

Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong)

Child Protection Legislation

Legislation

a) Age of Consent

- i. Under Sec. 124 of the Crimes Ordinance (Cap. 200), a man who has unlawful sexual intercourse with a girl under the age of 16 is liable to imprisonment for 5 years.¹
- ii. Under Sec. 118C of the Crimes Ordinance (Cap. 200), a man who commits buggery with another man under the age of 21 is liable to imprisonment for life.²

b) Age of Criminal Responsibility

- i. Under Sec. 3 of the Juvenile Offenders Ordinance (Cap. 226), no child under the age of 10 years can be guilty of an offence.³

c) Age of Marriage

- i. Sec. 13 of the Marriage Ordinance (Cap. 181) states that “no certificate of the Registrar may be issued or special license may be granted if any proposed party to the intended marriage is under the age of 16 years.”⁴
- ii. Sec. 14 of the Marriage Ordinance (Cap. 181) requires production of written consent “if any proposed party to the intended marriage is (a) of over 16 and under 21 years of age as of the date of marriage; and (b) not a widower or widow.”⁵

There are 3 major ordinances in Hong Kong which target crimes related to child pornography:

Control of Obscene and Indecent Articles Ordinance, Cap. 390 (COIAO)⁶

- This ordinance addresses offenses such as publishing, possessing for the purpose of publication, or importing for the purpose of publication of any obscene or indecent articles. The penalty is up to three years imprisonment and a fine of up to HK\$1,000,000.
- The COIAO regulated the supply and distribution of both adult and child pornographic materials prior to the enactment of the PCPO.

Prevention of Child Pornography Ordinance, Cap. 579 (PCPO)⁷

- Enacted in 2003, the PCPO outlines all offenses, definitions, and penalties relating to child pornography.⁸

¹ Hong Kong Ordinances, *Crimes Ordinance*, Cap. 200, Section 124, at <http://www.hkii.hk/eng/hk/legis/ord/200/s124.html> (last visited Jun. 12, 2017)

² Hong Kong Ordinances, *Crimes Ordinance*, Cap. 200, Section 118C, at <http://www.hkii.hk/eng/hk/legis/ord/200/s118C.html> (last visited Jun. 12, 2017).

³ Hong Kong Ordinances, *Juvenile Offenders Ordinance*, Cap. 226, Section 3, at <http://www.hkii.hk/eng/hk/legis/ord/226/> (last visited Jun. 12, 2017).

⁴ Hong Kong Ordinances, *Marriage Ordinance*, Cap. 181, Section 13, at <http://www.hkii.hk/eng/hk/legis/ord/181/s13.html> (last visited Jun. 12, 2017).

⁵ Hong Kong Ordinances, *Marriage Ordinance*, Cap. 181, Section 14, at <http://www.hkii.hk/eng/hk/legis/ord/181/s14.html> (last visited Jun. 12, 2017).

⁶ Allen & Overy, *Coalition of Stakeholders Against Commercial Sexual Exploitation of Children on the Internet - Legal Framework and Obstacles in the Asia-Pacific Region* 43, at <https://www.icmec.org/apac-fcacp/> (last visited Jun. 12th, 2017) (on file with the International Centre for Missing & Exploited Children).

⁷ Hong Kong Ordinance, *Prevention of Child Pornography Ordinance*, Cap. 579, at <http://www.hkii.hk/eng/hk/legis/ord/579/> (last visited Jun. 12, 2017).

⁸ Global Resource and Information Directory, *Hong Kong, Legislation*, at <http://fosigrid.org/hong-kong> (last visited Jun. 12, 2017).

- Under Sec. 2 of the PCPO, “child pornography” means:
 - i. a photograph, film, computer-generated image or other visual depiction that is a pornographic depiction of a person who is or is depicted as being a child, whether it is made or generated by electronic or any other means, whether or not it is a depiction of a real person and whether or not it has been modified; or
 - ii. anything that incorporates a photograph, film, image, or depiction referred to in paragraph (i)
 - iii. “child” means a person under the age of 16; and pornographic depiction means:
 - a visual depiction that depicts a person as being engaged in explicit conduct, whether or not the person is in fact engaged in such conduct; or
 - a visual depiction that depicts in a sexual manner or context the genitals or anal region of a person or the breast of a female person.
- Computer-facilitated possession of child pornography is also criminalised by the PCPO. Offenders face the same penalties for computer-facilitated dealings in child pornography as they do for offline child pornography offenses.⁹

Crimes Ordinance, Cap. 200 (CO)¹⁰

- **Procurement of persons under 18 for pornography**
Section 138A of the CO prohibits use, procurement, or offers to persons under the age of 18 for making pornography or live pornographic performances in which the underage person is or is to be “depicted pornographically”. The maximum penalty on conviction in relation to persons under the age of 16 is HK\$3,000,000 and 10 years imprisonment, and HK\$1,000,000 and five years of persons aged 16 or above but under 18.¹¹

Section 138A(2) and (3) of the CO establish defences in certain cases where there is consent from the person depicted who is aged 16 or above but under 18, and the pornography or live pornographic performance is solely for the personal use of the defendant and the person depicted.¹²

This section, beyond providing a higher maximum penalty than the PCPO, also covers cases where the victim is aged 16 years or above but under 18 years. However sec. 138A only concerns the maker of the pornography or live pornographic performance, and does not extend to the other classes of persons covered under the PCPO, such as distributors and mere possessors.¹³

- **Indecency with children under 16**
 - Section 146 criminalises committing acts of gross indecency with children under the age of 16, or inciting the child to commit such an act. The maximum penalty is 10 years imprisonment. Neither consent, nor subjective belief that the child is over the age of 16, is a defence. However, there is a limited defence of marriage or belief on reasonable grounds of marriage.¹⁴

⁹ Allen & Overy, *supra* note 6 at 38.

