



中華人民共和國香港特別行政區政府總部衛生福利及食物局  
Health, Welfare and Food Bureau  
Government Secretariat, Government of the Hong Kong Special Administrative Region  
The People's Republic of China

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23 November 2005

Miss Mary SO  
3rd floor, Citibank Tower,  
3 Garden Road, Hong Kong

Dear Miss So,

In response to the letter from Hon. Tommy Cheung to the Bills Committee on Smoking (Public Health) (Amendment) Bill 2005 dated 5 October 2005, raising questions on tobacco advertisements under the Bill, our response is set out below-

The Smoking (Public Health) Ordinance (“the Ordinance”) came into effect on 28 July 1982. Under the Ordinance, various measures were implemented to control the use, sale and promotion of cigarette products. For details, please refer to **Annex I** (Ord. No. 58/82). As for the contents of cigarette advertisements, please refer to Part IV. Sections 13 to 15 took effect on 13 August 1982, whereas section 11 came into force on 15 November 1982. Section 12, in relation to advertisements by way of neon signs, took effect on 15 May 1983; whilst for other situations, the commencement date of section 12 was 15 February 1983.

Subsequently, the then Legislative Council endorsed our proposed amendments to sections 11 and 12 on 16 May 1984. For details, please refer to **Annex II** (Ord. No. 26/84). The commencement dates of sections 3(a), 2, 3(c) and 3(b) of the Amendment Bill were 15 June 1984, 15 September 1984, 15 December 1984 and 15 June 1985 respectively.

Then in 1994, certain mentioning of the term “cigarette” in the Ordinance was replaced by “tobacco”. For details, please refer to **Annex III** (Ord. No. 91/94). The Amendment Bill was passed on 12 October 1994. Sections 12 to 14 therein took effect on 28 October 1994; whereas sections 10 and 11 came into force on 28 January 1995.

Another amendment to the Ordinance was passed on 23 June 1997. For details, please see **Annex IV** (Ord. No. 93/97). The commencement date of sections 13, 14, 16 and 17 of the Amendment Bill was 1 April 1998. Section 15 came into effect on 1 July 1998; whilst section 12 came into operation on the second anniversary of the day on which the Ordinance was enacted. Thereafter, Sections 11(b) and 11(a) also came into force on 16 July 1999 and 31 December 1999 respectively.

As a result of the above amendments, the existing Ordinance already prohibits tobacco advertisements in printed publications, display of tobacco advertisements, broadcast of tobacco advertisements by radio or visual images and placing of tobacco advertisements on the Internet. These requirements all aim at reducing the chance of citizens’ contact with tobacco products.

Hon. Tommy Cheung asked for the impact of each legislative amendment on the tobacco sales figures, the total number of smokers, the percentage of smokers in the population and the percentage of smokers among young people in the two to three years that followed. We do not agree with the view that the effectiveness of the Ordinance with regard to regulating tobacco advertisements and promotions may be assessed solely on the basis of tobacco sales figures, total number of smokers, percentage of smokers in the population and percentage of smokers among young people. However, viewing from the following tables, we could see that generally speaking, with enhanced provisions under the Ordinance, tobacco control in Hong Kong has been steadily improving:

<b>Year</b>	<b>Number of Daily Cigarette Smokers</b>	<b>Prevalence</b>
1982	888,400	23.3%

1983	783,900	19.9%
1984	744,500	18.7%
1986	713,400	17.4%
1988	723,900	16.8%
1990	691,900	15.7%
1993	687,100	14.9%
1996	740,400	14.8%
1998	805,100	15.0%
2000	692,500	12.4%
2003	818,200	14.4%

The percentages of smokers among young people aged between 15 and 19 are set out in the following table:

<b>Year</b>	<b>Prevalence</b>
1982	4.2%
1983	3.4%
1984	2.3%
1986	4.0%
1988	3.4%
1990	4.6%
1993	4.2%
1996	3.8%
1998	2.8%
2000	4.5%
2003	3.8%

According to the Treasury Branch under the Financial Services and the Treasury Bureau, Government revenue from tobacco products is as follows:

Year	Tax Revenue (\$million)
1985-1986	1,086
1986-1987	1,105
1987-1988	637
1988-1989	1,235
1989-1990	1,411
1990-1991	1,670
1991-1992	2,265
1992-1993	2,517
1993-1994	2,099
1994-1995	2,538
1995-1996	2,632
1996-1997	2,741
1997-1998	2,538
1998-1999	2,556
1999-2000	2,385
2000-2001	2,550
2001-2002	2,414
2002-2003	2,193
2003-2004	2,225
2004-2005	2,362

Our reply is as above.

Yours sincerely,



(Christine Au)

for Secretary for Health, Welfare and Food

**HONG KONG**

No. 58 OF 1982

L.S.

I assent.

Philip HADDON-CAVE,  
Acting Governor.

29 July 1982

An Ordinance to prohibit smoking in certain areas, to provide for the display of a health warning and other information on cigarette packets and in cigarette advertisements and for matters incidental thereto including the amendment of the Places of Public Entertainment Ordinance.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

**PART I****PRELIMINARY**Short title and  
commencement.

1. This Ordinance may be cited as the Smoking (Public Health) Ordinance 1982 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*; and different days may be so appointed for different provisions of this Ordinance and for different purposes of the same provision.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"advertisement" means any announcement to the public made or to be made in any manner;

"brand", except in section 14(3), includes a brand product, that is to say a variety of a brand marketed as having qualities differing from another variety of that brand;

"cigarette" means tobacco rolled up in paper or in any other material except tobacco, in such form as to be capable of immediate use for smoking;

"cigarette advertisement" has the meaning assigned to it by section 14;

"cigarette tobacco" means tobacco packaged as being suitable for the making by the purchaser of cigarettes for his own use;

"class" in relation to a class of seats means a class defined by reference to their price, all seats sold at the same price on the same occasion to the same category of persons being deemed to belong to the same class;

"ferry vessel" means a vessel operated on a ferry service as defined for the purposes of the Ferry Services Ordinance 1982 and having seating accommodation for 50 or more passengers;

"land vehicle" means a vehicle other than a train used on land for the transport of members of the public for hire or reward;

(30 of 1982.)

"manager" in relation to—

- (a) a cinema, theatre, concert hall or public transport vehicle service, includes an assistant manager, any person holding an appointment analogous to that of manager or assistant manager or any person who is responsible for the management, or is in charge or control of the cinema, theatre, concert hall or public transport service;
- (b) a lift, includes the owner, occupier or lessee of the building in which the lift is situated or the person in charge or control of such building or lift;

"newspaper", "local newspaper" and "printed document" have the same meaning as in the Control of Publications Consolidation Ordinance; (Cap. 268.)

"no smoking area", except in section 5(2), means an area or place in which smoking is prohibited by section 3;

"proof of identity" means proof of identity for the purposes of Part IVA of the Immigration Ordinance; (Cap. 115.)

"public lift" means a lift to which the public have access and includes any lift giving access to separately occupied flats, offices or other units of accommodation and a hotel lift;

"public transport vehicle" means—

- (a) a ferry vessel;
- (b) a land vehicle; or
- (c) a train;

while the vessel, vehicle or train is transporting members of the public, but excludes a taxicab, private hire vehicle or other vehicle or vessel hired or chartered to an individual whether on his own behalf or that of a number of persons;

"publish" in relation to an advertisement means making known an advertisement in any manner;

"regulations" means regulations under section 18;

"retail container" means a container suitable for the retail marketing of cigarette packets;

"smoke" means inhaling and expelling the smoke of tobacco or other substance;

"train" means a train of linked carriages used for the transport of members of the public for hire or reward.

**PART II****NO SMOKING AREAS**

3. No person shall smoke or carry a lighted cigarette, cigar or pipe in—

- (a) any area demarcated as a no smoking area under section 4;
- (b) any public lift;
- (c) any land vehicle, being a public transport vehicle, having only one deck;
- (d) the lower deck of a land vehicle, being a public transport vehicle, having more than one deck.

Prohibition on  
smoking in  
no smoking  
areas.

Annex I

Setting aside  
of no smoking  
areas.

4. (1) The manager of a cinema, theatre or concert hall shall set aside not less than 50 per cent of each class of its seating accommodation as an area in which smoking is prohibited; and he may set aside all such accommodation.

(2) The manager of a public transport service shall set aside not less than 50 per cent of each class of seating accommodation in every public transport vehicle of that service, not being a vehicle to which paragraph (c) or (d) of section 3 applies, as an area in which smoking is prohibited; and he may set aside all such accommodation.

