

Licensing of Food Premises

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EXECUTIVE SUMMARY

1. It is necessary for the food businesses owners to apply for a licence before they can start a food business in Tokyo, Los Angeles, Michigan, Ontario and Hong Kong. However, there is no such requirement in Sydney and London.
2. Except in Tokyo, places such as Los Angeles, Illinois, New York, Ontario, Sydney, London and Hong Kong require the food business owners to obtain a liquor licence before they can sell alcoholic drinks to consumers.
3. The licensing authority for food premises overseas is usually the local government whilst the licensing authority for liquor licence is usually an independent authority. In Hong Kong, the licensing authority for both types of licenses is the Provisional Municipal Council.
4. The application and licensing procedures are very similar in the overseas places under study and in Hong Kong. However, the time involved in vetting applications for licences taken by the Hong Kong Municipal Services Departments are longer than that in the overseas places.
5. It is observed from the overseas experiences that the majority of licensing requirements are related to sanitation requirements. In Hong Kong, however, most of the requirements are related to building, structural and fire safety concerns.
6. In view of the unsatisfactory licensing system of food premises in Hong Kong, the Ombudsman has conducted an investigation on this issue and has made 20 recommendations to all parties concerned. The Urban Services Department, the Regional Services Department, the Buildings Department and the Fire Services Department are currently reviewing the recommendations and some of these recommendations have already been implemented.
7. There were two other Consultant's Reports on this issue. Both did not propose the establishment of a Central Licensing Authority. The Consultant in the "*Consultant's Report on Food Safety and Environmental Hygiene Services in Hong Kong*" proposed to transfer the licensing authority for restaurant licences to the new Department of Food and Environmental Hygiene and the licensing authority for liquor licences to a new Liquor Licensing Board. The other Consultant in the "*Study on Restaurant Licensing: Draft Detailed Report*" proposed two options: (a) a "Fast Track Process" which would allow applicants to obtain licences on the same day of application; and (b) a "Normal Track Process" which would allow the processing time for issuing a Letter of Requirements to be reduced by 57 working days. Both Consultant's Reports are under review by the relevant government departments.

LICENSING OF FOOD PREMISES

PART 1 – INTRODUCTION

1. Background

1.1 The Research and Library Services Division (RLS) of the Legislative Council Secretariat was requested by the Joint Panels on Health Services, Environmental Affairs and Constitutional Affairs to conduct a research on the mechanism for application and issue of licences of food premises and liquor licences in Hong Kong and overseas.

2. Objective and Scope

2.1 The objective of this research is to study the licensing system of food premises in Hong Kong and overseas.

2.2 The scope of this research report is as follows:

- Describe the mechanism for application and issue of licences of food premises and liquor licences overseas; and
- Describe and analyze the mechanism for application and issue of restaurant and liquor licences in Hong Kong

3. Methodology

3.1 This study involves a combination of information collection, internet search, literature review and analysis, correspondence with the relevant authorities in the major places in the United States (US), United Kingdom (UK), Canada, Japan, Australia, Singapore and Taiwan. Requests for information were also sent to the two municipal services departments (MSDs) in Hong Kong. Interviews were also conducted with local food businesses practitioners and a government official of Rockdale City Council of Australia.

3.2 As of to date, the RLS has received official responses from some of the overseas authorities only; hence, findings of this research report were mainly based on the information available to us.

3.3 The RLS has also requested the MSDs to conduct a sample survey on the actual time involved in the processing of the applications for restaurant licences. Owing to the time constraint, a sample size of 18 to 36 was randomly drawn each year for three years to make the statistical analysis.

3.4 The research report was based on the information obtained from the above sources.

PART 2 – TYPES OF LICENCES OF FOOD PREMISES OVERSEAS

4. Licences of Food Premises

4.1 Different places have different arrangements regarding the licensing of food premises such as restaurants, cafés. Some places such as Tokyo, Los Angeles and Michigan require food business owners to obtain a specific licence for food business before they can engage in the business whilst in Ontario, a business licence alone suffices. In some other places such as Sydney and London, no licence is required. In Sydney, food business owners are obliged to make a development application to the relevant authority whilst in London, only registration with the relevant authority is required. Table 1 summarizes the different licensing arrangements of food premises in these places.

Table 1 – Licensing Arrangement of Food Premises

Places	Licence of Food Premises	Arrangement
Tokyo	✓	<ul style="list-style-type: none"> a single licence for the operation of all categories of food businesses under the Food Sanitation Law
Los Angeles	✓	<ul style="list-style-type: none"> Food Service Permit: a temporary licence will be issued first and followed by an actual licence
Michigan	✓	<ul style="list-style-type: none"> a food-establishment licence is required
Ontario	✓	<ul style="list-style-type: none"> a business licence is required
Sydney	✗	<ul style="list-style-type: none"> no licence is required but need to make a development application to the Local Council
London	✗	<ul style="list-style-type: none"> no licence is required but all food businesses have to be ‘registered’ with the relevant food authority

Sources:

1. Consulate-General of Japan, Hong Kong
2. Gale Research Inc, *National Directory of State Business Licensing and Regulation*, 1st Edition.
3. Michigan Department of Agriculture
4. Public Health Branch of Government of Ontario
5. Health and Building Surveyor of Sydney
6. Ministry of Agriculture, Fisheries and Food, United Kingdom

5. Liquor Licences

5.1 Most of the places except Tokyo require the food business owners to obtain a liquor licence before they can sell alcoholic drinks to consumers in their food premises. Table 2 summarizes the findings.

