

LEGISLATIVE COUNCIL BRIEF

Import and Export Ordinance
(Chapter 60)

IMPORT AND EXPORT (AMENDMENT) BILL 2023

INTRODUCTION

At the meeting of the Executive Council on 21 March 2023, the Council ADVISED and the Chief Executive ORDERED that the Import and Export (Amendment) Bill 2023 (the Bill), at Annex A, should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

Current position and challenges

2. Hong Kong is a premier logistics hub in Asia and gateway for trade between the Mainland and the rest of the world. Our strategic location, excellent connectivity, state-of-the-art infrastructure, sound legal system, high-quality service providers, competitive tax regime, and status as an international business and financial centre give Hong Kong its competitive edge. The Hong Kong International Airport (HKIA) has been the world's busiest international cargo airport for many years. The Central Government has also indicated support to Hong Kong in enhancing its status as an international aviation hub and international trade centre under the "Outline of the 14th Five-Year Plan for the National Economic and Social Development of the People's Republic of China and the Long-Range Objectives Through the Year 2035" (National 14th Five-Year Plan) and the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area (GBA).

3. Hong Kong is well known for its intermodal connectivity, which is key to our status as one of the most efficient and reliable logistics hubs in the region. The Chief Executive's Policy Address 2022 has also mentioned our direction to promote high value-added modern logistics development through reinforcing intermodal transport by integrating air, sea and land transport to strengthen the key role played by Hong Kong in the logistics chain of the GBA. In 2022, HKIA

handled around 4.2 million tonnes of total cargo throughput, which accounted for about 48%, or about HK\$4,560 billion, of the total value of Hong Kong's external merchandise trade. As a major pillar to Hong Kong's economy, the trading and logistics industry accounts for over one fifth of our GDP and provides more than 600 000 jobs. However, the air cargo and logistics industry has been facing increasing challenges, such as the sapping global economic growth and keen competition from neighbouring cities. While our air cargo performance has sustained throughout the pandemic in 2020 and 2021, air cargo volume of HKIA recorded a significant decline by 20% on average from May to December 2022 compared with the same period in the previous year. We are yet to see the recovery of total cargo throughputs in January and February 2023, despite the gradual resumption of normal operations of cross-boundary goods transport. According to the latest statistics, air cargo volume continued to drop by almost 27% in January 2023 compared with the same period in 2022.

4. The significant drop was partly due to the loss of intermodal ASP transshipment from the Mainland. In fact, with the Mainland being a major ASP manufacturing location in the world and Hong Kong as one of the most important transshipment hubs, the majority of ASPs from the Mainland used to be transhipped overseas via Hong Kong. ASP shipments, especially their vapouring equipment with battery inside, contribute to tens of thousands tonnes of export air cargo every month from the GBA to the United States, Europe, North East Asia and the Middle East, hence representing a significant portion of our total air cargo volume. According to the logistics trade, about 470 companies out of some 1 470 companies (i.e. one-third) in freight forwarding business are involved in ASP transshipment, handling almost 330 000 tonnes of ASP transshipment and related products per year.

5. Nevertheless, with effect from 30 April 2022, it is an offence to import ASPs to Hong Kong unless, among other exemptions, the ASPs concerned are "articles in transit" or "air transshipment cargoes" as defined in the Import and Export Ordinance (Cap. 60) (IEO)¹. In other words, transshipment of ASPs from the Mainland via Hong Kong by way of import into Hong Kong by sea or

¹ According to section 2 of the IEO –

Article in transit (過境物品) means an article which — (a) is brought into Hong Kong solely for the purpose of taking it out of Hong Kong; and (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong.

Air transshipment cargo (航空轉運貨物) means transshipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transshipment area of HKIA.

land and export by air (i.e. sea-to-air or land-to-air transshipment) is no longer permitted.

Proposal to alleviate the drop in air cargo volume

6. While it remains the Government's stance to prohibit ASPs from entering into the local market due to its harmful nature, we notice that the ban of the intermodal ASP transshipment has caused a substantial economic loss to our air cargo transshipment business and the overall economy of Hong Kong. This has dealt a heavy blow to Hong Kong's logistics industry. If the situation continues, Hong Kong's position as an international aviation hub under the National 14th Five-Year Plan would be seriously undermined.

7. The ban on intermodal ASP transshipment also has a knock-on effect on other transshipment products. The high-density nature of ASP transshipment is vital for cargo consolidation. Without the ASP equipment, freight forwarders in Hong Kong have encountered difficulties in arranging consolidation with other less heavy goods for transshipment, resulting in a loss of business involving other products.

8. In order to alleviate the decline in air cargo volume, we should allow the intermodal ASP transshipment on the premise that ASP leakage into the local market is duly prevented. As such, we plan to refine the existing control and regulatory regime for ASP transshipment by providing for the exemption of intermodal transshipment from the import ban for ASPs but supported by a new regulatory framework devised for ensuring that such transshipment will be carried out in a controlled and secure manner. The detailed arrangement for regulating intermodal transshipment of ASPs via sea-to-air and land-to-air modes is at **Annex**

B **B**.

Legislative amendments to allow intermodal ASP transshipment

9. At present, the Smoking (Public Health) Ordinance (Cap. 371) (SPHO) already provides for exemptions for "articles in transit" or "air transshipment cargoes" as mentioned in paragraph 5 above. We propose to refine the exemption regime so that intermodal transshipment of ASPs via both sea-to-air mode and land-to-air mode would be allowed. The intermodal transshipment arrangement would be subject to a set of control and monitoring measures as agreed by the Commissioner of Customs and Excise (CCE). This would meet the industry's operational needs and, at the same time, prevent the leakage of

ASPs into the local market, duly preserving the policy objective regarding the importation ban for ASPs.

10. Having considered that the existing import and export control of a number of prohibited articles are put under the IEO, we propose to add a new part in the IEO to specifically provide for the prohibition of ASPs import. The new part will contain the existing exemptions for “articles in transit” and “air transshipment cargo”, as well as the proposed exemption for intermodal ASP transshipment supported by a new registration scheme administered by the Customs and Excise Department (C&ED). The SPHO will be amended consequentially to remove the provisions relating to the prohibition of ASPs import. Salient features of the legislative proposal include –

(i) Registration Scheme for Intermodal ASP Transshipment

11. A new registration scheme to be supervised and enforced by C&ED will be created under the new part of the IEO. Any person seeking exemption for intermodal transshipment of ASPs via Hong Kong would need to register with CCE in advance. Under the registration scheme, exemption for intermodal ASP transshipment will only be allowed for shipments consigned on a through bill of lading from a place outside Hong Kong to another place outside Hong Kong via sea-to-air or land-to-air transshipment arrangements, and the transshipment arrangements will be subject to restrictions / conditions imposed by CCE. If CCE is satisfied that the applicant has fulfilled the security and procedural requirements, CCE will approve in writing the registration concerned. Any person who imports ASPs by way of intermodal transshipment without prior registration with CCE will not be covered by the exemption and will commit the criminal offence of importing ASPs.

12. Having considered that the security and procedural requirements will be adjusted from time to time due to technology advancement and other changes in circumstances, the relevant requirements will be set out in a set of practice guidelines for timely updating. To facilitate the operation of the registration scheme, CCE will be empowered to approve, refuse, suspend and cancel any registration of a person under the scheme based on the person’s fulfilment of requirements imposed by the practice guidelines. In other words, while a breach of the practice guidelines would not incur criminal liability, it may however lead to the suspension or cancellation of the registration for handling intermodal ASP transshipment. Any person who is aggrieved by CCE’s decision in relation to approving, refusing, suspending or cancelling any registration can lodge an appeal to the Chief Executive in accordance with the existing appeal mechanism under section 6 of the IEO.

(ii) Notification Requirement for Intermodal ASP Transhipment

13. For intermodal ASP transhipment, registered persons are required to notify CCE of each and every ASP transhipment in Hong Kong in accordance with the existing requirements under the Import and Export (Electronic Cargo Information) Regulation (Cap. 60L) or the Air Cargo Clearance System, where applicable. Criminal liabilities under the Regulation will also apply for failure to comply with the requirements under the Regulation.

(iii) Specified cargo handling area of HKIA

14. During the whole transfer process, the ASP transhipment, upon the entry to Hong Kong, is required to be stored in the cargo container/compartments and transported in a secure manner, and is required to remain on the incoming vessel or vehicle at all times until reaching the specified cargo handling area of HKIA and being further transported to the cargo transhipment area for export. For allowing intermodal ASP transhipment under the new part of the IEO, CCE will, after consultation with the Airport Authority Hong Kong, specify the cargo handling areas by notice published in the Gazette.

(iv) Enforcement, Penalty and Defence

15. C&ED will be responsible for the administration, supervision and enforcement of the intermodal ASP transhipment regime to be created in the new part of the IEO including investigation and disposal. C&ED will be conferred with sufficient statutory powers to take enforcement actions against any non-compliances of the requirements imposed on sea-to-air and land-to-air intermodal ASP transhipment.

16. For all other import offences of ASPs under the SPHO to be transferred to the new part of the IEO (i.e. import offences not relating to the intermodal ASP transhipment), the division of enforcement duties between the Department of Health and C&ED remains the same as per existing practice and the new part of the IEO will also provide sufficient enforcement powers for the inspectors appointed under section 15F of the SPHO².