(3) For the purposes of this section—

(a) an area shall be deemed to have been set aside under subsection (1) only while it is open to the public;

(b) a cinema, theatre or concert hall means—

(i) any building or part of a building used primarily as a cinema, theatre or concert hall, whether or not it is being so used at the material time, other than the premises of any club, association or other body in which films are exhibited, or plays or music performed for the benefit primarily of the members thereof and their guests;

(ii) any place of public entertainment licensed under the Places of Public Entertainment Ordinance while open to the public on account of any concert, stage play, stage performance or other musical, dramatic or theatrical entertainment or any cinematograph display;

(c) the passenger carriages of a train shall be deemed to be a single vehicle.

(4) Subject to compliance with the provisions of this section, seating accommodation set aside under this section as a no smoking area may be varied by increasing or reducing that area or by substituting another area in place thereof.

(5) Any seating accommodation demarcated as an area in which smoking is prohibited by signs placed in compliance, or purported compliance, with section 5 shall be deemed to have been set aside under this section.

(6) In setting aside seating accommodation under this section the manager shall comply with any prescribed requirements relating to the relative positioning of smoking and no smoking areas.

(7) The Secretary for Social Services may in writing exempt—

(a) the manager of any cinema, theatre or concert hall from compliance with subsection (1) in relation to any occasion;

(b) the manager of a public transport vehicle from compliance, either temporarily or permanently, with subsection (2) in relation to any vehicle or vessel.

73 of 1982, s. 38 (8) The General Manager of the Kowloon-Canton Railway may set aside seating accommodation under subsection (2) and, if he does so, the provisions of this Ordinance shall apply in relation to the accommodation so set aside notwithstanding that the functions of the General Manager are performed on behalf of the Crown by virtue of the provisions of section 29(1) of the Kowloon-Canton Railway Ordinance 1982.

(17 of 1982.)

Display of  
signs in no  
smoking areas.

5. (1) The manager shall place in a prominent position in each no smoking area a sufficient number of signs in English and Chinese to indicate that smoking is prohibited in the area; such signs shall be of the

prescribed description and shall be maintained by the manager in legible condition and good order.

(2) Where an area was designated as a no smoking area prior to the coming into operation of this Ordinance, the manager shall be deemed to have sufficiently complied with subsection (1) in relation to the description of the signs if the signs, being signs placed before such coming into operation, are in English and Chinese and are to the effect that smoking is prohibited.

6. (1) The—

(a) manager or any ticket collector or usher of any cinema, theatre or concert hall or such employee as the manager may authorize in that behalf;

(b) driver, conductor, inspector, ticket collector of any public transport vehicle or such other employee as the manager may authorize in that behalf;

(c) manager of a public lift or such employee as the manager may authorize in that behalf,

may require any person who smokes in a no smoking area to cease smoking forthwith, indicating the penalty therefor, and if he fails to do so, require him to give his name and address and to produce proof of identity.

(2) Any person who fails to comply with a requirement to cease smoking made under subsection (1) shall be deemed to be a trespasser and, if he is required to leave, or he is removed from, the building or vehicle in which the no smoking area is situated, he shall not be entitled to a refund of any admission fee or money paid by him for entry into the building or transport by the vehicle.

Provided that nothing in this section shall have the effect of deeming a person who smokes in a public lift to be a trespasser in the building (other than the lift) in which the lift is situated.

7. (1) Any person who contravenes section 3 commits an offence and is liable on summary conviction to a fine of \$1,000.

(2) Any person who fails to give his name and address or to produce proof of identity when required to do so under section 6 or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine of \$3,000.

(3) Any manager who—

(a) fails to set aside any area as a no smoking area in accordance with section 4; or

(b) fails to place signs in accordance with section 5 or to maintain the signs in the manner required by that section,

commits an offence and is liable on summary conviction to a fine of \$5,000.

### PART III

#### SALES OF CIGARETTES AND CIGARETTE TOBACCO

8. (1) No person shall sell, offer for sale or possess for the purposes of sale any cigarettes unless the packets thereof and, if the packets are within a retail container, the container also, bear in the prescribed form and manner—

(a) a health warning;

(b) the tar group designation of the cigarettes.

Powers  
exercisable  
in relation  
to persons  
smoking in no  
smoking area.

Offences under  
Part II.

Health warnings  
and tar group  
designation  
when cigarettes  
sold.

(2) Nothing in this section or section 9 shall apply to anything done in relation to cigarettes which are held—

- (a) in bond; or
- (b) by a manufacturer of tobacco products, for export from Hong Kong.

Health warnings  
when cigarette  
tobacco is sold.

9. No person shall sell, offer for sale or possess for the purposes of sale any cigarette tobacco unless the container thereof bears a health warning in the prescribed form and manner.

Offences under  
Part III.

10. (1) Any person who contravenes section 8 or 9 commits an offence and is liable on summary conviction to a fine of \$5,000.

(2) Any manufacturer of cigarettes or his agent and any wholesale distributor of cigarettes who sells, offers for sale or possesses for the purpose of sale any cigarettes to which section 8 applies which have on their packet or retail container a tar group designation which, having regard to any determination under section 16 and the regulations, is incorrect, commits an offence and is liable on summary conviction to a fine of \$5,000.

(3) Any manufacturer of cigarettes or his agent and any wholesale distributor of cigarettes who sells, offers for sale or possesses for the purpose of sale any cigarettes to which section 8 applies which have on their packet or their retail container—

- (a) a brand name which indicates the cigarettes belong to a tar group to which, having regard to any determination under section 16 and the regulations, they do not belong; or
- (b) a statement as to the amount of tar in the cigarettes which, having regard to the regulations, would place the cigarettes in a tar group other than that indicated by the tar group designation on the packet or retail container or, as the case may be, by the brand name,

commits an offence and is liable on summary conviction to a fine of \$5,000.

#### PART IV

##### CIGARETTE ADVERTISING

Cigarette  
advertisements  
in printed  
publications.

11. (1) No person shall print or publish a cigarette advertisement in a printed publication to which this section applies unless the advertisement bears, in the prescribed form and manner—

- (a) a health warning;
  - (b) the tar group designation of the cigarettes advertised.
- (2) This section applies to—
- (a) any local newspaper;
  - (b) any printed document published or distributed in Hong Kong, not being a newspaper or an advertisement published or distributed for the purpose of display.

(3) Nothing in this section or section 12 shall apply in relation to a cigarette advertisement in a printed publication—

- (a) being a local newspaper—
  - (i) not less than 80 per cent of whose circulation is outside Hong Kong;

(ii) published for the passengers of any airline or shipping company;

(iii) published for the tobacco trade or as the "in house" magazine of any company engaged in that trade;

(b) in such circumstances as may be prescribed.

12. (1) No person shall—

- (a) display;
- (b) publish or distribute for the purpose of display,

any cigarette advertisement in writing or other permanent or semi-permanent form unless the advertisement has a health warning in the prescribed form and manner.

(2) Nothing in this section shall apply in relation to a cigarette advertisement—

(a) on any—

(i) small portable object, being of a decorative nature or for personal, domestic or business use;

(ii) object worn on the person;

(iii) umbrella,

if that object or umbrella carries a cigarette advertisement only because it bears the name or trade name of a person associated with the marketing of cigarettes or cigarette tobacco or a brand name of cigarettes or cigarette tobacco and additionally or alternatively any pictorial device commonly associated therewith, but which does not illustrate or mention cigarette tobacco or cigarettes or their packages or qualities or smoking;

(b) in or upon that part of the premises of any manufacturer of tobacco or tobacco products or any dealer (whether by way of wholesale or retail) in cigarettes or cigarette tobacco which is used for the manufacture of cigarettes or cigarette tobacco or for the purpose of dealing in cigarettes or cigarette tobacco;

(c) upon a commercial vehicle registered in the name of a person who is a manufacturer or distributor of, or wholesale dealer in, cigarettes or cigarette tobacco;

(d) broadcast by television;

(e) of such other categories as may be prescribed.

13. (1) The Television Authority appointed under the Television Ordinance may from time to time issue Codes of Practice relating to cigarette advertisements broadcast by radio.

(2) Any Code of Practice issued under subsection (1) shall not be inconsistent with any prescribed conditions relating to the broadcast by radio of any cigarette advertisement.

(3) A Code of Practice issued under this section shall provide that when a cigarette advertisement is broadcast by radio a health warning shall also be broadcast in such manner and at such time as the Code may specify.

(4) No person shall broadcast by radio a cigarette advertisement which does not comply with a Code of Practice issued under this section or fail to broadcast a health warning in the manner and at the time specified in such a Code of Practice.

Health warning  
when cigarette  
advertisement  
displayed.

Cigarette  
advertisements  
on radio.  
(Cap. 52.)

