

Sex work legislation searcher 2018

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Hong Kong

Sex work related legislation

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Definition of Sex Work

Sex work is generally viewed and interpreted as the exchange of sexual services, which include masturbation, oral sex, vaginal sex and anal sex etc., between the sex worker and her client, for money or other remunerations.

In Hong Kong, sex industry mainly covers street-based sex workers, “one sex worker apartment”, massage parlour/foot spa, karaoke/night club/bar and those independent freelance (e.g. compensated dating) sex workers who provide sexual services etc.

The sex industry has changed and developed with time. Do not ever assume that as an independent sex worker or your work is not directly involved in the exchange of sexual services you then would not be caught by the law.

Now let us briefly explain the relevant sex work laws in Hong Kong!

Sex workers in different establishments are equally prone to committing some offences. Some of the prevalent offences are highlighted below. However, beware that the list of offences is not exhaustive.

| | Independent Freelance/ Compensated Dating Sex Worker | One sex worker apartment | Street-based Sex Worker | Night Club/ Karaoke | Massage Parlour | Sauna/ Foot Spa | Bar | Land- lord |
|--|--|--------------------------------|----------------------------|---------------------------|--------------------|-----------------------|-----|---------------|
| Cap. 200 S.147 Soliciting for an immoral purpose | ✓ | | ✓ | | | | | |
| Cap. 200 S.137 Living on earnings of prostitution of others | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Cap. 200 S.139 Keeping a vice establish- ment | | ✓ (3-p) | | ✓ | ✓ | ✓ | ✓ | |

| | Independent Freelance/ Compensated Dating Sex Worker | One sex worker apartment | Street-based Sex Worker | Night Club/ Karaoke | Massage Parlour | Sauna/ Foot Spa | Bar | Land- lord |
|---|--|---|----------------------------|---------------------------|--------------------|-----------------------|-----|---------------|
| Cap. 200 S.143 Letting premises for use as a vice establish- ment | | | | | | | | ✓ |
| Cap. 200 S.145 Tenant etc. permitting premises or vessel to be used for prostitution | | ✓ | | | ✓ | ✓ | | |
| Cap.266 S.4 Prohibition on operating etc. massage establish- ment without a licence | | ✓ (if providing massage service) | | | ✓ | ✓ | | |
| Cap. 200 S.147A Prohibition of signs advertising prostitution | | ✓ | | | ✓ | | | |

Under Cap 115, S.41, holder of tourist visa taking up employment in Hong Kong or holder of work visa taking up unauthorised employment is in breach of conditions of stay.

**Cap. 200 Crimes Ordinance –
Section 147 Soliciting for an immoral purpose**

- (1) A person who in a public place or in view of the public —**
(a) Solicits for any immoral purpose; or
(b) Loiters for the purpose of soliciting for any immoral purpose;

Shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

Current Situation of Street-based Sex Workers

Street-based sex workers are those who solicit business on the streets. In order to protect their work rights and avoid unnecessary disputes, sex worker always names the price and scope of services with her client beforehand. At the same time, a client may have committed an offence if he takes the initiative to offer a price and request for services in the first place.

Because of this particular piece of legislation, street-based sex worker should only name her fees for services when she is physically inside the premises with her client. However, disputes arise over fees and services at this point of time may result in unhappy deals.

It is understood that passers-by may be exposed to unnecessary nuisance. Therefore, we would remind street-based sex workers to maintain good relationships with people in their neighbourhood and to reduce disturbance to others.

Case 1) Street-based Sex Worker

Ah Han was waiting for the right client on the street. A client approached and winked at her. Ah Han just said “\$200, deal?” The client went with Ah Han to her apartment. When Ah Han was about to take off the clothes of her client, he identified himself as a police decoy. Ah Han was arrested and charged for soliciting with an immoral purpose.

Ah Han was not a first offender and was sentenced to three months imprisonment.

Decoy police is not easily identifiable. In order to avoid being lured into a trap by decoy police, it is advisable to refuse any clients who look suspicious.

Case 2) Compensated Dating/Freelancer/Part Time Girl Friend

Maggie works as a “Part-time Girl Friend”, who uses social media to reach out to her clients. On the day, a client messaged her for sex in a hotel in Kwun Tong. They arranged to meet first outside a nearby fast-food shop, which is close to the hotel.

Maggie arrived on time and identified her client by his outfits which were communicated to her beforehand. Maggie confirmed , “ \$1,800.”

She was then arrested immediately by the police who was waiting in ambush. She was charged with soliciting with an immoral purpose.

Please be reminded that to avoid committing an offence, you must not raise any issue regarding the provision of sex services in public.

Cap. 200 Crimes Ordinance–

Section 137 Living on earnings of prostitution of others

- 1) A person who knowingly lives wholly or in part on the earnings of prostitution of another shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 10 years.

Some sex workers, instead of getting their businesses on the streets, rely on intermediaries for their business. The intermediary might have committed the offence of living wholly or in part on the earnings of prostitution if he/she obtains benefits from the introduction.



Cap. 200 Crimes Ordinance—

Section.139 Keeping a vice establishment

(1) A person who on any occasion –

- a) keeps any premises, vessel or place as a vice establishment; or**
 - b) manages or assists in the management, or is otherwise in charge or control, of any premises, vessel or place kept as a vice establishment,**
- shall be guilty of an offence and shall be liable –**
- (i) on summary conviction to imprisonment for 3 years; or**
 - (ii) on conviction on indictment to imprisonment for 10 years.**

When a particular premises is reasonably suspected as a vice establishment, the police will determine if it is “kept”, “managed” or “assisted to manage” and make arrests accordingly. Although the charge is “Keeping a Vice Establishment”, a person “manages” or “assists to manage” a vice establishment is also likely to be prosecuted.

Case 1) Foot Spa

Mong Mong works in a foot spa. One day, two customers came and asked Mong Mong to recommend two ladies. Mong Mong then called Heung Heung and Fun Fun to provide foot massage and hand job.

After the services, the two customers identified themselves as police decoys. Mong Mong was charged with the offence of “Keeping a vice establishment” as she had called the two ladies to provide the services.

We believe Mong Mong was just trying to help her fellow workers to make money, but it is clearly a breach of the law irrespective of her intention.

Case 2) Karaoke

Siu Ling works as a pimp in a karaoke and is responsible for arranging girls for clients.

That day Siu Ling was working as usual. Inside the karaoke, girls were serving clients, singing and drinking as usual, giving hand job as well. Just before a girl started a hand job, a client identified himself as police decoy and immediately charged Siu Ling with the offence of “Keeping a vice establishment” and she was imprisoned for six months.

Cap. 200 Crimes Ordinance – Section 145 Tenant etc. permitting premises or vessel to be used for prostitution

The current legislation does not seem to affect the “one sex worker apartment”. However, there are many related legislations which limit activities in “one sex worker apartment”. Occupants have to beware of those legislations.

If a landlord is found to have let his premises to be used as “one sex worker apartment”, he may have committed an offence of “Tenant etc. permitting premises or vessel”. Claiming no knowledge of the usage of the premises is not a valid defense. There have been cases that sex workers found themselves in awful and hopeless situations when they were asked to vacate the premises immediately after their landlords found out that they were operating “one sex worker apartment” in the premises.

Some foot spas provide hand job services, which is legally classified as one of the sexual services. It is therefore an offence if a sex worker provides hand job in foot spas in exchange of money.

Vice establishment is defined as

- (a) the premises, vessel or place are or is used wholly or mainly by 2 or more persons for the purposes of prostitution; or
- (b) the premises, vessel or place are or is used wholly or mainly for or in connection with the organising or arranging of prostitution.



Cap 266 Massage Establishments Ordinance

Section 4 Prohibition on operating etc. massage establishment without a licence

(1) Any person who on any occasion operates, keeps, manages, assists in any capacity in the operation of, or assist in the management of , a massage establishment for the operation of which a licence is not in force commits an offence.

(2) For the avoidance of doubt is hereby declared that it shall not be a defence that a person charged with an offence under subsection (1) did not know that the operation of the massage establishment which is the subject of the offence was not licensed.

Any person who commits an offence under subsection(1)shall subject to subsection (4)be liable-

- a) On first conviction to a fine of \$50000 and to imprisonment for 6 months;**
- b) On a second or subsequent conviction to a fine of \$100000 and to imprisonment for 2 years.**

Under this piece of legislation, only massage for the upper part of the body from the shoulder upwards or the foot (up to knee) can be provided in establishment without a licence. No full body massage can be provided to a customer of the opposite sex.

