

ALL PASSED

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005

COMMITTEE STAGE

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

Clause

Amendment Proposed

2

By deleting the clause and substituting -

"2. Commencement

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

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

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

(b) section 4(h) (only in relation to the new definitions of "indoor" and "school");

(c) sections 5 to 8;

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

(e) sections 20 to 22A;

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

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

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(h) section 38 (only in relation to sections 2 and 8 of Part 2 of the new Schedule 6).

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

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

4 (a) By deleting paragraph (c) and substituting -
“(c) by repealing the definition of “manager” and substituting -

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

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

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

(b) By adding -

"(ea) in the definition of "public transport carrier", by repealing "while the public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel is, subject to Schedule 1, carrying members of the public";".

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

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

(d) In paragraph (h) -

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

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“bathhouse” (浴室) means a bathhouse -

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

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

(ii) by deleting the proposed definition of “domestic premises” and substituting -

“domestic premises” (住宅) means any premises that have been constructed to be used, and are used, as a private dwelling;”;

(iii) by deleting paragraph (b) of the proposed definition of “indoor” and substituting -

“(b) enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door;”;

(iv) by deleting the proposed definitions of “post secondary school” and “public market”;

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- (v) in the proposed definition of "school",
by deleting ", but excludes a post
secondary school";
- (vi) by deleting paragraph (a) of the proposed
definition of "workplace" and
substituting -
"(a) that is occupied for conducting a
business or non-profit making
undertaking; and";
- (vii) in paragraph (c) of the proposed
definition of "懲教機構", in the Chinese
text, by deleting "所。" and substituting
"所；";
- (viii) by adding -
"bathing beach" (泳灘) means any bathing
beach specified in the Fourth
Schedule to the Public Health and
Municipal Services Ordinance (Cap.
132);
"escalator" (自動梯) means an escalator
within the meaning of section 2(1)
of the Lifts and Escalators (Safety)
Ordinance (Cap. 327);
"massage establishment" (按摩院) means a
massage establishment -

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(a) that is within the meaning of section 2 of the Massage Establishments

Ordinance (Cap. 266); and

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

"public pleasure ground" (公眾遊樂場地)

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

"public swimming pool" (公眾泳池) means a

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

"stadium" (體育場) means a stadium within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);".

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

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

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

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smoking areas.

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

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

(a) any area that consists of the termini of 2 or more modes of public transport and is used for effecting and facilitating interchange between them;

or

(b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).";".

(b) By adding -

"(ba) by adding -

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

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(c) In paragraph (c) -

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

6 By deleting the clause and substituting -

**“6. Display of signs where
smoking prohibited**
Section 5 is repealed.”.

8 By deleting the clause and substituting -

“8. Offences under Part II
Section 7(3) and (4) is repealed.”.

11 By deleting the clause and substituting -

“11. Offences under Part III
Section 10 is amended -

- (a) in subsection (1), by repealing
“level 4” and substituting “level 5”;
- (b) in subsection (2) -
 - (i) by repealing “level 4” and
substituting “level 5”;
 - (ii) by repealing “載有” and
substituting “展示”;
- (c) by repealing subsection (3) and
substituting -

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"(3) Any manufacturer of tobacco products or his agent, or any wholesale distributor of tobacco products, who sells, offers for sale or possesses for the purpose of sale any tobacco product to which section 8 or 9 applies commits an offence if any packaging of the product (including any packet, retail container, wrapping, and any label attached to or printed on the packaging or the product) -

- (a) bears any term, descriptor, trademark, figurative or any other sign that is likely to create an erroneous impression that the product is less harmful to health than other tobacco

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products the
packaging of
which does not
bear such term,
descriptor,
trademark,
figurative or
sign; or

(b) promotes the
product by any
means that is
false,
misleading,
deceptive or
likely to create
an erroneous
impression about
its
characteristics,
health effects,
hazards or
emissions.

(4) A person who commits
an offence under subsection (3)
is liable on summary conviction
to a fine at level 5."."

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By deleting the clause and substituting -

"13. Tobacco advertisements in printed publications

Section 11 is amended -

- (a) in subsection (2) (b), by adding "printed," after "document";
- (b) in subsection (3), by repealing everything after "publication" and substituting "that is published for the tobacco trade or as the "in house" magazine of any company engaged in that trade."."

