

*Smoke-free Workplace Legislation  
in Selected Places*

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# CONTENTS

	<i>Page</i>
<b>Executive Summary</b>	
<b>Chapter 1 – Introduction</b>	<b>1</b>
Background	1
Scope of research	1
Methodology	3
<b>Chapter 2 – Ireland</b>	<b>4</b>
Background	4
Statutory smoke-free places	5
Places exempt from smoking ban	6
Legal responsibility of persons in charge of smoke-free places	7
Enforcing authorities	8
Compliance with smoking ban	8
Transitional arrangements for hospitality sector	9
Economic impact of smoking ban on hospitality sector	9
Legal challenge to smoking ban	10
<b>Chapter 3 – Norway</b>	<b>11</b>
Background	11
Statutory smoke-free places	12
Places exempt from smoking ban	12
Legal responsibility of persons in charge of smoke-free places	12
Enforcing authorities	13
Compliance with smoking ban	13
Transitional arrangements for hospitality sector	14
Economic impact of smoking ban on hospitality sector	14
Legal challenge to smoking ban	15
<b>Chapter 4 – The United Kingdom</b>	<b>16</b>
Background	16
Existing smoking restrictions	17
Legal responsibility of persons in charge of smoke-free places	18
Enforcing authorities	18
2005 consultation paper on statutory smoking ban	19
<i>Statutory smoke-free places</i>	19
<i>Places exempt from smoking ban</i>	20
<i>Legal responsibility of persons in charge of smoke-free places</i>	22
<i>Enforcing authorities</i>	22
<i>Transitional arrangements for hospitality sector</i>	22
Possible economic impact of smoking ban on hospitality sector	23
Legal challenge to smoking ban	23

<b>Chapter 5 – Singapore</b>	<b>24</b>
Background	24
Statutory smoke-free places	24
<i>Hospitality and public entertainment venues</i>	25
<i>Educational and welfare institutions</i>	25
<i>Other indoor workplaces/public places</i>	25
Places exempt from smoking ban	27
Legal responsibility of persons in charge of smoke-free places	28
Enforcing authorities	29
Transitional arrangements for hospitality sector	29
Economic impact of smoking ban on hospitality sector	29
Legal challenge to smoking ban	30
<b>Chapter 6 – Thailand</b>	<b>31</b>
Background	31
Statutory smoke-free places	32
Places exempt from smoking ban	33
Legal responsibility of persons in charge of smoke-free places	34
Enforcing authorities	35
Compliance with smoking ban	35
Transitional arrangements for hospitality sector	36
Economic impact of smoking ban on hospitality sector	36
Legal challenge to smoking ban	36
<b>Chapter 7 – Japan</b>	<b>37</b>
Background	37
Legislation relating to second-hand smoking	38
Legal responsibility of persons in charge of smoke-free places	39
Enforcing authorities	39
Compliance with smoking restriction	40
Legal challenge to smoking ban	40
<b>Chapter 8 – Taiwan</b>	<b>41</b>
Background	41
Statutory smoke-free places	41
Places exempt from smoking ban	42
Legal responsibility of persons in charge of smoke-free places	43
Enforcing authorities	44
Compliance with smoking ban	44
Transitional arrangements for hospitality sector	45
Economic impact of smoking ban on hospitality sector	45
Legal challenge to smoking ban	45

<b>Chapter 9 – State of California in the United States</b>	<b>46</b>
Background	46
Statutory smoke-free places	47
Places exempt from smoking ban	48
Legal responsibility of persons in charge of smoke-free places	49
Enforcing authorities	51
Compliance with smoking ban	51
Transitional arrangements for hospitality sector	52
Economic impact of smoking ban on hospitality sector	53
Legal challenge to smoking ban	53
<b>Chapter 10 – State of Queensland in Australia</b>	<b>54</b>
Background	54
Statutory smoke-free places	54
Places exempt from smoking ban	55
<i>Enclosed places</i>	55
<i>Entrances to non-residential buildings</i>	56
<i>Children's playground equipment</i>	56
<i>Major sports facilities</i>	56
<i>Outdoor eating or drinking places</i>	57
Legal responsibility of persons in charge of smoke-free places	57
<i>Occupiers of major sports facilities</i>	58
<i>Occupiers of outdoor eating or drinking places</i>	58
Enforcing authorities	59
Compliance with smoking ban	59
Transitional arrangements for hospitality sector	59
<i>Indoor liquor licensed premises</i>	59
<i>Outdoor eating or drinking places</i>	60
<i>Grace period</i>	60
Economic impact of smoking ban on hospitality sector	60
Legal challenge to smoking ban	60
<b>Chapter 11 – Province of British Columbia in Canada</b>	<b>61</b>
Background	61
Statutory smoke-free places	62
Places exempt from smoking ban	62
Legal responsibility of persons in charge of smoke-free places	64
<i>Employers prohibiting smoking in the entire workplace</i>	64
<i>Employers establishing designated smoking areas in facilities not for public entertainment</i>	65
<i>Employers of public entertainment facilities</i>	65
Enforcing authorities	66
Transitional arrangements for hospitality sector	66
Economic impacts of smoking ban on hospitality sector	66
Legal challenge to smoking ban	67

<b>Chapter 12 – Analysis</b>	<b>68</b>
Introduction	68
Statutory smoke-free places	69
<i>Indoor areas of restaurants</i>	69
<i>Indoor areas of bars</i>	69
<i>Outdoor areas of restaurants and bars</i>	70
<i>Indoor areas of hospitality premises other than restaurants and bars</i>	70
<i>Educational institutions</i>	71
<i>Welfare institutions</i>	72
<i>Other indoor workplaces/public places</i>	72
Legal responsibility of persons in charge of smoke-free places	73
Enforcing authorities	74
Compliance with smoking ban	74
Transitional arrangements for hospitality sector	75
Economic impact of smoking ban on hospitality sector	75
<b>Appendices</b>	<b>76</b>
<b>References</b>	<b>84</b>

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## Executive Summary

1. This report studies the statutory regulatory regimes of the smoke-free workplace in ten selected places, namely Ireland, Norway, the United Kingdom (UK), Singapore, Thailand, Japan, Taiwan, the State of California (California) in the United States (US), the State of Queensland (Queensland) in Australia, and the Province of British Columbia (BC) in Canada.
2. In Ireland where 24% of the population smoke, smoking is statutorily banned in all enclosed workplaces and public places, except certain specified places, including nursing homes, hospices, psychiatric hospitals and residential areas within tertiary educational institutions. Persons in charge of statutory smoke-free places failing to enforce the smoking ban, including developing and implementing a smoke-free policy, are liable on conviction to a fine of up to €3,000 (HK\$30,000). The smoking ban took effect more than one year after it was announced. The government claims that the smoking ban has been enforced successfully.
3. In Norway where 30% of the population smoke, smoking is statutorily banned in most enclosed public places, including food or drink premises, and membership clubs. The government progressively tightened the smoking restrictions in the hospitality sector before banning smoking outright. The government claims that a total smoking ban is more effective than a partial ban, as shown by the high level of compliance in hospitality workplaces.
4. In the UK where 26% of the population smoke, there is currently no national legislation that bans smoking outright in workplaces or public places. The UK government issued a public consultation paper in June 2005 proposing a statutory smoking ban in the indoor areas of such places, except pubs and bars not preparing and serving foods and membership clubs. The consultation paper also proposes that the smoking ban in restaurants and pubs and bars preparing and serving food will not be in place until the end of 2008.
5. In Singapore where 14% of the population smoke, smoking is statutorily banned in a wide range of specified enclosed places, including air-conditioned restaurants, schools, hospitals, nursing homes and air-conditioned offices. The government will decide by the end of 2005 on whether to extend the smoking ban to more hospitality and public entertainment venues, including pubs, bars, nightclubs and karaoke lounges. Persons in charge of statutory smoke-free places failing to enforce the smoking ban are liable on conviction to a fine of up to S\$1,000 (HK\$4,700).

6. In Thailand where 19.5% of the population smoke, smoking is statutorily banned in specified places, including air-conditioned restaurants and outpatient clinics. Smoking is allowed in private rooms and/or designated areas in some specified places, including schools, nurseries and hospitals, and air-conditioned workplaces. Persons in charge of statutory smoke-free places failing to enforce the smoking ban are liable on conviction to a fine of up to 20,000 baht (HK\$4,000) and/or an imprisonment of up to one month. The smoking ban took effect 90 days after it was gazetted. The government admits that the smoking ban has not been enforced satisfactorily.
7. In Japan where almost 50% of the adult male population smoke, there is currently no national smoke-free workplace legislation. In 2003, a health promotion law was enacted, but it only calls for operators of specified public places to take steps to prevent second-hand smoking, instead of imposing a mandatory smoking ban or restriction. Nor does the law impose penalties in the event of non-compliance. While in recent years the number and types of public places with a smoking ban or restriction have been increasing, most private businesses, including bars and restaurants, have yet to restrict smoking.
8. In Taiwan where 27% of the population smoke, smoking is statutorily banned in specified places, including classrooms, kindergartens, day care centres, and medical care and nursing care institutions. Some specified places, including restaurants with a floor area over 200 sq m, social welfare institutions and schools, are currently allowed to designate smoking areas, but the government is proposing extending the smoking ban to such places. Persons in charge of statutory smoke-free places failing to enforce the smoking ban are liable on conviction to a fine of up to NT\$30,000 (HK\$7,500). The government admits that the existing smoking ban has not been enforced satisfactorily.
9. In California where 16% of the population smoke, smoking is statutorily banned in most enclosed places of employment. The major exempted places include employee breakrooms meeting statutory ventilation conditions, small business with not more than five employees under limited conditions, patient smoking areas in long-term health care facilities, and up to 65% of the hotel/motel guest rooms. Persons in charge of statutory smoke-free places failing to enforce the smoking ban are subject to a fine of up to US\$100 (HK\$780) for the first violation. Continued non-compliance will result in increased penalties. The government claims that the smoking ban has been enforced successfully.
10. In Queensland where 21% of the population smoke, smoking is statutorily banned in most enclosed places, including indoor restaurants. Starting from January 2005, indoor liquor licensed premises have had 18 months to phase in the smoking ban, and by July 2006, smoking will only be allowed in designated areas in outdoor eating or drinking places. Persons in charge of statutory smoke-free places failing to enforce the smoking ban are currently subject to a fine of up to AUS\$1,500 (HK\$9,000). The government claims that compliance with the smoking ban in the dining areas of licensed premises has been satisfactory, even before the implementation of the new smoking ban in January 2005.

11. In British Columbia where 16% of the population smoke, employers are statutorily allowed to either ban smoking or restrict smoking to designate smoking areas in the workplace. Public entertainment facilities, including restaurants and bars, are exempt from the smoking ban if they provide a separate smoking place meeting statutory requirements. Persons in charge of statutory smoke-free places failing to enforce the smoking ban are subject to a fine of up to CAN\$75,000 (HK\$480,000). Continued non-compliance will result in increased penalties. The smoking ban had been delayed by the government for eight months before it took effect in the hospitality sector in May 2002. The hospitality sector successfully convinced the court to temporarily block the implementation of the smoking ban in 2000.
12. The Analysis Chapter focuses on comparing the main features of the regulation of the smoke-free workplace in the Hong Kong Special Administrative Region (HKSAR) and the ten selected places in the following aspects: scope of statutory smoking ban, legal responsibility of persons in charge of statutory smoke-free places, enforcing authorities, compliance with the smoking ban, transitional arrangements for the hospitality sector and economic impact of the smoking ban on the hospitality sector. The comparison is made with regard to the related provisions on second-hand smoking regulation under the existing Smoking (Public Health) Ordinance and the Smoking (Public Health) (Amendment) Bill 2005 gazetted on 29 April 2005 in the HKSAR.

# Smoke-free Workplace Legislation in Selected Places

## Chapter 1 – Introduction

### 1.1 Background

1.1.1 At the meeting of the Panel on Health Services on 25 February 2005, the Panel requested the Research and Library Services Division (RLSD) to conduct a research on smoke-free workplace legislation in selected places to facilitate the deliberation of the Panel on the Government's proposed amendments to the Smoking (Public Health) Ordinance. The proposed research outline was endorsed by Members in early March 2005, and Members requested RLSD to incorporate in the research the compliance with smoke-free workplace legislation and the economic impact of such legislation on the hospitality sector in selected places.

### 1.2 Scope of research

1.2.1 This study covers the regulation of the smoke-free workplace in:

- (a) Ireland;
- (b) Norway;
- (c) the United Kingdom (UK);
- (d) Singapore;
- (e) Thailand;
- (f) Japan;
- (g) Taiwan;
- (h) the State of California (California) in the United States (US);
- (i) the State of Queensland (Queensland) in Australia; and
- (j) the Province of British Columbia (BC) in Canada.

1.2.2 The selected places contain various features concerning the regulation of the smoke-free workplace. Ireland is chosen because its smoking ban in almost all enclosed workplaces has been regarded as one of the strictest in the world. Norway is chosen because it gave the hospitality sector an adaptation period of several years before implementing a total smoking ban. The UK is chosen because it is shifting from following a voluntary approach to the control of second-hand smoking to favouring a compulsory smoking ban in all enclosed workplaces, except membership clubs and certain liquor licensed premises.

1.2.3 Singapore is chosen because, given its well-known tough measures against second-hand smoking, the government is considering whether the smoking ban should cover public entertainment venues, such as pubs, bars and karaoke lounges. Thailand is chosen because it allows smoking in licensed premises other than air-conditioned restaurants and food courts. Japan is chosen because it has adopted a less restrictive smoke-free policy, and does not have national smoke-free workplace legislation to date.

1.2.4 Taiwan is chosen because its existing restrictions on smoking are relatively loose, and the government is proposing tougher smoke-free workplace legislation. California is chosen because it is the first State in the US to ban smoking in indoor workplaces, including bars and restaurants. Queensland is chosen because its new smoke-free workplace legislation has a phase-in mechanism for banning smoking indoors in hospitality premises, and requires outdoor eating or drinking places to set up a designated smoking area. BC is chosen because it allows public entertainment venues, including bars, restaurants and gambling casinos, to either ban smoking outright or restrict smoking to designated areas.

1.2.5 The regulation of the smoke-free workplace is examined in the following aspects:

- (a) statutory smoke-free places;
- (b) places exempt from the smoking ban;
- (c) legal responsibility of persons in charge of smoke-free places;
- (d) enforcing authorities;
- (e) compliance with the smoking ban;
- (f) transitional arrangements for the hospitality sector;
- (g) economic impact of the smoking ban on the hospitality sector; and
- (h) legal challenge to the smoking ban.

### **1.3 Methodology**

1.3.1 This study adopts a desk research method, which involves Internet research, literature review, documentation analysis and correspondence with relevant authorities.

## Chapter 2 – Ireland

### 2.1 Background

2.1.1 Ireland became the first country to institute a nationwide and outright smoking ban in enclosed public places and workplaces, when the Public Health (Tobacco) (Amendment) Act 2004 (the Amendment Act 2004) took effect on 29 March 2004. The country's sweeping smoke-free policy can be traced back to 1995 when smoking was banned in some enclosed places, including bingo halls, bridge centres, pre-schools, day nurseries, supermarkets, most hospitals and nursing homes, and food preparation areas in restaurants, cafes and pubs.

2.1.2 In November 1999, the Joint Committee on Health and Children of the Irish Parliament recommended that a national anti-smoking strategy should be adopted.<sup>1</sup> The government then set up an advisory body, the Tobacco Free Policy Review Group, to review the issue of tobacco and health. In a report published in March 2000, the Review Group proposed extending the smoking ban to all enclosed workplaces, places where essential routine commercial transactions were processed, public transport, entertainment places open to people under 18, and all health and educational premises. The Review Group also proposed setting up an Office of Tobacco Control (OTC) to co-ordinate and monitor the implementation of anti-smoking measures.<sup>2</sup> The Review Group's proposals were all adopted by the government. In May 2002, OTC was statutorily set up under the principal anti-smoking legislation, the Public Health (Tobacco) Act 2002.<sup>3</sup>

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<sup>1</sup> Information about the origins of OTC is available from [http://www.otc.ie/about\\_us.asp](http://www.otc.ie/about_us.asp) [Accessed April 2005].

<sup>2</sup> See *Towards a Tobacco Free Society: Summary of the Report of the Tobacco Free Policy Review* published by OTC, p. 9.

<sup>3</sup> OTC has various functions, including: (a) advising the Minister for Health and Children on the formulation of policies and objectives on the regulation of tobacco products, and assisting the Minister in their implementation; (b) consulting with the relevant national and international bodies on developments in tobacco control; (c) organizing research on tobacco and disseminating the results to the public; and (d) co-ordinating and implementing a national inspection programme. OTC comprises 12 members (including the chairperson) appointed by the Minister. See Part 2 of the Public Health (Tobacco) Act 2002.

2.1.3 In December 2002, the Health and Safety Authority and OTC jointly published a scientific report<sup>4</sup> concluding that the ventilation technology was ineffective at removing the risk of second-hand smoke to health, and that legislation was required to protect employees from exposure to second-hand smoke. As a result, the government announced in January 2003 that smoking would be banned in almost all enclosed workplaces in one year.<sup>5</sup> In response, the Irish Hospitality Industry Alliance (IHIA) published a regulatory impact assessment, claiming that the proposed smoking ban in hospitality venues would result in a loss of 10 700 to 64 200 jobs, a compliance cost of €200 million (HK\$2 billion) to the hospitality sector, and Exchequer costs (tax revenue foregone/unemployment benefit) of €157.5 million (HK\$1.5 billion) to €944 million (HK\$9.4 billion).<sup>6</sup>

2.1.4 IHIA argued that research on second-hand smoke at work under Irish circumstances had been limited, and that the World Health Organization and the European Union had not suggested banning smoking completely in the workplace.<sup>7</sup> Despite the opposition from the hospitality sector, the government presented the Public Health (Tobacco) (Amendment) Bill 2003 to Parliament in August 2003, and had it enacted in March 2004.

2.1.5 According to OTC, currently about 24% of the Irish population smoke, and some 7 000 people die from smoking-related diseases every year.

## 2.2 Statutory smoke-free places

2.2.1 The Amendment Act 2004 bans smoking in "*specified places*", which refer to not only ordinary "*places of work*", but also the following places in so far as they are places of work:<sup>8</sup>

- (a) licensed premises;
- (b) registered clubs;
- (c) schools and colleges;
- (d) health premises and hospitals;
- (e) buildings to which the public has access and which are owned or occupied by public authorities;

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<sup>4</sup> Health and Safety Authority and Office of Tobacco Control (2002), p. 11.

<sup>5</sup> Martin announces total ban on smoking in the workplace. Available from: [www.dohc.ie/press/releases/2003/20030130.html](http://www.dohc.ie/press/releases/2003/20030130.html) [Accessed April 2005].

<sup>6</sup> Irish Hospitality Industry Alliance (2003), p. 2 and p. 25.

<sup>7</sup> Irish Hospitality Industry Alliance (2003), p. 1.

<sup>8</sup> Section 16, the Amendment Act 2004.

- (f) indoor public entertainment places, including cinemas, theatres and concert halls; and
- (g) aircraft, trains, ships or other vessels, public service vehicles or vehicles used for the carriage of members of the public for reward.

## **2.3 Places exempt from smoking ban**

2.3.1 The Amendment Act 2004 exempts the following places from the smoking ban:<sup>9</sup>

- (a) an outdoor part of a place or premises covered by a fixed or movable roof, as long as not more than 50% of the perimeter of that part is surrounded by one or more walls or similar structures inclusive of windows, doors, gates or other means of access to or egress from that part;
- (b) a place or premises, or a part of a place or premises, that is wholly uncovered by any roof, whether fixed or movable;
- (c) rooms in hotels or similar premises that provide sleeping accommodation to the public; and rooms that solely provide living accommodation;
- (d) nursing homes, hospices, psychiatric hospitals and the Central Mental Hospital;
- (e) residential areas within tertiary educational institutions, such as universities;
- (f) private dwellings; and
- (g) prisons.

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<sup>9</sup> Section 16, the Amendment Act 2004.

