

SMOKING (PUBLIC HEALTH)(AMENDMENT) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Health, Welfare and Food

Clause

Amendment Proposed

2

By deleting the clause and substituting -

"2. Commencement

(1) Except as provided in subsections (2) to (4), this Ordinance shall come into operation on the day on which this Ordinance is published in the Gazette.

(2) The following provisions shall come into operation on 1 January 2007 -

(a) section 4(a), (c), (d), (e), (ea) and (f);

(b) sections 5 to 8;

(c) sections 13, 15, 17 and 19(b);

(d) sections 20 to 22A;

(e) sections 31A, 34 and 35A;

(f) section 36(aa), (ea) and (f); and

(g) section 38 (in relation to Part 2 of the new Schedule 6).

(3) Section 14(b) shall come into operation on 1 August 2007.

(4) Sections 14(a), 35 and 36(ab) and (e) shall come into operation on 1 August 2009."

4

(a) By deleting paragraph (c) and substituting -

"(c) by repealing the definition of "manager" and substituting -

"manager" (管理人), in relation to a no smoking area or a public transport carrier, means -

(a) any person who is responsible for the management or is in charge or control of the no smoking area or public transport carrier, and includes an assistant manager and any person holding an appointment analogous to that of a manager or assistant manager; or

(b) in the case where there is no such person in relation to any premises, the owner of the premises;" ;".

(b) By adding -

"(ea) in the definition of "public transport carrier", by repealing "while the public bus, public light bus, taxi, train, light rail

vehicle, car, tramcar or ferry vessel is,
subject to Schedule 1, carrying members of the
public";".

(c) In paragraph (f), by deleting paragraph (b) in the
proposed definition of "restaurant premises" and
substituting -

"(b) any other trade or business the purpose of
which is for the sale or supply of meals or
unbottled non-alcoholic drinks (including
Chinese herb tea) for human consumption on the
premises (whether or not it is carried on by a
person who is the holder of a licence under
the Hawker Regulation (Cap. 132 sub. leg.
AI));".

(d) In paragraph (h) -

(i) by deleting the proposed definition of
"bathhouse" and substituting -

"bathhouse" (浴室) means a bathhouse -

(a) that is within the meaning
of section 3(1) of the
Commercial Bathhouses
Regulation (Cap. 132 sub.
leg. I); and

- (b) in respect of which there is in force a licence granted under that Regulation;";
- (ii) by deleting the proposed definition of "domestic premises" and substituting -
"domestic premises" (住宅) means any premises that have been constructed to be used, and are used, as a private dwelling;";
- (iii) by deleting paragraph (b) in the proposed definition of "indoor" and substituting -
"(b) enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door;";
- (iv) by deleting the proposed definitions of "post secondary school" and "public market";
- (v) in the proposed definition of "school", by deleting ", but excludes a post secondary school";

(vi) by deleting paragraph (a) in the proposed definition of "workplace" and substituting -

"(a) that is occupied for conducting a business or non-profit making undertaking; and";

(vii) by adding -

"bathing beach" (泳灘) means any bathing beach specified in the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);

"escalator" (自動梯) means an escalator within the meaning of section 2(1) of the Lifts and Escalators (Safety) Ordinance (Cap. 327);

"massage establishment" (按摩院) means a massage establishment -

(a) that is within the meaning of section 2 of the Massage Establishments Ordinance (Cap. 266); and

(b) in respect of which a licence granted under that Ordinance is in force;

"public pleasure ground" (公眾遊樂場地)

means a public pleasure ground within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

"public swimming pool" (公眾泳池) means a

public swimming pool within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

"stadium" (體育場) means a stadium within

the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);".

5 (a) By deleting paragraph (a) and substituting -

"(a) by repealing subsection (1) and substituting -

"(1) The areas described in Part 1 of Schedule 2 are designated as no smoking areas.

(1AA) Subsection (1) does not apply to the exempt areas described in Part 2 of Schedule 2.

(1AB) The Director of Health may, by notice published in the Gazette, designate as a no smoking area the whole or a part of -

- (a) any area that consists of the termini of 2 or more modes of public transport and is used for effecting and facilitating interchange between them; or
- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).";".

(b) By adding -

"(ba) by adding -

"(2A) Subsection (2) does not prevent a person from smoking or carrying a lighted cigarette, cigar or pipe if he is exempt from that subsection under Schedule 5."."

(c) In paragraph (c) -

- (i) by deleting the proposed section 3(5);
- (ii) in the proposed section 3(6), by deleting "(1AA)" and substituting "(1AB)".

6

By deleting the clause and substituting -

"6. Display of signs where smoking prohibited
Section 5 is repealed."

8 By deleting the clause and substituting -

"8. Offences under Part II

Section 7(3) and (4) is repealed."

11 By deleting the clause and substituting -

"11. Offences under Part III

Section 10 is amended -

(a) in subsection (1), by repealing
"level 4" and substituting "level
5";

(b) in subsection (2) -

(i) by repealing "載有" and
substituting "展示";

(ii) by repealing "level 4" and
substituting "level 5";

(c) by repealing subsection (3) and
substituting -

"(3) Any manufacturer of
tobacco products or his agent, or
any wholesale distributor of tobacco
products, who sells, offers for sale
or possesses for the purpose of sale
any tobacco products to which
section 8 or 9 applies which have on
their packet or their retail

container -

(a) the words "light",
"lights", "mild",
"milds", "low tar",
"醇", "焦油含量低", "低
焦油", "淡味" or "柔
和"; or

(b) other words which
imply or suggest that
those products are
less harmful than
other tobacco
products,

commits an offence and is liable on
summary conviction to a fine at
level 5.

(4) Subsection (3) does not
apply to a person who is exempt from
that subsection under Schedule
5A."."

13 By deleting the clause and substituting -

**"13. Tobacco advertisements in printed
publications**

Section 11 is amended -

(a) in subsection (2)(b), by adding

"printed," after "document";

- (b) in subsection (3), by repealing everything after "publication" and substituting "that is published for the tobacco trade or as the "in house" magazine of any company engaged in that trade."."

