

Human Reproductive Technology (Amendment) Bill 2015

Response to Bills Committee's Questions and Comments

Overall Response

Before responding to the questions and comments raised by the Bills Committee and those from the deputations which attended the Meeting on 27 April 2015, let us restate that the main objective of the Human Reproductive Technology (Amendment) Bill 2015 (the Amendment Bill) is to strengthen the existing regulatory control under section 15(3) of the Human Reproductive Technology Ordinance (Cap. 561) (the Ordinance) by prohibiting advertisements that promote sex selection services involving the use of reproductive technology (RT) procedures. Similar prohibition is provided in sections 16(2) and 17(2) of the Ordinance in relation to commercial dealing of gametes and surrogacy arrangements respectively.

2. In formulating the legislative proposal, we have considered carefully the scope of the prohibition and whether we should confine it to cover only advertising activities which promote the use of RT procedures to achieve the purpose of sex selection on non-medical grounds only, so as not to affect the rights of needy couples to receive the relevant information on sex-linked diseases and relevant RT procedures like pre-implantation genetic diagnosis (PGD). Having regard to the clinical and ethical practices of the local medical profession, we considered that banning all advertisements on sex selection services using RT procedures would not restrict the right of persons with genuine medical reasons to receive the necessary information, since such patients will be under the care of healthcare professionals who would offer appropriate advice and referral to treatments available in Hong Kong or other countries as appropriate. Neither should medical practitioners and relevant healthcare professionals providing such information to patients and offering advice and referral fall under the proposed offence in the Amendment Bill.

On the other hand, confining the offence to advertisements to promote sex selection services using RT procedures on non-medical grounds may leave a loophole for those which seek to circumvent the proposed offence.

3. We were also aware of the possibility of individual persons and organizations using educational talks or workshops as a cover on their advertising and promotional activities on sex selection services. The way the proposed section 15(3A) is drafted should distinguish academic/educational activities from advertisements and promotion of sex selection services.

4. In the course of drafting, we were aware of the ever-increasing use of Internet in advertising and distributing promotional materials, including the use of webpages of which the hosts and servers are located outside Hong Kong, which would present greater difficulties for the enforcement authorities. Other policy bureaux and government departments are facing similar situations, for example, in collecting evidence and jurisdiction of enforcement. On the other hand, if the proposed offence did not cover advertisements on the Internet, we were concerned that the medical profession and the general public would query why the legislation would leave behind an obvious gap in the proposed legislation.

5. Having regard to the above and the views from the stakeholder consultation in mid-2014, we decided to adopt a general approach in legal drafting, taking into account the definition of "advertisement" as stipulated in section 2 of the Ordinance and the approach taken in sections 16(2) and 17(2).

6. Although we have adopted a general approach in drafting the offence in the proposed Section 15(3A), we do not envisage that the provision will catch those who inadvertently involved in the distribution of advertisements and promotional materials on the Internet e.g. hyperlink. Given the wordings of the proposed offence as drafted in its present form, we consider it unlikely for enforcement actions to be

initiated against those who are not knowingly involved in the dissemination process. In any event, the Department of Justice (DoJ) will follow its Prosecution Code when determining whether prosecution should be initiated against the relevant persons.

7. As for the question of providing a defence for certain parties in the Bill like medical practitioners, employees of advertising, media or relevant organizations, there are difficulties in mapping out the conditions; and more importantly, we are concerned whether this would provide loopholes for circumventing the proposed offence. As the proposed offence is only confined to advertisements that promote sex selection services using RT procedures, we do not support including clauses of exemption or defence under the proposed section 15(3).

8. Our response to specific questions and comments raised are set out in the ensuing paragraphs.

Definition and Scope of “Advertisement”

9. The term “advertisement” is defined in the Ordinance to include “*any form of advertising whether to the public generally, to any section of the public or individually to selected persons*”. From our experience, advertisement comes in different forms and representations. Given the nature of sex selection services, advertisers of such services may promote a range of medical consultations, tests and processes which may directly or indirectly achieve sex selection. To reduce the room for such advertisements trying to circumventing the legislation, , it would be advisable for the proposed offence to cover advertisements which present or imply the provision of sex selection services with different forms and manner of presentations, explicit or suggestive pictures or phrases. The term of “purporting to” is intended to capture those advertisements that appear to be promoting sex selection services, without the need of considering whether those promoted services are in fact of proven or unproven effectiveness in achieving sex selection. Their use in a legislative text depends on the grammatical context of the

provisions concerned. The term “purporting to” is commonly used in legislative provisions to cover situations in which critical features of a subject or matter in question are not explicit. The term is also used in cases where flexibility is required for covering certain situations¹. The Chinese term “看來是” is used to render “purporting to” in the present context. In contrast, the Chinese terms “看起來” (and “看似”) are not used in the similar context. The relevant provisions in which “看來是” is used in similar context are at **Annex A**.

