

**Legislative Council
of the
Hong Kong Special Administrative Region**

**Delegation of the
Panel on Health Services**

**Report on the duty visit to study
the experience of Thailand, Norway
and Ireland
in the implementation
of anti-smoking measures**

10 to 20 August 2005

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Chapter 1 – Introduction

Purpose of the report

1.1 A delegation of the Panel on Health Services of the Legislative Council visited Bangkok (Thailand), Oslo (Norway) and Dublin (Ireland) in August 2005 to study the experience of these countries in the implementation of anti-smoking measures. The report presents the main findings and observations of the delegation.

Background

1.2 The Panel on Health Services is tasked to monitor and examine the Government policies and issues of public concern relating to medical and health services.

1.3 The proposed expansion of the statutory no smoking areas and the enforcement of the legislation is one of the major areas of concern of the Panel. To enable members to have a better understanding of overseas experience, the Panel agreed at its meeting on 14 March 2005 that the Panel should undertake a duty visit to obtain first-hand information on the implementation of anti-smoking measures in selected overseas countries. Specifically, the visit aimed to study –

- (a) the anti-smoking policies in the countries concerned and the public's receptiveness of the policy;
- (b) whether the anti-smoking legislation had achieved the intended policy objective and the problems encountered in enforcement of the legislation;
- (c) the economic impact of the smoking ban on the catering and hospitality industries; and
- (d) new measures, if any, being considered to address the problems and concerns arising from the implementation of the smoking ban.

1.4 The Panel also agreed that the visit should be open to Members intending to join the Bills Committee likely to be formed to scrutinise the Smoking (Public Health) (Amendment) Bill after introduction into the Council, and other interested Members. The Panel obtained the House Committee's permission to undertake the duty visit to Bangkok (Thailand), Oslo (Norway) and Dublin (Ireland) on 24 June 2005.

Membership of the delegation

1.5 The delegation comprised the following Members –

Hon Andrew CHENG, Chairman of the Panel (Leader of the delegation)
Hon LI Kwok-ying
Hon Tommy CHEUNG

1.6 Ms Doris CHAN, Clerk to the Panel, accompanied the delegation on the visit.

Visit programme

1.7 The delegation visited Bangkok from 10 to 12 August 2005. During the stay in Bangkok, the delegation visited the Thailand Health Promotion Institute and the Department of Disease Control. The delegation also visited some bars and restaurants, as well as a number of entertainment establishments in the city.

1.8 The delegation visited Oslo from 13 to 16 August 2005. During the stay in Oslo, the delegation visited the Department for Tobacco Control, the Department of Occupational Health and Safety and the Norwegian Labour Inspection Authority. The delegation also visited over 10 bars and restaurants as well as a bingo hall in Oslo.

1.9 The delegation visited Dublin from 17 to 20 August 2005. During the stay in Dublin, the delegation visited the Health and Safety Authority and the Irish Cancer Society. The delegation also attended presentations by the Office of Tobacco Control, Action on Smoking and Health (ASH), the Environmental Health Officers' Association, the Union of Retail, Bar and Administrative Workers (MANDATE), the Irish Municipal, Public and Civil Trade Union (IMPACT), the Restaurants Association of Ireland and the Irish Hotels Federation.

1.10 Further details of the visit programme are in **Appendix I**. A list of the government officials and representatives with whom the delegation met is in **Appendix II**. A list of the reference materials obtained during the visit is in **Appendix III**.

Chapter 2 – Tobacco control policy and programme in Thailand

Visit programme

2.1 The delegation met with officials of the Department of Disease Control of the Ministry of Public Health and received briefings on the tobacco control policy and the tobacco control programme in Thailand. The delegation also received a briefing on the role of the Thailand Health Promotion Institute in the implementation of anti-smoking measures in the country. In addition, the delegation visited a bowling alley, a karaoke establishment, a cocktail lounge inside a hotel, and several restaurants in Bangkok.

Overview

2.2 Thailand is the 36th country to ratify the World Health Organization (WHO)'s Framework Convention on Tobacco Control. About 19.5% of the population smoked in 2004, down from 35.2% in 1981. Figures from the Thailand Action on Smoking and Health Foundation show that there are 10 million smokers in the country. At present, smoking is the second most significant risk factor affecting Thai health. About 125 persons die everyday of smoking-related diseases and the number of teenage smokers, especially young women, has increased in the past few years. Statistics on changes in smoking rate in the Thai population between 1999 and 2003 show an increase of 1.2% in the 15 to 19 age group, compared with an overall decrease of 2.7% for all age groups.

2.3 The major components of tobacco control in Thailand are promotion of health awareness, education to encourage smoking cessation, and legislation. To prevent young people from becoming smokers, there are community and school programmes targeting at youths, such as setting up school youth clubs, creating non-smoking leaders, and organising anti-smoking “Smart Camps” across the country to combine health education and recreational activities in a smoke-free environment.

2.4 In 1974, smoking was first banned in cinemas and on city buses in Bangkok. In 1986, smoking on intercity buses was banned. In 1989, the Thai Cabinet appointed a National Committee for the Control of Tobacco Use (NCCTU). It is an inter-ministerial policy committee, and its members include representatives from ministries, tobacco control experts, and the media, etc. In 1990, the Tobacco Control Office, which also serves as the secretariat of NCCTU, was set up in the Ministry of Public Health.

2.5 In 1992, the Non-Smokers' Health Protection Act was enacted to protect the health of non-smokers against cigarette smoke in the public places by

prohibiting cigarette smoking in certain places or by designating specific smoking areas. In the same year, the Tobacco Control Product Act was enacted to prohibit tobacco advertisement and sponsorship, and the sale of tobacco products to persons under 18 years of age.

Statutory smoke-free places and exemptions

2.6 The Non-Smokers' Health Protection Act, introduced in 1992, has served as the primary legal framework for controlling second-hand smoking in indoor workplaces and public places by specifying a list of places where smoking is banned or restricted. The list was amended in 1998 and 2002 to cover more places. As of June 2005, smoking is totally banned in –

- (a) air-conditioned restaurants, food courts and function centres;
- (b) public libraries;
- (c) outpatients clinics;
- (d) theatres, air-conditioned shopping centres, department stores and 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 and private buses, school buses, taxis, air-conditioned rail carriages, public boats and domestic flights; and
- (h) elevators, public toilets and public telephone booths.

2.7 Under the Non-Smokers' Health Protection Act, smoking is also banned in the following places, but their private rooms are exempted 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 stadiums.

2.8 A partial ban on smoking is imposed in the following places, which are allowed to designate smoking areas, and their private rooms are exempted from the ban –

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

2.9 On 9 August 2002, Announcement No. 9 of the Ministry of Public Health was published in the Government Gazette to provide that smoking areas in air-conditioned places shall be equipped with ventilation systems which ventilate the air between the outside and the inside of the smoking areas at the rate of no less than 50 square feet per minute per person.

2.10 Certain places, including bars and night entertainment places, are completely exempted from the smoking ban under the Act.

Graphic warnings and ban on display of cigarettes at points of sale

2.11 In April 2004, an Announcement was made by the Ministry of Public Health under the Tobacco Products Control Act that graphic warnings of the adverse effect of smoking on cigarette packages would take effect in one year's time. The Announcement took effect on 25 April 2005, and by the end of the year, the same warnings are also required to be displayed on packs of cigars and other types of tobacco. A ban on displays of cigarettes at retail stores, including convenience stores and other points of sale, took effect on 24 September 2005.

Thai Health Promotion Foundation

2.12 In 2001, the Health Promotion Act was passed to establish the Thai Health Promotion Foundation (ThaiHealth). Under the Act, ThaiHealth is provided with annual revenue of about US\$35 million which is derived from 2% of the excise taxes on tobacco and alcohol for health promotion. This revenue is not subject to normal budgetary processes and instead, ThaiHealth reports directly to the Cabinet and Parliament each year. The objectives of ThaiHealth are, inter alia, the reduction of sickness and death, and general improvements in the quality of life. It aims to support groups and organisations that are already working on public health issue, including tobacco and alcohol.

Legal responsibility of persons in charge of smoke-free places

2.13 Under section 5 of the Non-Smokers' Protection Act, the operator (an owner, manager, supervisor or a person responsible for the operation of the public place) shall have the duty to –

- (a) arrange any part or all of the specified public places as smoking or non-smoking areas;
- (b) arrange the smoking areas to have such condition, nature and standard as designated by the Minister; and
- (c) arrange the signs in the smoking and non-smoking areas in accordance with the criteria and procedures designated by the Minister.

Any operator failing to comply with (a), (b) or (c) above is liable to a fine of up to 20,000 Baht (HK\$4,000), 10,000 Baht (HK\$2,000) or 2,000 Baht (HK\$400) respectively.

Enforcement authorities

2.14 The Non-Smokers' Health Protection Act is executed by officers appointed by the Ministry of Public Health. The designated officers are empowered to enter the specified public places for inspection or supervision of the implementation of the Act. The Minister of Public Health also appoints health and law enforcement officials of the central, provincial and local administration to take charge of the Act within their jurisdiction.