Table 2 – Types of Liquor Licence

Places	Liquor Licence	Remark
Tokyo	✗	<ul style="list-style-type: none"> No regulation under the Food Sanitation Law for the provision of liquor in food businesses
Los Angeles	✓	<ul style="list-style-type: none"> Five types of liquor licences: <ol style="list-style-type: none"> On-Sale General Licence; Off-Sale General Licence; On-Sale Beer and Wine Licence; Off-Sale Beer and Wine Licence; and On-Sale Beer Licence
Illinois	✓	<ul style="list-style-type: none"> Restaurant Retailer's Licence
New York	✓	<ul style="list-style-type: none"> Three types of liquor licences: <ol style="list-style-type: none"> Retail Liquor Licence (on-premise); Retail Beer Licence (on-premise); and Retail Wine Licence (on-premise)
Ontario	✓	
Sydney	✓	
London	✓	<ul style="list-style-type: none"> Five types of liquor licences: <ol style="list-style-type: none"> On-licence for the sale of alcoholic drinks on the premises; Off-licence for the sale of alcohol off the premises; Restaurant licence for the sale of alcohol as an ancillary to a meal in a restaurant; Residential licence for the sale of alcohol to people staying in premises such as hotels; and Residential and restaurant licence which is a combination of the above two licences (types 3 and 4).

Sources:

- Consulate-General of Japan, Hong Kong
- Gale Research Inc, National Directory of State Business Licensing and Regulation, 1st Edition.
- Illinois Department of Agriculture
- Division of Alcoholic Beverage Control, State of New York
- Alcohol and Gaming Commission of Ontario
- Health and Building Surveyor of Sydney
- Ministry of Agriculture, Fisheries and Food, United Kingdom

PART 3 – MECHANISM OF LICENSING OF FOOD PREMISES OVERSEAS

6. Licences of Food Premises

Issuing Authorities

6.1 Table 3 lists the issuing authorities for the licences of food premises. It is noted from the table that the responsibility for issuing licences of food premises is usually delegated to the local governments.

Table 3 – Issuing Authorities for Licences of Food Premises

Places	Issuing Authorities
Tokyo	<ul style="list-style-type: none"> • Prefectural Government or the Municipal Governments of large regions
Los Angeles	<ul style="list-style-type: none"> • Local Environmental Health Agencies
Michigan	<ul style="list-style-type: none"> • Michigan Department of Agriculture
Ontario	<ul style="list-style-type: none"> • Municipal Government
Sydney	<ul style="list-style-type: none"> • Local Council (for the assessment of the development applications)
London	<ul style="list-style-type: none"> • Environmental Health Department of the Local Authority (for approving or registering food businesses)

Sources:

1. Bureau of Public Health of Tokyo Metropolitan Government
2. Michigan Department of Agriculture
3. Canadian Consulate General
4. Health and Building Surveyor of Sydney
5. Ministry of Agriculture, Fisheries and Food, United Kingdom

Authorities Involved in the Examination of the Application

6.2 Our findings show that in the overseas places under study, except New York and London, more than one authority is involved in the examination of the application for licences of food premises. Table 4 lists the relevant authorities involved in the examination of the application for licences of food premises.

Table 4 – Relevant Authorities Involved in the Examination of Application for Licences of Food Premises

Places	Authorities
Tokyo	<ul style="list-style-type: none"> • Public Health Centres of the prefectural government or the municipal governments of large regions • Food Sanitation Section of the Environmental Health Division under the Bureau of Public Health
Los Angeles	<ul style="list-style-type: none"> • Fire Department • Building / Planning Department • Los Angeles County Department of Health Services
Michigan	<ul style="list-style-type: none"> • Michigan Department of Agriculture • Health Department
Ontario	<ul style="list-style-type: none"> • Health Department of a municipal government
Sydney	<ul style="list-style-type: none"> • Local Council • Relevant State Government Departments such as: <ol style="list-style-type: none"> 1. State Health Department; 2. State Department of Urban Environment and Planning; 3. Sydney Waters; 4. Environmental Protection Authority; 5. New South Wales Fire Brigade;
London	<ul style="list-style-type: none"> • Environmental Health Department of the Local Authority

Remark:

1. **Local Council** means a co-ordinating authority

Sources:

1. Bureau of Public Health of Tokyo Metropolitan Government
2. Michigan Department of Agriculture
3. Public Health Branch of Government of Ontario
4. Health and Building Surveyor of Sydney
5. Ministry of Agriculture, Fisheries and Food, United Kingdom

6.3 In some places, one single authority is appointed to ensure co-ordination among the different government departments or agencies whilst in others, no such arrangement has been made. Table 5 summarizes the findings.

Table 5 – Departments/Agencies Responsible for Co-ordinating the Different Authorities Involved in the Examination of Applications

Places	Authorities
Tokyo	<ul style="list-style-type: none"> • Public Health Centres of the Prefectural Government
Los Angeles	<ul style="list-style-type: none"> • “Each level of government is responsible for the different licences”
Michigan	<ul style="list-style-type: none"> • Michigan Department of Agriculture
Ontario	<ul style="list-style-type: none"> • “No central authority or single body”
Sydney	<ul style="list-style-type: none"> • Local Council

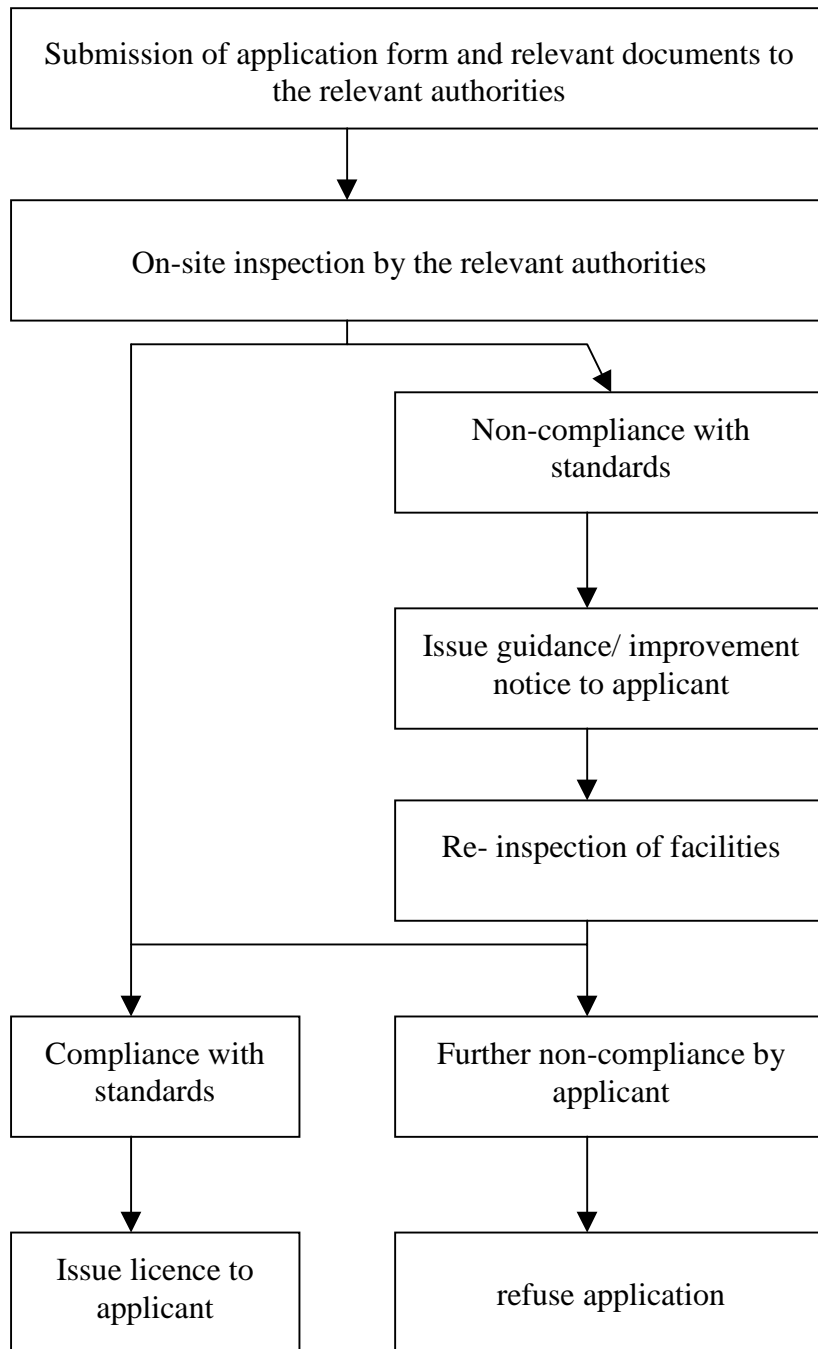
Sources:

1. Bureau of Public Health of Tokyo Metropolitan Government
2. Michigan Department of Agriculture
3. Canadian Consulate General
4. Health and Building Surveyor of Sydney

Application Procedures

6.4 The procedures for applying for the licences of food premises are very similar overseas except Sydney and London which do not require a licence to open, say, a restaurant. Diagram 1 shows the application procedures for licences of food premises in Michigan and Ontario.

Diagram 1 – Application Procedures for Licences of Food Premises in Michigan and Ontario



Tokyo

6.5 In Tokyo, before the submission of application, the Food Sanitation Section of the Bureau of Public Health will discuss with the applicants on the required facilities standards. If it is judged that the business facilities do not comply with the required facility standards, a guidance will be issued to the applicants to ensure compliance prior to the application. Thus, the procedures for vetting applications are as follows:

1. Pre-application guidance;
2. Acceptance of application;
3. On-site survey (confirmation of compliance with facility standards, assessment of duration of licence, etc.);
4. Compilation of written licence and register;
5. Approval;
6. Notification of issue of licence; and
7. Issue of licence.

Los Angeles

6.6 In the City of Los Angeles, applicants are required to submit an application form with the appropriate fee to the relevant authority. A receipt for the paid fee will be issued to the applicant and the receipt can be treated as a temporary licence. The actual licence will be issued to the applicant after the authority is satisfied with the application.

Sydney

6.7 In Sydney, there is no need to obtain a licence to open a restaurant. The applicant needs to submit a development application together with necessary plans and operation details including the hours of trade to the Local Council. The Health and Building Surveyor and the Town Planner will then examine the suitability of the proposal. The applicant is also required to advertise the proposal on newspapers.

6.8 It is also necessary for the Local Council to refer the application within two days of receipt of the application to the other government bodies such as Sydney Waters, Environmental Protection Authority, New South Wales Fire Brigade for their comments and conditions to be imposed on the application. These departments are given seven days to respond. If they fail to respond within that period, the Health and Building Surveyor will assess the application according to what he sees fit. After considering all issues regarding the compliance with the Environmental Planning and Assessment Act for land use control, National Food Code, the Building Code of Australia, etc, the application will be approved subject to conditions, if necessary¹.

London

6.9 All food businesses covered by the General Food Hygiene Regulations have to be registered with the relevant food authority, i.e., the Environmental Health Department of the Local Authority. This does not involve any kind of prior approval by the food authority; it is simply a system for ensuring that the food authority knows of the existence of these businesses so that subsequent inspections can be scheduled.

¹ The Local Council seldom rejects applications and in those rare cases (of rejection), the reasons would usually be inadequate parking space or the food premise was causing nuisance to its neighbours. Non-compliance with structural or sanitation requirements seldom formed a reason for rejecting application. (Source: Interview with Mr Chick, the Health and Building Surveyor of Rockdale City Council of Australia.)

Requirements to be Met Before Issue of Licences

6.10 It is found that the requirements necessary to be met by applicants for licences of food premises are very similar overseas. Listed below is the summary of those requirements to be met by applicants in Tokyo, Los Angeles, Michigan, New York and London.

1. Food Law, e.g. in Tokyo, the Food Sanitation Law; in Los Angeles, the Uniform Retail Food Facilities Law; in Michigan, the Public Health Code; in New York, the New York State Sanitary Code and in London, the 1995 General Food Hygiene Regulations.
2. Health and sanitation requirements, e.g. proper drainage system, flushed toilets, proper sterilizing and storage of utensils, appropriate sanitary fitments, etc.
3. Proper storage and removal of refuse.
4. Clean water supply: compliance with the standards required by law.
5. Adequate ventilation, e.g. independent and separate ventilating system to the kitchen, toilets, seating accommodation, etc.
6. Structural requirements: premises should be designed and constructed to permit good hygiene practices, e.g. no unauthorized building works, use of fire resistant materials, etc.
7. Proper use of equipment and facilities, e.g. use of water resistant utensils, proper kitchen fitments, proper arrangement for washing and sterilization facilities, etc.
8. Requirements for food handlers, e.g. maintain a high degree of personal cleanliness, never smoke in food handling areas, must receive adequate supervision and / or training in food hygiene, etc.
9. Pest control

6.11 In Tokyo, it is necessary for the food business to appoint a person responsible for food sanitation. This person must have obtained qualification relating to food sanitation and this qualification must be obtained through public examination. Such person can be a food sanitation manager or a nutritionist or a chef. If, at the time of issuing the licence, there is no person suitably qualified to be responsible for food sanitation, the business must sign an affidavit promising to appoint a person responsible for food sanitation within three months of receiving the licence.

System of Appeal

6.12 Not all overseas places under study have an appeal system. Table 6 gives a brief description of the appeal system for licences of food premises.

Table 6 – Appeal System for Licences of Food Premises in Tokyo, Ontario and Sydney

Places	Appeal To...	Appeal Against...
Tokyo	<ul style="list-style-type: none"> Judicial Affairs Division of the General Administration Bureau 	<ul style="list-style-type: none"> Duration of an issued licence rejection of an application
Ontario	<ul style="list-style-type: none"> Provincial Court 	<ul style="list-style-type: none"> rejection of an application
Sydney	<ul style="list-style-type: none"> Land and Environmental Court 	<ul style="list-style-type: none"> any delays caused by the Health and Building Surveyor rejection of an application

Sources:

1. Bureau of Public Health of Tokyo Metropolitan Government
2. Canadian Consulate General
3. Health and Building Surveyor of Sydney

London

6.13 There is no need for appeal regarding registration – the Environmental Health Department of the Local Authority cannot prevent a food business from registering although they can subsequently stop them from trading if inspections reveal that they are operating unhygienically.

