To establish the Hong Kong Council on Smoking and Health, to define its functions and powers, to negative personal liability of members and employees, and to provide for matters incidental thereto or connected therewith.

(Enacted 1987)


(Originally 56 of 1987)

PART I

PRELIMINARY

This Ordinance may be cited as the Hong Kong Council on Smoking and Health Ordinance.

(Enacted 1987)

PART II

INCORPORATION, POWERS AND STAFF

(1) There shall be a body corporate called the Hong Kong Council on Smoking and Health.

(2) The purposes of the Council are to-

(a) protect and to improve the health of the community by acquiring and disseminating, and assisting others to acquire and to disseminate, information concerning the causes, prevention and cure of tobacco dependence in human beings and its adverse effects and related diseases;

(b) engage in research into the causes, prevention and cure of tobacco dependence in human beings and its adverse effects and related diseases and to promote and to assist such research by other individuals and
organizations and to publish the results of such research;
(c) advance the education of the public concerning the effects of the smoking of tobacco and other forms of usage of tobacco and its effects on the health of the community and the individual;
(d) take such action as it thinks justified by information in its possession including giving advice to the Government, to any public body, to any public officer, to community health organizations, or to the public on the causes, prevention and cure of tobacco dependence in human beings and its adverse effects and related diseases;
(e) engage in such other activities, and to perform such other functions, as the Chief Executive may, after consultation with the Council, permit or assign to it by order published in the Gazette.  (Amended 60 of 2000 s. 3)

(3) The Council shall have perpetual succession and a common seal and be capable of suing and being sued and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

(Enacted 1987)

Section: 4 General powers of Council  30/06/1997

(1) The Council may do such things as are expedient for or conducive to the attainment of the purposes declared in or permitted or assigned under section 3(2) or of any purpose reasonably incidental to or consequential upon any of those purposes.
(2) Without restricting the generality of subsection (1) the Council may-
(a) take on lease, purchase, or otherwise acquire and hold, manage and enjoy property of any description, and sell, let or otherwise dispose of the same;
(b) enter into, assign or accept the assignment of, and vary or rescind any contract or obligation;
(c) produce or distribute, by way of sale or otherwise, any publication which it considers may be of interest to the public or may assist in the furtherance of its purposes;
(d) charge for the use of any facility or service provided by the Council;
(e) do any thing which it may do under this Ordinance in association or co-operation with any other person or sponsor any other person to do that thing; and
(f) become a member of or affiliate to any international body concerned with any matter relating to its purposes.

(Enacted 1987)

Section: 5 Membership of Council  60 of 2000 01/07/1997

Remarks:
Adaptation amendments retroactively made - see 60 of 2000 s. 3

(1) The Council shall consist of the following members-
(a) a Chairman who shall be appointed by the Chief Executive for a term not exceeding 3 years;
(b) a Vice-Chairman who shall be appointed by the Chief Executive for a term not exceeding 3 years; and
(c) not less than 13 nor more than 15 other persons each of whom shall be appointed by the Chief Executive for a term not exceeding 3 years.
(2) Any member appointed under this section may be appointed again on the expiry of his term of office.
(3) Any member appointed under this section may at any time-
(a) resign his office by notice to the Chief Executive; or
(b) be removed from office by the Chief Executive for permanent incapacity or other sufficient cause, and upon such resignation or removal the term for which he was appointed shall be deemed to have expired.
(4) Where any member appointed under subsection (1)(a) or (b) is precluded by temporary incapacity or other cause from exercising his functions as a member for any period, the Chief Executive may appoint another person to act in place of that member during that period with all such rights, powers, duties or liabilities as if that person had been appointed under subsection (1)(a) or (b), as the case may be.
(5) Where any question arises under subsection (3) or (4) as to whether any incapacity or cause exists or whether any incapacity is temporary or permanent or any cause sufficient, the decision of the Chief Executive shall be final.

(Enacted 1987. Amended 60 of 2000 s. 3)
Section: 6 Committees of Council 30/06/1997

(1) The Council may appoint committees and may delegate to them the exercise and performance of any of its powers and functions except this power of delegation.

(2) Persons who are not members of the Council are eligible for appointment to committees.

(3) Subject to the terms of any delegation by the Council every committee-
   (a) may exercise and perform the delegated powers and functions with the same effect as if it were the Council itself;
   (b) shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary;
   (c) may regulate its own procedure.

