



PHILIP MORRIS ASIA LIMITED

Philip Morris Asia Limited

Submission To The Legislative Proposals To  
Strengthen Tobacco Control

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## **I. Introduction**

Philip Morris Asia Ltd. is pleased to have this opportunity to provide its comments on the proposals to mandate health warnings covering a minimum of 85% of the front and back panels of tobacco packaging and to ban non-nicotine containing e-cigarettes. This opportunity is especially welcome in light of the attempt by the Food and Health Bureau (FHB) to circumvent the democratic process and propose legislation without consulting interested parties.

We oppose the proposal to increase the size of health warnings to 85%, thus leaving only 15% of tobacco packaging available for communicating product attributes to consumers because:

- The proposal is based on the flawed logic that because two countries have implemented 85% or larger health warnings, Hong Kong should follow;
- The FHB has presented no evidence to support the claim that 85% health warnings would reduce smoking in Hong Kong, and the available data from countries that have implemented excessively large health warnings suggest they are no more effective than smaller warnings;
- The proposal could trigger substantial growth in the already booming Hong Kong black market;
- The limited space available for branding will make it difficult to communicate product information to consumers; and
- The proposal's impact on intellectual property raises serious legal concerns.

The FHB's proposal to maintain the existing ban on nicotine-containing e-cigarettes and prohibit non-nicotine e-cigarettes is misguided and ignores significant scientific and empirical evidence and regulatory precedents:

- Evidence shows that e-cigarettes could reduce risk in smokers who fully switch to them and benefit public health;
- Evidence shows that they are used almost exclusively by current smokers or recent ex-smokers and that sustained use by non-smokers and minors is negligible;
- Evidence shows that the availability of e-cigarettes has not adversely impacted smoking initiation and cessation rates among youth or adults;
- Leading regulators recognize e-cigarettes potential to benefit public health and have not prohibited e-cigarettes or regulated them as medicines.

## **II. The Food and Health Bureau fails to articulate what 85% health warnings would accomplish**

In order to ensure high quality and effective regulation, global better regulation principles require the clear identification the problem to be addressed, only after which it would be appropriate to consider regulation to addresses the problem.<sup>i</sup> In the case of the proposed 85% health warnings rather than clearly identifying a problem with the existing health warnings, the FHB appears to propose the measure first and develop the justification after the fact.

The FHB makes no suggestion that larger health warnings are necessary to remedy a lack of understanding of the health risks of smoking. In fact, Hong Kong government awareness and education campaigns conducted since the 1980s have ensured that awareness of the risks of tobacco use is nearly universal.

Furthermore, Hong Kong is fully compliant with its obligations under the World Health Organization Framework Convention on Tobacco Control. In fact, Hong Kong exceeds the FCTC mandatory minimum of 30% health warnings on the front and back of the tobacco packaging, and unlike many countries, meets the FCTC's aspirational recommendation of 50% health warnings.<sup>ii</sup>

Instead of articulating a problem to be addressed by increasing the size of health warnings, the FHB policy paper seeks to justify the policy based on the "overseas experience."<sup>iii</sup> In this respect, the FHB appears to suggest that the actions of other countries justify the implementation excessively large health warnings in Hong Kong, and specifically names Pakistan, Nepal and Thailand as having 85% or larger health warnings.<sup>iv</sup> As a threshold matter, the FHB is mistaken – Pakistan has not implemented 85% health warnings. The government has twice delayed implementation and formed a ministerial committee to undertake consultation with interested stakeholders in order to assess whether the measure would actually reduce smoking, as well as the impact on illicit trade and government revenues. With respect to Thailand, the FHB fails to disclose that since the implementation of 85% health warnings, cigarette consumption has gone up, continuing a multi-year trend of increasing tobacco consumption.

Statements made during the Panel on Health Services meeting on May 18 at the Legislative Council suggest that the FHB also seeks to justify the larger health warnings on the basis that they will reduce smoking. At the meeting, however, the FHB could provide no estimate of the impact of increasing the size of health warnings on Hong Kong's long declining smoking rate, currently at 10.7%<sup>v</sup> and among the lowest in the world, nor did it cite a single piece of empirical or even anecdotal evidence that larger health warnings would have this effect. If anything, the inability of the FHB to cite evidence that larger health warnings reduce smoking is consistent with the "overseas experience."

#### **A. The domestic and overseas experiences show that larger health warnings are not more effective**

If the FHB was serious about implementing effective tobacco control measures that reduce the harms of smoking, it would first look at existing measures to assess whether they have actually worked. For this, one would need to analyze available smoking prevalence data from before and after the implementation of regulatory measures, while controlling for confounding factors, to determine which have reduced smoking and by how much.

While the FHB has not analyzed the efficacy of health warnings in Hong Kong, Dr. Kevin K. Tsui and Dr. Kwok Ping Tsang from Clemson University and Virginia Tech University have and conclude:<sup>vi</sup>

*our empirical analysis suggests that larger graphic cigarette warning labels are ineffective in reducing smoking prevalence in Hong Kong.*

Using government data, the experts analyzed whether increasing the size of health warnings between 1994 and 2007 (from 20% to 25-30% and finally to 50%) reduced smoking. After controlling for the long-term decline in smoking prevalence and other tobacco control measures, they concluded that increasing the size of health warnings had no effect on smoking rates:<sup>vii</sup>

*We have found that neither the introduction of regulation that mandates the size of the health warnings at the beginning of 1994 nor the later expansions around the mid of*

*2000 and near the end of 2007 played any discernible role in the decline of smoking rates in Hong Kong.*

The experts' findings are in line with a 2012 United States court decision which addressed the potential impact on smoking prevalence of health warnings covering 50% of the front and back panels of cigarette packs.<sup>viii</sup> Even the US Food and Drug Administration (FDA), which proposed the warnings in question, predicted that increasing health warnings to 50% of the front and back of tobacco packs from the current side panel text warning would have an effect of only 0.088%, which the FDA admitted was "*not statistically distinguishable from zero.*"<sup>ix</sup>

The court in that case conducted a detailed analysis of the evidence base on which the FDA relied, finding:<sup>x</sup>

*FDA has not provided **a shred of evidence** ... that the graphic warnings will 'directly advance' its interest in reducing the number of Americans who smoke.*

Furthermore, the court criticized the FDA when it argued, as the Hong Kong FHB now argues, that the actions of other countries should serve as a basis for action in the US:<sup>xi</sup>

*FDA makes much of the 'international consensus' surrounding the effectiveness of large graphic warnings, but offers **no evidence showing that such warnings have directly caused a material decrease in smoking rates in any of the countries that now require them.***

Finally, the court examined and rejected survey-based studies relied on by the FDA and advocates of larger health warnings, referring to such studies as "**questionable social science**"<sup>xii</sup> because they did not measure actual smoking behavior and instead drew conclusions based on study participants' thoughts or intentions.

### **1. Empirical evidence from overseas provides no support for the proposal**

In December 2014, Thailand became the first and only country in the world to require 85% health warnings on all cigarette packs sold at retail,<sup>xiii</sup> up from 55% previously. Prior to implementing the measure, the government and anti-tobacco groups claimed that the larger health warnings would reduce smoking:

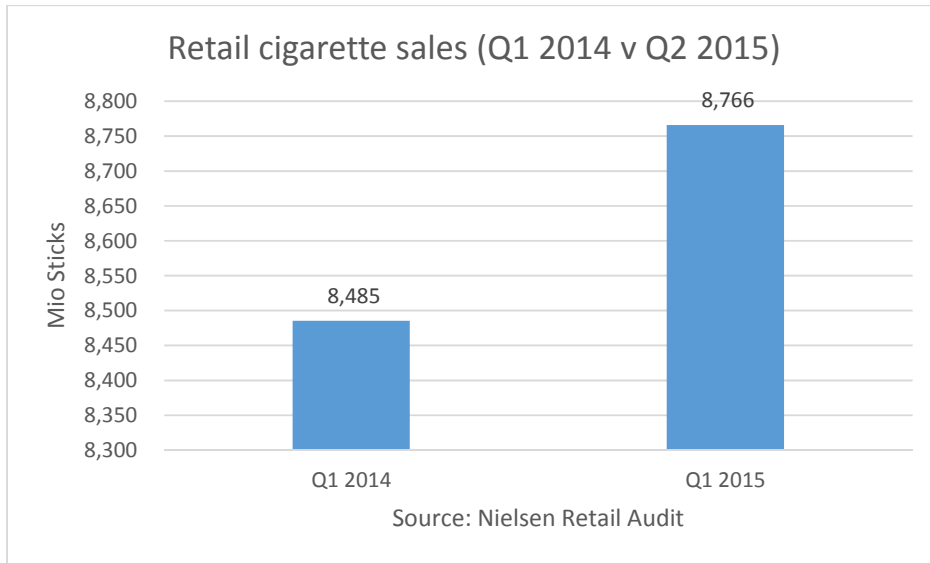
*This will help our campaign to lower the number of smokers in Thailand.*

Narong Sahametapat, Permanent Secretary for Public Health Ministry<sup>xiv</sup>

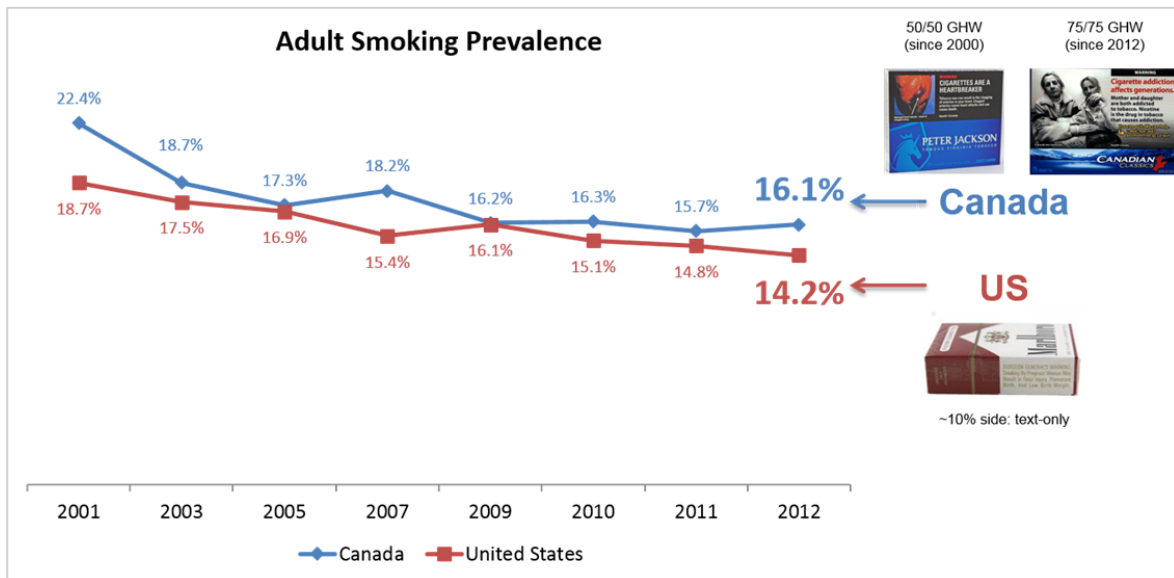
*The bigger the warnings are, the better we will be at preventing people from smoking.*

Nopporn Cheanklin, from the Public Health Ministry's Disease Control Department<sup>xv</sup>

The early evidence appears to show the opposite. Cigarette consumption in Thailand continues to increase. In fact, in the first quarter of 2015 (with 85% health warnings) retail cigarette sales increased by 281 million sticks compared to the first quarter of 2014 (with 55% health warnings).



Other countries have had similar experiences when increasing health warning size in an attempt to reduce smoking rates. For example, Canada has always had larger health warnings than its neighbor, the US. While the US requires only a small textual health warning on the side panel of packs, Canada required 50% health warnings from 2000 and 75% health warnings from 2012. Despite the stricter requirements, smoking prevalence in Canada fell no faster than prevalence in the US, and as illustrated below, smoking rates in the US were **lower** than in Canada despite Canada's significantly larger health warnings.



Data sourced from: OECD (2015), Daily smokers indicator, available [here](#).

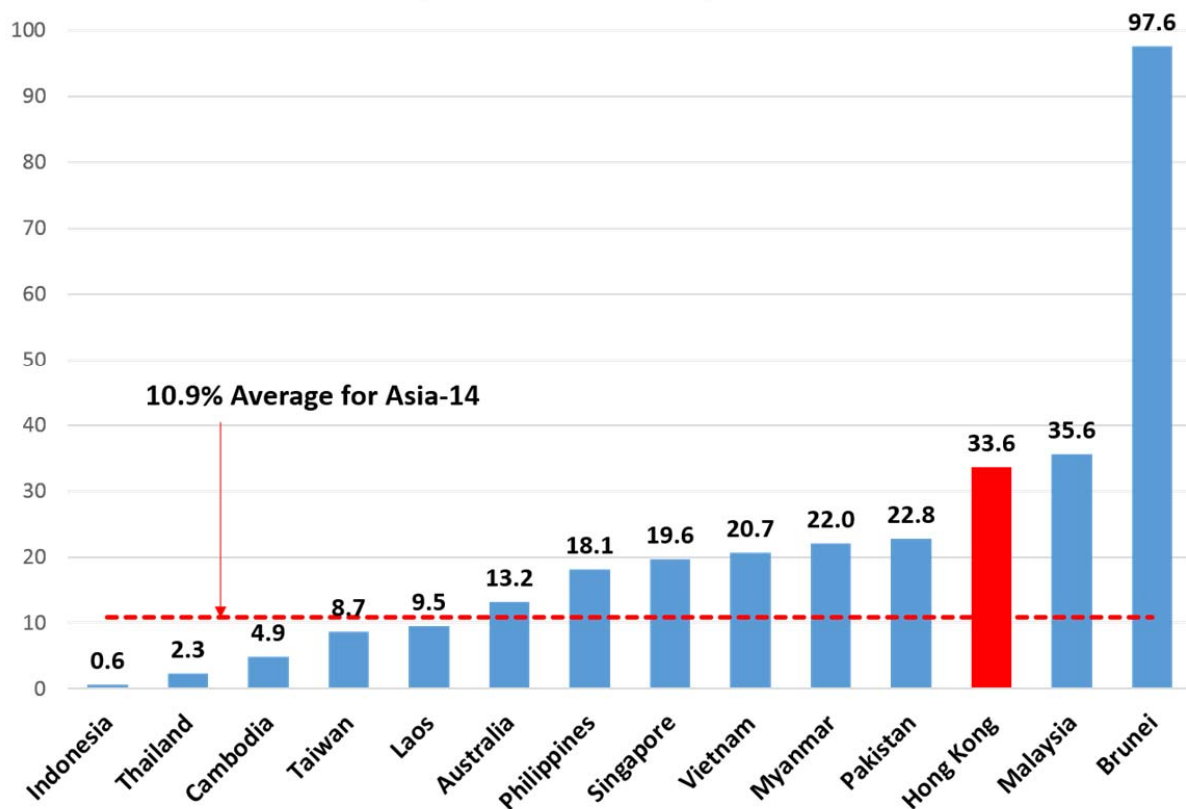
This lack of efficacy is not surprising in light of the research that is often cited in favor of large graphic health warnings, which typically consists of surveys of attitudes and intentions (i.e. what people think or

claim they might do) and does not measure actual smoking behavior. Similar to the findings by the US appellate court that this type of research is “questionable social science,” a 2011 review of more than 2,000 studies regarding the effects of health warning label size found that the studies do not support the contention that larger health warnings are more effective than smaller ones.<sup>xvi</sup> In fact, of the thousands of studies analyzed, only four looked at the effect of health warnings on actual smoking behavior. Of those, three found no effect, and the fourth failed to control for confounding factors, completely undermining its validity.<sup>xvii</sup>

**B. Increasing health warnings to 85% risks fueling the already prolific Hong Kong black market**

The cigarette black market in Hong Kong is staggering – in 2013, one of every three cigarettes consumed in Hong Kong was smuggled. This gives Hong Kong the dubious distinction of having one of the highest rates of illicit tobacco use among 14 Asian countries in a recent analysis, well above the average of 10.9%.<sup>xviii</sup>

**Asia-4: Illicit Consumption 2013  
(% of Total Consumption)**



To put this in perspective, 1.8 billion illicit cigarettes were consumed in Hong Kong in 2013, roughly the same amount as in Indonesia, where the total market is 57 times larger than in Hong Kong.<sup>xix</sup> By any measure, Hong Kong faces a substantial cigarette illicit trade problem.

The tobacco black market brings with it significant consequences for the Hong Kong economy, the legal tobacco industry and society as a whole. Oxford Economics estimates that in 2013, the Hong Kong government lost nearly US\$ 400 million in taxes to the tobacco black market – taxes that could have been put to good use to fund education, health care or tobacco control programs, among other things.<sup>xx</sup>

At the same time, the tobacco black market fuels organized crime, which engages in criminal activity going well beyond the illicit tobacco trade. In Hong Kong, there have been many reports of the involvement of triad criminal gangs in the illicit tobacco trade. For example, in February 2015, the Regional Anti Triad Unit Kowloon East seized 170,000 illicit cigarettes and arrested two people in a raid of an illicit cigarette storage facility believed to be operated by a major triad.<sup>xxi</sup>

Extreme regulation, like the proposed 85% health warnings, risks further increasing the already overwhelming black market. Countries that have implemented extreme regulatory measures in an attempt to reduce smoking have seen these policies backfire and trigger increased illicit trade. Australia's draconian packaging and labeling requirements are a prime example. As of December 2012, all cigarettes sold in Australia must bear health warnings covering 75% of the front and 90% of the back of the pack, and retail packaging cannot include logos or trademarks other than the brand name and variant displayed in a uniform size, place and font. While the measure has not resulted a reduction in smoking above and beyond the pre-existing decades-long trend of declining prevalence,<sup>xxii</sup> the black market has reached historic levels. According to Oxford Economics, the illicit consumption increased from 11.3% in 2012 to 13.2% in 2014<sup>xxiii</sup>. This trend is confirmed by the renowned international consulting firm KPMG,<sup>xxiv</sup> according to whom the tobacco black market grew by more than 17% in the first year of plain packaging (from 11.5% of total tobacco consumption in 2012 to 13.5% in 2013) and continued to grow to 14.5% of total consumption in 2014.<sup>xxv</sup> As a result, the Australian Customs and Border Protection Service has, for the first time ever, identified black market tobacco and its links to organized crime as an operational priority:<sup>xxvi</sup>

*The involvement in importing illicit tobacco by serious and organised crime is one of the reasons we have actually nominated it as being an operational priority for the service. With that comes the game we always play with organised crime, which is to stay one step ahead.*

Hong Kong should be mindful of this risk and careful to not follow in the footsteps of countries like Australia, both because increased illicit trade is a potential consequence of excessive regulation and because the illicit trade undermines the very objectives governments seek to achieve through tobacco control efforts. It is well-established that the black market, where minimum age laws are not enforced, is a popular source of tobacco for youth.<sup>xxvii</sup> At the same time, the rock-bottom prices offered on the black market – well below those of the legal market – undercut the use of tax measures, which are widely recognized as effective means to reduce smoking when applied in a reasonable manner that does not encourage illicit trade.<sup>xxviii</sup>

Rather than ineffective packaging measures that may exacerbate the already rampant illicit trade, if Hong Kong is serious about reducing smoking, it should focus on reducing the illicit trade, which will in turn enhance the efficacy of other tobacco control measures.

### **C. Increasing health warning size to 85% of front and back of packs would negatively impact consumers' right to be informed and manufacturers' intellectual property**

Health warnings covering 85% of the front and back of tobacco packs would prevent manufacturers from including certain descriptive product information on packaging. As packaging is among the only avenues left in Hong Kong to tell consumers what they are purchasing, limiting the product information that manufacturers can communicate to consumers could violate consumers' "right to be informed."<sup>xxxix</sup>

Furthermore, as explained by the International Trademark Association (INTA),<sup>xxx</sup> limiting the available space would force manufacturers to give up elements of their distinctive branding, many of which are registered and protected as trademarks under Hong Kong law.<sup>xxxi</sup> As use is the essence of trademarks, the impact would be to deprive manufacturers of all economic utility and value in these marks, which are also valuable property.<sup>xxxii</sup> Many of the trademarked elements of current day tobacco packaging would have to be abandoned if only 15% or less of the pack face were available for displaying branding and trademarks.

Legislation that restricts the use of or effectively deprives individuals of their property raises serious legal concerns. For example, when considering the impact of a proposal for health warnings covering 75% of the front and back of tobacco packaging, the European Union Parliament Committee on Legal Affairs expressed concern and suggested that 50% health warnings would be more appropriate.<sup>xxxiii</sup>

*Reducing the space available on the front and back surfaces to less than 25% would . . . make it **difficult to sufficiently distinguish the products of one producer from those of others, thereby depriving the trademarks of one of their main functions.** The trademarks could also not properly fulfill their other functions ... This would also not be in accordance with national constitutional law as well as international treaties such as the TRIPS Agreement.*

*Bearing in mind the impact on intellectual property rights, it is **more than surprising that the Commission did not even consider less restrictive measures such as smaller health warnings.** Taking into account the importance of intellectual property rights and legitimate health objectives, it is suggested that health warnings should cover 50 % of the front and back surface.*

As in the EU, private property rights enjoy vigorous protection under Hong Kong's capitalist system, and in particular under Articles 6 and 105 of the Basic Law.<sup>xxxiv</sup> In the words of the venerable jurist P.Y. Lo, "Bearing in mind that the Basic Law entrenches Hong Kong's capitalist system, [private property rights] ought to be generously interpreted."<sup>xxxv</sup> In fact, in 2006, when confronting the similar issue of a product descriptor ban that would prevent the use of certain trademarks, the Hong Kong Department of Justice, the Health, Welfare and Food Bureau, and the Intellectual Property Department, agreed that the cumulative effect of the proposed ban and other tobacco control measures created a "serious risk" of a



*de facto* deprivation of property.<sup>xxxvi</sup> In order to prevent the deprivation, the decision was taken to structure the descriptor ban in a way that did not prevent the use of certain trademark rights.

Furthermore, preventing the use of trademarks as registered by limiting the packaging space on which they can be applied may be inconsistent with Hong Kong's obligations under various international agreements. As explained by INTA, the World Trade Organization Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPs) prohibits the "*unjustified encumbrance of the use of trademarks in the course of trade.*"<sup>xxxvii</sup> Absent any evidence that substantially increasing the size of health warnings would lead to a material reduction in smoking, and given the availability of less restrictive alternative measures to reduce the harms of tobacco use, it is unclear how such an encumbrance could be justified.

Hong Kong enjoys a reputation as an ideal IP trading hub according to a survey of more than 500 business leaders,<sup>xxxviii</sup> which comes in part from the government's strong commitment to protection of intellectual property rights.<sup>xxxix</sup> The government should carefully consider the message it would send to current and potential investors should it implement a measure that undermines intellectual property rights. In this regard, Australia is again instructive. Following the de-branding of tobacco products, the influential Global Intellectual Property Center of the International Chamber of Commerce criticized Australia, citing "*restrictions on the use of brands, trademarks and trade dress in packaging*" as a key "*area of weakness.*"<sup>xl</sup>

At a minimum, the government should insist that the FHB present robust empirical evidence that such measures would achieve their objectives in Hong Kong before taking further legislative action.

### **III. E-cigarettes should be properly regulated, not prohibited**

The FHB provides no evidence that its proposal to maintain the existing ban on nicotine-containing electronic cigarettes and prohibit non-nicotine e-cigarettes would reduce smoking rates. To the contrary, there is compelling evidence that allowing Hong Kong's adult smokers access to nicotine-containing e-cigarettes could reduce their risk of smoking related disease and benefit public health.

#### **A. Introduction**

When a cigarette is lit, the burning of tobacco and other materials creates smoke, which contains nicotine and thousands of other chemicals. Some of these chemicals are widely recognized as being associated with the development of smoking-related diseases.<sup>xii</sup> At the same time, experts agree that nicotine, while addictive, is not the primary cause of smoking-related diseases. In 2007, Britain's Royal College of Physicians observed "*...that smokers smoke predominantly for nicotine, that nicotine itself is not especially hazardous, and that if nicotine could be provided in a form that is acceptable and effective as a cigarette substitute, millions of lives could be saved.*"<sup>xlii</sup>

E-cigarettes are not cigarettes, do not burn tobacco and do not generate smoke. They use battery-powered electronics to vaporize a nicotine-containing solution to create an aerosol, commonly referred to as vapour, with far fewer harmful chemicals than cigarette smoke.<sup>xliii</sup> A growing number of public health authorities and experts view the emergence of e-cigarettes and other non-combustible

alternatives to cigarettes as *“among the most significant health innovations of the 21st Century – perhaps saving hundreds of millions of lives...”*<sup>xliv</sup>

Providing adult smokers with reduced-risk alternatives to cigarettes is a priority for Philip Morris Asia Limited and its ultimate parent company, Philip Morris International. Our goal is to develop a portfolio of novel products, including e-cigarettes, which replicate the sensorial and taste attributes of cigarettes and deliver a nicotine-containing aerosol that is significantly less harmful than cigarette smoke.

## **B. Evidence shows that e-cigarettes could reduce risk in smokers who switch to them and benefit public health**

In order for an alternative to cigarettes to benefit public health, it must satisfy three conditions.

- **First**, its potential to reduce risk in smokers who switch to it must be established by sound science and measured against a clear standard.
- **Second**, the product must be a satisfying alternative to conventional tobacco products.
- **Third**, the product’s marketing and use must not adversely impact initiation and cessation of overall conventional tobacco use.

The available evidence strongly suggests that, as a class, nicotine-containing e-cigarettes meet those three criteria.

**First**, nicotine-containing e-cigarettes are likely to present significantly lower risk of smoking related disease to individuals than combustible cigarettes. For example, a 2014 publication by the UK Royal College of Physicians noted that *“Switching completely from tobacco to e-cigarettes achieves much the same in health terms as does quitting smoking and all nicotine use completely.”*<sup>xlv</sup> A group of scientific and tobacco policy experts reviewed all the available scientific literature on e-cigarettes and concluded:

*“based on the data available regarding the toxicant content of EC liquid and aerosol, long-term use of EC, compared to smoking, is likely to be much less, if at all, harmful to users or bystanders. This is because unlike cigarettes, EC do not deliver combustion-generated toxicants that are linked to cancer, chronic lung disease and cardiovascular disease (CVD).”*<sup>xlvi</sup>

Although, to our knowledge, no individual e-cigarette has been subjected to the full set of studies that would be necessary to precisely quantify its specific risk profile, there is little doubt among the scientific and policy community that smokers who switch to e-cigarettes would likely significantly reduce their risk of smoking-related diseases.

**Second**, evidence from places where e-cigarettes are widely available shows that e-cigarettes are a satisfying alternative to conventional tobacco products for millions of smokers and they are not used by never smokers. For example, a recent briefing paper by Action on Smoking and Health–UK noted that *“there are currently 2.6 million adults in Great Britain using electronic cigarettes. Of these, approximately 1.1 million are ex-smokers while 1.4 million continue to use tobacco alongside their electronic cigarette use. Regular use of the devices is confined to current and ex-smokers and use amongst never smokers remains negligible.”*<sup>xlvii</sup> Similarly, a government-funded monthly survey of thousands of UK smokers and non-smokers found that *“E-cigarettes may have helped approximately 20,000 smokers to stop last year who would not have stopped otherwise.”*<sup>xlviii</sup>

**Third**, evidence shows that the availability of e-cigarettes has not adversely impacted smoking initiation and cessation rates. Again, the UK's robust data are instructive, showing that the advent and growth in e-cigarette use *"has been accompanied by an increase in smoking cessation rates, a continued reduction in [smoking] prevalence and no increase in smoking uptake"* and *"by a decrease rather than increase in smoking uptake by children."*<sup>xlix</sup>

Evidence also shows that e-cigarettes more likely to be gateways out of smoking than gateways into smoking. The same review concluded, *"[A]lthough there have been claims that EC [electronic cigarettes] are acting as a 'gateway' to smoking in young people, the evidence does not support this assertion. Regular use of EC by non-smokers is rare and no migration from EC to smoking has been documented (let alone whether this occurred in individuals not predisposed to smoking in the first place)."*<sup>l</sup>

FHB and COSH have provided *no* evidence to justify a prohibition on e-cigarettes; significant evidence from countries which permit e-cigarettes to be sold suggests that e-cigarettes should be available for adult smokers to use as alternatives to combustible cigarettes.

### **C. The Legislative Counsel should properly regulate e-cigarettes, not ban them**

We recommend that the Committee reject FHB and COSH's recommendation to prohibit non-nicotine e-cigarettes and maintain the existing ban on nicotine-containing e-cigarettes. Instead, the Legislative Council should support and encourage the development, assessment, commercialization and use of potentially reduced risk non-combustible products by adult smokers as alternatives to combustible cigarettes.

The European Union and the United States have already adopted, or are in the process of adopting, dedicated legislative and regulatory frameworks for e-cigarettes and other alternatives to combustible cigarettes. In the EU, for example, e-cigarettes will be regulated under the 2014 Tobacco Product Directive (2014/40EU). As the EU Commission stated, *"The new legislation does not ban e-cigarettes, nor was there ever a plan to ban such products. Not only will consumers still be able to buy and use e-cigarettes, but they will benefit from improved safety and quality requirements."*<sup>li</sup>

We would recommend that the Hong Kong Legislature establish a framework for e-cigarettes that includes:

- Regulating them in a dedicated category or as tobacco-related products, not as medicines;
- Prohibiting their sale to minors;
- Subjecting e-cigarettes and e-cigarette ingredients (including nicotine) to quality and safety requirements;
- Regulating the advertising and marketing practices for e-cigarettes in a balanced way to minimize exposure of nonsmokers and minors while ensuring smokers and e-cigarette users are informed about their availability and benefits;
- Prohibiting therapeutic claims unless the product and claims are authorized as medicines;

- Prohibiting comparative claims of reduced risk or reduced exposure unless substantiated by product-specific clinical studies and other data;
- Prohibiting the use of candy or confectionary brands and marketing, such as the use of cartoon character trademarks.

The Committee should consider empirical and scientific evidence and regulatory best practices in deciding on the options they will allow for Hong Kong's more than 600,000 adults who smoke.

## VI. Conclusion

The FHB urges the government to implement tobacco control measures that it claims will protect and improve public health – a goal we support. Neither it nor COSH have provided any evidence that their proposed measures will reduce smoking rates or the burden of smoking-related disease – which is the evidence the Legislative Council should require before adopting FHB's proposals. In fact, the evidence shows that FHB's proposals would not reduce smoking rates: FHB can provide no data showing that health warnings have reduced smoking in Hong Kong or that excessively large health warnings have reduced smoking in other countries. Instead, the FHB can only characterize the acts of two countries as a "trend" towards 85% or larger health warnings. A deeper look at the Hong Kong and international experience confirms that larger is not better – increasing health warning size does not appear to impact smoking rates. At the same time, excessive regulation undermines intellectual property rights and can bring with it unintended consequences such as increased illicit trade.

The proposal on e-cigarettes would deprive smokers of access to potentially less harmful alternatives to cigarette smoking. If the FHB was serious about improving public health, it would look beyond measures that have proven ineffective in the past and recognize the growing consensus that novel products such as e-cigarettes could provide hundreds of thousands of adult smokers in Hong Kong with potentially less harmful options and benefit public health.

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<sup>i</sup> See, OECD, Recommendation of the Council on Regulatory Policy and Governance, 2012, available at <http://www.oecd.org/governance/regulatory-policy/49990817.pdf>.

<sup>ii</sup> FCTC Art. 11.

<sup>iii</sup> LP Paper No. CB(2)1456/14-15(07), Legislative Council Panel on Health Services, Progress of Tobacco Control Measures, 18 May 2015, p. 4.

<sup>iv</sup> Letter from Secretary for Food and Health to Legislative Council Clerk to Bills Committee, LC Paper No. CB(2)1808/14-15(01), 29 June 2015.

<sup>v</sup> Census and Statistics Department, Thematic Household Survey Report No. 53, Pattern of Smoking, Chiropractic Consultation, Personal Computer and Internet Penetration, November 2013, available at <http://www.censtatd.gov.hk/hkstat/sub/sp140.jsp?productCode=B1130201>.

<sup>vi</sup> Tsui, K.K., and Tsang, K.P., *An Econometric Analysis of Health Warning Labels on Cigarette Packets in Hong Kong*, 25 June 2015.

<sup>vii</sup> *Ibid.*

<sup>viii</sup> *R.J. Reynolds et al. v. FDA*, No. 11-5332 (D.C. Cir. Aug. 24, 2012), available at [http://www.cadc.uscourts.gov/internet/opinions.nsf/4C0311C78EB11C5785257A64004EBFB5/\\$file/11-5332-1391191.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/4C0311C78EB11C5785257A64004EBFB5/$file/11-5332-1391191.pdf).

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<sup>ix</sup> Ibid.

<sup>x</sup> Ibid.

<sup>xi</sup> Ibid.

<sup>xii</sup> Ibid.

<sup>xiii</sup> As of September 2014, all cigarette packs sold manufactured in or imported into Thailand were required to bear 85% health warnings, but packs with the old health warnings could be sold at retail through December 2014.

<sup>xiv</sup> Lefevre, A.S., *Bigger health warning for Thai cigarette packs*, Reuters, 27 June 2014, available at <http://www.reuters.com/article/2014/06/27/us-thailand-cigarettes-idUSKBN0F21AC20140627>.

<sup>xv</sup> *Philip Morris wins reprieve over cigarette health warnings in Thailand*, The Guardian, 27 August 2014, available at <http://www.theguardian.com/business/2013/aug/27/philip-morris-cigarette-health-warning-thailand>.

<sup>xvi</sup> Kleijnen Systematic Reviews Ltd., *Systematic review of the effectiveness of an increase in the size of tobacco health warning labels on cigarette packs in reducing smoking*, June 2011, p. 7. Report commissioned by Philip Morris International.

<sup>xvii</sup> Ibid.

<sup>xviii</sup> Oxford Economics and the International Tax and Investment Center, *Asia-14 Illicit Tobacco Indicator 2013*, September 2014, p. 14, available at <http://www.oxfordeconomics.com/recent-releases/update-asia-14-illicit-tobacco-indicator-2013>.

<sup>xix</sup> Ibid. According to Oxford Economics and the International Tax and Investment Center, 310.3 billion cigarettes were consumed in Indonesia in 2013 while 5.4 billion were consumed in Hong Kong. Illicit trade in Indonesia was estimated at 1.9 billion cigarettes, comparable to Hong Kong's 1.8 billion.

<sup>xx</sup> Ibid. p. L6.

<sup>xxi</sup> See, for example, Apple Daily, February 3, 2015 (警搗私煙竇拘兩男) (Chinese only), available at <http://hk.apple.nextmedia.com/news/art/20150203/19027447>; Ta Kung Pao, February 3, 2015 (警搗私煙倉拘兩黑漢) (Chinese only), available at <http://news.takungpao.com.hk/paper/q/2015/0203/2909814.html>.

<sup>xxii</sup> See Basham, P., *An Australian Lesson, The Plain Packaging Experiment is a Failure*, A Democracy Institute Economic Risk Series Paper, March 2015, available at [http://www.democracyinstitute.org/\\_literature\\_139923/Basham\\_DI\\_Australian\\_Lesson](http://www.democracyinstitute.org/_literature_139923/Basham_DI_Australian_Lesson).

<sup>xxiii</sup> Oxford Economics and the International Tax and Investment Center, *Asia-14 Illicit Tobacco Indicator 2013*, September 2014, p. 40, available at <http://www.oxfordeconomics.com/recent-releases/update-asia-14-illicit-tobacco-indicator-2013>

<sup>xxiv</sup> KPMG is the world leader in measuring illicit tobacco consumption and has done work in countries across Europe, Latin America and Asia. KPMG's methodology was pioneered in the European Union where it has been validated by the European Anti-Fraud Office. In 2013, the OECD Task Force for Charting Illicit Trade considered KPMG's work in the EU to be the "most authoritative assessment of the level of counterfeit and contraband cigarettes across EU Member States."

<sup>xxv</sup> KPMG, *Illicit tobacco in Australia, 2014 Full Year Report*, 30 March 2015, available at [http://www.pmi.com/eng/media\\_center/media\\_kit/Documents/KPMG%20Report%20FY%202014%20-%20Illicit%20tobacco%20in%20Australia.pdf](http://www.pmi.com/eng/media_center/media_kit/Documents/KPMG%20Report%20FY%202014%20-%20Illicit%20tobacco%20in%20Australia.pdf).

<sup>xxvi</sup> Roman Quaedvlieg, Chief Executive, Australian Customs and Border Protection Service, speaking before the Australian Senate Legal and Constitutional Affairs Legislation Committee, 25 May 2015.

<sup>xxvii</sup> See, for example, Hua, C., *Students join ranks of parallel traders*, China Daily, 18 July 2014, available at [http://usa.chinadaily.com.cn/epaper/2014-07/18/content\\_17839290.htm](http://usa.chinadaily.com.cn/epaper/2014-07/18/content_17839290.htm); see UK Department of Health, *Consultation on the Future of Tobacco Control*, 31 May 2008 ("[The illicit tobacco trade] undermines the Government's targets for reducing smoking prevalence, especially among young people") available at: [http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_085651.pdf](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_085651.pdf).

<sup>xxviii</sup> U.S. Department of Health and Human Services, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, *The Health Consequences of Smoking: 50 Years of Progress, A Report of the Surgeon General*, 2014, available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>.

- <sup>xxix</sup> Hong Kong Consumer Council, Guide to Consumer Rights and Responsibilities, *available at* <http://www.consumer.org.hk/Trade Practice Codes and Reports/2006100401/2006100401e v1.pdf>.
- <sup>xxx</sup> INTA letter to Clerk to Panel on Health Services, Legislative Council Secretariat, 15 June 2015 (INTA Submission).
- <sup>xxxi</sup> INTA Submission.
- <sup>xxxii</sup> Hong Kong Trade Marks Ordinance. L.N. 31 of 2003, Section 10.
- <sup>xxxiii</sup> Committee on Legal Affairs for EU Parliament Opinion on the Proposed Revision to the EU TPD, June 25, 2013, *available here*.
- <sup>xxxiv</sup> See, for example, Lo, P.Y., *The Hong Kong Basic Law*, 2011, p. 39.
- <sup>xxxv</sup> *Ibid*.
- <sup>xxxvi</sup> LC Paper No. CB(2)2406/05-06(01), Bills Committee on Smoking (Public Health) (Amendment) Bill 2005, Administration's Reply to the Assistant Legal Adviser's Letter of 6 June 2006. See also, opinion of the Legal Policy Division of the Hong Kong Department of Justice, Bills Committee on Smoking (Public Health) (Amendment) Bill 2005, Administration's Supplementary Reply to the Assistant Legal Adviser's Letter of 6 June 2006.
- <sup>xxxvii</sup> See, INTA Submission.
- <sup>xxxviii</sup> See, HKTDC Research, *Hong Kong: Asia's hub for IP trading*, 12 March 2013, *available at* <http://economists-pick-research.hktdc.com/business-news/article/Research-Articles/Hong-KongAsia-s-hub-for-IP-trading/rp/en/1/1X000000/1X09S9WD.htm>.
- <sup>xxxix</sup> The International Property Rights Index 2014, *available at* <http://internationalpropertyrightsindex.org/hongkong>.
- <sup>xl</sup> International Chamber of Commerce, Global Intellectual Property Center, Unlimited Potential, GIPC International IP Index, February 2015, *available at* [http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/Index\\_Map\\_Index\\_3rdEdition.pdf](http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/Index_Map_Index_3rdEdition.pdf).
- <sup>xli</sup> <http://www.fda.gov/downloads/tobaccoproducts/publichealthscicenceresearch/hphcs/ucm435035.pdf>.
- <sup>xlii</sup> Royal College of Physicians, HARM REDUCTION IN NICOTINE ADDICTION: HELPING PEOPLE WHO CAN'T QUIT Preface (2007) *available at* <http://www.tobaccoprogram.org/pdf/4fc74817-64c5-4105-951e-38239b09c5db.pdf>. Thus, FHB's focus on non-nicotine e-cigarettes, and its failure to question the existing ban on nicotine-containing e-cigarettes, is misguided.
- <sup>xliii</sup> See, for example, Britton, J. Bogdanovioca I, Electronic cigarettes: A Report Commissioned by Public Health England (2014). [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/311887/Ecigarettes\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311887/Ecigarettes_report.pdf). ("Producing nicotine vapour from a solution rather than by burning tobacco means that electronic cigarette vapour is free from almost all of the many toxic chemicals that accompany nicotine in cigarette smoke.")
- <sup>xliv</sup> Letter from Specialists in Nicotine Science and Public Health Policy, to Dr. Margaret Chan, WHO Director General (May 26, 2014) at 1, *available at* <http://nicotinepolicy.net/documents/letters/MargaretChan.pdf>.
- <sup>xlv</sup> Ilze Bogdanovica, *et al.*, Royal College of Physicians, *What You Need to Know About Electronic Cigarettes*, COMMENTARY, Mar. 20, 2014, *available at* <http://www.rcplondon.ac.uk/commentary/what-you-need-know-about-electronic-cigarettes>.
- <sup>xlvi</sup> Hajek, P., Etter, J.-F., Benowitz, N., Eissenberg, T. and McRobbie, H. (2014), Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit. *Addiction*. doi: 10.1111/add.12659. <http://onlinelibrary.wiley.com/doi/10.1111/add.12659/abstract>.
- <sup>xlvii</sup> ASH Fact Sheet, Use of electronic cigarettes (vapourisers) among adults in Great Britain, May 2015, [http://www.ash.org.uk/files/documents/ASH\\_891.pdf](http://www.ash.org.uk/files/documents/ASH_891.pdf).
- <sup>xlviii</sup> Trends in electronic cigarette use in England (STS140122), updated 23 April 2015, <http://www.smokinginengland.info/latest-statistics/>.
- <sup>xlix</sup> Hajek, P., Etter, J.-F., Benowitz, N., Eissenberg, T. and McRobbie, H. (2014), Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit. *Addiction*. doi: 10.1111/add.12659. <http://onlinelibrary.wiley.com/doi/10.1111/add.12659/abstract>.
- <sup>i</sup> Hajek, P., Etter, J.-F., Benowitz, N., Eissenberg, T. and McRobbie, H. (2014), Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit. *Addiction*. doi: 10.1111/add.12659. <http://onlinelibrary.wiley.com/doi/10.1111/add.12659/abstract>.
- <sup>ii</sup> European Commission, E-cigarettes Myth Buster, [http://ec.europa.eu/health/tobacco/docs/tobacco\\_mythbuster\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/tobacco_mythbuster_en.pdf).