Procedures for Renewal*Duration of Licence*

6.14 Table 7 shows the effective period of licences of food premises.

Table 7 – Effective Period of Licences of Food Premises

Places	Licences of Food Premises
Tokyo	• 5-8 years
Los Angeles	• 1 year
Michigan	• 1 year
Sydney	• not applicable (but the development application, once approved, is effective forever)
London	• not applicable

Sources:

1. Consulate-General of Japan, Hong Kong
2. Michigan Department of Agriculture

*Renewal Procedures**Tokyo*

6.15 Renewal procedures are the same as that of initial applications. The Public Health Office receives the application, conducts an on-site survey, and, if the facilities of the premise conform to all required standards, the Public Health Office of the local government will grant a licence.

6.16 However, when compared with the initial applications, fewer documents are required for renewal. For example, it is not necessary to submit a diagram of the premise's facilities.

Los Angeles

6.17 Renewal is done automatically by paying the renewal fee. No application is needed.

Time Involved in Scrutinizing Application

6.18 Table 8 summarizes the time involved in scrutinizing application for licences of food premises.

Table 8 – Time Involved in Scrutinizing Application

Places	Licences of Food Premises
Tokyo	<ul style="list-style-type: none"> • Within 8 days if the facilities conform to the required facility standards
Los Angeles	<ul style="list-style-type: none"> • The temporary licence is issued immediately • 2-4 weeks for the actual licence
Sydney	<ul style="list-style-type: none"> • Statutory time limit for approval is 40 working days, beyond this, the application is deemed to be refused • In general, it takes 6-8 calendar weeks

Sources:

1. Consulate-General of Japan, Hong Kong
2. Health and Building Surveyor of Sydney

Follow-up Action for Ensuring Compliance with Licensing Conditions

Tokyo

6.19 If, after the grant of licence, the facilities of the food premises cease to conform to the facility standards or do not follow the management standards, the Public Health Inspectors will issue a warning by means of a notice of caution and guidance to the operators. If improvements are not made, the operators of the food businesses might be ordered to suspend business.

6.20 Food sanitation inspection may also be carried out by inspectors such as medical doctors, veterinarians and pharmacists who are stationed in the prefectural and municipal Public Health Centres. They may take samples from food retailers and restaurants to conduct detailed laboratory examination of foods, additives, equipment and packaging, in order to find out whether these products are conformed to the relevant standards and specifications.

Los Angeles

6.21 Routine inspection is carried out by the Los Angeles County Department of Health Services. It is supposed to inspect food premises every three months to ensure the food premises are clean and food is properly prepared and stored. However, it is reported that they are inspecting less frequently than that.

Michigan

6.22 Food premises are routinely inspected by staff of the Michigan Department of Agriculture for compliance with sanitation and construction requirements. There is an Inspection Quality Assurance Programme required by law to be conducted by the Michigan Department of Agriculture at a ratio of approximately 1 per 100 inspection.²

6.23 The Michigan Department of Agriculture also delegates the responsibility of inspection to the health departments. The health departments report annually to the Michigan Department of Agriculture a summary of all inspections, investigations, samplings, legal actions and any other actions of a significant nature.³

Sydney

6.24 Normal control is by **scheduled** inspection. If food poisoning occurs as a result of substandard food handling, the Health and Building Surveyor is responsible for the investigation and report. If food poisoning is due to the negligence of the Health and Building Surveyor, the Health and Building Surveyor may be made personally liable.

² The Inspection Quality Assurance Programme is a field evaluation of the performed inspections. This means that for every 100 inspection made to the food premises, the Department of Agriculture would randomly draw one performed inspection to conduct a field evaluation to assess the performance of the inspectors. Michigan Department of Agriculture, Food Establishment Licensing: Regulation No. 557, 22 January 1980, R. 285.557.8, Rule 8.

³ Michigan Department of Agriculture, Food Establishment Licensing: Regulation No. 557, 22 January 1980, R. 285.557.8, Rule 8.

London

6.25 Environmental Health Officers carry out routine inspections and may also visit food premises as a result of a complaint. They do not have to make an appointment and they will usually come without notice. The frequency of inspection depends on the potential risk posed by the type of business and its previous records. Some premises may be inspected at least every six months, others much less often.⁴

7. Liquor Licences

Issuing Authorities

7.1 Table 9 lists the issuing authorities for liquor licences. It is noted from the table that the responsibility for issuing liquor licences is delegated to independent authorities.

