



The Honorable Members of the Legislative Council  
Legislative Council Complex 1  
Legislative Council Road Central  
Hong Kong

April 8, 2019

Dear Members of the Legislative Council,

We write to express our concerns about the Smoking (Public Health) (Amendment) Bill 2019 (the “**Bill**”) which seeks to ban the import, manufacture, or sale of alternative smoking products, including e-cigarettes and heat-not-burn products (“**HNB**”) in Hong Kong.

We are a leading global law firm practicing in the area of intellectual property. Founded in Singapore in 2002, we expanded to the United States of America (USA) in 2008. Our USA office is located in the state of California. In addition, we are planning to further expand to China’s Greater Bay Area, including Hong Kong.

E-cigarettes is the invention of a Chinese scientist who also registered the first patent for the modern e-cigarette design. Since then, manufacturers have invested substantially in technologies on e-cigarettes and other innovative products such as HNB. The vapor-delivering components and consumable containers of these alternative smoking products are sophisticated devices and have been granted multiple patents, in Hong Kong and around the world.

As the market for alternative smoking products in China is highly fragmented, it is inevitable that the product quality is inconsistent. A ban on the use of these products altogether, however, stifles innovation and does not help promote vision to develop Hong Kong as a hub of innovation and technology.

From a legal perspective, the Bill also risks violating the constitutional principles laid down in Hong Kong’s Basic Law. Article 6 of the Basic Law provides that right of private ownership of property shall be protected, and Article 105 of the Basic Law provides for the right to compensation for lawful deprivation of property. If passed, the Bill will make all intellectual property rights (including patents and trademarks) on alternative smoking products registered in Hong Kong valueless. In this regard, we note there are multiple patents for alternative smoking products registered in Hong Kong ranging from batteries, heating devices and other components of such products.<sup>1</sup> This arguably constitutes a deprivation of property from owners of those intellectual property rights susceptible of compensation.

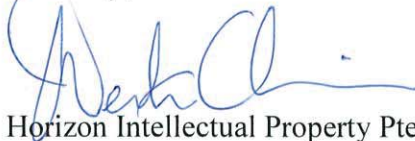
Notably, the Hong Kong Court of Final Appeal recently increased its scrutiny on government actions that encroaches upon property rights, as evidenced in the case of *Leighton Property Co Ltd v Town Planning Board* [2016] HKCFA 67.

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<sup>1</sup> From the Hong Kong IP Department online search website

Finally, we wish to note that the scientific community has reached the consensus that using e-cigarettes and HNB is less harmful than smoking.<sup>2</sup> The prohibition of these products deprives smokers of a less harmful choice, and is a disproportionate response to a problem that can be addressed by targeted regulations that strike a balance between tobacco control and allowing space for innovation, new technologies, and protection of intellectual property rights.

Sincerely,



Horizon Intellectual Property Pte. Ltd.

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<sup>2</sup> For example, (a) PHE (2018), *Evidence review of e-cigarettes and heated tobacco products 2018: A report commissioned by Public Health England*; (b) UK National Health Service: <http://www.nhs.uk/conditions/smoking-quitting/Pages/Treatment.aspx>; (c) Cancer Research UK (2016), Cancer Research UK (2016), *E-Cigarettes in Stop Smoking Services*. Available at: [https://www.cancerresearchuk.org/sites/default/files/e-cig\\_in\\_sss\\_0.pdf](https://www.cancerresearchuk.org/sites/default/files/e-cig_in_sss_0.pdf); (d) UK Royal College of Physicians (2016). Available at [Nicotine without smoke: Tobacco harm reduction. Available at: https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0](https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0); (e) COT (2017), *Statement on the toxicological evaluation of novel heat-not-burn tobacco products*. Available at: [https://cot.food.gov.uk/sites/default/files/heat\\_not\\_burn\\_tobacco\\_statement.pdf](https://cot.food.gov.uk/sites/default/files/heat_not_burn_tobacco_statement.pdf); and (f) American Cancer Society Position Statement on electronic cigarettes. Available at <https://www.cancer.org/healthy/stay-away-from-tobacco/e-cigarette-position-statement.html>; (g) FDA, Statement from FDA Commissioner Scott Gottlieb, M.D. (24 April 2018) Available at: <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm605432.htm>; and (h) New Zealand Ministry of Health position statement on E-cigarettes. Available at: <http://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/e-cigarettes>.