



Clerk to Bills Committee on
Smoking (Public Health) (Amendment) Bill 2019
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

8 April 2019

Dear Chairman,

Government's Proposed Amendments to the Smoking (Public Health) Ordinance –
Alternative Smoking Products

We refer to the inappropriate said proposed amendments (“Proposal”) introduced to the Legislative Council on 18 February 2019. We wish to take this opportunity to express our view in regard to the procedure adopted by the Government for introducing the Proposal to the Legislative Council as well as the contents of the same.

Inappropriate Procedure Adopted for Introducing the Proposal

The Government released a proposal in June 2018 to regulate e-cigarettes and other alternative smoking products.¹ The said proposal was initially deliberated at the Health Services Panel of the Legislative Council (“HSP”). However, the Government took a sudden U-turn in October 2018 such that regulation on e-cigarettes and other alternative smoking products now becomes a ban of their sale, manufacture, import, distribution and advertising. The new Proposal was then taken to the Legislative Council and Bills Committee in February and March 2019. The HSP has been completely by-passed and no proper discussion or deliberation of the complete ban Proposal from the health services panel has been conducted.

Moreover, the Government has not conducted any open public consultation or direct dialogues with the stakeholders which may be adversely affected by the Proposal. These include consumers who may wish to switch to a potentially less harmful alternative smoking product; manufacturers and distributors who have invested a large amount of resources in such products in Hong Kong as well as importers/transhippers which will be prevented from transferring such products via Hong Kong through import for export even when the domestic consumer market will not be impacted. In addition, the tobacco industry including manufacturers, retailers, distributors and unions were all excluded by the Government when formulating the Proposal.

¹ LC Paper No. CB(2)1578/1-18(05)



The proposal was based on the unfounded reasons and selective data with no full transparency

Such defective procedure would have significant adverse impact on the Legislative Council's function of monitoring Government's action as well as striking for a balanced regulation to assist in achieving proper public health agenda while giving adult smokers the freedom to choose. In this regard, we believe the Proposal is misconceived because:

- (a) Academic/scientific research stated in the Proposal were biased. The Government should not just selectively quote and present filtered scientific evidence as the bases for the Proposal. The fact is many independent or public institutions' laboratories, such as the German Federal Institute for Risk Assessment, the Tobacco Research Institute of the US Food and Drug Administration ("FDA"), the National Institute of Health Sciences, etc., have verified that the level of harmful substances contained in the aerosol of e-cigarette and heat-not-burn tobacco products are about 90% lower than those contained in the smoke of conventional cigarettes.
- (b) In the eighth conference of parties to WHO Framework Convention on Tobacco Control in Geneva, the parties agreed to conduct further studies in order to provide parties with additional guidance on how these novel products should be regulated. The result of these studies shall be presented at the next session of the COP together with policy options. It would be prudent for member states to be await the conclusion of this study / report before moving forward with policy options. Moreover, the parties also noted that member states could consider a range of regulatory measures including an appropriate regulatory framework in accordance with the FCTC and national laws. Please see the attached Exhibit for details.
- (c) The gateway effect is unfounded. The Government has not provided any proper support to prove that e-cigarette and heat-not-burn tobacco products could not be effectively regulated like traditional cigarettes in regard to protecting minors. On the contrary, the New Zealand Ministry of Health has introduced a policy at the end of 2018 to balance the protection of minors from tobacco products and to allow smokers to switch to lower-risk products.² Evidence has also suggested that e-cigarettes and heat-ot-burn tobacco products have provided a less harmful way out of smoking for millions of smokers.³

² <https://www.health.govt.nz/system/files/documents/pages/supporting-smokers-switch-to-significantly-less-harmful-alternatives-21nov2018-redacted.pdf>; and <https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/supporting-smokers-switch-significantly-less-harmful-alternatives>

³ <https://clivebates.com/documents/WHOCOP8LetterSeptember2018.pdf>.

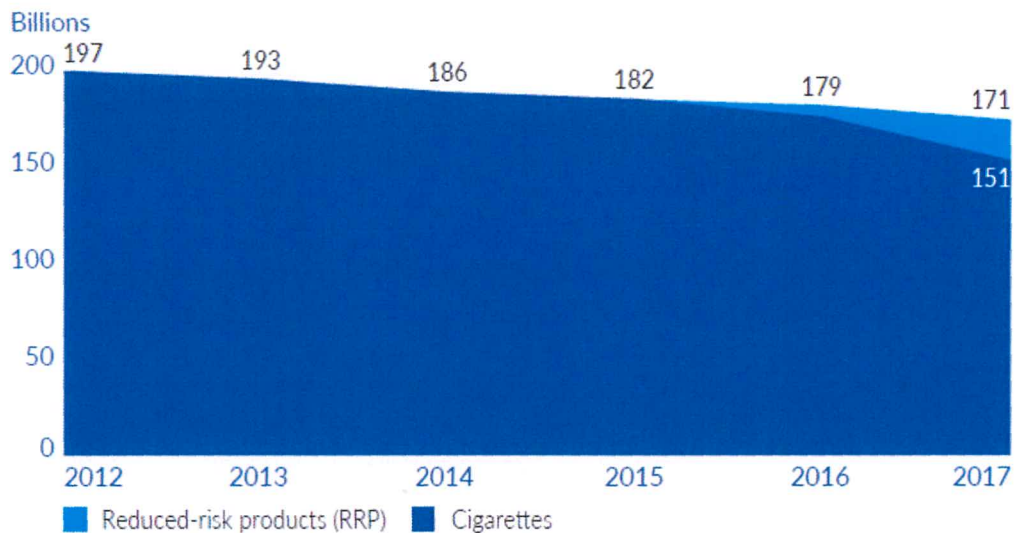


- (d) There is currently no regulation for product safety and quality control of e-cigarette. E-cigarettes contain no tobacco at all, do not rely on combustion, and as a consequence, no smoke or tobacco tar is formed when the e-liquid is "vaped". An increasing number of health experts agree that vaping e-cigarettes is less harmful than smoking traditional cigarettes including the Public Health of England, Scottish National Health Service and Cancer Research UK.⁴
- (e) The tar contained in heat-not-burn tobacco products does not compose of the same materials as the tar found in a lit traditional cigarette. In fact, heat-not-burn tobacco product does not produce solid black carbon-based particles like those found in a lit traditional cigarette because the former involved no combustion. An apple should not be directly compared to an orange. The Government has the duty to share all relevant evidence overseas and the technical differences in different tobacco products for the public and members of Legislative Council to consider.
- (f) Although heat-not-burn tobacco product is gradually gaining some shares in the market like Japan, the overall tobacco product consumption in Japan is shrinking and the declining trend of the smoking incidence remains. As such, there is no evidence of that heat-not-burn tobacco product would renormalize smoking.

⁴ (a) The PHE (2018) report recognised that "[v]aping poses only a small fraction of the risks of smoking and switching completely from smoking to vaping conveys substantial health benefits over continued smoking. Based on current knowledge, stating that vaping is at least 95% less harmful than smoking remains a good way to communicate the large difference in relative risk unambiguously so that more smokers are encouraged to make the switch from smoking to vaping" and that there have been "no identified health risks of passive vaping to bystanders". (b) The Scottish National Health Service in collaboration with several other public health bodies and NGOs, including Action on Smoking and Health Scotland, Cancer Research UK, and the UK Centre for Tobacco and Alcohol Studies, published a statement in 2017 in which it stated that "[t]here is now agreement based on the current evidence that vaping e-cigarettes is definitely less harmful than smoking tobacco. Although most e-cigarettes contain nicotine, which is addictive, vaping carries less risk than smoking tobacco. Thus, it would be a good thing if smokers used them instead of tobacco." (emphases in original). (c) A study funded by Cancer Research UK (2017) found that people who swapped smoking regular cigarettes for e-cigarettes or nicotine replacement therapy for at least six months had much lower levels of toxic and cancer causing substances in their body than people who continued to use conventional cigarettes. (d) A study by Levy et al., (2017) modelled the population impact in the future if more smokers in the US switched to e-cigarettes. They estimated that taking into account several parameters such as cessation, initiation and relative harm, switching cigarette smokers to e-cigarette use over a 10-year period would lead to 1.6 to 6.6 million fewer premature deaths in the US under a pessimistic and optimistic scenario respectively. The authors concluded that "a strategy of replacing cigarette by e-cigarette use can yield substantial gains, even with conservative assumptions about related risks. Most important, an e-cigarette substitution strategy provides the justification to redouble efforts to target cigarette use, as it is called for by the WHO Framework Convention for Tobacco Control."



Total Market – In Market Sales Volume, Annual 2012-2017



- (g) The Government have failed to disclose the scientific research/reports that it has commissioned for the Proposal. Dr. Chong Shan-shan, the principal researcher at the Hong Kong Baptist University which tested the aerosol of e-cigarettes in 2015 for the Government admitted in a television interview that the machine used for testing the inhaling and exhaling of e-cigarette aerosol lasted for 12 minutes. However, in real life, no normal consumer would have such consumption pattern and the e-cigarette device would be overheated in this unreasonably long period and test results appear to have been based on the “extreme use” of the device, not the objective and normal standards. In addition, the government has never disclosed whether they have tested sub-standard products, rather than good quality products from subject to regulated standards.
- (h) The Government has confused the public by citing the above testing results of e-cigarettes as the reason for banning heating tobacco products. Without distinguishing these two very different products, one containing no tobacco while the other one containing tobacco leaves, the Government in its legislative bill for banning all alternative tobacco products only mentioned IQOS as the testing samples without fully disclosing the methodology and the reason why other similar samples in the market like glo, PloomTECH, Lil, i-buddy etc. were not tested. The Government has also failed to justify why other results being “comparable to conventional cigarettes” shall support the extreme total ban measure.



Tobacco Association of Hong Kong
香港煙草業聯會

Conclusion

We respectively submit this letter for the Honorable Members of the Legislative Council to consider so as to arrive with a balanced, reasonable and effective regulation to achieve proper public health agenda for Hong Kong consumers. We further urge the Government to share fully all relevant reports and/or studies cited in the Legislative Bill to the members of Legislative Council and to the members of the public.

Yours faithfully



Tobacco Association of Hong Kong Limited



WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

**Conference of the Parties to the
WHO Framework Convention
on Tobacco Control**

Eighth session
Geneva, Switzerland, 1–6 October 2018

6 October 2018

DECISION

FCTC/COP8(22) Novel and emerging tobacco products

The Conference of the Parties (COP),

Recalling the WHO Framework Convention on Tobacco Control (WHO FCTC), and in particular its Article 6 (Price and tax measures to reduce the demand for tobacco), Article 7 (Non-price measures to reduce the demand for tobacco), Article 8 (Protection from exposure to tobacco smoke), Article 9 (Regulation of the contents of tobacco products), Article 10 (Regulation of tobacco product disclosures), Article 11 (Packaging and labelling of tobacco products) and Article 13 (Tobacco advertising, promotion and sponsorship);

Noting the report of WHO to the Sixth session of the COP (FCTC/COP/6/14) on the evolution of new tobacco products, related marketing strategies, and the conclusions and recommendations provided in that report, including on their toxicity, addictive potential, perception and potential impact on public health;

Recalling decision FCTC/COP7(14) to inter alia invite WHO to continue to monitor and examine market developments and usage of novel and emerging tobacco products, such as “heat-not-burn” tobacco products, and to report progress to future sessions of the COP;

Noting the report of WHO on technical matters related to Articles 9 and 10 of the WHO FCTC which covers market developments of heated tobacco products (document FCTC/COP/8/8);

Noting also that heated tobacco products are being marketed with claims of “reduced risk” “cleaner alternatives to conventional cigarettes” and smoke-free alternatives to smoking conventional cigarettes;

Recognizing heated tobacco products are tobacco products and are therefore subject to the provisions of the WHO FCTC;

Recognizing also that the properties of certain novel and emerging tobacco products such as heated tobacco products may pose regulatory challenges regarding their definition and classification, e.g. in relation to the emissions they produce, and that these may pose challenges for the comprehensive application of the WHO FCTC;

Recognizing further that some Parties have adopted various regulatory strategies with respect to heated tobacco products, in particular concerning their inclusion in smoke-free legislation;

Noting that the new generation of heated tobacco products have not been on the market for long, which results in very few Parties having experience regulating them or having insufficient measures to regulate the devices used to heat the tobacco;

Noting also that there is currently limited guidance to guide Parties on the classification and regulation of heated tobacco products,

1. THANKS WHO for its report to the COP on technical matters related to Articles 9 and 10 of the WHO FCTC, relevant publications cited therein and in particular the background document on the market monitoring of heated tobacco products cited therein (document FCTC/COP/8/8);
2. REQUESTS the Convention Secretariat to invite WHO and, as appropriate, the WHO Tobacco Laboratory Network (TobLabNet):
 - (a) to prepare a comprehensive report, with scientists and experts, independent from the tobacco industry, and competent national authorities, to be submitted to the Ninth session of the COP on research and evidence on novel and emerging tobacco products, in particular heated tobacco products, regarding their health impacts including on non-users, their addictive potential, perception and use, attractiveness, potential role in initiating and quitting smoking, marketing including promotional strategies and impacts, claims of reduced harm, variability of products, regulatory experience and monitoring of Parties, impact on tobacco control efforts and research gaps, and to subsequently propose potential policy options to achieve the objectives and measures outlined in paragraph 5 of the present decision;
 - (b) to examine the chemical and physical processes these products are undergoing during use, including the characterization of emissions;
 - (c) to assess whether the available standard operating procedures for contents and emissions are applicable or adaptable to heated tobacco products;
 - (d) to advise, as appropriate, on suitable methods to measure the contents and emissions of these products;
3. REQUESTS the Convention Secretariat:
 - (a) to examine possible challenges these products are posing for the comprehensive application of the WHO FCTC and in particular those articles and guidelines referring to definitions/terminology and to tobacco smoke, while considering the need to adapt these guidelines;
 - (b) to advise, as appropriate, on the adequate classification of novel and emerging tobacco products such as heated tobacco products to support regulatory efforts and the need to define new product categories;

4. INVITES Parties to take note of the report produced by WHO (document FCTC/COP/8/8);
5. REMINDS Parties about their commitments under the WHO FCTC when addressing the challenges posed by novel and emerging tobacco products such as heated tobacco products and devices designed for consuming such products, and consider prioritizing the following measures in accordance with the WHO FCTC and national law:
 - (a) to prevent the initiation of novel and emerging tobacco products;
 - (b) to protect people from exposure to their emissions and to explicitly extend the scope of smoke-free legislation to these products in accordance with Article 8 of the WHO FCTC;
 - (c) to prevent health claims from being made about novel and emerging tobacco products;
 - (d) to apply measures regarding advertising, promotion and sponsorship of novel and emerging tobacco products in accordance with Article 13 of the WHO FCTC;
 - (e) to regulate the contents and the disclosure of the contents of novel and emerging tobacco products in accordance with Articles 9 and 10 of the WHO FCTC;
 - (f) to protect tobacco-control policies and activities from all commercial and other vested interests related to novel and emerging tobacco products, including interests of the tobacco industry, in accordance with Article 5.3 of the WHO FCTC;
 - (g) to regulate, including restrict, or prohibit, as appropriate, the manufacture, importation, distribution, presentation, sale and use of novel and emerging tobacco products, as appropriate to their national laws, taking into account a high level of protection for human health;
 - (h) to apply, where appropriate, the above measures to the devices designed for consuming such products;
6. INVITES Parties, the Convention Secretariat and WHO to comprehensively monitor market developments and the use of novel and emerging tobacco products, including the relevant questions in all appropriate surveys and reports such as the WHO FCTC reporting instrument and to report on it at regular intervals.

(Fifth plenary meeting, 6 October 2018)

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