

Chapter:	371	SMOKING (PUBLIC HEALTH) ORDINANCE	Gazette Number	Version Date
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		Long title	21 of 2006	27/10/2006
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To prohibit smoking in certain areas; to provide for the display of a health warning and other information on packets or retail containers of tobacco products; to restrict tobacco advertising; to restrict the sale or giving of tobacco products; to provide for the appointment, powers and duties of inspectors for the enforcement of certain provisions of this Ordinance; and to provide for incidental and related matters.

(Amended 91 of 1994 s. 2; 21 of 2006 s. 3)

[Part I, Part IV (except sections 11 and 12) and Part V	}	13 August 1982
Section 11	}	15 November 1982
Part II and section 12 (except in relation to advertisements by way of neon signs)	}	15 February 1983
Section 12 (in relation to advertisements by way of neon signs)	}	15 May 1983
Part III	}	15 August 1983 <i>L.N. 314 of 1982</i>]

(Originally 58 of 1982)

Section:	1	Short title		30/06/1997
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PART I

PRELIMINARY

This Ordinance may be cited as the Smoking (Public Health) Ordinance.

Section:	2	Interpretation	L.N. 112 of 2011	18/11/2011
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

In this Ordinance, unless the context otherwise requires—

"advertisement" (廣告) means any announcement to the public made or to be made in any manner;

"amusement game centre" (遊戲機中心) means—

- (a) an amusement game centre within the meaning of section 2(1) of the Amusement Game Centres Ordinance (Cap 435);
- (b) any place that is the subject of an order under section 3(1)(a) of that Ordinance; or
- (c) any area that is specified in an order under section 3(1)(b) of that Ordinance; (Replaced 21 of 2006 s. 4)

"approved institution" (核准院舍) means an approved institution within the meaning of section 2(1) of the Probation of Offenders Ordinance (Cap 298); (Added 21 of 2006 s. 4)

"bar" (酒吧) means any place that is exclusively or mainly used for the sale and consumption of intoxicating liquors as defined in section 53(1) of the Dutiable Commodities Ordinance (Cap 109); (Added 21 of 2006 s. 4)

"bathhouse" (浴室) means a bathhouse—

- (a) that is within the meaning of section 3(1) of the Commercial Bathhouses Regulation (Cap 132 sub. leg. I); and

- (b) in respect of which a licence granted under that Regulation is in force; (Added 21 of 2006 s. 4)
- "bathing beach" (泳灘) means any bathing beach specified in the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap 132); (Added 21 of 2006 s. 4)
- "brand" (牌子), except in section 14(3), includes a brand product, that is to say a variety of a brand marketed as having qualities differing from another variety of that brand;
- "child care centre" (幼兒中心) means a child care centre within the meaning of section 2(1) of the Child Care Services Ordinance (Cap 243); (Added 21 of 2006 s. 4)
- "cigar" (雪茄) means tobacco rolled up in tobacco, in such form as to be capable of immediate use for smoking; (Added 91 of 1994 s. 3)
- "cigarette" (香煙) means tobacco rolled up in paper or in any other material except tobacco, in such form as to be capable of immediate use for smoking;
- "cigarette tobacco" (香煙煙草) means tobacco packaged as being suitable for the making by the purchaser of cigarettes for his own use;
- "cinema" (電影院), "theatre" (劇院) and "concert hall" (音樂廳) mean—
- (a) any building or part of a building used primarily as a cinema, theatre or concert hall, as the case may be, whether or not it is being so used at the material time, other than the premises of any club, association or other body in which films are exhibited, or plays or music performed for the benefit primarily of the members thereof and their guests;
 - (b) any place of public entertainment licensed under the Places of Public Entertainment Ordinance (Cap 172) while open to the public on account of any concert, stage play, stage performance or other musical, dramatic or theatrical entertainment or any cinematograph display; (Added 9 of 1992 s. 2)
- "correctional facility" (懲教機構) means—
- (a) any of the sites and buildings specified in the Schedule to the Prisons Order (Cap 234 sub. leg. B);
 - (b) any of the buildings specified in the Schedule to the Prisons (Hostel) Order (Cap 234 sub. leg. C); or
 - (c) an addiction treatment centre within the meaning of section 2 of the Drug Addiction Treatment Centres Ordinance (Cap 244); (Added 21 of 2006 s. 4)
- "domestic premises" (住宅) means any premises that have been constructed to be used, and are used, as a private dwelling; (Added 21 of 2006 s. 4)
- "escalator" (自動梯) means an escalator within the meaning of section 2(1) of the Lifts and Escalators (Safety) Ordinance (Cap 327); (Added 21 of 2006 s. 4)
- "hospital" (醫院) means any establishment for the care of the sick, injured or infirm or those who require medical treatment, including a nursing home—
- (a) whether or not it is a hospital to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap 165) applies; or
 - (b) whether or not it is a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap 113); (Added 21 of 2006 s. 4)
- "indoor" (室內) means—
- (a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and
 - (b) enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door; (Added 21 of 2006 s. 4)
- "inspector" (督察) means an inspector appointed under section 15F; (Added 21 of 2006 s. 4)
- "karaoke establishment" (卡拉OK場所) means—
- (a) a karaoke establishment within the meaning of section 2(1) of the Karaoke Establishments Ordinance (Cap 573); or
 - (b) a karaoke establishment referred to in section 3(1) of that Ordinance; (Added 21 of 2006 s. 4)
- "mahjong-tin kau premises" (麻將天九耍樂處所) means any premises that are licensed under section 22 of the Gambling Ordinance (Cap 148) for—
- (a) the playing therein of games in which mahjong tiles are used; or
 - (b) the playing therein of games in which tin kau tiles are used; (Added 21 of 2006 s. 4)

"manager" (管理人), in relation to a no smoking area or a public transport carrier, means—

- (a) any person who is responsible for the management or is in charge or control of the no smoking area or public transport carrier, and includes an assistant manager and any person holding an appointment analogous to that of a manager or assistant manager; or
- (b) in the case where there is no such person in relation to any premises, the owner of the premises; (Replaced 21 of 2006 s. 4)

"massage establishment" (按摩院) means a massage establishment—

- (a) that is within the meaning of section 2 of the Massage Establishments Ordinance (Cap 266); and
- (b) in respect of which a licence granted under that Ordinance is in force; (Added 21 of 2006 s. 4)

"maternity home" (留產院) means any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth—

- (a) whether or not it is a maternity home to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap 165) applies; or
- (b) whether or not it is a maternity home that is run as part of a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap 113), or managed or controlled by the Hospital Authority established under that Ordinance; (Added 21 of 2006 s. 4)

"newspaper" (報刊), "local newspaper" (本地報刊) and "printed document" (印刷文件) have the same meaning as in the Registration of Local Newspapers Ordinance (Cap 268); (Amended 15 of 1987 s. 19)

"nicotine yield" (尼古丁量) means the nicotine yield per cigarette rounded off to one decimal place and expressed in milligrams; (Added 93 of 1997 s. 2)

"no smoking area" (禁止吸煙區) means an area designated as a no smoking area under section 3; (Replaced 9 of 1992 s. 2. Amended 93 of 1997 s. 2; 21 of 2006 s. 4)

"pipe" (煙斗) means a receptacle or other device designed for use for smoking tobacco in a form other than as a cigarette or cigar; (Added 91 of 1994 s. 3)

"pipe tobacco" (煙斗煙草) means tobacco packaged as being suitable for smoking in a pipe; (Added 91 of 1994 s. 3)

"place of detention" (拘留地方) means—

- (a) a place of detention specified in Schedule 2 to the Immigration (Places of Detention) Order (Cap 115 sub. leg. B); or
- (b) a place of detention within the meaning of section 2(1) of the Juvenile Offenders Ordinance (Cap 226); (Added 21 of 2006 s. 4)

"place of refuge" (收容所) means a place of refuge within the meaning of section 2 of the Protection of Children and Juveniles Ordinance (Cap 213); (Added 21 of 2006 s. 4)

"proof of identity" (身分證明文件) means proof of identity for the purposes of Part IVA of the Immigration Ordinance (Cap 115);

"public lift" (公共升降機) means a lift to which the public have access and includes any lift giving access to separately occupied flats, offices or other units of accommodation and a hotel lift;

"public place" (公眾地方) means—

- (a) any place to which for the time being the public are entitled or permitted to have access, whether on payment or otherwise; or
- (b) a common part of any premises notwithstanding that the public are not entitled or permitted to have access to that common part or those premises; (Added 21 of 2006 s. 4)

"public pleasure ground" (公眾遊樂場地) means a public pleasure ground within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap 132); (Added 21 of 2006 s. 4)