Meaning of  
cigarette  
advertisement.

14. (1) For the purposes of this Part an advertisement is a cigarette advertisement if it—

- (a) contains any express or implied inducement, suggestion or request to purchase or smoke cigarettes or cigarette tobacco; or
- (b) relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of cigarettes or cigarette tobacco.

(2) An advertisement which mentions the name or trade name of any person associated with the marketing of cigarettes or cigarette tobacco or a brand name of cigarettes or cigarette tobacco or any pictorial device commonly associated therewith or which illustrates or mentions smoking or cigarettes or cigarette tobacco or their packages or qualities shall be deemed to be a cigarette advertisement unless the contrary is proved.

(3) Notwithstanding subsection (2), no advertisement shall be deemed to be a cigarette advertisement only because it uses the name or trade name or a brand name of, or otherwise identifies, a person associated with the manufacture or marketing of cigarettes or cigarette tobacco as the sponsor of an event or as congratulating another person or thing on an achievement of, or event relating to, such person or thing.

Offences under  
Part IV.

15. (1) Any person who contravenes section 11(1), 12(1) or 13(4) commits an offence and is liable on summary conviction to a fine of \$5,000 and, in the case of a continuing offence, to a further penalty of \$500 for each day during which the offence continues.

(2) In any proceedings for a contravention of section 11(1) it shall be a defence for the person charged to prove that the advertisement to which the proceedings relate was printed or published in such circumstances that he did not know and had no reason to believe he was taking part in the printing or publication thereof.

## PART V

### SUPPLEMENTARY

Evidence of  
tar group.

16. (1) The Government Chemist may from time to time analyse any cigarette for the purpose of determining the tar group to which it belongs for the purposes of this Ordinance and may publish the result of any such analysis.

(2) The determination of the Government Chemist under subsection (1) as published by him shall be evidence of the tar group of the brand of cigarettes from which the cigarette analysed was taken subject to such conditions or limitations as may be prescribed; and any publication purporting to be a determination so published shall be deemed to be such a determination unless and until the contrary is proved.

(Cap. 109.)

(3) The power of a member of the Customs and Excise Service to take samples of any goods to which the Dutiable Commodities Ordinance applies conferred by section 11(1)(d) of that Ordinance shall extend to the taking of samples of cigarettes for analysis by the Government Chemist for the purposes of this section.

Amendment  
of section 7  
of Places  
of Public  
Entertainment  
Ordinance.  
(Cap. 172.)

17. Section 7(1) of the Places of Public Entertainment Ordinance is amended by inserting, after paragraph (i), the following paragraph—

“(ia) the inclusion in any cigarette advertisement (as defined for the purposes of the Smoking (Public Health) Ordinance 1982), intended for exhibition at a cinematographic display, of a health

warning in such manner as may be prescribed in the regulations and enabling any advertisement which does not display such a warning to be disapproved of for exhibition;”.

18. (1) The Governor in Council may make regulations for all or any of the following matters—

Regulations  
and Orders.

- (a) prescribing anything required or permitted to be prescribed under this Ordinance;
- (b) prescribing the manner in which the tar group designation of a cigarette is to be determined for the purposes of section 12;
- (c) requiring notification of anything done by any person which may be relevant to the tar group designation of cigarettes and imposing penalties not exceeding \$2,000 for a failure to comply with such requirement;
- (d) excepting any cigarette advertisement from the provisions of Part IV either absolutely or subject to such exceptions as may be prescribed; and
- (e) for the better carrying into effect of this Ordinance.

(2) Subject to the regulations, the Secretary for Social Services may by order in the *Gazette* prescribe—

- (a) the form of any notice that smoking is prohibited, any health warning or any tar group designation where the form is required or permitted to be prescribed under this Ordinance;
- (b) the manner in which any such notice, warning or designation is to be displayed.

Passed by the Hong Kong Legislative Council this 28th day of July 1982.

Jennie CHOK,  
Clerk to the Legislative Council.

*This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.*

Jennie CHOK,  
Clerk to the Legislative Council.



HONG KONG

No. 26 OF 1984

I assent.

L.S.

Philip HADDON-CAVE,  
Acting Governor.  
17 May 1984

Ordinance not  
discussed -  
222 G.N. 2115/84.

An Ordinance to amend the Smoking (Public Health) Ordinance.

[18 May 1984]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

Short title and  
commencement.

1. (1) This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 1984.

(2) Sections 2 and 3 of this Ordinance shall come into operation on a day to be appointed by the Governor by notice in the *Gazette* and different days may be so appointed for different sections and for different provisions of the same section.

Amendment of  
section 11.  
(Cap. 371.)

2. Section 11(3) of the principal Ordinance is amended by deleting paragraph (a) and substituting the following—

“(a) being a local newspaper published—

(i) for the passengers of any airline or shipping company;

(ii) for the tobacco trade or as the “in house” magazine of any company engaged in that trade;

(aa) being a local newspaper, other than a newspaper referred to in paragraph (a), the circulation of which within Hong Kong—

(i) constitutes not more than 20 per cent of its total circulation; and

(ii) does not exceed such number as the Governor in Council may from time to time specify by notice in the *Gazette*.”

Amendment of  
section 12.

3. Section 12(2) of the principal Ordinance is amended—

(a) by deleting paragraph (a);

(b) by deleting paragraph (b); and

(c) by deleting paragraph (c).

Passed by the Hong Kong Legislative Council this 16th day of May 1984.

Jennie CHOK,  
Clerk to the Legislative Council.

*This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.*

Jennie CHOK,  
Clerk to the Legislative Council.

HONG KONG

No. 27 OF 1984

I assent.

L.S.

Philip HADDON-CAVE,  
Acting Governor.  
17 May 1984

An Ordinance to amend the Apprenticeship Ordinance.

[18 May 1984]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. This Ordinance may be cited as the Apprenticeship (Amendment) Ordinance 1984.

Ordinance 1  
discussed  
222 G.N. 2115/84

ended by inserting after  
Amendment of  
section 47.  
(Cap. 47.)

a writing,  
ditions as  
ons made

he may specify, under  
under this section.”

Passed by the Hong Kong Legislative Council this 16th day of May 1984.

Jennie CHOK,  
Clerk to the Legislative Council.

*This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.*

Jennie CHOK,  
Clerk to the Legislative Council.

Annex II

SMOKING (PUBLIC HEALTH) (AMENDMENT) ORDINANCE 1994

CONTENTS

Section	Page
1. Short title and commencement .....	A1319
2. Long title amended .....	A1319
3. Interpretation .....	A1319
4. Section added	
6A. Display of signs outside restaurants .....	A1320
5. Part heading substituted .....	A1320
6. Sales of cigarettes and tobacco products .....	A1320
7. Section substituted	
9. Health warnings when tobacco products are sold .....	A1320
8. Seizure and forfeiture .....	A1321
9. Part heading substituted .....	A1321
10. Tobacco advertisements in printed publications .....	A1321
11. Health warning when tobacco advertisement displayed .....	A1321
12. Prohibition on broadcast of tobacco advertisement by radio or visual images .....	A1321
13. Prohibition on exhibition of tobacco advertisement by film .....	A1321
14. Meaning of tobacco advertisement .....	A1321
15. Part added	

PART IVA

PROHIBITION ON SELLING OR GIVING OF  
TOBACCO PRODUCTS TO MINORS

15A. Prohibition on selling or giving of tobacco products to minors .....	A1322
15B. Display of sign when offering tobacco products for sale, etc. ....	A1322
15C. Offences under Part IVA .....	A1323
15D. Interpretation .....	A1323

HONG KONG

ORDINANCE No. 91 OF 1994

L.S.

I assent.

Christopher PATTEN,  
Governor.  
20 October 1994

An Ordinance to amend the Smoking (Public Health) Ordinance.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. Short title and commencement

(1) This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 1994.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Health and Welfare by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

2. Long title amended

The long title to the Smoking (Public Health) Ordinance (Cap. 371) is amended by repealing "cigarette" in both places where it appears and substituting "tobacco".

3. Interpretation

Section 2 is amended—

- (a) by repealing the definition of "cigarette advertisement";
- (b) in paragraph (a) of the definition of "manager" by repealing "or public transport carrier" in both places where it appears and substituting "public transport carrier or restaurant";
- (c) in the definition of "retail container" by adding "cigar packets or pipe tobacco packets" after "packets";
- (d) by adding—  
"“cigar” means tobacco rolled up in tobacco, in such form as to be capable of immediate use for smoking;

"pipe" means a receptacle or other device designed for use for smoking tobacco in a form other than as a cigarette or cigar;  
 "pipe tobacco" means tobacco packaged as being suitable for smoking in a pipe;  
 "tobacco advertisement" has the meaning assigned to it by section 14."

