

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

(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.".

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;

"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 that 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 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 -

**"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

PRE-AMENDMENT HEALTH WARNINGS, ETC.

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

(1) During the 12 months after the

commencement of this section, compliance with the relevant provisions of this Ordinance as in force immediately before such commencement 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.

## PART 2

### DEFERMENT OF SMOKING BAN IN LISTED ESTABLISHMENTS

#### **1. Interpretation of Part 2**

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. 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 the 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 this Part**

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 this Part**

This Part shall expire on 1 July 2009."