

For discussion  
on 15 February 2011

## **LegCo Panel on Food Safety and Environmental Hygiene**

### **Review of Liquor Licensing**

#### **PURPOSE**

This paper briefs Members on the Administration's latest thinking on the various proposed trade facilitation measures in respect of liquor licensing and updates Members on the problems besetting upstairs bars in Hong Kong.

#### **BACKGROUND**

2. Under the Dutiable Commodities (Liquor) Regulations (Cap. 109B) (DCLR), the sale of liquor at any premises for consumption on those premises is prohibited except on the authority of a liquor licence. Also, no liquor shall be supplied at any premises used by any club for the purposes of the club to any members of the club except under and in accordance with a club liquor licence. The Liquor Licensing Board (LLB) is an independent statutory body established under the DCLR to consider liquor licence applications. In considering an application for liquor licence pursuant to Regulation 17 of the DCLR, 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 and supplying intoxicating liquor; and (iii) whether in all the circumstances the grant of the licence is not contrary to the public interest. As at 31 December 2010, there were 5 291 liquor licences and 491 club liquor licences.

3. In 2007, the Efficiency Unit (EU) completed a Review of Liquor Licence, and made a total of 16 recommendations on the principle, process and communication aspects of the liquor licensing regime. All of the short to medium term recommendations have been implemented. A full list of the recommendations is at **Annex A**.

4. In June 2008, the Administration briefed Members of this Panel on the measures taken to regulate liquor selling premises in high-rise buildings (upstairs bars) and the proposals to further enhance the existing liquor licensing arrangement in order to facilitate the trade.

## **TRADE FACILITATION**

### *Appropriate party for holding a liquor licence*

5. Regulation 17 of DCLR stipulates that liquor licences are only issued to natural persons. Under the banner of trade facilitation, the EU recommended a review of the appropriate party for holding a liquor licence, including allowing multiple authorised persons to supervise the premises. At the Panel meeting in June 2008, the Administration agreed to explore the feasibility of issuing a liquor licence to a body corporate or a partnership with reference to the Karaoke Establishments Ordinance (Cap. 573) (KEO). However, it was emphasized that the legal responsibility of the licensee and law and order should not be affected and the integrity of the licensing regime must not be compromised. We have now completed our review and should like to share with Members our latest thinking.

6. Liquor licensing aims to control the sale of liquor to the public for consumption in public premises and to ensure that the premises so licensed are properly managed and controlled and are suitable for receiving customers. Liquor licensed premises exist in many and varied forms, ranging from restaurant, bar, nightclub, disco, karaoke to upstairs bar etc. Excessive consumption of alcoholic drinks could give rise to a host of law and order problems, as people under the influence of alcohol are more prone to resort to violence. In 2010, there were 2 593 crime cases related to liquor licensed premises, of which 668 were violent crimes.

7. Karaoke establishments, however, are a very different type of premises from liquor licensed premises. The nature of business is very different and the associated risk for potential order and law problem is much lower. Moreover, the KEO was enacted in 2002 with the policy objective of addressing the fire and building safety issues, which is different from the objective of the DCLR as described in paragraph 2 above. Given the different policy intents governing the two pieces of legislation, a like-with-like comparison of the two will be difficult and may not be appropriate.

8. The enforcement under the current liquor licence regime relies heavily on a clear liability and legal responsibility of the licensee to supervise and manage the licensed premises personally. If the licensee fails to do so, the licence could be revoked, suspended or refused to be renewed depending on the circumstances of the case. The licensee may risk losing his job or even face penalties under the DCLR, which may include imprisonment. We consider the control necessary and appropriate as it is commonly known that liquor licensed premises could be a breeding ground of crimes and a source of public nuisance. If a body corporate becomes a licensee, it is doubtful whether the body corporate, and its directors or partners, could be held liable for the breaches of the licensing conditions. The complexity of the composition of the body corporate concerned may exacerbate the problems of criminal prosecution. In any event a body corporate cannot be sent to jail. This will hinder effective enforcement and maintenance of law and order at licensed premises, and clearly not in the public interest.

9. Apart from the corporate licensee option, we also looked into the possibility of allowing multiple authorised persons to supervise the licensed premises. This suggestion was mooted by the trade and is said to be able to ensure business continuity during times of sudden departure of the licensee under the current DCLR. They said that during such vacuum period the business had to risk operating without a proper licensee in charge, although in the past three years there had not been any case where the licence was revoked or the renewal application objected merely because the licensee was not present at the premises. However, the option of allowing multiple authorised persons will still give rise to the same problem of unclear liability and legal responsibility. There are grave enforcement concerns on

who exactly is managing the licensed premises at any particular point of time and who should be held accountable for breaches detected. It is not difficult to envisage the scenario when the licensees are shifting the blame to each other; and that multiple co-management may be used as a cover for collective evasion of responsibility.

10. To address the trade's concern that businesses occasionally suffer from a disruption in operation when the licensee leaves the service without transferring his licence to his successor, consideration may be given to introducing an optional system of "reserve licensee". A reserve licensee may be nominated at the time of the application or anytime during the licensed period by the licensee (or the applicant). If the LLB accepts the nominee as the reserve licensee, the person could, with LLB's endorsement, take over the liquor licence upon the departure of the current licensee from the business, but at no time should there be two licensees legally responsible for a single premises. The departure of the original licensee should not be of a temporary nature and should pertain to cases like resignation or serious sickness. In considering if the reserve licensee is a fit and proper person, the LLB would apply the same standard as the usual licensees. With the presence of a reserve licensee who could take over within a short period of time, the disruption to businesses could be minimised while maintaining a clear legal responsibility and liability over the licensed premises at all times. However, it should be noted that this would incur an increase in the workload of both the LLB and the Police. The proposal, if found feasible, would require an amendment of the DCLR.

#### *Newspaper Advertisement*

11. At present, the LLB requires all applicants for new liquor licences to advertise their applications on three local newspapers (two Chinese and one English) in a specified size and format. For transfer, renewal and amendment applications, the applicant is required to place an advertisement on one local newspaper only (either Chinese or English), but the size of the advertisement is twice that for a new application, and the content of the advertisement is bilingual. This advertisement requirement is a statutory refinement under Regulation 16 of DCLR. The purpose of the advertisement requirement is to enable notice of the applications to be given to the public at large on the application.

12. In addition to placement of newspaper advertisements by the applicant, staff of the Food and Environmental Hygiene Department (FEHD) will also post three copies of the notice about the application for liquor licence in conspicuous locations of the building (such as the entrance of the premises, lift, lobby, etc.) in which the premises under application are located. FEHD also seeks the assistance of relevant District Offices to gather the views of nearby residents through the residents' organisations and District Councillors on the applications. Residents are more likely to get to know the applications through such a consultation process than the newspaper. As such, there have been suggestions to replace the requirement for newspaper advertisement to reduce cost to the trade with alternative public channels, like the Internet. For example, the LLB could create a designated webpage for posting new, renewal, transfer or amendment applications of liquor licence for public information. The current practice of posting notices at or near the premises and consultation through District Offices will be maintained.

#### *Extension of Licence Period*

13. Under the DCLR, a liquor licence shall be valid for a period of one year or such lesser period as the LLB shall determine. Currently, this annual renewal exercise provides a natural opportunity for the LLB to gauge the views of various Government departments and the community on the operation of the licensee in the past year and to take actions (e.g. refusing the new or renewal application, renewing the licence for a period less than a year with or without imposing additional licensing conditions) if necessary. On the other hand, the trade found the annual renewal a burden on their operation and this prompted the EU's recommendation on the extension of the duration of a liquor licence to more than one year. The Administration is open to the proposal of extending the duration of a licence to a maximum of two years for those businesses with a good track record for at least two consecutive years. The LLB may impose additional licensing conditions to the liquor licence where appropriate. New applications and those renewal applications with objections may be given a shorter licensed period as the LLB so decide. During the licence period, the licensed premises will have to ensure the concurrent coverage by a valid restaurant licence (for liquor licence) or a valid Certificate of Compliance (for club liquor licence), thus continuing to comply with and observe the fire safety and other licensing requirements at all times.

### *Classification of Licences*

14. At the Panel meeting in June 2008, some Members suggested that, as a trade facilitation measure to “dai pai dongs” and small and medium sized restaurants, there should be different categories of liquor licences e.g. one for selling beverages with an alcohol content of less than 5% (such as beer) and the other with an alcohol content of more than 5%. We agree that different types of business will pose different law and order risk and thus have explored the feasibility of some possible classifications with reference to overseas experiences. In some overseas jurisdictions, in addition to the variety of liquors sold, liquor licences are also categorised in accordance with the mode of operation of the business concerned, as in Singapore and the State of California, United States. A detailed analysis is at **Annex B**.

15. In Hong Kong, classification according to the variety of liquors sold might not be applicable. Most licensed premises are selling a pretty wide range of products at present and the proposed classification according to the variety of liquors sold will unavoidably disrupt their current mode of operation. We have also considered a classification according to the nature of business, i.e. a bar or a restaurant. However, with the changing dining behaviour of Hong Kong people, we found the distinction between bars and restaurants becoming blurred, with many new restaurants also having a bar next to the dining areas and the consumption of wine being very common in general restaurants. We will continue to discuss this issue with the trade.