Table 9 – Issuing Authorities for Liquor Licences

Places	Liquor Licence
Tokyo	• Not applicable
Los Angeles	• Department of Alcoholic Beverage Control
Illinois	• Liquor Control Commission
New York	• New York State Liquor Authority
Ontario	• The Alcohol and Gaming Commission of Ontario
Sydney	• Liquor Licence Board
London	• Licensing Justices

Sources:

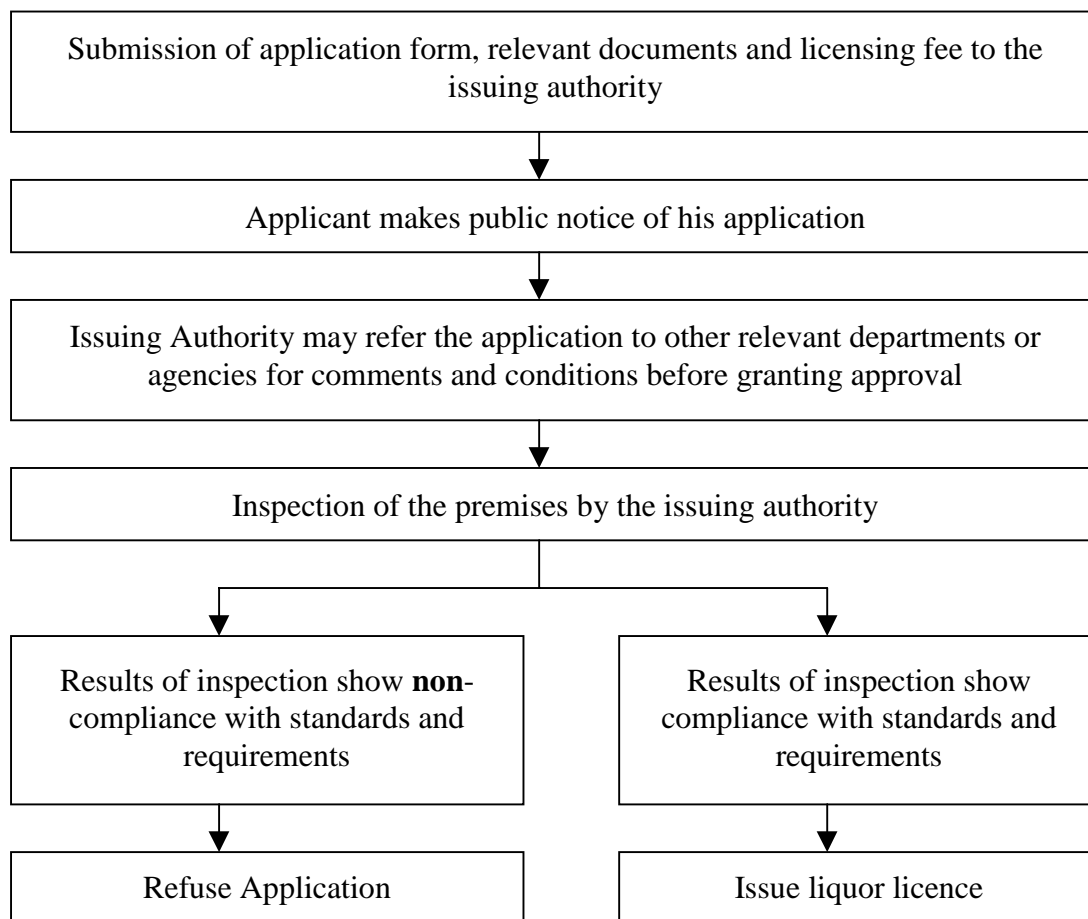
1. Consulate-General of Japan, Hong Kong
2. Gale Research Inc, National Directory of State Business Licensing and Regulation, 1st Edition
3. Division of Alcoholic Beverage Control, State of New York
4. Alcohol and Gaming Commission of Ontario
5. Health and Building Surveyor of Sydney
6. Ministry of Agriculture, Fisheries and Food, United Kingdom

⁴ Ministry of Agriculture, Fisheries and Food and Department of Health, Food Law Inspections and Your Business.

Application Procedures

7.2 Diagram 2 summarizes the application procedures for liquor licences in Ontario, Sydney and London .

Diagram 2 – Application Procedures for Liquor Licences in Ontario, Sydney and London



Requirements to be Met Before the Issue of Licences

7.3 Table 10 and 11 summarize the requirements to be met by applicants for liquor licences.

Table 10 – Requirements to be Met Before Issue of Liquor Licences

Requirements	Los Angeles	Illinois	New York	Sydney	Ontario	London
Public Notice of Application	✓		✓	✓	✓	✓
Premise must serve meals	✓	✓				
Premise layout plans	✓		✓		✓	
Not within the vicinity of churches, hospitals, schools, residence, etc.	✓		✓			

Table 11 – Further Requirements to be Met Before Issue of Liquor Licences

Places	Further Requirements
Los Angeles	<ul style="list-style-type: none"> • Comply with the Alcoholic Beverage Control Act; • Licence for a bona fide public eating place; and • Valid seller's permit
Illinois	<ul style="list-style-type: none"> • Comply with the Liquor Control Commission Rules and Regulations; • US citizen of good character and repute; • No felony conviction; • Not have had a liquor licence rejected before; • Applicant must not be law enforcing public official; and • Books and records must be made available for inspection
New York	<ul style="list-style-type: none"> • Comply with the Alcoholic Beverage Control Laws; • No felony conviction; • Not have had a liquor licence revoked within the past year; • Licences are issued upon the recommendation of local alcoholic beverage control boards; and • Copies of bank statements
Sydney	<ul style="list-style-type: none"> • Application referred to the Local Council, police, social security department and education department for comments and conditions before granting approval
Ontario	<ul style="list-style-type: none"> • Vendor's Permit from the Ministry of Finance; • Certificate of Compliance from Retail Sales Tax; and • Agency Letters of Approval, i.e, approval from a) Building Department; b) Fire Protection Officer or Fire Marshall; and c) Public Health Department
London	<ul style="list-style-type: none"> • Applications referred to the police and Local Authority for approval

