

C004-E

A BILL To Amend the Dutiable Commodities Ordinance.

Enacted by the Legislative Council.

PART I

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Dutiable Commodities (Amendment) Ordinance 2002.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Treasury by notice published in the Gazette.

PART II

Amendment of Dutiable Commodities Ordinance

and its Subsidiary Legislation

Dutiable Commodities Ordinance

2. Grant and revocation of licences and permits

Section 7 of the Dutiable Commodities Ordinance (Cap. 109) is amended by adding---

"(1A) Without prejudice to subsection (1)(b)(iv) and subject to section 8A(3), the Commissioner or other officer deputed by him in that behalf may revoke a licence that was granted in respect of any premises."

3. Section added

The following is added---

"8A. Determining applications for and revocation of licences in respect of premises

(1) In determining an application for the grant or renewal of a licence in respect of any premises, the Commissioner or the officer deputed by him in that behalf shall take into account---

- (a) whether the applicant possesses the appropriate financial status;
- (b) whether the books of account and other documents that are kept or proposed to be kept by the applicant in relation to the premises are sufficient for the purpose of auditing;
- (c) whether the systems, procedures and standards that are used or proposed to be used by the applicant in respect of inventory control, record keeping and security are appropriate;
- (d) whether the applicant and his responsible personnel are fit and proper persons; and
- (e) any other relevant matter.

(2) No licence shall be granted in respect of any premises which are or will be used wholly or partly as a place of residence.

(3) In determining whether to revoke under section 7(1A) a licence that was granted in respect of any premises, the Commissioner or the officer shall take into account---

- (a) whether the licensee possesses the appropriate financial status;
- (b) whether the books of account and other documents that are kept by the licensee in relation to the premises are sufficient for the purpose of auditing;
- (c) whether the systems, procedures and standards that are used by the licensee in respect of inventory control, record keeping and security are appropriate;
- (d) whether the licensee and his responsible personnel are fit and proper persons; and
- (e) any other relevant matter.

(4) In determining whether a person is a fit and proper person for the purposes of subsection (1)(d) or (3)(d), the Commissioner or the officer shall take into account---

- (a) the fact that the person has a conviction in Hong Kong or elsewhere for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;
- (b) the fact that the person has been convicted of an offence against this Ordinance;
- (c) if the person is an individual, the fact that the person is an undischarged bankrupt or has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) within the 5 years preceding the date of the application;
- (d) if the person is a body corporate, the fact that the person is in liquidation, is the subject of a winding-up order or there is a receiver appointed in relation to it or it has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) within the 5 years preceding the date of the application; and
- (e) any other relevant matter.

(5) In this section, "responsible personnel" (負責人員), in relation to a person who is an applicant or licensee (as the case may be), means---

- (a) where the person is a body corporate, any of its directors;
- (b) where the person is an unincorporated association, the president, chairman, vice chairman or secretary of its management or executive committee (however described), or a person holding a similar office; or
- (c) any other person who is or will be wholly or mainly responsible for the management

of the premises concerned."

4. Deputy for absent licensee

Section 10 is repealed.

5. Power of Commissioner to compound

Section 47A is amended---

(a) in subsection (2), by repealing "in satisfaction of the duty and the balance";

(b) in subsection (3)---

(i) by adding "in a case where dutiable goods are seized in connection with the offence" after "(2)";

(ii) in paragraph (a), by repealing "dutiable goods seized in connection with the offence" and substituting "goods".

6. Compounding of offences

Schedule 3 is amended---

(a) by repealing the column headings and substituting---

"Dutiable Commodities Ordinance

Column 1	Column 2	Column 3	Column 4
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Section	Offence	When compoundable	Penalty
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(b) in column 4, against "34A" in column 1, by adding "and, where dutiable goods are seized in connection with the offence, 5 times the duty payable on the goods concerned" after "1";

(c) by adding at the end---

"Dutiable Commodities Regulations

Column 1	Column 2	Column 3	Column 4
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Regulation	Offence	When compoundable	Penalty
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99(1) Failing to enter in stock or surplus account or goods (as the record case may be) does deficiency not exceed or surplus \$10,000 as in dutiable goods stored in a warehouse, or failing to report such

99(1)	Offence	When compoundable	Penalty
Failing to enter in stock or surplus account or goods (as the record case may be) does deficiency not exceed or surplus \$10,000 as in dutiable goods stored in a warehouse, or failing to report such	Failing to	if the duty value level 1".	a fine at

deficiency or
surplus to
the

Commissioner

within 24 hours

Dutiable Commodities Regulations

7. Applications for licences and permits

Regulation 22(1) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.)
is amended---

(a) in paragraph (d), by repealing "and" at the end;

(b) in paragraph (e), by repealing the full stop and substituting
"; and";

(c) by adding---

"(f) either one of the following statements, as the case may be---

(i) where the premises will be regularly open, a statement of the proposed opening
hours; or

(ii) a statement that the premises will not be regularly open.".

8. Regulation added

The following is added before regulation 22A---

"22AA. Renewal of licences

Except with the written permission of the Commissioner, an application for the
renewal of a licence shall be made at least 1 month before, and no earlier than 2
months before, the expiration of the licence.".

9. Identification of licensees

Regulation 26 is repealed.

10. Unauthorized person prohibited in
spirit store

Regulation 56 is repealed.

11. Liquor to be reduced to uniform strength
and spirit receivers emptied when account
is taken

Regulation 59 is repealed.

12. Records to be kept by distiller

Regulation 61(2) is repealed.

13. Lamps

Regulation 82 is repealed.

14. Regulation added

The following is added---

"83A. Production of goods for inspection
and manner of storage

(1) When required so to do by the Commissioner, the warehouse-keeper shall promptly produce any goods stored in a warehouse for inspection.

(2) Except with the written permission of the Commissioner, a warehouse-keeper shall, when storing goods in the warehouse---

(a) not alter the packaging in which the goods were first entered;

(b) arrange the goods in a tidy manner to ensure safe and easy access to and from the goods; and

(c) mark all packaging legibly and uniquely so that the goods can be easily identified by reference to the stock account or record."

15. Regulation substituted

Regulation 85 is repealed and the following substituted---

"85. Notification regarding opening of warehouses

(1) If, in respect of a warehouse---

(a) a statement has been furnished under regulation 22(1)(f)(i), and it is decided to change the opening hours mentioned in that statement or open the warehouse outside those hours; or

(b) a statement has been furnished under regulation 22(1)(f)(ii), and it is decided to open the warehouse,

the warehouse-keeper shall notify the Commissioner of such decision in writing.

(2) The notification mentioned in subregulation (1) shall---

(a) specify when the decision is to be implemented; and

(b) be made at least 4 hours before the implementation of the decision."

16. Entry, etc., only with a member of

the Customs and Excise Service

Regulation 86 is repealed.

17. Damaged containers

Regulation 93 is amended by repealing "empty or".

18. Opening containers

Regulation 94 is repealed.

19. Sampling and other treatment of goods

Regulation 95 is amended---

(a) in subregulation (1), by repealing everything before ", samples" and substituting---

"(1) After giving notice to the Commissioner";

(b) in subregulation (2), by repealing everything before "in" and substituting--

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"(2) Notice under subregulation (1) shall be given".

20. Regulation added

The following is added---

"98A. Keeping of documents by warehouse-keepers

(1) A warehouse-keeper shall keep---

(a) a copy of every relevant document that he issues; and

(b) every relevant document that he---

(i) prepares, including one that is prepared for the purpose of issuing but not issued; or

(ii) receives,

until the expiration of 2 years from the relevant date.

(2) In this regulation---

"relevant date" (有關日期) means---

(a) where the relevant document relates to the movement of goods into and out of the warehouse, the date on which the goods are taken out of the warehouse;

(b) in any other case, the date on which the document is issued, prepared or received (as the case may be);

"relevant document" (有關文件) means any document that relates to---

(a) the movement of goods into and out of the warehouse, including delivery orders, goods receipt notes, invoices, credit notes, debit notes, bills of lading or air waybills and air consignment notes; or

(b) payments made and received in the course of the business of the warehouse, including ledgers, statements of accounts, profit and loss accounts, balance sheets and auditor's reports.

(3) For the purposes of this regulation, a document that is issued, prepared or received (as the case may be) in the course of the business of a warehouse shall be regarded as issued, prepared or received (as the case may be) by the warehouse-keeper."

21. Deficiencies or surpluses

Regulation 99 is amended by adding "or surplus" after "deficiency" wherever it appears.

22. Penalties

Regulation 104 is amended---

(a) in subregulation (1)---

(i) by repealing "61" and substituting "61(1)";

(ii) by adding "83A," after "67,";

(iii) by repealing "94,";

(b) in subregulation (2)---

(i) by repealing "26,", "56,", "59,", "82," and "86,";

(ii) by adding "98A," after "93,".

