

For discussion
on 12 April 2011

LegCo Panel on Food Safety and Environmental Hygiene

Review of Liquor Licensing: Follow-up on Matters arising from the Panel Meeting of 15 February 2011

PURPOSE

This paper sets out our initial response to the Liquor Licensing Board's views towards our proposals on upstairs bars and trade facilitation. It also provides the additional information requested by Members of this Panel at the meeting of 15 February 2011.

VIEWS OF THE LIQUOR LICENSING BOARD

2. At the meeting of this Panel on 15 February 2011, we informed Members that we would consult the Liquor Licensing Board (LLB) on our latest proposals regarding trade facilitation and upstairs bars. We noted that the LLB, at this Panel's request, has commented on the Administration's proposals presented in the Panel paper on the subject (LC Paper No. CB(2)982/10-11(03)) vide their letter of 25 February 2011 (LC Paper No. CB(2)1205/10-11(01)). Separately, the Administration exchanged views with the LLB on 2 March 2011 on the proposals. The ensuing paragraphs set out the Administration's response towards the LLB's views.

Appropriate party to hold a liquor licence

3. As stated in LLB's reply to this Panel, the majority of the LLB Members supported the retention of the "natural person" requirement of a liquor licensee. There were individual LLB Members who asked the

Government to continue to explore the option of allowing company directors, owners or even limited companies as liquor licensees, and also suggested that these licensees could delegate the day-to-day management of the licensed premises to an employee as manager. Appropriate amendments to the legislation should be made to give a clear delineation of the responsibilities between the licensee and the manager, and the manager must be a “fit and proper” person and be subject to the approval of the LLB.

4. As explained in our Panel paper of February 2011, the current policy of issuing liquor licences to natural persons should be maintained because this provides for a clear liability and legal responsibility of the licensee to supervise and manage the licensed premises personally. We will examine the legal and enforcement implications of the LLB’s suggestion. In the interim, we believe we should concentrate on the optional system of “reserve licensee”. We believe this system, if implemented, should address the trade’s concern about the sudden departure of a manager/licensee. We would carefully examine the implementation details to strike a balance between public and business interest.

Location planning of premises for selling liquor

5. Some LLB Members suggested that the Administration should devise guidelines regarding the location suitable for licensed premises. Specifically, relevant departments should specify the areas or buildings where bars are not allowed, for example, certain densely populated areas or buildings which already have a number of bars in existence. It was considered that this would help the trade avoid incurring significant costs in renovating the premises which turn out to be unsuitable for the purpose of selling liquor.

6. Hong Kong is a compact city and it is not uncommon to find a mixture of uses juxtaposing one another in a development, e.g. the co-existence of commercial and residential uses within the same building.

7. Applications for liquor licences are generally related to premises used as restaurants or bars. These commercial uses are grouped under the “Eating Place” use in the Definition of Terms/Broad Use Terms

Used in Outline Zoning Plans¹ (OZPs). In “Residential (Group A)” (“R(A)”) zones, “Eating Place” is always permitted on the lowest three floors of a building or in the purpose-designed non-residential portion of an existing building (e.g. in the commercial podium of a residential block). “Eating Place” in the residential portion of a building in the “R(A)” zone requires planning permission from the Town Planning Board. Under the “Commercial” (“C”) and “Commercial/Residential” (“C/R”) zones, “Eating Place” is an always permitted use. In this regard, the potential interface problem of mixing residential and non-residential uses is likely to be more acute in areas zoned “C/R”. In recent years, “C/R” sites on the majority of the OZPs have been reviewed and rezoned to more appropriate zonings, namely, “C”, “R(A)” and “Other Specified Uses” annotated “Mixed Use” zones to provide a clear planning intention and for more effective infrastructure planning and better land use management.

8. Whether or not a particular premises is suitable for selling liquor will have to be considered by the LLB according to the merits of the application concerned. Apart from the zoning of the premises, the operator will also have to check the conditions of the land lease as well as the Deed of Mutual Covenant when making the business decision. The LLB has the statutory authority to consider applications for liquor licence, taking into account the suitability of the applicant and the application premises as well as public interest. The Administration likewise sees merits if broad guidance could be given to the trade on the suitability or otherwise of certain premises for liquor licensing purpose. We will explore with the LLB the possibility of formulating some guidelines for this purpose.

Upstairs bars

9. The LLB shared the public concern over the safety and nuisance of upstairs bars. Some LLB Members suggested that the Administration should consider legislating against bars above a certain storey or introducing

¹ Outline Zoning Plans (OZPs) are statutory town plans stipulating the broad land use zoning of individual planning areas. Areas covered by OZPs are zoned for various uses such as residential, commercial, industrial, government/ institution/community and open space uses. A set of Notes is attached to each OZP listing the uses which are always permitted (i.e. Column 1 uses) and those which may be permitted on application to the Town Planning Board (i.e. Column 2 uses). The general public including bar operators can inspect the OZPs and their Notes at the Planning Enquiry Counters of the Planning Department in North Point and Sha Tin. The OZPs and their Notes can also be browsed on the Internet at the Town Planning Board’s “Statutory Planning Portal” (www.ozp.tpb.gov.hk).

a quota system for bars in commercial or commercial/residential composite buildings. Some Members further suggested that a thorough town planning review should be conducted to evaluate if the mixed use in town planning terms is still appropriate in updated circumstances.

10. As a matter of fact, it has already become an established practice of the LLB to impose capacity limits for upstairs bars as an additional licensing condition. Such limits are not normally imposed on licensed premises on the ground level or those within purposely built entertainment complexes. The Police may prosecute a licensee if the maximum capacity limit of the premises imposed by the LLB is exceeded during licence checks.

11. In addition, where circumstances so warrant, the LLB will set a maximum number of bars permissible within the same building by refusing new liquor licence applications, after considering relevant factors such as the number of existing bars in the building concerned and their respective maximum capacity. This has been supported by the Municipal Services Appeal Board, as reflected in the judgments on some of the appeals.

12. We need to consider appropriate control measures when addressing the public concern, including that on nuisance caused, arising from these upstairs bars. We notice that the following situations tend to attract more complaints –

- (a) the building concerned is also used by others for residential purpose;
- (b) the building concerned is located among many densely populated residential blocks; or
- (c) the building concerned is an old commercial building not built for entertainment purpose.

We will consider with the LLB whether more restrictions should be imposed on the licensed premises in such buildings.

13. As stated in our Panel paper of February 2011, the control of upstairs bars is controversial and any proposal to tighten control would require prior consultation with the public and the trade. We have noted the LLB's suggestions and shall take them into account when formulating the way forward.

14. On our response to the suggestion regarding mixed use town planning, please refer to paragraphs 6 to 8 above.

Demerit points system

15. Some LLB Members suggested that a demerit points system (similar to the one applicable to food business licences) be introduced to provide a more objective basis for the LLB in assessing renewal applications.

16. The Administration is open to the idea of introducing a demerit points system. However, one should be careful that such system must not become a mechanical tool whereby the statutory authority of the LLB in granting, revoking or not renewing a licence in accordance with the Dutiable Commodities (Liquor) Regulations (Cap. 109B) (DCLR) is undermined.

Extension of licence period

17. We welcome the LLB's support for the proposed extension of maximum licence period from one year to two years.

Placing of advertisement

18. Instead of replacing the newspaper advertisement requirement with posting the advertisement on the LLB's website, some LLB Members suggested that both options should be made available to applicants. We defer to the views of the LLB as the statutory licensing authority in deciding the manner in which such an advertisement should be made.

LLB's other comments

19. Some LLB Members suggested that in the longer run, consideration should be given to limiting the number of LLB Members required to decide on each liquor licence application to 3 to 5 persons. We are open to this suggestion and shall take this into account when formulating the legislative amendments in detail. The Administration agrees that the workload of the LLB is heavy. In 2010, while the majority of applications were non-contested ones (over 6 200 cases), which were approved by the Licensing Offices of the Food and Environmental Hygiene Department (FEHD) under delegated authority, the LLB needed to conduct closed door sessions and open hearings in respect of over 960 applications (up by 7% from 2009). The Administration will continue to look into the possibility of further streamlining the procedures.

