

## LEGISLATIVE COUNCIL BRIEF

Smoking (Public Health) Ordinance  
Chapter 371

### Smoking (Public Health) (Amendment) Bill 2005

#### INTRODUCTION

A  
— At the meeting of the Executive Council on 19 April 2005, the Council ADVISED and the Acting Chief Executive ORDERED that the Smoking (Public Health) (Amendment) Bill 2005 (“the Bill”), at Annex A, should be introduced into the Legislative Council to provide for protection against secondhand smoking in indoor workplace and public places.

#### JUSTIFICATIONS

2. Following a consultation exercise conducted in mid 2001, anti-smoking advocates, the healthcare sector and the majority of the public have been urging the Administration to implement a smoking ban in indoor workplaces and public places. At the sitting of the Legislative Council on 20 October 2004, the motion calling for expeditious implementation of a total smoking ban in workplaces, restaurants and indoor public areas was carried by a large margin. Internationally, the adoption of the Framework Convention on Tobacco Control (FCTC)<sup>1</sup> by the World Health Organization (WHO) in May 2003 has heightened momentum for tightening tobacco control laws worldwide. A summary of the information on overseas smokefree workplace laws and their impact on the catering industry is at Annex B.

B  
— 3. Having regard to the irrefutable health risks of smoking and secondhand smoking, the latest community opinions and international developments, we propose that the Ordinance be amended to address the substantive issues described in paragraphs 6-18 below.

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<sup>1</sup> FCTC is an international treaty aimed at reducing tobacco-related deaths and diseases around the world. Among other things, the treaty obliges party states to establish clean indoor air controls and impose restrictions on tobacco advertising and promotion. As at 25 March 2005, 168 and 61 WHO Member States have signed and ratified the treaty respectively. The People's Republic of China has also signed the treaty. The Convention entered into force on 27 February 2005.

## **Expansion of Statutory No Smoking Areas**

4. Under the existing legislation, smoking is prohibited in certain indoor public places such as shopping malls, supermarkets, banks and department stores. We propose that the statutory smoking ban be extended to cover premises and places as elaborated in paragraphs 7-10 below.

### *Restaurants, Bars and Other Hospitality Premises*

5. Under the Ordinance, restaurants with seating capacity of 200 persons or less are not subject to statutory smoking ban. Those providing indoor seating for over 200 persons are required to make at least one-third of the seating area smokefree. In practice, this requirement has failed to protect restaurant goers and employees from secondhand smoking because tobacco smoke can diffuse from smoking areas to no smoking areas. Operationally, it has caused inconvenience to restaurant management and conflicts between smokers and non-smokers. To address these problems, we propose prohibiting smoking in the indoor areas of all restaurants, regardless of their size and seating capacity. The smoking ban should also apply to the indoor areas of bars, karaoke establishments, mahjong premises, commercial bathhouses and public markets to ensure comprehensive health protection for employees in the catering and hospitality industries.

### *Educational and Welfare Institutions*

6. The Ordinance presently provides that the management authority of a school, university or tertiary institution may designate the educational premises or part thereof as no smoking areas. As such designation is not compulsory, smoking is generally not prohibited in educational premises. To promote a smokeless learning environment and to curb youth smoking, we propose imposing a statutory ban on both the indoor and outdoor areas of all child care centres, kindergartens, primary and secondary schools, and in the indoor premises of all universities and post-secondary institutions.

7. At present, there is no requirement under the Ordinance to prohibit smoking in residential care homes for the elderly, residential treatment centres and hospitals. Following consultations with the licensing authorities, we propose designating the indoor parts of these premises as statutory no smoking areas under the Ordinance for the health benefits of patients, residents, elders and staff members therein.

### *Indoor Workplaces / Public Places*

8. Currently, there is no legislation to restrict smoking in workplaces and public places generally. A survey conducted by the Census and Statistics Department in 2001 revealed that over 700,000 persons working in indoor premises were subject to the influence of secondhand smoking. In view of the growing evidence of the costs and health risks of secondhand smoking, we propose including indoor areas of workplaces and public places as statutory smokefree areas apart from those premises specifically mentioned in paragraphs 7-9.

## **Advertisement and Promotion of Tobacco Products**

### *Display of Tobacco Advertisement*

9. Under the Ordinance, the display of tobacco advertisement is prohibited except at licensed hawker stalls and retail outlets employing not more than two employees. We observe that such exemptions have become a source of abuse. For example, numerous tobacco advertisements are being displayed at small retail stalls selling tobacco products. Many large light-boxes displaying tobacco advertisements can be found in small shop premises throughout the territory. To arrest these undesirable phenomena, we propose revoking the exemptions currently applicable to licensed hawker stalls and retail outlets with two employees or less.

### *Price Board and Price Marker*

10. Presently, price boards (for more than one type of tobacco products) and price markers (for a single type of tobacco product) can be lawfully displayed inside premises selling tobacco products. The Ordinance confines the size of a price board to 2,000 cm<sup>2</sup> while there is no size limit for price markers. To prevent price markers/price boards from being used as advertising vehicles for specific brands of tobacco products, we propose tightening the Ordinance to limit the size of price boards and price markers to 1,500 cm<sup>2</sup> and 50 cm<sup>2</sup> respectively.

### *Sale of Tobacco Products in Association with Other Products*

11. The existing legislation stipulates that a tobacco product cannot be sold in association with any gift, token, stamp or raffle ticket that may be exchanged for any gift. There is however no provision to prevent the package sale of tobacco products and non-tobacco products (e.g. watches or lighters). As such business practices have the undesirable effect of inducing purchase of tobacco products by smokers or non-smokers, we propose prohibiting the sale of tobacco product and non-tobacco merchandise as a single item.

### *Tobacco Sponsorship*

12. At present, the display of a tobacco brand name in any sponsored event is deemed a tobacco advertisement and hence prohibited. However, the display of the tobacco brand name will be allowed if it is displayed in conjunction with a non-tobacco product and if no words associated with “smoking”, “cigarette”, “tobacco”, etc. are mentioned. In some events jointly sponsored by tobacco and non-tobacco products, the promotional materials were designed such that the brand name of the tobacco product was much more prominent than the non-tobacco product. To plug this loophole, we propose amending the Ordinance to prohibit the appearance of a tobacco brand name in association with a non-tobacco product unless the name does not form the most prominent part of the advertisement.

## **Packaging and Labeling of Tobacco Products**

### *Health warnings*

13. Under the Ordinance, health warnings in prescribed size and wording and the amount of tar and nicotine yields are required to be shown on the package of tobacco products. To enhance the visual impact and deterrent effect of the warnings, we propose amending the Smoking (Public Health)(Notices) Order (“the Order”)(Cap. 371 sub. leg. B) to require the packets or retail containers of tobacco products to bear health warnings with pictorial and graphic contents. To conform to international practices, we also recommend increasing the prescribed area of the health warnings to at least 50% of the principal surface areas of the packet/container of any tobacco product.

### *Misleading descriptors*

14. At present, the use of descriptors on the package of any tobacco product such as “light”, “mild” and “low tar” is permitted. There is no scientific evidence indicating that products with these descriptors pose lesser health risks to smokers. On the contrary, the above descriptors may give the false impression that the tobacco products concerned are less harmful than others, thus encouraging deeper inhalation and increased daily consumption by smokers. In line with international practice, we recommend prohibiting the appearance of the words “light”, “lights”, “mild”, “milds”, “low tar” or other words that may have similar misleading effects on any package of tobacco product.

## **Law Enforcement**

15. At present, several government departments are involved in enforcing the Ordinance, notably the Police and Customs and Excise Department. In addition, managers of statutory no smoking areas are empowered to enforce the law. In February 2001, the Tobacco Control Office (TCO) was established under the Department of Health to coordinate the Government's efforts on tobacco control. There are however no concurrent conferment of legal powers on TCO staff to take enforcement actions under the Ordinance. To address this deficiency, we propose empowering TCO inspectors to deal with certain existing offences in the Ordinance and new offences<sup>2</sup> arising from the proposed amendments. The general powers of enforcement proposed to be given to TCO inspectors include the powers of entry, evidence collection and seizure.