(Enacted 1987)

Section: 7 Proceedings of Council 30/06/1997

(1) At a meeting of the Council 8 members shall form a quorum.

(2) At a meeting of the Council the Chairman shall preside or if he is absent the Vice-Chairman; if both the Chairman and the Vice-Chairman are absent the members present shall appoint one of their number to preside.

(3) All questions for determination at a meeting of the Council shall be decided by a majority of votes of the members present and voting thereon and where there is an equality of votes the member presiding shall have a casting vote in addition to his original vote.

(4) If a member of the Council, or of any committee of the Council, has a direct or indirect commercial interest in any matter under discussion at a meeting of the Council or of the committee, being an interest greater than that which he has as a member of the general public, the following provisions shall apply-
   (a) he shall disclose the nature of his interest at the meeting;
   (b) the disclosure shall be recorded in the minutes;
   (c) where the disclosure is made by the member presiding, he shall vacate the chair during the discussion and the members present shall appoint one of their number to preside;
   (d) the member, including one who has vacated the chair under paragraph (c), shall, if so required by the member presiding, withdraw from the meeting during the discussion and shall not in any case, except as otherwise determined by the member presiding, vote on any resolution concerning the matter or be counted for the purpose of establishing the existence of a quorum.

(5) Subject to this Ordinance, arrangements relating to meetings of the Council, and the procedure at and the conduct of its meetings, shall be such as the Council may determine.

(Enacted 1987)

Section: 8 Validity of proceedings 30/06/1997

The validity of any proceedings of the Council shall not be affected by-
   (a) any defect in the appointment of any member;
   (b) the absence of any member from the meeting at which any such proceeding occurred; or
   (c) any vacancy among members.

(Enacted 1987)

Section: 9 Transaction of business by circulation of papers 30/06/1997

The Council may transact any of its business by circulation of papers amongst members whether any such member is in or outside Hong Kong, and a resolution in writing which is approved in writing by a majority of the members shall be as valid and effectual as if it had been passed at a meeting of the Council.

(Enacted 1987)
The Council-
(a) shall appoint a person to hold the office of Executive Director;
(b) may appoint such other employees as it thinks fit; and
(c) may engage the services of technical and professional advisers as it thinks fit,
and may determine all matters relating to their remuneration and terms and conditions of appointment or engagement.

(Enacted 1987)

(1) The Council may-
(a) provide allowances and benefits for its employees;
(b) make payments, whether ex gratia or legally due, to the personal representative of a deceased employee or to any person who was dependent on such employee at his death.

(2) The Council may establish, manage and control, or enter into an arrangement with any company or association for the establishment, management and control by such company or association either alone or jointly with the Council of, any fund or scheme for the purpose of providing for the allowances, benefits and payments referred to in subsection (1).

(3) The Council may make contributions to any fund or scheme referred to in subsection (2) and may require its employees to make contributions thereto.

(4) In this section "employees" (僱員) includes any class of employee which the Council may specify and in subsection (1) includes former employees.

(Enacted 1987)

(1) The Council may make and execute all such documents as may be expedient for or conducive to the attainment of its purposes or of any purpose reasonably incidental to or consequential upon those purposes.

(2) A document to be made by the Council shall be deemed to be duly executed if sealed with the seal of the Council in accordance with subsection (3).

(3) A document shall not be sealed with the seal of the Council unless the seal is affixed pursuant to a resolution of the Council and in the presence of 2 members of the Council, each of whom shall sign his name.

(4) Any document purporting to be a document executed under the seal of the Council authenticated in accordance with subsection (3) shall be received in evidence and shall, until the contrary is proved, be deemed to be a document so executed.

(5) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be in the form of a deed may be entered into or executed on behalf of the Council by any person generally or specially authorized by the Council for that purpose.

(Enacted 1987)

Remarks:
Adaptation amendments retroactively made - see 60 of 2000 s. 3

PART III

FINANCIAL

(1) The Chief Executive may, out of money appropriated for the purpose by the Legislative Council, authorize payment to the Council of such amounts of money as he thinks fit. (Amended 60 of 2000 s. 3)

(2) The resources of the Council shall consist of-
(a) all money received by the Council under subsection (1);
(b) all other money and property, including donations, fees, rent, interest and accumulations of income received by the Council for its purposes.

