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Secretary for Health, Welfare and Food
Health, Welfare and Food Bureau
(Attn: Ms Julina CHAN, PAS(H)3)
19/F, Murray Building
Garden Road
Hong Kong

By Fax (2840 0467) and By Post

15 June 2005

Dear Ms CHAN

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

I refer to your letter of 9 June 2005 and my telephone conversation with your Miss AU on 9 June 2005. I have the following comments:

Public Place

I note that the policy intent is that the indoor common part of both domestic and non-domestic buildings is to be designated as a no smoking area under the Bill. However, doubt arises as to whether the drafting of the Bill reflects the policy intent.

Under section 3(1AA) of the Bill, an indoor area in a public place (including a common part of any premises) is to be designated as a no smoking area. Section 3(5) provides that section 3(1AA) does not apply to domestic premises. “Domestic premises” are defined under section 2 to mean any premises which are constructed or intended to be used for habitation. Your Miss AU informed me that “domestic premises” refers to the individual household units in a domestic building and therefore section 3(5) does not exclude the common part of the building.

However, “premises” is a word which is capable of many meanings, one of which is “a building”¹. “Premises” meaning parts of a domestic building other than the individual household units is also reflected in the legislation of Hong Kong:

- (a) Under section 1 of Cap.316P, when determining the premises in Hong

¹ Words and Phrases legally defined, Butterworths volume 3 P. 414 - 415

Kong occupied by persons for dwelling purposes, “premises” is defined to include any staircase and corridor.

- (b) Under section 42(11) of Cap. 486, while “domestic premises” is of the same meaning as provided in the Bill, “premises” is further defined to mean—
 - (i) any building where no part of the building is separately occupied, and includes any land appertaining to the building; and
 - (ii) in any other case, any part of a building which is separately occupied, and includes any land appertaining to such part.

In these circumstances, “domestic premises” can be construed to mean a domestic building including the common part. The common part of a domestic building will then be excluded from the smoking ban by virtue of section 3(5) of the Bill. If the policy intent is to restrict the meaning of “domestic premises” to the individual household units² of a domestic building, clarification would have to be made in the Bill.

Power of manager of a no smoking area

I note the policy intent is that:

- (a) “manager” of a lift in a building is defined to mean—
 - (i) the person who is responsible for the management, or is in charge or control of the building; and
 - (ii) the owner, occupier or lessee of the building.
- (b) manager of the common part (excluding the lift) of a building is restricted to mean (i) only.

If no one has been appointed to be responsible for the management or in charge or control of a building, please clarify the policy intent in respect of:

- (a) the party who is entitled to exercise the power under section 3(3) of Smoking (Public Health) Ordinance (Cap. 371) (“the Ordinance”) to ensure compliance of the Ordinance in the common part of the building; and

² Under section 57 of Cap. 494, “domestic premises” is defined to mean any premises used wholly or mainly for residential purposes and constituting a separate household unit.

- (b) the party who is responsible to place the no smoking signs in the common part in accordance with section 3(3) of the Ordinance.

It is appreciated that your reply in both Chinese and English could reach us by close of play, 28 June 2005.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser