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Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 12 April 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. The Administration also briefed the Panel at the meeting

on 15 February 2011 on its latest thinking on the various proposed trade facilitation measures and updated the Panel on the problems besetting upstairs bars in Hong Kong.

Upstairs bars

Public nuisance, fire safety and crime

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. Some members enquired about the enforcement of the licensing conditions to tackle public nuisance caused by upstairs bars, and pointed out that the enforcement of the smoking ban was made difficult by the physical locations of upstairs bars, which were tucked inside high-rise buildings. Members were worried that the Police had attached more importance to combating crimes associated with upstairs bars than dealing with their nuisance problems, which were the major areas of public complaints.

9. The Administration explained that the enforcement actions taken by the Police were based on a whole spectrum which included enforcing liquor licensing conditions and tackling crimes. The Police took specific actions and attempted to control the problems such as illegal parking and noise nuisance through the licensing regime, including restriction on the liquor selling hours, capacity limit, the requirements on closing of doors and windows of the premises, etc. If the smoking problem in bars was aggravated, the Administration would consider the need for amendments to the relevant legislation.

10. Concern had been raised as to whether there were separate teams in the Police to carry out licence inspections and handle public nuisance. The Administration advised that the Police's Miscellaneous and Enquiry Unit was responsible for processing applications for liquor licences and recording offences and warnings for LLB's consideration of additional conditions and revocation. The checks to ensure enforcement of the licence conditions and to combat crime problems would be conducted by the Police's normal uniform branch in crime teams as necessitated by the activities in the premises. The Administration assured members that the Police was aware of the public concern about the nuisance resulting from bars and would endeavour to take actions to minimize the disturbance to the public. A suggestion was made to introduce a demerit points system for liquor licensed premises. The Administration responded that depending on the views of LLB, the viability of the proposal could be further studied.

11. Noting that the number of crimes related to upstairs bars was higher than that of other liquor licensed premises, members sought information on the established procedures for the inspection of upstairs bars, and whether LLB could provide a list comprising the buildings which were regarded as high risk targeted buildings as well as those suitable for bar business for applicants' reference.

12. According to the Administration, the number of upstairs bars had increased from 123 in 2005 to 430 in February 2011. Upstairs bars represented 7.4% of all the liquor licensed premises and accounted for 11% of all crimes at liquor licensed premises in 2010. For the inspection of upstairs bars, the Police would focus on the business model of those bars which encouraged underage drinking or binge drinking, attracted crimes or caused nuisance, and would seek additional control of bars which caused public nuisances and crimes. Although the number of commercial establishments in a district was determined by the relevant land and planning policies, and the usage of private premises were governed by the relevant Government lease and Deeds of Mutual

Covenant, it would be difficult for the Administration to obtain all relevant information for the purpose of compiling a list of the buildings suitable for bar business. The Administration further advised that since the scale and mode of operation of a bar would be made available only when an application for liquor licence was filed, LLB was unable to advise whether a premise was suitable for bar business in the absence of relevant information before receiving an application.

Proposal on the regulation of upstairs bars

13. 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 were in breach of the prescribed land use and the Deed of Mutual Covenant of the building.

14. In the Administration's view, 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. Some members had expressed grave concern over the Administration's timetable for drawing up the proposals and introducing the legislative amendments. They urged the Administration to expedite the legislative process. The Administration explained that it would seek the views of LLB and conduct trade and public consultation after briefing the Panel on the preliminary proposals. As the Administration would have to discuss the proposals thoroughly with LLB, a consultation paper would be issued to the trade and public by the third or fourth quarter of 2011. Depending on the outcome of the consultation, the Administration would proceed with the legislative amendment exercise. There was worry that Members would not have sufficient time to scrutinize the legislative amendments before the current term expired in July 2012 if public consultation was to commence in the third quarter of 2011. The Administration was requested to proceed with drafting the legislative amendments in respect of the non-controversial issues in parallel with the trade and public consultation, and to provide the timetable for the relevant legislative amendment exercise.

15. Some members had reservations about the proposals to step up the regulation over upstairs bars and raised concern that the additional measures proposed by the Administration to minimize the disturbance of upstairs bars to the public would be too stringent. 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. The Administration reiterated that public and trade consultation would 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.

Selling of liquor at other non-liquor-licences premises

16. 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".

17. 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.

18. 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.

19. 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. 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.

20. Regarding the concern over the proliferation of bars operated in private premises without valid liquor licences, the Administration advised that for inspections of unlicensed bars, the Police would obtain search warrants if necessary. The Police adopted a zero tolerance policy towards unlicensed drinking establishments and would take enforcement actions as appropriate.

Trade facilitation measures

Classification of licences

21. 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. Members pointed out that as shown from overseas experience, classification of licences in accordance with the mode of operation of the business concerned was proven feasible. The Administration was requested to introduce different categories of liquor licences according to the mode of operation of the business concerned.

Liquor licence period

22. 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.

23. 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.

Liquor licence holder

24. 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. Members noted that in other business settings, the directors of listed companies were liable for offences of the companies. There was a view that the Administration should consider the trade's request and EU's recommendation to allow a body corporate to hold a liquor licence.

25. There was also concern that the Administration had yet to address various issues of the trade, such as the takeover of liquor licence by "reserve licensee" upon the departure of the current licensee from the business and hindrance to overseas investment in the trade caused by the existing requirement of a liquor licence holder to be a local person. Regarding the proposal on reserve licensee, the Administration took the view that having regard to the legal and public interest considerations, it was appropriate to maintain the existing arrangement of granting liquor licences to natural persons only. To address the trade's concern about the disruption to business when the licensee left the business without transferring his licence, the feasibility of an optional system of reserve licensee was being explored. If the reserve licensee had already been nominated at the time of the application or during the licence period by the licensee and was endorsed by LLB, the reserve licensee could take over the liquor licence upon the departure of the original licensee within a very short period of time.

Consultation process regarding applications for liquor licences

26. Members had sought information on the consultation process regarding applications for liquor licences. According to the Administration, FEHD would refer the liquor licence applications to the relevant departments including the Police and HAD for advice. The relevant District Offices would then gauge views of nearby residents, District Council members and area committees for LLB's consideration. LLB would take into account the views collected and impose additional licensing conditions (such as restriction on liquor selling hours and a ban on playing of music after certain hours, the duty hours of the licensee) where appropriate on a case-by-case basis. LLB required all applicants for new liquor licences to advertise their applications on local newspapers. Notice in respect of the application for liquor licence would also be posted in conspicuous locations of the building in which the premises under

application were situated. Members of the public could give their views to LLB on the applications. There was a view that LLB, being an independent statutory body to consider liquor licence applications, should advise the enforcement departments on the consultation process.

Relevant papers

27. A list of the relevant papers on the Legislative Council website is in **Appendix I**.

Council Business Division 2
Legislative Council Secretariat
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Relevant papers on liquor licensing review

Meeting	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	10.6.2008 (Item III)	Agenda Minutes CB(2)2147/07-08(01) CB(2)2147/07-08(02)
Legislative Council	10.3.2010	[Question 1] Asked by: Hon Tommy CHEUNG Review of liquor licensing and the Administration's reply
Panel on Food Safety and Environmental Hygiene	15.2.2011 (Item IV)	Agenda CB(2)982/10-11(03)

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