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## I. INTRODUCTION

The Health and Welfare Bureau has recently proposed a host of legislative amendments to the Smoking (Public Health) Ordinance (Cap. 371) (the Ordinance) with a view to further strengthening the tobacco control framework in Hong Kong. This Consultation Document sets out the details of the proposals and seeks your views on them.

### Objectives of the Proposals

2.
  - To protect members of the public, particularly non-smokers, against passive smoking in public indoor premises (as per paragraph 8 to 19)
  - To close loopholes identified in the existing legislation (as per paragraph 20 to 33)
  - To bring about more effective enforcement of the Ordinance (as per paragraph 38 to 41)

### Government's Policy on Tobacco Control

3. The Government's established policy on tobacco control is to seek, through a step-by-step approach, to discourage smoking, contain the proliferation of tobacco use and protect the public from passive smoking to the maximum extent possible. A multi-pronged approach, comprising legislation, taxation, publicity, education and enforcement, has been adopted to achieve the above policy objectives. Please refer to Annex A for a more detailed description of the multi-pronged approach.

4. The Smoking (Public Health) Ordinance was first enacted in 1982 to restrict the use, sale, and promotion of tobacco products. The Ordinance is subject to review on a regular basis, having regard to the latest international trends in tobacco control and changing domestic circumstances. The latest amendment exercise took place in 1997. In light of the operating experience of the Ordinance and the public aspiration for more stringent control on the use

and promotion of tobacco products, we consider the present time opportune for reviewing and amending the Ordinance.

### Hazards of Smoking and Passive Smoking

5. Smoking is the single largest preventable cause of death. Its harmful effects to health are well documented. Medical research and studies have shown unequivocally that smoking leads to various diseases such as lung cancer, bronchitis, emphysema and ischaemic heart disease. In Hong Kong, it claims about 5,500 lives every year. In terms of monetary loss, the estimated cost of medical treatment in the public sector of diseases directly attributable to smoking amounted to \$797 million in 1999, as compared to \$635 million in 1996.

6. Passive smoking, or commonly known as secondhand smoking, also poses great risk to the health of the public. It is well-proven that prolonged exposure to secondhand smoke can cause many serious illnesses. Moreover, medical studies revealed that the concentration of smoking-related carcinogen in the urine of people, who are consistently exposed to secondhand smoke, was found to be three times higher than normal persons. According to the estimation based on a survey conducted by the Harvard consultants in 1999, \$157 million was spent on medical consultation arising from exposure to passive smoking.

7. Please refer to Annex B for a more detailed description of the hazardous effects of passive smoking.

## II. PROPOSED AMENDMENTS TO THE ORDINANCE

### A. Expansion of Statutory No Smoking Areas

8. Under the existing legislation, smoking is prohibited in public indoor premises such as cinemas, shopping malls, supermarkets, banks, department stores, etc. It is proposed that the statutory smoking ban be extended to the following premises:

#### Restaurants and other Public Indoor Premises

9. Under the existing legislation, a restaurant providing indoor seating accommodation for more than 200 persons, excluding areas partitioned exclusively for a private event, is required to designate at least one-third of such area as no smoking area. This requirement has been proved to be problematic since it came into effect in July 1999. Firstly, individual restaurant may need to adjust the size of its no smoking area frequently to cater for the banquet arrangements of the day. This has caused inconvenience to the management, confusion to customers and potential conflicts between smokers and non-smokers. Secondly, smoke can diffuse from smoking area to no smoking area. This in effect defeats the original intention of protecting non-smokers in a restaurant setting from passive smoking.

#### Proposal

10. We propose that smoking should be prohibited in all restaurants, regardless of their size and seating capacity. Implementation will be preceded by a grace period of, say, six to twelve months. The smoking ban will also cover bars and karaokes, with consideration to be given for a longer grace period if demonstrated to be necessary.

11. To expand the scope of protection, it is our long term objective that the no smoking requirement would be gradually extended to other public indoor premises such as bathhouses, nightclubs and mahjong places. Enforcement in these licensed premises would be left to a subsequent stage when prohibition of indoor smoking has been generally practiced.

## Enforcement arrangement

12. The management of the premises will be the primary enforcement agency for the statutory smoking ban. Officers of the Tobacco Control Office (TCO) will liaise with and educate the managers on ways and means for effective implementation of the requirement. The Police will continue to provide assistance when offenders refuse to abide by the requirement.

