

立法會
Legislative Council

LC Paper No. CB(2)2056/16-17
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HS

Panel on Health Services

Minutes of meeting
held on Monday, 20 March 2017, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

- Members present** :
- Prof Hon Joseph LEE Kok-long, SBS, JP (Chairman)
 - Dr Hon Pierre CHAN (Deputy Chairman)
 - Hon Tommy CHEUNG Yu-yan, GBS, JP
 - Hon WONG Ting-kwong, SBS, JP
 - Hon CHAN Kin-por, BBS, JP
 - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
 - Hon Paul TSE Wai-chun, JP
 - Hon LEUNG Kwok-hung
 - Hon YIU Si-wing, BBS
 - Hon Charles Peter MOK, JP
 - Hon CHAN Chi-chuen
 - Hon CHAN Han-pan, JP
 - Hon Alice MAK Mei-kuen, BBS, JP
 - Dr Hon KWOK Ka-ki
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Dr Hon Helena WONG Pik-wan
 - Dr Hon Elizabeth QUAT, JP
 - Hon POON Siu-ping, BBS, MH
 - Hon CHU Hoi-dick
 - Dr Hon Junius HO Kwan-yiu, JP
 - Hon SHIU Ka-fai
 - Hon SHIU Ka-chun
 - Hon YUNG Hoi-yan
 - Hon Jeremy TAM Man-ho
- Members attending** :
- Hon LAM Cheuk-ting
 - Hon HUI Chi-fung

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public Officers : Items IV and V
attending

Prof Sophia CHAN Siu-chee, JP
Under Secretary for Food and Health

Item IV

Miss Amy YUEN Wai-yin
Deputy Secretary for Food and Health (Health) 2
Food and Health Bureau

Ms Wendy AU Wan-sze
Principal Assistant Secretary for Food and Health
(Health) Special Duties 1
Food and Health Bureau

Dr Tina CHAN Siu-mui
Assistant Director of Health (Special Health Services)
Department of Health

Dr Jeff LEE Pui-man
Head (Tobacco Control Office)
Department of Health

Item V

Ms Fiona CHAU Suet-mui
Principal Assistant Secretary for Food and Health
(Health) 1
Food and Health Bureau

Dr Teresa LI Mun-pik
Assistant Director of Health (Family and Elderly Health
Services)
Department of Health

Dr Rita HO Ka-wai
Principal Medical & Health Officer (Family Health
Service)
Department of Health

Clerk in : Ms Maisie LAM
attendance : Chief Council Secretary (2) 5

Staff in attendance : Ms Priscilla LAU
Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Ms Louisa YU
Clerical Assistant (2) 5

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I. Application for late membership
[LC Paper No. CB(2)930/16-17(01)]

Members accepted the application for late membership from Mrs Regina IP.

II. Information paper(s) issued since the last meeting
[LC Paper Nos. CB(2)953/16-17(01), CB(2)963/16-17(01), CB(2)964/16-17(01), CB(2)976/16-17(01) and CB(2)1023/16-17(01)]

2. Members noted the following papers issued since the last meeting:
- (a) Letter dated 8 March 2017 from Mr CHAN Han-pan requesting the Panel to discuss the registration and monitoring of health food products;
 - (b) Letter dated 10 March 2017 from Dr Helena WONG requesting the Panel to discuss the regulation of Chinese herbal medicines;
 - (c) Letter dated 9 March 2017 from Ms Alice MAK requesting the Panel to discuss the workflow and infection control measures of operating theatres in cataract centres and day care centres of the Hospital Authority ("HA");
 - (d) Letter dated 13 March 2017 from Dr KWOK Ka-ki requesting the Panel to discuss the dental care services for persons with intellectual disability; and
 - (e) Administration's reply letter dated 5 April 2017 to the letter from Ms Alice MAK at item (c) above.

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III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)979/16-17(01) to (02)]

Items for discussion at the regular meeting in April 2017

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for 25 April 2017 at 4:30 pm:

- (a) Extension of Operating Theatre Block of Tuen Mun Hospital – Main Works; and
- (b) Dutiable Commodities (Amendment) Bill 2017.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, two additional discussion items on "Review of the fees and charges for public hospital services" and "Review on mental health" have been added to the agenda for the April regular meeting. On the instruction of the Chairman, the meeting has been advanced to start at 3:00 pm and end at 6:45 pm to allow sufficient time for discussion.)

Items proposed for discussion at future meetings

4. Referring to Dr KWOK Ka-ki's request for the Panel to discuss dental care services for persons with intellectual disability at the earliest possible time (LC Paper No. CB(2)976/16-17(01)), Dr Fernando CHEUNG, in his capacity of the Chairman of the Joint Subcommittee on Long-term Care Policy ("the Joint Subcommittee") under the Panel and the Panel on Welfare Services, informed the meeting that the Joint Subcommittee planned to discuss issues relating to dental care for the elderly and persons with disabilities at its meeting in April or May 2017. Against the above, the Chairman said that the Panel could, where necessary, follow up the subject on dental care for persons with intellectual disability in the context of "Provision of public dental care services", which was an item already included in the Panel's list of outstanding items for discussion. Members raised no queries.

(Post-meeting note: The Joint Subcommittee has discussed the subject on "Dental care for the elderly and people with disabilities" at its meeting on 19 April 2017.)

