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Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 15 February 2011**

Liquor Licensing Review

Purpose

This paper summarizes the concerns of the Panel on Food Safety and Environmental Hygiene ("the Panel") on issues relating to liquor licensing.

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. 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, LLB will consider the following three criteria –

- (a) the applicant is a fit and proper person to hold the licence;
- (b) the premises to which the application relates are suitable for selling or supplying intoxicating liquor; and
- (c) in all the circumstances the grant of the licence is not contrary to the 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 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 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 with the considerations mentioned in paragraph 2 above, and if no objection or adverse comment is received. If objections or adverse comments are received, 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 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. According to the Administration, LLB adopts a fair and impartial approach in considering liquor licence applications and will duly consider the views of local residents and the enforcement authorities.

4. The Efficiency Unit ("EU") completed the review of liquor licensing in 2006 and made recommendations on the principle, process and communications aspects of the liquor licensing regime. The review had 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.

Deliberations of the Panel

5. At the meeting on 10 June 2008, the Panel discussed the Administration's proposed measures to regulate liquor selling premises in high-rise buildings and its proposals to further enhance the liquor licensing arrangement in order to facilitate the trade.

Upstairs bars

6. Members were concerned about the noise and environmental nuisance and fire safety issues caused by upstairs bars and clubs, particularly those located in a single staircase residential or composite commercial/residential building. Members also expressed concern that the proliferation of upstairs bars and clubs would exacerbate the problems. Noting the Administration's proposal to impose a limit on the number and capacity of liquor selling premises that might be housed in a building, members considered it necessary to work out detailed and clear guidelines on the approving conditions for issuing liquor licences. Some members called on the Administration to implement the proposed control measures to tighten the regulations over the granting of liquor licences expeditiously.

7. The Administration explained that the pre-requisite for granting of a liquor licence was a full or provisional restaurant licence issued by FEHD or a CoC by HAD. The Fire Services Department would conduct fire risk assessment when processing an application for restaurant licence. To ensure that buildings had adequate means of escape, the Buildings Department would assess the adequacy of means of escape of a building with reference to the design population/capacity of the premises, i.e. the number of persons normally expected in the premises, and such design population/capacity was 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 was assessed by HAD taking into account the MOE Code and other relevant factors.

8. Members generally considered that liquor licences should not be issued to liquor selling premises which only occupied one single unit or several units on a floor of a single staircase residential or composite commercial/residential building. The application for a liquor licence should be rejected if the premises concerned was in breach of the prescribed land use and the Deed of Mutual Covenant of the building.

9. The Administration was of the view that any proposal to further regulate upstairs bars would need to strike a balance between the interests of the local community and the trade. The Administration would consult the trade, District Councils and other stakeholders concerned carefully and extensively on its preliminary proposals. The Administration planned to introduce the legislative amendments to Cap. 109B into the Legislative Council in the 2009-2010 session.

10. Some members had reservation about the proposals to step up the regulation over upstairs bars. They commented that the Administration should avoid affecting the business of the existing licensed upstairs bars and clubs when applying the relevant measures. It was also envisaged that the number of upstairs bars and clubs would be reduced drastically when the smoking ban imposed by the Smoking (Public Health) (Amendment) Ordinance 2006 was to apply to licensed bars and clubs with effect from 1 July 2009.

Selling of liquor at other non-liquor-licences premises

11. Members pointed out that currently there was no control over the selling of alcoholic beverages such as beer in "dai pai dongs", restaurant patrons bringing along their own wine, and customers of convenience stores consuming alcoholic drinks outside the stores after purchase. Members considered that as a trade facilitation measure, the Administration should consider issuing liquor licences to "dai pai dongs".

12. The Administration advised that under Cap.109B, any person intending to sell liquor at any premises for consumption on the premises must obtain a liquor licence or club liquor licence from LLB before commencing such business. Liquor licences would not be required for restaurants whose patrons brought their own wine for consumption there and for convenience stores which only sold alcoholic beverages to customers. As regards "dai pai dongs", there were stringent requirements on the suitability of the premises under application for a liquor licence having regard to the location, fire safety, hygienic conditions and the structure of the premises. "Dai pai dongs" located at FEHD's cooked food centres might have physical constraint for the issue of liquor licence. However, the Administration would consult LLB's views in this regard.

13. Members expressed worry over the noise and environmental nuisance caused by drunken patrons of food premises which operated 24 hours, particularly those located in residential areas. Members were concerned about the restriction on the liquor selling time of these food premises. Members also expressed grave concern over the noise and environmental nuisance caused by private barbecue sites to nearby residents, given that there was no regulatory control over the operation of private barbecue sites which might sell liquor without any valid liquor licences.

14. The Administration advised that under the existing law, there was no restriction on the operation time of licensed food premises. As regards liquor licence, LLB might impose conditions on liquor selling hours for premises located in a residential building or a composite commercial/residential building

in a residential area. There was no specific type of licence for private barbecue sites under the existing licensing regime for food premises. The types of licences required by private barbecue sites would depend on the mode of the business. The Administration would take prosecution actions against unlicensed food premises when there was sufficient evidence.

15. The Administration explained that the Police, as the enforcement agency of Cap. 109B, would conduct licence checks on the liquor-licensed premises. Under Cap. 109B, LLB might revoke a liquor licence if the licensee had ceased to be a fit and proper person to hold the licence.

Trade facilitation measures

16. Some members suggested that, as a trade facilitation measure to "dai pai dongs" and small and medium restaurants, the Administration should consider issuing two different categories of liquor licences e.g. one for selling beverages with an alcohol content of less than 5% and the other with an alcohol content of more than 5%. The Administration advised that it would need to consult LLB on the suggestion.

17. Regarding the Administration's proposal to lengthen the duration of liquor licence to two years, some members held a strong view that a clear and stringent mechanism should be put in place to monitor the liquor licensed premises for compliance with the licensing conditions.

18. The Administration advised that it would consider introducing a review mechanism so that LLB might monitor the operation of the liquor licensed premises and impose additional licensing conditions to the liquor licence where appropriate.

19. On the review of the appropriate party for holding a liquor licence as recommended by EU in its review of liquor licensing in 2006, the Administration advised that it would make reference to the Karaoke Establishment Ordinance (Cap. 573) in exploring modifications to Cap. 109B so that a person authorized by a company which wished to obtain a liquor licence could apply as the representative on its behalf.

20. The Administration will brief the Panel on the review of liquor licensing at the meeting on 15 February 2011.

Question raised at Council meeting

21. An oral question relating to liquor licensing was raised by Mr Tommy CHEUNG at the Council meeting on 10 March 2010. The Administration's reply to the question is in the **Appendix**.

Relevant papers

22. Members are invited to access the LegCo website at <http://www.legco.gov.hk> to view the minutes and relevant papers of the meeting of Panel on 10 June 2008.

Council Business Division 2
Legislative Council Secretariat
9 February 2011

~~PRESIDENT (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.~~

(After the summoning bell had been rung, a number of Members entered the Chamber)

TABLING OF PAPERS

The following papers were laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

No. 76 — The Hong Kong Academy for Performing Arts Annual Report 2008-2009, and financial statements and Auditor's report for the year ended 30 June 2009

Report of the Bills Committee on Genetically Modified Organisms (Control of Release) Bill

ORAL ANSWERS TO QUESTIONS

~~PRESIDENT (in Cantonese): Questions: First question.~~

Review of Liquor Licensing

1. **MR TOMMY CHEUNG** (in Cantonese): *President, the Efficiency Unit (EU) completed the review of liquor licensing back in 2006 and submitted proposals for legislative amendments to the then Health, Welfare and Food Bureau, with a view to creating a more business-friendly environment for the trade. The proposals include allowing a company or multiple natural persons to hold a liquor licence, so as to avoid the situation of a licensee going on vacation, his departure or death rendering the premises concerned being in breach of the licence conditions or having to cease the sale of liquor and suffer business losses. Some members of the trade have relayed to me that the trade is gravely disappointed as it has been three years since the EU put forward its proposals, but the authorities have so far not introduced the relevant proposed legislative amendments. In this connection, will the Government inform this Council:*

