



# LAWS AND REGULATIONS

## PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.*

### HONG KONG

Communicated by the Government of the United Kingdom  
of Great Britain and Northern Ireland

#### NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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DANGEROUS DRUGS (AMENDMENT)

HONG KONG

No. 40 of 1982

I assent,

Edward YOUDE  
Governor

17 June, 1982

An Ordinance to amend the Dangerous Drugs Ordinance. 1/

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

Short title

1. This Ordinance may be cited as the Dangerous Drugs (Amendment) Ordinance 1982.

Amendment  
of section 2  
(Cap. 134.)

2. Section 2 of the principal Ordinance is amended:

(a) in subsection (1), by deleting the definition of "manufacture" and substituting the following:

"manufacture" means any act connected with making, adulterating, purifying, mixing, separating or otherwise treating a dangerous drug; and

(b) by inserting after subsection (2) the following subsection:

"(3) Any quantity of a dangerous drug shall be a dangerous drug for the purposes of this Ordinance notwithstanding that the quantity is insufficient to be measured or used."

Amendment of  
section 52

3. Section 52 of the principal Ordinance is amended:

(a) by inserting after subsection (1) the following:

"(1A) For the purposes of enabling a person to be searched under subsection (1)(f)(i), a police officer of or above the rank of inspector of a member of the Customs and Excise Service of or above the rank of inspector may request a registered medical practitioner or nurse registered or enrolled or deemed to be registered or enrolled under the Nurses Registration Ordinance, to examine the body cavities of that person.

(Cap. 164.)

(1B) A medical practitioner or nurse requested to examine the body cavities of a person under subsection (1A) may search the rectum, vagina, ears and any other body cavity of that person.

(1C) A medical practitioner or nurse carrying out an examination of a person at the request, under subsection (1A), of a police officer or member of the Customs and Excise Service who appears to be lawfully engaged in the performance of his duty shall not be bound to enquire whether or not the police officer or member is acting lawfully or within the scope of his duty.

(1D) A police officer or member of the Customs and Excise Service may detain a person in respect of whom a request is to be or has been made to a medical practitioner or nurse under subsection (1A) for such time as may reasonably be necessary to

permit a medical practitioner or nurse to complete an examination of the body cavities of that person under this section."; and

(b) by deleting subsection (9) and substituting the following:

"(9) (a)(i) An examination of the body cavities of a person under this section shall, unless that person otherwise consents, be carried out by a medical practitioner or nurse of the same sex as that person.

(ii) Where a female has consented, under sub-paragraph (i), to an examination of her body cavities by a medical practitioner or nurse of the opposite sex, such examination shall be in the presence of another female.

(b) Subject to paragraph (a), no female shall be searched under this section except by a female.

(c) No person shall be searched under this section in a public place if he objects to being so searched."

Passed by the Hong Kong Legislative Council this 16th day of June 1982.

Jennie CHOK  
Clerk to the Legislative Council

E/NL.1982/45

#### DANGEROUS DRUGS (AMENDMENT)

HONG KONG

No. 48 of 1982

I assent,

Edward YAUDE  
Governor

15 July 1982

An Ordinance to amend the Dangerous Drugs Ordinance. 1/

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof

1. This Ordinance may be cited as the Dangerous Drugs (Amendment) (No. 2) Ordinance 1982 and shall come into operation on a day to be appointed by the Governor by notice in the Gazette.

Short title and  
commencement

2. The principal Ordinance is amended by adding, after Part V, the following new Part

Addition of  
new Part VA.  
(Cap. 134.)

#### "PART VA

#### SEIZURE, DETENTION AND FORFEITURE OF SHIPS

38A. In this Part

Interpretation

"excessive quantity" means a quantity of a dangerous drug specified in the second column of the Fifth Schedule, including the quantity of any other substance contained with the dangerous drug in a preparation, mixture, extract or other material, being not less than the quantity specified in the third column of the Fifth Schedule;

Fifth Schedule

(Cap. 84.)

"master" in relation to a ship means the person (except a pilot within the meaning of the Pilotage Ordinance) having for the time being command or charge of the ship; and

"owner" in relation to a ship means:

- (a) the person registered or licensed as the owner of the ship or, in the absence of registration or licensing, the person owning the ship; and
- (b) a demise charterer of the ship.

Commissioner of the Customs and Excise Service may seize and detain ship.

38B. Where the Commissioner of the Customs and Excise Service has reasonable cause to suspect:

- (a) that an excessive quantity of dangerous drugs has been found on a ship exceeding 250 gross tons; and
- (b) that an excessive quantity of dangerous drugs was found on that ship within 18 months prior to the finding specified in paragraph (a),

he may, with the written consent of the Attorney General, seize and detain the ship for 48 hours.

Magistrate may order arrest and detention of ship.

38C. (1) Whenever, on an application made by the Commissioner of the Customs and Excise Service with the written consent of the Attorney General, it appears to a magistrate that there is reasonable cause to suspect:

- (a) that an excessive quantity of dangerous drugs has been found on a ship exceeding 250 gross tons; and
- (b) that an excessive quantity of dangerous drugs was found on that ship within 18 months prior to the finding specified in paragraph (a),

he shall order:

- (i) in a case where the ship has already been seized and detained under section 38B, that it continue to be detained; and
  - (ii) in any other case, that it be arrested and detained.
- (2) Where an order for detention or arrest and detention is made by a magistrate under subsection (1), he shall further order that the proceedings be transferred to the High Court.

