Introduction

This Brief calls for research proposals to evaluate the Trial Scheme on School Drug Testing in Tai Po District in school year 2009/10 ("Scheme"), and to propose further rolling out of voluntary drug testing in schools in Hong Kong.

Background

2. In October 2007, the Chief Executive in his Policy Address announced the appointment of the Secretary of Justice, the incumbent Deputy Chairman of the Fight Crime Committee ("FCC"), to lead a high level inter-departmental task force ("Task Force") to tackle the youth drug abuse problem. The Task Force summed up its work and recommendations in its Report on Youth Drug Abuse ("Report") in November 2008.

3. Considering the degree of seriousness of the youth drug abuse problem, and recognising that proper school-based drug testing scheme may serve to deter and prevent drug abuse as well as facilitate early intervention of drug abusers so that they would be motivated and guided towards counselling or treatment at an early stage, the Task Force recommended that a research project be commissioned to devise possible school-based drug testing schemes for voluntary adoption by schools in Hong Kong. Details of the thinking can be found in Chapter VII of the Report (see Appendix I, online version available at www.nd.gov.hk).

4. In July 2009, the Chief Executive set out directions to tackle youth drug abuse problem. One of the key strategies is the carrying out of the Scheme. The Scheme is scheduled for launch in December 2009. A final version of the Scheme Protocol is attached at Appendix II.
**Objectives of the Research**

5. To take advantage of the implementation of the Scheme, the Beat Drugs Fund Association (“Association”) would like to appoint a service provider (“Service Provider”) with profound experience in conducting evaluation research –

   (a) to conduct a comprehensive assessment of the Scheme focusing on both the process and outcome;

   (b) to review other local and overseas experience of drug testing in schools; and

   (c) based on the findings of (a) and (b), to suggest refinements and revisions of the Scheme and map out a practicable course of action for rolling out drug testing to all public sector schools in the territory.

**The Research Team**

6. The Service Provider should set up a Research Team to conduct the research. The Research Team should comprise, preferably, a professional from each of the following sectors:

   (a) education;

   (b) social services (with at least 5 years of experience in youth / corrections/ family services);

   (c) parent education;

   (d) drug treatment and rehabilitation;

   (e) medical;

   (f) academic (with at least 3 years of experience in research); and

   (g) legal (with at least 5 years of experience in human rights and data privacy issues).

7. The Research Team MUST meet both of the following mandatory requirements (a) and (b) below:

   (a) at least one member of the Research Team (who may be the team leader) must be able to communicate in both spoken and written English; and
(b) at least one member of the Research Team (who may be the team leader) must be able to communicate in Cantonese and written Chinese.

8. A proposal which fails to meet both of the mandatory requirements as stated in paragraph 7 will be disqualified and will not be further considered.

9. The Association reserves the right to require replacement of the members of the Research Team. Any proposed addition or change of members of the Research Team named or otherwise initiated by the Research Team must obtain the Association’s prior written approval. The Association reserves the right to terminate the Service Agreement by giving seven (7) days’ prior written notice to the Research Team in case the replacement is not acceptable to the Association.

**Scope of Research**

*Comprehensive assessment of the Scheme*

10. The aim of the evaluation is to assess the Scheme in terms of programme reach, efficacy, and implementation fidelity. Unintended consequences will also be identified through the evaluation process. The evaluation should be wide-ranging and of 3 levels –

(a) micro level – performance of each school, including the effects of the Scheme on its students;

(b) meso level – performance of the collaboration and interfacing of helping bodies or concerned parties prescribed in the Protocol; and

(c) macro level – performance of the Scheme as a whole.

11. Assessment of the Scheme should be made with respect to the objective and scope of the Scheme. Some possible performance indicators for the assessment of the Scheme are proposed as follows for illustration purposes –

(a) attitude and behavioural change of participating and non-participating students on drug abuse after implementation of the Scheme;

(b) programme reach (e.g. number of students consented to participate, number of students refused to give consent,
number of students refused to be tested after consent was given);

(c) number, and percentage, of student drug abusers (including the profile of student drug abusers) identified by the Scheme;

(d) number, and percentage, of false-positive cases;

(e) number, and percentage, of students self-refer to the Counselling Centre for Psychotropic Substance Abusers (“CCPSA”) serving Tai Po and North district, that is the Hong Kong Lutheran Social Service Cheer Lutheran Centre, or other non-governmental organisations (“NGOs”) of the district. Self-referral cases would be included as some student drug abusers may be motivated to directly seek professional assistance from any CCPSA apart from participating in the Scheme;

(f) possible reactions of parents/guardians and their students (e.g. truancy rate, increased anxiety and emotional problems, reasons for refusals, uncommon observations);

(g) system quality (e.g. downstream support services for student drug abusers and their parents/guardians, compliance rate, successful rate, relapse cases);

(h) service quality (e.g. usability, adaptability, functionality, reliability, and acceptability etc. of the briefing sessions, drug tests and support services, such as referral, case conference, downstream support services);

(i) information quality (e.g. accuracy, completeness, relevance, consistency of the data collection);

(j) feedbacks from stakeholders (e.g. students, parents, teachers, school social workers, staff from CCPSA and school principals); and

(k) resources allocation (e.g. adequacy and appropriateness).

12. The Research Team should explore problems identified in the implementation of the Scheme and suggest possible solutions.

13. While the Research Team is free to propose research methodologies for the study, the Research Team is encouraged to conduct
the evaluation with multiple methodologies, such as pre- and post-test questionnaire survey, focus groups, and in-depth case studies.

Research on other local and overseas experience in school drug testing

14. The Research Team is required to conduct a literature research into the local and overseas experiences in school-based drug testing. The Research should cover, without limitation, the detailed implementation plan, coverage, effectiveness, legal position and in particular, identification of the critical success factors of these schemes and the pertinent issues that need to be addressed.

15. In addition, the Research Team is required to pinpoint the methodologies adopted by other school-based drug testing policies and its efficacy, taking into account the drug trend and the current drug scene of the respective countries. Such data should be used to compare with the logistics arrangement of the Scheme, and advise the Government on the most appropriate methods in conducting school-based drug testing.

Suggestions of appropriate refinements and revisions to the Scheme and a possible approach for gradual rolling out to all schools in the territory

16. The Research Team is required to suggest appropriate and evidence-based refinements and revisions to the Scheme.

17. Other aspects including, but not limited to, institutional arrangement, resource requirement, detailed programme plan, scheme protocols, manuals for schools and parties concerned, publicity campaign, and resources kit, etc., of a possible territory-wide, cluster- or district-based schemes should be provided.

18. In undertaking the above work in the three research areas mentioned in paragraphs 10 to 17, the Research Team is required to –

(a) identify pertinent issues that need to be addressed. As an illustration, some of these issues are briefly described in Appendix III. This list of pertinent issues is not exhaustive. In addition to the pertinent issues set out in Appendix III, the Research Team is required to identify other issues which may also be pertinent whilst evaluating the Scheme. The list may be expanded from time to time at the absolute discretion of the Association. The team should suggest ways to address those pertinent issues identified as refinement to the Scheme and future rolling out;
(b) widely consult stakeholders in the education, health, social service, and legal sectors, including but not limited to students, teachers, parents, school principals, school councils and associations, school sponsoring bodies, social workers, and relevant Government bureaux and departments, e.g. Education Bureau (“EDB”), Social Welfare Department (“SWD”), Department of Health (“DH”), Department of Justice (“DoJ”), Police, Home Affairs Department (HAD), Government Laboratory (GLab) and ND; and

(c) make presentations and provide explanations during the whole course of the research on its findings / recommendations to the Government, Action Committee Against Narcotics (“ACAN”) and its Sub-committees, the Research Advisory Group (“RAG”), the Drug Liaison Committee (“DLC”), the Legislative Council and such other bodies as specified by the Association and to attend such relevant meetings when requested by the ND.

Data Collection

19. In pursuing the research areas set out above, the Research Team is required to conduct relevant literature review, focus group discussions, surveys, and in-depth case studies. All advice and recommendations shall be supported by detailed and evidence-based analyses and references to current local and overseas practices.

20. The Research Team is required to obtain aggregate data (e.g. total number of student participated, total number of student refused to take the drug test) from the Scheme co-ordinator (i.e. Hong Kong Lutheran Social Service Cheer Lutheran Centre) to conduct the evaluation. The Research Team should not request the Scheme co-ordinator to supply any personal data of the participants.

21. The Scheme co-ordinator is not obligated to recruit students or parents/guardians to participate in the Research. The Research Team shall design a feasible subject recruitment plan to conduct the evaluation. However, the Research Team may liaise with the Scheme co-ordinator to facilitate the recruitment process, e.g. with the consent of the students, the Scheme co-ordinator can refer students who received the drug test, or who entered the support programme to participate in the research. Further, for those parents and students who did not participate in the Scheme, the Research Team should liaise with the school principals to facilitate
subject recruitment. The Research Team may need to prepare separate consent form for those persons participating in the evaluation research on voluntary basis, taking into account relevant statutory requirements of the Personal Data (Privacy) Ordinance (PD(P)O) and the Dangerous Drugs Ordinance (DDO).

22. The Research Team should bear in mind that the core objective of this Research is to assess the Scheme and propose further rolling out of voluntary drug testing in schools in Hong Kong. The Research Team has no right to interfere with the implementation and the procedures of the Scheme as well as direct access to personal data of the participants.

Project Schedule and Deliverables

23. The Research Team is required to submit the following deliverables to the satisfaction of the Association in accordance with the timeframe specified below. The Research Team shall provide –

(a) an Implementation Plan within 2 calendar weeks from the award of Research to cover the objectives of the Research, the approach and methodology for undertaking each of the tasks, and work programme, as well as management and staffing structure;

(b) an Interim Assessment Report by end of March 2010, which shall cover preliminary findings from the literature research, pertinent issues identified and corresponding solutions, and an interim evaluation of the Scheme;

(c) a Draft Final Report by end of June 2010, which shall include a comprehensive research report covering the effectiveness and efficacy of the Scheme, its merits and limitations, findings from the literature research, and suggestions of appropriate refinements and revisions to the Scheme, and a possible approach for gradual rolling out of voluntary school drug testing in schools in Hong Kong;

(d) a Final Report, together with a Bilingual Executive Summary, by end of August 2010, which should be revised on the basis of the Draft Final Report referred to in paragraph 23(e) above after discussion with the Government; and

(e) a Supplementary Report by the end of January 2011, which shall include the assessment of the downstream support
programme under the Scheme which is not covered by the Final Report.

(collectively “the Deliverables”).

24. The **Bilingual Executive Summary** of about 20 pages shall set out the objectives, a summary of the major findings, conclusions, and recommendations of the Research.

25. All the above reports shall be prepared based on the method to be employed in undertaking the Research proposed by the Service Provider in the Technical Proposal (see paragraphs 40 and 41 below) subject to such modifications as the Association Representative (“AR”) (see paragraph 29) shall stipulate. The Service Provider shall consider fully and properly the comments of the AR and provide written responses thereto, whether by way of incorporating the necessary changes to the Deliverables or otherwise as appropriate to the satisfaction of the AR within 14 working days of the giving of such comments.

26. Unless the Association otherwise agrees in writing:

   (a) all Deliverables shall be prepared in **English** and the **Bilingual Executive Summary** shall be in both **Chinese** and **English**;

   (b) **100 hard copies** of each Deliverable shall be submitted; and

   (c) a **soft copy** of each Deliverables in MS Word/Excel and PDF shall be submitted in accordance with the above work schedule.

27. None of the Deliverables shall be deemed to have been completed until and unless the AR has confirmed acceptance of the same in writing. Should there be any defect in a Deliverable or should amendments be required to a Deliverable submitted, the Research Team shall amend and re-submit forthwith the Deliverable at no extra cost or expense to the Association upon being requested in writing by the AR until the Association finally accepts the Deliverable.

28. Any Deliverable which fails to meet any of the requirements set out in paragraphs 23 to 27 shall be regarded as non-compliant and therefore be rejected by the Association in its absolute discretion.
**Management of the Research**

29. A representative from ND will be appointed to act as the AR to liaise with the Research Team. Throughout the term of the Service Agreement, the Research Team shall report directly to the AR or any other person as designated by the AR, and take instructions from him/her on matters appropriate to fulfil the requirements of the Research. The AR may designate other persons to liaise with the Research Team and issue instructions on his/her behalf from time to time.

30. Throughout the course of the Service Agreement, ONE member ONLY of the Research Team MUST be deployed to assume the role of the team leader and shall be easily contactable. The team leader shall perform the role of liaison officer for communicating with the AR.

31. The Research Team shall be accountable to the Association and the AR for the performance of the Research and any other advice that the Association may request from time to time. The Research Team is required to make regular progress reports to the AR, and give briefings and presentations to relevant parties, including but not limited to ND, ACAN, RAG, DLC and any other party as specified by the AR. The Research Team shall provide prompt responses to comments and requests made in writing or otherwise as specified by the AR, and provide secretariat services during discussions or meetings if required by the AR.

32. The Service Provider shall not, without the prior written consent of the Association, sub-contract, assign or otherwise dispose of the whole or any part or parts of the Services as required under the Service Agreement (“Services”) to any person whatsoever, or purport to do so. The service fee shall include any fees, costs and disbursements incurred by the Service Provider in appointing or engaging any permitted sub-contractors, advisors or other parties to perform any part or parts of the Research, or to advise or assist in relation thereto. If any part of the Research is sub-contracted to any person, the Service Provider shall remain fully responsible for the performance of the Services and liable for any act or omission of such person as if such act or omission were its own.

33. ND has plans to form a multi-disciplinary steering committee to oversee the Research.
Duration and Completion

34. The Research shall commence in [December] 2009 or such other date as may be specified by the Association. The Research Team shall complete the Research to the satisfaction of the Association by end of January 2011. Completion of the Research means completion and delivery by the Research Team of all the tasks and Deliverables required hereunder (including but not limited to those set out in paragraphs 10 to 18 and paragraphs 23 to 27 of this Brief) to the satisfaction of the Association. The fee for the Research is an all inclusive lump sum fixed fee.

Applicants Bidding in Different Capacities for the Same Research

35. The Association has no objection to –

(a) an applicant or its associates or associated persons (as defined in paragraph 75) lodging one proposal and also acting as sub-contractor to another applicant in this exercise; or

(b) different and unconnected applicants proposing to engage the same sub-contractor or its associates or associated persons in this exercise;

 PROVIDED that –

(i) all the relevant circumstances are disclosed in the proposal; and

(ii) the applicant confirms in the proposal that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the proposal, where the applicant or any of its associates or associated persons is acting as sub-contractor in this exercise.

Submission of Proposals

36. An interested applicant shall submit two (2) sets of documents, each comprising a Technical Proposal and a Fee Proposal. The Technical Proposal and Fee Proposal must be put in separate sealed envelopes clearly marked on the outside of the envelopes “Research Study on Trial Scheme on School Drug Testing in Tai Po District 2009/10 – Technical Proposal” and “Research Study on Trial Scheme on School Drug Testing
in Tai Po District 2009/10 – Fee Proposal” respectively to “Secretary, Beat Drugs Fund Association, (c/o) Narcotics Division, Security Bureau”. The envelopes must reach the Narcotics Division office at 30/F High Block, Queensway Government Offices, 66 Queensway, Hong Kong on or before 5:00pm 30 November 2009 (“Proposal Closing Date”). Electronic file of the Technical Proposal, in either PDF or Microsoft Word format, should also be submitted.

37. Any proposal which does not comply with all of the requirements in paragraph 36 shall be regarded as non-compliant and shall be disqualified by the Association.

38. Electronic submissions will not be accepted and late submissions will not be considered. The Fee Proposals will only be opened after completion of assessment of the Technical Proposals.

39. By submitting proposals, interested applicants agree that the Association is permitted to keep their proposals for record purposes, irrespective of whether they will be awarded the Service Agreement.

**Technical Proposal**

40. An interested applicant is expected to submit in its Technical Proposal, prepared in English, up-to-date information on the matters at (a) – (k) below –

(a) its understanding of the background of the Research;

(b) its proposed approach and methodology in conducting the Research;

(c) the resources for the execution of the key areas of the Research as referred to in paragraphs 10 to 18 above;

(d) the proposed work programme, including without limitation to the overseas school-based drug test programmes that would be reviewed under the Research, with key dates of submission of the Deliverables clearly indicated;

(e) the organisational structure, if applicable, experience and back-up support of the organisation;

(f) the composition of the Research Team demonstrating the expertise/language proficiency required of the team as referred to in paragraphs 6 and 7 above;
(g) the academic and professional qualifications of each team member;

(h) the applicant’s overall experience, knowledge, expertise and capability in delivering services of similar nature and scale, including but not limited to –

(i) possession of, or having access to, a network of experts / practitioners in tackling youth drug abuse problem;

(ii) possession of, or having access to, a network of experts / practitioners in administering anti-drug programmes, preferably with drug testing as a component;

(iii) possession of, or having access to, a network of experts / practitioners in local school setting;

(iv) possession of relevant experience and expertise in providing advice and analysis for projects of similar nature and scale; and

(v) if sub-contractors are to be engaged by the applicant, a description of the relevant experience and expertise of the sub-contractors for the Association’s prior written consent.

(i) a statement by the applicant that in submitting the proposal it offers to provide the services to the Association on the terms and conditions set out in this Brief;

(j) an applicant is required to indicate clearly in its proposal any difficulties it foresees in performing the Research in accordance with this Brief; and

(k) any other information that may assist in the evaluation.

