

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

Administration's response to the issue of -

- (i) exemption for tobacco advertising at licensed hawker stalls; and**
- (ii) smoking prohibition arrangements at cross-boundary ferry terminals**

PURPOSE

This paper sets out the Administration's latest position on the above two issues. The issue of the proposed removal of exemption for tobacco advertising at licensed hawker stalls was discussed in LC Paper No. CB(2) 2340/04-05(02). The issue of smoking prohibition arrangements at cross-boundary ferry terminals was discussed in LC Paper No. CB(2) 2311/04-05(02).

(i) exemption for tobacco advertising at licensed hawker stalls

BACKGROUND

2. Section 12 of the Smoking (Public Health) Ordinance (the Ordinance) stipulates that the display of tobacco advertisement is prohibited except at licensed hawker stalls and retail outlets employing not more than two employees.

3. Clause 14 of the Smoking (Public Health) (Amendment) Bill 2005 ("the Bill") proposes to revoke the two exemptions in order to further restrain the scale and scope of tobacco advertising in Hong Kong. Having regard to the fact that affected hawkers might require some time to find other sources of revenue as replacement, it is further proposed that a longer adaptation period of one year be allowed for these hawkers.

4. In previous meetings, Members of the Bills Committee expressed concern over the possible adverse financial impact on licensed newspaper hawker stalls if the exemption was revoked. Representatives of the trade also made deputations to the Committee on 31 October 2005.

ADMINISTRATION'S LATEST POSITION

5. We have carefully considered Members' views and the practical operating difficulties faced by licensed newspaper hawkers. At the same time, we are mindful of our obligation under Articles 13(2) and 13(4) of World Health Organization (WHO)'s Framework Convention on Tobacco Control (FCTC) and our overall policy goal of further restraining tobacco advertising. FCTC requires

Parties, in accordance with their respective constitution or constitutional principles, to undertake a **comprehensive ban** (emphasis added) on all tobacco advertising, promotion and sponsorship within five years after FCTC's entry into force for that Party.

6. At the Bills Committee meeting of 31 October 2005, Members asked the Administration to seek clarification from the WHO on how "comprehensive ban" should be interpreted. Accordingly, we have issued a letter to WHO detailing to them Hong Kong hawkers' unique situation and invite them to clarify whether only a complete ban of tobacco advertisement in licensed hawker stalls would fulfil the requirements of FCTC. We have not received their response yet.

7. Meanwhile, we have also sought advice from the International Law Division of the Department of Justice. According to legal advice, the current exceptions provided for in section 12(2) of the Ordinance run a real risk of falling foul of the comprehensive ban on all tobacco advertising and promotion imposed by Article 13(2) of FCTC, unless it could be demonstrated that the removal of such exceptions is restrained by its constitution or constitutional principles. The legal advice further pointed out that the amendment could be effective on a date not later than the expiry of the five-year period.

8. In the light of the advice obtained, we have come to the view that in the long run, the exemption for tobacco advertising at these licensed stalls should be removed as a matter of policy. However, having regard to the practical consideration and to provide greater relief to licensed newspaper stall hawkers, we are prepared to extend the adaptation period from the proposed one year to three years from the date the Ordinance is published in the Gazette. With this longer adaptation period, we believe that licensed newspaper hawkers would have sufficient time to adjust to the new legislative framework and look for alternative revenue sources. In addition, even if tobacco companies stop supporting the hardware needs of hawkers because of this, licensed hawkers would still have sufficient time to look for alternative advertisement that provide similar support.

9. We wish to point out that the exemption presently applicable to retail outlets employing not more than two employees (including newspaper retail shops) would be revoked as proposed in the Bill, that is, on the first anniversary of the day on which the Amendment Ordinance is published in the Gazette.

TRADE CONSULTATION

10. We have informed the representative of licensed hawkers of our latest position and they are content with the proposed arrangement. They believe that a longer adaptation period would enable them to adjust to the new requirements and help secure their source of income.

FOLLOW-UP ACTION

11. The Bills Committee is invited to note the Administration's latest position. We will prepare a Committee Stage Amendment on this clause for the Committee's consideration in due course.

(ii) smoking prohibition arrangements at cross-boundary ferry terminals

BACKGROUND

12. Under Clause 5 of the Bill, it is proposed that except for certain exceptions, all indoor area in a workplace or public place will be designated as a no smoking area. At the meeting of 10 June 2005, Members asked for clarification on whether the smoking rooms at the two cross-boundary ferry terminals, namely the Macau Ferry Terminal (MFT) at Sheung Wan and the China Ferry Terminal (CFT) at Tsim Sha Tsui, would be regulated under the Bill and hence be required to become smoke-free. We have undertaken to report to the Bills Committee after consultation with the Marine Department and other relevant parties.

ADMINISTRATION'S LATEST POSITION

13. We have consulted the Marine Department which manages the two passenger terminals. The Marine Department has no objection to the proposed smoking ban to be imposed at the terminals. We have also notified ferry companies of the proposed arrangement. We have also taken into consideration the relatively short journey time of the ferry trips, the absence of need for passengers having to wait within the premises of the terminals for transit and that passengers comprise all age groups, including children and pregnant women. We have come to the considered view that from the policy angle, it is appropriate to apply the smoke-free restriction to the two cross-boundary ferry terminals. In practical terms, we do not foresee difficulty in implementation. We believe that this arrangement will be welcomed by most passengers.

FOLLOW-UP ACTION

14. The Bills Committee is invited to note the Administration's latest position. As this is in line with the proposal in the Bill, no follow up action is necessary.