Registrar to order summons to be served on ship.

38D. (1) On proceedings being transferred to the High Court under section 38C(2), the Registrar of the Supreme Court shall order that a summons be served on the ship containing details of the time and place at which the High Court will hear an application by the Commissioner of the Customs and Excise Service for an order for the payment of a financial penalty under section 38F.

(2) A summons ordered to be served under subsection (1) shall be served on the ship by affixing it to the mast or other prominent part of the ship.

Rail.

38E. (1) At any time after an order has been made under section 38C(1) for the detention or arrest and detention of a ship and before the application of the Commissioner of the Customs and Excise Service is determined under section 38F(1), a judge may, on application made by the owner or master and served on the Attorney General and on being satisfied that the requirements of subsections (2) and (3) have been complied with, admit the ship to bail and order its release.

(2) Bail on behalf of a ship under subsection (1) shall be in an amount not less than \$5,000,000 and may be:

- (a) a sum of money deposited with the High Court; or
- (b) subject to subsection (3), a bond.

- (3) Where bail on behalf of a ship is a bond, the bond shall be:
- (a) in such form as the High Court may determine;
  - (b) entered into by a surety or sureties acceptable to the Attorney General; and
  - (c) supported by an affidavit by each surety stating that he is able to pay the sum for which the bond is given.

38F. (1) Where, on an application being made by the Commissioner of the Customs and Excise Service and where a summons has been served under section 38D(2), the High Court is satisfied beyond reasonable doubt:

- (a) that an excessive quantity of dangerous drugs has been found on a ship exceeding 250 gross tons; and
- (b) that an excessive quantity of dangerous drugs was found on that ship within 18 months prior to the finding specified in paragraph (a),

it may order the owner to pay a financial penalty not exceeding \$5,000,000.

(2) Where a ship has been admitted to bail under section 38E, the High Court may order that any financial penalty imposed under subsection (1) be recovered by estreatment of the bail or such part thereof as may be necessary and the payment thereof to the Crown.

(3) Where a ship has not been admitted to bail under section 38E, the High Court may order that the ship continue to be detained until any financial penalty imposed under subsection (1) is paid or arrangements satisfactory to the High Court are made for the payment thereof.

(4) Where a ship has not been admitted to bail under section 38E and any financial penalty imposed under subsection (1) has not been paid and no satisfactory arrangements for the payment thereof have been made, the High Court may order that the ship be forfeited to the Crown.

(5) The High Court may impose a financial penalty under subsection (1) whether or not:

- (a) the first of the occasions was before the coming into operation of this Part; or
- (b) any person is convicted of an offence in respect of the excessive quantity of a dangerous drug; or
- (c) the master or owner knew of the carriage.

6. The High Court shall not impose a financial penalty under subsection (1) where it is proved, in respect of the second of the occasions, that the master and the owner for the time being had each taken all reasonable and practicable steps to prevent the ship from being used to carry a dangerous drug.

38G. A certificate purporting to be signed by the Commissioner of the Customs and Excise Service and certifying:

- (a) the finding of a dangerous drug on any ship;
- (b) the date of the finding;
- (c) the amount and type of the drug;
- (d) the name or other details of identification of the ship; or
- (e) any of the above,

Imposition of penalties in respect of ships carrying excessive quantities of drugs and consequential proceedings.

Certificate as to finding of dangerous drugs etc.

shall be admissible in evidence in any proceedings under this Part before any court on its production without further proof and, until the contrary is proved, the court shall presume:

- (i) that the document is signed by the Commissioner of the Customs and Excise Service; and
- (ii) that the facts certified therein are true.

Right of appeal.

38H. (1) Where an order has been made under section 38F, the owner of the ship in respect of which the order was made may appeal to the Court of Appeal within 21 days of the making of the order.

(2) The appeal may be:

- (a) on any ground which involves a question of law alone; and
- (b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal,

but if the judge who made the order under section 38F grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

Grounds for allowing appeal.

38I. The Court of Appeal shall allow an appeal against an order made under section 38F if it thinks that the order should be set aside on the ground of a wrong decision on any question of law or of fact or of mixed law and fact:

L.N.345/82

Provided that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

Procedure on appeal.

38J. Subject to sections 38H and 38I, the procedure on an appeal shall with all necessary modifications be that applicable to an appeal against conviction for an offence on indictment under section 82 of the Criminal Procedure Ordinance, and an appeal against sentence under section 83G of the Criminal Procedure Ordinance.

(Cap. 221.)

Amendment of Fifth Schedule.

38K. (1) The Governor in Council may by order amend the Fifth Schedule;

(2) Any question as to what constitutes an excessive quantity of dangerous drugs shall be determined by reference to the quantity specified in the Fifth Schedule at the time of the finding and, in the case of a finding before the date on which this Part came into operation, to the quantity so specified on that date."

Addition of new Schedule.

3. The principal Ordinance is amended by inserting, after the Fourth Schedule, the following new Schedule:

"FIFTH SCHEDULE

[s. 38A.]

First  
Column

Second Column

Third Column

Dangerous Drug

Excessive Quantity

- |    |   |           |
|----|---|-----------|
| 1. | Any dangerous drug other than Opium or or Cannabis. | 500 g     |
| 2. | Opium.  | 3 000 g   |
| 3. | Cannabis.   | 3 000 g". |

Passed by the Hong Kong Legislative Council this 14th day of July 1982.

Jennie CHOK,  
Clerk to the Legislative Council.