

Dissanayake DMA # 11896 V3

1st working draft: 17.08.99

2nd working draft: 22.10.99

PROVISION OF MUNICIPAL SERVICES (REORGANIZATION) BILL

COMMITTEE STAGE

Amendments to be moved by the [_____]

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 4, section 3(b)	(a) In subparagraph (iv), in the proposed definition of “respondent” by deleting paragraph (b) and substituting - “(b) an appeal board decision, the person who made the first decision;”. (b) In subparagraph (viii), by adding - ““first decision” (_____) means a decision which was the subject matter of an appeal to the Licensing Appeals Board;”.
Schedule 4, section 7(a)	In the proposed section 6(2) by adding “who are legally qualified” after “persons”.
Schedule 4, section 8	(a) In the proposed section 7(1) (a) by deleting

“decision which was the subject matter of the appeal board decision” and substituting “first decision”.

- (b) In the proposed section 7(2) (b) by deleting everything after “decision” where it first appears and substituting a full stop.

Schedule 4, section 10 By deleting paragraphs (b) and (c) and substituting -
“(b) in subsection (2) -

- (i) by adding -

“(aa) in the case of an appeal against an appeal board decision, the secretary to the Licensing Appeals Board; and”;

- (ii) in paragraph (b) by repealing”; and” and substituting a full stop;

- (iii) by repealing paragraph (c);

- (c) by adding -

“(3) If the Chairman so directs, the Secretary shall also give notice to any person (other than the appellant) who has made representations -

- (a) to the respondent, on the

subject matter of the administrative decision or the first decision, before the relevant decision was made; or

- (b) to the Licensing Appeals Board, on the subject matter of the appeal board decision, before that decision was made.”.”.

Schedule 4,
section 11

- (a) In the heading by deleting **“Decision maker”** and substituting **“Respondent and Licensing Appeals Board”**.
- (b) By deleting paragraph (a) (i).
- (c) By deleting paragraph (a) (iii) (A) and (E) (I) and (iv).
- (d) In paragraph (a) (iii) (D), in the proposed section 9(1) (a) (iia) by deleting “decision maker” and substituting “respondent”.
- (e) By adding -
“(aa) by adding -

“(1A) If the appeal to the Board is against an appeal board decision, the secretary to the Licensing Appeals Board shall, within 28 days after receiving notice of an appeal under section 8(2), serve on the Secretary, the appellant and any other person bound by the appeal board decision, a copy of the appeal board decision, the reasons for that decision, the minutes of proceedings and private deliberations relating to that decision, the names of persons who has made representations to the Licensing Appeals Board on the subject matter of that decision and any other document which is in the possession of the Licensing Appeals Board and considered by the Licensing Appeals Board to be relevant to the appeal.”;

- (f) By deleting paragraph (b) (i) and (ii).
- (g) By deleting paragraphs (c), (d) and (e).

Dissanayake DMA # 12302 v5

1st working draft: 02.09.99

Revised 1st working draft: 08.09.99

2nd working draft: 14.10.99

3rd working draft: 21.10.99

4th working draft: 25.10.99

Revised 4th working draft: 26.10.99

PROVISION OF MUNICIPAL SERVICES (REORGANIZATION) BILL

COMMITTEE STAGE

Amendments to be moved by the [_____]

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 5, section 2	(a) In paragraph (a) (i), in the proposed section 6(1) (g) by deleting everything from “for” to “(n)” and substituting “referred to in <u>section 6A</u> ”.
	(b) In paragraph (b), in the proposed section 6(4A) (b) by deleting “make rules for regulating proceedings before it” and substituting “determine its procedures and forms for the purposes of those regulations”.
Schedule 5, section 3	In the proposed section 6A by adding “and for authorizing a person to manage premises for which a licence has been issued, in place of the licence

holder” after “licence” where it thirdly appears.

Schedule 5, section 4(c) In the proposed definition of “Board” by deleting “section” and substituting “regulation”.

Schedule 5, section 6 By deleting the proposed regulation 2A(2), (3) and (4) and substituting -

“(2) The Board is to consist of -

- (a) a Chairman;
- (b) a Vice Chairman; and
- (c) 9 other members,

appointed by the Chief Executive.

(3) A public officer may not be appointed under paragraph (2).

(4) A person appointed under paragraph (2) is to hold and vacate office in accordance with that person’s terms of appointment.

