

SMOKING (PUBLIC HEALTH) (AMENDMENT) ORDINANCE 2006

CONTENTS

Section	Page
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PART 1

PRELIMINARY

1. Short title	A1347
2. Commencement	A1347

PART 2

AMENDMENTS TO SMOKING (PUBLIC HEALTH) ORDINANCE

3. Long title amended	A1349
4. Interpretation	A1349
5. Prohibition on smoking in certain designated areas	A1359
6. Display of signs where smoking prohibited	A1361
7. Display of signs outside restaurants	A1361
8. Offences under Part II	A1361
9. Sales of cigarettes and tobacco products	A1361
10. Sale of cigar, pipe tobacco or cigarette tobacco	A1361
11. Offences under Part III	A1363
12. Seizure and forfeiture	A1363
13. Tobacco advertisements in printed publications	A1363
14. No display of tobacco advertisement	A1365
15. Meaning of tobacco advertisement	A1365
16. Removal and disposal of tobacco advertisement	A1367
17. Offences under Part IV	A1369
18. Prohibition on selling or giving of tobacco products, etc.	A1369
19. Part IVB added	

Section

Page

PART IVB

PROVISIONS RELATING TO INSPECTORS

15E. Interpretation of Part IVB	A1369
15F. Appointment of inspectors	A1369
15G. General powers and duties of inspectors	A1369
15H. Disposal of property seized by inspectors	A1373
15I. Inspectors not personally liable for certain acts and omissions	A1373
20. Regulations and Orders	A1373
21. Schedule 2 substituted	
Schedule 2 Designated no smoking areas and exempt areas.....	A1375
22. Schedule 3 repealed	A1383
23. Premises specified under section 3(1B) that may be designated as no smoking areas	A1383
24. Schedule 5 added	
Schedule 5 Exemption from section 3(2) of this Ordinance	A1385

PART 3

AMENDMENTS TO SUBSIDIARY LEGISLATION MADE
UNDER SMOKING (PUBLIC HEALTH) ORDINANCE

Division 1—Amendments to Smoking (Public Health) Regulations

25. Tar groups	A1389
26. Determination by the Government Chemist	A1389
27. Determination by the proprietor of the brand	A1389
28. Minor variations between past and present determinations ...	A1391
29. Notification of retail sales	A1391

Section	Page
30. Tobacco advertisements in printed publications	A1391
31. Additional provisions applying to tar group designations.....	A1391
32. Exemption of certain advertisements from Part IV of the Ordinance	A1391
33. Health warnings on tobacco advertisements in printed publications	A1391

Division 2—Amendments to Smoking (Public Health) (Notices) Order

34. No smoking signs	A1393
35. Paragraph substituted	
3. Health warning and indication of tar and nicotine yields on packet or retail container of cigarettes ...	A1393
36. Paragraphs substituted	
4A. Health warning on retail container of cigar, pipe tobacco or cigarette tobacco (other than retail container containing one cigar)	A1395
4AA. Health warning on retail container containing one cigar	A1397
37. Restaurant signs	A1399
38. Tobacco advertisements on display	A1399
39. Paragraph added	
5A. Health warning on price board of tobacco products	A1399
40. Schedule amended	A1399

PART 4

TRANSITIONAL PROVISIONS

41. Section added	
19. Transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006	A1439
42. Schedule 6 added	

Section

Page

Schedule 6	Transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006	A1439
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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 21 OF 2006

L.S.

Donald TSANG

Chief Executive

26 October 2006

An Ordinance to amend the Smoking (Public Health) Ordinance and its subsidiary legislation to expand the scope of prohibition on smoking; to amend the form of health warnings to be borne on packets or retail containers of tobacco products; to amend the law relating to tobacco advertisements and the sale of tobacco products; to provide for the appointment, powers and duties of inspectors for the enforcement of certain provisions of the Ordinance; and to provide for consequential, transitional and related matters.

[27 October 2006]

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 2006.

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), (f) and (g);
 - (b) section 4(i) (only in relation to the new definitions of “indoor” and “school”);
 - (c) sections 5 to 8;
 - (d) sections 13, 15, 18 and 20(b);
 - (e) sections 21 to 24;
 - (f) sections 34, 37 and 39;
 - (g) section 40(b), (h) and (i); and
 - (h) section 42 (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), 38 and 40(c) and (g) shall come into operation on 1 November 2009.

PART 2

AMENDMENTS TO SMOKING (PUBLIC HEALTH) ORDINANCE

3. Long title amended

The long title to the Smoking (Public Health) Ordinance (Cap. 371) is amended by repealing everything after “areas” and substituting “; to provide for the display of a health warning and other information on packets or retail containers of tobacco products; to restrict tobacco advertising; to restrict the sale or giving of tobacco products; to provide for the appointment, powers and duties of inspectors for the enforcement of certain provisions of this Ordinance; and to provide for incidental and related matters.”.

4. Interpretation

Section 2 is amended—

- (a) by repealing the definition of “agency”;
- (b) by repealing the definition of “amusement game centre” and substituting—

““amusement game centre” (遊戲機中心) means—

- (a) an amusement game centre within the meaning of section 2(1) of the Amusement Game Centres Ordinance (Cap. 435);

- (b) any place that is the subject of an order under section 3(1)(a) of that Ordinance; or
 - (c) any area that is specified in an order under section 3(1)(b) of that Ordinance;”;
- (c) by repealing the definition of “manager” and substituting—
 - ““manager” (管理人), in relation to a no smoking area or a public transport carrier, means—
 - (a) any person who is responsible for the management or is in charge or control of the no smoking area or public transport carrier, and includes an assistant manager and any person holding an appointment analogous to that of a manager or assistant manager; or
 - (b) in the case where there is no such person in relation to any premises, the owner of the premises;”;
- (d) in the definition of “no smoking area”, by repealing “section 3(1), (1A) or (1C) or the premises or part thereof designated under section 3(1B)” and substituting “section 3”;
- (e) by repealing the definition of “principal officer”;
- (f) 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”;
- (g) by repealing the definition of “restaurant” and substituting—
 - ““restaurant premises” (食肆處所) means any premises on or from which there is carried on—
 - (a) a factory canteen or restaurant within the meaning of section 31(2) of the Food Business Regulation (Cap. 132 sub. leg. X); or
 - (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));”;
- (h) by repealing the definition of “retail container” and substituting—
 - ““retail container” (零售盛器)—