17. To enhance regulation on the intermodal ASP transhipment, we consider it necessary to raise the penalty level for the offence of importing ASPs

² According to section 15F of the SPHO, the Secretary for Health may appoint in writing any public officer to be an inspector to exercise a power and perform a duty.

to make it on par with that for the illegal import of prohibited articles under the IEO, so as to demonstrate the severity of the offence and to minimise the risk of ASPs leaking into the local market during the course of the intermodal transshipment³. Defence provisions, same as subsections (4) to (7) of section 15DD of the SPHO, will be added into the new part of the IEO.

THE BILL

18. The main provisions of the Bill are as follows –

- (a) **Clause 3** adds a new Part IIIA (new sections 13A to 13Q) to the IEO, which comprises the following –
 - (i) the new section 13B prohibits the import of ASPs (which is defined by the new section 13A);
 - (ii) the new section 13C provides for the liability of officers of bodies corporate for an offence under the new section 13B;
 - (iii) the new sections 13D to 13I provide for exemptions from the prohibition on importing ASPs in the case of “articles in transit”, “air transshipment cargoes” and “specified intermodal transshipment cargoes”. For ASPs that are specified intermodal transshipment cargoes, the exemption applies only to such products imported by a registered operator. A person who intends to import such products as a registered operator must make an application to CCE. In determining the application, CCE may have regard to whether the person has contravened any guidelines issued by CCE;
 - (iv) the new section 13J exempts ASPs that are registered pharmaceutical products from the new section 13B;
 - (v) the new sections 13K and 13L provide for exemptions from the prohibition on importing ASPs in the case of persons in transit and the performance of relevant functions by Government Chemists;

³ With reference to the relevant provisions concerning with the illegal import of prohibited articles under section 6C(3) of the IEO, it is suggested that the penalty be raised from a fine at level 5 (\$50,000) and to imprisonment for 6 months as currently set out under the SPHO to –

- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;
- (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years.

and

- (vi) the new sections 13M to 13Q provide for the enforcement powers of members of the Customs and Excise Service and the inspectors as mentioned in paragraph 16 above in relation to the offence of illegally importing ASPs.
- (b) The prohibition on importing ASPs, and the exemptions from it, are currently provided for under the SPHO. **Clauses 5 to 9** introduce consequential amendments to the relevant provisions in the SPHO.

LEGISLATIVE TIMETABLE

19. The Bill will be published in the Gazette on 24 March 2023 and introduced into the LegCo on 29 March 2023.

IMPLICATIONS OF THE PROPOSAL

C 20. The Bill has economic, financial and civil service implications as set out at **Annex C**. It has no productivity, gender, family or environmental implications. It also has no sustainability implications other than the economic implications. The Bill will not affect the current binding effect of the IEO and the SPHO. It is in conformity with the Basic Law, including provisions concerning human rights.

PUBLIC CONSULTATION

21. We consulted the LegCo Panel on Economic Development on the legislative proposal on 28 November 2022, receiving general support for the legislative proposal and introduction of the Bill into the LegCo. A number of Panel Members further pressed for exemption of ASP transshipment from the Mainland via Hong Kong.

22. A meeting with representatives of various industry associations (including Hong Kong Logistics Association, The Chamber of Hong Kong Logistics Industry, Hong Kong Sea Transport and Logistics Association, Hong Kong Association of Freight Forwarding and Logistics Limited (HAFFA), Hong Kong Association of Aircargo Truckers Limited and Hong Kong Air Cargo Carrier Liaison Group) was held in September 2022 to discuss the subject. At the meeting, all industry representatives strongly advocated for refinement of the

current regime. Amongst others, HAFFA emphasised the pressing need to resume the land-to-air transshipment urgently, in addition to sea-to-air transshipment, to avoid further deterioration of the transshipment business via Hong Kong, which had not only affected the logistics trade but also the overall economy of Hong Kong. The trade also indicated that they would comply with the registration requirements to be administered by CCE under the new part of the IEO, as well as the notification and other control and monitoring measures required by the Government.

23. Members of the Hong Kong Logistics Development Council also considered it important to resume ASP transshipment quickly to address the dire situation faced by the logistics and air cargo industry which has been severely hit by the disruption to the global supply chain due to the pandemic and other global economic factors.

