

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2095/16-17  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/7/16

**Bills Committee on Dutiable Commodities (Amendment) Bill 2017**

**Minutes of meeting**  
**held on Tuesday, 18 July 2017, at 8:45 am**  
**in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon YIU Si-wing, BBS (Chairman)  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Dr Hon KWOK Ka-ki  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai
- Members absent** : Dr Hon Junius HO Kwan-yiu, JP  
Hon KWONG Chun-yu
- Public Officers attending** : Item II
- Miss Amy YUEN Wai-yin  
Deputy Secretary for Food and Health (Health) 2
- Ms Wendy AU Wan-sze  
Principle Assistant Secretary for Food and Health  
(Health) Special Duties 1
- Dr Tina CHAN Siu-mui  
Assistant Director of Health (Special Health Services)
- Dr Jeff LEE Pui-man  
Head (Tobacco Control Office)  
Department of Health

Ms Lonnie NG Wah-chi  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Miss Josephine SO  
Chief Council Secretary (2) 2

**Staff in attendance** : Miss Joyce CHAN  
Assistant Legal Adviser 1

Ms Wendy LO  
Senior Council Secretary (2) 2

Miss Cally LAI  
Legislative Assistant (2) 2

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Action

**I. Election of Chairman**

Election of Chairman

Prof Joseph LEE, the member who had the highest precedence in Council among members of the Bills Committee present, presided over the election of the Chairman. He invited nominations for the chairmanship of the Bills Committee.

2. Mr YIU Si-wing was nominated by Mr SHIU Ka-fai and the nomination was seconded by Mr Holden CHOW. Mr YIU Si-wing accepted the nomination. As there was no other nomination, Prof Joseph LEE declared Mr YIU Si-wing elected as the Chairman of the Bills Committee. Mr YIU Si-wing then took the chair.

3. Members agreed that the election of Deputy Chairman was not necessary.

**II. Meeting with the Administration**

(File Ref: FH CR 1/4050/17, LC Paper Nos. CB(3)658/16-17, LS81/16-17 and CB(2)1911/16-17(02) to (04))

4. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Action

Follow-up action arising from the discussion

5. Members noted that the object of the Dutiable Commodities (Amendment) Bill 2017 ("the Bill") was, among others, to prohibit the sale or supply of intoxicating liquor to minors in the course of business. The question of which party should bear criminal liability for selling or supplying intoxicating liquor to minors in the course of business was raised. Members were particularly concerned about the requirements relating to age declaration/inspection. There was a view that the Administration should make it clear whether the restrictions on the sale and/or supply of intoxicating liquor to minors under the proposed regulatory regime, as set out in the new Part 5 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B), were intended to be applied only to the transaction process involving the sellers and purchasers; and whether the Bill only regulated the acts of selling and purchasing of intoxicating liquor in the course of business, not including the delivery process of such liquor to another place. The Administration was requested to consider whether amendments should be made to the Bill to address members' concerns in this respect.

Admin

**III. Any other business**

Invitation for public views

6. The Bills Committee agreed to receive public views on the Bill at the next meeting.

Date of next meeting

7. The Chairman asked the Clerk to check members' availability and schedule the next meeting in consultation with him.

*(Post-meeting note: Having checked members' availability and with the concurrence of the Chairman, the next meeting of the Bills Committee was scheduled for Monday, 9 October 2017 at 2:30 pm. The notice of the meeting was issued to members vide LC Paper No. CB(2)1946/16-17 on 20 July 2017.)*

8. There being no other business, the meeting ended at 9:55 am.

**Proceedings of meeting of the  
Bills Committee on Dutiable Commodities (Amendment) Bill 2017  
on Tuesday, 18 July 2017, at 8:45 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
<i>Agenda Item I - Election of Chairman</i>			
000400 - 000518	Prof Joseph LEE Mr SHIU Ka-fai Mr YIU Si-wing Mr Holden CHOW	Election of Chairman	
<i>Agenda Item II - Meeting with the Administration</i>			
000519 - 001119	Chairman Admin	Briefing by the Administration on the Dutiable Commodities (Amendment) Bill 2017 ("the Bill") [Legislative Council Brief - File Ref.: FH CR 1/4050/17]	
001120 - 002317	Chairman Mr SHIU Ka-fai Admin	<p>The Chairman drew members' attention to Rule 83A of the Rules of Procedure concerning personal pecuniary interest to be disclosed and reminded members to declare interests, if necessary.</p> <p>Mr SHIU Ka-fai declared that he represented the wholesale and retail sector. He said that the trade in general supported the proposed introduction of a new regulatory regime to prohibit the sale or supply of intoxicating liquor to minors.</p> <p>Responding to Mr SHIU's enquiry, the Administration advised that under section 53 of the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance"), "intoxicating liquors" included spirits, liqueurs, wines, beer and all other liquors fit or intended for use as a beverage. Hence, "rice wine" was a kind of "intoxicating liquors" whereas "antiseptic" (e.g. isopropyl alcohol) was not covered under the definition of "intoxicating liquors".</p> <p>Mr SHIU sought details on how business operators offering the sale or supply of intoxicating liquors by way of remote distribution could ascertain purchasers or recipients of the liquor concerned had reached the age of 18 years. He and the Chairman were concerned whether the person responsible for delivering the liquor to the purchaser (who made the order through retail shops or remote means) had a duty to check the purchaser's or recipient's proof of identity and</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>whether the business operators, the salespersons concerned or the person responsible for delivery would bear criminal liability for failing to check the identity of the purchaser or recipient of the intoxicating liquor in the sale or delivery process.</p> <p>The Administration advised that:</p> <p>(a) for remote distribution, the Bill intended to impose a requirement on the purchasers or recipients to declare that they had reached the age of 18 years before intoxicating liquor was sold or supplied. It was one of the defences to a charge for selling or supplying intoxicating liquor to minors to establish that the person charged had received a declaration from the purchaser or recipient that he or she had reached the age of 18 years, and there was no circumstance that caused the person to reasonably suspected that the declaration was false;</p> <p>(b) if the person responsible for delivering the liquor was under the direct employment of the seller or supplier, that person should inspect the proof of identity of the purchaser or recipient, if in doubt, when delivering the liquor to the door. For any person who simply delivered the liquor to a customer on an order from a seller/supplier, the proposed new regulation 35 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) ("the Regulations") sought to provide that such a person would not constitute an agent, given that it was stipulated in the Bill that an "agent", in relation to a sale or supply of intoxicating liquor, did not include a person who delivered the liquor in the course of business but was not otherwise involved in the sale or supply; and</p> <p>(c) the Administration would provide guidelines to facilitate the trade's compliance with the new requirements, including age declaration measures.</p>	
002318 - 003039	Chairman Mr Holden CHOW Admin	Mr Holden CHOW's question of which party should bear criminal liability for selling or supplying intoxicating liquor to minors in the course of business.	

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		<p>The Administration's advice that it depended on the circumstances of each case. It was one of the defences to a charge for selling or supplying intoxicating liquor to minors to establish that the person charged had, in the case of face-to-face distribution, inspected a proof of identity purporting to be the proof of identity of the purchaser or recipient of the intoxicating liquor and was reasonably satisfied that the purchaser or recipient was not a minor; and in the case of remote distribution, received a declaration from the purchaser or recipient that he or she had reached the age of 18 years, and there was no circumstance that caused the person to reasonably suspect that the declaration was false. In case the person was charged by reason of the act of another person, it was a defence for the former to establish that reasonable measures (e.g. provision of adequate training/guidelines to salespersons, display of sign at the place of sale or supply (for face-to-face distribution) or in an offer to sell or to supply (for remote distribution) containing prescribed notice which stated that no intoxicating liquor would be sold or supplied to any person under 18 years of age etc.) had been put in place to prevent intoxicating liquor from being sold or supplied by that other person in the course of business to a minor.</p> <p>Mr CHOW's view that the Administration should make it clear whether the restrictions on the sale and/or supply of intoxicating liquor to minors under the proposed regulatory regime, as set out in the new Part 5 of the Regulations, were intended to be applied only to the transaction process involving the sellers and purchasers; and whether the Bill only regulated the acts of selling and purchasing of intoxicating liquor in the course of business, not including the delivery process of such liquor to another place. To avoid causing undue burden to the trade in complying with the age inspection or declaration requirements, Mr CHOW opined that persons responsible for delivering the intoxicating liquor to the customers should not be required to check the proof of identity of the recipients.</p> <p>Mr CHOW's further view that the Administration should provide guidelines to facilitate compliance of the trade and step up publicity of the new requirements and the business operators' responsibilities under the new regulatory regime.</p>	

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003040 - 004217	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE's expression of concern as to whether the scope of the sale and/or supply of intoxicating liquor was extended to cover the delivery process of the liquor. His view that the Administration should make it clear whether the restrictions on the sale and/or supply of intoxicating liquor to minors under the proposed regulatory regime, as set out in the new Part 5 of the Regulations, were intended to be applied only to the transaction process involving the sellers and purchasers; and whether the Bill only regulated the acts of selling and purchasing of intoxicating liquor in the course of business, not including the delivery process of such liquor to another place. The Administration was requested to consider whether amendments should be made to the Bill to address members' concerns in this respect.</p> <p>Mr TSE cited Lan Kwai Fong as an example and expressed concern about the problems/nuisances caused by persons who bought intoxicating liquor from licensed or non-licensed premises for off-premises consumption. He enquired whether consideration would be given to extending the existing liquor licensing regime to cover all retailing premises, including liquor stores, convenience stores and supermarkets, to the effect that operators of these retailing premises would have to apply for and obtain a liquor licence for selling intoxicating liquor.</p> <p>The Administration's response that:</p> <p>(a) the legislative intent of the Bill was to prohibit the commercial sale and supply of intoxicating liquor to minors to achieve the effect of limiting minors' access and exposure to alcohol to help protect the health of adolescents;</p> <p>(b) the Administration had to strike a balance between safeguarding public health and ensuring that such safeguards were also commercially viable, in proposing the prohibition of commercial sale and supply of intoxicating liquor to minors;</p> <p>(c) there were around 5 000 retailing premises (including liquor stores, convenience stores and supermarkets) selling alcohol for consumers' on-site or off-premise</p>	<p><b>Admin</b> (para. 5 of the minutes refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>consumption. The Administration had to consider whether it was reasonable to require all retailing premises to obtain a liquor licence, under which the licensees concerned had to comply with various requirements including fire safety requirements imposed by the Fire Services Department and building safety requirements imposed by the Buildings Department; and</p> <p>(d) in proposing the prohibition of commercial sale and supply of intoxicating liquor to minors, the Administration had made reference to the regulatory regimes related to on-site consumption of alcohol on licensed premises under the Regulations, the control on tobacco products under the Smoking (Public Health) Ordinance (Cap. 371) as well as overseas experience.</p>	
004218 - 005156	Chairman Mr SHIU Ka-fai Admin	<p>In response to Mr SHIU Ka-fai's enquiry, the Administration advised that in a face-to-face distribution, the salesperson/frontline staff should check the proof of identity of a purchaser or recipient if in doubt, and should not sell any intoxicating liquor if he was not reasonably satisfied that the purchaser or recipient was not a minor. Mr SHIU expressed concern that such age inspection by frontline staff might give rise to disputes. The Administration advised that the requirement that a sign containing the prescribed notice, which stated the prohibition of sale or supply of intoxicating liquor to minors, had to be displayed in a prominent position at the place of sale or supply would facilitate the frontline staff to carry out the inspection. Mr SHIU suggested the Administration step up publicity on the new regulatory regime.</p> <p>In response to enquiries raised by the Chairman and Mr SHIU on issues relating to enforcement and prosecution, the Administration advised that:</p> <p>(a) the proposed penalty levels for contravening the prohibition of sale or supply of intoxicating liquor to minors were on par with those under the existing tobacco control regime. The Administration proposed to fix the penalty level for (i) sale of intoxicating liquor from vending machine and (ii) sale and supply of intoxicating liquor to minors at</p>	



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		<p>level 5 (i.e. a fine of \$50,000); and that for (iii) failure to display the sign for face-to-face distribution and (iv) failure to include the prescribed notice or require the purchaser or recipient to declare his or her age for remote distribution at level 4 (i.e. a fine of \$25,000);</p> <p>(b) regarding the enforcement actions taken by the Tobacco Control Office against persons selling tobacco products to minors, the annual number of complaint cases concerning sale of tobacco products to minors had decreased from more than 100 cases in 2010 to less than 10 cases in recent years. There had been around 30 convicted cases in this regard since 2007, with fines ranging from \$500 to \$4,000; and</p> <p>(c) after the passage of the Bill, public officers of the Department of Health ("DH") would conduct inspections and carry out enforcement actions upon receipt of intelligence and complaints. DH officers might carry out either random or targeted inspections of places selling or supplying intoxicating liquor by way of face-to-face distribution to ascertain whether signs containing the prescribed notice had been displayed in a prominent position. DH officers would also conduct compliance checks on businesses offering the sale or supply of intoxicating liquor by way of remote distribution as to whether the relevant notice and declaration requirements had been complied with.</p>	
005157 - 005413	Chairman Mr Holden CHOW Admin	Mr Holden CHOW's expression of concern about enforcement difficulties likely to be encountered by frontline staff working in licensed premises, in particular bars and discos, in ensuring intoxicating liquor must not be sold to any person under 18 years of age.	
005414 - 010119	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE's enquiries and the Administration's response on the definitions of "licensed premises" and "intoxicating liquor" under the Ordinance and the Regulations.</p> <p>Mr TSE's enquiries and the Administration's response on the rationale for not extending the application of the existing liquor licensing regime (specifically the requirement to apply for and obtain a liquor licence) to cover all premises engaging in the sale and supply of liquor.</p>	

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010120 - 010401	Chairman Mr SHIU Ka-fai Admin	<p>Mr SHIU Ka-fai asked whether the Administration would consider imposing sanctions on purchasers or recipients for failure to comply with the new requirements for the sale or supply of intoxicating liquor to deter minors from purchasing intoxicating liquor. The Administration responded that it did not have such a plan at present.</p> <p>Mr SHIU's suggestion and the Bills Committee's agreement to invite public views on the Bill at the next meeting to be scheduled.</p>	
010402 - 011211	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE's enquiries and the Administration's response on:</p> <p>(a) the existing licensing regime for premises selling liquor;</p> <p>(b) the legislative intent of the Bill; and</p> <p>(c) the application of the proposed new regulation 37(3) of the Regulations, which stated that "to avoid doubt, if a person sells a product that is not intoxicating liquor but that is accompanied by intoxicating liquor as a gift, the person supplies the liquor", in the scenario cited by Mr TSE.</p>	
011212 - 011438	Chairman Mr SHIU Ka-fai Admin	The Chairman's closing remarks.	