

LEGISLATIVE COUNCIL BRIEF

SMOKING (PUBLIC HEALTH) ORDINANCE (CAP. 371)

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2019

INTRODUCTION

A At the meeting of the Executive Council on 12 February 2019, the Council ADVISED and the Chief Executive ORDERED that the Smoking (Public Health) (Amendment) Bill 2019 (“Amendment Bill”), at **Annex A**, should be introduced into the Legislative Council to ban the import, manufacture, sale, distribution and advertisement of alternative smoking products¹.

JUSTIFICATIONS

2. To safeguard the health of the public, it is the Government’s policy to discourage smoking, contain the proliferation of tobacco use and minimise the impact of passive smoking on the public. Our multi-pronged approach comprises legislation, enforcement, publicity, education, smoking cessation services and taxation. Different measures have been introduced, including the designation and continuous expansion of no smoking areas (“NSAs”) (including public transport carriers), and periodic increases in tobacco duty. With the concerted efforts by the Government and other stakeholders over the years, smoking prevalence among persons aged 15 and above has significantly dropped from over 20% in the 1980s to 10% at present. Under the “Towards 2025: Strategy and Action Plan to Prevent

¹ Alternative smoking products include electronic cigarettes (“e-cigarettes”), heat-not-burn (“HNB”) products and herbal cigarettes. Under the Amendment Bill, “alternative smoking product” means –

- (a) a device (other than a waterpipe) that is capable of –
 - (i) generating an aerosol from any substance that is not tobacco or a dangerous drug, other than by means of lighting the substance directly; and
 - (ii) use for imitating conventional smoking;
- (b) a device (other than a waterpipe) that is capable of –
 - (i) generating an aerosol from tobacco, other than by means of lighting the tobacco directly; and
 - (ii) use for smoking;
- (c) specified plant material rolled up in any material, in a form that is capable of immediate use for imitating conventional smoking;
- (d) a component of, or accessory to, a device described in item (a) or (b) above that is designed for use as a component of, or accessory to, the device; or
- (e) any substance (other than a dangerous drug) that is packaged as being suitable for use with a device described in item (a) or (b) above and from which an aerosol is capable of being generated in the way described in that item.

and Control Non-communicable Diseases in Hong Kong”, the Government has also laid down the target of further reducing smoking prevalence to 7.8% by 2025. We will also reference international experience in exploring the way forward in achieving a tobacco endgame.

3. The emergence of alternative smoking products has posed new health risk and challenges. Often packaged as less harmful substitutes with promotion tactics targeted at youngsters and non-smokers, these products open a gateway to the eventual consumption of conventional cigarettes. The fact is: all these new smoking products are harmful to health and produce second-hand smoke. There is also a lack of sufficient evidence to prove that these products can help quit smoking. Instead, there are studies that suggested that the introduction of these new products could result in dual use with conventional cigarettes. The public may underestimate the harmful effects of these products and eventually endorse the smoking image and relevant behaviours once again. Detailed information on the health risks, gateway² and renormalisation³ effects, prevalence, World Health Organization (“WHO”) recommendation, overseas regulation and current local regulation where applicable in relation to the specific alternative smoking products is set out in **Annex B**.

B

4. The Food and Health Bureau submitted a proposal to the Legislative Council (“LegCo”) Panel on Health Services (“HS Panel”) on the regulation of alternative smoking products in June 2018. The proposal was heavily criticised by the medical professions, education sector, parents and many members of the public. They were worried that allowing the sale of alternative smoking products with restrictions would not be adequate to protect public health, and would bring about very negative impact and pose health risks on children and adolescents in particular. A non-binding motion was passed at the HS Panel meeting on 19 June 2018, urging the Government to impose a full ban.

5. Meanwhile, there is increasing evidence that both e-cigarettes and HNB products are definitely harmful to health and may bring about gateway effects. One of the largest systematic reviews, conducted by the United States (“US”) National Academies of Sciences, Engineering, and Medicine, revealed that there is conclusive evidence that most e-cigarette products contain and emit numerous potentially toxic substances. Some of these harmful substances are capable of causing cell damage which provides evidence that supports the biological plausibility that long-term exposure to e-cigarette aerosols could increase the risk of

² Gateway effect refers to the possibility that youth and young people getting used to e-cigarettes and ultimately turn to smoking cigarettes.

³ Renormalisation means that “the presence of e-cigarettes in the public arena is sufficient to encourage children and adult non-smokers to start smoking tobacco without the intervening step of first using e-cigarettes.”

cancer.⁴ The gateway effect of e-cigarettes has now been shown in the US^{5,6,7}, United Kingdom^{8,9}, the Netherlands¹⁰, Canada¹¹, and Germany¹². The study in Germany, for instance, involving 2 186 10th grade students, revealed that the risk of experimenting with conventional cigarettes is 2.2 times higher among e-cigarette users. A recent study in the US further confirmed on the gateway effect brought about by e-cigarettes to 18-30 year old young adults. Among 915 never smoking young adults, cigarette smoking was initiated by 47.7% of e-cigarette users and 10.2% of non e-cigarette users at 18 months.¹³

6. In fact, in September 2018, the US Food and Drug Administration (“FDA”) declared that “e-cigarette use among youth has hit epidemic proportions” with more than 2 million middle and high school students being current users (i.e. use in the past 30 days) of e-cigarettes in 2017. The FDA took new steps to target the illegal sales of e-cigarettes to youth, including issuing warning letters to retailers who illegally sold e-cigarette products to minors and asking major manufacturers to submit plans describing how they will address the widespread youth access to and use of their products. The FDA also warned that it may restrict flavoured e-cigarettes to address the youth epidemic. In Hong Kong, according to the 2016/17 school-based survey on smoking conducted by the University of Hong Kong, the number of ever and current e-cigarette users among Secondary 1-6 students was 29 380 (8.7%) and 2 770 (0.8%) respectively. A local study conducted by the Hong Kong Council on Smoking and Health further showed that ever use of e-cigarettes among primary 2 to primary 4 students increased by 55% from 2016-2017 to 2017-2018.

⁴ National Academies of Sciences Engineering, and Medicine. Public health consequences of e-cigarettes Washington, DC: The National Academies Press; 2018.

⁵ National Academies of Sciences Engineering, and Medicine. Public health consequences of e-cigarettes Washington, DC: The National Academies Press; 2018.

⁶ Chaffee BW, Watkins SL, Glantz SA. Electronic Cigarette Use and Progression From Experimentation to Established Smoking. *Pediatrics*. 2018;141(4):e20173594.

⁷ Watkins S, Glantz SA, Chaffee BW. Association of noncigarette tobacco product use with future cigarette smoking among youth in the population assessment of tobacco and health (path) study, 2013-2015. *JAMA Pediatrics*. 2018;172(2):181-7.

⁸ Conner M, Grogan S, Simms-Ellis R, Flett K, Sykes-Muskett B, Cowap L, et al. Do electronic cigarettes increase cigarette smoking in UK adolescents? Evidence from a 12-month prospective study. *Tobacco Control*. 2018;27(4):365-72.

⁹ Best C, Haseen F, Currie D, Ozakinci G, MacKintosh AM, Stead M, et al. Relationship between trying an electronic cigarette and subsequent cigarette experimentation in Scottish adolescents: a cohort study. *Tobacco Control*. 2018;27(4):373-8.

¹⁰ Treur JL, Rozema AD, Mathijssen JJP, van Oers H, Vink JM. E-cigarette and waterpipe use in two adolescent cohorts: cross-sectional and longitudinal associations with conventional cigarette smoking. *European Journal of Epidemiology*. 2018;33(3):323-34.

¹¹ Aleyan S, Cole A, Qian W, Leatherdale ST. Risky business: a longitudinal study examining cigarette smoking initiation among susceptible and non-susceptible e-cigarette users in Canada. *BMJ Open*. 2018;8(5):e021080.

¹² Morgenstern M, Nies A, Goecke M, Hanewinkel R. E-Cigarettes and the Use of Conventional Cigarettes. *Deutsches Arzteblatt international*. 2018;115(14):243-8.

¹³ Primack BA, Shensa A, Sidani JE, Hoffman BL, Soneji S, Sargent JD, et al. Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults. *The American Journal of Medicine*. 2018;131(4):443.e1-.e9.

7. International studies have also concluded that the tar and nicotine yields in HNB products are comparable to conventional cigarettes.^{14,15,16,17} Even Philip Morris International's ("PMI") in vivo clinical data failed to show a statistically detectable difference between iQOS (short for "i Quit Ordinary Smoking", the HNB product developed by PMI) and conventional cigarette users for 23 of the 24 biomarkers of potential harm among American adults.¹⁸ Furthermore, a recent study in Japan revealed a case involving a 16 year-old who was diagnosed with acute eosinophilic pneumonia (a severe and rapidly progressive lung disease that can cause fatal respiratory failure) induced by the use of HNB products.¹⁹

8. While awaiting studies on the gateway effect of the newly introduced HNB products to accumulate, a US study examined consumers' perception about iQOS in Japan and Switzerland.²⁰ Through expert interviews, product and marketing analysis and focus groups, the study concluded that iQOS was marketed as a "sophisticated, high tech and aspirational" product. Youth and young adults are more interested in such product positioning and this approach raises concern about youth appeal. The findings echoed with the longitudinal study in Japan, involving 8 240 persons aged 15 to 69, on the current use rate of iQOS. The current use rate increased more than 10 times from 2015 to 2017 (from 0.3% in 2015 to 3.6% in 2017) and in particular, among persons aged 15 to 19, the current use rate increased from 0.6% in 2015 to 2.0% in 2017 and among persons aged 20 to 29, from 1.0% in 2015 to 5.8% in 2017. The current use rate among never smokers also showed a more than 10 times increase, from 0.1% in 2015 to 1.3% in 2017.²¹

9. On the other hand, WHO has tightened its guidelines on tobacco control. Further to the seventh session²² of the Conference of the Parties ("COP") to the WHO Framework Convention on Tobacco Control ("FCTC") which proposed, in

¹⁴ Salman R, Talih S, El-Hage R, Haddad C, Karaoghlanian N, El-Hellani A, et al. Free-Base and Total Nicotine, Reactive Oxygen Species, and Carbonyl Emissions From IQOS, a Heated Tobacco Product. *Nicotine & Tobacco Research*. 2018;nty235-nty.

¹⁵ Mallock N, et al. Levels of selected analytes in the emissions of "heat not burn" tobacco products that are relevant to assess human health risks. *Archives of Toxicology*. 2018;10.1007/s00204-018-2215-y.

¹⁶ Li X, et al. Chemical Analysis and Simulated Pyrolysis of Tobacco Heating System 2.2 Compared to Conventional Cigarettes. *Nicotine & Tobacco Research*. 2018;nty005-nty.

¹⁷ HNB no less harmful than e-cigarettes. *The Korea Times*. 2018
<https://www.pressreader.com/korea-republic/the-korea-times/20180608/282209421554461>

¹⁸ Glantz SA. PMI's own in vivo clinical data on biomarkers of potential harm in Americans show that IQOS is not detectably different from conventional cigarettes. *Tobacco Control*. 2018;27(Suppl 1):s9-s12.

