Ref : NCR 2/1/8 S/F (5) Pt. 2

LEGISLATIVE COUNCIL BRIEF

Dangerous Drugs Ordinance
(Chapter 134)

DANGEROUS DRUGS ORDINANCE (AMENDMENT OF FIRST AND THIRD SCHEDULES) ORDER 2012

INTRODUCTION

At the meeting of the Executive Council on 8 May 2012, the Council **ADVISED** and the Chief Executive **ORDERED** that the Dangerous Drugs Ordinance (Amendment of First and Third Schedules) Order 2012 ("the Order"), at Annex, be made under section 50(1) of the Dangerous Drugs Ordinance ("the Ordinance") (Chapter 134), to impose control on gamma-butyrolactone (GBL), *Salvia divinorum* and salvinorin-A.

JUSTIFICATIONS

GBL

2. GBL is a chemical which can be used as a flavouring agent and as a solvent for cleaning or removing rust or superglue. It may also be used as a precursor for producing other chemical products or dietary supplement, such as body-building powder, or flavouring agent.

3. However, the substance is liable to abuse. Government Laboratory has advised that relevant literature had indicated that GBL can be quickly converted into gamma-hydroxybutyric acid (GHB), a dangerous drug (DD) already specified in the First Schedule to the Ordinance, inside the human body. Department of Health (DH) advised that GBL does not have any known pharmaceutical use, and that the adverse effects of GBL could be similar or even identical to those of GHB, causing vomiting, hypotonia, tremors, seizures, aggression, impairment of judgment, coma, respiratory depression, hypothermia and bradycardia.

4. At the international level, GBL is not yet subject to control under any international conventions. Although a joint Food and Agriculture Organization / World Health Organization (WHO) Expert Committee on Food Additives had considered that there was no food safety concern on intake of GBL at normal concentration when used as a flavouring agent, some overseas authorities are of the view that GBL is not a safe dietary ingredient. GBL has also since 2006 been placed on the proposed agenda for "pre-review" by the Expert Committee on Drug Dependence of WHO to consider the need for imposing control internationally. This is the necessary process before conducting a "critical review" on whether a substance should be listed on a schedule of substances recommended for control internationally by WHO. Some jurisdictions have on their own accord imposed different levels of control over GBL. These developments reflect that GBL has aroused concern in different jurisdictions as a substance of abuse that warrants regulatory control.

Trade Situation in Hong Kong

5. Trade declarations lodged with the Census and Statistics Department between January 2006 and July 2011 showed that there were about 90 shipments (involving 13 companies) of GBL or chemicals with names appeared to be synonyms of GBL, and 17 shipments involving about 22.3 tons of GBL between August 2010 and July 2011. The relatively small volume of trade suggests that regulatory control of the substance should not cause difficulties to the industry.

6. In April 2010, a small amount of GBL was seized locally together with other DDs. This sends a warning signal of the possibility of direct consumption of GBL as a substance of abuse in the territory.

Proposed Control

7. Although GBL has already been subject to control under the Ordinance by virtue of its being an "ester" of GHB, there is a case to specifically list it as a DD in the First Schedule to the Ordinance to dispel doubt and draw the attention of the public to the harmful effects of intake or consumption of GBL. There are precedents in the Ordinance that a substance is listed separately even when it has already been covered by the general description of another substance in the First Schedule, e.g. heroin is an ester of morphine but both of these are listed in the First Schedule.

8. Recognising the fact that GBL may be used as food flavouring agents, we recommend that exemption be allowed for the use at a level reasonably safe for human consumption of GBL in food.

9. Based on available information, a person consuming more than 0.3 millilitre or 0.33 gram of neat GBL will suffer from adverse drug effects. Normally food containing GBL either as a natural ingredient or as a flavouring agent is not expected to contain concentration level of over 0.1% by weight or by volume of GBL. Accordingly, only if a person consumes a relatively large quantity (exceeding 300 millilitre or 300 gram) of food containing GBL at a concentration of 0.1% that he/she would bear the drug effects. Against this understanding, we propose to set the exemption concentration level at 0.1%.

Salvia Divinorum and Salvinorin-A

10. *Salvia divinorum* is a herb native to Mexico containing an active ingredient called salvinorin-A, which causes hallucination and psychotomimetic episodes. These include psychedelic-like changes in visual perception, mood and body sensations, emotional swings and feelings of detachment. *Salvia divinorum* also causes adverse physical effects which lead to body incoordination, dizziness and slurred speech. According to DH, the distortion in perception of external reality and the self hampers the individual's ability to interact with the surroundings, and may pose a risk of injury or death. There is no known or approved pharmaceutical use of the plant itself and salvinorin-A.

11. *Salvia divinorum* is under different levels of regulatory control in many jurisdictions, including Australia, Belgium, Canada, Denmark, Estonia, Finland, Italy, Japan, Korea, Russia, Sweden and the US. Some jurisdictions treat it as a DD while some others control its commercial trade.

Trade Situation in Hong Kong

12. A search of trade declaration record between January 2009 and November 2011 did not reveal any import or export of the plant *Salvia divinorum.*

13. Although there has not been any local seizure of *Salvia divinorum* or salvinorin-A, there has been media report of its growing popularity among young party-goers in the Mainland and also Hong Kong. In addition, as part of their on-going monitoring of new substances of abuse, Police succeeded in July 2011 in purchasing *Salvia divinorum* through the Internet from a public website. Police intelligence also revealed that some young people were aware of the existence of *Salvia divinorum*, as a substance not yet subject to control and its effects. It is imperative, therefore, to impose legislative control in a timely manner to prevent these harmful substances from becoming new substances of abuse.