(5) The Secretary for the Environment and Food may appoint a secretary to the Board and other staff as the Secretary considers necessary.

(6) The Secretary for the Environment and Food may appoint a legal adviser to advise on legal matters relating to an application and the legal adviser may be present at any hearing before the Board or deliberations of the Board to so advise the Board.”.

Schedule 5 By adding -

“8A.Meetings of Board

Regulation 13(1) is amended by repealing “during March, June, September and December and at such other times” and substituting “as often”.”.

Schedule 5 By adding -

“8B.Regulations added

The following are added -

“13A.Board may delegate powers and functions

The Board may delegate any power or function of the Board to a committee of the Board, a member of the Board or a public officer

13B. Quorum for meeting of Board

The quorum for a meeting of the Board is not less than half its members for the time being.

13C. Chairman or Vice Chairman to preside

The Chairman or Vice Chairman

appointed under regulation 2A(2) must preside at any meeting of the Board.”.”.

Schedule 5 By adding -

“8C.Regulation added

The following is added in Part II -

“14A.Board may determine procedure for meetings and applications

The Board may determine the procedure for meetings of and applications to the Board including the manner of making, hearing and determining applications and the documents to be lodged or served in connection with applications.”.”.

Schedule 5 By adding -

“8D.Mode of voting

Regulation 14(2) is amended by repealing “chairman” and substituting “person presiding”.”.

Schedule 5 By adding -

“9A.Advertisement of applications

Regulation 16 is amended by repealing “or sign”.”.

Schedule 5 By deleting section 10 and substituting -

“10. Regulation substituted

Regulation 17 is repealed and the following substituted -

**“17. Decisions of Board and
appeals to Municipal
services Appeals Board**

(1) Upon application the Board may grant a liquor licence without conditions or subject to such conditions as it thinks fit, or refuse the application.

(2) The Board shall not grant a liquor licence unless it is satisfied -

(a) that the applicant is a fit and proper person to hold the licence;

(b) that the premises to which the application relates are suitable for selling or supplying intoxicating liquor, having regard to -

(i) the location and structure of the premises; and

(ii) the fire safety and hygienic conditions in the

premises;

(c) that in all the circumstances the grant of the licence is not contrary to the public interest.

(3) The Board must give reasons in writing -

(a) for any decision on an application in respect of which there is an objection; or

(b) for any decision to refuse an application.

(4) The secretary to the Board appointed under regulation 2A(5) must give notice in writing of the Board's decision, together with reasons, to the applicant and any other person who or body which has expressed an interest in the application.

(5) The applicant or 20 or more persons residing within a radius of 400 metres from the premises to which the application relates may, within 28 days after notice is given under paragraph (4), appeal to the Municipal Services Appeals Board against the decision.”.”.

Schedule 5 By deleting section 11 and substituting -

“11. Restriction against further applications

Regulation 19(2) is amended by repealing everything after “(1) (b),” and substituting -

“the secretary to the Board must give notice in writing of the refusal, together with reasons, to the person and the person may appeal to the Municipal Services Appeals Board against the refusal within 28 days after receiving the notice.”.”.

Schedule 5 By adding -

“11A. Issue and duration of licences

Regulation 20 (3) is amended by repealing “, 9 months, 6 months or 3 months” and substituting “or such lesser period”.”.

Schedule 5 By deleting section 12 and substituting -

“12. Revocation and suspension of licences

Regulation 23 is amended -

(a) in paragraph (1) by adding “or refuse to renew” after “fit”;

(b) by adding -

“(1A) Without limiting paragraph (1), the Board may revoke, suspend or

refuse to renew a liquor licence, if in its

opinion -

(a) the person holding the licence

has failed to comply with any

condition of the licence;

(b) the person holding the licence

has ceased to be a fit and proper

person to hold the licence;

(c) the premises specified in the

licence have ceased to be

suitable for selling or supplying

intoxicating liquor, for reasons

connected with -

(i) the location and structure of

the premises;

(ii) the fire safety and hygienic

conditions in the

premises; or

(d) public interest so requires.”;

(c) by repealing paragraph (2) and substituting -

“(2) The secretary to the Board must give notice in writing, together with reasons, of a decision under this regulation to the person concerned.

(3) A person may appeal to the Municipal Services Appeals Board against any decision of the Board under this regulation within 28 days after receiving notice of the decision.”.”.