¹⁹ Aokage T, Tsukahara K, Fukuda Y, Tokioka F, Taniguchi A, Naito H, et al. Heat-not-burn cigarettes induce fulminant acute eosinophilic pneumonia requiring extracorporeal membrane oxygenation. *Respiratory Medicine Case Reports*. 2019;26:87-90.

²⁰ Hair EC, Bennett M, Sheen E, Cantrell J, Briggs J, Fenn Z, et al. Examining perceptions about IQOS heated tobacco product: consumer studies in Japan and Switzerland. *Tobacco Control*. 2018;10.1136/tobaccocontrol-2018-054322.

²¹ Tabuchi T, Gallus S, Shinozaki T, Nakaya T, Kunugita N, Colwell B. Heat-not-burn tobacco product use in Japan: its prevalence, predictors and perceived symptoms from exposure to secondhand heat-not-burn tobacco aerosol. *Tobacco Control*. 2017;10.1136/tobaccocontrol-2017-053947.

²² http://www.who.int/fctc/cop/cop7/FCTC_COP7_9_EN.pdf

November 2016, to its Contracting Parties to consider applying regulatory measures to, *inter alia*, **prohibit** the manufacture, importation, distribution, sale, presentation, etc., of e-cigarettes, the eighth session²³ held in October 2018 proposed the same for HNB products.

10. Overall, protecting public health should be the Government's prime consideration. We must ensure that our achievements in tobacco control over the years would not be undermined, and must prevent the harm of new products from taking root. With this in mind, the Chief Executive announced in the Policy Address 2018 the legislative amendment proposal to ban the import, manufacture, sale, distribution and advertisement of alternative smoking products.

THE BILL

11. The main provisions of the Amendment Bill are as follows –

- (a) Clauses 5 and 6 amend sections 3 and 4 of Smoking (Public Health) Ordinance (Cap. 371) (“Cap. 371”) to prohibit the use of alternative smoking products in NSAs;
- (b) Clauses 12 to 19 amend Part 4 of Cap. 371 to prohibit the advertisement of alternative smoking products;
- (c) Clause 23 adds a new Part 4AB to Cap. 371 to prohibit the import, manufacture, sale, distribution for certain purposes, possession for certain purposes, and promoting in certain ways, of alternative smoking products. Enforcement provisions for the proposed ban are also included under the new Part;
- (d) Clause 29 adds the new Schedules 7 and 8 to Cap. 371. Schedule 7 sets out the interpretations of alternative smoking products and Schedule 8 lists out certain words or phrases prohibited in relation to the advertising of smoking products;
- (e) Clause 30 amends the Dutiable Commodities Ordinance (Cap. 109) to exclude the tobacco component of HNB products as dutiable commodity.

²³ [https://www.who.int/fctc/cop/sessions/cop8/FCTC__COP8\(22\).pdf](https://www.who.int/fctc/cop/sessions/cop8/FCTC__COP8(22).pdf)

Ban on import

12. It is proposed to ban the import²⁴ of alternative smoking products into Hong Kong, including through parcels and cargoes and bringing in by incoming travellers. Articles in transit, air transshipment cargoes and persons in transit, who arrive at the Hong Kong International Airport and have not passed through immigration control since arrival, shall be exempted from the proposed ban.

Ban on manufacture, sale, distribution and advertisement

13. It is proposed to ban the manufacture, sale, distribution and advertisement of alternative smoking products. Possession for the purpose of manufacture, sale or the said distribution shall also be prohibited.

14. Under the current Part 4A of Cap. 371, the distribution of conventional tobacco products by way of “giving” them in exchange for a token, or as a prize in any event or competition, is prohibited. We propose to extend the scope of the prohibition to cover the alternative smoking products. The same provisions for tobacco advertisement under Part 4 of Cap. 371 will also apply to the alternative smoking products, as tobacco advertisement is already banned.

The use of alternative smoking products in NSAs

15. According to section 3 (2) of Cap. 371, no person shall smoke or carry a lighted cigarette, cigar or pipe in NSAs. The Department of Health (“DH”) has been enforcing against the use of e-cigarettes and HNB products in NSAs. There however could be questions whether the use of e-cigarettes and HNB products could be regulated as such. It is thus proposed to put it beyond doubt that the use of alternative smoking products in NSAs are prohibited.

Export of alternative smoking products

16. Export of alternative smoking products will not be banned. Sellers can export the products at any time to clear out their stocks.

Registration as pharmaceutical products under the Pharmacy and Poisons Ordinance (Cap. 138) (“Cap. 138”)

17. At present, it is possible for e-cigarettes containing nicotine to fall within the definition of pharmaceutical products under Cap. 138. Such products have to comply with the relevant requirements on safety, quality and efficacy, and must be

²⁴ Import is defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) as “means to bring or cause to be brought into Hong Kong by air, land or water”.

registered with the Pharmacy and Poisons Board before they can be sold in Hong Kong as pharmaceutical products. To date, no e-cigarettes containing nicotine have been registered with the Pharmacy and Poisons Board.

18. The proposed ban will not preclude the registration of alternative smoking products that are pharmaceutical products with the Pharmacy and Poisons Board, provided that the requirements on safety, quality and efficacy under Cap. 138 are met. Upon successful registration with the Pharmacy and Poisons Board, such products will be excluded from the ban under Cap. 371, and the requirements under Cap. 138 should be followed instead.

Penalty

19. Any person who carries out the following activities in relation to alternative smoking products commits an offence and will be liable to the penalty listed in the table below –

Activity	Penalty
Import, manufacture, sale, distribution for certain purposes, possess for certain purposes, or promoting in certain ways	Summary conviction to a fine at level 5 and to imprisonment for 6 months
Advertisement	Summary conviction to a fine at level 5 and in the case of a continuing offence, to a further penalty of \$1,500 for each day during which the offence continues
Use in NSAs	Fixed penalty of \$1,500 or summary conviction to a fine of \$5,000

Enforcement

20. The proposed ban will be enforced by the Tobacco and Alcohol Control Office of DH, and by Customs and Excise Department (“C&ED”). C&ED officers will be in charge of detecting and intercepting incoming parcels, cargoes and travellers at import level while Tobacco and Alcohol Control Inspectors (“TACIs”) will be in charge of enforcement at street level and follow up on cases referred by C&ED.

21. For enforcement in relation to conventional tobacco products, TACIs’ general powers are set out under section 15G of Cap. 371, including the power to, at any time, enter any place in which the inspector reasonably suspects that a

relevant offence²⁵ has been or is being committed and to collect evidence in relation to a relevant offence. TACIs do not have the authority to enter domestic premises.

22. For enforcement in relation to alternative smoking products, we propose, in addition to the general powers to collect evidence as set out under section 15G(1)(c) to (h) of Cap. 371, to provide TACIs with the power to seize, remove and detain alternative smoking products and the power to detain any person whom a TACI reasonably suspects has committed or is committing an offence concerning the import, manufacture, sale or distribution, etc., of alternative smoking products. With the new powers of TACIs, we propose to require TACIs to obtain a warrant from the magistrate to enter any non-public place not including domestic premises, if it appears to the magistrate from information on oath that there is reasonable cause for suspecting that an offence concerning alternative smoking products has been committed, is being committed or is about to be committed in that place.

23. The new powers for TACIs are needed because alternative smoking products, unlike conventional tobacco products, are not dutiable commodities subject to the enforcement regimes under C&ED.

LEGISLATIVE TIMETABLE

24. The legislative timetable is as follows –

Publication in the Gazette	15 February 2019
First Reading and commencement of Second Reading debate	20 February 2019
Resumption of Second Reading debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

25. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has financial, civil service, economic, sustainability and family implications as set out in **Annex C**. The proposal does not have gender implication and has insignificant environmental implication. The Amendment Bill will not affect the current binding effect of Cap. 371.

²⁵ Relevant offence means any offence under Cap. 371 other than an offence under Part 3 (i.e. Sales of Tobacco Products).

PUBLIC CONSULTATION

26. We briefed the LegCo HS Panel on a regulatory proposal for alternative smoking products on 19 June 2018. 104 submissions were received. The medical and education sectors expressed great concern on the harmful health effects brought about by these alternative smoking products, the attractiveness of these products to the younger generation and their gateway effect. A non-binding motion was passed urging the Government to impose a total ban on alternative smoking products. While close to 2 000 letters or email messages were received thereafter supporting regulation of alternative smoking products only, the medical professions, education sector, parents and many members of the public strongly objected to a regulatory approach that may not be adequate to protect public health, in particular for children and adolescents. The Hong Kong Council on Smoking and Health alongside representatives from the medical professions, patient groups and the education sector have held joint press conferences on 15 June, 27 September and 15 October 2018 urging the Government to impose a full ban on alternative smoking products, in order to prevent these new products from taking root in Hong Kong. They have also collected around 62 000 signatures from the public supporting the ban.

PUBLICITY

27. A press release will be issued when the Amendment Bill is gazetted on 15 February 2019.

ENQUIRIES

28. Enquires on this brief can be addressed to Miss Carol WONG, Assistant Secretary for Food and Health (Health) 5A, at 3509 8961.

Food and Health Bureau
Department of Health
13 February 2019

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A BILL

To

Amend the Smoking (Public Health) Ordinance to prohibit the import, manufacture or sale, or use in certain places, of prescribed alternative smoking products; to restrict the giving, possession, advertising or promotion of the products; and to make related and miscellaneous amendments to the Ordinance and related legislation.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 2019.
- (2) This Ordinance comes into operation on the expiry of 6 months after the day on which this Ordinance is published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Smoking (Public Health) Ordinance (Cap. 371)

3. Long title amended

The long title—

Repeal

everything after “in certain” and before “to provide for the appointment”

Substitute

“places; to provide for the display of a health warning and other information on packets or retail containers of conventional smoking products; to restrict the advertising of smoking products; to restrict the sale, giving or promotion of conventional smoking products; to prohibit the import, manufacture or sale, and to restrict the giving, possession or promotion, of alternative smoking products;”.

4. Section 2 amended (interpretation)

- (1) Section 2—

Renumber the section as section 2(1).

- (2) Section 2(1), definition of *cigar*—

Repeal

“smoking;”

Substitute

“smoking, but does not include any alternative smoking product;”.

- (3) Section 2(1), definition of *cigarette*—

Repeal

“smoking;”

Substitute

“smoking, but does not include any alternative smoking product;”.

- (4) Section 2(1), definition of
- cigarette tobacco*
-

Repeal

“his own use;”

Substitute

“the purchaser’s own use, but does not include any alternative smoking product;”.

- (5) Section 2(1), definition of
- pipe*
-

Repeal

“cigar;”

Substitute

“cigar, but does not include any alternative smoking product;”.

- (6) Section 2(1), definition of
- pipe tobacco*
-

Repeal

“pipe;”

Substitute

“pipe, but does not include any alternative smoking product;”.

- (7) Section 2(1), Chinese text, definition of 牌子—

Repeal

“品質”

Substitute

“特質”.

- (8) Section 2(1)—

- (a) definition of *smoke*;
- (b) definition of *tobacco advertisement*;
- (c) definition of *tobacco product*—

Repeal the definitions.

