

立法會
Legislative Council

LC Paper No. CB(2)884/05-06

(These minutes have been
seen by the Administration)

Ref : CB2/BC/11/04

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005**

**Minutes of the 10th meeting
held on Monday, 19 December 2005 at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Hon Andrew CHENG Kar-foo (Chairman)
Hon Albert CHAN Wai-yip (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Hon LEUNG Yiu-chung
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Dr Hon KWOK Ka-ki
Hon WONG Ting-kwong, BBS
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin

Members absent : Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Public Officers attending : All items
Mrs Ingrid YEUNG

Deputy Secretary for Health, Welfare and Food (Health)

Dr Cindy LAI
Assistant Director of Health

Mr CHEUNG Wing-leung
Senior Government Counsel
Department of Justice

Ms Amy CHAN
Government Counsel
Department of Justice

**Deputations
by invitation** : Item 1

Meeting with Japan Tobacco Inc.

Mr Kazuhito YAMASHITA
General Manager
Corporate, Scientific and Regulatory Affairs Division
Japan Tobacco Inc.

Mr Yasuhiro ONO
Associate General Manager
Corporate, Scientific and Regulatory Affairs Division
Japan Tobacco Inc.

Mr Albert CHAN
Vice President
Corporate Affairs (Asia North and Australasia)
Japan Tobacco Inc.

Ms Berky KONG
Manager, Corporate Affairs
Japan Tobacco (Hong Kong) Ltd

Mr Ronald HINCKLEY, Ph.D.
President, Research/Strategy/Management Inc.

Mr Anthony POON
Partner
Baker & McKenzie

Dr Patrick LAU
Solicitor
Baker & McKenzie

Ms DENG Yu-ying

Trainee Solicitor
Baker & McKenzie

Ms Jane MOFFAT
Solicitor
Freshfields Bruckhaus Deringer

Clerk in attendance : Ms Doris CHAN
Chief Council Secretary (2) 4

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Miss Mary SO
Senior Council Secretary (2) 8

I. Meeting with Japan Tobacco Inc.
(LC Paper No. CB(2)407/05-06(01))

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Administration was requested to provide legal opinion on a ruling made by the Illinois Supreme Court on 15 December 2005, which reversed the trial court's judgement that Philip Morris USA had defrauded "Lights" smokers by suggesting to them "Marlboro Lights" and "Cambridge Lights" were actually less hazardous than their full-flavour brands. The Court concluded that the company was specifically authorised to use descriptors such as "light" and "low tar" by the Federal Trade Commission, and therefore the company is exempt from civil liability under section 10b(1) of the Illinois Consumer Fraud Act for the use of those terms. For the same reason, the Court concluded that the company is exempt from civil liability under the Illinois Deceptive Practices Act.

3. Barker and McKenzie was requested to provide the respective legal opinions provided by Mr Michael Thomas, QC and Mr Benjamin YU, SC on the Basic Law and the Bill of Rights implications of clause 11 of the Bill, which sought to prohibit the appearance of the words "light", "lights", "mild", "low tar" or other words that might have similar misleading effects on any package of tobacco products.

II. Meeting with the Administration
(LC Paper Nos. CB(2)138/05-06(01), CB(2)509/05-06(01), CB(2)633/05-06(01), CB(2)694/05-06(01) and CB(2)729/05-06(01))

4. The Chairman urged the Administration to expeditiously come up with its

position on the views/concerns expressed by members and deputations on the Bill at the previous public hearings.

III. Any other business

5. The Chairman reminded members that the next meeting of the Bills Committee was scheduled for Wednesday, 4 January 2006 at 10:45 am.