- 15 (a) In paragraph (a), by deleting the proposed section 14(3)(b) and substituting -
 - "(b) does not form a prominent part of the advertisement or object."
- (b) In paragraph (c), by deleting the proposed section 14(4A)(b) and substituting -
 - "(b) that the name does not form a prominent part of the advertisement or object; and"
- (c) In paragraph (d), in the proposed section 14(6) -
 - (i) in paragraph (a)(ii)(B), by deleting "or";
 - (ii) by deleting paragraph (b) and substituting -
 - "(b) one price board if -
 - (i) it lists only the names and prices of the tobacco products offered for sale in the premises;

- (ii) it is of a size not greater than 1 500 square centimetres;
 - (iii) each item on the board containing the name and price of one type of tobacco product is of a size not greater than 50 square centimetres; and
 - (iv) it bears a health warning in the prescribed form and manner; or
- (c) in the case of a shop in which nothing except cigars and cigar accessories are offered for sale, 3 sets of catalogues, each listing only the names and prices of the cigars offered for sale in the shop."

New By adding -

"16A. Offences under Part IV

Section 15(1) is amended by repealing "level 4" and substituting "level 5".

- 18 (a) By deleting the proposed section 15E and substituting -

"15E. Interpretation of Part IVB

In this Part -

"relevant offence" (有關罪行) means any offence under this Ordinance other than an offence under Part III;

"relevant provision" (有關條文) means any provision of this Ordinance other than a provision of Part III."

- (b) By deleting the proposed section 15G and substituting -

"15G. General powers and duties of inspectors

(1) Without limiting any other provisions of this Ordinance, an inspector may, subject to subsections (2) and (3) and on production of his authority as an inspector if requested, do all or any of the following -

- (a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been or is being committed;
- (b) at any reasonable time enter and inspect a no smoking area in a public place for the purpose of

- ascertaining whether the relevant provisions are complied with;
- (c) seize any thing that appears to the inspector to be evidence of any relevant offence;
 - (d) require any person to give his name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed a relevant offence;
 - (e) take photographs or make sound or video recording for the purpose of obtaining evidence in connection with any relevant offence;
 - (f) require any person to produce for inspection documents or records under the control of the person for the purpose of enabling the inspector to ascertain whether the relevant provisions are complied with;
 - (g) make copies of all or any part of any such documents or records;
 - (h) require any person to provide the inspector with such assistance or information as is reasonably

necessary to enable the inspector to exercise any power or perform any duty conferred or imposed by this Ordinance.

(2) An inspector shall not enter under subsection (1)(a) -

(a) any domestic premises; or

(b) any correctional facility without the approval of the Commissioner of Correctional Services.

(3) An inspector shall not enter under subsection (1)(b) any public place that is a common part of any premises to which the public are not entitled or permitted to have access.

(4) A person who wilfully obstructs an inspector who is in the exercise of a power or the performance of a duty conferred or imposed by this Ordinance commits an offence and is liable on summary conviction to a fine at level 3.

(5) A person who fails to give his name and address or to produce proof of identity when required to do so under subsection (1)(d), or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.

15GA. Disposal of property seized by inspectors

If an inspector seizes any property while exercising a power or performing a duty conferred or imposed by this Ordinance, section 102 of the Criminal Procedure Ordinance (Cap. 221) shall apply as if the inspector were the police within the meaning of that section and such property were property that had come into possession of the police in connection with a criminal offence.”.

19 By deleting the clause and substituting -

“19. Regulations and Orders

Section 18 is amended -

(a) by repealing subsection (2) and substituting -

“(2) Subject to the regulations, the Secretary may by order in the Gazette prescribe all or any of the following matters -

(a) the form (including specifications) of -

(i) any notice that smoking is prohibited;

(ii) any health
warning;

(iii) any
indication
of tar and
nicotine
yields; and

(iv) any
notation;

(b) the manner in which
any of the matters
referred to in
paragraph (a) is to
be displayed.";

(b) by repealing subsection (2)(a)(i)
(as substituted by paragraph (a) of
this section).".

20 By deleting the clause and substituting -

"20. Schedule 2 substituted

Schedule 2 is repealed and the following
substituted -

"SCHEDULE 2

[s.3(1)
&(1AA)]

PART 1

DESIGNATED NO SMOKING AREAS

Item	Type of area
1.	Any cinema, theatre or concert hall.
2.	Any public lift.
3.	Any escalator.
4.	Any amusement game centre.
5.	Any child care centre.
6.	Any school.
7.	Any specified educational establishment.
8.	Any approved institution.
9.	Any place of detention.

10. Any place of refuge.
11. Any reformatory school.
12. Any hospital.
13. Any maternity home.
14. Any public pleasure ground other than a bathing beach.
15. The following areas within any bathing beach -
 - (a) any part of the waters set aside for the sole use of swimmers under section 10 of the Bathing Beaches Regulation (Cap. 132 sub. leg. E) (which includes any beach raft and any other thing on the surface of or above those waters);
 - (b) any area of land that is adjacent to those waters and covered completely by sand; and
 - (c) any barbecue area.

16. The following areas within any public swimming pool -
 - (a) any swimming pool;
 - (b) any sidewalk immediately adjacent to the swimming pool;
 - (c) any diving board or other apparatus or facility adjoining the swimming pool; and
 - (d) any spectator stand.

17. The following areas within any stadium -
 - (a) any pitch;
 - (b) any running track;
 - (c) any sidewalk immediately adjacent to the pitch or running track; and
 - (d) any spectator stand.