### **Upstairs Bars**

16. Upstairs bars generally refer to those licensed premises mainly used for the sale and consumption of liquor on the premises and are located in multi-storey buildings which are originally built as office blocks or in commercial/residential composite buildings. These exclude the premises located in purpose-built shopping centres, hotels or buildings specifically designed for entertainment. According to the Police, there are some 400 licensed upstairs bars in Hong Kong (as at December 2010). The majority of these premises are concentrated in districts such as Yau Tsim Mong, Wan Chai and Central. The concentration of bars in high-rise composite buildings has brought along potential problems of public safety, crime and public nuisances. Local community and the District Councils have raised their concerns from time to time.

17. At the Panel meeting in June 2008, Members discussed the problems of the upstairs bars and noted the actions taken by relevant departments in containing the problems. The Administration reported that it was being considered whether there should be additional control on the number of upstairs bars that may be housed in a building and their capacity. While Members were concerned about the fire safety and the noise and environmental nuisance caused by upstairs bars, Members were also mindful of the possible negative impact on the business of existing licensed upstairs bars and clubs if additional regulation were to be imposed over these licensed premises. It is important to balance the interests of the local community and the legitimate business of the trade.

#### *Public Safety*

18. There is much concern over whether people, under the influence of alcohol and gathering in large numbers in a concentration of bars in a multi-storey building, can make their way to safety through the stairs while fighting for exit during emergencies. The situation would be worsened by slippery (with vomit) or blocked staircases, customers crowding at staircases for a rest or smoking and excessive drinking.

19. At present, liquor licence will only be issued with the relevant restaurant licence or a Certificate of Compliance, unless otherwise exempted by the LLB. For upstairs bars to serve their specified purposes, adequate means of escape (MOE) must be provided with reference to the "Code of Practice for the Provision of Means of Escape in Case of Fire 1996" (MOE Code), which is currently being reviewed through a consultancy study. In the process of reviewing the MOE standards, reference to foreign regulatory experience (e.g. that of the United Kingdom and of Australia) has been made and adopted where appropriate. The preliminary results of the review show that there is room for tightening up the standards in MOE provision. It is the Buildings Department's current aim to complete the review and implement the revised standards within 2011. In addition, as part of the licensing requirements for the restaurant licences, the Fire Services Department would stipulate appropriate fire safety requirements, including the provision of appropriate fire service installations and equipment (e.g. fire alarm system, fire extinguishers, sprinkler system, fire hydrant/hose reel system, exit signs, emergency lighting), the use of fire retardant materials for furniture and decorations, and the safe use of fuel, e.g. electricity.

20. As the licensing authority, the LLB has been very mindful of the problem. The LLB, when assessing applications from upstairs bars, might impose capacity limits for bars as an additional licensing condition on the basis of the Buildings Department's professional advice on the number of persons (including staff) normally expected in the premises used as a restaurant, or for club-house, the capacity limit imposed by the Home Affairs Department in the Certificate of Compliance. The Police may prosecute a licensee if the maximum capacity limit of the premises imposed by the LLB is exceeded during licence checks.

### *Crime*

21. Whilst the number of upstairs bars represents 8% of all the liquor licensed premises in Hong Kong, the number of crimes related to upstairs bars accounts for 11% of all crimes at liquor licensed premises in 2010. The crimes that occur in or arise from incidents at upstairs bars include mainly violent crimes such as wounding, assault, rape, indecent assault and other crimes such as criminal damage, and drug trafficking. Upstairs bars, usually offering a more competitive price on alcoholic drinks, tend to attract youngsters and underage drinking is an area of increasing concern.

22. The Police is determined to combat crimes at upstairs bars. However, the fact that upstairs bars are tucked inside high rise buildings makes law enforcement more difficult. There are cases when suspects have fled or drug traffickers/abusers have disposed of the drugs before police arrival. To assist the LLB to make decision on liquor licence applications at these premises, the Police will advise the LLB of the known or identified policing problems or concerns associated with the applications. If the LLB decides to grant the licence, it may, on the advice of the Police or other departments, impose additional licensing conditions such as capacity limit, restriction on the liquor selling hours, the duty hours of the licensee so as to subject the upstairs bars concerned to some additional regulatory measures.



### *Public Nuisance*

23. Due to the proximity of many upstairs bars to residential premises and the competing use for communal facilities with other building users, there are constant complaints of public nuisance, ranging from noise complaints, environmental hygiene to disorderly conduct. Where appropriate, the LLB also imposes additional licensing conditions to address these problems (e.g. a ban on selling or supplying liquor after certain hours and restriction on playing of music and/or karaoke facility after certain hours) on a case-by-case basis, taking into account the environment, the nature of business and views of nearby residents and relevant Government departments.

