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Panel on Health Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 28 February 2017**

**Proposals to amend the health warnings
on packets and retail containers of tobacco products**

Purpose

This paper provides background information on the requirements on health warnings on packets and retail containers of tobacco products and gives a brief account of the discussion by the Panel on Health Services ("the Panel") on the Administration's latest legislative proposals in this regard.

Background

2. According to the World Health Organization ("WHO"), well-designed health warnings and messages on tobacco product packages have been shown to be a cost-effective means to increase public awareness of the health effects of tobacco use and to be effective in reducing tobacco consumption. Article 11.1(b) of WHO Framework Convention on Tobacco Control ("FCTC")¹ requires each Party to adopt and implement effective measures to ensure that each unit packet and package of tobacco products and any outside packaging and labelling used in the retail sale of such products carry health warnings and messages. These warnings and messages shall be rotating; shall be large, clear, visible and legible; should be 50% or more, but no less than 30%, of the principal display areas; and may be in the form of or include pictures or pictograms.

¹ WHO FCTC entered into force in 2005. Parties are obliged to take a number of steps to reduce demand and supply for tobacco products. China is one of the signatories to and has ratified WHO FCTC, the application of which has been extended to Hong Kong since 2006.

3. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") with its subsidiary legislation provide the legal framework on tobacco control for restricting the use, sale and promotion of tobacco products in Hong Kong. Under sections 8 and 9 of the Ordinance, health warnings in prescribed size and wording are required to be shown on the packets or retail containers, as the case may be, of cigarettes,² cigar, pipe tobacco and cigarette tobacco. According to paragraphs 3, 4A and 4AA of the Smoking (Public Health) (Notices) Order (Cap. 371B) ("the Order") as amended in 2006, the health warning shall be in one of the prescribed forms as set out in the Schedule to the Order and shall appear on the two largest surfaces of the packet or the retail container concerned. Other than the case of retail container containing one cigar, the health warning concerned shall be of a size that covers at least 50% of the area of the surface on which it appears.

Deliberations of the Panel

4. The Panel discussed the Administration's legislative proposals to, among others, amend the prescribed forms of health warnings, the size and number of the health warnings and messages for packet or retail container of cigarettes, cigar, pipe tobacco and cigarette tobacco at its meeting on 18 May 2015, and received views from 100 deputations on 6 July 2015. The Panel was briefed on the latest legislative proposals at the meeting on 19 December 2016, and received views from 69 deputations on 17 January 2017. The major views and concerns of members are summarized in the following paragraphs.

Portion and forms of the health warning

5. Members noted the legislative proposal to increase the area of the graphic health warning from covering at least 50% to at least 85% of the two largest surfaces of the packet or the retail container of the tobacco product concerned. Some members were supportive of the proposal. However, some other members who shared the view of some deputations on the effectiveness of the proposal to lower the already very low local smoking prevalence rate, which stood at 10.5% in 2015, considered that strong supporting evidence, in particular local statistics and evidence-based analysis, should be provided to justify the proposal. These members noted that the tobacco control policy-related survey conducted by the Hong Kong Council on Smoking and Health ("COSH") in collaboration with the School of Public Health of The University of Hong Kong

² Applies to any packet of cigarettes containing 20 or more cigarettes and any retail container of cigarette packets containing any number of cigarettes.

in 2015³ only gauged the views of members of the public on, among others, enlarging the size of health warnings to cover up to 75% of cigarette packets. Internationally, only a few countries such as Nepal, Pakistan and Thailand required the size of health warnings to cover at least 85% of the two largest surfaces of cigarette packets. They also expressed concern that the Administration had formulated the proposal in the absence of public consultation and regulatory impact assessment. There was also a view that the Administration should instead strengthen the smoking cessation services. In addition, more resources should be allocated to COSH to step up publicity on the harms of smoking as well as to the Tobacco Control Office of the Department of Health for effective enforcement of smoking ban at the statutory no smoking areas.

6. According to the Administration, it was recommended under WHO FCTC that Parties should implement larger, rotating health warnings on all tobacco product packaging and labeling in order to maintain saliency and enhance impact. According to empirical evidence from WHO and overseas experience, the effects of health warnings and messages in discouraging tobacco consumption increased with their prominence. It should be noted that plain (standardized) packaging had been advocated by WHO. Australia, France, Hungary, Ireland, New Zealand and the United Kingdom had already adopted or prepared to adopt plain packaging of tobacco products. In the Administration's view, the current proposal of increasing the area of the graphic health warning to a size that covered at least 85% of the two largest surfaces of the packet or the retail container was moderate and appropriate for the local context, and was in line with its progressive tobacco control strategy. When mapping out the proposal of increasing the area of the graphic health warning, the Administration had balanced the interest of tobacco industry and the need to protect public health. Given that the existing batch of health warnings on packet or retail container of cigarettes and relevant tobacco products had been used since 2007, the Administration considered it high time to change the prescribed forms of the health warnings. Apart from increasing the portion of the health warnings, it was proposed that the number of forms of health warning be increased from six to 12. These proposals would increase the awareness of the health hazards of smoking among existing smokers and potential smokers, so as to encourage cessation and discourage uptake. It was hoped that smoking prevalence in Hong Kong could be lowered to single digit in the not-too-far away future.

7. Concern was raised about the display of an enlarged prescribed health warning on a square-shaped packet and a retail container in the form of a drum. The Administration advised that having taken into account the views expressed

³ The results of the tobacco control policy-related survey can be assessed at the website of COSH (http://smokefree.hk/UserFiles/resources/about_us/cosh_reports/COSHRN_E19.pdf).

by the trade, it would adjust its earlier proposal and exempt the new health warning requirement for applying on the lid of a drum shape container. The area of health warning would be required to remain covering 50% of the lid of the drum shape container.

8. Some members shared the tobacco industry's concern that implementation of the proposals would intensify the trade of counterfeit and illicit tobacco products, in particular that of cigar, due to the limited space left on the packets and retail containers for trademarks and branding. This would also amount to unlawful deprivation of intellectual property rights, and violate Hong Kong's obligations under international trade agreements and international investment agreements. There was a suggestion that the Administration should allow area of the graphic health warning to cover a different percentage of the two largest surfaces of the packet or the retail container concerned, say, 60% of one surface and 70% or 80% of another surface. Another suggestion was to follow the practice of Germany to require the area of graphic health warnings to cover at least 65% of the two largest surfaces of the packet or the retail container concerned. The Administration advised that there was no solid evidence suggesting that increasing the size of graphic health warnings would lead to intensification of illicit cigarette trade. Apart from the 15% remaining areas of the two largest surfaces, space was also available on the other surfaces of the packets or retail containers for trademarks and branding.

9. There was a suggestion of allowing the trade to carry out the design work of some graphic health warnings. Members were advised that a set of guidelines would be provided to the trade to facilitate their compliance with the amended laws. The Tobacco Control Office would also provide soft copy of the graphical files of the new health warnings to the trade.

10. Given that the space left on the two largest surfaces of the packet would be limited under the legislative proposals, question was raised as to whether the sealing, being printed in colour or made transparent, could overlay the area of the graphic health warning on a soft pack, as was the practice adopted in Thailand. There was also a concern that the authenticity seals of the cigar products would be covered by the enlarged graphic health warnings. The Administration advised that as required under paragraph 3(7) of the Smoking (Public Health) (Notices) Order (Cap. 371B), the health warning should not be 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.

11. Despite the Administration's explanation, some members were of the view that the Administration had not addressed squarely the various concerns raised

by the tobacco industry on the practical implementation issues arising from the legislative proposals.

Statement on the health warnings

12. Some members had reservation over the Administration's original legislative proposal to replace the existing statement "HKSAR GOVERNMENT WARNING" on the prescribed health warnings with the messages "Tobacco kills up to half of its users" and "Quitline: 1833 183", as the message "Tobacco kills up to half of its users" appeared to be merely a slogan without scientific proof. Members were subsequently advised that the latest legislative proposal was to include the messages "QUIT SMOKING FOR FUTURE GENERATIONS" and "QUITLINE: 1833 183" in the existing statement.

Indication of tar and nicotine yields

13. Members noted that indication of tar and nicotine yields would continue to be required to appear on the packet and retail container of cigarette and relevant tobacco products. They noted that according to the guidelines published by WHO for implementing Article 11 of FCTC, Parties should not require, among others, quantitative statements on tobacco product packaging and labelling about tobacco constituents and emissions that might imply that one brand was less harmful than another, such as the tar, nicotine and carbon monoxide figures. Some members considered that the Administration should follow the guidelines of WHO in this regard. The Administration advised that the indication of tar and nicotine yields would help to remind smokers that smoking was hazardous to health.

Adaptation period

14. Members noted that in the last legislative exercise to introduce, among others, the requirement that packets or retail containers of tobacco products should bear graphic health warnings of a size that covered at least 50% of the principal surface areas, sale of tobacco products with pre-amendment health warnings was allowed during the 12 months after the day on which the relevant provisions came into operation. There was a view that the tobacco trade should be given sufficient time in this legislative exercise to change the packaging of their products for compliance with the proposed new requirements and sell existing stock. Members noted with concern that the current legislative proposals would be subject to the negative vetting procedures under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). Given the tight timeframe under the negative vetting procedure, the Administration should adjust the proposed adaptation period from six months (counting from gazettal

of the amendment order) to at least 12 months. Members called on the Administration to communicate well with, and pay due regard to the concerns of, the industry and relevant stakeholders in the tobacco sector before introducing the legislative proposals into the Legislative Council.

15. The Administration stressed that Article 5.3 of WHO FCTC obliged Parties to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry in accordance with national law. To facilitate the tobacco trade's understanding and preparation for the implementation of the proposals, the Administration had issued a letter to the trade setting out the detailed specifications of the proposals in May 2016. A briefing on the technical issues relating to the implementation of the legislative proposals had been held on 23 November 2016. In the light of the concerns of the trade, the Administration would consider suitably extending the adaptation period.

Recent development

16. The Administration will brief the Panel on 28 February 2017 on its response to issues raised by members and deputations at the special meeting on 17 January 2017 concerning the proposals to amend the health warnings on packets and retail containers of tobacco products, including its latest adjustments to the proposals.

Relevant papers

17. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

**Relevant papers on proposals to amend the health warnings
on packets and retail containers of tobacco products**

Committee	Date of meeting	Paper
Panel on Health Services	18.5.2015 (Item V)	Agenda Minutes CB(2)1808/14-15(01)
	6.7.2015 (Item I)	Agenda Minutes
	19.12.2016 (Item IV)	Agenda
	17.1.2017 (Item III)	Agenda CB(2)859/16-17(12)

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