18. The Hong Kong Wetland Park designated under section 24(1) of the Country Parks Ordinance (Cap. 208).

19. An indoor area in -
 - (a) any shop, department store or shopping mall;

- (b) any market (whether publicly or privately operated or managed);
- (c) any supermarket;
- (d) any bank;
- (e) any restaurant premises;
- (f) any bar;
- (g) any karaoke establishment;
- (h) any mahjong-tin kau premises;
- (i) any bathhouse;
- (j) any massage establishment;
- (k) any residential care home;
- (l) any treatment centre; or
- (m) any communal quarters (as defined in Part 3).

20. An indoor area in a workplace or public place to the extent that it is not an area described in any other item in this Part.

PART 2

EXEMPT AREAS

Item	Type of area
1.	An area described in item 20 of Part 1 that is situated in domestic premises.
2.	Type 1 private quarters (as defined in Part 3).
3.	Type 2 private quarters (as defined in Part 3) that are not situated within any of the following - (a) a child care centre; (b) a school; (c) a specified educational establishment; (d) an approved institution; (e) a place of detention; (f) a place of refuge; (g) a reformatory school; (h) a hospital; (i) a maternity home.

4. A bedspace apartment in respect of which a licence or certificate of exemption issued under the Bedspace Apartments Ordinance (Cap. 447) is in force.

5. A room or suite of rooms in a hotel or guesthouse if -
 - (a) in respect of the hotel or guesthouse there is in force a licence or certificate of exemption issued under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349); and
 - (b) the room or suite of rooms is being hired for use as sleeping accommodation.

6. An area designated by the Airport Authority as a smoking area as referred to in section 16 of the Airport Authority Bylaw (Cap. 483 sub. leg. A).

7. An area in a correctional facility that is set aside for smoking by prisoners who are allowed to do so in accordance

with orders under rule 25 of the Prison Rules (Cap. 234 sub. leg. A).

8. A room designated for cigar tasting in a shop if all the following requirements are complied with -
 - (a) the shop is engaged in the retail sale of cigars;
 - (b) nothing except cigars and cigar accessories are offered for sale in the shop;
 - (c) the room is not used for smoking except for the purpose of tasting the cigars, or samples of the cigars, that are sold or offered for sale in the shop;
 - (d) the room is independently ventilated and completely partitioned off from the remainder of the shop; and
 - (e) no natural person is required to enter the room while it is being occupied for cigar tasting (whether or not he could have been required to do so by contract or otherwise).

9. A room designated for tobacco tasting in the manufacturing or business premises of a business engaged in the tobacco trade if all the following requirements are complied with -
- (a) the business is not engaged in the retail sale of tobacco products;
 - (b) the tobacco tasting is carried out for the purpose of conducting research and development or quality control of tobacco products in the normal course of the business;
 - (c) the room is only used for carrying out the tobacco tasting;
 - (d) the room is independently ventilated and completely partitioned off from the remainder of the premises; and
 - (e) no natural person, other than one who carries out the tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting (whether or not he could have been required

to do so by contract or otherwise).

PART 3

INTERPRETATION

In this Schedule -

"communal quarters" (共用宿舍) means any

premises that are the living

accommodation provided by an employer to

two or more employees, or to those

employees and their families, whether or

not any monetary consideration is

received by the employer for providing

the accommodation, but does not include -

(a) any room occupied exclusively by one employee, or by that employee and his family, within any such accommodation; and

(b) any such accommodation that is, or forms part of, the private dwelling of the employer or any other person;

"Type 1 private quarters" (第一類私人宿舍) means

any premises that comply with the

following requirements -

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by the employer for providing the accommodation;
- (b) the accommodation is occupied exclusively by that employee, or by him and his family; and
- (c) the block of building in which the accommodation is situated consists only of such accommodation and the common parts (if any) shared by such accommodation;

"Type 2 private quarters" (第二類私人宿舍) means

any premises that comply with the following requirements -

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by

the employer for providing the accommodation;

(b) the accommodation is occupied exclusively by that employee, or by him and his family; and

(c) the accommodation is permanently and completely partitioned off from the remainder of any area described in Part 1 within which the accommodation is situated; and

(d) none of any window, door or other closeable opening of the accommodation opens to an indoor part of that area (except a common part).".".

New By adding immediately after clause 22 -

"22A. Schedule 5 added

The following is added -

"SCHEDULE 5 [s. 3(2A)]

EXEMPTION FROM SECTION 3(2) OF THIS ORDINANCE

**Exemption for live performance
or recording for film or
television programme**

1. Interpretation of Schedule 5

(1) In this Schedule -

"film" (電影) means a film within the meaning of section 2(1) of the Film Censorship Ordinance (Cap. 392);

"live performance" (現場表演) means a performance given or done before a live audience, whether on payment or otherwise, and includes the final rehearsal of the performance;

"performance" (表演) means any play, show, entertainment or any other kind of performance;

"smoking act" (吸煙動作) means smoking or carrying a lighted cigarette, cigar or pipe;

"television programme" (電視節目) means a television programme within the meaning of section 2(1) of the Broadcasting Ordinance (Cap. 562).

(2) For the purposes of this Schedule, a venue is a designated performance venue if it is -

(a) situated in -

(i) a school other than one that provides any

nursery, kindergarten
or primary education
within the meaning of
section 3(1) of the
Education Ordinance
(Cap. 279); or

(ii) a specified
educational
establishment; and

(b) designated by the manager of
that school or establishment as
a venue for any live
performance.

2. Exemption for live performance

For the purposes of section 3(2A) of this
Ordinance, a person who does a smoking act in
a no smoking area is exempt from section 3(2)
of the Ordinance if he proves that -

(a) he is performing in a live
performance, and his smoking
act forms part of that
performance;

(b) the no smoking area in which
the live performance takes
place is not a school or

- specified educational establishment except a designated performance venue;
- (c) the manager of the no smoking area has given his prior permission for the live performance with the smoking act to take place in the no smoking area;
- (d) the live performance takes place only within the time and at the location permitted by the manager; and
- (e) the smoking act complies with all the requirements specified in relation to such an act under section 4.