16. Government efforts alone are not adequate to eradicate smoking offences under the Ordinance. For expeditious handling of smoking-related complaints and removal of nuisances caused by secondhand smoke, managers of statutory no smoking areas should take immediate remedial actions (e.g. requiring a smoker to extinguish a lighted cigarette) upon detecting or being notified of a smoking act. We recommend extending the enforcement powers conferred on managers of existing statutory smokefree areas to managers of new statutory smokefree areas such as indoor workplaces, restaurants and bars. As with the present practice, they will not be held accountable for a smoking act in the premises concerned provided the statutory requirement to display no-smoking signs is met.

## **Exceptional Arrangements and Transitional Provisions**

17. We consider that transitional arrangements are necessary to facilitate compliance with the new statutory requirements. The Amendment Ordinance will come into operation on the ninetieth day after it is published in the Gazette. In respect of packaging of tobacco products and display of tobacco advertisements by licensed hawkers/small retailers, we propose that a longer adaptation period of 1 year be allowed. A summary of the proposed adaptation periods is at Annex C. During the adaptation periods, we will publicize the new regulatory requirements among the communities and trades concerned and offer necessary training and assistance to promote compliance.

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<sup>2</sup> TCO's ambit will not cover Part III of the Ordinance concerning sale of tobacco products, the enforcement of which will continue to rest with the Customs and Excise Department.

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18. While the majority of indoor areas in non-residential buildings will have to go smokefree according to our proposals, some places will be exempted from the smoking ban on human rights, privacy and enforceability grounds. These comprise accommodation areas including private residence, staff dormitories, guest rooms and suites in hotels<sup>3</sup>, buildings under construction, smoking rooms in airport passenger terminals and correctional institutions.

19. Given the large clientele and workforce associated with catering and hospitality premises in Hong Kong, we consider it inappropriate from the public health angle to exempt the indoor part of these premises from the smoking ban. Taking into account the lead-time required to examine the Bill by the Legislative Council, we consider that the 90-day adaptation period as written into the Bill should suffice. It is important to apply the same transitional arrangements to different types of catering and hospitality premises to avoid distorting the level playing field.

## THE BILL

20. The main provisions are -

- (a) **Clause 4** amends certain existing definitions in the Ordinance and adds a number of new definitions. In particular, new definitions of “indoor”, “public place” and “workplace” are added.
- (b) Under section 3(1) of the Ordinance, the areas described in Schedule 2 are designated as no smoking areas. Apart from amending that Schedule (see sub-paragraph h below), **Clause 5** amends section 3 of the Ordinance to designate indoor areas in workplaces or public places as no smoking areas (new subsection (1AA)). It also sets out a number of exceptions to this new subsection, such as domestic premises and hotel rooms (new subsection (5))
- (c) Section 10(3) of the Ordinance prohibits the sale of cigarettes which have on their packet or their retail container a brand name which includes words implying that the cigarettes have a low tar yield, such as “light” and “mild”. However, the prohibition does not apply if the cigarettes have been determined to have a tar yield of 9 milligrams or less. **Clause 11** amends that section to expand the prohibition so that it covers sale of cigarettes which have on their packet or their retail container words implying that

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<sup>3</sup> The smoking ban will apply in all indoor areas of hotels and guesthouses apart from guest rooms and staff dormitories. However, smoking will be allowed in all outdoor areas within hotel complexes such as open-air swimming pools, sitting-out areas, playgrounds, outside seating accommodation of restaurants/bars, rooftops, non-enclosed sidewalks/corridors, balconies, etc.

the cigarettes are less harmful than others, including “light” and “mild”.

- (d) Section 11 of the Ordinance prohibits the printing and publication of tobacco advertisements in certain printed publications such as local newspapers. However, the prohibition does not apply if the local newspaper is published for the passengers of an airline or shipping company, or for circulation entirely outside Hong Kong. **Clause 13** amends that section by removing these two exceptions.
- (e) The Ordinance currently restricts advertising of tobacco products. However, section 14 of the Ordinance provides for certain exceptions. For instance, under subsection (3), it is lawful to include in an advertisement the trade name of a tobacco company if the name is included exclusively for a non-tobacco product or service, or for job recruitment purposes. Under subsection (4), it is lawful to include in an advertisement the name of a tobacco company as the sponsor of an event. **Clause 15** amends those subsections so that the exceptions only apply if the name in question does not form the most prominent part of the advertisement.
- (f) **Clause 17** amends section 15A of the Ordinance to prohibit the sale of a tobacco product and a non-tobacco product as a single item.
- (g) **Clause 18** adds a new Part IVB to the Ordinance to enhance the enforcement of the Ordinance. The new Part contains provisions about the appointment, powers and duties of inspectors.
- (h) Schedule 2 of the Ordinance contains a list of no smoking areas that are designated under the Ordinance. **Clause 20** amends that Schedule by adding a number of items, such as schools and indoor areas of public markets, restaurant premises, bars, karaoke establishments, mahjong-tin kau premises, bathhouses and hospitals.
- (i) **Clauses 23 to 31** amend the Smoking (Public Health) Regulations (Cap. 371 sub. leg. A), mainly to repeal certain provisions that have become obsolete.
- (j) **Clauses 32 and 33** replace paragraphs 3 and 4A of the Order by new paragraphs 3, 4A and 4AA. These new provisions set out the new requirements for the display of health warnings. **Clause 36** amends the Schedule to the Order to set out the new forms of health warnings.

(k) **Clause 38** is a transitional provision. Within a transitional period of one year, it is lawful to sell:

- (i) any tobacco products in packets or retail containers that bear the pre-amended forms of health warnings;
- (ii) any cigarettes which have on their packet or their retail container a brand name which includes words implying that the cigarettes have a low tar yield, if the sale would not have contravened the pre-amended section 10(3) of the Ordinance.

### **LEGISLATIVE TIMETABLE**

21. The legislative timetable will be -

2005	Publication in the Gazette	29	April
	First Reading and commencement of Second Reading debate	11	May 2005
	Resumption of Second Reading debate, committee stage and Third Reading notified	To	be

### **IMPLICATIONS OF THE BILL**

22. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. The financial, civil service, economic and sustainability implications of the Bill are set out at Annex D.

D

### **BINDING EFFECT OF THE LEGISLATION**

23. The designation of indoor workplaces and public places as no smoking areas under the Bill is also applicable to government premises.

### **PUBLIC CONSULTATION**

24. We consulted the Panel on Health Services of the Legislative Council on the proposed amendments to the Ordinance on 10 January 2005 and 25 February 2005. There was general support for the Administration's plan to introduce comprehensive smokefree workplace legislation in Hong Kong. Members' views and suggestions on the exceptional and transitional arrangements have been factored into the



Bill as appropriate.

25. We held over ten consultative sessions with tobacco control advocates and representatives from the catering, entertainment and tobacco industries from January to February 2005. Visits were made to eight hospitality premises including bars, karaoke establishments, discos and nightclubs on 4-5 February 2005 to explain the rationale behind the legislative initiatives and to collect feedback from the operators. We will continue to work with the catering and hospitality industries to allay their outstanding concerns about the smokefree legislation.

## **PUBLICITY**

26. A press release will be issued on 27 April 2005 and a spokesman will be available to answer media enquires.

27. Sustained public support is essential for smooth implementation of the legislative proposals. We will continue to arouse community awareness about the costs and risks of smoking and secondhand smoking through publicity measures. We will work closely with the Hong Kong Council on Smoking and Health, non-governmental agencies and district organizations to disseminate smokefree messages to the community.

## **BACKGROUND**

28. It is the Government's policy to discourage smoking by a step-by-step approach. Through a mix of measures including legislation, taxation, public education and smoking cessation, we have managed to maintain our smoking prevalence at around 15% over the past decade. This is relatively low by the standard of developed economies.

29. The Smoking (Public Health) Ordinance, first enacted in 1982, provides a legal framework for restricting the use, sale and promotion of tobacco products in Hong Kong. Over the years, the Ordinance has been progressively amended to tighten statutory control on various fronts, having regard to prevailing community opinions and international developments. The Ordinance was last amended in June 1997.

30. The Administration launched a consultation exercise in June 2001 to gauge public opinions on a package of legislative initiatives similar to those described in paragraphs 6-18. The public consultation reflected broad-based community support for most of the initiatives, albeit the catering and tobacco trades were against some proposals on the grounds that they would adversely affect business prospects.