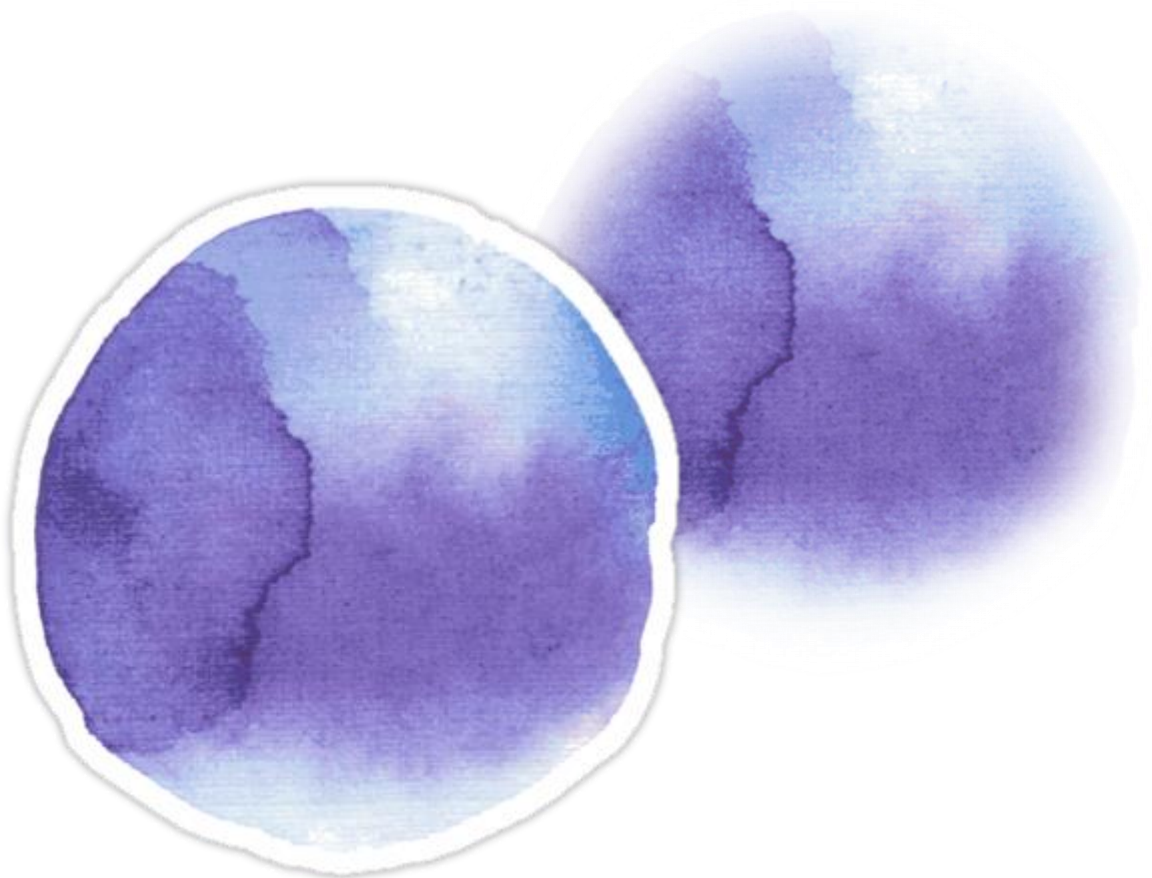
Police decoy would normally request a therapist to provide full body service, and when she starts to massage on the back or arm, she could be charged with assisting in the operation of an unlicensed establishment.

Case:

Ah Mui is working in a foot spa parlour. One day, a customer came and Ah Mui greeted him. However, Ah Mui was not the customer's type of lady so he asked for another therapist. Ah Mui asked her colleague, Ah Fong, to take up the job. Ah Fong then started to massage the customer's back after he took off his clothes. The customer immediately identified himself as a police decoy.

Because Ah Fong touched the police decoy's back, she was charged with assisting in the operation of an unlicensed establishment and Ah Mui was charged with managing an unlicensed establishment.

This type of offence normally takes place in foot spa or massage parlour. Service providers/therapists are reminded to protect themselves by taking note of the type of licence of the establishment before starting working there. This helps avoiding harsh penalties such as heavy fines and a criminal record.



Cap. 200 (Crime Ordinance)

Section 147A Prohibitions of signs advertising prostitution

- (1) Any person who publicly displays, or causes or permits the public display of, a sign that advertises, or may reasonably be understood to advertise, the services of a prostitute or of a person who organises or arranges prostitution shall be guilty of an offence and shall be liable on conviction to imprisonment for 12 months. (Amended 31 of 1997 s. 17)**
- (2) Where a sign displayed in contravention of subsection (1) advertises, or may reasonably be understood to advertise, that the services of a prostitute or of a person who organises or arranges prostitution are available at a place, any person who keeps, or manages or is otherwise in charge or control of, that place shall, until the contrary is proved, be presumed to have caused the display of the sign.**
- (3) For the purposes of this section-**
- (a) a sign is publicly displayed if, and only if, it can be seen from-**
 - (i) any place to which for the time being the public or a section of the public are entitled or permitted to have access, whether on payment or otherwise, or**
 - (ii) a common part of any premises notwithstanding that the public or a section of the public are not entitled or permitted to have access to that common part or those premises; and**
 - (b) in deciding how a sign may reasonably be understood regard may be had to-**
 - (i) all aspects of the sign, including its size, colour, shape and design;**
 - (ii) the location of the sign;**
 - (iii) the user of any place that the sign advertises; and**
 - (iv) the services offered by any person whose services the sign advertises, and to any other relevant circumstances.**

Under this legislation, sex workers display any signs, especially on charges and services offered, in public including the front door of a unit, may risk committing an offence.