Definition of Sex Selection Service

10. In the Amendment Bill, the term “sex selection services” is defined as “*services provided for selecting the sex of an embryo by means of a reproductive technology procedure, whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman)*”. Examples of such RT procedures may involve the use of –

- pre-implantation genetic diagnosis (PGD) to determine the sex of an embryo for sex-selective implantation into the womb of a woman; or
- sperm sorting to produce a sample with a higher proportion of sperm carrying a particular sex chromosome for insemination into a woman so as to increase the chance of conceiving a child of the preferred sex.

These are highly specialized technology and procedures using within the medical profession.

11. Under current clinical practices, medical techniques such as ultrasound, amniocentesis, chorionic villus sampling, or maternal blood tests are deployed for screening of fetal genetic disorders and growth

¹ A search on the Bilingual Laws Information System on existing Hong Kong legislation reveals 16 hits of “purportedly”, 702 hits of “purporting to” and 549 hits of “purporting to be”.

monitoring in the course of caring for a pregnant woman. These services/tests do not fall within the definition of “RT procedure” under section 2 of the Ordinance, since they are performed after the embryo is formed inside of a woman’s body without using any RT technology. Hence they will not be captured as procedures for achieving sex selection under the section 15(3) of the Ordinance nor the proposed new offence under the Amendment Bill. We have provided a more detailed background note on the regulation of maternal blood tests in Hong Kong via our letter dated 27 April 2015 to the Bills Committee.

Essential Elements of the Offence under the Legislative Proposal

12. Clause 3 of the Amendment Bill sets out the proposed new offence for prohibiting advertisements seeking to promote sex selection services -

“A person must not cause to be published or distributed, or knowingly publish or distribute, an advertisement purporting to promote sex selection services, whether or not the services are provided in Hong Kong.”

13. In order to establish the proposed offence, the prosecution must prove not only the *actus reus* but also the *mens rea* and that the *actus reus* and *mens rea* coincide. In relation to the proposed new offence, the essential elements and major considerations are as follows -

Actus Reus

- (a) an advertisement that promotes or purports to promote *sex selection services*. Anything falling short of promotion of services would not suffice and the service being promoted must be “sex selection services” within the meaning of the proposed subsection (3B) viz. involving the use of RT procedures;

- (b) a person could not be said to have committed the offence unless the person has *published and distributed* the advertisement, or *played a part in causing it to be published or distributed*.

Mens Rea

- (c) a person who “causes [the advertisement] *to be published or distributed*”; the word “causes” implies the intention to get the advertisement published or distributed; and
- (d) a person “*knowingly publishes or distributes*” the advertisements.

14. Having regard to the above, law enforcement agency would need to collect evidence as to the content of the advertisement/website/online advertisement at the time of the publication (and a material period of time thereafter) and the state of mind (which may be proved by admission or inference from circumstantial evidence) of the alleged perpetrator at the time of causing the publication (which may be a time before the actual publication) as to the content of the advertisement/website/online advertisement at the material time.

15. Against these common law principles, parties which do not have the *mens rea* (e.g. knowledge about the content or the subject matter to be conveyed by the advertisement, intention to cause to publish or distribute the advertisement to promote or offer sex selection services) should not be held liable. For example, an Internet search engine operator/owner who merely provides a search engine for identifying or trawling on-line information of a topic to be specified by an user would not possess the *mens reas* for committing an offence under the proposed section 15(3A), since the search results are generated through an automated process of the search engine without knowledge. In the English case of *Metropolitan International Schools Ltd. v. Designtecnica Corpn.*, [2009] EWHC 1765, [2011] 1 W.L.R. 1743 (Q.B.), it was found that an internet search engine operator, which

provided “snippets” of information that were generated automatically by its search engine in response to search terms entered by users, could not be held to have published the information since the search engine played only a passive instrumental role in facilitating the appearance of the snippets on the users’ screens.