## **ENQUIRY**

31. Enquiries in relation to the Bill should be directed to Miss Helen Tang, Principal Assistant Secretary for Health, Welfare and Food (Health)<sup>3</sup>, at 2973 8111.

Health, Welfare and Food Bureau

April 2005

[HWF CR 52/581/89 Pt. 56]

Smoking (Public Health) Ordinance (Chapter 371)

**SMOKING (PUBLIC HEALTH)(AMENDMENT) BILL 2005**

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**SMOKING (PUBLIC HEALTH)(AMENDMENT) BILL 2005**

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## A BILL

### To

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

Enacted by the Legislative Council.

## PART 1

### PRELIMINARY

#### **1. Short title**

This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 2005.

#### **2. Commencement**

(1) Subject to subsection (2), this Ordinance shall come into operation on the ninetieth day after the day on which this Ordinance is published in the Gazette.

(2) Sections 14, 35 and 36(e) shall come into operation on the first anniversary of the day on which this Ordinance is published in the Gazette.



## PART 2

### AMENDMENTS TO SMOKING (PUBLIC HEALTH) ORDINANCE

#### 3. Long title amended

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

#### 4. Interpretation

Section 2 is amended –

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

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

- (a) an amusement game centre within the meaning of section 2(1) of the Amusement Game Centres Ordinance (Cap. 435);
  - (b) any place that is the subject of an order under section 3(1)(a) of that Ordinance; or
  - (c) any area that is specified in an order under section 3(1)(b) of that Ordinance;”;
- (c) in the definition of “manager” –

- (i) by repealing paragraph (a) and substituting –
  - “(a) a no smoking area (other than a lift) or a public transport carrier, includes an assistant manager, any person holding an appointment analogous to that of manager or assistant manager and any person who is responsible for the management, or is in charge or control of the no smoking area or public transport carrier;”;
- (ii) by repealing paragraph (c);
- (d) in the definition of “no smoking area”, by repealing “section 3(1), (1A) or (1C) or the premises or part thereof designated under section 3(1B)” and substituting “section 3”;
- (e) by repealing the definition of “principal officer”;
- (f) by repealing the definition of “restaurant” and substituting –
  - ““restaurant premises” (食肆處所) means any premises on or from which there is carried on –
    - (a) a factory canteen or restaurant within the meaning of section 31(2) of the Food Business Regulation (Cap. 132 sub. leg. X); or
    - (b) any other trade or business for the purpose of which meals or unbottled non-alcoholic drinks (including Chinese herb tea) are sold or intended to be sold for human consumption on the

premises (whether or not it is carried on by a person who is the holder of a licence under the Hawker Regulation (Cap. 132 sub. leg. AI));”;

- (g) by repealing the definition of “retail container” and substituting—

““retail container” (零售盛器) —

- (a) in relation to any cigarette, means a container suitable for the retail marketing of cigarette packets; or
- (b) in relation to any cigar, pipe tobacco or cigarette tobacco, means a container suitable for the retail marketing of cigar, pipe tobacco or cigarette tobacco;”;

- (h) by adding —

““approved institution” (核准院舍) means an approved institution within the meaning of section 2(1) of the Probation of Offenders Ordinance (Cap. 298);

“bar” (酒吧) means any place that is exclusively or mainly used for the sale and consumption of intoxicating liquors as defined in section 53(1) of the Dutiable Commodities Ordinance (Cap. 109);

“bathhouse” (浴室) means a bathhouse within the meaning of section 3(1) of the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I);

“child care centre” (幼兒中心) means a child care centre within the meaning of section 2(1) of the Child Care Services Ordinance (Cap. 243);

“correctional facility” (懲教機構) means –

- (a) any of the sites and buildings specified in the Schedule to the Prisons Order (Cap. 234 sub. leg. B);
- (b) any of the buildings specified in the Schedule to the Prisons (Hostel) Order (Cap. 234 sub. leg. C); or
- (c) an addiction treatment centre within the meaning of section 2 of the Drug Addiction Treatment Centres Ordinance (Cap. 244);

“domestic premises” (住宅) means any premises which are constructed or intended to be used for habitation;

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

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

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

“indoor” (室內) means –

- (a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and
- (b) completely or substantially enclosed (whether temporarily or permanently), except for any window or door, or any closeable opening that functions as a window or door;

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

“karaoke establishment” (卡拉 OK 場所) means –

- (a) a karaoke establishment within the meaning of section 2(1) of the Karaoke Establishments Ordinance (Cap. 573); or
- (b) a karaoke establishment referred to in section 3(1) of that Ordinance;

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

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

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

- (a) whether or not it is a maternity home to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies; or
- (b) whether or not it is a maternity home that is run as part of a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113), or managed or controlled by the Hospital Authority established under that Ordinance;

“place of detention” (拘留地方) means –

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

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

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

“post secondary school” (專上學校) means a school within the meaning of section 3 of the Education Ordinance (Cap. 279) at which post secondary education is provided without contravention of section 18A of that Ordinance (not being a College within the meaning of section 2 of the Post Secondary Colleges Ordinance (Cap. 320));

“public market” (公眾街市) means a market specified in the Tenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);

“public place” (公眾地方) means –

- (a) any place to which for the time being the public are entitled or permitted to have access, whether on payment or otherwise; or
- (b) a common part of any premises notwithstanding that the public are not entitled or permitted to have access to that common part or those premises;

“reformatory school” (感化院) means a reformatory school within the meaning of section 2 of the Reformatory Schools Ordinance (Cap. 225);

“residential care home” (安老院) means a residential care home within the meaning of section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

“school” (學校) means a school within the meaning of section 3 of the Education Ordinance (Cap. 279), but excludes a post secondary school;

“specified educational establishment” (指明教育機構) means any establishment specified in section 2 of the Education Ordinance (Cap. 279);

“treatment centre” (治療中心) means a treatment centre within the meaning of section 2 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566);

“workplace” (工作地方) means a place –

(a) that is occupied for conducting a business (whether for profit or not); and

(b) in which natural persons work in the course of any self-employment, employment or engagement (whether for income or not),

including any part of the place that is set aside for use by those persons during any interval for taking a meal or rest.”.



**5. Prohibition on smoking in certain designated areas**

Section 3 is amended –

- (a) by adding immediately after subsection (1) –

“(1AA) An indoor area in a workplace or public place is, to the extent that it is not an area to which subsection (1) applies, designated as a no smoking area.”;
- (b) by repealing subsections (1A), (1B) and (1C);
- (c) by adding –
  - “(5) Subsection (1AA) does not apply to –
  - (a) domestic premises;
  - (b) any premises used for the provision of sleeping accommodation by any employer to his employees and their families, whether or not any monetary consideration is received by the employer for so providing the sleeping accommodation;
  - (c) a bedspace apartment in respect of which a licence or certificate of exemption issued under the Bedspace Apartments Ordinance (Cap. 447) is in force;
  - (d) a room or suite of rooms in a hotel or guesthouse if –
    - (i) in respect of the hotel or guesthouse there is in force a licence or

certificate of exemption  
issued under the Hotel  
and Guesthouse  
Accommodation  
Ordinance (Cap. 349);  
and

- (ii) the room or suite of  
rooms is being hired for  
use as sleeping  
accommodation;
- (e) an area designated by the Airport  
Authority as a smoking area as  
referred to in section 16 of the  
Airport Authority Bylaw (Cap.  
483 sub. leg. A);
- (f) an area in a correctional facility  
that is set aside for smoking by  
prisoners who are allowed to do  
so in accordance with orders  
under rule 25 of the Prison Rules  
(Cap. 234 sub. leg. A);
- (g) a building if –
  - (i) the building is not the  
subject of a valid  
occupation permit or  
temporary occupation  
permit issued under  
section 21(2) of the  
Buildings Ordinance  
(Cap. 123); and

- (ii) no part of the building is the subject of a valid temporary occupation permit issued under that section.

(6) For the avoidance of doubt, it is declared that subsections (1) and (1AA) apply to any premises that are owned or occupied by, or under the management and control of, the Government.”.

**6. Display of signs where smoking prohibited**

Section 5 is amended by adding “and keep in place” after “place”.

**7. Display of signs outside restaurants**

Section 6A is repealed.

**8. Offences under Part II**

Section 7 is amended –

- (a) in subsection (3), by repealing “Any manager who fails to place” and substituting “Subject to subsection (5), any manager who fails to place or keep in place”;
- (b) by repealing subsection (4);
- (c) by adding –

“(5) Subsection (3) does not permit proceedings to be taken against, or impose any criminal liability on, the Government or any person who does any act or omits to do any act in the course of carrying out his duties in the service of the Government.”.

**9. Sales of cigarettes and tobacco products**

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

**10. Sale of cigar, pipe tobacco or cigarette tobacco**

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

**11. Offences under Part III**

Section 10 is amended –

- (a) in subsection (2), by repealing “載有” and substituting “展示”;
- (b) in subsection (3), by repealing everything after “retail container” and substituting “the words “light”, “lights”, “mild”, “milds”, “low tar”, “醇” or “焦油含量低”, or other words which imply or suggest that the cigarettes are less harmful than others, commits an offence and is liable on summary conviction to a fine at level 4.”.

**12. Seizure and forfeiture**

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

**13. Tobacco advertisements in printed publications**

Section 11(3) is amended by repealing everything after “publication” and substituting “that is published for the tobacco trade or as the “in house” magazine of any company engaged in that trade.”.

**14. No display of tobacco advertisement**

Section 12 is amended –

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

## **15. Meaning of tobacco advertisement**

Section 14 is amended –

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

- (b) that the name does not form the most prominent part of the advertisement or object; and
  - (c) that the advertisement or object does not mention the words “cigarette”, “cigarettes”, “smoking”, “tobacco”, “cigar”, “cigars”, “pipe” or “pipes” or “香煙”, “吸煙”, “煙草”, “雪茄” or “煙斗”.”;
- (d) by repealing subsection (6) and substituting –
  - “(6) The display of the following at any premises where tobacco products are offered for sale is not a tobacco advertisement –
    - (a) one price marker for one type of tobacco product offered for sale in the premises that –
      - (i) contains only the name and price of that type of tobacco product; and
      - (ii) is of a size –
        - (A) not greater than the size of the price marker of any of the non-tobacco products offered for sale in the premises; and

- (B) not greater than  
50 square  
centimetres; or
- (b) one price board not exceeding  
1 500 square centimetres listing  
only the names and prices of the  
tobacco products offered for  
sale.”.

**16. Removal and disposal of tobacco advertisement**

Section 14A is amended –

- (a) in subsection (1), by repealing “Any public officer authorized in writing by the Secretary” and substituting “An inspector”;
- (b) in subsection (2), by repealing “any public officer authorized in writing by the Secretary” and substituting “an inspector”.

**17. Prohibition on selling or giving of tobacco products, etc.**

Section 15A(3) is amended –

- (a) in paragraph (f), by repealing “or” at the end;
- (b) by adding –
  - “(fa) sell, offer for sale or possess for the purposes of sale a tobacco product and a non-tobacco product as a single item; or”.

**18. Part IVB added**

The following is added immediately after section 15D –

## “PART IVB

### PROVISIONS RELATING TO INSPECTORS

#### **15E. Meaning of “relevant offence” in Part IVB**

In this Part, “relevant offence” (有關罪行) means any offence under this Ordinance other than an offence under Part III.

#### **15F. Appointment of inspectors**

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

#### **15G. General powers and duties of inspectors**

(1) Without limiting any other provisions of this Ordinance, an inspector may, subject to subsections (2) and (3) –

- (a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been, is being or is likely to be committed; and
- (b) in any place entered under paragraph (a) –
  - (i) seize any thing that appears to the inspector to be evidence of any relevant offence;
  - (ii) require any person found in that place to give his name and address and to produce proof of identity; and
  - (iii) take any necessary action for the purpose of obtaining evidence in connection with any relevant offence.



(2) If so requested by any person in any place entered under subsection (1), an inspector shall produce his authority as an inspector.

(3) An inspector shall not enter under subsection (1)(a) –

(a) any domestic premises; or

(b) any correctional facility without the approval of the Commissioner of Correctional Services.

(4) A person who wilfully obstructs an inspector who is in the exercise of a power or the performance of a duty conferred or imposed by this Ordinance commits an offence and is liable on summary conviction to a fine at level 3.

(5) A person who fails to give his name and address or to produce proof of identity when required to do so under subsection (1)(b)(ii), or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.

**15H. Inspectors not personally liable for certain acts and omissions**

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

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

**19. Regulations and Orders**

Section 18(2)(a) is amended by repealing “the form of” and substituting “the form (including specifications) of”.

## **20. Designated no smoking areas**

Schedule 2 is amended –

- (a) by repealing item 4;
- (b) by adding –
  - “5. Any child care centre.
  - 6. Any school.
  - 7. Any approved institution.
  - 8. Any place of detention.
  - 9. Any place of refuge.
  - 10. Any reformatory school.
  - 11. An indoor area in any –
    - (a) shop, department store or shopping mall;
    - (b) public market;
    - (c) supermarket;
    - (d) bank;
    - (e) restaurant premises;
    - (f) bar;
    - (g) karaoke establishment;
    - (h) mahjong-tin kau premises;
    - (i) bathhouse;
    - (j) hospital;
    - (k) maternity home;
    - (l) residential care home;
    - (m) treatment centre;
    - (n) post secondary school; or
    - (o) specified educational establishment.”.

**21. Schedule 3 repealed**

Schedule 3 is repealed.

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

Schedule 4 is repealed.

**PART 3**

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

**Division 1 – Amendments to Smoking (Public Health)  
Regulations**

**23. Tar groups**

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

**24. Determination by the Government Chemist**

Regulation 3 is amended –

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

**25. Determination by the proprietor of the brand**

Regulation 4 is amended –

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

- (b) in paragraph (b), by repealing “or designation”;
- (c) by repealing “and the tar group”;
- (d) by repealing “regulation 2 and”.

**26. Minor variations between past and present determinations**

Regulation 5 is repealed.

**27. Notification of retail sales**

Regulation 6 is amended –

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

**28. Tobacco advertisements in printed publications**

Regulation 6A is repealed.

**29. Additional provisions applying to tar group designations**

Regulation 6B is repealed.

**30. Exemption of certain advertisements from Part IV of the Ordinance**

Regulation 7 is amended –

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

**31. Health warnings on tobacco advertisements  
in printed publications**

The Schedule is repealed.

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

**32. Paragraph substituted**

Paragraph 3 of the Smoking (Public Health)(Notices) Order (Cap. 371 sub. leg. B) is repealed and the following substituted –

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

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

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

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

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

(a) the health warning and indication of tar and nicotine yields shall appear on the 2 largest surfaces of the packet and of the retail container;

(b) one of those surfaces shall bear the Chinese version of the health warning and indication of tar and nicotine yields and the other surface shall bear

the English version of the same health warning and indication of tar and nicotine yields; and

- (c) the top side of the area containing the Chinese or English version of the health warning and indication of tar and nicotine yields shall be no more than 12 millimetres from the top of the surface on which that version appears.

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

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

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

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

- (a) if the packets or retail containers are made of metal or are plastic drums;
- (b) with the approval of the Commissioner of Customs and Excise where he is satisfied that –
  - (i) the circumstances in which the packets or retail containers are in Hong Kong, or are to be brought to Hong Kong, are such that they could not reasonably be expected to

have had printed on them a health warning and indication of tar and nicotine yields at the time of their manufacture; and

- (ii) the approval is required for a limited period of time or in relation to a particular consignment of cigarettes only.”.

### **33. Paragraphs substituted**

Paragraph 4A is repealed and the following substituted –

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

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

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

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

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

- (a) the health warning shall appear on the 2 largest surfaces of the retail container;
- (b) one of those surfaces shall bear the Chinese version of the health warning and the other surface shall bear the English version of the same health warning; and

(c) the top side of the area containing the Chinese or English version of the health warning shall be no more than 12 millimetres from the top of the surface on which that version appears.

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

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

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

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

**4AA. Health warning on retail container containing one cigar**

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

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

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



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

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

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

**34. Restaurant signs**

Paragraph 4B is repealed.

