

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1267/19-20

Ref : CB2/BC/4/18

**Paper for the House Committee meeting on 3 July 2020**

**Report of the Bills Committee on Smoking  
(Public Health) (Amendment) Bill 2019**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Smoking (Public Health) (Amendment) Bill 2019 ("the Bills Committee").

**Background**

2. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") provides for, among others, the prohibition of smoking in certain areas, and the restrictions on tobacco advertising and the sale or giving of tobacco products. Pursuant to the Dutiable Commodities Ordinance (Cap. 109), tobacco is a dutiable commodity and is liable to duty payment in accordance with the relevant requirements.

3. There is an emergence of novel smoking products, including electronic cigarettes ("e-cigarettes")<sup>1</sup> and heat-not-burn ("HNB") products<sup>2</sup>, in recent years. According to the World Health Organization ("WHO"), all forms of tobacco use are unlikely to be harmless. As advised by the Administration, the Seventh session of the Conference of the Parties to the World Health Organization

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<sup>1</sup> E-cigarettes, which are battery-powered, are the most common prototype of electronic nicotine delivery systems or electronic non-nicotine delivery systems that do not burn or use tobacco but heat e-liquid that may or may not contain nicotine to create an aerosol the user then inhales. An e-cigarette usually comprises a mouthpiece, a battery-powered heating element, a cartridge or refillable tank containing e-liquid and an atomizer that vaporizes e-liquid when heated.

<sup>2</sup> HNB products use a battery-powered heating-system to heat tobacco up to 350°C (lower than 600°C as in conventional cigarettes) to produce aerosol containing nicotine and other chemicals, which is inhaled by users through the mouth. The heating system, which is enclosed in a device, can be (a) an external heat source to aerosolize nicotine from specially designed cigarettes or tobacco sticks; or (b) a heated sealed chamber to aerosolize nicotine directly from tobacco leaf.

Framework Convention on Tobacco Control ("WHO FCTC")<sup>3</sup> held in 2016 proposed to the Parties to apply regulatory measures either to prohibit or restrict the manufacture, importation, distribution, presentation, sale and use of electronic nicotine delivery systems or electronic non-nicotine delivery systems, as appropriate to their national laws and public health objectives. In the eighth session held in October 2018, WHO proposed the same for HNB products.<sup>4</sup>

4. In the light of the apparent health effect and hazards arising from the use of e-cigarettes, the wider long-term impact to students and youngsters and the recommendation of WHO, the Administration proposed in May 2015 to legislate for the prohibition of import, manufacture, sale, distribution, and advertising of e-cigarettes. Subsequently, the Administration put forth a refined proposal in June 2018 to regulate e-cigarettes and other new smoking products in a way similar to conventional tobacco products<sup>5</sup> with an aim to prevent youth and non-smokers from picking up the smoking habit, and to remind smokers and ex-smokers that these new products are harmful ("the June 2018 proposal"). In October 2018, the Chief Executive announced in her 2018 Policy Address that, with the protection of public health as the prime consideration, the Administration would submit a legislative proposal in the 2018-2019 legislative session to ban the import, manufacture, sale, distribution and advertisement of e-cigarettes and other new smoking products.

## **The Bill**

5. The Smoking (Public Health) (Amendment) Bill 2019 ("the Bill") was published in the Gazette on 15 February 2019 and received its First Reading at the Legislative Council ("LegCo") meeting of 20 February 2019. The Bill seeks to amend the Ordinance, two items of its subsidiary legislation, and the Dutiable Commodities Ordinance to (a) prohibit the import, manufacture or sale and

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<sup>3</sup> WHO FCTC entered into force in 2005. Parties are obliged to take a number of steps to reduce demand and supply for tobacco products. China is one of the signatories to and has ratified WHO FCTC, the application of which has been extended to Hong Kong since 2006.

<sup>4</sup> See paragraph 9 of the Legislative Council Brief (File Ref.: FH CR 1/3231/19) issued by the Food and Health Bureau and the Department of Health on 13 February 2019.

<sup>5</sup> The proposed regulatory regime included: (a) prohibition of sale to minors; (b) prohibition of advertisement, promotion and sponsorship; (c) prohibition of sale unless in retail package bearing health warning; (d) prohibition of sale from vending machines; (e) a ban on use in NSAs; (f) relevant labelling requirements, including indication of the presence of tar and nicotine, and a ban on any claims or suggestions that were not backed by scientific evidence; (g) a ban on certain additives (such as vitamins) in e-cigarettes which might create an impression that such products have health benefits or present reduced health risks, and any promotion that suggested that the products might contain any appealing flavour; and (h) taxation on any tobacco component.

restrict the giving, possession or promotion of prescribed alternative smoking products ("ASPs"); (b) extend the current prohibitions on the use of cigarettes, cigars or pipes in specified places to the use of ASPs; (c) extend the current restrictions on tobacco advertising to the advertising of ASPs; and (d) make related, textual and consequential amendments, including the exclusion of ASPs from being dutiable commodities. The key features of the Bill as explained by the Administration are set out in paragraphs 11 to 23 of the LegCo Brief (File Ref.: FH CR 1/3231/19) issued by the Food and Health Bureau and the Department of Health on 13 February 2019.