23. Compounding of offences

Regulation 105 is amended---

(a) in subregulation (1), by repealing "in satisfaction of the duty and";

(b) in subregulation (2)---

(i) by adding ", where applicable" after "out";

(ii) in paragraph (f)(i), by repealing "in satisfaction of the duty and".

PART III

Saving and Transitional Provisions

24. Interpretation

In this Part---

"existing licence" (現有牌照) means a licence that is valid immediately before the commencement of this Part;

"licence" (牌照) means a licence that was or will be granted in respect of any premises;

"original Ordinance" (原有條例) means the Dutiable Commodities Ordinance (Cap. 109) as it is in force immediately before the commencement of this Part.

25. Existing licences

(1) An existing licence shall remain valid for the unexpired portion of its period of validity that falls after the commencement of this Part, and the original Ordinance shall apply to the existing licence.

(2) If the holder of an existing licence applies for a licence---

(a) the Commissioner or the officer deputed by him in that behalf shall not grant a licence except upon the surrender of the existing licence; and

(b) the existing licence shall upon its surrender cease to be valid.

(3) The fee payable for a licence granted in accordance with subsection (2) shall be reduced by any fee paid for the existing licence in respect of the unexpired portion of its period of validity that falls after the surrender.

(4) For the purposes of subsection (3), the fee to be reduced shall be calculated on a pro-rata basis by reference to the number of months of the unexpired portion of the period of validity of the existing licence bears to the number of months for which the existing licence was granted, and part of a month shall be reckoned as a month.

26. Pending licence applications

Where, immediately before the commencement of this Part, an application made under the original Ordinance for the grant or renewal of a licence is pending, the

application shall, if the applicant so requests in writing, be determined in accordance with the original Ordinance.

Explanatory Memorandum

This Bill amends the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance") and the Dutiable Commodities Regulations (Cap. 109 sub. leg.) ("the Regulations") for the following main purposes---

(a) to introduce an Open Bond System ("OBS") for premises storing or manufacturing dutiable goods, including warehouses and factories; and

(b) to make other changes, including ancillary, minor and consequential changes, to existing provisions in the Ordinance and the Regulations.

2. In relation to OBS---

(a) clause 2 adds to existing section 7 of the Ordinance a new subsection, which gives the Commissioner of Customs and Excise ("the Commissioner") the power to revoke a licence that was granted in respect of such premises. Clause 3 adds to the Ordinance a new provision, which requires the Commissioner to take into account certain matters when determining whether to revoke the licence. The Commissioner shall take into account the same matters when determining an application for the grant or renewal of such a licence;

(b) clauses 10 to 12, 16 and 18 repeal certain existing provisions which will become obsolete once OBS is implemented;

(c) clauses 5 and 6 amend section 47A of and Schedule 3 to the Ordinance to give the Commissioner power to compound an offence under regulation 99 of the Regulations;

(d) clause 7 adds to regulation 22(1) of the Regulations a new paragraph, which requires the applicant for such a licence to furnish information about the proposed opening hours;

(e) clause 14 adds to the Regulations a new provision, which imposes new duties on warehouse-keepers to produce goods for inspection and to store goods in a certain manner;

(f) clause 15 replaces existing regulation 85 of the Regulations by a new provision, which requires a warehouse-keeper to notify the Commissioner of certain decisions in relation to opening the warehouse or changing its opening hours;

(g) clause 19 makes minor and consequential changes to regulation 95 of the Regulations;

(h) clause 20 adds to the Regulations a new provision, which requires a warehouse-keeper to keep certain documents;

(i) clause 21 amends regulation 99 of the Regulations---the existing requirements of reporting in relation to deficiency of dutiable goods stored in a warehouse will

apply also to a case of surplus;

(j) clauses 22 and 23 make consequential amendments to regulations 104 and 105 of the Regulations respectively;

(k) clauses 24 to 26 make saving and transitional provisions---

(i) to save the validity of existing licences;

(ii) to provide for a procedure for the surrender of an existing licence in return for a new licence;

(iii) to save the application of the existing provisions to pending applications for the grant or renewal of such licences, if the applicant so requests.

3. In relation to the other amendments---

(a) clauses 4, 9, 13 and 17 repeal certain existing provisions which have become obsolete;

(b) clause 5 amends section 47A of the Ordinance---the consequences now stated in subsection (3) will apply only where dutiable goods are seized;

(c) clause 8 adds to the Regulations a new provision, which requires renewal applications of licences under the Ordinance to be made at least 1 month before and no earlier than 2 months before the expiration of the licence.