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Paper for the House Committee meeting on 9 May 2014

**Report of the Bills Committee on
Dutiable Commodities (Amendment) Bill 2014**

Purpose

This paper reports on the deliberations of the Bills Committee on Dutiable Commodities (Amendment) Bill 2014 ("the Bills Committee").

Background

2. According to the Administration, tobacco dependence is a chronic disease that is responsible for causing over 6 900 deaths a year in Hong Kong and 5 400 000 deaths a year worldwide. It is also the single most important preventable risk factor responsible for main causes of death and chronic diseases, including cancers and cardiovascular diseases. The harmfulness of smoking including exposure to second-hand smoke is well-established by scientific research and well-recognized by the community both locally and internationally. The Framework Convention on Tobacco Control ("FCTC") of the World Health Organization ("WHO") represents the international efforts to address tobacco dependence as a public health epidemic. China is a signatory of and has ratified FCTC, the application of which has been extended to Hong Kong since 2006. The Government's current policy on tobacco control has full regard to the provisions of FCTC.

3. To protect public health, it is the established policy of the Government to discourage smoking, to contain the proliferation of tobacco use and to protect the public from passive smoking as far as possible. To achieve this, the Administration adopts a step-by-step and multi-pronged approach comprising legislation, taxation, publicity, education,

enforcement, smoking cessation, and increasing tobacco duty progressively, with a view to reducing tobacco consumption and smoking prevalence as well as to preventing the youngsters from picking up smoking. Further to the enactment of the Smoking (Public Health) (Amendment) Ordinance 2006 and the implementation of the smoking ban on 1 January 2007, the Administration has taken a series of measures in a progressive manner to strengthen tobacco control.

The Public Revenue Protection (Dutiable Commodities) Order 2014

4. According to the Administration, WHO has made clear that increasing tobacco duties is an effective means of tobacco control. To protect public health from the harmful effects of tobacco, the Financial Secretary has, in his 2014-2015 Budget, proposed to increase the duty on cigarettes by \$0.2 per stick (by about 11.7%) with a view to bringing the proportion of tobacco duty to the retail price of cigarettes to about 70% which meets the minimum level recommended by WHO. Duties on other tobacco products will also be increased by about 11.7%.

5. In order to give immediate effect to increase the duty rates on tobacco, the Chief Executive, after consultation with the Executive Council, made the Public Revenue Protection (Dutiable Commodities) Order 2014 (L.N. 25 of 2014) ("the Order") under section 2 of the Public Revenue Protection Ordinance (Cap. 120) ("PRPO") on 26 February 2014. The Order came into force at 11 a.m. on 26 February 2014. With a four-month temporary effect, the Order will lapse on 26 June 2014 pursuant to section 5(2)(d) of PRPO. A bill will have to be introduced and enacted before 26 June 2014 to give retrospective effect to the increase of duty on tobacco.

The Bill

6. The Bill was introduced into the Legislative Council ("LegCo") for First Reading on 19 March 2014. The Bill seeks to –

- (a) amend Part II of Schedule 1 to the Dutiable Commodities Ordinance (Cap. 109) to increase the rates of duty on various types of tobacco by about 11.7%; and
- (b) bring the amendments into operation with retrospective effect from 11 a.m. on 26 February 2014 as the Order came into force at that time.

A summary of the proposed rates of duty on various types of tobacco is given as follows –

Tobacco Products	Existing rates (\$)	Proposed rates (\$)
(a) for each 1 000 cigarettes	1,706	1,906
(b) cigars	2,197/kg	2,455/kg
(c) Chinese prepared tobacco	419/kg	468/kg
(d) all other manufactured tobacco except tobacco intended for the manufacture of cigarettes	2,067/kg	2,309/kg

The Bills Committee

7. At the House Committee meeting on 21 March 2014, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in the **Appendix**. Under the chairmanship of Prof Hon Joseph LEE Kok-long, the Bills Committee has held one meeting with the Administration.

Deliberations of the Bills Committee

8. The Bills Committee generally supports the Bill to increase the rates of tobacco duty as a measure to protect public health. In the course of deliberation, members of the Bills Committee have expressed concern about the justifications for tobacco duty increase, enforcement against illicit cigarettes activities, enforcement against smoking offences in statutory no smoking areas, female and juvenile smoking and the resources for smoking prevention and cessation services.

Justifications for tobacco duty increase

9. The Bills Committee has examined whether the proposed increase of the rates of duty on various types of tobacco is effective in reducing tobacco consumption. Hon Tommy CHEUNG is concerned about the effectiveness of the proposed tobacco duty increase in encouraging smokers to give up smoking given that the provision of relevant public education and publicity on smoking prevention and cessation is already sufficient and the smoking prevalence in Hong Kong is already low. The

duty increase would only end up affecting the livelihood of newspaper hawkers and the grassroots. On the other hand, Dr Hon KWOK Ka-ki considers that the current tobacco duty increase is small and may not have sufficient deterrence.

10. The Administration has explained that the tobacco duty increase is a measure to protect public health rather than raising revenue. It conveys the message that smoking is harmful to health. Relevant research has indicated that a 10% increase in the retail price of cigarettes may lead to a drop of about 4% in tobacco consumption in high-income countries. Apart from tobacco duty increase, the Administration has taken a multi-pronged approach over the years in combating smoking. While the current tobacco increase is relatively modest, experience shows that it would be conducive to smoking cessation.

11. Hon CHAN Chi-chuen has questioned the rationale behind the policy of increasing duty rates on tobacco products on the one hand and exempting the duties on wine, beer and all other alcoholic beverages on the other. He considers that such alcoholic products are no less harmful than tobacco products to the society, and the present policy allows the rich to enjoy cheaper wines while the poor are required to pay for expensive cigarettes.

12. The Administration considers it inappropriate to directly compare the taxation on cigarettes and alcoholic products for the reason that smoking is absolutely harmful to health and there are second-hand and third-hand smoking problems, which would directly affect other people. As regards chronic diseases, the Food and Health Bureau has established a committee to study the relevant risk factors (including the consumption of alcoholic products) leading to these diseases.

Enforcement against illicit cigarettes activities

13. Members including Hon CHAN Chi-chuen and Dr Hon KWOK Ka-ki have expressed concern about the current state of illicit cigarette activities and that the increase in tobacco duty would make these activities more rampant. The Bills Committee has examined ways to address the problem and made various suggestions to combat the problem including manpower in the Customs and Excise Department ("C&ED") for combating illicit cigarettes, measures for tackling sale of illicit cigarettes through telephone ordering, education and publicity activities as well as improving intelligence collection.

Measures for combating sale of illicit cigarettes

14. Members including Dr Hon KWOK Ka-ki are concerned about the effectiveness of measures taken by the Administration in combating the sale of illicit cigarettes and in particular, whether C&ED has sufficient manpower in combating illicit cigarettes.

15. The Administration has advised that C&ED has been taking robust enforcement actions against illicit cigarette activities. C&ED has been using the Road Cargo System to combat illicit cigarette activities at source. In 2013 C&ED detected 25 major cases of illicit cigarettes involving 39.3 million sticks of illicit cigarettes seized, representing almost half of the total 89 million sticks of illicit cigarettes seized in 2013. The Administration considers that C&ED's current strategy to stop the inflow of illicit cigarettes at source is effective as the illicit cigarettes peddling activities in Hong Kong and the related complaints on the sale of illicit cigarettes in 2013 dropped by around 10% and 40% respectively. In the first quarter of 2014 during which the current tobacco duty increase was announced, the number of major cases of illicit cigarette detected was more or less the same as that in the same period in 2013 while illicit cigarettes peddling activities in Hong Kong dropped by 10%.

16. C&ED is aware that some illicit cigarettes are sold through telephone ordering and has therefore set up two task forces to take focused action against it. According to the Administration, the number of detected cases relating to telephone ordering of illicit cigarettes in 2012 and 2013 were 131 and 195 respectively. In the first quarter of 2014, the number of complaints on the telephone ordering of illicit cigarettes dropped by 70%. This reflects the effectiveness of the Administration's enforcement action.

17. To combat illicit cigarettes trade, Hon CHAN Yuen-han has suggested that the Administration should emphasize in its education and publicity activities the adverse impact of illicit cigarettes such as the risk of inhaling harmful impurities. Hon Tommy CHEUNG has suggested that the reward for informers should be increased to enhance intelligence collection on illicit cigarette activities.

Enforcement against smoking offences in statutory no smoking areas

18. During deliberation, members took the opportunity to examine the effectiveness of enforcement of smoking offences in statutory no smoking areas.

Public awareness of indoor smoking ban

19. Hon Tony TSE notes that it is difficult to uphold the indoor smoking ban in some food premises, particularly as some tourists may not be aware of the smoking ban implemented in Hong Kong. He opines that the Administration should strengthen the relevant publicity against illegal smoking at food premises. The complaint hotline of Tobacco Control Office ("TCO") should be made more accessible to the public.

20. The Administration has advised that TCO deploys dedicated officers to tackle illegal smoking in statutory no smoking areas upon receipt of complaints and has strengthened such inspections if necessary. In 2013, TCO issued some 8 000 fixed penalty notices ("FPNs") while the number of complaints received had dropped. The Administration recognizes the need for strengthening education and publicity, including promotion of the hotline for reporting smoking offences. TCO would strengthen its enforcement work like conducting targeted inspections on black spots of smoking offences, and would involve the Police and the Food and Environmental Hygiene Department in these inspections if necessary. TCO issued around 300 FPNs to tourists in 2013. Publicity materials on Hong Kong's smoking ban in statutory no smoking areas are available at various boundary control points.

Smoking in office premises

21. Hon Alice MAK has expressed concern that TCO may not be able to take enforcement actions against illegal smoking effectively at office premises as the offenders usually could not be caught on the spot. She opines that TCO should conduct surprise inspections in office premises and consider using circumstantial evidence as appropriate. The Administration has advised that relatively few FPNs were issued in respect of smoking offences in office premises. TCO may be able to collect sufficient evidence to issue FPNs if relevant complainants are willing to come forward as witnesses. Notwithstanding the above, as reflected by the feedback of the complainants, the inspection *per se* had certain deterrent effect.

Smoking in public rental housing estates

22. Hon CHAN Yuen-han opines that the Housing Department ("HD") may be too stringent against residents of public rental housing estates smoking in no smoking areas when implementing the Marking Scheme for Estate Management Enforcement in Public Housing Estates ("the Marking

Scheme"). Some residents may contravene the smoking ban inadvertently because of the lack of clear signage in no smoking areas. The Administration has agreed to relay Miss CHAN's views on the Marking Scheme to HD and follow up with HD on possible additional measures to provide clearer signage in no smoking areas.

Female and juvenile smoking

23. The Bills Committee has examined the work of the Administration in tobacco control. Members including Hon Tony TSE, Hon Alice MAK, Dr Hon KWOK Ka-ki and Hon CHAN Yuen-han have expressed concern about the rising trend in the number of female and juvenile smokers. They have studied information on the prevalence of smoking among female and juvenile smokers and the measures, including education, publicity work and relevant collaborations with non-Government organizations ("NGOs"), which the Administration has taken in recent years to tackle the increase in the number of female and juvenile smokers

Female smokers

24. The Administration has advised that according to the latest Thematic Household Survey conducted by the Census and Statistics Department in 2012, there was an increase in smoking prevalence among female daily smokers from 3.0% in 2010 to 3.1% in 2012, in particular for the age-groups of 30-39 years (from 5.2% in 2010 to 6.5% in 2012) and 40-49 years (from 2.8% in 2010 to 4.2% in 2012). However, there was a decreasing trend of smoking prevalence among young females in the past decade. Percentage of female smokers aged 15-19 dropped from 1.3% in 2010 to 0.8% in 2012, while for those aged 20-29, the smoking prevalence declined from 4.5% in 2010 to 2.6% in 2012.

25. The Administration has further advised that the Hong Kong Council on Smoking and Health ("COSH") has been mounting promotional and education programmes targeted at women over the years, such as "Women for A Tobacco Free Hong Kong" (2000-03), "Great Search for Smoke-free OL Competition" (2001) and "Smoke-free Women Publicity campaign" (2010). The series of publicity campaigns launched by COSH in 2010 was to align with the theme of World No Tobacco Day 2010, "Gender and tobacco with an emphasis on marketing to women". During the year, COSH produced an Announcement in Public Interest ("API") "Smoke-free Women" to bring out the side effects of smoking to women and their loved ones, and thus encourage women smokers to quit smoking and urge young women to refuse the first cigarette. COSH also partnered

with Commercial Radio to produce different special programmes to deliver smoke-free message to the audience and encourage more female smokers to quit, including "Doctor Advice – Smoke-free; Worry-free", "Reality of quitting smoking", "Smoke-free Formula" and "A+ smoke-free Homes". In 2010 and 2013, TCO launched an API titled "Be Good to Yourself Quit Smoking" and "Do the Best Thing for Yourself Quit Smoking" respectively to encourage women to quit smoking.

Youth smoking

26. The Administration has advised that according to the survey conducted by the University of Hong Kong ("HKU") School of Public Health on the proportion of student smokers, the smoking prevalence among Primary 4 to Primary 6 students increased slightly from 0.2% in the school year of 2010/11 to 0.3% in 2012/13. On the other hand, there was a drop in the proportion of smokers among Form 1 to Form 5 students, from 9.6% in 2003/04 to 6.9% in 2007/08, 3.4% in 2010/11, and further to 3.0% in 2012/13 school year.

27. The Administration has advised that to enhance smoking cessation service for young smokers, the Department of Health ("DH") has collaborated with the HKU School of Nursing to operate 'Youth Quitline' since June 2011, which offers smoking cessation telephone counselling services to youth smokers aged 25 or below. To sustain the no smoking message, encourage smoking cessation and promote the importance of a smoke-free environment, COSH visits primary and secondary schools, as well as kindergartens across all districts to conduct health talks. Interactive education drama performances were conducted in primary schools to disseminate knowledge of smoking hazards, secondhand smoke and third-hand smoke. Youngsters aged 14 to 18 were recruited for its Smoke-free Youth Ambassador Leadership Training Programme to promote smoke-free lifestyle. TCO has recently collaborated with Po Leung Kuk to develop a pilot programme for smoking prevention in kindergartens.

Resources for smoking prevention and cessation services

Revenue from tobacco duty vis-à-vis resources for smoking control

28. Some members including Dr Hon KWOK Ka-ki are of the view that that the additional tax revenue from tobacco duty increase should be used for funding tobacco control measures. They have examined the information on the amount of revenue each year from tobacco duty vis-à-vis the amount of resources allocated each year on smoking

prevention and cessation services in recent years. They opine that this could demonstrate whether there is a corresponding increase in the latter following the last two occasions of tobacco duty increases in 2009 and 2011.

29. The Administration has advised that the amount of revenue from tobacco duty each year in the past five years is as follows –

	2008-09	2009-10	2010-11	2011-12	2012-13
Revenue from tobacco duty (in \$billion)	2.96	3.36	4.22	4.21	5.31

30. On the additional resources allocated to strengthen smoking prevention and cessation services in the past few years, the Administration has advised that there has been a three-fold increase from \$35.8 million in 2008-09 to \$102.6 million in 2012-13, mainly to expand the cessation clinic services provided by the Hospital Authority ("HA") and to support NGOs launching community-based smoking prevention and cessation programmes. Details are as follows –

	2008-09	2009-10	2010-11	2011-12	2012-13
Funding for smoking prevention and cessation services under DH (in \$million)	35.8	44.5	57.8	72.6	102.6

Adequacy and effectiveness of smoking cessation services

31. Dr Hon KWOK Ka-ki is of the view that the existing clinical services on smoking cessation operated by DH and HA are inadequate and that the Administration should consider the use of "public-private partnership" approach in clinical services on smoking cessation like allowing the distribution of cigarette substitutes by family doctors.

32. The Administration has advised that the number of patients/smokers who attended smoking cessation clinics has increased substantially from about 4 100 in 2009 to over 23 000 in 2013. The health education programmes relating to smoking prevention organized by the NGOs are also well-received, attracting an attendance of over 66 500 in 2013. The Administration has advised that apart from DH and HA, relevant NGOs like Tung Wah Group of Hospitals ("TWGH"), the Pok Oi Hospital and Lok Sin Tong are providing smoking cessation services.

TWGH also provides night services. In addition, HKU has established a hotline on juvenile smoking cessation. The Administration would regularly review its resources allocation on smoking cessation. TCO and COSH have been allocated resources to provide education and publicity on smoking cessation and prevention, including the making of APIs. TCO has also set up a collaborating centre to provide smoking cessation and prevention training for healthcare professionals. On private doctors' participation in providing smoking cessation services, the Administration has advised that it would look into/consider the feasibility of allowing private doctors to distribute relevant drugs.

33. Hon Paul TSE has questioned the effectiveness of the existing smoking cessation services as he notes that the smoking prevalence did not register an apparent decrease given the Administration's claim that the success rate of smoking cessation services was about 30-40%. The Administration has advised that the success rate of the smoking cessation services about 30-40% was in line with the international standard. However, some people quitting smoking may consume cigarettes again.

Committee Stage amendments

34. The Bills Committee and the Administration will not propose any Committee Stage amendments to the Bill.

Resumption of Second Reading debate on the Bill

35. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 21 May 2014.

Advice sought

36. Members are invited to note the deliberations of the Bills Committee.

Bills Committee on Dutiable Commodities (Amendment) Bill 2014

Membership List

Chairman Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN

Members Hon Albert HO Chun-yan
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon TANG Ka-piu
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Tony TSE Wai-chuen

(Total : 16 members)

Clerk Mr Derek LO

Legal Adviser Mr Bonny LOO