41. The applicant should specify in its Technical Proposal –

(a) any litigation, proceeding, inquiry, claim or allegation whatsoever, actual or threatened, against or involving the applicant or its proposed sub-contractor(s);

(b) the existence of any breach or default, or alleged breach or default of any agreement, order or award binding upon the applicant or its proposed sub-contractor(s);
(c) any other matters which may materially affect the applicant’s ability to conduct the Research or perform its role as the Service Provider, or which may lead to justifiable criticism or embarrassment of the Association for selecting the applicant;

(d) all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the applicant or its associates or associated persons (as defined in paragraph 75 below), or any of its sub-contractors or any member of the Research Team or their associates or associated persons, conflict or compete, or may conflict or compete, with the applicant’s duties to the Association in this Research; and

(e) disclosure as required in paragraph 76 and 77.

**Fee Proposal**

42. The Fee Proposal shall contain an all inclusive lump sum fixed fee in Hong Kong Dollars for the services set out in this Brief broken down into professional fees and other expenses and disbursements, airfares and hotel accommodation within and outside Hong Kong for any Research Team member engaged from overseas. The Fee Proposal shall also contain a breakdown of staff costs and all other costs and expenses in the form of a manning schedule with unit rates shown against each member of the Service Provider, its sub-contractor(s) and the Research Team.

43. The Fee Proposal shall take into account any deflation/inflation factor. No other costs, charges, expenses or disbursements for the provision of the Research rendered locally or overseas will be payable by the Association on top of the lump sum fixed fee.

44. Payment of the service fee to the Service Provider will be by instalments in accordance with the following payment schedule –

<table>
<thead>
<tr>
<th>Deliverables</th>
<th>Percentage of Fee payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the Implementation Plan (para. 23(a))</td>
<td>10%</td>
</tr>
<tr>
<td>(b) the Interim Report (para. 23 (b))</td>
<td>20%</td>
</tr>
</tbody>
</table>
(c) the Draft Final Report (para. 23(c)) 25%

(d) the Final Report and its Bilingual Executive Summary (para. 23(d)) 25%

(e) the Supplementary Report (para. 23(e)) 10%

(f) either (i) completion of all the tasks, Services and Deliverables in the Service Agreement (see paragraph 51), or (ii) upon the expiry of six (6) months after acceptance to the satisfaction of the Final Report and Bilingual Executive Summary referred to in paragraph 44 (d) above, whichever is later. 10%

45. Each instalment payment will be made within twenty one (21) working days after examination and acceptance by the Association of the specified Deliverables and completion by the Service Provider of all the Services required for that instalment under paragraphs 44 (a), (b), (c), (d), and (e).

46. Any payment by the Association shall be without prejudice to or any implication whatsoever for any rights or cause of action which has or may have accrued, or which may accrue, or any remedy available, to the Association in respect of any non-compliance whatsoever of the Service Agreement by the Service Provider.

**Assessment**

47. A vetting panel, comprising members of ACAN, its Sub-committees, RAG and Government representatives will be set up to examine the proposals. Recommendations made by the vetting panel on the proposals will first be submitted to the ACAN for endorsement and then to the Governing Committee of the Association for consideration and approval.

48. Assessment of the proposals will follow the assessment scheme set out at Appendix IV.

49. The Association will not be bound to select the bid on the basis of the lowest fee quoted.

50. Applicants may be invited to make a presentation, at their own costs and expenses, to the Association, ACAN, RAG, and other relevant
bodies involved in processing the applications if deemed necessary.

**Agreement**

51. The Association will enter into a formal written service agreement ("Service Agreement") with the Service Provider on terms prepared and approved by the Association. The Service Agreement will include, but not limited to, the matters referred to in this Brief, expanded and modified as necessary, and other matters such as fees payable to the Service Provider, details of the Research Team, conflict of interest, sub-contracting, termination of services, copyright and other intellectual property rights, confidentiality, set-off, force majeure, withholding tax if the selected Service Provider is not resident in Hong Kong. The Technical Proposal submitted by the Service Provider will form part of the Service Agreement.

52. The obligations and liabilities imposed on the Service Provider in paragraphs 54 to 75, 78, and 79 (conflict of interests, intellectual property rights, confidentiality and indemnity) in this Brief are not subject to negotiation or counter-proposals. Any counter-proposal in contravention of this paragraph will be disregarded.

**Nature of Agreement**

53. The Service Provider will be engaged by the Association as an independent contractor on a principal-to-principal basis. The Service Provider shall not represent itself as an employee, servant, agent or partner of the Association.

**Conflict of Interest**

54. The Service Provider shall during the term of the Service Agreement and for six (6) months thereafter:

(a) ensure that it (including its associates and associated persons or any member of the Research Team or any of the Service Provider’s sub-contractors or their associates or associated persons and its professional advisers, director’s, officers, employees and agents who are assisting in providing the Services) shall not undertake any service, task or job or do anything whatsoever for or on behalf of any third party (other than in the performance of the Service Agreement) which conflicts, or which may be seen to conflict, with the Service
Provider’s duties to the Association under the Service Agreement; and

(b) forthwith notify the Association in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Service Provider or its associates or associated persons, or any member of the Research Team or any one of the Service Provider’s sub-contractors, or their associates or associated persons, conflict or compete, or may conflict or compete, with the Service Provider’s duties to the Association under the Service Agreement.

55. The Service Provider shall provide the Services to the Association on an impartial basis without giving favour to any particular product, service or equipment in which the Service Provider, or its associates or associated persons, or any member of the Research Team or any one of the Service Provider’s permitted sub-contractors, or their associates or associated persons has a direct or indirect financial, professional, commercial personal or other interests. The Service Provider shall notify the Association in writing immediately upon knowing of any actual or potential, direct or indirect, financial, professional, commercial, personal or other interests which such persons have or may have in, or of any association or connection which such persons have or may have with, any product, service or equipment proposed or recommended by the Service Provider under the Service Agreement.

56. The Service Provider shall procure its sub-contractors, each member of the Research Team and its professional advisers, directors, officers, employees and agents who are involved in the provision of the services to execute a legally binding written undertaking in favour of the Service Provider and the Association jointly and severally in a form prescribed by the Association agreeing to observe the matters set out in paragraphs 54 and 55 and the Service Provider shall provide the original or certified true copies of all such undertakings to the Association as may be required by the Association. The Service Provider further agrees that, if so required by the Association, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Association in their enforcement.

57. The Service Provider shall ensure that its associates and associated persons, each of its sub-contractors and each member of the Research Team and their associates and associated persons shall inform
the Service Provider and keep it informed at all times of all facts which may reasonably be considered to give rise to a situation where the direct or indirect financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may conflict or compete, with the Service Provider’s duties to the Association under the Service Agreement.

58. Notwithstanding the expiry or earlier termination of the Service Agreement, the Service Provider shall ensure that it (including its associates and associated persons, each member of the Research Team and each of the Service Provider’s sub-contractors and their associates and associated persons who are involved in the performance of the Service Provider’s obligations pursuant to the Service Agreement) shall not (whether on its own or in joint venture with others), submit any bid in any competitive bidding process or accept any appointment as consultant for, or otherwise be interested in or involved in any manner in any subsequent exercise for the procurement of any goods and/or services arising out of the Research.

**Intellectual Property Rights**

59. All the Materials and all the Intellectual Property Rights in all the Materials shall be and shall remain the exclusive property of the Association and shall vest in the Association absolutely at the time when they are created.

60. In the event and to the extent that any of the Intellectual Property Rights in the Materials is deemed for any reason not to vest in the Association pursuant to paragraph 59, then, upon request by the Association, the Service Provider shall forthwith, free of charge to the Association, assign or otherwise transfer or cause to be assigned or otherwise transferred the same to the Association free of any encumbrance or compensation to the Service Provider.

61. The provisions of paragraph 59 shall not apply to the following type of property (“Licensed Property”) namely (a) property of a kind which is available publicly or generally within the business of a kind similar to that to be provided by the Service Provider under the Service Agreement or which is or was specifically produced or created solely and exclusively in relation to services other than the Services provided or to be provided to the Association under the Service Agreement, and which is incorporated or used in the Materials or otherwise used by the Service Provider in the performance of the Service Agreement; (b) any part of the property referred to in (a) above. The Service Provider shall keep the
Association informed in writing of any of the Materials that are subject matter(s) of the Licensed Property or any pre-existing Intellectual Property Rights and any restrictions whatsoever affecting the use thereof. The Service Provider shall also provide the Association promptly with other information relating to the Licensed Property and pre-existing Intellectual Property Rights as requested by the Association.

62. The Service Provider hereby grants and undertakes to procure at its own cost and expense the granting of, for the benefit of the Association or, if required by the Association, the Government of the Hong Kong Special Administrative Region (“Government”) an irrevocable, non-exclusive, worldwide, perpetual, royalty-free, transferable and sub-licensable licence to use the Licensed Property.

63. The licence granted under paragraph 62 includes the following rights:

   (a) the right to use the Licensed Property for any and all non-commercial purposes or for any and all purposes contemplated by the Service Agreement (including the exercise of any and all Intellectual Property Rights in any part of the Materials); and

   (b) the right to translate, reproduce, issue and distribute the Licensed Property in any format or medium for all non-commercial purposes or for any and all purposes contemplated by the Service Agreement.

64. Upon request by the Association, and in the event of the expiration or termination of the Service Agreement, the Service Provider shall at its own cost and expense promptly deliver to the Association all copies of the Materials then in the Service Provider’s custody, control or possession.

65. The Service Provider hereby waives and undertakes to procure at its own cost and expense all the authors concerned to waive irrevocably all moral rights (whether past, present or future) in the Materials and the Licensed Property, such waiver to operate in favour of the Association, its licensees, assigns and successors in title and to have effect upon the vesting of Intellectual Property Rights or the grant of license (as the case may be). In this paragraph, “moral rights” means the moral rights referred to in the Copyright Ordinance (Cap. 528).

66. The Service Provider warrants and undertakes that –
(a) the Materials shall consist of original works collected, compiled, contributed, created, developed, produced or used by the Service Provider or the Research Team or the employees, directors, officers, agents or sub-contractors at all levels of the Service Provider during the course of or in connection with the performance of the Service Provider’s obligations under the Service Agreement, save and except for the Licensed Property;

(b) the performance of the Service Agreement by the Service Provider, the Research Team or the employees, directors, officers, agents or sub-contractors at all levels of the Service Provider, and the use, exploitation or possession by the Association of the Materials or any part thereof for any purpose contemplated by the Service Agreement does not and will not infringe the Intellectual Property Rights of any person or violate the right of privacy or publicity of, or constitute defamation against, any person;

(c) the exercise by the Association of any of the rights or licence granted it under or pursuant to the Service Agreement shall not infringe the Intellectual Property Rights of any person;

(d) in respect of the Licensed Property and any software, material or thing supplied or used by the Service Provider in the performance of the Service Agreement and in respect of which any Intellectual Property Rights are vested in a third party, the Service Provider has or shall have a valid and continuing licence under which it is entitled to use and sub-licence the Licensed Property, the relevant software, material or thing and the third party Intellectual Property Rights for itself and for the Association or the Government, as the case may be, for all purposes contemplated by the Service Agreement.
67. In this Brief –

(a) “Intellectual Property Rights” means patents, copyright, design rights, trademarks, service marks, trade names, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights (of whatever nature and wherever arising, whether now know or hereafter created) and in each case whether registered or unregistered and including applications for the grant of any such rights.

(b) “Materials” includes but is not limited to all (a) the deliverables, reports; (b) works of authorship, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures, photographs, questionnaires, plans, models, analysis, work programmes, technical notes, information papers, opinions, comments, specifications, formulae, data, information, documents and materials; and (c) the drafts and uncompleted versions of any of the above collected, compiled, developed, produced or created by the Service Provider, the Research Team or employees, directors, officers, agents or sub-contractors at all levels of the Service Provider, (whether individually or jointly with the Association) in relation to and/or in the course of the performance of the Research or for the purpose of the Service Agreement including but without limitation, the pre-contractual and contractual documents thereof which are recorded or stored by whatever means in whatever form or media and the drafts of any of the above items.

Confidentiality

68. All materials and data furnished by or on behalf of the Association in connection with this Brief and the Service Agreement, materials created or produced during the Research, and the terms and conditions of the Service Agreement shall be treated as confidential information (“Confidential Information”). The Service Provider shall not, during the continuance of the Service Agreement or at any time thereafter, disclose to any person (including without limitation any associates or associated persons, directors, officers, employees or agents of the Service Provider who are not members of the Research Team except to the senior management, legal and compliance personnel and auditors of the Service Provider and then only on a need-to-know basis) any confidential
information, provided that the restrictions on disclosure contained in this paragraph shall not apply:

(a) to the disclosure of any information to any member of the Research Team in circumstances where such disclosure is necessary for the performance of the Service Provider’s duties and obligations under the Service Agreement;

(b) to the disclosure of any information already known to the recipient other than disclosure by the Service Provider, its associates or associated persons, directors, officers, employees, former employees, agents or any member of the Research Team or its sub-contractors including without limitation professional advisers;

(c) to the disclosure of any information which is or becomes public knowledge other than disclosure by the Service Provider, its associates or associated persons, director, officers, employees, former employees, agents or any member of the Research Team or its sub-contractors including without limitation professional advisers;

(d) to the disclosure of any information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or order of a court or arbitral authority of competent jurisdiction;

(e) to the disclosure of any information to the Service Provider’s sub-contractors, professional advisers, directors, officers, employees, agents where such disclosure is necessary for the performance of the Service Provider’s duties and obligations under the Service Agreement; or

(f) to the disclosure of any information with the prior written consent of the Association.

69. The Association shall have the right to determine in good faith at any time whether any information is within that described in paragraph 68(b), (c) or (e) above and the Service Provider shall comply with that determination. For the purpose of paragraph 68(e), if at the time the Association discloses the information to the Service Provider, the Association does not expressly state that the information cannot be distributed to the persons named in paragraph 68(e), the Association shall be deemed to have consented to the disclosure of that information to those persons but such disclosure shall be strictly limited to the
performance of the Service Provider’s duties and obligations under the Service Agreement.

70. Any disclosure permitted under paragraph 68 shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified in paragraph 68 and the Service Provider shall ensure the confidentiality of any such disclosure by taking all appropriate action to restrain or restrict any further disclosure.

71. The Service Provider shall not make use of or reproduce any Confidential Information including any information, report, chart, document, plan, software, data or other particulars or information whatsoever relating to the Service Agreement furnished by or on behalf of the Association other than in the performance of its obligations under the Service Agreement and shall not make use of the Deliverables or any Materials or computer models produced or created in relation to the performance of its obligations under the Service Agreement other than in the performance of its obligations under the Service Agreement or with the prior written consent of the Association.

72. The Service Provider shall not without the prior written consent of the Association publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical, film, video or other medium, any confidential information relating to the Research (including without limitation the advice provided by it or the duties undertaken by it under the Service Agreement).

73. The Service Provider shall inform every person to whom any Confidential Information including any information, report, chart, document, plan, software, data or other particulars or information whatsoever relating to the Service Agreement is disclosed pursuant to this paragraph of the restrictions on reproduction and disclosure attaching to such information and the Service Provider shall require such a person to notify the same restrictions to any other person to whom it makes any such disclosure, and shall ensure these restrictions are repeated in any subsequent reproduction and disclosure.

74. The Service Provider shall procure its sub-contractors, each member of the Research Team and its professional advisers, directors, officers, employees and agents referred to in paragraph 68(e) above to execute a legally binding written undertaking in favour of the Service Provider and the Association jointly and severally in a form prescribed by the Association agreeing not to disclose any such confidential information and the Service Provider shall provide the original or
certified true copies of all such undertakings to the Association as may be required by the Association. The Service Provider further agrees that, if so required by the Association, it shall take all such steps as are lawful and necessary to enforce such undertakings or to co-operate with the Association in their enforcement.

75. The terms “associate”, “associated person”, “director”, “relative”, “control”, “person” used in this Brief shall have the following meaning –

“associate” in relation to any person means

(a) a relative or partner of that person; or
(b) a company one or more of whose directors is in common with one or more of the directors of that person.

“associated person” in relation to another person means

(a) any person who has control, directly or indirectly, over the other; or
(b) any person who is controlled, directly or indirectly, by the other, or
(c) any person who is controlled by, or has control over, a person at (a) or (b) above.

“control” in relation to another person means the power of a person to secure

(a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or
(b) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or
(c) by virtue of being or holding office as a director in that or any other person;

that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.
“director” means any person occupying the position of a director by whatever name called and includes without limitation a de facto or shadow director.

“person” means any individual, corporation, firm or any body of persons, corporate or incorporate and includes any public body.

“relative” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parent and the step parent.

**Disclosure of Name of the Service Provider and the Fee Proposal**

76. The Association is entitled to disclose to any person, whenever it considers appropriate or upon request by any third party (written or otherwise), and without further reference to the Service Provider and in such form and manner as it deems fit, the following information –

   (a) the name and address of and the fees, costs, and expenses payable by the Association to the Service Provider; and

   (b) the Fee Proposal submitted by the Service Provider.

77. For the purpose of the paragraph 76 above, each applicant shall complete, execute and deliver to the Association a ‘Consent To Disclosure’ in the form enclosed (Appendix V) together with its proposal in respect of the Research.

**Indemnity**

78. The Service Provider shall indemnify and keep indemnified the Association and the Government against:

   (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments,
joint or several, threatened, brought or established against the Association or the Government ("Claims"); and

(b) any and all liabilities, losses, damages, costs, charges or expenses (including all legal fees and other awards, costs, payments, charges and expenses which the Association or the Government may pay or incur as a result of or in relation to any Claims,

which in any case arise directly or indirectly in connection with, out of or in relation to:

(i) the performance or breach of any provisions of the Service Agreement by the Service Provider or any member of the Research Team;

(ii) the negligence, recklessness, tortious acts or wilful misconduct of the Service Provider, its employees, agents or sub-contractors or any member of the Research Team in the provision of the services;

(iii) any default, unauthorised act or wilful omission of the Service Provider, its employees, agents or sub-contractor(s) or any member of the Research Team in the provision of the services;

(iv) the non-compliance by the Service Provider, its employees, agents or sub-contractor(s) or any member of the Research Team with any applicable law, regulation, order or requirement of any Association agency or authority in the provision of the services;

(v) any allegation of or claim for infringement of the Intellectual Property Rights of any party arising from or in any way related to the provision of the Services by the Service Provider, its employees, agents or sub-contractor(s) or any member of the Research Team; or

(vi) the provision, use, reproduction or possession at any time whether before or after the execution of the Service Agreement of the Materials or Licensed Property by the Association.