5. As regards Ms Alice MAK's request for the Panel to discuss the workflow and infection control measures of operating theatres in cataract

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centres and day care centres of HA (LC Paper No. 964/16-17(01)), the Chairman drew members' attention that the Administration had provided a written response in this regard (LC Paper No. CB(2)1023/16-17(01)).

IV. Further discussion on the proposal to amend the health warnings on packets and retail containers of tobacco products

[LC Paper Nos. CB(2)584/16-17(114), CB(2)859/16-17(11) to (14), CB(2)880/16-17(01), CB(2)888/16-17(01) to (02), CB(2)896/16-17(02), CB(2)899/16-17(01) to (03), CB(2)900/16-17(01) to (05), CB(2)905/16-17(01), CB(2)927/16-17(01), CB(2)979/16-17(03), CB(2)991/16-17(01), CB(2)993/16-17(01) to (02), CB(2)1008/16-17(01) to (13), CB(2)1022/16-17(01) to (06) and CB(2)1028/16-17(01) to (14)]

6. The Chairman advised that the Panel would continue the discussion on the Administration's proposal to amend the health warnings on packets and retail containers of tobacco products ("the legislative proposal"), which was an item carried over from the last regular meeting of the Panel on 28 February 2017.

7. Members noted the 71 submissions on the subject issued after the February regular meeting, which included 32 almost identical submissions from members of the public.

Rationale for the legislative proposal

8. Mrs Regina IP declared that she held shares in a tobacco company. She would refrain from voting on the matter. She expressed reservation about the need and the effectiveness of the proposal to increase the area of the health warning from covering at least 50% at present to at least 85% of the two largest surfaces of the packet or retail container of the tobacco products concerned in lowering the already very low smoking prevalence in Hong Kong. In her view, the proposal would aggravate the problem of illicit trade of cigarettes and cigars due to the limited space left on the packets and retail containers concerned for the display of trademark, and impose adverse impact on the livelihood of newspaper hawkers. Mr SHIU Ka-fai cast doubt about the effectiveness of the above proposal in reducing smoking prevalence. While acknowledging the harmful effects of tobacco use, Mr WONG Ting-kwong said that being a smoker for more than 40 years, he would not quit smoking because of an increase in the coverage of health warning. He pointed out that when comparing to a retail container of cigars having a flat cuboid shape, there would be much space

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left on a retail container of cigars having a cube shape for advertising, which might defeat the effectiveness of the proposal. Ms YUNG Hoi-yan said that while she supported the putting in place of more tobacco control measures to convey the anti-smoking message, she did not support the proposal which, in her view, might interfere intellectual property rights and trademarks, and intensify the trade of illicit and counterfeit tobacco products. This apart, the Administration had not fully addressed the concerns raised by some deputations at the special meeting of the Panel on 17 January 2017 about the effectiveness and procedural justice of the legislative proposal. She asked whether consideration could be given to changing the prescribed forms of the health warning in the first place to make the message of health effects caused by smoking more clear and threatening. Any increase in the coverage of health warning should only be introduced if the above measure was found ineffective.

9. Mr CHAN Chi-chuen said that he objected to the legislative proposal. Casting doubt on the effectiveness of increasing the coverage of health warning in reducing smoking prevalence in Hong Kong, he remarked that the response provided by the Administration in paragraph 9 of LC Paper No. CB(2)859/16-17(12) had failed to provide local statistics to support the legislative proposal. In particular, any reference to overseas experience had to take into account the difference in smoking prevalence in the places concerned. He opined that if it was for the sake of public health, smoking should be totally banned and health warning requirements on harmful effects caused by the use of alcohol and soft drinks should be introduced in Hong Kong. Mr Paul TSE pointed out that the effectiveness of health warning in reducing smoking prevalence depended on a number of factors, and could not be determined by simple reference to that of overseas places. He was particularly concerned that there was no local evidence of efficacy of health warning in reducing smoking prevalence on the one hand and, on the other hand, the legislative proposal would undermine the freedom of information and competitive advantage of Hong Kong. He remarked that the marginal efficiency of the legislative proposal was low even if it could lower the smoking prevalence in Hong Kong, as the general public was already well aware that smoking was harmful to health and the local smoking prevalence, which stood at 10.5% in 2015, was already very low.

10. Mr HUI Chi-fung said that being a parent, he supported tobacco control measures which aimed at discouraging smoking and containing the proliferation of tobacco use, in particular that of the youth group. He sought local evidence to justify the effectiveness of the legislative proposal in reducing smoking prevalence. Mr Jeremy TAM said that the Civic Party was in supportive of the legislative proposal. He remarked that the

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numerous concerns raised by the tobacco trade on the legislative proposal had implied their worry that the proposed increase in the coverage of health warning would adversely affect the sale of the tobacco products concerned. This in turn demonstrated that the effectiveness of health warning would increase with their prominence.

11. Under Secretary for Food and Health ("USFH") advised that the existing set of pictorial health warnings had been in use since 2007. The World Health Organization ("WHO") had also been advocating for plain packaging of tobacco products since 2016. In the Administration's view, the legislative proposal was moderate and appropriate for the local context, and was in line with its progressive and multi-pronged tobacco control strategy. According to the findings of some local studies, about 70% of the general public and 50% of smokers supported the work of the Administration in this regard. On the various legal issues raised by the tobacco trade, she invited members to refer to the response provided by the Administration in paragraphs 12 to 34 of LC Paper No. CB(2)859/16-17(01). It should also be noted that experience of some overseas places, such as Australia, Canada and Thailand, had suggested that increasing the coverage of health warning could increase quit intention, reduce the attractiveness of smoking and reduce smoking prevalence. The Hong Kong Council on Smoking and Health's Tobacco Control Policy-related Survey of 2015 revealed that about one-fourth of current smokers had considered quitting because of the health warning in the past 30 days. Separately, there was no international evidence of increased levels of illicit cigarette trade due to the implementation of health warning. Locally, efforts would continuously be made by the Customs and Excise Department to combat illicit cigarette trade in Hong Kong.

12. Dr Pierre CHAN noted that the revenue from tobacco duty was about \$4 billion in the 2011-2012 financial year. A study of the University of Hong Kong ("HKU") revealed that smoking had caused an annual economic loss of \$4.6 billion in Hong Kong in 2006. According to the research findings revealed by the Chinese University of Hong Kong in 2015, the latest annual economic loss caused by smoking in Hong Kong was estimated to reach HK\$11 billion. It should also be noted that among the 10 leading causes of death and the 10 major causes of cancer deaths in Hong Kong, malignant neoplasms, pneumonia, diseases of heart, chronic lower respiratory diseases, lung cancer, colorectum cancer, liver cancer and oesophagus cancer were attributable to smoking. Against the above, he asked about the Administration's stance on imposing a total smoking ban in Hong Kong as suggested by some members. Dr Fernando CHEUNG expressed support for the legislative proposal for the reason of safeguarding public health and reducing the disease burden and public health expenditure

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caused by smoking. He did not see that there would be any technical difficulties for the trade to comply with the proposed new requirements, which were less stringent than the plain packaging requirement advocated by WHO and adopted by some overseas places such as Australia and the United Kingdom.

13. USFH advised that each year, smoking caused 6 000 to 7 000 deaths in Hong Kong. A study of HKU revealed that the annual expenditure on health cost of smoking was \$5.5 billion. The Administration would continue its progressive and multi-pronged approach in tobacco control with a view to lowering the smoking prevalence in Hong Kong to a single digit. Dr Helena WONG asked whether the Department of Health ("DH") would conduct a study to assess the effectiveness of the legislative proposal in reducing smoking prevalence for different age groups, in particular the youth, after its implementation. USFH replied in the positive.

14. Referring to the latest submission from the British-American Tobacco (Hong Kong) Company Limited (LC Paper No. CB(2)1022/16-17(06)), Mr Paul TSE considered it unacceptable that the Administration had yet provided a substantive reply to the Company even it had agreed to do so. USFH advised that the Administration had addressed the concerns raised by the trade on various occasions such as via the Administration's letter to the trade on 31 May 2016, at the Panel meeting on 19 December 2016 and in its written response to issues raised at the special meeting of the Panel on 17 January 2017 (LC Paper No. CB(2)859/16-17(12)).

Practical implementation issues arising from the legislative proposal

15. Mr SHIU Ka-fai urged the Administration to provide as early as possible the 12 new forms of health warning under the legislative proposal for reference of the trade. He expressed grave concern that under the current proposal, there would not be much space left on a packet or retail container of the tobacco products concerned, in particular retail container of cigars, for the display of trademarks and seals of authenticity. He called on the Administration to make reference to the practices of the European Union and adjust its proposal to increase the coverage of health warning to cover only at least 65% of the two largest surfaces of the packet or retail container of the tobacco products concerned.

16. Mr Jeremy TAM was concerned that it would be technically difficult for local agents to produce more than 800 different sized health warnings to accommodate the some 800 different sized retail containers for cigars so as to meet the requirement that the health warning had to cover 100% of the area of the largest surface on the back of the retail container. He asked

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whether consideration could be given to reducing the proposed coverage of the health warning to at least 90% of the area of the largest surface on the back of the retail container.

17. USFH advised that the original proposal of the Administration was that the health warning had to cover at least 85% of the two largest surfaces of the retail container of cigars. Having duly considered the operational concerns raised by the trade, the Administration had adjusted its proposal such that the health warning was required to cover 100% of one of the two largest surfaces and 70% of the other largest surface of the retail container to provide greater flexibility to the trade. Head (Tobacco Control Office) stressed that law enforcement agencies would consider whether prosecution would be warranted on a case-by-case basis. When the offences were of a trivial or technical nature, prosecution might not be in the public interest. Generally speaking, law enforcement agencies would not prosecute in cases where slight deviations from the requisite percentage had arisen from manual procedures. In response to Mr WONG Ting-kwong's follow-up enquiry on the handling of slight deviations from the requisite percentage, USFH reiterated that when the offences were of a trivial or technical nature, prosecution might not be in the public interest. Law enforcement agencies would consider whether prosecution was warranted on a case-by-case basis.

Indication of tar and nicotine yields

18. Mr SHIU Ka-fai sought explanation on the reasons why the Administration maintained the requirement for displaying indication of tar and nicotine yields on packets and retail containers of cigarettes, which went against the guidelines of WHO in this regard. USFH advised that the concern of WHO was that quantitative statements on tobacco product packaging and labelling about tobacco constituents and emissions, such as tar and nicotine, might imply that one brand was less harmful than another. The Administration considered that in the local context, the indication of tar and nicotine yields on packets and retail containers of tobacco products could help reminding the public that cigarettes contained such substances that were harmful to health. The Administration would keep in view the local situation and conduct a review in this regard as and when necessary.

Adaptation period

19. Mr WONG Ting-kwong considered that the latest proposal of the Administration to extend the adaptation period from six months to 12 months upon gazettal of the relevant subsidiary legislation had taken into account the time required by the trade to prepare for the

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implementation of the legislative proposal. Dr Fernando CHEUNG, Dr KWOK Ka-ki and Mr Jeremy TAM urged the Administration to implement the legislative proposal without further concessions and delay. Holding the view that the legislative proposal could help strengthen the communication of the message about health effects of tobacco use, Mr YIU Si-wing considered that the Administration should enhance publicity on the objectives of the legislative proposal both before and after the legislative proposal took full effect. USFH assured members that efforts would continuously be made by the Administration to promote smoking prevention and cessation services.

Way forward

20. Dr Helena WONG asked whether the Administration's next step was to introduce plain packaging following this legislative exercise. She was concerned that the implementation of plain packaging would intensify the trade of counterfeit tobacco products which might pose a greater health risk to smokers. Dr Pierre CHAN sought information about whether there was a rise in the trade of illicit and counterfeit tobacco products in those countries which had implemented plain packaging. Given the health risks of smoking, Dr KWOK Ka-ki said that he would support the introduction of plain packaging in Hong Kong.

21. USFH advised that a recent Australian study showed no evidence in Australia of increased use, before versus after the introduction of plain packaging, of two important categories of contraband cigarettes. The Administration at this stage had no plan to introduce plain packaging in Hong Kong. It would first study the effectiveness of the current legislative proposal after its implementation before deciding the next step forward.

Other issues of concern

22. Mr HUI Chi-fung and Dr KWOK Ka-ki expressed concern about the Administration's inaction on regulation of electronic cigarettes. USFH advised that following its discussion with the Panel in this regard in 2015, the Administration was working on the regulatory framework for electronic cigarettes. It would revert to the Panel on the work progress in due course.

23. Dr Pierre CHAN asked if the Administration had any plan to control alcohol consumption as suggested by some members given the harmful effects of use of alcohol. USFH advised that a Working Group on Alcohol and Health had been set up by the Administration to draw up targets and action plans related to alcohol-related harm. The Administration would in due course introduce into the Legislative Council ("LegCo") a legislative

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proposal to prohibit the sale and supply of intoxicating liquor to minors in the course of business.

[At this juncture, the Chairman informed members of his decision to extend the meeting for 15 minutes beyond its appointed ending time to allow more time for discussion. He then sought members' views on whether to further extend the above period of extension of meeting for 15 minutes. Mr LEUNG Kwok-hung objected to the proposal. The Chairman said that the meeting would end at 6:45 pm.]

Motions

24. The Chairman informed the meeting that Mr Jeremy TAM and Mr SHIU Ka-fai had respectively proposed to move one motion and five motions under this agenda item, the wording of which had been tabled at the meeting. The Chairman ruled that the six motions were related to the agenda item under discussion, and invited members to consider whether the motions should be proceeded with at this meeting. Members agreed.

The first motion

25. Mr Jeremy TAM moved the following motion:

"本委員會同意政府決定加大煙草產品封包上的健康忠告為正確的大方向。但鑒於本港有超過 800 多個外盒大小不同的雪茄品項，如要實行健康忠告百分百覆蓋雪茄包裝的背面，業界必須為每一個雪茄品項製作一個完全符合該項外盒大小的圖像，實際操作上極之困難，任何手工誤差都可能導致業界誤入法網。本委員會促請政府將雪茄外盒背面的健康忠告調低到面積之 90%。"

(Translation)

"This Panel agrees that the Government's decision to increase the size of health warnings on tobacco product packets represents a correct broad direction. However, as there are more than 800 cigar items with varying outer package sizes in Hong Kong, if the proposal for health warnings to cover 100% of the back surface of a cigar packet has to be implemented, the industry must produce a unique graphic health warning for each cigar item that matches the exact size of its outer package. This creates enormous operational difficulties for the industry because any workmanship error may result in the industry inadvertently breaching the law. This Panel

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urges the Government to reduce the proposed size of health warnings on the outer packages of cigars to cover 90% of the back surfaces of these packages."

26. Mr SHIU Ka-fai said that the cigar trade had reflected that the requirement that the health warning on a retail container of cigar had to cover at least 70% of the area of the largest surface on the front of the container might result in the trademarks and seals of authenticity being covered. As such, he moved the following amendments to Mr Jeremy TAM's motion:

"本委員會同意政府決定加大煙草產品封包上的健康忠告為正確的大方向。但鑒於本港有超過 800 多個外盒大小不同的雪茄品項，如要實行健康忠告百分百覆蓋雪茄包裝的背面，業界必須為每一個雪茄品項製作一個完全符合該項外盒大小的圖像，實際操作上極之困難，任何手工誤差都可能導致業界誤入法網。本委員會促請政府將雪茄外盒**前面的健康忠告調低到面積之 60%及**背面的健康忠告調低到面積之 90%。"

(Translation)

"This Panel agrees that the Government's decision to increase the size of health warnings on tobacco product packets represents a correct broad direction. However, as there are more than 800 cigar items with varying outer package sizes in Hong Kong, if the proposal for health warnings to cover 100% of the back surface of a cigar packet has to be implemented, the industry must produce a unique graphic health warning for each cigar item that matches the exact size of its outer package. This creates enormous operational difficulties for the industry because any workmanship error may result in the industry inadvertently breaching the law. This Panel urges the Government to reduce the proposed size of health warnings on the outer packages of cigars to cover **60% and** 90% of the **front and** back surfaces of these packages **respectively**."

(Note: The amendment is marked in **bold and italic type**)

27. The Chairman put the motion as amended to vote. Seven members voted in favour of and three members voted against the amended motion, and one member abstained from voting. The Chairman declared that the motion as amended was carried.

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The second motion

28. Mr SHIU Ka-fai moved the following motion:

"政府當局於 2006 年採用類似先審議後訂立程序的法案形式，落實規定煙草產品封包或零售盛器上的健康忠告圖像至少覆蓋最大兩個表面的 50% 面積，但現時擬大幅增加圖像面積至 85% 時，反而採用先訂立後審議程序。由於此做法實為重大改變，影響到立法會行使審議法例的職權，本委員會要求當局停止相關的修例計劃，並重新與所有持份者充分溝通，待商討出實際可行方案後，再以先審議後訂立程序提交法案供立法會審議。"

(Translation)

"In 2006, the Administration introduced a bill, which was scrutinized under a procedure similar to the positive vetting procedure, to implement the requirement that graphic health warnings should cover at least 50% of the two largest surfaces of packets or retail containers of tobacco products. However, the negative vetting procedure is to be adopted for the current proposal to substantially increase the size of graphic health warnings to cover 85% of the surfaces. As it is a substantial change that has implications on the exercising of powers and functions by the Legislative Council in scrutinizing legislation, this Panel requests the Administration to suspend the relevant plan of introducing the legislative amendments, and introduce a bill for the Legislative Council's scrutiny under the positive vetting procedure after engaging in sufficient communication with all stakeholders afresh for the purpose of coming up with a practical and feasible proposal. "

29. The Chairman put the motion to vote. At Dr KWOK Ka-ki's request, the Chairman ordered that the voting bell be rung for five minutes to notify Panel members of the voting, and a division would be taken on the above motion and each of the remaining four motions to be moved by Mr SHIU Ka-fai.

The following four members voted in favour of the motion:

Mr LEUNG Kwok-hung, Mr CHAN Chi-chuen, Mr SHIU Ka-fai and Ms YUNG Hoi-yan.

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The following seven members voted against the motion:

Mr YIU Si-wing, Mr Charles MOK, Ms Alice MAK, Dr KWOK Ka-ki, Mr CHU Hoi-dick, Dr Pierre CHAN and Mr Jeremy TAM.

The following three members abstained from voting:

Mr WONG Ting-kwong, Mr CHAN Han-pan and Dr Junius HO.

30. The Chairman declared that the motion was not carried.

The third motion

31. Mr SHIU Ka-fai moved the following motion:

"由於政府當局沒有充分證據或進行過實質的本地調查，去證明在煙草產品封包或零售盛器上印有佔其最大的兩個表面面積達 85%的健康忠告圖像有助降低吸煙率，本委員會現要求政府當局暫停相關的修例計劃，待進行有關調查和研究後，再向本委員會匯報。"

(Translation)

"Given that the Administration has neither gathered sufficient evidence nor conducted any substantive local survey to support that the printing of graphic health warnings covering 85% of the two largest surfaces of packets or retail containers of tobacco products is conducive to reducing smoking prevalence, this Panel requests the Administration to suspend the relevant plan of introducing the legislative amendments, and report to this Panel again after conducting relevant surveys and studies."

32. The Chairman put the motion to vote.

The following four members voted in favour of the motion:

Mr LEUNG Kwok-hung, Mr CHAN Chi-chuen, Mr SHIU Ka-fai and Ms YUNG Hoi-yan.

The following seven members voted against the motion:

Mr YIU Si-wing, Mr Charles MOK, Ms Alice MAK, Dr KWOK Ka-ki, Mr CHU Hoi-dick, Dr Pierre CHAN and Mr Jeremy TAM.

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The following three members abstained from voting:

Mr WONG Ting-kwong, Mr CHAN Han-pan and Dr Junius HO.

33. The Chairman declared that the motion was not carried.

The fourth motion

34. Mr SHIU Ka-fai moved the following motion:

"鑒於有意見質疑當局今次決定將煙草產品封包及零售盛器上的健康忠告圖像大幅擴大，事前並未進行公眾諮詢，未有給予不同的持份者在社會上一個公平表達意見的機會，可能有違程序公義，本委員會現要求政府當局暫停相關的修例計劃，重新進行全面的公眾諮詢，然後再向本委員會匯報。"

(Translation)

"Given the queries that there has been no public consultation prior to the Administration's current decision of substantially increasing the size of graphic health warnings on packets and retail containers of tobacco products, and that various stakeholders have not been given the opportunity to fairly express their views in the community, which may have violated procedural justice, this Panel requests the Administration to suspend the relevant plan of introducing the legislative amendments, and report to this Panel again after conducting a comprehensive public consultation exercise."

35. The Chairman put the motion to vote.

The following four members voted in favour of the motion:

Mr LEUNG Kwok-hung, Mr CHAN Chi-chuen, Mr SHIU Ka-fai and Ms YUNG Hoi-yan.

The following seven members voted against the motion:

Mr YIU Si-wing, Mr Charles MOK, Ms Alice MAK, Dr KWOK Ka-ki, Mr CHU Hoi-dick, Dr Pierre CHAN and Mr Jeremy TAM.

The following three members abstained from voting:

Mr WONG Ting-kwong, Mr CHAN Han-pan and Dr Junius HO.

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36. The Chairman declared that the motion was not carried.

The fifth motion

37. Mr SHIU Ka-fai moved the following motion:

"歐洲議會法律事務委員會在 2013 年有法律意見認為，若將煙草產品封包上的警示圖像擴大至 75%，會有違當地法律和相關國際條約，最後當局只實施 65% 圖像規定。就此，本委員會要求香港特別行政區政府參照歐盟的做法，考慮將煙草產品封包或零售盛器上的健康忠告圖像覆蓋最大兩個表面的面積由現時 50% 擴大至 65%，以避免法律爭議，及配合政府的循序漸進的控煙政策。"

(Translation)

"According to the Committee on Legal Affairs of the European Parliament, there was a legal view in 2013 that increasing the size of graphic warnings to cover 75% of the packets of tobacco products might contravene local laws and relevant international treaties. Eventually, the authorities only implemented the 65% requirement. In this connection, this Panel requests the Government of the Hong Kong Special Administrative Region to consider, by making reference to the practice of the European Union, increasing the size of graphic health warnings from currently covering 50% of the two largest surfaces of packets or retail containers of tobacco products to 65%, so as to avoid legal disputes and dovetail with the Government's progressive tobacco control strategy."

38. The Chairman put the motion to vote.

The following four members voted in favour of the motion:

Mr LEUNG Kwok-hung, Dr Junius HO, Mr SHIU Ka-fai and Ms YUNG Hoi-yan.

The following five members voted against the motion:

Mr YIU Si-wing, Mr Charles MOK, Dr KWOK Ka-ki, Dr Pierre CHAN and Mr Jeremy TAM.

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The following five members abstained from voting:

Mr WONG Ting-kwong, Mr CHAN Chi-chuen, Mr CHAN Han-pan, Ms Alice MAK and Mr CHU Hoi-dick.

39. The Chairman declared that the motion was not carried.

The sixth motion

40. Mr SHIU Ka-fai moved the following motion:

"自 2013 年起，立法會每年在 5、6 月期間均須用上多個會議去審議《撥款條例草案》，致使不少採用先訂立後審議程序訂立的附屬法例，未有在修訂期限前讓議員在立法會會議上進行辯論及就修正案表決便自動生效，這實質上影響了議員行使職權。

一般相信，今年的會議情況亦會一如以往數年，故此，若政府當局堅持採用先訂立後審議程序來擴大煙草產品封包或零售盛器上的健康忠告圖像，並於本年 3、4 月間展開立法程序，很可能會再次產生上述問題，變相剝奪議員按《基本法》第七十三條規定，在立法會會議上就附屬法例進行辯論並就修正案進行表決的機會。為此，本委員會要求當局押後至本年 5 月或以後才向立法會提交有關附屬法例，以表充分尊重立法會議員的職權和憲制角色。"

(Translation)

"Since 2013, the Legislative Council has to devote several meetings held in May and June each year to scrutinize the Appropriation Bill. As a result, a number of subsidiary legislation made under the negative vetting procedure had come into operation automatically before Members could debate on these pieces of subsidiary legislation and vote on proposed amendments at Legislative Council meetings before the amendment deadlines, resulting in substantial impact on the exercising of powers and functions by Members.

It is generally believed that the situation of Legislative Council meetings this year will be the same as those in previous years. Therefore, if the Administration insists on increasing the size of graphic health warnings on packets or retail containers of tobacco products through the negative vetting procedure and commences the

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legislative procedure in March or April this year, it is very likely that the aforesaid problems will emerge again, thus de facto depriving Members of the opportunity to debate the subsidiary legislation and vote on proposed amendments at a Legislative Council meeting under Article 73 of the Basic Law. In this connection, this Panel requests the Administration to defer the introduction of the subsidiary legislation to the Legislative Council to May this year or later, so as to fully respect Legislative Council Members' powers and functions as well as their constitutional role."

41. The Chairman put the motion to vote.

The following six members voted in favour of the motion:

Mr LEUNG Kwok-hung, Mr CHAN Chi-chuen, Mr CHU Hoi-dick, Mr SHIU Ka-fai, Ms YUNG Hoi-yan and Dr Pierre CHAN.

The following two members voted against the motion:

Mr YIU Si-wing and Ms Alice MAK.

The following six members abstained from voting:

Mr WONG Ting-kwong, Mr Charles MOK, Mr CHAN Han-pan, Dr KWOK Ka-ki, Dr Junius HO and Mr Jeremy TAM.

42. The Chairman declared that the motion was carried.

Admin

43. The Chairman directed that the Administration be requested to provide a written response to the two motions passed by the Panel.

Conclusion

44. The Chairman remarked that the subject had been thoroughly discussed by the Panel at this meeting and the meetings on 19 December 2016, 17 January 2017 and 28 February 2017. Members could give their further views on the subject, if any, at meetings of the subcommittee to be set up to scrutinize the relevant subsidiary legislation.

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V. Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children

[LC Paper Nos. CB(2)979/16-17(04) to (05), CB(2)1008/16-17(14) to (18), CB(2)1022/16-17(07) to (10) and CB(2)1028/16-17(15) to (16)]

45. Members noted the following papers on the subject under discussion:

- (a) the Administration's paper entitled "Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children" (LC Paper No. CB(2)979/16-17(04));
- (b) the background brief entitled "Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children" prepared by the LegCo Secretariat (LC Paper No. CB(2)979/16-17(05)); and
- (c) the 778 submissions on the subject, which included a joint submission from 123 healthcare professionals and eight healthcare institutions, and 768 identical submissions from members of the public via the Natural Parenting Network as of 1:15 pm on the day of the meeting.

Scope of restrictions under the Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children ("HK Code")

46. Mr SHIU Ka-fai considered that the implementation of the HK Code would infringe parents' right to access to information and interfere free market. Noting that the HK Code was proposed to apply to any formula milk, any formula milk related products, any prepackaged food and any other product declared as a designated product by DH for the purposes of the HK Code ("the designated products") for infants and young children up to 36 months old, he pointed out that most of the countries which imposed restrictions on marketing of formula milk up to the age of 36 months were developing countries such as Lebanon, Nigeria, Philippines and South Africa where fewer mothers with infants and young children would go out to work. In his view, the restrictions under the HK Code should only be applied to designated products for infants less than six months of age, or at the very least not over designated products for young children beyond 12 months of age. Mr CHAN Han-pan expressed similar views, adding that narrowing the coverage of the HK Code, which was voluntary in nature, would encourage compliance by the traders.

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47. Dr KWOK Ka-ki expressed support for the direction for protecting breastfeeding and supporting optimal feeding of infants and young children aged below 36 months. Mr HUI Chi-fung held the view that the health benefits of breastfeeding to infants and young children should override the concerns of the manufacturers and distributors of the designated products. From his personal experience, marketing information on formula milk available to parents of infants and young children was far greater in volume than information on breastfeeding.

48. USFH advised that WHO had reaffirmed in 2016 that breast-milk substitutes, including any milk that were specifically marketed for feeding infant and young children up to three years of age, should not be promoted. The Administration maintained that the HK Code should be applicable to designated products for infants and young children up to the age of 36 months. It was worthy to note that a survey conducted by DH revealed that local children aged 12 months and above had consumed more milk than the recommended volume, which probably reflected the permeation of aggressive formula marketing. She stressed that the implementation of the HK Code would not hinder parents who needed to use the designated products from making informed choices, as manufacturers and distributors of such products were free to provide correct and factual product information via their websites and upon a person's request via any electronic or physical means, provided that such information would not convey biased information or discourage breastfeeding.

49. Mr Jeremy TAM noted with concern that according to the draft HK Code, product information provided by manufacturers and distributors of formula milk and related products should not promote bottle feeding, which meant feeding liquid or semi-solid food from a bottle with a teat. Given that some mothers might for various reasons choose to provide breastmilk for their babies through feeding bottles, he considered it necessary for the Administration to define more clearly what constituted bottle feeding under the HK Code. Assistant Director of Health (Family and Elderly Health Services) advised that having considered the negative impact of bottle feeding on breastfeeding and similar restrictions recommended by the International Code of Marketing of Breastmilk Substitutes developed by WHO, the Administration proposed that the HK Code should impose restrictions on, among others, marketing practices of feeding bottles. Information and advice on the use of a feeding bottle could be provided by healthcare professionals as and when necessary.

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Implementation of the HK Code

50. Mr SHIU Ka-fai was concerned about whether the implementation of the HK Code, which would impose restrictions on the marketing practices for the designated products, would contravene the Competition Ordinance (Cap. 619). USFH advised that as affirmed by the Department of Justice, the finalized HK Code would not contravene the Competition Ordinance.

51. Mr LEUNG Kwok-hung said that the Trade Descriptions Ordinance (Cap. 362), which prohibited, among others, false trade descriptions and false, misleading or incomplete information in respect of good provided in the course of trade, could cover deceptive acts of traders, such as the false or misleading health and nutrition claims for the designated products. USFH said that the Administration was in the process of working on the legislative proposals for establishing a regulatory framework on nutrition and health claims on formula products and prepackaged food for infants and young children under the age of 36 months, taking into account views expressed during the public consultation exercise and the latest international development.

52. Mr HUI Chi-fung urged the Administration to, in the long run, legislate against aggressive marketing of breastmilk substitutes. Dr KWOK Ka-ki called for early legislation of the HK Code to provide legal backing for the implementation of the measures concerned. He enquired about the legislative timetable in this regard. Mr Jeremy TAM was concerned that given that the HK Code would be of a voluntary nature and there would be no sanctions for non-compliance, there might be a possibility that only the large traders would observe the recommended good marketing practices whereas the small traders would continue to adopt an aggressive marketing approach. He considered that a better option was to regulate the marketing practices of breastmilk substitutes through legislation, with the provision of a transitional period for preparation by traders.

53. USFH advised that the Administration's plan was to promulgate the HK Code in mid-2017. It would then assess the overall trends in marketing practices of the designated products through regular surveys to evaluate the effectiveness of the HK Code and to decide the way forward, including whether legislation should be pursued. It was expected that the evaluation would take a few years to complete.

54. Expressing support for the implementation of the HK Code, Dr Pierre CHAN sought information on the amount of advertising expenses of the manufacturers on powdered formula for infants and young children

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aged below 36 months through various media channels. USFH advised that according to some news reports, traders of powdered formula had spent more than \$2 billion on advertising their products. At the request of Dr Pierre CHAN, USFH undertook to provide in writing the annual volume and value of these products imported into Hong Kong after the meeting.

Admin

Other measures to promote and support breastfeeding

55. Mr Jeremy TAM expressed concern that it was very difficult for working mothers, who had to return to work after the 10-week statutory maternity leave, to sustain breastfeeding. He called on the Food and Health Bureau ("FHB") to work with the Labour and Welfare Bureau to extend the duration of statutory maternity leave, so as to enable working mothers to prolong the duration of breastfeeding. While expressing support for the HK Code, Mr CHU Hoi-dick considered that the Administration should devote more efforts to enable working mothers to sustain breastfeeding. He pointed out that the statutory maternity leave of some overseas places, such as Canada and Sweden, could be up to several months or even a year. Mr POON Siu-ping noted that the exclusive breastfeeding rate for infants at four months of age as revealed in the breastfeeding survey conducted by DH was only 27% in 2014. He requested the Administration to provide the latest statistics in this regard when available.

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56. USFH advised that issues relating to the breastfeeding rate and relevant practices in other countries had been and would continuously be looked into by the Committee on Promotion of Breastfeeding ("the Committee") set up by FHB in 2014 to provide recommendations on strategies and action plans to strengthen the promotion, protection and support for breastfeeding.

57. Mr LEUNG Kwok-hung remarked that to promote breastfeeding, creating a breastfeeding friendly environment in the workplace and public places would be a more effective way than introducing the HK Code. Mr CHU Hoi-dick was of a similar view. Noting that the local ever-breastfeeding rate on hospital discharge had increased over the years following the concerned efforts of the Administration and various sectors of the community in promoting breastfeeding, he asked about the measures to be implemented by the Administration to further raise the breastfeeding rate. Mr HUI Chi-fung urged the Administration to put in place more measures to support breastfeeding after mothers returned to work, such as encouraging employers to provide breastmilk expression area in workplace, breaks for expression and child care services. Mr POON Siu-ping said that a survey conducted by The Federation of Hong Kong & Kowloon Labour Unions in February 2017 revealed that two out of the 13 baby care facilities

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in public places managed by private enterprises covered under the survey were in washrooms. Considering that such an arrangement would give rise to hygienic problem, he called on the Administration to encourage private enterprises to provide more breastfeeding friendly premises in order to support breastfeeding in public places.

58. USFH advised that the Administration had all along endeavoured to promote, protect and support breastfeeding. Apart from the planned launching of the HK Code, the Administration would continue to encourage more government departments and private enterprises to implement the breastfeeding friendly workplace policy to facilitate working mothers to express milk. A Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers on "Provision of Babycare Rooms in Commercial Buildings" was issued in 2009 to encourage and facilitate the provision of babycare rooms on private commercial premises. Separately, the Queen Elizabeth Hospital had been accredited internationally as the first baby friendly hospital in Hong Kong in May 2016. It was expected that other public hospitals with maternity wards would become baby friendly hospitals in phases.

Motion

59. Mr SHIU Ka-fai moved the following motion:

"本委員會要求政府當局押後推行《香港配方奶及相關產品和嬰幼兒食品銷售守則》("香港守則")，以免有部分持份者遵守，有部分不遵守，造成不公平情況，並且必須進行有效性評估，提出透過推行香港守則提升母乳餵哺率的具體目標和相關支持數據(若有)，以及再次就香港守則進行公眾及業界諮詢，以深入研究應以自願性方式還是立法方式推行有關措施，及涵蓋的規管範圍。"

(Translation)

"This Panel requests the Administration to defer the implementation of the Hong Kong Code of Marketing of Formula Milk and Related Products, and Food Products for Infants & Young Children ("HK Code") to forestall the unfair situation where some stakeholders comply with the HK Code while some others do not, and that an assessment, with relevant supporting data (if any), on the effectiveness of the implementation of the HK Code in achieving specific targets to increase the breastfeeding rate must be conducted, and that consultations on the HK Code among members of the public and the

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industry should be conducted afresh for in-depth consideration of whether the measures concerned should be implemented on a voluntary basis or by legislation, as well as the scope of regulation."

60. The Chairman ruled that the motion was related to the agenda item under discussion, and invited members to consider whether the motion should be proceeded with at this meeting. Members agreed.

61. The Chairman put the motion to vote. One member voted in favour of and five members voted against the motion, and one member abstained from voting. The Chairman declared that the motion was not carried.

62. Mr SHIU Ka-fai said that many stakeholders such as the relevant trade associations were not fully consulted on the draft HK Code. He was of the view that the Panel should hold a special meeting to receive views from the stakeholders and the public on the subject. The Chairman suggested and members agreed that a special meeting be held before the Easter holiday for the said purpose.

(Post-meeting note: The special meeting for the above purpose has been scheduled for 10 April 2017 from 2:30 pm to 7:15 pm.)

VI. Policy on and drugs for rare diseases

[LC Paper Nos. CB(2)979/16-17(06) to (07), CB(2)1022/16-17(11) and IN07/16-17]

63. In view of the time constraint, members agreed that the Panel should hold another special meeting before the Easter holiday to discuss with the Administration on the policy on and drugs for rare diseases. Dr KWOK Ka-ki suggested that the Panel should receive public views on the subject at the special meeting. Members agreed.

(Post-meeting note: The special meeting for the above purpose has been scheduled for 11 April 2017 from 10:00 am to 12:30 pm.)

VII. Any other business

64. There being no other business, the meeting ended at 6:45 pm.