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Paper for the House Committee on 13 March 2015

**Report of the Subcommittee on
Dutiable Commodities (Liquor) (Amendment) Regulation 2015
and Dutiable Commodities (Liquor Licences) (Fees) (Amendment)
Regulation 2015**

Purpose

This paper reports on the deliberations of the Subcommittee on Dutiable Commodities (Liquor) (Amendment) Regulation 2015 and Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015 ("the Subcommittee").

Background

2. Under the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) ("DCLR"), the sale or supply of liquor at any premises for consumption on those premises is prohibited except under a liquor licence. The Liquor Licensing Board ("LLB") is an independent statutory body established under DCLR to consider liquor licence applications. Regulation 17 of DCLR stipulates that LLB must not grant a liquor licence unless it is satisfied that - (i) the applicant is a fit and proper person to hold the licence; (ii) the premises to which the application relates are suitable for selling or supplying intoxicating liquor; and (iii) the grant of the licence is not contrary to the public interest. According to the Administration, as at 31 October 2014, there were 6 800 liquor-licensed premises. Over 90% of these premises have restaurant licences and less than 20% have bar endorsement.

3. As mentioned in the Legislative Council ("LegCo") Brief (File ref.: FH CR 2/3231/13) issued by the Food and Health Bureau and the Food and Environmental Hygiene Department ("FEHD"), there had been persistent concerns in recent years about crime, nuisance and potential fire danger brought

about by the proliferation of bars, particularly those accommodated on the upper floors of multi-storey domestic/commercial buildings (commonly referred to as "upstairs bars"), and at the same time, there were calls from the trade to lower the regulatory burden and nurture a business-friendly environment. The Administration conducted between July and September 2011 a public consultation on the review of liquor licensing ("the public consultation"), which covered regulation of upstairs bars and measures to further streamline the liquor licensing procedures such as extending the duration of liquor licences, and allowing liquor licence applicants to advertise their applications through other means instead of publishing an advertisement on newspapers.

4. According to the views collected during the public consultation, the trade supported the proposed trade facilitation measures but did not favour tightening of the regulation over liquor-licensed premises. Nevertheless, representatives and residents of local communities where a large number of bars existed urged the Government to impose more stringent control on liquor-licensed premises and strengthen enforcement actions against premises causing nuisances, and a significant number of respondents considered that safety should be accorded top priority in vetting liquor licence applications from upstairs bars. The Administration had therefore put in place a number of administrative measures to improve liquor licensing in the past two years, including -

- (a) with effect from May 2013, for applications for the renewal or transfer of liquor licence by premises which (i) drew objections when the licence was renewed on the previous occasion; or (ii) were the subject of complaints in the past 12 months, the District Council ("DC") member of the respective geographical constituency where the premises were located would be consulted as a matter of course before the case was put before LLB;
- (b) in December 2013, LLB published the "Guidelines on Assessing Liquor Licence Applications" ("the Guidelines")¹, which outlined the factors that were taken into account when assessing liquor licence applications, so as to enhance transparency, facilitate compliance by the trade and help address the concerns of the public; and
- (c) since June 2014, express provisions had been added in the licensing conditions stipulating that restaurant licensees² must comply with

¹ For the Guidelines, please refer to Annex C to the LegCo Brief.

² According to the Administration, over 90% of the liquor-licensed premises, including practically all upstairs bars, have restaurant licences. Following the addition of the express provisions, minor breaches, if repeatedly not attended to promptly, will render a restaurant licence holder liable to

fire safety requirements at all times.

Dutiable Commodities (Liquor) (Amendment) Regulation 2015 and Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015

5. The Dutiable Commodities (Liquor) (Amendment) Regulation 2015 (L.N. 20 of 2015) is made by the Chief Executive in Council under section 6 of the Dutiable Commodities Ordinance (Cap. 109) ("DCO") to amend DCLR to -

- (a) extend the maximum validity period of a liquor licence from one year to two years;
- (b) provide that the maximum period (or the aggregate of the periods) for which a person may be authorized to manage the licensed premises during the illness or temporary absence of the licensee be capped at 25% of the licence period, and for licences that are valid for more than one year, each period of absence must not exceed 90 days (and the total period of absence must not exceed 90 days within any 12 consecutive months during the licence period); and
- (c) provide that the requirement for a signature in an application submitted in the form of electronic records can be satisfied by a digital signature, or a password assigned or approved by LLB.

6. The Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015 (L.N. 21 of 2015) is made by the Secretary for Food and Health under section 6A of DCO to amend the Dutiable Commodities (Liquor Licences) (Fees) Regulation (Cap. 109 sub. leg. H) to provide for the fees payable when the validity period of liquor licences exceeds one year. Such an amendment is consequent upon the extension of the maximum validity period of a liquor licence by virtue of L.N. 20 of 2015. It is proposed that the fees for a licence that is valid for a period of two years, or any period more than one year but less than two years, be set at a level which is 1.5 times the fees prescribed for a one-year licence.

7. Both L.Ns. 20 and 21 of 2015 will come into operation on 3 August 2015.

licence suspension/cancellation. Furthermore, documentary evidence of continuous compliance with fire safety requirements must be adduced when FEHD processed applications for licence renewal.

The Subcommittee

8. At the House Committee meeting on 6 February 2015, Members agreed to form a subcommittee to scrutinize the two items of subsidiary legislation. The membership list of the Subcommittee is in **Appendix I**. Under the chairmanship of Hon Tommy CHEUNG, the Subcommittee has held two meetings with the Administration and also received views from seven deputations and individual. A list of the organizations and individual which/who has given views to the Subcommittee is in **Appendix II**.

9. To allow sufficient time for the Subcommittee to study the subsidiary legislation, the scrutiny period of the two items of subsidiary legislation has been extended from the Council meeting of 25 February 2015 to that of 25 March 2015 by a resolution of the Council passed on 25 February 2015.

Deliberations of the Subcommittee

Proposed extension of the maximum validity period of a liquor licence

Cases with a "good track record"

10. Mr Tommy CHEUNG and Mr YIU Si-wing have indicated their support to the proposal to extend the maximum validity period of a liquor licence from one year to two years as a trade facilitation measure. While supporting the proposal to facilitate the trade, Mr WONG Ting-kwong considers that concerns in the districts about the nuisances caused by bars should be addressed. Mr SIN Chung-kai and Dr Helena WONG have expressed grave concern that following the implementation of the proposed amendment of extending the validity period of a liquor licence, LLB may vet applications for renewing liquor licences in a lenient manner and approve a validity period of two-year, irrespective of whether complaints or objections have been received from residents in the vicinity of the premises concerned.

11. As explained by the Administration, the proposed extension of the maximum validity period of a liquor licence from one year to two years will allow LLB to have greater flexibility in granting liquor licences of a longer duration in meritorious cases. By reducing the workload of LLB, its secretariat as well as other departments that will otherwise arise from the processing of

straight-forward licence renewal cases (i.e. cases with a "good track record"), the proposal enables LLB to focus their attention on handling new applications and contested licence renewal applications. Cases with "good track record" mean those cases that - (a) do not have any substantiated complaint/enforcement action recorded against the licensed premises or the licensees in the licences register for at least two consecutive years immediately before licence renewal; (b) have been granted a full term licence at the time when their licences were last approved or renewed; and (c) do not receive objection or adverse comment from the public from its licence renewal application notice. The Administration has further advised that a complaint is regarded as substantiated if prosecution has been taken or verbal/written warning has been made against the premises after investigation by the concerned departments. As at 31 December 2013, about 78% of the liquor-licensed premises will meet the "good track record" test.

12. Mr SIN Chung-kai and Dr Helena WONG remain concerned about the proposal of extending the maximum validity period of a liquor licence and consider it important to ensure that public interest is duly protected in the vetting process of liquor licence applications by LLB. Mr SIN has suggested the Administration to consider adopting a two-tier licensing system under which liquor licences of different durations will be issued based on the track records of premises concerned.

13. The Administration has stressed that following the enactment of the proposed amendment of extending the maximum validity period of a liquor licence from one year to two years, the current practice will continue so that when the licence is due for renewal, the person who applies for a renewal will be required to post notices in newspapers³ and on the LLB website to notify members of the public of the renewal application. Applications which draw objections or adverse comments may be given a licence period shorter than the full term as LLB deems fit. Furthermore, LLB has established procedures for conducting public hearing on contentious and contested cases. To address the concerns of residents in the vicinity, LLB may also impose additional licensing conditions where appropriate, such as restricting liquor selling hours, capacity limit of the premises and the requirements to close the doors and windows of the premises as measures to abate noise nuisance. In the Administration's view, the current proposal has already struck a reasonable balance between the interests of the applicants and those residents who may be affected.

³ According to the LegCo Brief, respondents to the public consultation conducted in 2011 generally raised no objection to allowing liquor licence applications to be advertised on the Internet. The Administration has advised that the proposal of allowing advertisements on a liquor licence application on free channels or media can be implemented without amending DCLR.

14. The Administration has also advised that to address some District Council ("DC") members' concerns about the possibility of deterioration in the licensed premises' performance in complying with the licensing conditions after the granting of a two-year licence, the Administration is formulating, in consultation with LLB, a mid-term review mechanism⁴ for licences of a two-year validity period, and is prepared to liaise with LLB on updating the Guidelines (see paragraph 4(b) above) to reflect the relevant factors to be taken into account when LLB considers the applications for renewing a liquor licence for two years.

15. Notwithstanding the Administration's advice above, Mr SIN Chung-kai and Dr Helena WONG maintain their view that it is important to ensure that liquor licensed premises which (a) draw objections or adverse comments from the public from its licence renewal notice; or (b) are the subject of complaints shall not be issued with licences valid for two years. They consider that the criteria for "good track record" as mentioned in paragraph 11 above should be specified in the proposed amendments to the effect that LLB must apply the criteria in processing licence renewal cases. Mr SIN and Dr WONG have indicated their intention to move an amendment to such an effect.

Proposed mid-term review mechanism

16. Members note that under the proposed mid-term review mechanism, a review will be conducted in the 11th month during the validity period of a two-year liquor licence. For individual liquor-licensed premises, the Liquor Licensing Office under FEHD will check the record of complaint and enforcement against the premises concerned and report to LLB as an integral part of the mid-term review. At the time of the mid-term review, liquor-licensed premises with no record of enforcement action or substantiated complaint will be deemed to have passed the mid-term review whereby they can carry on with their operation within the remainder of the 24-month licence period.

17. Mr KWOK Wai-keung is concerned about the adequacy of the safeguards in the proposed mid-term review against nuisances caused by liquor licensed premises to the residents concerned. The Administration has stressed that LLB may revoke or suspend a licence immediately in case of major breaches of licensing conditions, irrespective of the licence duration. To address public's interest, LLB must consult DC members concerned if there are

⁴ Details of the proposed mid-term review mechanism are in Annex D to the LegCo Brief.

complaints or adverse comments on the last application or renewal. In case the applicants or residents living near the premises concerned are aggrieved by the licensing decisions made by LLB, they may lodge an appeal to the Municipal Services Appeals Board ("MSAB"). If aggrieved by the decision of MSAB, they may apply for judicial review.

18. Mr SIN Chung-kai and Dr Helena WONG, however, share the concern of the DC member who has given views to the Subcommittee that as the proposed mid-term review will not require LLB to arrange a hearing for the public to give views on whether liquor-licensed premises will pass the mid-term review, there may be fewer opportunities for residents to express views to LLB. To protect residents' interests, it is considered important for LLB to put in place a mechanism to consider the views of the local community and to handle residents' complaints in assessing liquor licence applications. They note the suggestion made by the DC member that LLB should be required to arrange a public hearing upon receiving a complaint made by 20 or more persons residing within a radius of 400 metres from the liquor-licensed premises concerned, irrespective of the time remaining in the licence period.