16. To address Bills Committee Members’ queries of different scenarios *in a general sense*, a purely academic forum on sex selection technology *without any offer to provide such service* should not be considered as an advertisement. By the same token, a feature article in which *no service provider is identified* nor is there any information that purports to promote the use of such service should not be considered an advertisement. Whether a party will be held liable for the proposed offence depends on the activities conducted and the availability of evidence. The question of liability is a matter of fact and degree for the tribunal of fact after all and will be subject to deliberation by the Court.

17. In the event that the talk or lecture is video-recorded in the above case and the video clip is used as part of an advertisement to promote sex selection services provided by another person or organization, the speaker should not be liable if he has not done anything to publish or distribute the advertisement or cause its publication or distribution.

18. There are also concerns whether a medical practitioner providing information on sex selection services in the course of care or referring patients to receive such services would be considered contravening the proposed provision. Providing factual information on sex selection service or referring patients with medical indications to receive sex selection service in the course of care would not be liable as such activities would not amount to “promotion” of such services. Besides, practice promotion of registered medical practitioners are governed by the “Code of Professional Conduct for the Guidance of Registered Medical Practitioners” issued by the Medical Council of Hong Kong. In general, communication and information

dissemination to the public and patients in compliance with the principles set out in the said Code of Professional Conduct would not amount to a promotional activity.

Overseas Websites and Servers

19. The primary basis of criminal jurisdiction in the Hong Kong SAR is territorial. It follows that statutory exceptions apart, the courts were not concerned with conduct abroad. There is a presumption in construing a statute creating an offence that is not intended to make conduct taking place outside the territorial jurisdiction of the Hong Kong SAR an offence triable in a Hong Kong SAR court. Where the offending acts have been committed by foreigners abroad, such a presumption is even stronger and the offences would probably not be triable in Hong Kong SAR courts. In addition, there are difficulties in collecting evidence and taking enforcement actions outside the territory of Hong Kong SAR. Hence we envisage that the main focus of enforcement action under the proposed section 15(3A) will be advertisements published on local webpages and servers in addition to traditional media like local newspapers and magazines.

20. Notwithstanding the above, we do not consider it advisable to exclude fully overseas Internet websites and servers under the Amendment Bill. No doubt there will be persons who seek to circumvent the proposed offence by posting advertisements promoting sex selection services involving RT procedures on overseas Internet webpages or uploading them through servers located outside Hong Kong. Where the contents of the advertisements appear to target at people residing in Hong Kong (e.g. providing local addresses, phone numbers and/or the service fees quoted in Hong Kong Dollars, promoting the relevant website in the local mass media, etc.), there may be a prima facie case for contravention of the offence. If the proposed offence already excludes advertisements posted on overseas servers and webpages from the regulatory framework at the outset, this may undermine the effectiveness of our investigations and related

enforcement actions (e.g. against agents stationed in Hong Kong). This is also why we do not support introducing provisions similar to section 3(1) of the Unsolicited Electronic Messages Ordinance (Cap. 593) to narrow the scope of the proposed offence.

21. For those who operate these overseas websites or initiate the publishing or distributing of these advertisements abroad and are not residing in Hong Kong, they may still be considered liable under the proposed offence if there is sufficient evidence to show that they have committed all the necessary elements of the offence concerned. As to whether such an overseas operator would be prosecuted when travelling to Hong Kong, the matter involves jurisdictional questions. Whether this is triable in courts of Hong Kong would then depend on circumstances of individual cases.

22. Following passage of the Amendment Bill, we will inform local media, local Internet webpage operators and servers and other stakeholders details of the new offence.

Hyperlinking

23. As regards to Members' concern over the liability and enforcement of cases involving hyperlink leading to the offending advertisement, DoJ has advised that in the Canadian case *Crookes v Newton* 2011 SCC 47, [2011] 3 S.C.R. 269, the Supreme Court of Canada held that a hyperlink, by itself, should never be seen as "publication" of the content to which it refers. Only when a hyperlinker presents content from the hyperlinked material in a way that actually repeats the content, should that content be considered to be "published" by the hyperlinker. This may provide a useful point of reference for the time being, as we do not yet have any criminal case related to hyperlinking in Hong Kong that have binding effect.