### **The Bills Committee**

6. At the House Committee meeting on 1 March 2019, Members agreed to form a Bills Committee to study the Bill. Hon KWOK Wai-keung and Hon Elizabeth QUAT have been elected as Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

7. The Bills Committee has held nine meetings with the Administration between 18 March 2019 and 2 June 2020 to study the general merits and principles of the Bill. It has also received oral representations from 133 organizations and 140 individuals at three of these meetings and received over 11 500 written submissions. A list of organizations and individuals which/who have given oral representation to the Bills Committee is in **Appendix II**.

8. The Chairman has regularly reviewed the progress of the scrutiny of the Bill during the above period. In the 2019-2020 legislative session, while the original plan of the Chairman was for the Bills Committee to hold meetings once a month from December 2019 onwards, the meeting of the Bills Committee scheduled for January 2020 was cancelled due to a lack of quorum, and another two meetings scheduled for February and March 2020 were not held in the light of the coronavirus disease 2019 pandemic. When the Bills Committee resumed meeting on 4 May 2020, some members raised concern on the scrutiny progress of the Bill. Members noted that any legislative items which could not complete the scrutiny process would lapse upon the end of the current term of LegCo in accordance with section 9(4) of the Legislative Council Ordinance (Cap. 542). Given that it was assessed at the meeting that the Bills Committee might need to hold about 10 more meetings in order to complete the scrutiny work ("the proposed meeting target"), the Chairman has subsequently consulted members' views by way of circulation of papers on the way forward of the Bills

Committee.<sup>6</sup> Having regard to members' return, the Chairman has instructed that the Bills Committee will discuss its way forward at the meeting on 2 June 2020.<sup>7</sup>

9. Members present at the meeting on 2 June 2020 expressed divided views on the matter. Some members including Mr Kenneth LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Dr Pierre CHAN, Mr Kenneth LAU and Mr Jeremy TAM considered that the Bills Committee should endeavour to complete scrutiny of the Bill by holding more meetings in June 2020 as far as possible. Some other members including Mr Tommy CHEUNG, Mr WONG Ting-kwong, Mr Frankie YICK, Mr CHAN Chi-chuen, Ms Alice MAK, Mr CHUNG Kwok-pan, Mr SHIU Ka-fai and Mr CHENG Chung-tai held the view that it was practically impossible that the scrutiny of the Bill could be completed in time before the prorogation of the sixth LegCo as the Bills Committee had yet started clause-by-clause examination of the Bill and some members had indicated that a number of amendments would be proposed to the Bill for consideration of the Bills Committee. As there were divided views among members, the Chairman put to vote the question "That the Bills Committee should discontinue its scrutiny work on the Bill and report to the House Committee its decision to discontinue its work". The question was supported by the Bills Committee, with eight members voted for, four members voted against and one member abstained from voting. Having regard to the foregoing, the Administration has indicated that it would take into account the discussions and concerns of the Bills Committee on the Bill and consider introducing legislative proposals on ASPs in the next LegCo term when the opportunity arises. In the meantime, it would continue to step up public education on the harms of e-cigarettes and HNB products and enforcement actions in relation to these products under the existing legislative regime.

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<sup>6</sup> The Chairman has invited members to indicate their availability for nine proposed meeting dates in May and June 2020 by circulation of paper on 5 May 2020 in order to facilitate the Bills Committee to decide on the way forward for its scrutiny work. A total of 27 members provided their returns. According to the returns, there is a gap between the number of future meetings that the Bills Committee could hold and the proposed meeting target. Having reviewed the situation, the Chairman has directed to seek members' views by way of circulation of paper on 12 May 2020 on the proposal that the Bills Committee would discontinue its scrutiny work on the Bill and report to the House Committee its decision to discontinue its work. A total of 25 members responded to the invitation, with 11 members signifying agreement while 14 members signifying disagreement.

<sup>7</sup> According to paragraph 4.27 of the Handbook for Chairmen of Bills Committees, a matter considered by circulation of papers to members will be deemed to be approved by the Bills Committee, if a majority of the members of the Bills Committee have signified approval, and no member has signified disapproval or has requested that the matter should be discussed at a meeting.

## **Deliberations made by the Bills Committee**

10. The major discussions and concerns of the Bills Committee are summarized in the ensuing paragraphs to facilitate reference and follow-up by future LegCo when the Administration introduces the relevant legislative proposals.

### Prohibitions on the import, manufacture or sale, and the restrictions on the giving, possessing or promoting of ASPs

11. The Bill proposes to add a new definition of ASP<sup>8</sup> and a new Part 4AB (i.e. proposed new sections 15DA to 15DH) to the Ordinance to provide for the new regime on the prohibitions and restrictions of ASPs. The proposed new section 15DA of the Ordinance provides for the prohibition of the import, manufacture, sale or offer for sale,<sup>9</sup> and restriction, under certain circumstances, of the giving, possession or promotion ("full ban") of ASPs. Referring to the June 2018 proposal whereby e-cigarettes, HNB products and herbal cigarettes were proposed to be regulated in a way similar to that for conventional cigarettes and tobacco products, members have enquired about the rationale for the change in the legislative direction for these products in a short period of time.