2.3.2 In response to a suggestion that designated smoking areas in enclosed places of work should be allowed, the government dismisses it as unrealistic because employees are still required to work in smoking areas, and thus exposed to second-hand smoke.<sup>10</sup> Nor does the government agree to exempt businesses with less than five employees from the smoking ban, because such an exemption discriminates against the staff of small businesses.<sup>11</sup>

## 2.4 Legal responsibility of persons in charge of smoke-free places

2.4.1 The Amendment Act 2004 provides that *"the occupier, manager and any other person for the time being in charge of the specified place"* must make *"all reasonable efforts"* to ensure compliance with the smoking ban. Otherwise, they are liable to a fine of up to €3,000 (HK\$30,000) on conviction.

2.4.2 According to OTC's guidelines, the recommended minimum reasonable efforts required for the specified places are:<sup>12</sup>

- (a) developing and implementing a written smoke-free policy, which clearly identifies the persons responsible for its implementation and specifies the procedures to be followed in the event of non-compliance, and communicating such a policy to all staff;
- (b) displaying "No Smoking" signs clearly visible to employees, customers and visitors; and
- (c) removing all ashtrays and other similar receptacles, and providing stubbing bins at entrances where appropriate.

2.4.3 The Amendment Act 2004 requires "No Smoking" signs to be displayed at all times in all places, in which or in part of which smoking is banned. Such signs must indicate clearly the smoke-free and/or smoking areas, and include the name of the person in charge of the places to whom a complaint should be made in the event of non-compliance.<sup>13</sup> The Amendment Act 2004 does not set out any required specifics of the signs. Still, OTC recommends a model "No Smoking" sign in its guidelines.

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<sup>10</sup> Department of Health and Children (2003).

<sup>11</sup> Minister Micheál Martin responds to recent comments on the smoking ban, 28 August 2003. Available from: <http://www.dohc.ie/press/releases/2003/20030828.html> [Accessed March 2005].

<sup>12</sup> Office of Tobacco Control (2004a), p. 4, and Section 15, the Amendment Act 2004.

<sup>13</sup> Section 15, the Amendment Act 2004.

## 2.5 Enforcing authorities

2.5.1 While inspectors from the Health and Safety Authority<sup>14</sup> are responsible for enforcing the smoking ban in enclosed offices and factories, the smoking ban in other workplaces is enforced by environmental health officers (EHOs) from the Health Service Executive<sup>15</sup> and tobacco control officers from OTC. These authorized officers and inspectors are given general powers of enforcement, such as carrying out inspections of the premises, requiring any person in charge of the premises and his or her employees to provide assistance, and recording the name and residential address of smokers who violate the smoking ban.<sup>16</sup> According to OTC, an authorized officer finding evidence of a breach of the law can issue a warning to, or initiate proceedings against, the responsible person of the premises concerned. A decision to recommend prosecution depends on the nature of the offence, the compliance record of the premises or responsible person, and the compliance efforts made by the premises or responsible person.

## 2.6 Compliance with smoking ban

2.6.1 OTC has so far published two progress reports and a one-year review on the implementation of smoke-free workplace legislation. According to the one-year review, from the introduction of the smoking ban on 29 March 2004 to the end of 2004, EHOs and OTC officers conducted about 35 000 inspections or compliance checks, revealing that 94% of places inspected were compliant with the smoking ban. In particular, the national compliance level of licensed premises, hotels and restaurants stood at 90%, 93% and 99% respectively. During the same period, inspectors from the Health and Safety Authority conducted nearly 7 500 inspections of offices and factories, and recorded an overall 92% compliance. According to OTC, from 29 March 2004 to the end of February 2005, 20 prosecutions were made against premises for breaching the smoking ban. In most cases, the maximum fine of €3,000 (HK\$30,000) was levied.

2.6.2 In addition, a public opinion poll commissioned by OTC and conducted in March 2005 showed that 93% of the respondents thought the smoking ban was "a good idea", 96% felt the ban was "successful" and 98% believed the ban made workplaces "healthier".<sup>17</sup>

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<sup>14</sup> Established under the Safety, Health and Welfare at Work Act 1989, the Health and Safety Authority is a national body with overall responsibility for the administration and enforcement of health and safety at work in Ireland. It reports to the Minister for Enterprise, Trade and Employment.

<sup>15</sup> The Health Service Executive came into existence on 1 January 2005, following the enactment of the Health Act 2004. It is responsible for providing health and social services in 11 HSE Areas throughout the country.

<sup>16</sup> Section 17, the Amendment Act 2004, and Section 48, the Public Health (Tobacco) Act 2002.

<sup>17</sup> Office of Tobacco Control (2005), p. 7.

## **2.7 Transitional arrangements for hospitality sector**

2.7.1 The Amendment Act 2004 does not provide any transitional arrangement for the hospitality sector. In August 2003, responding to a suggestion to delay the implementation of the smoking ban for two years, the government argued that the smoking ban was announced one year before its implementation, and businesses should have enough time to adapt to it.<sup>18</sup>

## **2.8 Economic impact of smoking ban on hospitality sector**

2.8.1 The government has not published any comprehensive report on the economic impacts of the smoking ban on the hospitality sector. Nor does the one-year review prepared by OTC on smoke-free workplace legislation contain such an analysis. The one-year review only provides general data from various sources about bar sales, hospitality employment and tourism before and after the implementation of the smoking ban. The data show that bar sales fell 4.4% in volume in 2004, while the drop for the year before was 4.2%. The employment rate in the hospitality sector at the end of 2004 dropped 2.4% from the end of 2003 but rose 0.6% from the end of 2002. Meanwhile, there was a 3.2% rise in the number of visitors to Ireland in 2004 when compared to 2003.

2.8.2 On the other hand, a survey conducted by the Irish Brewers' Association in 2004 found that six months after its implementation, the smoking ban had led to a 6% drop in beer sales.<sup>19</sup> The Licensed Vintners Association, representing 95% of Dublin publicans, claimed that in Dublin, the first three-month implementation of the smoking ban had resulted in a loss of 2 000 jobs and a 16% drop in pub sales.<sup>20</sup>

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<sup>18</sup> Minister Micheál Martin responds to recent comments on the smoking ban, 28 August 2003. Available from: <http://www.dohc.ie/press/releases/2003/20030828.html> [Accessed March 2005].

<sup>19</sup> Forest online, available from: <http://www.forestonline.org/output/Page129.asp> [Accessed April 2005].

<sup>20</sup> Ibid.

## **2.9 Legal challenge to smoking ban**

2.9.1 According to the Department of Health and Children, some publicans and individuals have stated that they will mount a legal challenge to the government's workplace smoking ban,<sup>21</sup> but no court hearings have taken place to date. Before the smoking ban came into force, the Licensed Vintners Association had announced that after taking legal advice, it decided not to challenge the smoking ban, and that although it was disappointed with the ban, it would uphold the law.<sup>22</sup>

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<sup>21</sup> For example, see Smokers set to launch legal fight against ban, *Irish Examiner*, 19 August 2004; Galway Vintners' quietly confident of success for constitutional challenge, the *Galway Advertiser*, 17 July 2004; and Corkman lodges legal challenge against smoking ban, *Ireland Online*, 16 June 2004. Available from: [www.tobacco.org](http://www.tobacco.org) [Accessed April 2005].

<sup>22</sup> Information provided by OTC.

## Chapter 3 – Norway

### 3.1 Background

3.1.1 Norway is the first country to ratify WHO's Framework Convention on Tobacco Control,<sup>23</sup> and the second country, after Ireland, to totally ban smoking in enclosed public places and workplaces, including bars and restaurants. In Norway, smoking has been regulated by the Norwegian Act No.14 of 9 March 1973 relating to Prevention of the Harmful Effects of Tobacco (the Prevention Act) since 1973.

3.1.2 In July 1988, the Prevention Act was amended to ban smoking in all enclosed workplaces and public places excluding hospitality premises, except that if a place had several facilities serving the same purpose, smoking could be permitted in up to half of such facilities. The Norwegian government stated at that time that the long-term goal was to make all indoor food or drink premises mandatory smoke-free. The legislative amendment allowed hospitality premises a five-year transitional period to incrementally implement smoking restrictions so that at least one-third of the indoor area of such premises was smoke-free by July 1993. In December 1995, hospitality employers were required by another amendment to extend the smoking restriction to 50% of the indoor area of their premises by January 1998. They also had to provide clients with direct access to smoke-free areas, and were obligated to meet ventilation requirements and carry out internal control routines to ensure compliance.

3.1.3 Prior to the 2004 smoking ban, surveys commissioned by the government showed that enforcement of the smoking restrictions in the hospitality sector was not satisfactory. At least 30% of the municipal authorities did not conduct inspections, and the hospitality sector found it very difficult to comply with the smoking restrictions in bars and dance clubs where guests often did not obey the division of smoking and smoke-free areas.

3.1.4 In September 2002, backed by trade unions and health organizations, the government issued a white paper proposing to amend the Prevention Act to extend a total smoking ban to all indoor food or drinks premises such as bars and restaurants. Despite the opposition from the hospitality and tobacco industries, the proposal was passed by Parliament. The government had originally planned to launch the total smoking ban on 1 January 2004, but thought that it would be inappropriate to force smokers outside in winter. The ban was therefore postponed to 1 June 2004.

3.1.5 In 2004, about 30% of the 4.5 million Norwegian population smoked.<sup>24</sup>

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<sup>23</sup> Norwegian Directorate for Health and Social Welfare, Department of Tobacco Control, available from: <http://www.tobakk.no/english/fctc.htm> [Accessed April 2005].

<sup>24</sup> Statistics Norway (2004).

### **3.2 Statutory smoke-free places**

3.2.1 The Prevention Act provides that the following categories of places must be smoke-free:<sup>25</sup>

- (a) food or drink premises, including clubs open to members only;
- (b) premises to which the public have access;
- (c) meeting rooms, work premises and institutions where two or more persons gather; and
- (d) public transport.

### **3.3 Places exempt from smoking ban**

3.3.1 Under the Prevention Act,<sup>26</sup> if several premises within a place are used for the same purpose, smoking is permitted in up to half of such premises, provided that the smoke-free area is larger than the smoking area. The smoking ban does not apply to private rooms in premises, but such premises are obligated to make smoke-free rooms available if such a request is received.

### **3.4 Legal responsibility of persons in charge of smoke-free places**

3.4.1 Under the Prevention Act, owners of the specified smoke-free places other than food or drink premises, or persons having such places at their disposal, are required to clearly display "No Smoking" notices in those places.<sup>27</sup>

3.4.2 Owners of food or drink premises are legally required to not only clearly display "No Smoking" notices at the entrance to their premises but also establish an internal control system with relevant documents being produced to the enforcing authorities, which inspect these places intermittently.<sup>28</sup>

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<sup>25</sup> Section 6, the Prevention Act.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

### 3.5 Enforcing authorities

3.5.1 The smoking ban is mainly enforced by municipal councils in local municipalities. In practice, each municipal council delegates the inspection duties to municipal administration bodies, such as the chief municipal medical officer, the personnel specializing in the provision of pre-emptive health care, the local food inspection agency and the liquor control board. The smoking ban in work premises is supervised by the Norwegian Labour Inspection Authority,<sup>29</sup> which conducts intermittent inspections on whether the work premises comply with legal requirements.

### 3.6 Compliance with smoking ban

3.6.1 According to a one-year review commissioned by the Norwegian Directorate for Health and Social Affairs on the smoking ban in the hospitality sector, statistics on enforcement and compliance have not yet been available from the responsible authorities.<sup>30</sup> Nevertheless, the review contains some significant findings from opinion polls regarding compliance with the smoking ban in the hospitality sector.<sup>31</sup>

- (a) compliance is easier to achieve with a total ban than a partial ban. Some 90% of employees surveyed reported compliance with the total smoking ban, whereas before the total ban, only 51% reported compliance with a partial ban under which designated smoking areas were allowed;
- (b) the percentage of employees surveyed who are positive towards the smoking ban rose slightly from 50% before the implementation of the ban to 53% afterwards; and
- (c) the general public's approval rating of the smoking ban rose from 47% in the last quarter of 2003 to 58% in the last quarter of 2004.

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<sup>29</sup> The Norwegian Labour Inspection Authority is a government agency under the Ministry of Labour and Government Administration.

<sup>30</sup> National Institute for Alcohol and Drug Research and Research Centre for Health Promotion (2005), p. 5.

<sup>31</sup> National Institute for Alcohol and Drug Research and Research Centre for Health Promotion (2005), p. 6. In addition, an official survey released in January 2005 showed that the total smoking ban had not inspired more people to quit smoking. Between 2003 and 2004, the number of daily smokers aged 16 to 74 only dropped from 26.3% to 26%, while the number of smokers aged 16 to 24 rose from 22.8% to 23.7%. See Statistics Norway (2004).

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3.6.2 Trade associations have reportedly complained that bar and restaurant employees find it difficult to keep an eye on customers smoking outside their bars and restaurants. It has also become common for customers who leave their tables and go outside for smoking do not return to pay for their bills.<sup>32</sup>

### **3.7 Transitional arrangements for hospitality sector**

3.7.1 While the legislative amendment to ban smoking in most enclosed public places and workplaces had been enacted since 1988, the hospitality sector was allowed to progressively implement smoking restrictions before the total smoking ban in the sector came into force in June 2004.

### **3.8 Economic impact of smoking ban on hospitality sector**

3.8.1 The government has not published any comprehensive report on the economic impacts of the smoking ban on the hospitality sector. Nor does the one-year review contain such an analysis. The one-year review does provide general data from various sources about bar sales, hospitality employment and tourism before and after the implementation of the smoking ban:

- (a) data from the Association of Breweries show that compared to the period from June 2003 to April 2004 (before the smoking ban), the period from June 2004 to April 2005 (after the smoking ban) experienced a 6% drop in beer sales to pubs, bars and restaurants, and a 2.8% rise in beer sales to supermarkets;
- (b) the labour force survey of Statistics Norway finds that compared to the second half of 2003, the employment rate in the entire hotel and restaurant sector dropped 2.1% during the second half of 2004; and
- (c) between 2003 and 2004, the weekly pub/bar patronage frequency and the weekly restaurant patronage frequency, which were reported by customers (including smokers and non-smokers), dropped slightly from 25% to 23% and from 48% to 46% respectively, whereas the percentage of customers who seldom or never visited pubs or bars increased from 42% to 45%.

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<sup>32</sup> Smokers dodge restaurants bills, *Aftenposten*, 21 December 2004. Available from: <http://www.aftenposten.no/english/local/article934922.ece> [Accessed April 2005].

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3.8.2 Trade associations reported that up to the end of 2004, the smoking ban in the hospitality sector did not have significant impact on the survival of hospitality businesses because the number of pubs, bars and restaurants that shut down declined slightly from 386 in 2003 to 372 in 2004.<sup>33</sup>

### **3.9 Legal challenge to smoking ban**

3.9.1 In Norway, there has not been any legal challenge to the constitutional or legal basis of the existing smoking ban under the Protection Act.<sup>34</sup>

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<sup>33</sup> Fewer businesses bust after smoking ban, *Aftenposten*, 31 January 2005. Available from: <http://www.aftenposten.no/english/local/article959680.ece> [Accessed April 2005].

<sup>34</sup> There was a landmark case in 2000 regarding a female employee in a discotheque successfully seeking compensation from her employer for lung cancer partially caused by second-hand smoke at work. Although medical experts appointed by the Supreme Court concluded that second-hand smoke at work and her own active smoking contributed to about 40% and 60% of her lung cancer respectively, the Supreme Court granted the employee full compensation.

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## Chapter 4 – The United Kingdom

### 4.1 Background

4.1.1 In the UK, there has been so far no national legislation that bans smoking outright in workplaces or public places. Before 2004, the government's smoke-free policy was to encourage employers to voluntarily control smoking in the workplace.<sup>35</sup> In the 1998 White Paper on smoking, the government stated that it was not going to ban smoking at work. Instead, it proposed a legally enforceable Approved Code of Practice,<sup>36</sup> providing advices to employers on the preparation and implementation of smoke-free policies in the workplace in compliance with health and safety legislation. However, the Code has not been implemented, mainly because of opposition from hospitality employers, who feared the adverse economic impact it might have on the industry.

4.1.2 In 1999, with the government's assistance, the hospitality sector launched a Public Places Charter to encourage public entertainment venues, including pubs, bars and restaurants, to provide more facilities for non-smokers, improve air quality and inform customers of the smoking policies in operation within the premises.<sup>37</sup> Nevertheless, a progress report in 2003 showed that about half of the hospitality premises surveyed allowed smoking throughout, and less than 1% banned smoking outright.

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<sup>35</sup> A major report published in 1998 by the Scientific Committee on Tobacco and Health (SCOTCH) under the Department of Health of the UK government also declined to propose an outright smoking ban. The report only recommended that "*wherever possible, smoking should not be allowed in the work place*", and that smoking in public places "*should be restricted*", with the level of restriction varying according to the categories of public places. In November 2004, SCOTCH issued an up-to-date report on the evidence of health effects of second-hand smoke that had emerged since 1998. The report concluded that no infant, child or adult should be exposed to second-hand smoke, but did not make any policy recommendations.

<sup>36</sup> According to the 1998 White Paper "Smoking Kills", although it was not of itself an offence to fail to comply with the proposed Approved Code of Practice, if employers were prosecuted for a breach of health, safety and welfare law, and it was proved that they did not follow the Code, they needed to show that they had complied with the law in some other ways, or a court would find them at fault. Health and safety inspectors would also be able to quote provisions of the Code in court in cases of alleged breaches of the Health and Safety at Work etc. Act. The government believed that the proposed Code would be more powerful in enforcement than the guidelines in place that were entirely voluntary.

<sup>37</sup> Under the Charter, public places are encouraged to have a written smoking policy and display signs showing which of the following five levels of policies they apply: (a) no smoking allowed at all times; (b) smoking and non-smoking areas separated by walls; (c) areas clearly defined for smoking and non-smoking; (d) non-defined areas but special ventilation equipment used to improve comfort for non-smokers; and (e) no segregation or special ventilation equipment.

4.1.3 In recent years, the success of implementing smoking bans in the workplace in other places, notably Ireland and New York, has added weight to the campaign for a statutory smoking ban in the UK. In 2003, about 26% of the population in the UK smoked.<sup>38</sup> Meanwhile, about 2.2 million people (8% of the working population) worked in places with no restrictions on smoking, while 10.3 million people (38% of the working population) worked in places that allowed smoking in designated areas only.<sup>39</sup> A recent academic study indicates that second-hand smoking at work is likely to be responsible for 617 deaths per year in the UK, including 54 deaths a year in the hospitality industry.<sup>40</sup>

4.1.4 In the face of the mounting pressure from the public to ban smoking in the workplace and public places, the government issued a White Paper on public health in November 2004, which presented a shift in its position from supporting voluntary restrictions on smoking to adopting legislation to ban smoking where necessary.<sup>41</sup> The White Paper proposed that all enclosed public places and workplaces should be smoke-free, unless specifically exempted. On June 20 2005, the government announced the launch of an 11-week public consultation on the proposed smoke-free measures under the Health Improvement and Protection Bill. The consultation paper puts forward details on the smoke-free policy outlined in the 2004 White Paper.

## 4.2 Existing smoking restrictions

4.2.1 In the UK, the main laws regulating the workplace environment comprise the Health and Safety at Work etc. Act 1974 (HSWA) and some statutory instruments in the form of regulations made under HSWA, particularly the Workplace (Health, Safety and Welfare) Regulations 1992 No. 3004 (the 1992 Regulations).<sup>42</sup> HSWA does not specifically deal with smoking in the workplace, but its general provisions imply an obligation for employers to ensure the health, safety and welfare of employees. The 1992 Regulations contain an explicit provision requiring employers to protect non-smoking employees from second-hand smoke in facilities for rest in the workplace.<sup>43</sup> Nevertheless, neither HSWA nor the 1992 Regulations impose a statutory smoking ban in the workplace.<sup>44</sup>

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<sup>38</sup> Department of Health (2004), pp. 36-37.

<sup>39</sup> Information is available from Action on Smoking and Health.