"public swimming pool" (公眾泳池) means a public swimming pool within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap 132); (Added 21 of 2006 s. 4)

"public transport carrier" (公共交通工具) means any public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel mentioned in Schedule 1; (Added 9 of 1992 s. 2. Amended 21 of 2006 s. 4)

"publish" (刊登) in relation to an advertisement means making known an advertisement in any manner;

"reformatory school" (感化院) means a reformatory school within the meaning of section 2 of the Reformatory Schools Ordinance (Cap 225); (Added 21 of 2006 s. 4)

"regulations" (規例) means regulations under section 18;

"residential care home" (院舍) means—

- (a) a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap 459); or
- (b) a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap 613); (Added 12 of 2011 s. 29)

"restaurant premises" (食肆處所) means any premises on or from which there is carried on—

- (a) a factory canteen or restaurant within the meaning of section 31(2) of the Food Business Regulation (Cap 132 sub. leg. X); or
- (b) any other trade or business the purpose of which is for the sale or supply of meals or unbottled non-alcoholic drinks (including Chinese herb tea) for human consumption on the premises (whether or not it is carried on by a person who is the holder of a licence under the Hawker Regulation (Cap 132 sub. leg. AI)); (Replaced 21 of 2006 s. 4)

"retail container" (零售盛器)—

- (a) in relation to any cigarette, means a container suitable for the retail marketing of cigarette packets; or
- (b) in relation to any cigar, pipe tobacco or cigarette tobacco, means a container suitable for the retail marketing of cigar, pipe tobacco or cigarette tobacco; (Replaced 21 of 2006 s. 4)

"sale, sell" (出售、售賣、銷售、售) includes the disposal by barter or raffling but excludes the disposal of confiscated cigarettes without health warnings through auctions by the Government; (Added 93 of 1997 s. 2)

"school" (學校) means a school within the meaning of section 3 of the Education Ordinance (Cap 279); (Added 21 of 2006 s. 4)

"Secretary" (局長) means the Secretary for Food and Health; (Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007)

"smoke" (吸煙)、(吸用) means inhaling and expelling the smoke of tobacco or other substance;

"specified educational establishment" (指明教育機構) means any establishment specified in section 2 of the Education Ordinance (Cap 279); (Added 21 of 2006 s. 4)

"stadium" (體育場) means a stadium within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap 132); (Added 21 of 2006 s. 4)

"tar yield" (焦油量) means the tar yield per cigarette rounded off to the nearest milligram; (Added 93 of 1997 s. 2)

"tobacco advertisement" (煙草廣告) has the meaning assigned to it by section 14. (Added 91 of 1994 s. 3)

"tobacco product" (煙草產品) means any cigarette, cigarette tobacco, cigar or pipe tobacco; (Added 93 of 1997 s. 2)

"trade mark" (商標) has the same meaning as in section 3 of the Trade Marks Ordinance (Cap 559); (Added 93 of 1997 s. 2. Amended 35 of 2000 s. 98)

"treatment centre" (治療中心) means a treatment centre within the meaning of section 2 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap 566); (Added 21 of 2006 s. 4)

"workplace" (工作地方) means a place—

- (a) that is occupied for conducting a business or non-profit making undertaking; and
- (b) in which natural persons work in the course of any self-employment, employment or engagement (whether for income or not),

including any part of the place that is set aside for use by those persons during any interval for taking a meal or rest. (Added 21 of 2006 s. 4)

(Amended 9 of 1992 s. 2; 91 of 1994 s. 3; 21 of 2006 s. 4; 12 of 2011 s. 29)

Section:	3	Prohibition on smoking in certain designated areas	21 of 2006	01/01/2007
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PART II

NO SMOKING AREAS

- (1) The areas described in Part 1 of Schedule 2 are designated as no smoking areas. (Replaced 21 of 2006 s. 5)
- (1AA) Subsection (1) does not apply to the exempt areas described in Part 2 of Schedule 2. (Added 21 of 2006)

- s. 5)
- (1AB) The Director of Health may, by notice published in the Gazette, designate as a no smoking area the whole or a part of-
- (a) any area that consists of the termini of 2 or more modes of public transport and is used for effecting and facilitating interchange between them; or
 - (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap 230). (Added 21 of 2006 s. 5)
- (1A)-(1C) (Repealed 21 of 2006 s. 5)
- (2) No person shall smoke or carry a lighted cigarette, cigar or pipe in a no smoking area.
- (2A) Subsection (2) does not prevent a person from smoking or carrying a lighted cigarette, cigar or pipe if he is exempt from that subsection under Schedule 5. (Added 21 of 2006 s. 5)
- (3) The manager of a no smoking area or any person authorized in that behalf by any such manager may, in respect of any person who appears to be contravening subsection (2)-
- (a) after indicating that the person is smoking or carrying a lighted cigarette, cigar or pipe, as the case may be, in a no smoking area in contravention of subsection (2), require the person to extinguish the lighted cigarette, cigar or pipe;
 - (b) where the person fails to extinguish the lighted cigarette, cigar or pipe, require him-
 - (i) to give his name and address and to produce proof of identity; and
 - (ii) to leave the no smoking area;
 - (c) where the person fails, as required under paragraph (b)-
 - (i) to give his name and address and to produce proof of identity; or
 - (ii) to leave the no smoking area,
 remove him from the no smoking area by the use of reasonable force if necessary and detain him and call for the assistance of a police officer to assist in the enforcement of this section.
- (4) Where a person is, under subsection (3), required to leave a no smoking area, removed from a no smoking area or detained, he shall not be entitled to a refund of any admission fee or money paid by him for entry into the premises or building in which the no smoking area is situated.
- (5) For the avoidance of doubt, it is declared that subsections (1) and (1AB) apply to any premises that are owned or occupied by, or under the management and control of, the Government. (Added 21 of 2006 s. 5)
(Replaced 9 of 1992 s. 3)

Section:	4	Prohibition on smoking in public transport carriers	30/06/1997
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- (1) No person shall smoke or carry a lighted cigarette, cigar or pipe in a public transport carrier.
- (2) The driver, conductor, inspector, ticket collector or manager of any public transport carrier or any person authorized in that behalf by any such manager may, in respect of any person who appears to be contravening subsection (1)- (Amended 68 of 1995 s. 39)
- (a) after indicating that the person is smoking or carrying a lighted cigarette, cigar or pipe, as the case may be, in a public transport carrier in contravention of subsection (1), require the person to extinguish the lighted cigarette, cigar or pipe;
 - (b) where the person fails to extinguish the lighted cigarette, cigar or pipe, require him-
 - (i) to give his name and address and to produce proof of identity; and
 - (ii) to leave the public transport carrier;
 - (c) where the person fails, as required under paragraph (b)-
 - (i) to give his name and address and to produce proof of identity; or
 - (ii) to leave the public transport carrier,
 remove him from the public transport carrier by the use of reasonable force if necessary and detain him and call for the assistance of a police officer to assist in the enforcement of this section.
- (3) Where a person is, under subsection (2), required to leave a public transport carrier, removed from a public transport carrier or detained, he shall not be entitled to a refund of any money paid by him for carriage by the public transport carrier.
(Replaced 9 of 1992 s. 3)

Section:	5	(Repealed 21 of 2006 s. 6)	21 of 2006	01/01/2007
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Section:	6	(Repealed 9 of 1992 s. 4)		30/06/1997
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Section:	6A	(Repealed 21 of 2006 s. 7)	21 of 2006	01/01/2007
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Section:	7	Offences under Part II	21 of 2006	01/01/2007
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(1) Any person who contravenes section 3 or 4 commits an offence and is liable on summary conviction to a fine of \$5000.

(2) Any person who fails to give his name and address or to produce proof of identity when required to do so under section 3(3) or 4(2) or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.

(3)-(4) (Repealed 21 of 2006 s. 8)

(Amended 9 of 1992 s. 5; 93 of 1997 s. 5)

Section:	8	Sales of cigarettes and tobacco products	L.N. 149 of 1999	16/07/1999
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PART III

SALES OF TOBACCO PRODUCTS

(Amended 91 of 1994 s.5)

(1) No person shall sell, offer for sale or possess for the purposes of sale any cigarettes unless-

(a) they are in a packet of at least 20 sticks; and

(b) the packet thereof and, if the packet is within a retail container, the container also, bear in the prescribed form and manner-

(i) a health warning;

(ii) the tar and nicotine yields. (Replaced 93 of 1997 s. 6)

(2) Nothing in this section or in section 8A or 9 shall apply to anything done in relation to cigarettes, cigarette tobacco, cigars or pipe tobacco which are held- (Amended 9 of 1992 s. 6; 91 of 1994 s. 6)

(a) in bond; or

(b) by a manufacturer of tobacco products,

for export from Hong Kong.