- (9) Section 2(1)—

Add in alphabetical order“*activated* (已啟動)—see subsection (2);*aerosol* (氣霧) means—

- (a) any gas;
- (b) any solid particles, or liquid, suspended in air; or
- (c) any mixture of the substances mentioned in paragraphs (a) and (b);

Note—

Smoke is a form of aerosol as defined above.

alternative smoking product (另類吸煙產品) means a product set out in Part 2 of Schedule 7;*cease* (停止), in relation to a smoking act—see subsection (3);*conventional smoking product* (傳統吸煙產品) means any cigarette, cigarette tobacco, cigar or pipe tobacco;*deactivate* (熄掉)—see subsection (4);*Government Chemist* (政府化驗師) has the meaning given by section 2 of the Evidence Ordinance (Cap. 8);*smoking* (吸煙、吸用) means inhaling and expelling—

- (a) in relation to a conventional smoking product—the smoke of tobacco generated from the product; or
- (b) in relation to an alternative smoking product—the aerosol generated by or from the product;

smoking act (吸煙行為) means smoking or carrying—

- (a) a lighted cigarette, cigar or pipe; or
- (b) an activated alternative smoking product;

Note—

See also subsections (2), (3) and (4).

smoking product (吸煙產品) means—

- (a) a conventional smoking product; or
- (b) an alternative smoking product;

smoking product advertisement (吸煙產品廣告)—see section 14;”.

(10) After section 2(1)—

Add

- “(2) An alternative smoking product is *activated* if any process, such as combustion or heating, is taking place for generating an aerosol by or from the product.
- (3) A person *ceases* a smoking act—
 - (a) in relation to a lighted cigarette, cigar or pipe, if the person extinguishes it; or
 - (b) in relation to an activated alternative smoking product, if the person deactivates it.
- (4) A person *deactivates* an activated alternative smoking product if the person stops the process mentioned in subsection (2) in relation to the product.
- (5) A reference in this Ordinance to marketing in relation to a smoking product includes marketing outside Hong Kong.
- (6) A note in the text of this Ordinance is for information only and has no legislative effect.”.

5. Section 3 amended (prohibition on smoking in certain designated areas)

(1) Section 3(2)—

Repeal

“shall smoke or carry a lighted cigarette, cigar or pipe”

Substitute

“may do a smoking act”.

(2) Section 3(3), after “contravening subsection (2)”—

Add

“in the no smoking area”.

(3) Section 3(3)—

Repeal paragraph (a)

Substitute

“(a) after indicating to the person that the person is doing a smoking act in the no smoking area in contravention of subsection (2), require the person to cease the act;”.

(4) Section 3(3)(b)—

Repeal

“extinguish the lighted cigarette, cigar or pipe,”

Substitute

“cease the smoking act,”.

(5) Section 3(3)(b)(ii) and (c), Chinese text, before “禁止” (wherever appearing)—

Add

“該”.

6. Section 4 amended (prohibition on smoking in public transport carriers)**(1) Section 4(1)—****Repeal**

“shall smoke or carry a lighted cigarette, cigar or pipe”

Substitute

“may do a smoking act”.

(2) Section 4(2)—**Repeal everything before paragraph (a)****Substitute**

“(2) The driver, conductor, ticket inspector, ticket collector or manager of any public transport carrier or any person authorized in that behalf by the manager may, in respect of any person who appears to be contravening subsection (1) in the public transport carrier—”.

(3) Section 4(2)—**Repeal paragraph (a)****Substitute**

“(a) after indicating to the person that the person is doing a smoking act in the public transport carrier in contravention of subsection (1), require the person to cease the act;”.

(4) Section 4(2)(b)—**Repeal**

“extinguish the lighted cigarette, cigar or pipe,”

Substitute

“cease the smoking act,”.

7. Part 3 heading amended (sales of tobacco products)

Part 3, heading—

Repeal

“Tobacco”

Substitute

“Conventional Smoking”.

8. Section 8 amended (sales of cigarettes and tobacco products)**(1) Section 8, heading—****Repeal**

“cigarettes and tobacco”

Substitute

“conventional smoking”.

(2) Section 8(2)(b)—**Repeal**

“tobacco”

Substitute

“conventional smoking”.

9. Section 8B amended (prohibition on sale of tobacco products from a vending machine)**(1) Section 8B, heading—****Repeal**

“tobacco”

Substitute

“conventional smoking”.

(2) Section 8B—

Repeal

“tobacco”

Substitute

“conventional smoking”.

10. Section 10 amended (offences under Part 3)**(1) Section 10(3)—****Repeal**

“tobacco” (wherever appearing)

Substitute

“conventional smoking”.

(2) Section 10(3)(a), English text—**Repeal**

“trademark” (wherever appearing)

Substitute

“trade mark”.

11. Section 10A amended (seizure and forfeiture)**Section 10A(1)(ca)—****Repeal**

“tobacco”

Substitute

“conventional smoking”.

12. Part 4 heading amended (tobacco advertising)**Part 4, heading—****Repeal**

“Tobacco Advertising”

Substitute

“Advertising of Smoking Products”.

13. Section 11 amended (tobacco advertisements in printed publications)**(1) Section 11, heading—****Repeal**

“Tobacco”

Substitute

“Smoking product”.

(2) Section 11(1)—**Repeal**

“tobacco”

Substitute

“smoking product”.

(3) Section 11—**Repeal subsection (3)****Substitute**

“(3) Nothing in this section or section 12 applies in relation to a smoking product advertisement in a printed publication that is published—

(a) for the smoking products trade; or

(b) as the in-house publication of any company engaged in that trade.”.

14. Section 12 amended (no display of tobacco advertisement)**(1) Section 12, heading—****Repeal**

“tobacco”**Substitute****“smoking product”.**

- (2) Section 12(1)—

Repeal**“tobacco advertisement”****Substitute****“smoking product advertisement”.**

- (3) Section 12(4)—

Repeal**“tobacco advertisement”****Substitute****“smoking product advertisement”.**

- (4) Section 12(4)(a)—

Repeal subparagraph (i)**Substitute****“(i) of any manufacturer of conventional smoking products or any wholesale dealer dealing in conventional smoking products; and”.**

- (5) Section 12(4)(a)(ii)—

Repeal**everything after “manufacturing of”****Substitute****“conventional smoking products or for the purpose of dealing by wholesale in conventional smoking products; and”.**

- (6) Section 12(4)(b), Chinese text—

Repeal**“該等煙草”****Substitute****“該”.**

- (7) Section 12(5)—

Repeal**“tobacco”.****15. Section 13 amended (prohibition on broadcast of tobacco advertisement by radio or visual images)**

- (1) Section 13, heading—

Repeal**“tobacco”****Substitute****“smoking product”.**

- (2) Section 13—

Repeal**“tobacco”****Substitute****“smoking product”.****16. Section 13A amended (prohibition on exhibition of tobacco advertisement by film)**

- (1) Section 13A, heading—

Repeal**“tobacco”****Substitute****“smoking product”.**

- (2) Section 13A(1)—

Repeal

“tobacco”

Substitute

“smoking product”.

17. Section 13B amended (prohibition on placing of tobacco advertisement on the Internet)**(1) Section 13B, heading—****Repeal**

“tobacco”

Substitute

“smoking product”.

(2) Section 13B(1)—**Repeal**

“tobacco”

Substitute

“smoking product”.

(3) Section 13B(2)(a), Chinese text—**Repeal**

“電腦”.

(4) Section 13B(3)—**Repeal**

“tobacco”

Substitute

“smoking product”.

18. Section 14 amended (meaning of tobacco advertisement)**(1) Section 14, heading—****Repeal**

“tobacco”

Substitute

“smoking product”.

(2) Section 14(1)—**Repeal**

“tobacco advertisement”

Substitute

“smoking product advertisement”.

(3) Section 14(1)(a)—**Repeal**

“cigarettes, cigarette tobacco, cigars or pipe tobacco”

Substitute

“any smoking product”.

(4) Section 14(1)(b)—**Repeal**

“cigarettes, cigarette tobacco, cigars or pipe tobacco”

Substitute

“any smoking product”.

(5) Section 14(1)(c)—**Repeal**

“cigarettes, cigarette tobacco, cigars or pipe tobacco”

Substitute

“any smoking products”.

- (6) Section 14(1A)—
Repeal
 “tobacco”
Substitute
 “smoking product”.
- (7) Section 14(2)(b)—
Repeal
 “tobacco”
Substitute
 “smoking”.
- (8) Section 14(2)—
Repeal
 “tobacco product, or any trade mark or brand name of a tobacco”
Substitute
 “smoking product, or any trade mark or brand name of a smoking”.
- (9) Section 14(2)—
Repeal
 “tobacco advertisement”
Substitute
 “smoking product advertisement”.
- (10) Section 14(3)(a)(i)—
Repeal
 “non-tobacco”
Substitute

- “product or service that is not a smoking”.
- (11) Section 14(4)(a)—
Repeal
 “tobacco”
Substitute
 “smoking”.
- (12) Section 14(4)—
Repeal paragraph (b)
Substitute
 “(b) any name identical to the trade name or brand name of any smoking product, in association with any product that is not a smoking product.”.
- (13) Section 14(4A)(c)—
Repeal
 everything after “mention”
Substitute
 “any word or phrase set out in Schedule 8 (including any word or phrase that means the same as, or closely resembles, the word or phrase).”.
- (14) Section 14(5)—
Repeal
 “tobacco product” (wherever appearing)
Substitute
 “smoking product”.
- (15) Section 14(5)—
Repeal
 “tobacco advertisement”

- Substitute**
“smoking product advertisement”.
- (16) Section 14(6)—
Repeal
“tobacco products are offered for sale is not a tobacco”
Substitute
“conventional smoking products are offered for sale is not a smoking product”.
- (17) Section 14(6)(a)—
Repeal
“tobacco” (wherever appearing)
Substitute
“conventional smoking”.
- (18) Section 14(6)(a)(ii)(A)—
Repeal
“non-tobacco”
Substitute
“products that are not smoking”.
- (19) Section 14(6)(b)(i)—
Repeal
“tobacco”
Substitute
“conventional smoking”.
- (20) Section 14(6)(b)(iii)—
Repeal
“tobacco”

- Substitute**
“conventional smoking”.
19. **Section 14A amended (removal and disposal of tobacco advertisement)**
- (1) Section 14A, heading—
Repeal
“tobacco”
Substitute
“smoking product”.
- (2) Section 14A(1)—
Repeal
“tobacco”
Substitute
“smoking product”.
- (3) Section 14A(2)—
Repeal
everything after “disposal of any”
Substitute
“advertisement or structure removed under subsection (1), whether or not any person is convicted of any offence under this Ordinance, on the grounds that an offence under this Ordinance has been or is being committed in relation to the advertisement or structure.”.
- (4) Section 14A(4)—
Repeal
everything after “brand of”
Substitute

“smoking product which is mentioned in the removed advertisement or structure or from the owner of the advertisement or structure.”.

20. Part 4A heading amended (prohibition on selling or giving of tobacco products)

Part 4A, heading—

Repeal

“Tobacco”

Substitute

“Conventional Smoking”.

21. Section 15A amended (prohibition on selling or giving of tobacco products, etc.)

(1) Section 15A, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

(2) Section 15A(3)(a)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

(3) Section 15A(3)(b)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

(4) Section 15A(3)—

Repeal paragraph (c)

Substitute

“(c) give valuable consideration to any person in order to induce the person to buy a particular conventional smoking product or otherwise to promote the product to the person;”.