79. The Association and the Government will NOT provide any indemnity to the Service Provider in any respect. Any proposal which is inconsistent with this requirement will not be considered.
Policy of Insurance and Compensation

80. The Service Provider shall effect and keep in force during the term of the Service Agreement at its own expense a Public Liability Policy Insurance for the Service Agreement in the joint names of the Association, the Government and the Service Provider in a sum of not less than five million Hong Kong Dollars (HK$5,000,000) for any one occurrence with unlimited number of claims with a reputable insurance company authorised under the Insurance Companies Ordinance (Cap.41) and approved by the AR and on such terms and conditions as shall be approved by the AR against liability to pay damages and compensation for injury to or death of any persons and for loss or damage to any properties whatsoever where such injury, death, loss or damage as the case may be is caused by or arises out of any act or default of the Association, the Government, the Service Provider, the personnel, agents or sub-contractors of any of them in connection with the Service Agreement.

81. If the policy of insurance provides that the payment of certain amount of compensation shall be borne by the insured parties, the Service Provider shall be solely responsible for such payment and shall reimburse the Association and the Government forthwith if the Association or the Government shall be required to make such payment.

82. The Service Provider shall submit to the AR within fourteen (14) days upon receipt of the letter of acceptance a certified copy of the policy of insurance together with the premium receipt.

83. The Service Provider is responsible for lodging all claims with the insurance company and shall deal with the insurance company upon receipt from the Association or the Government or otherwise of a report on any injury, death, loss or damage.

84. If the Service Provider fails to effect and keep in force the insurance referred to or any other insurances which it may be required to take out or maintain under the terms of the Service Agreement or legislation, the Association or the Government may effect and keep in force any such insurances and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Association as aforesaid from any moneys due or which may become due to the Service Provider under the Service Agreement or recover the same as a debt due from the Service Provider.
Employment of Personnel and Sub-contractors

85. The Service Provider undertakes and warrants that it shall enter into a written employment contract with the personnel engaged to perform the Service Agreement. The employment contract shall fully comply with the Employment Ordinance and other applicable rules and regulations.

86. The Service Provider undertakes not to employ illegal workers or to aid and abet another person to breach his condition of stay in the execution of the Service Agreement and any other contract made with the Association or the Government.

87. The Service Provider shall pay at a reasonable time to its employees of the Research Team, sub-contractors, agents, advisors or other parties involved in performing any part or parts of the Research, whichever is applicable.

Sponsorship

88. The Service Provider shall not receive any sponsorship in execution of the Service Agreement, without the prior written approval of the Association.

Termination of Service Agreement

89. If the Service Provider has breached any terms of the Service Agreement and has failed to remedy the same within (fourteen) 14 days of receipt of a written notice from the Association that the same be remedied, the Association may after the expiry of such notice, terminate the Service Agreement by giving (fourteen) 14 days’ written notice to the Service Provider.

90. The Association may at any time or times prior to the completion of the Research at its option terminate without cause the Service Agreement by giving the Service Provider thirty (30) days’ written notice of such termination.

Undertaking and Warranty

91. The Service Provider will be required to warrant and undertake to the Association that –
(a) the services to be provided by it under the Research (the “Services”) shall be performed and completed in an impartial, timely and diligent manner and that the Service Provider and each member of the Research Team, each of the Service Provider’s permitted sub-contractors and every person employed, used or engaged by the Service Provider in the performance of the Services shall use all the experience, skills, care and diligence in the performance of the Services and the discharge of all its duties and obligations under the Service Agreement as may be expected from a person who is an expert in providing services of a kind similar to the Services;

(b) it, the Research Team and the Service Provider’s permitted sub-contractors, have the necessary skills and experience to provide the Services and it shall provide independent and unbiased professional advice to the Association in relation to the Research in accordance with applicable professional standards in Hong Kong; and

(c) it will comply with all laws, regulations, by-laws and code of practice in particular the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) in performing the Services.

**Prevention of Bribery**

92. The Service Provider will be required to prohibit its employees, agents and sub-contractors and the Research Team members who are involved in the provision of the Services from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting the Research.

**Submissions by Interested Applicants**

93. The Association intends to enter into the Service Agreement with one contractual party who will be held responsible for the due and faithful performance of the Services, in which case the party may, subject to the prior written approval of the Association, nominate, as the main contractor, one or more sub-contractors having the necessary expertise to perform part of the Services.
Other Conditions

94. The Association reserves the right, in its absolute discretion, not to appoint any of the applicants which have submitted proposals in response to this Brief, for the whole or any part of the Research. Submission of a proposal shall be made on the understanding that the Association will not be liable to pay any costs arising out of or incidental to the preparation, submission or clarification of the proposal. The Association is also under no obligation to discuss the assessment result with any applicant.

95. After submission of the Technical and Fee Proposals, the applicant shall not attempt to initiate any further contact, whether direct or indirect, with the Association on its proposal or this Brief. The Association shall have the sole right to initiate any such further contact and all such contacts and any replies of consultant firms thereto shall be in writing or formally documented in writing.

96. The Association reserves the right to amend the terms of this Brief in its sole discretion at any time prior to entering into a binding agreement with the Service Provider.

Restrictions or Limitations Proposed by Applicant

97. Restrictions or limitations proposed by the applicant which seek to limit or avoid their responsibility in contract, tort or otherwise for failing to exercise the skill and care required by the Service Agreement or reasonably expected of the Service Provider in these circumstances may render any proposal non-compliant in the absolute discretion of the Association.

Publicity

98. The Service Provider shall not, and shall not permit any of their officers and their proposed sub-contractor(s) to make use of the Association’s name or make any public announcement in connection with this Brief, whether in the form of a press release, advertising or promotion materials, public communications without the prior written approval from the Association.
Negotiation and Variation of Scope of the Service Agreement

99. The Association reserves the right to negotiate with any applicant over the terms of its proposal.

100. The Association may at any time during the term of the Service Agreement, by giving fourteen (14) days’ written notice to the Service Provider, make changes to the scope of the Service Agreement. Where the Association requires the Service Provider to perform services in addition to those specified in this Brief, the additional fee payable by the Association to the Service Provider for those services shall be calculated on a time cost basis by the actual number of hours spent by different levels of the Research Team. The Service Provider shall keep accurate and updated timesheets showing clearly the time spent, the name of the fee earners, the daily rates and concise particulars of the additional services done. Fees and expenses incurred for the additional services intended to be claimed shall be wholly, exclusively and necessarily incurred in the performance of the additional work. Expense account with full itemised breakdown together with original receipted invoices shall be produced to the Association in any claim for additional fees and expenses for the authorised additional services undertaken by the Service Provider.

Withholding Tax

101. Where the Service Provider is a non-Hong Kong resident, the Association shall withhold a percentage equivalent to the prevailing Hong Kong profits tax applicable to unincorporated and incorporated business/profession, as may be applicable to the Service Provider, of any payments payable to the Service Provider by way of lump sum, instalments, or discounted payments (exclusive of any reimbursement of expenses, if any) in respect of the services provided in Hong Kong by the Service Provider for the settlement of such profits tax chargeable on the payments. Any balance of the sum withheld will be returned to the Service Provider without interest within a reasonable time upon final determination and settlement of such tax liabilities.

Governing Law and Arbitration

102. The Service Agreement is governed by the laws of Hong Kong and the parties hereby submit to the exclusive jurisdiction of the Hong Kong courts.
103. Unless the Service Agreement has already been terminated, the Service Provider shall continue to provide the Services during the resolution of the dispute.

Set-Off

104. Where the Service Provider has incurred any liability to the Association, whether at law or in equity, and whether such liability is liquated or unliquidated, the Association may, without prejudice to any rights or remedies the Association may have, set off, whether at law or in equity, the amount of such liability against any sum then due or which at any time thereafter may become due from the Association to the Service Provider under the Service Agreement or any other contracts.

Force Majeure

105. In the event of Force Majeure (as defined in paragraph 107 below), the party so prevented shall be excused from the performance of its obligations under the Service Agreement for so long as such cause shall continue. The party so prevented shall give notice in writing to the other party as soon as possible of the occurrence of the event of Force Majeure.

106. Should performance by the Service Provider of its obligations under the Service Agreement be prevented by an event of Force Majeure for a period of twenty-eight (28) consecutive days or longer, the Association shall be entitled at the expiration of such period to terminate the Service Agreement by not less than fourteen (14) days’ written notice to the Service Provider.

107. “Force Majeure” means –

(a) any supervening outbreak of war affecting Hong Kong and/or the People’s Republic of China, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government or the People’s Republic of China, civil war, riot, civil disturbances, fire which is not caused or contributed to by the Service Provider, its associate or associated person or any employee or agent or ex-employee or ex-agent thereof, civil commotion or acts of God; or
(b) any supervening catastrophic event which is similar to the foregoing, if not caused or contributed to by the Service Provider, its associate or associated person or any employee or agent or sub-contractor or ex-employee or ex-agent thereof, and which in (a) and/or (b) above, prevent(s) the performance of the duties and obligations of any party under the Service Agreement.

Legal Opinion

108. If the Service Provider is incorporated elsewhere than in Hong Kong, the Service Provider is required to submit to the satisfaction of the Association within the timeframe specified by the Association an opinion obtained from a lawyer qualified in the jurisdiction of incorporation and acceptable to the Association on the following and otherwise in such form as shall be required by the Association:

(a) that the Service Provider is duly incorporated and validly existing under the relevant law and has full power and authority to carry on the business as it is now being conducted;

(b) that the Service Provider has the power to enter into and perform the proposed Service Agreement with the Association and that it has taken all necessary corporate legal actions to authorise the entry into and performance of the proposed Service Agreement;

(c) that the proposed Service Agreement with the Association will, upon execution by the authorised signatory or attorney of the Service Provider constitute the legal, valid and binding obligation of the Service Provider in the jurisdiction of incorporation.

Process Agent

109. Where the Service Provider is a non-Hong Kong resident, the Service Provider is required to appoint a process agent in Hong Kong acceptable to the Association to receive on the Service Provider’s behalf service of process of any legal action or proceedings arising out of or in connection with the Service Agreement.
**Budget**

110. An indicative budget for this Research is about $2 million, subject to approval of the Association.

**Association Not Liable for Information**

111. The Association may provide, if available and appropriate for use in this study, relevant background information and data to facilitate the Research Team’s research. The provision of such information is at the sole discretion of the Association, and, for the avoidance of doubt, the failure or delay by the Association in providing the information and data shall not affect the obligations of the Service Provider under the Service Agreement. The Service Provider should note that any information and data provided by the Association in connection with the Research are for reference only. The Association gives no warranty, statement or representation, expressed or implied, as to the accuracy, availability, completeness, usefulness or future changes of such information and data. The Service Provider shall conduct its own independent assessment of the information and data. The Association does not accept any liability for the accuracy, completeness or otherwise of such information and data.

**Secretariat**

**Beat Drugs Fund Association**
Appendix I  Chapter VII of the Task Force Report

As attached in the subsequent pages.
Chapter VII

DRUG TESTING

(A) Overview

(a) Objectives of drug testing

7.1 Drug testing can reveal whether a person has used illicit drugs. Depending on the actual mode of operation, it may serve the following objectives1 -

(i) Monitoring and deterrence - Drug testing as a form of monitoring underlines the need to enquire into the more private areas of a person’s life, and in doing so, reduces the likelihood of drug abuse. Its effectiveness will depend on a number of factors including the degree of social consensus as to what constitutes socially transgressive behaviour and the capacity to apply some kinds of negative sanction or punishment.

(ii) Early intervention - Drug testing as a tool for early intervention highlights the importance of identifying drug abusers early so that they may be motivated and guided towards counselling or treatment as soon as possible to avoid the problem from further deteriorating.

(iii) Preventing drug abuse - Drug testing prevents drug abuse because one can use potential testing as an excuse to refuse drugs when approached by a peer. Drug testing can also help create a culture of disapproval towards drugs e.g. in schools.

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1 See, for example, “Random drug testing of school children – A shot in the arm or a shot in the foot for drug prevention?” by Neil McKeganey (2005), and US’s National Drug Control Strategy 2007.
(iv) **Crime investigation and prevention** – In countries and places where consumption of drugs is an offence, drug testing can be a tool to enforce the law and to deter offending. Separately, drug testing may also assist in preventing other crimes which may be committed to finance the habit (e.g. theft, prostitution, burglary and trafficking of drugs) by identifying offenders and suspects who are drug abusers for treatment options. This helps break the connection between drug abuse and crime.

7.2 The above objectives may be intertwined with one another. For example, development of the criminal justice system has been moving in the direction of rehabilitation rather than punishment, and seeking to divert juvenile offenders away from prosecution for alternative remedies of the delinquent behaviour. This is especially important in the youth drug abuse context when we come to devising a drug testing scheme.

7.3 In sum, drug testing, depending on the design of the scheme and the specific objectives it seeks to achieve, can be a powerful means to protect public health and maintain law and order.

7.4 Drug testing can be on urine, hair, blood and others. As background, the characteristics of various drug testing methods are set out in *Annex 4*.

(b) **Mainland and overseas examples**

7.5 Drug testing to identify drug abusers has been in place in different forms and to various extents in some jurisdictions. Notably, drug testing in schools and for law enforcement purposes has attracted considerable discussion.
(i) Drug testing in schools

7.6 Drug testing practice in schools differs in various jurisdictions and it remains a subject of debate. Issues of concern include privacy, confidentiality, consent, who should bear the cost, who should take up the role of conducting the tests, the process of selecting subjects for testing, the process of testing, drug testing methods, false positive problems, the consequences of a positive drug test, and so on.

7.7 In the United States (US), drug testing is widely available in the school setting and considered to be a key tool to address the youth drug abuse problem as it prevents drug use in the first place, helps users get the help they need and sends a message that drug use is not acceptable. Drug testing is underpinned by a US Supreme Court ruling in June 2002\(^2\) which broadened the authority of public schools to test students for illegal drug use if they engage in competitive extracurricular activities. This ruling has greatly expanded the scope of school drug testing, which previously had been allowed only for student athletes. Although it is still up to individual schools to decide if drugs are a significant threat, and if testing is an appropriate response, the availability of federal, state and local funding to be used for drug testing underlines the priority accorded to the measure by the US administration.

7.8 In the United Kingdom (UK), cleaning up schools has been one of the priorities in the war on drugs. Although drug testing has been practised in the independent school sector for several years, the British Government openly supported random drug testing of students only in 2004, which started the availability of drug tests in state schools. The Department for Education and Skills has issued guidance\(^3\) to schools on drug related matters, among others, the use of drug testing. Whether and how to implement student drug testing is up to each individual school. The guidance does not cite any legal authority overriding the need for consent when putting in place a drug testing scheme.

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\(^{2}\) Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Earls et al., decided on 27 June 2002.

\(^{3}\) “Drugs: Guidance for schools” issued by the Department for Education and Skills provides guidance on all matters related to drug education, the management of drugs within the school community, etc.
7.9 In Singapore, some schools also administer drug tests. It is for the individual school to decide whether or not drug tests should be administered, taking into account its individual circumstances. There is no need for schools to seek government’s approval in relation to their internal drug testing procedures.

(ii) Drug testing for law enforcement purposes

7.10 Drug testing is also in place in some jurisdictions as part of their law enforcement efforts.

7.11 In the Mainland, pursuant to the Anti-drug Law, persons found suspected to be drug abusers can be required to provide a urine sample for testing. Should the person refuse to undergo such a test, compulsory drug testing can be administered. For those who are tested positive for drugs, they will be subject to a fine of 2,000 yuan and administrative detention for 10 to 15 days\(^4\). The Anti-drug Law also specifies three types of detoxification measures for drug addicts i.e. voluntary detoxification, detoxification in community and compulsory detoxification treatment in isolation. The latter two are compulsory in nature, and may be ordered by the public security authorities under different circumstances.

7.12 In Malaysia, by virtue of the Dangerous Drugs Act, it is lawful for a police officer not below the rank of sergeant or an officer of the Customs to require an arrested person to provide a specimen of his urine for the purposes of an examination of the person to afford evidence as to the commission of offences under the Act, including consumption and possession of dangerous drugs. Any person who, without reasonable excuse, fails to provide a specimen of his urine, shall be guilty of an offence.

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\(^4\) In the Mainland, the act of taking drugs is regarded as an act against the administration of public security under the Law on Penalties for Administration of Public Security. The Criminal Law of the People’s Republic of China does not provide that the taking of illicit drugs is a criminal offence.
7.13 In Singapore, under the Misuse of Drugs Act, consumption of controlled drugs is an offence. There is a general provision whereby any Central Narcotics Bureau officer, immigration officer or police officer not below the rank of sergeant may require a person suspected of drug consumption to provide his urine sample for tests. Urine samples will first be tested on the Instant Urine Test (IUT) machine as preliminary screening. After a person has been tested positive on the IUT machine, two samples of his urine will be sent for confirmatory tests. A confirmed drug abuser may be required to be subject to supervision, or to be admitted and detained for treatment and rehabilitation.

7.14 In the UK, pursuant to the Police and Criminal Evidence Act, the police may require a person who is arrested for or charged with a trigger offence (e.g. robbery, burglary, and possession of controlled drugs) to provide a sample of urine or non-intimate sample for the purpose of ascertaining whether he has any specified Class A drug (heroin or cocaine) in his body. This power may also be exercised where a police officer of at least the rank of inspector has reasonable grounds for suspecting that the misuse by that person of a specified Class A drug caused or contributed to the offence for which he is arrested or with which he is charged. A person who fails without good cause to give any sample which may be taken from him is guilty of an offence. The information obtained from the sample may be used for the purpose of informing any decision about the giving of a conditional caution, for the purpose of informing any decision about the appropriate sentence and any decision about his supervision or release in case he is convicted of an offence, for the purpose of drug assessment which the person is required to attend, for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned, etc. These provisions enable identification of problem drug users earlier in the criminal justice system and refer them to treatment and other support programmes, even if they do not go on to be charged with any offence.

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5 A citizen or a permanent resident of Singapore commits this offence even if the consumption takes place outside Singapore.

6 Section 63B of Police and Criminal Evidence Act 1984 as amended by the Drugs Act 2005.
(c) Current position of drug testing in Hong Kong

7.15 In Hong Kong, from a drug treatment and rehabilitation perspective, a drug test for screening and identification purposes is not readily available in the public sector. In the first place, a young person, or his or her parents, must take the initiative to seek medical consultation from a private doctor or a medical officer at an Out-Patient Clinic of the Hospital Authority. The need to administer a drug test is a professional matter for individual medical practitioners. While drug tests can be a common part of the medical procedures for diagnosis and treatment in a Substance Abuse Clinic (SAC), they are more for tertiary (late) intervention and treatment than for screening and early identification purposes. The use of quick test kits by layman social workers in Counselling Centres for Psychotropic Substances Abusers (CCPSAs) is subject to many limitations. There are perhaps more hurdles than incentives to undergo drug testing for even those who are willing to take the first step to seek help.

7.16 In the school setting, some international schools have on their initiatives put in place various drug testing schemes. For instance, parents may be asked to sign a consent form at the beginning of a school year for this purpose. Students may then be randomly, or with reasonable cause, selected to undergo a drug test. Those with a positive result will be requested to attend follow-up counselling or treatment. We are not aware of any mainstream schools instituting a drug testing scheme for students.

7.17 From the law enforcement perspective, consumption of dangerous drugs is an offence under the Dangerous Drugs Ordinance (Cap. 134)\(^7\) (DDO). It is, however, difficult to gather sufficient evidence to prove consumption nowadays, particularly because many dangerous drugs

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\(^7\) Section 8 of the Dangerous Drugs Ordinance (Cap. 134) provides that—

“(1) Save under and in accordance with this Ordinance or a licence granted by the Director thereunder, no person shall -
(a) have in his possession; or
(b) smoke, inhale, ingest or inject, a dangerous drug.

(2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and shall be liable—
(a) on conviction upon indictment to a fine of $1,000,000 and, subject to section 54A, to imprisonment for 7 years; or
(b) on summary conviction to a fine of $100,000 and, subject to section 54A, to imprisonment for 3 years.”
are consumed in a manner which is much more difficult to detect, e.g. by swallowing tablets, as compared with inhaling or injecting heroin.

7.18 Under section 59C of the Police Force Ordinance (Cap. 232), authorised police officers can take non-intimate samples (e.g. nails, saliva and hair) from a person suspected of having committed a serious arrestable offence (including consumption of drugs). However, in practice, non-intimate samples are generally of low evidential value in proving to the satisfaction of the court that an offence relating to consumption of dangerous drugs has been committed.

7.19 Separately, intimate samples (e.g. urine and blood) can be collected by law enforcement officers with the person’s consent. Specifically, under section 54AA of the DDO, authorised Police and Customs officers can take a urine sample from a person suspected of having committed a serious arrestable offence (including consumption of drugs), subject to the consent of the person (or, in the case of a minor, the consent of his or her parent or guardian) and judicial approval. In practice, the suspect is very unlikely to give consent and hence drug testing in this context is not common in Hong Kong.

7.20 Section 52 of the DDO provides for the examination of a person’s body cavities by a doctor or nurse, and this may be done without that person's consent. However this power may only be exercised where a Police or Customs officer (of or above the rank of inspector) has reason to suspect that the person has in his actual custody an article liable to seizure under the Ordinance. Mere suspicion that a person has consumed dangerous drugs is not sufficient for invoking this power.

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8 An offence in relation to dangerous drugs for which a person may be sentenced to imprisonment for a term not less than 7 years.

9 More generally, section 59A of the Police Force Ordinance (Cap. 232) also empowers authorised Police officers to take intimate samples from a person suspected of having committed a serious arrestable offence, subject to the consent of the person (or in the case of a minor, the consent of the person’s parent or guardian) and judicial approval. It covers all serious arrestable offences not just those related to dangerous drugs.
7.21 An excerpt of statutory provisions which may be invoked for drug testing is at Annex 5.

7.22 For a young offender below the age of 18, the Police may place him under the Police Superintendent’s Discretion Scheme instead of initiating a prosecution action, provided that certain criteria are met and the offence involved is of a less serious nature. The young offender must, with parental consent, agree and comply with the conditions a Superintendent of Police may impose in issuing a caution. For a youngster arrested for drug-related crimes, a possible range of measures may include undergoing a urine test to confirm whether he or she has a problem of drug abuse, receiving drug treatment, and post-caution visits by the Police’s Juvenile Protection Section. One difficulty is that if the youngster subsequently fails to comply with the conditions (like attending the drug treatment programme), the range of sanctions may be limited and in particular prosecution action may be precluded given that a caution has been administered and there has been an elapse of time\(^{10}\).

7.23 As regards a person prosecuted and convicted of an offence, the Court may require reports in respect of various sentencing options. In preparing such reports, the relevant authorities may carry out drug tests on the convicted offender. For one reported to have drug abusing behaviour, the Court may at its discretion pass a sentence with a drug treatment element, notably detention in a Drug Addiction Treatment Centre (DATC) run by the Correctional Services Department or a Probation Order with a requirement to attend a drug treatment centre or participate in a drug treatment programme.

(d) The case for provision of drug testing in Hong Kong

7.24 Statistics show that 99% of the young drug abusers in Hong Kong abuse psychotropic substances. Unlike traditional drugs such as heroin which would require fume inhaling or injection, many psychotropic substances can readily be taken through snorting or swallowing without any paraphernalia. There may be few obvious withdrawal symptoms in the

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\(^{10}\) See section 26 of the Magistrates Ordinance, Cap. 227 where a summary offence is statute barred after 6 months.
short term. There is also an increasing trend of abusing drugs at home or across the boundary, out of sight of public authorities or parents. This makes psychotropic substance abuse by youngsters difficult to detect by law enforcement officers, their parents, teachers or peers. As expounded in Chapter II, many abusers have remained out of reach of the existing help networks given the hidden nature of psychotropic substance abuse.

7.25 Early identification and intervention is thus a mainstay of our treatment and rehabilitation strategy to tackle the youth drug abuse problem. The Task Force considers that an appropriately designed drug testing regime has the potential of being a most powerful tool in such efforts. However, as noted in paragraphs 7.15-7.23 above, the present system is not conducive to drug testing.

7.26 From a law and order perspective, the nexus between problematic entertainment venues and drug abuse has been a major concern. The Task Force has recognised the intensified efforts by the Police in stepping up law enforcement operations in such premises to meet the challenge. The largest karaoke and discos in Kowloon in which drugs were often found have ceased business as a result of these operations. However, it has been a substantial commitment in terms of manpower and other resources, and drugs are still available in smaller entertainment venues. Police operations can be frustrated by the general alertness of traffickers and abusers nowadays, the connivance of venue staff in warning patrons of the police entry, and the dark and crowded environment enabling patrons to discard drugs before being searched.

7.27 Undercover operations are conducted, but they are mainly targeted at dealers rather than abusers. When the Police check the entertainment venues, persons are often found in a secluded area with drugs discarded onto the floor. Although the taking of urine sample is provided for in the DDO (paragraph 7.19 above), such power could seldom be exercised for proof of consumption of drugs since it requires consent of the person.
7.28 Without a voluntary self-admission, it is hardly possible to prove that a person is in possession of the discarded drugs or has consumed drugs, so no arrest can be made and the persons concerned continue to take drugs. This is dangerous as it is reinforcing the perception that consuming drugs is of no legal consequence.

7.29 In view of the above, the Task Force sees a strong need to look into whether and how further drug testing may be made available in Hong Kong for the purposes of health protection and law and order.

7.30 The Task Force is aware of the arguments against drug testing as raised by some quarters. Certain pertinent issues have to be considered very carefully before taking forward any proposals.

(e) Issues for consideration

7.31 Drug testing inevitably requires the taking of body samples, intimate or non-intimate, which may give rise to privacy concerns. Consent of the subject (and/or of the subject’s parents) is required under the present law, unless there is clear justifications and overriding legal authority.

7.32 The Task Force notes that there is currently no legal authority, whether under the existing legislation or at common law, for the law enforcement agencies to carry out compulsory drug tests, without the need to obtain consent of the suspect, for ascertaining whether a person has consumed dangerous drugs \(^{11}\). Therefore, some form of legislative backing, and justification for such, would be required if compulsory drug testing is to be taken forward to help identify drug abusers.

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\(^{11}\) See paragraphs 7.18 – 7.20 above. Separately, under Regulations 54 and 96 of the Education Regulations (Cap. 279 sub. leg.), the Permanent Secretary for Education has power to require a student to submit to medical examination and to require a principal to expel or suspend a student. In context this power is primarily for protecting health and well being of pupils and those coming into contact with them, and for determining their physical fitness (see sections 84(1)(f) and (g) of the Education Ordinance (Cap. 279)). It is doubtful whether this power may be invoked for ascertaining whether a pupil has taken drugs.
(i) **Compulsory drug testing**

7.33 Compulsory drug testing is potentially a very effective means of screening and identifying drug abusers for crime investigation, treatment and prevention.

7.34 However, compulsory drug testing may be argued as an interference with human rights, in particular the right to privacy, comprising the right to human dignity and bodily integrity (including right to refuse medical treatment). Some may argue that compulsory drug testing would lead to abuse of civil liberty by giving excessive powers to law enforcement agencies (or such other parties administering the test), particularly on juveniles who are vulnerable and would require special protection from those who may abuse their position of power. In addition, although consuming drugs is an offence under the DDO, it is for the prosecution to prove that a person has committed that offence. Some may argue that to use the result of drug testing obtained by compulsory power from an individual as evidence against the individual in a criminal charge may possibly infringe the right not to incriminate oneself.\(^\text{12}\)

7.35 Even where a compulsory drug testing scheme only for identification and treatment purposes without involvement of law enforcement officers is carried out in, for example, schools, it still could give rise to concerns about privacy. Another objection is the undermining of the trust between staff and students that should be in place in an education setting, which would in turn impact negatively on other aspects of young people’s educational work, including drug education. There are other difficult issues like possible stigmatisation of a student who has been tested positive, false positive and false negative results, cost-effectiveness and others.\(^\text{13}\)

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\(^{12}\) Legislative precedent exists for such compulsory powers, for example under the Road Traffic Ordinance (Cap. 374) which, under prescribed circumstances, requires a driver to undergo a breathalyzer test, the result of which may be used in evidence.

\(^{13}\) Some may even query the underlying assumption of the proclaimed efficacy of drug testing in preventing drug abuse. See footnote 1.
7.36 Such an interference could only be justified if it is prescribed by law, for a lawful purpose, and rational and proportionate to the problem.

7.37 The Task Force has given the matter careful consideration. Given the grave harm caused by the abuse of psychotropic drugs to those who consume them and the community at large, the difficulties in detecting and proving consumption of dangerous drugs which is a serious arrestable offence, and the degree of seriousness of the whole youth drug abuse problem we now face, the Task Force believes that there is a strong case to pursue a legislative exercise to provide for compulsory drug testing by our law enforcement agencies for the lawful purposes of crime investigation and prevention and protection of public health. The statutory scheme must be designed carefully in a rational and proportionate manner, with built in safeguards against arbitrariness and for the protection of affected persons’ rights. The various implications must be addressed fully.

7.38 The Task Force also considers that the proposed investigative powers through compulsory drug testing should be confined to law enforcement officers who have been given appropriate training and are subject to strict discipline.

(ii) Voluntary drug testing based on consent

7.39 There may be two approaches in devising a voluntary drug testing scheme based on consent. One is to make available a convenient drug test service and to offer the service on a purely voluntary basis. Another approach is to target the drug test at a certain population (like students of a school) and press for comprehensive compliance coverage\(^{14}\) through various means.

7.40 The first approach is only effective in helping those who are willing to come forward for help (e.g. caring parents who are able to persuade their at-risk child to seek help). Indeed, if a person is willing to come forward for help, he or she may have, to a certain extent, already

\(^{14}\) Not necessarily physical administration of the test on each and every subject of the population. Compliance may be achieved by obtaining prior consent to a possible drug test in future under specified circumstances, as in randomised testing.
admitted using drugs. Drug testing may be seen as the beginning of a treatment process or a pre-requisite for further treatment and follow-up services. The Task Force considers that naturally, it is not as an effective tool for screening as the second approach below, but it can still play a useful role to offer help to those in need.

7.41 The second approach can be effective as far as the target population is concerned, if a reasonable level of compliance (i.e. in subjecting oneself to the test) can be achieved. Compliance may be achieved through possible incentives, appropriate sanctions when consent is not given, peer pressure and other means. In the school setting, it may be feasible in certain international schools as students (or parents on their behalf) who do not give consent to drug testing may ultimately be denied enrolment. However, this may not be workable for other schools where the same kind of competition in enrolment or parental attention may not be present. In any case, schools will be discouraged from dismissing students found to have abused drugs.

7.42 But even a scheme purely based on consent is not without criticisms if the second approach is followed. Some may see it an unethical intrusion into the privacy of a person, with the kind of pressure or sanction resulting if consent is not given. The various objections to compulsory drug testing (paragraphs 7.34-7.35 above) may also be applicable here, but probably not with the same degree of emphasis 15.

15 More practically, a scheme based on consent will next invite the question of whether parental consent will be sufficient legal authority for a drug test to be carried out on a child. Parental consent alone provides that a drug test may be carried out lawfully but it does not determine that a drug test shall be carried out. The law also recognises that a child, depending on his or her age, may have the competence to determine his or her own well-being. In that case, parental consent would not suffice if the child refuses to undergo a drug test. The case law does not specify an age at which a child is recognised to have such competence. The older the child, the more likely he or she is to have such competence. Article 12 of the Convention on the Rights of the Child, an international human rights treaty applicable to Hong Kong, is also relevant - “... to assure to the child who is capable of forming his or her views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.
7.43 The Task Force has carefully considered the whole matter and the many challenges presented. On balance, it considers the possible options under a voluntary approach should be further considered but a more in-depth investigation and analysis of the relevant environment and possible implications is necessary before these options can be usefully formulated. The availability of a drug testing scheme in the community can play a useful role in helping those who themselves are willing to come forward. A credible and effective drug test service targeting students, though ultimately based on consent, would enable the schools to tackle the youth drug abuse problem more effectively and send a strong message of our resolve.

(B) Possible Options under a Compulsory Approach

7.44 As noted in paragraphs 7.33 to 7.38 above, the Task Force sees a strong need to look into how a compulsory drug testing scheme can be introduced with legislative backing.

7.45 The Task Force must emphasize at the outset that the purpose of introducing compulsory drug testing is not to facilitate prosecution for the sake of punishing offenders, but rather to enhance early intervention and rehabilitation. However, experience elsewhere shows that a degree of coercion and deterrence is necessary. Notably, if law enforcement officers are given the power to require a compulsory drug test, they would be in a better position to prove that an offence of consumption of dangerous drugs has been committed. This can then provide a concrete basis to identify the drug abuser and to exert background coercion to induce the drug abuser to undergo treatment in lieu of prosecution.

7.46 The Task Force fully recognises the sensitive issues and wide implications involved in seeking to introduce compulsory drug testing, particularly from a human rights perspective. A proper balance needs to be struck with legal and other pertinent issues adequately addressed. The community must be consulted in mapping out the way forward.
Recommendation 7.1

As a matter of principle, the Task Force recommends the introduction of new legislation to empower law enforcement officers to require a person reasonably suspected of having consumed dangerous drugs to be subjected to a drug test, although important issues including the extent of coverage, human rights concerns, read-across implications on law and enforcement, resources as well as implementation details have to be carefully considered. The primary purpose of the compulsory drug testing scheme is to enable early intervention for treatment and rehabilitation, instead of facilitating prosecution. A proposal for a compulsory drug testing scheme should be set out in a detailed consultation paper and public views should be invited before the proposal is taken forward.

7.47 The Task Force sets out below the key elements and related issues of the compulsory drug testing scheme, as well as the basis of our recommendation in respect of each of the same.

(a) Age limit

7.48 One major issue which has to be considered is whether compulsory drug testing should apply to young persons only or to persons of all ages, and if the former, where to draw the line.

7.49 The focus of the Task Force is admittedly on how best to tackle the drug abuse problem among our young people. Within its terms of reference, the proposed scheme should aim at protecting young people against the prevalent use of psychotropic substances in Hong Kong.
7.50 Young people belong to a vulnerable section of the community that need greater protection from bad influences including drugs. It is also commonly accepted that young people should be diverted from the courts to treatment and rehabilitation where possible. As stated before, the trend of psychotropic substance abuse among young people is such that more decisive measures are needed to arrest it. Because of these considerations, the Task Force believes that there is justification to offer young and especially first-time drug abusers separate treatment and rehabilitation options instead of resorting to immediate prosecution. This represents a departure from the more conventional criminal justice system and the justifications applicable to the young drug abusers may not necessarily apply to the case of older and traditional drug abusers. There are precedents for different age limits in respect of various offences in Hong Kong and in different countries. It is therefore not a matter of legal necessity to apply the proposed compulsory drug testing scheme to persons of all ages.

