

Chapter IX

LEGISLATION AND ENFORCEMENT

(A) Legislation

(a) Overview

9.1 The supply and use of drugs is strictly controlled in Hong Kong by legislation. Four major Ordinances are in operation -

- (a) The Dangerous Drugs Ordinance (Cap.134) (DDO) is the principal legislation dealing with dangerous drugs. The Police and Customs are responsible for enforcing the Ordinance in respect of the trafficking, manufacture and other non-medical use of dangerous drugs, and DH is responsible for the licensing of import, export, manufacture, sale and supply of dangerous drugs for medical purposes. The maximum penalties for drug-related offences are severe. For example, trafficking in or the manufacture of dangerous drugs is subject to a maximum penalty of a fine of \$5 million and life imprisonment, whereas possessing or consuming a dangerous drug is subject to a maximum penalty of a fine of \$1 million and seven years' imprisonment.

- (b) Precursor chemicals that can be used for the manufacture of illicit drugs are controlled under the Control of Chemicals Ordinance (Cap.145) (CCO). Licensing requirements and other controls are imposed on a list of precursor chemicals as set out in international conventions. The maximum penalty for importing, exporting, manufacturing, supplying or possessing specified chemical substances without a licence is a fine of \$1 million and imprisonment for 15 years. The Customs are the licensing and major enforcement authority under this Ordinance.

- (c) The Pharmacy and Poisons Ordinance (Cap.138) (PPO) controls the medical use of drugs by providing for the licensing of manufacturers, wholesalers, retailers and import and export dealers, the registration and testing of pharmaceutical products and the keeping of an up-to-date Poisons List. Almost all dangerous drugs are subject to the additional controls provided for under the PPO by being included in the Poisons List. A few common substances of abuse are controlled by the PPO but not the DDO, notably cough medicine containing codeine¹. The maximum penalty for an offence under the Ordinance is a fine of \$100,000 and two years' imprisonment. The Pharmacy and Poisons Board (PPB) is responsible for the enforcement of the provisions of the Ordinance. In practice, it acts through DH and executive committees established under the PPO.
- (d) The Import and Export Ordinance (Cap.60) provides that the import and export of every consignment of a pharmaceutical product is subject to licensing requirements. The licensing authority is delegated to the Director of Health who normally consults the PPB before an application for an import or export licence is granted. The Customs are the major enforcement agency under this Ordinance and are tasked to suppress illicit imports and exports.

9.2 Furthermore, the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap.405) and the Organized and Serious Crimes Ordinance (Cap.455) provide for the tracing, freezing and confiscation of the proceeds of drug trafficking and for action against drug money laundering. The maximum penalty for money laundering offences in both Ordinances is a

¹ Codeine is a narcotic drug widely used for its cough-suppressant properties and is used, to a much lesser extent, as a pain-killer. Codeine is also a drug with abuse potential. Codeine is a dangerous drug controlled by the DDO. However, pharmaceutical products containing therapeutic dosage of codeine - currently set at 0.5% or below - are exempted from the control of the DDO but are subject to the controls of the PPO instead. Under the PPO, for preparations containing codeine at more than 0.1% but less than 0.2%, a record must be kept of every sale transaction in respect of the name and address and identity card number of the purchaser, and the name and quantity of the cough preparation sold. Preparations containing not less than 0.2% of codeine are subject to more stringent control and could only be obtained with doctors' prescription.

fine of \$5 million and 14 years' imprisonment. The Joint Financial Intelligence Unit manned by Police and Customs officers analyses information it receives regarding suspicious transactions which may constitute money laundering or other financial crimes, and refers to investigative units for further action as necessary.

(b) Ongoing review

9.3 The Task Force has recognised the Administration's continuous efforts in keeping the legislation and its implementation up to date, in view of the changing drug abuse and trafficking trends and related social problems.

9.4 Hong Kong has strictly complied with the three international drug conventions, namely, the 1961 Single Convention on Narcotic Drugs as amended by the Protocol of 1972 (1961 Convention), the 1971 Convention on Psychotropic Substances, and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Legislative measures have been taken to implement decisions of the United Nations Commission on Narcotic Drugs in connection with these three Conventions. For instance, the inclusion of a substance under Schedule I of the 1961 Convention for international control obliges Hong Kong to put that substance under the control of the DDO.

9.5 In addition, where there is evidence of a widespread abuse of a substance in other countries or when the abuse of a substance in Hong Kong is assessed to constitute a public health or social problem, the substance concerned may be considered to be scheduled as a dangerous drug under the DDO beyond prevailing international requirements. One notable example is the scheduling of ketamine under the DDO in 2000.

9.6 Apart from subjecting illicit drugs and related activities to appropriate controls, legislation also provides for necessary enforcement and ancillary powers. One important issue under consideration is the inability of law enforcement officers to administer drug tests on suspects in the absence of the latter's written consent and judicial sanction, making the proof of the commission of consumption offence most difficult, if not

impossible. Legislative amendment is required if some form of compulsory drug testing is to be introduced. This subject together with the sensitive issues involved has been discussed in Chapter VII in detail.

(c) Sentencing guidelines

9.7 Sentencing in any individual case is a matter for the court concerned, which depends on the circumstances of the case including the facts, the evidence admitted, and the application of any relevant guidelines or tariffs, judicial precedents and other relevant considerations.

9.8 In this connection, the Task Force welcomes the Court of Appeal's landmark judgment in *Secretary for Justice v HII Siew-cheng* (CAAR 7/2006) delivered in June 2008. In that case, DoJ, in view of the increasing threat of psychotropic substances in Hong Kong, appealed to the Court of Appeal to seek an increase in the tariffs for offences involving ketamine and ecstasy to be set at a level closer to that imposed for heroin. During the appeal, expert witnesses' reports, research findings, medical evidence, and other latest information including abuse and seizure figures had been submitted to the Court of Appeal to demonstrate the prevalence of the drugs and their multiple harms on the abusers.

9.9 In the judgment, the Court of Appeal recognised the increasing prevalence of ketamine and ecstasy abuse among young people and their harmful and addictive effects on abusers. It substantially raised the sentence tariffs for trafficking offences relating to ketamine and ecstasy². The previous and lower tariffs of which were set some ten years ago.

² New sentence tariffs for traffickers in ketamine and ecstasy –

- (1) up to 1 gramme – within the sentencer's discretion;
- (2) over 1 gramme to 10 grammes – 2 to 4 years' imprisonment;
- (3) 10 to 50 grammes – 4 to 6 years' imprisonment;
- (4) 50 to 300 grammes – 6 to 9 years' imprisonment;
- (5) 300 to 600 grammes – 9 to 12 years imprisonment;
- (6) 600 to 1000 grammes – 12 to 14 years' imprisonment; and
- (7) over 1000 grammes – 14 years upwards.

The previous sentence tariffs are as follows –

- (1) up to 25 grammes – within the sentencer's discretion;
- (2) over 25 grammes to 400 grammes – 2 to 4 years' imprisonment;
- (3) 400 to 800 grammes – 4 to 8 years' imprisonment; and
- (4) over 800 grammes – 8 years and upwards.

9.10 The Court of Appeal also emphasised the need for a custodial sentence against traffickers who operate at discos and similar premises and prey on young people. While some of the “social” or “non-commercial” trafficking cases involving small quantities of drugs can properly be regarded as falling into the lower end of the sentencing scale, this factor should not, in itself, provide a general basis for imposing a lighter sentence than would have been imposed for commercial trafficking.

9.11 The Task Force notes that the Court has held in no uncertain terms that psychotropic substances are seriously addictive and dangerous. The Court also underlines that “social trafficking” between friends and acquaintances is equally serious to attract a custodial sentence.

9.12 On another front relating to cough medicine, there have been occasional queries about the seemingly light penalties given in recent years involving the illegal sale and storage of the substance, ranging from a fine of \$2,000 to \$40,000 plus four months’ imprisonment suspended for three years, as against a maximum penalty of \$100,000 fine and two years’ imprisonment³ as set out in the PPO.

9.13 Although the abuse of cough medicine is relatively less common among young people currently (the seventh in descending order in 2007, with 127 abusers reported to CRDA), DH is, in consultation with DoJ, closely monitoring the situation, including the penalties imposed by the courts. If there is sufficient evidence in relation to the prevalence and adverse consequences of this abuse, it would make an application to the court to review the present sentencing level.

³ Over the years, the control over the use and sale of cough preparations containing codeine has been tightened, e.g. in 2005, by lowering to 0.2% the concentration threshold above which preparation containing codeine would be subject to stringent control as prescription drugs – see footnote 1. A balance has to be struck between allowing reasonable access of such a medicine by members of the public for legitimate use and restricting their availability to control abuse. Further tightening the control does not appear justified.

9.14 Moreover, pharmacies and registered pharmacists convicted of an offence may be subject to disciplinary action by the PPB. DH is also considering whether there is a case to apply to the PPB to impose heavier disciplinary penalties in appropriate cases to enhance the deterrent effect.