**35. Tobacco advertisements on display**

Paragraph 5 is repealed.

**36. Schedule amended**

The Schedule is amended –

(a) by repealing “[paras. 3, 4A, 4B, 5 & 8]” and substituting “[paras. 3, 4A, 4AA & 8]”;

(b) by repealing Part II and substituting –

**“PART II**

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

Form 1

Chinese version

香港特區政府忠告市民



吸煙引致**肺癌**

焦油：	毫克	尼古丁：	毫克
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English version

HKSAR GOVERNMENT WARNING



**SMOKING CAUSES LUNG CANCER**

TAR：	mg	NICOTINE：	mg
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Form 2

Chinese version

			
香港特區政府忠告市民			
吸煙足以致命			
焦油：	毫克	尼古丁：	毫克

English version

			
HKSAR GOVERNMENT WARNING			
SMOKING KILLS			
TAR：	mg	NICOTINE：	mg

Form 3

Chinese version

 <p>香港特區政府忠告市民</p>			
<b>吸煙禍及家人</b>			
焦油：	毫克	尼古丁：	毫克

English version

 <p>HKSAR GOVERNMENT WARNING</p>			
<b>SMOKING HARMS YOUR FAMILY</b>			
TAR：	mg	NICOTINE：	mg

Form 4

Chinese version

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

English version

<b>HKSAR GOVERNMENT WARNING</b>	
	
<b>SMOKING CAUSES PERIPHERAL VASCULAR DISEASES</b>	
TAR：	mg
NICOTINE：	mg

Form 5

Chinese version

香港特區政府忠告市民			
			
吸煙可引致陽萎			
焦油：	毫克	尼古丁：	毫克

English version

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

Form 6

Chinese version

	
<b>吸煙可加速皮膚老化</b>	
焦油：	毫克
尼古丁：	毫克

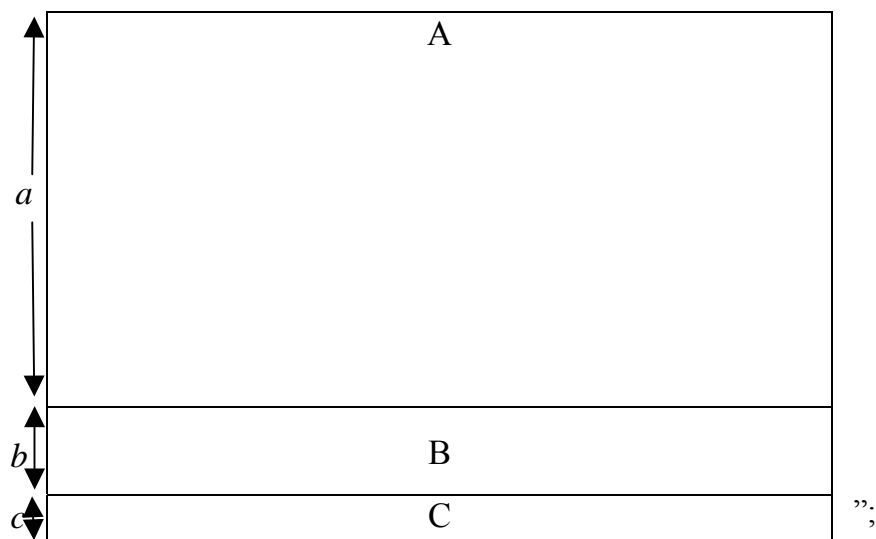
English version

	
<b>SMOKING CAN ACCELERATE AGEING OF SKIN</b>	
TAR :	mg
NICOTINE :	mg

Specifications:

1. Each form is rectangular in shape and surrounded by a black line as demarcation.
2. Each form is divided into 3 rectangular areas (marked “A”, “B” and “C” in the diagram below). The ratio of the length of area A to that of area B to that of area C (marked “a”, “b” and “c” respectively in that diagram) is 9 to 2 to 1.

3. Area A contains the graphic (on which “香港特區政府忠告市民” (in the Chinese version) or “HKSAR GOVERNMENT WARNING” (in the English version) is printed) as set out in the form. Area B contains the message in words as set out in the form. Area C contains an indication of tar and nicotine yields as set out in the form.
4. For the Chinese version, the characters and numbers are printed in “中黑體” typeface. For the English version, the letters and numbers are printed in Univers Bold typeface.
5. In relation to area A –
  - (a) the characters and letters are printed in white;
  - (b) the graphic is printed by 4-colour printing with a minimum resolution of 300 dpi.
6. In relation to areas B and C –
  - (a) the background colour is white;
  - (b) the characters, letters and numbers are printed in –
    - (i) 100% black for black; and
    - (ii) 100% yellow plus 100% magenta for red.





(c) by repealing Part IIA and substituting –

“PART IIA

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

Form 1

Chinese version



English version



Form 2

Chinese version



English version



Form 3

Chinese version



English version



Form 4

Chinese version



English version



Form 5

Chinese version



English version



Form 6

Chinese version



English version

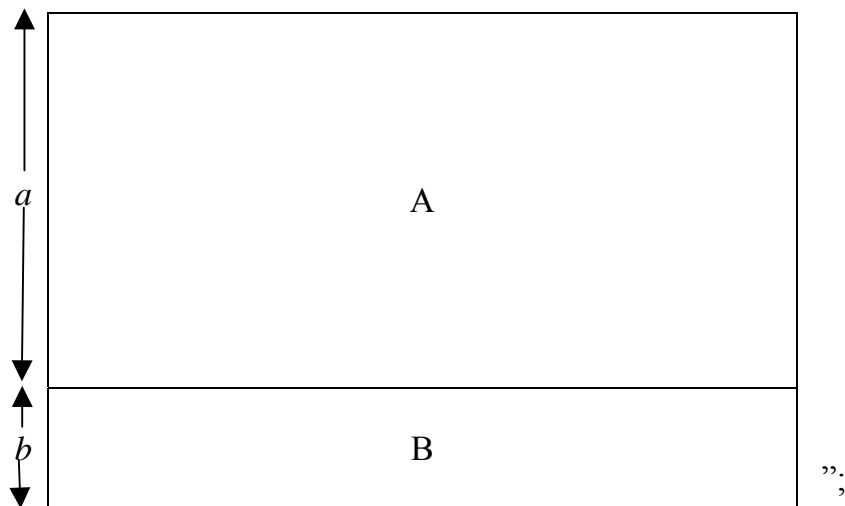


Specifications:

1. Each form is rectangular in shape and surrounded by a black line as demarcation.
2. Each form is divided into 2 rectangular areas (marked "A" and "B" in the diagram below). The ratio of the length of area A to that of area B (marked "*a*" and "*b*" respectively in that diagram) is 3 to 1.
3. Area A contains the graphic (on which "香港特區政府忠告市民" (in the Chinese version) or "HKSAR

GOVERNMENT WARNING” (in the English version) is printed) as set out in the form. Area B contains the message in words as set out in the form.

4. For the Chinese version, the characters are printed in “中黑體” typeface. For the English version, the letters are printed in Univers Bold typeface.
5. In relation to area A –
  - (a) the characters and letters are printed in white;
  - (b) the graphic is printed by 4-colour printing with a minimum resolution of 300 dpi.
6. In relation to area B –
  - (a) the background colour is white;
  - (b) the characters and letters are printed in –
    - (i) 100% black for black; and
    - (ii) 100% yellow plus 100% magenta for red.



- (d) by repealing Part IIB and substituting –

## “PART IIB

### FORMS OF HEALTH WARNING ON RETAIL CONTAINER CONTAINING ONE CIGAR

#### Form 1

##### Chinese version



##### English version



#### Form 2

##### Chinese version



##### English version





Form 3

Chinese version



English version



Form 4

Chinese version



English version



## Form 5

### Chinese version



### English version



## Form 6

### Chinese version



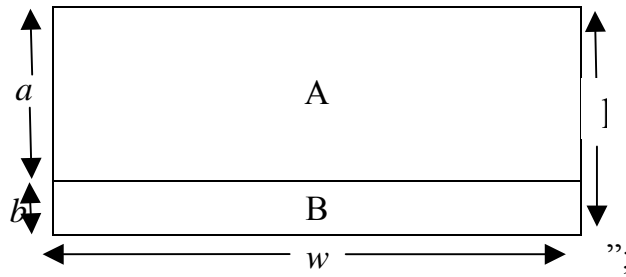
### English version



### Specifications:

1. Each form is rectangular in shape and surrounded by a black line as demarcation. The width and the length (marked "w" and "l" respectively in the diagram below) are 7 cm and 3 cm respectively.

