



Legco

Dear Members,

2nd March 2012

In the light of recent press articles wherein the Chief Executive Donald Tsang and his wife were alleged to have stayed on board the Golden Toad luxury yacht in Macau owned by Charles HO Tsu-Kwok, (the owner of Hong Kong Tobacco Company Ltd), I feel I must bring to your attention the relevant contents of the FCTC Treaty that binds Hong Kong and its officials. This is remarkable given that in the 2012 Budget, just 16 days earlier there were no tobacco control measures announced to extend the tobacco excise tax and thereby put smoking beyond the reach of youth. A previous recent Thematic survey revealed an increase in smoking by the targeted U19 age group and the fact that Hong Kong tobacco retail prices lag way behind other 1st world countries such as Australia, Ireland, New Zealand, New York and Singapore; yet all this was ignored by the hierarchy decision makers. Our Government decision makers are supposed to have a duty of care for the health of Hong Kong citizens rather than consorting with tobacco company owners.

Getting tobacco control policy, legislation and taxation passed used to be easier in the days of the pre-1997 administration which listened to its advisors. The sticking points in the post-1997 administrations have always been difficult to identify, but they clearly lie with the top decision makers notwithstanding the multiple advisory submissions from the Department of Health, COSH, eminent medical professors, nurses and NGO's which were arrogantly ignored.

**FCTC and Hong Kong:** China ratified the WHO Framework Convention on Tobacco Control (FCTC) in 2005 (after the establishment of Hong Kong's MPF system), and specifically stated that Hong Kong and Macau were included in this legally binding UN treaty.

***Article 5.3 of the FCTC states: "In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."*** This applies to all sectors of government.

The Guidelines for Implementation are available at:

[http://whqlibdoc.who.int/publications/2011/9789241501316\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789241501316_eng.pdf)

GUIDING PRINCIPLES for the implementation of Article 5.3 state:

**Item 4.10 Parties should not allow any official or employee of government or of any semi/quasi-governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.**

All Item 4:

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**(4) Avoid conflicts of interest for government officials and employees.**

The involvement of organizations or individuals with commercial or vested interests in the tobacco industry in public health policies with respect to tobacco control is most likely to have a negative effect. Clear rules regarding conflicts of interest for government officials and employees working in tobacco control are important means for protecting such policies from interference by the tobacco industry.

Payments, gifts and **services, monetary or in-kind**, and research funding **offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest.** **Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized in the International Code of Conduct for Public Officials adopted by the United Nations General Assembly and by several governmental and regional economic integration organizations.**

<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan039934.pdf>

*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.

4.3 Parties should not award contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies.

4.4 Parties should develop clear policies that require public office holders who have or have had a role in setting and implementing public health policies with respect to tobacco control to inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving service.

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.

*Guidelines for implementation: Article 5.3*



### ARTICLE 5.3

4.6 Parties should require government officials to declare and divest themselves of direct interests in the tobacco industry.

**4.7 Government institutions and their bodies should not have any financial interest in the tobacco industry, unless they are responsible for managing a Party's ownership interest in a State-owned tobacco industry.**

**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.**

<http://www.bauhinia.org/publications/BFRC-HC-FR-EN.pdf>

"Developing and Financing Hong Kong 's Future Healthcare."

<http://www.bauhinia.org/>

social environment in Hong Kong – what would be the appropriate social policies, in areas such as (c) environmental protection, education, labour, immigration, transport, medical and health, **Notwithstanding 4.8 Charles HO Tsu -Kwok is the Protector of the tycoon funded Bauhinia Foundation.**

4.9 Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.

4.10 Parties should not allow any official or employee of government or of any semi/quasi-governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.

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.**

Yours sincerely,

*James Middleton*

Chairman

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