6. There being no other business, the meeting ended at 12:55 pm.

Council Business Division 2
Legislative Council Secretariat
16 January 2006

**Proceedings of the 10th meeting of the
Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005
on Monday, 19 December 2005 at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 – 000647	Chairman	Opening remarks	
000648 – 002215	Japan Tobacco Inc. Baker & McKenzie Research/Strategy/Management (RSM) Inc.	Powerpoint presentation by Baker & McKenzie on the proposed implementation of Article 11 of the WHO Framework Convention on Tobacco Control (FCTC) under the Bill Powerpoint presentation by RSM Inc. on Hong Kong consumer understanding of “Mild Seven” brand name and on-pack notations regarding the meaning of cigarette descriptors (the “Mild Seven” study)	
002216 – 002923	Mr Martin LEE Administration Japan Tobacco Inc. RSM Inc.	Administration’s response on whether the use of the brand name “Mild Seven” would still be allowed after the enactment of the Bill, would be provided to the Bills Committee shortly Whether persons under the age of 18 were covered in the “Mild Seven” study Top-of-mind beliefs by respondents of the “Mild Seven” study about the use of the English word “light” or “mild” on some brands of cigarettes	
002924 – 003322	Ms Emily LAU Japan Tobacco Inc.	Reason for choosing the “Mild Seven” brand name	
003323 – 003525	Dr YEUNG Sum RSM Inc.	Disagreed with the first conclusion of the “Mild Seven” study that the brand name “Mild Seven” did not create the impression among the public that the cigarettes were less harmful than other cigarettes	
003526 – 004035	Mr Tommy CHEUNG RSM Inc.	Methodology of the “Mild Seven” study	
004036 – 004249	Mr Vincent FANG Baker & McKenzie	Compliance of the Bill with Article 11 of the FCTC	
004250 – 004907	Mr Martin LEE Japan Tobacco Inc. RSM Inc. Baker & McKenzie	Whether study similar to the “Mild Seven” study had been conducted in Japan in the past Whether Mr Michael Thomas, QC and Mr Benjamin YU, SC had agreed that their names could be used for supporting Japan Tobacco’s stance on clause 11 of the Bill which sought to prohibit the appearance of the words “light”, “lights”, “mild”, “low tar” or other words that might have similar misleading effects on any package of tobacco products	

Time marker	Speaker	Subjects	Action required
004908 – 005031	Mr WONG Ting-kwong Administration	Whether the use of foreign languages, other than English, could be used as descriptors on the package of tobacco products	
005032 – 005612	Mr Tommy CHEUNG RSM Inc.	Top-of-mind beliefs by respondents of the “Mild Seven” study about the use of the English word “light” or “mild” on some brands of cigarettes	
005613 – 010421	Mr LEUNG Yiu-chung Administration	Queried about the justification for prohibiting the appearance of the words “light”, “lights”, “mild”, “low tar” or other words that might have similar misleading effects on any package of tobacco products	
010422 – 011042	Ms Emily LAU Mr Vincent FANG Administration	Whether any overseas justifications had prohibited the use of the brand name “Mild Seven” for compliance with the FCTC	
011043 – 012231	Mr Martin LEE Japan Tobacco Inc. Administration Mr Tommy CHEUNG Baker & McKenzie	The Administration was requested to provide legal opinion on a ruling made by the Illinois Supreme Court on 15 December 2005, which reversed the trial court’s judgement that Philip Morris USA had defrauded “Lights” smokers by suggesting to them “Marlboro Lights” and “Cambridge Lights” were actually less hazardous than their full-flavour brands. Barker and McKenzie was requested to provide the respective legal opinions provided by Mr Michael Thomas, QC and Mr Benjamin YU, SC on the Basic Law and the Bill of Rights implications of clause 11 of the Bill	✓ (Admin to provide the legal opinions in writing) ✓ (Barker & McKenzie to provide the requested legal opinions)
012232 – 012459	Mr Tommy CHEUNG Administration	Whether the appearance of the word “slim” on the package of tobacco products would be allowed after the enactment of the Bill	
012500 – 012910	Mr Albert CHAN Administration	The Administration should consider enact those parts of the Bill which were less contentious first	
012911 – 013621	Mr Tommy CHEUNG Administration	Prohibiting the appearance of the words “light”, “lights”, “mild”, “low tar” or other words that might have similar misleading effects on any package of tobacco products might be going too far	
013622 – 014945	Administration Chairman Ms Emily LAU Mr Tommy CHEUNG	Impact of each legislative amendment on smoking on the number of smokers (LC Paper No. CB(2)509/05-60(01))	
014946 – 015900	Mr Vincent FANG Administration Mr Tommy CHEUNG	Queried about the justification for prohibiting the display of tobacco advertisement at licensed hawker stalls when there had not been a noticeable drop in the number of smokers, despite the various measures implemented to control the use, sale and promotion of cigarette products in the past years	
015901 – 020209	Dr KWOK Ka-ki	Urged for early implementation of the Bill	

Time marker	Speaker	Subjects	Action required
020210 – 020335	Mr LEUNG Yiu-chung	If the Administration was sincere in protecting public health, it should prohibit the sale and use of tobacco products	
020336 – 020633	Mr Tommy CHEUNG	Urged the Administration to amend the Bill, taking into account the views/concerns expressed by the hospitality trade	
020634 – 020555	Administration	Responding to the views expressed by Mr LEUNG Yiu-chung on prohibiting the sale and use of tobacco products	
020556 – 021017	Chairman	The Administration was urged to expeditiously come up with its position on the views/concerns expressed by members and deputations on the Bill at the previous public hearings Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
16 January 2006