9.15 While any application for review of sentence or sentencing guidelines will depend on facts of the cases before the courts and any relevant surrounding circumstances, the Task Force believes it will be useful, by way of background knowledge (without in any way interfering with sentencing in any specific case), to provide our Judges and Judicial Officers with up-to-date information regarding drugs and drug-related issues and research results.

Recommendation 9.1

The Task Force recommends that ND should continue to liaise with the Judiciary Administration to provide Judges and Judicial Officers with, as background knowledge, the latest drug information, and to organise seminars or talks with the participation of law enforcement agencies and visits to drug treatment and rehabilitation facilities.

(d) Enhanced sentencing

9.16 Section 56A of the DDO is a special provision empowering the court, where it is satisfied with evidence that an adult has involved a minor in the commission of a drug-related offence⁴ and if it thinks fit, to

⁴ These include –

- (a) the procuring, supplying or trafficking by whatever means of a dangerous drug for or to a minor for possession or otherwise by a person;
- (b) a person obtaining by whatever means a dangerous drug from a minor;
- (c) provision by a person to a minor of any pipe, equipment or apparatus fit and intended for the smoking, inhalation, ingestion or injection of a dangerous drug;
- (d) a person intentionally or unintentionally employing, hiring, using, persuading, enticing, or coercing a minor in the commission of a specified offence or the avoidance of detection or apprehension of such and offence; and
- (e) use of a minor in assisting the operation or management of premises which are used as a divan or for unlawful trafficking, manufacturing, or storage of a dangerous drug.

pass a sentence on the convicted adult offender that is more severe than the sentence it would, in the absence of such evidence, have passed.

9.17 Over the past years, there have been various successful cases of invoking enhanced sentencing pursuant to section 56A. Applications have been made, where possible, for the imposition of a heavier sentence to increase deterrence against exploitation of the young in illicit drug activities.

9.18 To ensure the maximum use of the provision where appropriate, DoJ has issued a circular on the subject to remind all public prosecutors. The law enforcement agencies have also issued instructions to officers involved in the investigation and prosecution of drug offences and emphasised the importance of this provision during the training of officers.

9.19 Separately, to deter frequent deliveries of small quantities of drugs from the Mainland, trafficking by way of import or export, irrespective of the small quantities, should be treated as an aggravating factor for the purposes of sentencing, pursuant to *HKSAR v NG Po Lam (CACC 114/2004)* & *HKSAR v HONG Chang Chi (CACC 187/2001)*. Investigating officers have been reminded of this factor to ensure that all relevant evidence of importation will be provided to DoJ for submission to and consideration by the court for enhanced sentencing where appropriate.

Recommendation 9.2

The Task Force recommends that the law enforcement agencies and DoJ should work closely together to continue to utilise section 56A of the DDO and the aggravating factor of importation of drugs for enhanced sentencing in appropriate cases.

(B) Law Enforcement

9.20 In the fight against drugs, the Task Force appreciates that law enforcement agencies are taking rigorous and persistent enforcement actions, including frequent raids by the Police on entertainment venues which have led to the closure of many large problematic discos, and intensified efforts by the Customs at boundary control points.

9.21 There are, however, increasing concerns that drug-related activities are moving to some small bars, hotel and villa rooms, private premises or even schools. New modes of trafficking and supply of drugs have also emerged from time to time. At the boundary control points, there are observations that drugs are now smuggled into the territory in frequent but small batches. There has been a marked increase in the number of young persons arrested for drug offences in Hong Kong in recent years. The year 2007 and the first half of 2008 recorded a rise of 114% and 233% respectively in the number of cross-boundary drug trafficking cases by youngsters over the corresponding period in the previous year.

9.22 Against such subtle changes, in addition to the usual law enforcement actions, the Task Force sees the need for the law enforcement agencies to focus and intensify efforts in both supply reduction and crime prevention. In particular, early intervention at schools, support for juvenile offenders, information and intelligence gathering as well as detection capability at boundary control points should be strengthened. Law enforcement agencies also play a key part in our external cooperation efforts, more details of which are set out in Chapter X.

(a) Police School Liaison Programme

9.23 Under the Police School Liaison Programme (PSLP), there are at present 25 school liaison officers and 33 secondary school liaison officers who assist schools in identifying early juvenile delinquency, preventing and tackling students' involvement in crime and illegal activities through a multi-agency approach involving the school community, Government departments and NGOs.

