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Health and Welfare Bureau
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The People's Republic of China

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Dear Ms Lai,

Smoking (Public Health) (Amendment) Bill 2005 ("the Amendment Bill")

Thank you for your letter of 3 June 2005. Our response to the questions raised is set out as below –

Scope of the Smoking Ban

Indoor area

As defined in Clause 4 of the Amendment Bill, an area has to be "completely or substantially enclosed" in order to come under the definition of "indoor". Both "completely" and "substantially" are to be understood by their ordinary meanings. It would not be possible to list out all-encompassing criteria for interpreting the two terms. Rather, the decision should be based upon relevant factual circumstances. In this regard, control and maintenance of temperature inside the area may be a factor.

In fact, the expression "or substantially" appears commonly in the legislation of Hong Kong, for example, "complete or substantially complete" in s.1A of Cap 187A; "new or substantially improved" in s.2 of Cap 316T; "wholly or substantially completed" in r.2B of Cap 406A; "completed or substantially altered" in r.12 of Cap 406E; "reconstructed or substantially altered" in s.3 of Cap 478I and "same or substantially the same" in s.51(7A) of Rules of Procedure of the Legislative Council.

Public place

It is not our policy intention to make any differentiation between domestic and non-domestic buildings in terms of the definition of "public place". As the definition of "domestic premises" does not cover the indoor common parts of any building (such as the corridors, staircases and roofs), the common parts would have to be smoke-free.

Power of manager of a no smoking area

We agree with you that for lifts of buildings, the owner, occupier or lessee of the building, together with the person who is in charge or control of the building or the lift would fall within the definition of "manager" and hence are authorized to exercise the powers under section 3(3) of the Smoking (Public Health) Ordinance (Cap. 371). For other common parts of the building, the "manager" would cover the person who is responsible for the management, or is in charge of or control of the building. However, we would like to reiterate that the Bill makes no differentiation between domestic and non-domestic buildings.

After the enactment of the Amendment Bill, all owners/lessees would have to comply with the smoking ban on indoor common parts of their buildings, and be subject to the powers of managers. This corresponds with the ultimate policy goal to protect public health by discouraging smoking and reducing the chance of passive smoking. In our views, to prohibit a person (including owner or lessee) from smoking inside the common area of a building is more a control over, not a deprivation of, his right of enjoyment in the common part.

Consequential amendments

We agree that consequential amendments should also be made to regulation 51(1) of Cap. 279A. We would propose corresponding CSAs in a later stage.

Drafting

Thank you for drawing the Administration's attention to the drafting of the Chinese text of paragraph (b) of the definition of "restaurant premises". We would further consider the matter.

Yours sincerely,



(Miss Christine Au)

for Secretary for Health, Welfare and Food

c.c.

Department of Justice

(Attn.: Mr WL Cheung)

(Attn.: Ms Amy Chan)

(Attn.: Mr Winson Koo)

Department of Health

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