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**Prohibition of Alternative Smoking Products**

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

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Smoking (Public Health) (Amendment) Ordinance 2021.
(2) This Ordinance comes into operation on the expiry of 6 months after the day on which this Ordinance is published in the Gazette.

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

修訂《吸煙 (公眾衞生) 條例》(第 371 章)

3. 長篇題目修訂

Long title amended

The long title—

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

Substitute

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

4. 修訂第 2 條 (釋義)

Section 2 amended (interpretation)

(1) 第 2 條——

Renumber the section as section 2(1).

(2) 第 2(1) 條，雪茄的定義——

Repeal

“smoking;”

Substitute

“smoking, but does not include any alternative smoking product;”.
(3) 第 2(1) 條，香煙的定義——
廢除
在“捲裹”之後的所有字句
代以
“的，處於能夠即時吸用的形態的煙草，但不包括另類吸煙產品；”。

(4) 第 2(1) 條，香煙煙草的定義——
廢除
在“指”之後的所有字句
代以
“包裝成適合供購買者製作香煙自用的煙草，但不包括另類吸煙產品；”。

(5) 第 2(1) 條，煙斗的定義——
廢除
在“指”之後的所有字句
代以
“經設計用於吸用煙草 ( 不屬香煙或雪茄形態者 ) 的容器或其他器具，但不包括另類吸煙產品；”。

(6) 第 2(1) 條，煙斗煙草的定義——
廢除
在“指”之後的所有字句
代以
“包裝成適合在煙斗吸用的煙草，但不包括另類吸煙產品；”。

(7) 第 2(1) 條，中文文本，牌子的定義——
廢除
“品質”

(3) Section 2(1), definition of *cigarette*—
Repeal
“smoking;”
Substitute
“smoking, but does not include any alternative smoking product;”.

(4) Section 2(1), definition of *cigarette tobacco*—
Repeal
“his own use;”
Substitute
“the purchaser’s own use, but does not include any alternative smoking product;”.

(5) Section 2(1), definition of *pipe*—
Repeal
“cigar;”
Substitute
“cigar, but does not include any alternative smoking product;”.

(6) Section 2(1), definition of *pipe tobacco*—
Repeal
“pipe;”
Substitute
“pipe, but does not include any alternative smoking product;”.

(7) Section 2(1), Chinese text, definition of *牌子*—
Repeal
“品質”
Substitute
“特質”.

(8) Section 2(1)—
(a) definition of smoke;
(b) definition of tobacco advertisement;
(c) definition of tobacco product—
Repeal the definitions.

(9) Section 2(1)—
Add in alphabetical order
“activated (已啟動)—see subsection (2);
aerosol (氣霧) means—
(a) any gas;
(b) any solid particles, or liquid, suspended in air;
or
(c) any mixture of the substances mentioned in paragraphs (a) and (b);

Note—
Smoke is a form of aerosol as defined above.
alternative smoking product (另類吸煙產品) means a
product set out in Part 2 of Schedule 7;
conventional smoking product (傳統吸煙產品) means any
cigarette, cigarette tobacco, cigar or pipe tobacco;
deactivate (熄掉)—see subsection (4);
Government Chemist (政府化驗師) has the meaning given
by section 2 of the Evidence Ordinance (Cap. 8);
smoking (吸煙、吸用) means inhaling and expelling—
(2) An alternative smoking product is activated if any process, such as combustion or heating, is taking place for generating an aerosol by or from the product.

(3) A person ceases a smoking act—
(a) in relation to a lighted cigarette, cigar or pipe, if the person extinguishes it; or
(b) in relation to an activated alternative smoking product, if the person deactivates it.

(4) A person deactivates an activated alternative smoking product if the person stops the process mentioned in subsection (2) in relation to the product.
5. Section 3 amended (prohibition on smoking in certain designated areas)

(1) Section 3(2)—

Repeal

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

Substitute

“may do a smoking act”.

(2) Section 3(2A), Chinese text—

Repeal

“他吸煙”

Substitute

“該人吸用”.

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

Add

“in the no smoking area”.

(4) Section 3(3)—

Repeal paragraph (a)

Substitute

A reference in this Ordinance to marketing in relation to a smoking product includes marketing outside Hong Kong.

A note in the text of this Ordinance is for information only and has no legislative effect.”.
“(a) after indicating to the person that the person is doing a smoking act in the no smoking area in contravention of subsection (2), require the person to cease the act;”.

(5) Section 3(3)(b)—
Repeal
“extinguish the lighted cigarette, cigar or pipe,”
Substitute
“cease the smoking act,”.

(6) Section 3(3)(b)(ii) and (c), Chinese text, before “禁止” (wherever appearing)—
Add
“該”.

6. Section 4 amended (prohibition on smoking in public transport carriers)

(1) Section 4(1)—
Repeal
“shall smoke or carry a lighted cigarette, cigar or pipe”
Substitute
“may do a smoking act”.

(2) Section 4(2)—
Repeal everything before paragraph (a)
Part 2
Section 7

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

(3) Section 4(2)—
Repeal paragraph (a)
Substitute
“(a) after indicating to the person that the person is doing a smoking act in the public transport carrier in contravention of subsection (1), require the person to cease the act;”.

(4) Section 4(2)(b)—
Repeal
“extinguish the lighted cigarette, cigar or pipe,”
Substitute
“cease the smoking act,”.