9.24 Apart from liaising closely with schools on the practical enforcement of the law and collecting information concerning student involvement in illegal activities, school liaison officers also interview problematic students identified by schools on a small group or individual basis to assist them in building up positive values and observing discipline, and conduct talks in schools regularly on a wide range of topics including preventing and combating drug abuse.

9.25 Recent years saw a rising trend of youth involvement in crimes, in particular drug abuse, as well as of reported crimes involving students as both offenders and victims. To better utilise the school platform for prevention and early intervention of youth drug abuse and other juvenile crimes, the Task Force sees a need to improve the manning scale of school liaison officers. Taking on an enhanced role in supporting schools, they can increase the frequency of school visits, strengthen preventive education activities, and intensify police-school communication on drug and other crime control issues.

Recommendation 9.3

The Task Force recommends that PSLP should be strengthened and the communication on drug matters among schools, EDB and the Police should be enhanced.

Measures taken thus far

27 additional police school liaison officers will join PSLP in the fourth quarter of 2008 and the communication protocols have been enhanced for the more effective sharing of information between various parties.

(b) Juvenile Protection Section

9.26 Currently, the Juvenile Protection Section (JPS) operated by the Police provides referral services and conducts supervisory home visits in respect of youngsters, including drug abusers, cautioned under the Police Superintendents' Discretion Scheme (PSDS), a programme aiming to steer offenders under the age of 18 away from prosecution. Youngsters arrested for drug-related crimes are required to undergo a urine test with parental consent to confirm whether there is any habit of drug abuse, in order to be considered for PSDS instead of being prosecuted.

9.27 Experience shows that a large majority of young drug abusers has a history of committing other crimes prior to their drug addiction. To prevent young offenders from becoming embroiled in the drug subculture and reduce drug-related recidivism, the Task Force sees a need to strengthen JPS to identify early young offenders prone to drug abuse, enhance the frequency of home visits and adopt a more consistent and coordinated approach in supervision of all juveniles cautioned under the PSDS, having regard to the seriousness of offences committed and the extent to which they are considered to be at risk of re-offending.

Recommendation 9.4

The Task Force recommends the strengthening of JPS to enhance early identification, post-caution supervision and aftercare services.

Measures taken thus far

Additional provisions of one sergeant and five constables have been approved and the enhanced service will start in the fourth quarter of 2008.

(c) Intelligence gathering

9.28 The Police attach great importance to stepping up intelligence and information gathering, to keep abreast of new modes of trafficking and supply of drugs.

9.29 In view of the increasing popularity of the Internet among youngsters and the potential use of the Internet platform by criminals to disseminate information on the sale, distribution and abuse of illicit drugs, the Task Force sees clear merits to strengthen the capacity of the Police to carry out Internet patrol on narcotics offences. For example, the “policing” of the Internet for open information about dance parties, private parties and other functions where drugs may be available can lead to enforcement actions.

9.30 Separately, the Task Force considers that existing channels to gather information and intelligence on drug trafficking and abuse activities should be strengthened and made more user-friendly to encourage reporting of drug crimes and black spots of illicit drug activities.

Recommendation 9.5

The Task Force recommends that cyber patrols for intelligence on drug trafficking and abuse should be strengthened, and the Police’s existing dedicated drug reporting hotline should be reinvigorated to better appeal to the public for information on drug trafficking and abuse activities.

Measures taken thus far

One sergeant and three constables have started the cyber patrol service since April 2008. Efforts are being made to reinvigorate the drug reporting hotline.

(d) Working with NGOs

9.31 While the Customs have an effective and extensive intelligence system for the detection of drug trafficking, the rising problem of youths being exploited as drug couriers presents a new challenge.

9.32 In response, the Customs have made special efforts recently to step up liaison with NGOs that are involved in youth drug abuse matters with a view to understanding better the behavioural pattern of cross boundary young drug abusers and the modus operandi of drug syndicates in recruiting young drug couriers.

9.33 There has been positive feedback from NGOs. The information collected includes the way of getting drugs and crucial indicators of cross boundary drug traffickers and abusers, like their backgrounds, age profiles, travelling patterns, common land boundary control points used, modes of transport, etc. Consolidation of such information would be valuable in updating the risk profiles and identifying the modes of trafficking activities, which would assist frontline officers in targeting high-risk travellers.

Recommendation 9.6

The Task Force recommends that the Customs should continue to enhance partnership with NGOs to understand the latest situation of youth drug abuse and drug trafficking trend, as well as the behavioural pattern of the youth, so as to identify the changing mode of operation used by drug syndicates to recruit young drug couriers.

