

SCHEDULE 2
TO THE ORDER

OFFICIAL SECRETS ACT 1989, AS EXTENDED TO HONG KONG

Information resulting from unauthorised disclosures or entrusted in confidence.

5.—(1) Subsection (2) below applies where—

- (a) any information, document or other article protected against disclosure by the foregoing provisions of this Act has come into a person's possession as a result of having been—
 - (i) disclosed (whether to him or another) by a Crown servant or government contractor without lawful authority; or
 - (ii) entrusted to him by a Crown servant or government contractor on terms requiring it to be held in confidence or in circumstances in which the Crown servant or government contractor could reasonably expect that it would be so held; or
 - (iii) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted as mentioned in sub-paragraph (ii) above; and
- (b) the disclosure without lawful authority of the information, document or article by the person into whose possession it has come is not an offence under any of those provisions.

(2) Subject to subsections (3) and (4) below, the person into whose possession the information, document or article has come is guilty of an offence if he discloses it without lawful authority knowing, or having reasonable cause to believe, that it is protected against disclosure by the foregoing provisions of this Act and that it has come into his possession as mentioned in subsection (1) above.

(3) In the case of information or a document or article protected against disclosure by sections 1 to 3 above, a person does not commit an offence under subsection (2) above unless—

- (a) the disclosure by him is damaging; and
- (b) he makes it knowing, or having reasonable cause to believe, that it would be damaging;

and the question whether a disclosure is damaging shall be determined for the purposes of this subsection as it would be in relation to a disclosure of that information, document or article by a Crown servant in contravention of section 1(3), 2(1) or 3(1) above.

(4) A person does not commit an offence under subsection (2) above in respect of information or a document or other article which has come into his possession as a result of having been disclosed—

- (a) as mentioned in subsection (1)(a)(i) above by a government contractor; or
- (b) as mentioned in subsection (1)(a)(iii) above,

unless that disclosure was by a British national or Hong Kong permanent resident or took place in Hong Kong.

(5) For the purposes of this section information or a document or article is protected against disclosure by the foregoing provisions of this Act if—

- (a) it relates to security or intelligence, defence or international relations within the meaning of section 1, 2 or 3 above or is such as is mentioned in section 3(1)(b) above; or
- (b) it is information or a document or article to which section 4 above applies;

and information or a document or article is protected against disclosure by sections 1 to 3 above if it falls within paragraph (a) above.

(6) A person is guilty of an offence if without lawful authority he discloses any information, document or other article which he knows, or has reasonable cause to believe, to have come into his possession as a result of a contravention of section 1 of the Official Secrets Act 1911.