3. Exemption for recording for film or television programme

For the purposes of section 3(2A) of this Ordinance, a person who does a smoking act in a no smoking area is exempt from section 3(2) of the Ordinance if he proves that -

- (a) he is performing in a performance, and his smoking

act forms part of the performance;

- (b) the performance is being recorded for the production of a film or television programme (whether live or otherwise);
- (c) the film or television programme is not, and does not form part of, a tobacco advertisement;
- (d) the manager of the no smoking area in which the performance takes place has given his prior permission for the performance with the smoking act to take place in the no smoking area;
- (e) the performance takes place only within the time and at the location permitted by the manager; and
- (f) the smoking act complies with all the requirements specified in relation to such an act under section 4.

4. Specified requirements for smoking act

For the purposes of sections 2(e) and 3(f), the following are the requirements specified in relation to a smoking act -

- (a) the act does not expressly or impliedly induce, suggest or request any person to purchase or smoke any tobacco product;
- (b) the act does not illustrate smoking in a manner that is calculated, expressly or impliedly, to promote or encourage the use of any tobacco product;
- (c) the act does not illustrate the package of any tobacco product; and
- (d) the act does not illustrate any quality of any tobacco product except for the purpose of publicizing the harm of smoking."

22B. Schedule 5A added

The following is added -

"SCHEDULE 5A [s. 10(4)]

EXEMPTION FROM SECTION 10(3) OF
THIS ORDINANCE

1. Interpretation of Schedule 5A

(1) In this Schedule -

"appointed day" (指定日期) means the day on
which the Smoking (Public Health)
(Amendment) Ordinance 2006 (of 2006)
is published in the Gazette;

"cigarettes" (香煙) means any cigarettes to
which section 8 of this Ordinance
applies;

"proscribed term" (禁用字眼) means -

(a) the words "light", "lights",
"mild", "milds", "low tar",
"醇", "焦油含量低", "低焦油", "淡
味" or "柔和"; or

(b) other words which imply or
suggest that any tobacco
products are less harmful than
others;

"specified person" (指明人士) means a
manufacturer or his agent, or a wholesale
distributor;

"specified tobacco product" (指明煙草產品) means
any cigar, pipe tobacco or cigarette

tobacco to which section 9 of this Ordinance applies.

(2) In this Schedule -

(a) a reference to a specified person who sells any tobacco products includes a reference to a specified person who offers for sale, or possesses for the purpose of sale, any tobacco products; and

(b) a reference to any tobacco products sold by a specified person shall be construed accordingly.

(3) In this Schedule, the expressions listed in the left-hand column below shall have the same meaning as defined in, or shall be construed in accordance with, the provisions of the Trade Marks Ordinance (Cap. 559) listed in the right-hand column in relation to those expressions.

Expression	Relevant Provision
date of registration (註冊日期)	section 48
owner (in relation to a registered trade mark)(註冊	section 2(1)

商標的擁有人)	
owner of a well-known trade mark (馳名商標的擁有人)	section 4(3)
The register (註冊紀錄冊)	section 8(1)
registered trade mark (註冊商標)	section 2(1)
registration (註冊)	section 8(2)
trade mark (商標)	section 3
Use (of trade mark) (使用(商標))	section 6
well-known trade mark (馳名商標)	section 4

2. Exemption for certain trade marks and trade names on packet or retail container of cigarettes

For the purposes of section 10(4) of this Ordinance, a specified person who sells any cigarettes which have on their packet or retail container any proscribed term is exempt from section 10(3) of the Ordinance if he proves that -

- (a) the proscribed term is, or forms part of, -
 - (i) a registered trade mark that complies with all the

requirements
specified in relation
to such a trade mark
in section 4;

(ii) an unregistered trade
mark or trade name
that complies with
all the requirements
specified in relation
to such a trade mark
or trade name in
section 5; or

(iii) a well-known trade
mark that complies
with all the
requirements
specified in relation
to such a trade mark
in section 6;

(b) the proscribed term is used on
the packet or retail container
only as, or as part of, that
trade mark or trade name, and
in the notation mentioned in
paragraph (e), and is not used
in connection with any other
expression or description on

the packet or retail container;

- (c) the specified person is the owner of that trade mark or trade name or his licensee, agent or authorized user;
- (d) the cigarettes have been determined under section 16 of the Ordinance and the regulations to have a tar yield of 9 milligrams or less; and
- (e) the packet of the cigarettes, and if the packet is within a retail container, the container also, bear a notation in the prescribed form and manner.

3. Exemption for certain trade marks and trade names on retail container of specified tobacco products

For the purposes of section 10(4) of this Ordinance, a specified person who sells any specified tobacco products which have on their retail container any proscribed term is exempt from section 10(3) of the Ordinance if he proves that -

- (a) the proscribed term is, or forms part of, -

- (i) a registered trade mark that complies with all the requirements specified in relation to such a trade mark in section 4;
 - (ii) an unregistered trade mark or trade name that complies with all the requirements specified in relation to such a trade mark or trade name in section 5; or
 - (iii) a well-known trade mark that complies with all the requirements specified in relation to such a trade mark in section 6;
- (b) the proscribed term is used on the retail container only as, or as part of, that trade mark or trade name, and in the notation mentioned in paragraph

- (d), and is not used in connection with any other expression or description on the retail container;
- (c) the specified person is the owner of that trade mark or trade name or his licensee, agent or authorized user; and
- (d) the retail container of the specified tobacco products bears a notation in the prescribed form and manner.

4. Requirements specified in relation to registered trade mark

For the purposes of sections 2(a)(i) and 3(a)(i), the following are the requirements specified in relation to a registered trade mark used on the packet or retail container of any tobacco products sold by a specified person -

- (a) the date of registration of that trade mark is before the appointed day;
- (b) that trade mark is registered in respect of tobacco products;

and

- (c) that trade mark remains registered in the register at the time when the tobacco products are sold by the specified person.