Cap 115 Immigration Ordinance

Section 41 Breach of Condition of Stay

Under Cap 115A Immigration Regulations Section 2(1)

- (1) Permission given to a person to land in Hong Kong as a visitor shall be subject to the following conditions of stay-**
- (a) he shall not take any employment, whether paid or unpaid;**
 - (b) he shall not establish or join in any business; and**
 - (c) he shall not become a student at a school, university or other educational institution.**

Any person who obtained an employment visa for Hong Kong could only take up the employment or join in the business approved by the Immigration.

Holders of visitor or double entry visa are not allowed to take up any employment, including unpaid work. Any persons violated their conditions of stay will, upon arrest, be liable to immediate repatriation or imprisonment; a maximum fine of HK\$50,000 and imprisonment for two years.

The Police and Immigration officers regularly conduct joint decoy operations in different establishments, arresting illegal sex workers. Sex workers are reminded that criminal records are permanent and would not be deleted after periods of absence from Hong Kong. Criminal records can have massive implication on employment and immigration so sex workers are advised to stay away from crime.

Case:

Rosa was a full time domestic helper from the Philippines. She was eager to make more money on her rest days. So, she solicited sex business on the street on Sundays and holidays.

Finally Rosa was arrested by police decoy and was charged with breach of condition of stay and soliciting for an immoral purpose.

Your rights and obligations after arrest :

- A police officer can, depending on the surrounding circumstances such as you resisted physically or he/she feels that he/she has to take precautions to protect himself/herself, handcuff you first before informing you the reason for the arrest.
- You have a right NOT to answer questions or to sign on cautioned statements.
- The police is required to provide you with a “Notice to Persons in Police Custody or involved in Police Enquiries”. You should read the document carefully and understand your own rights before proceeding any further. The document explains your rights and obligations which include:

TO PERSONS IN POLICE CUSTODY OR INVOLVED IN POLICE ENQUIRIES

You are entitled to the following rights.

1. Seeking legal assistance
 - To make private telephone calls to, or communicate in writing or in person with a lawyer.
 - To have a lawyer present during any interview with the Police.
 - To communicate privately or refuse to communicate with a lawyer claiming to have been instructed by a third person on your behalf.
 - To be provided with a list of solicitors published by the Law Society of Hong Kong.
2. Telling someone that you are at a police station
 - To require the police to try to inform a relative or friend that you are at a police station, and to be informed of the result.
3. Communicating with a relative or friend.
 - To be given reasonable opportunities to communicate with a relative or friend by telephone.
 - To receive visits from a relative or friend. If for an arrested person and detained person, the permission of the Duty Officer for such visits is required.
 - To be supplied with writing materials and to have your letter posted as soon as practicable at your own expense.

- 4. Receiving copies of written record under caution.**
 - To be supplied with a copy of your written record under caution as soon as practicable after the interview.
 - To refuse to answer subsequent questions until a copy of the written record under caution has been provided to you.
- 5. Communication with consulate if you are a foreign national.**
 - To receive visits from or to communicate in private with
 - (i) representatives from the consulate or the relevant authority of your home country or
 - (ii) a lawyer whom such representatives arrange for you.
- 6. Notification to consulate if you are a foreign national.**
 - To require the police to notify the consulate of your home country in Hong Kong of your arrest or detention.
 - To require the police to notify the relevant authority of your home country of your arrest or detention, if there is no consular representation in Hong Kong.
- 7. Provision of food and drink**
 - To be provided with drinking water upon request while in police custody.
 - To be offered three meals a day with drinks.
 - Due to a special reason,
e.g. religious need or outside the canteen operating hours, etc. food from an outlet or delivered by your relative or friend may be arranged on your behalf subject to the permission of the Duty Officer or an inspector and the inspection of such food.
- 8. Seeking medical attention**
 - To be given medical attention if you feel unwell.
- 9. Requesting for release or admittance to bail (applies to persons detained in police custody only)**
 - To request to be released or to be admitted to bail. (If you are remanded by order of a magistrate, the decision of release or granting bail will be made by the magistrate.)
 - To keep your pants on while your upper body is bare or your shirt on while your pants or skirt are off.

Source:

https://www.police.gov.hk/mip/doc/pol_153e.pdf

<http://www.police.gov.hk/info/doc/pgo/em/Epg0049.pdf>

Decriminalise sex work

Under the existing legislation, legitimate work environment for sex workers is fairly limited. For years, we have worked hard in pursuit of decriminalising sex work, studying the feasibility of “sex workers sharing one apartment”, and amending the existing laws affecting sex workers’ work environment, for better protection of sex workers from gangs.

We hope we can continue working together, with the goal to decriminalise sex work.

AFRO 24 hours Emergency Hotline 2770 1002



9669 8108



AFRO27701002



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