12. The Administration has explained that overall, protecting public health is its prime consideration. The June 2018 proposal was heavily criticized by the medical professions, education sector, parents and many members of the public. They were worried that allowing the sale of ASPs, even though 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. Meanwhile, there is increasing evidence that ASPs are definitely harmful to health and would bring about gateway effects.<sup>10</sup> Overseas experience suggests

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<sup>8</sup> Under the proposed section 2 of, and Part 2 of the proposed new Schedule 7 to, the Ordinance, the following products would fall within the definition of ASP: (a) Category 1 ASP refers to a device (other than a waterpipe) that is capable of generating an aerosol from a substance not being tobacco or a dangerous drug (as defined in section 2(1) of the Dangerous Drugs Ordinance (Cap. 134)) other than by means of lighting the substance directly and use for imitating the smoking of a cigarette, cigar or pipe ("conventional smoking"), its component or accessory, or that substance; (b) Category 2 ASP refers to a device (other than a waterpipe) that is capable of generating an aerosol from tobacco other than by means of lighting the tobacco directly and use for smoking, its component or accessory, or that tobacco; and (c) Category 3 ASP refers to specified plant material, not being tobacco or a dangerous drug, rolled up in any material in a form that is capable of immediate use for imitating conventional smoking.

<sup>9</sup> A sale of ASP with a view to exporting ASP would not be regarded as a sale of ASP under the proposed new section 15DA(2)(b) of the Ordinance.

<sup>10</sup> Some of the studies cited by the Administration are:

that prevalence of ASPs in places, where age restriction for selling these products has been imposed, may change very quickly and form an irreversible trend. Hence, the Administration must prevent the harm of new smoking products from taking root in the local market to avoid what has happened regarding the regulation of conventional tobacco products. A full ban will make it difficult for potential consumers to get access to these products before they become widely popular, similar to what it has achieved with the ban of smokeless tobacco products under the Smokeless Tobacco Products (Prohibition) Regulations (Cap. 132BW). In the Administration's view, any control short of a full ban may be construed as it formally endorsing these ASPs on the one hand, and on the other hand will undermine its ongoing efforts on tobacco control. In addition, a regulatory approach requires a complex enforcement regime with a whole new set-up involving extra resources, the use of which the Administration does not consider well justified given the harms of ASPs.

*Proposed full ban on e-cigarettes*

13. Members in general raise no objection to the proposed full ban of e-cigarettes. They note that there is conclusive evidence that most e-cigarette products contain and emit numerous potentially toxic substances that are harmful to health. Studies have demonstrated that formaldehyde, an irritant<sup>11</sup> and cancer-causing chemical, could be formed during "vaporization" of e-liquids.<sup>12</sup> As at 5 November 2019, 2 051 lung injury cases (including 39 fatal cases) associated with the use of e-cigarette have been reported to the United States Centers for Disease Control and Prevention from 49 states, the District of Columbia, and one United States territory.<sup>13</sup> In addition, e-cigarettes sold locally are mostly manufactured by small manufacturers with limited quality control to ensure quality and consumer safety.

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(a) a study published in August 2018 showed no statistical difference between HNB product and conventional cigarette users for 23 of the 24 examined biomarkers of potential harm and thus rebutted the claim that HNB product has lower risks of harm in human use than conventional cigarettes; and

(b) Canada has experienced a staggering increase in youth use of e-cigarettes since the legalization of nicotine-containing e-cigarettes as consumer products in May 2018. A study found that while prior surveys up to and including 2017 had shown a continuing decline in youth smoking, the use of e-cigarettes among those aged 16-19 years old increased significantly from 8.4% in 2017 to 14.6% in 2018, and that cigarette smoking among 16-19 year-olds in the same period increased from 10.7% to 15.5%.

These above studies are set out in the paper provided by the Administration in respect of its response to issues raised at the Bills Committee meeting on 25 June 2019 (LC Paper No. CB(2)283/19-20(02)).

<sup>11</sup> According to the Administration, inhalation of irritants may induce airway disorders such as asthma and other inflammatory lung diseases.

<sup>12</sup> See Annex B to the LegCo Brief issued by the Food and Health Bureau and the Department of Health on 13 February 2019.

<sup>13</sup> See paragraph 3 of LC Paper No. CB(2)283/19-20(02).

*Proposed full ban on HNB products*

14. Some members including Ms Elizabeth QUAT, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr IP Kin-yuen, Dr Pierre CHAN, Mr Kenneth LAU and Mr Jeremy TAM also support the imposition of a full ban on other new smoking products including HNB products so as to reduce the health and social costs associated with the use of tobacco products, and to prevent the taking root of these products in the local market which may in turn result in a rebound in smoking prevalence. Ms Elizabeth QUAT is particularly concerned that an increased number of non-smoking females and youths have become HNB product users due to the design of and marketing strategies for these products. Mr Jeremy TAM has remarked that some members of the public may be less aware of being exposed to the harmful second-hand aerosol of HNB products which produce no smoke or unpleasant smell. Dr Fernando CHEUNG and Mr IP Kin-yuen have called for a full ban of conventional cigarettes and tobacco products in the long run for the sake of public health.