Compliance with the smoking ban

2.15 There has not been any study on the effectiveness of the Non-Smokers' Health Protection Act in controlling second-hand smoke. On the eve of the World No Tobacco Day in May 2005, the Thai Public Health Minister announced that a research centre charged with tackling tobacco use would be established by the Public Health Ministry and ThaiHealth with an initial budget of 100 million Baht. The Centre is expected to scientifically analyse smoking problems and tobacco control measures.

Difficulties encountered in enforcement of the smoking ban

2.16 Officials of the Department of Disease Control pointed out that there were four regions with different cultures in Thailand and enforcement of the legislation was more difficult in the rural areas. There are only 3 000 to 4 000 designated officials for the whole country and only a few hundred fines a year for violation of the smoking ban. One of the problems is that the Police considers violation of the smoking ban a small crime and does not like to go out with the health officials to take action. Enforcement of the smoking ban in hospitality premises is difficult even though the designated officers are empowered to enter the premises for inspection. Moreover, outside of Bangkok, people know each other well and do not want to take action against those who violate the smoking ban.

2.17 Since smoking is still allowed in bars and nightclubs, some restaurants take advantage of the law by turning part of the restaurant into a bar which permits smoking in that area.

Economic impact of the smoking ban

2.18 Although there has not been any study on the economic impact of the smoking ban, officials of the Department of Disease Control told the delegation that they believed that business would only suffer some loss initially and there would be no impact in the longer term, taking into account that 70% of the people in Thailand support the present legislation and most people do not smoke.

Observations of the delegation

2.19 The delegation found that in the restaurants it visited, there was compliance with the smoking ban. Most of the restaurants are on the ground floor fronted either by a parking or garden area so it was quite easy for smokers to go outside to smoke.

2.20 The delegation visited a bowling alley in Bangkok. It has a bar at one end and the area around the bar, which is neither enclosed nor partitioned, is a smoking area. The delegation also visited a karaoke establishment inside a shopping mall in Bangkok. While the open areas of the establishment are smoke-free, there are several “boxes” or “cubicles” with floor-to-ceiling partition on the premises which are smoking areas. As the partition materials are transparent, users have a full view of outside activities and vice-versa.

2.21 Although a ban on smoking in hotel lobbies has not yet been introduced, some hotels have already banned smoking in their lobbies, as in the case of the hotel used by the delegation. This hotel provides an open air smoking area adjacent to the lobby and smokers can sit at the tables outside the lobby. The hotel also has a pub, which is a fully partitioned area on the same floor as the lobby, for smokers to have their drinks and smoke.

2.22 Thailand has adopted a step-by-step approach in its implementation of the smoking ban. Such an approach is to ensure that there will be less resistance. Smoking is still allowed in certain indoor places, such as bars and night entertainment places. The country does not yet have a time frame for a total ban.

2.23 A member of the delegation considers that Bangkok, among the three cities visited, is the one closest to Hong Kong in terms of geography, lifestyle, culture, business style and environment, and therefore its difficulties encountered in the enforcement of the smoking ban, as pointed out in paragraph 2.16 above, are good reference for Hong Kong where the Smoking (Public Health) (Amendment) Bill is being scrutinised.

Chapter 3 – Smoke-free restaurants and bars in Norway

Visit programme

3.1 The delegation received a welcome address and introduction from the State Secretary. The delegation met with other officials of the Directorate for Health and Social Affairs who made a detailed presentation on the smoking ban in bars and restaurants in Norway, covering the background of the ban, related legislation and communications strategy.

3.2 The delegation also received a presentation on a scientific evaluation of the smoking ban conducted by the Norwegian Institute for Drug and Alcohol Research. The presentation mainly discussed public support for the ban, indoor air quality, and employee smoking habits before and after the ban.

3.3 In addition, the delegation met with officials of the Norwegian Labour Inspection Authority, who made a presentation on the Authority's preparation for and follow-up work of the smoking ban. They also took the delegation to visit several restaurants and bars in Oslo and meet with the owners and staff concerned.

3.4 Through arrangements made by a contact of the Hong Kong Economic and Trade Office in London, the delegation visited various hospitality premises, including bars, cafes, restaurants and a hotel, and held informal discussions with the owners/managers.

3.5 The Government departments and other premises visited by the delegation are as follows –

- (a) Department for Tobacco Control, Directorate for Health and Social Affairs;
- (b) Norwegian Labour Inspection Authority, Directorate of Labour Inspection;
- (c) over 10 bars and restaurants; and
- (d) a bingo hall.

Overview

3.6 Norway is the first country to ratify WHO's Framework Convention on Tobacco Control, and the second country, after Ireland, to totally ban smoking in enclosed public places and workplaces, including bars and restaurants.

3.7 Surveys conducted by Statistics Norway in 2004 showed that 26% of the population aged 16 to 74 smoke daily. According to the Directorate for Health and Social Affairs, about 7 500 persons die each year because of tobacco related diseases and in addition, 350 to 550 lives are lost due to passive smoking.

3.8 On 1 June 2004, Norway banned smoking in bars, pubs, cafes, restaurants and other hospitality establishments. The main objective of the smoking ban in bars and restaurants is to improve employees' working environment. One year after the enactment of the ban, the Directorate for Health and Social Affairs announced that the transition had been extremely smooth, and that the main intention of providing a better working environment for employees had been achieved. It was found that Norway's bars and restaurants and their guests adapted to the new situation very quickly. The inspection authorities and the employees experienced very few problems with compliance. People went outdoors to smoke, and employees were able to enjoy better air quality and better health.

Prohibition of advertising of tobacco products

3.9 In Norway, smoking is regulated by Act No. 14 of 9 March 1973 relating to Prevention of the Harmful Effects of Tobacco (the Tobacco Act). Section 2 of the Tobacco Act prohibits all form of advertising of tobacco products. A brand name or trade mark for tobacco products may not be used in the advertising of other goods or services so long as the name or trade mark in question is used in connection with the tobacco product.

Ban on smoking in enclosed workplaces and public places

Amendments to the Tobacco Act in 1988

3.10 In July 1988, the Tobacco Act was amended to ban smoking in all enclosed workplaces and public places but hospitality premises, including restaurants and bars, were exempted. Hospitality premises were allowed a five-year transitional period to incrementally implement smoking restrictions so that at least one-third of the indoor area of such premises would be smoke-free by July 1993.

Amendments to the Tobacco Act in 1995

3.11 In December 1995, further amendments were introduced to require employers of the hospitality industry to extend the smoking restriction to 50% of the indoor area of their premises by January 1998. The employers were

also required to provide customers with direct access to smoke-free areas, and were obligated to meet ventilation requirements and carry out internal control routines to ensure compliance.

Consultation in 2001

3.12 In autumn 2001, the first step in the consultation process for an extension of the smoking ban was made. Four alternatives, with the strictest one being a total ban on smoking, were proposed in an open consultation exercise. In November 2002, backed by trade unions and health organisations, the Norwegian Government issued a white paper proposing a total ban on smoking in establishments that serve food and/or drinks. The outcome of the consultation indicated wide public support for a total ban.

The Tobacco Act – Section 6

3.13 The amendments to the Tobacco Act to implement the total ban on smoking were passed by the Norwegian Parliament and took effect on 1 June 2004. Section 6 of the Tobacco Act provides, inter alia, that smoking is not permitted in establishments which serve food and/or drinks and which are equipped for consumption on the premises. The owner or manager of the premises is responsible for ensuring compliance with the provisions. Notices must clearly indicate that smoking is prohibited in areas where such prohibition may be in doubt, and at the entrance to all establishments serving food and/or drink.

3.14 To ensure that the prohibition of smoking is complied with at establishments that serve food and/or drinks, the Section also provides that such establishments shall maintain internal controls and establish an internal control system which can be inspected by the supervisory authorities. Responsibility for inspection and control is divided between the municipal authorities and the Norwegian Inspection Authority.

Enforcement authorities

3.15 The owners are responsible for ensuring that their customers do not smoke inside the premises, while the local Inspectorate and the municipal authority are responsible for enforcing the law.

Fines

3.16 The supervising authorities can impose two kinds of coercive fines on owners who fail to comply with the ban. The first is a continuous coercive fine that may be imposed for each day that passes after the expiry of the time limit set for implementation of an order of compliance until the order is implemented. The other is a single payment fine, which can be up to 50,000

Norwegian Kroners (HK\$60,000) for each restaurant. The Norwegian Inspection Authority considers fines the most important means to put pressure on owners who fail to ensure effective compliance with the smoking ban.

Review published by the Directorate for Health and Social Affairs

3.17 The Directorate for Health and Social Affairs published a report entitled “Norway’s ban on smoking in bars and restaurants – A review of the first year” in May 2005. The review was based on reports from the inspection authorities and three independent surveys.

3.18 The report pointed out that there were many predictions about how the ban would work. Some expected a state of chaos outside bars and restaurants, accompanied by a steep downturn in business. Others also expected the general public to ignore the ban.

3.19 The report concluded that these predictions did not materialise. Norway’s bars and restaurants and their guests adapted to the new situation very quickly. People went outside to smoke, and employees were able to enjoy better air quality and better health. The main findings were –

- (a) people generally complied with the ban;
- (b) the inspection authorities and the employees experienced very few problems with compliance;
- (c) a growing number of people supported the ban;
- (d) guests stated that air quality had improved, although breweries recorded a slight decline in the sale of beer;
- (e) there was little difference in the turnover index of bars and restaurants before and after the ban;
- (f) there had been a distinct improvement in air quality in the workplace;
- (g) far fewer employees stated that they had general medical problems;
- (h) fewer employees stated that they experienced respiratory problems; and
- (i) one in 10 employees had quit smoking.

3.20 Bar and restaurant employees also found that compliance with a total ban was easier to achieve than compliance with a partial ban. There were fewer problems relating to enforcement of the ban than people had expected prior to the introduction of the total ban. Of the employees surveyed, 90% reported compliance with the total smoking ban, whereas only 51% reported compliance with the previous provisions which divided customers into smoking and no-smoking zones.

3.21 The report stated that the Norwegian Labour Inspection Authority conducted 915 inspections, mainly focusing on the Tobacco Act, at bars and restaurants from 1 May 2004 to 1 May 2005. Of these inspections, 290 led to one or more orders to make changes. As regards outdoor service, some establishments had gone to such great lengths to enclose areas that they had to be instructed to remove part of the enclosures. Only a few such instructions had been appealed against.

3.22 Feedbacks from municipalities showed that inspections had become considerably easier since the statutory requirements were more absolute than before. There had been no reports from the police of increased violence after the total ban was introduced.

3.23 The Directorate of Labour Inspection has received five formal complaints from owners of establishments that served food or drinks since the implementation of the smoking ban in June 2004. The two main reasons for the complaints are as follows –

- (a) some owners consider that they should be allowed to arrange a smoking room as a private club with membership for smoking customers in the restaurant. However, such an arrangement is not allowed under the Tobacco Act; and
- (b) some owners have arranged outdoor seating areas with shelters or barriers against the cold, rain, wind and sun. In many cases, the barriers or shelters cause so much obstruction to the fresh air ventilation that the outdoor seating areas in question have to be defined as indoor premises and therefore a no-smoking area under the law.

Implementation strategy

Strategy objective

3.24 To implement the smoking ban under Section 6 of the Tobacco Act which took effect on 1 June 2004, a strategy was formulated with the objective of increasing public understanding and acceptance of the law.

Information initiatives

3.25 The key message of the strategy was “Everyone has the right to a smoke-free workplace”, and the main target groups were the general public, the hospitality industry and the inspection authorities. Advertisements were made on television, radio, Internet and in cinemas to disseminate the messages that “second-hand smoke is dangerous”, “the smoking ban is not bad for business”, and “the ban will protect workers”. Detailed information packages were provided by the Directorate for Health and Social Affairs to the hospitality industry. This was followed by further public relations initiatives, such as holding conferences, displaying “questions and answers” posters, and placing advertisements on buses, trams and underground trains, on the smoking ban.

3.26 Information packages were distributed to the relevant businesses. The packages contained information about the smoking ban, a poster outlining the main changes and the reasons for the changes, no smoking stickers, etc., as well a fact sheet from the Labour Inspection Authority focusing on how bars and restaurants should handle the ban.

Fact sheet on how bars and restaurants should handle the ban

3.27 Concerned that enforcing the ban would result in problems for employees in the hospitality sector in that some guests might refuse to comply with the new regulations and might abuse or threaten the employees, the Labour Inspection Authority issued a the fact sheet containing the following messages to the hospitality industry –

- (a) the importance of clearly visible no smoking signs;
- (b) the importance of a uniform response, i.e. all employees should handle similar situations in similar ways, and should not allow smoking indoors;
- (c) the importance of the management’s backing of the employees who were given the task of telling smokers to stop smoking;
- (d) the need to establish routines and training of employees on how to inform and/or expel smoking guests; and
- (e) expectations of the Labour Inspection Authority, i.e. what the Authority would be looking for, and how it would react to violations.

Internal information

3.28 An important component of the information strategy was directed at inspectors and the personnel manning the call centre. The legal department of the Labour Inspection Authority prepared and distributed circular letters on how to interpret the various legal issues that might arise. A “questions and answers” sheet was also prepared for internal use. It contained short, standard answers to expected questions to help inspectors and call centre personnel to respond to questions, and to ensure correct and uniform answers across the organisation.

Strong alliance with relevant organisations

3.29 The Norwegian Government also forged a strong alliance with the workers’ unions, and non-governmental organisations (NGOs), including the Asthma and Allergy Association, the Norwegian Heart and Lung Association and the Norwegian Medical Association, to implement the smoking ban.

Decisive arguments for the smoking ban

3.30 Officials of the Directorate for Health and Social Affairs highlighted in their presentation to the delegation the following decisive arguments for the smoking ban –

- (a) protection of the health of the employees;
- (b) protection of the health of the guests;
- (c) removal of an important arena where many teenagers started smoking; and
- (d) people with asthma and allergy had been excluded from many social arenas prior to the smoking ban.

Success factors

3.31 The officials attributed the main success factors for the implementation of the smoking ban to –

- (a) step-by-step implementation;
- (b) full support from important workers’ unions; and
- (c) a Supreme Court decision in favour of the plaintiff in a landmark case of an employee of a discotheque seeking compensation from

her employer for lung cancer partially caused by second-hand smoke at work.

3.32 The importance of timing was also emphasised. The Norwegian Government originally planned to launch the total ban on 1 January 2004 but considered it inappropriate to force smokers to smoke outdoors in the winter. The ban was postponed to 1 June 2004 so that smokers had the summer months to get used to smoking outdoors.

Economic impact of the smoking ban on the hospitality sector

3.33 The Norwegian Institute for Alcohol and Drug Research is analysing the economic consequences of smoke-free bars and restaurants. Although some preliminary results are ready, the reports are not yet available. Some preliminary data relating to bar sales, sales of beer, hospitality employment and bankruptcy in the hospitality industry are as follows –

- (a) VAT statistics from Statistics Norway show that there was a 6.7% decrease in turnover for pubs/bars in the first nine months;
- (b) there was a 6.6% decrease in sales of beer from breweries to pubs/bars and restaurants in the first 12 months (up to 31 May 2005) and a 1.6% increase in the sales of beer from breweries to supermarkets;
- (c) the Department of Labour statistics show that there is no change in the employment rate in the hospitality industry; and
- (d) the Central Bureau of Statistics reports a 7% increase in bankruptcy in the hospitality industry in the first quarter of 2005 compared with the first quarter of 2004.

3.34 Officials of the Directorate for Health and Social Affairs pointed out to the delegation that the decrease in beer sales might also be due to other factors such as weather, the price of beer and a change in lifestyle as there had been a shift from beer consumption in bars to drinking beer at home. They also pointed out that there was a 12% increase in sales of beer from breweries to pubs/bars and restaurants in June 2005 compared with 2004; therefore if the June figures had been included, the decrease would have been smaller. Restaurants in general were not as affected as pubs, in particular the “brown pubs”, which were patronised by mostly smokers.

Observations of the delegation

Restaurants and bars

3.35 There are 1 140 restaurants, bars and pubs in Oslo. The delegation visited and talked to owners/managers and waiters of over 10 restaurants, bars and pubs mainly in the city centre and the Aker Brygge area. The latter is a dockside area with a large number of outdoor restaurants and bars along the waterfront. With more and more outdoor dining areas being provided after the smoking ban was introduced, Oslo is now looking more like a Mediterranean city. The general impression given was that the Norwegians accepted the smoking ban. Smokers and owners of restaurants and bars accepted their social responsibility and generally took the smoking ban very well.

3.36 Business in the restaurants, bars and pubs visited by the delegation had not been substantially affected by the smoking ban, except for two of them. One is a bar on the second floor of a railway terminal building. It had experienced a 45% to 50% drop in business and only one bartender was now employed instead of two before the smoking ban. The other is a bar and restaurant occupying three floors of a building in the town centre. It can accommodate several hundred guests but there is no outside seating area. The owner told the delegation that while the business of the bar on the ground floor and the restaurant in the basement was not affected, he lost at least half of his business on the second floor. He also told the delegation that people were now drinking more at home and stayed for a shorter periods in bars. However, according to the opinion of an accompanying official of the Ministry of Health and Care Services, this particular restaurant was already losing popularity even before the smoking ban was introduced, and the decline in its business was not entirely due to the smoking ban.

3.37 The delegation also visited an open air cafe near the National Theatre in the town centre area. Having outdoor seating only, the café's business is dependent on weather conditions and is only open for business from April to September each year. Although smoking is permitted in this café, the owner reported a 4% to 6% drop in beer sales. Even with an increase in food sales during the same period, the café was making up to 20% less profit as more money could be made from bar sales than food sales. Since smoking is allowed in this open air café, the delegation reckons that the decline in profit in this particular café was not caused by the smoking ban, but could be the result of other factors, such as the trend of people drinking at home more.

3.38 The owner of the open air café referred to in the paragraph above also operates another restaurant in the Oslo City Shopping Centre with indoor seating only. The owner told the delegation that this restaurant had suffered 50% loss in business after the smoking ban was introduced. Even so, he

expressed support for the smoking ban. He expected that small businesses might have some problems in the first few years, and considered that they should be given tax and rent deductions to tide them over the difficult period.