20. Some LLB Members suggested that the Government should permit the establishment of smoking rooms in liquor licensed premises. The suggestion of smoking rooms has been thoroughly discussed in this Council in the context of the indoor smoking ban for six types of qualified establishments (bars, clubs, nightclubs, bathhouses, massage parlours, and mahjong and tinkow parlours) in 2009. The Administration commissioned a consultancy study on the feasibility of smoking rooms. The research findings and the experience of overseas countries showed that there were technical and enforcement difficulties in the provision of smoking room. In addition, there is no conclusive evidence which can prove that smoking rooms can effectively segregate smokers from non-smokers. It is therefore considered that provision of smoking room is not practicable in light of Hong Kong's actual circumstances. The findings were reported to the LegCo Panel on Health Services in April 2009.

21. There were suggestions to ban smoking in the vicinity of liquor licensed premises so as to reduce the noise nuisance arising from the gathering of customers outside the licensed premises. We envisage grave difficulty from the enforcement perspective, as it is difficult and unreasonable to require the liquor licensee to manage customers who have left his licensed premises.

22. Finally, the LLB suggested that the Administration should thoroughly re-examine the entire liquor licensing regime, and consider commissioning a consultant to conduct such review. FHB reviews the liquor licensing regime from the policy angle from time to time whereas the FEHD, as the secretariat, takes instructions from the LLB in reviewing the procedures and modus operandi of the LLB as and when necessary. The public consultation planned later this year will provide further input to the continuous review on policy and procedural aspects. The Administration will consider commissioning a consultancy when the need arises.

ADDITIONAL INFORMATION REQUESTED BY THE PANEL

Public Consultation Process for Liquor Licence Applications

23. At the Panel meeting of 15 February 2011, Members requested the Administration to provide information concerning how the consultation process adopted by the former Municipal Councils with respect to the applications of liquor licences differed from the current consultation process.

24. At present, the LLB adopts a three-pronged approach in consulting the public on liquor licence applications. They are –

- (a) newspaper advertisement: the LLB requires all applicants for new liquor licence and renewal, transfer and specified types of amendments of liquor licence to advertise their applications on local newspapers in a specified size and format;
- (b) posting of notice nearby the premises: staff of FEHD posts 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; and
- (c) consultation through District Offices (DOs): FEHD, on the LLB's behalf, also seeks the assistance of relevant DOs to gather the views of nearby residents through the residents' organisations and District Councillors on the applications for the LLB's consideration. For

each liquor licence application referred to the relevant DO by FEHD, DO staff would assist FEHD and play an advisory role as to which stakeholders should be consulted. Particular care would be taken to seek the views of those directly affected by an application as far as possible, including the District Councillors and the relevant residents' organisations (such as Owners Corporations/Mutual Aid Committees (if any), and/or other local stakeholders). DO staff would then issue an information note prepared by FEHD to the stakeholders concerned, collate the feedback and forward it to FEHD together with a summary of the views received. The Administration is prepared to discuss with the LLB with a view to further improving the current consultation procedure if necessary.

25. The above consultation approach was inherited from the standing practice adopted by the Liquor Licensing Boards during the days of the former Municipal Councils, and has proven to be effective in keeping the public at large notified of potential liquor selling premises at places near to their residence. Members of the public who are discontented with any application may raise objection or reservation with the LLB and are free to express their views in person at open hearings held by the LLB.

Measures to Tackle Concerns over Public Nuisance

26. Members also asked the Administration to provide the number of cases involving the imposition of additional licensing conditions to liquor licences and the revocation of liquor licences as a result of public nuisance.

27. In response to adverse comments from nearby residents regarding public nuisance caused by liquor licensed premises, the LLB has imposed additional licensing conditions to the licences concerned where appropriate. Examples of such conditions include requiring the closing of doors and windows, prohibiting the playing of music and/or karaoke activities after the specified time etc. As at 4 March 2011, additional licensing conditions for the purpose of minimising nuisance caused to nearby residents were attached to over 770 liquor licences/club liquor licences.

