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Secretary for Health, Welfare and Food
Health, Welfare and Food Bureau
(Attn: Mrs Ingrid YEUNG, DS(H)2)
19/F, Murray Building
Garden Road, Hong Kong

By Fax (2840 0467) and By Post

15 June 2006

Dear Mrs YEUNG

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

I refer to the proposed section 3(1AA) of the Bill (“section 3(1AA)”) which provides that an indoor area in a workplace or public place is, to the extent that it is not an area to which subsection (1) applies, designated as a no smoking area. Section 7(1) of the Smoking (Public Health) Ordinance (Cap. 371) (“the Ordinance”) provides that a person who contravenes section 3 or 4 commits an offence and is liable on summary conviction to a fine of \$5,000.

It appears that the no smoking area designated under section 3(1AA) may overlap with the smoking area provided under the bylaw made by an authorized body and a person who smokes in such area may contravene both the relevant bylaw and section 3(1AA) at the same time. This scenario may happen under the Mass Transit Railway bylaws.

Section 23 of the Mass Transit Railway By-laws (Cap. 556B) (“Cap. 556B”) provides that no person shall smoke or carry a lighted pipe, cigar or cigarette or naked flame in any form in any other part of the railway premises where smoking is prohibited by notice. Section 43 and the Schedule to Cap. 556B provides that a person who contravenes section 23 commits an offence and is liable to a maximum penalty of \$5,000.

Section 10(4)(a) of the Mass Transit Railway (Transport Interchange) Bylaw (Cap. 556D) (“Cap. 556D”) provides that no person in a parking space shall smoke. Section 15(2)(a) of Cap. 556D provides that no person in a car park shall smoke. Section 62 of Cap. 556D provides that a person who contravenes sections 10(4)(a) and 15(2)(a) commit an offence and is liable on conviction to the maximum penalty of \$5,000.

Please clarify how section 3(1AA) and the relevant bylaw are to be enforced and the penalty to be imposed on a person who contravenes both the Ordinance and the proposed sections in the Bill and at the same time the bylaws applied to the place where he smokes.

It is appreciated that your reply in both Chinese and English could reach us by 16 June 2006.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser