



**Legco  
Panel on Health Services  
Attention all Hon members**

24<sup>th</sup> October 2015

Dear Hon Members,

As an anti air pollution and anti tobacco charity NGO based in Hong Kong we express our concern at the lack of progress in tobacco control in Hong Kong. Indeed the Chairman of this Panel and his deputy chairman, both health professionals, have been quoted making statements which show a clear lack of understanding of the mandatory requirements of the Framework Convention on Tobacco Control Treaty, a legally binding instrument covering ratified parties including Hong Kong (sub China), which is lodged at the United Nations Depository since 2003. Copies of the said Treaty in Chinese and English are at attachment for your ease of reference. (*FCTCGuidelines.pdf and FCTC-Doc-Chi-Eng.pdf*)

1)

All Legco Members and District Councillors are 'public servants' under the laws of Hong Kong. Moreover they are obliged to comply with the International Code of Conduct for Public Officials.

<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010930.pdf>

#### **International Code of Conduct for Public Officials**

##### **I. GENERAL PRINCIPLES**

1. A public office, as defined by national law, is a position of trust, implying a **duty to act in the public interest**. Therefore, **the ultimate loyalty of public officials shall be to the public interests of their country** as expressed through the democratic institutions of government.
2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and **with integrity**, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.
3. Public officials shall be attentive, **fair and impartial** in the performance of their functions and, in particular, in their relations with the public. **They shall at no time afford any undue preferential treatment to any group or individual** or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

##### **VI. POLITICAL ACTIVITY**

11. The political or other **activity of public officials outside the scope of their office shall**, in accordance with laws and administrative policies, **not be such as to impair public confidence in the impartial performance of their functions and duties**.

All Legco and District Councillors are public servants, paid by the public purse:

[http://www.csb.gov.hk/english/admin/conduct/files/CSCCode\\_e.pdf](http://www.csb.gov.hk/english/admin/conduct/files/CSCCode_e.pdf)

1.2 Article 99 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereafter referred to as "the Basic Law") states "**... Public servants must be dedicated to their duties and be responsible to the Government of the Hong Kong Special Administrative Region**".

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[http://www.who.int/fctc/guidelines/article\\_5\\_3.pdf](http://www.who.int/fctc/guidelines/article_5_3.pdf)

At this link are the WHO Guidelines in relation to Article 5.3 of the FCTC Treaty.

This Panel on Health Services has direct influence on the setting of health policies.

Para 23) relates to the above **Code of Conduct for Public Officials**.

Recommendations:

**4.1 Parties should mandate a policy on the disclosure and management of conflicts of interest that applies to all persons involved in setting and implementing public health policies with respect to tobacco control, including government officials, employees, consultants and contractors.**

**4.2 Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.**

**4.5 Parties should develop clear policies that require applicants for public office positions which have a role in setting and implementing public health policies with respect to tobacco control to declare any current or previous occupational activity with any tobacco industry whether gainful or not.**

**4.8 Parties should not allow any person employed by the tobacco industry or any entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.**

**4.11 Taking into account national law and constitutional principles, Parties should have effective measures to prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns, or to require full disclosure of such contributions.**

In the light of the above, we query the presence of two current members of this Panel, Vincent Fang Kang and Wong Ting-Kwong, who are Hon Consultants to the Tobacco Control Concern Group, a tobacco industry front group staffed by and funded by tobacco companies.