#### 4. Section added

The following is added—

##### "6A. Display of signs outside restaurants

(1) The manager of a restaurant shall place and keep in place in a prominent position in the restaurant and visible from outside the restaurant a sign in English and Chinese indicating whether there is in the restaurant an area of its seating accommodation where smoking is not permitted.

(2) A sign required by subsection (1) shall be of the prescribed description and shall be maintained by the manager in legible condition and good order.

(3) Any manager who fails to place or keep in place a sign in accordance with subsection (1) or to maintain a sign in accordance with subsection (2) commits an offence and is liable on summary conviction to a fine at level 4.

(4) In this section "restaurant" means a restaurant licensed pursuant to the Public Health and Municipal Services Ordinance (Cap. 132)."

#### 5. Part heading substituted

Part III is amended by repealing the heading and substituting—"SALES OF TOBACCO PRODUCTS".

#### 6. Sales of cigarettes and tobacco products

Section 8(2) is amended by adding ", cigarette tobacco, cigars or pipe tobacco" after "cigarettes".

#### 7. Section substituted

Section 9 is repealed and the following substituted—

##### "9. Health warnings when tobacco products are sold

No person shall sell, offer for sale or possess for the purposes of sale any cigar, pipe tobacco or cigarette tobacco unless the container thereof bears a health warning in the prescribed form and manner."

#### 8. Seizure and forfeiture

Section 10A(1)(a) is amended by repealing "or cigarette tobacco" and substituting ", cigarette tobacco, cigars or pipe tobacco".

#### 9. Part heading substituted

Part IV is amended by repealing the heading and substituting—"TOBACCO ADVERTISING".

#### 10. Tobacco advertisements in printed publications

Section 11 is amended—

(a) in subsection (1)—

(i) by repealing "a cigarette" and substituting "a tobacco";

(ii) in paragraph (b) by repealing "the cigarettes" and substituting "any cigarettes";

(b) in subsection (3) by repealing "cigarette" and substituting "tobacco".

#### 11. Health warning when tobacco advertisement displayed

Section 12(1) is amended by repealing "cigarette" and substituting "tobacco".

#### 12. Prohibition on broadcast of tobacco advertisement by radio or visual images

Section 13 is amended by repealing "cigarette" and substituting "tobacco".

#### 13. Prohibition on exhibition of tobacco advertisement by film

Section 13A(1) is amended by repealing "cigarette" and substituting "tobacco".

#### 14. Meaning of tobacco advertisement

Section 14 is amended—

(a) in subsection (1)—

(i) by repealing "a cigarette advertisement" and substituting "a tobacco advertisement";

- (ii) in paragraphs (a) and (b) by repealing "or cigarette tobacco" and substituting ", cigarette tobacco, cigars or pipe tobacco";
- (b) in subsection (2)—
  - (i) by repealing "or cigarette tobacco" wherever it appears and substituting ", cigarette tobacco, cigars or pipe tobacco";
  - (ii) by repealing "a cigarette advertisement" and substituting "a tobacco advertisement";
- (c) in subsection (3)—
  - (i) in paragraph (a) by repealing "or cigarette tobaccos" and substituting ", cigarette tobaccos, cigars or pipe tobaccos";
  - (ii) in paragraph (b) by repealing "or cigarette tobacco" and substituting ", cigarette tobacco, cigar or pipe tobacco";
  - (iii) by repealing "or "tobaccos"" and substituting ", "tobaccos", "cigar", "cigars", "pipe" or "pipes"";
  - (iv) by repealing "a cigarette advertisement" and substituting "a tobacco advertisement".

#### 15. Part added

The following is added—

### "PART IVA

#### PROHIBITION ON SELLING OR GIVING OF TOBACCO PRODUCTS TO MINORS

##### 15A. Prohibition on selling or giving of tobacco products to minors

(1) No person shall sell any cigarette, cigarette tobacco, cigar or pipe tobacco to any person under the age of 18 years.

(2) No person shall, for the purposes of promotion or advertisement, give any cigarette, cigarette tobacco, cigar or pipe tobacco to any person under the age of 18 years.

##### 15B. Display of sign when offering tobacco products for sale, etc.

(1) Any person offering for sale, or promoting the sale, purchase, smoking or use of, cigarettes, cigarette tobacco, cigars or pipe tobacco shall place and keep in place in a prominent position at his premises or at the place of promotion a sign in English and Chinese to indicate that no cigarette, cigarette tobacco, cigar or pipe tobacco may be sold or given to any person under the age of 18 years.

(2) A sign required by subsection (1) shall be of the prescribed description and shall be maintained in legible condition and good order by the person offering for sale, or promoting the sale, purchase, smoking or use of, cigarettes, cigarette tobacco, cigars or pipe tobacco.

#### 15C. Offences under Part IVA

(1) Any person who contravenes section 15A or 15B commits an offence and is liable on summary conviction to a fine at level 4.

(2) It shall be a defence to a charge under section 15A of selling or giving any cigarette, cigarette tobacco, cigar or pipe tobacco to a person under the age of 18 years to prove that at the time the offence is alleged to have been committed, the person charged inspected an identity card or passport purporting to be the identity card or passport of the person under the age of 18 years and believed on reasonable grounds that such person was not under the age of 18 years.

#### 15D. Interpretation

For the purposes of this Part "promotion or advertisement" means a promotion or advertisement intended as an inducement to purchase, smoke or encourage the use of cigarettes, cigarette tobacco, cigars or pipe tobacco, whether or not with reference to a particular brand."

SMOKING (PUBLIC HEALTH)  
(AMENDMENT) ORDINANCE 1997

1997 年吸煙 (公眾衛生)  
(修訂) 條例

# SMOKING (PUBLIC HEALTH) (AMENDMENT) ORDINANCE 1997

## CONTENTS

Section	Page
1. Short title and commencement .....	A3600
2. Interpretation .....	A3600
3. Prohibition on smoking in certain designated areas .....	A3602
4. Display of signs outside restaurants .....	A3602
5. Offences under Part II .....	A3602
6. Sales of cigarettes and tobacco products .....	A3604
7. Prohibition on sale of cigarette with a tar yield exceeding 17 milligrams ....	A3604
8. Section added	
8B. Prohibition on sale of tobacco products from a vending machine	A3604
9. Offences under Part III .....	A3604
10. Seizure and forfeiture .....	A3606
11. Tobacco advertisements in printed publications .....	A3606
12. Section substituted	
12. No display of tobacco advertisement .....	A3608
13. Prohibition on broadcast of tobacco advertisement by radio or visual images	A3608
14. Section added	
13B. Prohibition on placing of tobacco advertisement on the Internet	A3610
15. Meaning of tobacco advertisement .....	A3610
16. Section added	
14A. Removal and disposal of tobacco advertisement .....	A3614
17. Offences under Part IV .....	A3614
18. Part heading amended .....	A3614
19. Prohibition on selling or giving of tobacco products, etc. ....	A3616
20. Display of sign when offering tobacco products for sale, etc. ....	A3616
21. Offences under Part IVA .....	A3618
22. Evidence of tar and nicotine yields .....	A3618
23. Regulations and Orders .....	A3618
24. Designated no smoking areas .....	A3618
25. Schedule amended .....	A3618
26. Schedule added	
Schedule 4 Premises specified under section 3(1B) that may be designated as no smoking areas .....	A3620
27. Transitional .....	A3620

# 1997 年吸煙 (公眾衛生) (修訂) 條例

## 目錄

條次	頁次
1. 簡稱及生效日期 .....	A3601
2. 釋義 .....	A3601
3. 禁止在某些指定區域內吸煙 .....	A3603
4. 在食肆外面展示標誌 .....	A3603
5. 第 II 部所訂罪行 .....	A3603
6. 香煙及煙草產品的售賣 .....	A3605
7. 禁止售賣焦油量超過 17 毫克的香煙 .....	A3605
8. 加入條文	
8B. 禁止以銷售機售賣煙草產品 .....	A3605
9. 第 III 部所訂罪行 .....	A3605
10. 檢取及沒收 .....	A3607
11. 印刷刊物內的煙草廣告 .....	A3607
12. 取代條文	
12. 不得展示煙草廣告 .....	A3609
13. 禁止以無線電或視覺影像方式播放煙草廣告 .....	A3609
14. 加入條文	
13B. 禁止將煙草廣告置於電腦互聯網上 .....	A3611
15. 煙草廣告的涵義 .....	A3611
16. 加入條文	
14A. 將煙草廣告移走和處置 .....	A3615
17. 第 IV 部所訂罪行 .....	A3615
18. 修訂第 IVA 部標題 .....	A3615
19. 禁止售賣或給予煙草產品等 .....	A3617
20. 煙草產品要約出售等時須展示標誌 .....	A3617
21. 第 IVA 部所訂罪行 .....	A3619
22. 焦油量及尼古丁量的證據 .....	A3619
23. 規例及命令 .....	A3619
24. 指定禁止吸煙區 .....	A3619
25. 修訂附表 .....	A3619
26. 加入附表	
附表 4 根據第 3(1B) 條指明的可指定為禁止吸煙區的處所 .....	A3621
27. 過渡性條文 .....	A3621

Section		Page		條次		頁次
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Consequential Amendments

相應修訂

Smoking (Public Health) (Specification of  
Newspaper Circulation) Notice

《吸煙 (公眾衛生) (指明報刊銷量) 公告》

28.    Repeal ..... A3620

28.    廢除 ..... A3621

HONG KONG

ORDINANCE NO. 93 OF 1997

L.S.