Schedule 5

By adding -

“12A.Illness or absence of licensee

Regulation 24 is amended by repealing “a fee of \$10” and substituting “the appropriate fee prescribed under section 6A of the

Ordinance”.”.

Schedule 5 By deleting section 13 and substituting -

“13. Issue of temporary licences

Regulation 25(2) is repealed.”.

Schedule 5 By deleting section 14 and substituting -

“14. Clubs to be licensed for supply of liquor to members

Regulation 26 is amended -

- (a) in paragraph (2), by repealing “Urban Council or the Regional Council as the case may require” and substituting “Board”;
- (b) by repealing paragraph (3).”.

Schedule 5 By adding -

“14A.Licensee to exhibit name, etc.

Regulation 26A(1) is amended by adding “licence” after “liquor”.

14B.Regulation added

The following is added -

“26B. Board may determine forms of licences

The Board may determine the form of any licence granted by it under these

regulations.”.”.

Schedule 5 By deleting section 15 and substituting -

**“15. Restrictions on employment of
young persons on licensed
premises**

Regulation 29 is amended -

(a) by adding after paragraph (1) -

 “(1AA) If the Board refuses
 permission for the purposes of paragraph
 (1) (c), the Board must give reasons in
 writing for the refusal.”;

(b) in paragraph (1A) by repealing “Appeals
 Board” and substituting “Municipal Services
 Appeals Board within 28 days after receiving
 notice of the refusal”.”.

Schedule 5, In the proposed regulation 33 by adding -

section 16

 “(1A) Any reference in these regulations to the prescribed
 fee includes a reference to a fee continued in force under
 section 9(2) of the Provision of Municipal Services
 (Reorganization) Ordinance (of 1999) as if
 prescribed under section 6A of the Ordinance, until that fee is
 replaced under

that section 6A.”.

Schedule 4 - Amendments to Municipal Services Appeals Board (Cap. 220)

- **Interpretation** (Clause 3(b) - C1959; Clause 10 - C1963 and Clause 11 - C1965)

Proposed CSA : These include

- amending the definition of “respondent”;
- moving the definition of “first decision” to the front; and
- making consequential amendments by deleting subsections 8(3) and 9(4).

Remarks : The definition of “respondent” is amended in response to Members’ views that the licensing authority should not have right of appeal to the MSAB. Moving the definition of “first decision” to the front is for better presentation and consequently proposed subsection 8(3) can be deleted. Proposed section 9(4) can also be deleted because the distinction between “decision maker” and “respondent” no longer exists and ‘respondent’ will now refer to the decision maker and will not be the ‘appellant’ which may be the case under the original proposal.

- **Qualification of the Vice-Chairman** (Clause 7(a) -C1961)

Proposed CSA : Amending proposed Section 6(2) to require that Vice-Chairman should also be legally qualified.

Remarks : The existing legislation specifies that both the Chairman and Vice-Chairman of the Municipal Services Appeals Board should be legally qualified. The Bill as drafted at present only requires the Chairman to be legally qualified. A CSA is proposed to reflect the existing provision.

- **Power of the Board in respect of appeal** (Clause 8 -C1961 to 1963)

Proposed CSA : These include

- revising proposed subsection 7(1)(a) by deleting the words “decision which was the subject matter of the appeal board decision, as the case may require” and substituting “the first decision”.
- revising proposed subsection 7(2)(b) by deleting the words “in which the respondent is the person whose decision was the subject matter of the appeal board decision”.

Remarks : As the original description in subsection 7(1)(a) refers to “first decision” after removal of licensing authority’s right to appeal to the MSAB, it is substituted for clearer presentation.

As “respondent” would only mean “decision maker” after removing licensing authority’s right of appeal to the MSAB, the original description to clarify who is the “respondent” has become superfluous.

- **Board to give notice of appeal to the Licensing Appeals Board** (Clause 10 - C1963)

Proposed CSA : Deleting proposed subsection 8(2) and 8(3) and substituting new sections to provide that in addition to the “respondent” the MSAB should also give notice of appeal to the LAB and any other persons who had made representations to the respondent and LAB before their relevant decisions were made.

Remarks : The CSA is to ensure that in serving the notice of appeal, the MSAB will be able to cover all persons/bodies who have made representation on the subject matter.