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(a) In paragraph (a), by deleting the proposed section 14(3) (b) and substituting -

"(b) does not form a prominent part of the advertisement or object."

(b) In paragraph (c), by deleting the proposed section 14(4A) (b) and substituting -

"(b) that the name does not form a prominent part of the advertisement or object; and"

(c) In paragraph (d), in the proposed section 14(6) -

(i) in paragraph (a) (ii) (B), by deleting "or";

(ii) by deleting paragraph (b) and substituting -

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"(b) one price board if -

- (i) it lists only the names and prices of the tobacco products offered for sale in the premises;
- (ii) it is of a size not greater than 1 500 square centimetres;
- (iii) each item on the board containing the name and price of one type of tobacco product is of a size not greater than 50 square centimetres; and
- (iv) it bears a health warning in the prescribed form and manner; or

(c) in the case of a shop in which nothing except cigars and cigar accessories are offered for sale, 3 sets of catalogues, each listing only the names and prices of the cigars offered for sale in the shop."

New

By adding -

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"16A. Offences under Part IV

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

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

"15E. Interpretation of Part IVB

In this Part -

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

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

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

"15G. General powers and duties of inspectors

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

- (a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been or is being committed;

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- (b) at any reasonable time enter and inspect a no smoking area in a public place for the purpose of ascertaining whether the relevant provisions are complied with;
- (c) seize any thing that appears to the inspector to be evidence of any relevant offence;
- (d) require any person to give his name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed a relevant offence;
- (e) take photographs or make sound or video recording for the purpose of obtaining evidence in connection with any relevant offence;
- (f) require any person to produce for inspection documents or records under the control of the person for the purpose of enabling the inspector to ascertain whether the relevant provisions are complied with;
- (g) make copies of all or any part of any such documents or records;

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(h) require any person to provide the inspector with such assistance or information as is reasonably necessary to enable the inspector to exercise any power or perform any duty conferred or imposed by this Ordinance.

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

- (a) any domestic premises; or
- (b) any correctional facility without the approval of the Commissioner of Correctional Services.

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

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

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

15GA. Disposal of property seized by inspectors

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

19 By deleting the clause and substituting -

"19. Regulations and Orders

Section 18 is amended -

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

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

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- (a) the form (including specifications) of -
 - (i) any notice that smoking is prohibited;
 - (ii) any health warning; and
 - (iii) any indication of tar and nicotine yields;
- (b) the manner in which any of the matters referred to in paragraph (a) is to be displayed.”;

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

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By deleting the clause and substituting -

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"20. Schedule 2 substituted

Schedule 2 is repealed and the following substituted -

"SCHEDULE 2 [s. 3(1)
& (1AA)]

DESIGNATED NO SMOKING AREAS
AND EXEMPT AREAS

PART 1

DESIGNATED NO SMOKING AREAS

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

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9. Any place of detention.
10. Any place of refuge.
11. Any reformatory school.
12. Any hospital.
13. Any maternity home.
14. Any public pleasure ground other than a bathing beach.
15. The following areas within any bathing beach -
 - (a) any part of the waters set aside for the sole use of swimmers under section 10 of the Bathing Beaches Regulation (Cap. 132 sub. leg. E) (which includes any beach raft and any other thing on the surface of or above those waters);
 - (b) the shore covered with sand or stones, together with any structure, showering facilities or natural feature on such shore; and

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- (c) any area specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap. 132) to be used as a barbecue area, camp site or children's play area.

16. The following areas within any public swimming pool -

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

17. The following areas within any stadium -

- (a) any pitch;
- (b) any running track;
- (c) any sidewalk immediately adjacent to the pitch or running track; and
- (d) any spectator stand.

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

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

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

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PART 2

EXEMPT AREAS

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

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

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

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

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

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

8. An area that is -
 - (a) situated within a public pleasure ground other than a bathing beach; and
 - (b) specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap. 132) to be used as a smoking area.

9. A room designated for cigar tasting in a shop if all the following requirements are complied with -
 - (a) the shop is engaged in the retail sale of cigars;
 - (b) nothing except cigars and cigar accessories are offered for sale in the shop;
 - (c) the room is not used for smoking except for the purpose of tasting the cigars, or samples of the cigars, that are sold or offered for sale in the shop;

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- (d) the room is independently ventilated and completely partitioned off from the remainder of the shop; and
- (e) no natural person is required to enter the room while it is being occupied for cigar tasting (whether or not he could have been required to do so by contract or otherwise).