Bingo halls

3.39 The delegation visited a bingo hall in Oslo. This indoor establishment consists of an open no smoking area with tables and seats for people playing bingo and a separate glass-partitioned area for smokers playing the game. There is a food service counter serving light food and drinks in the middle of the premises between the two areas. People in the smoking area do not get any service from the staff of the bingo hall and have to get their own food and drinks from the counter. There are about 30 such establishments in Oslo.

General observations

3.40 The general observations of the delegation in regard to the smoking ban in restaurants and bars in Oslo are as follows –

- (a) In Oslo, many of the restaurants and bars are on the ground floor and can expand outdoors to provide outside seating areas. The business of such restaurants and bars is less affected than the business of those which are on upper floors or in shopping malls without any outside seating;
- (b) restaurants and bars in the more affluent areas are less affected than those in the less well-to-do areas, which are patronised by more smokers;
- (c) most owners with whom the delegation had met are supportive of the ban and even waiters who are smokers themselves support the ban because of cleaner air in their place of work;
- (d) preparation for and timing of the implementation of the smoking ban are important. The smoking ban in Norway was postponed by several months to take effect on 1 June to allow smokers to get used to smoking outdoors during the summer months; and
- (e) the informal meetings with the owners/managers of hospitality premises enabled the delegation to obtain first-hand information from the stakeholders concerned which proved very useful in the discussions with the officials.

3.41 The delegation considers that the preparation for the implementation of the smoking ban in Norway provides very useful reference for Hong Kong. The information packages provided to the relevant businesses and the fact sheet

on how bars and restaurants should handle the ban referred to in paragraphs 3.25 to 3.27 above played an vital role in overcoming any worry on the part of the bar and restaurant operators and employees concerned, and in winning over their support of the ban.

3.42 A member of the delegation has pointed out that the report referred to in paragraphs 3.17 to 3.22 above did not show whether any bars had closed or gone bankrupt after the introduction of the smoking ban. As the report only reflected the situation of bars and restaurants still in operation at the time of the review, he considers that the points mentioned as “success” or “effective” about bars were biased towards existing bars only.

Chapter 4 – Smoke-free workplaces in Ireland

Visit programme

4.1 In Ireland, the delegation held discussions with representatives of the Office of Tobacco Control (OTC), the Health and Safety Authority, the Environmental Health Officers' Association, the Irish Cancer Society, Action on Smoking and Health (ASH) Ireland, as well as two large workers' unions, i.e. the Union of Retail, Bar and Administrative Workers (MANDATE) and the Irish Municipal, Public and Civil Trade Union (IMPACT). The delegation also received briefings by representatives of the Restaurant Associations of Ireland and the Irish Hotels' Federation.

Overview

4.2 Ireland is the first country to introduce a nationwide total ban in enclosed public places and workplaces. Enclosed workplaces became smoke-free by law in Ireland on 29 March 2004 under provisions in the Public Health (Tobacco) Acts 2002 and 2004. Since then, offices, shops, factories, bars, restaurants and other enclosed workplaces have been smoke-free. The primary aim of the legislation is to protect third parties, particularly workers, from exposure to the harmful effect of second-hand smoke.

4.3 According to the OTC, about 45% of all adults in Ireland smoked in the mid 1970's. That fell to about 28% in the early 1990s. Currently about 25% of the Irish population smoke, and 7 000 people die from smoke-related diseases every year.

Progression of smoke-free workplaces legislation

Tobacco (Health Promotion and Protection) Regulations 1995

4.4 The Tobacco (Health Promotion and Protection) Regulations 1995 banned smoking in certain enclosed premises, including bingo halls, bridge centres, cinemas/theatres, public service vehicles, doctors/dentists waiting rooms, supermarkets, food preparation areas in restaurants, cafes and pubs. The Regulations also required that 50% of seating area of restaurants must be smoke-free.

Recommendations of the Tobacco Free Policy Review Group

4.5 In November 1999, the Joint Committee on Health and Children of the Irish Parliament recommended that a national anti-smoking strategy should be

adopted. An advisory body, the Tobacco Free Policy Review Group, was set up to review the issue of tobacco and health. In its report entitled “Towards a Tobacco Free Society”, the Review Group recommended, inter alia, that the smoking ban should be extended to cover all enclosed workplaces, places where essential routine commercial transactions were done, public transport, and places of entertainment open to people below 18 years of age. The Review Group’s proposals, including the setting up the OTC to co-ordinate and monitor the implementation of anti-smoking measures, were adopted by the Government.

Public Health (Tobacco) Act 2002

4.6 Part 2 of the Public Health (Tobacco) Act 2002 provides for the establishment of the OTC which was set up in May 2003. The Act also provides for regulation and control of the sale, marketing and smoking of tobacco products. Section 47(1) of the Act provides that the Minister may, by regulations, prohibit or restrict the smoking of tobacco in “specified places”, including –

- (a) aircrafts, trains, ships or other vessels, public service vehicles;
- (b) hospitals or health premises;
- (c) buildings to which the public has access, and which are owned or occupied by public authorities;
- (d) cinemas, theatres, concert halls or other places normally used for indoor public entertainment; and
- (e) all or part of a licensed premises, registered club, or place of work.

Independent scientific report on environmental tobacco smoke

4.7 An independent scientific report was commissioned by the Health and Safety Authority and the OTC in 2003. The report, entitled “Report on the Health Effects of Environmental Tobacco Smoke (ETS) in the Workplace”, concluded that exposure to ETS caused lung cancer, heart disease and respiratory problems. The Report particularly noted that bar staff and other hospitality employees were a unique risk group in that their workplaces constituted extreme ETS exposure settings. The Report also concluded that current ventilation technology was ineffective as a means of removing the risk of second-hand smoke to health, and legislation was required to protect employees from exposure to second-hand smoke. Following the publication of the Report, the Minister of Health and Children announced on 30 January 2003 that smoking would be banned in almost all enclosed workplaces in one

year's time and draft regulations were published.

Preparation for the legislation

4.8 To prepare for the introduction of the legislation, the Health and Safety Authority conducted public consultation sessions on the proposed changes to the smoking legislation. The public, employers and workers were invited to attend regional information meetings to find out what the ban would mean for them.

4.9 Surveys were also carried out to gauge the public's perception of the legislation. A public information campaign supporting the legislation and a multi-media campaign on the following subjects were mounted –

- (a) effects of ETS;
- (b) support for smokers; and
- (c) the Quitline Service.

4.10 A national debate on the health effects of second-hand smoke exposure, civil liberties, ventilation, economic issues and whether the smoking ban was workable and enforceable followed.

4.11 On the question of civil liberties, it was generally agreed that the rights of one individual should not compromise the health of another, and the right of workers to work in a healthy environment should be respected.

4.12 As to ventilation, it was concluded that no authoritative institutions claimed that ventilation was able to address the health effects of second-hand smoke, and that it was healthier, simpler and cheaper to go smoke-free.

4.13 Regarding the economic argument, the OTC held a Seminar on the Economic Cost of Smoking in the Workplace in October 2003. The Seminar found that smoking cost the Irish economy between €1 million (HK\$9.5 million) to €5 million (HK\$49.5 million) per day. An OTC report published in May 2004 concluded that the weight of evidence was that smoking bans had little or no effects, in aggregate, on sales in the hospitality industry.

Opposition from the hospitality industry

4.14 The main opposition to the smoking ban came from the hospitality industry, especially the publicans. There was also opposition from some Cabinet ministers. The opposition campaign failed to gain public support and in the few weeks before the law was passed, the vintners' associations decided to advise their members to comply with the law.

4.15 In August 2003, the Irish Hospitality Industry Alliance (IHIA) published a Regulatory Impact Assessment (RIA) which pointed out that patronage of pubs in Ireland, at an estimated 85% of the total Irish adult population, was significantly higher than that in the United States and Canada. The RIA concluded that it was highly probable that the proposed smoking ban would result in a fall of sales, with commensurate redundancies. The Exchequer's receipts from alcohol would fall, as would the commercial value of a large number of hospitality venues. Based on a number of scenarios ranging from a 5% to 30% drop in business, the RIA estimated that the proposed smoking ban in hospitality venues would result in 10 700 to 64 200 job losses, €57.5 million (HK\$1,8496 million) to €44 million (HK\$8,968 million) in tax revenue foregone and unemployment benefits, and compliance costs of €8.9 million (HK\$85 million) to the Government, and €200 million (HK\$1,900 million) to the hospitality sector.

4.16 IHIA also argued that research on second-hand smoke at work under the Irish circumstances had been limited. It submitted a compromise package of proposals, including the introduction of designated smoking areas in pubs and clubs and larger non-smoking areas of around 50% of a venue's capacity, to the Government for its consideration.

Public support for the proposed smoking ban in workplaces

4.17 Opinion polls taken showed increasing public support for smoke-free workplaces. A poll taken in June 2003 showed that 67% of the Irish public supported the introduction of smoke-free bars and restaurants, up from 59% in February 2003. In October 2003, a survey measuring public support for compliance with the proposed smoke-free workplace legislation found that 81% of the public stated that publicans should comply with the ban on smoking in workplaces. Significantly, 61% of smokers believed that publicans should comply with the smoking ban.