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



- (e) by repealing Part III;
- (f) by repealing Part V.

## PART 4

### CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

#### Division 1 – Consequential amendments

##### Child Care Services Regulations

#### 37. Spitting

Regulation 38(1) of the Child Care Services Regulations (Cap. 243 sub. leg. A) is repealed.

#### Division 2 – Transitional provisions

#### 38. Section added

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

**“19. Transitional provisions relating to Smoking (Public Health)(Amendment) Ordinance 2005**

(1) In this section –

“amendment Ordinance” (修訂條例) means the Smoking (Public Health) (Amendment) Ordinance 2005 ( of 2005);

“relevant day” (有關日期) means the ninetieth day after the day on which the amendment Ordinance is published in the Gazette.

(2) It shall not be an offence under 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 this Ordinance relating to health warnings and indication of tar and nicotine yields if, but only if, the packets or retail containers comply with the provisions of this Ordinance, as in force immediately before the relevant day, relating to health warnings and indication of tar and nicotine yields.

(3) Section 10(3) does not apply to any cigarettes which have on their packet or their retail container a brand name which includes the words “light”, “lights”, “mild”, “milds”, “low tar”, “醇” or “焦油含量低” or other words which imply or suggest that the cigarettes have a low tar yield if, but only if, the cigarettes have been determined, before the relevant day, under section 16 and the regulations to have a tar yield of 9 milligrams or less.

(4) This section shall expire on the first anniversary of the day on which the amendment Ordinance is published in the Gazette.”.

### **Explanatory Memorandum**

The main object of this Bill is to amend the Smoking (Public Health) Ordinance (Cap. 371) (“the Ordinance”) and its subsidiary legislation to tighten the control on smoking.

2. The Bill is divided into 4 Parts. Part 1 deals with commencement of this Bill upon being enacted as Ordinance. Parts 2 and 3 provide for the amendments to be made to the Ordinance and its subsidiary legislation respectively. Part 4 provides for consequential amendments and transitional provisions. The main clauses of the Bill are explained below.

3. Clause 4 amends section 2 of the Ordinance. It amends certain existing definitions and adds a number of new definitions. In particular, new definitions of “indoor”, “public place” and “workplace” are added.

4. Under section 3(1) of the Ordinance, the areas described in Schedule 2 to the Ordinance are designated as no smoking areas. Apart from amending that Schedule (see paragraph 10) to include additional no smoking areas, clause 5 amends section 3 of the Ordinance to designate indoor areas in workplaces or public places as no smoking areas (new subsection (1AA) of that section). It also sets out a number of exceptions to that new subsection, such as domestic premises, hotel rooms and areas in the Airport that are designated as smoking areas (new subsection (5) of that section).

5. Section 10(3) of the Ordinance prohibits the sale of cigarettes which have on their packet or their retail container a brand name which includes words implying that the cigarettes have a low tar yield, such as “light” and “mild”. However, the prohibition does not apply if the cigarettes have been determined to have a tar yield of 9 milligrams or less. Clause 11 amends that section to expand the prohibition so that it covers sale of cigarettes which have on their packet or their retail container words implying that the cigarettes are less harmful than others, including “light” and “mild”.

6. Section 11 of the Ordinance prohibits the printing and publication of tobacco advertisements in certain printed publications such as local newspapers. However, the prohibition does not apply if the local newspaper is published for the passengers of an airline or shipping company, or for circulation entirely outside Hong Kong. Clause 13 amends that section by removing these 2 exceptions.

7. The Ordinance currently restricts advertising of tobacco products. However, section 14 of the Ordinance provides for certain exceptions. For instance, under subsection (3) of that section, it is lawful to include in an advertisement the trade name of a tobacco company if the name is included exclusively for a non-tobacco product or service, or for job recruitment purposes.

Under subsection (4) of that section, it is lawful to include in an advertisement the name of a tobacco company as the sponsor of an event. Clause 15 amends those subsections so that the exceptions only apply if the name in question does not form the most prominent part of the advertisement.

8. Clause 17 amends section 15A of the Ordinance to prohibit the sale of a tobacco product and a non-tobacco product as a single item.

9. Clause 18 adds a new Part IVB to the Ordinance to enhance the enforcement of the Ordinance. The new Part contains provisions about the appointment, powers and duties of inspectors. Those powers are exercisable in relation to most of the offences under the Ordinance. One example is the power to enter a place in which an inspector reasonably suspects that an offence has been, is being or is likely to be committed.

10. As stated in paragraph 4, Schedule 2 to the Ordinance contains a list of no smoking areas that are designated under the Ordinance. Clause 20 amends that Schedule by adding a number of items, such as schools and indoor areas of public markets, restaurant premises, bars, karaoke establishments, mahjong-tin kau premises, bathhouses and hospitals.

11. Clauses 23 to 31 amend the Smoking (Public Health) Regulations (Cap. 371 sub. leg. A), mainly to repeal certain provisions that have become obsolete.

12. Under the Smoking (Public Health) (Notices) Order (Cap. 371 sub. leg. B) (“the Order”), packets or retail containers of tobacco products are required to bear health warnings. Clauses 32 and 33 replace paragraphs 3 and 4A of the Order by new paragraphs 3, 4A and 4AA. These new provisions set out the new requirements for the display of health warnings. Clause 36 amends the Schedule to the Order to set out the new forms of health warnings.

13. Clause 38 is a transitional provision. Within a transitional period of one year, it is lawful to sell –

- (a) any tobacco products in packets or retail containers that bear the pre-amended forms of health warnings;

- (b) any cigarettes which have on their packet or their retail container a brand name which includes words implying that the cigarettes have a low tar yield, if the sale would not have contravened the pre-amended section 10(3) of the Ordinance.



## **Smokefree Workplace Legislation: Overseas Experience**

### **INTRODUCTION**

This note sets out the information about smokefree workplace laws overseas and their economic impact on the food business industry.

2. Paragraphs 3-16 of this note highlight the findings of a study on smokefree workplace laws of five jurisdictions with economic status comparable to that of Hong Kong, namely, California, State of New York, Ireland, Singapore and New Zealand. This study focuses on major legal provisions such as the scope of smoking ban, exemptions, transitional arrangements, smokers' and employers' legal obligations, penalties for violations and enforcement agencies. The latter part of this paper (paragraphs 17-22) summarises the findings of widely quoted overseas studies on the economic impact of smoking ban on the catering/hospitality industries.

### **COMPARATIVE STUDY OF SMOKEFREE WORKPLACE LAWS**

#### **California**

3. California is one of the first jurisdictions to prohibit smoking in almost all indoor workplaces. The ***Smoke-Free Workplace Law*** (enacted as *Labor Code LC 6404.5*) seeks to restrict and prohibit the smoking of tobacco products in enclosed places of employment so as to reduce employee exposure to environmental tobacco smoke. The law took effect in restaurants and other workplaces on 1 January 1995 and in bars, taverns and gaming clubs on 1 January 1998.

4. Under the ***Smoke-free Workplace Law***, smoking is prohibited in all enclosed places of employment, with the exception of tobacco shops, private smokers' lounges, private residences (when not used for child care), 65% of guest room accommodations and designated areas of lobbies in hotels/motels, large warehouses, employee breakrooms

meeting stringent ventilation conditions, small businesses under limited conditions, etc.

5. The ***Smoke-free Workplace Law*** provides that “*no employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment*”. Employers are obligated to prevent smoking in their enclosed workplaces by (i) posting clear and prominent signs at entrances and (ii) requesting smokers to refrain from smoking in the workplaces. The law is enforced by agencies (e.g. health and police departments) designated by local governing bodies. Business owners and patrons in violation of *LC 6404.5* are subject to fines of US\$100 for the first violation and up to US\$500 for the third violation within a year. After three violations within a year, cases may be referred to the Occupational Safety and Health Administration that can levy fines up to US\$70,000.