- (a) *why it has still not introduced the bill concerned to this Council to date; whether it has set a legislative timetable in this regard; if so, of the details; if not, the reasons for that;*
- (b) *given that the trade has requested the authorities for years to allow a company or multiple natural persons to hold a liquor licence, and the authorities only responded at a meeting of the Panel on Food Safety and Environmental Hygiene of this Council in 2008 that they would make reference to the Karaoke Establishments Ordinance and study the proposals, of the progress and outcome of the study concerned; whether the authorities have consulted the trade on the proposed legislative amendments and of the outcome of such consultation; if the outcome of the study is not yet available, the reasons for that; and*
- (c) *of the number of applications lodged with the Liquor Licensing Board by liquor licensees each year from 2006 to 2009 to authorize other persons to temporarily manage the licensed premises concerned, and the average time taken to complete the processing of such applications?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the EU began conducting a review on liquor licensing in 2006, with the objective to rationalizing the prevailing regime and procedures for liquor licensing and shortening the overall processing time required in order to provide a more business-friendly environment for the trade. In October 2007, the EU completed the review and submitted its report to the Food Business Task Force under the Business Facilitation Advisory Committee with a list of recommendations. The Food and Health Bureau and the Food and Environmental Hygiene Department have since implemented a series of short- to medium-term measures in the light of the recommendations of the review report which include streamlining the application processes and allowing e-processing of licence applications. With respect to the legislative amendment recommendations put forth in the review, including that regarding the review of the appropriate party for holding a liquor licence, which is of concern to the trade, the Bureau has also considered the proposal in association with other relevant bureaux and executive departments.

Under the Dutiable Commodities (Liquor) Regulations (Cap. 109B), before granting a liquor licence, the Liquor Licensing Board (LLB) should consider the following three criteria:

- (a) the applicant is a fit and proper person to hold the licence;
- (b) the premises to which the application relates are suitable for selling or supplying intoxicating liquor; and
- (c) in all the circumstances the grant of the licence is not contrary to the public interest.

Under the existing legislation, a liquor licence will only be granted to a natural person, which means that it could only be granted to a person but not to a body corporate or a company formed by partnership. The objective of this requirement is to have all premises with liquor licences to appoint a natural person who can be held criminally liable for any breaches of the law or licensing conditions in respect of the premises. The trade is concerned that when there is a change in the employee, the grant of a liquor licence to a natural person may cause the premises to suspend operation temporarily because there is no licence holder. In this regard, the EU recommended in its report that the Government should consider amending the legislation to allow a "company" or multiple natural persons to hold a liquor licence.

When considering the above recommendation, we have been adhering to the principle that all liquor licensed premises should have a designated person who can be held criminally liable for any breaches of the law or licensing conditions in respect of the premises, and that the Administration's existing procedures and strength of enforcement will not be affected. We note that the Karaoke Establishments Ordinance (Cap. 573) has certain requirements on licence applicant. The Ordinance stipulates that the person making an application for a permit or licence is a person who is a fit and proper person to operate the karaoke establishment. That said, the Ordinance provides that where a body corporate or a company formed by partnership wishes to obtain a permit or a licence, a person authorized by the body corporate or a company formed by partnership in that behalf shall apply as the representative of the body corporate or a company formed by 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 a company formed by partnership. Besides, under Cap. 573, a body corporate or a company formed by 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 company formed by partnership.

Cap. 573 may serve as a reference in relaxing the appropriate party for holding a liquor licence. 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. At present, we are carefully examining the impacts of the legislative amendment proposal from the perspectives of legal, enforcement actions and resources, and will consult the trade and the Legislative Council Panel after finalizing our proposal. We will study how to further facilitate the trade on the premise that the work of the law-enforcement agencies in preserving law and order and against crimes will not be affected.