28. The Police also raised objections to liquor licence applications on the ground of frequent complaints of nuisance. In 2010, the Police

raised objection to 66 liquor licence applications based on the criteria stipulated in Regulation 17(2) of the DCLR, namely whether or not the applicant is a fit and proper person, the suitability of the location and the concern over public interest. According to the Police, of the 66 objections raised by the Police in 2010, 16% of the objected cases related to the frequent complaints of noise nuisance caused by the premises concerned. The following table shows a breakdown of grounds of objection.

Grounds of Objection Raised by the Police in 2010*

Not a Fit & Proper Person (Licensee / Applicant)	Repeated absence	7
	Poor experience / integrity in doubt	5
	Previous Criminal records	7
	Previous Records on Liquor related offences	12
Unsuitability of Location	Location not suitable	20
Public Interest	Dangerous Drugs Offences detected	15
	Gambling Offences detected	5
	Vice activities detected	4
	Noise Nuisance	11
	Obstruction (usually extension of business area)	4
	Other crimes	7
Total*		97

* Some cases involved more than one ground of objection. Hence, the total number of grounds for objection adds up to more than 66 as referred to in paragraph 28.

Number of Upstairs Bars

29. According to information of the Police, there were 335, 472 and 433 upstairs bars in the territory in 2008, 2009 and 2010 respectively. There was an increase of 41% (+137 premises) from 2008 to 2009, but a decrease of 8% (-39 premises) from 2009 to 2010.

Crime Situation in Liquor Licensed Premises

30. The following table shows the detailed breakdown of crimes in licensed premises in 2009 and 2010.

Statistics Related to Liquor Licensed Premises

Items	2009	2010
No. of upstairs bars	472	433
Total no. of liquor licensed premises	5 218	5 782
No. of crime occurred at Chinese/Western restaurants	1 754	1 681
No. of crime occurred at upstairs bars	254	284
No. of crime occurred at other bars	703	628
Total no. of crime occurred at all liquor licensed premises	2 711	2 593
No. of violent crime reported at liquor licensed premises	670	671

31. Whilst the total number of crimes at licensed premises decreased in 2010, those at upstairs bars increased. Upstairs bars, making up of 7.4% of all licensed premises, accounted for 11% of all the crimes occurred at licensed premises. The fact that the number of upstairs bars has dropped from 472 to 433 from 2009 to 2010 but the number of crimes has recorded an increase from 254 to 284 over the same period shows a worrying trend. Moreover, the nature of the crimes in the upstairs bars tended to be more serious, which could endanger the personal safety of people in them. For example in 2010, over 40% of the crimes in upstairs bars involved rape, indecent assault, other assault, dangerous drugs and disorder of fighting in a public place. Many of these serious crimes could be prevented with proper management of the licensed premises.

32. Imprisonment is the ultimate sanction on a licensee. According to the Police, no liquor licensee was imprisoned for solely breaching liquor licensing conditions in the past five years, which shows that the requirement of a fit and proper person to control and manage the licensed premises has worked well.

Timetable

33. The Administration plans to consult the public and the trade in the second half of 2011. Depending on the outcome of consultation, the Administration and the LLB may proceed with the implementation of the proposals, some of which may be administrative (like the advertisement on the Internet to be introduced by the LLB), while others may require amending the DCLR by the Administration (like the proposed “reserve licensee” mechanism and the proposed extension of licence duration to two years). Pursuant to Section 6 of the Dutiable Commodities Ordinance (Cap. 109), the authority to make (and amend) the DCLR is the Chief Executive in Council. Nine to twelve months from the conclusion of the consultation exercise will be required to consolidate and analyse the feedback received during the consultation, draft the legislation, consult this Panel and seek approval from the Executive Council. We expect that the legislative amendments, in the form of subsidiary legislation, could be tabled in the LegCo by the fourth quarter of 2012.

ADVICE SOUGHT

34. Members are invited to note the contents of the paper.

Food and Health Bureau
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