24. In response to comments from a Bills Committee Member, we have identified a relevant local case [Court Reference: KTCC

3075/2007] which involves a person being held liable for hyperlinking eight obscene photographs under the Control of Obscene and Indecent Articles Ordinance (Cap. 390). In this case, the accused pleaded guilty to the offence concerned. Given that the case is tried at the Magistracy, it has no binding effect.

Provision of Defences

25. Regarding the suggestion to provide a defence for employees of a company under the proposed offence, we do not support incorporating clauses of exemption or defences for employees, as this would create a loophole for the real culprits of the offence to evade from the liability, simply commit acts that contravene the proposed provision as an employee, or instruct the employees to commit such acts. In practice, in deciding whether to prosecute a person for the proposed offence, the DoJ would consider (a) whether there is sufficient evidence to justify instituting or continuing proceedings; (b) whether the general public interest requires that prosecution be conducted vis-à-vis the guiding principles set out in the *Prosecution Code 2013* promulgated by the DoJ.

26. In addition, the term “person” in the new section 15(3A) could be interpreted to include the “person-in-charge” e.g. director(s) or owners of a company and/or individuals who cause such advertisements to be published or distributed knowingly publish or distribute such advertisement.

27. Regarding the suggestions to provide a statutory defence to medical practitioners or academics delivering talks or lectures not involving commercial elements, or for distributors of hyperlink in private or non-commercial context, we have elaborated on the need for meeting the essential components of section 15(3A) to establish the *actus reus* and the *mens rea* before instituting prosecution action in paragraphs 13 to 18 above. We do not support providing a statutory defence for such situations which in turn may become loopholes for

circumventing the proposed offence. The desirability of providing statutory defence in legislation depends on the specific offence and circumstances of the employees concerned.

Supplementary Information

(a) Local Legal Provisions Relating to Internet Activities

28. In response to comments by Bills Committee members, we have conducted a search on the Bilingual Laws Information System (BLIS) with wordings such as “Internet”, “online”, “advertise”, “advertising” and “advertisement”. Over 650 entries are found, involving over 200 ordinances or subsidiary legislations. We do not consider it practical to compile a full list of such provisions and the respective policy intent, penalty for different offences, and the relevant prosecution figures. It should also be pointed out that these provisions were crafted at different times to suit different policy objectives, types of activities and circumstances and hence their wording is unlikely to be identical. It may not be fruitful to seek to adopt standard wordings and clauses across the board for offences involving the use of Internet. We have provided detailed information on a few ordinances as illustration at **Annex B**.

(b) Overseas Experiences

29. We have studied the experiences of some countries/ jurisdictions in regulating sex selection using RT. A summary is at **Annex C**. Among these countries, the United States and Thailand do not regulate sex selection services using RT procedures, irrespective of whether it is for medical or non-medical reasons.

30. In respect of advertisement promoting sex selection services using RT, among these jurisdictions, namely, Canada, Taiwan, Singapore as well as the Mainland have adopted different modes of legislation to prohibit such advertising and related activities. As

requested by Bills Committee members, we have contacted the relevant authorities in these jurisdictions and received replies from Canada, Singapore, Australia (Victoria) and the Mainland. They indicate that they do not have prosecution statistics on sex selection using RT for non-medical reasons or other information which can be used to assess the effectiveness of enforcement under their respective legislative framework.

(c) Council on Human Reproductive Technology (CHRT)

31. At the meeting with deputations on 27 April 2015, some attendees expressed concern on the operation of the CHRT in handling enquiries from the trade. The Secretariat of CHRT has a mechanism in place to handle all enquiries received. The processing time required will depend on the complexity of individual enquiries. In general, those enquiries for which the answers are provided in the Ordinance and the Code will be replied within ten days. However, if the enquiries are more complicated in nature, which may require legal clearance or decision by the Council, an interim reply will be issued within ten days of receipt before issuance of a substantive reply. The Secretariat will keep the enquirers informed of the progress of the case and a substantive reply will be issued to them after the Council reaches a formal view on the matter.

32. Regarding the suggestion to appoint local RT experts who are involved in providing RT services (i.e. licensees and persons responsible under a licence) to the CHRT as members, section 4(2)(c) stipulates that four persons who are engaged in the teaching or practice of obstetrics and gynaecology or any relevant activity should be appointed to the Council and over the years, we have appointed various experts from the relevant fields to sit on the Council.