24. In addition to the logistics industry, we have also reached out to members of the Hong Kong Council on Smoking and Health (COSH) to explain to them the legislative proposal including the proposed security and monitoring regime to be put in place in regulating the intermodal transshipment of the ASPs in view of the concern of the medical and health groups as well as the education sector about the possible change in regulation and leakage of ASPs into the local market during the transshipment process. COSH expressed in-principle objection towards the intermodal transshipment regime, due to its inconsistency with the prevailing tobacco regulatory regime under the SPHO which provides for a total ban on ASPs in Hong Kong. COSH was concerned about enforcement against illegal import arising from the intermodal transshipment and was very much against the land-to-air transshipment which, in COSH's views, would present an even higher risk of ASP leakage into the local market. We will continue to engage COSH and relevant stakeholders to alleviate their concerns including explaining to them the intermodal transshipment regime under the supervision and enforcement of C&ED, and to reinforce the Government's commitment in enforcing the import ban for ASPs.

PUBLICITY

25. A press release will be issued on 22 March 2023. A spokesperson will be available to handle enquires.

ENQUIRIES

26. Any enquiries on this brief can be addressed to Ms Joanne CHU, Principal Assistant Secretary for Transport and Logistics at 3509 8162.

Transport and Logistics Bureau
March 2023

Import and Export (Amendment) Bill 2023

Contents

Clause	Page
Part 1	
Preliminary	
1. Short title.....	1
2. Enactments amended.....	1
Part 2	
Amendment to Import and Export Ordinance (Cap. 60)	
3. Part IIIA added.....	2
Part IIIA	
Prohibition on Importing Alternative Smoking Products and Exemptions	
Division 1—Preliminary	
13A. Interpretation (Part IIIA).....	2
Division 2—General Prohibition on Importing Alternative Smoking Products	
13B. Offence of importing alternative smoking products.....	3
13C. Liability of officers of bodies corporate, partners and members of unincorporated bodies	3

Clause	Page
Division 3—Exemptions from Prohibition on Importing Alternative Smoking Products and Related Matters	
Subdivision 1—Articles in Transit and Certain Transhipment Cargoes	
13D. Interpretation (Subdivision 1).....	5
13E. Exemption for articles in transit and certain transhipment cargoes.....	5
13F. Defence related to import of alternative smoking products deemed under section 13E.....	7
13G. Import of specified intermodal transhipment cargoes: registration as registered operator	8
13H. Import of specified intermodal transhipment cargoes: issue of guidelines.....	10
13I. Import of specified intermodal transhipment cargoes: area specified for section 13E.....	11
Subdivision 2—Pharmaceutical Products and Poisons	
13J. Relationship with Pharmacy and Poisons Ordinance.....	11
Subdivision 3—Other Exemptions	
13K. Exemption for persons in transit at Hong Kong International Airport	12
13L. Exemption for Government Chemists.....	12

Clause	Page
Division 4—Enforcement	
13M. Meaning of <i>inspector</i>	12
13N. Enforcement powers of members of Customs and Excise Service	12
13O. Supplementary provisions about enforcement powers of members of Customs and Excise Service	14
13P. Inspectors to enforce section 13B	15
13Q. Enforcement powers of inspectors	15

Part 3

Related Amendments

**Division 1—Amendment to Specification of Public Offices Notice (Cap. 1 sub.
leg. C)**

4. Schedule amended (specification of public offices).....	19
--	----

Division 2—Amendments to Smoking (Public Health) Ordinance (Cap. 371)

5. Long title amended.....	19
6. Section 15DA amended (prohibition on import, manufacture or sale, etc.)	19
7. Sections repealed.....	20
8. Section 15DI added.....	20
15DI. Saving provision relating to Import and Export (Amendment) Ordinance 2023.....	20

Clause	Page
9. Section 15H amended (disposal of property seized by inspectors).....	20

A BILL

To

Amend the Import and Export Ordinance to provide for the prohibition on importing alternative smoking products and the exemptions from it; and to make related amendments to certain other enactments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. **Short title**
This Ordinance may be cited as the Import and Export (Amendment) Ordinance 2023.
2. **Enactments amended**
The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendment to Import and Export Ordinance (Cap. 60)

3. Part IIIA added

After Part III—

Add

“Part IIIA

Prohibition on Importing Alternative Smoking Products and Exemptions

Division 1—Preliminary

13A. Interpretation (Part IIIA)

In this Part—

alternative smoking product (另類吸煙產品) has the meaning given by section 2(1) of the Smoking (Public Health) Ordinance (Cap. 371);

specified intermodal transshipment cargo (指明聯運轉運貨物) means an article—

- (a) imported in a vehicle or vessel; and
- (b) consigned—
 - (i) on a through bill of lading from a place outside Hong Kong to another place outside Hong Kong; and
 - (ii) for export in an aircraft departing from the Hong Kong International Airport.