7.51 If the proposed scheme is made applicable only to young persons, the next question will be whether the age limit should be set at 18 or 21. One may argue that the age of majority is 18 in Hong Kong and overseas which is recognised in the Convention on the Rights of the Child. Young persons or offenders are also generally defined as persons under the age of 18 or even younger in the criminal justice system in Hong Kong. On the other hand, the age of 18 is not in line with ND’s long-established definition of youngsters under the anti-drug policy and in its statistical records. The cut-off ages of various sentencing options and for other services for young offenders, though varied, are generally set higher than 18 to benefit more people. Furthermore, the number of young drug abusers above 18 is significant and the rationale for alternative treatment for young offenders applies equally to those above 18. There is no simple

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16 As among youngsters, psychotropic substance abuse is on the rise among adults, but is still trailing behind heroin abuse which remains dominant. Such heroin abusers are generally more easily identifiable. The argument for early identification and intervention is less strong.

17 Protection of Children and Juveniles Ordinance (Cap. 213) (juveniles aged 14-18); Reformatory School Ordinance (Cap. 225) (young persons aged 14-16/ youthful offenders aged 10-16); and Juvenile Offenders Ordinance (Cap. 226) (young persons aged 14-16).

18 Training centres (aged 14-21); detention centres (aged 14-25); rehabilitation centres (aged 14-21); young prisons (aged 14-21); Young Offender Assessment Panel (female aged 14-21/ male aged 14-25); and Community Support Service Scheme (aged below 25).
answer to the question as to where the line should be drawn. The Task Force sees merit to seek more views in this respect.

7.52 Nevertheless, the Task Force notes that there are also cogent arguments for making compulsory drug testing applicable to all ages. The Administration’s anti-drug policy is not made exclusively for the young, and the same enforcement powers are usually applied to both minors and adults in respect of the same offence. Treatment and rehabilitation of drug abusers is provided to all ages. The international drug control conventions are also of general application. Persons of all ages should be treated equally. If a distinction is drawn in the law between adults and youngsters in terms of drug testing requirements, it would create enforcement difficulties. For instance, if a group of people are caught suspected of consuming dangerous drugs together, it would seem unreasonable to require the ‘under aged’ abusers to undergo drug testing with a prospect of prosecution and conviction but to allow the older group members to go away scot-free (which, as discussed above, results from the limited investigative power in the present law).

**Recommandation 7.2**

The Task Force recommends that the Administration should consult the public as to whether the proposed compulsory drug testing scheme should apply to young people only or to persons of all ages, and if the former, what the age limit should be.

(b) Tiered intervention structure

7.53 As the proposed drug testing scheme is primarily aimed to identify youngsters who have drug abuse problems for treatment and rehabilitation, the Task Force considers that a tiered intervention structure should be introduced whereby youngsters should be offered the chance of rehabilitation instead of prosecution for the first time they are caught and tested positive. The consequences should get more serious for persistent offending with prosecution as the last resort. In considering a tiered
structure, the Task Force reckons that there are different degrees of drug addiction among the abusers.

7.54 In order to set up a tiered structure with differentiations between different abusers, a central database of persons tested positive in compulsory drug tests would have to be set up. A person tested positive for the first time (“the first-timer”) would be given a warning and offered the service of voluntary treatment and rehabilitation programmes through information provision or assistance by social workers. Appropriate follow-up visits can also be considered. The evidence obtained by the compulsory drug test will not be admissible as evidence for any offence of consumption19. If the same person is caught and tested positive for consuming dangerous drug a second time (“the second-timer”), the law enforcement officer of a sufficiently senior rank has the discretionary power to offer the second-timer a mandatory treatment option in lieu of prosecution. If the same person is caught and tested positive for consuming dangerous drug a third time or more (“the third-timer” and beyond), he would be prosecuted and the positive drug test result would be admissible evidence to prove consumption at trial.

7.55 The warning given to the first-timer is the first step in the overall scheme for deterring or rehabilitating young drug abusers. Although the first-timer will not face prosecution for the consumption offence based upon the evidence obtained by the compulsory drug test20, in the case of a young offender, this first step would have alerted his parents/guardian of his drug problem (the drug test and/or the warning would have been administered with the knowledge of the parents/guardian). This prospect of itself will give rise to considerable deterrent effect. Further, upon being so alerted, most probably the parents/guardian would consider the treatment or rehabilitation programmes offered or at least would become more vigilant from then on. Therefore it may not be necessary to confront the first-timer at that stage with the choice between compulsory treatment and prosecution, which would involve considerable public resources.

19 This is without prejudice to the possibility of charging the consumption offence based on evidence other than the drug test result, or the charging of non-consumption drug-related offences.
20 As mentioned, currently, consumption cases are difficult to prosecute in any event due to the difficulty of proof.
7.56 However, this treatment of first-timer is not without concerns. Some may argue that the first warning is feeble, and may even give a wrong message that a young person need not worry about the risk of being prosecuted unless and until he has been caught consuming dangerous drugs for the second time. This may also create a disparity with young persons caught in possession of dangerous drugs on the same occasion, with the first-timer not having to face prosecution, the second-timer at risk, and the third-timer definitely.

7.57 The alternative is to dispense with a first warning and directly offer a choice between mandatory treatment and prosecution to first-timers. Second-timers and subsequent offenders will be prosecuted right away. It should be noted that the person is prosecuted and convicted, sentencing options themselves can contain mandatory treatment and rehabilitation elements (paragraph 7.23 above).

7.58 The Task Force is in favour of a tiered intervention structure. In terms of protecting the welfare of youngsters, the criminal justice system tends to steer young offenders away from prosecution in favour of rehabilitation options. A tiered intervention structure may make the whole scheme of compulsory drug testing more acceptable by providing a further buffer from prosecution. As to whether a two-tier structure (paragraph 7.57 above) or a three-tier structure (paragraph 7.54 above) is more appropriate, the Task Force’s preference is with the three-tier system especially if the scheme is confined to young people. However, this matter is debatable and the Task Force believes the public should also be consulted thereon.

7.59 Further, if it is ultimately decided that the proposed compulsory drug testing scheme should be made applicable to persons of all ages, it is possible for different tiers of intervention to be applied to youngsters and adults, with more lenient treatment for the former.
Recommendation 7.3

The Task Force recommends that the proposed compulsory drug testing scheme for youngsters should comprise a tiered intervention structure offering a warning and/or treatment and rehabilitation option for those who test positive, diverting them away from possible prosecution which should be the last resort. The public should be consulted on the options of a two-tier or a three-tier intervention structure.

(c) Presence of parents/legal guardians or an independent person

7.60 As a safeguard against possible abuse of power by law enforcement agencies for the protection of a young person under the age of 18, the presence of a person independent of the law enforcement officers during the provision of the body samples by the young person can be considered.

7.61 Parents and legal guardians should assume parental responsibility for young persons aged under 18. They should attend to their needs and welfare. In case they cannot be reached, relatives should be contacted. To deal with those situations in which after a reasonable period of time, no one related to a minor is available, an independent person drawn from a stand-by pool should be present to oversee the taking of the body sample. The composition of the pool of independent persons can be further considered.

Recommendation 7.4

The Task Force recommends that the proposed compulsory drug testing scheme should provide for the taking of body samples of a minor in the presence of his or her parent or legal guardian (or relatives), or an independent person in case the
 former is not available. The public should be consulted on the possible pool of independent persons.

(d) Extra-territorial effect for the consumption offence

7.62 According to CRDA, a significant proportion (i.e. 11%) of all reported drug abusers had taken drugs in the Mainland in 2007. As regards those aged under 21, some 17% had taken drugs in the Mainland.

7.63 The Task Force notes that if we tighten control in Hong Kong by instituting compulsory drug testing, we would expect certain enforcement difficulties as some might argue that the drugs had been taken outside Hong Kong, especially those who frequent venues outside Hong Kong to take drugs. The “balloon effect”\(^2\) might also see more going to Shenzhen to seek indulgence, exacerbating the current cross-boundary drug abuse problem. Although legislating with a view to regulating the behaviour of persons outside Hong Kong’s boundary is the exception rather than the rule, there should be a case to consider giving the offence of consumption of drugs extra-territorial effect as part of the package of the proposal for compulsory drug testing. After all, the harms to the offender himself and to the others in the Hong Kong community would be equally great even if drug consumption takes place outside Hong Kong.

7.64 The Task Force notes that the Basic Law does not prohibit the legislature from making law with extra-territorial effect. There are also recent legislative precedents of extra-territorality, e.g. in respect of offences related to child sex tourism. From a legal policy point of view, there is a case for legislating with extra-territorial effect for the offence of consumption of drugs. There is, however, a need to demonstrate the nexus between the territory and the legislation, avoid undue intrusion into the jurisdictions of other territories, and consider whether the proposed extra-territorality should apply only to Hong Kong residents or to any person regardless of his nationality or residency.

\(^2\) Enhanced efforts in one geographical area may result in greater illegal activities in neighbouring areas if not checked by comparable action at the same time.
Having regard to the substantially wider scope of change to the criminal justice system should the offence be legislated with extra-territorial effect, and the various complex issues involved, the Task Force considers that this is an important matter on which the public should be consulted.

**Recommendation 7.5**

The Task Force recommends consulting the public as to whether extra-territorial effect should be introduced to the offence of consumption of drugs (and the extent in terms of the degree of connection of the drug abusers to Hong Kong), or whether the status quo should be maintained (i.e. no extra-territorial effect).

(e) **Support services and other issues**

The use of compulsory drug testing to identify drug abusers is but the first step in the whole scheme of measures to drive a wedge into a problematic area not fully exposed hitherto. At present, we are unable to estimate precisely the number of young drug abusers and at-risk youth who may be uncovered by the new enforcement powers and schemes. However, if the compulsory drug testing scheme is to be implemented, there will be a huge demand for downstream support services which should be put in place in good time. It is also important that the mandatory treatment and rehabilitation programmes to be offered to youngsters in lieu of prosecution are of requisite quality and proven effectiveness, and are sufficiently wide to cater for the needs of youngsters with different backgrounds.

The need to strengthen support services applies not only to the new treatment and rehabilitation options to be provided under the compulsory drug testing scheme. It is applicable also more generally to the downstream service provision for drug abusers (such as CCPSAs, SACs and Drug Treatment and Rehabilitation Centres) and convicted offenders (e.g. probation service and DATCs) caught through other channels. The
possible impact on Government departments, subvented agencies and NGOs has to be carefully assessed and addressed.

7.68 In addition, there are other important issues that need to be considered, to name but a few: the circumstances under which the proposed new powers may be triggered, actual procedures of drug testing, possible technological neutrality of drug tests, procedural safeguards against arbitrary use of the powers and to protect affected persons’ rights, and consequences of offenders failing to complete mandatory treatment programmes. Many of these do not admit easy answers. The Administration and the community need to carefully consider and deliberate through the whole matter to decide on how best to take forward this important next step in our war on drugs.

Recommendation 7.6

The Task Force recommends that alongside the formulation of a detailed proposal for a compulsory drug testing scheme, the Administration should conduct an assessment on the corresponding increase in the demand for downstream support services, including in particular the treatment and rehabilitation programmes, as well as the resource implications.

(C) Possible Options under a Voluntary Approach

(a) School-based drug testing programmes

7.69 As a matter of principle, as is the current practice in some international schools in Hong Kong, parents of students in other schools may be asked to sign a consent form pursuant to which students will be randomly selected, or with reasonable cause, to undergo drug tests as administered by the school itself or by other professionals as appropriate. Students may then be requested to attend follow-up counselling or treatment.
7.70 In reality, however, maintaining a reasonable level of compliance among parents and students will be far more complex and difficult in the local school setting. As set out in paragraphs 7.41 to 7.42 above, the administration of the tests by schools may lead to a number of complex social, ethical and technical issues as well as adding to the heavy workload of schools. In addition, strong resistance from schools and parents may be encountered. It may also be difficult to obtain parental consent especially from at-risk families.

7.71 In view of the above, the Task Force considers that making drug testing a mandatory requirement for all schools across the board may not be practicable. In line with the principle of school-based management, it may be better for the school authority itself to consider whether drug testing is a feasible and appropriate tool which it would like to adopt.

7.72 However, given the host of issues of concern identified, it is unlikely that the majority of schools would, on their own initiative, consider arranging school-based drug tests. In order to assist the schools to consider the feasibility of introducing drug tests on campus, the different means available, and to facilitate its adoption where appropriate, the Administration should undertake a more in-depth study into the relevant issues and suggest model schemes for reference. In particular, the study should draw up protocols tailored to the local school setting, identify critical success factors, suggest a promotion scheme for voluntary adoption by local schools, and address the various issues of concern including liberty of persons, possible labeling effect, ways to promote compliance among parents and students, the kind of sanctions and incentives to be provided, which party should conduct the drug tests, the funding of the scheme, support and referral services required, etc.

**Recommendation 7.7**

The Task Force recommends that, a research project should be commissioned to devise possible school-based drug testing schemes for voluntary adoption by schools, having regard to the practices in local international schools and those in overseas jurisdictions.
Measures taken thus far:

Plans are being drawn up by ND to invite research proposals on how a school-based drug testing scheme for voluntary adoption by local schools should be devised.

(b) Providing drug testing in the Student Health Service

7.73 The Task Force has considered whether it is desirable and cost-effective to add a drug test to the health check programme under the Student Health Service (SHS) which focuses on students.

7.74 Currently about 50% of Primary One to Secondary Seven students participate in SHS. Enrolled students annually attend an SHS centre for a series of health checks and physical examination, which screens for health problems related to growth, psychological health and behaviour etc. The idea is to invite parents to consent to adding a drug test to the series of health checks. They will then be notified of the test result, and, if positive, invited to refer the child to SWD or designated NGOs for voluntary follow-up services.

7.75 There are, however, concerns raised. Past experience has shown that students joining SHS normally have good family support. It may not be a good use of resources to screen those students who are unlikely to be a concern. Students may also feel intimidated by the drug test option and refuse to attend the health checks altogether, thereby jeopardising SHS itself.

7.76 Another pragmatic approach is to sever the drug test from the health check programme, and to locate a drug test service at SHS centres taking advantage of the infrastructure, core medical staff and wide regional network in place. Parents are therefore at liberty to bring their children to these premises for drug tests and screening, without any prior SHS enrolment. Again, there are concerns that co-locating the drug screening
service in SHS centres may undermine the smooth running of the normal programme. Students may still equate attending SHS centres as attending for drug screening and rather drop out instead, again hampering the level of participation in SHS.

7.77 The Task Force appreciates the validity of all these concerns which need to be fully addressed before any action can be taken. But as students are a primary focus of our help, the Administration should further explore ways to deliver a voluntary drug test service focusing on students to further supplement the current student health service and promotion programme.

**Recommendation 7.8**

The Task Force recommends that the provision of voluntary drug test service targeting students should be further explored by DH in the context of its endeavour to promote student and adolescent health.

(c) Drug testing in CCPSAs

7.78 As envisaged by the Task Force, CCPSAs should enhance collaboration with other services in the community as a first stop for psychotropic substance abusers seeking assistance, with established network with stakeholders within their service cluster and through various means of case intake.

7.79 As discussed in Chapter VI, the Task Force has recommended that medical support services should be introduced into CCPSAs to enable timely and early medical intervention to drug abusers who do not yet require specialist medical treatment at SACs. Apart from body checks and drug-related consultation, etc, such services should encompass drug testing to facilitate screening, early identification and assessment of the health conditions of the drug abusers for timely referrals.
Recommendation 7.9

The Task Force recommends that the provision of a voluntary drug test service, as part of the enhanced medical support enhanced in CCPSAs to identify and motivate drug abusers to receive early medical and social intervention and rehabilitation treatment, should be pursued.
Appendix II Protocol

*As attached in the subsequent pages.*
Protocol

Trial Scheme on School Drug Testing in Tai Po District (School Year 2009/10)

Security Bureau
Education Bureau
November 2009
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CHAPTER 1  PURPOSES AND GUIDING PRINCIPLES

1.1 The Trial Scheme on School Drug Testing in Tai Po District (Scheme) is a joint initiative by the Government (led by the Narcotics Division, Security Bureau (SB) and Education Bureau (EDB)) and 23 public sector secondary schools in the Tai Po District, supported by parties in the social welfare, healthcare and other sectors.

1.2 Development of the Scheme is guided by the following principles –

(a) helping students in their best interest;
(b) voluntary participation;
(c) keeping personal information strictly confidential; and
(d) professional testing and support services for students.

1.3 The purposes and imperatives of the Scheme are –

(a) for prevention – it will enhance the resolve of those students who have not taken any drugs to continue to stay away from drugs. They will be in a better position to say “no” to their peers when they are tempted to try drugs and this will help prevent the spread of drugs in schools; and
(b) for rendering assistance to students – the Scheme will trigger the motivation of those students abusing drugs to quit drugs and seek help, especially those who are trying drugs at an early stage. The Scheme will also provide appropriate support services to those students who wish to pull themselves out of the drug trap.

1.4 The Scheme could also shed light on the effectiveness of cross-sector and multi-disciplinary downstream support service for student drug abusers.

1.5 Experience gained and feedback collected in the implementation of the Scheme would provide empirical data to facilitate a project research to be conducted in parallel and strategic planning of anti-drug activities.

1.6 In line with the objectives of the Scheme, students found to have abused drugs under the Scheme will –

(a) not be prosecuted for drug consumption; and
(b) not be expelled from school.
1.7 Apart from participating in the Scheme, a student and his/her parent/guardian can also directly approach any counselling centre for psychotropic substance abusers (CCPSA) for professional assistance. The whole process is kept confidential. To complement their counselling services, CCPSAs will, starting from October 2009, provide elementary medical support including voluntary drug testing services.
CHAPTER 2  DEFINITIONS

2.1 Scheme
The Trial Scheme on School Drug Testing in Tai Po District (School Year 2009/10) includes drug testing and support programmes. Drug testing will run from December 2009 to June 2010. Support programmes (see paragraph 2.18) for identified students may last until the end of December 2010, i.e. the completion of the Scheme.