7. Part 3 heading amended (sales of tobacco products)
Part 3, heading—
Repeal
“Tobacco”
Substitute
“Conventional Smoking”.

7. Part 3 heading amended (sales of tobacco products)
8. Section 8 amended (sales of cigarettes and tobacco products)
   (1) Section 8, heading—
       Repeal
       "cigarettes and tobacco"
       Substitute
       "conventional smoking".
   (2) Section 8(2)(b)—
       Repeal
       "tobacco"
       Substitute
       "conventional smoking".

9. Section 8B amended (prohibition on sale of tobacco products
    from a vending machine)
   (1) Section 8B, heading—
       Repeal
       "tobacco"
       Substitute
       "conventional smoking".
   (2) Section 8B—
       Repeal
       "tobacco"
       Substitute
       "conventional smoking".

10. Section 10 amended (offences under Part 3)
   (1) Section 10(3)—
(a) 廢除
在“，即”之前的所有字句
代以
“(3) 任何傳統吸煙產品製造商或其代理人，或任何
傳統吸煙產品批發經銷商，如售賣、要約出售
或為售賣而管有第8或9條適用的、符合以下
說明的傳統吸煙產品”；

(b) 廢除
在“健康的危害”之後而在“；或”之前的所有字句
代以
“，小於包裝上沒有作相同展示的其他傳統吸煙產
品”。

(2) 第10(3)(a)條，英文文本——
廢除
所有“trademark”
代以
“trade mark”。

11. 修訂第10A條 (檢取及沒收)
第10A(1)(ca)條——
廢除
“銷售機或煙草”
代以
“售賣機或傳統吸煙”。

12. 修訂第4部標題 (煙草廣告)
第4部，標題——
廢除

11. Section 10A amended (seizure and forfeiture)
Section 10A(1)(ca)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

12. Part 4 heading amended (tobacco advertising)
Part 4, heading—
Repeal
13. 修訂第 11 條 ( 印刷刊物內的煙草廣告 )

(1) 第 11 條，標題——
廢除
“煙草”
代以
“吸煙產品”。

(2) 第 11(1) 條——
廢除
在 “刊物中” 之後的所有字句
代以
“，印刷或刊登吸煙產品廣告，亦不得安排在本條適用
的印刷刊物中，刊登吸煙產品廣告。”。

(3) 第 11 條——
廢除第 (3) 款
代以
“(3) 就於以下印刷刊物內的吸煙產品廣告而言，本條及
第 12 條不適用——
(a) 為吸煙產品業界印行的印刷刊物；或
(b) 作為從事吸煙產品業的公司的內部刊物而印行
的印刷刊物。”。

13. Section 11 amended (tobacco advertisements in printed publications)

(1) Section 11, heading—
Repeal
“Tobacco”
Substitute
“Smoking product”.

(2) Section 11(1)—
Repeal
“tobacco”
Substitute
“smoking product”.

(3) Section 11—
Repeal subsection (3)
Substitute
“(3) Nothing in this section or section 12 applies in
relation to a smoking product advertisement in a
printed publication that is published—
(a) for the smoking products trade; or
(b) as the in-house publication of any company
engaged in that trade.”.
14. Section 12 amended (no display of tobacco advertisement)

(1) Section 12, heading—

Repeal “tobacco”

Substitute “smoking product”.

(2) Section 12(1)—

Repeal “tobacco advertisement”

Substitute “smoking product advertisement”.

(3) Section 12(4)—

Repeal “tobacco advertisement”

Substitute “smoking product advertisement”.

(4) Section 12(4)(a)—

Repeal subparagraph (i)

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

(5) Section 12(4)(a)(ii)—

Repeal everything after “manufacturing of”

Substitute
“(ii) 用於製造傳統吸煙產品，或為批發傳統吸煙產品而使用；及”。
(6) 第 12(4)(b) 條，中文文本——
廢除
“該等煙草”
代以
“該”。
(7) 第 12(5) 條——
廢除
“煙草廣告”
代以
“廣告，”。

15. 修訂第 13 條 (禁止以無線電或視覺影像方式播放煙草廣告)
(1) 第 13 條，標題——
廢除
在“禁止”之後的所有字句
代以
“藉無線電或視覺影像，播放吸煙產品廣告”。
(2) 第 13 條——
廢除
在“不得”之後而在“廣告”之前的字句
代以
“藉以下方法，播放擬供公眾人士普遍接收的吸煙產品”。

“conventional smoking products or for the purpose of dealing by wholesale in conventional smoking products; and”.
(6) Section 12(4)(b), Chinese text—
Repeal
“該等煙草”
Substitute
“該”.
(7) Section 12(5)—
Repeal
“tobacco”.

15. Section 13 amended (prohibition on broadcast of tobacco advertisement by radio or visual images)
(1) Section 13, heading—
Repeal
“tobacco”
Substitute
“smoking product”.
(2) Section 13—
Repeal
“tobacco”
Substitute
“smoking product”.
16. 修订第13A条（禁止电影上映烟草广告）
(1) 第13A条，标题——
废除
“电影上映烟草”
代以
“藉电影上映吸煙產品”。
(2) 第13A(1)条——
废除
“烟草”
代以
“吸煙產品”。

17. 修订第13B条（禁止将烟草广告置于电脑互联网上）
(1) 第13B条，标题——
废除
“烟草广告置于电脑”
代以
“吸煙產品廣告置於”。
(2) 第13B(1)条——
废除
在“安排将”之后的所有字句
代以
“吸煙產品廣告，置於互聯網上。”。
(3) 第13B(2)(a)条，中文文本——
废除

16. Section 13A amended (prohibition on exhibition of tobacco advertisement by film)
(1) Section 13A, heading—
Repeal
“tobacco”
Substitute
“smoking product”.
(2) Section 13A(1)—
Repeal
“tobacco”
Substitute
“smoking product”.
(3) Section 13B(2)(a), Chinese text—
Repeal
18. 修訂第 14 條（煙草廣告的涵義）
(1) 第 14 條，標題——
廢除
“煙草”
代以
“吸煙產品”。

(2) 第 14(1) 條——
廢除
“為煙草廣告”
代以
“即屬吸煙產品廣告”。

(3) 第 14(1) 條——
廢除 (a) 段
代以
“(a) 載有的內容以明示或默示方式，誘使、建議或促請購買或吸用吸煙產品；”

(4) 第 14(1)(b) 條——
廢除
在 “，而” 之後的所有字句

18. Section 14 amended (meaning of tobacco advertisement)
(1) Section 14, heading—
Repeal
“tobacco”
Substitute
“smoking product”.

(2) Section 14(1)—
Repeal
“tobacco advertisement”
Substitute
“smoking product advertisement”.

(3) Section 14(1)(a)—
Repeal
“cigarettes, cigarette tobacco, cigars or pipe tobacco”
Substitute
“any smoking product”.

(4) Section 14(1)(b)—
Repeal
“cigarettes, cigarette tobacco, cigars or pipe tobacco”
代以
“其措辭刻意以明示或默示方式，提倡或鼓勵使用吸煙
產品；或”。

(5) 第 14(1) 條——
廢除 (c) 段
代以
“(c) 描述或提及吸煙或吸煙產品，或該等產品的包裝或
特質；”。

(6) 第 14(1A) 條——
廢除
在“定，”之後的所有字句
代以
“廣告如以勸阻吸煙為目的，則不視為吸煙產品廣告。”。

(7) 第 14(2) 條——
廢除 (b) 段
代以
“(b) 在進行任何業務或提供任何服務的過程中，不論是
否供出售，而向公眾展示的任何物體 ( 吸煙產品除
外) ，”。

(8) 第 14(2) 條——
廢除
在“銷售”之後而在“當作為”之前的所有字句
代以
“任何吸煙產品有關連的人的姓名、名稱或商業名稱，
或任何吸煙產品的商標或牌子名稱，或任何通常與該商
標或牌子名稱相聯的圖樣 ( 或圖樣的一部分 )，則該廣
告或物體即”。

Substitute
“any smoking product”.

(5) Section 14(1)(c)—
Repeal
“cigarettes, cigarette tobacco, cigars or pipe tobacco”
Substitute
“any smoking products”.

(6) Section 14(1A)—
Repeal
“tobacco”
Substitute
“smoking product”.

(7) Section 14(2)(b)—
Repeal
“tobacco”
Substitute
“smoking”.

(8) Section 14(2)—
Repeal
“tobacco product, or any trade mark or brand name of a
tobacco”
Substitute
“smoking product, or any trade mark or brand name of a
smoking”.

Substitute
“any smoking product”.
(9) Section 14(2)—
Repeal
“tobacco advertisement”
Substitute
“smoking product advertisement”.

(10) Section 14(3)(a)(i)—
Repeal
“non-tobacco”
Substitute
“product or service that is not a smoking”.

(11) Section 14(4)(a)—
Repeal
“tobacco”
Substitute
“smoking”.

(12) Section 14(4)—
Repeal paragraph (b)
Substitute
“(b) any name identical to the trade name or brand name of any smoking product, in association with any product that is not a smoking product.”.

(13) Section 14(4A)(c)—
Repeal
everything after “mention”
Substitute
“附表 8 列出的任何字詞或字句 (包括與該附表列出的任何字詞或字句意義相同的字詞或字句，或與該附表列出的任何字詞或字句極為相似的字詞或字句)。”。

(14) 第 14(5) 條——
廢除
在 “任何” 之後而在 “並不屬” 之前的字句
代以
“吸煙產品的意外出現或附帶出現，或任何吸煙產品的商標、商業名稱、牌子名稱或標識的意外出現或附帶出現，付出有值代價，則該產品、商標、名稱或標識的意外出現或附帶出現，”。

(15) 第 14(5) 條——
廢除
“煙草廣告”
代以
“吸煙產品廣告”。

(16) 第 14(6) 條——
廢除
在 “凡” 之後而在 “廣告” 之前的字句
代以
“在某處所內，有傳統吸煙產品被要約出售，則在該處所內展示以下物件，並不屬吸煙產品”。

(17) 第 14(6)(a) 條——
廢除
所有 “類別煙草”
代以
“類別傳統吸煙”。

“任何字或字詞 (包括與該表列出的任何字或字詞意義相同的字或字詞，或與該表列出的任何字或字詞極為相似的字或字詞)。”。

(14) Section 14(5)—
Repeal
“tobacco product” (wherever appearing)
Substitute
“smoking product”.

(15) Section 14(5)—
Repeal
“tobacco advertisement”
Substitute
“smoking product advertisement”.

(16) Section 14(6)—
Repeal
“tobacco products are offered for sale is not a tobacco”
Substitute
“conventional smoking products are offered for sale is not a smoking product”.

(17) Section 14(6)(a)—
Repeal
“tobacco” (wherever appearing)
Substitute
“conventional smoking”.
(18) Section 14(6)(a)(ii)(A)—
Repeal
“non-tobacco”
Substitute
“products that are not smoking”.

(19) Section 14(6)(b)(i)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(20) Section 14(6)(b)(iii)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

19. Section 14A amended (removal and disposal of tobacco advertisement)
(1) Section 14A, heading—
Repeal
“tobacco”
Substitute
“smoking product”.

(2) Section 14A(1)—
Repeal
20. Part 4A heading amended (prohibition on selling or giving of tobacco products)

Part 4A, heading—

Repeal
“Tobacco”
Substitute
“Conventional Smoking”.

(3) Section 14A(2)—

Repeal
everything after “disposal of any”
Substitute
“advertisement or structure removed under subsection (1), whether or not any person is convicted of any offence under this Ordinance, on the grounds that an offence under this Ordinance has been or is being committed in relation to the advertisement or structure.”.

(4) Section 14A(4)—

Repeal
everything after “brand of”
Substitute
“smoking product which is mentioned in the removed advertisement or structure or from the owner of the advertisement or structure.”.
Section 15A amended (prohibition on selling or giving of tobacco products, etc.)

(1) Section 15A, heading—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(2) Section 15A(3)(a)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(3) Section 15A(3)(b)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(4) Section 15A(3)—
Repeal
paragraph (c)
Substitute
“(c) give valuable consideration to any person in order to induce the person to buy a particular conventional smoking product or otherwise to promote the product to the person;”.

(5) Section 15A(3)(d)—
Repeal
“tobacco”
代以
“...要約出售或為售賣而管有包含贈品的任何傳統吸煙
產品, 或連同贈品的任何傳統吸煙產品;”。
(6) 第 15A(3)(e) 條—
廢除
在“凡任何”之後的所有字句
代以
“換物憑證、印花或彩票可以換取贈品、獎品或任何產
品的折扣，則任何人不得售賣、要約出售或為售賣而管
有包含該換物憑證、印花或彩票的傳統吸煙產品，或連
同該換物憑證、印花或彩票的傳統吸煙產品;”。
(7) 第 15A(3)(f) 條—
廢除
在“得售賣”之後的所有字句
代以
“...要約出售或為售賣而管有符合以下說明的產
品—
(i) 並非吸煙產品；及
(ii) 包含屬贈品的傳統吸煙產品，或連同屬贈品的
傳統吸煙產品;”。
(8) 第 15A(3) 條—
廢除 (fa) 段
代以
“(fa) 凡任何單一物品由傳統吸煙產品及並非吸煙產品的
產品組成，任何人不得售賣、要約出售或為售賣而
管有該單一物品；或”。

Substitute
“conventional smoking”.
(6) Section 15A(3)(e)—
Repeal
“tobacco”
Substitute
“conventional smoking”.
(7) Section 15A(3)(f)—
Repeal
everything after “sale a”
Substitute
“product—
(i) that is not a smoking product; and
(ii) that includes or is accompanied by a
conventional smoking product as a gift;”.
(8) Section 15A(3)(fa)—
Repeal
“tobacco product and a non-tobacco”
Substitute
“conventional smoking product and a product that is not
a smoking”.
(9) 第 15A(3)(g) 條——
廢除
在 “亦不得將擬向公眾展示的” 之後而在 “，給予任何其他人。” 之前的所有字句
代以
“、載有任何傳統吸煙產品的商標或牌子名稱，或任何
通常與該商標或牌子名稱相聯的圖樣 (或圖樣的一部分)
的物體”。

22. 修訂第 15B 條標題（煙草產品要約出售等時須展示標誌）
第 15B 條，標題——
廢除
“煙草產品要約出售等時”
代以
“傳統吸煙產品要約出售等時，”。

23. 加入第 4AB 部
在第 4A 部之後——
加入

“第 4AB 部
禁止另類吸煙產品

15DA. 禁止進口、製造或售賣等
(1) 任何人不得——
(a) 進口另類吸煙產品；
(b) 製造另類吸煙產品；

(9) Section 15A(3)(g)—
Repeal
“tobacco product”
Substitute
“conventional smoking product”.

22. Section 15B heading amended (display of sign when offering tobacco products for sale, etc.)
Section 15B, heading—
Repeal
“tobacco”
Substitute
“conventional smoking”.

23. Part 4AB added
After Part 4A—
Add

“Part 4AB
Prohibition of Alternative Smoking Products

15DA. Prohibition on import, manufacture or sale, etc.
(1) No person may—
(a) import an alternative smoking product;
(b) manufacture an alternative smoking product;
(c) sell, or offer for sale, an alternative smoking product;
(d) give an alternative smoking product to another person—
   (i) for promotion or advertisement;
   (ii) in exchange for a token; or
   (iii) as a prize in any event or competition;
(e) possess an alternative smoking product for—
   (i) the manufacture of any other alternative smoking product;
   (ii) sale; or
   (iii) giving it to another person for the purpose mentioned in paragraph (d)(i), (ii) or (iii);
(f) give valuable consideration to another person in order to promote to the person an alternative smoking product; or
(g) give another person an object that is intended to be shown in public, and that contains—
   (i) the name or trade name of a person associated with the marketing of alternative smoking products; or
   (ii) a trade mark or brand name of an alternative smoking product, or a pictorial device, or any part of the device, commonly associated with the trade mark or brand name.

(2) A reference to the sale of an alternative smoking product in subsection (1)—
(a) includes the sale of any product that includes, or is accompanied by, an alternative smoking product as a gift; and

(b) does not include the sale of the product with a view to exporting the product.

(3) For the purposes of subsection (1), an act is a promotion or advertisement in relation to a product if the act is a promotion or advertisement intended as an inducement to smoke, or encourage the use of, the product, whether or not a particular brand is mentioned.

(4) Any person who contravenes subsection (1) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

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

15DB. Liability of officers of bodies corporate, partners and members of unincorporated bodies

(1) If a body corporate commits an offence under section 15DA(4), and it is proved that the offence—

(a) was committed with the consent or connivance of a person specified in subsection (2); or

(b) is attributable to any neglect on the part of the person,

the person also commits the offence.

(2) The person referred to in subsection (1) is—

(a) a director, manager, secretary or other similar officer of the body corporate; or
(b) 有意图 (a) 段所述的人作出的事宜的人。

(3) 如某合伙人共同第 15DA(4) 条所定之罪，而该罪行经证明是——
(a) 在第 (4) 款指明的人同意或纵容下干犯的；或
(b) 可归因于该人的疏忽的，
则该人亦属犯该罪行。

(4) 第 (3) 款所述的人是——
(a) 上述合伙中的任何其他合伙人，或关涉该合伙
的管理的任何其他人；或
(b) 看来是以 (a) 段所述的人的身分行事的人。

(5) 如任何其他不属法团的团体的成员犯第 15DA(4) 条
所定之罪，而该罪行经证明是——
(a) 在第 (6) 款指明的人同意或纵容下干犯的；或
(b) 可归因于该人的疏忽的，
则该人亦属犯该罪行。

(6) 第 (5) 款所述的人是——
(a) 上述不属法团的团体的任何其他成员，或该团
体的任何经理、秘书或其他相类高级人员；或
(b) 看来是以 (a) 段所述的人的身分行事的人。

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

(3) If a partner in a partnership commits an offence
under section 15DA(4), and it is proved that the
offence—
(a) was committed with the consent or connivance
of a person specified in subsection (4); or
(b) is attributable to any neglect on the part of the
person,
the person also commits the offence.

(4) The person referred to in subsection (3) is—
(a) any other partner in the partnership or any
other person concerned in the management of
the partnership; or
(b) a person purporting to act in the capacity of a
person referred to in paragraph (a).

(5) If a member of any other unincorporated body
commits an offence under section 15DA(4), and it is
proved that the offence—
(a) was committed with the consent or connivance
of a person specified in subsection (6); or
(b) is attributable to any neglect on the part of the
person,
the person also commits the offence.

(6) The person referred to in subsection (5) is—
(a) any other member, or any manager, secretary or
other similar officer, of the unincorporated
body; or
(b) a person purporting to act in the capacity of a
person referred to in paragraph (a).
15DC. Exemption for persons in transit at Hong Kong International Airport

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

(a) arrives at the Hong Kong International Airport from a place outside Hong Kong; and

(b) while in Hong Kong, does not pass through any immigration control.

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

(1) Section 15DA(1)(a) does not apply in relation to an alternative smoking product that is an article in transit or air transhipment cargo.

(2) However, section 15DA(1)(a) does apply in relation to an alternative smoking product if, at any time between its being brought into and taken out of Hong Kong—

(a) for an article in transit on an aircraft—the product is removed from the aircraft other than in the specified cargo transhipment area;

(b) for an article in transit in a vessel—the product is removed from the vessel; or

(c) for an air transhipment cargo—the product is removed from the specified cargo transhipment area.

(3) If section 15DA(1)(a) applies in relation to a product because of subsection (2), for the purposes of the application—

(a) the product is deemed to be imported at the time of the removal mentioned in subsection (2); and
(b) the person who brought the product, or caused it to be brought, into Hong Kong as an article in transit or air transhipment cargo is deemed to be the person who imported the product.

(4) It is a defence for a person mentioned in subsection (3)(b) who is charged under section 15DA(4) in relation to importing a product to show that the person took all reasonable steps and exercised reasonable diligence to avoid the removal mentioned in subsection (2).

(5) Subsection (6) applies if a defence under subsection (4) involves an allegation that the offence was committed because of—

(a) another person’s act or default; or
(b) the defendant’s reliance on information given by another person.

(6) Without the leave of the court, the defendant may not rely on the defence unless, at least 10 days before the hearing of the proceedings, the defendant has served a written notice on the prosecutor giving particulars of—

(a) the person who allegedly committed the act or default, or allegedly gave the information; and
(b) the act, default or information concerned, of which the defendant is aware at the time the notice is served.

(7) The defendant may not rely on a defence under subsection (4) claiming that the offence was committed because of the defendant’s reliance on information given by another person unless the defendant shows that the reliance was reasonable in
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all the circumstances, having regard in particular to—
(a) the steps that the defendant took, and those which might reasonably have been taken, for verifying the information; and
(b) whether the defendant had any reason to disbelieve the information.

(8) In this section—

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

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

specified cargo transhipment area (指明貨物轉運區) means—
(a) any part of the Hong Kong International Airport that is designated under section 35 of the Aviation Security Ordinance (Cap. 494) as a restricted area; or
(b) an area approved by the Commissioner of Customs and Excise under section 2AA of the Import and Export Ordinance (Cap. 60).

15DE. Exception for Government Chemists

Despite section 15DA, a Government Chemist may import an alternative smoking product so far as it is necessary for the performance of the Government Chemist’s functions.
15DF. Relationship with Pharmacy and Poisons Ordinance

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

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

15DG. Enforcement powers of inspectors

(1) An inspector may seize, remove or detain any article if the inspector reasonably suspects that—
   (a) the article is an alternative smoking product; and
   (b) an offence under section 15DA(4) has been committed, is being committed or is about to be committed in respect of the article.

(2) If an inspector reasonably suspects that a person has committed or is committing an offence under section 15DA(4), the inspector may detain the person for a reasonable period to facilitate the enforcement of section 15DA.

(3) A magistrate may issue a warrant empowering an inspector named in the warrant to at any time enter any place that is neither a public place nor a domestic premises if it appears to the magistrate from information on oath that there is reasonable cause for suspecting that an offence under section 15DA(4) has been committed, is being committed or is about to be committed in that place.
(4) In exercising a power under subsection (1) or (2), or under a warrant mentioned in subsection (3), an inspector must, if requested, produce proof of his or her authority as an inspector.

(5) This section does not limit section 15G(1)(c), (d), (e), (f), (g) or (h).

15DH. Enforcement powers of Customs and Excise officers

(1) For the enforcement of section 15DA in relation to an import offence, a Customs and Excise officer—

(a) may stop and search a person arriving in Hong Kong, and search anything in the person's possession;

(b) may stop, board and search any transport carrier arriving in Hong Kong;

(c) may, at any point of entry to Hong Kong, examine any article (including cargo, unaccompanied baggage or unaccompanied personal belongings) that is not contained in a postal packet; and

(d) may, in the presence of, and under the directions of, an officer of the Post Office, open and examine any postal packet.

(2) A person searched under subsection (1)(a)—

(a) may only be searched by a person of the same sex; and

(b) may not be searched in a public place if the person objects to being so searched.

(3) A Customs and Excise officer may seize, remove or detain any article if the officer reasonably suspects that—
(a) the article is an alternative smoking product; and
(b) an import offence has been committed or is being committed in respect of the article.

(4) Any article seized, removed or detained under subsection (3) may be retained in the custody of a Customs and Excise officer until it is transferred to an inspector for the enforcement of section 15DA.

(5) If a Customs and Excise officer reasonably suspects that a person has committed or is committing an import offence, the officer—

(a) to facilitate the enforcement of section 15DA in relation to the offence, may detain the person for a reasonable period; and
(b) may arrest the person without warrant.

(6) A Customs and Excise officer may use any force reasonably necessary for exercising a power under this section.

(7) In this section—

Customs and Excise officer (海關人員) means a person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342); import offence (進口罪行) means an offence under section 15DA(4) for the contravention of section 15DA(1)(a);

officer of the Post Office (郵政署人員) has the meaning given by section 2(1) of the Post Office Ordinance (Cap. 98);

postal packet (郵包) has the meaning given by section 2(1) of the Post Office Ordinance (Cap. 98);
24. **Section 15H amended (disposal of property seized by inspectors)**

(1) **Section 15H—**

*Renumber the section as section 15H(1).*

(2) **After section 15H(1)—**

*Add*

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

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

Section 19—

*Repeal the section.*

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

(1) **Schedule 2, Part 2, item 10—**

*Repeal*

everything after “designated for” and before “if”

*Substitute*

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

*transport carrier* (交通工具) includes an aircraft, vehicle, vessel or train, and any other means of travel or transport.”.
(2) Schedule 2, Part 2, item 10, paragraph (a)—
Repeal
“tobacco”
Substitute
“smoking”.

(3) Schedule 2, Part 2, item 10—
Repeal paragraph (b)
Substitute
“(b) the tasting or testing is carried out for conducting research and development or quality control of smoking products in the normal course of the business;”.

(4) Schedule 2, Part 2, item 10, paragraph (c)—
Repeal
“tobacco tasting”
Substitute
“tasting or testing”.

(5) Schedule 2, Part 2, item 10, paragraph (e)—
Repeal
“tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting”
Substitute
“tasting or testing, is required to enter the room while it is being occupied for the tasting or testing”.

(6) Schedule 2, Part 2, after item 11—
Add
“12. A Government laboratory.”.
27. Schedule 5 amended (exemption from section 3(2) of this Ordinance)

(1) Schedule 5, section 1(1)—
Repeal the definition of smoking act.

(2) Schedule 5, section 1(1)—
Add in alphabetical order “conventional smoking act (傳統吸煙行為) means smoking or carrying a lighted cigarette, cigar or pipe;”.

(3) Schedule 5, section 2—
Repeal “a smoking act”
Substitute “a conventional smoking act”.

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

(5) Schedule 5, section 2(e), before “smoking act”—
Add “conventional”.

(6) Schedule 5, Chinese text, section 2(e)—
Repeal “該等動作”
Substitute
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2021年第39号條例
A3992
第2部
第27条

“傳統吸煙行為”。

(7) 附表5，第3条——
廃除
“作出吸煙動作”
代以
“作出傳統吸煙行為”。

(8) 附表5，第3(a)条——
廃除
“吸煙動作”
代以
“傳統吸煙行為”。

(9) 附表5，第3(c)条——
廃除
所有“煙草”
代以
“吸煙產品”。

(10) 附表5，第3(d)条——
廃除
“吸煙動作”
代以
“傳統吸煙行為”。

(11) 附表5，第3(f)条——
廃除
“吸煙動作”
代以
“傳統吸煙行為”。

“傳統吸煙行為”。

(7) Schedule 5, section 3—
Repeal
“a smoking act”
Substitute
“a conventional smoking act”.