Sources:

1. Gale Research Inc, National Directory of State Business Licensing and Regulation, 1st Edition
2. Division of Alcoholic Beverage Control, State of New York
3. Health and Building Surveyor of Sydney
4. Alcohol and Gaming Commission of Ontario
5. Ministry of Agriculture, Fisheries and Food, United Kingdom

System of Appeal

7.4 Not all overseas places have an appeal system for liquor licences. Table 12 gives a brief description of the appeal system in Ontario and London.

Table 12 – Appeal System for Liquor Licence in Ontario and London

Places	Appeal To...	Appeal Against...
Ontario	<ul style="list-style-type: none"> Board of Directors of the Alcohol and Gaming Commission 	<ul style="list-style-type: none"> review, suspension or revocation of liquor licence applications
London	<ul style="list-style-type: none"> Crown Court 	<ul style="list-style-type: none"> decisions made by licensing justices

Sources:

1. Alcohol and Gaming Commission of Ontario
2. Ministry of Agriculture, Fisheries and Food, United Kingdom

Los Angeles

7.5 Anyone can object the issue of a liquor licence to the applicant. If there is such an accusation, the applicant is entitled to have a public hearing to present a defence against the charges made. The hearing will be presided over by an Administrative Law Judge of the Administrative Hearings Office.

Procedures for Renewal

Duration of Liquor Licences

7.6 Table 13 shows the effective period of liquor licences.

Table 13 – Effective Period of Licences of Liquor Licences.

Places	Liquor Licence
Los Angeles	• 1 year
Illinois	• 1 year
New York	• 1 to 3 years
Ontario	• 2 years for the new liquor licence • 3 years for subsequent renewals
Sydney	• 1 year
London	• 3 years

Sources:

1. Gale Research Inc, National Directory of State Business Licensing and Regulation, 1st Edition
2. Division of Alcoholic Beverage Control, State of New York
3. Alcohol and Gaming Commission of Ontario
4. Health and Building Surveyor of Sydney
5. Ministry of Agriculture, Fisheries and Food, United Kingdom

*Renewal Procedures**Los Angeles*

7.7 Applicant is required to pay the required renewal fee before the licence expires.

London

7.8 The Licensing Justices have complete discretion whether to revoke a liquor licence and anyone can initiate revocation proceedings.

Time Involved in Scrutinizing Application

7.9 Table 14 summarizes the time involved in scrutinizing application for liquor licences.

Table 14 – Time Involved in Scrutinizing Application for Liquor Licence

Places	Liquor Licence
Los Angeles	<ul style="list-style-type: none"> • most investigations take approximately 45-50 days. Circumstances often result in a longer waiting period.
Sydney	<ul style="list-style-type: none"> • approximately 56 days

Sources:

1. Department of Alcoholic Beverage Control, State of California
2. Health and Building Surveyor of Sydney

Follow-up Action for Ensuring Compliance with Licensing Conditions

New York

7.10 The New York State Liquor Authority Enforcement Bureau is responsible for the investigation and enforcement of the Alcoholic Beverage Control Law in the New York State. Police is also involved in enforcement since most violations of the law are crimes.

Los Angeles

7.11 The Department of Alcoholic Beverage Control employs investigators who are 'peace officers' to enforce the law. Police officers, sheriff's deputies are also involved in enforcement.

PART 4 – LICENSING IN HONG KONG

8. Introduction

8.1 In Hong Kong, all food premises are required to obtain the relevant licenses prior to the operation of business. The two Provisional Municipal Councils (PMCs) are the licensing authorities for licensing food premises. Types of licences and permits issued by the PMCs are listed in Appendix 1. Since the licensing procedures of these different licences and permits are quite similar, this research report will mainly focus on restaurant licensing. The Liquor Licensing Boards (LLBs) of the two PMCs are the licensing authority for liquor licences. As the executive arms of the PMCs, the Municipal Services Departments (MSDs) are responsible for co-ordinating and processing licence applications.

9. Licences of Food Premises

Types of Restaurant Licences

9.1 There are two kinds of restaurant licences, namely, the General Restaurant Licence and the Light Refreshment Restaurant Licence. A General Restaurant Licence permits the licensee to prepare and sell any kind of food for consumption on the premises. A Light Refreshment Restaurant Licence permits the licensee to prepare and sell any one group of the specified food items for consumption on the premises. Appendix 2 shows the list of the approved food items for light refreshment restaurants.

9.2 Restaurant licences may be issued as Provisional Licences or Full Licences. Provisional Licences are issued to restaurant premises which have met the essential health, structural, fire safety and ventilation requirements, and they enable the applicant to run the business prior to the issue of the Full Licence.

