

立法會
Legislative Council

LC Paper No. CB(2)1505/19-20

(These minutes have been
seen by the Administration)

Ref : CB2/BC/4/18

Bills Committee on Smoking (Public Health) (Amendment) Bill 2019

**Minutes of the eighth meeting
held on Monday, 4 May 2020, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present :

- Hon KWOK Wai-keung, JP (Chairman)
- Hon Elizabeth QUAT, BBS, JP (Deputy Chairman)
- Hon LEUNG Yiu-chung
- Hon Tommy CHEUNG Yu-yan, GBS, JP
- Prof Hon Joseph LEE Kok-long, SBS, JP
- Hon WONG Ting-kwong, GBS, JP
- Hon Paul TSE Wai-chun, JP
- Hon Frankie YICK Chi-ming, SBS, JP
- Hon YIU Si-wing, BBS
- Hon MA Fung-kwok, SBS, JP
- Hon Charles Peter MOK, JP
- Hon CHAN Chi-chuen
- Hon Alice MAK Mei-kuen, BBS, JP
- Dr Hon KWOK Ka-ki
- Hon Christopher CHEUNG Wah-fung, SBS, JP
- Dr Hon Fernando CHEUNG Chiu-hung
- Dr Hon Helena WONG Pik-wan
- Hon IP Kin-yuen
- Ir Dr Hon LO Wai-kwok, SBS, MH, JP
- Hon CHUNG Kwok-pan
- Hon Andrew WAN Siu-kin
- Hon Jimmy NG Wing-ka, JP
- Hon Junius HO Kwan-yiu, JP
- Hon HO Kai-ming
- Hon SHIU Ka-fai
- Dr Hon Pierre CHAN
- Hon CHEUNG Kwok-kwan, JP
- Hon LUK Chung-hung, JP

Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai

Members absent : Hon Kenneth LEUNG
Hon Dennis KWOK Wing-hang
Hon CHU Hoi-dick
Hon Jeremy TAM Man-ho

Public Officers attending : Miss Amy YUEN
Deputy Secretary for Food and Health (Health) 2
Food and Health Bureau

Dr FUNG Ying
Head (Tobacco and Alcohol Control Office)
Department of Health

Dr Manny LAM
Senior Medical and Health Officer (Tobacco and
Alcohol Control Office)1
Department of Health

Ms Ida NG
Assistant Commissioner (Intelligence and Investigation)
Customs and Excise Department

Mr Manuel NG
Senior Government Counsel
Department of Justice

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

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Miss Kay CHU
Senior Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration

[File Ref.: FH CR 1/3231/19, LC Paper Nos. LS48/18-19, CB(3)397/18-19, CB(2)244/19-20(01), CB(2)418/19-20(01), CB(2)477/19-20(01) to (03), CB(2)966/18-19(02), CB(2)1175/18-19(01), CB(2)1431/18-19(04) and CB(2)1651/18-19(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

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2. The Bills Committee requested the Administration to:

- (a) advise the existing regulation governing the sale of electronic cigarettes ("e-cigarettes") containing nicotine and heat-not-burn ("HNB") products in the local market and the enforcement actions taken in the past three years, including the respective number of prosecution cases; and
- (b) in respect of the Administration's advice set out in paragraph 4 of LC Paper No. CB(2)477/19-20(03) that various surveys by the Hong Kong Council on Smoking and Health, academics, and parent-teacher groups had shown strong support to banning both e-cigarettes and HNB products from medical and health care professionals, parents, teachers, youth and the general public, provide the details of the surveys concerned.

Future meeting arrangement

3. Members noted that the current term of the Legislative Council had less than 11 weeks left. Any legislative items which could not complete the scrutiny process would lapse upon the end of the current term in accordance with section 9(4) of the Legislative Council Ordinance (Cap. 542). In response to the concerns raised by some members on the scrutiny progress of the Bill, the Chairman invited views from members on the future meeting arrangement. After discussion, it was agreed that members would be invited to indicate their availability for about 10 proposed meeting dates in May and June 2020 by circulation of paper in order to facilitate the Bills Committee to decide on the way forward for its scrutiny work.

(Post-meeting note: On the instruction of the Chairman, members were invited vide LC Paper No. CB(2)919/19-20 issued on 5 May

Action

2020 to indicate their availability for nine proposed meeting dates in May and June 2020.)

II. Any other business

4. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
23 September 2020

**Proceedings of the eighth meeting of
the Bills Committee on Smoking (Public Health) (Amendment) Bill 2019
held on Monday, 4 May 2020, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000951 - 001126	Chairman	Opening remarks	
001127 - 001835	Chairman	Suspension of meeting	
001836 - 003736	Chairman Admin Mr SHIU Ka-fai Mr Tommy CHEUNG	<p>Briefing by the Administration on its response to issues raised at the meeting on 2 December 2019 [LC Paper No. CB(2)477/19-20(02)].</p> <p>Mr SHIU Ka-fai's remark on the rationale of his proposed draft amendments to the Bill to the effect that heat-not-burn ("HNB") products would not be subject to the proposed prohibition of import, manufacture or sale and restriction of the giving, possession or promotion of the prescribed alternative smoking products ("ASPs") but a regulatory regime similar to that of conventional cigarettes ("the draft amendments to the Bill"); and the Administration's briefing on its response to Mr SHIU Ka-fai's proposed amendments to the Bill [LC Paper Nos. CB(2)418/19-20(01) and CB(2)477/19-20(03)].</p> <p>Mr Tommy CHEUNG and Mr SHIU Ka-fai's enquiries and the Chairman's response on the discussion arrangement.</p>	
003737 - 004420	Chairman Dr KWOK Ka-ki Admin	<p>Dr KWOK Ka-ki objected to the draft amendments to the Bill and called for an early passage of the Bill on the following grounds: (a) a study published in the BMJ journal on tobacco control in 2018 showed that the cytotoxicity of HNB products was higher than electronic cigarettes ("e-cigarettes"); (b) dual use of HNB products and conventional cigarettes was common among adolescents in Japan and Korea as pointed out by the Administration; (c) there was no scientific evidence to prove that HNB products could help quit smoking; and (d) many tobacco companies had used all means to actively promote HNB products as they accounted for about 40% of their profits. He asked how the Administration would take forward the Bill given that many Members belonging to different political parties had indicated objection to the Bill.</p> <p>The Administration's response that it would continue its efforts to explain to Members the justifications for the proposed prohibition of the import, manufacture or sale and restriction of the giving, possession or promotion ("full ban") of the prescribed ASPs; and step up public education on the harmful effects of these products.</p>	
004421- 005239	Chairman Dr Pierre CHAN Admin	Dr Pierre CHAN expressed support to impose a full ban on the prescribed ASPs and objected to the draft amendments to the Bill. He considered it important for the Administration to provide the	

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	Mr Tommy CHEUNG	<p>relevant scientific evidence in writing to facilitate the Bills Committee's consideration of the general merits of the Bill, and expressed concern that there might not be enough time for the Bills Committee to complete the scrutiny of the Bill before the prorogation of the Sixth Legislative Council ("Sixth LegCo"). Pointing out that the Bills Committee had yet started clause-by-clause examination of the Bill and considered the draft amendments to be proposed by member(s) to the Bill, Mr Tommy CHEUNG raised a similar concern. In response, the Administration advised that it would continue to cooperate with the scrutiny of the Bill by the Bills Committee, in order to secure passage of the Bill as soon as possible.</p> <p>In response to Dr Pierre CHAN's enquiry, the Chairman advised that the Administration's response to Dr CHAN's letter dated 28 November 2019 [LC Paper No. CB(2)342/19-20(01)] and Dr CHAN's letter dated 23 April 2020 [LC Paper No. CB(2)906/19-20(01)] had been or would be uploaded onto the relevant webpage of the Bills Committee.</p>	
005240 - 010139	Mr Tommy CHEUNG Admin Chairman Mr SHIU Ka-fai	<p>Mr Tommy CHEUNG declared that he was not a user of HNB products and e-cigarettes. Referring to the draft amendments to the Bill, he drew the Administration's attention to the practice in Japan that e-cigarettes and HNB products were regulated under the laws governing pharmaceuticals and tobacco business respectively, with the latter being allowed for sale in the market.</p> <p>Referring to the statement of the United States Food and Drug Administration ("FDA") that authorizing the marketing of the IQOS Tobacco Heating System (i.e. a HNB product) for the market of the United States ("US") was appropriate for the protection of public health, Mr SHIU Ka-fai asked about the reason why the Administration held the view that the draft amendments to the Bill, if carried forward, would seriously undermine public health. In his view, dual use of HNB products and conventional cigarettes were not common in Hong Kong. The Bill, if enacted, would give rise to illicit trade activities.</p> <p>The Administration advised that while the law of Japan prohibited persons under the age of 20 to smoke and purchase tobacco products, rapid uptake of HNB products among persons aged 15 to 19 had been observed upon their introduction in the market of Japan. It was believed that the draft amendments to the Bill, if carried forward, would undermine the health of youth in Hong Kong. The availability of HNB products in the market might also prevent smokers from quitting smoking completely when they thought that switching to these products could reduce harm. However, there was currently no evidence to suggest that a lower level of some toxicants in HNB products translated to reduced health risk. It should be noted that the decision of FDA for authorizing the marketing of IQOS in the US market was based on factors specific to US. In addition, FDA had yet authorized the marketing of the product with claims that the use of the product would reduce risks to health.</p>	

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010140 - 010717	Chairman Mr WONG Ting-kwong	<p>Holding the view that conventional cigarettes were more harmful than HNB products and only a full ban of all tobacco products could safeguard public health, Mr WONG Ting-kwong urged the Administration to consider the following issues when taking forward the Bill: (a) the proposed full ban of HNB products would render dual users of HNB products and conventional cigarettes to switch completely to conventional cigarettes; (b) how the proposed full ban of HNB products could prevent the youth from taking up conventional cigarettes; and (c) the proposal of solely cutting the local market supply of HNB products without prohibiting the use of these products would give rise to illicit trade activities.</p> <p>Mr WONG Ting-kwong said that he did not see any evidence to support Dr KWOK Ka-ki's earlier remark that tobacco companies had been actively promoting HNB products in the local market.</p>	
010718 - 011129	Mr WONG Ting-kwong Chairman Mr CHAN Chi-chuen	<p>Mr WONG Ting-kwong's concern about the disruption of the work and normal functioning of the House Committee, including consideration of the reports of Bills Committees in preparation of the resumption of the Second Reading debates on the bills concerned at Council meetings, caused by the inordinate delay in the election of the Chairman of the House Committee for the current legislative session.</p> <p>At 3:35 pm, the Chairman informed members that the Bills Committee would discuss the timetable for its scrutiny work after Mr CHAN Chi-chuen and he had spoken.</p> <p>Mr CHAN Chi-chuen's view that since the Bills Committee had yet started clause-by-clause examination of the Bill, members should decide whether the Bills Committee should continue its scrutiny work if it was practically impossible for it to complete the work in time before the prorogation of the Sixth LegCo.</p>	
011130 - 011840	Mr CHAN Chi-chuen Chairman Admin	<p>Mr CHAN Chi-chuen's concern that the Administration had not provided any data to support its stance that the draft amendments to the Bill, if carried forward, would seriously undermine public health; and his request for the Administration to provide after the meeting the following information in writing:</p> <p>(a) the details of the surveys by the Hong Kong Council on Smoking and Health, academics, and parent-teacher groups which had shown strong support to banning both e-cigarettes and HNB products from medical and health care professionals, parents, teachers, youth and the general public as referred to by the Administration in paragraph 4 of LC Paper No. CB(2)477/19-20(03); and</p> <p>(b) the existing regulation governing the sale of e-cigarettes containing nicotine and HNB products in the local market and the enforcement actions taken in the past three years, including the respective number of prosecution cases.</p> <p>The Administration advised that all tobacco products were definitely harmful to health and highly addictive. There was a</p>	Admin

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		<p>need to impose a full ban on HNB products in order to prevent the introduction of a new class of addictive and harmful tobacco products for safeguarding public health and the ongoing efforts on tobacco control. Its policy was to progressively step up control measures on all tobacco products in pursuit of the further lowering of smoking prevalence and the endgame for tobacco in Hong Kong.</p>	
011841 - 012334	Chairman	<p>The Chairman criticized that the Administration had dragged its feet in introducing legislative proposal to impose a full ban on e-cigarettes after he first raised the need to do so in 2014. In respect of the current discussion about the legislative proposal to impose a full ban on HNB products, there was a divergence of views on the question of whether smokers' right of choice should be upheld or whether proliferation of tobacco use should be contained.</p>	
012335 - 013408	Chairman Mr Tommy CHEUNG Mr CHAN Chi-chuen Dr Pierre CHAN Mr SHIU Ka-fai	<p>The Chairman invited members' views on the future meeting arrangement of the Bills Committee with a view for completion of the scrutiny work in time for preparation of the resumption of the Second Reading debate on the Bill at a Council meeting.</p> <p>Mr Tommy CHEUNG said that he planned to propose a number of amendments to the Bill for consideration of the Bills Committee. In his view, the Bills Committee would not be able to complete its work even if 10 more meetings were held in May and June 2020</p> <p>Mr CHAN Chi-chuen did not agree to scrutinize the Bill in a hasty manner as members had divided views on the Bill.</p> <p>Dr Pierre CHAN reiterated his view that it would be practically impossible that the scrutiny work of the Bills Committee could be completed in time before the prorogation of the Sixth LegCo.</p> <p>Mr SHIU Ka-fai expressed dissatisfaction to the Administration's refusal to agree to the draft amendments to the Bill which aimed at enabling the imposition of a full ban on e-cigarettes to safeguard public health which was generally supported by members of the Bills Committee.</p>	
013409 - 013811	Chairman Mr Tommy CHEUNG	<p>At 4:00 pm, as Mr Tommy CHEUNG drew the Chairman's attention that a quorum was not present, the Chairman directed that members be summoned. The meeting resumed at 4:04 pm when a quorum was present.</p>	
013812 - 014436	Chairman Mr Tommy CHEUNG Mr WONG Ting-kwong Mr CHAN Chi-chuen Admin	<p>Mr WONG Ting-kwong's remark that members might not be able to attend frequent meetings of the Bills Committee as they were already heavily occupied in attending the Council and different committee meetings.</p> <p>The Chairman concluded that members would be consulted by way of circulation of paper their availability for 10-odd meetings to be scheduled for May and June 2020. He would report the outcomes to members and propose the way forward.</p> <p>In response to the Chairman's enquiry, the Administration advised</p>	

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		that it would continue to cooperate with the scrutiny work of the Bills Committee.	
014437 - 015313	Chairman Mr Tommy CHEUNG Admin	On Mr Tommy CHEUNG's enquiry about whether the increased number of HNB product users in Korea were originally conventional cigarette users, the Administration advised that studies showed that over 96% of current HNB product users in Korea were dual users of HNB product and cigarettes. It was also of note that among the HNB product users who were of the age of 12 to 18, 9.3% of them had never smoked a cigarette before, which signified the risk of HNB product uptake by non-smokers.	
015314 - 015841	Chairman Mr SHIU Ka-fai Admin	<p>Mr SHIU Ka-fai enquired about (a) the current number of HNB product users in Hong Kong; (b) the annual amount of duty revenue collected from HNB products which were dutiable commodities under the Dutiable Commodities Ordinance (Cap. 109); and (c) the penalty against the possession of duty-not-paid HNB products for self-use.</p> <p>The Administration's advice that (a) the latest round of thematic household survey conducted by the Census and Statistics Department on pattern of smoking, the key findings of which were yet to be published, had covered for the first time users of HNB products; (b) the duty revenue collected from tobacco products was \$6,310 million in the financial year of 2018-2019, out of which \$1.739 million (i.e. 0.03%) was collected from 911 000 sticks of HNB products; and (c) any person who imported, possessed, sold or bought dutiable commodities without meeting the relevant requirements committed an offence under the Dutiable Commodities Ordinance and the maximum penalty upon conviction was a fine of \$1 million and imprisonment for two years.</p> <p>Mr SHIU Ka-fai estimated that over 10% of local smokers were HNB product users. In his view, the statistics that duty revenue collected from HNB products only accounted for 0.03% of the total duty revenue collected from tobacco products reflected that many smokers might be using duty-not-paid HNB products.</p>	
<i>Agenda item II: Any other business</i>			
015842 - 015903	Chairman	Closing remarks	