15. However, some other members including Mr LEUNG Yiu-chung, Mr Tommy CHEUNG, Mr MA Fung-kwok, Mr CHAN Chi-chuen, Mr CHUNG Kwok-pan, Mr Jimmy NG, Mr SHIU Ka-fai, and Mr CHENG Chung-tai are of the view that a full ban should not be imposed on HNB products which, according to some local and international studies, have a lower level of harmful constituents than conventional cigarettes.<sup>14</sup> Since conventional cigarettes and other tobacco products are not prohibited and restricted on equal footing under the Bill, they

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<sup>14</sup> Some of the studies cited by members are:

- (a) a conclusion of the United Kingdom Committees on Toxicity, Carcinogenicity and Mutagenicity of Chemicals in Food, Consumer Products and the Environment on the toxicological evaluation of HNB products which states that it is likely that there is a reduction in risk, though not to zero, to health for smokers who switch completely to HNB products as the exposure to compounds of concern in the aerosol is reduced compared to conventional cigarette smoke;
- (b) the Tobacco Products Scientific Advisory Committee under the Food and Drug Administration of the United States agrees by a vote of eight to one the claim of Philip Morris International that "scientific studies have shown that switching completely from cigarettes to the IQOS system significantly reduces your body's exposure to harmful or potentially harmful chemicals";
- (c) the Government Laboratory's test results of seven samples of an HNB product as set out in a paper provided by the Administration for the Bills Committee (LC Paper No. CB(2)1175/18-19(03)) which demonstrate that the maximum level of nicotine and tar yields of HNB products, which stand at 0.2 and 5 mg/stick respectively, is far lower than that of conventional cigarettes which stand at 1.3 and 14 mg/stick respectively.

The studies referred to by members in items (a) and (b) above (in English version only) can be respectively accessed at [https://cot.food.gov.uk/sites/default/files/heat\\_not\\_burn\\_tobacco\\_statement.pdf](https://cot.food.gov.uk/sites/default/files/heat_not_burn_tobacco_statement.pdf) and <https://www.fda.gov/media/111455/download>.

consider that adult smokers should not be deprived of the right to consume HNB products which, in their views, are less harmful. This apart, many existing users of HNB products, which produce no ash, smoke or unpleasant smell, in general are reluctant to switch to conventional cigarettes. They have pointed out that only a few places such as Macao, Singapore and Thailand have prohibited the sale of HNB products. To strike a proper balance, they consider it more appropriate to introduce a regulatory regime to prohibit the sale of HNB products to persons under the age of 18 but allow adult smokers the option of switching to HNB products. Mr SHIU Ka-fai has indicated his intention to propose a set of amendments to the Bill to exclude HNB products from the definition of ASPs and subject these products to a regulatory regime similar to that of conventional tobacco products. Dr Junius HO goes further to suggest that the Administration should introduce a register of smokers, whom would be the only group of persons being allowed to use conventional cigarettes and ASPs within a defined period of time, to keep smoking prevalence at the current level or below. Mr MA Fung-kwok, Dr Helena WONG and Mr Jimmy NG suggest that a statutory limit could be set on the level of toxicants to be contained in HNB products.

16. The Administration has advised that tobacco consumption is the single most important preventable risk factor responsible for main causes of death and many chronic diseases. Many chemicals of HNB products do not have sufficient inhalation toxicity or genotoxicity or carcinogenicity data available, and as such it is difficult, if not impossible, to set statutory limits on the various chemicals in these products. It has stressed that there is no safe level of exposure to tobacco smoke, and there is no safe tobacco product. Even if HNB products emit less toxic substances than conventional tobacco products, they cannot be regarded as less harmful until it is so proven. There is currently no evidence to suggest that reduced exposure to the toxic chemicals in tobacco smoke translates to reduced risk of disease or death in human. Its advice is that members of the public, rather than using these products that are claimed to be less harmful, should quit smoking by using methods proven to be effective and safe, such as nicotine replacement therapy. While the risks associated with use of HNB products 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 legislative proposals are of a forward-looking nature to prevent the growth of a new generation of smokers in Hong Kong. The aim of the Administration is to lower the smoking prevalence to 7.8% by 2025 and move toward the target of WHO to achieve the endgame for tobacco, for which a number of governments have adopted a target of smoking prevalence rate of 5%.

17. Those members who are against the imposition of a full ban on HNB products do not subscribe to the Administration's explanations. They consider that there is lack of conclusive evidence on the level of health risk associated with



HNB products to justify imposing a full ban on these products. Some of these members have criticized that certain study findings provided by the Administration are taken out of context. A case in point is the information paper provided by the Administration<sup>15</sup> in relation to the statement of the United States Food and Drug Administration that authorizing the marketing of the IQOS "Tobacco Heating System" (i.e. a HNB product) for the US market is appropriate for the protection of public health.<sup>16</sup> Holding the view that family, school and public education is the main factor in lowering youth smoking prevalence, they do not agree that the formal introduction of HNB products into the local market could lead to the emergence of a new generation of smokers and reverse Hong Kong's downward trend of smoking prevalence which recorded 10.0% in 2017.

18. In response, the Administration has elaborated the reasons why it disagrees with the data of the United States Food and Drug Administration in support of the product review and explained that each place would take into account a basket of factors and its local situation in determining its tobacco control policies. Some other members who have concerns over the proposed full ban on HNB products are of the view that the Administration has failed to provide comprehensive information, scientific evidence and local findings to facilitate the Bills Committee's consideration of the merits and demerits of the legislative proposal. There is a suggestion that a third party should be engaged to make an objective analysis of the findings of international studies and reports on HNB products. Mr KWOK Wai-keung has remarked that the Administration had dragged its feet in introducing legislative proposals since the policy direction of imposing a full ban on novel tobacco products was first proposed in 2015. This has enabled e-cigarettes and HNB products to tap into the Hong Kong market and become popular. In determining whether a full ban should be imposed on all ASPs, he considers it worthy to consider whether the society as a whole should cater for existing smokers' right of choice or contain the proliferation of use of novel and emerging tobacco products.

*Proposed full ban on other ASPs that may come on stream in future*

19. Mr CHAN Chi-chuen considers it unjustifiable to impose a full ban on all future non-conventional tobacco products as it is unknown at this point of time whether they may be proven in the future to be less harmful than conventional cigarettes and tobacco products. Mr Kenneth LEUNG has enquired about the handling of possible emergence of a gas inhalation product which proved to have

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<sup>15</sup> See the Annex to LC Paper No. CB(2)283/19-20(02).

<sup>16</sup> The relevant press announcement of the United States Food and Drug Administration on 30 April 2019 (in English version only) can be accessed at <https://www.fda.gov/news-events/press-announcements/fda-permits-sale-iqos-tobacco-heating-system-through-premarket-tobacco-product-application-pathway>.

no harmful health effects and fall outside the definition of prescribed ASPs under the Bill. The Administration has advised that it would continue to keep abreast of the development of new smoking products and make reference to the reports released by WHO and other places in this regard.

### Proposed exemptions

20. The Bill provides for exemptions from the prohibition on importing ASPs in the case of persons in transit, articles in transit, air transshipment cargos, and the performance of relevant functions by Government Chemists. Mr Frankie YICK has suggested that the Bill should also provide for exemption from the prohibition of importing any ASPs if the products are brought into Hong Kong and removed from the aircraft, vehicle or vessel concerned solely for the purpose of exporting them after repacking within Hong Kong.

21. The Administration has advised that should the import of ASPs for the purpose of exporting them after repacking in Hong Kong be allowed, an elaborate enforcement regime would be required to monitor the whole supply chain, including registration and vigorous tracking of such goods to ensure that they are duly exported after repacking, instead of entering into the black market. It takes the view that such relaxation would require disproportionate resources in enforcement and place unnecessary pressure on the overall enforcement regime. Hence, it does not agree with the suggestion.

22. Mr WONG Ting-kwong and Mr SHIU Ka-fai consider that the proposed prohibition on the manufacture of ASP should not include the manufacture, which is solely for the purpose of export, of a component of, or accessory to, a device (other than a waterpipe) that is capable of generating an aerosol from tobacco other than by means of lighting the tobacco directly and use for smoking (such as a heating element or battery).

23. The Administration has explained that the reason for including such parts and components in the proposed ban is to prevent the sale of parts and components that can be easily assembled for use by members of the public on their own while the sale of whole devices is prohibited. On the other hand, in practice, it would not be feasible to ban everything that can be used as a part and component of ASP, which may also be capable of being used with appliances that are not ASPs. It has taken a balanced view on the aim of the Bill, the actual enforcement situation and concerns of relevant stakeholders in proposing to include components of or accessories to ASPs that are "designed for use as" such components or accessories, as well as any substance or tobacco that is packaged as being suitable for use with an ASP device, in the proposed ban. Its legislative

intent is not to ban components or accessories that are generally capable of being used with appliances that are not ASPs.

24. The existing section 3(2A) of the Ordinance provides that a person is exempt from the prohibition of smoking or carrying a lighted cigarette, cigar or pipe in a no smoking area if the exemptions contained in Schedule 5 to the Ordinance apply (i.e. the exemption for live performance and the exemption for recording for film or television programme). Mr MA Fung-kwok has expressed concern that the Bill does not propose to extend these exemptions to the smoking or carrying of an activated ASP in a no smoking area.

25. The Administration has explained that the purpose of the Bill is to discourage the use of such products through prohibiting supply, by banning the import, manufacture, sale, distribution and promotion of the products as they are harmful to health and can bring about gateway and renormalization effects. It would like to avoid the situation where the use of ASPs during a live performance and recording for film or television programme generates public interest in such products. Moreover, there should no longer be any local supply of ASPs upon enactment of the Smoking (Public Health) (Amendment) Ordinance 2019 (if the Bill is passed) and therefore it considers it not necessary to extend the exemption under the existing section 3(2A) of the Ordinance to ASPs.

#### Impacts of the legislative proposals on different industries

26. Members including Mr YIU Si-wing, Ir Dr LO Wai-kwong and Mr SHIU Ka-fai are concerned that the legislative proposal to prohibit the bringing of ASPs into Hong Kong for their own use may cause inconvenience to those incoming travellers who would travel to other places (such as the Mainland and Macao) after their stay in Hong Kong and result in travellers contravening the law unintentionally. This may deter travellers who plan to take multi-destination travel in the region from including Hong Kong in their itineraries. Mr YIU Si-wing has suggested the Administration to allow non-frequent incoming travellers to bring in a certain number of ASPs for their own use.

27. The Administration has advised that the new regime on the prohibitions and restrictions of prescribed ASPs has to be wide enough to avoid creating any loopholes. If the Bill is passed, it would step up publicity to enhance travellers' awareness of the prohibition to import ASPs into Hong Kong. In the early stage of implementation, it intends to adopt a lenient enforcement approach and facilities may be provided at boundary control points for voluntary disposal of these products.

28. Mr Frankie YICK has expressed concern that the legislative proposals would bring about an adverse impact on the local logistics industry as there is no exemption for ASPs that are brought into Hong Kong and removed from the aircraft, vehicle or vessel concerned solely for the purpose of exporting them after repackaging within Hong Kong. Some members are concerned about the impact that may be brought about by the legislative proposals on licensed newspaper hawkers who seek to be allowed to sell ASPs under their licences in the future so as to provide other sources of income. On the latter, the Administration has advised that it would examine how to improve the business operations of licensed newspaper hawkers.

### Illicit trade

29. Members note that the use of prescribed ASPs would not be banned under the Bill otherwise than in a no smoking area or public transport carrier. Some members including Mr LEUNG Yiu-chung, Mr MA Fung-kiwok, Mr SHIU Ka-fai and Mr CHENG Chung-tai are concerned that solely cutting the local market supply of prescribed ASPs but not prohibiting the use of these products would give rise to illegal activities associated with the smuggling, distribution and sale of the relevant products after the proposed ban comes into effect. Hence, the effectiveness of prohibiting, among others, the import and sale of ASPs to curb the demand for these products would be limited. As informed by the Administration, it is noted that in respect of illicit HNB products, eight million and six million sticks were seized in 2018 and 2019 respectively.

30. The Administration has advised that the use or possession of ASPs for self-use would not be prohibited as it is not its intent to push ahead an excessively stringent regulation on individual's domestic life. There is also difficulty to carry out enforcement action against the possession of ASPs, which could involve search of domestic premises or any individual. That said, it is of note that the experience of regulating the sale of conventional cigarettes shows that illicit trade may take place whether a full ban or regulation with taxation exists. Upon the passage of the Bill, the Customs and Excise Department ("C&ED") will further step up enforcement against smuggling of ASPs from countries of provenance and mount focused operations targeting ASPs from time to time. C&ED will enhance co-operation as well as intelligence exchange with the Department of Health ("DH") and other overseas law enforcement agencies to fight against smuggling attempts. In addition, DH will follow up and carry out investigation on every case related to distribution and sale of ASPs, by collecting intelligence and arranging joint enforcement operations with the Police and C&ED against illegal activities.

**Advice sought**

31. Members are invited to note the deliberations of the Bills Committee and its decision to discontinue its work.

Council Business Division 2  
Legislative Council Secretariat  
2 July 2020

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

**Membership list\***

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

(Total : 33 members)

**Clerk** Ms Maisie LAM

**Legal Adviser** Ms Wendy KAN

\* Changes in membership are shown in Annex.

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

**Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Hon HUI Chi-fung	Up to 25 April 2019
Hon SHIU Ka-chun	Up to 5 June 2019
Hon AU Nok-hin <sup>1</sup>	Up to 16 December 2019
Hon HO Kai-ming <sup>2</sup>	Up to 31 May 2020

<sup>1</sup> According to the Judgment of the Court of First Instance of the High Court handed down on 2 September 2019, AU Nok-hin was not duly elected as a member of the Legislative Council ("LegCo") at the LegCo by-election held on 11 March 2018 and no other person was duly elected instead. According to the decision of the Appeal Committee of the Court of Final Appeal of 17 December 2019 refusing Mr AU's application for leave to appeal, AU Nok-hin, by virtue of section 72(5)(b) of the Legislative Council Ordinance (Cap. 542), has ceased to be a member of LegCo since 17 December 2019.

<sup>2</sup> Pursuant to section 15(1)(a) of the Legislative Council Ordinance (Cap. 542), HO Kai-ming ceases to hold office as a member of LegCo upon his resignation on 1 June 2020.



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

Organizations and individuals which/who have given oral representation to the Bills Committee

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1. Arena Corporations Limited
2. Asian Consultancy on Tobacco Control
3. Association of Private Medical Specialists of Hong Kong
4. Auxiliary Medical Service Officers' Club
5. British-American Tobacco Company (Hong Kong) Limited
6. Cancer Strategy Concern Group
7. Cancerinformation.com.hk Charity Foundation
8. CHEST Delegation Hong Kong and Macau / Hong Kong Lung Foundation
9. Christian Family Service Centre
10. Coalition of Hong Kong Newspaper and Magazine Merchants
11. Coalition On Tobacco Affairs Limited
12. Committee on Home School Cooperation
13. Community Drug Advisory Council
14. Ever Fortune Tobacco Limited
15. Excel Media Group Limited
16. Fanmost Limited
17. Fast Printing Company Limited
18. Federation of Parent-Teacher Association, Tai Po District
19. Federation of Parent-Teacher Associations, Tuen Mun
20. Friends of the Earth (HK) Charity Ltd
21. Frontline Doctors' Union
22. Fuk Chak Compradore
23. German Automobiles Limited
24. HK Cancer Reduction Association
25. HK College of Nursing & Health Care Management
26. Hong Kong Academy of Medicine
27. Hong Kong Academy of Nursing
28. Hong Kong Association of Family Medicine and Primary Health Care Nurses
29. Hong Kong Association of the Heads of Secondary Schools
30. Hong Kong Association of Youth Development
31. Hong Kong College of Community and Public Health Nursing
32. Hong Kong College of Community Medicine
33. Hong Kong College of Emergency Nursing

34. Hong Kong Council on Smoking and Health
35. Hong Kong Dental Association
36. Hong Kong Doctors Union
37. Hong Kong Patients' Voices
38. Hong Kong Playground Association
39. Hong Kong Society for Nursing Education
40. Hong Kong Subsidized Secondary School Council
41. Hong Kong Vape Association
42. Hong Kong Vape Shop Alliance
43. Horizon IP Pte Ltd
44. I Smoke Alliance
45. i-education
46. Intimex Business Solutions Co Ltd
47. Japan Tobacco (Hong Kong) Limited
48. Joint Council of Parent-Teacher Associations of the Shatin District Limited
49. Kerry Logistics (HK) Limited
50. Kwai Tsing Safe Community and Healthy City Association
51. Kwok Fung Consulting & Training Co. Ltd.
52. Lab in Hong Kong
53. Liberal Party
54. Liberal Party Youth Committee
55. Life Education Activity Programme
56. Lo Sun Sam Hing Advertising Decoration Ltd
57. Luen Wah Development Company
58. Macau Social Security Society
59. Medical Students' Subcommittee, Youth Committee, Hong Kong Medical Association
60. Modern Rich Group Limited
61. Nextwave Yachting Limited
62. North American Medical Association of HK
63. Patients and Health Professional Rights Association
64. Philip Morris Asia Limited
65. PMSA
66. Pok Oi Hospital - HK Baptist University Chinese Medicine Centre for Training & Research (YTM) & (HMT)
67. Pok Oi Hospital - The Chinese University of Hong Kong Chinese Medicine Centre for Training & Research (Yuen Long)
68. Pok Oi Hospital - The Chinese University of Hong Kong Chinese Medicine Centre for Training and Research (Shatin)
69. Pok Oi Hospital Chinese Medicine Service Support Centre
70. Pok Oi Hospital Community Chinese Medicine Clinic
71. Pok Oi Hospital Mrs. Leung Chi Chim Chinese Medicine Polyclinic

72. Pok Oi Hospital Oriental Daily News Charitable Fund Chinese Medicine Polyclinic
73. Pok Oi Hospital WFAS Acupuncture Specialist Centre
74. Pok Oi Hospital
75. Prince of Wales Hospital
76. Richform Holdings Limited
77. School of Nursing, The University of Hong Kong
78. Shenzhen e-Cigarette Chamber of Commerce
79. Sik Sik Yuen
80. Sky Horse Advertising Decoration Company
81. Smoking Abstention and Good Health Association
82. SUTL Corporation (Hong Kong) Ltd.
83. The Boys' and Girls' Clubs Association of Hong Kong
84. The Federation of Medical Societies of Hong Kong
85. The Hong Kong Chinese Women's Club (HKCWC Fung Yiu King Memorial Secondary School)
86. The Hong Kong College of Mental Health Nursing
87. The Hong Kong Institute of Allergy
88. The Hong Kong Institute of Family Education
89. The Hong Kong Medical Association
90. The Hong Kong Taoist Association
91. The Hong Kong Thoracic Society
92. The Junior Chief Executive, The Boys and Girls Clubs Association of Hong Kong
93. The Lion Rock Institute
94. The Lok Sin Tong Benevolent Society Kowloon (Smoking Cessation Program in Workplace)
95. The Lok Sin Tong Benevolent Society Kowloon
96. The Pharmaceutical Society of Hong Kong
97. The Society for the Aid and Rehabilitation of Drug Abusers
98. To Kee Company
99. Tobacco Association of Hong Kong Limited
100. Tung Wah Group of Hospitals Integrated Centre on Smoking Cessation
101. Vape Trick Academy of Hong Kong
102. Vision Engineering Limited
103. Wan Kau Store
104. Wellness Mind Centre, The Hong Kong Federation of Youth Groups
105. Wing Fat Fruit Store
106. Women Quit
107. Yan Chai Hospital (School Sponsoring Body)
108. Youth Quitline
109. Yuen Yuen V-Learn Women Centre

110. 一藝術基金會
111. 日報社
112. 日進報社
113. 加熱煙關注組
114. 光輝報社
115. 宇輝貿易有限公司
116. 亞寶報檔
117. 兩益書報社
118. 金富拖車
119. 長發報社
120. 恒發報社
121. 香港吸煙愛好者大聯盟
122. 香港知青聯
123. 香港島各界李茂蘭新星龍獅團
124. 香港報販協會
125. 浩聲專業培訓顧問公司
126. 笑記報檔
127. 郭記報檔
128. 創始文化有限公司
129. 渣甸坊販商協會
130. 港九新界販商社團聯合會
131. 港九煙草業職工總會
132. 粵港澳大灣區跨境服務公司
133. 萬順國際旅遊有限公司
134. Miss Asif Kainaat
135. Ms Asma Batool
136. Ms Rita AU YEUNG Miu-ling
137. Prof Balazs Szabo
138. Mr Bernard Girault
139. Mr Brian Stone
140. Mrs Bulbul Sharma
141. Ms Cammie CHAN
142. Mr Philippe CHAN
143. Miss CHAN Hiu-ching
144. Ms CHAN Hiu-yee
145. Holy CHAN Ming-hei
146. Mr CHAN Sheung-kwan
147. Mr Eddie Jr. CHAN YU-him
148. CHAU Man-fong
149. Mr CHAU Siu-long
150. Mr CHEN Jianjiu