**Division 2—General Prohibition on Importing
Alternative Smoking Products**

13B. Offence of importing alternative smoking products

A person who imports an alternative smoking product commits an offence and is liable—

- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years.

13C. Liability of officers of bodies corporate, partners and members of unincorporated bodies

- (1) If a body corporate commits an offence under section 13B, 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) 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 13B, 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 13B, 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).

Division 3—Exemptions from Prohibition on Importing Alternative Smoking Products and Related Matters

Subdivision 1—Articles in Transit and Certain Transshipment Cargoes

13D. Interpretation (Subdivision 1)

- (1) In this Subdivision—
practice guidelines (實務指引) means the guidelines issued under section 13H(1);
registered operator (登記營運人) means a person in respect of whom a registration under section 13G has effect.
- (2) For the purposes of this Subdivision—
- (a) a vehicle is a person's business vehicle if the person imports any article in the vehicle as a registered operator; and
 - (b) a vessel is a person's business vessel if the person imports any article in the vessel as a registered operator.

13E. Exemption for articles in transit and certain transshipment cargoes

- (1) Section 13B does not apply in relation to an alternative smoking product that is—
- (a) an article in transit;
 - (b) an air transshipment cargo; or
 - (c) a specified intermodal transshipment cargo imported by a registered operator.

- (2) However, section 13B does apply in relation to an alternative smoking product mentioned in subsection (1) 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 cargo transshipment area of Hong Kong International Airport;
 - (b) for an article in transit in a vessel—the product is removed from the vessel;
 - (c) for an air transshipment cargo—the product is removed from the cargo transshipment area of Hong Kong International Airport; or
 - (d) for a specified intermodal transshipment cargo—
 - (i) if the product has not entered the cargo transshipment area of Hong Kong International Airport or an area specified under section 13I(1) (each a *specified area*)—the product is removed from the vehicle or vessel in which it is imported; or
 - (ii) if the product has entered a specified area—the product is removed from that area.
- (3) If section 13B 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 that subsection; and
 - (b) the person who brought the product, or caused it to be brought, into Hong Kong as an article in transit, air transshipment cargo or specified intermodal transshipment cargo is deemed to be the person who imported the product.

13F. Defence related to import of alternative smoking products deemed under section 13E

- (1) It is a defence for a person mentioned in section 13E(3)(b) who is charged under section 13B to show that the person took all reasonable steps and exercised reasonable diligence to avoid the removal mentioned in section 13E(2).
- (2) Subsection (3) applies if a defence under subsection (1) 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.
- (3) 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.
- (4) The defendant may not rely on a defence under subsection (1) 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 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.

13G. Import of specified intermodal transshipment cargoes: registration as registered operator

- (1) A person who intends to import any articles in reliance on an exemption under section 13E(1)(c) may, in accordance with the practice guidelines and in the form specified under subsection (9), apply to the Commissioner for registration as a registered operator.
- (2) The Commissioner may—
 - (a) approve an application made under subsection (1); or
 - (b) refuse the application.
- (3) After determining an application made under subsection (1), the Commissioner must, as soon as practicable, inform the applicant in writing of—
 - (a) if the application is approved—
 - (i) the approval; and
 - (ii) the date on which the registration is to take effect; or
 - (b) if the application is refused—
 - (i) the refusal; and
 - (ii) the reasons for the refusal.
- (4) If the Commissioner is satisfied that a person is no longer fit to be a registered operator, the Commissioner may by written notice given to the person—
 - (a) cancel the registration; or
 - (b) suspend the registration.

- (5) For the purposes of subsection (4)(b), the Commissioner may—
- (a) determine a period the Commissioner considers appropriate so that a registration suspended under that subsection has no effect for the period; or
 - (b) impose any terms or conditions the Commissioner considers appropriate so that a registration suspended under that subsection has no effect until the Commissioner is satisfied that the terms or conditions are complied with.
- (6) If the Commissioner decides to cancel or suspend under subsection (4) a person's registration, the Commissioner must, as soon as practicable after so deciding, inform the person in writing of—
- (a) if the registration is cancelled—
 - (i) the cancellation;
 - (ii) the reasons for the cancellation; and
 - (iii) the date on which the cancellation is to take effect; or
 - (b) if the registration is suspended—
 - (i) the suspension;
 - (ii) the reasons for the suspension; and
 - (iii) the period, or terms or conditions, mentioned in subsection (5).
- (7) The Commissioner—
- (a) in considering an application made by a person under subsection (1); or
 - (b) in considering for the purposes of subsection (4) whether a person is no longer fit to be a registered operator,

- may have regard to any matters that the Commissioner considers relevant, including whether the person has contravened any practice guidelines.
- (8) For determining for the purposes of subsection (7) whether a person has contravened any practice guidelines, the Commissioner—
- (a) may by written notice given to the person require the person to provide any information that is specified in the notice; and
 - (b) may at any reasonable time inspect any vehicle or vessel that the person intends to use as a business vehicle or business vessel.
- (9) The Commissioner may specify the form required for the purposes of this section.

