立法會
Legislative Council

LC Paper No. CB(2)1123/20-21
(These minutes have been seen by the Administration)

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Bills Committee on Smoking (Public Health) (Amendment) Bill 2019 (2020-2021 session)

Minutes of the third meeting held on Tuesday, 19 January 2021, at 10:45 am in Conference Room 1 of the Legislative Council Complex

Members present	:	Hon WONG Ting-kwong, GBS, JP (Chairman) Hon Frankie YICK Chi-ming, SBS, JP (Deputy Chairman) Hon Abraham SHEK Lai-him, GBS, JP Hon CHAN Kin-por, GBS, JP Hon Paul TSE Wai-chun, JP Hon YIU Si-wing, BBS Hon MA Fung-kwok, GBS, JP Hon LEUNG Che-cheung, SBS, MH, JP Hon KWOK Wai-keung, JP Hon Elizabeth QUAT, BBS, JP Hon CHUNG Kwok-pan Hon Holden CHOW Ho-ding Hon SHIU Ka-fai, JP Dr Hon Pierre CHAN Hon LUK Chung-hung, JP Dr Hon CHENG Chung-tai
Members absent	:	Hon Tommy CHEUNG Yu-yan, GBS, JP Hon Mrs Regina IP LAU Suk-yee, GBS, JP Hon Martin LIAO Cheung-kong, GBS, JP Ir Dr Hon LO Wai-kwok, SBS, MH, JP Hon Jimmy NG Wing-ka, BBS, JP Hon Wilson OR Chong-shing, MH Hon YUNG Hoi-yan, JP Hon CHEUNG Kwok-kwan, JP Hon LAU Kwok-fan, MH

Public Officers attending	:	Miss Amy YUEN, JP Deputy Secretary for Food and Health (Health)2 Food and Health Bureau Dr FUNG Ying Head (Tobacco and Alcohol Control Office) Department of Health Dr Manny LAM Senior Medical and Health Officer (Tobacco and Alcohol Control Office) 1 Department of Health Mr CHAN Tsz-tat Assistant Commissioner (Intelligence and Investigation) Customs and Excise Department Miss Celia HO Government Counsel Department of Justice
Clerk in attendance	:	Ms Maisie LAM Chief Council Secretary (2) 3
Staff in attendance	:	Ms Wendy KAN Assistant Legal Adviser 6 Ms Catherina YU Senior Council Secretary (2) 3 Miss Alison HUI Legislative Assistant (2) 3

Action

I. Meeting with the Administration

[File Ref.: FH CR 1/3231/19, LC Paper Nos. LS48/18-19, CB(3)397/18-19, CB(2)966/18-19(02), CB(2)1175/18-19(01), CB(2)1431/18-19(04), CB(2)1651/18-19(01), CB(2)244/19-20(01), CB(2)665/20-21(01) and (02)]

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

Action

2. The Bills Committee requested the Administration to provide:

(a) a summary of the premarket review mechanism of the Food and Drug Administration of the United States ("FDA") for new tobacco products seeking an FDA marketing order, and explain what constituted a product being authorized by FDA to market under a modified risk tobacco product order which could be in the form of a "risk modification" order and/or an "exposure modification" order;

(b) a comparison of the regulatory measures implemented by FDA and those by the European Union for electronic cigarettes and heated tobacco products; and

(c) information on the estimated selling prices per pack of the most sold brands of illicit cigarettes in Hong Kong.

II. Any other business

3. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
4 June 2021

Annex

Proceedings of the third meeting of Bills Committee on Smoking (Public Health) (Amendment) Bill 2019 (2020-2021 session) held on Tuesday, 19 January 2021, at 10:45 am in Conference Room 1 of the Legislative Council Complex