Trade union involvement

4.18 Irish trade unions were key agents in proposing, supporting and implementing the smoking ban. The attitudes of trade unions to the issue of passive smoking in the workplace changed very drastically between 2002 and 2003 as knowledge and understanding of the hazards of ETS increased.

4.19 Irish trade unions initially objected to the smoking ban out of fear of job loss, and because many of their members were also smokers. In February 2002, the OTC hosted a seminar on the health effects of ETS which targeted key union leaders. The representatives of MANDATE and IMPACT told the delegation that the seminar, which had an exceptional effect on trade union thinking, was followed up by informal meetings with key union leaders. As a

result, the OTC succeeded in winning support from three key trade unions, viz, MANDATE, the bar workers' union, IMPACT, the state's largest public sector union, and the Services, Industrial, Professional & Technical Union, the state's largest union whose members include both tobacco industry workers and hospitality industry staff. By autumn 2002, the three unions adopted active policies in support of a workplace smoking ban. On 15 October 2003, the Irish Congress of Trade Unions formally backed the campaign for smoke-free workplaces.

4.20 In October 2003, IMPACT's General Secretary identified ETS as the single biggest health and safety hazard, and stated that there could be no so-called compromise on the health and safety of Irish workers. The issue was featured regularly in union publications and conference debates, and became a standard element of union's health and safety training. The trade unions also negotiated total workplace bans with individual employers and lobbied politicians to support the Minister for Health and Children's proposals for a workplace smoking ban.

4.21 The unions also made important interventions in the public and media debate, often focusing on specific areas of their expertise. In this respect, the unions formed part of a broad coalition of worker, professional, civic and health interests. This coalition included representatives of consultants, nurses, health professionals, and the relevant organisations, such as the Irish Heart Foundation, the Irish Cancer Society, ASH Ireland, the Irish College of General Practitioners, the Irish Hospital Consultants' Association, the Asthma Society of Ireland, the Institute of Public Health, the National Heart Alliance, the Irish Sudden Infant Death Association, the National Women's Council of Ireland, and the Irish Country Women's Association. Each of these organisations brought a unique perspective to the debate and worked together in a highly co-ordinated way.

Statutory smoke-free places under the Public Health (Tobacco) Acts 2002 and 2004 and exempted places

4.22 The Public Health (Tobacco) (Amendment) Act 2004 amended section 47(1) of the Public Health (Tobacco) Act 2002 to prohibit the smoking of a tobacco product in "specified places" which include not only ordinary places of work, but also the following places insofar as they are places of work –

- (a) licensed premises;
- (b) registered clubs;
- (c) schools or colleges;
- (d) hospitals and health premises;

- (e) buildings to which the public has access and which are owned or occupied by public authorities;
- (f) cinemas, theatres, concert halls or other places normally used for indoor public entertainment; and
- (g) aircrafts, trains, ships or other vessels, public service vehicles or vehicles used for the carriage of members of the public for reward.

4.23 Section 47(7) of the Public Health (Tobacco) Acts 2002 and 2004 exempts the following places from the smoking ban –

- (a) an outdoor part of a place or premises covered by a fixed or movable roof, provided that 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.

Offences and penalties

4.24 Under section 47(2) of the Public Health (Tobacco) Acts 2002 and 2004, a person who smokes in contravention of subsection (1) of that section is guilty of an offence.

4.25 Under section 47(3) of the Public Health (Tobacco) Acts 2002 and 2004, where a person smokes in contravention of subsection (1) of that section, the occupier, manager or any other person for the time being in charge of the place

where the contravention occurs shall each be guilty of an offence.

4.26 Section 47(4) of the Public Health (Tobacco) Acts 2002 and 2004 establishes a defence for a person against whom proceedings are brought under Section 47(3), provided that they can demonstrate that they have made all reasonable efforts to ensure compliance with Section 47.

4.27 Under Section 5(2A) of the Public Health (Tobacco) Acts 2002 and 2004 a person found guilty of an offence under Section 47 is liable on summary conviction to a fine of up to €3,000 (HK\$28,500).

Guidance for the Irish licensed trade

4.28 In March 2004, following consultation with the Irish licensed trade, the OTC issued a publication entitled “Guidance for the Irish licensed trade” to provide guidance to occupiers, managers and other persons in the licensed trade, including bars, restaurants and nightclubs, on how they could seek to comply with their legal obligations under Section 47 of the Public Health (Tobacco) Acts 2002 and 2004. A similar Guidance for Employers and Managers was published to provide guidance to employers, occupiers, managers and other persons in charge of workplaces.

4.29 The publication provides useful information on compliance/enforcement including the following recommended minimum reasonable efforts –

- (a) developing and implementing a written smoke-free workplace policy (see paragraphs 4.30 and 4.31 below);
- (b) displaying the required “No smoking” signs (see paragraph 4.32 below);
- (c) removing all ashtrays and other like receptacles; and providing external stubbing bins at entrance where appropriate;
- (d) informing a person smoking in a bar, restaurant or nightclub that he/she is committing an offence;
- (e) refusing service to individuals who are smoking in violation of the law; and
- (f) requesting any person smoking in the premises to extinguish the smoking material or to leave.

4.30 The publication advises occupiers, managers and any other persons in charge of a licensed premises to establish and implement a written policy and procedures to ensure compliance with Section 47, as they are each potentially

liable under Section 47(3) of the Public Health (Tobacco) Acts 2002 and 2004. The policy should clearly identify which members of the management/staff have responsibility for its implementation and procedures to be followed in the event of non-compliance. This policy and associated procedure must be communicated to all staff and, in particular, to new and part-time staff before they commence their employment.

4.31 A Model Smoke-Free Workplace Policy for the Irish Licensed Trade is provided in the publication which sets out the procedure for staff for dealing with infringements by customers. A copy is in **Appendix IV**.

4.32 As regards signage, a “No smoking” sign should be permanently displayed in a conspicuous position at each entrance to the premises, at service counters, in toilet facilities and staff rooms. All such signs must include the name of the person (owner/manager) to whom a complaint should be made in the event of non-compliance.

Enforcement of the smoking ban

Enforcement agencies

4.33 Environmental Health Officers and officers of the Health and Safety Authority are responsible for the enforcement of the smoking ban in hospitality premises and other enclosed workplaces respectively. There are two inspection programmes and details are as follows –

- (a) National Tobacco Control Inspection Programme : this programme is co-ordinated by the Office of Tobacco Control, and implemented by the Environmental Health Services of the Health Services Executive (formerly health boards). A total of 34 957 inspections/compliance checks were conducted in respect of hotels, restaurants, licensed premises and other hospitality venues during the nine month period from the introduction of the law to the end of 2004; and
- (b) Health and Safety Inspection Programme : this programme monitors compliance with smoke-free workplace legislation in enclosed workplaces such as offices and factories, which are not covered by the Environmental Health Services. The Authority carried out 7 480 inspections for compliance with the law in relevant workplaces during 2004.

Smoke-Free Compliance Line

4.34 The OTC has operated a Smoke-Free Compliance Line since the introduction of the law. The line receives information calls, queries and complaints about non-compliance with the law. All complaints are passed to the appropriate enforcement agency and prioritised in their respective inspection programmes. In the period from 29 March 2004 to 31 December 2004, a total of 3 121 calls were made to the compliance line, including 1 881 complaints.

One-Year Review

4.35 One year after enclosed workplaces became smoke-free by law in Ireland on 20 March 2004, the OTC published a One-Year Review in March 2005. The key findings of the Review were as follows –

- (a) compliance with the smoke-free workplace legislation was very high in that –
 - (i) 94% of all workplaces inspected under the National Tobacco Control Inspection Programme were smoke-free;
 - (ii) 92% of all workplaces inspected by the Health and Safety Authority were smoke-free;
 - (iii) 93% of all hospitality workplaces inspected were smoke-free;
- (b) there was overwhelming support for the smoke-free legislation among both smokers and non-smokers;
- (c) air quality in pubs had improved dramatically since the smoke-free legislation;
- (d) levels of carbon monoxide had decreased by 45% in non-smoking bar workers; and
- (e) 96% of all indoor workers reported working in smoke-free environments since the introduction of the smoke-free workplace law.

4.36 The Review also pointed out that the wide support of employers, managers, proprietors, employees and the public, smokers and non-smokers alike, meant that the law was part of normal work and social life. A market

research on public attitudes commissioned by the OTC indicated that 99% of all smokers surveyed who visited the pub within the past fortnight either smoked outside or did not smoke at all. One in five smokers chose not to smoke at all while socialising in pubs.

Bar sales, hospitality employment and tourism data

4.37 The Review also pointed out that the Retail Sales Index, available from the Central Statistics Office (CSO), shows that there has been a steady decline in the volume of bar sales since 2001. Bar sales declined in volume by 4.4% in 2004, while the decline for the previous year was 4.2%. Economic analysts suggest that this continuing downward trend is due to a number of factors including high prices, changing lifestyles, and shifting demographic patterns.