13H. Import of specified intermodal transshipment cargoes: issue of guidelines

- (1) The Commissioner may issue guidelines setting out—
- (a) the manner in which an application under section 13G(1) must be made;
 - (b) the requirements that a registered operator's business vehicle or business vessel must meet;
 - (c) the manner in which any articles intended to be imported in reliance on an exemption under section 13E(1)(c) must be transported, stored and otherwise handled before being transferred to an aircraft for export; and
 - (d) any other matters that the Commissioner considers relevant to the import of any articles in reliance on that exemption.
- (2) The Commissioner—

- (a) must publish the practice guidelines in a manner appropriate to bring them to the notice of persons affected by them; and
- (b) must make copies of the practice guidelines available to the public (whether in hard copy form or electronic form).
- (3) The practice guidelines are not subsidiary legislation.
- (4) The Commissioner may amend or revoke any of the practice guidelines.
- (5) Subsections (2) and (3) apply to an amendment or revocation of the practice guidelines in the same way as they apply to the practice guidelines.

13I. Import of specified intermodal transshipment cargoes: area specified for section 13E

- (1) The Commissioner may, after consultation with the Airport Authority, by notice published in the Gazette specify an area for the purposes of section 13E(2)(d).
- (2) A notice published under subsection (1) is not subsidiary legislation.

Subdivision 2—Pharmaceutical Products and Poisons

13J. 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.

Subdivision 3—Other Exemptions

13K. Exemption for persons in transit at Hong Kong International Airport

Section 13B 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.

13L. Exemption for Government Chemists

Despite section 13B, a Government Chemist (as defined by section 2 of the Evidence Ordinance (Cap. 8)) may import an alternative smoking product so far as it is necessary for the performance of the Government Chemist's functions.

Division 4—Enforcement

13M. Meaning of *inspector*

In this Division—

inspector (督察) means a public officer referred to in section 13P.

13N. Enforcement powers of members of Customs and Excise Service

- (1) This section applies to the exclusion of Part V (except sections 20(1)(c)(ii) and (d), 21(2)(c), (d) and (e) and 26) and of section 35.
- (2) For the enforcement of section 13B, a member of the Customs and Excise Service—

- (a) may stop and search a person, and search anything in the person's possession;
 - (b) may stop, board and search any transport carrier;
 - (c) may 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.
- (3) A person searched under subsection (2)(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.
- (4) A member of the Customs and Excise Service may seize, remove or detain any article if the member reasonably suspects that—
- (a) the article is an alternative smoking product; and
 - (b) an offence under section 13B has been, is being or is about to be committed in respect of the article.
- (5) If a member of the Customs and Excise Service reasonably suspects that a person has committed, is committing or is about to commit an offence under section 13B, the member—
- (a) to facilitate the enforcement of that section, may detain the person for a reasonable period; and
 - (b) may arrest the person without warrant.
- (6) A magistrate may issue a warrant empowering a member of the Customs and Excise Service 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—

- (a) an offence under section 13B has been, is being or is about to be committed in that place; or
- (b) anything that is or contains, or that is likely to be or contain, evidence of an offence under section 13B is in that place.

(7) A member of the Customs and Excise Service may use any force reasonably necessary for exercising a power under or pursuant to this section.

(8) In this section—

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);

transport carrier (交通工具) includes an aircraft, vehicle, vessel or train, and any other means of travel or transport.

130. Supplementary provisions about enforcement powers of members of Customs and Excise Service

- (1) Part VI does not apply to any article seized, removed or detained under section 13N(4).
- (2) Such an article may be retained in the custody of a member of the Customs and Excise Service until it is transferred to an inspector for the enforcement of section 13B.
- (3) However, if the article is, or a member of the Customs and Excise Service reasonably suspects that it is, a specified intermodal transshipment cargo, subsection (2) also does

not apply to the article and, accordingly, section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to the article.

13P. Inspectors to enforce section 13B

- (1) If a public officer is appointed under section 15F of the Smoking (Public Health) Ordinance (Cap. 371) to exercise a power and perform a duty, the officer may also exercise a power conferred, and perform a duty imposed, on the officer by section 13Q.
- (2) For the purposes of subsection (1), it does not matter whether the appointment is made before, on or after the date on which the Import and Export (Amendment) Ordinance 2023 (of 2023) comes into operation.