<sup>40</sup> Jamrozik (2005).

<sup>41</sup> Department of Health (2004).

<sup>42</sup> Smoking in the workplace is also regulated under several European Union Directives that have resulted in regulations, such as the Management of Health and Safety at Work Regulations 1992, the Pregnant Workers Directive, and the Carcinogens at Work Directives.

<sup>43</sup> Under the 1992 Regulations, "workplace" means "any premises or part of premises which are not domestic premises and are made available to any person as a place of work", including "any place within the premises to which such person has access while at work; and any room, lobby, corridor, staircase, road or other place used as means of access to or egress from that place of work or where facilities are provided for use in connection with the place of work, other than a public road".

<sup>44</sup> An exception is that smoking is banned in areas in the workplace where flammable materials are stored or there is risk of explosion, but such situation is regulated by legislation and regulations on fire precautions.

### 4.3 Legal responsibility of persons in charge of smoke-free places

4.3.1 Under HSWA, employers are only required to perform a general duty of providing and maintaining *"a safe working environment which is, so far as is reasonably practicable, safe, without risks to health and adequate as regards facilities and arrangements for [employees'] welfare at work"*.<sup>45</sup> According to the Health and Safety Executive,<sup>46</sup> if it can be demonstrated that there is a risk to health in the workplace, the employer concerned must take action to deal with the risk, provided that the time, trouble or cost of such an action would not be grossly disproportionate to the risk.<sup>47</sup> The 1992 Regulations also place a duty on employers to control second-hand smoke. It requires that *"rest rooms and rest areas shall include suitable arrangements to protect non-smokers from discomfort caused by tobacco smoke"*.<sup>48</sup>

4.3.2 In the event that offences under HSWA are determined to be committed by corporate bodies instead of individual employers, directors, managers or company secretaries of those corporate bodies may be subject to prosecution if found negligent.

### 4.4 Enforcing authorities

4.4.1 The required smoking restrictions under HSWA and the 1992 Regulations are enforced by health and safety inspectors appointed by the Health and Safety Executive and the relevant local authorities. These inspectors may serve on the offender a prohibition notice when there is a risk of serious personal injury, or an improvement notice when health and safety legislation is being contravened. Ultimately, it is for the courts to decide whether the risk to health is significant on a case by case basis.

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<sup>45</sup> Section 2 (2) (e), HSWA.

<sup>46</sup> Established under HSWA, the Health and Safety Executive has day-to-day responsibility for enforcing health and safety law, investigating accidents, licensing and approving standards, and commissioning research. It advises and assists the Health Service Commission whose primary functions include making arrangements to secure health, safety and welfare at work. The Commission is accountable to the Minister of State for Work.

<sup>47</sup> Health and Safety Executive (1999), p. 2, and Passive Smoking at Work, a guideline issued by HSE, available from: <http://www.hse.gov.uk> [Accessed April 2005].

<sup>48</sup> Section 25 (3), the 1992 Regulations.

## 4.5 2005 consultation paper on statutory smoking ban

4.5.1 In the 2005 consultation paper, the government declares that its smoke-free policy aims to "*make almost all enclosed public places and workplaces smoke-free*".<sup>49</sup> The proposed statutory smoking ban will apply to England only. Wales, Scotland and Northern Ireland are allowed to make their own smoke-free policies and legislation.<sup>50</sup>

### Statutory smoke-free places

4.5.2 In line with the 2004 White paper, the 2005 consultation paper proposes that:

- (a) all enclosed workplaces and public places, including restaurants, pubs and bars preparing and serving food and bar areas,<sup>51</sup> should be smoke-free; and
- (b) pubs and bars not preparing and serving food and membership clubs should be free to choose whether to allow smoking or to be smoke-free.

4.5.3 In the 2004 White Paper, the government estimated that the proposed smoking ban would make 97% of enclosed public places and workplaces (including 80% of licensed premises) smoke-free.<sup>52</sup> As a result, the number of smoking-related deaths in the hospitality industry would be reduced some 10 times to merely four or five a year.<sup>53</sup>

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<sup>49</sup> Department of Health (2005).

<sup>50</sup> According to the 2005 consultation paper, although the Health Improvement and Protection Bill is an England and Wales Bill, Wales is allowed under the Bill to make provisions for smoke-free public places based on the policy it may decide on the issue of smoking. Scotland is completing work on implementing a smoking ban under the Smoking, Health and Social Care (Scotland) Act 2005. Northern Ireland has recently completed a separate consultation on smoking in public places and workplaces.

<sup>51</sup> The 2005 consultation paper proposes defining bar areas as "*the area immediately adjoining the bar in which the persons stand or sit while ordering drinks*" and stipulating the distance (one metre) from the bar where smoking will not be allowed.

<sup>52</sup> Department of Health (2004).

<sup>53</sup> Uncorrected evidence to the Health Select Committee 23 February 2005, Q48. Available from: <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmhealth/uc358-i/uc35802.ht> [Accessed March 2005].

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4.5.4 As indicated by the 2004 White Paper, there are three main reasons for the government to shift from encouraging voluntary smoking cessation in public places and workplaces to favouring a compulsory outright smoking ban:

- (a) more smoke-free places could increase social pressures not to smoke and help people give up smoking easier;
- (b) public consultation and surveys show that people want more places smoke-free; and
- (c) changes from allowing smoking to creating a smoke-free environment have been slow in the hospitality sector, and public demand for government action in the form of legislation has increased significantly.

#### Places exempt from smoking ban

4.5.5 As mentioned in paragraph 4.5.2, the 2005 consultation paper proposes that membership clubs where the members make the rules and pubs and bars not preparing and serving food will be free to choose whether to allow smoking or to be smoke-free.

4.5.6 According to the government, the reasons for not extending the smoking ban to all licensed premises include:

- (a) banning smoking in all licensed premises may force some smokers to bring smoking from such premises home, as it does in Ireland where about 15% of those people previously smoking in pubs take the habit home;<sup>54</sup>
- (b) the public's views on smoking ban in pubs and bars have been different from its views on smoking ban in the ordinary workplace. In the 2004 White Paper, the Department of Health's own survey showed that although the public wanted to see smoking restrictions in pubs, only 20% supported a total ban. In addition, 70% of the people surveyed preferred both smoking and smoke-free areas to be provided, with a greater proportion dedicated as smoke-free;<sup>55</sup> and
- (c) the proposed smoke-free workplace legislation should primarily protect the public from second-hand smoking, not to prevent people from smoking or force them to live a certain lifestyle. Some people should be allowed to make a choice, which is legal even if it is against the government's advice or damages their health.<sup>56</sup>

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<sup>54</sup> Uncorrected evidence to the Health Select Committee 23 February 2005, Q7, Q8 and Q56.

<sup>55</sup> Paragraph 75, Chapter 4, the 2004 White Paper.

<sup>56</sup> Uncorrected evidence to the Health Select Committee 23 February 2005, Q7, Q8, Q54 and Q56.

4.5.7 Public health groups have doubted whether the government's proposed partial ban is workable.<sup>57</sup> They believe that, from the experience of Ireland, what makes a smoking ban work is to have a simple, level playing field where people cannot smoke in all workplaces. They are worried that the partial ban may encourage employers in the hospitality sector to look for loopholes in the law, and leave vulnerable employees exposed to health risks related to second-hand smoke. In addition, the proposed exemption of membership clubs from the smoking ban are criticized by leading hospitality associations for protecting the business of membership clubs, which has been a major source of funding for the Labour Party.<sup>58</sup>

4.5.8 The 2005 consultation paper also proposes that the specified places below should be exempted from the smoke-free legislation because "*they act as an individual's dwelling or are clearly private space*", although some of them (e.g. psychiatric hospitals and units) could become smoke-free in the longer term:

- (a) a place where only a single self-employed person is working;
- (b) a vehicle that is used for work purposes by only ever one person;
- (c) the separate living area of a seafarer;
- (d) any place occupied as residential premises or as living accommodation, and bedrooms in halls of residence;
- (e) private vehicles;
- (f) adult hospices, long-stay adult residential care homes, and psychiatric hospitals and units;
- (g) oil and gas platforms; and
- (h) prisons, other places of detention, and detention rooms in designated police premises.

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<sup>57</sup> Mixed reaction to public health reforms, 16 November 2004. Available from: <http://news.bbc.co.uk/1/hi/health/4015733.stm> [Accessed April 2005]; and Ministers face fight over smoking ban, The Guardian, 17 May 2005, available from: [http://www.guardian.co.uk/uk\\_news/story/0,3604,1485895,00.html](http://www.guardian.co.uk/uk_news/story/0,3604,1485895,00.html) [Accessed May 2005].

<sup>58</sup> See, for example, Public health white paper: smoking ban will drive us to drink say pubs, 16 November 2004, the British Beer and Pub Association, available from: <http://www.beerandpub.com> [Accessed April 2005].

### Legal responsibility of persons in charge of smoke-free places

4.5.9 The 2005 consultation paper proposes that any person in charge of smoke-free places must:

- (a) display no-smoking notices; and
- (b) prevent the occurrence of smoking in the smoke-free places, such as requesting the smoker to stop smoking and informing the smoker that the smoker is committing an offence.

4.5.10 The person failing to perform item (a) is liable to a fine of up to £200 (HK\$2,850), and a fine of also up to £200 (HK\$2,850) for the first conviction of violating item (b).

### Enforcing authorities

4.5.11 The 2005 consultation paper proposes that the statutory smoking ban should be enforced by local authority enforcement officers, who will have the power to inspect premises and take samples, and bring prosecutions for any offence under the smoke-free legislation. Such enforcement officers will include food safety officers, trading standards officers, technical officers and environmental health officers. The division of enforcement responsibility among these officers will be worked out when the proposed smoke-free legislation comes into effect.

### Transitional arrangements for hospitality sector

4.5.12 The 2005 consultation paper proposes the provision of transitional arrangements for the hospitality sector. In particular, the statutory smoke-free requirements for restaurants, and pubs and bars preparing and serving food will not be in place until the end of 2008. The statutory total smoking ban will first apply to all central government departments and the National Health Service by the end of 2006, and then extend to all enclosed public places and workplaces, other than those specifically exempted, by the end of 2007.

## **4.6 Possible economic impact of smoking ban on hospitality sector**

4.6.1 The British Beer and Pub Association, whose members produce 98% of beer brewed in the UK and own more than half of the UK's 60 000 pubs, opines that the smoking ban would drive pubs not to serve food, and hence put in jeopardy the livelihood of thousands of publicans running small businesses in the UK.<sup>59</sup> The Association claims that more than 80% of pubs in the UK serve food, and they serve more than £1.1 billion (HK\$15.4 billion) meals a year, compared with £0.7 billion (HK\$9.8 billion) meals served in the restaurant sector.

4.6.2 Whereas the government has not published any report on the possible economic impacts of the proposed smoking ban on the hospitality sector, there were two private studies on this issue.<sup>60</sup> One was published in 1998 by an economist advisory group for the Restaurant Association of Great Britain. The study collected views of a sample of restaurant owners on the potential impact of a smoking ban on their business. In the survey, 54% of the owners estimated that the turnover would drop up to 20%, and 24% estimated a drop of more than 20%, whereas only 1% expected the turnover to rise by up to 20%, and 39% expected it to remain unchanged. The other study was published by the Publican, a hospitality association, to examine the same theme. In this study, pub owners estimated that on average pubs would lose about 41% of their customers if they were forced to ban smoking. Nonetheless, these two studies were criticized by other researchers for using flawed methodologies resulting in unsound findings.<sup>61</sup>

## **4.7 Legal challenge to smoking ban**

4.7.1 In the UK, there has not been any legal challenge to the constitutional or legal basis of the existing smoking ban under HSWA. There have only been some legal actions taken by employees to claim compensation from their employers for damage to their health caused by second-hand smoke at work.

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<sup>59</sup> Public health white paper: smoking ban will drive us to drink say pubs, 16 November 2004, the British Beer and Pub Association, available from: <http://www.beerandpub.com> [Accessed April 2005].

<sup>60</sup> The peer review, entitled "Summary of Studies Assessing the Economic Impact of Smoke-free Policies in the Hospitality Industry", was published by Michele Scollo and Anita Lai of the VicHealth Centre for Tobacco Control in Australia in April 2004. See Scollo and Lai (2004).

<sup>61</sup> Scollo and Lai (2004), p. 38.

## Chapter 5 – Singapore

### 5.1 Background

5.1.1 Singapore has been praised by WHO as a leader in tobacco control in Asia, with legislation being first introduced to ban smoking in public buses and auditoriums of cinemas and theatres in 1970. The smoking ban has since been expanded progressively to cover a wide variety of places. In particular, smoking has been banned in indoor areas of fast-food outlets since July 1988 and in air-conditioned restaurants since September 1989. Singapore's current smoking prevalence rate is the lowest in Asia, with 14% of the 4.1 million population being smokers, down from 18% in 1992.

5.1.2 Since 1992, prohibition of smoking has been governed principally by the Smoking (Prohibition in Certain Places) Act (the Smoking Act). The Smoking Act empowers the National Environment Agency (NEA)<sup>62</sup> to, with the approval of the Minister for the Environment and Water Resources, specify any commercial, industrial or recreational premises or building to which members of the public have access, any common property of any residential premises or building, or any public service vehicle, as a smoke-free place. The list specified by NEA is contained in a subsidiary legislation, the Smoking (Prohibition in Certain Places) Notification (the Smoking Notification). Any person who smokes in any specified smoke-free place or vehicle is liable on conviction to a maximum fine of S\$1,000 (HK\$4,800).<sup>63</sup>

5.1.3 Singapore is a signatory of WHO's Framework Convention on Tobacco Control. To implement the treaty, Singapore has announced that the statutory smoking ban will cover more public places.

### 5.2 Statutory smoke-free places

5.2.1 The Smoking Act does not regulate smoking in public places or the workplace generally, nor does it use the term "workplace". Instead, the Smoking Act specifies a list of smoke-free places, which as of June 2005 comprises:

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<sup>62</sup> The National Environment Agency was established in 2002 as a statutory board under the Singapore National Environment Agency Act.

<sup>63</sup> Section 3, the Smoking Act.

Hospitality and public entertainment venues

- (a) air-conditioned restaurants and air-conditioned food shops, including their washrooms;
- (b) arcade games rooms, including jackpot machine rooms; and
- (c) amusement centres, cinemas, theatres, public museums, public art galleries, indoor ice-skating rinks, roller-skating rinks and roller-discotheques, indoor sports arenas and sports stadiums, bowling alleys, billiard saloons, gymnasium, and aerobic and fitness centres.

Educational and welfare institutions

- (a) schools, junior colleges, polytechnics and training institutes;
- (b) enclosed or air-conditioned part of buildings, residence halls, canteens, lecture theatres, sports and recreation centres, and stairwells and washrooms in universities;
- (c) reading rooms, public libraries and libraries in institutions of higher learning; and
- (d) hospitals, maternity homes, medical clinics and nursing homes.

Other indoor workplaces/public places

- (a) air-conditioned factories, air-conditioned offices, and enclosed or air-conditioned corridors, lobbies, stairwells, washrooms and other common areas of buildings or part of such a building, which wholly or principally consist of offices premises;
- (b) air-conditioned halls, ballrooms and function rooms (including any such premises located in a hotel) when they are used for holding meetings, conferences, seminars, courses or exhibitions, or serving meals;
- (c) theatres or cinemas in private clubs, and enclosed or air-conditioned common areas of private residential premises or buildings;

- (d) enclosed premises of banks to which the public have access for banking transactions, air-conditioned shops, air-conditioned shopping malls or complexes, including shops, atriums, corridors, lobbies, stairwells, washrooms and other areas within shopping malls and complexes, but excluding any places used as discotheques, pubs, bars, lounges or nightclubs; air-conditioned barber shops and hair-dressing saloons;
- (e) air-conditioned areas in the terminal buildings of Singapore Changi Airport, omnibuses, private buses, private hire buses, school buses and taxis;
- (f) the Supreme Court, subordinate courts and small claims tribunals; and
- (g) lifts, queues in public places, and underground pedestrian walkways.

5.2.2 The designation of the above places as smoke-free is based on three criteria:<sup>64</sup>

- (a) they are used for the gathering of families and children;
- (b) they are frequented mainly by non-smokers; and
- (c) they are enclosed places where it is difficult for non-smokers to get away from smokers.

5.2.3 In March 2005, after a public consultation, the government announced that, by 1 October 2005, the smoking ban would extend to:

- (a) community clubs;
- (b) swimming complexes;
- (c) open air stadiums;
- (d) bus shelters and bus interchanges; and
- (e) public toilets;

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<sup>64</sup> Singapore Smoking Control Programme, Society of Environment Health, p. 3.

5.2.4 According to the government,<sup>65</sup> it is reasonable to extend the smoking ban to community clubs, swimming complexes and open air stadiums because these places have banned smoking under their own house rules. The reason for banning smoking in bus shelters, bus interchanges and public toilets is that it is difficult for non-smokers to avoid second-hand smoke in such places, as in queues in public places.

### **5.3 Places exempt from smoking ban**

5.3.1 The Smoking Act empowers NEA to, subject to the directions of the Minister for the Environment and Water Resources, exempt any specified place or vehicle from the statutory smoking ban either permanently or for such period as NEA sees fit.<sup>66</sup> As of June 2005, the smoking ban applies to almost all of the places specified in the Smoking Notification. The only exceptions are air-conditioned offices and the Singapore Changi Airport, where the managers of such premises may designate rooms for smoking, provided that such rooms:

- (a) must be independently ventilated;
- (b) are not required to be used by any employee for the performance of his or her duties; and
- (c) are not washrooms, pantries or other common areas accessible to employees.

5.3.2 Hawker centres and some public entertainment venues, such as pubs, bars, discos, nightclubs, karaoke lounges and coffee shops, remain free from the smoking ban as at the publication of this report. The government will decide by the end of 2005 on whether smoking in such places should be banned. The government has indicated that its long-term goal is to do away with the need for an exhaustive list, and move towards allowing smoking only in private premises, wide open spaces and designated smoking areas.<sup>67</sup>

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<sup>65</sup> Minister for the Environment and Water Resources (2005).

<sup>66</sup> Section 10, the Smoking Act.

<sup>67</sup> Minister for the Environment and Water Resources (2005).

## 5.4 Legal responsibility of persons in charge of smoke-free places

5.4.1 The Smoking Act assigns "managers" of specified places and "operators" of specified vehicles with certain responsibilities in the implementation of the smoking ban. The definition of "manager" includes *"any owner, occupier, lessee or person who is responsible for the management of the specified building or is in charge or control thereof, and includes an assistant manager or supervisor or any person holding an appointment analogous to that of manager, assistant manager or supervisor."*<sup>68</sup> The definition of "operator" means *"any owner, ticket or tour conductor, driver, ticket inspector or person who is in charge or control of the specified vehicle"*.<sup>69</sup>

5.4.2 Managers of specified places and operators of specified vehicles must:<sup>70</sup>

- (a) display *"suitable and sufficient"* number of notices stating that smoking is banned by law. Such notices must be of an *"adequate size"* and displayed in *"conspicuous positions"*;
- (b) follow the direction by the Director-General of Public Health about the places in which "No Smoking" notices are displayed, the manner in which such notices are phrased, and the size of such notices;
- (c) adopt any means, method or device as the Director-General of Public Health sees fit for bringing the smoking ban to the attention of the public or passengers;
- (d) inform any person who smokes in smoke-free places or vehicles to cease smoking immediately; indicate the penalty of violating the smoking ban; request the person to leave the places or vehicles immediately if the person refuses, neglects or fails to cease smoking; and refer the case to police or authorized officers<sup>71</sup>; and
- (e) provide reasonable assistance to police or authorized officers to deal with persons who violate the smoking ban.

5.4.3 In addition, managers of specified places must take *"all reasonable steps"* to investigate complaints involving alleged smoking offences in specified places, and perform items (d) and (e) in paragraph 5.4.2 against the smokers, if the complaints are found true.

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<sup>68</sup> Section 2, the Smoking Act.

<sup>69</sup> Section 2, the Smoking Act.

<sup>70</sup> Sections 5 and 6, the Smoking Act.