(8) Schedule 5, section 3(a), before “smoking act”—
Add
“conventional”.

(9) Schedule 5, section 3(c)—
Repeal
“tobacco”
Substitute
“smoking product”.

(10) Schedule 5, section 3(d), before “smoking act”—
Add
“conventional”.

(11) Schedule 5, section 3(f), before “smoking act”—
Add
“conventional”.
(12) 附表 5，中文文本，第 3(f) 條——
废除
“該等動作”
代以
“傳統吸煙行為”。

(13) 附表 5，第 4 條，標題——
废除
“吸煙動作”
代以
“傳統吸煙行為”。

(14) 附表 5，第 4 條——
废除
“吸煙動作”
代以
“傳統吸煙行為”。

(15) 附表 5，第 4(a) 條——
废除
“煙草”
代以
“傳統吸煙”。

(16) 附表 5，中文文本，第 4(a) 條——
废除
“動作”
代以
“行為”。

(17) 附表 5，第 4(b) 條——

(12) Schedule 5, Chinese text, section 3(f)—
Repeal
“該等動作”
Substitute
“傳統吸煙行為”。

(13) Schedule 5, section 4, heading, before “smoking”—
Add
“conventional”.

(14) Schedule 5, section 4, before “smoking act”—
Add
“conventional”.

(15) Schedule 5, section 4(a)—
Repeal
“tobacco”
Substitute
“conventional smoking”.

(16) Schedule 5, Chinese text, section 4(a)—
Repeal
“動作”
Substitute
“行為”.

(17) Schedule 5, section 4(b)—
(18) Schedule 5, Chinese text, section 4(b)—
Repeal “tobacco”
Substitute “conventional smoking”.

(19) Schedule 5, Chinese text, section 4(b)—
Repeal “推廣”
Substitute “提倡”.

(20) Schedule 5, section 4(c)—
Repeal “tobacco”
Substitute “conventional smoking”.

(21) Schedule 5, Chinese text, section 4(c)—
Repeal “動作”
Substitute “行為”.

(22) Schedule 5, section 4(d)—
Repeal
28. Schedule 6 repealed (transitional provisions relating to Smoking (Public Health) (Amendment) Ordinance 2006)

Schedule 6—

Repeal the Schedule.

29. Schedules 7 and 8 added

The Ordinance—

Add
“Schedule 7

[ s. 2(1) ]

Alternative Smoking Products

Part 1

Interpretation Provisions

1. In this Schedule—

conventional smoking (傳統吸煙) means the smoking of a cigarette, cigar or pipe;  
dangerous drug (危險藥物) has the meaning given by section 2(1) of the Dangerous Drugs Ordinance (Cap. 134);  
specified plant material (指明植物材料) means any material—
   (a) that was any part of a plant, such as leaves, roots, flowers, fruit and seeds; and  
   (b) that is not tobacco or a dangerous drug;  
waterpipe (水煙壺) means a receptacle or other device designed for use for smoking tobacco in a form other than as a cigarette or cigar where the receptacle or device—
   (a) allows smoke to be generated other than by means of electricity; and  
   (b) consists of or includes a jar or similar receptacle for containing a liquid through which the smoke of tobacco would pass before being inhaled by the user of the receptacle or device.
2. For the purposes of this Schedule, it is irrelevant whether the aerosol generated is visible.

3. For the purposes of this Schedule, a thing is capable of use for imitating conventional smoking if it is capable of use for smoking in the same way as conventional smoking in respect of—
   (a) the bringing of the thing to the mouth; and
   (b) the inhaling and expelling of aerosol.

4. For the purposes of this Schedule, it is irrelevant whether the component or accessory is sold separately from the device.

**Part 2**

**Products for Definition of Alternative Smoking Product**

**Category 1**

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

1.2. A thing that is designed for use as a component of, or accessory to, a device described in item 1.1 (such as a mouthpiece, heating element, battery or container of a substance mentioned in that item).
1.3. Any substance (other than tobacco or a dangerous drug)—
   (a) that is packaged as being suitable for use with a device described in item 1.1; and
   (b) from which an aerosol is capable of being generated in the way described in that item.

**Category 2**

2.1. A device (other than a waterpipe) that is capable of—
   (a) generating an aerosol from tobacco, other than by means of lighting the tobacco directly; and
   (b) use for smoking.

2.2. A thing that is designed for use as a component of, or accessory to, a device described in item 2.1 (such as a mouthpiece, heating element, battery or container of the tobacco mentioned in that item).