Time marker	Speaker	Subject(s)/Discussion	Action required
Agenda item I: Meeting with the Administration			
001619 - 001846	Chairman	Opening remarks	
001847 - 002423	Chairman Admin	Briefing by the Administration on its response to the follow-up actions arising from the meeting on 17 November 2020 [LC Paper No. CB(2)665/20-21(02)(Revised)]	
002424 - 002643	Chairman Dr Pierre CHAN Admin	While supporting the Bill, Dr Pierre CHAN expressed concern about the progress of the scrutiny of the Bill given the coronavirus disease 2019 epidemic and the latest changes in the membership of the Sixth Legislative Council. He enquired whether the Administration had solicited afresh views of those deputations which had given views on the Bill in the last legislative session, such as the Hong Kong Council on Smoking and Health ("COSH"), and whether it would introduce any amendments to the legislative proposals. The Administration advised that it had communicated with various parties including COSH during both the previous and current legislative sessions. They shared the concerns about the negative and profound impact of new smoking products, which were claimed to be less harmful than conventional tobacco products, on the tobacco control effort and expressed support for the Administration's legislative proposals.	
002644 - 004227	Chairman Mr SHIU Ka-fai Admin	Mr SHIU Ka-fai urged the Administration to adopt different legislative approaches for electronic cigarettes ("e-cigarettes") and heated tobacco products ("HTPs") as the latter, according to many studies, were less harmful than conventional cigarettes and other tobacco products. In his view, HTPs should be subject to regulatory approach similar to that applied to conventional tobacco products. In response to Mr SHIU Ka-fai's enquiry about how many of the 10 870 premarket tobacco product applications ("PMTAs") for new tobacco products received by the Food and Drug Administration of the United States ("FDA") as of 3 November 2020 as set out in paragraph 5 of LC Paper No. CB(2)665/20-21(02)(Revised) were e-cigarettes, HTPs and components of these devices such as the heated tobacco unit, the Administration said that FDA had not published such information. Mr SHIU Ka-fai criticized that in the absence of the information, the citing of the approved figures in the same paragraph might mislead members of the public that only a very small proportion of HTPs applications had been granted marketing authorization by FDA. Referring to FDA's issuance of exposure modification orders for the first time in respect of tobacco products in July 2020 to IQOS	

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		Tobacco Heating System ("the IQOS system") to authorize the marketing of the product as a modified risk tobacco product ("MRTP") with the information that (a) the IQOS system heated tobacco but did not burn it; (b) this significantly reduced the production of harmful and potentially harmful chemicals; and (c) scientific studies had shown that switching completely from conventional cigarettes to the IQOS system significantly reduced the body's exposure to harmful or potentially harmful chemicals, Mr SHIU Ka-fai sought the Administration's views on the above modified risk claims of the IQOS system. The Administration drew members' attention that FDA had, however, determined that the manufacturer's claims that "scientific studies have shown that switching completely from conventional cigarettes to the IQOS system can reduce the risks of tobacco-related diseases" and "switching completely to IQOS presents less risk of harms than continuing to smoke cigarettes" to be not substantiated. Separately, the World Health Organization ("WHO") had in response made a statement advising that (a) claims that HTPs reduced exposure to harmful chemicals relative to conventional cigarettes might be misleading as users' health might be affected by exposure to additional toxins present in aerosols of these products that were either not present in conventional cigarette smoke or present at higher levels than in conventional cigarette smoke; and (b) reducing exposure to harmful chemicals in HTPs did not render them harmless, nor did it translate to reduced risk to human health.	
004228 - 004821	Chairman Mr KWOK Wai-keung Admin	As smoking not only caused health problems on users but also imposed heavy burden on public healthcare expenditure, Mr KWOK Wai-keung called for an early passage of the Bill to prevent the harm of new tobacco products from taking root in Hong Kong and ensure that the achievements in tobacco control over the years would not be undermined. Expressing particular concern about the slow progress in prohibiting the import, manufacture, sale, distribution and advertising of e-cigarettes which was first proposed in 2014, he enquired about the enforcement actions taken by the Administration against the increasing illegal sale of e-cigarettes containing nicotine in local market. The Administration advised that nicotine was a "Part 1 poison" under the Pharmacy and Poisons Ordinance (Cap. 138). Under the Ordinance, nicotine-containing e-cigarettes were classified as pharmaceutical products requiring registration with the Pharmacy and Poisons Board of Hong Kong before they could be sold or distributed in Hong Kong and only licensed wholesale dealers or authorized sellers were allowed to possess or sell these products. Between 2017 and 2020, there were five convicted cases involving illegal possession or sale of unregistered pharmaceutical products or "Part 1 poisons" related to nicotine-containing e-cigarettes. Separately, persons who used e-cigarettes or HTPs in no smoking areas committed an offence under the Smoking (Public Health) Ordinance (Cap. 371).	
004822 - 005637	Chairman Mr YIU Si-wing Admin	Mr YIU Si-wing expressed support for the proposed prohibition of the import, manufacture or sale and restriction of the giving, possession or promotion ("full ban") of e-cigarettes. He, however,	