### Schools, Universities and Tertiary Institutions

13. The Ordinance at present provides that the principal of a school, university or tertiary institution may designate the premises as no smoking area at his/her discretion. Education Regulations (Cap. 279A) also prohibits smoking in classrooms during school hours.

14. However, smoking is not a punishable offence under the Regulations, and the principal of individual school may choose not to designate his/her premises as no smoking areas. Thus staff members of the schools may still smoke in the school premises, creating an undesirable example to students.

## Proposal

15. We propose that smoking should be prohibited in both indoor and outdoor areas of all kindergartens, primary and secondary schools, and in the indoor premises of universities and tertiary institutions.

## Enforcement arrangement

16. The principal of the school will assume the primary enforcement responsibility, with his/her enforcement role being similar to that of managers of other designated no smoking areas. The TCO will develop and provide guidelines to principals to facilitate their enforcement.

### Indoor Workplaces

17. Currently, there is no legislation regulating smoking in indoor workplaces. The Omnibus Household Survey conducted by the Census and

Statistics Department in 2001 revealed that about 733,000 persons working in indoor premises are currently subject to the influence of passive smoking.

### Proposal

18. We propose that smoking should be prohibited in all indoor workplaces, apart from those licensed premises mentioned in paragraph 11 above. Workplace will be defined as any place where employees work, such as offices, shops and factories, but does not include domestic premises where the only employees are domestic servants, or places where only self-employed people work. Consideration will be given to granting a longer grace period to businesses who demonstrate genuine difficulty in complying with the smoking ban requirement.

### Enforcement arrangement

19. The management of individual companies will be the primary enforcement agency. The TCO will assist the management in drawing up internal guidelines and implementation plans. The Police will assist in the event of visiting customers refusing to abide by the smoking ban.

## **B. Advertisement and Promotion of Tobacco Products**

20. It is noted that there are loopholes in the existing legislation that are being exploited for the purpose of promoting particular brands of tobacco products. To further restrict the advertisement of tobacco products in the public, it is proposed that the following measures be adopted:

### Display of Tobacco Advertisement

21. Under the existing Ordinance, the display of tobacco advertisement is prohibited except at licensed hawker stalls and retail outlets employing not more than two employees. It is noted that such exemption has become a source of abuse. Numerous tobacco advertisements are being displayed at small retail stalls selling tobacco products. Many over-sized light-boxes depicting tobacco advertisements are found upon the premises of small shops throughout the territory. This has in effect defeated the purpose of banning the display of tobacco advertisements in public areas.

### Proposal

22. We propose to revoke the current exemption on the display of tobacco advertisement at licensed hawker stalls and retail outlets employing not more than two employees.

### Enforcement arrangement

23. TCO officers will ensure compliance with the regulation during their routine fieldwork. They will also act upon receipt of public complaints.

### Price Board and Price Marker

24. Price boards (for more than one tobacco brand) and price markers (for one single tobacco brand) are allowed for display inside premises selling tobacco products. Under the existing legislation, a price board cannot exceed a size of 2,000 cm<sup>2</sup>, but there is no size limit for price markers. It is noted that many over-sized price markers are being displayed in numerous retail outlets in the territory to achieve the effect of advertising for specific brand of tobacco product.

## Proposal

25. We propose to prescribe the size of the price board and price marker to, say, not larger than 1,500 cm<sup>2</sup> and 50 cm<sup>2</sup> respectively. We propose also to prescribe the font size of words printed on them so that while price boards and price markers can continue to serve as indication of prices, their potential use as advertisement for tobacco products is minimised.

## Enforcement arrangement

26. TCO officers will ensure compliance during their periodic check on selected retail outlets.

## *Sale of Tobacco Products in Association with Other Products*

27. The existing legislation stipulates that a tobacco product cannot be sold in association with any gift, or token, stamp and raffle ticket which may be exchanged for any gift. Complaints have been received that tobacco products are being sold in association with non-tobacco products, such as watches or lighters. These non-tobacco merchandises are charged at prices much lower than their actual value to induce purchase of the accompanying tobacco products.

## Proposal

28. We propose to prohibit the sale of a tobacco product in association with any merchandise, regardless it is charged or not.

## Enforcement arrangement

29. TCO officers will monitor the retail outlets of tobacco products to ensure compliance.

## *Tobacco Sponsorship*

30. Currently, the display of a tobacco brand name in any sponsored event will be deemed a tobacco advertisement and hence prohibited. However,



if a tobacco sponsorship is accompanied by the corporate name of a tobacco company, or the brand name of a tobacco product is in association with a non-tobacco product, and if no words associated with “smoking” or “cigarette” or other tobacco products are mentioned, then the related promotional materials are not regarded as tobacco advertisements.