10. A room designated for tobacco tasting in the manufacturing or business premises of a business engaged in the tobacco trade if all the following requirements are complied with -

- (a) the business is not engaged in the retail sale of tobacco products;
- (b) the tobacco tasting is carried out for the purpose of conducting research and development or quality control of tobacco products in the normal course of the business;
- (c) the room is only used for carrying out the tobacco tasting;

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- (d) the room is independently ventilated and completely partitioned off from the remainder of the premises; and
- (e) no natural person, other than one who carries out the tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting (whether or not he could have been required to do so by contract or otherwise).

PART 3

INTERPRETATION

In this Schedule -

"communal quarters" (共用宿舍) means any

premises that are the living accommodation provided by an employer to 2 or more employees, or to those employees and their families, whether or not any monetary consideration is received by the employer for providing the accommodation, but does not include -

- (a) any room occupied exclusively by one employee, or by that employee and his family, within any such accommodation; and
- (b) any such accommodation that is, or forms part of, the private dwelling of the employer or any other person;

"Type 1 private quarters" (第一類私人宿舍) means any premises that comply with the following requirements -

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

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parts (if any) shared by such
accommodation;

"Type 2 private quarters" (第二類私人宿舍) means
any premises that comply with the
following requirements -

- (a) the premises are the living
accommodation provided by an
employer to one employee, or to
that employee and his family,
whether or not any monetary
consideration is received by
the employer for providing the
accommodation;
- (b) the accommodation is occupied
exclusively by that employee,
or by him and his family;
- (c) the accommodation is
permanently and completely
partitioned off from the
remainder of any area described
in Part 1 within which the
accommodation is situated; and

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

New By adding immediately after clause 22 -

"22A. Schedule 5 added

The following is added -

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

EXEMPTION FROM SECTION 3(2) OF THIS ORDINANCE

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

1. **Interpretation of Schedule 5**

(1) In this Schedule -

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

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

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

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

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

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

(a) situated in -

(i) a school other than one that provides any nursery, kindergarten or primary education within the meaning of section 3(1) of the Education Ordinance (Cap. 279); or

(ii) a specified educational establishment; and

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

2. **Exemption for live performance**

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

- (a) he is performing in a live performance, and his smoking act forms part of the performance;
- (b) the no smoking area in which the live performance takes place is not a school or specified educational establishment except a designated performance venue;
- (c) the manager of the no smoking area has given his prior permission for the live performance with the smoking act to take place in the no smoking area, and in the case

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of a designated performance venue in a secondary school within the meaning of section 3(1) of the Education Ordinance (Cap. 279), that prior permission has been given in writing;

- (d) the live performance takes place only within the time and at the location permitted by the manager; and
- (e) the smoking act complies with all the requirements specified in relation to such an act under section 4.

3. **Exemption for recording for film or television programme**

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

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

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- (b) the performance is being recorded for the production of a film or television programme (whether live or otherwise);
- (c) the film or television programme is not, and does not form part of, a tobacco advertisement;
- (d) the manager of the no smoking area in which the performance takes place has given his prior permission for the performance with the smoking act to take place in the no smoking area, and in the case of a school that provides any nursery, kindergarten, primary or secondary education within the meaning of section 3(1) of the Education Ordinance (Cap. 279), that prior permission has been given in writing;
- (e) the performance takes place only within the time and at the location permitted by the manager; and

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- (f) the smoking act complies with all the requirements specified in relation to such an act under section 4.

4. **Specified requirements for smoking act**

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

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

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(d) the act does not illustrate any quality of any tobacco product except for the purpose of publicizing the harm of smoking."."

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

New By adding immediately before clause 32 -

"31A. No smoking signs

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

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

33 In the proposed paragraph 4A(4) -

(a) in sub-subparagraph (a), by adding "and" at the end;

(b) in sub-subparagraph (b), by deleting "; and" and substituting a full stop;

(c) by deleting sub-subparagraph (c).

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New By adding -

"35A. Paragraph added

The following is added -

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

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

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

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

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

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

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

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

(b) By adding -

"(ea) by adding -

"PART IIIA

FORM OF HEALTH WARNING ON PRICE BOARD
OF TOBACCO PRODUCTS



Specifications:

1. The form is rectangular in shape and surrounded by a black line as demarcation.
2. The background colour is white.
3. The characters "香港特區政府忠告市民" are printed in 30 kyu (級).
4. The characters "吸煙足以致命" are printed in 90 kyu (級).