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		was of the view that a full ban should not be imposed on HTPs which, according to some views in the community, might help smokers cut down or quit smoking. He was concerned that some travellers who were users of HTPs might not come to Hong Kong as they could not get access to HTPs if a full ban on these products was imposed. He suggested the Administration should make reference to FDA's pre-market review mechanism and conduct testing of the HTPs applying for authorization for sale. The tests could either be carried out by the Administration or by an accredited institution. Authorization for sale of the products should only be granted if they satisfied the safety standards set by the Administration. The Administration could consider increasing the import tax on HTPs to disincentivize the purchase of these products. The Administration advised that: (a) a decision of the eighth session of the Conference of the Parties to the World Health Organization Framework Convention on Tobacco Control ("FCTC") was that Parties should consider regulating, including restricting, or prohibiting, as appropriate, the manufacture, importation, distribution, presentation, sale and use of novel and emerging tobacco products, as appropriate to their national laws; (b) all other places outside Hong Kong rarely conducted tests on conventional cigarettes before they were allowed for sale in the market as studies over the years had proven that of the more than 7 000 chemicals in conventional cigarette smoke, 69 of them were carcinogenic; (c) FDA collected user fees, which amounted to US$700 million per annum, from domestic manufacturers and importers of certain classes of tobacco products and used the funds to support activities in relation to tobacco product regulation such as PMTAs. It was impossible for Hong Kong to follow suit; and (d) all new smoking products were harmful and allowing the sale of them might result in an increase in smoking prevalence. As protecting public health was the Government's prime consideration, it was inappropriate to establish a mechanism to facilitate these products to take root in Hong Kong. On item (c) above, Mr YIU Si-wing remarked that since there were not many types of HTPs and the local market was much smaller than that of the United States, there was no cause for concern that the same level of funding was required for the testing of the HTPs applying for authorization for sale.	
005638 - 010117	Chairman Mr CHAN Kin-por Admin	Noting that all tobacco products were harmful to health and given the fact that some members had objected to the proposed full ban on HTPs on the ground that these products, according to some studies, contained less toxic substances than conventional tobacco products and could help quit smoking, Mr CHAN Kin-por asked whether the Administration would consider deferring a full ban on HTPs to a later stage in order to secure the passage of the Bill to	

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		first subject e-cigarettes to a full ban. The Administration's response that it would continue to listen to members' views in this regard. It should also be noted that there was no evidence to suggest that HTPs could help quit smoking and population data in Japan and South Korea showed that the majority of users of HTPs dually used conventional cigarettes. In response to Mr CHAN Kin-por's request for examples of places which had imposed a full ban on e-cigarettes but not on HTPs, the Administration said that the places imposing a full ban on e-cigarettes had outnumbered those imposing a full ban on HTPs. It might be due to the fact that the former was emerged earlier than the latter. That said, the number of places imposing a full ban on HTPs had increased to 20 as at 2019.	
010118 - 010716	Chairman Mr LUK Chung-hung Admin	Mr LUK Chung-hung declared that he was a non-smoker. Given the health effects arising from the use of e-cigarettes and HTPs and the gateway effect that youngsters and non-smokers getting used to these products would turn to consume conventional cigarettes, he took the view that both products should be banned. The Administration's advice that given that new smoking products would attract new smokers and as a result, undermine the ongoing efforts in tobacco control, it was necessary to prevent the harm of new smoking products from taking root in the local market. It would also step up the control of conventional cigarettes. As set out in the action plan to prevent and control non-communicable diseases, the target was to reduce the smoking prevalence to 7.8% by 2025.	
010717 - 011924	Chairman Mr MA Fung-kwok Admin	Mr MA Fung-kwok's view that the Administration was unable to convince many members and the community why a full ban had to be imposed on HTPs which were regarded as less harmful alternatives to conventional tobacco products. Given that the passage of a bill required a majority vote of Members present, he opined that the Administration should proceed with those legislative proposals in relation to e-cigarettes that had consensus and introduce, separate from the Bill, stringent control on HTPs and conventional cigarettes to immediately deter market growth which could be followed by a full ban in the future. Reiterating that the claims that HTPs reduced exposure to harmful chemicals relative to conventional cigarettes might be misleading, the Administration stressed the need to prevent the harm of HTPs before the formal introduction of these products in the local market to avoid what had happened regarding the regulation of conventional tobacco products. This would be similar to what had been achieved with the ban of smokeless tobacco products since 1987 under the Smokeless Tobacco Products (Prohibition) Regulations (Cap. 132BW). It should also be noted that studies suggested that the introduction of HTPs could result in dual use with conventional cigarettes. The Chairman remarked that the Administration should not play down the fact that HTPs, which heated tobacco but did not burn it, reduced the production of harmful and potentially harmful	