13Q. Enforcement powers of inspectors

- (1) An inspector—
 - (a) may seize, remove or detain any article if the inspector reasonably suspects that—
 - (i) the article is an alternative smoking product; and
 - (ii) an offence under section 13B has been, is being or is about to be committed in respect of the article; and
 - (b) may seize any other thing that appears to the inspector to be evidence of an offence under section 13B.
- (2) If an inspector reasonably suspects that a person has committed, is committing or is about to commit an offence under section 13B, the inspector may detain the person for a reasonable period to facilitate the enforcement of that section.

- (3) An inspector may do all or any of the following—
 - (a) require any person to give the person's name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed, is committing or is about to commit an offence under section 13B;
 - (b) take photographs or make sound or video recording for obtaining evidence in connection with an offence under section 13B;
 - (c) require any person to produce for inspection documents or records under the control of the person for enabling the inspector to ascertain whether the person has committed, is committing or is about to commit an offence under section 13B;
 - (d) make copies of all or any part of the documents or records;
 - (e) require any person to provide the inspector with any assistance or information that is reasonably necessary to enable the inspector to exercise a power conferred, or perform a duty imposed, by this section.
- (4) 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—
 - (a) an offence under section 13B has been, is being or is about to be committed in that place; or

- (b) anything that is or contains, or that is likely to be or contain, evidence of an offence under section 13B is in that place.
- (5) In exercising a power under subsection (1), (2) or (3), or under a warrant mentioned in subsection (4), an inspector must, if requested, produce proof of his or her authority as an inspector.
- (6) A person who wilfully obstructs an inspector who is in the exercise of a power conferred, or in the performance of a duty imposed, by this section commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (7) A person who, when required under subsection (3)(a) to give the person's name and address or to produce proof of identity—
- (a) fails to do so; or
- (b) gives a false or misleading name or address,
- commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (8) If an inspector seizes any property while exercising a power conferred, or performing a duty imposed, by this section, section 102 of the Criminal Procedure Ordinance (Cap. 221) applies as if the inspector were the police within the meaning of that section and the property were property that had come into possession of the police in connection with a criminal offence.
- (9) For the purposes of subsection (8), an article transferred to an inspector as mentioned in section 13O(2) is regarded as an article seized by the inspector.
- (10) In this section—

proof of identity (身分證明文件) has the meaning given by section 17B(1) of the Immigration Ordinance (Cap. 115).”.

Part 3

Related Amendments

**Division 1—Amendment to Specification of Public Offices
 Notice (Cap. 1 sub. leg. C)**

4. **Schedule amended (specification of public offices)**
 The Schedule, entry relating to the Commissioner of Customs and Excise specified for the purposes of the Import and Export Ordinance (Cap. 60), after “12,”—
 Add
 “13G, 13H.”

**Division 2—Amendments to Smoking (Public Health)
 Ordinance (Cap. 371)**

5. **Long title amended**
 The long title—
 Repeal
 “import.”
6. **Section 15DA amended (prohibition on import, manufacture or sale, etc.)**
 (1) Section 15DA, heading—
 Repeal
 “import.”
 (2) Section 15DA(1)—
 Repeal paragraph (a).

- (3) Section 15DA, note—
 Repeal
 “*Import and export are*”
 Substitute
 “*Export is*”.
7. **Sections repealed**
 Sections 15DC, 15DD, 15DE and 15DH—
 Repeal the sections.
8. **Section 15DI added**
 At the end of Part 4AB—
 Add
 “15DI. **Saving provision relating to Import and Export (Amendment) Ordinance 2023**
 If an alternative smoking product is imported before the date on which the Import and Export (Amendment) Ordinance 2023 (of 2023) (*amending Ordinance*) comes into operation, this Ordinance as in force immediately before that date continues to apply in relation to the import as if the amendments to this Ordinance made by the amending Ordinance had not been made.”.
9. **Section 15H amended (disposal of property seized by inspectors)**
 Section 15H—
 Repeal subsection (2).

Explanatory Memorandum

The object of this Bill is to amend the Import and Export Ordinance (Cap. 60) (*principal Ordinance*) to provide for the prohibition on importing alternative smoking products and the exemptions from it. The Bill also makes related amendments to certain other enactments.

2. The Bill is divided into 3 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title.

Part 2—Amendment to Principal Ordinance

4. Clause 3 adds a new Part IIIA (new sections 13A to 13Q) to the principal Ordinance.
5. The new section 13B prohibits the import of alternative smoking products (which is defined by the new section 13A).
6. The new section 13C provides for the liability of officers of bodies corporate etc. for an offence under the new section 13B.
7. The new sections 13D to 13I provide for exemptions from the prohibition on importing alternative smoking products in the case of articles in transit, air transshipment cargoes and specified intermodal transshipment cargoes. For alternative smoking products that are specified intermodal transshipment cargoes, the exemption applies only to such products imported by a registered operator. A person who intends to import such products as a registered operator must make an application to the Commissioner of Customs and Excise under the new section 13G. In determining the application, the Commissioner may have regard to whether the person has contravened any guidelines issued by the Commissioner under the new section 13H.

