

For discussion
on 10 January 2012

**Legislative Council Panel on Food Safety
and Environmental Hygiene**

Report on Public Consultation on Review of Liquor Licensing

PURPOSE

This paper reports the outcome of the public consultation on the review of liquor licensing conducted by the Food and Health Bureau between July and September 2011 and sets out the proposed way forward.

BACKGROUND

2. At the meetings of this Panel on 15 February and 12 April 2011, we briefed Members on the Administration's initial thinking on various proposed trade facilitation measures in respect of liquor licensing and the problems besetting upstairs bars in Hong Kong. Taking into account the views of Members, the Liquor Licensing Board (LLB) and other stakeholders, we launched a public consultation on 13 July 2011 to gauge the public's views on the regulation of upstairs bars and further streamlining of licensing procedures. The consultation document set out for public discussion the following –

- (a) more stringent licensing proposals relating to upstairs bars;
- (b) an alternative means for liquor licence applicants to advertise their applications other than on newspapers;
- (c) proposed extension of the maximum duration of liquor licences to not more than two years;
- (d) an optional “reserve licensee” mechanism while maintaining the requirement for a liquor licence to be applied for and held by a natural person; and

- (e) possible classification of liquor licences so as to better manage the risks of different types of liquor-selling premises.

A copy of the consultation paper has been provided to Members of this Panel on 13 July 2011.

OUTCOME OF PUBLIC CONSULTATION

3. The Administration received some 180 written submissions from individuals and organisations. Besides, Government officials attended a number of trade consultation forums, the Food Business Task Force under the Business Facilitation Advisory Committee, the Retail and Tourism Committee of the Hong Kong General Chamber of Commerce, and District Councils of the three districts with most liquor-licensed premises in Hong Kong (Yau Tsim Mong, Wan Chai, Central and Western) and received many constructive views from the community and the trade.

4. By and large, the trade was supportive of the proposed trade facilitation measures but against tightening of the regulation over liquor-licensed premises including upstairs bars. In contrast, representatives and residents of local communities where larger numbers of bars existed urged the Government to impose more stringent control on liquor-licensed premises and enhance enforcement against premises causing nuisances. Most of them did not express views on the trade facilitation measures in the consultation document, although some did not agree with the proposed extension of the maximum licence period.

5. A full report summarising mainstream opinions gathered in the public consultation is enclosed at [Annex](#) for Members' information. This report has been uploaded to the Food and Health Bureau's website.

WAY FORWARD

6. Based on the consultation outcome, we are inclined to pursue the implementation of various proposals as set out in paragraphs 7 to 13 below.

Upstairs Bars

7. We need to address public concerns about public order, safety and nuisance of upstairs bars. In fact, when LLB considers liquor licence

applications, members will satisfy themselves that the premises are suitable for selling or supplying intoxicating liquor having regard to, among others, the fire safety and hygienic conditions in the premises pursuant to Regulation 17(2) of the Dutiable Commodities (Liquor) Regulations (“DCLR”) (Cap. 109B). Public interest is one of the criteria upon which LLB will consider if an application for a liquor licence shall be approved. In view of the legislative requirements already in place which empower LLB to vet each application from upstairs bars according to the circumstances of the case, we do not propose to impose additional across-the-board statutory restriction on such bars in certain areas or buildings, which could be unnecessarily restrictive and lacks flexibility. However, LLB may consider adopting more stringent criteria in assessing liquor licence applications from upstairs bars to address the public concern about public order, safety and nuisance. In this regard, LLB may consider drawing up a set of guidelines on the vetting of upstairs bar applications. It is abundantly clear from the public consultation that safety should be accorded the first priority in the vetting criteria. To enhance transparency, LLB may consider publicising such guidelines in an appropriate manner and publishing, on a regular basis, buildings and locations of rejected upstairs bar applications.

8. At present, the Police and the Food and Environmental Hygiene Department (FEHD) inspect all liquor-licensed premises at least once a year. The frequency of inspection will be adjusted according to the risk profile of the premises.¹ We will discuss with the relevant Government agencies ways to enhance their inspection of and better their enforcement strategy for liquor-licensed premises.