Section:	8A	Prohibition on sale of cigarette with a tar yield exceeding 17 milligrams	L.N. 149 of 1999	16/07/1999
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(1) No person shall sell, offer for sale or possess for the purposes of sale any cigarette containing an amount of tar exceeding 17 milligrams.

(2) A certificate purporting to be under the hand of the Government Chemist and stating that a cigarette contains an amount of tar exceeding 17 milligrams shall be evidence of the facts stated in the certificate as at the date of such certificate and shall be received in evidence without further proof.

(Added 9 of 1992 s. 7. Amended 93 of 1997 s. 7)

Section:	8B	Prohibition on sale of tobacco products from a vending machine	L.N. 124 of 1998	01/04/1998
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No person shall sell or offer for sale any tobacco product from a vending machine.

(Added 93 of 1997 s. 8)

Section:	9	Sale of cigar, pipe tobacco or cigarette tobacco	21 of 2006	27/10/2006
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No person shall sell, offer for sale or possess for the purposes of sale any cigar, pipe tobacco or cigarette tobacco unless it is in a retail container that bears a health warning in the prescribed form and manner.

(Replaced 91 of 1994 s. 7. Amended 21 of 2006 s. 10)

Section:	10	Offences under Part III	21 of 2006	27/10/2006
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(1) Any person who contravenes section 8, 8A, 8B or 9 commits an offence and is liable on summary conviction to a fine at level 5. (Amended 93 of 1997 s. 9; 21 of 2006 s. 11)

(1A) In any proceedings for a contravention of section 8A it shall be a defence for the person charged to prove that he did not know and had no reason to believe that any cigarette to which the proceedings relate contained an amount of tar exceeding 17 milligrams. (Added 9 of 1992 s. 8)

(2) Any manufacturer of cigarettes or his agent and any wholesale distributor of cigarettes who sells, offers for sale or possesses for the purpose of sale any cigarettes to which section 8 applies which have on their packet or retail container a tar yield or nicotine yield which, having regard to any determination under section 16 and the regulations, is incorrect, commits an offence and is liable on summary conviction to a fine at level 5. (Amended 21 of 2006 s. 11)

(3) Any manufacturer of tobacco products or his agent, or any wholesale distributor of tobacco products, who sells, offers for sale or possesses for the purpose of sale any tobacco product to which section 8 or 9 applies commits an offence if any packaging of the product (including any packet, retail container, wrapping, and any label attached to or printed on the packaging or the product)—

- (a) bears any term, descriptor, trademark, figurative or any other sign that is likely to create an erroneous impression that the product is less harmful to health than other tobacco products the packaging of which does not bear such term, descriptor, trademark, figurative or sign; or
- (b) promotes the product by any means that is false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions. (Replaced 21 of 2006 s. 11)

(4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine at level 5. (Added 21 of 2006 s. 11)

(Amended 9 of 1992 s. 8; 93 of 1997 s. 9)

Section:	10A	Seizure and forfeiture	L.N. 149 of 1999	16/07/1999
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(1) A person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap 342) may without warrant seize, remove and detain for the purpose of proceedings under this Part-

- (a) any packet or retail container of cigarettes, cigarette tobacco, cigars or pipe tobacco- (Amended 91 of 1994 s. 8)
 - (i) which does not bear a health warning or, where required, the tar and nicotine yields, in the form and manner required by section 8 or 9; or
 - (ii) which that person reasonably suspects may contain any cigarette containing an amount of tar exceeding 17 milligrams; (Replaced 9 of 1992 s. 9. Amended 93 of 1997 s. 10)
- (aa) any packet of cigarettes which contains less than 20 sticks of cigarettes; (Added 93 of 1997 s. 10)
- (b) the contents of such packet or container;
- (c) any receptacle in which such packet or container is contained;
- (ca) any vending machine or tobacco product in connection with an offence under section 8B; (Added 93 of 1997 s. 10)
- (d) anything which appears to that person to be evidence of an offence under this Part.

(1A) A person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap 342) may without warrant seize, remove and detain for the purpose of proceedings under this Part-

- (a) any cigarette not contained in any packet or retail container whether or not referred to in subsection (1)(a) and which that person reasonably suspects may contain an amount of tar exceeding 17 milligrams; (Amended 93 of 1997 s. 10)
- (b) any receptacle in which such cigarette is contained;
- (c) anything which appears to that person to be evidence of an offence under this Part. (Added 9 of 1992 s. 9)

(2) Subject to subsection (4), any article seized under subsection (1) or (1A) may be retained in the custody of the Commissioner of Customs and Excise until either proceedings under this Part are completed or it is decided that no such proceedings shall be brought.

(3) For the purposes of section 16 of the Dutiable Commodities Ordinance (Cap 109) (which relates to obstruction of a member of the Customs and Excise Service) as read with section 46 of that Ordinance, any article seized under subsection (1) or (1A) shall be deemed to have been seized in pursuance of a power conferred by that Ordinance.

(4) A magistrate may, on the application of the Commissioner of Customs and Excise, order the forfeiture of any article mentioned in subsection (1)(a), (aa), (b), (c) or (ca) or (1A)(a) or (b), whether or not any person is convicted of any offence under this Part, on the grounds that an offence under this Part has been committed in relation to such article or that such article may not lawfully be sold or possessed for the purposes of sale in Hong Kong: (Amended 93 of 1997 s. 10)

Provided that the magistrate shall not order such forfeiture unless he is first satisfied that all persons with an interest in such article have, in so far as is reasonably practicable, had the opportunity of making representations thereon to the magistrate or that no such persons can, after reasonable inquiry, be found.

(5) Any article forfeited under subsection (4) shall be destroyed or disposed of in the same manner as any article forfeited under sections 48, 48A and 48C of the Dutiable Commodities Ordinance (Cap 109), and the provisions of sections 49 and 50 of that Ordinance shall apply in relation to articles forfeited under subsection (4) as they do to articles forfeited under sections 48, 48A and 48C of that Ordinance. (Amended 70 of 1993 s. 7)

(Added 52 of 1983 s. 2. Amended 9 of 1992 s. 9)

Section:	11	Tobacco advertisements in printed publications	21 of 2006	01/01/2007
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PART IV

TOBACCO ADVERTISING

(Amended 91 of 1994 s. 9)

(1) No person shall print, publish or cause to be published a tobacco advertisement in a printed publication to which this section applies. (Replaced 93 of 1997 s. 11)

(2) This section applies to-

(a) any local newspaper;

(b) any printed document printed, published or distributed in Hong Kong. (Replaced 93 of 1997 s. 11. Amended 21 of 2006 s. 13)

(3) Nothing in this section or section 12 shall apply in relation to a tobacco advertisement in a printed publication that is published for the tobacco trade or as the "in house" magazine of any company engaged in that trade. (Amended 21 of 2006 s. 13)

Section:	12	No display of tobacco advertisement	21 of 2006	01/11/2009
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(1) No person shall-

(a) display or cause to be displayed; or

(b) publish or distribute for the purpose of display or cause to be published or distributed for the purpose of display,

any tobacco advertisement in writing or other permanent or semi-permanent form.

(2)-(3) (Repealed 21 of 2006 s. 14)

(4) Subsection (1) does not apply to any tobacco advertisement which-

(a) is in or upon any premises-

(i) of any manufacturer of tobacco products or any wholesale dealer dealing in tobacco products; and

(ii) which are used for the manufacturing of tobacco products or for the purpose of dealing by wholesale in tobacco products; and

(b) is not visible from outside the premises.

(5) The tobacco advertisement mentioned in subsection (4) is not required to bear a health warning or the tar and nicotine yields.

(Replaced 93 of 1997 s. 12)

Section:	13	Prohibition on broadcast of tobacco advertisement by radio or visual images	L.N. 124 of 1998	01/04/1998
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No person shall broadcast a tobacco advertisement- (Amended 91 of 1994 s. 12)

- (a) by the transmission of sound by means of radio waves; or
- (b) by the transmission of visual images or sound by wireless or otherwise than by wireless, intended for general reception by members of the public. (Amended 93 of 1997 s. 13)

(Replaced 9 of 1992 s. 11)

Section:	13A	Prohibition on exhibition of tobacco advertisement by film		30/06/1997
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(1) No person shall exhibit a tobacco advertisement by film. (Amended 91 of 1994 s. 13)

- (2) In this section "exhibit" (上映) and "film" (電影) mean, respectively, exhibit and film within the meaning of section 2 of the Film Censorship Ordinance (Cap 392).