<sup>71</sup> Section 6 (7) of the Smoking Act provides that the manager does not need to repay or refund any fee paid by a person for gaining admission into the specified place where that person has been required to leave the place.

5.4.4 Any manager or operator who fails or neglects to fulfil the legal responsibilities is liable to a maximum fine of S\$1,000 (HK\$4,700), and in the case of a second or subsequent conviction, to a maximum fine of S\$2,000 (HK\$9,400). Any person who hinders, obstructs, threatens, abuses, molests or assaults any manager or operator in meeting his or her legal responsibilities is liable to a maximum fine of S\$1,000 (HK\$4,700) or to imprisonment not exceeding six months, or to both.

## **5.5 Enforcing authorities**

5.5.1 The Smoking Act is administered by NEA and is enforced by police officers or authorized officers appointed by the Director-General of Public Health under the Environmental Public Health Act.<sup>72</sup> The authorized officers are empowered to arrest without warrant any person reasonably suspected of having violated the Smoking Act, and produce the person before a District Court or a Magistrate's Court. They can also require the person arrested to provide evidence of his or her identity.

## **5.6 Transitional arrangements for hospitality sector**

5.6.1 The Smoking Act does not provide transitional arrangements for the hospitality sector. It only states that NEA may, subject to the directions of the Minister for the Environment and Water Resources, exempt any specified place from the statutory smoking ban for such a period as NEA sees fit.<sup>73</sup>

## **5.7 Economic impact of smoking ban on hospitality sector**

5.7.1 The government has not published any study on the economic impacts of the smoking ban on the hospitality sector. During the public consultation in early 2005 on the proposed expanded list of statutory smoke-free places, the government cited a review of 97 studies from various places (none of which was about Singapore) on the economic impact of smoke-free policies on the hospitality sector. The review found that no methodologically-sound studies indicated negative economic impact from the introduction of smoke-free policies in restaurants and bars.<sup>74</sup>

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<sup>72</sup> Sections 2 and 4, the Smoking Act.

<sup>73</sup> Section 10, the Smoking Act.

<sup>74</sup> Scollo and Lai (2004). The Singaporean government also cited a recent study on the experience of New York City, where smoking has been banned in hospitality workplaces since 30 March 2003 under the Smoke-free Air Act, to reinforce its argument for the expanded list of statutory smoke-free areas. The study, jointly conducted by four New York City government departments, found that in New York City, the overall business tax receipts from restaurants and bars rose 8.7% in 2004, and 234 new liquor licenses were issued, creating 10 600 jobs. See New York City Department of Finance et. al. (2004).

## **5.8 Legal challenge to smoking ban**

5.8.1 In Singapore, there has not been any legal challenge to the smoking ban under the Smoking Act.

## Chapter 6 – Thailand

### 6.1 Background

6.1.1 Thailand is the 36<sup>th</sup> country which has ratified WHO's Framework Convention on Tobacco Control.<sup>75</sup> About 19.5% of the population smoked in 2004, down from 35.2% in 1981.<sup>76</sup> Some 42 000 people die of smoking-related diseases every year.<sup>77</sup>

6.1.2 In 1976, smoking was first banned in cinemas and on buses in Bangkok. In 1989, the government further curbed smoking by setting up the National Committee for Control of Tobacco Use, which expanded the smoking ban to all air-conditioned public transport and government agencies. In 1990, the government set up the Office of Tobacco Consumption Control<sup>78</sup> under the Ministry of Public Health to deal with smoking problems specifically.

6.1.3 In the early 1990s, recognizing the health hazards of second-hand smoke, the government found it necessary to create more statutory smoke-free places. In 1992, the Non-Smokers' Health Protection Act (the Health Protection Act) was enacted. The Health Protection Act has served as the primary legal framework for controlling second-hand smoking in indoor workplaces and public places. Through amendments to the Health Protection Act, the number of categories of places under the smoking ban or restrictions has increased significantly.

6.1.4 Thailand is one of the world's largest producers of tobacco. Tobacco production has been a state monopoly since 1943. About 85% of the domestic market is dominated by the state-owned Thailand Tobacco Monopoly Company (TTMC) under the Ministry of Finance.<sup>79</sup> The government originally planned to privatize TTMC through an initial public offering in November 2002, but has postponed the plan indefinitely because the privatization would make it difficult for the government to control cigarette marketing and would compromise its anti-smoking campaign.<sup>80</sup>

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<sup>75</sup> Thailand ratifies global anti-smoking treaty, 15 November 2004. Available from: <http://www.tobacco.org/news/181985.html> [Accessed March 2005].

<sup>76</sup> National Statistical Office (2004), p. 3.

<sup>77</sup> Asia's Burning Issues, the Wall Street Interactive Edition, 11 February 2005. Available from: <http://www.tobacco.org/articles/country/thailand/> [Accessed march 2005].

<sup>78</sup> The Office is currently under the Department of Disease Control.

<sup>79</sup> TTMC contributes revenue of 20 billion baht (HK\$4 billion) to the government annually. It advises tobacco growers on matters about growing and harvesting tobacco, and helps stabilize the prices of tobacco products. Available from: <http://www.thaitobacco.or.th/eng/eng/organization.htm> [Accessed April 2005], and [http://www2.mof.go.th/state\\_enterprises.htm](http://www2.mof.go.th/state_enterprises.htm) [Accessed April 2005].

<sup>80</sup> Privatization of Thai tobacco monopoly suspended, Pattaya Mail, 2002. Available from: <http://www.pattayamail.com/468/business.shtml> [Accessed April 2005].

## 6.2 Statutory smoke-free places

6.2.1 The Health Protection Act does not regulate smoking in workplaces and public places generally, but specifies a list of places where smoking is banned or restricted.<sup>81</sup> The list was amended in 1998 and 2002 respectively to cover more places. The Health Protection Act provides the definition of "public place" which means "a place or any vehicle where the public is entitled to enter",<sup>82</sup> but it covers workplaces to which the public has access as well. As of June 2005, smoking is totally banned in:<sup>83</sup>

- (a) air-conditioned restaurants, food courts and function centres;
- (b) public libraries;
- (c) outpatient clinics;
- (d) entertainment theatres, air-conditioned shopping centres and department stores, and air-conditioned sports centres;
- (e) air-conditioned mini-marts, hairdressers, tailors, beauty salons, drug stores and Internet venues;
- (f) places where religious ceremonies are held;
- (g) piers, public areas in air-conditioned air, rail, road and sea terminals, public buses, private buses, air-conditioned rail carriages, public boats, domestic flights and school buses; and
- (h) elevators, public toilets and public telephone booths.

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<sup>81</sup> Under Section 4 of the Health Protection Act, the Minister of Public Health can designate: (a) the types of public places where the health of non-smokers must be protected, and any part or all of such places as a smoking or smoke-free area; (b) the condition, nature and standard of smoke-free or smoking areas regarding smoke or air ventilation; (c) the criteria and procedures of sign demonstration in smoking or smoke-free areas; and (d) the date, time or period during which the person responsible for the operation of the public places must ensure compliance regarding smoke or air ventilation and sign demonstration.

<sup>82</sup> Section 3, the Health Protection Act.

<sup>83</sup> Article 2, the 1992 Non-Smokers Health Protection Act (Announcement 10) Announcement of the Ministry of Public Health (No. 10) B.E. 2545 (2002). Despite the national statutory smoking ban, local governments can enact tougher laws to ban smoking in public places. For instance, in Bangkok, under a rule set by the Bangkok Metropolitan Administration in May 2003, parents caught smoking outside public and private schools or in playgrounds while waiting for their children will be liable to a fine of up to 2,000 baht (HK\$400). See Thai schools made smoke-free zones, BBC News, 27 May 2003, available from: <http://news.bbc.co.uk/1/hi/education/2940518.stm> [Accessed April 2005].

### **6.3 Places exempt from smoking ban**

6.3.1 Under the Health Protection Act, smoking is banned in the following places, but their private rooms are exempt from the ban:

- (a) schools or educational institutions at the secondary level and below;
- (b) nurseries and pre-school centres;
- (c) hospitals;
- (d) cultural exhibition buildings, museums and galleries; and
- (e) indoor sports stadiums.

6.3.2 While the following places are also subject to a smoking ban, they are allowed to designate smoking areas, and their private rooms are exempt from the ban:

- (a) air-conditioned workplaces;
- (b) buildings at universities, colleges and tertiary educational institutions;
- (c) banks and financial institutions;
- (d) government offices and offices of state enterprises;
- (e) air-conditioned showrooms and exhibition buildings; and
- (f) domestic and international airports.

6.3.3 In addition to the above exemptions, certain places, including pubs and night entertainment places, are completely exempt from the smoking ban because, according to the government, such places were not frequented by children.<sup>84</sup>

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<sup>84</sup> Thailand's nationwide smoking ban to take effect November 8, Xinhuanet, 17 August 2002, available from: [http://news.xinhuanet.com/english/2002-08/17/content\\_528205.htm](http://news.xinhuanet.com/english/2002-08/17/content_528205.htm) [Accessed April 2005].

## 6.4 Legal responsibility of persons in charge of smoke-free places

6.4.1 The Health Protection Act assigns "operators" of the specified public places with certain legal responsibilities in the implementation of the smoking ban or restriction. "Operators" refer to owners, managers, supervisors or persons responsible for the operation of the public places.<sup>85</sup> They are required to:<sup>86</sup>

- (a) arrange any part or all of the specified public places as smoking or smoke-free areas;
- (b) arrange the smoking areas in air-conditioned places to have such condition, nature and standard as legally required, such as installing a ventilation system, which must ventilate the air between the outside and the inside of a smoking area at the rate of no less than 50 sq ft per minute per person; and ensure that the smoking area is not established at the entrance or exit of a specified public place and does not cause annoyance to nearby people;<sup>87</sup>
- (c) arrange for signs in smoking or smoke-free areas as legally required, such as posting "No Smoking" signs at the entrance of the specified public places and smoking signs at designated smoking areas;<sup>88</sup> and
- (d) allow the enforcing authorities to enter the specified public places for inspection or supervision of the implementation of the smoking ban or restriction.

6.4.2 Any operator failing to perform item (a), (b), (c) or (d) in the previous paragraph is liable to a fine of up to 20,000 baht (HK\$4,000), 10,000 baht (HK\$2,000), 2,000 baht (HK\$400), or an imprisonment not exceeding one month or a fine of up to 2,000 baht (HK\$400) or both respectively.<sup>89</sup>

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<sup>85</sup> Section 3, the Health Protection Act.

<sup>86</sup> Sections 5 and 7, the Health Protection Act.

<sup>87</sup> Articles 2, 3 and 4, Designation of signs for smoking and non-smoking areas, Announcement of the Ministry of Public Health (No.8) B.E.2540, and Articles 2 and 3, Condition and appearance of smoking areas as per the Non-smokers' Health Protection Act B.E.2535, Announcement of the Ministry of Public Health (No.8) B.E.2540.

<sup>88</sup> Articles 2, 3 and 4, Designation of signs for smoking and non-smoking areas, Announcement of the Ministry of Public Health (No.8) B.E.2540.

<sup>89</sup> Sections 11 and 13, the Health Protection Act.

## 6.5 Enforcing authorities

6.5.1 The Health Protection Act is executed by officers appointed by the Minister of Public Health. These designated officers are empowered to enter the specified public places for inspection or supervision of the implementation of the smoking ban or restriction.<sup>90</sup> The Minister of Public Health also appoints health and law enforcement officials of the central, provincial and local administrations to take charge of the Health Protection Act within their jurisdictions.<sup>91</sup>

## 6.6 Compliance with smoking ban

6.6.1 Although there has not been any official study on the effectiveness of the Health Protection Act in controlling second-hand smoking, several unofficial surveys on compliance with the smoking ban are available. A study jointly published in 2003 by scholars and a pharmacist from the Ministry of Public Health found that the smoking ban in the specified public places had been wildly violated.<sup>92</sup> About 55% of smokers interviewed acknowledged that they had smoked in the statutory smoke-free places. The percentage of smokers interviewed who had smoked in the statutory smoke-free places in provincial areas (60%) was higher than in Bangkok (50%). The violation was particularly serious in schools and shopping areas. More than 23% of smokers surveyed reported smoking in such areas, against 17%, 14% and 12% in trains, government offices and taxis respectively.<sup>93</sup> A 2004 nationwide survey of 6 213 monks revealed that more than one in four of them smoked, and 33% were not aware of the smoking ban in temples (about 9 100 temples throughout Thailand).<sup>94</sup> An academic survey found that only 31% of more than 1 020 government and private hospitals nationwide supported a complete ban on smoking inside hospitals.<sup>95</sup>

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<sup>90</sup> Sections 7, 8, 9 and 10, the Health Protection Act.

<sup>91</sup> Appointment of officials to be in charge of the Non-Smokers' Health Protection Act B.E.2535, Announcement of the Ministry of Public Health (No.6) B.E.2540.

<sup>92</sup> The study was funded by the World Bank and WHO. Its authors declared that the findings, interpretations and conclusions in the study were entirely those of the authors, and should not be attributable to the World Bank or WHO or their executive directors, or the countries they represent.

<sup>93</sup> Sarntisart et. al. (2003), pp. 28-29.

<sup>94</sup> Buddhist monks urged to give up smoking, 1 June 2004, United Press International, available from: <http://www.tobacco.org/news/165333.html> [Accessed April 2005]; and Regional monks move to ban smoking, 10 May 2004, MCOT News, available from: <http://etna.mcot.net/query.php?nid=27383> [Accessed April 2005].

<sup>95</sup> Anti-smoking campaign: only 31% of hospitals support ban, the Nation, 12 May 2004, available from: <http://www.tobacco.org/news/163406.html> [Accessed April 2005].

6.6.2 The central government has been criticized for lacking a political will to enforce anti-smoking measures.<sup>96</sup> While occasionally issuing directives to urge local governments to strictly enforce the smoking ban, the government publicly concedes that the Health Protection Act has not been adequately enforced, and the anti-smoking campaign has not clearly formed part of government policies.<sup>97</sup> It believes that mechanisms should be put in place for the examination and assessment of the anti-smoking drive.<sup>98</sup>

## **6.7 Transitional arrangements for hospitality sector**

6.7.1 The Health Protection Act does not provide any special transitional arrangement for the hospitality sector. In July 2002, when announcing an amended list of specified public places (including all air-conditioned restaurants and food courts) to be under a smoking ban, the Ministry of Public Health allowed the amended list to enter into force on the ninetieth day after it was gazetted.

## **6.8 Economic impact of smoking ban on hospitality sector**

6.8.1 The government has not published reports on the economic impacts of the smoking ban on the hospitality sector. When the smoking ban was about to take effect in November 2002, the Thai Restaurants Association complained that extending the smoking ban to air-conditioned restaurants would force pubs-restaurants to drop their dual identity and chose to be either a restaurant or a pub where smoking was allowed.<sup>99</sup> The Thai Hotel Association also opined that the smoking ban might drive away tourists, especially those from other Asian countries, the most rapidly growing holidaymaker group, who were mostly heavy smokers.<sup>100</sup>

## **6.9 Legal challenge to smoking ban**

6.9.1 In Thailand, there has not been any legal challenge to the smoking ban under the Health Protection Act.

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<sup>96</sup> Butt out that cigarette, Bangkok Post, 11 March 2005. Available from: [http://www.bangkokpost.net/110305\\_News/11Mar2005\\_news34.php](http://www.bangkokpost.net/110305_News/11Mar2005_news34.php) [Accessed April 2005].

<sup>97</sup> Smoking ban to be more strict, 18 December 2003, available from: <http://www.tobacco.org/news/146873.html> [Accessed April 2005], and Gov't declares crackdown to enforce no-smoking zones, 20 March 2004, available from: <http://www.tobacco.org/news/157254.html> [Accessed April 2005].

<sup>98</sup> Government admits failure of anti-smoking drive, MCOT News, 26 January 2005, available from: <http://etna.mcot.net/query.php?nid=35204> [Accessed April 2005].

<sup>99</sup> Anti-smoking law: thousands of venues to be affected, 8 November 2002, The Nation, available from: <http://www.tobacco.org/news/107948.htm> [Accessed April 2005].

<sup>100</sup> Smoke-free zones: fears of backlash by tourists, 31 October 2002, The Nation, available from: <http://www.tobacco.org/news/107277.htm> [Accessed April 2005].

## Chapter 7 – Japan

### 7.1 Background

7.1.1 Japan does not have national smoke-free workplace legislation to date. Unlike many developed countries where smoking is statutorily restricted or banned in workplaces and public places, Japan has adopted a less restrictive policy towards smoking.

7.1.2 The government's efforts to control smoking can be dated back to 1995 when the Council on Public Health published the "Report by Tobacco Action Program Committee", which proposed reducing the adverse effects of second-hand smoking, such as separating smokers from non-smokers.<sup>101</sup> Although the government endorsed the proposal, the Ministry of Health and Welfare (currently the Ministry of Health, Labour and Welfare), the Ministry of Labour and the National Personnel Authority have only issued advisory guidelines to encourage smoking restrictions in enclosed public places and workplaces, instead of resorting to legislative measures to control smoking.<sup>102</sup> So far, smoking has only been restricted or banned based on voluntary measures in certain public places, such as aircraft, cinemas, educational institutions, health care facilities and government workplaces.<sup>103</sup> In addition, Japan permits cigarette vending machines, which number about 630 000 throughout the country, to be placed in unsupervised public areas.<sup>104</sup>

7.1.3 In recent years, Japan has tried to step up smoking control. In 2000, the Ministry of Health and Welfare launched a nationwide 10-year health promotion programme, Health Japan 21, under which smoking control was considered a target to be achieved in the first decade of the 21st century.<sup>105</sup> The Health Promotion Act (HPA), enacted in 2003, contains provisions on the prevention of second-hand smoking. In March 2004, Japan became the 98th signatory of WHO's Framework Convention on Tobacco Control.

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<sup>101</sup> Ministry of Health and Welfare (1999).

<sup>102</sup> Ibid, and Utsunomiya (2002), p. 31.

<sup>103</sup> World Health Organization (2002).

<sup>104</sup> Tighten Japan's tobacco controls, Japan Times, 24 May 2003, available from: <http://listsessential.org/pipermail/intl-tobacco/2003q2/000928.htm> [Accessed March 2005].

<sup>105</sup> National Health Promotion Movement in the 21st Century, available from: <http://www.wpro.who.int/chips/chip04/jpn.htm> [Accessed May 2005].

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7.1.4 A major concern regarding the enactment of smoke-free workplace legislation in Japan has been the government's profound interest in the tobacco industry.<sup>106</sup> Tax revenues from the tobacco industry, which amount to two trillion yen (HK\$114 billion) a year, have been a significant source of government income. The Tobacco Business Law, which aims to secure stable fiscal revenues for Japan, provides for the government to own a majority share in Japan Tobacco Inc, the world's third largest cigarette manufacturer and seller.<sup>107</sup> As such, the chairmen of the tobacco company have often been former senior officials from the Finance Ministry.<sup>108</sup>

7.1.5 WHO's figures show that the 49% smoking rate of the adult male population in Japan is among the highest in the world.<sup>109</sup>

## 7.2 Legislation relating to second-hand smoking

7.2.1 In Japan, HPA is so far the only legislation that covers second-hand smoking. However, it does not empower the government or any person in charge of a public place to ban or restrict smoking in public places or workplaces. It merely calls for steps to be taken to prevent second-hand smoking in 11 types of public places: restaurants, bars, schools, hospitals, offices, government buildings, department stores, theatres, galleries, gymnasiums and public assembly halls. In particular, HPA does not specify any penalties in the event of non-compliance. Members of Diet, the Japanese Parliament, have urged the government to impose a more restrictive national legislation on second-hand smoking in the workplace, but the government does not have any plan to do so.

7.2.2 After the enactment of HPA, some local governments across the country have banned smoking in certain enclosed public places. In April 2002, the Wakayama Prefectural Government set the precedent by banning smoking at all schools under its jurisdiction. Other prefectures have since followed suit or are considering similar moves. According to a survey, at least 18 of the country's 47 prefectures have either banned or decided to ban smoking in the premises of prefecture-run schools.<sup>110</sup> In addition, in October 2002, the Chiyoda Ward government of Tokyo became the first local government to ban smoking on the streets in a bid to prevent smokers from disposing cigarette butts on the streets.

