 1970 s.3)
- (2) An application under subsection (1) may be made either orally in open court or in writing.
- (3) Subsection (1) shall not apply in relation to any proceedings transferred to be dealt with summarily by a magistrate pursuant to section 65F of the Criminal Procedure Ordinance (Cap.221) or section 77A of the District Court Ordinance (Cap.336) or transferred for a preliminary inquiry pursuant to section 77A of the District Court Ordinance (Cap.336). (Added 59 of 1992 s.15)
- (Added 2 of 1953 s.3)

**Part V Summary Trial of Indictable Offences**

**91. Indictable offences which may be dealt with by special magistrate summarily<sup>(31/05/2025)</sup>**

Whenever any person is accused before a special magistrate of any indictable offence except an offence specified in the Second Schedule,<sup>18</sup> the magistrate, instead of committing the accused for trial before the court, may deal with the case and convict the accused summarily, and on conviction may sentence the accused to imprisonment for 6 months and to a fine of \$50,000: (See Form 93) (Amended 51 of 1981 s.6)

Provided that nothing in this section shall affect the provisions of section 94 or any lesser punishment specifically provided in any other Ordinance.

(Replaced 24 of 1949 s.29. Amended 30 of 1958 s.7; 13 of 1995 s.59)

<sup>17</sup> Appendix 8.  
<sup>18</sup> Appendix 8.

**42. Indictable offences which may be dealt with by permanent magistrate summarily<sup>(31/05/2025)</sup>**

Whenever any person is accused before a permanent magistrate of any indictable offence except an offence specified in Part I of the Second Schedule,<sup>19</sup> the magistrate, instead of committing the accused for trial before the court, may deal with the case and convict the accused summarily, and on conviction may sentence the accused to imprisonment for 2 years and to a fine of \$100,000: (See Form 93) (Amended 51 of 1981 s.7)

Provided that nothing in this section shall affect any greater or lesser punishment specifically provided for in any other Ordinance.

(Replaced 24 of 1949 s.29. Amended 30 of 1958 s.7; 13 of 1995 s.60)

**National Security Law**

**Chapter IV Jurisdiction, Applicable Law and Procedure**

**Article 41(3)**

Cases concerning offence endangering national security within the jurisdiction of the Hong Kong Special Administrative Region shall be tried on indictment.

As a result of MO ss.88, 91, 92, Sch.2<sup>20</sup> and NSL art.41(3), the following courts do not have jurisdiction to try the following indictable offences listed under MO Sch.2 and NSL

Magistrates Ordinance	Cannot be tried by the following court(s)	Sections
Pt.I Indictable Offences	Special Magistrate or Permanent Magistrate	MO ss.91 and 92
Pt.II Indictable Offences	SM	MO s.91
Pt.III Indictable Offences	SM or District Judge	MO ss.88 and 91

  

NSL	Restrictions	Articles
Offences endangering National Security	Must be dealt with on indictment in the District Court or CFI by Designated Judges appointed under NSL art.44 (and jury where applicable)	NSL art.41(3) NSL art.44

For example, murder, contrary to common law and OAPO s.2, being an indictable offence punishable with life imprisonment and falling under MO Sch.2 Pts.I and III, is an offence triable upon indictment only in the CFI. 4.029

Another example is wounding with intent, contrary to OAPO s.17, being an indictable offence which is punishable with life imprisonment which falls under MO Sch.2 Pt.I, but not under MO Sch.2 Pt.III as an exception to Pt.III s.2, is triable upon indictment in the CFI or District Court only. 4.030

<sup>19</sup> Appendix 8.  
<sup>20</sup> Appendix 8.