Respondent and Licensing Appeals Board to lodge statement and relevant documents (Clause 11 - C1963)

Proposed CSA : These include

- changing the heading of section 9 to “Respondent and Licensing Appeals Board to lodge statement and relevant documents”;
- revising proposed subsection 9(1)(a)(ia) by deleting “decision maker” and substituting “respondent”;
- adding a new subsection 9(1A) to specify the documents and other information to be provided to the MSAB by the Secretary to the LAB within 28 days after receiving MSAB’s notice; and
- deleting from Clause 11 of Schedule 4 proposed paragraphs (a)(i), (a)(iii)(A), (a)(iii)(E)(I), a(iv), (b)(i), (b)(ii), (c) and (d) which were originally included in the Bill to cater for appeal by the licensing authority to the MSAB;

Remarks : These amendments are consequential to removing the licensing authority’s right of appeal to the MSAB and stipulate the need for the LAB to lodge relevant documents/information to the MSAB in the case of an appeal against a LAB decision.

- END -

Schedule 5 - Amendments to Dutiable Commodities Ordinance and its subsidiary legislation (Cap. 109)

Amendments to Dutiable Commodities Ordinance (Cap. 109)

• **Jurisdiction of the Chief Executive in Council** (Clause 2 - C1967)

Proposed CSA : Simplifying the proposed amendment to subsection 6(1)(g) by referring to ‘section 6A’ instead of describing the details of that section.

Remarks : Technical amendment.

• **The Board may determine procedures for meetings and applications and forms of licences** (Clauses 2, 13 & 14 - C1969 & 1971 and new Clauses 8C & 14B)

Proposed CSA : Improving the wording used in the proposed subsection 6(4A)(b) to reflect that regulations can be made to empower the Board “to determine its procedures and forms for the purposes of those regulation”. As a result, the following consequential amendments are also made to the Dutiable Commodities (Liquor) Regulations-

- adding a new reg. 14A to empower the Board to determine procedure for meetings and applications;
- adding a new reg. 26B to empower the Board to determine the forms for various licences; and repealing proposed reg. 25(2) & 26(3) concerning the determination of licences which has become superfluous.

Remarks : No change in meaning. This CSA is merely to improve the wording.

- **The Secretary for the Environment and Food may prescribe fees for liquor licences (Clause 3 - C1969 and new Clause 12A)**

Proposed CSA : These include

- revising proposed section 6A of the Ordinance to provide that in addition to fees for issue, renewal, transfer or amendment of a liquor licence, the Secretary for Environment and Food may prescribe fee for approval of temporary substitute of licensee;
- updating reg. 24 at the same time to provide that the payment for approval of temporary substitute of licensee will be in accordance with an appropriate fee prescribed under section 6A of the Ordinance.

Remarks : This amendment is to empower the Secretary for the Environment and Food to prescribe also the fees in relation to temporary substitute of licensee on grounds of absence or illness. Reg. 24 on the fee for this purpose is also amended correspondingly to reflect this new mechanism in determining fees. Pending revision, all the existing fees in relation to liquor licences will be saved and we have proposed a CSA to this effect separately (see page 7).

Amendments to Dutiable Commodities (Liquor) Regulations (Cap. 109B)

- **Interpretation** (Clause 4 - C1969)

Proposed CSA : Amending the definition of the term “Board” under reg. 2(1) by replacing “section” with “regulation”.

Remarks : Technical amendment.

- **Establishment and composition of the Liquor Licensing Board**
(Clause 6 - C1969 to 1971)

Proposed CSA : Revising the proposed reg. 2A(2) , (3) and (4) to

- provide a Vice-chairman for the Board;
- reduce the number of other members from 10 to 9 correspondingly;
- clarify that the Board is to be made up of non-officials only; and
- stipulate that the legal adviser for the Board shall be appointed by the Secretary for the Environment and Food.

Remarks : The proposed CSA is to spell out the composition of the Board and appointment of legal adviser more clearly. The Vice-Chairman is needed to deputize the Chairman during his absence in view of the frequency of meetings and heavy caseload of the Board. The existing LLBs of the two PMCs also have the office of Vice-chairman.

- **Meetings of Board** (new Clause 8A)

Proposed CSA : Revising reg. 13(1) to provide that the Board may meet as often as necessary.

Remarks : To allow flexibility for the future Board to meet.