4.38 Statistics on employment published by the CSO show a decline of 2.4% between the end of 2003 and that of 2004. However, the numbers employed in the sector at the end of 2004 exceeded those employed in 2002 by 0.6%. It was pointed out to the delegation that employment rates in this sector were traditionally susceptible to fluctuations.

4.39 The most recent CSO statistics on tourism and travel published in February 2005 show that there was a 3.2% increase in visitors to Ireland when compared to 2003.

4.40 A member of the delegation has pointed out that since the figures quoted in the Review were based on those premises still in operation after the introduction of the smoking ban, the high compliance rate was to be expected. The member considers that the number of premises in the hospitality industry which went bankrupt after the introduction of the smoking ban is an important figure to reflect the economic impact of the smoking ban. However, such a figure was not provided by the Irish officials.

Success factors of the smoking ban in Ireland

4.41 Representatives of the various concerned organisations highlighted to the delegation several success factors in the implementation of the legislation in Ireland. The most important factor is the strong political will and a high level of Government commitment. This has made it possible for the fast pace of the enactment and implementation of the legislation, which took effect one year after it was first announced.

4.42 Another important success factor is an effective public agency dedicated to tobacco control in the form of the OTC, which has been instrumental in advocating and delivering the Irish workplace smoking ban. The OTC has commissioned research, provides and disseminates public information,

including television and radio advertisements immediately prior to the implementation of the ban. It has lobbied key players and has consulted the hospitality industry on the codes of practices for enforcement of the ban. It also provides information and support to employers, such as its publication of Guidance for the Irish Licensed Trade.

4.43 Highlighting the health effects of ETS has also been crucial to promoting an active public debate on the issue, and winning strong public support for a workplace smoking ban. It was pointed out to the delegation that few public policy issues had been subject to such rigorous and intense debates, and few statutory health measures so well understood and supported by the Irish people.

4.44 As highlighted in paragraphs 4.18 to 4.21 above, the strong support of trade unions is a further crucial factor to achieving the smoking ban, as Irish trade unions have a high level of influence over social and economic policies, especially if they affect the workplace.

4.45 Consultation with the hospitality industry in drawing up the Guidance for the Licensed Trade and publication of the Guidance has also played an important part in winning the support of the industry and overcoming its concern about enforcement of the ban in hospitality premises.

4.46 Similar to the implementation of the smoking ban in Norway, timing is also very important. In Ireland, it was originally proposed that the smoking ban legislation would take effect on 1 January 2004. To avoid commencing the ban on a cold winter day, the date was changed to 29 March 2004, which was considered a good timing as it was spring and after the period of Lent.

Enforcement of the smoking ban in hospitality premises

4.47 According to the Chairman of the Environmental Health Officers' Association (EHOA), 41 Environmental Health Officers are designated for tobacco control in hospitality premises. These officers carry out daytime inspections, surprise inspections and night checks for compliance. For evening work, there is a team of two officers for safety reasons. The Chairman of EHOA pointed out that the most effective way of checking was to go in, buy a drink and sit for a while to observe the situation.

4.48 When the smoking ban was introduced, there was a six-week compliance building period to allow the teething problems to be solved. During the period from 29 March to 31 December 2004, 3 121 calls including 1 881 complaints were made to the Smoke-Free Compliance Line. By August 2005, the number of calls was down to 40 to 50 per week.

4.49 Environmental Health Officers normally do not deal with the smokers, and only prosecute owners who have been given very specific guidelines. The enforcement procedures for manager/operator/staff of hospitality premises are set out in the Guidance for the Irish licensed trade referred to in paragraphs 4.28 to 4.32 above. Briefly the procedures are as follow –

- (a) draw smoker's attention to the "No-smoking" signs;
- (b) advise them that smoking is prohibited;
- (c) show/advise them where they can smoke;
- (d) refuse service to anyone who continues to smoke, ask them to leave;
- (e) follow usual procedures for dealing with anti-social behaviour; and
- (f) seek assistance of the Police, if threatened.

If the owners have made all reasonable efforts to enforce the smoking ban, it could be used as a defence.

4.50 The delegation noted that there were less than 30 prosecutions of owners since the smoking ban became effective, and those premises which had been prosecuted had not been prosecuted again.

Economic impact of the smoking ban

4.51 Apart from the official statistics quoted in paragraphs 4.35 to 4.39 above, the delegation had obtained some relevant information from the Chief Executive Officer (CEO) of the Restaurants Association of Ireland as well as the Secretary/Treasurer of the Irish Hotels Federation during their presentations to the delegation.

4.52 According to the CEO of the Restaurants Association of Ireland, drink sales went down slightly after the introduction of the smoking ban but food sales went up. He also told the delegation that the smoking ban had a positive instead of a negative effect as more families were dining out and restaurants were now part of social life. He pointed out to the delegation that the downturn in pub sales in recent years was due to a variety of reasons, including –

- (a) changing lifestyles;

- (b) price increases in pubs which led people to buy beer and other bottled drinks from off-licence premises at less than half the prices charged by pubs for consumption at home; and
- (c) the Police was taking drink driving more seriously and with the Police checking on drivers more often, people did not drink and drive.

4.53 The Irish Hotels Federation informed the delegation that there were some effects on the function business along the border with Northern Ireland. Surveys conducted by the Federation indicated that –

- (a) 55% of properties had experienced an average of 16% decrease in drink sales in their hotel bars;
- (b) 17% of properties had experienced an average of 14% decrease in drink sales at functions;
- (c) 16% of properties had experienced function cancellations as a direct result of the ban; and
- (d) 36% of properties had experienced an average of 29% decrease in their tea/coffee trade.

The Federation did not explain the methodology and time frame of the surveys in the paper it provided to the delegation. During his presentation, the Secretary/Treasurer of the Federation also mentioned the trend of young people drinking more wine and beer at home and, as a result, bar sales had gone down while off-licences were doing better business than before.

4.54 According to the Secretary/Treasurer of the Irish Hotels Federation, the views of its members towards the smoking ban are generally positive. The general view is that for the tourism industry, the long-term effect of the smoking ban is positive as it is a worldwide trend. The Federation's reaction to the impact of the smoking ban is that the Government should reduce VAT burden on the industry to counteract the loss of business and improve its competitiveness with other European Union countries with lower VAT rate.

4.55 As regards compliance, the CEO of the Restaurants Association of Ireland told the delegation that there was 100% compliance in restaurants, and smokers were quite happy to go outside to smoke. The Irish Hotels Federation also reported little difficulty in implementing the ban, and reaction from United States visitors was very positive.

4.56 The delegation was not able to discuss the subject with the Vintners' Federation of Ireland (VFI), a national trade association with 6 000 members, as the presentation by the Federation was cancelled on the day of the meeting. However, according to information provided by the OTC in its presentation to the delegation, the VFI issued a press release on 6 July 2004 stating that "higher prices and increased excise duties were being blamed for the decrease in bar sales" and calling on the Government to reduce excise duties, as Ireland's tax regime was crippling the small rural pub.

4.57 A member of the delegation has pointed out that according to the Retail Sales Index for bars, the turnover figures for the bar sector, which has been lagging behind the general growth in the Irish economy since 2001, show that the gap has widened dramatically since the smoking ban. Whereas employment in catering industry continued to rise until 2004, the figures for second quarter of 2004 showed a dramatic shift, despite an ongoing increase in overall employment. The decline showed a loss of 7 000 jobs in the third quarter of 2004 on a seasonally adjusted basis, 5.3% below the final quarter prior to the ban, and 6.0% below the third quarter of 2003. There had been a slight recovery in the fourth quarter of 2004, but still 3 000 fewer people were employed in the sector than prior to the ban, whereas the total jobs market had expanded by 50 000 in the same period. The member considers that the smoking ban is clearly having a major impact on pubs with a consequent sharp fall in employment in the sector.

Observations of the delegation

4.58 Dublin is a city noted for its Georgian buildings and there are few highrise buildings. Most restaurants and pubs are on the ground floor with indoor seating only. Unlike Oslo where the streets are wider and there is more open space, only a small number of the restaurants and pubs in the main entertainment and shopping areas of Dublin, i.e. the Temple Bar and Grafton Street areas, are able to provide outdoor seating areas.

4.59 As most restaurants and pubs are on the ground floor, people can easily go outside to smoke if they want to do so. During busy hours, many people can be seen smoking outside and external stubbing bins are provided outside the entrance. Either the stubbing bins are full or people prefer to throw and extinguish the cigarette stubs on the pavement, the areas outside restaurants and pubs are often littered with cigarette stubs. In some cases, smoking outside has caused a certain amount of noise pollution.

4.60 In the restaurants visited by the delegation, there was flourishing business and full compliance with the smoking ban. Pubs in the Temple Bar and Grafton Street areas also appeared to be doing good business as many people could be seen smoking outside in the evening. The delegation noted

that the business of hospitality premises along the border with Northern Ireland was more affected by the smoking ban. Since smoking is still permitted in such establishments on the other side of the border, smokers living in the border area can easily go to Northern Ireland for drinks and meals.

4.61 Since Ireland is the first country to introduce a nationwide total ban in enclosed public places and workplaces, there is much that can be learnt from its experience. The delegation considers that the country's preparation for the smoking ban legislation provides very useful reference for Hong Kong. Following the Government's announcement of the smoking ban in almost all enclosed workplace in one year's time, opinion polls were conducted at frequent intervals to gauge public support of the ban. The publication "Guidance for the Irish licensed trade" also provides very useful reference for drawing up similar guidelines for the bar and restaurant industry in Hong Kong.

Chapter 5 – Conclusion

5.1 The delegation considers that the visit is very useful in that it has enabled members to better understand the implementation and enforcement of the smoking ban in Thailand, Norway and Ireland. Thailand does not yet have a complete ban as certain places, such as bars and nightclubs, are still exempted. In line with its culture, a step-by-step approach is taken. Both Norway and Ireland were able to introduce a complete ban in nearly all indoor workplaces, including bars, restaurants and pubs, within a very short time. The leader of the delegation is impressed by the strong support for the smoking ban expressed by most of the restaurant and bar owners with whom the delegation met, even though their business may have been affected. He is also impressed by the strong commitment of the enforcement agencies in the two countries and the very high compliance achieved in the various sectors.

5.2 There are a number of common factors for the smooth implementation of the smoking ban in bars, restaurants and other enclosed workplaces in Ireland and Norway. Both countries spent considerable efforts on public education on the harmful effect of environmental tobacco smoke to increase public understanding and acceptance of the proposed smoking ban. Based on a strong health case, they were able to win strong public support before the relevant legislation was introduced.

5.3 Both countries also conducted wide consultation on the subject and in the process, paid particular attention to trade unions and the hospitality industry to enlist their support. Winning the support of trade unions, which have a high level of influence over social and economic policies, was also crucial to the successful implementation of the smoking ban in the two countries. To help overcome the concern of owners of bars and restaurants about possible problems in dealing with customers who smoked in their premises, clear guidelines and information packages were provided by the relevant supervisory/enforcement agencies to the trade. Such guidelines were instrumental in ensuring consistent responses to violations of the smoking ban across the trade.

5.4 The supervising authorities in both countries can impose fines on owners who fail to comply with the smoking ban. The Norwegian Inspection Authority considers fines the most effective means of putting pressure on owners to ensure compliance with the smoking ban in their premises. In Ireland, those premises which had been prosecuted have not been prosecuted again as they have learnt to comply with the law.

5.5 Another common factor is that a hotline was provided in both countries to receive information calls, queries and complaints about non-compliance with the law. All complaints are passed to the appropriate enforcement agency and

given priority in the agency's inspection programmes.

5.6 As regards the economic impact of the smoking ban, the delegation finds it difficult to quantify as numerous other factors, such as changing lifestyles, are involved. On the whole, the business of bars and pubs is more affected for a number of reasons, including the smoking ban. However the downturn in their business seems also to be a continuation of the downward trend which has started before the smoking ban took effect. Most of the data provided by Norway and Ireland refer to the beer sales figures only and not the turnover of pubs, bars or restaurants. Since beer sales include beer bought for drinking at home, it could not reflect the true picture of the impact of the smoking ban on the hospitality and catering industries.

5.7 As regards the words "success factors", "success", "successful" used throughout the report, especially in Chapters 3 and 4 (Norway and Ireland), a member of the delegation questions whether it is still too early to conclude that the introduction of the smoking ban in the two countries is successful. The member is of the view that all the so-called "success" factors are in fact countermeasures mapped out by the Government and/or the enforcement authorities for the introduction of the smoking ban. The member has also pointed out that Thailand, Norway and Ireland introduced and passed the smoking ban while the economies of all the three countries were on the rise with low unemployment rate. They could absorb workers who were laid off after the introduction the smoking ban. This might also mitigate the adverse impact on the catering business due to the smoking ban. The member has observed that the Governments of these countries have always assumed the worse-case scenario and mapped out countermeasures before introducing the ban.

5.8 Although the relevant factors in the countries concerned may not be directly applicable to Hong Kong, their respective experiences in the implementation of the smoking ban serve as very useful reference for Members in considering the Smoking (Public Health) (Amendment) Bill 2005.

Panel on Health Services

Overseas duty visit to Thailand, Norway and Ireland
from 10 to 20 August 2005

Visit programme

Wednesday, 10 August 2005	
12:45 pm	Departure from Hong Kong
2:25 pm	Arrival in Bangkok
Thursday, 11 August 2005	
10:00 am - 12:00 noon	<p>Visit to the Thailand Health Promotion Institute</p> <ul style="list-style-type: none"> - Briefing on the Institute's role in the implementation of the country's smoking ban
2:00 pm - 2:10 pm	<p>Visit to the Department of Disease Control, Ministry of Public Health</p> <ul style="list-style-type: none"> - Welcome address by Dr Thawat Suntrajarn, Director-General of the Department of Disease Control
2:10 pm - 2:30 pm	<ul style="list-style-type: none"> - Briefing on Tobacco Control Policy in Thailand by Dr Narong Sahamerapat, Deputy Director-General of the Department of Disease Control
2:30 pm - 3:00 pm	<ul style="list-style-type: none"> - Briefing on Tobacco Control Programme in Thailand by Dr Narong Sahamerapat, Deputy Director-General of the Department of Disease Control
3:00 pm - 3:45 pm	<ul style="list-style-type: none"> - General discussion

Saturday, 13 August 2005	
1:20 am	Departure for Oslo
9:30 am	Arrival in Oslo
2:00 pm - 3:40 pm	Meeting with Mr Kaare Groenli at Jimmy's Restaurant - Discussion with the restaurant management on anti-smoking measures and their impact
4:00 pm - 5:00 pm	Meeting with the management of the Holmenkollen Park Hotel - Discussion with the management of the hotel on the impact of anti-smoking legislation on the hotel industry
Monday, 15 August 2005	
9:50 am	Meeting with the Directorate for Health and Social Affairs
10:00 am - 10:15 am	Welcome address and introduction by State Secretary, Mr Jan Otto Risebrobakken
10:15 am - 11:15 am	Presentation of Norway's ban on smoking in bars and restaurants by the Directorate for Health and Social Affairs - Background - Legislative preparation - Communications strategy
11:15 am - 11:45 am	Discussion

12:45 pm - 1:45 pm **Presentation of scientific evaluation of the country's smoking ban by Dr Karl Erik Lund, Norwegian Institute for Drug and Alcohol Research**

- Economic consequences for the hospitality industry
- Public support
- Indoor air quality
- Employees smoking habits before and after the ban

1:45 pm - 2:45 pm **Discussion**

Evening **Dinner hosted by Directorate for Health and Social Affairs**

Tuesday, 16 August 2005

12:00 noon – 2:00 pm **Meeting with the Norwegian Labour Inspection Authority**

- Presentation of Inspection Authority's preparation and follow-up of the country's smoking ban

2:00 pm – 4:00 pm **Visit to various restaurants and bars in Oslo**

Wednesday, 17 August 2005

4:25 pm Departure for Dublin

5:30 pm Arrival in Dublin

Thursday, 18 August 2005

10:30 am **Presentation by Ms Marie Killeen of the Office of Tobacco Control**

12:00 noon **Presentation by the Health and Safety Authority**

1:15 pm **Lunch hosted by the Health and Safety Authority**

2:30 pm **Presentation by Ms Louise O'Donnell of IMPACT and Mr John Douglas of MANDATE**

4:30 pm **Meeting with Mr Henry O'Neill, CEO of Restaurants Association of Ireland**

5:45 pm **Presentation by Mrs Norma Cronin, Irish Cancer Society**

Friday, 19 August 2005

10:00 am **Presentation by Ms Ann-Marie Part, Chairman of the Environmental Health Officers' Association**

11:30 am **Presentation by Mr Donal O'Meara, Secretary/Treasurer of the Irish Hotels' Federation**

2:30 pm **Presentation by Professor Luke Clancy, Chairman of ASH Ireland**

Saturday, 20 August 2005

6:20 pm **Departure from Dublin**

Appendix II

List of the Government officials and representatives with whom the delegation met

Bangkok

Dr Hatai Chitanondh, President, Thailand Health Promotion Institute

Dr Thawat Suntrajarn, Director-General, Department of Disease Control

Dr Narong Sahamerapat, Deputy Director-General, Department of Disease Control

Dr Smarn Futrakul, Deputy Director-General, Department of Disease Control

Oslo

Mr Jan Otto Risebrobakken, State Secretary, Directorate for Health and Social Affairs

Mrs Kari Huseby, Director, Department for Tobacco Control

Miss Siri Nasheim, Legal Adviser, Department for Tobacco Control

Mrs Rita Lindbak, International Adviser, Department for Tobacco Control

Miss Line Boystad, Adviser, Ministry of Health and Care Services

Dr Karl Erik Lund, Norwegian Institute for Drug and Alcohol Control

Mr Frode Vatne, Senior Engineer, Norwegian Labour Inspection Authority

Mr Hans Haavind, Legal Adviser, Norwegian Labour Inspection Authority

Ms Liv Osmundsen, Communications Adviser, Norwegian Labour Inspection Authority

Ms Marion Sundquist, Inspector, Norwegian Labour Inspection Authority

Dublin

Ms Marie Killeen, Acting Director of Communications & Education, Office of Tobacco Control

