

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)(iia) 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.

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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.

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