



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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Tel: 2973 8240

Fax: 2840 0467

2869 4376

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Ms Monna LAI
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Fax: 2877 5029

Dear Ms Lai,

Smoking (Public Health) (Amendment) Bill 2005 (“the Amendment Bill”)

Thank you for your letter of today. Our response to the questions raised is set out as below –

(a)

Whether a person is a manager as defined in the Smoking (Public Health) Ordinance is a matter of fact, i.e. any proof that he is responsible for the management or is in charge of the common part of the building. In this respect, a professional building manager appointed by the owners of the building or an agent employed to carry out those functions is no doubt a manager within the definition. If there is no such appointment, whether an owner is a manager will depend on what duties imposed on him under the Deed of Mutual Covenant (DMC) in relation to the common part of the building. In the case of a building without an owners' corporation, reference to the terms of the relevant DMC has to be made to ascertain where ultimately the management responsibility lies.

(b)

The offences concerned are –

- (a) The sale, offering for sale or possessing for the purpose of sale any cigarettes which have on their packet or retail container an incorrect tar yield or nicotine yield;
- (b) The sale, offering for sale or possessing for the purpose of sale any cigarettes which have on their packet or retail container prohibited words;
- (c) The printing, publishing or causing to be published a tobacco advertisement in a printed publication;
- (d) The display, causing to be displayed, publishing, distributing for the purpose of display or causing to be published or distributed for the purpose of display any tobacco advertisement in writing or other permanent or semi-permanent form;
- (e) The broadcasting of a tobacco advertisement on radio or television;
- (f) The exhibiting of a tobacco advertisement by film; and
- (g) The placing or causing to be placed a tobacco advertisement on the Internet.

In our view, these are not offences that one commits inadvertently or out of occasional carelessness, but are committed either due to a serious lack of care (as in offence (a)) or intentionally (as in offences (b) to (g)). The current maximum penalty level is level 4 (\$25,000). There are also views from a Bills Committee member that more should be done to target the acts of tobacco companies intended to induce people to smoke. After reviewing the current maximum fine level, we find it too low and would like to propose an increase to level 5 (\$50,000).

We also intend to put forward a committee stage amendment to increase the maximum fine level stipulated in section 10(1) to level 5. We apologise for having left out this amendment in this batch of committee stage amendments.

Yours sincerely,



(Miss Christine Au)

for Secretary for Health, Welfare and Food