2.2 Participating School
A secondary school in the Tai Po District which joins the Scheme on a voluntary basis in the school year 2009/10.

2.3 Consent to Participation
A written consent to participation in the Scheme, given by a student and his parent/guardian in a standard form to the school principal (see paragraph 4.3 to 4.11). A sample form is at Appendix 1.

2.4 Participating Student
A student who has consented to participate, and whose parent/guardian has also given consent for the student to participate, in the Scheme.

2.5 Selected Student
A student who is randomly selected for a screening test (see paragraph 2.14).

2.6 Identified Student
A student who is identified as a screened positive case (see paragraph 4.27) or a confirmed case (see paragraph 2.16).

2.7 Concerned Parties
The parties specified in the Consent to Participation, who will have access to personal data collected under the Scheme (see paragraph 4.6) and will have a specific role to play in the Scheme (see Chapter 3).

2.8 Designated CCPSA
The CCPSA serving Tai Po and North District, that is, the Hong Kong Lutheran Social Service Cheer Lutheran Centre.

1 In this Protocol, unless expressly stated otherwise or the context otherwise suggests, “he” refers both genders.
2.9 **Student Drug Testing (SDT) Team**

A multi-disciplinary team comprising two nurses (of different genders), two registered social workers and one information administrator, who are staff of the designated CCPSA. The team will visit each of the participating schools in turns over the 2009/10 school year and carry out drug testing.

2.10 **Case Manager**

A registered social worker of the designated CCPSA, who specialises in drug counselling and is assigned to handle an identified student.

2.11 **Designated Teachers**

The class teacher of the participating student, and another school teacher suggested by a participating student in the Consent to Participation.

2.12 **Project Officer**

An officer from the Home Affairs Department (HAD) who will perform the duties of project officer as set out in this Protocol.

2.13 **Illicit Drug or Drug**

Any drug or substance which is subjected to control under the Dangerous Drugs Ordinance (Cap 134, Laws of Hong Kong) (DDO).

2.14 **Screening Test**

A drug test to be conducted by the SDT team. A urine test kit will be used to test for the presence of illicit drugs (or their metabolites) in a person’s urine specimen. It covers common types of psychotropic substances abused by adolescent drug abusers in Hong Kong. As illustration, they may include:

(a) Ketamine (氯胺酮, K 仔);

(b) Ecstasy (搖頭丸);

(c) Methylamphetamine (冰);

(d) Cannabis (大麻); and

(e) Cocaine (可卡因).

As the trend of taking illicit drugs may change rapidly, the types of drugs to be tested may be changed during the course of the Scheme.
2.15 **Confirmatory Test**

A test conducted by the Government Laboratory using sophisticated instruments, namely Gas chromatography – mass spectrometry (GC-MS) or Liquid chromatography – mass spectrometry (LC-MS), to identify the presence of illicit drugs in order to ensure reliability and accuracy.

2.16 **Confirmed Case**

A case of drug abuse which is supported by confirmatory test result demonstrating the presence of illicit drugs in the relevant urine specimen. It also refers to a self-referral case (see Chapter 6).

2.17 **False-positive Case**

A positive screening test result refuted by a negative confirmatory test result, or refuted upon medical review (see Chapter 9).

2.18 **Support Programme**

A support programme of counselling, treatment, rehabilitation and referral services for an identified student (see Chapter 5).

2.19 **Mentoring Scheme**

HAD will put in place a mentoring scheme in Tai Po to support identified students. The mentor is a volunteer who may share his life experience and help the student to cope with and overcome difficulties under a mentoring scheme in Tai Po.


CHAPTER 3 Roles of Concerned Parties

3.1 Designated CCPSA

(a) SDT team. They are responsible for performing the drug tests and carrying out the ancillary arrangement, receiving testing results, and providing on-the-spot counselling services for students tested positive.

(b) Case manager. He is responsible for assessing the identified student’s needs, and for the provision or coordination of suitable counselling, treatment and rehabilitation services, including the conduct of a multi-disciplinary case conference to formulate an effective support programme for the identified student.

3.2 School social worker. He is responsible for providing timely counselling to participating students, identified students and their parents/guardians.

3.3 School

(a) School principal. He is responsible for supervising the running of the Scheme at school and providing the school’s support for the participating and identified students.

(b) Designated teachers. They are responsible for providing assistance to the running of the Scheme at school and supporting the participating and identified students.

3.4 Project officer. He is responsible for –

(a) observing the SDT team on school visits and offering comments on whether the SDT team has adhered to the drug testing procedures set out in this Protocol;

(b) advising participating schools on the data privacy requirements relating to drug testing as set out in this Protocol, and relaying concerns identified to relevant authorities;

(c) handling complaints relating to drug testing from participating students, their parents/guardians, or other relevant parties; and

(d) compiling the following reports –

(i) school visit reports to school principals (see paragraph 0); and

(ii) monthly compliance reports and a final one to school principals and the Government.
CHAPTER 4  DRUG TESTING

Preparation

4.1 In the first few months of the school year 2009/10, anti-drug education and briefing sessions will be arranged to introduce and promote the Scheme to school teachers, parents/guardians, students and other relevant parties, and to invite participation in the Scheme.

4.2 In parallel, participating schools will devise and implement a healthy school policy in the school year 2009/10 with a view to creating a safe, caring, healthy and drug-free learning environment, and building up positive values and attitudes among students for whole-person development from an early stage, thereby enhancing their ability to resist taking drugs.

Consent Form and Participation in the Scheme

4.3 Participation in the Scheme is entirely voluntary.

4.4 The participating schools will provide students and their parents/guardians with a copy of this Protocol and a standard form of Consent to Participation to indicate whether they agree to participate and to give the necessary consent and undertaking.

4.5 To participate in the Scheme, a student and his parent/guardian will need to give the following consent and undertaking –

(a) **Drug testing.** Consent and undertaking to provide a urine specimen of the student to be tested for the presence of illicit drugs, if so requested under the Scheme.

(b) **Support Programme.** Consent and undertaking to join the support programme under the Scheme, if the above drug testing returns a positive result, or if the student refers himself to the support programme.

4.6 The form for Consent to Participation will inform parents/guardians and students that their personal data will be collected by and/or released to the following concerned parties on a confidential basis and only for the purposes of the Scheme –

(a) relevant staff of Hong Kong Lutheran Social Service Cheer Lutheran Centre, that is, the SDT team and the case manager assigned to the student upon any positive test result or upon self-referral;

(b) school social worker of the participating school;
(c) relevant staff of the participating school, that is, the school principal, the class
teacher of the student and any other teacher if so suggested by the student; and
(d) project officer.

4.7 The form for Consent to Participation must be read, signed, and dated by the
student and his parent/guardian. It should be returned to the student’s class teacher
on/before 30 November 2009.

4.8 Consent to Participation is valid for the duration of the Scheme (see paragraph
2.1).

4.9 For a participating student who changes school (within Tai Po) during the school
year 2009/10, the student and his parent/guardian are required to submit a new
Consent to Participation to the new school in order to continue participating in the
Scheme.

4.10 Any parent/guardian and student who have not returned the form of Consent to
Participation on or before 30 November 2009 are nonetheless still welcome to join
the Scheme anytime during the school year 2009/10.

4.11 Students who are currently subjected to supervision under the law, such as
probation order, community service order, supervision order or a suspended
sentence shall not participate in the Scheme.

List of Students

4.12 Before any testing begins, school principals of all participating schools will each
prepare a list which includes the name, class and gender of the participating
students in their respective schools.

4.13 Before a visit to any participating schools, the SDT team will provide one-week
advance notice to the school principal, school social worker and the project officer.
Test dates and frequencies will not be made known to the students.

4.14 The school principal will provide the SDT team and project officer with an
updated participating student list three working days prior to the school visit via
secure communication.

4.15 The SDT team will inform the school principal and project officer of the list of
randomly selected students for drug testing one working day before the school
visit. The selected students will only be informed as they proceed to receive the
screening test.

4.16 At the beginning of the school visit, the school principal will provide an updated
list of randomly selected students to the SDT team and the project officer, which
shows the availability and sequence of the selected students to undergo drug
testing.
Random Selection

4.17 Each month, approximately 5% of participating students from a school will be randomly selected and tested by the SDT team. Generally speaking, each school may be visited twice a month and some 32 to 40 students (out of 800 participating students, for example) may be randomly selected and tested over the two visits. The SDT team will not visit the participating schools on regular schedule, so that students will not be able to tell the date of testing.

4.18 Except for those identified students who have already enrolled in support programmes under the Scheme, a student selected for a screening test will remain in the total population subject to future random selection.

Urine Specimen Collection and Screening Test

4.19 In conducting the urine specimen collection procedure, the SDT team will make their best endeavours to put the selected students at ease and to dispel undue concerns or misunderstandings about drug tests and the Scheme.

4.20 The process may take about 15 minutes, which includes –

(a) screening interview in an interview room;

(b) collection of urine specimen in a rest room;

(c) screening test in an interview room; and

(d) debriefing in an interview room.

4.21 During the screening test, the SDT team will brief selected students individually and answer any relevant questions. A set of guidelines for the screening interview is provided at Appendix 2.

4.22 Selected students will be required to provide urine specimen in a clean rest room that allows for individual privacy. The urine specimen collection procedure is provided in Appendix 3. See Chapter 7 for the procedures for following up on-the-spot refusals.

4.23 If a screening test returns a positive result, the SDT team will conduct another screening test on the same urine specimen using a urine test kit of a different brand. If the second test result is negative, the student will be treated as a negative case.

4.24 If the results of the two screening tests are positive, the student will be treated as a screened positive case.

4.25 The project officer will be present at all screening drug test sessions. The project officer will observe that the screening drug tests conducted by the SDT team are in accordance with this Protocol. He will also record information required for the school visit report (see paragraph 0).
**Result Notification (Screening Test)**

### 4.26 Negative Case

(a) Specimens will be immediately disposed of by the SDT team after the screening test.

(b) Negative cases will be reported in the school visit report prepared by the project officer.

(c) The school principal will inform the selected student’s parent/guardian of the screening test done and the negative result in writing.

### 4.27 Positive Case

(a) The SDT team will provide on-the-spot counselling to the identified student.

(b) The project officer will immediately inform the school principal of the positive case.

(c) The school principal will notify the identified student’s parent/guardian and invite them to a meeting on the day. The school principal will also notify the designated teachers for assistance and counselling at school.

(d) The SDT team will make immediate arrangements for the attendance of a school social worker and a case manager from the designated CCPSA. They may provide counselling services and necessary support to the identified student and his parents/guardians.

(e) Meanwhile, if appropriate, the identified student may return to class after immediate counselling.

(f) The case manager, school social worker, school principal and/or designated teachers will discuss with the attending parent/guardian the immediate welfare of the identified student, and make preliminary suggestion on an appropriate support programme.

### 4.28 Other cases

A selected student may also, on the spot –

(a) refer himself to a support programme without testing (see Chapter 6);

(b) refuse drug testing (see Chapter 7); or

(c) withdraw Consent to Participation (see Chapter 8).
4.29 School Visit Report

(a) At the end of the school visit, the project officer will compile a school visit report to the school principal for necessary follow-up.

(b) The school visit report will state whether the SDT team has adhered to drug testing procedures set out in this Protocol when conducting the drug tests as observed by the project officer, and cover any on-the-spot complaints received by the project officer. It will also contain the names of the students who –

(i) were screened negative;

(ii) were screened positive;

(iii) self-referred to a support programme without testing;

(iv) refused drug testing; and

(v) withdrew Consent to Participation.

Confirmatory Test

4.30 For a screened positive case, the SDT team and the project officer will sign a request for confirmatory testing to the Government Laboratory.

4.31 The SDT team will deliver the same urine specimen to the Government Laboratory for a confirmatory test. No personal identifier will be attached to the specimen in order to ensure confidentiality and privacy. Proper procedures will be followed to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen at the Government Laboratory.

4.32 The confirmatory test will normally take about five working days and the test results will be available for collection at the Government Laboratory by authorized staff of the SDT team and via secure communication to the project officer.

4.33 Specimens sent for confirmatory testing will be discarded by the Government Laboratory personnel on expiry of five working days after completion of analysis.

4.34 If the identified student and/or his parent/guardian insist on obtaining a second test (using sophisticated instruments, namely GC-MS or LC-MS) by another competent laboratory to refute the positive screening test result, they may do so at their own expense and should inform the school principal within three working days from the screening test. The school principal will inform the project officer and the SDT team. The SDT team will notify the Government Laboratory through a signed request to prepare the urine specimen for collection. Upon receipt of the notification, the Government Laboratory will make ready the urine specimen remaining after the Government Laboratory has conducted the confirmatory test or has retained a sufficient part for the confirmatory test, under seal for collection at
the Government Laboratory by authorised staff of the SDT team. The Government Laboratory will discard the remaining urine specimens if they are not collected within five days from the date of the notification.

4.35 If the result of the urine test conducted by the other laboratory is negative, then for the purposes of the Scheme, the student will be treated as a false-positive case irrespective of the positive result of the confirmatory test.

Result Notification (Confirmatory Test)

4.36 The project officer will inform the school principal about the confirmatory test results via secure communication.

4.37 False-positive Cases

(a) The SDT team will notify the case manager if a given case is confirmed negative upon confirmatory test. The case manager will abort the support services started.

(b) The school principal will inform the concerned student and his parent/guardian.

(c) If the student and/or parent/guardian show emotional distress, the case manager will provide necessary counselling services. The school social worker will provide necessary backup, if required.

4.38 Confirmed Cases

(a) The SDT team will notify the case manager.

(b) The case manager will notify the identified student and his parent/guardian and continue to coordinate the support services.

(c) The school principal will release the confirmed positive test result via secure communication to the designated teachers and school social worker.

(d) The identified student and/or his parent/guardian may request a medical review (see Chapter 9).
CHAPTER 5 SUPPORT PROGRAMME

Case Conference

5.1 Within 10 working days after notification of a confirmed case, the case manager will convene and chair a multi-disciplinary case conference, to formulate a support programme (or commonly known as a welfare plan) to continue with assistance to the identified student. Before the case conference, where appropriate, the student and parent/guardian may be requested to further consent to the participation of other parties to the case conference, and to the disclosure of information relating to the student’s drug use, treatment and rehabilitation to them. The case manager will discuss with the student and his parent/guardian on details of the support programme for agreement before implementation.

Support Programmes for Identified Students

5.2 Depending on the case assessment, a support programme for an identified student may be wide ranging, including possible measures such as the following (non-exhaustive, for illustrative purposes) –

(a) For experimental abusers or non-dependent regular abusers

(i) The parent/guardian should pay more attention to the student, and may also arrange medical and counselling services through their own means;

(ii) The student may continue normal schooling as far as possible, and at the same time receive counselling and assistance from school social workers and designated teachers at school;

(iii) Community-based support services outside school, such as counselling sessions in the designated CCPSA, thematic therapeutic groups, community service programmes, family/interpersonal relationship training, psychiatric/psychological intervention, etc;

(iv) Subject to the agreement of the identified student and/or his parent/guardian and the case manager’s assessment, the student concerned will participate in the mentoring scheme and he will be matched with a mentor. The intention is that the mentor will share his life experience with the identified student and join hand with the case manager to help the student to resist and abstain from drug abuse;

(v) Basic medical support (e.g. further drug testing, body check up, motivational interviews and drug-related consultation) from general practitioners in the local community network, or medical doctors and healthcare professionals engaged by the designated CCPSA;
Cases with psychiatric and other medical complications may be referred to the Psychological Medicine Clinic of Alice Ho Miu Ling Nethersole Hospital or Substance Abuse Clinic at Prince of Wales Hospital for specialist medical treatment;

(b) For addicted (dependent) abusers

(i) Addicted abusers requiring voluntary residential programmes may be admitted to the 39 drug treatment and rehabilitation centres in the territories run by 17 non-governmental organisations (NGOs); and

(ii) After completing a residential programme, the rehabilitated student may return to schooling in a mainstream or other school following a review by the concerned parties and others in a case conference as and when necessary. EDB will ensure such social reintegration through the existing placement assistance mechanism.

5.3 The support programme will also make full use of the “Your Health, Our Concern” community network.

5.4 The case manager may review the support programme every three months and may share the case progress and relevant issues with the student, his parent/guardian, and other concerned parties. Case conferences may be convened to discuss progress and unresolved issues, if needed.

5.5 The support programme under the Scheme may last for up to six months generally, and will not go beyond 31 December 2010 upon completion of the Scheme. However, after completion of the support programme, an identified student may, if necessary, continue to receive support services outside the Scheme from the designated CCPSA, school social workers, designated teachers, mentoring scheme and others in the normal course of their work and subject to the usual confidentiality, voluntary participation and professional arrangements.

5.6 Parents/guardians of participating and identified students may also benefit from counselling and other services of the concerned parties, apart from general community services such as those available at integrated family service centres operated by Social Welfare Department (SWD) or NGOs subvented by SWD, which deliver “one-stop” services to individuals and families to meet their multifarious needs.

Programmes for Non-drug Users and Other Students

5.7 The school, designated CCPSA and other parties may arrange promotion, education and prevention programmes for non-drug users and other students in the light of the general drug situation as revealed by the Scheme.
CHAPTER 6  SELF-REFERRAL

6.1 At anytime during the drug testing process, selected students may admit abuse of drugs.

6.2 Participating students not selected for drug testing may admit abuse of drug to any school personnel at anytime. The school personnel will refer the student to the SDT team and inform the project officer.

6.3 The need for drug testing may be obviated by such voluntary admission of drug abuse.

6.4 Such students having admitted drug abuse will be treated as confirmed cases and will be followed up as such (see paragraph 4.38).
CHAPTER 7  REFUSAL

7.1 If a selected student refuses to take the screening test, the school principal may ask a designated teacher to address any concern that the selected student may have but it must always be borne in mind that participation is entirely voluntary.

7.2 If a selected student tampers with the testing process, the school principal may ask a designated teacher to follow up with the selected student.