31. It is noted that in some events jointly sponsored by a tobacco and a non-tobacco product, the promotional materials were designed in a subtle way such that the brand name of the tobacco product was more prominent than the non-tobacco product, hence reinforcing the effect of advertisement for the former.

#### Proposal

32. We propose to prohibit the brand name of any tobacco product, and any words in association with “tobacco”, to be used in the promotion of any sponsored event, irrespective of whether it is used in association with a non-tobacco product. Nevertheless, the appearance of the brand name of a tobacco product is allowed if such name is clearly stipulated to be a non-tobacco product/merchandise and made no reference at all to the tobacco product.

#### Enforcement arrangement

33. TCO officers will liaise with organisers of major events that are known to seek sponsorship to ensure that they are aware of this restriction.

### **C. Health Warning on Tobacco Products**

34. Under the existing Ordinance, health warnings in prescribed size and wording, and the quantitative amount of tar and nicotine yields are required to be borne on the package of cigarette products.

35. Canada has recently introduced health warnings, which include graphic depiction of damaged human organs caused by smoking, to be printed on tobacco packages to create greater visual impact on the purchasers. There are also local voices calling for adoption of similar measure in Hong Kong.

#### Proposal

36. We propose to introduce enabling provision in the Ordinance allowing health warnings to contain pictorial and graphic contents. Detailed format of such health warning may be prescribed by the Secretary for Health and Welfare (SHW) by order in the Gazette in future.

#### Enforcement arrangement

37. The Customs and Excise Department will continue to monitor the health warning on tobacco products to ensure compliance.

## **D. Law Enforcement**

38. At present, there are several government departments assisting in the enforcement of the Ordinance, namely, the Police, Custom and Excises Department, Food and Environmental Hygiene Department and Marine Department. Also, managers of statutory no smoking areas are empowered to enforce the legislation. To bring about more effective enforcement of the Ordinance, the TCO was set up in February 2001 to oversee the overall implementation of the Ordinance and coordinate efforts among parties concerned. It is considered necessary to delegate TCO officers with proper authority to facilitate their discharge of enforcement duties effectively.

### Proposal

39. We propose to introduce provisions in the Ordinance enabling SHW to authorise public officers, particularly staff of TCO, to initiate prosecuting action against the following offences in the Ordinance:

- (a) Failing to display sufficient number of no smoking notices in no smoking area
- (b) Failing to place a sign outside a restaurant indicating that the entire restaurant is a statutory no smoking area (provided the proposal in paragraph 10 is adopted)
- (c) Selling tobacco product without health warning
- (d) Printing or distributing tobacco advertisement on printed publication
- (e) Displaying tobacco advertisement
- (f) Broadcasting tobacco advertisement on radio and TV
- (g) Exhibiting tobacco advertisement by film
- (h) Placing tobacco advertisement on Internet

- (i) Contravening the prohibition on tobacco sponsorship
- (j) Failing to comply with the statutory requirements on price board and price marker
- (k) Giving gift or other consideration in the selling of tobacco products
- (l) Selling a tobacco product in association with non-tobacco product (provided the proposal in paragraph 28 is adopted)
- (m) Failing to display a notice indicating that person under the age of 18 is prohibited to purchase tobacco products, when offering for sale tobacco products

40. With proper authority conferred on TCO officers, they will conduct the necessary investigation, collect evidence and initiate prosecution action or refer the case to the Department of Justice for court action depending on the circumstances of the case. If deemed necessary, TCO officers could also be authorised by SHW to mount ad hoc enforcement operation in selected malls or restaurants, with the support of the Police and the management of the premises concerned.

41. Managers of statutory no smoking areas such as restaurants, shopping malls, will continue to be empowered to enforce the law as in the present legislation. Similar power will also be conferred upon principals of the schools and managers of offices, shops and factories.

### **III. WAY FORWARD**

42. While we are consulting the public on the proposed legislative amendments, a Regulatory Impact Assessment is to be conducted to assess the economic impact of the proposals on the affected sectors. Subject to the views and feedback collected, we shall refine the proposals as appropriate, and initiate legislative amendments in the 2001/02 legislative year.