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		chemicals. It should, however, make it clear to members its legislative intent to ban HTPs was to prevent youth from access to and use of these products as they were more interested in these products.	
011925 - 013441	Chairman Mr SHIU Ka-fai Admin Mr Paul TSE	Referring to FDA's authorization of the marketing of the IQOS system as scientific studies had shown that switching completely from conventional cigarettes to the system significantly reduced the body's exposure to harmful or potentially harmful chemicals, Mr SHIU Ka-fai enquired the number of users of HTPs who also consumed conventional tobacco products in Hong Kong. In response, the Administration advised that according to the findings of the Thematic Household Survey conducted by the Census and Statistics Department in 2019, it was estimated that there were some 13 100 persons who consumed HTPs daily (i.e. 0.2% of all persons aged 15 or above). Statistics on dual users of HTPs and conventional cigarettes were not available. It stressed that FDA had determined that the available scientific evidence did not support issuing risk modification orders for the IQOS system at the time. Mr SHIU Ka-fai said that to his understanding, the sale of HTPs was allowed in around 60 countries as opposed to about 40 countries as cited by the Administration in paragraph 16 of LC Paper No. CB(2)665/20-21(02)(Revised). Opining that members might be misled by information that was not up-to-date, he criticized the Administration for withholding information that was unfavourable to its legislative proposals. The Administration responded that according to the Campaign for Tobacco-Free Kids and Johns Hopkins Bloomberg School of Public Health, as at May 2020, there were about 40 countries where HTPs were regulated. The Chairman urged the Administration to verify information from other sources before providing it to the Bills Committee for members' reference. Mr Paul TSE remarked that the Administration had the responsibility to present all the facts and explain the pros and cons of its legislative proposals to members and the public in an impartial manner.	
013442 - 014305	Chairman Mr Paul TSE Admin	Mr Paul TSE requested the Administration to provide a summary of the premarket review mechanism of FDA for new tobacco products seeking an FDA marketing order, and explain what constituted a product being authorized by FDA to market under a MRTP order which could be in the form of a risk modification order and/or an exposure modification order. Opining that in theory, reduced exposure to toxic substances could indirectly reduce health risk, he enquired whether there was any available evidence to suggest that HTPs would increase health risks. The Administration reiterated the salient points in the statement made by WHO in response to FDA's decision regarding the IQOS system, which stressed that claims that HTPs reduced exposure to harmful chemicals relative to conventional cigarettes might be misleading. It drew members' attention that studies also suggested that dual use of HTPs and conventional cigarettes and users' underestimation of the risk of HTPs due to the claim of reduced exposure to harmful chemicals were common and alarming.	**Admin**

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		Mr Paul TSE's view that there needed to be a proper balance between upholding public health based on the available scientific evidence and providing members of the public with choices which were made based on known risks.	
014306 - 015212	Chairman Mr Holden CHOW Admin	Mr Holden CHOW's enquiries about (a) with respect to the countries which prohibited the sale of HTPs, what were the justifications for imposing such prohibition, whether there were difficulties in enforcing the ban and whether the problem of illegal sale of HTPs had become serious; and (b) with respect to the countries which had adopted a regulatory approach to HTPs, whether there were difficulties in enforcing the regulation, whether there were disputes over the enforcement and whether the problem of non-compliance was serious. The Administration responded that it had not looked into the implementation of banning or regulating HTPs in each and every country, and cited the consideration of the latest decision in Australia to prohibit the sale and import of nicotine contained in HTPs as consumer products. In its view, HTPs were novel products and many of their effects (e.g. effects of the built-in Bluetooth as featured in some of these products for connecting to users' smartphones) remained unknown. The technological developments in these products would easily outpace the regulatory capacities of a country or region. The technological potentials of these novel tobacco products would give rise to a number of concerns.	
015213 - 015358	Chairman Deputy Chairman Admin	The Deputy Chairman's request for a comparison of the regulatory measures implemented by FDA and those by the European Union for electronic cigarettes and HTPs.	**Admin**
015359 - 020351	Chairman Admin Mr Paul TSE	The Chairman declared that he was a smoker. Making reference to the serious illicit cigarette activities in Hong Kong, he took the view that the Bill, which did not prohibit the use of HTPs otherwise than in a no smoking area and the possession of which not for the purpose of sale would create a loophole and exacerbate the illegal trade of these products. At the Chairman's request, the Administration undertook to provide after the meeting information on the estimated selling prices per pack of the most sold brands of illicit cigarettes in Hong Kong.	**Admin**
Agenda item II: Any other business			
020352 - 020358	Chairman	Closing remarks	

Council Business Division 2
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4 June 2021