



The Chairman & Clerk to Subcommittee on Smoking (Public Health)
(Notices) (Amendment) Order 2017
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Date
25 May 2017

By email and by hand

Dear Sirs

Smoking (Public Health) (Notices) (Amendment) Order 2017 ("Amendment Order")

We act for British American Tobacco Company (Hong Kong) Limited ("**BAT HK**") and refer to our previous letter dated 17 May 2017 (LC Paper No. CB(2)1443/16-17(78)) and the meeting of the Legislative Council's Subcommittee on Smoking (Public Health) (Notices) (Amendment) Order 2017 (the "**Subcommittee**") on 23 May 2017 (the "**Meeting**").

Towards the end of the Meeting, our Mr. Dominic Adrian Geiser appearing on behalf of BAT HK raised the following three questions to the Government:

1. What is the objective evidence that the Government has relied on to say that it is 85% (size of graphical health warnings ("**GHWs**")) which would be effective in reducing smoking prevalence?
2. Has the Government actually conducted any regulatory impact assessment or produced any quality report or any assessment in anti-illicit trade, if so, what is the outcome of such assessment?
3. Why has BAT HK not received a substantive response from the Government to its lengthy and detailed written submissions over the last two years? BAT HK only received a 2–page letter from the Government, which was not really a response at all.

Not surprisingly, the Government has yet again avoided addressing these questions. In particular, the Government's purported response to question one referred to researches conducted in Canada

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and Australia which, as claimed by the Government, found that larger GHWs would reduce smoking prevalence. This does not address the question of why 85% GHWs is the appropriate size in Hong Kong and also shows that there is no local evidence to suggest why 85% is appropriate in Hong Kong at all. The response is also inconsistent with the Government's statement made in the previous meeting of the Subcommittee held on 16 May 2017 that the Government relied on a recent survey in making the Amendment Order.

Further, notwithstanding that the Chairman of the Subcommittee had directed the Government to respond to the legal concerns raised by BAT HK, in particular in relation to issues with Articles 6 and 105 of the Basic Law, the Government had yet again avoided to address this issue directly – the Government had been referring to deprivation of property in its response, which is only one of the aspects of Article 105 of the Basic Law. As explained in BAT HK's written and oral submissions, Articles 6 and 105 are engaged because, *inter alia*, the Amendment Order interferes with and/or deprives of BAT HK's property rights. The Government failed to address all relevant aspects of Articles 6 and 105 and even on the deprivation aspect alone, the Government's response was incomplete and was of no substance.

Accordingly, we would respectfully ask the Government to provide a direct and substantive response to the above questions in the next meeting of the Subcommittee to be held on 26 May 2017, which we believe would assist the Subcommittee in considering this Amendment Order.

We should be grateful if you could kindly table a copy of this letter for consideration by the Subcommittee in advance of the next Subcommittee meeting on 26 May 2017.

Please do not hesitate to contact us should you have any queries.

Yours faithfully,

Herbert Smith Freehills

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