(5) Section 15A(3)(d)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

(6) Section 15A(3)(e)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

(7) Section 15A(3)(f)—

Repeal

everything after “sale a”

Substitute

“product—

(i) that is not a smoking product; and

(ii) that includes or is accompanied by a conventional smoking product as a gift;”.

(8) Section 15A(3)(fa)—

Repeal

“tobacco product and a non-tobacco”

Substitute

“conventional smoking product and a product that is not a smoking”.

- (9) Section 15A(3)(g)—

Repeal

“tobacco product”

Substitute

“conventional smoking product”.

22. **Section 15B heading amended (display of sign when offering tobacco products for sale, etc.)**

Section 15B, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

23. **Part 4AB added**

After Part 4A—

Add**“Part 4AB****Prohibition of Alternative Smoking Products**

- 15DA. Prohibition on import, manufacture or sale, etc.**

- (1) No person may—

- (a) import an alternative smoking product;
 - (b) manufacture an alternative smoking product;
 - (c) sell, or offer for sale, an alternative smoking product;
 - (d) give an alternative smoking product to another person—
 - (i) for promotion or advertisement;
 - (ii) in exchange for a token; or
 - (iii) as a prize in any event or competition;
 - (e) possess an alternative smoking product for—
 - (i) the manufacture of any other alternative smoking product;
 - (ii) sale; or
 - (iii) giving it to another person for the purpose mentioned in paragraph (d)(i), (ii) or (iii);
 - (f) give valuable consideration to another person in order to promote to the person an alternative smoking product; or
 - (g) give another person an object that is intended to be shown in public, and that contains—
 - (i) the name or trade name of a person associated with the marketing of alternative smoking products; or
 - (ii) a trade mark or brand name of an alternative smoking product, or a pictorial device, or any part of the device, commonly associated with the trade mark or brand name.
- (2) A reference to the sale of an alternative smoking product in subsection (1)—

- (a) includes the sale of any product that includes, or is accompanied by, an alternative smoking product as a gift; and
- (b) does not include the sale of the product with a view to exporting the product.
- (3) For the purposes of subsection (1), an act is a promotion or advertisement in relation to a product if the act is a promotion or advertisement intended as an inducement to smoke, or encourage the use of, the product, whether or not a particular brand is mentioned.
- (4) Any person who contravenes subsection (1) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

Note—

Import and *export* are defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

15DB. Liability of officers of bodies corporate

- (1) If a body corporate commits an offence under section 15DA(4), and it is proved that the offence—
 - (a) was committed with the consent or connivance of an officer of the body corporate; or
 - (b) is attributable to any neglect on the part of an officer of the body corporate,
 the officer also commits the offence.
- (2) In subsection (1)—

officer (高級人員) means—

 - (a) a director, manager, secretary or other similar officer of the body corporate; or

- (b) a person purporting to act in the capacity of a person referred to in paragraph (a).

15DC. Exemption for persons in transit at Hong Kong International Airport

Section 15DA(1)(a) does not apply to a person who—

- (a) arrives at the Hong Kong International Airport from a place outside Hong Kong; and
- (b) while in Hong Kong, does not pass through any immigration control.

15DD. Exemption for articles in transit or air transshipment cargos

- (1) Section 15DA(1)(a) does not apply in relation to an alternative smoking product that is an article in transit or air transshipment cargo.
- (2) However, section 15DA(1)(a) does apply in relation to an alternative smoking product if, at any time between its being brought into and taken out of Hong Kong—
 - (a) for an article in transit on an aircraft—the product is removed from the aircraft other than in the specified cargo transshipment area;
 - (b) for an article in transit in a vessel—the product is removed from the vessel; or
 - (c) for an air transshipment cargo—the product is removed from the specified cargo transshipment area.
- (3) If section 15DA(1)(a) applies in relation to a product because of subsection (2), for the purposes of the application—

- (a) the product is deemed to be imported at the time of the removal mentioned in subsection (2); and
 - (b) the person who brought the product, or caused it to be brought, into Hong Kong as an article in transit or air transshipment cargo is deemed to be the person who imported the product.
- (4) It is a defence for a person mentioned in subsection (3)(b) who is charged under section 15DA(4) in relation to importing a product to show that the person took all reasonable steps and exercised reasonable diligence to avoid the removal mentioned in subsection (2).
- (5) Subsection (6) applies if a defence under subsection (4) involves an allegation that the offence was committed because of—
- (a) another person's act or default; or
 - (b) the defendant's reliance on information given by another person.
- (6) Without the leave of the court, the defendant may not rely on the defence unless, at least 10 days before the hearing of the proceedings, the defendant has served a written notice on the prosecutor giving particulars of—
- (a) the person who allegedly committed the act or default, or allegedly gave the information; and
 - (b) the act, default or information concerned,
- of which the defendant is aware at the time the notice is served.
- (7) The defendant may not rely on a defence under subsection (4) claiming that the offence was committed because of the defendant's reliance on information given by another person unless the defendant shows that the

reliance was reasonable in all the circumstances, having regard in particular to—

- (a) the steps that the defendant took, and those which might reasonably have been taken, for verifying the information; and
 - (b) whether the defendant had any reason to disbelieve the information.
- (8) In this section—

air transshipment cargo (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);

article in transit (過境物品) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60);

specified cargo transshipment area (指明貨物轉運區) means—

- (a) any part of the Hong Kong International Airport that is designated under section 35 of the Aviation Security Ordinance (Cap. 494) as a restricted area; or
- (b) an area approved by the Commissioner of Customs and Excise under section 2AA of the Import and Export Ordinance (Cap. 60).

15DE. Exception for Government Chemists

Despite section 15DA, a Government Chemist may import an alternative smoking product so far as it is necessary for the performance of the Government Chemist's functions.

15DF. Relationship with Pharmacy and Poisons Ordinance

- (1) This Part does not limit the Pharmacy and Poisons Ordinance (Cap. 138).

- (2) If an alternative smoking product is registered as a pharmaceutical product under regulation 36 of the Pharmacy and Poisons Regulations (Cap. 138 sub. leg. A), other provisions of this Part do not apply in relation to the product.

15DG. Enforcement powers of inspectors

- (1) An inspector may seize, remove or detain any article if the inspector reasonably suspects that—
 - (a) the article is an alternative smoking product; and
 - (b) an offence under section 15DA(4) has been committed, is being committed or is about to be committed in respect of the article.
- (2) If an inspector reasonably suspects that a person has committed or is committing an offence under section 15DA(4), the inspector may detain the person to facilitate the enforcement of section 15DA.
- (3) A magistrate may issue a warrant empowering an inspector named in the warrant to at any time enter any place that is neither a public place nor a domestic premises if it appears to the magistrate from information on oath that there is reasonable cause for suspecting that an offence under section 15DA(4) has been committed, is being committed or is about to be committed in that place.
- (4) In exercising a power under subsection (1) or (2), or under a warrant mentioned in subsection (3), an inspector must, if requested, produce proof of his or her authority as an inspector.
- (5) This section does not limit section 15G(1)(c), (d), (e), (f), (g) or (h).

15DH. Enforcement powers of Customs and Excise officers

- (1) For the enforcement of section 15DA in relation to an import offence, a Customs and Excise officer—
 - (a) may stop and search a person arriving in Hong Kong, and search anything in the person's possession;
 - (b) may stop, board and search any transport carrier arriving in Hong Kong;
 - (c) may, at any point of entry to Hong Kong, examine any article (including cargo, unaccompanied baggage or unaccompanied personal belongings) that is not contained in a postal packet; and
 - (d) may, in the presence of, and under the directions of, an officer of the Post Office, open and examine any postal packet.
- (2) A person searched under subsection (1)(a)—
 - (a) may only be searched by a person of the same sex; and
 - (b) may not be searched in a public place if the person objects to being so searched.
- (3) A Customs and Excise officer may seize, remove or detain any article if the officer reasonably suspects that—
 - (a) the article is an alternative smoking product; and
 - (b) an import offence has been committed or is being committed in respect of the article.
- (4) Any article seized under subsection (3) may be retained in the custody of a Customs and Excise officer until it is transferred to an inspector for the enforcement of section 15DA.

- (5) If a Customs and Excise officer reasonably suspects that a person has committed or is committing an import offence, the officer—
- to facilitate the enforcement of section 15DA in relation to the offence, may detain the person; and
 - may arrest the person without warrant.
- (6) A Customs and Excise officer may use any force reasonably necessary for exercising a power under this section.
- (7) In this section—
- Customs and Excise officer* (海關人員) means a person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342);
- import offence* (進口罪行) means an offence under section 15DA(4) for the contravention of section 15DA(1)(a);
- officer of the Post Office* (郵政署人員) has the meaning given by section 2(1) of the Post Office Ordinance (Cap. 98);
- postal packet* (郵包) has the meaning given by section 2(1) of the Post Office Ordinance (Cap. 98);
- transport carrier* (交通工具) includes an aircraft, vehicle, vessel or train, and any other means of travel or transport.”.

24. Section 15H amended (disposal of property seized by inspectors)

- (1) Section 15H—

Renumber the section as section 15H(1).

- (2) After section 15H(1)—

Add

- “(2) For the purposes of subsection (1), an article transferred to an inspector as mentioned in section 15DH(4) is regarded as an article seized by the inspector.”.

25. Section 19 repealed (transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006)

Section 19—

Repeal the section.

26. Schedule 2 amended (designated no smoking areas and exempt areas)

- (1) Schedule 2, Part 2, item 10—

Repeal

everything after “designated for” and before “if”

Substitute

“tasting or testing of smoking products in the manufacturing or business premises of a business engaged in the smoking products trade”.

- (2) Schedule 2, Part 2, item 10, paragraph (a)—

Repeal

“tobacco”

Substitute

“smoking”.

- (3) Schedule 2, Part 2, item 10—

Repeal paragraph (b)

Substitute

- “(b) the tasting or testing is carried out for conducting research and development or quality control of smoking products in the normal course of the business;”.

- (4) Schedule 2, Part 2, item 10, paragraph (c)—

Repeal

“tobacco tasting”

Substitute

“tasting or testing”.

- (5) Schedule 2, Part 2, item 10, paragraph (e)—

Repeal

“tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting”

Substitute

“tasting or testing, is required to enter the room while it is being occupied for the tasting or testing”.

- (6) Schedule 2, Part 2, after item 11—

Add

“12. A Government laboratory.”.

27. Schedule 5 amended (exemption from section 3(2) of this Ordinance)

- (1) Schedule 5, section 1(1)—

Repeal the definition of *smoking act*.

- (2) Schedule 5, section 1(1)—

Add in alphabetical order

“*conventional smoking act* (傳統吸煙行為) means smoking or carrying a lighted cigarette, cigar or pipe;”.

- (3) Schedule 5, section 2—

Repeal

“a smoking act”

Substitute

“a conventional smoking act”.

- (4) Schedule 5, section 2(a) and (c), before “smoking act”—

Add

“conventional”.

- (5) Schedule 5, section 2(e), before “smoking act”—

Add

“conventional”.

- (6) Schedule 5, Chinese text, section 2(e)—

Repeal

“該等動作”

Substitute

“傳統吸煙行為”.

- (7) Schedule 5, section 3—

Repeal

“a smoking act”

Substitute

“a conventional smoking act”.

- (8) Schedule 5, section 3(a), before “smoking act”—

Add

“conventional”.

- (9) Schedule 5, section 3(c)—

Repeal

“tobacco”

Substitute

“smoking product”.

- (10) Schedule 5, section 3(d), before “smoking act”—
Add
“conventional”.
- (11) Schedule 5, section 3(f), before “smoking act”—
Add
“conventional”.
- (12) Schedule 5, Chinese text, section 3(f)—
Repeal
“該等動作”
Substitute
“傳統吸煙行為”.
- (13) Schedule 5, section 4, heading, before “smoking”—
Add
“conventional”.
- (14) Schedule 5, section 4, before “smoking act”—
Add
“conventional”.
- (15) Schedule 5, section 4(a)—
Repeal
“tobacco”
Substitute
“conventional smoking”.
- (16) Schedule 5, Chinese text, section 4(a)—
Repeal
“動作”
Substitute

- “行為”.
- (17) Schedule 5, section 4(b)—
Repeal
“tobacco”
Substitute
“conventional smoking”.
- (18) Schedule 5, Chinese text, section 4(b)—
Repeal
“動作”
Substitute
“行為”.
- (19) Schedule 5, Chinese text, section 4(b)—
Repeal
“推廣”
Substitute
“提倡”.
- (20) Schedule 5, section 4(c)—
Repeal
“tobacco”
Substitute
“conventional smoking”.
- (21) Schedule 5, Chinese text, section 4(c)—
Repeal
“動作”
Substitute
“行為”.

- (22) Schedule 5, section 4(d)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (23) Schedule 5, Chinese text, section 4(d)—

Repeal

“動作”

Substitute

“行為”.

- (24) Schedule 5, Chinese text, section 4(d)—

Repeal

“品質”

Substitute

“特質”.

- 28.
- Schedule 6 repealed (transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006)**

Schedule 6—

Repeal the Schedule.

- 29.
- Schedules 7 and 8 added**

The Ordinance—

Add**“Schedule 7**

[s. 2(1)]

Alternative Smoking Products**Part 1****Interpretation Provisions**

1. In this Schedule—

conventional smoking (傳統吸煙) means the smoking of a cigarette, cigar or pipe;*dangerous drug* (危險藥物) has the meaning given by section 2(1) of the Dangerous Drugs Ordinance (Cap. 134);*specified plant material* (指明植物材料) means any material—

- (a) that was any part of a plant, such as leaves, roots, flowers, fruit and seeds; and
- (b) that is not tobacco or a dangerous drug;

waterpipe (水煙壺) means a receptacle or other device designed for use for smoking tobacco in a form other than as a cigarette or cigar where the receptacle or device—

- (a) allows smoke to be generated other than by means of electricity; and
- (b) consists of or includes a jar or similar receptacle for containing a liquid through which the smoke of

tobacco would pass before being inhaled by the user of the receptacle or device.

2. For the purposes of this Schedule, it is irrelevant whether the aerosol generated is visible.
3. For the purposes of this Schedule, a thing is capable of use for imitating conventional smoking if it is capable of use for smoking in the same way as conventional smoking in respect of—
 - (a) the bringing of the thing to the mouth; and
 - (b) the inhaling and expelling of aerosol.
4. For the purposes of this Schedule, it is irrelevant whether the component or accessory is sold separately from the device.

Part 2

Products for Definition of *Alternative Smoking Product*

Category 1

- 1.1. A device (other than a waterpipe) that is capable of—
 - (a) generating an aerosol from any substance that is not tobacco or a dangerous drug, other than by means of lighting the substance directly; and
 - (b) use for imitating conventional smoking.
- 1.2. A thing that is designed for use as a component of,

or accessory to, a device described in item 1.1 (such as a mouthpiece, heating element, battery or container of a substance mentioned in that item).

- 1.3. Any substance (other than tobacco or a dangerous drug)—
 - (a) that is packaged as being suitable for use with a device described in item 1.1; and
 - (b) from which an aerosol is capable of being generated in the way described in that item.

Category 2

- 2.1. A device (other than a waterpipe) that is capable of—
 - (a) generating an aerosol from tobacco, other than by means of lighting the tobacco directly; and
 - (b) use for smoking.
- 2.2. A thing that is designed for use as a component of, or accessory to, a device described in item 2.1 (such as a mouthpiece, heating element, battery or container of the tobacco mentioned in that item).
- 2.3. Tobacco—
 - (a) that is packaged as being suitable for use with a device described in item 2.1; and
 - (b) from which an aerosol is capable of being generated in the way described in that item.

Category 3

3. Specified plant material rolled up in any material, in a form that is capable of immediate use for imitating conventional smoking.
-

Schedule 8

[s. 14(4A)(c)]

Words or Phrases for Section 14(4A)(c)

cigarette
smoking
tobacco
cigar
pipe
waterpipe
hookah
shisha
vaping
vaporizer
e-cigarette
e-cig
electronic nicotine delivery system
ENDS
electronic non-nicotine delivery system
ENNDS
e-liquid
e-juice
heat-not-burn
HNB

heatstick
 HTP
 香煙
 捲煙
 吸煙
 煙草
 煙絲
 雪茄
 煙斗
 水煙
 電子煙
 電子尼古丁傳送系統
 電子非尼古丁傳送系統
 煙油
 煙液
 加熱煙
 加熱非燃燒
 草本煙
 草藥煙
 藥草煙
 茶煙
 水果煙
 果味煙
 有味煙”。

Part 3

Related and Consequential Amendments

Division 1—Amendment to Dutiable Commodities Ordinance (Cap. 109)

30. Section 3 amended (application)

Section 3(1)—

Repeal paragraph (b)

Substitute

“(b) tobacco other than—

- (i) any smokeless tobacco product as defined by section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); or
- (ii) any alternative smoking product as defined by section 2(1) of the Smoking (Public Health) Ordinance (Cap. 371);”.

Division 2—Amendments to Smoking (Public Health) Regulations (Cap. 371 sub. leg. A)

31. Regulation 3 amended (determination by the Government Chemist)

(1) Regulation 3—

Renumber paragraph (i) as paragraph (c).

(2) Regulation 3(c)—

Repeal

“tobacco”

Substitute

“smoking product”.

- (3) Regulation 3—

Renumber paragraph (ii) as paragraph (d).

32. **Regulation 7 amended (exemption of certain advertisements from Part 4 of the Ordinance)**

Regulation 7—

Repeal

“tobacco”

Substitute

“smoking product”.

**Division 3—Amendments to Smoking (Public Health)
(Prescribed Information) Order (Cap. 371 sub. leg. B)**

33. **Paragraph 5A amended (health warning on price board of tobacco products)**

- (1) Paragraph 5A, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

- (2) Paragraph 5A(1)—

Repeal

“tobacco”

Substitute

“conventional smoking”.

34. **Paragraph 8 heading amended (sign when offering tobacco products for sale, etc.)**

Paragraph 8, heading—

Repeal

“tobacco”

Substitute

“conventional smoking”.

35. **Schedule amended**

- (1) Schedule, Part 2, heading—

Repeal

“Tobacco”

Substitute

“Conventional Smoking”.

- (2) Schedule, Part 2A, heading—

Repeal

“Tobacco”

Substitute

“Conventional Smoking”.

- (3) Schedule, Part 3A, heading—

Repeal

“FORM OF HEALTH WARNING ON PRICE BOARD OF TOBACCO PRODUCTS”

Substitute

“Form of Health Warning on Price Board of Conventional Smoking Products”.

- (4) Schedule, Part 6, heading—

Repeal

“SIGN WHEN OFFERING TOBACCO PRODUCTS FOR SALE, ETC.”

Substitute

“Sign When Offering Conventional Smoking Products for Sale, etc.”.

Explanatory Memorandum

The object of this Bill is to amend the Smoking (Public Health) Ordinance (Cap. 371) (*Ordinance*) to prohibit the import, manufacture or sale, or use in certain places, of prescribed alternative smoking products, and to restrict the giving, possession, advertising or promotion of the products. The Bill also makes related and miscellaneous amendments to the Ordinance and related legislation.

2. The Bill contains 3 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to Ordinance

4. Clause 3 expands the long title of the Ordinance to cover the prohibitions and restrictions in relation to the prescribed alternative smoking products.
5. Clause 4 amends section 2 of the Ordinance (interpretation) to amend and add terms used in the Ordinance. Under the amended section 2, *alternative smoking product* means a product set out in the new Schedule 7 to the Ordinance.
6. Clauses 5 and 6 amend sections 3 and 4 of the Ordinance respectively to extend the prohibitions on the use of cigarettes, etc. in designated no smoking areas and public transport carriers to the use of alternative smoking products.
7. Clauses 7, 8, 9, 10 and 11 make consequential amendments to Part 3 of the Ordinance (sales of tobacco products).
8. Clauses 12, 13, 14, 15, 16, 17, 18 and 19 amend Part 4 of the Ordinance (tobacco advertising) to extend the restrictions on

- tobacco advertising to the advertising of alternative smoking products.
9. Clauses 20, 21 and 22 make consequential amendments to Part 4A of the Ordinance (prohibition on selling or giving of tobacco products).
 10. Clause 23 adds a new Part 4AB to the Ordinance, which contains the following new provisions—
 - (a) the new section 15DA prohibits the import, manufacture or sale of, and restricts the giving, possession or promotion of, alternative smoking products;
 - (b) the new section 15DB provides for the liability of officers of bodies corporate for an offence under the new section 15DA;
 - (c) the new sections 15DC, 15DD and 15DE provide for exemptions from the prohibition on importing alternative smoking products in the case of persons in transit, articles in transit, air transshipment cargos, and the performance of relevant functions by Government Chemists;
 - (d) the new section 15DF exempts alternative smoking products that are registered pharmaceutical products from the other provisions of the new Part 4AB; and
 - (e) the new sections 15DG and 15DH provide for the enforcement powers of Tobacco Control Inspectors and officers of the Customs and Excise Service in relation to offences under section 15DA.
 11. Clause 24 makes consequential amendments to section 15H (disposal of property seized by inspectors).

12. Clauses 25 and 28 repeal section 19 of and Schedule 6 to the Ordinance respectively because the transitional provisions contained in that Schedule no longer have any effect.
13. Clause 26 amends Schedule 2 to the Ordinance (designated no smoking areas and exempt areas) to make consequential amendments and to exclude Government laboratories from being designated no smoking areas.
14. Clause 27 makes consequential amendments to Schedule 5 to the Ordinance (exemption from section 3(2) of this Ordinance).
15. Clause 29 adds the new Schedule 7 to the Ordinance to set out certain alternative smoking products for the purposes of the Ordinance. Alternative smoking products include the products commonly known as “e-cigarettes”, “heat-not-burn products” and “herbal cigarettes”.
16. Clause 29 also adds the new Schedule 8 to the Ordinance. Under the amended section 14 of the Ordinance, an advertisement or object that includes a company name, etc. associated with smoking products is subject to the restrictions on the advertising of smoking products. However, if the advertisement or object does not mention certain words or phrases, and meets certain other conditions, it is exempted from the restrictions. The new Schedule 8 sets out those words or phrases, which include words or phrases related to alternative smoking products.