I assent.

Christopher PATTEN,  
Governor.  
26 June 1997

香 港

1997 年第 93 號條例

公印位置

本人批准。

彭定康，  
總督  
1997 年 6 月 26 日

An Ordinance to amend the Smoking (Public Health) Ordinance.

[ ]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

1. Short title and commencement

(1) This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 1997.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Health and Welfare by notice in the Gazette.

(3) Notwithstanding subsection (2), section 12 shall come into operation on the 2nd anniversary of the day on which this Ordinance is enacted.

(4) Notwithstanding subsection (2), section 11(a) shall come into operation on 31 December 1999.

2. Interpretation

Section 2 of the Smoking (Public Health) Ordinance (Cap. 371) is amended—

- (a) in the definition of “manager”, in paragraph (a) by repealing “or restaurant” where it twice appears and substituting “, restaurant, department store, shopping mall, supermarket or bank”;
- (b) in the definition of “no smoking area”, by repealing “3” and substituting “3(1), (1A) or (1C) or the premises or part thereof designated under section 3(1B)”;
- (c) by adding—
  - ““nicotine yield” (尼古丁量) means the nicotine yield per cigarette rounded off to one decimal place and expressed in milligrams;
  - “restaurant” (食肆) means a restaurant licensed pursuant to the Public Health and Municipal Services Ordinance (Cap. 132);

本條例旨在修訂《吸煙 (公眾衛生) 條例》。

[ ]

由香港總督參照立法局意見並得該局同意而制定。

1. 簡稱及生效日期

- (1) 本條例可引稱為《1997 年吸煙 (公眾衛生) (修訂) 條例》。
- (2) 本條例自衛生福利司以憲報公告指定的日期起實施。
- (3) 儘管有第 (2) 款的規定，第 12 條自本條例制定日期的第二周年日起實施。
- (4) 儘管有第 (2) 款的規定，第 11(a) 條自 1999 年 12 月 31 日起實施。

2. 釋義

《吸煙 (公眾衛生) 條例》(第 371 章) 第 2 條現予修訂——

- (a) 在“管理人”的定義的 (a) 段中，廢除兩度出現的“或餐館”而代以“、食肆、百貨公司、購物商場、超級市場或銀行”；
- (b) 廢除“禁止吸煙區”的定義而代以——
  - ““禁止吸煙區”(no smoking area) 指根據第 3(1)、(1A) 或 (1C) 條指定為禁止吸煙區的區域或根據第 3(1B) 條指定的處所或其部分；”；
- (c) 加入——
  - ““尼古丁量”(nicotine yield) 指調整為小數點後一個位並以毫克表示的每支香煙的尼古丁量；
  - “出售”、“售賣”、“銷售”、“售”(sale, sell) 包括藉以物相易或抽籤的方式處置，但不包括政府透過拍賣對被充公的沒有健康忠告的香煙的處置；



“sale, sell” (出售、售賣、銷售、售) includes the disposal by barter or raffling but excludes the disposal of confiscated cigarettes without health warnings through auctions by the Government;  
 “Secretary” means the Secretary for Health and Welfare;  
 “tar yield” (焦油量) means the tar yield per cigarette rounded off to the nearest milligram;  
 “tobacco product” (煙草產品) means any cigarette, cigarette tobacco, cigar or pipe tobacco;  
 “trade mark” (商標) has the same meaning as in section 2 of the Trade Marks Ordinance (Cap. 43);”.

### 3. Prohibition on smoking in certain designated areas

(1) Section 3(1A) is amended by repealing “by order in the Gazette”.

(2) Section 3 is amended by adding—

“(1B) Subject to subsection (1C), the manager of any premises specified in Schedule 4 may designate any such premises or part thereof as a no smoking area.

(1C) The manager of a restaurant which provides indoor seating accommodation for more than 200 persons, excluding accommodation being used exclusively for a private event and separated by full height partition, shall designate not less than one-third of the area of such as a no smoking area.”.

### 4. Display of signs outside restaurants

Section 6A is amended—

- (a) in subsection (1) by repealing “餐館” wherever it appears and substituting “食肆”;
- (b) by repealing subsection (4).

### 5. Offences under Part II

Section 7 is amended—

- (a) in subsection (2) by repealing “of \$10,000” and substituting “at level 3”;
- (b) in subsection (3) by repealing “of \$15,000” and substituting “at level 4”;
- (c) by adding—  
 “(4) Any manager who contravenes section 3(1C) commits an offence and is liable on summary conviction to a fine at level 4.”.

“食肆” (restaurant) 指依據《公眾衛生及市政條例》(第 132 章) 獲發牌照的食肆;

“商標” (trade mark) 的涵義與《商標條例》(第 43 章) 第 2 條中該詞的涵義相同;

“焦油量” (tar yield) 指調整為最接近的毫克整數的每支香煙的焦油量;

“煙草產品” (tobacco product) 指任何香煙、香煙煙草、雪茄或煙斗煙草;”。

### 3. 禁止在某些指定區域內吸煙

(1) 第 3(1A) 條現予修訂，廢除“藉憲報刊登的命令”。

(2) 第 3 條現予修訂，加入——

“(1B) 除第 (1C) 款另有規定外，附表 4 所指明的任何處所的管理人可指定該處所或其任何部分為禁止吸煙區。

(1C) 以全高度間隔隔開以作某項私人活動專用的席位除外，提供多過 200 個室內席位的食肆，其管理人需指定不少於三分一的面積作為禁止吸煙區。”。

### 4. 在食肆外面展示標誌

第 6A 條現予修訂——

- (a) 在第 (1) 款中，廢除所有“餐館”而代以“食肆”;
- (b) 廢除第 (4) 款。

### 5. 第 II 部所訂罪行

第 7 條現予修訂——

- (a) 在第 (2) 款中，廢除“罰款 \$10,000”而代以“第 3 級罰款”;
- (b) 在第 (3) 款中，廢除“罰款 \$15,000”而代以“第 4 級罰款”;
- (c) 加入——

“(4) 任何管理人違反第 3(1C) 條，即屬犯罪，一經循簡易程序定罪，可處第 4 級的罰款。”。

## 6. Sales of cigarettes and tobacco products

Section 8(1) is repealed and the following substituted—

“(1) No person shall sell, offer for sale or possess for the purposes of sale any cigarettes unless—

- (a) they are in a packet of at least 20 sticks; and
- (b) the packet thereof and, if the packet is within a retail container, the container also, bear in the prescribed form and manner—
  - (i) a health warning;
  - (ii) the tar and nicotine yields.”.

## 7. Prohibition on sale of cigarette with a tar yield exceeding 17 milligrams

Section 8A(1) and (2) is amended by repealing “20” and substituting “17”.

## 8. Section added

The following is added—

### “8B. Prohibition on sale of tobacco products from a vending machine

No person shall sell or offer for sale any tobacco product from a vending machine.”.