(e) Working with industry partners

9.34 To prevent drug syndicates from taking advantage of the efficient logistics and transport industry in Hong Kong to ship their drugs around, the Customs have solicited the cooperation and support of industry

partners to enhance the collection of information and the accuracy of cargo profiling.

9.35 Cooperation programmes have been launched with express companies and strategic partnership developed with the precursor chemical industry to identify high-risk express parcels and suspicious consignments. Seminars were also held to raise the risk awareness of their frontline staff.

Recommendation 9.7

The Task Force recommends that the Customs should continue to strengthen cooperation with industry partners on information collection against the smuggling of drugs.

(f) Detection capability at boundary control points

9.36 With the heavy traffic of passengers and cargoes between Hong Kong and the Mainland, there is a growing tendency for drug syndicates to manufacture and stockpile drugs on the Mainland and transport them in small quantities into Hong Kong. Illicit drugs are also found hidden in cross boundary coaches or concealed by individual passengers, notably at land control points⁵. The Task Force supports enhancing the Customs' detection capability.

9.37 Stationing detector dogs at the control points is an effective means to detect drug possession and trafficking at boundary or border control points, as recognised by the international customs community. They can carry out efficient searches on vehicles, cargoes and passengers for dangerous drugs, while making minimal impact on the traffic. Their presence at control points also yields a strong deterrent effect on drug traffickers.

⁵ Including Lo Wu control point, Lok Ma Chau control point, Man Kam To control point, Sha Tau Kok control point, as well as Shenzhen Bay control point and Lok Ma Chau Spurline control point.

9.38 Over the years, Customs detector dogs have assisted in the successful detection of drug cases. Among the 140 drug cases detected at the land boundary control points in the first six months of 2008, 11 were attributed to detector dogs.

9.39 Another effective means to combat drug trafficking at boundary control points is to deploy plainclothes officers to identify suspicious drug couriers among passengers. For instance, in the first six months of 2008, 8 out of 13 trafficking cases in the Lok Ma Chau control point were detected in this way.

9.40 The huge volume of passengers passing through Customs clearance area within a matter of seconds gives uniformed officers very little time for passenger profiling to identify potential drug traffickers for detailed inspection. Deploying plainclothes officers in and beyond the Customs Hall can lengthen the time for profiling and allow detection to be done effectively in a discreet manner.

Recommendation 9.8

The Task Force recommends that the Customs detector dog services should be enhanced to strengthen enforcement actions and the deterrent effect against drug abusers and traffickers.

Measures taken thus far

Additional provisions have been approved to expand the existing Dog Unit by 14 customs officers and 11 detector dogs. The enhanced service has been coming into operation by phases since September 2008.

Recommendation 9.9

The Task Force also recommends that plainclothes operations should be enhanced over time to detect drug trafficking cases at the boundary control points.

(g) Crime prevention

9.41 Crime prevention and preventive education are also important aspects of the work of our law enforcement departments, in a bid to tackle the problem at source.

9.42 Apart from regular talks, seminars and anti-drug campaigns against youth drug abuse at schools and in the community, the Police also organised projects targeting at-risk youths to promote positive values and healthy lifestyle, in collaboration with NGOs and Government departments at the district level.

9.43 The Customs have focused their preventive efforts on tackling the cross boundary drug problem, seeking to raise the awareness among the public, especially the youth, of the serious consequences of drug trafficking and the penalties of drug abuse in the Mainland.

9.44 To curb a possible upsurge during festive seasons, the two disciplined services always step up their publicity efforts, for instance through media interviews and joining forces with district bodies and DFCCs in various publicity initiatives like leaflet distribution at the boundary control points.

9.45 Separately, the Correctional Services Department, apart from detaining and rehabilitating offenders, has been undertaking public education initiatives for the youth over the years to help prevent juvenile delinquency. Notably, since 2001, it has been running the Green Haven Scheme to promote anti-drug messages, arranging young people aged

between 13 and 18 to visit a mini drug museum and inmates of the Drug Addiction Treatment Centre on Hei Ling Chau.

9.46 On another front, DH is also undertaking publicity efforts targeting pharmacies, registered pharmacists, medical doctors and other industry stakeholders as a stern reminder of their statutory obligations and professional duties to abide by the law on drugs and poisons.

9.47 The Task Force commends such complementary efforts which should be sustained.

Recommendation 9.10

The Task Force recommends that the law enforcement departments should continue and sustain their crime prevention efforts through publicity and preventive education, partnership with the community and NGOs, and working with industry stakeholders.