- (a) in relation to any cigarette, means a container suitable for the retail marketing of cigarette packets; or
 - (b) in relation to any cigar, pipe tobacco or cigarette tobacco, means a container suitable for the retail marketing of cigar, pipe tobacco or cigarette tobacco;”;
- (i) by adding—
 - ““approved institution” (核准院舍) means an approved institution within the meaning of section 2(1) of the Probation of Offenders Ordinance (Cap. 298);
 - “bar” (酒吧) means any place that is exclusively or mainly used for the sale and consumption of intoxicating liquors as defined in section 53(1) of the Dutiable Commodities Ordinance (Cap. 109);
 - “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;
 - “bathing beach” (泳灘) means any bathing beach specified in the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);
 - “child care centre” (幼兒中心) means a child care centre within the meaning of section 2(1) of the Child Care Services Ordinance (Cap. 243);
 - “correctional facility” (懲教機構) means—
 - (a) any of the sites and buildings specified in the Schedule to the Prisons Order (Cap. 234 sub. leg. B);
 - (b) any of the buildings specified in the Schedule to the Prisons (Hostel) Order (Cap. 234 sub. leg. C); or
 - (c) an addiction treatment centre within the meaning of section 2 of the Drug Addiction Treatment Centres Ordinance (Cap. 244);
 - “domestic premises” (住宅) means any premises that have been constructed to be used, and are used, as a private dwelling;

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

“hospital” (醫院) means any establishment for the care of the sick, injured or infirm or those who require medical treatment, including a nursing home—

(a) whether or not it is a hospital to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies; or

(b) whether or not it is a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113);

“indoor” (室內) means—

(a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and

(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;

“inspector” (督察) means an inspector appointed under section 15F;

“karaoke establishment” (卡拉 OK 場所) means—

(a) a karaoke establishment within the meaning of section 2(1) of the Karaoke Establishments Ordinance (Cap. 573); or

(b) a karaoke establishment referred to in section 3(1) of that Ordinance;

“mahjong-tin kau premises” (麻將天九耍樂處所) means any premises that are licensed under section 22 of the Gambling Ordinance (Cap. 148) for—

(a) the playing therein of games in which mahjong tiles are used; or

(b) the playing therein of games in which tin kau tiles are used;

“massage establishment” (按摩院) means a massage establishment—

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

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

“maternity home” (留產院) means any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth—

(a) whether or not it is a maternity home to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies; or

(b) whether or not it is a maternity home that is run as part of a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113), or managed or controlled by the Hospital Authority established under that Ordinance;

“place of detention” (拘留地方) means—

(a) a place of detention specified in Schedule 2 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B); or

(b) a place of detention within the meaning of section 2(1) of the Juvenile Offenders Ordinance (Cap. 226);

“place of refuge” (收容所) means a place of refuge within the meaning of section 2 of the Protection of Children and Juveniles Ordinance (Cap. 213);

“public place” (公眾地方) means—

(a) any place to which for the time being the public are entitled or permitted to have access, whether on payment or otherwise; or

(b) a common part of any premises notwithstanding that the public are not entitled or permitted to have access to that common part or those premises;

“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);

- “reformatory school” (感化院) means a reformatory school within the meaning of section 2 of the Reformatory Schools Ordinance (Cap. 225);
- “residential care home” (安老院) means a residential care home within the meaning of section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);
- “school” (學校) means a school within the meaning of section 3 of the Education Ordinance (Cap. 279);
- “specified educational establishment” (指明教育機構) means any establishment specified in section 2 of the Education Ordinance (Cap. 279);
- “stadium” (體育場) means a stadium within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);
- “treatment centre” (治療中心) means a treatment centre within the meaning of section 2 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566);
- “workplace” (工作地方) means a place—
- (a) that is occupied for conducting a business or non-profit making undertaking; and
 - (b) in which natural persons work in the course of any self-employment, employment or engagement (whether for income or not),
- including any part of the place that is set aside for use by those persons during any interval for taking a meal or rest.”.

5. Prohibition on smoking in certain designated areas

Section 3 is amended—

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

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

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

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

- (a) any area that consists of the termini of 2 or more modes of public transport and is used for effecting and facilitating interchange between them; or
 - (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).”;
- (b) by repealing subsections (1A), (1B) and (1C);
- (c) 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.”;
- (d) by adding—
 - “(5) For the avoidance of doubt, it is declared that subsections (1) and (1AB) apply to any premises that are owned or occupied by, or under the management and control of, the Government.”.

6. Display of signs where smoking prohibited

Section 5 is repealed.

7. Display of signs outside restaurants

Section 6A is repealed.

8. Offences under Part II

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

9. Sales of cigarettes and tobacco products

Section 8(1)(b) is amended by repealing “格式及方式載有” and substituting “式樣及方式展示”.

10. Sale of cigar, pipe tobacco or cigarette tobacco

Section 9 is amended by repealing “the container thereof” and substituting “it is in a retail container that”.

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—

“(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 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.”.

12. Seizure and forfeiture

Section 10A(1)(a)(i) is amended by repealing “格式和方式載有” and substituting “式樣及方式展示”.

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.”.

14. No display of tobacco advertisement

Section 12 is amended—

- (a) by repealing subsection (2);
- (b) by repealing subsection (3);
- (c) in subsection (5), by repealing “載有” and substituting “展示”.

15. Meaning of tobacco advertisement

Section 14 is amended—

- (a) in subsection (3), by repealing everything after “if” and substituting—
 - “the name, trade name, trade mark, brand name or pictorial device or part thereof mentioned in that subsection—
 - (a) is included exclusively for—
 - (i) a non-tobacco product or service; or
 - (ii) job recruitment purposes; and
 - (b) does not form a prominent part of the advertisement or object.”;
- (b) in subsection (4)—
 - (i) by repealing “Subsection” and substituting “If the conditions set out in subsection (4A) are satisfied, subsection”;
 - (ii) by repealing everything after “being tobacco” and substituting a full stop;
- (c) by adding—
 - “(4A) The conditions mentioned in subsection (4) are—
 - (a) that the name mentioned in that subsection is included as the sponsor of an event or for congratulating another person or thing on an achievement of, or event relating to, such person or thing;
 - (b) that the name does not form a prominent part of the advertisement or object; and
 - (c) that the advertisement or object does not mention the words “cigarette”, “cigarettes”, “smoking”, “tobacco”, “cigar”, “cigars”, “pipe” or “pipes” or “香煙”, “吸煙”, “煙草”, “雪茄” or “煙斗”.”;

(d) by repealing subsection (6) and substituting—

“(6) The display of the following at any premises where tobacco products are offered for sale is not a tobacco advertisement—

(a) one price marker for one type of tobacco product offered for sale in the premises that—

(i) contains only the name and price of that type of tobacco product; and

(ii) is of a size—

(A) not greater than the size of the price marker of any of the non-tobacco products offered for sale in the premises; and

(B) not greater than 50 square centimetres;

(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.”.

16. Removal and disposal of tobacco advertisement

Section 14A is amended—

(a) in subsection (1), by repealing “Any public officer authorized in writing by the Secretary” and substituting “An inspector”;

(b) in subsection (2), by repealing “any public officer authorized in writing by the Secretary” and substituting “an inspector”.

17. Offences under Part IV

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

18. Prohibition on selling or giving of tobacco products, etc.

Section 15A(3) is amended—

(a) in paragraph (f), by repealing “or” at the end;

(b) by adding—

“(fa) sell, offer for sale or possess for the purposes of sale a tobacco product and a non-tobacco product as a single item; or”.

19. Part IVB added

The following is added immediately after section 15D—

“PART IVB

PROVISIONS RELATING TO INSPECTORS

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.

