

**Bills Committee on
Smoking (Public Health) (Amendment) Bill 2005**

**Administration's response to a matter raised
at the Bills Committee meeting on 31 October 2005**

PURPOSE

This paper sets out the Administration's response to an issue raised by the Bills Committee at its meeting on 31 October 2005.

BACKGROUND

2. At the above meeting, the question as to how "a comprehensive ban" under Article 13 of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) should be interpreted was raised. Members would like us to seek clarification with WHO as to whether only a complete banning of tobacco advertisement in licensed hawker stalls could fulfil the requirements of FCTC

ADMINISTRATION'S RESPONSE

3. On 25 January 2006, we received a reply from Mr Burke A. Fishburn, Regional Coordinator - Tobacco Free Initiative of WHO Western Pacific Regional Office on our enquiry. His reply is excerpted hereunder:

Under Article 1(c) of the WHO FCTC, "Tobacco advertising and promotion" means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.

"Advertisement" means any commercial communication through any media or means, that is intended to have, or is likely to have, the direct, indirect, or incidental effect of:

i) creating an awareness of a tobacco product, brand, manufacturer, or seller, or

ii) promoting the purchase or use of a tobacco product or brand.

A tobacco advertisement includes, but is not limited to, words, names, messages, mottos, slogans, letters, numbers, pictures, images, colors and other graphics, sounds, and any other auditory, visual, or

sensory matter, in whole part, that is or are:

i) commonly identified or associated with a tobacco product, brand, manufacturer, or seller, or

ii) otherwise an indicia of product, brand manufacturer, or seller identification.

Due to the tobacco industry's ability to get around direct advertising bans or restrictions, it is clear that the law must address not only direct forms of advertising but also indirect forms of advertising and promotion, such as sponsorships and brand stretching. There should, therefore, be a complete ban on direct and indirect tobacco advertisement at licensed hawker stalls and retail outlets in order to fulfill the requirements of the WHO FCTC.

4. Having briefed about the unique situation in Hong Kong, WHO's reply emphasized that **“a complete ban of tobacco advertisement in licensed hawker stalls is in line with the comprehensive ban called for under Article 13 of the WHO FCTC.”**

5. We believe that this view of WHO echoes the advice we previously sought from the International Law Division of the Department of Justice, details of which was already covered in LC Paper No. CB(2)901/05-06(01). This affirmation from WHO has also helped secure our position that in the long run, the exemption for tobacco advertising at licensed hawker stalls should be removed as a matter of policy.

ADVICE SOUGHT

6. The Bills Committee is invited to note the above response in conjunction with LC Paper No. CB(2)901/05-06(01).

Health, Welfare and Food Bureau
February 2006