## 9. Offences under Part III

Section 10 is amended—

- (a) in subsection (1)—
  - (i) by adding “, 8B” after “8A”;
  - (ii) by repealing “of \$20,000” and substituting “at level 4”;
- (b) in subsection (1A) by repealing “20” and substituting “17”;
- (c) in subsection (2)—
  - (i) by repealing “group designation” and substituting “yield or nicotine yield”;
  - (ii) by repealing “of \$20,000” and substituting “at level 4”;
- (d) in subsection (3) by repealing everything after and including the dash and substituting—
 

“a brand name which includes the words “light”, “lights”, “mild”, “milds”, “low tar”, “醇”, “焦油含量低” or other words which imply or suggest that the cigarettes have a low tar yield unless the cigarettes have been determined under

## 6. 香煙及煙草產品的售賣

第 8(1) 條現予廢除，代以——

“(1) 任何人不得售賣或要約出售任何香煙，或管有任何香煙作售賣用途，除非——

- (a) 該等香煙是裝載於至少載有 20 支香煙的封包內；及
- (b) 該等香煙的封包及(如封包是在零售盛器內的話)盛器以訂明的格式及方式載有——
  - (i) 健康忠告；
  - (ii) 焦油量及尼古丁量。”。

## 7. 禁止售賣焦油量超過 17 毫克的香煙

第 8A(1) 及 (2) 條現予修訂，廢除所有 “20” 而代以 “17”。

## 8. 加入條文

現加入——

### “8B. 禁止以銷售機售賣煙草產品

任何人不得以銷售機售賣或要約以銷售機售賣任何煙草產品。”。

## 9. 第 III 部所訂罪行

第 10 條現予修訂——

- (a) 在第 (1) 款中——
  - (i) 在 “8A” 之後加入 “、8B”；
  - (ii) 廢除 “罰款 \$20,000” 而代以 “第 4 級罰款”；
- (b) 在第 (1A) 款中，廢除 “20” 而代以 “17”；
- (c) 在第 (2) 款中——
  - (i) 廢除 “含量類別名稱” 而代以 “量或尼古丁量”；
  - (ii) 廢除 “罰款 \$20,000” 而代以 “第 4 級罰款”；
- (d) 在第 (3) 款中，廢除在 “香煙的封包或零售盛器上” 之後的所有字句而代以——
 

“載有的牌子名稱包括 “醇”、“焦油含量低”、“light”、“lights”、“mild”、“milds”、“low tar” 或其他文字，而該等文字意味或使人聯想到該等香煙是含有低焦油量的，則除非該等香煙已根據第 16

section 16 and the regulations to have a tar yield of 9 milligrams or less, commits an offence and is liable on summary conviction to a fine at level 4.”.

## 10. Seizure and forfeiture

Section 10A is amended—

- (a) in subsection (1)(a)(i) by repealing “a tar group designation” and substituting “the tar and nicotine yields”;
- (b) in subsection (1)(a)(ii) by repealing “20” and substituting “17”;
- (c) in subsection (1)—
  - (i) by adding—
 

“(aa) any packet of cigarettes which contains less than 20 sticks of cigarettes;”;
  - (ii) by adding—
 

“(ca) any vending machine or tobacco product in connection with an offence under section 8B;”;
- (d) in subsection (1A)(a) by repealing “20” and substituting “17”;
- (e) in subsection (4) by repealing “(b) or (c)” and substituting “(aa), (b), (c) or (ca)”.

## 11. Tobacco advertisements in printed publications

Section 11 is amended—

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

“(1) No person shall print, publish or cause to be published a tobacco advertisement in a printed publication to which this section applies.”;
- (b) by repealing subsection (2)(b) and substituting—
 

“(b) any printed document published or distributed in Hong Kong.”;
- (c) in subsection (3)—
  - (i) in paragraph (a) by adding—
 

“(iii) for circulation entirely outside Hong Kong.”;
  - (ii) by repealing paragraph (aa).

## 12. Section substituted

Section 12 is repealed and the following substituted—

條及規例被鑑定為含有9毫克或少於9毫克的焦油量，否則即屬犯罪，一經循簡易程序定罪，可處第4級罰款。”。

## 10. 檢取及沒收

第10A條現予修訂——

- (a) 在第(1)(a)(i)款中，廢除“含量類別名稱”而代以“量及尼古丁量”；
- (b) 在第(1)(a)(ii)款中，廢除“20”而代以“17”；
- (c) 在第(1)款中——
  - (i) 加入——
 

“(aa) 載有少於20支香煙的香煙封包；”；
  - (ii) 加入——
 

“(ca) 與第8B條所訂罪行有關連的銷售機或煙草產品；”；
- (d) 在第(1A)(a)款中，廢除“20”而代以“17”；
- (e) 在第(4)款中，廢除“(b)或(c)”而代以“(aa)、(b)、(c)或(ca)”。

## 11. 印刷刊物內的煙草廣告

第11條現予修訂——

- (a) 刪去第(1)款，代以——
 

“(1) 任何人不得在本條適用的印刷刊物中印刷、刊登或安排刊登煙草廣告。”；
- (b) 廢除第(2)(b)款而代以——
 

“(b) 在香港刊印或分發的任何印刷文件。”；
- (c) 在第(3)款中——
  - (i) 在(a)段中，加入——
 

“(iii) 為全部在香港以外地方行銷而刊印的本地報刊；”；
  - (ii) 廢除(aa)段。

## 12. 取代條文

第12條現予廢除，代以——

**“12. No display of tobacco advertisement**

- (1) No person shall—
  - (a) display or cause to be displayed; or
  - (b) publish or distribute for the purpose of display or cause to be published or distributed for the purpose of display, any tobacco advertisement in writing or other permanent or semi-permanent form.
- (2) Subsection (1) does not apply to any tobacco advertisement which—
  - (a) is in or upon any stall or pitch of a hawker who is licensed pursuant to the Public Health and Municipal Services Ordinance (Cap. 132) to hawk commodities, including tobacco products, at that stall or pitch; and
  - (b) bears a health warning in the prescribed form and manner.
- (3) Subsection (1) does not apply to any tobacco advertisement which is in or upon any premises of a retail dealer dealing in commodities including tobacco products if—
  - (a) the number of persons employed by the dealer does not exceed 2; and
  - (b) the tobacco advertisement bears a health warning in the prescribed form and manner.
- (4) Subsection (1) does not apply to any tobacco advertisement which—
  - (a) is in or upon any premises—
    - (i) of any manufacturer of tobacco products or any wholesale dealer dealing in tobacco products; and
    - (ii) which are used for the manufacturing of tobacco products or for the purpose of dealing by wholesale in tobacco products; and
  - (b) is not visible from outside the premises.
- (5) The tobacco advertisement mentioned in subsection (4) is not required to bear a health warning or the tar and nicotine yields.”.

**“12. 不得展示煙草廣告**

- (1) 任何人不得——
  - (a) 展示或安排展示；或
  - (b) 為展示用途而刊登或分發，或安排為展示用途而刊登或分發，任何書面形式或其他永久或半永久形式的煙草廣告。
- (2) 第(1)款不適用於下列煙草廣告——
  - (a) 出現於任何小販攤檔的廣告，而該小販持有根據《公眾衛生及市政條例》(第132章)所發出的牌照，販賣包括煙草產品的貨品；及
  - (b) 該廣告以訂明格式及方式載有健康忠告。
- (3) 第(1)款不適用於下列煙草廣告——
  - (a) 出現於任何經營包括煙草產品的貨品的零售商處所之內或之上的廣告，而該零售商聘用不多於兩名僱員；及
  - (b) 該廣告以訂明格式及方式載有健康忠告。
- (4) 第(1)款不適用於符合以下說明的煙草廣告——
  - (a) (i) 煙草廣告是在任何煙草產品製造商或任何煙草產品批發商的處所之內或之上的；而
  - (ii) 該等處所是用作製造煙草產品或作批發煙草產品的用途的；及
  - (b) 該等煙草廣告是不能從該等處所外面看得見的。
- (5) 第(4)款提及的煙草廣告無須載有任何健康忠告或有關的焦油量及尼古丁量。”。

**13. Prohibition on broadcast of tobacco advertisement by radio or visual images**

Section 13 is amended by repealing “for” and substituting “intended for general”.

**13. 禁止以無線電或視覺影像方式播放煙草廣告**

第13條現予修訂，廢除“藉以下方法播放煙草廣告予公眾人士接收”而代以“為擬供公眾人士普遍接收而藉以下方法播放煙草廣告”。

**14. Section added**

The following is added—

**14. 加入條文**

現加入——

### “13B. Prohibition on placing of tobacco advertisement on the Internet

(1) No person shall place or cause to be placed a tobacco advertisement on the Internet.

(2) For the avoidance of doubt, a holder of a Public Non-Exclusive Telecommunications Service Licence granted under the Telecommunication Ordinance (Cap. 106) shall not be responsible for—

- (a) any content placed on the Internet by a user and made available for the use of another user unless the holder has knowledge of such content and can reasonably be expected to block the use of such content or require amendment of such content; or
- (b) any such content to which the holder only provides access, including the automatic and temporary storage of such content by the holder due to the request of a user.

(3) Subsection (1) shall not apply to any tobacco advertisement which is contained in any private correspondence on the Internet and is not for commercial purposes.”.