8. The new section 13J exempts alternative smoking products that are registered pharmaceutical products from the new section 13B.
9. The new sections 13K and 13L provide for exemptions from the prohibition on importing alternative smoking products in the case of persons in transit and the performance of relevant functions by Government Chemists.
10. The new sections 13M to 13Q provide for the enforcement powers of members of the Customs and Excise Service and certain other public officers in relation to an offence under the new section 13B.

Part 3—Related Amendments

11. Clause 4 consequentially amends the Specification of Public Offices Notice (Cap. 1 sub. leg. C).
12. The prohibition on importing alternative smoking products, and the exemptions from it, are currently provided for under the Smoking (Public Health) Ordinance (Cap. 371). Clauses 5 to 9 amend that Ordinance because of the provision for such prohibition and exemptions in the principal Ordinance as amended by the Bill.

**Detailed Arrangement for
Regulating Intermodal Transshipment of
Alternative Smoking Products**

Sea-to-air Transshipment

As part of its effort to better serve the Guangdong-Hong Kong-Macao Greater Bay Area's air cargo market, the Airport Authority Hong Kong (AAHK) is developing sea-air intermodal cargo transshipment between the Hong Kong International Airport (HKIA) and Dongguan. AAHK has started using the Sea-Air Transshipment Facilitation Scheme since early 2022 to facilitate the cross-boundary air-cargo transshipment through sea-to-air intermodal processes. The pilot scheme of the above intermodal transshipment operations has been running smoothly since implementation.

2. This Sea-Air Transshipment Facilitation Scheme provides a new way in facilitating sea-to-air ASP transshipment without compromising the need to guard against leakage of alternative smoking products (ASPs) into the local market during the transshipment process. Under the Scheme, "sea-to-air" transshipment cargo would undergo aviation security screening in HKIA Logistics Park in Dongguan before being transported by sea to HKIA under real-time monitoring during the sea journey (e.g. application of e-lock and designated seal(s) on the container, tracking of the conveyance by closed-circuit television (CCTV)/global positioning system (GPS) equipment, and so forth). The cargo will remain on the incoming vessel and upon reaching the airport, be immediately brought into the specified cargo handling area of HKIA under real-time monitoring within which the cargo will remain at all times until departure for onward transshipment by air to overseas destinations.

Land-to-air Transshipment

3. According to the information provided by the logistics industry, ASPs and related products manufactured in the Mainland used to be transported to Hong Kong via land transport and then transhipped through the HKIA to other places. Similar to the sea-to-air transshipment, the cargoes have to be transported in a secure manner and under real-time monitoring throughout the whole transportation process from the designated land boundary control point(s) in Hong Kong to the specified cargo handling area of HKIA to the satisfaction of the Commissioner of

Customs and Excise (e.g. application of e-lock and designated seal(s) on the container, tracking of the conveyance by CCTV/GPS equipment, and so forth). The cargoes will remain on the incoming vehicle and upon reaching the airport, be immediately brought into the specified cargo handling area of HKIA under real-time monitoring. The cargo will remain at all times within that area until departure for onward transshipment by air to overseas destinations.

4. The whole sea-to-air and land-to-air transshipment process is subject to a control regime agreed by the Customs and Excise Department (C&ED) including provision of advance cargo information, real-time monitoring of the movement of the conveyance and inspection on the cargo. Meanwhile, C&ED is devising a registration scheme, as well as a set of security and monitoring requirements in the form of practice guidelines to enable the secure operations of both sea-to-air and land-to-air intermodal transshipment of ASPs.

Implications of the Bill

Economic Implication

Exempting the intermodal transshipment of alternative smoking products (ASPs) will help the air cargo and logistics industry recover some losses in goods transshipment arising from the ban of intermodal ASP transshipment. This will be conducive to upholding Hong Kong's role as an international logistics and transshipment hub.

Financial and Civil Service Implications

2. The fines collected under the relevant provisions concerning with the illegal import of prohibited articles will be credited to the General Revenue Account in accordance with the established practice.

3. Meanwhile, the Customs and Excise Department will require manpower to administer the registration scheme for intermodal ASP transshipment, including the processing of applications, inspection of business vehicles and vessels and supervision of the compliance of the security and procedural requirements. The additional manpower resources will be sought with justifications in accordance with the established mechanism.