

# **立法會**

## ***Legislative Council***

LC Paper No. LS81/16-17

### **Paper for the House Committee Meeting on 23 June 2017**

### **Legal Service Division Report on Dutiable Commodities (Amendment) Bill 2017**

#### **I. SUMMARY**

- 1. The Bill**

The Bill seeks to amend the Dutiable Commodities Ordinance (Cap. 109) and the Dutiable Commodities (Liquor) Regulations (Cap. 109B) to prohibit the sale of intoxicating liquor from vending machines; to prohibit the sale or supply of intoxicating liquor to minors in the course of business; to impose requirements for a prescribed notice and age declaration for the sale or supply of intoxicating liquor; and to provide for related matters.
- 2. Public Consultation**

The Administration conducted briefing sessions for stakeholders including the wine industry, the retail industry, and the medical and health sector from January to February 2017 and invited stakeholders to provide written submissions. Of the 100 written submissions received, 78 respondents supported the proposed regulatory regime, while 20 respondents had reservations about the proposal and suggested introducing a Government-led voluntary scheme instead. The trade had particular concerns about the penalty level and liabilities under various business models.
- 3. Consultation with LegCo Panel**

The Panel on Health Services was consulted on 25 April 2017. Members generally supported the legislative proposals but expressed certain concerns.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new regulatory regime to prohibit the sale or supply of intoxicating liquor to minors, Members may wish to form a Bills Committee to study the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 21 June 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: FH CR 1/4050/17) issued by the Food and Health Bureau on 7 June 2017 for further details.

### **Object of the Bill**

2. The Bill seeks to amend the Dutiable Commodities Ordinance (Cap. 109) and the Dutiable Commodities (Liquor) Regulations (Cap. 109B) to prohibit the sale of intoxicating liquor from vending machines; to prohibit the sale or supply of intoxicating liquor to minors in the course of business; to impose requirements for a prescribed notice and age declaration for the sale or supply of intoxicating liquor; and to provide for related matters.

### **Background**

3. Under Cap. 109B, the sale or supply of intoxicating liquor for consumption on premises (such as bars) is regulated through a liquor licensing system. Under regulation 28, no licensee shall permit any person under the age of 18 years ("minors")<sup>1</sup> to drink any intoxicating liquor on any licensed premises. However, there is currently no statutory prohibition on the sale or supply of intoxicating liquor to minors in licensed premises for off-premises consumption, and in non-licensed premises (such as retail stores). The sale or supply of intoxicating liquor to minors through remote means (such as on the internet), and the sale of intoxicating liquor through vending machines are also not prohibited. According to paragraph 3 of the LegCo Brief, the retail industry has been refraining from selling intoxicating liquor to minors on a voluntary basis for a number of years and there are concerns over the effectiveness of such a voluntary measure. The Administration considers it necessary to amend Cap. 109 and Cap. 109B to regulate the above activities for the overall well-being of minors.

### **Provisions of the Bill**

#### Amendment to Cap. 109 to provide for an empowering provision for the making of regulation

4. Clause 3 of the Bill seeks to amend section 6 of Cap. 109 to include "regulating or restricting the sale or supply of liquor" in the list of matters which

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<sup>1</sup> "Minor" is defined to mean a person who has not attained the age of 18 years under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

the Chief Executive in Council may by regulation prescribe or provide for under Cap. 109.

Amendments to Cap. 109B

*Prohibitions on sale of intoxicating liquor from vending machines and on sale or supply of intoxicating liquor to minors*

5. The Bill seeks to add a new Part 5 to Cap. 109B to prohibit:
  - (a) the sale of intoxicating liquor from vending machines; and
  - (b) the sale or supply of intoxicating liquor to minors in the course of business.
6. Any person who contravenes any of the above prohibitions would commit an offence and would be liable on summary conviction to a fine at level 5 (\$50,000).

*Notice and declaration requirements for face-to-face distribution and remote distribution*

7. The Bill proposes to impose a notice requirement on the sale or supply of intoxicating liquor by way of face-to-face distribution. Under the proposed notice requirement, a sign containing both the Chinese and English versions of the notice on the prohibition of the sale or supply of intoxicating liquor to minors ("the prescribed notice") must be displayed in a prominent position at the place where the sale or supply of intoxicating liquor is offered or conducted in the course of business. Any person who contravenes this requirement would commit an offence and would be liable on summary conviction to a fine at level 4 (\$25,000).
8. In respect of remote distribution (i.e. other than in a face-to-face distribution), the Bill proposes to impose both notice and declaration requirements. A person who, in the course of business, offers to sell or to supply intoxicating liquor by remote distribution must ensure that the offer contains the contents of the prescribed notice, whether published in the form of a visual image, a sound recording or an oral communication. Also, a person must not, in the course of business, sell or supply intoxicating liquor to another person in a remote distribution unless the person receives a declaration to the effect that the other person has reached the age of 18 years, and there is no circumstance that causes the person to reasonably suspect that the declaration is false. Any person who contravenes any of the above proposed requirements would commit an offence and would be liable on summary conviction to a fine at level 4 (\$25,000).

### *Defences*

9. The Bill proposes certain defences for persons charged with selling or supplying intoxicating liquor to minors in the course of business, including:

- (a) for face-to-face distribution, it would be a defence if the person can establish that he/she had 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
- (b) for remote distribution, it would be a defence if the person can establish that he/she had received a declaration to the effect that the purchaser or recipient of the liquor had reached the age of 18 years and there was no circumstance that caused the person to reasonably suspect that the declaration was false.

### *Enforcement powers*

10. For the purposes of enforcing the provisions under the new Part 5 of Cap. 109B, the Bill proposes to confer certain powers on inspectors appointed by the Secretary for Food and Health ("SFH"). These powers include the power to enter and inspect an area in a public place to check for compliance with the relevant provisions, the power to require any person to give his/her name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed an offence under the new Part 5 of Cap. 109B, the power to seize, remove, or detain anything that appears to be evidence of the relevant offence, and the power to take samples of intoxicating liquor for analysis.

11. The Bill also proposes that any person who delays, obstructs, hinders or molests an inspector in the performance of his duties would commit an offence punishable on summary conviction by a fine at level 3 (\$10,000).

### **Commencement**

12. The Bill, if passed, would come into operation on a day to be appointed by SFH by notice published in the Gazette.

### **Public Consultation**

13. According to paragraphs 15 and 16 of the LegCo Brief, the Administration conducted briefing sessions for stakeholders including the wine industry, the retail industry, and the medical and health sector, the education sector

as well as the Chairmen and vice-Chairmen of the District Councils from January to February 2017. Stakeholders were also invited to provide written submissions. Of the 100 written submissions received, 78 respondents supported the proposed regulatory regime, while 20 respondents had reservations about the proposal and suggested introducing a Government-led voluntary scheme instead. None expressed in-principle objection. The trade requested the Administration to provide detailed guidelines to facilitate compliance with the new requirements. The Administration also consulted the Liquor Licensing Board and the relevant organizations under the Business Facilitation Advisory Committee in May 2017.

### **Consultation with LegCo Panel**

14. The Clerk to the Panel on Health Services has advised that the Panel was consulted on the proposed legislative amendments on 25 April 2017. Members generally supported the proposed amendments, but raised concerns on the operational difficulties for frontline staff of retail stores to comply with the new requirements for face-to-face distribution, enforceability of the new requirements for remote distribution, and the statutory defences to be provided for the new offences.

### **Conclusion**

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new regulatory regime to prohibit the sale or supply of intoxicating liquor to minors, Members may wish to form a Bills Committee to study the Bill in detail.

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