



中華人民共和國香港特別行政區政府總部衛生福利及食物局
Health, Welfare and Food Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

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Miss Doris CHAN
Chief Council Secretary
Legislative Council Secretariat
3rd floor, Citibank Tower,
3 Garden Road, Hong Kong

Dear Miss Chan,

We refer to the letter from Hon. Tommy Cheung to the Bills Committee on Smoking (Public Health) (Amendment) Bill 2005 ("the Bill") dated 19 December 2005 on a judgment recently handed down by the Illinois Supreme Court of the United States and questions raised in relation to the Bill. Our response is set out below.

We would like to point out that the said judgment was a foreign judgment related to the particular circumstances of Illinois in the United States which has no direct application to Hong Kong's circumstances. Accordingly, it is neither possible nor appropriate for us to give a response to the first two questions raised in Mr. Cheung's letter, which are speculative in nature.

As a general comment, under the laws of Hong Kong, a plaintiff who sustains loss, damage or personal injuries arising from the wrongful act of another party, may sue the wrongdoer for damages. Depending on if there is a contractual relationship between the parties, a legal action in tort (where there is no contract) or an action for breach of contract (where there is a contract) may be initiated by the plaintiff to claim for compensation arising from any loss, damage or injuries so sustained; the plaintiff however has to prove the damage or loss which he has sustained as a result of the wrongful act committed by the other party. This general legal position applies to a situation where the wrongdoer is a tobacco company.

The Smoking (Public Health) (Amendment) Bill 2005 does not intend to affect the laws in this respect (i.e. to claim for compensation) which will be applicable to those circumstances where a plaintiff initiates an action against a tobacco company for compensation in respect of loss, damage or injuries sustained arising from the alleged fraudulent or deceptive act of the tobacco company. Neither does the Amendment Bill intend to affect the amount of compensation payable on a successful legal action in the matter.

As regards to the last two questions arising from the Framework Convention on Tobacco Control and Clause 11 of the Amendment Bill, we shall address them in due course.

Yours sincerely,



(Christine Au)

for Secretary for Health, Welfare and Food