7.3 If the selected student is in emotional distress, he may be referred to the school social worker for voluntary counselling.

7.4 The school principal or the designated teacher will notify the selected student’s parent/guardian who has given Consent to Participation, if a selected student refuses to take the screening test and/or tampers with the testing process.
CHAPTER 8  WITHDRAWAL OF CONSENT

8.1 Participating students and parents/guardians may jointly withdraw Consent to Participation at any time during the Scheme by written notice given to the school principal.

8.2 Where a withdrawal notification is given by the participating student only, the school principal or the designated teacher will inform the parent/guardian who gave the Consent to Participation.

8.3 Bearing in mind that participation in the Scheme is entirely voluntary, no adverse consequence will arise from any withdrawal.

8.4 Upon receiving the notice of withdrawal, the school principal will inform the SDT team, the project officer, and the other concerned parties, who (including the school principal) will erase the relevant personal data (including any drug testing records) in their respective possession as soon as the data are no longer required for the purposes of the Scheme.
CHAPTER 9 REVIEW

9.1 If the identified student and/or his parent/guardian maintain that the existence of the positive confirmatory test result of the urine specimen is not attributable to unlawful use (e.g. it was caused by the use of drugs prescribed by medical doctors), they should inform the school principal. The school principal will inform the SDT team and the project officer. The SDT team will invite a medical doctor to review the situation in the light of the said assertion. The concerned parties will abide by the medical doctor’s review result.

9.2 However, if the identified student and/or his parent/guardian insist on obtaining a second opinion from another competent medical practitioner to prove that the existence of the positive confirmatory test result of the urine specimen is not attributable to unlawful use, they may do so at their own expenses.

9.3 If the second opinion obtained by the identified student and/or his parent/guardian substantiates the assertion, then irrespective of the review result in paragraph 9.1, the identified student will be treated as a false-positive case for the purposes of the Scheme.
CHAPTER 10  CONFIDENTIALITY AND PERSONAL DATA PRIVACY

10.1 Personal data obtained under the Scheme are protected under the Personal Data (Privacy) Ordinance (Cap. 486 Laws of Hong Kong) (PD(P)O). Records of confidential information kept by reporting agencies and Central Registry of Drug Abuse (CRDA) is also protected by Part VIIA (sections 49A-49I) of the DDO. All concerned parties must familiarize themselves and strictly comply with the provisions of these Ordinances. For ease of reference, a brief summary of the data protection principles (DPP) 1–6 of the PD(P)O is attached at Appendix 4.

10.2 The project officer will advise participating schools on the requirements for the protection of confidential information and personal data as set out in this Protocol.

Data Protection Principles (DPP) 1 – 6 of the Personal Data (Privacy) Ordinance

10.3 The consent form, this Protocol and the process of obtaining consent have been carefully designed to set out the necessary information in order to meet the requirements of DPP 1. All concerned parties involved in the Scheme should restrict themselves to obtaining and disclosing personal data of a student which are strictly necessary for the purposes of the Scheme.

10.4 In accordance with DPP 2, due process has been put in place to ensure accuracy of the test results (see arrangements for screening tests and confirmatory tests in Chapter 4 and for review in Chapter 9). Following completion of the Scheme, or withdrawal of Consent to Participation, all personal data will be erased as soon as they are no longer required for the purposes of the Scheme.

10.5 In accordance with DPP 3, personal data collected under the Scheme shall not without the prescribed consent of the data subject, be used for any purpose other than the purposes of the Scheme or a purpose directly related to the Scheme.

10.6 In accordance with DPP 4, all data users must establish and maintain appropriate security measures to protect the personal data. Policies and practices in relation to personal data must be formulated to ensure only authorized persons could access such personal data. Personal data, especially drug testing records and the school visit report, will be kept confidential and all practicable measures will be employed to avoid any stigma or labelling effect. The SDT team will include a dedicated information administrator to ensure security. Staff in schools and NGOs concerned who have access to such data or may gain knowledge to confidential information relating to drug tests e.g. those escorting students to screening tests, should be required to sign an undertaking to maintain confidentiality. Communication of personal data over the Internet must be secure. The use of mobile device for storing such personal data must be restrictive and encrypted.

10.7 In accordance with DPP 5, this Protocol is an open document for dissemination to all concerned and for public access. All data users must also put in place and make available their personal data policies and practices.
10.8 In accordance with DPP 6, all data subjects (students and parents/guardians) have rights to access to and correction of their personal data.

Protection under the Dangerous Drugs Ordinance (DDO)

10.9 All concerned parties should note that under section 49D(1) of the DDO, there is a general prohibition with criminal sanctions against disclosure of any records of confidential information\(^2\) which is kept by CRDA or a reporting agency, supply to any person information obtained from such record, or permitting access to any such record. Any person seeking to do any act mentioned in section 49D(1) shall ensure that the act is covered by consent under section 49F, or is otherwise lawful. The designated CCPSA and all the NGOs providing school social work services in the 23 participating schools are reporting agencies.

10.10 For the purposes of the Scheme, and without prejudice to other situations, the designated CCPSA may report to CRDA the drug abuse situation of the student if the student and his parent/guardian so consent.

10.11 All information supplied to CRDA is handled in strict confidence and is accessible only to people who are directly involved in the operation of CRDA and are required to observe the rule of confidentiality.

\(^2\)“Confidential information” means information which is recorded by the CRDA or a reporting agency in respect of any person and which relates to any one or more of the following –
(a) the use, or alleged use, by that person of a dangerous drug;
(b) the conviction of that person for an offence under the DDO; and
(c) the care, treatment or rehabilitation of that person by reason of his use of a dangerous drug.
CHAPTER 11 LAW ENFORCEMENT

Police

11.1 Police and other law enforcement agencies will not be informed of the personal data of any individual student obtained under the Scheme.

11.2 Police may be provided with aggregate, non-identifying statistics of the test results to understand the drug situation of a school for better focusing efforts to combat the drug problem.

Prosecution Policy

11.3 A positive drug test or an admission of drug abuse will generally evidence that an offence of consumption of a dangerous drug has taken place. However, the Scheme is an innovative initiative which is primarily designed to enhance the resolve of those students who have not taken any drugs to continue to stay away from drugs, and trigger the motivation of those students abusing drugs to quit drugs and seek help. Accordingly, as has been confirmed with the prosecution authorities, a participating student who has been tested positive or who admits drug abuse pursuant to the Scheme will not be prosecuted for consumption of drugs contrary to section 8 of the DDO.

11.4 Any other situation outside the Scheme, that is, other than where a participating student has tested positive or admits drug abuse pursuant to the Scheme, will be governed by existing practice and laws of Hong Kong. The Scheme does not exempt police investigation and/or prosecution of a student and/or a participant of the Scheme who is found to be in possession of a dangerous drug or is found to be consuming a dangerous drug whether inside or outside the school campus. In every other respect, the Statement of Prosecution Policy and Practice 2009 applies.
APPENDIX 1  SAMPLE FORM: CONSENT TO PARTICIPATION

CONSENT TO PARTICIPATION
Participation in Trial Scheme on School Drug Testing in Tai Po District (Scheme)

To:  Principal, [Name] Secondary School

We, the undersigned student (the student) and parent/guardian, acknowledge receipt of a copy of the Protocol of the Scheme. We have read and understood the Protocol and the contents of this consent form.

Drug testing
We hereby consent and undertake to provide a urine specimen of the student to be collected and tested for the presence of illicit drugs, if so requested under the Scheme during the school year 2009/10.

Support Programme
We hereby consent and undertake to join the support programme under the Scheme, if the above drug testing returns a positive result, or if the student refers himself/herself to the support programme.

Collection, Use and Release of Personal Data
We understand that our personal data (including drug testing results of the student) will be collected by and/or released to the following concerned parties mentioned in Chapter 3 of the Protocol on a confidential basis and only for the purposes of the Scheme –

1. relevant staff of Hong Kong Lutheran Social Service Cheer Lutheran Centre, that is the Student Drug Testing team and the case manager assigned to the student upon any positive test result or upon self-referral;
2. school social worker of the participating school;
3. relevant staff of [Name] Secondary School, that is, the school principal, the class teacher of the student, and ___________________ (that is, any other teacher if so suggested by the student); and
4. project officer.

We understand we may request access to and correction of our personal data under the Personal Data (Privacy) Ordinance (Cap. 486 Laws of Hong Kong), and that any such request to you may be made at the address and telephone number provided in the note below.

We also understand that (a) we may withdraw the above consent and undertaking at any time by written notice to you, and (b) the parent/guardian will be informed if the student
gives a notice of withdrawal, refuses to provide a specimen of urine for drug test under
the Scheme, or otherwise refuses to continue participation in the Scheme.

☐ We hereby agree to give the above consent and undertaking to participate in the
Scheme on a voluntary basis.

☐ We do not wish to participate in the Scheme.

*(Please select and tick ONE of the two boxes above.)*

<table>
<thead>
<tr>
<th>Parent’s/Guardian’s* Name (Block Capitals)</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Student’s Name (Block Capitals)</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
</table>

Contact telephone number of Parent/Guardian*: _________________________________

*Delete as appropriate

**Notes:**

1. Exclusion – students who are currently subjected to supervision under the law, such as
probation order, community service order, supervision order or a suspended sentence
shall not participate in the Scheme.

2. Contact information of [Name of School Principal] is … (include school address and
telephone number)
APPENDIX 2 GUIDELINES FOR SCREENING INTERVIEW

Screening Interview

A screening interview will be conducted by the social worker of the SDT team before the drug test is administered. The following areas will be explored –

1. The guiding principles and objectives of the Scheme;
2. The procedures of the drug test (collection of urine specimen and how the screening test will be conducted);
3. The rights and obligations of the students; and
4. Drug abuse history of the student, if any.

Assessment of Student’s Drug Abuse Status

If student is identified as drug abuser, social workers may quickly investigate the following 10 domains (Tarter, 1990) by briefly asking the student, his parents/guardians, teachers, and school social workers –

Are you aware of/have you noticed any problems on your…?

1. Drug use/abuse (e.g. signs of drug use, patterns of use, reasons for use);
2. Behaviour patterns (e.g. deviant behaviour);
3. Health status (e.g. major illness, recent physical health problems);
4. Emotional and psychological state (e.g. depression, suicidal ideation or attempts);
5. Family system (e.g. family substance use, family chaos);
6. School adjustment (e.g. falling school grade, truancy);
7. Work (e.g. idle, frequent absence from work without reason);
8. Social skills (e.g. poor communication skills, withdrawn);
9. Peer relationship (e.g. substance using peers);
10. Leisure/recreation (e.g. rave parties, karaoke, game centres, cyber cafes).


After the initial screening interview and the assessment, students may be identified as follows –

1. The never exposed – They have never been offered or abused drugs, and are unlikely ever to be offered. Yet, they may take note in the general public information programmes of drugs used/abused in the society.
2. **The exposed never-used** – They may, on a small number of occasions, have been presented with the opportunity to use drugs, but chose not to do so. It is presumed that they, at some future date, may again be posed to a situation where there is the opportunity to use drugs. Decisions of use or not to use will depend on personal and social factors.

3. **The experimental abuser** – They are exploring both the drug effect and the place of this drug use within their own lives. At this stage their future engagement with, or disengagement from further drug use has not yet been firmly determined.

4. **The non-dependent regular abuser** – Dependence has not yet occurred. For such users, it is likely that prevention messages may be suitable to steer them away from drug use. Their perceptions of the adverse consequences of detection/arrest may influence the extent to which they become more heavily involved in their drug use.

5. **The addicted (dependent) abuser** – Drug use has become the most important aspect of their life. The extent to which they are influenced by public opinions and policies is determined by the extent to which they consider themselves to be part of the society.

6. **The vulnerable ex-user** – Former drug users who have become drug-free are likely to have a greater vulnerability to unexpected opportunity to use their previous drug.

**Reference**


APPENDIX 3  URINE SPECIMEN COLLECTION PROCEDURES

Pre-test Arrangement

1. The school principal designates a collection site (interview room and rest room) which is secure, and dedicated solely to urine collection.

Procedures for Specimen Collection

2. The school principal informs selected students and facilitates their attendance to the collection site.
3. The collector shall conduct a screening interview and brief the student on the purpose of urine collection.
4. The collector provides a clean specimen collection container to the student.
5. The student is allowed to provide his specimen in a rest room that allows for individual privacy.
6. Upon receiving the specimen from the student, the collector shall determine the volume (not less than 30mL) and temperature (not outside the range of 32° – 38°C) of the specimen. The collector shall also inspect the specimen to determine if there is any sign indicating that the specimen may be invalid.

Screening Test

7. The collector shall perform the screening test in front of the student and the project officer. The collector shall use a new dropper to extract an appropriate amount of specimen for screening test kit.
8. If the screening test returns a positive result, another screening test on the same urine specimen using a urine test kit of a different brand will be conducted.
9. If both screening tests return positive results, the collector will then affix security seal to the remaining specimen for confirmatory testing and initial a specimen delivery record for the purpose of certifying that it is the specimen collected from the concerned student. A specimen code will be attached to the specimen container. No personal identifier will be attached to the specimen in order to ensure confidentiality and privacy. The specimen will be sent to the Government Laboratory by the collector.
10. Nonessential specimens will be disposed of into the sewer properly and immediately.
APPENDIX 4 BRIEF ON PERSONAL DATA (PRIVACY) ORDINANCE

Objectives
The purpose of the Ordinance is to protect the privacy interests of living individuals in relation to personal data. It also contributes to Hong Kong's continued economic well being by safeguarding the free flow of personal data to Hong Kong from restrictions by countries that already have data protection laws.

Scope of Coverage
The Ordinance covers any data relating directly or indirectly to a living individual (data subject), from which it is practicable to ascertain the identity of the individual and which are in a form in which access or processing is practicable. It applies to any person (data user) that controls the collection, holding, processing or use of personal data.

Data Protection Principles (DPP)
Principle 1 (DPP 1) – Purpose and manner of collection. This provides for the lawful and fair collection of personal data and sets out the information a data user must give to a data subject when collecting personal data from that subject.

Principle 2 (DPP 2) – Accuracy and duration of retention. This provides that personal data should be accurate, up-to-date and kept no longer than necessary.

Principle 3 (DPP 3) – Use of personal data. This provides that unless the data subject gives consent otherwise personal data should be used for the purposes for which they were collected or a directly related purpose.

Principle 4 (DPP 4) – Security of personal data. This requires appropriate security measures to be applied to personal data (including data in a form in which access to or processing of the data is not practicable).

Principle 5 (DPP 5) – Information to be generally available. This provides for openness by data users about the kinds of personal data they hold and the main purposes for which personal data are used.

Principle 6 (DPP 6) – Access to personal data. This provides for data subjects to have rights of access to and correction of their personal data.

The Ordinance (full text) can be downloaded from website of “The Office of the Privacy Commissioner for Personal Data” at

Appendix III    Pertinent Issues

The Research Team is required to identify pertinent issues arising from the implementation of the Trial Scheme on School Drug Testing in Tai Po District (Scheme). The Research Team should evaluate how best the Scheme has addressed them, and suggest refinements on gradual rolling out of drug testing in all public sector schools (School-based Drug Testing) in light of these issues. Some of the pertinent issues are briefly described as follow for illustration purpose.

Privacy and Consent

2. “Privacy” covers the protection of personal integrity and the inviolability of one’s own body. Drug testing inevitably requires the collection of body samples, intimate or non-intimate, and thus may give rise to privacy concern. Consent is required to protect the person taking the sample from the pupil from being charged with assault or being subject to a civil claim for damages for trespass to person.

3. To administer a drug test, consent of the student (and/or the parents) is required under the present law, unless there are clear justifications and overriding legal authority.

4. One basic question is from whom consent should be sought, e.g. the student himself or the parents/legal guardians.

5. While parental consent alone may be sufficient for a drug test to be carried out lawfully, the law also recognises that a child, depending on his or her age, may have the competence to determine his or her own well-being. In that case, parental consent would not be sufficient if the child refuses to undergo a drug test.

6. If a student’s consent to drug testing is required, it must be given voluntarily, with knowledge and awareness of the relevant circumstances and likely consequences. Otherwise, the students may play truant to avoid the drug test. At the practical level, it may be difficult to obtain the student’s consent as the student might not want his parents and teachers to know that he is a drug abuser. Meanwhile non-consenting students may be stigmatised.

1 The case law does not specify an age at which a child is recognised to have such competence. The older the child, the more likely he or she is to have such competence.
7. Furthermore, it may be difficult to obtain parental consent especially from at-risk families. Parents may be concerned that if their children are tested positive, they might be suspended or expelled from school, or even be prosecuted.

8. Participation in the Scheme is entirely voluntary. The consent to participation will be sought from both the student and his/her parents/guardians. Some may still see it an unethical intrusion into privacy of a person due to the group pressure if consent is not given.

9. The Research Team should evaluate the current practice, and explore the best approach in obtaining consent to participate in a School-based Drug Testing.

**Children’s Rights**

10. “Children’s Rights” in this context generally refer to those stipulated in the United Nations Convention on the Rights of the Child (UNCRC). UNCRC was applied to Hong Kong in 1994, and its provisions continue to apply to Hong Kong after the establishment of the Hong Kong Special Administrative Region. The Research Team shall assess the possible impact of the Scheme on children taking into account children’s rights under UNCRC, including their rights to express their views (Article 12), and to the protection of their privacy and reputation (Article 16).

**Roles of Parents**

11. While the parent may opt for the child to join the Scheme, it may be resisted by the child leading to family strife and affecting family solidarity. The Research Team should assess the possible impact of the introduction of voluntary School-based Drug Testing on family relationship and family values (e.g. love and care, respect and responsibilities, communication and harmony).