Part 3—Related and Consequential Amendments

17. Clause 30 amends section 3 (application) of the Dutiable Commodities Ordinance (Cap. 109) to exclude alternative smoking products from being dutiable commodities.
18. Clauses 31 to 35 make consequential amendments to the following enactments—

- (a) the Smoking (Public Health) Regulations (Cap. 371 sub. leg. A); and
- (b) the Smoking (Public Health) (Prescribed Information) Order (Cap. 371 sub. leg. B).

BACKGROUND INFORMATION ON ALTERNATIVE SMOKING PRODUCTS

A. E-cigarettes

E-cigarettes, also known as electronic nicotine delivery systems (“ENDS”) or electronic non-nicotine delivery systems (“ENNDS”), are battery-powered devices that heat a solution (called the “e-liquid”) in a cartridge (also known as a “tank”) with a metallic coil to deliver an aerosol that users inhale through a mouthpiece in a way that simulates the act of cigarette smoking. They may look like conventional tobacco products such as cigarettes or cigars, or they can take the form of other ordinary items such as pens, USB memory sticks and other larger cylindrical or rectangular devices. The e-liquid is a chemical mixture typically composed of propylene glycol, glycerin, flavourings, and other additives. E-cigarettes do not contain tobacco but ENDS (not ENNDS) contain nicotine.

(i) Harmful effects of e-cigarettes

2. There is now conclusive evidence that, in addition to nicotine, most e-cigarette products contain and emit numerous potentially toxic substances which are harmful to health. Studies have demonstrated that formaldehyde, an irritant and cancer-causing chemical, could be formed during “vapourisation” of e-liquids. Besides, most e-cigarettes contain propylene glycol, a known irritant when inhaled. Inhalation of irritants may induce airway disorders such as asthma and other inflammatory lung diseases. The use of e-cigarettes becomes addictive with the presence of nicotine and increases cardiovascular risks. Moreover, a study showed that nicotine intake from e-cigarette devices among experienced adult e-cigarette users can be comparable to that from combustible tobacco cigarettes.¹ Even if dual users cut back on conventional cigarettes use, this will not protect them from respiratory symptoms. A study² in Sweden, involving 30 272 participants, found out that dual users had the highest prevalence of respiratory symptoms (e.g. cough and wheeze).

3. Long-term use of e-cigarettes is expected to increase the risk of various heart and lung diseases, cancers as well as some other diseases associated with smoking. In addition, e-cigarettes increase exposure of non-smokers and bystanders to a number of toxicants and nicotine in second- and third-hand smoke.

¹ National Academies of Sciences Engineering, and Medicine. Public health consequences of e-cigarettes Washington, DC: The National Academies Press; 2018.

² Hedman L, Backman H, Stridsman C, et al. Association of electronic cigarette use with smoking habits, demographic factors, and respiratory symptoms. JAMA Network Open. 2018;1(3):e180789.

4. There are also concerns about the quality control of e-cigarettes, such as uneven delivery of inhaled nicotine, leakage of chemicals, inconsistent labelling of content and potential fire danger. We observe that the e-cigarettes sold locally are mostly manufactured by small manufacturers with limited quality control to ensure quality and consumer safety.

5. Research on the efficacy of e-cigarettes for smoking cessation meanwhile is inconclusive to date. The largest review to date, conducted by the US National Academies of Science, Engineering and Medicine,³ concluded that there is limited evidence that e-cigarettes may be effective aids to promote smoking cessation. Another meta-analysis published in 2018 revealed that the odds of quitting smoking was 27% lower in those who used e-cigarettes compared with those who did not use e-cigarettes, which implied that smokers who used e-cigarettes were significantly less likely to stop smoking cigarettes⁴. Similar to the meta-analysis, another randomised controlled trial also revealed that e-cigarette users were less likely than non-users to abstain from tobacco use.⁵

6. The Government tested e-cigarettes purchased from the market for the presence of selected harmful chemicals. The samples were purchased from consignment stores, e-cigarette specialty shops as well as the Internet. The tests detected the presence of formaldehyde, a carcinogen, in many of the samples. The Hong Kong Baptist University also conducted tests in 2015 on the aerosol of e-cigarettes and detected formaldehyde and heavy metals⁶. These test results show that e-cigarettes are harmful to health and echo the view of WHO, that e-cigarette aerosol is not merely “water vapour” as is often claimed in the marketing of these products. Besides, simple comparison of toxicant levels in e-cigarette aerosol and tobacco smoke, as advocated by the industry, may be of little value given the absence of science on safe tolerance limits for smoke constituents or their specific effects on the multiple diseases caused by smoking.

(ii) Gateway and renormalisation effects

7. Direct health effects from use of e-cigarettes aside, WHO has expressed concern about their gateway and renormalisation effects. Adolescents are particularly vulnerable to visual cues and social norms, and young adults are drawn to technological innovation. E-cigarettes are colourfully packaged and flavoured to increase their appeal to youngsters, and are promoted as being cool and fun. E-

³ National Academies of Sciences Engineering, and Medicine. Public health consequences of e-cigarettes Washington, DC: The National Academies Press; 2018

⁴ Glantz SA, Bareham DW. E-Cigarettes: Use, Effects on Smoking, Risks, and Policy Implications. Annual Review of Public Health. 2018;39(1):215-35.

⁵ Rigotti NA, Chang Y, Tindle HA, et al. Association of e-cigarette use with smoking cessation among smokers who plan to quit after a hospitalization: A prospective study. Annals of Internal Medicine. 2018;168(9):613-20.

⁶ http://smokefree.hk/UserFiles/resources/about_us/cosh_reports/COSHRN_C20.pdf

cigarettes deliver nicotine more slowly than standard cigarettes, rendering users more tolerant to the substance's side effects. Even though e-cigarettes on the local market should be nicotine-free, the design of such products, which simulates the behavioural and sensory characteristics of conventional cigarette smoking, may familiarise users with the act of smoking who may eventually progress to smoking conventional cigarettes⁷. A prospective study in the United Kingdom reported that baseline ever use of e-cigarettes was strongly associated with subsequent initiation and escalation of cigarette use at 12-month follow-up.⁸ As mentioned in the main text of this paper, the gateway effect of e-cigarettes has now been shown in the US, United Kingdom, the Netherlands, Canada, and Germany.

8. E-cigarettes could also result in the renormalisation of cigarette smoking.⁹ Smoke-free policies are designed not only to protect non-smokers from second-hand smoke, but also to seek to denormalise smoking and to provide incentives to quit smoking. The use of e-cigarettes (i) increases the exposure to exhaled aerosol toxicants of potential harm to bystanders, (ii) reduces the incentive to quit, and (iii) influences the public's sense of what is normal and socially acceptable when the act of smoking again becomes more visible.

(iii) Growth and prevalence of e-cigarettes use

9. E-cigarette sales worldwide are increasing rapidly. In 2014, ENDS reached US\$ 2.76 billion in sales globally¹⁰, US\$ 8.61 billion in 2016 and is expected to garner US\$ 26.84 billion by 2023.¹¹ The National Youth Tobacco Survey in the US showed that current e-cigarette use (i.e. use in the past 30 days) among high school students increased non-linearly during 2011–2018 (1.5% to 20.8%). Similar nonlinear increases occurred in use of e-cigarettes among middle school students (0.6% in 2011 to 4.9% in 2018).¹²

10. Another US survey, Monitoring the Future, reported that the percentage of 12th grade students (aged 17-18) who reported vaping nicotine within the past 30 days rose to 21% in 2018 from 11% in 2017. The rate of use among 10th grade students rose from 8% to 16%, and among 8th grade students, nicotine vaping

⁷ Primack BA, Soneji S, Stoolmiller M, Fine MJ, Sargent JD. Progression to traditional cigarette smoking after electronic cigarette use among US adolescents and young adults. *JAMA pediatrics*. 2015;169(11):1018-1023.

⁸ Conner M, Grogan S, Simms-Ellis R, Flett K, Sykes-Muskett B, Cowap L, et al. Do electronic cigarettes increase cigarette smoking in UK adolescents? Evidence from a 12-month prospective study. *Tobacco Control*. 2018;27(4):365-72

⁹ Vasiljevic M, Petrescu DC, Marteau TM. Impact of advertisements promoting candy-like flavoured e-cigarettes on appeal of tobacco smoking among children: an experimental study. *Tob Control*. 2016;Dec 1;25(e2):e107-12.

¹⁰ Statistics and market data on Consumer Goods & FMCG. <https://www.statista.com/markets/415/consumer-goods-fmcg>.

¹¹ Electronic Cigarette Market by Product Type, Flavor and Distribution Channel – Global Opportunity Analysis and Industry Forecast, 2017–2023. https://www.researchandmarkets.com/research/pjkd84/global_electronic?w=5.

¹² <https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm405173.htm>

increased from 3.5% to 6.1% over the same period¹³. The situation of dual use is also worrying. In US, 93% of e-cigarette users continued to smoke cigarettes in 2014, 83% in France, and 60% in the United Kingdom.¹⁴

11. In September 2018, the US FDA declared that “e-cigarette use among youth has hit epidemic proportions”. In fact, more than 2 million middle and high school students were current users of e-cigarettes in 2017. The agency took new steps to target the illegal sales of e-cigarettes to youth, including issuing warning letters to retailers who illegally sold e-cigarette products to minors and asking major manufacturers to submit plans describing how they will address the widespread youth access and use of their products. FDA also warned that it may restrict flavoured e-cigarettes to address youth epidemic and consider banning online sale of the products.¹⁵ FDA considers that teen addiction to vaping is so bad that it may have to encourage the development of products to help them kick this new habit of vaping. FDA held a public hearing to obtain the public's perspectives on the potential role drug therapies may play in the broader effort to eliminate youth e-cigarette and other tobacco product use.¹⁶

(iv) Local consumption of e-cigarettes

12. According to the Thematic Household Survey Report No. 64 issued in April 2018, some 5 700 persons aged 15 or over were daily smokers of e-cigarettes, compared with the findings in 2015 of less than 1 000 persons aged 15 or above, more than a five-fold increase.

13. According to the School-based Survey on Smoking conducted by the School of Public Health, the University of Hong Kong in 2016-2017, 2 340 Primary 4-6 students (1.4%) had ever used e-cigarettes (down from 2.6% in 2014/15). The number of ever and current e-cigarette users among Secondary 1-6 students was 29 380 (8.7%) and 2 770 (0.8%) respectively (a slight decrease from 9.0% and 1.3% respectively in 2014/15). Among those primary school students who had ever used both e-cigarettes and conventional cigarettes, nearly 70% tried e-cigarettes first.

14. On the other hand, the Hong Kong Council on Smoking and Health's surveys showed that ever use of e-cigarettes among primary 2 to primary 4 students increased by 55% from 2016-2017 to 2017-2018.

¹³ <http://www.monitoringthefuture.org/pressreleases/18drugpr.pdf>

¹⁴ Glantz SA, Bareham DW. E-Cigarettes: Use, Effects on Smoking, Risks, and Policy Implications. Annual Review of Public Health. 2018;39(1):215-35.