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5. All characters referred to in paragraphs 3 and 4 are printed in black and in "華康中黑體" typeface.
6. The letters "HKSAR GOVERNMENT WARNING" are printed in 30 points.
7. The letters "SMOKING KILLS" are printed in 90 points.
8. All letters referred to in paragraphs 6 and 7 are printed in black and in Univers Bold typeface, all capitals.
9. If the price board is smaller than 1 500 square centimetres, the characters and letters of the health warning may be proportionally reduced in kyu (級) and points by reference to the specifications in paragraphs 3, 4, 6 and 7."

Part 4 By deleting the Part and substituting -

"PART 4

TRANSITIONAL PROVISIONS

37. Section added

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

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

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

38. Schedule 6 added

The following is added -

"SCHEDULE 6 [s. 19]

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

PART 1

REQUIREMENTS RELATING TO TOBACCO
PRODUCT PACKAGING

1. Interpretation of Part 1

In this Part, "appointed day" (指定日期) means the day on which the Smoking (Public Health) (Amendment) Ordinance 2006 (of 2006) is published in the Gazette.

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

(1) During the 12 months after the appointed day, compliance with the relevant provisions of this Ordinance as in force immediately before the appointed day shall, for the purposes of sections 8 and 9 of this Ordinance, be deemed to be compliance with the relevant provisions of this Ordinance.

(2) In this section, "relevant provisions" (有關規定) means the provisions relating to health warnings and indication of tar and nicotine yields.

3. Offence relating to tobacco product packaging

No prosecution shall be brought under section 10(3) of this Ordinance in respect of an act done during the 12 months after the appointed day if that act would not have constituted an offence under that section as in force immediately before the appointed day.

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PART 2

DEFERMENT OF SMOKING BAN IN
LISTED ESTABLISHMENTS

1. **Interpretation and application
of Part 2**

(1) In this Part -

"Appeal Board" (上訴委員會) means the Appeal
Board established by section 12;

"certificate of compliance" (合格證明書) means a
certificate of compliance within the
meaning of section 2 of the Clubs (Safety
of Premises) Ordinance (Cap. 376);

"club-house" (會址) means a club-house within
the meaning of section 2 of the Clubs
(Safety of Premises) Ordinance (Cap.
376);

"designated mahjong room" (指定麻將房) has the
meaning assigned to it by section 5(2);

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

"displayed name" (展示名稱), in relation to an
establishment, means any name, style or
description of the establishment that
appears -

(a) outside the establishment; or

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

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

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

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

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

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

"person in charge" (負責人) -

(a) in relation to a qualified bar
that complies with section
4(1)(c)(i), means the licensee

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- of the liquor licence that is in force in respect of the bar;
- (b) in relation to a qualified bar that complies with section 4(2)(b), means the person who has made an application described in that section;
- (c) in relation to a qualified club, means the person in whose name the certificate of compliance for the club-house is issued;
- (d) in relation to a qualified nightclub, means the licensee of the liquor licence that is in force in respect of the nightclub;
- (e) in relation to a bathhouse, means the person to whom a licence in respect of the bathhouse is granted under the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I);
- (f) in relation to a massage establishment, means the person to whom a licence to operate

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the establishment is issued
under the Massage
Establishments Ordinance (Cap.
266); and

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

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

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

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

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

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

(2) This Part does not apply to any
premises that are under the management and
control of the Government.

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2. **Smoking ban deferred in listed establishments**

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

(a) the area -

(i) is a designated mahjong room in a listed establishment that is a qualified club; or

(ii) is in any other listed establishment; and

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

3. **Qualified establishment**

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

(a) the establishment is -

(i) a qualified bar;

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

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

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

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

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- (d) such signs are maintained in legible condition and good order.

4. Qualified bar

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

- (a) the establishment is a bar as defined in section 2 of this Ordinance;
- (b) the establishment is permanently and completely partitioned off from any other establishment;
- (c) either -
 - (i) a liquor licence specifying the bar and no other premises as the licensed premises is in force in respect of the establishment; or

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- (ii) all the requirements specified in relation to the establishment in subsection (2) are complied with;
- (d) no displayed name of the establishment contains "酒家", "酒樓", "餐廳", "卡拉OK", "網吧", "restaurant", "café", "karaoke", "internet" or similar expressions; and
- (e) the establishment is not engaged primarily in the sale or supply of meals.