5. Requirements specified in relation to unregistered trade mark or trade name

For the purposes of sections 2(a)(ii) and 3(a)(ii), the following are the requirements specified in relation to an unregistered trade mark or trade name used on the packet or retail container of any tobacco products sold by a specified person -

- (a) the specified person has begun to use that trade mark or trade name in good faith continuously in the course of retail sale of tobacco products in Hong Kong before the appointed day;
- (b) that trade mark or trade name is capable of -
 - (i) distinguishing the tobacco products sold by the specified

person from the
tobacco products of
other undertakings;
and

(ii) in the case of a
trade mark, being
represented
graphically;

(c) that trade mark or trade name
is not subject to a permanent
injunction granted by the court
against its use based on fraud
or other similar grounds under
the common law; and

(d) that trade mark or trade name
was not previously a registered
trade mark the registration of
which has been either -

(i) revoked on the ground
for being liable to
mislead the public
under section
52(2)(c) of the Trade
Marks Ordinance (Cap.
559); or

(ii) declared invalid
under section 53(3)

of that Ordinance on the ground that the trade mark was registered in contravention of section 11 of that Ordinance for being likely to deceive the public.

6. Requirements specified in relation to well-known trade mark

For the purposes of sections 2(a)(iii) and 3(a)(iii), the following are the requirements specified in relation to a well-known trade mark used on the packet or retail container of any tobacco products sold by a specified person -

- (a) that trade mark has begun to be well known in Hong Kong in respect of tobacco products before the appointed day;
- (b) that trade mark is not subject to a permanent injunction granted by the court against its use based on fraud or other

similar grounds under the
common law; and

(c) that trade mark was not
previously a registered trade
mark the registration of which
has been either -

(i) revoked on the ground
for being liable to
mislead the public
under section
52(2)(c) of the Trade
Marks Ordinance (Cap.
559); or

(ii) declared invalid
under section 53(3)
of that Ordinance on
the ground that the
trade mark was
registered in
contravention of
section 11 of that
Ordinance for being
likely to deceive the
public.

7. Effect of this Schedule

Nothing in this Schedule affects the operation of the Trade Marks Ordinance (Cap. 559) or any other enactment or rule of law.

8. Transitional provision

(1) Despite section 2, a specified person who sells, before the first anniversary of the appointed day, any cigarettes which have on their packet or retail container any proscribed term is exempt from section 10(3) of the Ordinance so long as he proves that all the requirements in section 2(a) to (d) of this Schedule are complied with.

(2) Despite section 3, a specified person who sells, before the first anniversary of the appointed day, any specified tobacco products which have on their retail container any proscribed term is exempt from section 10(3) of the Ordinance so long as he proves that all the requirements in section 3(a) to (c) of this Schedule are complied with."."

30

In paragraph (a), in the Chinese text, by deleting "內。" and substituting "內，".

New By adding immediately before clause 32 -

"31A. No smoking signs

Paragraph 2 of the Smoking (Public Health)
(Notices) Order (Cap. 371 sub. leg. B) is
repealed."

32 By deleting "of the Smoking (Public Health)(Notices)
Order (Cap. 371 sub. leg. B)".

33 In the proposed paragraph 4A(4) -

- (a) in paragraph (a), by adding "and" at the end;
- (b) in paragraph (b), by deleting "; and" and
substituting the full stop;
- (c) by deleting paragraph (c).

New By adding -

"34A. Paragraphs added

The following is added -

**"4C. Notation on packet or retail
container of tobacco products
(other than retail container
containing one cigar)**

(1) For the purposes of sections 2(e)
and 3(d) of Schedule 5A to the Ordinance, this
paragraph applies to any packet or retail
container of tobacco products to which that
Schedule applies (other than a retail
container containing one cigar).

(2) Each packet and each retail container shall bear a notation in the form set out in Part IIC of the Schedule to this Order.

(3) Subject to subparagraphs (4) and (8) -

(a) the notation shall appear on the next 2 largest surfaces other than the 2 largest surfaces of the packet and of the retail container; and

(b) one of those surfaces shall bear the Chinese version of the notation and the other surface shall bear the English version of the notation.

(4) If a packet or retail container is in the form of a drum, the Chinese version of the notation shall appear on the curved surface of the drum and the English version of the notation shall appear on the lid.

(5) Subject to subparagraph (6), the Chinese or English version of the notation shall be of a size that covers at least 45% of the area of the surface on which that version appears.

(6) If a packet or retail container is in the form of a drum, the Chinese or English version of the notation shall be of a size that covers at least 25% of the area of the surface on which that version appears.

(7) No notation shall appear in such a manner that it is obscured by any affixture to the packet or retail container, the wrapping of the packet or retail container or any affixture to the wrapping of the packet or retail container.

(8) The notation may be printed on a label securely affixed to the packets or retail containers -

(a) if the packets or retail containers are made of metal or are plastic drums;

(b) with the approval of the Commissioner of Customs and Excise where he is satisfied that -

(i) the circumstances in which the packets or retail containers are in Hong Kong, or are to be brought to Hong

Kong, are such that they could not reasonably be expected to have had printed on them a notation at the time of their manufacture; and

- (ii) the approval is required for a limited period of time or in relation to a particular consignment of tobacco products only.

4D. Notation on retail container containing one cigar

(1) For the purposes of section 3(d) of Schedule 5A to the Ordinance, this paragraph applies to any retail container containing one cigar to which that Schedule applies.

(2) Each retail container shall bear a notation in the form set out in Part IIC of the Schedule to this Order.

(3) Subject to subparagraph (5), the Chinese and English versions of the notation shall appear on the largest surface of the retail container.

(4) No notation shall appear in such a manner that it is obscured by any affixture to the retail container, the wrapping of the retail container or any affixture to the wrapping of the retail container.

(5) The notation may be printed on a label securely affixed to the retail containers with the approval of the Commissioner of Customs and Excise where he is satisfied that the circumstances in which the retail containers are in Hong Kong, or are to be brought to Hong Kong, are such that they could not reasonably be expected to have had printed on them a notation at the time of their manufacture."."