¹⁵ <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620184.htm>

¹⁶ <https://www.federalregister.gov/documents/2018/11/05/2018-24126/eliminating-youth-electronic-cigarette-and-other-tobacco-product-use-the-role-for-drug-therapies>

(v) WHO recommendation

15. The sixth COP to the WHO FCTC invited Parties to consider taking measures in accordance with national law to achieve at least the following objectives

—

- (a) **prevent** the initiation of ENDS/ENNDS by non-smokers and youth with special attention to vulnerable groups;
- (b) **minimise** as far as possible potential health risks to ENDS/ENNDS users and protect non-users from exposure to their emissions;
- (c) **prevent** unproven health claims from being made about ENDS/ENNDS; and
- (d) **protect** tobacco-control activities from all commercial and other vested interests related to ENDS/ENNDS, including interests of the tobacco industry.

16. The seventh session of the COP to WHO FCTC held in November 2016 further proposed to its member countries to apply regulatory measures either to **prohibit** or restrict the manufacture, importation, distribution, presentation, sale and use of e-cigarettes, as appropriate to their national laws and public health objectives.

(vi) Overseas practices

17. The sale of e-cigarettes is banned in the following 30 jurisdictions: Argentina, Bahrain, Brazil, Brunei Darussalam, Cambodia, Colombia, Gambia, Iran, Jordan, Kuwait, Lebanon, Macau, Mauritius, Nepal, Nicaragua, Oman, Panama, Qatar, Saudi Arabia, Seychelles, Singapore, Suriname, Syria, Thailand, Timor-Leste, Turkey, Turkmenistan, Uganda, United Arab Emirates and Uruguay.¹⁷

Macau

18. From 1 January 2018, the sale, advertising and use in NSAs of e-cigarettes are prohibited in Macau. Travellers are allowed to bring e-cigarettes into Macau.

Singapore

19. In Singapore, vaporisers such as e-cigarettes, e-pipes, e-cigars and the like are prohibited under the Tobacco (Control of Advertisements and Sale) Act. This legislation prohibits the importation, distribution, sale or offer for sale of any

¹⁷ <https://www.globaltobaccocontrol.org/e-cigarette/policy-domains>

confectionery or other food product or any toy, device or article :-

- (a) that resembles, or is designed to resemble, a tobacco product;
- (b) that is capable of being smoked;
- (c) that may be used in such a way as to mimic the act of smoking; or
- (d) the packaging of which resembles, or is designed to resemble, the packaging commonly associated with tobacco products.

It is also an offence to import, distribute, sell or offer for sale any component of a toy, a device or any article referred above.

20. From 1 February 2018, new prohibitions on the purchase, use and possession of emerging and imitation tobacco products have come into force. Under the Tobacco (Control of Advertisements and Sale) Act, any persons caught purchasing, using or having in their possession emerging and imitation tobacco products, are liable on conviction to a fine not exceeding \$2,000.

(vii) Current regulation in Hong Kong

21. E-cigarettes used for cessation purpose or with medical claim may fall within the definition of “pharmaceutical products” under Cap. 138. “Pharmaceutical products” must be registered with the Pharmacy and Poisons Board of Hong Kong before they can be put up for sale or distribution in Hong Kong. In order to be so registered, the products have to comply with the relevant requirements on safety, quality and efficacy. Under the same Ordinance, except when contained in chewing gum, lozenges or patches for external application intended to be used in nicotine replacement therapy, nicotine (whose use is essentially medicinal) is categorised as “Part 1 poison” which can only be legally possessed or sold in accordance with the Ordinance (e.g. by certain licensed or registered persons, including “licensed wholesale dealers” and “authorised sellers of poisons”).¹⁸ Illegal possession or sale of “Part 1 poisons” or unregistered “pharmaceutical products” is an offence. Any person convicted of the offence is liable to a maximum fine of \$100,000 and imprisonment up to two years. So far, no e-cigarettes are registered as “pharmaceutical products” under Cap. 138.

¹⁸ Nicotine in tobacco is exempted from being regulated as “Part 1 poison” under Cap. 138: see regulation 8 of and Schedule 2 to the Pharmacy and Poisons Regulation (Cap. 138A).

B. HNB products

22. Major tobacco companies have recently developed HNB products for consumption of real tobacco using a special electronic heating device, and such products are proliferating in markets like Japan and Italy. The most prominent examples, iQOS and Ploom Tech, are designed by PMI and Japan Tobacco International respectively.

23. These HNB products share a common feature: the tobacco stick or capsule is heated just enough to produce an aerosol without combustion. For iQOS, the tobacco stick is skewered on a metal blade that heats it to about 260°C which is a third the temperature of a burning cigarette (around 600°C). For Ploom Tech, the device heats up a liquid-filled cartridge just enough to generate vapour. When the user inhales, this vapour passes through a capsule containing granulated tobacco, delivering a cigarette-like taste without burning. The tobacco sticks and capsules are device specific and are separately sold.

24. The presence of real tobacco in HNB products delivers a quicker and more authentic hit, making them more satisfying to smokers than existing e-cigarettes. Like e-cigarettes, HNB are being promoted by the tobacco companies as a healthier alternative to conventional cigarettes and safer for bystanders. In Japan, PMI's aggressive marketing of iQOS has seen a phenomenal market growth since it was first launched at the end of 2014 so that it now takes up nearly 5% of the market for conventional cigarettes. It is estimated that iQOS could displace 30% of the global combustible market by 2025.

(i) Harmful effects of HNB products

25. Recent studies have shown that the tar and nicotine yields of HNB products are comparable to those of conventional cigarettes. The tests conducted by Government Laboratory in 2017 got the same results. Seven samples of iQOS tobacco sticks were tested and all the aerosol samples were confirmed to contain nicotine and tar, with yields comparable to some conventional cigarettes available in Hong Kong. Nicotine can cause addiction and narrowing of blood vessels. Tar is carcinogenic and can irritate airways. A study¹⁹ has also discovered that the smoke released by iQOS contains 84% of the nicotine in conventional cigarettes and same harmful constituents of conventional cigarette smoke, including volatile organic compounds and carbon monoxide. Furthermore, there are over four thousand harmful substances in cigarette smoke. HNB product manufacturers have yet to disclose all the details of their emissions. Assumptions that these new products will be smoked with the same pattern of puffing as conventional cigarettes,

¹⁹ Auer R, Concha-Lozano N, Jacot-Sadowski I, Cornuz J, Berthet A. Heat-Not-Burn Tobacco Cigarettes Smoke by Any Other Name. *JAMA Intern Med.* 2017;177(7):1050–1052. doi:10.1001/jamainternmed.2017.1419

will not be more addictive than conventional cigarettes, or will not contain new constituents with undefined risks are also not warranted and must be tested.

26. The review²⁰ conducted by the United Kingdom Committees on Toxicity, Carcinogenicity and Mutagenicity of Chemicals in Food, Consumer Products and the Environment has already commented that most of the research data on HNB products was from the tobacco industry and only limited information was available from independent sources. The review concluded that the aerosol generated by HNB products contains harmful substances that will be a risk to the health of anyone using these products. The risks associated with use of HNB products however cannot be quantified due to gaps in the information available and uncertainties in the dose-response relationship of chemicals and potential adverse health outcomes. The review also stressed that it was not possible to extrapolate from epidemiological data on smoking risks, particularly given the complexity of the interactions that occur between the compounds in the HNB product aerosol in producing adverse health effects. Another study commissioned by the Ministry of Food and Drug Safety of South Korea government revealed that all tested HNB products contained Group I carcinogens. Other toxic substances such as acrolein were also found.²¹ PMI meanwhile submitted a modified risk tobacco product²² (“MRTP”) application for iQOS to FDA²³ on 5 December 2016. FDA’s Tobacco Products Scientific Advisory Committee (“TPSAC”) voted unanimously, with one abstention, against PMI’s claim that switching completely from cigarettes to iQOS can reduce the risks of tobacco-related diseases. The TPSAC also rejected PMI’s claim that switching completely to iQOS presents less risk of harm than continuing to smoke cigarettes.

27. There is in fact no safe level of exposure to a carcinogen and the exposure to carcinogens and health effects may not bear a linear relationship. A change in the emission profile of HNB products may not translate into reduction in toxicity, and reduced toxicity does not automatically translate into reduced harm for individual smokers. Apart from adverse health impact to users, these products also expose bystanders to side-stream emissions and passive smoking^{24,25}, and WHO has stated that there is no safe level of exposure to second-hand tobacco smoke²⁶.

²⁰ UK Committees on Toxicity, Carcinogenicity and Mutagenicity of Chemicals in Food, Consumer Products and the Environment. Statement on the toxicological evaluation of novel heat-not-burn tobacco products. 2017.

²¹ HNB no less harmful than e-cigarettes. The Korea Times. 2018 <https://www.pressreader.com/korea-republic/the-korea-times/20180608/282209421554461>

²² MRTP are tobacco products that are sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

²³ Section 911 of the Federal Food, Drug and Cosmetic (FD&C) Act, as amended by the Tobacco Control Act, gives FDA responsibility to establish rigorous criteria to be met before authorising the market of a MRTP.

²⁴ Ruprecht A, et al. Environmental pollution and emission factors of electronic cigarettes, heat-not-burn tobacco products, and conventional cigarettes. *Aerosol science and technology*. 2017;51(6):674-84.

²⁵ Protano C, Manigrasso M, Avino P, Sernia S, Vitali M. Second-hand smoke exposure generated by new electronic devices (IQOS® and e-cigs) and traditional cigarettes: submicron particle behaviour in human respiratory system. *Annali di igiene: medicina preventiva e di comunità*. 2016;28(2):109.

²⁶ <http://www.who.int/mediacentre/news/releases/2007/pr26/en/>

Overall, the actual long-term health effects of HNB products to users and bystanders need to be assessed by epidemiological studies, the results of which would not be available for decades. Nonetheless, there has been a case in Japan involving a 16 year-old diagnosed with acute eosinophilic pneumonia after using HNB products for two weeks. Even PMI's own in vivo clinical data failed to show statistically detectable difference between iQOS and conventional cigarette users of potential harm.²⁷ Hence, while awaiting the scientific evidence to emerge and accumulate, HNB products may give smokers the false expectation that switching to these products means reduction in harm, thus preventing smokers who might otherwise have attempted to quit smoking completely from doing so; or even tempt those who might otherwise not have taken up smoking at all.

(ii) Gateway and renormalisation effects

28. HNB products are marketed as a “clean, chic and pure” product, which resonated very well in places with strong cultural values of order, cleanliness, quality and respect for others, such as Japan.²⁸ Overall, HNB products and their accessories are promoted as “sophisticated, high tech and aspirational” products, which are highly appealing to youth and young adults. The marketing strategies used by tobacco companies, as described in paragraph 32 below, basically glamourize the use of tobacco, though in a new form. The presence of nicotine from the heating of real tobacco in HNB should bring about possibly stronger gateway and renormalisation effect, despite the lack of scientific evidence at this stage. As shown by PMI's own study on intention to use, smokers with intention to quit smoking are equally attracted to the seemingly healthier iQOS, thereby perpetuating their smoking habit and nicotine addiction. A study²⁹ further showed that dual use of iQOS along with conventional cigarettes could increase.