Part (c) of the question enquires on the number of applications lodged with the LLB by liquor licensees to authorize other persons to temporarily manage the licensed premises concerned. Under the Dutiable Commodities (Liquor) Regulations, in case of illness or temporary absence of the holder of a liquor licence, the secretary to the LLB may in his discretion authorize any person to manage the licensed premises for a period not exceeding three months, and during that period the authorized person shall be deemed to be the licensee of the premises. In 2006, 2007, 2008 and 2009, the numbers of applications lodged by liquor licensees with the LLB to authorize other persons to manage the premises temporarily were 313, 352, 382 and 355 respectively. The average processing time of each case is around seven to nine days.

MR TOMMY CHEUNG (in Cantonese): *President, there is something which the Secretary did not state clearly in the first part of the main reply that I would like to clarify with him. First, has he laid down a timetable? He said he is already examining the issue with different departments. When did it begin? When will it be completed? Will he give a full account of it in this Council?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, we began examining the issue with relevant departments in October 2007. We have basically implemented all the 16 recommendations put forward by the EU back then. However, there is a very important issue about the liability of the licensee*

and how to ensure that he will be held criminally liable for any non-compliances and breaches of the law. We have to discuss and examine this issue in close collaboration with the relevant authorities.

At present, there are over 5 000 liquor licenses, while there are only 500-odd karaoke establishment licences. The proposed change, if implemented, will definitely involve operational and resource considerations. Therefore, more thorough consideration is required. Our tentative timetable is to complete the relevant study within this year and launch consultation with the relevant authorities, Panels and the trade at the end of this year.

MR VINCENT FANG (in Cantonese): *Some people engaged in the entertainment business relayed to me that during licence checks at licensed liquor premises, the enforcement officer would put on record the absence of the licensee, and such record would become a ground for refusing licence renewal applications made by the relevant premises in future. May I ask the Secretary about the rationale behind this practice? Does it mean to have the licensee confined to the premises? Does he have in hand the statistics concerning the number of licence renewal applications being refused as a result of the absence of the licensee during licence checks?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as I have just said, a condition for the issue of licence is that the licensee must be physically present in the premises. This aims at holding the licensee criminally liable to any breaches of the law and regulations or breaches of licensing conditions, which is very important. However, we also understand that the licensee may have other needs, such as a day off per week. He is therefore allowed to be absent from the premises for one day per week. Besides, we also understand that he may have other reasonable grounds for absence, such as going out for meals. Therefore, if the licensee is absent, the police will consider whether he has breached the relevant licensing conditions, having regard to the circumstances during enforcement. In the event of breaches, the police will impose certain penalties or make records. I do not have the detailed record and statistics in hand, but we can request the authorities to give Members a written reply, if necessary, to provide the relevant statistics. (Appendix I)

MS EMILY LAU (in Cantonese): *President, the Secretary said in the main reply that the EU completed a report in October 2007 and submitted it to the Food Business Task Force under the Business Facilitation Advisory Committee. President, I am the Vice-chairman of this Committee and also a member of the Task Force. President, I have attended many of their meetings and I know the business sector holds lots of grudges against the Government, in particular, the Bureau under the charge of Secretary Dr York CHOW belongs.*

The Secretary already submitted the report in October 2007, and he said some medium-term measures would be implemented before amendments would be introduced. It has already been two years now, but no results have been achieved. May I ask the Secretary whether he understands what business facilitation is all about? During the process, was there any resource shortage or co-ordination difficulty because the discussion would involve many bureaux and departments? If the relevant bill cannot be passed next year or before our tenure expires, how can business be facilitated?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, I can only reiterate that regarding business facilitation, all immediate actions, be they short-term or medium-term ones, have already been taken. We have received a total of 16 recommendations, including parallel processing of new applications alongside revocation of old licences, introducing the use of information technology in processing liquor and restaurant licence applications and rationalizing processes for transfer applications*

MS EMILY LAU (in Cantonese): *President, these have nothing to do with my question. I do not want to waste time. My question was why it has taken so long. Is it because resources were inadequate or co-ordination was difficult among so many departments, or there was no way to facilitate businesses? My question was not about what have been done, President.*

PRESIDENT (in Cantonese): *Secretary, the Member's question was why the outstanding work has to take so long.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, what I have to say is we have already taken all possible immediate and short-term actions.