15F. Appointment of inspectors

The Secretary may appoint in writing any public officer to be an inspector to exercise any of the powers and perform any of the duties conferred or imposed on an inspector by this Ordinance.

15G. General powers and duties of inspectors

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

- (a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been or is being committed;
 - (b) at any reasonable time enter and inspect a no smoking area in a public place for the purpose of ascertaining whether the relevant provisions are complied with;
 - (c) seize any thing that appears to the inspector to be evidence of any relevant offence;
 - (d) require any person to give his name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed a relevant offence;
 - (e) take photographs or make sound or video recording for the purpose of obtaining evidence in connection with any relevant offence;
 - (f) require any person to produce for inspection documents or records under the control of the person for the purpose of enabling the inspector to ascertain whether the relevant provisions are complied with;
 - (g) make copies of all or any part of any such documents or records;
 - (h) require any person to provide the inspector with such assistance or information as is reasonably necessary to enable the inspector to exercise any power or perform any duty conferred or imposed by this Ordinance.
- (2) An inspector shall not enter under subsection (1)(a)—
- (a) any domestic premises; or
 - (b) any correctional facility without the approval of the Commissioner of Correctional Services.
- (3) An inspector shall not enter under subsection (1)(b) any public place that is a common part of any premises to which the public are not entitled or permitted to have access.
- (4) A person who wilfully obstructs an inspector who is in the exercise of a power or the performance of a duty conferred or imposed by this Ordinance commits an offence and is liable on summary conviction to a fine at level 3.
- (5) A person who fails to give his name and address or to produce proof of identity when required to do so under subsection (1)(d), or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.

15H. 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.

15I. Inspectors not personally liable for certain acts and omissions

(1) An inspector is not personally liable for any act done or omitted to be done by the inspector while exercising a power or performing a duty conferred or imposed by this Ordinance if the inspector did the act or omitted to do the act in the honest belief that the act or omission was required or authorized by or under this Ordinance.

(2) Subsection (1) does not affect any liability that the Government may have because an inspector has done an act or omitted to do an act to which that subsection applies.”.

20. Regulations and Orders

Section 18 is amended—

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

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

(a) the form (including specifications) of—

(i) any notice that smoking is prohibited;

(ii) any health warning; 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).

21. 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.
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— <ul style="list-style-type: none">(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(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— <ul style="list-style-type: none">(a) any swimming pool;(b) any sidewalk immediately adjacent to the swimming pool;

Item	Type of area
	(c) any diving board or other apparatus or facility adjoining the swimming pool; and (d) any spectator stand.
17.	The following areas within any stadium— (a) any pitch; (b) any running track; (c) any sidewalk immediately adjacent to the pitch or running track; and (d) any spectator stand.
18.	The Hong Kong Wetland Park designated under section 24(1) of the Country Parks Ordinance (Cap. 208).
19.	An indoor area in— (a) any shop, department store or shopping mall; (b) any market (whether publicly or privately operated or managed); (c) any supermarket; (d) any bank; (e) any restaurant premises; (f) any bar; (g) any karaoke establishment; (h) any mahjong-tin kau premises; (i) any bathhouse; (j) any massage establishment; (k) any residential care home; (l) any treatment centre; or (m) any communal quarters (as defined in Part 3).
20.	An indoor area in a workplace or public place to the extent that it is not an area described in any other item in this Part.

PART 2

EXEMPT AREAS

Item	Type of area
1.	An area described in item 20 of Part 1 that is situated in domestic premises.
2.	Type 1 private quarters (as defined in Part 3).

Item	Type of area
3.	Type 2 private quarters (as defined in Part 3) that are not situated within any of the following— <ul style="list-style-type: none">(a) a child care centre;(b) a school;(c) a specified educational establishment;(d) an approved institution;(e) a place of detention;(f) a place of refuge;(g) a reformatory school;(h) a hospital;(i) a maternity home.
4.	A bedspace apartment in respect of which a licence or certificate of exemption issued under the Bedspace Apartments Ordinance (Cap. 447) is in force.
5.	A room or suite of rooms in a hotel or guesthouse if— <ul style="list-style-type: none">(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 with orders under rule 25 of the Prison Rules (Cap. 234 sub. leg. A).
8.	An area that is— <ul style="list-style-type: none">(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— <ul style="list-style-type: none">(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;

- | Item | Type of area |
|------|---|
| | <ul style="list-style-type: none">(c) the room is not used for smoking except for the purpose of tasting the cigars, or samples of the cigars, that are sold or offered for sale in the shop;(d) the room is independently ventilated and completely partitioned off from the remainder of the shop; and(e) no natural person is required to enter the room while it is being occupied for cigar tasting (whether or not he could have been required to do so by contract or otherwise). |
| 10. | <p>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—</p> <ul style="list-style-type: none">(a) the business is not engaged in the retail sale of tobacco products;(b) the tobacco tasting is carried out for the purpose of conducting research and development or quality control of tobacco products in the normal course of the business;(c) the room is only used for carrying out the tobacco tasting;(d) the room is independently ventilated and completely partitioned off from the remainder of the premises; and(e) no natural person, other than one who carries out the tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting (whether or not he could have been required to do so by contract or otherwise). |

PART 3

INTERPRETATION

- In this Schedule—
- “communal quarters” (共用宿舍) means any premises that are the living accommodation provided by an employer to 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 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
- (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).”.

22. Schedule 3 repealed

Schedule 3 is repealed.

23. Premises specified under section 3(1B) that may be designated as no smoking areas

Schedule 4 is repealed.

24. Schedule 5 added

The following is added—

“SCHEDULE 5

[s. 3(2A)]

EXEMPTION FROM SECTION 3(2) OF THIS ORDINANCE

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

1. Interpretation of Schedule 5

- (1) In this Schedule—
- “film” (電影) means a film within the meaning of section 2(1) of the Film Censorship Ordinance (Cap. 392);
- “live performance” (現場表演) means a performance given or done before a live audience, whether on payment or otherwise, and includes the final rehearsal of the performance;
- “performance” (表演) means any play, show, entertainment or any other kind of performance;
- “smoking act” (吸煙動作) means smoking or carrying a lighted cigarette, cigar or pipe;
- “television programme” (電視節目) means a television programme within the meaning of section 2(1) of the Broadcasting Ordinance (Cap. 562).
- (2) For the purposes of this Schedule, a venue is a designated performance venue if it is—
- (a) situated in—
- (i) a school other than one that provides any nursery, kindergarten or primary education within the meaning of section 3(1) of the Education Ordinance (Cap. 279);
- or
- (ii) a specified educational establishment; and
- (b) designated by the manager of that school or establishment as a venue for any live performance.

2. Exemption for live performance

For the purposes of section 3(2A) of this Ordinance, a person who does a smoking act in a no smoking area is exempt from section 3(2) of 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 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;
- (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
- (f) the smoking act complies with all the requirements specified in relation to such an act under section 4.