- 4.031 Since the enactment of SNSO on 23 March 2024, MO Sch.2 Pt.I and Pt.III have been updated. Moreover, offences in Pt.I and II of the Crimes Ordinance such as *misprision of treason* and *offences in connection with seditious intention* have been repealed. They have been replaced by indictable offences under SNSO Pt.II and Pt.III and are now *offences in connection with seditious intention* as defined by SNSO s.7. More particularly, the *offence in connection with seditious intention* contrary to SNSO s.24 is triable upon indictment.
- 4.032 Generally, there is no prescribed time limit for laying of information for indictable offences. However, excessive delay could lead to an application of stay of proceedings by the Defence<sup>22</sup> and/or affect the sentence upon conviction.<sup>23</sup>

(d) Offences triable either way

- 4.033 An offence may be triable either way under CPO Pt.II s.14A(4).

Criminal Procedure Ordinance (Cap.221)

Part II Proceedings Preliminary to Trial

Institution of proceedings

14A. Trial of offences<sup>(14/04/2025)</sup>

- (4) Where any provision in any Ordinance creates, or results in the creation of, an offence and the offence is declared to be triable either summarily or upon indictment or to be punishable on summary conviction or on indictment, the offence shall be triable either on indictment or summarily.

[Note: other *sub-ss* are omitted]

- 4.034 An example of an offence which is triable either way is the offence of Keeping a Vice Establishment, contrary to Crimes Ordinance Pt.XII s.139(1).

Crimes Ordinance (Cap.200)

Part XII Sexual and Related Offences

Exploitation of other persons for sexual purposes

139. Keeping a vice establishment<sup>(23/03/2024)</sup>

- (1) A person who on any occasion — (*Amended 69 of 1990 s.3*)
- (a) keeps any premises, vessel or place as a vice establishment; or
- (b) manages or assists in the management, or is otherwise in charge or control, of any premises, vessel or place kept as a vice establishment,
- shall be guilty of an offence and shall be liable—

<sup>21</sup> See *HKSAR v Tam Tak Chi* (2025) 28 HKCFAR 122 for pre-SNSO challenge for discussion of “Are the offences identified in sections 9 and 10 [now repealed] of the Crimes Ordinance, Cap 200 (“Offences”) indictable offences that must be tried in the Court of First Instance by a judge and jury under the requirements of the Second Schedule, Part III, Paragraph 1 [now repealed] of the Magistrates Ordinance, Cap 227?”

<sup>22</sup> See Chapter 5: Section 9(b): Stay of proceedings.

<sup>23</sup> See Chapter 8: Section 5(d)(v): Mitigating Factors — Delay in prosecution.

- (i) on summary conviction to imprisonment for 3 years; or
- (ii) on conviction on indictment to imprisonment for 10 years.

[Note: *sub-s.(2)* is omitted]

“the category of the offence is established upon its commission” and “the manner of trial does not determine whether the offence is a summary one or one which is indictable”;<sup>24</sup> there is no limitation period generally imposed for prosecution of indictable offences triable either way.<sup>25</sup>

In addition, where an indictable offence need not be transferred to the District Court or committed to CFI for trial and/or sentence,<sup>26</sup> a Magistrate has jurisdiction to try the offence summarily under CPO s.14A(5), provided consent of the prosecutor is obtained under MO s.94A.

Criminal Procedure Ordinance (Cap.221)

Part II Institution of proceedings

14A. Trial of offences<sup>(14/04/2025)</sup>

- (5) Nothing in this section shall affect—

- (a) the powers conferred upon a magistrate by the Magistrates Ordinance (Cap.227) or by any other law to try an indictable offence summarily; or
- (b) the powers conferred upon the District Court by any law to try indictable offences.

[Note: other *sub-ss* are omitted]

Magistrates Ordinance (Cap.227)

Part V Summary Trial of Indictable Offences

94A. Consent of prosecutor to be obtained<sup>(31/05/2025)</sup>

Notwithstanding anything contained in section 91, 92 or 94, an indictable offence shall not be dealt with summarily, unless the consent of the prosecutor has been obtained.