However, as I said just now, we need more time to examine some relatively complicated issues, in particular, law enforcement details. For example, the law enforcement authorities consider that even if changes are to be implemented, they must be consistent with a principle and that is, the responsible person has to be physically present in the premises and be held criminally liable for any breaches of the law and licensing conditions.

MR WONG TING-KWONG (in Cantonese): *President, the problem of the issuance of liquor licence has existed for a long time. I think the liquor licence holder, as the responsible person of the premises, should see to it that the premises in operation are in compliance with the relevant requirements. May I ask about the number of prosecutions instituted over the past three years as a result of the absence of the liquor licence holder from the premises? Are these figures available?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I do not have these figures now.

MR CHIM PUI-CHUNG (in Cantonese): *President, as all of us know, the issuance of liquor licence actually provided a chance for bribery in the past, and a Member of the Urban Council was put to jail because of matters relating to the issuance of liquor licences. May I ask why a licence cannot be issued to three responsible persons in relation to the same premise, so that when the first responsible person is absent, the second or the third one will be held liable? Certainly, I am not referring to the kind of practice adopted by Stanley HO. (Laughter) Will the Government issue three liquor licences to a certain entity or the relevant responsible persons, thereby avoiding chances for imposing penalties, which will affect their operation?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I believe the requirement that the liquor licence holder should assume all criminal liabilities is to ensure that there is a person to be held accountable, so to speak.

If more than one person is to be held accountable, we believe it will be more complicated for the relevant departments to carry out enforcement and investigation.

Therefore, if changes are to be made to the existing system, or if more than one responsible person is to be allowed for one premise, the enforcement process and other issues that will arise, including the issue of resources, must be studied in detail.

MR CHIM PUI-CHUNG (in Cantonese): *President, the Secretary has not given a reply. Is the Government refusing to repent and insisting on not amending the legislation? If it is, what is the use of conducting studies?*

PRESIDENT (in Cantonese): Mr CHIM, I do not get your follow-up question.

MR CHIM PUI-CHUNG (in Cantonese): *That is, is the Government refusing my question just now was whether consideration could be given to issuing the licence to three persons, but his reply suggested that this would not be considered. In that case, what is the use of conducting studies?*

PRESIDENT (in Cantonese): I believe the Secretary has already given a reply. You are only expressing your view on the Secretary's reply.

MR LAU KONG-WAH (in Cantonese): *President, the Secretary's reply was if someone was to manage the premises on a temporary basis, consideration had to be given to the issue of accountability. In the last paragraph of the main reply, the Secretary said there were on average over 300 such applications in each of the past few years, with an average processing time of around seven to nine days. Was there any interface problem, and for how long on average a person is entrusted with temporary management of the premises?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I do not have the detailed information in hand. Generally speaking, however, there is a performance pledge of 30 days regarding the processing of applications for

authorizing a person to manage the premises for the liquor licence holder. So, these can be processed within a short time.

In special circumstances, according to my record, the processing of applications from liquor licence holders could be completed in seven working days.

PRESIDENT (in Cantonese): Mr Tommy CHEUNG, this is your second follow-up question.

MR TOMMY CHEUNG (in Cantonese): *May I ask the Secretary whether reference will be made to other legislation in Hong Kong apart from the Karaoke Establishments Ordinance? I believe under other legislation, criminal liability is not necessarily shouldered by a natural person. For many listed companies, we actually did not know who the director was, but when problems arose, there was someone who could be held accountable. Will the Secretary make reference to all legislation to find out whether there is any existing legislation which does not cause any concern about the shirking of responsibilities, so that this piece of legislation can be amended expeditiously?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we will certainly make reference to other legislation and legislation with similar provisions in this respect to ensure that the principle I have mentioned repeatedly just now is complied with.

However, special attention must be paid, in particular, by law enforcement bodies, such as the police. If we are to make changes to the licensing conditions, they will have to perform enforcement duties. Members have to understand that some liquor licensed premises may be more prone to crimes. Therefore, they are particularly concerned about this.

Therefore, we can only draw reference from related legislation. Members have to understand that we are not trying to make things difficult for the trade, but we must strike a balance among the needs of various parties.