

For information
on 5 June 2018

Legislative Council Panel on Security
Existing Legislation to Combat Trafficking in Persons

This paper briefs Members on the existing legislative framework to combat trafficking in persons (“TIP”).

Background

2. TIP is a heinous crime which is not tolerated in Hong Kong. The Government has always attached great importance to combating TIP, responding to this evolving international issue through targeted and multi-pronged measures (which are under continuous review and updating) in areas including victim identification, law enforcement, prosecution, victim protection, enhancement in staff training and partnership with local and overseas stakeholders. As the potential threats of trafficking posed by transnational organized crime syndicates continue to evolve, we have also continued to identify necessary new measures in response over the years.

Existing Legislative Framework

3. TIP cases involve crimes of different nature. Under our existing legislative framework, law enforcement agencies (“LEAs”) may resort to powers and rely on offences provided in different statutes in the course of their investigation, enforcement and prosecution, so that they can cover all nature of crimes involved, such as physical abuse, false imprisonment, criminal intimidation, unlawful custody of personal valuables, child abduction, child pornography and exploitation of children, illegal employment, etc. This flexibility equips LEAs with more tools and tactics to tackle TIP depending on the details of individual cases, rather than relying on a single piece of TIP legislation. Besides, our

existing legislative framework covers a wide range of conducts of TIP as defined in the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crimes”¹ (or more commonly referred to as the “Palermo Protocol”) even though the Protocol does not apply to Hong Kong. They are elaborated in the ensuing paragraphs.

Prostitution or other forms of sexual exploitation

4. Section 129(1) of the Crimes Ordinance (Cap. 200) provides that a person who takes part in bringing another person into, or taking another person out of, Hong Kong for the purpose of prostitution shall be guilty of an offence, liable on conviction on indictment to imprisonment for 10 years.

5. Section 130 of the Crimes Ordinance provides that harbouring another person or exercising control or direction over another person with the intention that that person shall do unlawful sexual acts with others; or harbouring another person or exercising control, direction, or influence over another person for the purpose of or with a view to that person’s prostitution shall be guilty of an offence, liable on conviction on indictment to imprisonment for 14 years.

6. Moreover, section 131 of the Crimes Ordinance provides for the following offences, each liable on conviction on indictment to imprisonment for 10 years –

(a) procuring another person to become a prostitute in Hong Kong or elsewhere;

(b) procuring another person to leave Hong Kong, intending that

¹ Article 3 of the Palermo Protocol defines TIP to involve the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, which shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

other person to become, elsewhere, an inmate of or frequent any premises, vessel or place kept as a vice establishment; or

- (c) procuring another person to leave her or his usual place of abode in Hong Kong, intending that other person to become an inmate of or frequent any premises, vessel or place kept as a vice establishment, in Hong Kong or elsewhere, for the purpose of prostitution.

7. There are also provisions under the Crimes Ordinance that provide extra-territorial effect against certain sexual offences committed against children outside Hong Kong, including related arrangements and advertisements, making them punishable in Hong Kong. For example –

- (a) Section 153P(1) provides that where a Hong Kong permanent resident or a person who ordinarily resides in Hong Kong, or a body corporate that is incorporated or registered in Hong Kong, or a body of persons (whether corporate or unincorporate) that has a place of business in Hong Kong commits any act outside Hong Kong, and the act would have constituted an offence under any of the provisions specified in Schedule 2 of the Crimes Ordinance had it been committed in Hong Kong (“Schedule 2 offence”), and the act is committed in relation to a child², then that person or body shall be guilty of that offence; and
- (b) Section 153P(2) provides that where any person or body of persons (whether corporate or unincorporate) commits any act outside Hong Kong that would have constituted a Schedule 2 offence had it been committed in Hong Kong, and the act is committed in relation to a Hong Kong permanent resident or a person who ordinarily resides in Hong Kong and who is a child, then that person shall be guilty of that offence.

8. In addition, under section 153Q of the Crimes Ordinance, it is an offence for any person who makes arrangements (whether wholly or partly in Hong Kong) for himself or another person to commit any act in

² “Child” refers to a person under the age of 16, or 13 in the case of an offence under sections 123 or 140 of the Crimes Ordinance.

relation to a person under the age of 16 that would constitute a Schedule 2 offence if it were committed in Hong Kong, liable on conviction on indictment to a fine of \$3 million and to imprisonment for 10 years.

