

## Third Study Commission Questionnaire

Yu Ying Kuang (Taiwan)

1. Does your country have legislation, or regulations, and/or court rules of procedure that are relevant to the topic of our focus this year – chemical substances and essential equipment possibly used in illicit drug manufacturing and trafficking, including importing, exporting, for domestic distribution and use and private sector due diligence.

**Answer:**

Yes, Taiwan has the "Narcotics Hazard Prevention Act" and the "Toxic and Concerned Chemical Substances Control Act." However, in practice, narcotics regulation is primarily governed by the "Narcotics Hazard Prevention Act," while the "Toxic and Concerned Chemical Substances Control Act" is mainly used for environmental protection rather than for regulating precursors.

2. Does your country have specific legislation on precursors control?

Yes .... No....

Title of current legislation and date of adoption:

**Answer:**

No, there is no specific legislation for precursor control, but drugs and narcotics in Taiwan are regulated under the "Narcotics Hazard Prevention Act." However, precursors that cause habitual usage, abusive usage, and pose a danger to society can be classified as narcotics. This classification is determined by a review committee set up by the Ministry of Justice in conjunction with the Ministry of Health and Welfare, which meets every three months to decide whether precursors should be classified as narcotics. In addition, if precursors are involved in the production of narcotics, they will also be regulated under the "Narcotics Hazard Prevention Act."

3. In your country, is an approval by a judge a pre-condition to launch investigations into a case of diversion and trafficking of precursors? Similarly, is a court order or approval by a judge required for effecting controlled or monitored deliveries?

**Answer:**

Regarding launching investigations into cases of diversion and trafficking of

precursors, in Taiwan, any investigation, including those involving precursors, requires judicial approval for wiretapping or searches. When requesting the court to issue a search or wiretap warrant, the specific legal provisions must be listed. Because precursors might be involved in drug manufacturing, requests for judicial approval are usually made under the provisions for drug trafficking in the “Narcotics Hazard Prevention Act.”

Controlled or monitored deliveries of precursors do **NOT** require a court order or approval by a judge. If the precursors are related to pharmaceuticals, they are regulated by the Controlled Drugs Act. The Ministry of Health and Welfare is responsible for controlling these pharmaceuticals, and prior judicial approval is not required to carry out controlled or monitored deliveries.

4. When a drug/precursor-related crime is being investigated in your country, does the judiciary have any role (a) in the request for information from a foreign state and/or (b) in the provision of information to a foreign state?

Yes .... No....

If your answer to either (a) or (b) is yes, what legislation, regulations or rules of procedure apply to the decision of a judge involved at the investigation stage?

**Answer:**

Yes, the judiciary has a role in requesting information from a foreign state because cases involving international drug trafficking and drug transportation often necessitate cross-border information.

Regarding the provision of information to foreign courts and national agencies, Taiwan has "The Law in Supporting Foreign Courts on Consigned Cases." According to the legal framework, foreign requests for information do not pass through Taiwanese courts but require assistance from the Ministry of Justice. In Taiwan, if courts require information from foreign sources during proceedings, they send a request letter to the Ministry of Justice, International and Cross-Strait Legal Affairs Division. Subsequently, this division, based on agreements with respective countries, requests the necessary information.

When Taiwanese courts seek assistance from foreign agencies, they often do not receive direct responses due to Taiwan's sovereignty issues, which pose significant challenges for Taiwanese judicial authorities seeking international assistance or

information from other countries. Typically, information retrieval relies on relevant agreements negotiated by the Ministry of Justice, International and Cross-Strait Legal Affairs Division. Even if judges deem information necessary during trial proceedings, requests must still be submitted through this administrative process, potentially delaying the retrieval of information.

5. Does your country have legislation or court rules that relate to monitoring manufacture and distribution of precursors which are applicable over the entire national territory?

**Answer:**

No, Taiwan does not have legislation or court rules related to monitoring the manufacture and distribution of precursors applicable across the entire national territory. All relevant monitoring of the manufacture and distribution of precursors must be governed by the "Narcotics Hazard Prevention Act" and the "Controlled Drugs Act." In other words, there must be evidence that the precursors are intended for the manufacture of narcotics or are related to drugs in order to legally monitor their manufacture and distribution.

6. Does your country have legislation or court rules that establish as a criminal offence the manufacture, transport and distribution of essential equipment intended to be used for illicit drug manufacturing.

**Answer:**

Yes, according to Article 4, Paragraph 5 of the "Narcotics Hazard Prevention Act," offenders involved in the manufacturing, transporting, or selling of equipment for manufacturing narcotics or for using narcotics are subject to a minimum one-year to a maximum seven-year fixed-term imprisonment, and may also be subject to a fine of up to one million five hundred thousand New Taiwan dollars.

7. In respect of non-scheduled chemicals/ equipment, is the fact that they have been mis-declared before the Customs, sufficient to impute 'knowledge' on the part of the supplier of their being used for illicit drug manufacture?