(Added 9 of 1992 s. 11)

Section:	13B	Prohibition on placing of tobacco advertisement on the Internet	36 of 2000	16/06/2000
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(1) No person shall place or cause to be placed a tobacco advertisement on the Internet.

(2) For the avoidance of doubt, a holder of a Public Non-Exclusive Telecommunications Service Licence granted under the Telecommunications Ordinance (Cap 106) shall not be responsible for- (Amended 36 of 2000 s. 28)

- (a) any content placed on the Internet by a user and made available for the use of another user unless the holder has knowledge of such content and can reasonably be expected to block the use of such content or require amendment of such content; or
- (b) any such content to which the holder only provides access, including the automatic and temporary storage of such content by the holder due to the request of a user.

(3) Subsection (1) shall not apply to any tobacco advertisement which is contained in any private correspondence on the Internet and is not for commercial purposes.

(Added 93 of 1997 s. 14)

Section:	14	Meaning of tobacco advertisement	21 of 2006	01/01/2007
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(1) For the purposes of this Part an advertisement is a tobacco advertisement if it-

- (a) contains any express or implied inducement, suggestion or request to purchase or smoke cigarettes, cigarette tobacco, cigars or pipe tobacco; (Amended 93 of 1997 s. 15)
- (b) relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of cigarettes, cigarette tobacco, cigars or pipe tobacco; or (Amended 93 of 1997 s. 15)
- (c) illustrates or mentions smoking or cigarettes, cigarette tobacco, cigars or pipe tobacco or their packages or qualities. (Added 93 of 1997 s. 15)

(1A) Notwithstanding subsection (1)(c), an advertisement is not regarded as a tobacco advertisement if its purpose is to discourage smoking. (Added 93 of 1997 s. 15)

(2) Subject to subsections (3) to (5), where-

- (a) an advertisement; or
- (b) any object, other than a tobacco product, which is displayed to the public, whether for sale or otherwise, in the course of conducting any business or providing any service,

includes the name or trade name of any person associated with the marketing of any tobacco product, or any trade mark or brand name of a tobacco product, or any pictorial device or part thereof commonly associated therewith, then the advertisement or object shall be deemed to be a tobacco advertisement. (Replaced 93 of 1997 s. 15)

(3) Subsection (2) shall not apply to any advertisement or object if the name, trade name, trade mark, brand name or pictorial device or part thereof mentioned in that subsection- (Amended 21 of 2006 s. 15)

- (a) is included exclusively for-

- (i) a non-tobacco product or service; or
- (ii) job recruitment purposes; and
- (b) does not form a prominent part of the advertisement or object. (Replaced 93 of 1997 s. 15. Amended 21 of 2006 s. 15)

(4) If the conditions set out in subsection (4A) are satisfied, subsection (2) shall not apply to any advertisement or object which includes- (Amended 21 of 2006 s. 15)

- (a) the name of any company or body corporate associated with the manufacture or marketing of any tobacco product; or
- (b) any name identified with the trade name or brand name of any tobacco product, in association with any product not being tobacco. (Added 93 of 1997 s. 15. Amended 21 of 2006 s. 15)

(4A) The conditions mentioned in subsection (4) are-

- (a) that the name mentioned in that subsection is included as the sponsor of an event or for congratulating another person or thing on an achievement of, or event relating to, such person or thing;
- (b) that the name does not form a prominent part of the advertisement or object; and
- (c) that the advertisement or object does not mention the words "cigarette", "cigarettes", "smoking", "tobacco", "cigar", "cigars", "pipe" or "pipes" or "香煙", "吸煙", "煙草", "雪茄" or "煙斗". (Added 21 of 2006 s. 15)

(5) Notwithstanding subsection (2), any accidental or incidental appearance of any tobacco product or the trade mark, trade name, brand name or logo of any tobacco product where no valuable consideration has been or is intended to be given for such appearance is not a tobacco advertisement. (Added 93 of 1997 s. 15)

(6) The display of the following at any premises where tobacco products are offered for sale is not a tobacco advertisement-

- (a) one price marker for one type of tobacco product offered for sale in the premises that-
 - (i) contains only the name and price of that type of tobacco product; and
 - (ii) is of a size-
 - (A) not greater than the size of the price marker of any of the non-tobacco products offered for sale in the premises; and
 - (B) not greater than 50 square centimetres;
- (b) one price board if-
 - (i) it lists only the names and prices of the tobacco products offered for sale in the premises;
 - (ii) it is of a size not greater than 1500 square centimetres;
 - (iii) each item on the board containing the name and price of one type of tobacco product is of a size not greater than 50 square centimetres; and
 - (iv) it bears a health warning in the prescribed form and manner; or
- (c) in the case of a shop in which nothing except cigars and cigar accessories are offered for sale, 3 sets of catalogues, each listing only the names and prices of the cigars offered for sale in the shop. (Replaced 21 of 2006 s. 15)

(Amended 91 of 1994 s. 14)

Section:	14A	Removal and disposal of tobacco advertisement	21 of 2006	27/10/2006
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(1) An inspector may, without payment for it, remove or cause to be removed any tobacco advertisement or advertising structure in respect of which he reasonably suspects that an offence under this Ordinance has been or is being committed. (Amended 21 of 2006 s. 16)

(2) A magistrate may, on an application of the Secretary or an inspector, order the disposal of any tobacco advertisement or advertising 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 such advertisement or structure. (Amended 21 of 2006 s. 16)

(3) The magistrate shall not order such disposal unless he is first satisfied that all persons with an interest in such advertisement or structure have, in so far as is reasonably practicable, had the opportunity of making representations thereon to the magistrate or that no such persons can, after reasonable inquiry, be found.

(4) The Government may recover the costs of the removal or disposal from the proprietor of the brand of tobacco product which is mentioned in the tobacco advertisement or advertising structure removed under subsection (1) or from the owner of such advertisement or structure.

(Added 93 of 1997 s. 16)

Section:	15	Offences under Part IV	21 of 2006	27/10/2006
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(1) Any person who contravenes section 11(1), 12(1), 13, 13A or 13B commits an offence and is liable on summary conviction to a fine at level 5 and, in the case of a continuing offence, to a further penalty of \$1500 for each day during which the offence continues. (Amended 9 of 1992 s. 13; 93 of 1997 s. 17; 21 of 2006 s. 17)

(2) In any proceedings for a contravention of section 11(1) it shall be a defence for the person charged to prove that the advertisement to which the proceedings relate was printed or published in such circumstances that he did not know and had no reason to believe he was taking part in the printing or publication thereof.

Section:	15A	Prohibition on selling or giving of tobacco products, etc.	21 of 2006	01/01/2007
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PART IVA

PROHIBITION ON SELLING OR GIVING OF TOBACCO PRODUCTS

(Amended 93 of 1997 s. 18)

(1) No person shall sell any cigarette, cigarette tobacco, cigar or pipe tobacco to any person under the age of 18 years.

(2) No person shall, for the purposes of promotion or advertisement, give any cigarette, cigarette tobacco, cigar or pipe tobacco to any person. (Amended 93 of 1997 s. 19)

(3) No person shall-

- (a) sell, offer for sale or give a tobacco product to any person in exchange for a token;
- (b) give to any person a tobacco product as a prize in any event or competition;
- (c) give valuable consideration to any individual in order to induce him to buy a particular tobacco product or otherwise to promote to him that tobacco product;
- (d) sell, offer for sale or possess for the purposes of sale a tobacco product which includes or is accompanied by a gift;
- (e) sell, offer for sale or possess for the purposes of sale a tobacco product which includes or is accompanied by a token, stamp or raffle ticket, which may be exchanged for a gift, prize or discount on any product;
- (f) sell, offer for sale or possess for the purposes of sale a non-tobacco product which includes or is accompanied by a tobacco product as a gift; (Amended 21 of 2006 s. 18)
- (fa) sell, offer for sale or possess for the purposes of sale a tobacco product and a non-tobacco product as a single item; or (Added 21 of 2006 s. 18)
- (g) give to any person any object which contains the name or trade name of any person associated with the marketing of cigarettes, cigarette tobacco, cigars or pipe tobacco or contains any trade mark or brand name of a tobacco product or any pictorial device or part thereof commonly associated therewith, and which is intended to be shown in public. (Added 93 of 1997 s. 19)

(Added 91 of 1994 s. 15)

Section:	15B	Display of sign when offering tobacco products for sale, etc.	L.N. 124 of 1998	01/07/1998
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(1) Any person offering for sale, or promoting the sale, purchase, smoking or use of, cigarettes, cigarette tobacco, cigars or pipe tobacco shall place and keep in place in a prominent position at his premises or at the place of promotion a sign in English and Chinese to indicate that no cigarette, cigarette tobacco, cigar or pipe tobacco may be sold to any person under the age of 18 years or given to any person. (Amended 93 of 1997 s. 20)

(2) A sign required by subsection (1) shall be of the prescribed description and shall be maintained in legible condition and good order by the person offering for sale, or promoting the sale, purchase, smoking or use of, cigarettes, cigarette tobacco, cigars or pipe tobacco.