New The following is adding -

"35A. Paragraph added

The following is added -

**"5A. Health warning on price board
of tobacco products**

(1) For the purposes of section

14(6)(b)(iv) of the Ordinance, this paragraph applies to a price board that lists the names and prices of the tobacco products offered for sale in any premises.

(2) The price board shall bear a health warning in the form set out in Part IIIA of the Schedule.

(3) The health warning shall be of a size that covers at least 20% of the area of the price board."."

36

(a) By deleting paragraph (a) and substituting -

"(a) by repealing "[paras. 3, 4A, 4B, 5 & 8]" and substituting "[paras. 3, 4A, 4AA, 4B, 4C, 4D, 5 & 8]";

(aa) by repealing "[paras. 3, 4A, 4AA, 4B, 4C, 4D, 5 & 8]" (as substituted by paragraph (a) of this section) and substituting "[paras. 3, 4A, 4AA, 4C, 4D, 5, 5A & 8]";

(ab) by repealing "[paras. 3, 4A, 4AA, 4C, 4D, 5, 5A & 8]" (as substituted by paragraph (aa) of this section) and substituting "[paras. 3, 4A, 4AA, 4C, 4D, 5A & 8]";".

(b) By adding -

"(da) by adding -

"PART IIC

FORM OF NOTATION ON PACKET OR RETAIL
CONTAINER OF TOBACCO PRODUCTS

Chinese version

警告： “ ” 並不表示
本產品對健康的害處
小於其他煙草產品

English version

**WARNING: " " DO(ES) NOT MEAN
THAT THIS PRODUCT IS LESS
HARMFUL TO HEALTH THAN OTHER
TOBACCO PRODUCTS**

Specifications:

1. The form is rectangular in shape and surrounded by a black line as demarcation. In the case of a retail container containing one cigar, the width and the length of the form are 7 cm and 3 cm respectively.
2. The notation contains the message in words as set out in the form and shall be completed by inserting between the quotation marks in the form each proscribed term as defined in section 1

of Schedule 5A to the Ordinance which appears on the packet or retail container.

3. The background colour is white.
4. For the Chinese version, the characters are printed in “中黑體” typeface. For the English version, the letters are printed in Univers Bold typeface.
5. All characters and letters are printed in black.”.”.

(c) By adding -

“(ea) by adding -

"PART IIIA

FORM OF HEALTH WARNING ON PRICE BOARD
OF TOBACCO PRODUCTS



Specifications:

1. The form is rectangular in shape and surrounded by a black line as demarcation.
2. The background colour is white.
3. The characters "香港特區政府忠告市民" are printed in 30 kyu (級).
4. The characters "吸煙足以致命" are printed in 90 kyu (級).
5. All characters referred to in paragraphs 3 and 4 are printed in black and in "華康中黑體" typeface.
6. The letters "HKSAR GOVERNMENT WARNING" are printed in 30 points.
7. The letters "SMOKING KILLS" are printed in 90 points.
8. All letters referred to in paragraphs 6

and 7 are printed in black and in Univers Bold typeface, all capitals.

9. If the price board is smaller than 1 500 square centimetres, the characters and letters of the health warning may be proportionally reduced in kyu (級) and points by reference to the specifications in paragraphs 3, 4, 6 and 7.";"

Part 4 By deleting the Part and substituting -

"PART 4

TRANSITIONAL PROVISIONS

37. Section added

The Smoking (Public Health) Ordinance (Cap. 371) is amended by adding -

"19. Transitional provisions relating to the Smoking (Public Health) (Amendment) Ordinance 2006

Schedule 6 provides for the transitional arrangements relating to the Smoking (Public Health)(Amendment) Ordinance 2006 (of 2006).".

38. Schedule 6 added

The following is added -

"SCHEDULE 6 [s. 19]

TRANSITIONAL PROVISIONS RELATING TO THE
SMOKING (PUBLIC HEALTH) (AMENDMENT)
ORDINANCE 2006

PART 1

PRE-AMENDMENT HEALTH WARNINGS, ETC.

**1. Sale of tobacco products with
pre-amendment health
warnings, etc.**

(1) Despite sections 8 and 9 of this Ordinance, it shall not be an offence under this Ordinance to sell, offer for sale or possess for the purposes of sale, before the first anniversary of the appointed day, any tobacco products the packet or retail container of which does not comply with the provisions of this Ordinance relating to health warnings and indication of tar and nicotine yields if, but only if, the packet or retail container complies with the provisions of this Ordinance, as in force immediately before the appointed day, relating to health warnings and indication of tar and nicotine yields.

(2) In this section, "appointed day" (指定日期) means the day on which the Smoking

(Public Health) (Amendment) Ordinance 2006
(of 2006) is published in the Gazette.

PART 2

DEFERMENT OF SMOKING BAN IN
LISTED ESTABLISHMENTS

1. Interpretation of Part 2

In this Part -

"Appeal Board" (上訴委員會) means the Appeal

Board established by section 12;

"certificate of compliance" (合格證明書) means a

certificate of compliance within the
meaning of section 2 of the Clubs (Safety
of Premises) Ordinance (Cap. 376);

"club-house" (會址) means a club-house within

the meaning of section 2 of the Clubs
(Safety of Premises) Ordinance (Cap.
376);

"designated mahjong room" (指定麻將房) has the

meaning assigned to it by section 5(2);

"Director" (署長) means the Director of Health;

"displayed name" (展示名稱), in relation to an

establishment, means any name, style or
description of the establishment that
appears -

(a) outside the establishment; or

(b) on a signboard or any
advertising structure relating
to the establishment;

"exclusive entrance" (專用入口), in relation to
an establishment, means an entrance that
leads exclusively to the establishment;

"licensee" (持牌人) means a licensee within the
meaning of regulation 2(1) of the
Dutiable Commodities (Liquor) Regulations
(Cap. 109 sub. leg. B);