**Answer:**

In respect of non-scheduled chemicals and equipment, the fact that they have been incorrectly declared before Customs is not sufficient to impute "knowledge" on the part of the supplier regarding their use for illicit drug manufacture. In Taiwan, the principle of presumption of innocence applies to criminal liability. Given this legislative background, there are many reasons for incorrect declaration, and therefore, the legislation does not directly assume that a supplier who has incorrectly declared is aware that the precursors are intended for illegal drug manufacturing. If there is a case of incorrect declaration, it will be used as evidence for the judge to comprehensively consider and determine whether there was any intent or assistance in illegal drug manufacturing.

8. In your country, does domestic legislation include measures and/or civil, criminal and/or administrative sanctions to address non-scheduled chemicals and emerging precursors, namely those that are used as starting materials and/or intermediaries in the legitimate manufacture of substances in Table I and Table II of the 1988 Convention? If yes, which type of sanctions?

**Answer:**

No, Taiwan's domestic legislation does not include criminal or administrative sanctions to address non-scheduled chemicals and emerging precursors. When applying criminal law, these precursors must be classified as narcotics. However, to maintain the flexibility of legal regulations, and considering that narcotics and precursors evolve with time and technological advancements, the "Narcotics Hazard Prevention Act" mandates that a review committee established by the Ministry of Justice in conjunction with the Ministry of Health and Welfare holds relevant meetings every three months to determine whether new types of chemical substances or precursors should be classified as narcotics.

9. Please elaborate on specific pieces of information and level of details that would allow you as a judge to act on information/intelligence/evidence received from counterparts in investigations related to new emerging drug precursor chemicals not under control in your country.

**Answer:**

As a judge, I believe it's essential to acquire the following information to take effective action:

1. Characteristics of the chemical substance: Potential uses in the manufacture and use of illicit drugs.
2. The harmfulness and potential for addiction.
3. Existence of any non-illicit drug-related uses for the chemical substance.
4. Typical scenarios where it serves as a precursor for drug production, and whether other chemicals are necessary.
5. Degree of harm to human health.
6. Relevant regulations in other countries or international conventions.

In Taiwan, when judges perceive potential illegality or related risks, they can request investigative actions from the prosecution or prompt relevant authorities (such as a review committee established by the Ministry of Justice in conjunction with the Ministry of Health and Welfare) to consider these precursors when amending related regulations.

10. Are there any specific provisions that allow you as judge to act on non-scheduled chemicals with no known legitimate uses? Would information from an international body, or a collection of information from other countries, that a chemical has no known legitimate use facilitate your work in any way?

**Answer:**

No, there are no special provisions granting judges the authority to take action on non-scheduled substances in Taiwan that lack established applications. Judges can only urge relevant agencies through official correspondence to take notice. Typically, agencies respect the court's opinion and act accordingly. However, due to the lack of relevant provisions, if the agencies do not heed the court's advice, judges cannot enforce regulatory measures or impose penalties.

11. As a judge, if you receive a request for assistance in a drug/precursor-related crime from a foreign country, whether at the investigation stage or in the context of a court proceeding (a hearing or a trial), how is it relevant to your determination to ensure that basic human rights, principles of natural justice, and/or rules of procedural fairness that exist in your country are respected?

**Answer:**

As a judge, I would differentiate my approach based on the stage of the case. During the investigative phase, constrained by confidentiality principles, I would forward any relevant requests to the responsible investigative agency for their determination on information disclosure. In the ordinary trial phase, I would lawfully provide pertinent information without infringing upon human rights. Ensuring fair and equitable access to essential information for judicial authorities globally is crucial, especially as many crimes cross international borders. Facilitating information exchange and mutual cooperation among judicial entities can prevent further crimes and protect the health of people worldwide.

12. Describe your own personal experience(s) as a judge that are relevant to the topic of our focus this year, whether it be presiding over an extradition hearing (a request to extradite an accused person to another country in order to be prosecuted in that other country), or receiving evidence in a court proceeding in your country from a witness who is testifying from another country and with the help of court officials in that other country, or helping to arrange for a witness in a court proceeding in another country to testify from a place in your own country, or responding to a request for assistance from an international court such as The Hague, or something else. These are just examples of things that you may have experienced; they are not meant to be exhaustive.

**Answer:**

I have handled cases related to drug trafficking and drug manufacturing involving substances or precursors originating from Southeast Asian countries. Besides providing information, accomplices apprehended in those locations are often interviewed and their statements recorded. However, extradition typically applies only to Taiwanese nationals. The related information and suspects may be divided and processed separately in multiple countries, leading to the following issues:

Admissibility of witness testimonies: Testimonies from witnesses or accomplices recorded in different countries may involve hearsay and raise questions about their evidential value. Testimonies not given in Taiwan cannot be directly used as evidence.

Provision of relevant information: Due to sovereignty concerns regarding Taiwan, some countries may not cooperate with requests from Taiwanese judicial authorities.

Therefore, establishing stable cross-border cooperation is essential.