2.3. Tobacco—
   (a) that is packaged as being suitable for use with a device described in item 2.1; and
   (b) from which an aerosol is capable of being generated in the way described in that item.
第 3 項

3. 符合以下說明的指明植物材料：用任何物料捲裹，並處於能夠即時用於模仿傳統吸煙的形態。

附表 8

[第 14(4A)(c) 條]

為第 14(4A)(c) 條而列出的字詞或字句

香煙
cigarette
捲煙
smoking
吸煙
tobacco
cigar
煙草
pipe
煙絲
waterpipe
雪茄
hookah
煙斗
shisha
水煙
evaping
煙斗
e-cigarette
雪茄
evaporizer
煙油
e-cig
煙液
hookah
tobacco
加熱煙
vaporizer
generally
加熱非燃燒
ENDS

Category 3

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

Schedule 8

[§ 14(4A)(c)]

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

cigarette
smoking
tobacco
cigar
pipe
waterpipe
hookah
shisha
evaping
vaporizer
e-cigarette
e-cig
electronic nicotine delivery system
ENDS
electronic non-nicotine delivery system
Part 2
Section 29
Smoking (Public Health) (Amendment) Ordinance 2021

2021年第39号条例
A4008

第2部
第29条

Ord. No. 39 of 2021
A4009

草本煙
草藥煙
藥草煙
茶煙
水果煙
果味煙
有味煙
cigarette
smoking
tobacco
cigar
pipe
waterpipe
hookah
shisha
vaping
vaporizer
e-cigarette
e-cig
electronic nicotine delivery system
ENDS

ENNDSES

e-liquid
e-juice
heat-not-burn
HNB
heatstick
HTP
香煙
捲煙
吸煙
煙草
煙絲
雪茄
煙斗
水煙
電子煙
電子尼古丁傳送系統
電子非尼古丁傳送系統
煙油
煙液
加熱煙
加熱非燃燒
草本煙
草藥煙
藥草煙
茶煙
HNB
heatstick
HTP”。

水果煙
果味煙
有味煙”。
第 3 部
相關及相應修訂

第 1 分部——修訂《應課稅品條例》(第 109 章)

30. 修訂第 3 條 (適用範圍)
第 3(1) 條——
廢除 (b) 段
代以
“(b) 不屬以下產品的煙草——
(i) 《公眾衛生及市政條例》(第 132 章) 第 2(1) 條
所界定的無煙煙草產品；或
(ii) 《吸煙 (公眾衛生) 條例》(第 371 章) 第 2(1) 條
所界定的另類吸煙產品；”。

第 2 分部——修訂《吸煙 (公眾衛生) 規例》(第 371 章，
附屬法例 A)

31. 修訂第 3 條 (政府化驗師所作的鑑定)
(1) 第 3 條——
將第 (i) 段重編為 (c) 段。
(2) 第 3(c) 條——
廢除
在 “定，” 之後的所有字句

第 3
Related and Consequential Amendments

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

30. Section 3 amended (application)
Section 3(1)—
Repeal paragraph (b)
Substitute
“(b) tobacco other than—
(i) any smokeless tobacco product as defined by
section 2(1) of the Public Health and Municipal
Services Ordinance (Cap. 132); or
(ii) any alternative smoking product as defined by
section 2(1) of the Smoking (Public Health)
Ordinance (Cap. 371);”.

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

31. Regulation 3 amended (determination by the Government
Chemist)
(1) Regulation 3—
Renumber paragraph (i) as paragraph (c).
(2) Regulation 3(c) —
Repeal
“tobacco”
32. Regulation 7 amended (exemption of certain advertisements from Part 4 of the Ordinance)

Regulation 7—

Repeal “tobacco”

Substitute “smoking product”.

(3) Regulation 3—

Renumber paragraph (ii) as paragraph (d).

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

(1) Paragraph 5A, heading—

Repeal “tobacco”

Substitute “conventional smoking”.

(2) Paragraph 5A(1)—

Repeal “tobacco”

Substitute “smoking product”.

Division 3—Amendments to Smoking (Public Health) (Prescribed Information) Order (Cap. 371 sub. leg. B)
34. 修訂第 8 條標題（煙草產品要約出售等時的標誌）
第 8 條，標題——
廢除
“煙草”
代以
“傳統吸煙”。

35. 修訂附表
(1) 附表，第 2 部，標題——
廢除
“煙草”
代以
“傳統吸煙”。
(2) 附表，第 2A 部，標題——
廢除
“煙草”
代以
“傳統吸煙”。
(3) 附表，第 3A 部，標題——
廢除
“煙草產品價格牌上的健康忠告的式樣”
代以

34. Paragraph 8 heading amended (sign when offering tobacco products for sale, etc.)
Paragraph 8, heading—
Repeal
“tobacco”
Substitute
“conventional smoking”.

35. Schedule amended
(1) Schedule, Part 2, heading—
Repeal
“Tobacco”
Substitute
“Conventional Smoking”.
(2) Schedule, Part 2A, heading—
Repeal
“Tobacco”
Substitute
“Conventional Smoking”.
(3) Schedule, Part 3A, heading—
Repeal
“FORM OF HEALTH WARNING ON PRICE BOARD OF TOBACCO PRODUCTS”
Substitute
Part 3—Division 3
Section 35

Smoking (Public Health) (Amendment) Ordinance 2021

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

(4) Schedule, Part 6, heading—
Repeal
“SIGN WHEN OFFERING TOBACCO PRODUCTS FOR SALE, ETC.”

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

(4) 附表，第 6 部，標題——
廢除
“煙草產品要約出售等時的標誌”
代以
“傳統吸煙產品要約出售等時的標誌”。

“傳統吸煙產品價格牌上的健康忠告的式樣”。

(4) 附表，第 6 部，標題——
廢除
“煙草產品要約出售等時的標誌”
代以
“傳統吸煙產品要約出售等時的標誌”。

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

(4) Schedule, Part 6, heading—
Repeal
“SIGN WHEN OFFERING TOBACCO PRODUCTS FOR SALE, ETC.”

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