"liquor licence" (酒牌) means a liquor licence
within the meaning of section 2(1) of the
Dutiable Commodities Ordinance (Cap 109);

"list of qualified establishments" (合資格場所名
單) means the list maintained under
section 7(1);

"listed establishment" (列明場所) means an
establishment with its name and address
included in the list of qualified
establishments;

"person in charge" (負責人) -

(a) in relation to a qualified bar,
means the licensee of the
liquor licence that is in force

- in respect of the bar;
- (b) in relation to a qualified club, means the person in whose name the certificate of compliance for the club-house is issued;
- (c) in relation to a qualified nightclub, means the licensee of the liquor licence that is in force in respect of the nightclub;
- (d) in relation to a bathhouse, means the person to whom a licence in respect of the bathhouse is granted under the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I);
- (e) in relation to a massage establishment, means the person to whom a licence to operate the establishment is issued under the Massage Establishments Ordinance (Cap. 266); and
- (f) in relation to mahjong-tin kau

premises, means the person to whom a licence is issued in respect of the premises under section 22(1)(b) of the Gambling Ordinance (Cap. 148);

"prescribed sign" (訂明標誌) has the meaning assigned to it by section 8(2);

"qualified bar" (合資格酒吧) has the meaning assigned to it by section 4;

"qualified establishment" (合資格場所) has the meaning assigned to it by section 3;

"qualified club" (合資格會所) has the meaning assigned to it by section 5(1);

"qualified nightclub" (合資格夜總會) has the meaning assigned to it by section 6.

2. Smoking ban deferred in listed establishments

Despite section 3(1) of this Ordinance, a designation of no smoking area under that section does not have effect before 1 July 2009 in relation to an indoor area if and only for so long as -

(a) the area -

(i) is a designated mahjong room in a

listed establishment
that is a qualified
club; or

(ii) is in any other
listed establishment;
and

(b) a prescribed sign is displayed
in relation to the
establishment in accordance
with section 8(1).

3. Qualified establishment

(1) For the purposes of this Part, an
establishment is a qualified establishment if
and only for so long as -

(a) the establishment is -

- (i) a qualified bar;
- (ii) a qualified club;
- (iii) a qualified
nightclub;
- (iv) a bathhouse;
- (v) a massage
establishment; or
- (vi) mahjong-tin kau
premises; and

(b) the establishment complies with
all the entry restrictions.

(2) For the purpose of subsection (1)(b), an establishment complies with all the entry restrictions if -

- (a) no person under the age of 18 years is permitted to enter the establishment;
- (b) no person can enter the establishment except through an exclusive entrance;
- (c) a sign in Chinese and English is placed and kept in place in a prominent position at each exclusive entrance of the establishment indicating that no person under the age of 18 years is permitted to enter the establishment; and
- (d) such signs are maintained in legible condition and good order.

4. Qualified bar

For the purposes of this Part, an establishment is a qualified bar if all the following requirements are complied with -

- (a) the establishment is a bar as

defined in section 2 of the Ordinance;

- (b) the establishment is permanently and completely partitioned off from any other establishment;
- (c) there is in force a liquor licence in respect of and relating exclusively to the establishment; and
- (d) no displayed name of the establishment contains "酒家", "酒樓", "餐廳", "卡拉OK", "網吧", "restaurant", "café", "karaoke", "internet" or similar expressions; and
- (e) the establishment is not engaged primarily in the sale or supply of meals.

5. Qualified club and designated mahjong room

(1) For the purposes of this Part, an establishment is a qualified club if all the following requirements are complied with -

- (a) the establishment is a club-house in respect of which there

is in force a certificate of compliance;

(b) the club-house is open 24 hours on any day on which it is open to members and their accompanied guests; and

(c) the establishment consists of at least 10 designated mahjong rooms.

(2) For the purposes of this Part, a room in an establishment is a designated mahjong room if -

(a) the room is furnished and used for the purpose of playing mahjong; and

(b) the room is permanently and completely partitioned off from the remainder of the establishment.

6. Qualified nightclub

For the purposes of this Part, an establishment is a qualified nightclub if all the following requirements are complied with -

(a) there is in force a liquor licence in respect of the

establishment;

(b) either -

(i) each displayed name of the establishment in Chinese contains the expression “夜總會” in plain and readily legible characters; or

(ii) each displayed name of the establishment in a language other than Chinese contains the expression “night club” or “nightclub” in plain and readily legible letters;

(c) no displayed name of the establishment contains “酒家”, “酒樓”, “餐廳”, “酒吧”, “網吧”, “restaurant”, “café”, “bar”, “internet” or similar expressions; and

(d) the establishment is not open for business between 6 a.m and 12 p.m. on any day.

7. List of qualified establishments

(1) The Director shall maintain a list containing the name and address of each qualified establishment notified under this section.

(2) The person in charge of a qualified establishment may request the Director to include the name and address of the establishment in the list of qualified establishments by submitting to the Director a notification in a form specified by the Director.

(3) The person in charge shall in the notification make a declaration stating that all the information given in the notification is true, correct and complete.

(4) After receiving a duly completed notification submitted under this section in respect of an establishment, the Director shall include the name and address of the establishment in the list of qualified establishments.

(5) The Director shall make the list of qualified establishments available for inspection by the public, free of charge,

during the ordinary opening hours of his office.

8. Listed establishment to display prescribed sign

(1) The person in charge of a listed establishment shall ensure that -

(a) a prescribed sign is placed and kept in place -

(i) in the case of a listed establishment that is a qualified club, in a prominent position at the exclusive entrance of each designated mahjong room in the club; and

(ii) in the case of any other listed establishment, in a prominent position at each exclusive entrance of the establishment; and

(b) such signs are maintained in legible condition and good

order.