#### New York State

6. The ***Clean Indoor Air Act (Public Health Law, Article 13-E)*** of the State of New York prohibits smoking in public and work places to protect employees and the public from secondhand smoke. The Act went into effect statewide on 24 July 2003. Under the Act, smoking is not permitted in a wide range of indoor areas including places of employment, bars, food service establishments, establishments used for carrying on or exercising any trade, profession, vocation or charitable activity, bingo facilities, indoor arenas, etc. Smoking is also disallowed in separately ventilated rooms of business establishments.

7. There are a few organizations/businesses that the Act does not apply to. The major exempted premises are private residence, hotel or motel rooms rented to guests, retail tobacco businesses, membership associations where duties related to their operation are performed by volunteers, cigar bars, up to 25% of the seating in outdoor dining areas of food service establishments with no roof or ceiling enclosure.

8. Under the ***Clean Indoor Air Act***, it is unlawful for any person to smoke or to allow smoking in an area or establishment subject to the smoking ban. In addition, owners, operators or managers of no smoking areas are required to prominently post and properly maintain “No smoking” signs in the areas. Owners, operators or managers of hotels/motels that adopt a smoking policy for guest rooms must post a notice at the reception area as to the availability of rooms in which no

smoking is allowed. Breaches of any provisions under the Act are punishable by penalties of up to US\$2,000 per violation. The Act is enforced by owners, managers or operators of statutory no smoking areas and local health departments.

### Ireland

9. The ***Public Health (Tobacco)(Amendment) Act 2004*** of Ireland is a recent smoke-free initiative aimed to provide protection for employees across the board from toxic tobacco smoke. The Act prohibits the smoking of tobacco products in all places of work including restaurants and pubs, buildings to which the public has access, public entertainment places, licensed premises, registered clubs, etc. The smoking ban does not apply to outdoor or non-enclosed parts of places of work, dwellings, rooms in hotels or other premises that provide living/sleeping accommodation for the public, prisons, etc. The smokefree requirements in the Act commenced on 29 March 2004, i.e. 15 months after initial announcement of the legislative initiative.

10. According to the ***Public Health (Tobacco)(Amendment) Act 2004***, a person who smokes in a premises to which the smoking prohibition applies as well as the occupier, manager and any other person in charge of the premises are each liable to a fine of €3,000 upon conviction. The Act also requires the occupier/person in charge of the premises to display at all times a sign indicating clearly that smoking is prohibited on those premises. The smokefree workplace legislation in Ireland is enforced by officers authorised by the Office of Tobacco Control and the health boards under the National Inspection Programme.

### Singapore

11. The ***Smoking (Prohibition in Certain Places) Act*** of Singapore provides that the National Environmental Agency (NEA) may, with the approval of the Minister, by notification in the Gazette specify any premises or building or such part thereof as a place in which smoking shall not be permitted. The smoking ban was first introduced in 1970 in cinemas and theatres and this was progressively extended to more public places over the years. Currently, there are 26 categories of public places where smoking is prohibited. These include amusement centres, air-conditioned barber shops/hair-dressing salons, air-conditioned food shop, air conditioned halls, ballrooms or function rooms in hotels, banks, air-conditioned office premises, air-conditioned factories, enclosed or air-conditioned common areas of private residential buildings, air-

conditioned shops and shopping malls/complexes, underground pedestrian walkways, air-conditioned facilities in private clubs, etc.

12. To better protect the health of non-smokers from environmental tobacco smoke, the NEA and the Health Promotion Board are reviewing the list of smoke-free public areas with a view to extending the smoking ban to entertainment venues (pubs, bars, discos, nightclubs & karaoke lounges), hawker centres and coffee shops. A public consultation exercise on the proposed extension has just been completed and the proposal is expected to be implemented within 2005.

13. Under the *Smoking (Prohibition in Certain Places) Act*, any person who smokes in any specified place where smoking is disallowed shall be liable on conviction to a fine not exceeding S\$1,000. The manager of a specified no smoking place has a legal duty to take reasonable steps to investigate complaints involving alleged smoking offences in the place and to take rectification actions against the smokers. Failure to take such actions will render the manager liable to a fine not exceeding S\$1,000 and, in the case of a second or subsequent conviction, to a fine not exceeding S\$2,000. The Act is enforced by police officers or authorised officers appointed by the Director-General of Public Health.

#### New Zealand

14. The *Smokefree Environments Amendment Bill* was passed by the New Zealand Parliament on 3 December 2003 and was signed into law by the Governor-General six days later. The principal aims of this smokefree law are to protect all workers and the public from secondhand smoke, to reduce the harm caused to individuals by their smoking, to restrict minors' access to smoking products and to promote a smokefree lifestyle as the norm. The legislative intent is not to target smokers, but to encourage public health protections against secondhand smoke with public support and voluntary compliance.

15. The smokefree law requires all indoor workplaces including offices, warehouses, factories and licensed premises/hospitality venues (e.g. bars, taverns, restaurants, cafes, clubs, casinos, gaming venues) to become smokefree by 10 December 2004, i.e. one year after law enactment. Separate smoking areas or ventilated smoking rooms in indoor workplaces or hospitality venues are disallowed. The smokefree requirement does not apply to outdoor areas except school grounds, private homes, temporary private premises, hotel rooms, home-like environment such as individual prison cells, etc.

16. An individual who smokes in a smokefree area commits an offence and is liable to a maximum fine of NZ\$400. Employers or proprietors are liable to a fine of up to NZ\$400 (individual) or \$4,000 (body corporate) if they allow someone to smoke in a smokefree area. They will not be prosecuted if they have taken all reasonably practicable steps to prevent unlawful smoking (e.g. display of no-smoking signs, removal of ashtrays, oral warnings having been given to smokers). Enforcement officers appointed by the Director-General of Health are empowered to enter and inspect premises, to take photographs and to seek identifying information. Obstructing an enforcement officer to exercise his/her powers or failing to provide the information required is punishable by a maximum fine of NZ\$1,000.

## **ECONOMIC IMPACT OF SMOKING BAN ON CATERING INDUSTRY**

17. The debate on the economic impact of smokefree workplace laws has centered around the effect they have on the catering and hospitality industries. While the tobacco industry has claimed that smokefree laws will lead to a decrease in business and employment, there has been no reliable scientific evidence to support these claims. According to quality reviews<sup>1</sup> of relevant economic impact studies, all the high-quality studies indicate no impact or a positive impact of smoke-free laws on sales or employment of restaurants and bars. The major findings of the more widely quoted studies are summarized in paragraphs 18 to 22.

18. Business was booming in New York City's bars and restaurants since the *Smoke-Free Air Act* went into effect on 30 March 2003. From 1 April 2003 through 31 January 2004, bar and restaurant tax receipts were up 8.7% from the same period in 2002/03. Employment in these catering premises had increased by about 10,600 jobs<sup>2</sup> nine months after law enactment.

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<sup>1</sup> Scollo M., A. Lal, A. Hyland, and S. Glantz. "Review of the quality of studies on the economic effects of smoke-free policies on the hospitality industry". Tobacco Control 2003; 12:13-20.

<sup>2</sup> Department of Finance, Department of Health & Mental Hygiene, Department of Small Business Services, Economic Development Corporation of New York. "The State of Smoke-Free New York City: A One-Year Review". March 2004.

19. According to the California Board of Equalization, the Golden State's hospitality sector continued to grow since California's smokefree workplace law was enacted in 1994. Sales tax data showed an increase in annual sales from US\$7.16 billion in 1997 for establishments selling beer and wine to US\$9.6 billion in 2002. For establishments selling all kinds of alcohol, sales increased from US\$8.64 billion in 1997 to US\$11.3 billion in 2002. In 2003, the Employment Development Department under the Board reported that the number of individuals employed in California's bars and restaurants had about 200,500 more employees than they did in 1995, before the smokefree policy took effect<sup>3</sup>.

20. A survey conducted in Ireland in mid 2004 showed that visiting patterns to restaurants had been virtually unchanged since introduction of the legislation<sup>4</sup>.