### 15. Meaning of tobacco advertisement

Section 14 is amended—

- (a) in subsection (1)—
  - (i) in paragraph (a) by repealing “or” at the end;
  - (ii) in paragraph (b) by repealing the full stop and substituting “; or”;
  - (iii) by adding—
 

“(c) illustrates or mentions smoking or cigarettes, cigarette tobacco, cigars or pipe tobacco or their packages or qualities.”;
- (b) by adding—
 

“(1A) Notwithstanding subsection (1)(c), an advertisement is not regarded as a tobacco advertisement if its purpose is to discourage smoking.”;
- (c) by repealing subsections (2) and (3) and substituting—
 

“(2) Subject to subsections (3) to (5), where—

  - (a) an advertisement; or
  - (b) any object, other than a tobacco product, which is displayed to the public, whether for sale or otherwise, in the course of conducting any business or providing any service,

### “13B. 禁止將煙草廣告置於電腦互聯網上

(1) 任何人不得將或安排將煙草廣告置於電腦互聯網上。

(2) 為免生疑問，根據《電訊條例》(第106章)批給的公共非專利電訊服務牌照的持有人無須對以下事項負責——

- (a) 某使用人置於電腦互聯網上並供另一使用人使用的任何內容，除非該持有人知道該等內容，而且可合理地預期該持有人會阻止該等內容的使用或可合理地預期該持有人會要求修訂該等內容；或
- (b) 該持有人只提供取覽方便的任何該等內容，包括因某使用人的要求而由該持有人對任何該等內容所作的自動和暫時儲存。

(3) 第(1)款不適用於載於電腦互聯網的任何私人通訊內且不是為商業目的作出的任何煙草廣告。”。

### 15. 煙草廣告的涵義

第14條現予修訂——

- (a) 在第(1)款中——
  - (i) 在(a)段中，廢除末處的“或”；
  - (ii) 在(b)段中，廢除末處的逗號而代以“；或”；
  - (iii) 加入——
 

“(c) 闡說或提及吸煙、香煙、香煙煙草、雪茄或煙斗煙草，或其包裝或品質，”；
- (b) 加入——
 

“(1A) 儘管有第(1)(c)款的規定，如任何廣告以勸阻吸煙為目的，則該廣告不視為煙草廣告。”；
- (c) 廢除第(2)及(3)款而代以——
 

“(2) 除第(3)至(5)款另有規定外，凡——

  - (a) 任何廣告；或
  - (b) 任何在進行任何業務或提供任何服務的過程中不論是為售賣或其他目的而向公眾展示的煙草產品以外的物體，

includes the name or trade name of any person associated with the marketing of any tobacco product, or any trade mark or brand name of a tobacco product, or any pictorial device or part thereof commonly associated therewith, then the advertisement or object shall be deemed to be a tobacco advertisement.

(3) Subsection (2) shall not apply to any advertisement or object if the inclusion of such name, trade name, trade mark, brand name or pictorial device or part thereof mentioned in subsection (2) is exclusively for—

- (a) a non-tobacco product or service; or
- (b) job recruitment purposes.

(4) Subsection (2) shall not apply to any advertisement or object which includes—

- (a) the name of any company or body corporate associated with the manufacture or marketing of any tobacco product; or
- (b) any name identified with the trade name or brand name of any tobacco product, in association with any product not being tobacco,

as the sponsor of an event or as congratulating another person or thing on an achievement of, or event relating to, such person or thing and which 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”.

(5) Notwithstanding subsection (2), any accidental or incidental appearance of any tobacco product or the trade mark, trade name, brand name or logo of any tobacco product where no valuable consideration has been or is intended to be given for such appearance is not a tobacco advertisement.

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

- (a) one price marker for each tobacco product—
  - (i) containing only the name and price of the tobacco product; and
  - (ii) of a size not greater than the size of the price marker of any of the non-tobacco products sold in the premises; or

包含任何與銷售任何煙草產品有關連的人的姓名、名稱或商業名稱，或包含任何煙草產品的商標或牌子名稱或包含任何通常與其相聯的圖樣或圖樣的一部分，則該廣告或物體即須當作為煙草廣告。

(3) 如任何廣告或物體純粹是——

- (a) 為非煙草產品或服務；或
- (b) 為職位招聘目的，

而包含第(2)款提及的姓名、名稱、商業名稱、商標、牌子名稱或圖樣或圖樣的一部分，則第(2)款不適用於該廣告或物體。

(4) 如任何廣告或物體包含——

- (a) 與製造或銷售任何煙草產品有關連的公司或法人團體的名稱；或
- (b) 與任何非煙草產品有關連而與任何煙草產品的商業名稱或牌子名稱相同的名稱，

以述明某項活動的贊助人或以祝賀某人或某事，所祝賀者為該人或該事的成就或與該人或該事有關的活動，而該廣告或物體並沒有提及“香煙”、“吸煙”、“煙草”、“雪茄”或“煙斗”，或“cigarette”、“cigarettes”、“smoking”、“tobacco”、“cigar”、“cigars”、“pipe”或“pipes”，則第(2)款不適用於該廣告或物體。

(5) 儘管有第(2)款的規定，凡沒有或不擬就任何煙草產品或其商標、商業名稱、牌子名稱或標識的意外或附帶出現付有價值代價，則該等出現並不屬煙草廣告。

(6) 凡在任何售賣煙草產品的處所內展示——

- (a) 一個為每項煙草產品而設的價格標記，而該價格標記——
  - (i) 只載有該煙草產品的名稱及價格；及
  - (ii) 尺寸不大於在該處所內出售的任何非煙草產品的價格標記的尺寸；或

- (b) one price board not exceeding 2 000 square centimetres listing only the names and prices of the tobacco products for sale.”.

- (b) 一塊只列出供售賣的煙草產品的名稱及價格的價格板，而該價格板的面積不超過 2 000 平方厘米，則該等展示並不屬煙草廣告。”。

16. Section added

The following is added—

16. 加入條文

現加入——

“14A. Removal and disposal of tobacco advertisement

“14A. 將煙草廣告移走和處置

(1) Any public officer authorized in writing by the Secretary may, without payment for it, remove or cause to be removed any tobacco advertisement or advertising structure in respect of which he reasonably suspects that an offence under this Ordinance has been or is being committed.

(1) 如任何獲衛生福利司書面授權的公職人員合理地懷疑有人已就或正就任何煙草廣告或廣告構築物違反本條例所訂的罪行，則該人員可在無須付款的情況下移走或安排移走該煙草廣告或廣告構築物。

(2) A magistrate may, on an application of the Secretary or any public officer authorized in writing by the Secretary, order the disposal of any tobacco advertisement or advertising structure removed under subsection (1), whether or not any person is convicted of any offence under this Ordinance, on the grounds that an offence under this Ordinance has been or is being committed in relation to such advertisement or structure.

(2) 裁判官可應衛生福利司或獲衛生福利司書面授權的任何公職人員的申請，基於有人已就或正就根據第 (1) 款移走的煙草廣告或廣告構築物違反本條例所訂的罪行，而命令處置該等煙草廣告或廣告構築物，不論是否有人已被裁定犯本條例所訂的罪行。

(3) The magistrate shall not order such disposal unless he is first satisfied that all persons with an interest in such advertisement or structure have, in so far as is reasonably practicable, had the opportunity of making representations thereon to the magistrate or that no such persons can, after reasonable inquiry, be found.

(3) 除非裁判官首先信納所有對該等廣告或構築物享有權益的人，已在合理的切實可行範圍內盡量有機會就該等廣告或構築物向裁判官作出申述，或首先信納在作出合理的查訊後該等享有權益的人未能尋獲，否則裁判官不得命令作出該等處置。

(4) The Government may recover the costs of the removal or disposal from the proprietor of the brand of tobacco product which is mentioned in the tobacco advertisement or advertising structure removed under subsection (1) or from the owner of such advertisement or structure.

(4) 政府可向根據第 (1) 款移走的煙草廣告或廣告構築物內提及的煙草產品牌子的擁有人或向該等廣告或構築物的擁有人，追討移走或處置費用。

17. Offences under Part IV

Section 15(1) is amended—

- (a) by repealing “or 13A” and substituting “, 13A or 13B”;

17. 第 IV 部所訂罪行

第 15(1) 條現予修訂——

- (a) 廢除“或 13A”而代以“、13A 或 13B”；

- (b) 廢除“罰款 \$15,000”而代以“第 4 級罰款”。

18. Part heading amended

The heading to Part IVA is amended by repealing “TO MINORS”.