(2) For the purposes of this Part, a sign is a prescribed sign if it complies with all the following specifications -

(a) it is square in shape and each side is at least 15 centimetres in length;

(b) it is surrounded by a black line as demarcation and the background colour is white;

(c) it reads -

(i) in the case of a listed establishment that is a qualified club, “此房間是合資格會所的指定麻將房，而此會所已列入根據《吸煙(公眾衛生)條例》備存的合資格場所名單，此房間將於2009年7月1日起實施禁煙規定。This is a designated mahjong room in a qualified club that has been included in the list of qualified

establishments
maintained under the
Smoking (Public
Health) Ordinance.
The smoking ban will
apply to this room
with effect from 1
July 2009.”; and

- (ii) in the case of any
other listed
establishment, “此場所
已列入根據《吸煙(公眾衛
生)條例》備存的合資格場所
名單，此場所的室內區域將於
2009年7月1日起實施禁煙規
定。This establishment
has been included in
the list of qualified
establishments
maintained under the
Smoking (Public
Health) Ordinance.
The smoking ban will
apply to an indoor
area in this

establishment with
effect from 1 July
2009."; and

(d) all characters and letters are
printed in black and are plain
and readily legible.

(3) The manager of a no smoking area
that is not in a listed establishment shall
ensure that no prescribed sign, or any other
sign implying or suggesting that smoking is
permitted in the area, is displayed in or
outside the area.

(4) A person who fails to comply with
subsection (1) or (3) commits an offence and
is liable to a fine at level 5 and, in the
case of a continuing offence, to a further
penalty of \$1500 for each day during which the
offence continues.

**9. Removal of name and address
from the list of qualified
establishments**

(1) Where there is any change in any
information given in the notification
submitted under section 7 in respect of a
listed establishment, and as a result the
establishment is no longer a qualified

establishment, the person in charge of the establishment shall, within 10 days after the change, inform the Director of the change by submitting to the Director a notification in a form specified by the Director.

(2) Without prejudice to subsection (1), if the person in charge of a listed establishment wishes to have the name and address of the establishment removed from the list of qualified establishments, he may request the Director to do so by submitting to the Director a notification in a form specified by the Director.

(3) After receiving a notification submitted under this section in respect of a listed establishment, the Director shall remove the name and address of an establishment from the list of qualified establishments.

(4) If it otherwise comes to the knowledge of the Director that a listed establishment is no longer a qualified establishment or section 8(1) is not complied with, the Director may, on his own initiative, remove the name and address of the establishment from the list of qualified establishments.

(5) The Director shall not make a decision under subsection (4) in respect of a listed establishment without giving the person in charge concerned prior written notice and an opportunity to make a written representation within 14 working days after the issue of the prior notice.

(6) A person who fails to comply with subsection (1) commits an offence and is liable to a fine at level 5.

10. Defence to offences under this Part

In any proceedings for an offence under this Part, it is a defence for the person charged to prove that -

- (a) the offence was committed without his knowledge or consent; and
- (b) he had exercised all due diligence to prevent the commission of the offence.

11. Appeal to Appeal Board against Director's decision

(1) A person aggrieved by a decision of the Director under section 9(4) may, within 14 days after the decision, appeal to the Appeal

Board by giving a notice of appeal to the Secretary stating the substance of the matter and reasons for the appeal.

(2) An appeal under this section against a decision does not suspend the decision.

12. Constitution of Appeal Board

(1) There is established an Appeal Board for the purpose of hearing and determining an appeal under section 11.

(2) The Appeal Board is to be constituted according to this section.

(3) Where a notice of appeal is given under section 11, the Secretary shall appoint 3 members from the Appeal Board Panel constituted according to section 13 to serve as members on the Appeal Board for the purpose of hearing and determining the appeal to which the notice relates.

(4) The Secretary shall appoint one of those 3 members to be the Chairman of the Appeal Board in the hearing of that appeal.

(5) If a matter involved in an appeal may give rise to a conflict of interest between a person's duties as a member on the Appeal Board and his pecuniary or other

personal advantage, the Secretary shall not appoint that person to serve as a member on the Appeal Board for hearing and determining that appeal.

13. Constitution of Appeal Board Panel

(1) Subject to subsection (2), the Secretary shall appoint an Appeal Board Panel ("the Panel") consisting of such persons as he considers suitable to serve as members of the Appeal Board.

(2) A public officer is not eligible for appointment to the Panel.

(3) Appointment under subsection (1) shall be for such period as the Secretary may determine.

(4) A member of the Panel may resign his office by giving notice in writing to the Secretary.

(5) The Secretary shall publish in the Gazette notice of every appointment under subsection (1).

(6) Upon his appointment, a member of the Panel shall submit to the Secretary, in a form specified by the Secretary, a written declaration stating the particulars of any

matter that may give rise to a conflict of interest between his duties as a member of the Panel and his pecuniary or other personal advantage.

(7) Where there is any change in any matter stated in a declaration submitted under subsection (6), the member shall, within one month after the change, submit to the Secretary another declaration stating the change.

14. Proceedings before Appeal Board

(1) The Chairman of the Appeal Board shall notify the appellant and the Director of the date, time and place of the hearing of the appeal.

(2) The Chairman shall fix the date of the hearing on -

- (a) a date that is within 14 working days after the receipt of the notice of appeal; or
- (b) a later date if requested by the appellant.

(3) The hearing of the appeal shall be conducted in public unless the Chairman of his own motion, or at the request of the appellant

or the Director, orders that all or any persons should be excluded from the whole or any part of the hearing.

(4) The appellant and the Director may be represented by an agent or legal representative at the proceedings before the Appeal Board.

(5) The Appeal Board shall determine its procedure for hearing the appeal.

15. Powers of the Appeal Board

(1) The Appeal Board may -

- (a) order a person to attend before the Board and give evidence;
and
- (b) order a person to produce documents.

(2) The Appeal Board may confirm or revoke the decision of the Director appealed against.

(3) The decision of an Appeal Board on an appeal shall be binding on the appellant and the Director and shall be final.

(4) The Appeal Board shall notify the appellant and the Director of its decision and the reasons for it.

16. Expiry of this Part

This Part shall expire on 1 July 2009.".