(Added 91 of 1994 s. 15)

Section:	15C	Offences under Part IVA	L.N. 124 of 1998	01/07/1998
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(1) Any person who contravenes section 15A or 15B commits an offence and is liable on summary conviction to a fine at level 4.

(2) It shall be a defence to a charge under section 15A of selling any cigarette, cigarette tobacco, cigar or pipe tobacco to a person under the age of 18 years to prove that at the time the offence is alleged to have been committed, the person charged inspected an identity card or passport purporting to be the identity card or passport of the person under the age of 18 years and believed on reasonable grounds that such person was not under the age of 18 years. (Amended 93 of 1997 s. 21)

(Added 91 of 1994 s. 15)

Section:	15D	Interpretation		30/06/1997
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For the purposes of this Part "promotion or advertisement" (推廣或宣傳) means a promotion or advertisement intended as an inducement to purchase, smoke or encourage the use of cigarettes, cigarette tobacco, cigars or pipe tobacco, whether or not with reference to a particular brand.

(Added 91 of 1994 s. 15)

Section:	15E	Interpretation of Part IVB	21 of 2006	27/10/2006
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PART IVB

PROVISIONS RELATING TO INSPECTORS

In this Part—

"relevant offence" (有關罪行) means any offence under this Ordinance other than an offence under Part III;

"relevant provision" (有關條文) means any provision of this Ordinance other than a provision of Part III.

(Part IVB added 21 of 2006 s. 19)

Section:	15F	Appointment of inspectors	21 of 2006	27/10/2006
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The Secretary may appoint in writing any public officer to be an inspector to exercise any of the powers and perform any of the duties conferred or imposed on an inspector by this Ordinance.

(Part IVB added 21 of 2006 s. 19)

Section:	15G	General powers and duties of inspectors	21 of 2006	27/10/2006
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(1) Without limiting any other provisions of this Ordinance, an inspector may, subject to subsections (2) and (3) and on production of his authority as an inspector if requested, do all or any of the following—

- (a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been or is being committed;
- (b) at any reasonable time enter and inspect a no smoking area in a public place for the purpose of ascertaining whether the relevant provisions are complied with;
- (c) seize any thing that appears to the inspector to be evidence of any relevant offence;
- (d) require any person to give his name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed a relevant offence;
- (e) take photographs or make sound or video recording for the purpose of obtaining evidence in connection with any relevant offence;
- (f) require any person to produce for inspection documents or records under the control of the person for the purpose of enabling the inspector to ascertain whether the relevant provisions are complied with;
- (g) make copies of all or any part of any such documents or records;
- (h) require any person to provide the inspector with such assistance or information as is reasonably necessary to enable the inspector to exercise any power or perform any duty conferred or imposed by

this Ordinance.

(2) An inspector shall not enter under subsection (1)(a)—

(a) any domestic premises; or

(b) any correctional facility without the approval of the Commissioner of Correctional Services.

(3) An inspector shall not enter under subsection (1)(b) any public place that is a common part of any premises to which the public are not entitled or permitted to have access.

(4) A person who wilfully obstructs an inspector who is in the exercise of a power or the performance of a duty conferred or imposed by this Ordinance commits an offence and is liable on summary conviction to a fine at level 3.

(5) A person who fails to give his name and address or to produce proof of identity when required to do so under subsection (1)(d), or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.

(Part IVB added 21 of 2006 s. 19)

Section:	15H	Disposal of property seized by inspectors	21 of 2006	27/10/2006
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If an inspector seizes any property while exercising a power or performing a duty conferred or imposed by this Ordinance, section 102 of the Criminal Procedure Ordinance (Cap 221) shall apply as if the inspector were the police within the meaning of that section and such property were property that had come into possession of the police in connection with a criminal offence.

(Part IVB added 21 of 2006 s. 19)

Section:	15I	Inspectors not personally liable for certain acts and omissions	21 of 2006	27/10/2006
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(1) An inspector is not personally liable for any act done or omitted to be done by the inspector while exercising a power or performing a duty conferred or imposed by this Ordinance if the inspector did the act or omitted to do the act in the honest belief that the act or omission was required or authorized by or under this Ordinance.

(2) Subsection (1) does not affect any liability that the Government may have because an inspector has done an act or omitted to do an act to which that subsection applies.

(Part IVB added 21 of 2006 s. 19)

Section:	16	Evidence of tar and nicotine yields	L.N. 149 of 1999	16/07/1999
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PART V

SUPPLEMENTARY

(1) The Government Chemist may from time to time analyse any cigarette for the purpose of determining its tar and nicotine yields for the purposes of this Ordinance and may publish the result of any such analysis.

(2) The determination of the Government Chemist under subsection (1) as published by him shall be evidence of the tar and nicotine yields of the brand of cigarettes from which the cigarette analysed was taken subject to such conditions or limitations as may be prescribed; and any publication purporting to be a determination so published shall be deemed to be such a determination unless and until the contrary is proved.

(3) The power of a member of the Customs and Excise Service to take samples of any goods to which the Dutiable Commodities Ordinance (Cap 109) applies conferred by section 11(1)(d) of that Ordinance shall extend to the taking of samples of cigarettes for analysis by the Government Chemist for the purposes of this section.

(Amended 93 of 1997 s. 22)

Section:	16A	Amendment of Schedules	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

The Secretary may by order published in the Gazette amend the Schedules.

(Added 9 of 1992 s. 14. Amended 80 of 1997 s. 22; L.N. 106 of 2002; L.N. 130 of 2007)

Section:	17	(Had its effect)		30/06/1997
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(Had its effect)

Section:	18	Regulations and Orders	21 of 2006	01/01/2007
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(1) The Chief Executive in Council may make regulations for all or any of the following matters- (Amended 60 of 2000 s. 3)

- (a) prescribing anything required or permitted to be prescribed under this Ordinance;
- (b) prescribing the manner in which the tar and nicotine yields of a cigarette are to be determined; (Replaced 93 of 1997 s. 23)
- (c) requiring notification of anything done by any person which may be relevant to the tar and nicotine yields of cigarettes and imposing penalties not exceeding a fine at level 3 for a failure to comply with such requirement; (Amended 9 of 1992 s. 15)
- (d) excepting any tobacco advertisement from the provisions of Part IV either absolutely or subject to such exceptions as may be prescribed; and
- (e) for the better carrying into effect of this Ordinance.

(2) Subject to the regulations, the Secretary may by order in the Gazette prescribe all or any of the following matters—

- (a) the form (including specifications) of—
 - (i) (Repealed 21 of 2006 s. 20)
 - (ii) any health warning; and
 - (iii) any indication of tar and nicotine yields;
- (b) the manner in which any of the matters referred to in paragraph (a) is to be displayed. (Replaced 21 of 2006 s. 20)

(Amended 93 of 1997 s. 23)

Section:	19	Transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006	21 of 2006	27/10/2006
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Schedule 6 provides for the transitional arrangements relating to the Smoking (Public Health)(Amendment) Ordinance 2006 (21 of 2006).

(Added 21 of 2006 s. 41)

Schedule:	1	PUBLIC TRANSPORT CARRIERS WHERE SMOKING IS PROHIBITED	L.N. 200 of 2007	02/12/2007
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[section 2]

Item	Type of carrier
1.	A public bus operated under a franchise granted under the Public Bus Services Ordinance (Cap 230).
2.	A public bus operated under a passenger service licence for the purposes of- <ul style="list-style-type: none"> (a) a tour service; (b) an international passenger service; (c) a hotel service; (d) a student service; (e) an employees' service; (f) a residents' service; (g) a multiple transport service; or (h) any other service approved by the Commissioner for Transport, under the Road Traffic Ordinance (Cap 374) other than when hired to any person under regulation 38 of the

Road Traffic (Public Service Vehicles) Regulations (Cap 374 sub. leg. D).

