

**For discussion
on 10 June 2008**

LegCo Panel on Food Safety and Environmental Hygiene

Review of Liquor Licensing

PURPOSE

This paper briefs Members on the measures that have been taken by the Administration to regulate liquor selling premises in high-rise buildings and proposals to further enhance the existing liquor licensing arrangement in order to facilitate the trade.

BACKGROUND

2. At present, any person intending to sell liquor at any premises for consumption on the premises must obtain a liquor licence or a club liquor licence from the Liquor Licensing Board (LLB) before commencement of such business. The LLB is an independent statutory body established under the Dutiable Commodities (Liquor) Regulations (Cap. 109B) to consider liquor licence applications. In considering an application for liquor licence, the LLB will consider (i) whether the applicant is a fit and proper person to hold the licence; (ii) whether the premises are suitable for selling liquor; and (iii) whether the grant of a licence will be contrary to public interest. It has been the standing practice that a liquor licence will only be issued if the food premises concerned have been issued with a full or provisional restaurant licence by the Food and Environmental Hygiene Department (FEHD). For club liquor licence, the liquor licence will only be issued if the club-house premises concerned have been issued with a Certificate of Compliance (CoC) by the Home Affairs Department (HAD).

3. FEHD provides secretariat support to the LLB. Upon receiving an application for liquor licence, FEHD will consult relevant Government departments and the local community through HAD. At the same time, it will

request the applicant to place a newspaper advertisement to inform members of the public. An application will be approved if LLB is satisfied of the considerations mentioned in paragraph 2 above, and if no objection or adverse comment is received. If objections or adverse comments are received, the LLB will consider the application in an open hearing or a closed-door meeting in accordance with established procedures. The applicant and the objectors will be invited to make representations to the LLB in person in an open hearing. In the event that the objectors do not wish to disclose their identities or they decline to attend the open hearing, the case will be considered in a closed-door meeting. In considering liquor licence applications, the LLB adopts a fair and impartial approach and will duly consider the views of local residents and the enforcement authorities.

4. As at 30 April 2008, there were 4 846 liquor licence and 460 club liquor licence.

UPSTAIRS BARS

5. In recent years, changes in business model have led to an increase in the number of upstairs bars¹. There are over 340 liquor licensed premises of this kind in the territory, over half of which are located in Wan Chai. Some District Councils and local residents have raised concerns about the problems that may be caused by an increasing number of upstairs bars, including overcrowding, fire hazard, environmental hygiene problems, noise, as well as law and order problems.

6. The Administration has taken the following measures to address these concerns.

Overcrowding

7. As mentioned in paragraph 2 above, the pre-requisite for a liquor licence is a full or provisional restaurant licence issued by FEHD or a CoC issued by HAD. In assessing an application for a restaurant licence, the Buildings Department (BD) will advise FEHD on the adequacy of the provision of means

¹ For the purpose of this paper, 'upstairs bars' refer to those licensed premises located in those high-rise buildings which are originally built as office blocks and are mainly used for the sale and consumption of liquor on the premises.

of escape, fire resisting construction and structural safety of the premises. BD will assess the adequacy of the provision of means of escape according to the design population / capacity of the premises, i.e. the number of persons normally expected in the premises, and such design population / capacity is calculated in accordance with the guidelines in the “Code of Practice for the Provision of Means of Escape in case of Fire 1996” (MOE Code). As for premises with a CoC, the maximum capacity in a club-house is assessed by HAD having taken into account the MOE Code and other relevant factors. In response to the recommendation of the Police, the LLB may, upon seeking advice from BD on the maximum capacity of the premises, impose a capacity limit on the premises as a licensing condition, if the LLB thinks fit.

8. The Police, as the enforcement agency of the Dutiable Commodities (Liquor) Regulations, will conduct licence checks on all liquor-licensed premises. The Police may prosecute the licensee if the maximum capacity limit of the premises imposed by LLB is exceeded.

Fire safety

9. The Fire Services Department (FSD) or HAD will conduct fire risk assessment, when processing an application for restaurant licence or CoC. As stated in paragraph 7 above, to ensure buildings have adequate means of escape, BD will assess the adequacy of means of escape of a building with reference to the design population / capacity in accordance with the MOE Code. FSD and HAD will take legal action against any violation of relevant Ordinances / Regulations.

10. Since January 2008, FSD has conducted 361 inspections to liquor licensed premises in 39 buildings where there are quite a large number of upstairs bars, and served 85 Fire Hazard Abatement Notices on their operators. FSD has also drawn up a contingency plan to cope with emergency incidents at premises with multiple upstairs bars.

Other Nuisances

11. The Police is usually the first agency to handle reports of noise nuisance. It deals with noise nuisance emanated from public areas and refers those emanated from liquor-selling premises to the Environmental Protection Department for investigation. As for environmental hygiene nuisance, FEHD

acting on complaint visits common parts of buildings and takes action against the source of nuisance.

Proposals to further control upstairs bars

12. In view of the concerns of some District Councils and local residents, the Administration is considering whether, in addition to the measures mentioned in paragraphs 7 to 11 above, there should be further control on the number of upstairs bars that may be housed in a building and their capacity. Such measures may include imposing a more stringent limit on the number and capacity of liquor selling premises that may be housed in a building by making reference to the size and scale of such premises as well as the building. This administrative limit will be a guideline for LLB's consideration.

13. Any proposal to further control upstairs bars will need to balance the interests of the local community and the legitimate business of the trade. We will consult the trade, District Councils, and other stakeholders carefully and extensively on our preliminary proposals.

TRADE FACILITATION

14. In 2006, the Efficiency Unit (EU) completed a Review of Liquor Licence, and made a total of 16 recommendations (at **Annex**) on the principle, process and communications aspects of the liquor licensing regime. All of the short to medium term recommendations have been implemented.

15. The review has also suggested that the Government should review the following aspects of the current legislation –

- (a) review of the appropriate party for holding a liquor licence, including allowing multiple authorized persons to supervise the premises; and
- (b) review of other legislative details including the duration of the licence and the need for a newspaper advertisement to inform members of the public on the licence application.

Appropriate party for holding a liquor licence

16. At present, liquor licences are only issued to natural persons. The trade is concerned that the grant of a liquor licence to a natural person may pose a threat to the continuity of their business. Since according to the licensing conditions, the licensee has to supervise the premises personally, the licensee may be an employee of the business. If there is a change in the employee, the operator will have to go through the licensing procedures for transfer of licence which takes time. The report recommended that the Government should consider amending the legislation to allow a company to hold a liquor licence, and if that is not feasible, to allow multiple natural persons to hold the liquor licence.

17. We note that the Karaoke Establishment Ordinance (Cap. 573) requires that, the person making an application for a permit or licence is a person who is, among other things, a fit and proper person to operate the karaoke establishment. Cap. 573 also provides that where a body corporate or a partnership wishes to obtain a permit or a licence, a person authorized by the body corporate or the partnership shall apply as the representative of the body corporate or the partnership and, if a permit or a licence is granted or issued by the licensing authority, it shall be expressed to be granted or issued to that person on behalf of the body corporate or the partnership. Under Cap. 573, a body corporate or partnership may make an application to the licensing authority to substitute another person for the person whose name appears on the permit or the licence as the representative of the body corporate or the partnership.

18. Cap. 573 may serve as a reference in exploring modifications to Cap. 109B so that where a body corporate or a partnership wishes to obtain a liquor licence, a person authorized by the body corporate or the partnership in that behalf shall apply as the representative. We must, however, ensure that the legal responsibility of the licensee and law and order will not be affected and the integrity of the licensing regime will not be compromised.

Duration of licence and need for newspaper advertisement

19. EU has recommended that the duration of a liquor licence could be lengthened to more than one year so as to reduce the administrative burden to the trade in applying for renewal of liquor licence every year. Also, EU has recommended that the current requirement that advertisement should be made at

least two weeks before LLB considers an application be dispensed with.

20. We agree that there may be scope to further streamline administrative arrangements. As regards the licence duration, legislative amendments to Cap. 109B could be considered to enable LLB to grant, at its discretion, a liquor licence with a duration not longer than two years. A review mechanism may be introduced so that the LLB may monitor the performance of the liquor licensed premises and impose additional licensing conditions to the liquor licence where appropriate. We also propose to remove the requirement for newspaper advertisement, as there are already other more effective channels of communication through which the public may learn about the possible establishment of new liquor licensed premises.

NEXT STEPS

21. Subject to any views that Members may have on the above proposal, we will consult the various stakeholders.

ADVICE SOUGHT

22. Members are invited to comment on the proposal set out above.

Food and Health Bureau
Food and Environmental Hygiene Department
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**Efficiency Unit's 16 recommendations
on liquor licensing already implemented**

- (a) Parallel processing of new applications alongside revocation of old licences.
- (b) Removal of dependency of the liquor licence on restaurant licence and CoC so that applications for liquor licence and restaurant licence or CoC could be processed in parallel.
- (c) Setting up an application tracking system.
- (d) Delegation of authority to the Licensing Offices for approval of non-contested cases.
- (e) Clearer rules for staff on when to submit cases to LLB for pre-meetings.
- (f) Improved communication with the trade and departments concerned.
- (g) Better use of computer-generated templates for preparing submission papers more speedily.
- (h) Dispensing of referrals of new applications for club liquor licence to the Office of the Licensing Authority of the HAD.
- (i) Re-defining referral rules involving the Police.
- (j) Enhancing counter service for provision of one-stop service for new and transfer applications.
- (k) Improving licensing guide and application form to facilitate applicants in submitting their applications.
- (l) Rationalising processes for transfer applications.
- (m) Introduction of performance pledges for the major processes of all kinds of applications.
- (n) Developing information technology to support e-submissions and e-processing of licence applications.
- (o) Dispensing of referrals of new applications for club liquor licence to Department of Justice for checking of the club constitution.
- (p) Notification of applicants once the applications are determined to be considered by the LLB at pre-meetings.