Mr Tom Beegan, Chief Executive Officer, Health and Safety Authority

Mr Michael O'Neill, Legal Adviser, Health and Safety Authority

Mr John Douglas, General Secretary, Union of Retail, Bar and Administrative Workers

Ms Louise O'Connell, Assistant General Secretary, Irish Municipal, Public and Civil Trade Union

Mrs Norma Cronin, Health Promotion Manager-Tobacco Control, Irish Cancer Society

Mr Henry O'Neill, Chief Executive, Restaurants Association of Ireland

Ms Ann-Marie Part, Chairman, Environmental Health Officers' Association

Mr Donal O'Meara, Secretary/Treasurer, Irish Hotels Federation

Professor Luke Clancy, Chairman, ASH Ireland and Director General, Research Institute for a Tobacco Free Society

Reference materials obtained during the visit

Thailand

“The Future of the Thai Health Promotion Foundation and Lessons Learned From Tobacco Control Organizations in the U.S.” written by Professor Prakrit Vathesatogkit and published in August 2005

“Thailand’s Tobacco Control Laws

Tobacco Products Control Act B.E. 2535 (1992)

Non-smokers’ Health Protection Act B.E. 2535 (1992)” published by the Health Systems Research Institute, Thailand

National Mechanism for Consumption Control on Tobacco – presentation materials provided by Dr Futrakul, Deputy Director General, Department of Disease Control, on 11 August 2005.

Norway

“Act No. 14 of 9 March 1973 relating to Prevention of the Harmful Effects of Tobacco” published by the Ministry of Health

“A Healthy Working Environment for All” published by the Norwegian Labour Inspection Authority

“Smokefree bars and restaurants from 1st June 2004” published by the Directorate for Health and Social Affairs

“Norway’s ban on smoking in bars and restaurants – A review of the first year” published by the Directorate for Health and Social Affairs

“Smokefree bars and restaurant in Norway – Some tentative results” provided by Dr K E Lund, Norwegian Institute for Drug and Alcohol Research on 15 August 2005.

“Smoke-free Norway – Preparing for Success” - presentation materials provided by the Directorate for Health and Social Affairs on 15 August 2005

“Regulation on smoking in restaurants and other establishments where food and beverages are served, internal control, etc.”

“Smoking policies in Norway” – paper provided by Mr Frode Vatne, Senior Engineer, Directorate of Labour Inspection

“Information initiatives – Act relating to the prevention of the harmful effects of tobacco” – paper provided by Ms Liv Osmundsen, Communications Adviser, Directorate of Labour Inspection

Speaking note on the Norwegian ban on smoking in restaurants and premises where food or drinks are served, provided by Mr Hans Haavind, Legal Adviser, Directorate of Labour Inspection

Ireland

Public Health (Tobacco) (Amendment) Act 2004

“Towards a Tobacco Free Society, Ireland – a Smoke Free Zone” – Report of the Tobacco Free Policy Review Group published by the Government of Ireland in March 2000

“Towards a Tobacco Free Society” – Summary of the Report of the Tobacco Free Policy Review Group published by the Government of Ireland in 2000

“Report on the Health Effects of Environmental Tobacco Smoke (ETS) in the Workplace” and “Summary of the Report on the Health Effects of Environmental Tobacco Smoke (ETS) in the Workplace” published by the Health and Safety Authority in December 2002

“Smoke-Free Policies – Market Research and Literature Review on Economic Effects on the Hospitality Sector” published by the Office of Tobacco Control in February 2004

“Guidance for the Irish licensed trade – Public Health (Tobacco) Acts 2002 and 2004, Section 47 – Smoking Prohibitions” published by the Office of Tobacco Control in March 2004

“Guidance for Employers and Managers – Public Health (Tobacco) acts 2002 and 2004, Section 47 – Smoking Prohibitions” published by the Office of Tobacco Control in March 2004

“Smoke-free bars – Guidance for Bar Staff” published by the Office of Tobacco Control”

“Smoke-Free Workplace legislation Implementation – Public Health (Tobacco) Acts 2002 and 2004” – Progress Reports published by the Office of Tobacco Control in May 2004, December 2004, March 2005 and June 2005

Other pamphlets/fact sheets provided by the Office of Tobacco Control listed as follows –

- Second-hand Smoke: the facts
- Promoting a tobacco free society
- Second –hand Smoke in the Workplace – the Facts
- Health Effects of Second-hand Smoke
- Economic Impact of Smoke-free Laws
- Public Support for Smoke-free Workplace Laws
- Smoke-free Workplace Laws Around the World

“Going Smoke-free – The Irish Experience” – presentation materials provided by Ms Marie Killeen, Acting Director of Communications & Education, Office of Tobacco Control

“Winning a Smoke-free Workplace – The Irish Experience” presentation materials provided by Ms Louise O’Donnell, National Secretary, IMPACT Trade Union

“Smoke Free At Work – An overview of the legislation in Ireland” – presentation materials provided by Mrs Norma Cronin, Health Promotion Manager, Tobacco Control, Irish Cancer Society

Pamphlets on “The Beauty of Quitting” and “Just be smoke free” and booklet entitled “Manual for Men on Cancer Prevention and Early Detection” published by the Irish Cancer Society

“Tobacco Control – The Irish Experience” – presentation materials provided by Ms Ann Marie Part, Chairman, Environmental Health Officers’ Association

“Smoking Prohibition Regulations 2004 – An Overview August 2005” provided by the Irish Hotels Federation

“Non-smokers live longer and feel healthier.” – Statement by the Medical and Allied Professional Community in Ireland on the occasion of the Adoption and Signing of the Framework Convention on Tobacco Control at the World Health Assembly

Irish Hospitality Industry Alliance’s “Regulatory Impact Assessment on Draft Ministerial Regulations to Ban Smoking in the Workplace, including Hospitality Venues” published by A&L Goodbody consulting in August 2003

“Passive Smoking Exposure and Risk for Irish Staff”- paper written by M Mulcahy and J L Repace

“Review of the quality of studies on the economic effects of smoke-free policies on the hospitality industry” written by M Scollo, A Lai, A Hyland and S Glantz

Report on “Preliminary Results of the Impact of Various Air Exchange Rates on the Levels of Environmental Tobacco Smoke (ETS) Components” prepared by D Kotzias

Model Smoke-Free Workplace Policy for the Irish Licensed Trade

Purpose

Exposure to second-hand smoke/Environmental Tobacco Smoke (ETS) also known as passive smoking is a cause of disease, including lung cancer and heart disease, in third parties. Neither the simple separation of smokers and non-smokers within the same airspace nor the provision of ventilation can eliminate exposure

to ETS and the consequent health effects of such exposure. This policy has been developed to protect all employees, service users, customers and visitors from exposure to ETS, to ensure compliance with legal obligations and to ensure a safe working environment.

Policy

It is the policy of [INSERT NAME OF BUSINESS] that all of its workplaces are smoke-free and that all employees have a right to work in a smoke-free environment.

Smoking is prohibited throughout the entire workplace with no exceptions. This policy applies to all employees, consultants, contractors, customers and visitors.

Implementation

Overall responsibility for policy implementation rests with the occupier, manager or other person for the time being in charge of the workplace. All staff have an obligation to adhere to, and facilitate the implementation of this policy.

The person in charge shall inform all existing employees, consultants and contractors of the policy and their role in the implementation and monitoring of the policy. All new and prospective employees, consultants and contractors shall be given a copy of the policy on recruitment/induction by the person in charge.

Policy Infringements

Infringements by staff will be dealt with under local disciplinary procedures. Infringements by customers, clients etc., will be dealt with in accordance with the procedure set out overleaf.

Staff and customers who contravene legislation prohibiting smoking in the workplace are also liable to criminal prosecution with an associated fine.

Smoking Cessation

Information on how to obtain help quitting smoking is available from [.....] e.g. The National Smokers Quitline (1850 201 203) or the Health Promotion Service of the local health board.

Procedure for staff if a customer smokes in contravention of the law prohibiting smoking in the workplace

- 1. Draw the customer's attention to the "No Smoking" signs and advise that they are committing an offence by smoking on the premises.**
- 2. Advise the customer that it is also an offence for the occupier, manager and any other person for the time being in charge of the premises to permit anyone to smoke in contravention of the law.**
- 3. Advise the customer that the business has a smoke-free policy to ensure a safe working environment for staff and customers, and that under the policy staff are obliged to refuse service to customers who persist in smoking.**
- 4. If the customer continues to smoke you are entitled to refuse service and should immediately request that they leave the premises.**
- 5. If the customer refuses, implement normal procedure for anti-social/illegal behaviour in the premises.**
- 6. Maintain an appropriate record of all such incidents and notify all staff of action taken.**
- 7. In all cases where physical violence is threatened or encountered, notify and/or seek the assistance of the Gardaí.**

Model "No Smoking" Sign

No Smoking

It is illegal to smoke in these premises



Proprietor:

**Please notify
complaints to:**

Maximum Fine €3000 – Public Health (Tobacco) Acts