(2) For the purposes of subsection (1)(c)(ii), the following are the requirements specified in relation to the establishment -

- (a) a liquor licence specifying the bar as well as other premises as the licensed premises is in force in respect of the establishment;
- (b) an application has been made under Part III of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg.

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B) seeking a liquor licence that specifies the bar and no other premises as the licensed premises; and

(c) either -

(i) the application has not been withdrawn or refused yet; or

(ii) if the application has been refused, the decision to refuse the application is under appeal and has not been confirmed yet.

5. **Qualified club and designated mahjong room**

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

(a) the establishment is a club-house in respect of which a certificate of compliance is in force;

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- (b) the club-house is open 24 hours on any day on which it is open to members and their accompanied guests; and
- (c) the establishment consists of at least 10 designated mahjong rooms.

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

- (a) the room is furnished and used for the purpose of playing mahjong; and
- (b) the room is permanently and completely partitioned off from the remainder of the establishment.

6. Qualified nightclub

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

- (a) a liquor licence is in force in respect of the establishment;
- (b) either -

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- (i) each displayed name of the establishment in Chinese contains the expression “夜總會” in plain and readily legible characters; or
- (ii) each displayed name of the establishment in a language other than Chinese contains the expression “night club” or “nightclub” in plain and readily legible letters;
- (c) no displayed name of the establishment contains “酒家”, “酒樓”, “餐廳”, “酒吧”, “網吧”, “restaurant”, “café”, “bar”, “internet” or similar expressions; and
- (d) the establishment is not open for business between 6 a.m. and 12 noon on any day.

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7. List of qualified establishments

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

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

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

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

(5) The Director shall make the list of qualified establishments available for inspection by the public, free of charge, during the ordinary opening hours of his office.

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8. **Listed establishment to display prescribed sign**

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

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

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

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

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

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

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

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

(c) it reads -

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

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maintained under the
Smoking (Public
Health) Ordinance.

The smoking ban will
apply to this room
with effect from 1
July 2009.”; and

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

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effect from 1 July
2009."; and

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

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

(4) A person who fails to comply with subsection (1) or (3) commits an offence and is liable on summary conviction to a fine at level 5 and, in the case of a continuing offence, to a further penalty of \$1,500 for each day during which the offence continues.

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

(1) Where there is any change in any information given in the notification submitted under section 7 in respect of a listed establishment, and as a result the establishment is no longer a qualified establishment, the person in charge of the establishment shall, within 10 days after the

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change, inform the Director of the change by submitting to the Director a notification in a form specified by the Director.

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

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

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

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

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

10. Defence to offences under Part 2

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

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

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**11. Appeal to Appeal Board
against Director's
decision**

(1) A person aggrieved by a decision of the Director under section 9(4) may, within 14 days after the decision, appeal to the Appeal Board by giving a notice of appeal to the Secretary stating the substance of the matter and reasons for the appeal.

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

12. Constitution of Appeal Board

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

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

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

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

(5) If a matter involved in an appeal may give rise to a conflict of interest between a person's duties as a member on the Appeal Board and his pecuniary or other personal advantage, the Secretary shall not appoint that person to serve as a member on the Appeal Board for hearing and determining that appeal.

13. Constitution of Appeal Board Panel

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

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

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

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

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

(6) Upon his appointment, a member of the Panel shall submit to the Secretary, in a form specified by the Secretary, a statement setting out the particulars of any matter that may give rise to a conflict of interest between his duties as a member of the Panel and his pecuniary or other personal advantage.

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

14. Proceedings before Appeal Board

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

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

- (a) a date that is within 14 working days after the receipt of the notice of appeal; or

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(b) a later date if requested by
the appellant.

(3) The hearing of the appeal shall be conducted in public unless the Chairman of his own motion, or at the request of the appellant or the Director, orders that all or any persons should be excluded from the whole or any part of the hearing.

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

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

15. Powers of Appeal Board

(1) The Appeal Board may -

(a) order a person to attend before
the Board and give evidence;
and

(b) order a person to produce
documents.

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

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

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

16. **Expiry of Part 2**

This Part shall expire on 1 July 2009."."

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