12. The Research Team should also examine the proper role of parents at different stages - e.g. when invited to give consent for their children to join the scheme, when their or other parents’ children are identified to undergo a drug test, when the test result is known, etc.
School-based Management

13. In line with school-based management, whether to introduce a drug testing scheme is a matter for the school itself, involving the management staff, school management body, parents, parent-teacher association and school sponsoring body. Some schools may have little motivation to introduce a School-based Drug Testing as they are very much concerned that, for example, if any of their students is found to be a drug abuser, the school could be stigmatised and would affect the future student intake. The Research Team should examine how best to devise and promote School-based Drug Testing recognising school-based management and the healthy school policy that each school should put in place.

Role of Teachers

14. Class teachers interact with students the most and they should be in the best position to provide immediate assistance and support. While some argue that the class teacher may not be the most reliable person to the students. It is suggested that students should be allowed to choose a school teacher they trust to discuss their drug testing results.

15. Further, if teachers are required to select students to take the drug tests, irrespective of a random selection or under suspicion approach, it is likely to develop a sense of mistrust between students and teachers and hence damage their relationship.

16. Under the Scheme, a student drug testing (SDT) team will be set up to randomly select students for drug testing, school teachers will not be involved in the selection process.

17. The Research Team should evaluate whether the current practice may pose any adverse effect on teacher-student relationship and examine the proper role teachers should play in School-based Drug Testing.

Role of School Social Workers / Other helping Professionals

18. School social workers and other helping professionals such as education psychologists, student guidance officers, and student guidance teachers may address students’ concerns arising from the implementation of the Scheme. The Research Team should evaluate the roles play by the school social workers under the Scheme, and suggest the proper roles of
school social workers as well as other helping professionals in School-based Drug Testing.

**School Participation**

19. To implement drug testing at school, the target size of participation should be clearly defined and students should be encouraged to participate as far as possible. The Research Team should examine and advise on the reasonable level of participation for School-based Drug Testing to be effective in a school and how best to achieve it through possible incentives, appropriate sanctions and others means. It should be borne in mind that the degree of competition for enrolment or parental attention may vary from school to school.

**Trust of Schools**

20. One basic issue of drug testing at school is the possible undermining of trust that is expected between school personnel and students, in an educational setting, to the extent that it would adversely affect other aspects of student’s education, including drug education. The “policing” role of teachers may possibly create an environment of resentment, distrust and suspicion leading to loss of school connectedness. It may possibly aggravate truant behaviour, making it more difficult to reach the drug abusing youths.

21. The Research Team should examine whether the Scheme may pose any adverse effect on students’ trust to schools and explore how best to design and run School-based Drug Testing in order to avoid or minimise such undermining of the trust.

**Circumstances Leading to Administration of a Drug Test**

22. The criteria for a selection-based drug testing scheme should be objective and clearly defined. Under the Scheme, students will be randomly selected by the SDT team to participate in the drug tests. Some suggested that training should be provided to parents and teachers to help them to identify potential student drug abusers earlier, and select students to take the drug test based on criteria such as reasonable suspicion or upon complaint. The Research Team should examine the current random selection approach and advise on other appropriate methods, if any to select students in School-based Drug Testing.
Labelling Effect and Confidentiality

23. People generally have a negative perception of drug abusers. Students, families and schools with youth drug problem will be considered to be problem students, families and schools. The mere carrying out of drug test on a student can already have an undesirable labelling effect, not to mention upon receiving a positive test result.

24. The Research Team should evaluate the labelling effect, if any generated under the Scheme and examine how best to avoid or mitigate possible labelling effect at various stages, for example, through certain protection of confidentiality. A balance needs to be struck between strict confidentiality of the test result and immediate and effective downstream support and referral service.

25. While it is generally accepted that parents should be informed of the student’s drug test result so that intervention could be administered immediately, there is much controversy as to whether such information should be made available to teachers, principals, school social workers and the Police. The Research Team should consider the Personal Data (Privacy) Ordinance (PD(P)O), the Dangerous Drugs Ordinance (DDO) and other relevant materials, to propose how this balance should be struck in the Hong Kong context.

Drug Testing Methods

26. There are a number of different drug testing methods including tests of hair, urine, sweat, oral fluid, blood, etc. There are also more than one choice of test kits available for each kind of body sample (e.g. there are quite a number of test kits for urine). Some of the tests are intimate while the others are not. Some tests such as hair test and blood test may be repugnant to students as they may affect their appearance or cause pain.

27. The Scheme is to conduct urine drug test to screen for the presence of illicit drugs. The Research Team should comment on the use of urine drug testing in school settings and recommend any appropriate testing methods for use in School-based Drug Testing, giving consideration to factors such as cost, specific drugs to be detected, detection windows, accuracy, equipment requirement, sensitivity, limitations, etc.
**Keeping of Samples**

28. Under the Scheme, nonessential specimens (i.e. specimens with negative screening test result) will be immediately disposed of into the sewer by the SDT team. Specimens that are sent to the Government Laboratory for confirmatory tests will be destroyed by the Government Laboratory personnel in five working days after the completion of analysis.

29. The Research team should comment on the arrangement of the Scheme, and recommend how long the samples should be kept and the parties that should be responsible for keeping the samples, especially for samples tested positive in case of disputes over the test results, as well as the security measures that should be put in place to maintain sample integrity.

**Keeping of Records**

30. People are concerned about the handling of confidential information and personal data of students (how and for how long the personal data will be kept). Each data user must establish and maintain appropriate security measures to protect the personal data.

31. With reference to PD(P)O and DDO, the Research Team should evaluate the handling of confidential information under the Scheme and recommend how and for how long the test results should be kept and the parties that should be responsible for record keeping, as well as the security measures that should be put in place to ensure strict confidentiality of the records.

**Role of Student Health Services (SHS)**

32. Instead of performing the drug test at school, some suggested that it should be conducted at clinics in order to minimise labelling effect and protect students’ privacy.

33. The participation of students in the Student Health Service (SHS) is entirely voluntary and currently it covers about 50% of Primary One to Secondary Seven students. Enrolled students annually attend SHS centre for a series of health checks and physical examination. One possibility is to invite parents to consent to adding drug test to the series of health checks. However, as students joining SHS normally have good family support and are likely to be health conscious, it may not be a good
use of resources to screen those students. Students may also feel intimidated by the drug test option and refuse to attend the health check altogether, thereby jeopardising SHS itself.

34. Another possibility is to locate a drug test service at SHS centres to take advantage of the infrastructure, core medical staff and wide regional network in place. Drug tests could be administered to students without prior SHS enrolment. However, there are concerns that co-locating the drug test service in SHS centres may undermine the smooth running of the programme. Students may still equate attending SHS centres as attending drug testing and drop out from SHS. Hence hampering the level of participation in SHS.

35. The Research Team should evaluate the current practice of drug-testing at school and explore the possible role SHS may play in School-based Drug Testing.

**Process of Testing**

36. The Research Team should examine and recommend the detailed testing process, including –

   (a) the parties that should be involved in carrying out the testing process and their respective roles;

   (b) the notices that should be given to the student and his/her parents before and after the drug test;

   (c) the place and party to collect the body sample; and

   (d) the place and party to carry out the drug test.

37. In examining the place and party to collect the body sample and carry out the drug test, consideration should be given to issues such as availability of appropriate equipment and expertise; whether the service is easily accessible; whether the location will induce undesirable stigmatisation to the students; whether provision of such service at certain locations will arouse public objection etc. The possible role of Hospital Authority (e.g. general outpatient clinics), Counselling Centres for Psychotropic Substances Abusers and Student Health Service Centres of the Department of Health (DH) and designated private clinics or doctors should be considered.
Consequences of a Positive Result

38. The main purpose of the Scheme is to enhance the resolve of those students who have not taken any drugs to continue to stay away from drugs, and trigger the motivation of those students abusing drugs to quit drugs and seek help, especially those who are trying drugs at an early stage.

39. However, one cannot preclude the possibility that the results may be used by the school as a reason for punishment. Parents may also worry that students could be regarded as problem students and hence being dismissed or suspended from school. On the other extreme, if there is no negative consequence, it may convey a wrong message to youngsters that drug abuse is not a problem. Effective drug testing at school should therefore foster a positive environment for early treatment and rehabilitation while armed with reasonable follow-up measures.

40. Apart from referral and treatment services, other follow-up actions may be required if the test result is positive, e.g. follow-up drug tests to ensure that the student indeed quit drugs. A balance needs to be struck between confidentiality of test result and informing concerned parties for effective follow-up action and referral and treatment services.

41. The Research Team should examine and recommend the appropriate level of consequence to students who yield a positive test result, measures to discouragement schools from dismissing the drug abusing students, parties that could have access to the test results, the process of referral, and follow-up action required from various parties including the student, the parent and school social worker etc., especially for students who yield repeated positive test results.

Consequences of a Negative Result

42. Under the Scheme, parent/guardian of the student will be informed in case of negative results. Some may suggest that the results should also inform other concerned parties, for example, teaches and school social workers.

43. Further, for cases where a previous drug abuser passed the follow-up tests, some may suggest that previous positive record(s) be cleared.

44. The Research Team should address these issues in the recommendation to School-based Drug Testing.
False-positive

45. Whichever method is selected for adoption in School-based Drug Testing, since the tests may not always be 100 percent accurate, for example, there is a small likelihood that a student may be tested positive when in fact the test result is not attributable to any unlawful use of drugs.

46. Under the Scheme, if the identified student and/or his parent/guardian maintain that the existence of the positive confirmatory test result of the urine specimen is not attributable to unlawful use, they may request a medical review.

47. The Research Team should examine the current review mechanism and suggest how best to handle such situations, e.g. possible claims for compensation and the correction of drug testing records of individuals.

Support for Schools

48. Throughout the implementation of the Scheme, the Research Team should examine the kind of support that should be provided to a school in order to maintain the rolling out of School-based Drug Testing, for example, guidance or advice on incorporation of the Scheme as part of the healthy school policy and the school development plan, standard manuals and protocols, teacher training, availability of service providers and experts with whom a school may collaborate, etc.

Referral and Treatment Services

49. One of the objectives of the Scheme is to render assistance to students who are troubled by drugs. To successfully implement School-based Drug Testing, appropriate and adequate support services should be put in place. The Research Team should evaluate the referral and treatment services put in place for the implementation of the Scheme.

50. The Research Team should advice on the downstream support services to be provided to student drug abusers identified in School-based Drug Testing, and the re-integration of the student in the school environment after treatment. The Research Team should examine the possible resources implication of the different treatment services on Government departments, schools, subvented agencies and NGOs.
Role of Education Bureau (EDB)

51. Wider school participation would invariably reduce stigmatisation. The Research Team should consult relevant stakeholders and examine the role of EDB and its regional education offices in promoting and soliciting schools to join School-based Drug Testing, and assisting with the implementation and subsequent referral services.

Role of Police

52. Police play an important role to combat the supply of drugs. Information collected from drug testing at school could shed light on the drug situation at school and facilitate the Police to better focus their efforts to combat the supply of drugs.

53. However, some object to police involvement in drug testing at school. It is argued that if students’ information is to be used for investigation purposes, it will become intelligence permanently staying in the criminal database. Students will be targeted by the Police to trace the source of drugs, and if they provide evidence in court against peers and others, their security might be put at risk.

54. Police will not be informed of the personal data of any student obtained under the Scheme. They may be provided with aggregate, non-identifying statistics of the test results to understand the drug situation at schools. The Research Team should evaluate such arrangement, and recommend the role of the Police or the Police School Liaison Officer in the operation of School-based Drug Testing.

Roles of other Government Parties

55. The Scheme is a joint initiative by the Government (led by the Security Bureau and EDB) and 23 public sector secondary schools in the Tai Po District, supported by parties in the social welfare, healthcare and other sectors. The Research Team should examine the roles of each party in the promotion and operation of the Scheme, and advise on how best each party should contribute to School-based Drug Testing. The Research Team should also map out a practical course of action, in consultation with all concerned parties as far as practicable, for rolling out drug testing to all public sector schools in the territory.
**Legal Issues**

56. The Research Team should identify legal issues aroused from the introduction of School-based Drug Testing, such as personal data privacy and consent, and examine how best to address them. The Research Team shall note relevant statutory requirements of the PD(P)O and DDO regarding handling of confidential information under DDO and personal data.

**Resources Implications**

57. A substantial amount of resources has been allocated to facilitate implementation of the Scheme. The Research Team should examine both non-recurrent and recurrent implications of the Scheme, and whether the resources have been allocated adequately and appropriately under the Scheme.

58. The Research Team should identify and suggest cost-effective ways of administering School-based Drug Testing, having regard to the available technologies, the effectiveness of different drug testing schemes, and the acceptability of the costs to Government, schools and other stakeholders. The Research Team should also explore possible ways to meet and share the cost by different parties (such as Government, the school and parents).

**Implementation Strategies**

59. There are two levels of implementation. At the individual school level, the Research Team should examine how best a school should pursue implementation and smooth operation of School-based Drug Testing. At the school sector level, the Research Team should examine the merits and limitations (e.g. cost-effectiveness) of School-based Drug Testing, pros and cons of different strategies and approaches to promote future roll out to all public sector schools (e.g. an incremental approach, publicising the schools joining the drug testing scheme) and recommend the ones that the Government should adopt.

**Evaluation**

60. The Research Team should conduct a comprehensive assessment of the Scheme. With reference to the evaluation to be conducted, the Research Team should develop a set of indicators to assess
the effectiveness of School-based Drug Testing, recommend and advice on appropriate methodologies and data analysis.
Appendix IV Assessment Scheme

Marking Scheme

The technical information will be checked against the mandatory requirements in Stage 1 assessment. Offers failing to meet the mandatory requirements will not be considered. Those meeting all mandatory requirements will be assessed according to this Marking Scheme in Stage 2 - Technical Assessment. In the Marking Scheme, the technical score will carry a weight of 60% against a weight of 40% for price score. Only those which have a technical mark at or above the overall passing mark of 50 of the total technical mark before applying the 60% weighting will be considered for overall score assessment.

Upon completion of assessment in Stage 1 and 2, the price information will be evaluated under Stage 3. Application with the highest overall combined technical and price score will normally be recommended for acceptance.

Weighting

Technical Score is calculated as follow:

\[
60 \times \frac{\text{Technical mark of the offer being considered which has obtained the overall passing mark}}{\text{Highest technical mark amongst the offers which has obtained the overall passing mark}}
\]

Price Score is calculated as follow:

\[
40 \times \frac{\text{Lowest price amongst the offers which pass passed the Technical Assessment}}{\text{Price of the offer being considered which has passed the Technical Assessment}}
\]
Stage 1  Mandatory Requirements

1. At least one member of the research team (who may be the team leader) must be able to communicate in both spoken and written English. □ Yes □ No

2. At least one member of the research team (who may be the team leader) must be able to communicate in Cantonese and written Chinese □ Yes □ No

Stage 2  Technical Assessment

1. The extent to which the proposal meets the parameters and prerequisites in the Brief.

Checklist on Scope of Research

☐ Comprehensive framework and approach for assessment of the Scheme
   For example:
   - Does it cover each and every aspect of the Scheme?
   - What is the proposed overall framework and methodology?

☐ Research on local and overseas experiences on school drug testing
   For example:
   - What are the places/schools/schemes to be covered?
   - Is the research comprehensive with identification of the critical success factors and pertinent issues that need to be addressed?

☐ Suggestions of appropriate refinements and revision of the Scheme and a possible approach for gradual rolling out to all schools in the territory
   For example:
   - Any preliminary suggestion on the structure of the reports?
   - Any and how many presentations (regular or irregular) will be made?
   - Any discussions on mode of operation and funding of drug testing scheme?
   - Any research plans on effective implementation on a territory-wide scale? /30

1 The questions suggested are for illustration purposes only. The vetting panel reserves the right to consider all pertinent areas.
2. The approach and methodology in conducting the Research.

**Checklist on Approach and Methodology**

- Is the subject recruitment plan feasible?
  - Target populations
  - Number of subjects from each population
- Is the approach comprehensive?
  - Presence of a practical plan to consult relevant stakeholders
  - A clear framework to identify the pertinent issues
- What are the methodologies proposed?
  - Quantitative and qualitative assessment
  - Able to capture pre and post effect of the Scheme? /30

3. The composition, academic and professional qualifications, experience, knowledge, expertise, and capability of the Research Team.

**Checklist on composition of the Research Team**

- Proposed representatives from the following sectors
  - Education
  - Social services (with at least 5 years of experience in youth / corrections / family services)
  - Parent education
  - Drug treatment and rehabilitation
  - Medical
  - Academic (with at least 3 years of experience in research)
  - Legal (with at least 5 years of experience in human rights and data privacy issues) /20

4. The manpower and other resources to be allocated to the Research. /15

5. Other added values services at no additional costs to the Association. /5

Total Score /100

Weighted Technical Score /60
Stage 3  Price Assessment

Price quoted in the Application Form

Weighted Price Score /40

Total Score

Weighted Technical Score /60
Weighted Price Score /40

/100
Appendix V  Consent to Disclosure

CONSENT TO DISCLOSURE

To: Beat Drugs Fund Association

Appointment to conduct Evaluation Research on Trial Scheme on School Drug Testing in Tai Po District 2009/10

We, [insert the name of the applicant], hereby irrevocably authorise, consent and agree that if the Beat Drugs Fund Association (“Association”) agrees to appoint us to carry out the Evaluation Research on Trial Scheme on School Drug Testing in Tai Po District 2009/10, the Association may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to us, disclose to any person in such form and manner as Association deems fit:

(a) our name and address and the fees, costs, and expenses payable by the Association of engaging us; and

(b) the Fee Proposal submitted by us on [insert the relevant date].

We hereby waive and forego our right, if any, to make any claims against the Association for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by the Association.

Dated this  day of   2009

[insert the name of the applicant] and  )
SIGNED by [insert the name(s) of the   )
signator(ies)], the director(s) of the     )
company in the presence of :-  )

Signature of Witness:
Name of Witness:
Occupation:
Address: