

**For discussion
on 8 July 2008**

Legislative Council Panel on Security

Review of Legislation Relating to “One Sex Worker Apartment”

Purpose

This paper sets out the existing legislation relating to “one sex worker apartment” and the response of the Administration to the issues relating to such legislation raised at the Special Meeting of the Legislative Council Panel on Security (the Panel) held on 5 May 2008 and in the written submissions received from deputations for the meeting.

Existing Legislation Relating to “One Sex Worker Apartment”

2. Under the existing law, the act of prostitution itself is not illegal, nor is the operation of “one sex worker apartment” *per se* prohibited. However, there are various prostitution-related offences under Part XII of the Crimes Ordinance (Cap. 200) with the objective of –
- (a) preventing the exploitation of others for the purposes of prostitution;
 - (b) combating organized prostitution activities; and
 - (c) lessening the nuisance to members of the public that vice activities may cause.

A list of the relevant provisions is set out at the **Annex**.

3. The law as it currently stands strikes a reasonable balance, taking account of the human rights and privacy of sex workers, the well-being of other members of the community as well as the prevailing moral values of the community. Any proposal to amend the existing prostitution-related laws should be carefully considered from various social and policy perspectives, and not solely from the angle of law and order. The views from different sectors of the community must be considered thoroughly before changes, if any, are to be made to the existing legislative regime.

Response to issues raised by the deputations

4. At the Special Meeting of the Panel held on 5 May 2008, a number of deputations attending the meeting suggested that sex work should be “decriminalised”. Some of them specifically demanded the repeal of certain prostitution-related offences and suggested allowing more than one sex worker to work in the same apartment. Paragraphs 5 to 16 below set out the Administration’s response to these issues.

(a) Repealing or amending certain prostitution-related offences

General

5. Some view that as prostitution involves the voluntary trading of sex services and there is no victim, it should be regulated by commercial law as for other trading activities. It is argued that some of the existing prostitution-related offences, e.g. “soliciting for an immoral purpose” (section 147 of Cap. 200), “letting premises for use as a vice establishment¹” (section 143 of Cap. 200), “tenant permitting premises or vessels to be kept as a vice establishment” (section 144 of Cap. 200), “tenant permitting premises or vessel to be used for prostitution” (section 145 of Cap. 200), etc. are unfair to sex workers and prevent them from operating their businesses. In addition, the offence of “living on earnings of prostitution of others” (section 137 of Cap. 200) prohibits people from developing business relations with, or providing service to, sex workers.

6. Vice business is one of the main sources of income of triads and organised crime syndicates in Hong Kong. For this purpose, the triads and organised crime syndicates often adopt illegal means to force sex workers either to work in their vice establishments or not to compete with their vice businesses. Although the operation of “one sex worker apartment” itself is not illegal under the law, Police information indicates that a substantial number of vice establishments controlled by criminal syndicates are operated in the guise of “one sex worker apartment”.

7. The existing vice-related offences referred to in paragraph 5 above provide the legal basis for the Police to take enforcement actions against the activities of vice syndicates which may operate under different scenarios. This in turn helps interdict the source of income of triads and

¹ Under the Crimes Ordinance (Cap. 200), “vice-establishment” refers to premises which are used wholly or mainly for organizing or arranging of prostitution, or used wholly or mainly for the purpose of prostitution by two or more persons.

organised crime syndicates. If these provisions were amended or repealed, the effectiveness of Police efforts in combating syndicated vice activities would be seriously undermined. Worse, the triads and organised crime syndicates would have a more favourable environment to further their criminal activities.

“Living on the earnings of the prostitution of others” (section 137 of Cap. 200)

8. A suggestion has been made that suppliers of goods and services to sex workers are at risk of committing the offence of “living on the earnings of the prostitution of others” (under section 137 of Cap. 200). As a result, sex workers face difficulty in obtaining necessary support in operating their businesses.

9. Legal advice is that whether suppliers of goods and services to sex workers would commit the said offence would depend on specific circumstances. The critical issue is whether a supplier is paid by sex workers for goods or services supplied by him to them for the purpose of their prostitution which he would not supply but for the fact that they were sex workers. There has to be a close connection between the receipt of the money and the trade before the recipient commits the offence. Section 137 of Cap. 200 does not in itself debar suppliers of goods or services from providing to sex workers what they would normally supply to other individuals.

Provisions relating to the letting or renting of premises to be kept as a vice establishment / to be used for prostitution (sections 143, 144 and 145 of Cap. 200)

10. There are suggestions that the provisions indirectly “criminalises” sex work by prohibiting owners or tenants from letting / permitting their premises to be kept as vice establishment (under sections 143 and 144 of Cap. 200) or for tenants to permit their premises to be used for prostitution (under section 145 of Cap. 200). These would have the effect of preventing sex workers from operating their businesses.

11. Sections 143 and 144 of Cap. 200 are primarily targeted at vice establishments which by definition (see footnote 1 on page 2) cover only premises for use of prostitution by two or more persons. They do not prohibit owners / tenants from letting or permitting the use of their flats for use as “one sex worker apartment”. As regards section 145 of Cap. 200, although it is targeted at the use of premises for prostitution

generally (which covers “one sex worker apartment”), legal advice is that a sex worker who is a tenant or occupier cannot permit or suffer his/her own prostitution in law, and hence the provision would not prohibit a sex worker from practicing prostitution in his/her own flat.

“Soliciting for an immoral purpose” (section 147 of Cap. 200)

12. A specific suggestion is made that the offence of “soliciting for an immoral purpose” (under section 147 of Cap. 200) should be repealed as we can rely on section 4A of the Summary Offences Ordinance (Cap. 228) and sections 83 to 86D of the Public Health and Municipal Services Ordinance (Cap. 132) to tackle the nuisance caused by sex workers to the neighbourhood.

13. It is an offence under section 4A of Cap. 228 if a person sets out or leaves (or causes to be set out or left) any matter or thing which obstructs, inconveniences or endangers, or may obstruct, inconvenience or endanger, any person or vehicle in a public place. In normal circumstances, a sex worker only stands on the street and solicits members of the public verbally or by signals; no “matter or thing” is set out or left on the street. Hence, we cannot invoke section 4A of Cap. 228 to deal with the nuisance caused by sex workers to the neighbourhood. Similarly, sections 83 to 86D of Cap. 132 specifically apply to hawkers, and a sex worker does not fall within the definition of “hawker” under section 2 of that Ordinance. Hence, a sex worker taking a customer to any place or a customer visiting a sex worker will not be caught by sections 83 to 86D of the Public Health and Municipal Services Ordinance.

14. Offenders involved in prostitution-related activities on the street are mostly prosecuted for the offence of “soliciting for an immoral purpose”. The provision seeks to protect passers-by, nearby residents and businesses from possible nuisances caused by on-street promotion of prostitution business. If we repealed the provision, the disturbance caused by prostitution activities would likely become uncontrolled. This would affect legitimate businesses in the neighbourhood as members of the public would stay away from the area. Juveniles would also become more exposed to prostitution.

(b) *Legalising “two sex worker apartment”*

15. Views have been expressed that, to protect the safety of sex workers, the definition of “vice establishment” should be amended so that

more than one sex worker can be allowed to work in an apartment.

16. The current arrangement which allows the operation of “one sex worker apartment” while criminalising the operation of vice activities involving more sex workers strikes a reasonable balance among various relevant considerations. It takes account of the human rights, privacy and livelihood of sex workers, reduces the opportunity for organized crime groups or individuals involved in illegal activities to manipulate sex workers for their own gain, and minimises the nuisance caused by prostitution activities to the neighbourhood, thus protecting law and order of the community. From the law and order perspective, we see merit in maintaining the existing legislative regime. In view of the concerns of sex workers regarding their safety following the murder cases targeted at sex workers in March 2008, the Police have taken the initiative to enhance communication with sex worker groups. The special measures taken by the Police for ensuring the safety of sex workers are outlined in our paper presented for discussion at the Special Meeting of the Panel on 5 May 2008 (LC Paper No. CB(2) 1742/07-08(01)).

Security Bureau

Hong Kong Police Force

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Annex

**Relevant prostitution-related provisions
in the Crimes Ordinance (Cap. 200)**

Section	Heading	Summary of the Provision	Maximum Penalty
130	Control over persons for purpose of unlawful sexual intercourse or prostitution	A person who exercises control over another person for the purpose of unlawful sexual acts or prostitution shall be guilty of an offence.	Imprisonment for 14 years
131	Causing prostitution	A person who procures another person to become a prostitute shall be guilty of an offence.	Imprisonment for 10 years
134	Detention for intercourse or in vice establishment	A person who detains another person against her or his will with the intention that the other person shall do an unlawful sexual act; or on any premises or vessel, or in any place, kept as a vice establishment, shall be guilty of an offence.	Imprisonment for 14 years
135	Causing or encouraging prostitution of or intercourse with a girl or boy under 16	A person who causes or encourages the prostitution of or an unlawful sexual act with a girl or boy under the age of 16 for whom that person is responsible shall be guilty of an offence.	Imprisonment for 10 years
136	Causing or encouraging prostitution of mentally incapacitated person	A person who causes or encourages the prostitution in Hong Kong or elsewhere of a mentally incapacitated person shall be guilty of an offence.	Imprisonment for 10 years
137	Living on earnings of prostitution of others	A person who knowingly lives wholly or in part on the earnings of prostitution of another shall be guilty of an offence.	Imprisonment for 10 years

Section	Heading	Summary of the Provision	Maximum Penalty
139	Keeping a vice establishment	A person who on any occasion keeps any premises, vessel or place as a vice establishment; or manages or assists in the management, or is otherwise in charge or control, of any premises, vessel or place kept as a vice establishment, shall be guilty of an offence.	Imprisonment for 10 years
141	Permitting young person to resort to or be on premises or vessel for intercourse or prostitution	An owner or occupier of any premises or vessel, and any person who manages or assists in the management or control of any premises or vessel, who induces or knowingly suffers – (a) a girl under the age of 16 to resort to or be on such premises or vessel for the purpose of having unlawful sexual intercourse with a man or for the purpose of prostitution; (b) a girl or boy under the age of 21 to resort to or be on such premises or vessel for the purpose of committing buggery with a man; or (c) a boy under the age of 21 to resort to or be on such premises or vessel for the purpose of committing an act of gross indecency with a man, shall be guilty of an offence.	Imprisonment for 14 years

Section	Heading	Summary of the Provision	Maximum Penalty
142	Permitting mentally incapacitated person to resort to or be on premises or vessel for intercourse or prostitution	An owner or occupier of any premises or vessel, and any person who manages or assists in the management or control of any premises or vessel, who induces or knowingly suffers a woman who is a mentally incapacitated person to resort to or be on such premises or vessel for the purpose of having unlawful sexual intercourse with a man or for the purpose of prostitution (or in the case of a man who is a mentally incapacitated person, for committing buggery or an act of gross indecency with another man), shall be guilty of an offence.	Imprisonment for 10 years
143	Letting premises for use as a vice establishment	A person who, being the owner or tenant of any premises or his agent, lets the whole or part of the premises with the knowledge that it is to be kept, in whole or in part, as a vice establishment; or where the whole or part of the premises is used as a vice establishment, is wilfully a party to that use continuing, shall be guilty of an offence.	Imprisonment for 7 years
144	Tenant etc. permitting premises or vessel to be kept as a vice establishment	A tenant, occupier or person in charge of a premises who permits or suffers the whole or part of the premises to be kept as a vice establishment shall be guilty of an offence.	Imprisonment for 7 years
145	Tenant etc. permitting premises or vessel to be used for prostitution	A tenant, occupier or person in charge of any premises who permits or suffers the whole or part of the premises to be used for the purposes of habitual prostitution shall be guilty of an offence.	Imprisonment for 7 years

Section	Heading	Summary of the Provision	Maximum Penalty
147	Soliciting for an immoral purpose	A person who in a public place or in view of the public solicits for any immoral purpose or loiters for the purpose of soliciting for any immoral purpose shall be guilty of an offence.	A fine of \$10,000 and imprisonment for 6 months
147A	Prohibition of signs advertising prostitution	Any person who publicly displays, or causes or permits the public display of, a sign that advertises, or may reasonably be understood to advertise, the services of a prostitute or of a person who organises or arranges prostitution shall be guilty of an offence.	Imprisonment for 12 months