(iii) Growth and prevalence of HNB products use

29. According to data released by Euromonitor in 2017, total sales for HNB products in 2016 were US \$ 2.1 billion and Euromonitor International expects this to reach US \$ 17.9 billion by 2021, according to its 2018 forecast. Profit margins for PMI's iQOS are 30%-50% higher than for conventional cigarettes, leading some analysts to project that iQOS sales will contribute up to 15% of PMI's profits in

²⁷ Glantz SA. PMI's own in vivo clinical data on biomarkers of potential harm in Americans show that IQOS is not detectably different from conventional cigarettes. *Tobacco Control*. **2018**;27(Suppl 1):s9-s12.

²⁸ Hair EC, Bennett M, Sheen E, Cantrell J, Briggs J, Fenn Z, et al. Examining perceptions about IQOS heated tobacco product: consumer studies in Japan and Switzerland. *Tobacco Control*. **2018**;10.1136/tobaccocontrol-2018-054322.

²⁹ McKelvey K, Popova L, Kim M, Chaffee BW, Vijayaraghavan M, Ling P, et al. Heated tobacco products likely appeal to adolescents and young adults. *Tobacco Control*. 2018;27(Suppl 1):s41-s7.

2019. As of April 2018, HNB products are available in over 35 countries^{30,31}.

30. Evidences have shown that the use of HNB products is not only limited to smokers. A longitudinal study in Japan involving 8 240 persons aged 15 to 69 showed that the current use (i.e. use in the previous 30 days) rate of a specific named brand of HNB product i.e. iQOS increased more than 10 times from 0.3% in 2015 to 3.6% in 2017 and the current use rate among never smokers increased from 0.1% in 2015 to 1.3% in 2017. Among persons aged 15 to 19, the current user rate increased from 0.6% in 2015 to 2.0% in 2017 and among persons aged 20 to 29, from 1.0% in 2015 to 5.8% in 2017. Among all respondents, dual use with conventional tobacco products increased from 0.8% in 2015 to 3.4% in 2017. For men, it increased 4-fold from 1.3% to 5.3%; for women, from 0.4% to 1.5%.³²

31. Another study conducted in Italy involving 3 086 persons aged 15 or above revealed that 45% of the respondents who had used the same HNB product mentioned above were never smokers.³³

32. According to the information from WHO, marketing strategies used by tobacco companies to attract and increase sales include the following:

- (a) Reduce consumer's health concerns by claiming that HNB products are reduced-risk products, which is scientifically unsubstantiated;
- (b) Design and market HNB products to boost the user's social image, e.g. availability in different colours, limited edition designs, reduced odour, etc.;
- (c) Open flagship and dedicated retail stores;
- (d) Employ "bait and hook" pricing strategy, where the base device is typically sold at a discounted price with a recurrent price being charged for refills. This increases customer retention rates through increased upfront switching cost and lifetime value of consumers as a result of repeat buying;
- (e) Involve community activators and brand ambassadors to promote HNB products through social media platforms and promotional videos; and

³⁰ Andorra, Bulgaria, Canada, Colombia, Croatia, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Guatemala, Italy, Israel, Japan, Kazakhstan, Republic of Korea, Lithuania, Monaco, the Netherlands, New Zealand, Palestine, Poland, Portugal, Romania, Russia, Serbia, Slovak Republic, Slovenia, South Africa, Spain, Switzerland, Turkey, Ukraine and the United Kingdom.

³¹ http://www.who.int/tobacco/publications/prod_regulation/https-marketing-monitoring/en/

³² Tabuchi T, et al. Heat-not-burn tobacco product use in Japan: its prevalence, predictors and perceived symptoms from exposure to secondhand heat-not-burn tobacco aerosol. *Tobacco Control*. 2017;10.1136/tobaccocontrol-2017-053947

³³ Liu X, Lugo A, Spizzichino L, Tabuchi T, Pacifici R, Gallus S. Heat-not-burn tobacco products: concerns from the Italian experience. *Tobacco Control*. 2018;Published Online First: 26 January 2018;doi: 10.1136/tobaccocontrol-2017-054054.

- (f) Advertise by acknowledging the health risks of traditional cigarettes and describe new products as cleaner alternatives.

33. The quick and significant growth in the sale of HNB products elsewhere, notwithstanding regulation against sale to minors, fuelled by sleek appeal to consumers and aggressive marketing strategies of the tobacco companies, raises serious concern that formal introduction of these products to Hong Kong will open a floodgate that cannot be contained by our tobacco control efforts.

(iv) Local consumption of HNB products

34. In Hong Kong, using data weighted by the 2017 population, a population-based survey revealed that 0.9% had ever used HNB products. When stratified by smoking status, 0.05% of never smokers, 0.5% of former smokers and 8.8% of current smokers had used HNB products.³⁴

(v) WHO recommendation

35. WHO considers that all forms of tobacco use, including the use of HNB products, are harmful and advises that HNB products should be “subject to policy and regulatory measures applied to all other tobacco products, in line with the WHO FCTC”³⁵. At the eighth COP to the WHO FCTC held on 1-6 October 2018 the COP adopted the decision urging Parties to the FCTC to consider 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”³⁶.

(vi) Overseas practices

Singapore

36. HNB tobacco products are considered emerging tobacco products and their importation, distribution, sale, purchase, use and possession are prohibited under the Tobacco (Control of Advertisement and Sale) Act.

³⁴ Wu Y, Wang M, Ho D, Cheung Y, Tabuchi T, Kwong A, et al., editors. Heat-not-burn tobacco use and its associated factors in Chinese adults: a population-based survey in Hong Kong, China (poster and abstract). Society for Research on Nicotine and Tobacco (SRNT) Europe 18th Annual Conference in Munich, Germany, September 6-8, 2018; 2018.

³⁵ http://www.who.int/tobacco/publications/prod_regulation/heated-tobacco-products/en/

³⁶ [http://www.who.int/fctc/cop/sessions/cop8/FCTC_COP8\(22\).pdf](http://www.who.int/fctc/cop/sessions/cop8/FCTC_COP8(22).pdf)

Macau

37. HNB products are also considered as e-cigarettes in Macau and their sale, advertising and use in NSAs are prohibited.³⁷

(vii) Current regulation in Hong Kong

38. Under Cap. 371, the sale, distribution, prescribed format of health warnings, and advertisement and promotion of any tobacco products in Hong Kong are strictly regulated. Besides, pursuant to the Dutiable Commodities Ordinance (Cap. 109), tobacco is a dutiable commodity. Generally, any person who imports, exports, manufactures or stores dutiable goods is required to apply for an appropriate type of licence and permit from C&ED.

³⁷ <https://www.gov.mo/zh-hant/news/256861/>

C. Herbal cigarettes

39. Herbal cigarette is a product made with plants, herbs or fruits with no tobacco but looks exactly like a conventional cigarette. Similar to conventional cigarettes, herbal cigarette is consumed via a combustion process. The product is erroneously considered, given the absence of nicotine, a safer alternative to smoking, or an aid to quit smoking, and is actively promoted as such by some manufacturers. This is particularly misleading and may result in underestimation of its harm by consumers. The fact that herbal cigarette looks exactly like conventional cigarette could also contribute to renormalization of the smoking imagery if left unregulated.

(i) Harmful effects of herbal cigarettes

40. There is evidence showing that herbal cigarettes that do not contain tobacco or nicotine may still produce toxic substances including carcinogens. For example, a research³⁸ has examined DNA damage response arising from exposure of human lung cells to smoke from tobacco- and nicotine-free cigarettes. This exposure led to DNA damages that are potentially carcinogenic, and there was a dose–response relationship between exposure to the smoke and the severity of DNA damage response. The study concluded that smoking tobacco- and nicotine-free cigarettes is at least as hazardous as smoking cigarettes containing tobacco and nicotine.

41. Another study³⁹ conducted in China analysed the urine samples of herbal cigarette smokers and regular smokers. The researchers found no significant difference in the levels of the four biomarkers between smokers of herbal cigarettes and smokers of regular cigarettes, concluding that herbal cigarettes did not deliver less carcinogens than regular cigarettes and that the Chinese tobacco industry should avoid misleading the public by promoting herbal cigarettes as safer products.

42. Furthermore, an analysis⁴⁰ of “vegetable-based cigarettes” manufactured in France and sold in Austria were found to yield levels of carbon monoxide at least as high as those produced by conventional cigarettes. Similarly, a brand of “non-nicotine, non-tar” herbal cigarettes popular in the Philippines has also shown significant yields of tar and carbon monoxide⁴¹. Therefore, smokers attempting to use herbal cigarettes as an adjunct to quitting are exposing themselves to tar and carbon monoxide, without actually increasing their chance of quitting.

³⁸ Jorgensen ED, Zhao H, Traganos F, Albino AP and Darzynkiewicz Z. DNA damage response induced by exposure of human lung adenocarcinoma cells to smoke from tobacco- and nicotine-free cigarettes. *Cell Cycle* 2010;9(11):2170-6.

³⁹ Gan Q, Yang J, Yang G, Goniewicz M, Benowitz N and Glantz S. Chinese 'herbal' cigarettes are as carcinogenic and addictive as regular cigarettes. *Cancer Epidemiology, Biomarkers & Prevention* 2009;18(12):3497–501.

⁴⁰ Groman E, Bernhard G, Blauensteiner D and Kunze U. A harmful aid to stopping smoking. *The Lancet* 1999;353:466-7.

⁴¹ Calafat AM, Polzin GM, Saylor J, Richter P, Ashley DL and Watson CH. Determination of tar, nicotine, and carbon monoxide yields in the mainstream smoke of selected international cigarettes. *Tobacco Control* 2004;13:45-51.

(ii) Overseas practices

Singapore

43. Herbal cigarettes are also considered emerging tobacco products and their importation, distribution, sale, purchase, use and possession are prohibited under the Tobacco (Control of Advertisement and Sale) Act.

(iii) Current regulation in Hong Kong

44. The use of herbal cigarettes is prohibited in NSAs according to Cap. 371.

FINANCIAL, CIVIL SERVICE, ECONOMIC, SUSTAINABILITY AND FAMILY IMPLICATIONS

Financial and civil service implications

DH will implement the proposed ban on alternative smoking products, including inspection, enforcement and prosecution, complaints handling, supervision and training. DH would endeavour to absorb the additional work from within its existing resources as far as possible, particularly with the current resources allocated for enforcement against illegal smoking in NSAs and detecting tobacco advertisement. Government Laboratory and C&ED may also need additional manpower and financial resources to cater for additional laboratory testing and enforcement. The relevant departments will seek the additional resources, if required, with justifications in accordance with the established mechanism.

2. Currently, if travellers bring in HNB tobacco sticks, they may be liable to duty payment. The proposal may affect government revenue from duty charged on such tobacco products though the exact impact is difficult to estimate.

Economic implications

3. The proposal may help reduce the medical expenditure and economic losses associated with diseases arising from smoking. Some commercial activities related to the alternative smoking products may be lost, but the impact should not be significant as the use of such products is not prevalent in Hong Kong.

Sustainability implications

4. The proposal will help protect the public health of Hong Kong, which in turn could reduce the burden on the healthcare system. A healthier population would also contribute to the productivity of the labour force in the long run.

Family implications

5. The proposed ban is targeted at preventing the initiation of alternative smoking products consumption by non-smokers including students. The proposal has positive impact on fostering family harmony as it halts alternative smoking products from taking root in the local community and turning into a serious problem which can be, as in the case of smoking, a source of dispute amongst family members.