18. 修訂第 IVA 部標題

第 IVA 部的標題現予廢除，代以“禁止售賣或給予煙草產品”。

## 19. Prohibition on selling or giving of tobacco products, etc.

Section 15A is amended—

- (a) in subsection (2) by repealing “under the age of 18 years”;
- (b) by adding—
  - “(3) No person shall—
    - (a) sell, offer for sale or give a tobacco product to any person in exchange for a token;
    - (b) give to any person a tobacco product as a prize in any event or competition;
    - (c) give valuable consideration to any individual in order to induce him to buy a particular tobacco product or otherwise to promote to him that tobacco product;
    - (d) sell, offer for sale or possess for the purposes of sale a tobacco product which includes or is accompanied by a gift;
    - (e) sell, offer for sale or possess for the purposes of sale a tobacco product which includes or is accompanied by a token, stamp or raffle ticket, which may be exchanged for a gift, prize or discount on any product;
    - (f) sell, offer for sale or possess for the purposes of sale a non-tobacco product which includes or is accompanied by a tobacco product as a gift; or
    - (g) give to any person any object which contains the name or trade name of any person associated with the marketing of cigarettes, cigarette tobacco, cigars or pipe tobacco or contains any trade mark or brand name of a tobacco product or any pictorial device or part thereof commonly associated therewith, and which is intended to be shown in public.”.

## 20. Display of sign when offering tobacco products for sale, etc.

Section 15B(1) is amended—

- (a) by repealing “or given”;
- (b) by adding “or given to any person” after “18 years”.

## 19. 禁止售賣或給予煙草產品等

第 15A 條現予修訂——

- (a) 在第 (2) 款中，廢除“18 歲以下”而代以“任何”；
- (b) 加入——
  - “(3) (a) 任何人不得將或要約將煙草產品售賣予其他人或將煙草產品給予任何其他人，以換取憑證；
  - (b) 任何人不得將煙草產品給予任何其他人，以作為在任何活動或比賽中的獎品；
  - (c) 任何人不得為誘使任何個人購買某煙草產品或以其他方式向該人推廣該煙草產品而給予該人有值代價；
  - (d) 任何人不得售賣或要約出售包括禮物在內或連同禮物的任何煙草產品，或管有該等煙草產品作售賣用途；
  - (e) 凡任何憑證、印花或彩票可以換取禮物、獎品或任何產品的折扣，則任何人不得售賣或要約出售包括該憑證、印花或彩票在內或連同該憑證、印花或彩票的任何煙草產品，或管有該等煙草產品作售賣用途；
  - (f) 任何人不得售賣或要約出售包括作為禮物的煙草產品在內或連同該煙草產品的任何非煙草產品，或管有該非煙草產品作售賣用途；或
  - (g) 任何人不得將擬向公眾展示的載有任何與銷售香煙、香煙煙草、雪茄或煙斗煙草有關連的人的姓名、名稱或商業名稱的物體，給予任何其他人，亦不得將擬向公眾展示的載有任何煙草產品的商標或牌子名稱或通常與其相聯的圖樣或圖樣的一部分的物體，給予任何其他人。”。

## 20. 煙草產品要約出售等時須展示標誌

第 15B(1) 條現予修訂——

- (a) 廢除“或給予”；
- (b) 在“人士”之後加入“或給予任何人士”。



**21. Offences under Part IVA**

Section 15C(2) is amended by repealing “or giving”.

**22. Evidence of tar and nicotine yields**

Section 16 is amended—

- (a) in subsection (1) by repealing “the tar group to which it belongs” and substituting “its tar and nicotine yields”;
- (b) in subsection (2) by repealing “group” and substituting “and nicotine yields”.

**23. Regulations and Orders**

Section 18 is amended—

- (a) by repealing subsection (1)(b) and substituting—  
“(b) prescribing the manner in which the tar and nicotine yields of a cigarette are to be determined;”;
- (b) in subsection (1)(c)—
  - (i) by repealing “group designation” and substituting “and nicotine yields”;
  - (ii) by repealing “\$6,000” and substituting “a fine at level 3”;
- (c) in subsection (1)(d) by repealing “cigarette” and substituting “tobacco”;
- (d) in subsection (2)—
  - (i) by repealing “for Health and Welfare”;
  - (ii) in paragraph (a) by repealing “group designation” and substituting “and nicotine yields”;
  - (iii) in paragraph (b) by repealing “designation” and substituting “yields”.

**24. Designated no smoking areas**

Schedule 2 is amended by adding—

- “4. (a) Any indoor area open to the public in a supermarket or bank.
- (b) Any indoor area open to the public in department stores or shopping malls, except the restaurant within a department store or a shopping mall.”.

**25. Schedule amended**

Schedule 3 is amended by adding—

**21. 第 IVA 部所訂罪行**

第 15C(2) 條現予修訂，廢除“或給予”。

**22. 焦油量及尼古丁量的證據**

第 16 條現予修訂——

- (a) 在第 (1) 款中，廢除“所屬的焦油含量類別”而代以“焦油量及尼古丁量”；
- (b) 在第 (2) 款中，廢除“含量類別”而代以“量及尼古丁量”。

**23. 規例及命令**

第 18 條現予修訂——

- (a) 廢除第 (1)(b) 款而代以——  
“(b) 訂明鑑定香煙焦油量及尼古丁量的方式；”；
- (b) 在第 (1)(c) 款中——
  - (i) 廢除“含量類別名稱”而代以“量及尼古丁量”；
  - (ii) 廢除“\$6,000”而代以“第 3 級”；
- (c) 在第 (1)(d) 款中，廢除“香煙”而代以“煙草”；
- (d) 在第 (2) 款中——
  - (i) 在 (a) 段中，廢除“含量類別名稱”而代以“量及尼古丁量”；
  - (ii) 在 (b) 段中，廢除“名稱”而代以“焦油量及尼古丁量”。

**24. 指定禁止吸煙區**

附表 2 現予修訂，加入——

- “4. (a) 超級市場或銀行中任何對公眾開放的室內地區。
- (b) 百貨公司或購物商場中任何對公眾開放的室內地區但百貨公司或購物商場中的餐館則除外。”。

**25. 修訂附表**

附表 3 現予修訂，加入——

“2. Airport Authority Passenger terminal complex of the Airport as defined in section 2 of the Airport Authority Ordinance (Cap. 483)”.

## 26. Schedule added

The following is added—

### “SCHEDULE 4

[s. 3]

#### PREMISES SPECIFIED UNDER SECTION 3(1B) THAT MAY BE DESIGNATED AS NO SMOKING AREAS

Item	Premises
1.	Restaurants.
2.	Schools registered or provisionally registered under the Education Ordinance (Cap. 279).
3.	Post secondary colleges, technical colleges or technical institutes, industrial training centres or skills centres.
4.	Universities.
5.	The Hong Kong Academy for Performing Arts.”.

## 27. Transitional

(1) It shall not be an offence under the principal Ordinance, as amended by this Ordinance, to sell, offer for sale or possess for the purposes of sale packets or retail containers of tobacco products which do not comply with the provisions of the principal Ordinance, as amended by this Ordinance, relating to tar and nicotine yields if, but only if, the packets or retail containers comply with the provisions of the principal Ordinance, as in force immediately before the commencement of this section, relating to tar group designations.

(2) This section shall expire on the 1st anniversary of the commencement of this section.

### Consequential Amendments

#### Smoking (Public Health) (Specification of Newspaper Circulation) Notice

## 28. Repeal

The Smoking (Public Health) (Specification of Newspaper Circulation) Notice (Cap. 371 sub. leg.) is repealed.

“2. 機場管理局

《機場管理局條例》(第 483 章) 第 2 條所界定的機場的機場客運大廈”。

## 26. 加入附表

現加入——

### “附表 4

[第 3 條]

#### 根據第 3(1B) 條指明的可指定為 禁止吸煙區的處所

項	處所
1.	食肆。
2.	根據《教育條例》(第 279 章) 註冊或暫時註冊的學校。
3.	專上學院、科技學院或工業學院、工業訓練中心或技能訓練中心。
4.	大學。
5.	香港演藝學院。”。

## 27. 過渡性條文

(1) 任何人出售、要約出售或為售賣用途而管有不合經本條例修訂的主體條例中關於焦油量及尼古丁量的條文的煙草產品封包或零售盛器，並不犯經本條例修訂的主體條例所訂的罪行，但在亦只有在該等煙草產品封包或零售盛器符合在緊接本條的生效日期前有效的主體條例中關於焦油含量類別的條文，該人才沒有犯該等罪行。

(2) 本條在本條的生效日期一周年當日失效。

### 相應修訂

#### 《吸煙 (公眾衛生) (指明報刊銷量) 公告》

## 28. 廢除

《吸煙 (公眾衛生) (指明報刊銷量) 公告》(第 371 章，附屬法例) 現予廢除。