33. According to the operating experience in the past ten years or so, majority of Council business concern licensing, inspection and related matters. It would hence be inappropriate for licensees and related persons to be involved in Council discussions and deliberations on

grounds of conflict of interest. Notwithstanding this, the CHRT has from time to time co-opted other persons to serve on the committees established under the Council – namely, the Ethics, Inspection and Investigation Committees – to tap their expertise and experiences as necessary. In addition, expert advice is sought from local professional bodies, like the Hong Kong College of Obstetricians and Gynaecologists, on specific issues. To facilitate the Council performing its statutory duties, consideration will be given to soliciting the views and expertise of local RT practitioners, say, in the Ethics Committee, as well as engaging overseas RT experts on a need basis.

Food and Health Bureau

Department of Health

Department of Justice

May 2015

Examples of provisions that contains “purporting to”
載有“看來是”的條文的例子

| | Name of Ordinance 條例名稱 | English version of relevant provision 相關條文的英文版本 | Chinese version of relevant provision 相關條文的中文版本 |
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| 1 | Companies Ordinance (Cap. 622) 《公司條例》 (第 622 章) | <p><u>Section 894 – Report by appointed person</u></p> <p>(1) A person appointed to investigate a company’s affairs under section 892(1) must, on the conclusion of the investigation, report on the investigation in any manner as that company in general meeting may direct.</p> <p>(2) In any proceedings before a court— (a) a document purporting to be a copy of the report, and purporting to be signed by the appointed</p> | <p><u>第 894 條 - 獲委任的人提交的報告</u></p> <p>(1) 根據第892(1)條獲委任調查某公司的事務的人須在該調查完成後，按該公司在大會上所指示的方式，就該調查提交報告。</p> <p>(2) 於在法院進行的任何法律程序中— (a) 如某文件看來是上述報告的文本，並看來是經獲委任的人及該公司簽署，則該文件一經交</p> |

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| | | <p>person and the company, is admissible in evidence on its production without further proof; and</p> <p>(b) on being admitted in evidence under paragraph (a), the document is proof of any opinion of the appointed person expressed in the report.</p> | <p>出，即可接納為證據而無需再加證明；及</p> <p>(b) 該文件一經根據(a)段接納為證據，即為該獲委任的人在該報告內述明的意見的證據。</p> |
| 2 | <p>Money Lenders Ordinance (Cap.163)</p> <p>《放債人條例》(第 163 章)</p> | <p><u>Section 26 - Restriction on money-lending advertisements</u></p> <p>(1) A money lender shall not for the purpose of his business as a money lender issue or publish or cause to be issued or published any advertisement, circular, business letter or other similar document which does not show the name of the money lender as specified in his licence in such manner as to be not less conspicuous than any other name.</p> | <p><u>第 26 條 - 對放債廣告的限制</u></p> <p>(1) 任何廣告、通告、商業函件或其他同類文件，如非以展示任何其他姓名或名稱所用的同樣顯著方式展示牌照內指明的放債人的姓名或名稱，則放債人不得為其放債人業務而發出或刊登、或安排發出或刊登該廣告、通告、商業函件或其他同類文件。</p> |

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| | | <p>(2) Where any advertisement, circular, business letter or other similar document issued or published by or on behalf of a money lender purports to indicate the terms of interest on which he is willing to make loans or any particular loan, such advertisement, circular, business letter or other document shall show the interest proposed to be charged-</p> <p>(a) subject to section 24(1), as a rate per cent per annum; and</p> <p>(b) in such manner as to be not less conspicuous than any other matter mentioned therein.</p> | <p>(2) 由放債人或其代表發出或刊登的任何廣告、通告、商業函件或其他同類文件，凡看來是表明放債人願意作出任何貸款的利息條款或願意作出某宗貸款的利息條款，則該廣告、通告、商業函件或其他文件須按以下方式列明擬收取的利息—</p> <p>(a) 年息百分率，但須受第24(1)條的規限；及</p> <p>(b) 表明方式須與其內所述其他事項的表明方式同樣顯著。</p> |
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| 3 | <p>Places of Public Entertainment Ordinance (Cap. 172)</p> <p>《公眾娛樂場所條例》 (第 172 章)</p> | <p><u>Section 6 - Restrictions on the unauthorized sale of tickets</u></p> <p>(1) No person shall sell, or offer or exhibit or have in his possession for sale, or solicit the purchase of, any ticket or voucher authorizing or purporting to authorize admission to any place of public entertainment licensed under this Ordinance or any place with respect to which duty on payments for admission is payable under the Entertainments Tax Ordinance -</p> <p>(a) in any public thoroughfare, or in the entrance hall of, or approaches to, any such place as aforesaid, except at a box-office, booth, turnstile or counter appointed by the proprietor or manager of such place or by the organizer of the entertainment, exhibition, performance, amusement, game</p> | <p><u>第 6 條 - 對未獲授權而售賣門票的限制</u></p> <p>(1) 如門票或門券是授權或看來是授權進入根據本條例獲發牌的公眾娛樂場所，或進入根據《娛樂稅條例》* 須在入場費上繳付稅項的場所的，則任何人—</p> <p>(a) 不得於公眾通道或上述場所的入口大堂或引道售賣或要約出售該等門票或門券，或展示或管有該等門票或門券以供出售，或游說他人購買該等門票或門券，但於該場所的東主或管理人或該場所內所舉行的娛樂、展覽、表演、遊樂、遊戲或運動的籌辦人所指定的售票</p> |
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| | | <p>or sport held therein; or</p> <p>(b) at a price exceeding the amount fixed by such proprietor, manager or organizer to be charged therefor, inclusive of the duty, if any, payable.</p> | <p>處、攤位、入閘機或櫃位進行則除外；或</p> <p>(b) 不得以超過該東主、管理人或籌辦人就活動所定的款額(連須繳稅項(如有的話))的票價，售賣或要約出售該等門票或門券，或展示或管有該等門票或門券以供出售，或游說他人購買該等門票或門券。</p> |
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Annex B**Examples of provisions relating to advertising on the Internet**

| | Ordinance | Purpose | Relevant provisions stating the offence and penalty |
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| 1 | Accreditation of Academic and Vocational Qualifications Ordinance (Cap.592) | To provide for matters relating to accreditation of academic and vocational qualifications | <p><u>Section 18 - Advertisements relating to the Qualifications Framework and the Qualifications Register</u></p> <p>(1) No person shall publish or cause to be published an advertisement which claims, represents or holds out that a qualification obtainable from a granting body or from the completion of a learning programme is recognized under the Qualifications Framework unless—</p> <p>(a) all of the following information is contained in the advertisement—</p> <p>(i) the relevant level of the Qualifications Framework under which the qualification is recognized;</p> <p>(ii) the registration number assigned by the QR Authority for the entry of the qualification in the Qualifications Register;</p> |

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| | | | <p>(iii) the validity period of the entry; and</p> <p>(b) at the time of the publication of the advertisement, the information referred to in paragraph (a) and contained in the advertisement corresponds to the information contained in the entry referred to in paragraph (a)(ii).</p> <p>(2) No person shall publish or cause to be published an advertisement which claims, represents or holds out that a person, school, institution, organization or other body is an appointed assessment agency unless the person, school, institution, organization or body is an appointed assessment agency at the time of the publication of the advertisement.</p> <p>(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 5.</p> <p>(4) Where a person is charged with an offence under subsection (3), it shall be a defence for the person charged to prove—</p> <p>(a) that—</p> <p>(i) he carries on the business of publishing or arranging for the publication of advertisements;</p> <p>(ii) he received the advertisement for publication in the ordinary course of his business; and</p> <p>(iii) he published the advertisement in reliance on a statement made to him by the person who caused it to be published to the effect that the publication</p> |
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| | | | <p>would not constitute an offence under subsection (3) and it was reasonable for him to rely on the statement; or</p> <p>(b) that he took all reasonable steps and exercised all due diligence to prevent the commission of the offence.</p> <p>(5) For the purposes of this section, an advertisement may be constituted by any words, whether written or spoken, or any picture, drawing, visual image, figure or article—</p> <p>(a) appearing in any publication; or</p> <p>(b) brought to the notice of the general public or any section of the general public in any other way.</p> <p>(6) For the purposes of this section, “publish” (發表) includes broadcast or otherwise disseminate.</p> |
| 2 | Race Discrimination Ordinance (Cap. 602) | To render discrimination, harassment and vilification, on the ground of race, unlawful; to prohibit serious vilification of persons on that ground; to extend the jurisdiction of the Equal Opportunities Commission to include such unlawful acts; to confer on the | <p><u>Section 2 - Interpretation</u></p> <p>Advertisement (廣告) includes every form of advertisement, whether to the public or not, and whether—</p> <p>(a) in a newspaper or other publication;</p> <p>(b) by television or radio;</p> <p>(c) by display of notices, signs, labels, showcards or goods;</p> <p>(d) by distribution of samples, circulars, catalogues, price lists or other material;</p> <p>(e) by exhibition of pictures, models or films; or</p> |