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<sup>106</sup> Non-smokers shouldn't have to put up with smokers, the Asahi Shimbun, 15 July 2004, Anti-smoking treaty may finally force Japan to butt out, The Daily Yomiuri, 10 June 2004, and Kicking the habit? The Daily Yomiuri, 1 May 2004.

<sup>107</sup> Anti-smoking treaty may finally force Japan to butt out, The Daily Yomiuri, 10 June 2004.

<sup>108</sup> Hanai, H. (2004).

<sup>109</sup> World Health Organization (2002).

<sup>110</sup> Prefectures gradually forcing teachers to kick their smoking habits at school, The Japan Times, 8 June 2004, available from: <http://202.221.217.59/print/news/nn06-2004/nn20040608b5.htm> [Accessed March 2005].

### **7.3 Legal responsibility of persons in charge of smoke-free places**

7.3.1 Since HPA only advises operators of public facilities to take necessary measures to curb second-hand smoke, persons in charge of privately-run public places or workplaces are not legally required to do so.

### **7.4 Enforcing authorities**

7.4.1 The Health, Labour and Welfare Ministry of the central government is responsible for implementing HPA. The Ministry has issued a guideline entitled "Countermeasures against Smoking at Workplaces" for private companies. The guideline advises such companies to set up air-tight smoking rooms and equip smoking rooms with ventilators.

7.4.2 The National Personnel Authority, which is under the jurisdiction of the Cabinet but operates as an independent authority whose duties include responsibilities over government employees' working conditions and welfare, issued a guideline in July 2004 aiming for a total smoking ban in all central government buildings. In particular, the guideline advises that a smoking room should be set up within a government building as a minimum measure, and there should not be any smoking areas within offices. Nonetheless, the guideline is not compulsory and does not specify any consequence of non-compliance.

7.4.3 Noting that privately-run facilities, including restaurants and entertainment places, are lagging behind public facilities in taking measures against second-hand smoking, the central government has recently pledged to subsidize half the costs of projects launched by municipal governments to prevent second-hand smoking at such places.<sup>111</sup>

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<sup>111</sup> Japan's government to fund crackdown on public smoking, Agence France Presse, 24 January 2005, available from: <http://www.tobacco.org/news> [Accessed March 2005].

## 7.5 Compliance with smoking restriction

7.5.1 It is reported that the implementation of HPA has not been satisfactory. In particular, no central government building has implemented a total ban, as stipulated in the guideline issued by the National Personnel Authority, and some designated smoking rooms in such buildings have no walls or systems to vent cigarette smoke.<sup>112</sup> The Health, Labour and Welfare Ministry is one of the ministries, which do not follow the guideline to set up smoking areas within its offices; so are the Justice Ministry and the Finance Ministry (which has jurisdiction over the tobacco industry). The National Personnel Authority has also not set up a schedule to ban smoking in its building.

7.5.2 The enactment of HPA to prevent second-hand smoking in the public sector has not inspired most private businesses to restrict smoking on their own initiative. For instance, more than 80% of restaurants and bars in Japan have yet to restrict smoking, and smoke-free taxis account for only 0.6% of the country's company-operated taxi fleets.

## 7.6 Legal challenge to smoking ban

7.6.1 In Japan, there has not been any legal challenge to the constitutional or legal basis of the smoking restriction under HPA. Nevertheless, there was a landmark case in July 2004 that for the first time the court awarded damages to an employee for second-hand smoking he had suffered at his workplace.<sup>113</sup>

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<sup>112</sup> Smoking lingers in government buildings, *The Japan Times*, 29 July 2003, available from: <http://www.japantimes.co.jp/cgi-bin/getarticle.p15?nn20030729a7.htm> [Accessed March 2005].

<sup>113</sup> On 12 July 2004, the Tokyo District Court awarded 50,000 yen (HK\$3,500) in damages to an employee of the municipal Government of Edogawa Ward, who had demanded 300,000 yen (HK\$21,400) in damages, over his suffering from second-hand smoking at work. The man was employed by the municipal government in April 1995, where smoking was permitted. He complained of respiratory problems and pains in the neck and shoulders, claiming that they were caused by second-hand smoking. He requested his supervisor to designate a smoking area. In response, the municipal government installed ventilators instead of creating a smoking area or relocating his desk. In January 1996, the man presented his supervisor with a medical diagnosis claiming that his health would deteriorate if he remained in the same working environment. Three months later, he was transferred to another office with a designated smoking area. The Judge ruled that although the link between smoking and the damage to the plaintiff's health was not certain, leaving the plaintiff unattended for three months was a violation of the municipal government's obligation to take safety precautions. See *Worker wins 50,000 yen over passive smoke*, *The Japan Times*, 13 Japan 2004, available from: <http://search.japantimes.co.jp/print/news/nn07-2004/nn20040713a3.htm> [Accessed March 2005]; and *Japan: Court awards damages for passive smoking for 1st time*, available from: <http://www.wpro.who.int/tfi/docs/news/07-12-04.htm> [Accessed March 2005].

## Chapter 8 – Taiwan

### 8.1 Background

8.1.1 In Taiwan, smoking was banned first in airlines in 1995 and then in passenger buses in 1996. The year 1997 witnessed the enactment of the Tobacco Hazards Prevention Act (the Hazards Prevention Act), which was regarded as a milestone in the tobacco control in Taiwan. Instead of banning smoking in workplaces and public places, the Hazards Prevention Act aims at outlawing the sale of cigarettes to persons under 18, banning advertising by tobacco companies, and requiring cigarette manufacturers to clearly label the nicotine and tar contents of their products.

8.1.2 Only until recent years does the government regard the creation of smoke-free environments as a strategy for the tobacco control. In 2000, the Hazards Prevention Act was amended to make it illegal to smoke in certain public places. The amended Act has become the primary legislation against smoking in indoor workplaces and public places.

8.1.3 Taiwan is so far the only non-WHO member to have adopted the Framework Convention on Tobacco Control, which was ratified by the Legislative Yuan on 14 January 2005. Official figures show that 27% of the population smoke,<sup>114</sup> and about 19 000 people die of smoking-related diseases every year. The government is planning to privatize the state-owned Taiwan Tobacco and Liquor Corporation, which is expected to be listed on the stock market by the end of 2005.<sup>115</sup>

### 8.2 Statutory smoke-free places

8.2.1 The Hazards Prevention Act does not have a definition of either "workplace" or "public place". Nor does it regulate smoking in workplaces and public places generally. Instead, it specifies a list of places where smoking is totally banned:<sup>116</sup>

- (a) library rooms, classrooms and laboratories;
- (b) day care centres and kindergartens;

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<sup>114</sup> Department of Health (2004).

<sup>115</sup> Taiwan tobacco sees stock listing in 11 more months, Taipei Times, 6 October 2004. Available from: <http://www.tobacco.org/articles/country/taiwan> [Accessed March 2005].

<sup>116</sup> Article 13, the Hazards Prevention Act.

- (c) medical care institutions, nursing care institutions and any other medical institutions and welfare organizations for the disabled;
- (d) the business areas of banks, post offices and offices of telecommunications businesses;
- (e) performance halls, auditoriums, exhibition rooms and conference halls;
- (f) indoor gymnasiums and swimming pools;
- (g) civil aircraft, buses, cable cars, taxis, ferry boats, closed-ventilation trains, stations and carriages of mass transit systems, elevators and any other closed-ventilation public transport systems; and
- (h) places for manufacturing, storage or sale of flammable and explosive items.

### **8.3 Places exempt from smoking ban**

8.3.1 While the following places are subject to a smoking ban, they are permitted to designate areas for smoking:<sup>117</sup>

- (a) restaurants with a floor area exceeding 200 sq m;
- (b) social welfare institutions;
- (c) libraries, schools and social education halls;
- (d) government offices and state-owned enterprises;
- (e) tourist hotels, department stores, supermarkets, shopping centres;
- (f) memorial halls, museums, art galleries and cultural centres;
- (g) opera houses, movie theatres and other places of performance;
- (h) non-closed ventilation trains and ferry boats; and
- (i) ticket offices and passenger waiting lobbies of train stations, ports and airports.

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<sup>117</sup> Article 14, the Hazards Prevention Act.

8.3.2 To implement WHO's Framework Convention on Tobacco Control, the government is consulting the public and stakeholders on its new amendment to the Hazards Prevention Act, which proposes extending the total smoking ban to the following places:

- (a) all indoor workplaces and public places, including restaurants, cafes, pubs, bars, nightclubs and karaoke lounges;
- (b) social welfare institutions;
- (c) schools at the upper middle level and below, and facilities mainly for educating children and young people;
- (d) public transport carriers; and
- (e) area within 10 m of entrances to and exits from the above specified places.

#### **8.4 Legal responsibility of persons in charge of smoke-free places**

8.4.1 The Hazards Prevention Act provides that persons in charge of smoke-free places must:<sup>118</sup>

- (a) persuade smokers to stop smoking in smoke-free areas;
- (b) display conspicuous "No Smoking" notices in places where smoking is banned; and
- (c) distinctly segregate and indicate the smoking and smoke-free areas in places where smoking is partially banned.

8.4.2 Employees of smoke-free places are also legally required to persuade smokers to stop smoking in smoke-free areas.

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<sup>118</sup> Articles 13, 14 and 15, the Hazards Prevention Act.

8.4.3 Nevertheless, any person failing to perform item (a) in paragraph 8.4.1 will not be penalized. Only smokers who smoke in the specified smoke-free places and refuse to stop smoking after persuasion are liable to a fine of not less than NT\$1,000 (HK\$250) but not more than NT\$3,000 (HK\$750).<sup>119</sup> Any person in charge of a specified smoke-free place who fails to perform items (b) or (c) in paragraph 8.4.1 is liable to a fine of not less than NT\$10,000 (HK\$2,500) but not more than NT\$30,000 (HK\$7,500). The person concerned is also required to make corrections within a specified period of time, or will be penalized on a daily basis<sup>120</sup>, until the corrections are made.<sup>121</sup>

## 8.5 Enforcing authority

8.5.1 The smoking ban is enforced by the Department of Health of the Executive Yuan at the central government, the municipal health departments and the county governments. The enforcing authorities at the municipal and county levels are required to periodically send officials to inspect the management of the specified smoke-free public places and the smoking areas designated in such places.<sup>122</sup>

## 8.6 Compliance with smoking ban

8.6.1 A survey on smoking in restaurants released by the Department of Health (DOH) in December 2003 showed that the percentage of customers who experienced second-hand smoke in restaurants dropped from 75% in February 2003 to 57% in October 2003. According to the Bureau of Health Promotion, although restaurants are not required to ban smoking totally, the number of restaurants registered with DOH as smoke-free has been increasing rapidly, expecting to reach 5 000 by the end of 2005 from 770 in mid-2004.<sup>123</sup>

8.6.2 A survey released by Taipei Medical University in mid-2004 revealed that 91% of the 2 900 people surveyed expressed their willingness to dine at smoke-free restaurants, and 90% expressed satisfaction with the air quality at restaurants registered with DOH as smoke-free. A similar survey into the views of owners of 450 restaurants found that 88% did not believe that a smoke-free environment would drive customers away.<sup>124</sup>

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<sup>119</sup> Article 25, the Hazards Prevention Act.

<sup>120</sup> The amount of the fine is not specified in the Hazards Prevention Act.

<sup>121</sup> Article 26, the Hazards Prevention Act.

<sup>122</sup> Article 16, the Hazards Prevention Act.

<sup>123</sup> In order to promote smoke-free restaurants, the Bureau offers subsidies for advertising and opportunities for coverage in gourmet magazines to restaurants that register with DOH as smoke-free. See *Smoke-free restaurants to increase*, Taipei Times, June 18 2004, available from: <http://www.taiwanheadlines.gov.tw/20040618/20040618s1.html> [Accessed April 2005].

<sup>124</sup> *Smoke-free restaurants to increase*, Taipei Times, June 18 2004, available from: <http://www.taiwanheadlines.gov.tw/20040618/20040618s1.html> [Accessed April 2005].

8.6.3 Despite the progress of the anti-smoking drive, the Health Minister conceded in 2004 that the government's tobacco-control strategy had not been effective enough to discourage smoking, and would push for more stringent anti-smoking policies.<sup>125</sup>

## **8.7 Transitional arrangements for hospitality sector**

8.7.1 The Hazards Prevention Act took effect six months after its enactment. It does not provide any particular transitional arrangement for the hospitality sector, which is subject to smoking restrictions.

## **8.8 Economic impact of smoking ban on hospitality sector**

8.8.1 The survey conducted by DOH mentioned in paragraph 8.6.1 showed that nearly one year after introducing the smoking restriction in restaurants, 18.4% of the restaurants surveyed said that there had been a slight rise in revenue, while 10% reported less income. Another 58.1% indicated that there had been no change in their revenue. In addition, 86.6% of the restaurants surveyed felt that banning indoor smoking would help attract customers in the long term.

## **8.9 Legal challenge to smoking ban**

8.9.1 In Taiwan, there has not been any legal challenge to the smoking ban under the Hazards Prevention Act.

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<sup>125</sup> Health bureau assesses progress of nationwide anti-smoking drive, *Taiwan Journal*, 23 March 2004, available from: <http://www.taiwanheadlines.gov.tw/20040323/20040323f1.html> [Accessed April 2005].

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## Chapter 9 – State of California in the United States

### 9.1 Background

9.1.1 California is the first state in the US to ban smoking in all indoor workplaces generally. The State has imposed a smoking restriction in selected public areas since the mid-1970s. For example, before the mid-1990s, restaurants were required to provide separate sections for smokers and non-smokers.<sup>126</sup> In 1988, California voters passed an initiative, Proposition 99, which authorized the State to establish a formal tobacco control programme. As a result, the Tobacco Control Section (TCS) was set up under the California Department of Health Services in 1989. TCS is responsible for formulating the California Tobacco Control Programme, an objective of which is to achieve a smoke-free California.

9.1.2 In 1991, San Luis Obispo became the first city in the State, as well as in the US, to ban smoking in restaurants and bars, including bars serving drinks only. By 1994, over 100 California cities and counties had enacted legislation imposing smoking restrictions in the workplace.

9.1.3 In 1994, the state legislature enacted the California Smoke-free Workplace Law (the Smoke-free Workplace Law), which, as a worker-protection measure, became section 6404.5 of the California Labour Code. The Smoke-free Workplace Law has been the primary legislation creating a uniform state-wide standard to restrict or ban smoking in enclosed places of employment.<sup>127</sup> It took effect in most enclosed workplaces, including restaurants, on 1 January 1995 and in gaming clubs, bars and taverns on 1 January 1998.

9.1.4 Up to 2004, about 16% of the California population smoked.

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<sup>126</sup> California Department of Health Services (2001), pp. 5-11.

<sup>127</sup> Labour Code section 6404.5 (a).

## 9.2 Statutory smoke-free places

9.2.1 In California, the Smoke-free Workplace Law applies to most enclosed places of employment, which are also specifically regulated by provisions of federal laws and other California laws, including Government Code Sections, Health and Safety Code Sections, Education Code Sections, Penal Code Sections and Vehicle Code Sections. Under these laws, smoking is banned in any enclosed space at a "place of employment" which means *"any place, and the premises appurtenant thereto, where employment is carried on"*.<sup>128</sup> Such places cover:<sup>129</sup>

- (a) restaurants and bars;<sup>130</sup>
- (b) elementary and secondary schools,<sup>131</sup> and any indoor facility used for kindergarten, elementary or secondary education, or library services for children;<sup>132</sup>
- (c) school districts and county offices of education that receive tobacco control funding from the State;<sup>133</sup>
- (d) the area within 25 ft of a playground or tot lots (play areas within a public park designated for use by children under five);<sup>134</sup>
- (e) premises of licensed day care centres, private residences that are licensed as family day care homes during the hours of operation, and areas of the family day care homes where children are present;<sup>135</sup>
- (f) indoor facilities used for health care, day care or early childhood development services for children, which are funded by the federal government or used by the employees of the service providers;<sup>136</sup>

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<sup>128</sup> In the Labour Code, the term "place of employment" is not defined in section 6404.5 but in section 6303 (a). The term "employment" is not defined in Labour Code section 6404.5 either but is defined in the Labour Code section 6303 (b) as any work *"in which any person is engaged or permitted to work for hire"*, including voluntary work. "Enclosed" is not defined in the Labour Code sections. It is generally understood as a space surrounded by four walls, a floor and a ceiling. See Technical Assistance Legal Center (2004a).

<sup>129</sup> Technical Assistance Legal Center (2004a), (2004b) and (2004c).

<sup>130</sup> California Health and Safety Code sections 114020 (d) and 113935.

<sup>131</sup> California Education Code section 48901.

<sup>132</sup> 20 United States Code sections 6083(a) and 6083(f)(1).

<sup>133</sup> These places are regulated by the California Health and Safety Code section 104420(p), and they are not covered by the California Smoke-free Workplace Law.

<sup>134</sup> This area is regulated by the California Health and Safety Code section 104495, and is not covered by the California Smoke-free Workplace Law.

<sup>135</sup> California Health and Safety Code sections 1596.795 and 1596.890.

<sup>136</sup> 20 United States Code sections 6083(b) and (f).

- (g) the indoor area of buildings occupied, owned or leased by the State, a county or a city in the State, or a California Community College district, and the outdoor area within 20 ft of a main exit, entrance, or operable window of such buildings;<sup>137</sup>
- (h) passenger vehicles owned by the State;<sup>138</sup>
- (i) the common areas of apartment complexes and multi-unit residences if those areas are enclosed and are places of employment; and
- (j) public transport.<sup>139</sup>

### **9.3 Places exempt from smoking ban**

9.3.1 The statutory smoking ban does not apply to the following places:<sup>140</sup>

- (a) smoking breakrooms designated by employers under specified conditions (as mentioned in paragraph 9.4.2);
- (b) smoking areas of small businesses with five or fewer employees under specified conditions (as mentioned in paragraph 9.4.3);
- (c) patient smoking areas in long-term health care facilities;
- (d) up to 65% of the hotel/motel guest rooms;
- (e) up to 25% of hotel/motel lobbies or 50% of hotel/motel lobby (which is 2 000 sq ft or less) if designated for smoking;
- (f) meeting and banquet rooms in a hotel/motel or public convention centre, except while food or beverage functions are taking place (including setup, service, and cleanup activities or when the room is being used for exhibition). When smoking is banned in a meeting or banquet room, the establishment may permit smoking in corridors and pre-function areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area;

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<sup>137</sup> California Government Code sections 7596-7598.

<sup>138</sup> Ibid.

<sup>139</sup> California Health and Safety Code sections 118925-118945, California Penal Code Section 640, California Vehicle Code sections 336, 12523(d)(2), 12523.5(d)(2) and 13369(b)(4), and 49 United States Code Section 41706.

<sup>140</sup> Labour Code section 6404.5 (d).

- (g) retail or wholesale tobacco shops, and private smokers' lounges which refer to any enclosed areas in or attached to retail or wholesale tobacco shops;
- (h) cabs of motor trucks, if non-smoking employees are not present;
- (i) warehouse facilities, each of which has more than 100 000 sq ft of total floor area and 20 or fewer full-time employees working at the facility, but not areas used as office space within that facility;
- (j) theatrical production sites, if smoking is an integral part of the story in the theatrical production;
- (k) medical research or treatment sites, if smoking is integral to the research and treatment being conducted; and
- (l) private residences, except for those licensed as family day care homes during hours of operation and in those areas where children are present.

9.3.2 Despite these exemptions, the Smoke-free Workplace Law does not supersede local authorities to regulate workplaces exempt from the state-wide smoking ban, nor prevent employers from enacting more restrictive smoking ban in their workplaces.<sup>141</sup>

## **9.4 Legal responsibility of persons in charge of smoke-free places**

9.4.1 Under the Smoke-free Workplace Law, no employers can "*knowingly or intentionally permit*" smoking in an enclosed place of employment. Employers must:

- (a) post clear and prominent signs;<sup>142</sup> and
- (b) request non-employees who are smoking in smoke-free areas to cease smoking.