151. Miss CHEN Ting-ting
152. Mr CHENG Wai-cheong
153. Miss Janice CHEUK Heu-mien
154. Mr Hung CHEUNG
155. Mr CHEUNG Kai-hin
156. Miss CHEUNG Sin-ying
157. Mr Alex CHEUNG Yau-tin
158. Dr Derek CHEUNG Yee-tak
159. Mr William CHING Tim-lam
160. Mr Brian CHIU Wei-chiang
161. Mr CHOI Ka-leong
162. Mr CHOW Hoo-keen
163. Mathew CHOW Siu-chun
164. Mr CHU Heng-feng
165. Mr CHUI Yiu-hung
166. Mr Benny CHUNG Yan-chi
167. Mr Max CHUNG
168. Mr DAI Cheuk-pui
169. Mr Daniel Harding De La Vega
170. Ms Roxanne FAN Yi-lan
171. Mr Victor FONG Fu-shu
172. Miss FONG Po-man
173. Ms Faye FU Man-yee
174. Mr Mathias FUNG Kai-yan
175. Miss FUNG Kam-yan
176. Mr Peter FUNG Ming-yu
177. Mr Sam HAN Kwok-chung
178. Mr HO Chun-fung
179. Mr HO Kam-chung
180. Miss HO Long-kwan
181. Dr Daniel HO Sai-yin
182. Mr HO Wan
183. Ms Rebecca HUI Tak-yee
184. Mr KO Hong-tik
185. Miss KONG Yuk-chun
186. Ms KWAN Kit-ching
187. LAI Chu-kwan
188. Mr LAI Ka-to
189. Mr LAM Ho-fung
190. Mr LAM Ka-kit
191. Mr LAM Pui-wa
192. Prof LAM Tai-hing

193. Miss Madeleine LAU
194. Ms LAU Man-man
195. Mr LAU Tat-chi
196. Mr LAU Wai-ming
197. Miss LAU Wing-hei
198. Miss LAW Tin-ching
199. Miss Jeannette LEE Ching-tsun
200. Mr LEE Hau-chi
201. Mr Henry LEE Hing-lim
202. Ms Renee LEE Yan-ha
203. Mr LEUNG Kwok-hung
204. Mr Henry LEUNG Kwok-kei
205. Miss LEUNG May-kam
206. Miss LEUNG Lok-tung
207. Mr LEUNG Yat-ming
208. Mr LI Chun-yat
209. Miss LIN Jiahuang
210. Mr LIU Kwai-sum
211. Mr LO Chun-yin
212. Miss Beverley LO Kar-yan
213. Mr LUK Ho-man
214. Mr LUK Tzu-tsun
215. Mr Anthony MAK Wai-ho
216. Mr Philip MIU Yin-lai
217. Miss MOK Hoi-yan
218. Ms MUNG Yuen-kam
219. Mr Nathan Golding Marcelo
220. Mr NG Kwan-lok
221. NG Long-hei
222. Mr NG Wing-chung
223. Miss Yolanda NG, Wan Chai District Council Member
224. Mr Lyon PONG Ting-bong
225. Mr Prahlad Chari
226. Mr Sagar Pathrikar
227. Ms Sharmila Gurung
228. Miss Shoba Rai
229. Mr Simon Mosbey
230. Miss SIU Nga-yue
231. Miss SZETO Chun-yin
232. Mr TAM Ho-nam
233. Miss Ewey TAN
234. Mr TANG Kwong-yau

235. Miss TANG Tsz-ching
236. Miss TANG Yan-ming
237. Mr James TO Wai-chun
238. Mr TONG Jan-yu
239. Ms Julie TRAN
240. Miss Elizabeth TSANG
241. Prof Kevin K. TSUI
242. Mr Ivan TSUI Wai-lam
243. Mr Eugene TSUI Yu
244. Mr WAN Wai-hin
245. Miss WANG Lijun
246. Dr WANG Man-ping
247. Mr Samson WEI
248. Mr Alan WONG
249. Ms Kay WONG
250. Mr WONG Dik-cheung
251. Mr WONG Wing-leong
252. Miss XIA Wei
253. Miss YAN Choi-kei
254. Mr YEUNG Ke-cheong
255. Miss YEUNG Lai-har
256. Mr YIP Tin-lun
257. Miss YU Sui-yan, student of Lok Sin Tong Ku Chiu Man Secondary School
258. Mr YUE Kai
259. Mr Jonathan YUE Lap-hang
260. Samson YUM Hin-hei
261. Mr ZHANG Shiliang
262. Miss ZHANG Yansuen
263. Mr ZHENG Fulin
264. 孔浩恩先生
265. 吳宇豐先生
266. 林沃文先生
267. 徐緣先生
268. 莫建榮先生
269. 陳慧娜女士
270. 廖立基先生
271. 盧芷珊小姐
272. 譚倫歡先生
273. 蘇偉業先生