

A BRIEF GUIDE TO THE CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE (COIAO)

(For Retailers' Reference)

**OFFICE FOR FILM, NEWSPAPER
AND ARTICLE ADMINISTRATION**

Brief Introduction to the COIAO

COIAO regulates the publication or display of articles with obscene or indecent content including material which is violent, depraved or repulsive.



- COIAO covers a wide range of articles including newspapers, magazines, comic books, video tapes, video compact discs, digital video discs, tapes, electronically transmitted pictures and images.
- There is no statutory requirement for articles to be submitted for classification before publication. However, publishers or producers may take the initiative to submit their articles to the Obscene Articles Tribunal (OAT) for classification before publication. The OAT is a judicial body which consists of a magistrate and members of the public from different walks of life.
- In classifying articles, the OAT will take into account the standards of morality, decency and propriety that are generally accepted by reasonable members of the community, the dominant effect of an article as a whole, the target audience and if an article has an honest purpose. Articles can be classified into one of the following categories:

Class I (Neither Obscene Nor Indecent)

The article can be published to any person.

Class II (Indecent)

The article cannot be published to persons under the age of 18. It should be sealed in a transparent or opaque wrapper as the case maybe. At least 20% of the front and back covers should contain the statutory warning notice. Particulars of the publisher (i.e. the name, full address of the place of business and telephone number of the publisher) should also be clearly and conspicuously printed on the front or back cover of the article.

Class III (Obscene)

The article is prohibited from publication.



The following provisions of the COIAO are also relevant:

- under section 21 of the COIAO, it is an offence to publish any obscene article, to possess any obscene article for the purpose of publication, or to import for the purpose of publication any obscene article, whether or not he knows that it is an obscene article;
- under section 22 of the COIAO, any person who publishes any indecent article to a person who is a juvenile (i.e. a person under the age of 18), whether or not he knows that it is an indecent article or that such person is a juvenile, commits an offence;
- section 23 of the COIAO provides that where an indecent matter is publicly displayed, the person making the display and any person causing or permitting the display to be made, whether or not he knows that the matter is indecent, commits an offence;
- section 24 of the COIAO requires the publication of an indecent article to be sealed in a transparent or an opaque wrapper, as the case may be, and displayed with a statutory warning notice occupying no less than 20% of the front and back covers; and the publisher's information (i.e. the name, full address of the place of business and telephone number of the publisher) to be printed on either the front or back covers. Any person who contravenes the above requirements, whether or not he knows that the article is an indecent article, commits an offence; and



- section 27A of the COIAO provides that any person who possesses for the purpose of publication any indecent article in respect of which any requirement of section 24 of the COIAO is contravened, whether or not he knows that it is an indecent article, or that the indecent article contravenes any requirement of section 24 of the COIAO, commits an offence.

Any person who publishes an indecent article to a person under the age of 18, or publicly displays any indecent matter, or publishes any indecent article without complying with the statutory requirements, or possesses for the purpose of publication any indecent article in respect of which any requirement of section 24 of the COIAO is contravened, is liable to a fine of \$400,000 and to imprisonment for 1 year on first conviction, and to a fine of \$800,000 and to imprisonment for 1 year on any subsequent conviction.

Any person who publishes, possesses or imports for the purpose of publication any obscene article, is liable



to a fine of
\$1,000,000

&



to imprisonment for
3 years



Enforcement of the COIAO



Enforcement of the COIAO is the responsibility of the Hong Kong Police Force, the Customs and Excise Department and the Office for Film, Newspaper and Article Administration (OFNAA).

Hong Kong Police Force

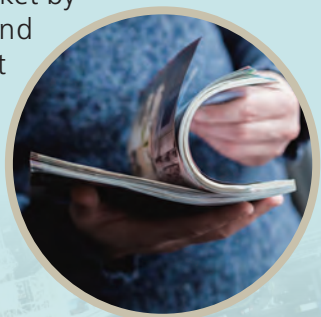
Focuses on the sale of obscene articles in the market and conducts joint operations with OFNAA from time to time.

Customs and Excise Department

Tackles obscene and indecent articles at entry points and in day-to-day anti-piracy operations.

Office for Film, Newspaper and Article Administration

Focuses on the sale of indecent articles in the market by conducting inspections in sales outlets and monitoring publications on sale in the market. It also promotes public awareness of the COIAO and handles related complaints.



Joint Efforts to Control Obscene and Indecent Articles

To ensure effective protection of young people from the harmful effects of obscene and indecent articles, the enforcement departments have stepped up enforcement actions under the COIAO. In addition, publicity and public education programmes will continue to be organised by OFNAA to promote public awareness of the provisions of the COIAO.

Complaints and Enquiries

For complaints and enquiries, please contact us at:

Telephone: 2676 7676

Email: naa@ofnaa.gov.hk

Address: 3/F, Treasury Building,
3 Tonkin Street West, Cheung Sha Wan, Kowloon



Questions You May Ask

(1) What articles are subject to regulation by the COIAO?