(3) All money received by the Council shall be deposited with any bank approved by the Financial Secretary.

(Enacted 1987)

<table>
<thead>
<tr>
<th>Section: 14</th>
<th>Borrowing powers</th>
<th>30/06/1997</th>
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</thead>
<tbody>
<tr>
<td>The Council may, with the prior approval of the Financial Secretary, borrow money and charge all or any part of its property as security therefor.</td>
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(Enacted 1987)

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<tr>
<th>Section: 15</th>
<th>Use of surplus funds</th>
<th>30/06/1997</th>
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<tbody>
<tr>
<td>All money of the Council that is not immediately required shall be invested on deposit in any bank approved by the Financial Secretary, either generally or in any particular case, for the purpose or in such other forms of investment as the Financial Secretary may approve.</td>
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(Enacted 1987)

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<thead>
<tr>
<th>Section: 16</th>
<th>Estimates</th>
<th>L.N. 130 of 2007 01/07/2007</th>
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<tbody>
<tr>
<td>Remarks: For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.</td>
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<tr>
<td>The Council shall in each financial year adopt estimates of income and expenditure for the ensuing financial year and, before a date to be appointed by the Secretary for Food and Health, send them to the Chief Executive for his approval together with a programme of its proposed activities for the ensuing financial year.</td>
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(Enacted 1987. Amended 60 of 2000 s. 3; L.N. 106 of 2002; L.N. 130 of 2007)

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<tr>
<th>Section: 17</th>
<th>Accounts, audit and annual report</th>
<th>L.N. 130 of 2007 01/07/2007</th>
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<tbody>
<tr>
<td>Remarks: For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.</td>
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<tr>
<td>(1) The Council shall keep proper accounts and proper records in relation to the accounts.</td>
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| (2) Without restricting the generality of subsection (1), the accounts and records kept by the Council shall include information relating to-
  (a) money received and paid by the Council disclosing the sources of receipt and reasons for payment; 
  (b) the assets and liabilities of the Council. |
| (3) The Council shall, as soon as is practicable and in any case not later than 3 months after the expiry of a financial year, prepare a statement of the accounts of the Council, which statement shall include an income and expenditure account and a balance sheet. |
| (4) The Council shall, with the prior approval of the Secretary for Food and Health to any appointment proposed to be made, appoint an auditor, who shall be entitled to have access at any time to all books of account, vouchers and other records of the Council and to require such information and explanations relating thereto as he thinks fit. (Amended L.N. 106 of 2002; L.N. 130 of 2007) |
| (5) The auditor shall, as soon as is practicable, audit the accounts required by subsection (3) and shall submit a report on the accounts to the Council. |
| (6) The Council shall, as soon as is practicable and in any case not later than 6 months after the expiry of a financial year, furnish-
  (a) a report on the affairs of the Council for that year; 
  (b) a copy of its accounts therefor; and 
  (c) the auditor's report on the accounts, |
to the Secretary for Food and Health who shall cause the same to be laid on the table of the Legislative Council.  
(Amended L.N. 106 of 2002; L.N. 130 of 2007)  
(Enacted 1987)

<table>
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<tr>
<th>Section</th>
<th>Council not servant or agent of the Government</th>
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**PART IV**

**MISCELLANEOUS**

The Council shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.  
(Enacted 1987. Amended 23 of 2002 s. 34)

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<th>Section</th>
<th>Chief Executive may give directions</th>
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<td>60 of 2000</td>
<td>01/07/1997</td>
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Remarks:
Adaptation amendments retroactively made - see 60 of 2000 s. 3

(1) The Chief Executive may, if he considers the public interest so requires, give directions in writing to the Council and the Council shall comply with those directions. (Amended 60 of 2000 s. 3)

(2) No direction under subsection (1) shall be inconsistent with this Ordinance.  
(Enacted 1987)

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<tr>
<th>Section</th>
<th>Protection of members of Council and committees</th>
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<td>30/06/1997</td>
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(1) No member or employee of the Council or of any committee of the Council shall be personally liable for any act done or default made-
(a) by the Council; or
(b) by any committee of the Council, acting in good faith in the course of the operations of the Council or of the committee.

(2) The protection hereby conferred on members and employees of the Council or of a committee in respect of any act or default shall not in any way affect any liability of the Council for that act or default.  
(Enacted 1987)