立法會 CB(1)2207/10-11(01)號文件  
(只備中文本)



**關注控煙工作委員會簡介**

關注控煙工作委員會（「關注控煙會」）於 2009 年成立。該會支持合理的煙草法規，其成立的主要目的之一是要引起公眾關注大幅增加煙草稅會導致私煙活動顯著增長。

關注控煙會的成員包括 7-Eleven（香港）、OK 便利店有限公司、華潤萬家（香港）有限公司、全港報販大聯盟、英美煙草（香港）有限公司、香港煙草業聯合商會有限公司、菲利普莫里斯亞洲集團有限公司、太平洋雪茄有限公司和香煙經銷商新連（香港）有限公司。兩位擔任關注控煙會名譽顧問的立法會議員為方剛議員及黃定光議員。

Translation: Info of TCCG

TCCG was established in 2009. It supports the legitimate regulation on tobacco. It aims to raise the public concern on the smuggling which is caused by tobacco tax. Members

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include 7-11 (Hong Kong), OK Convenience Store, China Resources Vanguard Shops, Coalition of Hong Kong Newspaper and Magazine Merchants, BAT, Hong Kong Federation of Tobacco Industry Limited, Philip Morris, Pacific Cigar Company and a tobacco trader.

**Honorary consultant: LegCo members – Vincent Fang Kang and Wong Ting-kwong**

**Clear the Air states that the said members should step down or recuse themselves from discussing or voting on any tobacco related matters as this is a major conflict of interest.** It is not in the interest of Hong Kong society for Legco members to be advising a tobacco group when the cost of smoking to Hong Kong society due to tobacco related diseases and death is **in excess of HK\$ 73 billion per year** and the said Code of Conduct should apply to the betterment of the Hong Kong society, not the profits of tobacco companies, which profit from the deaths of Hong Kong people and who addict our youth. The conflict of interest applies whether the services provided by the two members are gainful or otherwise. ( It is of note that TCCG is not a society, firm, company or other legal entity registered here)

2)

We refer to article comments by Professor Joseph Lee Kok Long:

<http://www.ejinsight.com/20150713-new-tobacco-control-measures-require-further-consultation/>

**“The administration has yet to provide any conclusive evidence that increasing the size of the graphic health warning on the cigarette packet can encourage smokers to quit.”**

Commentators **Joseph Lee Kok-long** - Jul 13, 2015 11:03am

**“New tobacco control measures require further consultation”**

It appears Professor Lee has not read the contents nor Guidelines to Article 11 of the said FCTC Treaty and that he doubts the effectiveness of enlarged colorful graphic warning labels. Accordingly, since HK Government has allegedly failed to provide him with the ‘conclusive evidence’ Clear the Air has done it for them - Please see the detailed attachment ***LeeKokLong-health-warnings.pdf***

Further, the Hong Kong Government in its formulation of tobacco control policies, is not in any way obliged to engage the tobacco industry as a stakeholder – indeed the FCTC Treaty Article 5.3 clearly **directs that the tobacco companies must not be involved in nor in any way interfere in policy decision making.** If they go out of business then that’s great. They should not have been invited to present in Legco. The interests of health policies to prevent children smoking and save lives and tobacco company interests which profit in selling a consumer product which kills when used as directed by its manufacturers, are completely opposed and opposite.

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3)

We refer to comments made by Dr Leung Ka Lau.

<http://www.scmp.com/article/970722/lawmakers-approve-tobacco-tax-increase>

16 June 2011

Although he voted for the tax, medical sector lawmaker **Dr Leung Ka-lau doubted whether increasing it would be useful**, saying only a tiny fraction of tobacco taxes collected each year were spent on smoking cessation. 'Hong Kong's smoking rate is already very low,' he said. 'I suspect that with such a low rate, **taxation is no longer effective in making people quit.**'

We agree with Dr Leung that the excise taxation from tobacco should be directed to smoking prevention and increased staffing of tobacco control office to allow them to actually patrol, instead of into the General Fund for pouring more concrete white elephants and keeping the development tygoons smiling. However it seems also obvious that Dr Leung has not bothered to read nor assimilate the requirements of Article 6 of the FCTC Treaty regarding taxation. Accordingly and for the education of all Hon Members, Clear the Air has done the research for him and it is shown at the attachment **Leung-Ka-Lau-Tax-Works.pdf**

There is obviously far more available relevant information, but by reading what we provided, all Hon members can see beyond any shadow of a doubt that the WHO directives on regular tax increases above the level of inflation are **effective and necessary**.