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| | | <p>Commission the function of eliminating such discrimination, harassment and vilification and promoting equality and harmony between people of different races;</p> | <p>(f) in any other way;</p> <p><u>Section 42 - Discriminatory advertisements</u></p> <p>(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part 3 or 4.</p> <p>(2) Subsection (1) does not apply to an advertisement if the intended act would not in fact be unlawful.</p> <p>(3) For the purposes of subsection (1), use of a job description which is specific with reference to race is to be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.</p> <p>(4) The publisher of an advertisement made unlawful by subsection (1) is not subject to any liability under that subsection in respect of the publication of the advertisement if the publisher proves—</p> <p>(a) that the advertisement was published in reliance on a statement made to the publisher by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful; and</p> |
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| | | | <p>(b) that it was reasonable for the publisher to rely on the statement.</p> <p>(5) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (4)(a) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.</p> |
| 3 | Sex Discrimination Ordinance (Cap.480) | To render unlawful certain kinds of sex discrimination, discrimination on the ground of marital status or pregnancy, and sexual harassment; to provide for the establishment of a Commission with the functions of working towards the elimination of such discrimination and harassment and promoting equality of opportunity between men and women generally | <p><u>Section 2 - Interpretation</u></p> <p>Advertisement (廣告) includes every form of advertisement, whether to the public or not, and whether-</p> <ul style="list-style-type: none"> (a) in a newspaper or other publication; (b) by television or radio; (c) by display of notices, signs, labels, showcards or goods; (d) by distribution of samples, circulars, catalogues, price lists or other material; (e) by exhibition of pictures, models or films; or (f) in any other way, <p>and references to the publishing of advertisements shall be construed accordingly;</p> <p><u>Section 43 - Discriminatory advertisements</u></p> <p>(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be</p> |

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| | | | <p>understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part 3 or 4.</p> <p>(2) Subsection (1) shall not apply to an advertisement if the intended act would not in fact be unlawful.</p> <p>(3) For the purposes of subsection (1), use of a job description which is sex specific shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.</p> <p>(4) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves-</p> <p style="padding-left: 40px;">(a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful; and</p> <p style="padding-left: 40px;">(b) that it was reasonable for him to rely on the statement.</p> <p>(5) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (4) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.</p> |
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| 4 | Education Ordinance (Cap. 279) | To promote education in Hong Kong, and to consolidate and amend the law relating to the supervision and control of schools and the teaching therein, etc. | <p><u>Section 86A - Control of false advertising by unregistered schools</u></p> <p>(1) No person shall publish any advertisement that alleges that an institution, organization or establishment is registered or provisionally registered as a school under this Ordinance when it was not, at the time of publication, so registered or provisionally registered.</p> <p>(2) No person shall publish any advertisement with respect to a school that is registered or provisionally registered unless that advertisement includes the registration number assigned by the Permanent Secretary to the school.</p> <p>(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 6.</p> <p>(4) Where a person is charged with an offence under subsection (3) relating to an advertisement, it shall be a defence for such person to show that he carries on the business of publishing or arranging for the publication of advertisements, that he received the advertisement for publication in the ordinary course of business and that at the time he published the advertisement he believed upon reasonable grounds that the advertisement related to a school that was registered or</p> |