- **Board may delegate its powers and functions** (new Clause 8B)

Proposed CSA : To add a new reg. 13A to provide that the Board may delegate its power and function to a committee, a member or a public officer.

Remarks : Currently, PUC delegates the authority for determination of non-contested applications to delegated LLB members. In the case of ProRC, non-contested applications are determined by circulation of papers to LLB members. In view of the heavy caseload of nearly 5,000 liquor licence applications per annum, a provision to enable the future LLB to delegate its powers and functions is necessary to ensure its smooth and effective operation.

- **Quorum for meeting of Board (new Clause 8B)**

Proposed CSA : Adding a new reg. 13B to provide that the quorum of meeting shall not be less than half of the members.

Remarks : Since the LLB is a statutory body, there is a need to provide in the law the quorum for its meetings. Equivalent quorum requirement applies to District Councils and many other statutory Boards.

- **Chairman or Vice-chairman to preside (new Clause 8B)**

Proposed CSA : Adding a new reg. 13C to provide that either the Chairman or Vice Chairman must preside at any meeting of the Board.

Remarks : To reflect the role of the Vice Chairman provided under reg. 2A.

- **Mode of voting (new Clause 8D)**

Proposed CSA : To revised reg. 14(2) by replacing “Chairman” with “person presiding”.

Remarks : To clarify that the “person presiding” who may be the Chairman or Vice Chairman will have a casting vote.

- **Advertisement of applications** (new Clause 9A)

Proposed CSA : Repealing the words “or sign” from reg. 16.

Remarks : Reg. 16 requires the Board to advertise the liquor licensing applications in local press at the expense of the applicants. The advertisement is expected to provide the name and address of the applicant and the address and proposed name or sign of the premises to be licensed. From experience, “sign” of the premises is not necessary and hence deletion is recommended.

- **Criteria for assessment of applications, requirement to give reasons and channel of appeal** (Clauses 10, 11,12 & 15 -C1971)

Proposed CSA : These include

- setting out under reg. 17(2) specific criteria for assessment of liquor licensing applications;
- specifying a “28 days” limit for lodging appeal to the Municipal Services Appeals Board by
 - (a) applicant and contestors living in the vicinity against the decision of LLB under proposed reg. 17(5);
 - (b) licensee against suspension and revocation of licence under proposed reg. 19(2) and 23(3);
 - (c) licensee against refusal of application to employ young persons under proposed reg. 29(1A); and
- requiring the Board to give notice in writing with reasons for its decisions made with regard to the above appeals.

Remarks : The criteria for granting a liquor licence under proposed reg. 17(2) is to provide guiding principles for Board members in considering licensing applications. These are the criteria currently adopted by the two LLBs.

At present no time limit is set for lodging appeal against the Board's decisions to the MSAB. Other types of appeals to the MSAB are all subject to a time limit.

The proposed requirement for the LLB to give reasons for its decision is to ensure that the applicant and other persons or bodies who have expressed an interest in the application are aware of the reasons of the LLB's decisions.

- **Duration of Licence (new Clause 11A)**

Proposed CSA : Amending reg. 20(3) to provide that the LLB may grant liquor licence for any period up to 1 year.

Remarks : The existing regulation provides that a liquor licence may be granted for a year or a shorter period of "9 months, 6 months or 3 months". The proposed CSA will enable the LLB to decide the length of any shorter period without the restriction of 3, 6 or 9 months.

- **The power of the Board to suspend, revoke or refuse to renew liquor licence (Clause 12 - C1971)**

Proposed CSA : To amend the proposed regulation 23(1) and to add a new regulation 23(1A) to the effect that the LLB may suspend, revoke or refuse to renew a liquor licence based on certain criteria.

Remarks : The existing legislation has not provided any criteria based on which the LLB may make the above decisions. These criteria follow closely those stipulated under proposed reg. 17(2).

- **Licensee to exhibit name, etc.** (new Clause 14A)

Proposed CSA : Amending the word “liquor” in regulation 26A(1) to read as “liquor licence”.

Remarks : Technical amendment to rectify an omission.

- **Transitional provision to cover the prescribed fees for liquor licences**
(Clause 16)

Proposed CSA : Adding a new reg. 33 (1A) to ensure that prescribed fees and charges for liquor licences will continue in force without being affected by the amendments to Cap. 109 and its subsidiary legislation.

Remarks : A saving provision to maintain the status quo of fees relating to liquor licence.

- END -