3. A public light bus within the meaning of the Road Traffic Ordinance (Cap 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap 374 sub. leg. D).
4. A registered taxi within the meaning of the Road Traffic Ordinance (Cap 374) other than when hired to any person under regulation 38 of the Road Traffic (Public Service Vehicles) Regulations (Cap 374 sub. leg. D).
5. A train operated on the Mass Transit Railway under the Mass Transit Railway Ordinance (Cap 556). (Amended 13 of 2000 s. 65)
6. A train operated on the Kowloon-Canton Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap 372) at any time outside the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap 556). (Amended 11 of 2007 s. 36)
- 6A. A train operated on the KCRC Railway within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap 556) during the Concession Period referred to in item 6. (Added 11 of 2007 s. 36)
7. A light rail vehicle operated on the North-west Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap 372) at any time outside the Concession Period referred to in item 6. (Amended 11 of 2007 s. 36)
- 7A. A light rail vehicle operated on the North-west Railway within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap 556) during the Concession Period referred to in item 6. (Added 11 of 2007 s. 36)
8. A car used upon the tramway under the Tramway Ordinance (Cap 107) other than on a hire tramway service.
9. A tramcar used upon the tramway under the Peak Tramway Ordinance (Cap 265).
10. Those parts of a ferry vessel operated under a franchise or a licence granted under the Ferry Services Ordinance (Cap 104) opened, kept or used for or in connection with the carriage of passengers or to which the passengers have or are permitted to have access.

(Added 9 of 1992 s. 16)

Schedule:	2	DESIGNATED NO SMOKING AREAS AND EXEMPT AREAS	L.N. 16 of 2010	15/04/2010
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[section 3(1) & (1AA)]

PART 1

DESIGNATED NO SMOKING AREAS

Item	Type of area
1.	Any cinema, theatre or concert hall.
2.	Any public lift.
3.	Any escalator.
4.	Any amusement game centre.
5.	Any child care centre.
6.	Any school.
7.	Any specified educational establishment.
8.	Any approved institution.
9.	Any place of detention.

10. Any place of refuge.
11. Any reformatory school.
12. Any hospital.
13. Any maternity home.
14. Any public pleasure ground other than a bathing beach.
15. The following areas within any bathing beach-
 - (a) any part of the waters set aside for the sole use of swimmers under section 10 of the Bathing Beaches Regulation (Cap 132 sub. leg. E) (which includes any beach raft and any other thing on the surface of or above those waters);
 - (b) the shore covered with sand or stones, together with any structure, showering facilities or natural feature on such shore; and
 - (c) any area specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap 132) to be used as a barbecue area, camp site or children's play area.
16. The following areas within any public swimming pool-
 - (a) any swimming pool;
 - (b) any sidewalk immediately adjacent to the swimming pool;
 - (c) any diving board or other apparatus or facility adjoining the swimming pool; and
 - (d) any spectator stand.
17. The following areas within any stadium-
 - (a) any pitch;
 - (b) any running track;
 - (c) any sidewalk immediately adjacent to the pitch or running track; and
 - (d) any spectator stand.
18. The Hong Kong Wetland Park designated under section 24(1) of the Country Parks Ordinance (Cap 208).
19. An indoor area in-
 - (a) any shop, department store or shopping mall;
 - (b) any market (whether publicly or privately operated or managed);
 - (c) any supermarket;
 - (d) any bank;
 - (e) any restaurant premises;
 - (f) any bar;
 - (g) any karaoke establishment;
 - (h) any mahjong-tin kau premises;
 - (i) any bathhouse;
 - (j) any massage establishment;
 - (k) any residential care home;
 - (l) any treatment centre; or
 - (m) any communal quarters (as defined in Part 3).
20. An indoor area in a workplace or public place to the extent that it is not an area described in any other item in this Part.

PART 2

EXEMPT AREAS

- | Item | Type of area |
|------|--|
| 1. | An area described in item 20 of Part 1 that is situated in domestic premises. |
| 2. | Type 1 private quarters (as defined in Part 3). |
| 3. | Type 2 private quarters (as defined in Part 3) that are not situated within any of the following- <ol style="list-style-type: none"> (a) a child care centre; (b) a school; (c) a specified educational establishment; (d) an approved institution; (e) a place of detention; |

- (f) a place of refuge;
 - (g) a reformatory school;
 - (h) a hospital;
 - (i) a maternity home.
4. A bedspace apartment in respect of which a licence or certificate of exemption issued under the Bedspace Apartments Ordinance (Cap 447) is in force.
 5. A room or suite of rooms in a hotel or guesthouse if-
 - (a) a licence or certificate of exemption issued under the Hotel and Guesthouse Accommodation Ordinance (Cap 349) is in force in respect of the hotel or guesthouse; and
 - (b) the room or suite of rooms is being hired for use as sleeping accommodation.
 6. An area designated by the Airport Authority as a smoking area as referred to in section 16 of the Airport Authority Bylaw (Cap 483 sub. leg. A).
 7. An area in a correctional facility that is set aside for smoking by prisoners who are allowed to do so in accordance with orders under rule 25 of the Prison Rules (Cap 234 sub. leg. A).
 8. An area that is-
 - (a) situated within a public pleasure ground other than a bathing beach; and
 - (b) specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap 132) to be used as a smoking area.
 9. A room designated for cigar tasting in a shop if all the following requirements are complied with-
 - (a) the shop is engaged in the retail sale of cigars;
 - (b) nothing except cigars and cigar accessories are offered for sale in the shop;
 - (c) the room is not used for smoking except for the purpose of tasting the cigars, or samples of the cigars, that are sold or offered for sale in the shop;
 - (d) the room is independently ventilated and completely partitioned off from the remainder of the shop; and
 - (e) no natural person is required to enter the room while it is being occupied for cigar tasting (whether or not he could have been required to do so by contract or otherwise).
 10. A room designated for tobacco tasting in the manufacturing or business premises of a business engaged in the tobacco trade if all the following requirements are complied with-
 - (a) the business is not engaged in the retail sale of tobacco products;
 - (b) the tobacco tasting is carried out for the purpose of conducting research and development or quality control of tobacco products in the normal course of the business;
 - (c) the room is only used for carrying out the tobacco tasting;
 - (d) the room is independently ventilated and completely partitioned off from the remainder of the premises; and
 - (e) no natural person, other than one who carries out the tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting (whether or not he could have been required to do so by contract or otherwise).
 11. An area set aside by the Director of Immigration under rule 11A of Schedule 1 to the Immigration (Treatment of Detainees) Order (Cap. 115 sub. leg. E) in a place specified in Schedule 2 to that Order for smoking by persons detained there. (L.N. 16 of 2010)

PART 3

INTERPRETATION

In this Schedule-

"communal quarters" (共用宿舍) means any premises that are the living accommodation provided by an employer to 2 or more employees, or to those employees and their families, whether or not any monetary consideration is received by the employer for providing the accommodation, but does not include-

- (a) any room occupied exclusively by one employee, or by that employee and his family, within any such accommodation; and
- (b) any such accommodation that is, or forms part of, the private dwelling of the employer or any other person;

"Type 1 private quarters" (第一類私人宿舍) means any premises that comply with the following requirements-

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by the employer for providing the accommodation;
- (b) the accommodation is occupied exclusively by that employee, or by him and his family; and
- (c) the block of building in which the accommodation is situated consists only of such accommodation and the common parts (if any) shared by such accommodation;

"Type 2 private quarters" (第二類私人宿舍) means any premises that comply with the following requirements-

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by the employer for providing the accommodation;
- (b) the accommodation is occupied exclusively by that employee, or by him and his family;
- (c) the accommodation is permanently and completely partitioned off from the remainder of any area described in Part 1 within which the accommodation is situated; and
- (d) none of any window, door or other closeable opening of the accommodation opens to an indoor part of that area (except a common part).

(Schedule 2 replaced 21 of 2006 s. 21)

Schedule:	3	(Repealed 21 of 2006 s. 22)	21 of 2006	01/01/2007
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Schedule:	4	(Repealed 21 of 2006 s. 23)	21 of 2006	01/01/2007
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Schedule:	5	EXEMPTION FROM SECTION 3(2) OF THIS ORDINANCE	21 of 2006	01/01/2007
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[section 3(2A)]

Exemption for live performance or recording for film or television programme

1. Interpretation of Schedule 5

(1) In this Schedule-

"film" (電影) means a film within the meaning of section 2(1) of the Film Censorship Ordinance (Cap 392);

"live performance" (現場表演) means a performance given or done before a live audience, whether on payment or otherwise, and includes the final rehearsal of the performance;

"performance" (表演) means any play, show, entertainment or any other kind of performance;

"smoking act" (吸煙動作) means smoking or carrying a lighted cigarette, cigar or pipe;

"television programme" (電視節目) means a television programme within the meaning of section 2(1) of the Broadcasting Ordinance (Cap 562).

(2) For the purposes of this Schedule, a venue is a designated performance venue if it is-

- (a) situated in-
 - (i) a school other than one that provides any nursery, kindergarten or primary education within the meaning of section 3(1) of the Education Ordinance (Cap 279); or
 - (ii) a specified educational establishment; and
- (b) designated by the manager of that school or establishment as a venue for any live performance.

2. Exemption for live performance

For the purposes of section 3(2A) of this Ordinance, a person who does a smoking act in a no smoking area is exempt from section 3(2) of this Ordinance if he proves that-

- (a) he is performing in a live performance, and his smoking act forms part of the performance;

- (b) the no smoking area in which the live performance takes place is not a school or specified educational establishment except a designated performance venue;
- (c) the manager of the no smoking area has given his prior permission for the live performance with the smoking act to take place in the no smoking area, and in the case of a designated performance venue in a secondary school within the meaning of section 3(1) of the Education Ordinance (Cap 279), that prior permission has been given in writing;
- (d) the live performance takes place only within the time and at the location permitted by the manager; and
- (e) the smoking act complies with all the requirements specified in relation to such an act under section 4.

3. Exemption for recording for film or television programme

For the purposes of section 3(2A) of this Ordinance, a person who does a smoking act in a no smoking area is exempt from section 3(2) of this Ordinance if he proves that-

- (a) he is performing in a performance, and his smoking act forms part of the performance;
- (b) the performance is being recorded for the production of a film or television programme (whether live or otherwise);
- (c) the film or television programme is not, and does not form part of, a tobacco advertisement;
- (d) the manager of the no smoking area in which the performance takes place has given his prior permission for the performance with the smoking act to take place in the no smoking area, and in the case of a school that provides any nursery, kindergarten, primary or secondary education within the meaning of section 3(1) of the Education Ordinance (Cap 279), that prior permission has been given in writing;
- (e) the performance takes place only within the time and at the location permitted by the manager; and
- (f) the smoking act complies with all the requirements specified in relation to such an act under section 4.

4. Specified requirements for smoking act

For the purposes of sections 2(e) and 3(f), the following are the requirements specified in relation to a smoking act-

- (a) the act does not expressly or impliedly induce, suggest or request any person to purchase or smoke any tobacco product;
- (b) the act does not illustrate smoking in a manner that is calculated, expressly or impliedly, to promote or encourage the use of any tobacco product;
- (c) the act does not illustrate the package of any tobacco product; and
- (d) the act does not illustrate any quality of any tobacco product except for the purpose of publicizing the harm of smoking.

(Schedule 5 added 21 of 2006 s. 24)

Schedule:	6	TRANSITIONAL PROVISIONS RELATING TO SMOKING (PUBLIC HEALTH) (AMENDMENT) ORDINANCE 2006	21 of 2006	01/01/2007
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[section 19]

PART 1

**REQUIREMENTS RELATING TO TOBACCO
PRODUCT PACKAGING**

1. Interpretation of Part 1

In this Part, "appointed day"* (指定日期) means the day on which the Smoking (Public Health)(Amendment) Ordinance 2006 (21 of 2006) is published in the Gazette.

2. Sale of tobacco products with pre-amendment health warnings, etc.

(1) During the 12 months after the appointed day, compliance with the relevant provisions of this Ordinance as in force immediately before the appointed day shall, for the purposes of sections 8 and 9 of this Ordinance, be deemed to be compliance with the relevant provisions of this Ordinance.

(2) In this section, "relevant provisions" (有關規定) means the provisions relating to health warnings and indication of tar and nicotine yields.

3. Offence relating to tobacco product packaging

No prosecution shall be brought under section 10(3) of this Ordinance in respect of an act done during the 12 months after the appointed day if that act would not have constituted an offence under that section as in force immediately before the appointed day.

PART 2

DEFERMENT OF SMOKING BAN IN LISTED ESTABLISHMENTS

1. Interpretation and application of Part 2

(1) In this Part—

"Appeal Board" (上訴委員會) means the Appeal Board established by section 12;

"certificate of compliance" (合格證明書) means a certificate of compliance within the meaning of section 2 of the Clubs (Safety of Premises) Ordinance (Cap 376);

"club-house" (會址) means a club-house within the meaning of section 2 of the Clubs (Safety of Premises) Ordinance (Cap 376);

"designated mahjong room" (指定麻將房) has the meaning assigned to it by section 5(2);

"Director" (署長) means the Director of Health;

"displayed name" (展示名稱), in relation to an establishment, means any name, style or description of the establishment that appears—

(a) outside the establishment; or

(b) on a signboard or any advertising structure relating to the establishment;

"exclusive entrance" (專用入口), in relation to an establishment, means an entrance that leads exclusively to the establishment;

"licensee" (持牌人) means a licensee within the meaning of regulation 2(1) of the Dutiable Commodities (Liquor) Regulations (Cap 109 sub. leg. B);

"liquor licence" (酒牌) means a liquor licence within the meaning of section 2(1) of the Dutiable Commodities Ordinance (Cap 109);

"list of qualified establishments" (合資格場所名單) means the list maintained under section 7(1);

"listed establishment" (列明場所) means an establishment with its name and address included in the list of qualified establishments;

"person in charge" (負責人)—

(a) in relation to a qualified bar that complies with section 4(1)(c)(i), means the licensee of the liquor licence that is in force in respect of the bar;

(b) in relation to a qualified bar that complies with section 4(2)(b), means the person who has made an application described in that section;

(c) in relation to a qualified club, means the person in whose name the certificate of compliance for the club-house is issued;

(d) in relation to a qualified nightclub, means the licensee of the liquor licence that is in force in respect of the nightclub;

(e) in relation to a bathhouse, means the person to whom a licence in respect of the bathhouse is granted

- under the Commercial Bathhouses Regulation (Cap 132 sub. leg. I);
- (f) in relation to a massage establishment, means the person to whom a licence to operate the establishment is issued under the Massage Establishments Ordinance (Cap 266); and
- (g) in relation to mahjong-tin kau premises, means the person to whom a licence is issued in respect of the premises under section 22(1)(b) of the Gambling Ordinance (Cap 148);

"prescribed sign" (訂明標誌) has the meaning assigned to it by section 8(2);

"qualified bar" (合資格酒吧) has the meaning assigned to it by section 4;

"qualified club" (合資格會所) has the meaning assigned to it by section 5(1);

"qualified establishment" (合資格場所) has the meaning assigned to it by section 3;

"qualified nightclub" (合資格夜總會) has the meaning assigned to it by section 6.

(2) This Part does not apply to any premises that are under the management and control of the Government.

2. Smoking ban deferred in listed establishments

Despite section 3(1) of this Ordinance, a designation of no smoking area under that section does not have effect before 1 July 2009 in relation to an indoor area if and only for so long as—

- (a) the area—
 - (i) is a designated mahjong room in a listed establishment that is a qualified club; or
 - (ii) is in any other listed establishment; and
- (b) a prescribed sign is displayed in relation to the establishment in accordance with section 8(1).

3. Qualified establishment

(1) For the purposes of this Part, an establishment is a qualified establishment if and only for so long as—

- (a) the establishment is—
 - (i) a qualified bar;
 - (ii) a qualified club;
 - (iii) a qualified nightclub;
 - (iv) a bathhouse;
 - (v) a massage establishment; or
 - (vi) mahjong-tin kau premises; and
- (b) the establishment complies with all the entry restrictions.

(2) For the purposes of subsection (1)(b), an establishment complies with all the entry restrictions if—

- (a) no person under the age of 18 years is permitted to enter the establishment;
- (b) no person can enter the establishment except through an exclusive entrance;
- (c) a sign in Chinese and English is placed and kept in place in a prominent position at each exclusive entrance of the establishment indicating that no person under the age of 18 years is permitted to enter the establishment; and
- (d) such signs are maintained in legible condition and good order.

4. Qualified bar

(1) For the purposes of this Part, an establishment is a qualified bar if all the following requirements are complied with—

- (a) the establishment is a bar as defined in section 2 of this Ordinance;
- (b) the establishment is permanently and completely partitioned off from any other establishment;
- (c) either—
 - (i) a liquor licence specifying the bar and no other premises as the licensed premises is in force in respect of the establishment; or
 - (ii) all the requirements specified in relation to the establishment in subsection (2) are complied with;
- (d) no displayed name of the establishment contains "酒家", "酒樓", "餐廳", "卡拉OK", "網吧", "restaurant", "cafe", "karaoke", "internet" or similar expressions; and
- (e) the establishment is not engaged primarily in the sale or supply of meals.

(2) For the purposes of subsection (1)(c)(ii), the following are the requirements specified in relation to the establishment—

- (a) a liquor licence specifying the bar as well as other premises as the licensed premises is in force in respect of the establishment;
- (b) an application has been made under Part III of the Dutiable Commodities (Liquor) Regulations (Cap 109 sub. leg. B) seeking a liquor licence that specifies the bar and no other premises as the licensed premises; and
- (c) either—
 - (i) the application has not been withdrawn or refused yet; or
 - (ii) if the application has been refused, the decision to refuse the application is under appeal and has not been confirmed yet.

