



Tobacco Association of Hong Kong
香港煙草業聯會

Prof Hon Joseph LEE Kok-long, SBS, JP
Chairman of the Panel on Health Services
Legislative Council
Legislative Council Complex 1
Legislative Council Road Central
Hong Kong

23 January 2017

Dear Prof Hon Chairman Lee,

Special Meeting of the Panel of Health Services of the Legislative Council of 17 January 2017
("the Special Meeting")



We are writing to provide clarifications to some of the issues raised by Hon Peter Shiu Ka-fai regarding the correspondences between the industry members and the Administration during the Special Meeting.

With regards to Hon Peter Shiu's query as to whether the Food and Health Bureau ("FHB") has provided any reply to the various submissions made by our industry associations, we respectfully advise that the Tobacco Association of Hong Kong has not received any substantive reply to-date (see the enclosed table and annexures). The letters from the FHB dated 31 May 2016 and 4 November 2016 merely requested some selected tobacco manufacturers to provide their views on the technical aspects of the FHB's proposal to increase the size of the graphic health warning on the tobacco packs from 50% to 85% ("the Proposal"), and invited some selected members of the industry to attend the 23 November 2016 briefing session on technical aspects. There has been no direct reply to any of our previous submissions nor any qualitative analysis whatsoever addressing the issues we repeatedly raised in our submissions. Please see the attached table for details.

We note that Dr. Sophia Chan concluded towards the end of the Special Meeting that the majority of the 100 submissions received for the Special Meeting supported the Proposal. We disagreed. On the contrary, 35 of the 70 verbal submissions given at the Special Meeting and close to 50% of the 106 written submissions collected (for those who did not attend) were against the Proposal. Further, a number of the Legislative Members have expressed their discontent to the Proposal including but not limited to interference with trade mark property right, lack of proper public consultation and local evidence/study, procedural impropriety and technical



Tobacco Association of Hong Kong
香港煙草業聯會

impracticality. We believe that the FHB should conduct a multi-perspectives and comprehensive qualitative analysis of the said submissions so as to gain a proper understanding of all of the issues raised rather than simply adopting a quantitative count of submissions.

In addition, we urge the FHB to provide us with a substantive reply to our various submissions and also to provide the Legislative Council with sufficient qualitative analysis and reports so that the Proposal can be discussed and evaluated effectively and productively at the upcoming Panel's meeting.

Yours faithfully,



Christine Hu
Chairperson
Tobacco Association of Hong Kong Limited



Tobacco Association of Hong Kong
香港煙草業聯會

Tobacco Association of Hong Kong ("TA")

Date	TAHK Letter	Food & Health Bureau Letter
13 June 2015	TA provided a submission to the Health Panel raising issues ranging from interference to trade mark property right, illicit trade, consumer's right to product information, the effectiveness of the Proposal and technical difficulties (see LC Paper No. CB(2)1808/12-15(44)(Revised)). (for the special meeting on 6 July 2015)	No reply nor any qualitative analysis report addressing issues raised in TA's Jun 13, 2015 submission.
13 July 2016	TA sent a letter to FHB reiterating the issues raised in its submission of 13 June 2015 (see enclosed).	No reply
10 January 2017	TA provided a submission reiterating various issues raised previously and provided further details in support of the need for a longer grace period (see LC Paper No. CB(2)584/16-17(52)). (for the special meeting on 17 January 2017)	No reply nor any qualitative analysis report addressing issues raised in TA's Jan 10, 2017 submission.



Tobacco Association of Hong Kong
香港煙草業聯會

Dr. Ko Wing-man BBS, JP
The Secretary for Food and Health
18/F, East Wing, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Ref: FH CR3/3231/15

13 July 2016

Dear Dr. Ko,

Health Warnings on Tobacco Products Packets and Retail Container

I am writing on behalf of the Tobacco Association of Hong Kong ("TA") in response to your letter dated 31 May 2016 and headed "Health Warnings on Tobacco Products Packets and Retail Container" (the "Proposal Letter").

First and foremost, we are disappointed that the Proposal Letter has failed to address any of the concerns and issues raised by the stakeholders, including members of TA, and by the members of the Panel of Health Services ("Panel") at the special meeting held on 6 July 2015 (the "Special Meeting"). The Proposal Letter has only set out a bare outline of the proposed amendments in relation to the layout, adaptation period and other technical specifics of the 85% health warnings on cigarette packets (the "Proposal"). It is disconcerting that to-date, the Food and Health Bureau ("FHB") is unable to put forward any evidence and reasoning that ought to be to support the drastic measures of the Proposal.

Secondly, the process in which the Proposal was put forward fell short of best practice and fundamental requirements of due process legitimately expected from the government, as the Proposal Letter has not been addressed to TA (representing more than 100 corporations and individuals in the tobacco industries) and many of TA's members, including local distributors and retailers that are affected by the Proposal. This is in contrast to the active consultation process that the government adopts on many other proposed policies.

We welcome and support any necessary and proportionate regulations proposed by the government that will effectively achieve public health objective, so long as the said objective is clearly identified, the effect of the proposed regulations are substantiated by scientific studies and local researches, and the proposed regulations are scrutinized through a proper and open consultation. However, in the recent Proposal, notwithstanding the fact that many members of TA and other stakeholders have raised their pressing concerns over the operational impracticalities and other significant negative impacts arising from the Proposal,



the government has not sought to address these concerns and hear from all stakeholders through a proper consultation process.

A. Procedural Impropriety – Absence of a Public Consultation

In the minutes to the Special Meeting held on 6 July 2015, it was noted that the Chairman of the Panel and a number of its members urged the FHB to consult with the industry and other stakeholders before initiating any proposed amendments:

“The Chairman suggested and members agreed that the Administration should revert to the Panel on how it would take forward the legislative proposals after communicating with the tobacco industry and the relevant stakeholders having regard to their concerns over the legislative proposals”.

It was reasonably expected that following the Special Meeting, the government would initiate an open and transparent public consultation on the Proposal as recommended by the Panel, but this has not been forthcoming.

This stands in stark contrast to the active public consultation process that recently took place on various controversial issues such as the development of private healthcare facilities, the recycling of “waste cooking oil”, the nutrition and health claims on milk formula and pre-packaged food for infants/toddlers aged up to 36 months. In particular, we note that in January 2015, when FHB put forward the amendments to the liquor licensing regulatory regime to the Legislative Council, a public consultation was launched in 2011 with a view to strike a balance between the legitimate commercial interest of stakeholders and the social interest of the wider community was advocated. As a result of such consultation, FHB revised its initial amendments to address the issues raised and made the final proposal more acceptable to the community as a whole before presenting it to the Legislative Council. In light of this, we are disappointed with the different attitude and approach taken by the government in this instance, where no proper and appropriate consultation process was attempted when the issues raised are highly controversial and the negative impacts of the Proposal are notably significant.

B. Absence of Evidence to Substantiate the Effectiveness of the Proposal

The legal requirement for graphic health warnings (GHW) on tobacco packaging in Hong Kong has been in existence for nine years. However, there has been no evidence to suggest such requirement has a direct effect on reducing the local smoking prevalence rate. The Government has again failed to provide any evidence or conduct any study or local research to substantiate the premise that, by increasing the size of GHW from 50% to 85% on the two largest surfaces of cigarette packs, this will effectively reduce the smoking prevalence rate in Hong Kong, which is already one of the lowest in the world at 10.2%.



We are of the view that a prudent policymaker should listen, consider and analyse all views and opinions from all sectors of the community without bias. Any party who wishes to express views and concerns, including stakeholders such as the manufacturers, wholesalers and retailers, in the tobacco industry or anti-tobacco associations, should be entitled to an equal opportunity to voice out through appropriate channels.

C. Operational Impracticalities – Adaptation Period

We would like to draw your attention to the infeasibility of a six-month adaptation period as proposed by the government. At the Special Meeting on 6 July 2015, we already explained in our written and verbal submission that the production process of tobacco products would be extremely complex and the actual time required for designing and printing new packaging as well as rotating the stock would be more than six months.

The Proposal Letter refers to the overseas experience as being the basis of the proposed six months adaptation period but does not specify any particular jurisdictions. From our findings, the adaption period for similar graphic health warnings applied in other countries varies. We would like to highlight that when considering the adaption period, local circumstances and practice such as availability of manufacturing sites and/or production scheduling, shipping and logistics arrangements, taxation arrangement as well as stock situations should be considered. In Hong Kong, an adaptation period of 12 months was given when the 50% GHW was introduced in 2007. At the Panel meeting on 18 May 2015 and the Special Meeting on 6 July 2015, numerous members of the Panel stated that the current proposed six months' adaption period would be unreasonably short and infeasible. We again urge the Government to adopt a 12 month adaptation period based on the previous local practice in 2007 as it is more relevant to the local businesses and the local circumstances. In the Proposal Letter, the FHB further suggests for the adaptation period to run from the date of the publication of the Amendment Order. However, we consider it more appropriate for the adaptation period to commence from the date of the publication of the official artworks in AI format (or Adobe Illustrator format) and after the Legislative Council's scrutinising of the Amendment Order.

D. Operational Impracticalities – technical issues

The Proposal is also unclear, contradictory and several recommendations are technically impossible or operationally impracticable. Similar concerns were raised by the industry and relevant stakeholders at the Special Meeting in July 2015 but they have not been properly considered nor addressed:



1. A rectangular shaped GHW within a circular shape would only take up at the most 65% of the circular area and thus, manufacturers who use drum containers would inevitably violate the regulations;
2. The bottom of a drum container is metal and is neither practical nor visible to consumers if the manufacturer has to print indication of tar and nicotine yields on the bottom of a drum container;
3. The proposal for the characters, letters numbers of the GHW to be printed in white, black, or red and be surrounded by a black or white border is intended to make the text and numbers stand out, but there is no indication that the font colour should not be the same as the border colour nor is there any consideration of the background colour of the pack;
4. The “pull-tabs” and markings on the seals of soft packs of cigarettes would cover and obscure part of the 85% health warning so the availability of such packs/features would be contrary to the Proposal — the history of soft packs dates back more than 100 years and again the manufacturers who use soft packs would inevitably violate the regulations;
5. Tar and nicotine yields could no longer be displayed within the health warning space, the area required would actually exceed 85% of the two largest surfaces of the cigarette pack. This further reduces the space available for manufacturers to display trademarked features, the origin of their products, anti-counterfeiting features, barcodes, consumer hotline numbers and other consumer information. In our view, the tar and nicotine yields should be displayed within the Government warning as it is demanded by the Government, not by the manufacturers; and
6. There is no clear indication of how the tar and nicotine information should be positioned on the side or bottom panel of the pack. In any event, manufacturers will need to re-design the side panels as well as the two largest surfaces of the pack which will cause more complication in the designing and production process.

The cigar industry is also concerned about the impracticalities of the Proposal. At the Special Meeting held on 6 July 2015, various parties of the cigar industry voiced out their concerns over the technical difficulties for applying the enlarged health warning, and more importantly, the consequence of facilitating the counterfeit trading as the enlarged health warning would cover all the authenticity seals and identity features on the box cover. Members of the Panel urged the government to talk to the cigar industry but this request has also not been addressed. These technical difficulties for the cigar industry continue to exist in the Proposal, making it difficult for them to comply with the Proposal. The cigar industry is already in a tremendous amount of distress and confusion even with the mere Proposal of the amendment.



Tobacco Association of Hong Kong
香港煙草業聯會

These technical infeasibilities and operational impracticalities highlight the fact that the Proposal without input from the industry may not be enforceable and practical. This confirms the necessity of an open, inclusive and proper consultation where the views of all stakeholders (including all members of TA) can be heard, considered and incorporated.

Hong Kong's smoking prevalence is already one of the lowest in the world. The government has so far not been able to put forward evidence or studies to suggest that increasing the size of health warnings would accelerate the existing decline in smoking prevalence, and this is an issue that must be evaluated and addressed by the government. The operational impracticalities of the Proposal and the lack of proper consultation and supporting evidence further pose questions as to the need for the justification of the Proposal. As such, we sincerely wish that FHB can consider the issues mentioned above and address each of them respectively.

We look forward to hearing from you soon.

Yours sincerely,

Christine Yimei Hu

For and on behalf of
Tobacco Association of Hong Kong

CC: Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN,
Chairman, Legislative Council Panel on Health Services

Secretary, Legislative Council Panel on Health Services
(Attn: Miss Ms Maisie LAM)