All articles that fall within the definition of “article” in the COIAO are subject to regulation by the COIAO.

Under the COIAO, an “article” is “anything consisting of or containing material to be read or looked at or both read and looked at, any sound recording, and any film, video-tape, disc or other record of a picture or pictures”.



(2) What are the definitions of “obscenity” and “indecenty”?

According to the COIAO, a thing is obscene if by reason of obscenity it is not suitable to be published to any person; and a thing is indecent if by reason of indecenty it is not suitable to be published to a juvenile (i.e. a person under the age of 18). “Obscenity” and “indecenty” include “violence, depravity and repulsiveness”. The OAT determines whether an article is obscene or indecent.

(3) What is the definition of “publish”?

According to the COIAO, a person publishes an article if he or she, whether for gain or not:

- distributes, circulates, sells, hires, gives or lends that article to the public or to a section of the public; or
- in the case of an article consisting of or containing material to be looked at, or that is a sound recording or a film, videotape, disc or other record of a picture or pictures, shows, plays or projects that article to or for the public or a section of the public.



(4) What is the definition of “public”?

According to the Interpretation and General Clauses Ordinance (Cap. 1), “public” includes any class of the public. The COIAO extends the definition of “public” to include the members of any club.

(5) Are operators of retail outlets required to submit articles to the OAT for classification before their publication ? Who can submit articles to the OAT ?

There is no statutory requirement for articles to be submitted to the OAT for classification before publication. According to the COIAO, the author, printer, manufacturer, publisher, importer, distributor or owner of the copyright of any article or any person who commissions the design, production or publication of any article may submit that article to the OAT for classification.



(6) What restrictions and penalties apply to the publication of indecent articles under the COIAO?

An indecent article must be sealed in a wrapper with a statutory warning notice occupying no less than 20% of the front and back covers. If the front and back covers of the article are not indecent, it must be sealed in a transparent wrapper. If either the front or back cover of the article is indecent, it must be sealed in an opaque wrapper. No indecent article shall be published to a person under the age of 18. The name, full address of the place of business and telephone number of the publisher must be clearly and conspicuously printed either on the front cover or the back cover.

Whether or not the publisher knows that an article is indecent, if he or she is found guilty of publishing an indecent article, he or she is liable to a maximum penalty of a \$400,000 fine and 12 months' imprisonment for the first conviction and to a \$800,000 fine and 12 months' imprisonment on the second or subsequent conviction.

(7) What restrictions and penalties apply to the publication of obscene articles under the COIAO?

COIAO stipulates that no one shall publish, possess for the purpose of publication or import for the purpose of publication any obscene article. Whether or not the publisher knows that an article is obscene, if he or she is found guilty of publishing an obscene article, he or she is liable to a maximum penalty of a \$1,000,000 fine and three years' imprisonment.



- (8) In publishing an indecent article, whether the requirements of the COIAO would be regarded as having been complied with if the article is sealed in a wrapper, with the statutory warning notice displayed on the front cover and the publisher's information printed on the inner page of that article?**

COIAO stipulates that where an indecent article is published, the warning notice shall be displayed on both the front and back covers of the article and that the publisher's information shall be printed on either its front cover or back cover. Appropriate actions should be taken to ensure that all the statutory requirements of the COIAO have been followed in publishing an indecent article.

- (9) What matters are subject to regulation by the COIAO?**

Examples of matters include sex toys and posters, etc. COIAO provides that in determining whether any matter publicly displayed is indecent, there shall be disregarded any part of that matter which is not exposed to view.



(10) What is deemed to be matter publicly displayed?

According to the COIAO, any matter which is displayed in or so as to be visible from:

- any public street or pier, or public garden; and
- any place to which the public have or are permitted to have access, shall be deemed to be matter publicly displayed.

For example, sex toys placed on the display shelves of shops where public have access to, or posters displayed in a show window which are visible from the common area of a shopping mall, are deemed to be matters publicly displayed.



(11) What restrictions and penalties apply to the public display of indecent matters under the COIAO?

COIAO provides that no person shall publicly display, or cause or permit to be displayed, an indecent matter, whether or not he knows that the matter is indecent. The maximum penalty on conviction is a fine of \$400,000 and imprisonment for 12 months on first conviction, and a fine of \$800,000 and imprisonment for 12 months on a second or subsequent convictions.

(12) Does the COIAO apply to materials published on the Internet?

COIAO applies to articles published in Hong Kong, including materials published on the Internet. Both articles in print and internet-based publications are subject to the provisions of the COIAO, which is in place primarily to control the dissemination of obscene or indecent articles. Articles likely to be classified as Class II (indecent) according to the COIAO should be preceded by an entry page on the Internet carrying the required statutory warning. Those likely to be classified as Class III (obscene) are prohibited from publication.

To provide guidance for Internet Service Providers, the HKSAR Government has, together with the Hong Kong Internet Service Providers Association (HKISPA), developed a self-regulatory “Code of Practice”, which is available at the website of HKISPA.