### **IV. ADVICE SOUGHT**

43. We look forward to your views and comments on the above proposed legislative amendments. Please send your comments on this Consultation Document before 15 September 2001 to:

Tobacco Control Consultation Taskforce  
Health and Welfare Bureau  
19/F, Murray Building  
Garden Road  
Central, Hong Kong  
Or by fax to: (852) 2840 0467  
Or e-mail to: [tcct@hwb.gov.hk](mailto:tcct@hwb.gov.hk)

## **V. ANNEXES**

### **Annex A**

#### **Government's Multi-pronged Approach for Tobacco Control**

The government has, on its tobacco control policy, adopted a multi-pronged approach comprising legislation, taxation, publicity, education and enforcement:

#### **Legislation**

2. The Smoking (Public Health) Ordinance (Cap. 371) provides a legislative framework for tobacco control in Hong Kong. It prohibits smoking in certain designated areas, and restricts the advertisement, sale and promotion of tobacco products. Legislative amendments to the Ordinance are now being proposed to further tighten up tobacco control.

#### **Taxation**

3. Studies have shown that increasing tobacco tax is an effective way to reduce number of smokers and tobacco consumption. In the 2001-02 Budget, the Financial Secretary proposed to increase tobacco duty by 5%. At present, cigarettes are taxed at HK\$804 per 1000 sticks. The duty rate is about half of the retail price of a packet of cigarettes.

#### **Publicity and Education**

4. Publicity and educational programs have been organised by the Department of Health to discourage smoking. They include health talks, 24-hour health education hotline, distribution of pamphlets and booklets that contain anti-smoking messages, etc.

5. Besides, resources have been allocated by the Government to anti-smoking bodies, such as the Hong Kong Council on Smoking and Health

(COSH), to strengthen their anti-smoking programs. COSH have organised a variety of different campaigns, such as no-smoking day in workplace, health talks, carnivals, dramas, competitions, etc., to disseminate the no-smoking message to the public.

## **Enforcement**

6. Apart from government departments including the Police, Customs and Excise Department, Food and Environment Department and Marine Department, the Tobacco Control Office under the Department of Health has been set up as a designated enforcement agency to oversee the overall implementation of the Ordinance and co-ordinate efforts among departments concerned.

## **Annex B**

### **Hazardous Effects of Passive Smoking**

#### **What is Passive Smoking?**

Breathing in other people's tobacco smoke is called passive, secondhand or involuntary smoking. The smoke, which is called Environmental Tobacco Smoke (ETS), is a mixture of mainstream smoke exhaled by smokers and sidestream smoke emitted from the burning tips of cigarettes, pipes and cigars.

2. ETS contains more than 4,000 chemicals, of which more than 40 are carcinogenic. According to the World Health Organization (WHO), the California Environmental Protection Agency (CalEPA) and other authoritative scientific bodies, ETS is a human carcinogen and there is no "safe" level of exposure.

#### **Health Hazards of Passive Smoking**

3. Secondhand smoke is more than just a nuisance – it poses serious hazards to human health. Medical evidences have shown that passive smoking is causally associated with a variety of diseases:

##### *Lung Cancer*

4. Secondhand smoke is a human lung carcinogen. The US Environmental Protection Agency (USEPA) and the UK Government Department of Health Scientific Committee on Tobacco and Health (SCOTH) and many other agencies have accepted that ETS exposure can cause lung cancer. It is responsible for approximately 3,000 lung cancer deaths annually in US non-smokers.

##### *Heart Disease*

5. Evidences have indicated that passive smoking is a cause of heart disease. In 1997, CalEPA concluded that secondhand smoke is responsible for around 35,000 to 62,000 deaths among non-smokers from heart disease in US



annually. Besides, some recent studies also concluded that the greater the exposure to secondhand smoke, the greater the risk of getting heart disease.

### *Diseases in Children*

6. The WHO estimates that around 700 million, or almost half of the world's children, are regularly exposed to secondhand smoke.

7. ETS exposure causes a wide variety of adverse health impacts on children, including lower respiratory tract infections such as bronchitis and pneumonia, coughing and wheezing, worsening of asthma, and middle ear infection. Their exposure to secondhand smoke may also contribute to cardiovascular disease in adulthood and to neurobehavioral impairment.

8. It is also revealed that ETS exposure to pregnant women reduces the average birth weight of their babies, and that there is an increased risk of death from sudden infant death syndrome if the infant is exposed to ETS.

### *Other Diseases*

9. Besides the hazards mentioned above, passive smoking also leads to other health risks. Its long-term health impacts include stroke, impaired respiratory function, chronic bronchitis and cancer of the uterine cervix. Secondhand smoke, being a source of indoor air pollutant, also causes immediate health effects such as eye irritation, sore throat, cough, headache, dizziness, etc.