4. Specified requirements for smoking act

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

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

PART 3

AMENDMENTS TO SUBSIDIARY LEGISLATION MADE UNDER SMOKING (PUBLIC HEALTH) ORDINANCE

Division 1—Amendments to Smoking (Public Health) Regulations

25. Tar groups

Regulation 2 of the Smoking (Public Health) Regulations (Cap. 371 sub. leg. A) is repealed.

26. Determination by the Government Chemist

Regulation 3 is amended—

- (a) in paragraph (i), by repealing “or tar group designation, as the case may be,”;
- (b) in paragraph (ii)—
 - (i) by repealing the semicolon and substituting a full stop;
 - (ii) by repealing “載有” and substituting “展示”;
- (c) by repealing paragraph (iii).

27. Determination by the proprietor of the brand

Regulation 4 is amended—

- (a) in paragraph (a), by repealing everything after “Ordinance” and substituting “; or”;
- (b) in paragraph (b), by repealing “or designation”;

- (c) by repealing “and the tar group”;
- (d) by repealing “regulation 2 and”.

28. Minor variations between past and present determinations

Regulation 5 is repealed.

29. Notification of retail sales

Regulation 6 is amended—

- (a) in paragraph (1)—
 - (i) by repealing “Government Chemist” and substituting “Director of Health”;
 - (ii) by repealing “載有” and substituting “展示”;
- (b) in paragraph (2), by repealing “Government Chemist” and substituting “Director of Health”.

30. Tobacco advertisements in printed publications

Regulation 6A is repealed.

31. Additional provisions applying to tar group designations

Regulation 6B is repealed.

32. Exemption of certain advertisements from Part IV of the Ordinance

Regulation 7 is amended—

- (a) in paragraph (a), by repealing everything after “before” and substituting “31 December 1999.”;
- (b) by repealing paragraph (b).

33. Health warnings on tobacco advertisements in printed publications

The Schedule is repealed.

**Division 2—Amendments to Smoking (Public Health)
(Notices) Order**

34. No smoking signs

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

35. Paragraph substituted

Paragraph 3 is repealed and the following substituted—

**“3. Health warning and indication of tar and
nicotine yields on packet or retail
container of cigarettes**

(1) For the purposes of section 8 of the Ordinance, this paragraph applies to any packet of cigarettes containing 20 or more cigarettes and any retail container of cigarette packets containing any number of cigarettes.

(2) Subject to subparagraph (3), each cigarette packet and each retail container shall bear a health warning and indication of tar and nicotine yields in one of the forms set out in Part II of the Schedule.

(3) For each brand of cigarette, each of the forms so set out shall be borne on the packets containing that brand of cigarette and on the retail containers containing those packets with equal frequency during any continuous period of 12 months.

(4) Subject to subparagraphs (5) and (8)—

- (a) the health warning and indication of tar and nicotine yields shall appear on the 2 largest surfaces of the packet and of the retail container;
- (b) one of those surfaces shall bear the Chinese version of the health warning and indication of tar and nicotine yields and the other surface shall bear the English version of the same health warning and indication of tar and nicotine yields; and
- (c) the top side of the area containing the Chinese or English version of the health warning and indication of tar and nicotine yields shall be no more than 12 millimetres from the top of the surface on which that version appears.

(5) If a packet or retail container is in the form of a drum, the Chinese version of the health warning and indication of tar and nicotine yields shall appear on the curved surface of the drum and the English version of the same health warning and indication of tar and nicotine yields shall appear on the lid.

(6) The Chinese or English version of the health warning and indication of tar and nicotine yields shall be of a size that covers at least 50% of the area of the surface on which that version appears.

(7) No health warning and indication of tar and nicotine yields shall appear in such a manner that it is obscured by any affixture to the packet or retail container, the wrapping of the packet or retail container or any affixture to the wrapping of the packet or retail container.

(8) The health warning and indication of tar and nicotine yields may be printed on a label securely affixed to the packets or retail containers—

- (a) if the packets or retail containers are made of metal or are plastic drums;
- (b) with the approval of the Commissioner of Customs and Excise where he is satisfied that—
 - (i) the circumstances in which the packets or retail containers are in Hong Kong, or are to be brought to Hong Kong, are such that they could not reasonably be expected to have had printed on them a health warning and indication of tar and nicotine yields at the time of their manufacture; and
 - (ii) the approval is required for a limited period of time or in relation to a particular consignment of cigarettes only.”.

36. Paragraphs substituted

Paragraph 4A is repealed and the following substituted—

“4A. Health warning on retail container of cigar, pipe tobacco or cigarette tobacco (other than retail container containing one cigar)

(1) For the purposes of section 9 of the Ordinance, this paragraph applies to any retail container of any cigar, pipe tobacco or cigarette tobacco (other than a retail container containing one cigar).

(2) Subject to subparagraph (3), each retail container shall bear a health warning in one of the forms set out in Part IIA of the Schedule.

(3) For each brand of cigar, pipe tobacco or cigarette tobacco, each of the forms so set out shall be borne on the retail containers containing that brand of cigar, pipe tobacco or cigarette tobacco with equal frequency during any continuous period of 12 months.

(4) Subject to subparagraphs (5) and (8)—

- (a) the health warning shall appear on the 2 largest surfaces of the retail container; and

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

(5) If a retail container is in the form of a drum, the Chinese version of the health warning shall appear on the curved surface of the drum and the English version of the same health warning shall appear on the lid.

(6) The Chinese or English version of the health warning shall be of a size that covers at least 50% of the area of the surface on which that version appears.

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

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

4AA. Health warning on retail container containing one cigar

(1) For the purposes of section 9 of the Ordinance, this paragraph applies to any retail container containing one cigar.

(2) Subject to subparagraph (3), each retail container shall bear a health warning in one of the forms set out in Part IIB of the Schedule.

(3) For each brand of cigar, each of the forms so set out shall be borne on the retail containers containing that brand of cigar with equal frequency during any continuous period of 12 months.

(4) Subject to subparagraph (6), the Chinese and English versions of the health warning shall appear on the largest surface of the retail container.

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

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

37. Restaurant signs

Paragraph 4B is repealed.

38. Tobacco advertisements on display

Paragraph 5 is repealed.

39. 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.”.