Proposed Control

14. At present, *Salvia divinorum* and salvinorin-A are not subject to legislative control in Hong Kong. In view of their potential abuse and harmful effects and the development of regulatory control, it is considered necessary to subject the plant of *Salvia divinorum* and its active ingredient, salvinorin-A, to regulatory control as DDs under the Ordinance.

Textual Amendments to the First and the Third Schedules

15. The Department of Justice noticed that references to sections 3[1] and 50[2] of the Ordinance have been omitted in the square brackets at the top right hand corner of Parts II, III and IV of the First Schedule, and all parts of the First Schedule and the Third Schedule, respectively. We therefore propose to take the opportunity to include relevant textual amendments to rectify such omissions.

THE PROPOSAL

16. We propose to –

(a) amend the First Schedule to the Ordinance to include the following substances which are liable to abuse, thereby controlling their use –

[1] Section 3 of the Ordinance sets out the calculation of percentages for purposes of First Schedule and extended meaning of "substance".

[2] Section 50(1) of the Ordinance states that the Chief Executive may by order published in the Gazette amend the First and Third Schedules.

(i) GBL;
(ii) *Salvia divinorum* and its active ingredient, salvinorin-A;

with a provision for exemption in respect of a preparation of GBL containing not more than 0.1 per cent of GBL calculated by weight or by volume (being a preparation compounded with one or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse and that the GBL cannot be recovered by readily applicable means or in a yield which would constitute a risk to health); and

(b) make minor textual amendments to the First and Third Schedules to the Ordinance.

17. With the proposed amendments, *Salvia divinorum* and salvinorin-A will become DDs and hence subject to strict control on their trafficking, manufacture, possession, supply, import and export. As with other DDs, illicit trafficking, manufacture, import and export of GBL, *Salvia divinorum* and salvinorin-A will attract a maximum penalty of a fine of $5 million and life imprisonment.

18. The import and export of DDs require a licence from the Director of Health.

LEGISLATIVE TIMETABLE

19. The legislative timetable will be -

Gazettal of the Order	18 May 2012
Tabling at the Legislative Council (LegCo) for negative vetting	23 May 2012
Commencement	14 July 2012

IMPLICATIONS OF THE PROPOSAL

20. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding

effect of the Ordinance. It has no economic, productivity, environmental or sustainability implications. The additional workload and financial implications arising from the implementation of the proposal are expected to be minimal and any additional requirements will be absorbed by the relevant bureaux and departments.

PUBLIC CONSULTATION

21. We have consulted the Action Committee Against Narcotics and obtained their support for the proposal. We have also consulted the pharmaceutical and chemical trades, as well as food industry. There has not been any objection.

22. We have also on 13 March 2012 consulted the LegCo Panel on Security, which supported the proposal.

PUBLICITY

23. The Order will be published in the Gazette on 18 May 2012. A press release will be issued on 9 May 2012, and a spokesman will be available to respond to media enquiries.

ENQUIRIES

24. Any enquiries concerning this brief can be directed to the following officer -

Miss Janet Wong
Principal Assistant Secretary for Security (Narcotics)1
Tel No. : 2867 5676.

Narcotics Division
Security Bureau
May 2012

Dangerous Drugs Ordinance (Amendment of First and Third Schedules) Order 2012

(Made by the Chief Executive under section 50(1) of the Dangerous Drugs Ordinance (Cap. 134) after consultation with the Executive Council)

1. Commencement

This Order comes into operation on 14 July 2012.

2. Dangerous Drugs Ordinance amended

The Dangerous Drugs Ordinance (Cap. 134) is amended as set out in sections 3 and 4.

3. First Schedule amended

(1) First Schedule, Part I—

Repeal

"& 22]"

Substitute

", 22 & 50]".

(2) First Schedule, Part I, paragraph 1(a), after item "Flurazepam"—

Add

"Gamma-butyrolactone".

(3) First Schedule, Part I, paragraph 1(a), after item "Rolicyclidine"—

Add

"Salvinorin-A".

(4) First Schedule, Part I, after paragraph 10—

Add

"10A. *Salvia divinorum* (or any part of it).".

(5) First Schedule, Part II—

Repeal

"[ss. 4, 23 & 24]"

Substitute

"[ss. 3, 4, 23, 24 & 50]".

(6) First Schedule, Part II, after paragraph 16C—

Add

"16D. A preparation of gamma-butyrolactone containing not more than 0.1% of gamma-butyrolactone, being a preparation compounded with one or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse and that the gamma-butyrolactone cannot be recovered by readily applicable means or in a yield which would constitute a risk to health.".

(7) First Schedule, Part III—

Repeal

"[ss. 25, 26 & 32]"

Substitute

"[ss. 3, 25, 26, 32 & 50]".

(8) First Schedule, Part IV—

Repeal

"[ss. 24, 25 & 26]"

Substitute

"[ss. 3, 24, 25, 26 & 50]".

4. Third Schedule amended (other offences of which defendant may be convicted)

Third Schedule—

Repeal

"[s. 42]"

Substitute

"[ss. 42 & 50]".

Chief Executive

2012

Explanatory Note

This Order—

(a) amends Part I of the First Schedule to the Dangerous Drugs Ordinance (Cap. 134) (***the Ordinance***) in order to specify gamma-butyrolactone, Salvinorin-A and *Salvia divinorum* (or any part of it) as dangerous drugs for the purposes of the Ordinance;

(b) adds a preparation containing gamma-butyrolactone in Part II of the First Schedule to the Ordinance; and

(c) makes minor textual amendments to Parts I, II, III and IV of the First Schedule and to the Third Schedule to the Ordinance.