(*Added 49 of 1965 s.19*)

A conviction entered by a Magistrate for an indictable offence without the consent of the prosecutor under MO s.94A is a nullity.<sup>27</sup> This is in line with right to prosecutorial independence of the SJ as guaranteed under Basic Law art.63.<sup>28</sup>

To illustrate, Indecent Assault, contrary to Crimes Ordinance Pt.XII s.122(1), being an indictable offence, states:

<sup>24</sup> See *Shun Cheung Investment Co Ltd v Securities and Futures Commission* (1999) 2 HKCFAR 490, 499.

<sup>25</sup> *Ibid.*, 500.

<sup>26</sup> Due to the constraints under MO ss.88, 91, 92, Sch.2 and NSL art.41(3). See para.4.027.

<sup>27</sup> *AC v Chai Yan Kwong* [1989] 1 HKC 131.

<sup>28</sup> See para.4.006; Chapter 4: Section 2(d): Decision as to venue of criminal proceedings.

- (3) The issuance of a Fixed Penalty Notice by the law enforcement agency to the accused.

(b) Laying information before a Magistrate

(i) Generally

- 4.099 To commence criminal proceedings of indictable offences, information is laid before a Magistrate<sup>83</sup> in accordance with MO Pt.III.
- 4.100 To commence criminal proceedings of summary offences, information may be laid before a Magistrate in accordance with MO Pt.II.

(ii) Where the accused has already been arrested and charged — charge sheet (控罪書)

- 4.101 In the majority of criminal proceedings involving the prosecution of indictable offences, the accused is arrested and charged by the law enforcement agency. To charge an accused, the law enforcement agency such as the police prepares a written charge sheet (控罪書) in accordance with MO Pt.II or III,<sup>84</sup> which is directly served on the accused.

- 4.102 See Appendix 30 for a sample of a Charge Sheet.

- 4.103 The charge sheet must be in writing and shall comply with the requirements under MO Pt. III s.75 and Indictment Rules (Cap.221C, Sub.Leg.)<sup>85</sup> in so far as they are applicable.

Magistrates Ordinance (Cap.227)

Part III Indictable Offences

75. Complaint or information to be in writing and defects therein<sup>(31/05/2025)</sup>

- (1) Every complaint or information alleging the commission of an indictable offence shall be in writing and shall contain or consist of a statement of the offence alleged to have been committed, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence.

- (2) No objection shall be allowed to any complaint or information for any defect in it in substance or in form or for any variance between it and the evidence adduced on behalf of the prosecution at the committal proceedings.  
(Amended 48 of 1983 s.3)

(Replaced 49 of 1965 s.10)

- 4.104 See also PGO Ch.45: Charge Sheets and Court Procedure<sup>86</sup> in relation to criminal proceedings commenced by the police.

Where the accused is arrested and charged, the charge sheet acts as the information to be laid before a Magistrate during the first court appearance of the accused, as the elements contained in a charge sheet, properly drafted, should comply with MO Pt.II or III. 4.105

The act of laying information under MO s.72 occurs subsequently when the accused is brought before a Magistrate for the first appearance and the accused's case is called. At that juncture, his charge sheet is brought to the attention of the Magistrate, and information is said to be laid under MO s.72.<sup>87</sup> 4.106

72. Procedure on information being laid<sup>(31/05/2025)</sup>

- (1) In every case where a complaint is made to or an information laid before a magistrate alleging the commission of any indictable offence then, if the accused is not then in custody, it shall be lawful for the magistrate to issue his warrant to apprehend the accused and to cause him to be brought before a magistrate to answer to the complaint or information and to be further dealt with according to law; but in any case it shall be lawful for the magistrate to whom the complaint is made or before whom the information is laid, if he so thinks fit, instead of issuing his warrant in the first instance to apprehend the accused, to issue his summons directed to the accused requiring him to appear before a magistrate at a time and place to be therein mentioned; and if, after being served with the summons in manner hereinafter mentioned, he fails to appear at such time and place in obedience to such summons, then and in every such case any magistrate may issue his warrant to apprehend the accused and to cause him to be brought before a magistrate to answer to the complaint or information and to be further dealt with according to law: (See Forms 1, 2, 4) (Amended 49 of 1965 s.9; 50 of 1991 s.4)

Provided that a warrant shall not be issued in the first instance unless the complaint or information is supported by evidence on oath. (Added 49 of 1965 s.9)

- (2) Nothing in this section shall prevent a magistrate from issuing the warrant hereinbefore first mentioned at any time before or after the time mentioned in the summons for the appearance of the accused.

[cf. 1848 c.42 s.1 U.K.]

Similarly, under MO s.8, information may be laid under MO Pt.II in relation to an offence which a Magistrate has power to convict summarily or to make an order for the payment of money or otherwise. 4.107

Part II Procedure in respect of Summary Offences

8. Issue of summons to defendant and mode of service there<sup>(31/05/2025)</sup>

- (1) In every case where a complaint is made to or an information laid before a magistrate or an officer of a magistrate's court who is authorized in writing for that purpose by a magistrate, being a complaint or information in respect of which a magistrate has power to convict summarily or to make an order for the payment of money or otherwise, it shall be lawful, subject to this Part, for a summons to be issued by a magistrate or an officer of a magistrate's

<sup>83</sup> With exceptions of proceedings by voluntary bill and committal for contempt.

<sup>84</sup> See Sample of Charge Sheet at Appendix 30 and Sample of Brief Facts at Appendix 31.

<sup>85</sup> See Chapter 4: Section 5: Indictment and Charge Sheet.

<sup>86</sup> See <http://www.police.gov.hk/info/doc/pgo/en/Epgo045.pdf>.

<sup>87</sup> See also Chapter 5: Section 3: Accused's First Appearances in Magistrates Courts.

- court who is authorized under this subsection. (See Form 1) (Replaced 18 of 1981 s.2. Amended 12 of 1992 s.2)
- (1A) Every such summons shall be issued to the person against whom the complaint has been made or information laid, stating the matter of the complaint or information and requiring him to appear at a certain time and place before a magistrate to answer to the complaint or information and to be further dealt with according to law. (Added 18 of 1981 s.2. Amended 59 of 1994 s.2)
- (1B) (a) (Repealed 12 of 1992 s.2)
- (b) A summons may be issued without consideration of the complaint or information by the magistrate or an officer of a magistrate's court who is authorized under subsection (1), but, if a magistrate does consider the complaint or information, he may for good cause refuse to issue a summons. (Added 18 of 1981 s.2. Amended 12 of 1992 s.2)
- (1C) (Repealed 12 of 1992 s.2)
- (1D) Every such summons shall be in the prescribed form. (Replaced 12 of 1992 s.2)

[Note: sub-ss.(2) to (6) are omitted]

**4.108** The information laid under MO in relation to summary offences is usually in writing and shall comply with the requirements under MO s.10(2) and 10(4) and Indictment Rules<sup>88</sup> in so far as they are applicable.

**10. Manner of making complaint or laying information**<sup>(31/05/2025)</sup>

- (1) Every complaint and every information under this Part, unless some enactment otherwise requires, may respectively be made or laid without any oath being made of the truth thereof; except in case of an information where the magistrate receiving the same thereupon issues his warrant in the first instance to apprehend the defendant as aforesaid; and in every such case where the magistrate issues his warrant in the first instance the matter of the information shall be substantiated by the oath of the informant, or of some witness on his behalf, before any such warrant shall be issued. (Amended 25 of 1998 s.2)
- (2) For every distinct offence of which any person is accused there shall be a separate complaint or information, and every such complaint or information shall be tried separately except in the following cases—
- (a) when a person is accused of more offences than one of the same or a similar character he may, subject to the provisions of section 26, be charged with and tried at the same time for any such offence, whether it is committed with respect to the same person or not: (Amended 49 of 1965 s.4)

<sup>88</sup> See Chapter 4; Section 5; Indictment and Charge Sheet.

- Provided that if the magistrate is of opinion that a person accused will be prejudiced or embarrassed in his defence, he may order a separate trial of any such charge or charges;
- (b) if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at the same time for every such offence; and
- (c) if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed all or any of such offences and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. (Replaced 24 of 1949 s.6)
- (3) Every such complaint or information may be made or laid by the complainant or informant in person or by his counsel or other person authorized in that behalf.
- (4) Every such complaint or information shall comply with the Indictment Rules (Cap.221, sub.leg.C) in so far as those rules are applicable mutatis mutandis<sup>89</sup> to any such complaint or information. (Replaced 36 of 1976 s.4. Amended E.R. 2 of 2018)

(iii) *Where the accused is not arrested — summons* (傳票)

Where an accused is not arrested, upon information being laid by the law enforcement agency or Prosecution (i) under MO s.72 in relation to an indictable offence or (ii) under MO P.II in relation to an offence which a Magistrate has power to convict summarily or to make an order for the payment of money or otherwise, a Magistrate may:

- (1) issue a summons (傳票) directed to the accused requiring him to appear before a Magistrate at a time and place to be therein mentioned;<sup>90</sup> or
- (2) issue a warrant (手令) to apprehend the accused and to cause him to be brought before a Magistrate where information is supported by evidence on oath.<sup>91</sup>

See MO s.72 at para.4.106 and MO s.8 at para.4.107 and MO s.9.

**4.110**

**Magistrates Ordinance (Cap.227)**

**Part II Procedure in respect of Summary Offences**

**9. Issue of warrant in first instance or subsequently**<sup>(31/05/2025)</sup>

- (1) Where a complaint or information laid before a magistrate is substantiated by oath before him, the magistrate may, in the first instance or notwithstanding that a summons has been previously issued, issue a warrant to arrest the

<sup>89</sup> "Once the necessary changes have been made".

<sup>90</sup> Indictable offence: MO s.72(1); summary offence: MO s.8(1).

<sup>91</sup> Indictable offence: MO s.72(2); summary offence: MO s.9(1).

defendant and bring him before a magistrate to answer to the complaint or information. (See Form 4)

- (2) Where a defendant is arrested under a warrant issued under subsection (1), he shall be brought before a magistrate, who may adjourn the hearing and deal with the defendant in accordance with section 20.

(Replaced 36 of 1976 s.3)

- 4.111 Under such circumstances, the act of *laying information* or *making complaint* referred to in MO s.72, MO s.8 and MO s.9 before a Magistrate by the law enforcement agency or Prosecution occurs in the absence of the accused who is not arrested.
- 4.112 The information laid under MO in relation to indictable offences must be in writing and shall comply with the requirements under MO s.75<sup>92</sup> and Indictment Rules<sup>93</sup> in so far as they are applicable.
- 4.113 The information laid under MO in relation to summary offences is usually in writing and shall comply with the requirements under MO s.10(2) and 10(4) and Indictment Rules in so far as they are applicable.
- 4.114 Summons issued under MO s.8 (for summary offences under MO Pt.II) or MO s.72 (for indictable offences under MO Pt.III) must comply with the requirements set out in Magistrates (Forms) Rules (Cap.227C, Sub.Leg.) Schedule Pt.I. See the prescribed forms contained in Magistrates (Forms) Rules Schedule Pt.I.
- 4.115 See Appendix 10 for an example of a summons.
- 4.116 Summons issued under MO s.8(1) or MO s.72 must be duly served by the relevant persons to the accused, in accordance with MO Pt.II s.8(2)–8(4).<sup>94</sup>

**8. Issue of summons to defendant and mode of service thereof**<sup>(31/05/2025)</sup>

- (2) (a) Every such summons shall be served—
- by hand; or
  - by post.
- (b) Where a summons is served by post and the person to whom it is directed does not appear at the time and place specified in the summons for the appearance of that person, such service shall be deemed to have never been effected, and the summons shall thereafter be served by hand.
- (c) Where a summons is served by hand, the police officer, the usher or other officer of a magistrate's court, or officer of the Independent Commission Against Corruption who served the summons shall, save as provided in subsection (3), attend before a magistrate at any time and place specified by a magistrate to depose, if necessary, to its service. (Amended 48 of 1996 s.24)
- (d) Nothing in this subsection shall oblige a magistrate or an officer of a magistrate's court who is authorized under subsection (1) to issue a summons in any case where the defendant appears voluntarily or upon

<sup>92</sup> See para.4.103.