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| | | | <p>provisionally registered.</p> <p>(5) In this section "publish" (發布) includes issue, circulate, display, distribute or broadcast.</p> <p><u>Section 86B - Control of false advertising by registered or provisionally registered schools</u></p> <p>(1) No owner or manager of a school that is registered or provisionally registered shall publish or cause to be published any advertisement that-</p> <ul style="list-style-type: none"> (a) alleges that the school is operating in, or authorized to operate in, premises other than the premises specified in the certificate of registration or provisional registration of the school; or (b) contains any other information otherwise concerning the school which to his knowledge is false or misleading in a material particular. <p>(2) An owner or manager who contravenes subsection (1) commits an offence and is liable to a fine at level 6.</p> <p>(3) In this section "publish" (發布) includes issue, circulate, display, distribute or broadcast.</p> |
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Annex C**Regulation of Advertisement of Sex Selection through Human Reproductive Technology (RT) and
Relevant Penalty in other Jurisdictions**

| Jurisdictions | Is sex selection through RT regulated? | Is sex selection advertisement prohibited? | Penalty (for contravening provisions related to sex selection advertisement) |
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| 1. USA 2. Thailand | No | No | - |
| 3. UK 4. Australia (Victoria) 5. New Zealand | Sex selection is allowed for medical reasons only. | No | - |
| 6. Canada | Sex selection is allowed for medical reasons only. | Sex selection advertisement is prohibited under the Assisted Human Reproduction (AHR) Act. | For advertising of prohibited activities, - On conviction on indictment, a fine not exceeding CAD500,000 and/or imprisonment for a term not exceeding 10 years; - On summary conviction, a fine not exceeding CAD250,000 and/or |

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| | | | <p>imprisonment for a term not exceeding 4 years</p> <p><i>[Remarks: The penalty level is same as those for offences relating to surrogacy, commercial dealings in human embryos and gametes, and sex selection for non-medical reasons]</i></p> |
| 7. Mainland China | Sex selection is allowed for medical reasons only. | There is no legislation specifically governing sex selection advertisement but Measures for the Administration of Medical Advertisements (《醫療廣告管理辦法》) bans advertising of prohibited activities. | <p>For advertising of prohibited activities,</p> <ul style="list-style-type: none"> - A fine of no less than CNY10,000 but no more than CNY30,000 <p><i>[Remarks: The penalty level is same as those for violation relating to surrogacy, commercial dealings in human embryos and gametes, and sex selection for non-medical reasons, i.e. a fine not exceeding CNY30,000]</i></p> |
| 8. Singapore | Sex selection is allowed for medical reasons only. | There is no legislation specifically governing sex selection advertisement. Advertising of medical services is in general restricted under the Private Hospitals and Medical Clinics (PHMC) (Publicity) | <p>For contravening section 4 of the Medicines (Advertisement and Sale) Act, which prohibits advertisement of medical treatment services by non-registered practitioners,</p> <ul style="list-style-type: none"> - On a first conviction, a fine not exceeding SGD1,000 and/or |

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| | | Regulations and the Medicines (Advertisement and Sale) Act. | <p>imprisonment for a term not exceeding 1 year</p> <ul style="list-style-type: none"> - On a subsequent conviction, a fine not exceeding SGD2,000 and/or imprisonment for a term not exceeding 2 years <p>For contravening Regulation 4(1) of the PHMC (Publicity) Regulations, which sets out requirements of advertising or publicising the services of licensed healthcare institutions²,</p> <ul style="list-style-type: none"> - A fine not exceeding SGD2,000 |
| 9. Taiwan | Sex selection is allowed for medical reasons only. | There is no legislation specifically governing sex selection advertisement. Medical advertisement is in general restricted under Medical Care Act. | <p>For contravening article 84 of the Medical Care Act, which prohibits medical advertisement by non-medical care institutions,</p> <p>A fine of no less than NT\$50,000 but no more than NT\$250,000</p> <p>For contravening article 86(7) of the Medical Care Act, which prohibits e.g. advertising unethical medical services,</p> |

² It is required that, for example, (a) the information contained in the publicity must be factually accurate and capable of being substantiated, must not be exaggerated, false, misleading or deceptive; (b) the publicity must not be offensive, ostentatious or in bad taste such as to undermine the honour and dignity of the medical, dental or nursing profession; etc.

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| | | | <ul style="list-style-type: none">- A fine of no less than NT\$50,000 but no more than NT\$250,000; and- Suspension or revocation of the practice licence of the institution and revocation of the physician certificate of the supervising physician for one year, if the content contains false, exaggerated, or distorted facts, or is indecent; or the content promotes illegal abortion; or the concerned person has already been penalised three times within one year. |
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