40. Schedule amended

The Schedule is amended—

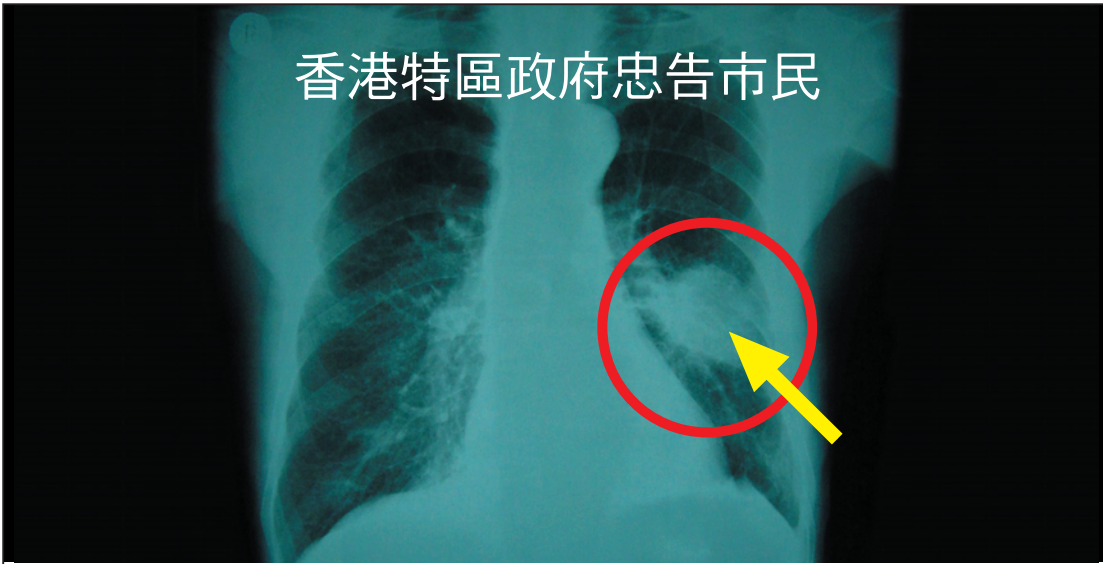
- (a) by repealing “[paras. 3, 4A, 4B, 5 & 8]” and substituting “[paras. 3, 4A, 4AA, 4B, 5 & 8]”;
- (b) by repealing “[paras. 3, 4A, 4AA, 4B, 5 & 8]” (as substituted by paragraph (a) of this section) and substituting “[paras. 3, 4A, 4AA, 5, 5A & 8]”;
- (c) by repealing “[paras. 3, 4A, 4AA, 5, 5A & 8]” (as substituted by paragraph (b) of this section) and substituting “[paras. 3, 4A, 4AA, 5A & 8]”;
- (d) by repealing Part II and substituting—

“PART II

FORMS OF HEALTH WARNING AND INDICATION OF TAR
AND NICOTINE YIELDS ON PACKET OR RETAIL
CONTAINER OF CIGARETTES

Form 1

Chinese version

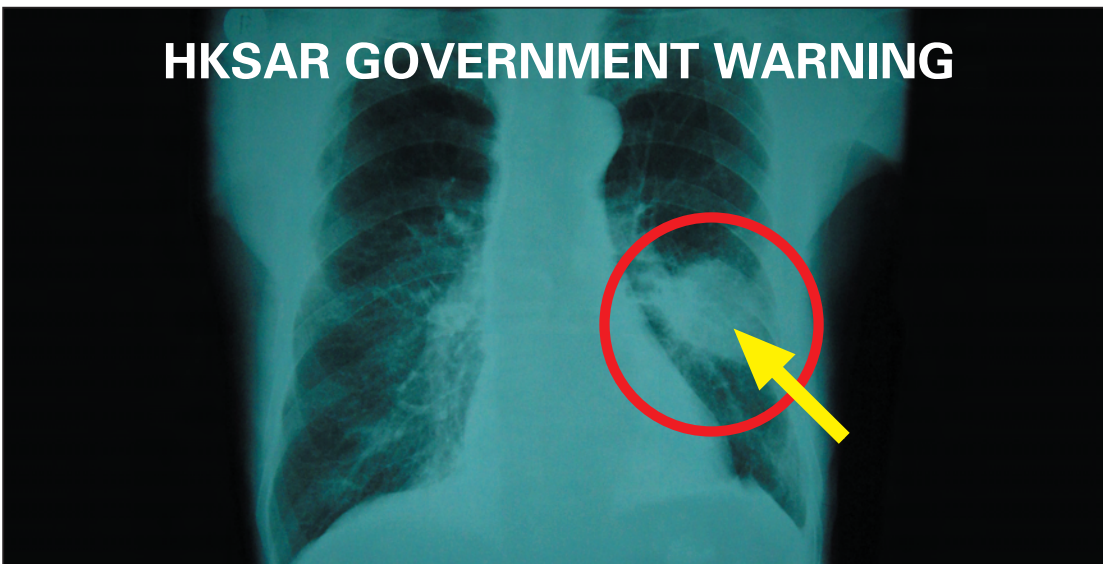


香港特區政府忠告市民

吸煙引致**肺癌**

焦油：	毫克	尼古丁：	毫克
-----	----	------	----

English version



HKSAR GOVERNMENT WARNING

SMOKING CAUSES **LUNG CANCER**

TAR :	mg	NICOTINE :	mg
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Form 2

Chinese version

香港特區政府忠告市民



吸煙足以致命

焦油：	毫克	尼古丁：	毫克
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English version