<sup>93</sup> See Section 5: Indictment and Charge Sheet.

<sup>94</sup> MO s.76.

his recognizance or is in the custody of the police or charged on the charge sheet in which case it shall be lawful for a magistrate to hear and determine the case in all respects as if the defendant had appeared in answer to a summons.

(e) In this subsection—

*served by hand* (由專人送達) means served by a police officer, usher or other officer of a magistrate's court, or officer of the Independent Commission Against Corruption on the person to whom the summons is directed— (Amended 48 of 1996 s.24)

- by delivering the summons to that person personally; or
- by leaving it with a third person for that person at that person's last or most usual place of abode;

*served by post* (以郵遞方式送達) means sent by an usher or other officer of a magistrate's court by ordinary post to the residential or business address of the person to whom it is directed. (Replaced 59 of 1994 s.2)

(3) A statutory declaration by a police officer, usher or other officer stating that he delivered a summons to the person to whom it is directed personally or that he left it with a third person for that person at that person's last or most usual place of abode, shall on its production be admissible in evidence without further proof, and until the contrary is proved the magistrate before whom it is produced shall presume— (Amended 59 of 1994 s.2; 14 of 1997 s.9)

- that the facts stated therein are true; and
- that the summons was duly served in accordance with subsection (2)(a)
  - (Added 36 of 1976 s.2)

(4) Notwithstanding subsection (3) a magistrate may require the police officer, usher or other officer who served a summons to attend before him and give evidence on oath as to its service. (Added 36 of 1976 s.2. Amended 59 of 1994 s.2)

Subject to MO s.8(6), at any time before the person to whom a summons is directed has appeared to answer the complaint or information, a Magistrate may, pursuant to MO s.8(5), where practicable upon first hearing the complainant or informant, cancel the summons by writing under his hand which shall be served in the manner provided for the service of a summons by hand in MO s.8(2). **4.117**

**8. Issue of summons to defendant and mode of service thereof**<sup>(31/05/2025)</sup>

- Subject to subsection (6), at any time before the person to whom a summons is directed has appeared to answer the complaint or information, a magistrate may, where practicable upon first hearing the complainant or informant, cancel the summons by writing under his hand which shall be served in the manner provided for the service of a summons by hand in subsection (2). (Added 18 of 1981 s.2. Amended 59 of 1994 s.2)
- Where a summons has been cancelled under subsection (5) a magistrate may, within 2 months of the date of such cancellation, order that the complainant or informant shall pay to the defendant such costs, not exceeding \$5,000, as he may think fit. (Added 18 of 1981 s.2)

- 4.118 Where a summons is cancelled under MO s.8(5), a Magistrate may, under MO s.8(6), within two months of the date of such cancellation, order that the complainant or informant shall pay to the accused such costs, not exceeding \$5,000.
- 4.119 If, after being served with the summons under MO s.72, an accused fails to appear at such time and place in obedience to such summons, a Magistrate may issue a warrant to apprehend the accused and to cause him to be brought before a Magistrate to answer to the complaint or information and to be further dealt with under MO s.72.
- 4.120 Where an accused fails to answer to a summons issued under MO Pt.II, a Magistrate may issue a warrant to arrest the accused and bring him before a Magistrate to answer to the complaint or information under MO s.9.
- 4.121 For example, prosecution brought by the Labour Department in relation to alleged breaches of the Factories and Industrial Undertakings Ordinance (Cap.59) would usually be commenced by way of summons rather than by way of first arresting and charging the accused.<sup>95</sup> Some traffic violations, such as careless driving contrary to Road Traffic Ordinance (Cap.374) s.38, may also be commenced by way of summons.