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<sup>141</sup> Labour Code section 6404.5 (i).

<sup>142</sup> Labour Code section 6404.5 (c) provides that where smoking is banned throughout a building or structure, a sign stating "No Smoking" must be posted at each entrance to the building or structure; where smoking is permitted in designated areas of a building or structure, a sign stating "Smoking is prohibited except in designated areas" must be posted at each entrance to the building or structure.

9.4.2 Employers who designate breakrooms for smoking must:

- (a) install exhaust fans to directly exhaust air from the smoking rooms to the outside;
- (b) comply with any ventilation standard adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency;
- (c) designate the smoking rooms in non-work areas where no employee, as part of his or her work responsibilities, is required to enter; and
- (d) provide sufficient smoke-free breakrooms for non-smoking employees.

9.4.3 Employers with five or fewer employees, either full-time or part-time, may permit smoking in a smoking area in the workplace, provided that they fulfil the following responsibilities:

- (a) items (a) and (b) in paragraph 9.4.2;
- (b) ensuring the inaccessibility of the smoking area to minors; and
- (c) ensuring that all employees who enter the smoking area consent to permit smoking.

9.4.4 Employers violating the law are subject to a fine of up to US\$100 (HK\$780) for the first violation, up to US\$200 (HK\$1,560) for the second violation within one year, and up to US\$500 (HK\$3,900) for third and for each subsequent violation within one year.<sup>143</sup> After three violations within one year, cases may be referred to the California Occupational Safety and Health Administration (Cal/OSHA).

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<sup>143</sup> Labour Code section 6404.5 (j).

## 9.5 Enforcing authorities

9.5.1 The Smoke-free Workplace Law is mainly enforced by local law enforcement agencies, including local health, fire and police departments, as determined by the local governing bodies.<sup>144</sup> For workplaces covered by the Smoke-free Workplace Law, Cal/OSHA is required to investigate complaints regarding smoking in workplaces after the employer has been found guilty of three or more violations of the law within one year. Cal/OSHA can levy fines of up to US\$7,000 (HK\$54,600) for general or serious violations, and fines of up to US\$70,000 (HK\$546,000) for wilful serious violations. If Cal/OSHA receives a complaint regarding smoking in a workplace not covered by the Smoke-free Workplace Law (for example, see paragraph 9.2.1 (c) and (d)), it can send a letter directing the employer concerned to investigate and correct the problem.

## 9.6 Compliance with smoking ban

9.6.1 The California government has not published any official data about the compliance level of the Smoke-Free Workplace Law. Nevertheless, a publicly-funded research, which was jointly conducted by officials from Los Angeles County Department of Health Services and a scholar, provided what it claimed the first published data on compliance of the Smoke-free Workplace Law. Focusing on Los Angeles County, the research indicated that by 2002, four years after the Smoke-free Workplace Law applied to bars and restaurants, the level of compliance was high, reaching about 99% in bar/restaurants and 76% in freestanding bars.<sup>145</sup> According to the research, its findings were similar to the unpublished results from the City of San Francisco Tobacco Free Project, which showed that the patron compliance with the smoking ban for 2002 was 80% for freestanding bars and 98.2% for bars/restaurants. The research attributed the relatively lower compliance level of freestanding bars to the influence of a state-wide public relations campaign sponsored by the tobacco industry, which claimed that freestanding bars would experience catastrophic economic losses and the rights of smokers and employers would be deprived of as a result of the smoking ban.<sup>146</sup>

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<sup>144</sup> The smoking ban in some places, which are not regulated by the Smoke-free Workplace Law, is enforced by specified authorities. For example, under the California Health and Safety Code section 104420(p), the California Department of Education is responsible for monitoring the smoking ban in school districts and county offices of education that receive tobacco control funding from the State.

<sup>145</sup> Weber et al. (2003). The study was funded by California Department of Health Services Grant and National Cancer Institute Grant.

<sup>146</sup> Weber et al. (2003), p. 271.

## 9.7 Transitional arrangements for hospitality sector

9.7.1 There was no transitional arrangement for restaurants where the smoking ban under the Smoke-free Workplace Law took effect on 1 January 1995. Nevertheless, the Law provided a three-year adaptation period for the following hospitality workplaces where smoking would not be banned until 1 January 1998:<sup>147</sup>

- (a) gaming clubs that restrict access to minors aged under 18; and
- (b) bars and taverns which are facilities primarily devoted to the serving of alcoholic beverages, with incidental serving of food. When attaching to restaurants, the term "bar" or "tavern" covers only those areas used primarily for the sale and service of alcoholic beverages, but does not include the dining areas of a restaurant.

9.7.2 Originally, the Smoke-free Workplace Law had only provided a two-year adaptation period for gaming clubs, bars and taverns so that smoking would have been banned in those places on 1 January 1997. However, in 1996, the tobacco industry supported a bill to extend the effective date of the scheduled smoking ban to 1 January 2000. The bill was opposed by health groups for denying workers in such workplaces the equal protection of a safe and smoke-free environment. The bill was eventually passed, but the extension was reduced to one year, ending on 1 January 1998, during which gaming clubs, bars and taverns were only required to establish a smoke-free area if feasible.<sup>148</sup>

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<sup>147</sup> Labour Code section 6404.5 (d) and (f).

<sup>148</sup> California Department of Health Services (2001), p. 15.

## **9.8 Economic impact of smoking ban on hospitality sector**

9.8.1 The California Department of Health Services claimed in 2003 that smoking bans were in fact good for hospitality businesses in California.<sup>149</sup> For instance, taxable sales at eating and drinking establishments rose continuously from US\$26 billion (HK\$203 billion) in 1995 to US\$35 billion (HK\$273 billion) in 2000, even after the implementation of smoke-free restaurants in 1995 and smoke-free bars in 1998. Conducted by a private consultancy commissioned by the Department, surveys showed that in 2002, 75% of the bar owners and employees surveyed preferred to work in a smoke-free environment, against 47% in 1998, while 79% of the bar patrons surveyed opined that it was important to have a smoke-free environment inside clubs, bars, lounges and restaurants with bars, against 66% in 1998.

9.8.2 In addition, according to the California Board of Equalization, the number of individuals employed in bars and restaurants in California had about 200 500 more employees in 2003 than in 1995, before the smoke-free policy in restaurants took effect.

## **9.9 Legal challenge to smoking ban**

9.9.1 According to the California Department of Health Services, there have been a number of legal challenges to the Smoke-free Workplace Law since the law took effect for bars, taverns and gaming clubs in 1998, but none has succeeded in any court in California.<sup>150</sup> In some of these cases, the courts ruled that the law was constitutional, was not vague, provided equal protection and did not pre-empt local governments from establishing more strict local tobacco control. The courts also ruled that there was no constitutional right to smoke, that the presence of ashtrays demonstrated that owners were knowingly and intentionally allowing patrons to smoke, and that bar owners had to do more than just posting "No Smoking" signs and asking patrons to refrain from smoking.

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<sup>149</sup> California Department of Health Services (2003).

<sup>150</sup> California Department of Health Services (2001), pp. 34-35.

## Chapter 10 – State of Queensland in Australia

### 10.1 Background

10.1.1 Queensland is the first state in Australia to introduce a comprehensive smoking ban in workplaces and public places. Official figures show that about 20% of its population smoke, and over 3 400 people die from smoking or smoking-related diseases each year.

10.1.2 In 2001, the government made significant amendments to the Tobacco and Other Smoking Products Act 1998 to reduce second-hand smoke. The Act makes it an offence for a person to smoke in most enclosed places, including non-licensed food premises.

10.1.3 In early 2004, as required by the Tobacco and Other Smoking Products Act 1998, the government carried out a review of the Act, which resulted in the enactment of a new tobacco legislation, the Tobacco and Other Smoking Products Amendment Act 2004, in November 2004. Effective on 1 January 2005, the new law puts in place what the government claims as "*the toughest*" and "*most comprehensive*" smoking ban in Australia.<sup>151</sup>

### 10.2 Statutory smoke-free places

10.2.1 Under the Tobacco and Other Smoking Products Act as amended by amendments that commenced on or before 1 January 2005, smoking is banned in all enclosed places with a few exceptions. "Enclosed place" means a place or a vehicle having a ceiling or roof and completely or substantially enclosed, whether permanently or temporarily.<sup>152</sup>

10.2.2 Since 1 January 2005, the smoking ban has extended to the following outdoor public areas:<sup>153</sup>

- (a) the area within four m of an entrance to a non-residential building;
- (b) the area within 10 m of any part of children's playground equipment ordinarily open to the public;

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<sup>151</sup> The website of the Queensland Health. Available from: <http://www.health.qld.gov.au/atods/tobaccolaws/index.asp>. [Accessed April 2005].

<sup>152</sup> Section 26Q, the Tobacco and Other Smoking Products Act 1998 as amended.

<sup>153</sup> Sections 26ZH to 26ZL, the Tobacco and Other Smoking Products Act 1998 as amended.

- (c) major sports facilities managed by the Major Sports Facilities Authority; and
- (d) patrolled beaches on which red and yellow flags mark the boundaries for safe swimming, and prescribed outdoor swimming areas (e.g. artificial beaches) between sunrise and sunset.

10.2.3 In addition, from 1 January 2005 to 1 July 2006, a smoking ban will progressively apply to the following places:

- (a) indoor liquor licensed premises;
- (b) gaming machines on the indoor liquor licensed premises; and
- (c) part of any outdoor eating or drinking place where food or drink is being provided or consumed as part of a business.<sup>154</sup>

### **10.3 Places exempt from smoking ban**

#### Enclosed places

10.3.1 The smoking ban in enclosed places does not apply to:<sup>155</sup>

- (a) residential premises, other than a part of the premises being used for carrying on a business while one or more persons who do not reside at the premises are present in that part of the premises;
- (b) multi-unit residential accommodation, other than the common areas of the accommodation;
- (c) vehicles for private use, or for business use if only one person is in the vehicle;
- (d) premium gaming rooms in casinos;
- (e) licensed premises other than dining areas while meals are served, bingo areas and gaming table areas in casinos;
- (f) secure facilities such as prisons; and

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<sup>154</sup> An "outdoor eating or drinking place" refers to any non-enclosed place that does not have a ceiling or a roof, is not completely or substantially enclosed, and is provided by a person conducting a business, for the purpose of consuming food or drink that has been provided by that business.

<sup>155</sup> Section 26R, the Tobacco and Other Smoking Products Act 1998 as amended.

- (g) persons who need to smoke during a performance.

#### Entrances to non-residential buildings

10.3.2 The smoking ban in an entrance to a non-residential building does not apply to:<sup>156</sup>

- (a) entrances to residential premises or multi-unit residential accommodation, including motels, hostels, boarding houses and nursing homes;
- (b) entrances to liquor licensed premises with a general, club or special (casino) license;
- (c) entrances to non-residential buildings which are closed for general access (e.g. the building is not open for business), even if the buildings' owner or staff have after-hours access by those entrances;
- (d) smokers in designated outdoor pedestrian malls; and
- (e) smokers in motor vehicles, or not remaining at or near entrances to non-residential buildings but are merely passing the entrances.

#### Children's playground equipment

10.3.3 The smoking ban applicable to children's playground equipment does not apply to smokers in motor vehicles driving past the playground, or playground equipment that is in a private backyard.<sup>157</sup>

#### Major sports facilities

10.3.4 The smoking ban in major sports facilities does not apply to the roads, car parks, picnic areas and parkland of the facilities.<sup>158</sup>

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<sup>156</sup> Section 26ZJ, the Tobacco and Other Smoking Products Act 1998 as amended.

<sup>157</sup> Section 26ZK, the Tobacco and Other Smoking Products Act 1998 as amended.

<sup>158</sup> Section 26ZE, the Tobacco and Other Smoking Products Act 1998 as amended.

### Outdoor eating or drinking places

10.3.5 The occupiers of liquor licensed premises with a general, club or special (casino) licence, such as pubs, clubs and casinos, are permitted to designate part of the outdoor area of their premises as a designated outdoor smoking area (DOSA). There may be more than one DOSA at the premises. Each DOSA must meet the following requirements:<sup>159</sup>

- (a) the total area of a DOSA (or DOSAs) must not be more than 50% of the whole outdoor area of the premises;
- (b) each DOSA must be separated by a buffer which must be a screen, impervious to smoke, at least 2.1 m high, or an area (e.g. a garden or pathway), at least two m wide, in which no drinking, eating or smoking is permitted; and
- (c) each DOSA must be under the control of a smoking management plan, which is a document prepared by the licensee as required by law stating how smoking is managed and reduced at the premises.<sup>160</sup>

## **10.4 Legal responsibility of persons in charge of smoke-free places**

10.4.1 Certain legal responsibilities are placed on the occupiers of major sports facilities and outdoor eating or drinking places where smoking is banned or restricted. "Occupier" means a person having the management or control or being in charge of the place or part of the place.<sup>161</sup> It also includes a person who reasonably appears to be the occupier or in charge of the place.<sup>162</sup>

10.4.2 On the other hand, there is no legal responsibility for the persons in charge of smoke-free areas regarding the enforcement of the smoking ban in entrances to non-residential buildings, children's playground equipment, patrolled beaches and prescribed outdoor swimming areas.

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<sup>159</sup> Section 26ZA, the Tobacco and Other Smoking Products Amendment Act 2004.

<sup>160</sup> A smoking management plan must: (a) identify the DOSA, the outdoor areas where food is provided, and the buffers separating the smoking and smoke-free areas; (b) state how the licensee will minimize the exposure of staff and patrons to tobacco smoke; (c) describe the training or instruction given to staff to ensure that the law and the plan are complied with; and (d) provide for signage that clearly identifies where smoking is or is not allowed.

<sup>161</sup> Schedule, Dictionary, the Tobacco and Other Smoking Products Act 1998 as amended.

<sup>162</sup> Section 32, the Tobacco and Other Smoking Products Act 1998 as amended.

### Occupiers of major sports facilities

10.4.3 If the occupier of a major sports facility is aware of a person smoking at the facility, the occupier, or an employee or agent of the occupier, has the responsibility to direct the person to stop smoking, and tell the person it was an offence not to comply with the direction. Otherwise, the occupier commits an offence.<sup>163</sup>

### Occupiers of outdoor eating or drinking places

10.4.4 The occupier of an outdoor eating or drinking place with a DOSA must not allow anyone to smoke in the outdoor area of the place other than the smoking area. The occupier or agent of the occupier must direct smokers not to smoke outside the smoking area, and inform smokers that it is an offence not to comply with the smoking ban. If a smoker does not follow the direction, the occupier must not provide food or drink to the smoker.

10.4.5 The occupier of liquor licensed premises with a DOSA must:<sup>164</sup>

- (a) prohibit anyone from smoking in an outdoor area of the premises other than the DOSA;
- (b) ensure that, in a DOSA, no food or drink is served; no food is consumed; no entertainment is offered; and no gaming machines are provided;
- (c) ensure that the DOSA and its buffers comply with the legal requirements;
- (d) prepare and keep up-to-date a smoking management plan as described in footnote 160;
- (e) display a notice in or near the DOSA stating that the smoking management plan is available for perusal by patrons on request; and
- (f) produce the smoking management plan for inspection on request by authorized officers.

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<sup>163</sup> 26ZG, the Tobacco and Other Smoking Products Amendment Act 2004.

<sup>164</sup> Sections 26ZB and 26ZC, the Tobacco and Other Smoking Products Amendment Act 2004.

10.4.6 Any occupier allowing persons to smoke in a statutory smoke-free area may be prosecuted through a Magistrate's Court, and is liable to a fine of up to AUS\$1,500 (HK\$9,000) (which will be raised to AUS\$10,500 (HK\$63,000) after 1 July 2006).

## **10.5 Enforcing authorities**

10.5.1 The smoking ban is enforced by the Environmental Health Officers (EHOs) from Queensland Health, a public agency led by the Minister for Health of the Queensland Government. EHOs can issue improvement notices and on-the-spot fines, and initiate legal proceedings for breaches of the law. EHOs generally do not wear a uniform, but they show an identification card before asking any questions.

## **10.6 Compliance with smoking ban**

10.6.1 There has so far been no information released by the Queensland Government on compliance of the hospitality sector with the new smoking ban effective in January 2005. As to compliance with the Tobacco and Other Smoking Products Act 1998, inspections of liquor licensed premises in parts of South-east Queensland by Queensland Health between January and June 2003 found that no patron was smoking in the dining area of enclosed licensed premises surveyed. The only area of non-compliance identified by the inspections was the failure of some licensees to display the mandatory "No Smoking" sign in the dining areas at their premises.<sup>165</sup>

## **10.7 Transitional arrangements for hospitality sector**

### Indoor liquor licensed premises

10.7.1 Under the Tobacco and Other Smoking Products Amendment Act 2004, indoor liquor licensed premises are allowed to phase in the smoking ban from 1 January 2005 to 1 July 2006:

- (a) In phase one, from 1 January 2005, at least one-third of the whole indoor area of the liquor licensed premises, and at least one-third of the gaming machines in the premises must be smoke-free;

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<sup>165</sup> Queensland Health (2004), p. 20.

- (b) In phase two, by 1 September 2005, the indoor area of the liquor licensed premises and the gaming machines in the premises that are to be smoke-free must increase to at least two-thirds; and
- (c) In phase three, by 1 July 2006, the whole indoor area of the liquor licensed premises and all gaming machines in the premises must be smoke-free.

### Outdoor eating or drinking places

10.7.2 Outdoor eating or drinking places are permitted not to implement the smoking ban until 1 July 2006.

### Grace period

10.7.3 The government provided a three-month grace period (from 1 January 2005 to 30 March 2005) for the public and businesses to understand the new smoking ban. During the period, EHOs inspected premises, and provided advice and education about the smoking ban.

## **10.8 Economic impact of smoking ban on hospitality sector**

10.8.1 There has not been any government study released on the economic impacts of the smoking ban on the hospitality sector in Queensland. In a public consultation paper on the review of the Tobacco and Other Smoking Products Act 1998,<sup>166</sup> Queensland Health cited a review, conducted by the VicHealth Centre for Tobacco Control in Australia, which stated that there was no negative economic impact from the introduction of smoke-free policies on restaurants and bars<sup>167</sup>. Queensland Health also cited the experience of the State of Victoria, in that although the State experienced a drop in gaming revenue of nearly 23% following the introduction of a smoking ban, the reduction in revenue did not put the gaming industry in deficit.

## **10.9 Legal challenge to smoking ban**

10.9.1 In Queensland, there has not been any legal challenge to the smoking ban under the smoke-free workplace legislation.

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<sup>166</sup> Queensland Health (2004), p. 18.

<sup>167</sup> The Singaporean government also cites the review findings to support its proposed expansion of statutory smoke-free places. See paragraph 5.7.1 of this report.

## Chapter 11 – Province of British Columbia in Canada

### 11.1 Background

11.1.1 In BC, prohibition of smoking in the workplace was first proposed in 1992 by the Workers' Compensation Board (WCB), a provincial statutory agency that administers the Workers Compensation Act under which WCB can make and enforce regulations to protect workers from second-hand smoking.<sup>168</sup>

11.1.2 In July 1997, WCB approved the Occupational Health and Safety Regulation (the OHS Regulation), which contained provisions requiring all employers to prevent employees from working in indoor areas that allowed smoking, with a sunset clause exempting the hospitality sector, among others, from the smoke-free requirements until January 2000. However, the sunset clause was legally challenged by the hospitality sector for not going through sufficient public consultation. In March 2000, the challenge was supported by the BC Supreme Court, which ruled the sunset clause null and void. (see paragraphs 11.8.1 and 11.8.2). The sunset clause was in effect for just two and a half months.

11.1.3 In April 2000, WCB published an amended draft OHS Regulation on second-hand smoking for public consultation. The amendment required all employers, including those in hospitality, to either ban smoking or restrict smoking to designated smoking areas in the workplace by 10 September 2001. However, the BC government requested WCB to consider delaying the effective day of the amended OHS Regulation until 30 April 2002, in view of the concern of the hospitality sector about the negative economic impact of the proposed smoking ban on small businesses. WCB did not accede to the BC government's request, but the government made an unprecedented move by insisting on deferring the implementation of the amended regulation.

11.1.4 In January 2002, the BC government directed WCB to consider further amending the OHS Regulation to allow hospitality employees to choose whether to work in designated smoking areas up to 20% of their work shift. Despite WCB's opposition, the BC government insisted on making such an amendment. On 1 May 2002, the further amended OHS Regulation finally came into effect. It has become the most important legislative measure regulating second-hand smoking in BC where about 16% of the population smoke.

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<sup>168</sup> Established under the Workers Compensation Act, WCB is governed by a Board of Director appointed by the Minister of Skills Development and Labour of the BC government. WCB can make regulations it considers necessary or advisable on occupational health, safety and environment. The Minister can direct WCB to consider whether it should make, repeal or amend its regulations. If WCB does not make, repeal or amend its regulations as recommended by the Minister, the Lieutenant Governor in Council may, by regulation, make, repeal or amend the regulations of WCB in accordance with the recommendations of the Minister, and such regulations are deemed to be regulations of WCB when coming into force. See sections 111, 225 and 229 of the Workers Compensation Act.

## 11.2 Statutory smoke-free places

11.2.1 Under the OHS Regulation, employers must control the exposure of workers to second-hand smoke at any workplace defined as *"any place where a worker is or is likely to be engaged in any work and includes any vessel, vehicle or mobile equipment used by a worker in work"*.<sup>169</sup> According to guidelines issued by WCB, this statutory requirement for employers is intended to prevent workers from being exposed to second-hand smoke, instead of prohibiting workers from choosing to smoke. As such, employers can choose to:<sup>170</sup>

- (a) ban smoking in the entire workplace, or
- (b) restrict smoking to designated smoking areas or by other equally effective means,<sup>171</sup> and ensure that in normal situation workers do not work in indoor areas that allow smoking.

## 11.3 Places exempt from smoking ban

11.3.1 In public entertainment facilities, areas open to the public are exempt from the smoking ban if employers provide a separate place for smoking. Under the OHS Regulation, such entertainment facilities include:<sup>172</sup>

- (a) restaurants and cocktail lounges;
- (b) bars, pubs and nightclubs;
- (c) bingo halls and gambling casinos; and
- (d) bowling alleys.

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<sup>169</sup> Section 106, Workers Compensation Act.

<sup>170</sup> Sections 4.81 and 4.82, the OHS Regulation.

<sup>171</sup> According to WCB's guidelines, "other equally effective means" include providing a ventilation system that can effectively capture the tobacco smoke close to the smoking activity with the discharge going directly outdoors, ensure no recirculation of the exhausted air into a work area, and provide makeup air.

<sup>172</sup> Section 4.83, the OHS Regulation.

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11.3.2 The separate place for smoking<sup>173</sup> in the above entertainment facilities must:

- (a) for a public entertainment facility other than a bingo hall, not have a floor area exceeding 45% of the total floor area used by the public;
- (b) for a bingo hall, not have a floor area exceeding 65% of the total floor area used by the public;
- (c) for a liquor licensed public entertainment facility, not have a floor area exceeding 45% of the total floor area licensed for the service of liquor, and not have more than two designated smoking rooms, with each room not exceeding 80 sq m, in the facility;
- (d) not have a workstation, which includes a desk or worktable used by workers, and in a public entertainment facility, the bartending area, food or beverage preparation area, waiting station, cash register station, computer terminal and bingo calling station;<sup>174</sup>
- (e) be clearly identified by signs or other effective means; and
- (f) be a safe outdoor location that has free movement of air,<sup>175</sup> or a designated room structurally separated from other areas.

11.3.3 If the separate place for smoking is a designated room, it must be ventilated by a non-recirculating exhaust ventilation system or an air cleaning system,<sup>176</sup> or by a combination of the two. Such a system must meet certain statutory requirements.<sup>177</sup>

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<sup>173</sup> Section 4.83, the OHS Regulation. According to WCB, the floor area of outdoor patios is not to be considered when determining the percentage of total floor area required for designation as a separate place for smoking. See Workers' Compensation Board (2005).

<sup>174</sup> Workers' Compensation Board (2005).

<sup>175</sup> According to WCB, a safe outdoor location usually means an area with a floor, a roof and obstructions on no more than two sides. Adjacent buildings and objects must be taken into consideration. Smoke should not enter the indoor work area. Employers are responsible for demonstrating that second-hand smoke does not accumulate. Available from: [http://www.worksafebc.com/news/campaigns/ets/new\\_30\\_20\\_20.asp](http://www.worksafebc.com/news/campaigns/ets/new_30_20_20.asp) [Accessed March 2005].

<sup>176</sup> If an air cleaning system is used, the employer must ensure that the system, at a minimum, meets a standard of 95% operating efficiency at 0.3 micrometre particle size.

<sup>177</sup> Under section 4.83 of the OHS Regulation, such requirements include: (a) the air flow is from smoke-free areas to the designated room; (b) the air flows in the designated room at a minimum ventilation rate of 35 cu ft per minute per person; and (c) the air only discharges in a manner that does not recirculate or transfer it from a designated smoking room to smoke-free areas; and (d) the system must have an inspection and maintenance record as required by law.

11.3.4 Workers are allowed to work in a designated smoking room only under the following circumstances:<sup>178</sup>

- (a) they need to respond to emergencies endangering life, health or property, or to investigate illegal activities;
- (b) for the worker's work period (the period of time that the activities of a worker is under the control of the employer) in a 24-hour day, the total times they spend in the smoking room does not exceed 20% of that work period;
- (c) they can only work in the smoking room intermittently (e.g. the "less than 20% time allocation" of their work shift described in (b) cannot be spent continuously in the room); and
- (d) they can choose not to enter the smoking room to perform their duties (except for responding to emergencies and investigating illegal activities), or work there for less than 20% of their work period.

## **11.4 Legal responsibilities of persons in charge of smoke-free places**

### Employers prohibiting smoking in the entire workplace

11.4.1 Employers choosing to ban smoking in the entire workplace must provide evidence of compliance to WCB officers. Such evidence typically includes:<sup>179</sup>

- (a) an established smoke-free policy at the workplace;
- (b) communication of the smoke-free policy to all workers;
- (c) signs at the entry/entries to the workplace alerting visitors that it is a smoke-free workplace; and
- (d) the absence of ashtrays, cigarette butts or any other indication that smoking is occurring at the workplace.

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<sup>178</sup> Sections 4.82 (3) and 4.83 (8), the OHS Regulation.

<sup>179</sup> Occupational Health and Safety Regulation – Guidelines Part 4 – Environmental tobacco smoke. Available from: <http://regulation.healthandsafetycentre.org/s/GuidelinePart4.asp?ReportID=22354> [Accessed March 2005].

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Employers establishing designated smoking areas in facilities not for public entertainment

11.4.2 In workplaces other than public entertainment facilities, employers who choose to restrict smoking to designated smoking areas must:<sup>180</sup>

- (a) clearly identify the smoking area to workers by signs or other effective means;
- (b) ensure that the smoking area is a safe outdoor location or room structurally separated from other areas;
- (c) (if necessary to prevent tobacco smoke from entering a workplace) provide a designated smoking room with a separate and non-recirculating exhaust ventilation system, which meets certain statutory requirements; and
- (d) ensure that workers do not work in indoor areas that allow smoking except for limited circumstances.<sup>181</sup>

Employers of public entertainment facilities

11.4.3 In public entertainment facilities where smoking is allowed, the employers must:<sup>182</sup>

- (a) clearly identify the separate smoking area to workers by signs or their effective means;
- (b) ensure that the separate smoking area meets the conditions as mentioned in paragraph 11.3.2;
- (c) ensure that workers can only work in a designated smoking room under the circumstances mentioned in paragraph 11.3.4; and
- (d) refrain from taking discriminatory action against workers who choose not to work intermittently in a designated smoking room.

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<sup>180</sup> Section 4.82, the OHS Regulation.

<sup>181</sup> Under section 4.82 of the OHS Regulation, such circumstances are that: (a) the workers must enter the indoor areas to respond to emergencies endangering life, health or property, or to investigate illegal activities; (b) the smoke has been effectively removed; and (c) the workplace is a public entertainment facility.

<sup>182</sup> Section 4.83, the OHS Regulation.

11.4.4 The basic penalty amount for an employer's non-compliance with the OHS Regulation is determined by formulas based on assessable payroll and risk, and can range from CAN\$1,000 (HK\$6,400) to CAN\$75,000 (HK\$480,000). Higher penalties may be imposed due to continued and/or wilful non-compliance.

## **11.5 Enforcing authorities**

11.5.1 The OHS Regulation is enforced by WCB, which can levy administrative penalties for wilful or repeated non-compliance with the OHS Regulation.

## **11.6 Transitional arrangements for hospitality sector**

11.6.1 There has not been any transitional arrangement for the hospitality sector. Hospitality employers, who demonstrated a plan to establish a designated smoking area in public entertainment facilities but were not ready by 1 May 2002, still have an obligation to control exposure of workers to second-hand smoke by all reasonable and practicable administrative measures, which could include providing a safe outdoor location for smoking or banning smoking outright in the entire workplace.

## **11.7 Economic impacts of smoking ban on hospitality sector**

11.7.1 After the sunset clause in the OHS Regulation on exemption of hospitality workplaces from smoking restrictions had been overturned in court in March 2000 pending further public consultation, WCB commissioned a private consultancy to study both the real and potential economic impact of the sunset clause on hospitality businesses. The study concluded that requiring hospitality businesses to either ban smoking in the entire workplace or restrict smoking to designated smoking areas would likely have negative impacts on hospitality businesses for the first few months, but such impacts would likely become insignificant in the longer term. In addition, although some hospitality businesses would suffer disproportionate impacts in the short term, they could construct at reasonable cost designated smoking rooms, which ought to alleviate much of those impacts.<sup>183</sup>

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<sup>183</sup> Pacific Analytics Inc. (2001), p. 29.

## **11.8 Legal challenge to smoking ban**

11.8.1 In BC, there was a controversial court case, *B.C. Liquor Licensees v. W.C.B.* 2000 BCSC 505, initiated by the hospitality sector against the implementation of the smoke-free workplace regulations.<sup>184</sup>

11.8.2 In March 2000, WCB was challenged by the Liquor Licensees and Retailers Association in BC in the Supreme Court of BC on whether WCB had jurisdiction to make a "sunset clause" in the OHS Regulation, without proper notice to affected parties, removing the exemption of hospitality workplaces from the OHS Regulation restricting smoking in public places. As required by the Workers Compensation Act, before a regulation can be adopted, WCB must hold sufficient public hearings and give proper notice to affected parties. The Association argued that the sunset clause was added in 1997, after WCB's public hearings on the issue were over, and WCB neither informed them of the making of the sunset clause nor further consulted them before it was enacted in April 1998. In addition, WCB acknowledged that the impact of the sunset clause on the affected hospitality places was an uncertainty. The Supreme Court ruled the sunset clause null and void because the OHS Regulation enacted had not been the draft regulation that was the subject of WCB's public hearings, and WCB had no jurisdiction to enact the sunset clause without proper notice to those affected.

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<sup>184</sup> Reasons for Judgement on *B.C. Liquor Licensees v. W.C.B.* 2000 BCSC 505 is available from: <http://www.courts.gov.bc.ca> [Accessed April 2005].

## Chapter 12 – Analysis

### 12.1 Introduction

12.1.1 Based on the findings in this study, this chapter highlights the following issues, most of which are addressed in the Smoking (Public Health) (Amendment) Bill 2005 (the 2005 Amendment Bill) gazetted by the Government of the Hong Kong Special Administrative Region (HKSAR) on 29 April 2005:

- (a) statutory smoke-free places, including the indoor areas of restaurants, bars and other hospitality premises, the indoor and outdoor areas of educational and welfare institutions, and indoor workplaces/public places;
- (b) legal responsibilities of persons in charge of statutory smoke-free places;
- (c) enforcing authorities;
- (d) compliance with the smoking ban;
- (e) transitional arrangements for the hospitality sector; and
- (f) economic impact of the smoking ban on the hospitality sector.

12.1.2 These issues are discussed with reference to not only the 2005 Amendment Bill but also the existing Smoking (Public Health) Ordinance, which, first enacted in 1982 and last amended in 1997, has been the basic legal framework for controlling second-hand smoking in the HKSAR.

12.1.3 To facilitate Members' discussion, a comparison of the scope of the statutory smoking ban/restriction in the HKSAR and the ten selected places is presented in **Appendix I**. **Appendix II** compares the issues relating to the implementation of the statutory smoking ban/restriction in the HKSAR and the ten selected places. **Appendix III** presents some socio-economic data underlying the respective smoking policies adopted in Ireland, Norway and Thailand.

## 12.2 Statutory smoke-free places

### Indoor areas of restaurants

12.2.1 Among the ten places studied, most support or tend to support a total smoking ban in the indoor areas of restaurants. Ireland, Norway, California and Queensland all support a total smoking ban in such premises. In Ireland, Norway and California, the smoking ban covers not only all air-conditioned restaurants but also those without air-conditioning. Equally comprehensive is the smoking ban in Queensland, which is being implemented in stages. Singapore and Thailand confine their smoking ban to indoor restaurants which are air-conditioned. In the UK and Taiwan, smoking is currently allowed but is being considered to be banned in all indoor restaurants soon.

12.2.2 Japan is the only place under study, where smoking indoors is statutorily neither banned nor restricted in restaurants. Unlike most of the selected places, BC allows employers to restrict smoking indoors to designated areas in restaurants.

12.2.3 In the HKSAR, under the existing Smoking (Public Health) Ordinance, restaurants with seating capacity of less than 200 persons are not subject to any statutory smoking restriction, while those providing indoor seating accommodation for over 200 persons must designate at least one-third of the indoor area as a smoke-free zone. In line with the practice of most selected places, the 2005 Amendment Bill proposes banning smoking outright in the indoor areas of all restaurants, regardless of their size and seating capacity.<sup>185</sup>

### Indoor areas of bars

12.2.4 In the ten selected places, the support of a total smoking ban in the indoor areas of bars is not as overwhelming as that in the indoor areas of restaurants. Four selected places (Ireland, Norway, California and Queensland) ban smoking in the indoor areas of all bars, and two places (Singapore and Taiwan, where smoking indoors is currently allowed in bars) are considering to follow soon. On the other hand, the UK and BC allow smoking indoors in bars under certain conditions. The UK proposes banning smoking in the indoor areas of bars preparing and serving food but allowing smoking in those preparing and serving drinks only. BC allows bar employers to have the discretion to either ban smoking or restrict smoking to designated areas in bars. In Thailand and Japan, smoking is statutorily neither banned nor restricted in indoor bars.

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<sup>185</sup> Health, Welfare and Food Bureau (2005a), p. 2.

12.2.5 In the HKSAR, smoking is neither banned nor restricted in bars under the existing Smoking (Public Health) Ordinance. Since many bars operate with a restaurant licence in practice,<sup>186</sup> the 2005 Amendment Bill proposes banning smoking in the indoors areas of all bars.<sup>187</sup>

#### Outdoor areas of restaurants and bars

12.2.6 Among the ten places studied, most (Norway, the UK, Singapore, Thailand, Japan, Taiwan, California and BC) do not ban nor restrict smoking in the outdoor areas of bars and restaurants. Ireland and Queensland are the only selected places that regulate smoking in the outdoor areas of hospitality places. In Ireland, smoking is allowed only in licensed premises (or part of it) that is wholly uncovered by any roof, or an outdoor part of licensed premises covered by a roof if not more than 50 per cent of the perimeter of that part is surrounded by a wall or similar structure. In Queensland, smoking is only permitted in designated areas in outdoor eating or drinking places, and the designated smoking areas must be governed by a smoking management plan.

12.2.7 In the HKSAR, the smoking ban under both the existing Smoking (Public Health) Ordinance and the 2005 Amendment Bill does not apply to the outdoor areas of restaurants and bars.

#### Indoor areas of hospitality premises other than restaurants and bars

12.2.8 Other than restaurants and bars, particular types of hospitality premises such as karaoke establishments, mahjong premises or commercial bathhouses are seldom specified in the smoke-free laws or proposals in the ten places under study. Still, such venues may fall under the categories of food or liquor licensed premises, public entertainment facilities or public places, and therefore in practice can be covered by those laws or proposals in the places studied.

12.2.9 Of the ten selected places, three (Ireland, Norway and California) ban smoking in the indoor areas of all types of hospitality premises. Queensland also bans smoking in the indoor areas of almost all types of hospitality places except certain areas (such as bingo and gaming table areas) in casinos. The governments in the UK, Singapore and Taiwan are considering banning smoking in all indoor hospitality places (except bars serving drinks only in the UK). In the three remaining selected places, the smoke-free policy is less restrictive. In Thailand, karaoke establishments, mahjong premises or commercial bathhouses are not specified as smoke-free places. In BC, hospitality places such as public entertainment facilities are allowed to restrict smoking to designated areas. Japan is the only selected place, where smoking is statutorily neither banned nor restricted in any hospitality venues.

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<sup>186</sup> Health, Welfare and Food Bureau (2005b), p. 2.

<sup>187</sup> Health, Welfare and Food Bureau (2005a), p. 2.

12.2.10 In the HKSAR, under the existing Smoking (Public Health) Ordinance, smoking is not restricted in the indoor areas of hospitality premises other than restaurants. The 2005 Amendment Bill proposes extending the smoking ban to such premises. The Government originally planned to exempt commercial bathhouses and mahjong parlors from the proposed smoking ban, but has dropped the plan because it considers that workers at such premises may also be subject to the prevalent second-hand smoking.<sup>188</sup>

#### Educational institutions

12.2.11 More than half of the ten selected places (Ireland, Norway, Singapore, Taiwan, California and Queensland) ban smoking outright in the indoor areas of kindergartens, and five of them (excluding Taiwan) extend the ban to the indoor areas of primary and secondary schools. In Taiwan, smoking is currently allowed in designated indoor areas in primary and secondary schools, but the government proposes extending the smoking ban to such places. The UK is also considering banning smoking in the indoor areas of all educational institutions nationwide. Thailand, BC and Japan have adopted a more lenient smoke-free policy towards educational institutions. Thailand allows smoking in private rooms in pre-school centres and primary and secondary schools. In BC, smoking can be totally banned or restricted to designated areas in educational institutions. Japan has no statutory smoking restrictions in educational institutions, although more and more schools have chosen to become smoke-free on their own initiative.

12.2.12 Half of the ten selected places (Ireland, Norway, California, Queensland, and the UK) have banned or consider banning smoking in the indoor areas of universities and post-secondary institutions,<sup>189</sup> while the other half do not ban smoking in all indoor areas of such institutions. In Singapore, smoking is banned in specified indoor areas. Thailand and BC do not support a total smoking ban either. Japan and Taiwan are the only selected places which do not have a statutory smoking restriction in such institutions.

12.2.13 In the HKSAR, under the existing Smoking (Public Health) Ordinance, it is not compulsory for the management authority of a kindergarten, primary or secondary school, university or post-secondary institution to designate the educational premises or part of it as a smoke-free area. The 2005 Amendment Bill requires a smoking ban in both indoor and outdoor areas of kindergartens and primary and secondary schools, and in the indoor areas of all universities and post-secondary institutions.<sup>190</sup>

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<sup>188</sup> Legislative Council Secretariat (2005), p. 2, and HK Government preparing to expand smoking ban, the Associated Press, 1 April 2005. Available from: [http://english.sina.com/taiwan\\_hk/1/2005/0401/26306.html](http://english.sina.com/taiwan_hk/1/2005/0401/26306.html). [Accessed April 2005].

<sup>189</sup> In Ireland, smoking is allowed in the residential areas within such educational institutions.

<sup>190</sup> Section 20, The 2005 Amendment Bill, and Health, Welfare and Food Bureau (2005a), p. 2.

### Welfare institutions

12.2.14 While most selected places have banned or restricted smoking or are considering banning smoking in the indoor areas of hospitals, medical clinics and residential care centres, some of them allow smoking in certain welfare institutions. In particular, Ireland does not ban smoking in nursing homes, hospices, psychiatric hospitals and the Central Mental Hospital. In California, long-term health care facilities can choose to designate smoking areas for patients. The UK also proposes exempting adult hospices, long-stay adult residential care homes and psychiatric hospitals and units from the smoke-free legislation, with some of them, such as psychiatric hospitals and units, perhaps becoming smoke-free in the longer term.

12.2.15 In the HKSAR, the existing statutory smoking ban does not apply to licensed or registered residential care homes for the elderly, residential treatment centres and hospitals. The 2005 Amendment Bill proposes extending the ban to the indoor areas of these places.<sup>191</sup>

### Other indoor workplaces/public places

12.2.16 Among the ten selected places, most (Ireland, Norway, the UK, Taiwan, California, Queensland and BC) ban, restrict or propose banning smoking in indoor workplaces/public places generally. Singapore, Thailand and Japan designate certain places in indoor workplaces/public places as smoke-free areas instead of imposing an overall ban or restriction. The government in Singapore has expressed its intention to do away with the need for an exhaustive list and move towards banning smoking in indoor workplaces/public places generally with certain exceptions.

12.2.17 In the HKSAR, the existing legislation does not ban or restrict smoking in the indoor areas of workplaces or public places generally. The 2005 Amendment Bill proposes designating such areas as statutory smoke-free areas.<sup>192</sup>

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<sup>191</sup> Section 20, The 2005 Amendment Bill, and Health, Welfare and Food Bureau (2005a), p. 2.

<sup>192</sup> Section 5, The 2005 Amendment Bill, and Health, Welfare and Food Bureau (2005a), p. 3.

### 12.3 Legal responsibility of persons in charge of smoke-free places

12.3.1 Except for Japan which does not have and has not proposed national smoke-free legislation to date, all other selected places assign or propose to assign the persons in charge of smoke-free places with similar legal responsibilities. In particular, the responsible persons are statutorily required to display "No Smoking" signs, and they do not have powers to require smokers in smoke-free areas to produce proof of identity or remove them from such areas by reasonable force if necessary. Still, there are variations in their responsibilities:

- (a) only Ireland and Queensland statutorily require the responsible persons to develop and implement a written smoke-free policy; and
- (b) six of the selected places (Ireland, the UK, Singapore, Taiwan, California and Queensland) statutorily require or propose requiring the responsible persons to request offenders to cease smoking in statutory smoke-free areas. However, none of them empowers the responsible persons to use reasonable force if necessary to remove the offender from the smoke-free areas or detain the offender. In addition, among these places, only Taiwan does not penalize the responsible persons who do not persuade smokers to stop smoking in smoke-free areas.

12.3.2 In the HKSAR, under the existing Smoking (Public Health) Ordinance,<sup>193</sup> the manager<sup>194</sup> of a statutory smoke-free area is required to enforce the smoking ban, such as requesting the offender to extinguish the lighted cigarette, and if the offender fails to do so, requiring him or her to produce proof of identity and leave the smoke-free area. If the offender fails to produce proof of identity or leave the smoke-free area, the manager can remove the offender from the smoke-free area by reasonable force if necessary, and detain the offender and call for the assistance of the police. In addition, the manager must place in a prominent position a sufficient number of "No Smoking" signs in each smoke-free area. The 2005 Amendment Bill proposes extending the enforcement powers conferred upon managers of existing statutory smoke-free places to managers of those newly designated smoke-free places. Under the proposal, managers will not be held accountable for a smoking act in the premises concerned if the statutory requirement to display "No Smoking" signs is met.<sup>195</sup>

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<sup>193</sup> Sections 3, 4 and 5, the Smoking (Public Health) Ordinance.

<sup>194</sup> Under Section 2 of the Smoking (Public Health) Ordinance, "manager" includes an assistant manager, any person holding an appointment analogous to that of manager or assistant manager, or any person who is responsible for the management or is in charge or control of the designated smoke-free areas. The term also includes the owner, occupier or lessee of the building in which the lift is situated or the person in charge or control of such building or lift, and the principal officer of an agency, who designates any smoke-free area.

<sup>195</sup> Health, Welfare and Food Bureau (2005a), p. 5.

## **12.4 Enforcing authorities**

12.4.1 In the ten places studied, the powers of the authorities responsible for enforcing the smoking ban have certain variations. In particular, only the enforcing authorities in California, Queensland and BC can levy fines for non-compliance, and only Singapore empowers the authorized officers to arrest any person reasonably suspected of having violated the smoking ban.

12.4.2 In the HKSAR, the existing Smoking (Public Health) Ordinance lacks explicit provisions empowering the Tobacco Control Office (TCO) of the Department of Health of the HKSAR Government to enforce the Ordinance. The functions of TCO are confined to enhancing and co-ordinating the Government's tobacco control efforts, such as monitoring law compliance, and assisting managers and staff of public premises in complying with and enforcing the smoking ban.<sup>196</sup> Under the 2005 Amendment Bill, TCO officers will have power to initiate prosecutions against both existing offences under the Ordinance and new offences arising from the amendments. They will also have other law enforcement powers, including powers of entry, investigation, sample-taking and seizure.<sup>197</sup>

## **12.5 Compliance with smoking ban**

12.5.1 Among the ten selected places, only Ireland, Norway, California and Queensland have released official information on compliance with the smoking ban. These four places generally claim that their smoking bans have worked successfully in enclosed workplaces and public places, including bars and restaurants. Although the governments in Thailand and Taiwan have not published information on compliance with the smoking ban, they have publicly admitted that compliance has not been satisfactory because of inadequate enforcement. The government in Taiwan has proposed enacting a tougher legislation to control second-hand smoking, while the Thailand government has pledged to strengthen its enforcement efforts.

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<sup>196</sup> Hong Kong Tobacco Control Office. Available from:<http://www.tobaccocontrol.gov.hk> [Accessed April 2005].

<sup>197</sup> Section 15G, The 2005 Amendment Bill.

## **12.6 Transitional arrangements for hospitality sector**

12.6.1 Among the ten selected places, most provide transitional arrangements for the hospitality sector. In Ireland, the decision to extend the smoking ban to the hospitality sector was announced more than one year before the implementation of the ban. In Norway, the government spent several years to progressively tighten the smoking restrictions in the hospitality sector before launching a total smoking ban. In the UK, the government proposes that the smoking ban in restaurants and pubs and bars preparing and serving food will not be in place until the end of 2008. In Thailand, specified premises, including air-conditioned restaurants, had 90 days to adapt to the smoking ban. In California, bars, taverns and gaming clubs had three years to adapt to the smoking ban, although there was no transitional arrangement for restaurants. In Queensland, indoor liquor licensed premises and gaming machines on such premises have 18 months to phase in the smoking ban. In BC, when the current smoking ban took effect in the public entertainment places in May 2002, it had been delayed by the government for nearly eight months.

12.6.2 In the HKSAR, to avoid distorting the level playing field, the 2005 Amendment Bill proposes providing various types of hospitality premises with the same 90-day adaptation period.<sup>198</sup>

## **12.7 Economic impact of smoking ban on hospitality sector**

12.7.1 Of the eight selected places which have a statutory workplace smoking ban, five (Ireland, Norway, Taiwan, California and BC) have published official information on the economic impact of the smoking ban on the hospitality sector. In general, the imposition of a smoking ban seems to have negative rather than positive economic impacts on the hospitality sector in Ireland and Norway, whereas its impacts appear to be positive in California. In Ireland, one year after the smoking ban took effect, both bar sales and the hospitality employment rate dropped, although the number of visitors to the country rose. In Norway, during the first year of the implementation of the smoking ban, the sales to pubs, bars and restaurants and the hospitality employment rate dropped, and fewer people visited pubs, bars and restaurants. On the other hand, in California, official surveys showed that several years after the smoking ban took effect, bars and restaurants earned more and employed more people. In both Taiwan and BC, the smoking ban or restriction seems to have no significant economic impact on hospitality places.

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<sup>198</sup> Health, Welfare and Food Bureau (2005a), pp. 5-6.

## Appendix I

## Comparison of the scope of the statutory smoking ban/restriction in workplaces and public places in the HKSAR and the ten selected places

	Current situation in the HKSAR	2005 Amendment Bill	Ireland	Norway	UK	Singapore
<b>Indoor areas of restaurants</b>	Partially banned.	Banned.	Banned.	Banned.	Ban being proposed.	Banned in air-conditioned areas.
<b>Indoor areas of bars/pubs serving food and drinks</b>	Not banned.	Banned.	Banned.	Banned.	Ban being proposed.	Ban being considered.
<b>Indoor areas of bars/pubs serving drinks only</b>	Not banned.	Banned.	Banned.	Banned.	Not banned.	Ban being considered.
<b>Outdoor eating or drinking places</b>	Not banned.	Not banned.	Not banned under certain conditions.	Not banned.	Not banned.	Not banned.
<b>Indoor areas of membership clubs</b>	Not banned.	Banned.	Banned.	Banned.	Not banned.	Ban being considered.
<b>Indoor areas of gaming rooms/nightclubs/karaoke lounges and similar hospitality/public entertainment premises</b>	Not banned.	Banned.	Banned.	Banned.	Ban being proposed.	Ban being considered.
<b>Indoor areas of tertiary educational institutions</b>	Not banned.	Banned.	Banned with exceptions.	Banned.	Ban being proposed.	Banned in most areas.
<b>Indoor areas of welfare institutions</b>	Not banned.	Banned.	Banned with exceptions.	Banned.	Banned with exceptions.	Banned.
<b>Other Indoor workplaces</b>	Not banned.	Banned.	Banned.	Banned.	Ban being proposed.	Banned.

## Appendix I (cont'd)

## Comparison of the scope of the statutory smoking ban/restriction in the HKSAR and the ten selected places (cont'd)

	Thailand	Japan	Taiwan	California	Queensland	British Columbia
<b>Indoor areas of restaurants</b>	Banned in air-conditioned areas.	Not banned.	Ban being proposed.	Banned generally.	Banned.	Banned or restricted to designated areas.
<b>Indoor areas of bars/pubs serving food and drinks</b>	Not banned.	Not banned.	Ban being proposed.	Banned generally.	Banned.	Banned or restricted to designated areas.
<b>Indoor areas of bars/pubs serving drinks only</b>	Not banned.	Not banned.	Ban being proposed.	Banned generally.	Banned.	Banned or restricted to designated areas.
<b>Outdoor eating or drinking places</b>	Not banned.	Not banned.	Not banned.	Not banned.	Allowed in designated areas only.	Not banned.
<b>Indoor areas of membership clubs</b>	Not banned.	Not banned.	Ban being proposed.	Banned generally.	Banned.	Banned or restricted to designated areas.
<b>Indoor areas of gaming rooms/nightclubs/karaoke lounges and similar hospitality/public entertainment premises</b>	Not banned.	Not banned.	Ban being proposed.	Banned generally.	Banned with exceptions.	Banned or restricted to designated areas.
<b>Indoor areas of tertiary educational institutions</b>	Allowed in private rooms and/or designated areas.	Not banned.	Not banned.	Banned generally.	Banned.	Banned or restricted to designated areas.
<b>Indoor areas of welfare institutions</b>	Banned in outpatient clinics but allowed in private rooms in hospitals, nurseries, etc.	Not banned.	Ban being proposed.	Banned generally.	Banned.	Banned or restricted to designated areas.
<b>Other Indoor workplaces</b>	Allowed in designated areas.	Not banned.	Ban being proposed	Banned generally.	Banned.	Banned or restricted to designated areas.

## Appendix II

## Comparison of the issues relating to the implementation of the smoking ban/restriction in the HKSAR and the ten selected places

	Current situation in the HKSAR	2005 Amendment Bill	Ireland	Norway	UK	Singapore
<b>Legal responsibilities of persons in charge of smoke-free areas</b>						
Displaying smoke-free notices	Yes.	Yes.	Yes.	Yes.	Being proposed.	Yes.
Requesting smokers to stop smoking	Yes.	Yes.	Yes.	Yes.	Being proposed.	Yes.
Developing a written smoke-free policy	No.	No.	Yes.	No.	No.	No.
<b>Powers of persons in charge of smoke-free areas</b>						
Requiring smokers to produce proof of identity	Yes.	Yes.	No such power.	No such power.	No such power.	No such power.
Removing smokers from smoke-free areas by reasonable force if necessary and detain smokers	Yes.	Yes.	No such power.	No such power.	No such power.	No such power.
<b>Availability of statutory transitional arrangements for hospitality sector</b>	Not applicable.	Yes, 90-day adaptation period.	No, but the smoking ban was announced more than one year before it took effect.	No, but the government gradually tightened smoking restrictions before a total ban.	Yes, the proposed smoking ban will not be in place until the end of 2008.	Yes. The recent extension of the smoking ban to non-hospitality places will take effect six months after its announcement in March 2005.
<b>Legal challenge to workplace smoking ban</b>	No.	No.	No.	No.	Not applicable.	No.

## Appendix II (cont'd)

## Comparison of the issues relating to the implementation of the smoking ban/restriction in the HKSAR and the ten selected places (cont'd)

	Thailand	Japan	Taiwan	California	Queensland	British Columbia
<b>Legal responsibilities of persons in charge of smoke-free areas</b>						
Displaying smoke-free notices	Yes.	No.	Yes.	Yes.	Yes.	Yes.
Requesting smokers to stop smoking	Yes.	No.	Yes.	Yes.	Yes.	Yes.
Developing a written smoke-free policy	No.	No.	No.	No.	Yes.	No.
<b>Powers of persons in charge of smoke-free areas</b>						
Requiring smokers to produce proof of identity	No such power.	No such power.	No such power.	No such power.	No such power.	No such power.
Removing smokers from smoke-free areas by reasonable force if necessary and detain smokers	No such power.	No such power.	No such power.	No such power.	No such power.	No such power.
<b>Availability of statutory transitional arrangements for hospitality sector</b>	Yes, the smoking ban in all specified places took effect 90 days after it was gazetted.	Not applicable.	Yes, the existing law on the smoking ban in all specified places took effect six months after it was enacted.	Yes, gaming clubs, bars and taverns had a three-year adaptation period.	Yes, indoor liquor licensed premises and their gaming machines have a 18 month phase-in period.	No, but the smoking ban had been delayed for eight months before it took effect.
<b>Legal challenge to workplace smoking ban</b>	No.	No.	No.	Yes, but not successful.	No.	Yes, the hospitality sector successfully delayed the ban in 2000.

## Appendix III

## Selected socio-economic figures - Ireland, Norway and Thailand

## I. Ireland

Table 1 - General figures 2000 – 2004

	Population	GDP growth rate	Labour force	Unemployment rate
<b>2000</b>	3.8 million	9.9%	1.77 million	4.3%
<b>2001</b>	3.8 million	6%	1.8 million	3.9%
<b>2002</b>	3.9 million	6.1%	1.85 million	4.3%
<b>2003</b>	3.95 million	3.6%	1.87 million	4.6%
<b>2004</b>	4 million	4.9%	1.9 million	4.5%

Sources: Reports issued by Organisation for Economic Co-operation and Development, and Central Statistics Office Ireland.

Table 2 - Principal aggregates for restaurants and catering 1999 – 2001

	No. of enterprises	No. of employees	Turnover excluding VAT (€ billion)
<b>Restaurants</b>			
<b>1999</b>	2 501	21 575	0.95 (HK\$9.5 billion)
<b>2000</b>	3 059	24 054	1.1 (HK\$11 billion)
<b>2001</b>	3 484	27 291	1.3 (HK\$13 billion)
<b>California Department of Health Services Catering</b>			
<b>1999</b>	117	7 162	0.3 (HK\$3 billion)
<b>2000</b>	148	24 054	0.29 (HK\$2.9 billion)
<b>2001</b>	196	8 187	0.49 (HK\$4.9 billion)

Source: Central Statistics Office Ireland.

## Appendix III (cont'd)

## I. Ireland (cont'd)

Table 3 - Persons aged 15 and over employed in hotels and restaurants 2002 – 2005

12/2002 – 2/2003	9/2002 – 11/2003	12/2003 – 2/2004	3/2004 – 5/2004	6/2004 – 8/2004	9/2004 – 11/2004	12/2004 – 2/2005
110 000	115 400	113 100	107 800	116 100	112 600	112 300

Source: Central Statistics Office Ireland.

## II. Norway

Table 1 - General figures 2000 – 2004

	Population	GDP growth rate	Labour force	Unemployment rate
2000	4.5 million	2.8%	2.35 million	3.4%
2001	4.5 million	2.7%	2.36 million	3.6%
2002	4.54 million	1.1%	2.37 million	3.9%
2003	4.56 million	0.4%	2.37 million	4.5%
2004	4.6 million	2.9%	2.4 million	4.4%

Sources: Reports issued by Organisation for Economic Co-operation and Development, and Statistics Norway.

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## Appendix III (cont'd)

## II. Norway (cont'd)

Table 2 -General trends for restaurants, bars, and canteens and catering 2001-2003

	No. of enterprises	No. of employees	Operating income (NOK million)	Operating costs (NOK million)	Turnover (NOK million)	Investment (NOK million)
<b>Restaurants</b>						
<b>2001</b>	6 033	43 925	18 366 (HK\$21.7 billion)	17 753 (HK\$21 billion)	18 306 (HK\$21.6 billion)	808 (HK\$953 million)
<b>2002</b>	6 220	47 122	19 591 (HK\$23 billion)	18 602 (HK\$21.9 billion)	19 477 (HK\$23 billion)	840 (HK\$991 million)
<b>2003</b>	6 293	46 256	19 658 (HK\$23.2 billion)	18 785 (HK\$22 billion)	19 658 (HK\$23.1 billion)	610 (HK\$729 million)
<b>Bars</b>						
<b>2001</b>	229	1 887	607 (HK\$716 million)	600 (HK\$708 million)	603 (HK\$712 million)	26 (HK\$31 million)
<b>2002</b>	316	2 385	860 (HK\$1 billion)	832 (HK\$982 million)	856 (HK\$959 million)	37 (HK\$44 million)
<b>2003</b>	368	2 544	978 (HK\$1.2 billion)	921 (HK\$1 billion)	955 (HK\$1.1 billion)	28 (HK\$33 million)
<b>Canteens and catering</b>						
<b>2001</b>	909	7 620	4 223 (HK\$5 billion)	4 278 (HK\$5 billion)	4 205 (HK\$5 billion)	116 (HK\$137 million)
<b>2002</b>	982	7 983	4 250 (HK\$5 billion)	4 231 (HK\$5 billion)	4 238 (HK\$5 billion)	42 (HK\$50 million)
<b>2003</b>	1 017	7 815	4 458 (HK\$5.3 billion)	4 389 (HK\$5.2 billion)	4 449 (HK\$5.2 billion)	47 (HK\$55 million)

Source: Statistics Norway

## Appendix III (cont'd)

## II. Norway (cont'd)

Table 3 - Quarterly Turnover Index for restaurants, bars, and canteens and catering 2003 – 2005

	1st quarter 2003	2nd quarter 2003	3rd quarter 2003	4th quarter 2003	1st quarter 2004	2nd quarter 2004	3rd quarter 2004	4th quarter 2004	1st quarter 2005
<b>Restaurants</b>	95.3	114.8	119.5	116.9	98.1	117.3	119.3	114.2	95
<b>Bars</b>	120.7	139.8	138.7	141.8	134.2	144.6	139.3	140.3	123.9
<b>Canteens and catering</b>	95.2	98.6	93.7	105.7	93.5	96.5	100.1	111.1	97.1

Source: Statistics Norway

## III. Thailand

Table 1 - General figures 2000 – 2004

	Population	GDP growth	Labour force	Unemployment rate
<b>2000</b>	62.4 million	4.8%	33.9 million	2.4%
<b>2001</b>	63 million	2.1%	34.5 million	2.6%
<b>2002</b>	63.4 million	5.4%	34.9 million	1.8%
<b>2003</b>	64 million	6.7%	35.3 million	1.5%
<b>2004</b>	65 million	6.1%	36 million	1.5%

Source: Asian Development Bank (2005).

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