¹⁰ *Id.* at 43.

¹¹ Hong Kong Ordinance, *Crimes Ordinance*, Cap. 200, Sec. 138A, at <http://www.hkllii.hk/eng/hk/legis/ord/200/s138A.html> (last visited Jun. 12, 2017).

¹² *Id.*

¹³ *Id.*

¹⁴ Hong Kong Ordinance, *Crimes Ordinance*, Cap. 200, Sec. 146, at <http://www.hkllii.hk/eng/hk/legis/ord/200/s146.html> (last visited Jun. 12, 2017).

▪ **The Code of Practice for Internet Computer services Centres Operators**

- The Code of Practice for Internet Computer Services Centres Operators was released in July 2003 by the Home Affairs Bureau, and updated in April 2009. It obliges those who operate Internet cafes and the like to use up-to-date devices to filter pornographic, violent or gambling content during the facility's business hours. In addition, operators must ensure that customers below the age of 18 are not permitted access to indecent material (as defined in COIAO). A breach of the Code is not a criminal offence.¹⁵

Below are some other relevant laws in the **Crime Ordinances, CAP 200**:¹⁶

- **Section 118, Rape.** The offense does not make specific mention of the act committed against a child or have increased penalties for such an offense. Penalties are not specified in this section.
- **Section 122, Indecent Assault.** This section states that a person under 16 is unable to consent to an act which would otherwise not be classed as an assault if consent were given. The crime carries a term of imprisonment of 10 years.
- **Section 123, Intercourse with a girl under thirteen.** States that the penalty for having unlawful sexual intercourse with a female child under the age of 13 upon conviction on indictment is life imprisonment.
- **Section 124, Intercourse with a girl under 16.** States that the penalty for having unlawful sexual intercourse with a female child under the age of 16 upon conviction on indictment is imprisonment for 5 years.
- **Section 126, Abduction of a girl under sixteen.** States that anyone who takes an unmarried girl under the age of 16 out of the possession of her parent or guardian against the will of the parent or guardian is liable for imprisonment for 10 years.
- **Section 127, Abduction of a minor for sexual intercourse.** States that anyone who takes an unmarried girl under the age of 18 out of the possession of her parent or guardian against the will of the parent or guardian with the intention that she shall have unlawful intercourse with men or with a particular man is liable for imprisonment for 7 years.
- **Section 132, Procurement of a girl under 21.** States that anyone who procures a girl under the age of 21 to have unlawful sexual intercourse with a 3rd party (in HKSAR or anywhere else) is liable for imprisonment for 5 years.
- **Section 135, Encouragement of prostitution/assault of a child.** States that anyone who is responsible for a child and causes or encourages the prostitution of or an unlawful sexual act (with a girl or boy under the age of 16 is liable for imprisonment for 10 years.
- **Section 140, Regarding Child Prostitution.** States that any owner, occupier, manager, etc. of any premises/vessel who induces or knowingly suffers a girl or boy under the age of 13 to resort to or be such premises or vessel for prostitution is liable for imprisonment for life.
- **Section 161, Computer Crimes.** States that anyone who obtains access to a computer: (a) with intent to commit an offence; (b) with a dishonest intent to deceive; (c) with a view to dishonest gain for himself or another; or (d) with a dishonest intent to cause loss to another, whether on the same occasion as he obtains such access or on any future occasion is liable for imprisonment for 5 years.

¹⁵ Allen & Overy, *supra* note 6 at 44.

¹⁶ Jasmine Siu, *Hong Kong Commission Recommends New Sexual Offences to Offer Greater Protection to Child and Mentally Impaired Victims*, SOUTH CHINA MORNING POST, at <http://www.scmp.com/news/hong-kong/law-crime/article/2042093/hong-kong-commission-recommends-new-sexual-offences-offer> (last visited Jun. 12, 2017) (on file with the International Centre for Missing & Exploited Children).

Extraterritoriality provisions

Extraterritorial Effect of Sexual Offense Provisions, Crimes Ordinance, CAP 200, Sec. 153P

Under §153P, a person who commits any act outside of Hong Kong against a child that would have amounted to an offense specified in Schedule 2 of the Crimes Ordinances had it been committed in Hong Kong, commits an offense if he or she is either (a) a permanent resident of the HKSAR or ordinarily resides in the HKSAR; or (b) the victim is a permanent resident or ordinarily resides in HKSAR. Schedule 2 offences range from sexual intercourse with girls under 13 and under 16, causing or encouraging prostitution of, intercourse with, or indecent assault on a girl or boy under the age of 16, and administering drugs to obtain or facilitate an unlawful sexual act.¹⁷

Dual Criminality requirements

Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525, Sec. 5(g).

Under §5(g) of Cap. 525, a request for legal assistance outside Hong Kong under this Ordinance shall be refused if, in the opinion of the Secretary for Justice, the request relates to an act or omission that, if it had occurred in Hong Kong, would not have constituted a Hong Kong Offence.¹⁸

¹⁷ Hong Kong Ordinance, *Crimes Ordinance*, Cap. 200, Section 153P, at <http://www.hkii.hk/eng/hk/legis/ord/200/s153P.html> (last visited Jun. 12, 2017).

¹⁸ Hong Kong Ordinance, Cap. 525, Section 5(g), at <http://www.hkii.hk/eng/hk/legis/ord/525/s5.html> (last visited Jun. 12, 2017).