(c) Filing a notice of prosecution (檢控通知書)

- 4.122 Where the penalty which may be imposed upon conviction for an offence does not exceed a fine of \$10,000 and imprisonment for six months, criminal proceedings may be commenced by the law enforcement agency filing and serving a Notice of Prosecution to the accused in accordance with MO s.7D.

Magistrates Ordinance (Cap.227)

Part II Procedure in respect of Summary Offences

7D. Notice of prosecution<sup>(31/05/2025)</sup>

- (1) Where the penalty which may be imposed upon conviction for an offence does not exceed a fine of \$10,000 and imprisonment for 6 months (whether with or without any additional order, relating to suspension or cancellation of a licence, disqualification from obtaining or holding a licence, or as to compensation or otherwise), any public officer or body corporate authorized to prosecute in respect of that offence may file in a magistrate's court a notice of prosecution and shall, within 14 days of such filing, serve a copy of that notice by post on the defendant. (See Forms 104, 105)
- (2) A notice under subsection (1)—
- shall be in the prescribed form;
  - shall be signed by the public officer or on behalf of the body corporate filing the notice;
  - shall state—
    - the name and address of the defendant;

<sup>95</sup> See example at Appendix 10.

- particulars of the offence which is alleged to have been committed and of the time and place at which it is alleged to have been committed; and
  - the date before which the defendant may file a written notice requiring a hearing being a date not less than 35 days after the date on which the notice of prosecution was filed; and
- (d) shall be accompanied by a statement of the penalty which may be imposed and any other order which may be made upon conviction.

(Added 18 of 1984 s.2)

See also Magistrates (Forms) Rules Schedule Pt. VI, in particular Forms 104 and 105 on Notice of Prosecution for Minor Offence. 4.123

Where a Notice of Prosecution is filed and served, if an accused elects to plead guilty, an accused should reply by signing the relevant form, for example, see Form 105, and by returning it in accordance with the Notice of Prosecution within the prescribed period. 4.124

Where a Notice of Prosecution is filed and served, if an accused elects to plead not guilty or an accused elects to plead guilty but wishes to be heard by a Magistrate, an accused must send written notice to the Magistrates Court in which the Notice of Prosecution was filed and before the date stated therein, in accordance with MO s.7E. Then, the court will issue a summons to the accused.<sup>96</sup> 4.125

7E. Procedure where hearing required<sup>(31/05/2025)</sup>

- Where a notice of prosecution has been filed and served and the defendant requires a hearing, he shall, by written notice filed in the magistrate's court in which the notice of prosecution was filed and before the date stated in the notice of prosecution, so state and shall, in that notice, state whether he intends to plead guilty or not guilty to the offence. (See Forms 109, 110, 111)
- Where a written notice by the defendant mentioned in subsection (1) is filed, a summons shall be issued under section 8 and the prosecution shall proceed as if an information had been laid under that section by an informant deemed to act on behalf of the Secretary for Justice. (Amended L.N. 362 of 1997)

(Added 18 of 1984 s.2)

Where a Notice of Prosecution is filed and served, if an accused does not file a written notice under MO s.7E, within the prescribed time limit, a Magistrate has the power to deal with the case as if the accused had pleaded guilty for the charge and agreed with the summary of facts set out on the Notice of Prosecution, in accordance with MO ss.7F and 7G. 4.126

7F. Procedure where no hearing required<sup>(31/05/2025)</sup>

- Where a notice of prosecution is filed and served and the defendant does not file a written notice under section 7E(1), a magistrate sitting in the absence of the parties and otherwise than in open and public court, shall determine

<sup>96</sup> See Chapter 4: Section 4(b)(iii): Laying information before a Magistrate — Where the accused is not arrested.