9. A list of Schedule 2 offences is reproduced at Annex A. Apart from the above, multiple provisions of the Crimes Ordinance also prohibit other forms or acts of sexual exploitation. They are summarized at Annex B.

10. Separately, section 3 of the Prevention of Child Pornography Ordinance (Cap. 579) provides that any person who prints, makes, produces, reproduces, copies, imports, exports or publishes any child pornography commits an offence, liable on conviction on indictment to a fine of \$2 million and imprisonment for 8 years.

Removal of organs

11. Commercial dealings in human organs intended for transplanting are prohibited under the Human Organ Transplant Ordinance (Cap. 465) (“HOTO”). Section 4 of the HOTO provides that a person is guilty of an offence if, in Hong Kong, he makes or receives any payment for the supply of (or for an offer to supply), or seeks to find a person willing to supply for payment (or offer to supply for payment), or initiates or negotiates any arrangement involving the making of a payment for the supply of (or for an offer to supply) an organ which has been or is to be removed from a dead or living person, whether in Hong Kong or elsewhere, and is intended to be transplanted into another person, whether in Hong Kong or elsewhere, liable upon a first conviction to a fine at level 5 (\$50,000) and to imprisonment for 3 months, and upon a subsequent conviction to a fine at level 6 (\$100,000) and to imprisonment for 1 year. Causing a relevant advertisement to be published or distributed is also an offence under the same section liable to the same level of punishment.

Immigration offences

12. The Immigration Ordinance (Cap. 115) prohibits arranging or assisting the passage of an unauthorized entrant to Hong Kong. Section

37D of the Immigration Ordinance provides that such is an offence, liable to a fine of \$5 million and imprisonment for 14 years. Moreover, section 37DA of the Immigration Ordinance provides that assisting an unauthorized entrant to remain in Hong Kong is also an offence, liable to a fine of \$500,000 and imprisonment for 10 years.

13. It is also an offence to aid and abet a person to enter Hong Kong illegally (in contravention of section 38(1)(a) of the Ordinance) or a person who has entered illegally to remain in Hong Kong (in contravention of section 38(1)(b) of the Ordinance). The offence carries a maximum penalty of 3 years' imprisonment and a level 4 fine (\$25,000) on conviction on indictment. Besides, if a person lands from a ship in contravention of section 38(1)(a) of the Ordinance, the captain, the owner of the ship and his agent shall be guilty and liable on conviction on indictment, to a fine of \$600,000 and imprisonment for 7 years (in contravention of section 38(4) of the Ordinance).

14. Separately, the Immigration Ordinance makes it an offence to employ persons not lawfully employable, which is liable to a fine of \$350,000 and imprisonment for 3 years.

Labour offences

15. The Employment Ordinance (Cap. 57) imposes criminal liability on an employer who without reasonable excuse fails to grant any rest days or statutory holidays to his employees and such employer is liable to a fine at level 5 (HK\$50,000) upon conviction. Also, any employer who willfully and without reasonable excuse contravenes legal requirements on payment of wages (including non-payment, under-payment or delay in payment of wages) commits an offence and upon conviction is liable to a fine of \$350,000 and to imprisonment for 3 years.

16. Separately, following the enactment of the Employment (Amendment) Ordinance 2018 in February 2018, the maximum penalties for the offences of overcharging of commission from job-seekers (including foreign domestic helpers) and unlicensed operation by employment agencies ("EAs") were substantially increased from a fine of HK\$50,000 to a fine of HK\$350,000 and imprisonment for 3 years, and to extend criminal liability of the overcharging offence from only the licensee of EAs to the management and employees of the EAs with a view to raising the deterrent effect.

Other offences

17. Section 42 of the Offences Against the Person Ordinance (Cap. 212) provides that any person who, by force or fraud, takes away or detains against his or her will any person (of any gender or any age) with intent to sell him or her or to procure a ransom or benefit for his or her liberation, shall be guilty of an offence triable upon indictment, and shall be liable to imprisonment for life.

18. Other provisions under the Crimes Ordinance and other relevant ordinances prohibit other crimes oftentimes associated with TIP. Examples of these offences include –

- (a) Criminal intimidation;
- (b) Assaults with intent to cause certain acts to be done or committed;
- (c) Making or copying or using a false instrument or copy of a false instrument;
- (d) Various other offences against the person;
- (e) False imprisonment;
- (f) Theft;
- (g) Fraud;
- (h) Stealing child;
- (i) Conspiracy; etc.