5. Qualified club and designated mahjong room

(1) For the purposes of this Part, an establishment is a qualified club if all the following requirements are complied with—

- (a) the establishment is a club-house in respect of which a certificate of compliance is in force;
 - (b) the club-house is open 24 hours on any day on which it is open to members and their accompanied guests; and
 - (c) the establishment consists of at least 10 designated mahjong rooms.
- (2) For the purposes of this Part, a room in an establishment is a designated mahjong room if—
- (a) the room is furnished and used for the purpose of playing mahjong; and
 - (b) the room is permanently and completely partitioned off from the remainder of the establishment.

6. Qualified nightclub

For the purposes of this Part, an establishment is a qualified nightclub if all the following requirements are complied with—

- (a) a liquor licence is in force in respect of the establishment;
- (b) either—
 - (i) each displayed name of the establishment in Chinese contains the expression "夜總會" in plain and readily legible characters; or
 - (ii) each displayed name of the establishment in a language other than Chinese contains the expression "night club" or "nightclub" in plain and readily legible letters;
- (c) no displayed name of the establishment contains "酒家", "酒樓", "餐廳", "酒吧", "網吧", "restaurant", "cafe", "bar", "internet" or similar expressions; and
- (d) the establishment is not open for business between 6 a.m. and 12 noon on any day.

7. List of qualified establishments

(1) The Director shall maintain a list containing the name and address of each qualified establishment notified under this section.

(2) The person in charge of a qualified establishment may request the Director to include the name and address of the establishment in the list of qualified establishments by submitting to the Director a notification in a form specified by the Director.

(3) The person in charge shall in the notification make a statement declaring that all the information given in the notification is true, correct and complete.

(4) After receiving a duly completed notification submitted under this section in respect of an establishment, the Director shall include the name and address of the establishment in the list of qualified establishments.

(5) The Director shall make the list of qualified establishments available for inspection by the public, free of charge, during the ordinary opening hours of his office.

8. Listed establishment to display prescribed sign

- (1) The person in charge of a listed establishment shall ensure that—
 - (a) a prescribed sign is placed and kept in place—
 - (i) in the case of a listed establishment that is a qualified club, in a prominent position at the exclusive entrance of each designated mahjong room in the club; and
 - (ii) in the case of any other listed establishment, in a prominent position at each exclusive entrance of the establishment; and
 - (b) such signs are maintained in legible condition and good order.
- (2) For the purposes of this Part, a sign is a prescribed sign if it complies with all the following specifications—
 - (a) it is square in shape and each side is at least 15 centimetres in length;
 - (b) it is surrounded by a black line as demarcation and the background colour is white;
 - (c) it reads—
 - (i) in the case of a listed establishment that is a qualified club, "此房間是合資格會所的指定麻將房，而此會所已列入根據《吸煙(公眾衛生)條例》備存的合資格場所名單，此房間將於2009年7月1日起實施禁煙規定。This is a designated mahjong room in a qualified club that has been included in the list of qualified establishments maintained under the Smoking (Public Health) Ordinance. The smoking ban will apply to this room with effect from 1 July 2009."; and
 - (ii) in the case of any other listed establishment, "此場所已列入根據《吸煙(公眾衛生)條例》備存的合資格場所名單，此場所的室內區域將於2009年7月1日起實施禁煙規定。This establishment has been included in the list of qualified establishments maintained under the Smoking (Public Health) Ordinance. The smoking ban will apply to an indoor area in this establishment with effect from 1 July 2009."; and
 - (d) all characters and letters are printed in black and are plain and readily legible.

(3) The manager of a no smoking area that is not in a listed establishment shall ensure that no prescribed sign, or any other sign implying or suggesting that smoking is permitted in the area, is displayed in or outside the area.

(4) A person who fails to comply with subsection (1) or (3) commits an offence and is liable on summary conviction to a fine at level 5 and, in the case of a continuing offence, to a further penalty of \$1500 for each day during which the offence continues.

9. Removal of name and address from list of qualified establishments

(1) Where there is any change in any information given in the notification submitted under section 7 in respect of a listed establishment, and as a result the establishment is no longer a qualified establishment, the person in charge of the establishment shall, within 10 days after the change, inform the Director of the change by submitting to the Director a notification in a form specified by the Director.

(2) Without prejudice to subsection (1), if the person in charge of a listed establishment wishes to have the name and address of the establishment removed from the list of qualified establishments, he may request the Director to do so by submitting to the Director a notification in a form specified by the Director.

(3) After receiving a notification submitted under this section in respect of a listed establishment, the Director shall remove the name and address of the establishment from the list of qualified establishments.

(4) If it otherwise comes to the knowledge of the Director that a listed establishment is no longer a qualified establishment or section 8(1) is not complied with, the Director may, on his own initiative, remove the name and address of the establishment from the list of qualified establishments.

(5) The Director shall not make a decision under subsection (4) in respect of a listed establishment without giving the person in charge concerned prior written notice and an opportunity to make a written representation within 14 working days after the issue of the prior notice.

(6) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine at level 5.

10. Defence to offences under Part 2

In any proceedings for an offence under this Part, it is a defence for the person charged to prove that—

- (a) the offence was committed without his knowledge or consent; and
- (b) he had exercised all due diligence to prevent the commission of the offence.

11. Appeal to Appeal Board against Director's decision

(1) A person aggrieved by a decision of the Director under section 9(4) may, within 14 days after the decision, appeal to the Appeal Board by giving a notice of appeal to the Secretary stating the substance of the matter and reasons for the appeal.

- (2) An appeal under this section against a decision does not suspend the decision.

12. Constitution of Appeal Board

(1) There is established an Appeal Board for the purpose of hearing and determining an appeal under section 11.

- (2) The Appeal Board is to be constituted according to this section.

(3) Where a notice of appeal is given under section 11, the Secretary shall appoint 3 members from the Appeal Board Panel constituted according to section 13 to serve as members on the Appeal Board for the purpose of hearing and determining the appeal to which the notice relates.

(4) The Secretary shall appoint one of those 3 members to be the Chairman of the Appeal Board in the hearing of that appeal.

(5) If a matter involved in an appeal may give rise to a conflict of interest between a person's duties as a member on the Appeal Board and his pecuniary or other personal advantage, the Secretary shall not appoint that person to serve as a member on the Appeal Board for hearing and determining that appeal.

13. Constitution of Appeal Board Panel

(1) Subject to subsection (2), the Secretary shall appoint an Appeal Board Panel ("the Panel") consisting of such persons as he considers suitable to serve as members on the Appeal Board.

- (2) A public officer is not eligible for appointment to the Panel.

- (3) Appointment under subsection (1) shall be for such period as the Secretary may determine.

- (4) A member of the Panel may resign his office by giving notice in writing to the Secretary.

- (5) The Secretary shall publish in the Gazette notice of every appointment under subsection (1).

(6) Upon his appointment, a member of the Panel shall submit to the Secretary, in a form specified by the Secretary, a statement setting out the particulars of any matter that may give rise to a conflict of interest between his duties as a member of the Panel and his pecuniary or other personal advantage.

(7) Where there is any change in any matter set out in a statement submitted under subsection (6), the member shall, within one month after the change, submit to the Secretary another statement setting out the change.

14. Proceedings before Appeal Board

(1) The Chairman of the Appeal Board shall notify the appellant and the Director of the date, time and place of the hearing of the appeal.

- (2) The Chairman shall fix the date of the hearing on—

- (a) a date that is within 14 working days after the receipt of the notice of appeal; or
- (b) a later date if requested by the appellant.

(3) The hearing of the appeal shall be conducted in public unless the Chairman of his own motion, or at the request of the appellant or the Director, orders that all or any persons should be excluded from the whole or any part of the hearing.

(4) The appellant and the Director may be represented by an agent or legal representative at the proceedings before the Appeal Board.

- (5) The Appeal Board shall determine its procedure for hearing the appeal.

15. Powers of Appeal Board

- (1) The Appeal Board may—
 - (a) order a person to attend before the Board and give evidence; and
 - (b) order a person to produce documents.
- (2) The Appeal Board may confirm or revoke the decision of the Director appealed against.
- (3) The decision of an Appeal Board on an appeal shall be binding on the appellant and the Director and shall be final.
- (4) The Appeal Board shall notify the appellant and the Director of its decision and the reasons for it.

16. Expiry of Part 2

This Part shall expire on 1 July 2009.

(Schedule 6 added 21 of 2006 s. 42)

Note:

* appointed day: 27 October 2006.