21. According to an Australian study on the economic impact of smokefree dining, the introduction of smokefree dining laws in 1999 in South Australia did not adversely affect restaurants<sup>5</sup>. The monthly turnover for South Australian (SA) restaurants and cafes rose by 4.7% to A\$31.3 million after introduction of smokefree dining. In addition, the ratio of SA restaurant and café turnover in comparison to SA retail sector turnover remained the same before and after introduction of smoke-free dining.

22. Healthcare experts in California have recently conducted a study to examine the impact of smoke-free ordinances on the value and profitability of restaurants in the United States. The study estimated the value added to a restaurant by a smoke-free policy using regression analysis of the purchase price of restaurants. It reflected a median increase of 16% in the sale price of a restaurant in a jurisdiction with a

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<sup>3</sup> California State Board of Equalization: California Department of Health Services, "Tobacco Control Section". November 2002; State of California, Employment Development Department, "Labour Force Statistics". November 2003.

<sup>4</sup> Office of Tobacco Control of the Republic of Ireland. "Smoke-Free Workplace Legislation Implementation Progress Report, May 2004". May 2004.

<sup>5</sup> Wakefield M et al. "The Effect of a Smoke-free Law on Restaurant Business in South Australia". Australian and New Zealand Journal of Public Health, 2002, 26:4 375-380

smoke-free law compared to a comparable restaurant in a community without such a law.<sup>6</sup>

## CONCLUSION

23. Comprehensive tobacco control legislation is a crucial component of a successful tobacco control strategy. While there is as yet no universal formula for enacting effective tobacco control laws, there is increasing recognition among the international health community that best-practices smokefree legislations should cover all enclosed public places and provide equal protection to employees in all industries. Many jurisdictions in North America, Europe and the Asia-Pacific Region have successfully implemented all-embracing smokefree workplace laws to protect public health without causing adverse economic impact on the trades. We shall continue to draw on the experience of these and other jurisdictions and relevant overseas expertise in seeking to make indoor workplaces and public places in Hong Kong smokefree.

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<sup>6</sup> Benjamin C. Alamar and Stanton A. Glantz. “*Smoke-Free Ordinances Increase Restaurant Profit and Value*”. Contemporary Economic Policy. Vol 22, No. 4, October 2004, 520-525.

**Proposed Adaptation Periods for Amendments  
to the Smoking (Public Health) Ordinance**

<b>Nature</b>	<b>Proposed Legislative Amendment</b>	<b>Proposed Adaptation Period*</b>
Expansion of Statutory No Smoking Areas	<ul style="list-style-type: none"> <li>To prohibit smoking in the indoor areas of all restaurants, bars, karaoke establishments, mahjong premises, commercial bathhouses and public markets</li> </ul>	90 days
	<ul style="list-style-type: none"> <li>To prohibit smoking in indoor and outdoor areas of all child care centres, kindergartens, primary and secondary schools, and in the indoor premises of all universities, post-secondary institutions, residential care homes for the elderly, residential treatment centres and hospitals</li> </ul>	90 days
	<ul style="list-style-type: none"> <li>To prohibit smoking in other indoor workplaces and public places</li> </ul>	90 days
Advertisement and Promotion of Tobacco Products	<ul style="list-style-type: none"> <li>To revoke the current exemption on display of tobacco advertisement at licensed hawker stalls and retail outlets employing 2 employees or less</li> </ul>	1 year
	<ul style="list-style-type: none"> <li>To confine the sizes of price boards and price markers to 1,500 cm<sup>2</sup> and 50 cm<sup>2</sup> respectively</li> </ul>	90 days
	<ul style="list-style-type: none"> <li>To prohibit the package sale of a tobacco product with any other merchandise</li> </ul>	90 days
	<ul style="list-style-type: none"> <li>To further restrict the appearance of brand name of tobacco product in any sponsored event</li> </ul>	90 days
Packaging of Tobacco Products	<ul style="list-style-type: none"> <li>To require the package of tobacco products to bear health warnings with pictorial or graphic contents</li> </ul>	1 year
	<ul style="list-style-type: none"> <li>To increase the area containing the health warnings of any tobacco product packet/container to at least 50% of the principal display surfaces</li> </ul>	
	<ul style="list-style-type: none"> <li>To prohibit the appearance on a tobacco product packet/container of the words “light”, “mild” or other words which suggest that the tobacco product is of lower health risk than other tobacco products</li> </ul>	
Law Enforcement	<ul style="list-style-type: none"> <li>To enable the staff of Tobacco Control Office to take enforcement actions against existing and new offences in the Ordinance (except Part III)</li> </ul>	90 days
	<ul style="list-style-type: none"> <li>To confer on management of new no smoking areas enforcement powers similar to those presently conferred on management of existing no smoking areas</li> </ul>	90 days

\* All adaptation periods count from the day on which the Amendment Ordinance is published in the Gazette.



## **Implications of the Proposals**

### **FINANCIAL AND CIVIL SERVICE IMPLICATIONS**

The Tobacco Control Office (TCO) under the Department of Health (DH) is the primary enforcement agency<sup>1</sup> under the Bill. It will need staff reinforcement to complement the introduction of the new law. We estimate that about 30 additional staff<sup>2</sup> will be required to cope with the additional enforcement, publicity and education work arising from the new regulatory requirements. An additional staff cost of about \$7.6 million will be required.

2. To contain the civil service establishment, DH will delete a number of vacant posts in the Department so as to accommodate the additional civil servants in the TCO. There will be no net addition of the civil service posts. The additional resources required will be met by the exiting provisions of the Health, Welfare and Food Bureau. DH will review the staffing position of the TCO, including the appropriateness for the continued employment of non-civil service contract staff in a year's time.

3. The proposals, if implemented, are likely to have an impact on the consumption of tobacco products. Government revenue from tobacco duty would decrease if the proposed measures are effective in reducing tobacco consumption, although the exact implications are difficult to estimate.

### **SUSTANABILITY IMPLICATIONS**

4. The proposals seek to reduce public exposure to

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<sup>1</sup> In the interest of optimal use of manpower resources, the support of other government bureaux/departments, notably Food and Environmental Hygiene Department, Education and Manpower Bureau, Social Welfare Department and the Police, will be sought to educate the communities/operators concerned on the new regulatory requirements and to promote compliance.

<sup>2</sup> Our initial staff plan is that of the some 30 additional staff, five are civil servants. Details of the staff mix, including the proportion of civil servants to non-civil service contract staff, may vary in the light of actual situation in future.

secondhand smoking and tobacco advertisements. They are conducive to the sustainability principle of providing a living and working environment which promotes and protects the physical health of the people of Hong Kong. In health terms, the proposed smoking ban in public premises would help improve indoor air quality of the premises and reduce morbidity and mortality associated with secondhand smoking. Furthermore, the proposals should not have negative impacts on restaurants, retail outlets, etc. in the long run. Rather, in overall terms, the productivity of our society should increase and medical expenditure on treatment decrease as a result of better health.

## **ECONOMIC IMPLICATIONS**

5. According to quality reviews<sup>3</sup> of relevant economic impact studies, all the high-quality studies indicate that smokefree workplace laws have no impact or a positive impact on the sales and employment of the catering industry (mainly restaurants and bars) as a whole. Many jurisdictions in North America, Europe and the Asia-Pacific Region have successfully implemented smokefree workplace laws without causing adverse economic impact on the catering trade. Given such overseas experience, we believe the business opportunities available to the catering industry in Hong Kong as a whole should not be affected by the smoking ban.

6. From the wider perspective, the implementation of the legislative proposals will benefit the whole community by reducing public exposure to secondhand smoke and preventing young persons from starting to smoke. The proposed expansion of statutory no smoking areas will provide an impetus for current smokers to quit smoking, thereby helping to keep the smoking prevalence in Hong Kong in check. The mortality and morbidity costs of smoking and secondhand smoking, estimated at over \$5 billion<sup>4</sup> per year, are likely to drop as a result of implementation of the legislative proposals.

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<sup>3</sup> Source: Michelle Scollo and Anita Lal, VicHealth Centre for Tobacco Control, Melbourne "Summary of Studies Assessing the Economic Impact of Smoke-free Policies in the Hospitality Industry" April 2004

<sup>4</sup> Source: Faculty of Medicine, School of Public Health, University of Hong Kong "Smoking Costs Hong Kong Over \$5 billion every year: First Report of a Comprehensive Assessment in Asia" 24 Feb 2005