HKSAR GOVERNMENT WARNING



SMOKING KILLS

TAR :	mg	NICOTINE :	mg
-------	----	------------	----

Form 3

Chinese version



香港特區政府忠告市民

吸煙禍及家人

焦油： 毫克 尼古丁： 毫克

English version



HKSAR GOVERNMENT WARNING

SMOKING HARMS YOUR FAMILY

TAR : mg NICOTINE : mg

Form 4

Chinese version

香港特區政府忠告市民	
	
吸煙引致末梢血管疾病	
焦油：	毫克
尼古丁：	毫克

English version

HKSAR GOVERNMENT WARNING	
	
SMOKING CAUSES PERIPHERAL VASCULAR DISEASES	
TAR :	mg
NICOTINE :	mg

Form 5

Chinese version

	
香港特區政府忠告市民	
吸煙可引致陽萎	
焦油：	毫克
尼古丁：	毫克

English version

	
HKSAR GOVERNMENT WARNING	
SMOKING MAY CAUSE IMPOTENCE	
TAR：	mg
NICOTINE：	mg

Form 6

Chinese version



香港特區政府忠告市民

吸煙可加速皮膚老化

焦油： 毫克 尼古丁： 毫克

English version



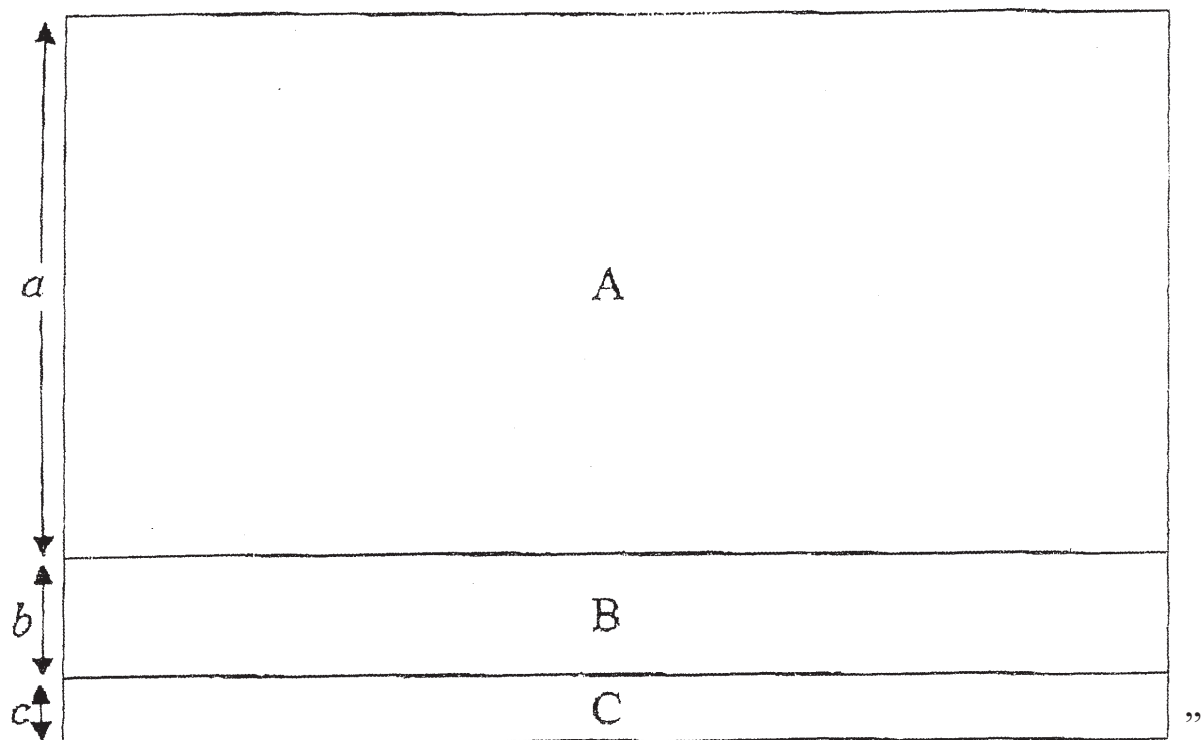
HKSAR GOVERNMENT WARNING

**SMOKING CAN ACCELERATE
AGEING OF SKIN**

TAR : mg NICOTINE : mg

Specifications:

1. Each form is rectangular in shape and surrounded by a black line as demarcation.
2. Each form is divided into 3 rectangular areas (marked “A”, “B” and “C” in the diagram below). The ratio of the length of area A to that of area B to that of area C (marked “*a*”, “*b*” and “*c*” respectively in that diagram) is 9 to 2 to 1.
3. Area A contains the graphic (on which “香港特區政府忠告市民” (in the Chinese version) or “HKSAR GOVERNMENT WARNING” (in the English version) is printed) as set out in the form. Area B contains the message in words as set out in the form. Area C contains an indication of tar and nicotine yields as set out in the form.
4. For the Chinese version, the characters and numbers are printed in “中黑體” typeface. For the English version, the letters and numbers are printed in Univers Bold typeface.
5. In relation to area A—
 - (a) the characters and letters are printed in white;
 - (b) the graphic is printed by 4-colour printing with a minimum resolution of 300 dpi.
6. In relation to areas B and C—
 - (a) the background colour is white;
 - (b) the characters, letters and numbers are printed in—
 - (i) 100% black for black; and
 - (ii) 100% yellow plus 100% magenta for red.



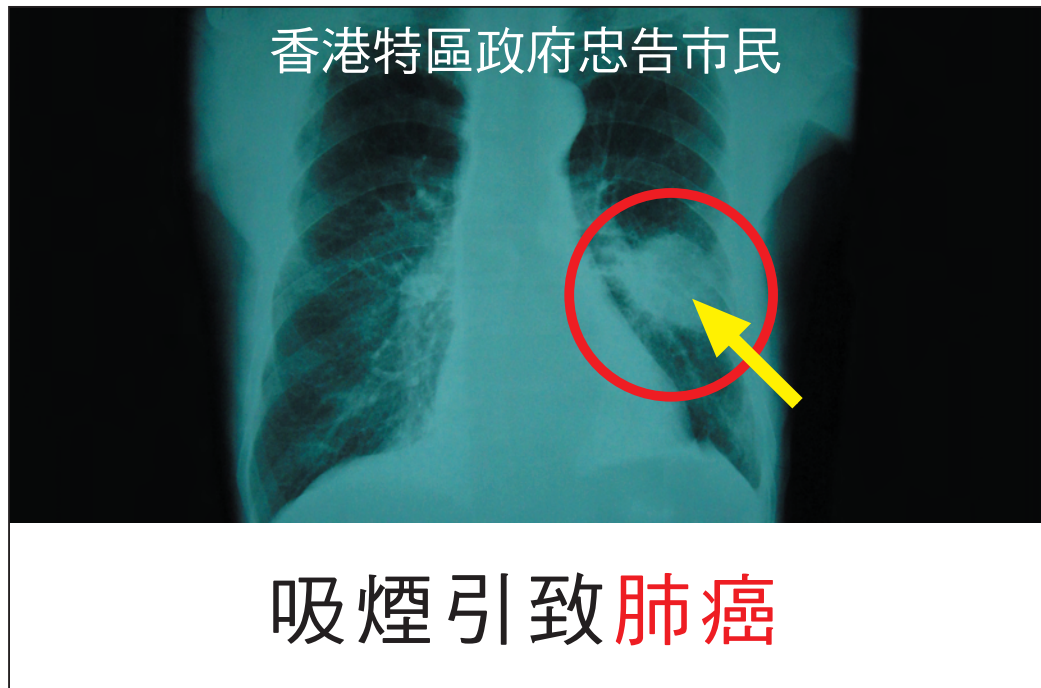
(e) by repealing Part IIA and substituting—

“PART IIA

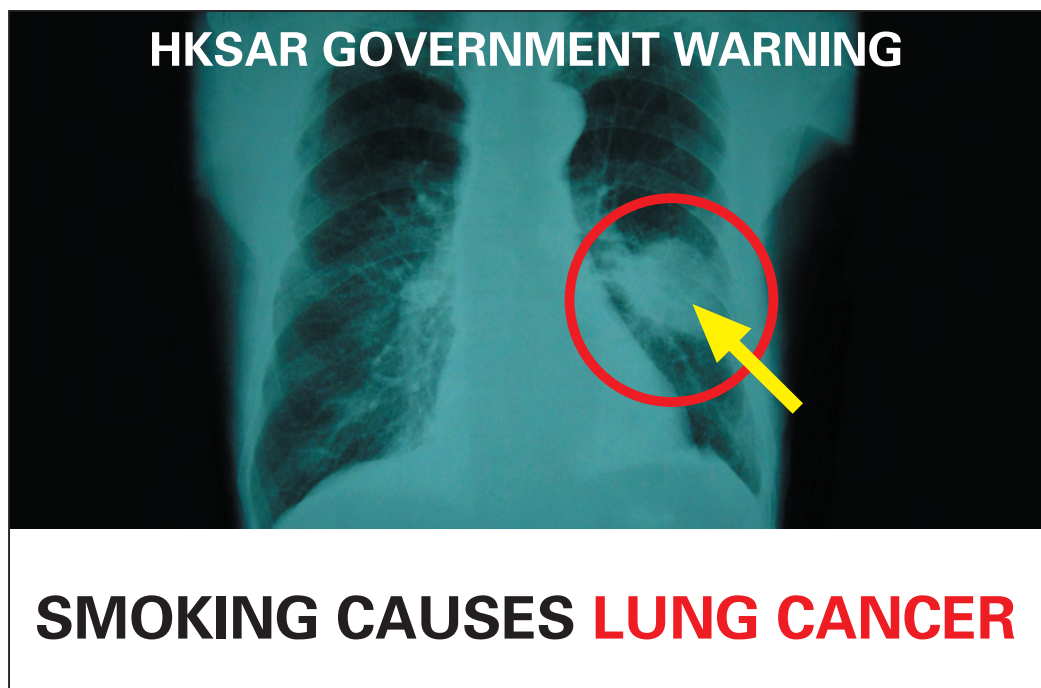
FORMS OF HEALTH WARNING ON RETAIL CONTAINER OF CIGAR,
PIPE TOBACCO OR CIGARETTE TOBACCO (OTHER THAN RETAIL
CONTAINER CONTAINING ONE CIGAR)