Advertising an Application

9. Respondents to the public consultation generally raised no objection to allowing liquor licence applications to be advertised on the Internet. According to Regulation 16 of DCLR, the manner in which liquor licence applications should be advertised is to be decided by LLB. Advertising on a designated website accords with the trend of obtaining information through the Internet, incurs less cost and sustains for a longer period than a one day newspaper advertisement. We will invite LLB to consider this proposal and

¹ FEHD conducts inspections to licensed food premises on a regular basis according to their risk types under the “Risk-based Inspection System”. High, medium and low risk food premises are inspected at intervals of once every four, 10 and 20 weeks respectively. Besides, FEHD conducts inspections to clubs with catering services once every 10 weeks. At present, most liquor-licensed premises are licensed restaurants or clubs issued with Certificate of Compliance.

provide necessary administrative support. LLB may also wish to consider whether newspaper advertisements should be retained as an alternative, as suggested by some respondents, and whether there is any need for a transition period in which newspaper advertisements will be placed alongside Internet advertisements but in a reduced number of local newspapers.

Duration of a Licence

10. Given the trade's strong support and LLB's agreement, we propose to extend the liquor licence period to a maximum of two years for those businesses with a good track record for at least two consecutive years. To address the concerns of some respondents, we will discuss with LLB the establishment of a review mechanism to enable LLB to tackle any negative developments of licensed premises (e.g. sudden increase in complaint cases) during the extended licence period. Under Regulation 20 of DCLR, the liquor licence, if granted by LLB, shall be for a period of 12 months or such lesser period as the Board shall determine. Extension of liquor licence period would require amendments to DCLR.

Natural Person and Reserve Licensee

11. The community generally supports maintaining the existing requirement that liquor licensees must be natural persons, so as to maintain a clear legal responsibility. As a business facilitation measure, we intend to implement the proposed reserve licensee mechanism, which was generally welcomed by the trade. In working out the operational details of the scheme, we will adhere to a few principles –

- (a) there should be a clear delineation of responsibility at any one time during the licence period, i.e. there should only be one and only one licensee, who is a natural person, responsible for the management of the licensed premises; and
- (b) a simplified procedure should be in place to facilitate the reserve licensee to take over the licence in a matter of days, so as to minimise the disruption to the business.

Amendments to DCLR would be required to implement this proposal.

Licence Fee

12. We will take the opportunity to review the licence fee with an

extended licence period and a new reserve licensee mechanism, taking into account the latest cost analysis.

Classification of Licence

13. Differing views were received during the public consultation on whether there should be different types of licence for different modes of operation, for different types of liquor sold or for different nature of businesses. However, there were no suggestions on how these different categories of licence and the licensing conditions can be configured. There is in any case no perfect way to classify licences and the additional benefits to be reaped in terms of better regulation were not obvious. We will keep an open mind to the suggestions and welcome further discussion with the trade.

Other Matters

14. During the public consultation, some respondents suggested that a demerit points system similar to the one applicable to food business licences be introduced as a tool to enforce liquor licensing conditions. The Administration has reservation on the proposal because the considerations in granting a liquor licence, which include general public interest, are different from that for food business licences and could be difficult to quantify under a points system. The value added by such a system is also questionable as it should not be a mechanical tool to obviate the need for LLB to exercise its discretion under the DCLR in considering each case. We will further consult LLB on this matter.

TIMETABLE

15. The Administration will proceed to discuss with LLB the various proposals above. Other stakeholders will be involved as appropriate. Those proposals of an administrative nature, such as the adoption of guidelines on assessing upstairs bar applications by LLB and posting of liquor licence application advertisements on the internet, if agreed by LLB, could be implemented ahead of proposals which require legislative amendments to the DCLR, such as the proposed extension of the maximum licence duration and the reserve licensee mechanism. The legislative amendments, in the form of subsidiary legislation to be made by the Chief Executive in Council pursuant to Section 6 of the Dutiable Commodities Ordinance (Cap. 109), would need to be tabled in the Legislative Council. If we are to proceed with these amendments, we will consult this Panel on

the draft legislation beforehand.

ADVICE SOUGHT

16. Members are invited to note and advise on the contents of this paper.

**Food and Health Bureau
January 2012**