Justifications for the fees proposal

19. Members note that the deputations representing the trade do not have objection to the Administration's proposal to set the fees for a licence that is valid for more than one year at a level which is 1.5 times the fees prescribed for one-year licence. Members also note that the current fees for a licence valid for one year is \$3,940 and the proposed fees for a licence valid for more than one year is \$5,910.

20. Members have enquired why the Administration has proposed to set the fees for a licence that is valid for more than one year at such level. Members note the Administration's explanation that while a comprehensive review on fees for liquor licences (including the licence renewal service) on a full cost recovery basis is underway, the Administration has good reasons to believe that the cost for processing a two-year renewal application will not be as high as double that for a one-year one as two-year licences will only be granted to premises with a "good track record". The procedures for processing straight-forward licence renewal cases are much simpler than new applications and contested licence renewal applications. For contentious cases, the liquor licence applications will be referred to the relevant departments including the Police for advice and the Home Affairs Department for consultation with stakeholders in the local communities directly affected by the applications (including members of the DC concerned), and LLB may conduct public hearings. The cost arising from the establishment of the proposed mid-term review mechanism is expected to be

out-weighed by the reduction in workload that will otherwise arise from the processing of straight forward licence renewal cases annually. The Administration has also advised that the current cost recovery rates for new issue and renewal of liquor licences based on the existing procedures are 25% and 149% respectively. With the proposal of setting the fee for a licence valid for more than one year at 1.5 times that for a licence valid for one year, the projected cost recovery rate of the licence renewal service, calculated on a weighted average costing approach, will be reduced from currently 149% to 119%, resulting in an estimated decrease in average annual revenue by about \$2.7 million.

Temporary absence of the holder of a liquor licence

21. Members are advised that at present, Regulation 24 of DCLR allows the secretary to LLB to authorize a person to manage the licensed premises for a liquor licence holder who is ill or temporarily absent for a period not exceeding three months. The three-month may be taken as a single period or multiple periods which together do not exceed three months. The Administration has proposed to amend Regulation 24 to make it clear that the period of illness or temporary absence also covers an aggregate of periods. As a corollary of the proposal to extend the maximum validity period of a licence to two years, it is proposed that the period of temporary absence will be capped at 25% of the licence duration. It is also proposed that a caveat should be imposed for licences that bear a duration exceeding one year such that each period of absence must not exceed 90 days, and that the total period of absence must not at any time exceed 90 days within 12 consecutive months during the validity period of licence. Members raise no objection to the above proposals.

Facilitation for electronic submission of applications

22. Members note that at present, electronic submission of liquor licence applications accompanied by a digital signature is permitted. However, the utilization rate is low given that only a small number of applicants are equipped with a digital signature. The Administration has therefore proposed to amend DCLR such that electronic submission of certain applications, such as applications for the issue, renewal, transfer or amendment of liquor licences, may be allowed if accompanied by either a password assigned or approved by LLB or by digital signature. Mr Tommy CHUENG supports the proposed amendment to further facilitate the trade and has pointed out that the Business Facilitation Advisory Committee has recommended several years ago that

electronic submission of applications by food business and related services should be allowed.

Advice sought

23. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
11 March 2015

**Subcommittee on
Dutiable Commodities (Liquor) (Amendment) Regulation 2015
and Dutiable Commodities (Liquor Licences) (Fees) (Amendment)
Regulation 2015**

Membership List

Chairman Hon Tommy CHEUNG Yu-yan, SBS, JP

Members Hon WONG Ting-kwong, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan

(Total : 10 Members)

Clerk Ms Alice LEUNG

Legal Adviser Miss Winnie LO

Appendix II

Subcommittee on Dutiable Commodities (Liquor) (Amendment) Regulation 2015 and Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015

List of organizations/individual which/who has given views to the Subcommittee

1. Entertainment Business Rights Concern Group
2. Hong Kong Bars and Karaoke Rights Advocacy
3. Mr HUI Chi-fung, Central and Western District Council Member
4. Institution of Dining Art
- *5. Hong Kong Federation of Restaurants & Related Trades Limited
- *6. Hong Kong Catering Industry Association
- *7. The Democratic Party

* Organizations which have submitted written views only.