Form 1

Chinese version



English version



Form 2

Chinese version

香港特區政府忠告市民



吸煙足以致命

English version

HKSAR GOVERNMENT WARNING



SMOKING KILLS

Form 3

Chinese version



香港特區政府忠告市民

吸煙禍及家人

English version



HKSAR GOVERNMENT WARNING

SMOKING HARMS YOUR FAMILY

Form 4

Chinese version

香港特區政府忠告市民



吸煙引致末梢血管疾病

English version

HKSAR GOVERNMENT WARNING



SMOKING CAUSES
PERIPHERAL VASCULAR DISEASES

Form 5

Chinese version

香港特區政府忠告市民



吸煙可引致陽萎

English version

HKSAR GOVERNMENT WARNING



SMOKING MAY CAUSE IMPOTENCE

Form 6

Chinese version



香港特區政府忠告市民

吸煙可加速皮膚老化

English version

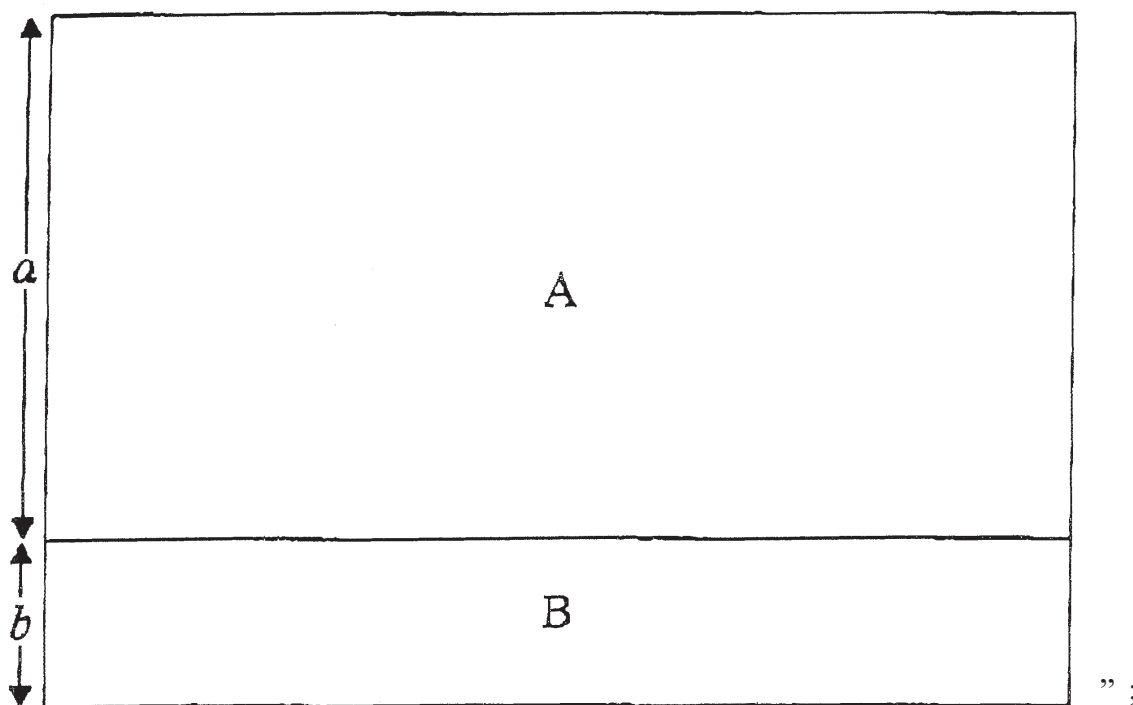


HKSAR GOVERNMENT WARNING

SMOKING CAN ACCELERATE
AGEING OF SKIN

Specifications:

1. Each form is rectangular in shape and surrounded by a black line as demarcation.
2. Each form is divided into 2 rectangular areas (marked “A” and “B” in the diagram below). The ratio of the length of area A to that of area B (marked “*a*” and “*b*” respectively in that diagram) is 3 to 1.
3. Area A contains the graphic (on which “香港特區政府忠告市民” (in the Chinese version) or “HKSAR GOVERNMENT WARNING” (in the English version) is printed) as set out in the form. Area B contains the message in words as set out in the form.
4. For the Chinese version, the characters are printed in “中黑體” typeface. For the English version, the letters are printed in Univers Bold typeface.
5. In relation to area A—
 - (a) the characters and letters are printed in white;
 - (b) the graphic is printed by 4-colour printing with a minimum resolution of 300 dpi.
6. In relation to area B—
 - (a) the background colour is white;
 - (b) the characters and letters are printed in—
 - (i) 100% black for black; and
 - (ii) 100% yellow plus 100% magenta for red.



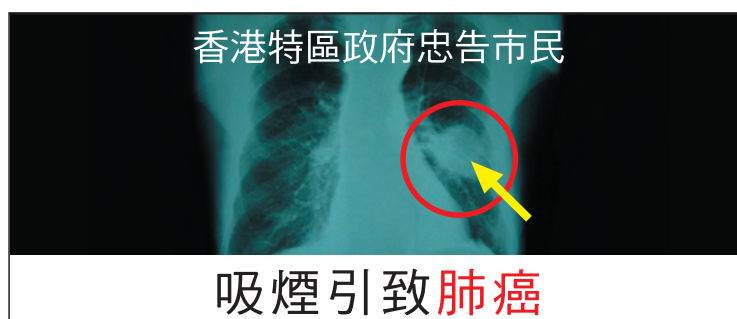
(f) by repealing Part IIB and substituting—