Organised and serious crimes

19. Section 25 of the Organized and Serious Crimes Ordinance (Cap. 455) (“OSCO”) provides that it is an offence for a person to deal with any property, knowing or having reasonable grounds to believe that the property, in whole or in part, directly or indirectly, represents proceeds of an indictable offence (including a reference to conduct outside Hong Kong, which would constitute an indictable offence if it had occurred in Hong Kong). A person having committed an indictable offence may be liable to a money laundering offence by dealing in or with his own crime proceeds. The offence may be prosecuted summarily or by indictment. The former carries a maximum fine of \$500,000 and to imprisonment for 3 years and the latter a maximum fine of \$5 million and imprisonment for 14 years. The purpose of the wide definition is to deter persons from using Hong Kong to launder proceeds of crime.

20. Under the OSCO and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“UNATMO”), any person who knows or suspects that any property represents proceeds of an indictable offence, or is a terrorist property, must report his/her knowledge or suspicion to the authorities as soon as practicable. Failure to do so constitutes an offence punishable by \$50,000 and up to 3 months’ imprisonment.

21. Also, section 8 of the OSCO permits the Court of First Instance or the District Court to make a confiscation order in relation to a person’s proceeds of a specified offence exceeding \$100,000. Quite a number of TIP-related offences are offences “relevant to the definitions of organized crime and specified offences” under Schedule 1 of OSCO.

Conclusion

22. The existing legislative framework is comprehensive and facilitates effective enforcement actions against TIP-related crimes. This multiple-legislation approach provides our LEAs and prosecutors with sufficient power and flexibility to investigate and prosecute TIP cases. The Government will continue to keep a close monitor on the trend of TIP-related crimes to make timely responses to the rapidly changing state of criminal affairs as well as modus operandi of criminals, and to keep abreast of the enforcement of existing legislation with regard to the prevailing circumstances, to ensure that our regime continues to be effective in and capable of tackling TIP crimes.

Security Bureau
Labour and Welfare Bureau
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Annex A

Crimes Ordinance (Cap.200)

Schedule 2 - Sexual Offence Provisions with Extra-Territorial Effect

Section	Description of offences
118	Rape
118A	Non-consensual buggery
118B	Assault with intent to commit buggery
118C	Homosexual buggery with or by man under 16
118D	Buggery with girl under 21
118F	(Repealed 18 of 2014 s. 8)
118G	Procuring others to commit homosexual buggery
118H	Gross indecency with or by man under 16
118J	Gross indecency by man with man otherwise than in private
118K	Procuring gross indecency by man with man
119	Procurement by threats
120	Procurement by false pretences
121	Administering drugs to obtain or facilitate unlawful sexual act
122	Indecent assault
123	Intercourse with girl under 13
124	Intercourse with girl under 16
126	Abduction of unmarried girl under 16
130	Control over persons for purpose of unlawful sexual intercourse or prostitution
132	Procurement of girl under 21
134	Detention for intercourse or in vice establishment
135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16
140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse
141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act
146	Indecent conduct towards child under 16

Crimes Ordinance (Cap.200)

Provisions prohibiting various forms or acts of sexual exploitation

Section	Description of offences
118	Rape
119	Procurement by threats
120	Procurement by false pretences
121	Administering drugs to obtain or facilitate unlawful sexual act
122	Indecent assault
123	Intercourse with girl under 13
124	Intercourse with girl under 16
125	Intercourse with mentally incapacitated person
126	Abduction of unmarried girl under 16
127	Abduction of unmarried girl under 18 for sexual intercourse
128	Abduction of mentally incapacitated person from parent or guardian for sexual act
129	Trafficking in persons to or from Hong Kong
130	Control over persons for purpose of unlawful sexual intercourse or prostitution
131	Causing prostitution
132	Procurement of girl under 21
133	Procurement of mentally incapacitated person
134	Detention for intercourse or in vice establishment
135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16
136	Causing or encouraging prostitution of mentally incapacitated person
137	Living on earnings of prostitution of others
138A	Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances
139	Keeping a vice establishment
140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse
141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act

Section	Description of offences
142	Permitting mentally incapacitated person to resort to or be on premises or vessel for intercourse, prostitution or homosexual act
143	Letting premises for use as a vice establishment
144	Tenant etc. permitting premises or vessel to be kept as a vice establishment
145	Tenant etc. permitting premises or vessel to be used for prostitution