Furthermore we provide at attachment **Worldcigaretteprices.pdf** which show why Australia has been so successful in tobacco control: political will, plain packaging, large health warnings, smokefree legislation with onus on licensees and regular stiff excise increases above inflation. Their male smoking prevalence rate is lower than Hong Kong.

[www.who.int/tobacco/publications/en\\_tfi\\_tob\\_tax\\_annex.pdf](http://www.who.int/tobacco/publications/en_tfi_tob_tax_annex.pdf)

Further to the code of conduct rules above :

***4.11 Taking into account national law and constitutional principles, Parties should have effective measures to prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns, or to require full disclosure of such contributions.***

We request that the Panel members make a declaration and register it online that their political parties have not received any funding from the tobacco industry or its front groups.

This letter is addressed to all members of the Panel on Health Services but excludes Elizabeth Quat. At attachment **CTAletter-Quat.pdf** is a self explanatory letter sent to Elizabeth Quat's published contact details numerous times, in which we query her alleged qualifications and doctorate, and thereby her integrity as a lawmaker and district councillor. Ms Quat has failed to respond with any evidential proof that her 'degrees' are not from a diploma mill in Hawaii and we query why she is allowed to vote within Legco until this is resolved in the public interest. <https://webb-site.com/articles/quat.asp>

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<http://www.illegal-tobacco.co.uk/wp-content/uploads/2014/11/Guidance-for-Trading-Standards.pdf>

This excellent reference site explains clearly about the requirements of FCTC Treaty Article 5.3 guidelines covering Ratified parties to the Treaty and in what manner Ratified Party Government officials can deal with tobacco companies and their front organisations.

[http://www.tobaccotactics.org/index.php/Framework\\_Convention\\_on\\_Tobacco\\_Control](http://www.tobaccotactics.org/index.php/Framework_Convention_on_Tobacco_Control)

“Officials, representatives, and employees of any government or semi/quasi-public institution or body responsible for, or that contributes or could contribute, to developing or implementing tobacco control policies, and to any persons acting on their behalf. (Guidelines, para. 9-10)”

- **Limit interactions with the tobacco industry to only those necessary to effectively regulate the industry and its products.** When tobacco industry interactions are necessary, **they should be conducted transparently in public through hearings, notices of interactions, and disclosure of records.** (Rec. 2.1, 2.2)
- **Reject any partnerships, non-binding or non-enforceable agreements and any voluntary arrangement put forth by the tobacco industry or its allies or where such agreements are offered as a substitute for legally enforceable measures.** (Rec. 3.1, 3.3)
- **Reject any offer for assistance** or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry. (Rec. 3.4)
- Prohibit tobacco industry involvement in any youth, public education, or other tobacco control initiative; **prohibit involvement, in any manner, in initiatives directly or indirectly related to tobacco control.** (Rec. 3.2)
- **Avoid conflicts of interests for government officials and employees.**
- **Ban political contributions by the tobacco industry, or alternatively, require their full disclosure.** (Rec. 4.11)
- **Prohibit tobacco industry payments, contributions, gifts, and services to government institutions, officials, or employees** (except payments mandated by law).
- Bar tobacco industry representatives, **or any entity acting to further tobacco industry interests, from membership of any body, committee or advisory group that sets or implements public health policy.** (Rec. 4.8)
- Require the tobacco industry to publicly report activities and practices, and impose mandatory penalties for providing false or misleading information:

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e.g. registration of lobbyists and payments to them for production, manufacture, market share, revenues, lobbying, philanthropy, political contributions, other activities not yet banned; and other specified activities and practices (e.g. payments to scientists/ researchers, journalists; for research, conferences, etc.). (Rec. 5.2-5.5)

- **Denormalise** and regulate purported “socially responsible” activities by the tobacco industry - e.g. **no endorsement, support or formation of partnerships with the industry**, and correction of any perceptions of partnerships created by it. (Guidelines, para. 20; Rec. 6.1-6.4)

Yours faithfully,

*James Middleton*  
Chairman