24. There have been calls by some quarters to tighten the policy and licensing conditions for upstairs bars to address social and public safety concerns such as escape from fires under drunken situations in a high-rise setting, youth drug problem and combat of vice etc. Drinking is a personal behaviour and all individuals should take a responsible approach when consuming alcohols, including choosing the right place and consuming an appropriate amount of alcohol. On the other hand, we need to ensure the safety of other users at the buildings will not be compromised by the irresponsible drinking behaviour of the customers of upstairs bars. In view of the public concern, there is a need to consider additional measures to minimise the disturbance to the public at large. There are suggestions that the potential risk of upstairs bars should be assessed and graded on the basis of –

- (a) the number of licensed premises already in the building concerned;
- (b) the number of alcohol-related crimes and public nuisance reports in the precinct or the building concerned;
- (c) the impact on joint users of the buildings (e.g. the adverse impact would be much greater if the building is for joint commercial/residential use); and
- (d) the layout of the building, including the number of staircases; the number of floors and whether there is separate access to cater for different user groups.

25. Based on risk assessment, suggestions to strengthen control include –

- (a) imposing a stricter capacity limit on those liquor licences which are issued for premises located in all multi-storey buildings that are not purpose built for entertainment;
- (b) limiting the number of liquor selling premises that may be housed in a multi-storey building by making reference to the size and scale of such premises as well as the building;
- (c) restricting the issue of new liquor licences to light refreshment restaurants (LRRs) and new club liquor licences in certain high risk targeted buildings (e.g. those with a large number of residents) with a relatively higher incidence of crime or complaints in the past; and
- (d) developing more restrictive guidelines for approving new liquor licences/club liquor licences in all multi-storey buildings.

26. These proposals involve imposing new restrictions on the trade and could be controversial. Public and trade consultation will have to be conducted on how the policy on licensing of upstairs bars should be tightened in order to strike a balance among the interests of different sectors of the community.

### **Way Forward**

27. Since many of the proposals have an impact on the community and the trade, the Administration will solicit the views of the LLB and conduct trade and public consultation. Depending on the outcome of consultation, the Administration may proceed with the legislative amendment exercise.

### **Advice Sought**

28. Members are asked to note and advise on the contents of this paper.

**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 Certificate of Compliance (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 the Liquor Licensing Board (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 Home Affairs Department.
- (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.

**Classification of liquor licences in California, Singapore and England and Wales**

	<b>California, USA</b>	<b>Singapore</b>	<b>England and Wales</b>
Are liquor licences classified?	<ul style="list-style-type: none"> <li>● Yes. Common types on the sale and consumption of liquor on the licensed premises –</li> <li>(a) <b>On Sale Beer</b> - (Bar, Tavern) Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.</li> <li>(b) <b>On Sale Beer &amp; Wine – Eating Place</b> - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors</li> </ul>	<ul style="list-style-type: none"> <li>● Yes. Common types on the sale and consumption of liquor on the licensed premises –</li> <li>(a) <b>1<sup>st</sup> Class Public House Licence</b> is for the sale of all types of liquor (inclusive of beer and stout) for consumption on the premises from 6 am to 12 midnight.</li> <li>(b) <b>2<sup>nd</sup> Class Public House Licence</b> is for the sale of all types of liquor (inclusive of beer and stout) for consumption on the premises from 6 am to 10pm.</li> <li>(c) <b>Beer House Licence</b> is for the sale of only beer and stout for consumption on the premises from 6 am to 12 midnight.</li> <li>(d) <b>Outdoor Beer Stall Licence</b> is for the sale of only beer and stout for consumption on the premises from 6 am to 3 am.</li> <li>● A holder of a valid liquor licence may apply to extend the licensing hours of the liquor licence. The extension hour period applied for can only be within the validity period of the liquor</li> </ul>	<ul style="list-style-type: none"> <li>● No.</li> </ul>

California, USA	Singapore	England and Wales
	<p>are allowed on the premises.</p> <p>(c) <b>On Sale Beer &amp; Wine – Public Premises</b> - (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.</p> <p>(d) <b>On Sale General – Eating Place</b> - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.</p> <p>(e) <b>On Sale General – Public Premises</b> - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where</p>	<p>licence. It is known as the <b>Extension Hours Liquor Licence</b>.</p>

California, USA	Singapore	England and Wales
	<p>sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.</p> <p>(f) <b>Club</b> - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. No off-sale privileges. Food service is not required. Minors are allowed on the premises.</p>	

*Sources:*

1. Department of Alcoholic Beverage Control, California: <http://www.abc.ca.gov/>
2. Ministry of Home Affairs, Singapore: <http://www.mha.gov.sg/index.aspx>
3. Electronic Licence Application, Singapore: <http://licences.business.gov.sg>
4. Home Office, United Kingdom: <http://www.homeoffice.gov.uk/drugs/alcohol/>