“PART IIB

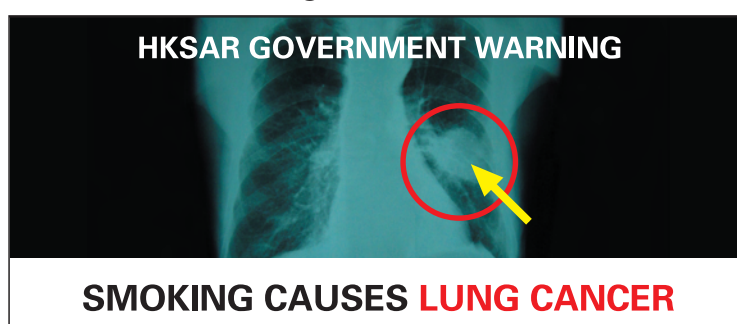
FORMS OF HEALTH WARNING ON RETAIL CONTAINER
CONTAINING ONE CIGAR

Form 1

Chinese version



English version



Form 2

Chinese version



English version



Form 3

Chinese version



English version



Form 4

Chinese version



English version



Form 5

Chinese version



English version



Form 6

Chinese version

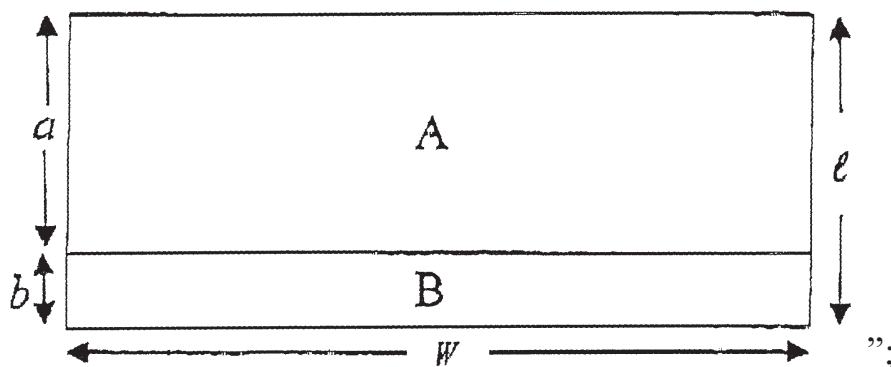


English version



Specifications:

1. Each form is rectangular in shape and surrounded by a black line as demarcation. The width and the length (marked “ w ” and “ ℓ ” respectively in the diagram below) are 7 cm and 3 cm respectively.
2. Each form is divided into 2 rectangular areas (marked “A” and “B” in that diagram). The lengths of area A and area B (marked “ a ” and “ b ” respectively in that diagram) are 2.25 cm and 0.75 cm respectively.
3. Area A contains the graphic (on which “香港特區政府忠告市民” (in the Chinese version) or “HKSAR GOVERNMENT WARNING” (in the English version) is printed) as set out in the form. Area B contains the message in words as set out in the form.
4. For the Chinese version, the characters are printed in “中黑體” typeface. For the English version, the letters are printed in Univers Bold typeface.
5. In relation to area A—
 - (a) the characters and letters are printed in white;
 - (b) the graphic is printed by 4-colour printing with a minimum resolution of 300 dpi.
6. In relation to area B—
 - (a) the background colour is white;
 - (b) the characters and letters are printed in—
 - (i) 100% black for black; and
 - (ii) 100% yellow plus 100% magenta for red.



- (g) by repealing Part III;
- (h) by adding—

“PART IIIA

FORM OF HEALTH WARNING ON PRICE BOARD
OF TOBACCO PRODUCTS



Specifications:

1. The form is rectangular in shape and surrounded by a black line as demarcation.
 2. The background colour is white.
 3. The characters “香港特區政府忠告市民” are printed in 30 kyu (級).
 4. The characters “吸煙足以致命” are printed in 90 kyu (級).
 5. All characters referred to in paragraphs 3 and 4 are printed in black and in “華康中黑體” typeface.
 6. The letters “HKSAR GOVERNMENT WARNING” are printed in 30 points.
 7. The letters “SMOKING KILLS” are printed in 90 points.
 8. All letters referred to in paragraphs 6 and 7 are printed in black and in Univers Bold typeface, all capitals.
 9. If the price board is smaller than 1 500 square centimetres, the characters and letters of the health warning may be proportionally reduced in kyu (級) and points by reference to the specifications in paragraphs 3, 4, 6 and 7.”;
- (i) by repealing Part V.

PART 4

TRANSITIONAL PROVISIONS

41. Section added

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

**“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 (21 of 2006).”.

42. 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 (21 of 2006) is published in the Gazette.

**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.

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
 - (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 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 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.

2. Smoking ban deferred in listed establishments

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

- (a) the area—
 - (i) is a designated mahjong room in a listed establishment that is a qualified club; or
 - (ii) is in any other listed establishment; and
- (b) a prescribed sign is displayed in relation to the establishment in accordance with section 8(1).

3. **Qualified establishment**

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

- (a) the establishment is—
 - (i) a qualified bar;
 - (ii) a qualified club;
 - (iii) a qualified nightclub;
 - (iv) a bathhouse;
 - (v) a massage establishment; or
 - (vi) mahjong-tin kau premises; and
- (b) the establishment complies with all the entry restrictions.

(2) For the 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
- (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
 - (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. 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;
 - (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—
 - (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.

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.

8. Listed establishment to display prescribed sign

- (1) The person in charge of a listed establishment shall ensure that—
 - (a) a prescribed sign is placed and kept in place—

- (i) in the case of a listed establishment that is a qualified club, in a prominent position at the exclusive entrance of each designated mahjong room in the club; and
 - (ii) in the case of any other listed establishment, in a prominent position at each exclusive entrance of the establishment; and
 - (b) such signs are maintained in legible condition and good order.
- (2) For the purposes of this Part, a sign is a prescribed sign if it complies with all the following specifications—
- (a) it is square in shape and each side is at least 15 centimetres in length;
 - (b) it is surrounded by a black line as demarcation and the background colour is white;
 - (c) it reads—
 - (i) in the case of a listed establishment that is a qualified club, “此房間是合資格會所的指定麻將房，而此會所已列入根據《吸煙 (公眾衛生) 條例》備存的合資格場所名單，此房間將於 2009 年 7 月 1 日起實施禁煙規定。 This is a designated mahjong room in a qualified club that has been included in the list of qualified establishments maintained under the Smoking (Public Health) Ordinance. The smoking ban will apply to this room with effect from 1 July 2009.”; and
 - (ii) in the case of any other listed establishment, “此場所已列入根據《吸煙 (公眾衛生) 條例》備存的合資格場所名單，此場所的室內區域將於 2009 年 7 月 1 日起實施禁煙規定。 This establishment has been included in the list of qualified establishments maintained under the Smoking (Public Health) Ordinance. The smoking ban will apply to an indoor area in this establishment with effect from 1 July 2009.”; and
 - (d) all characters and letters are printed in black and are plain and readily legible.
- (3) The manager of a no smoking area that is not in a listed establishment shall ensure that no prescribed sign, or any other sign implying or suggesting that smoking is permitted in the area, is displayed in or outside the area.
- (4) A person who fails to comply with subsection (1) or (3) commits an offence and is liable 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 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.

(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.

11. Appeal to Appeal Board against Director's decision

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

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

12. Constitution of Appeal Board

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

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

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

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

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

13. Constitution of Appeal Board Panel

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

(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

(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.

(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.”.