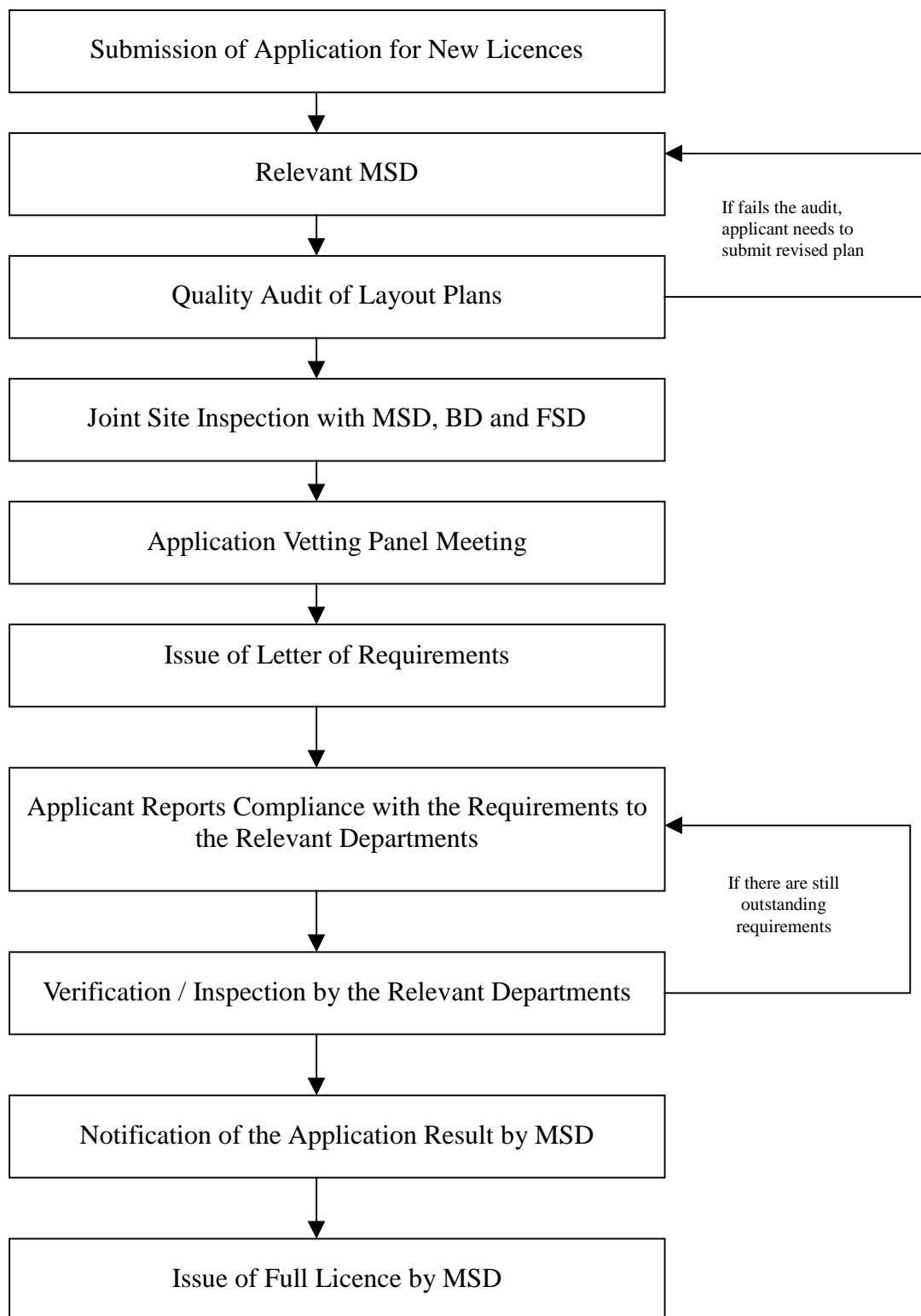
9.3 Full Licences are issued to applicants who have fully complied with all health, structural, fire safety, ventilation and other requirements.

Application Procedures

9.4 The application and licensing procedures adopted by the two PMCs are similar. Diagram 3 shows the details of these procedures of a Full Licence for General Restaurants. In sum, each application is processed as follows:

1. Applicant submits the application form and layout plans to the relevant MSD;
2. Applicant obtains the relevant documents from the registered fire service installation contractors and gas contractors and submit them to the relevant MSD;
3. The relevant MSD makes quality audit of layout plans;
4. The relevant MSD, Buildings Department (BD) and Fire Services Department (FSD) carry out a Joint site inspection;
5. Applicant attends Application Vetting Panel Meeting with the relevant MSD, BD and FSD;
6. The relevant MSD issues Letter of Requirements (LR) or Refusal;
7. The relevant MSD carries out compliance inspection;
8. The relevant MSD, BD and FSD carry out separate final verification inspection; and
9. The relevant MSD issues licence.

Diagram 3 – Flow Chart Showing Restaurant Application and Licensing Procedures



9.5 Applicant applying for a Full Licence can also apply for a Provisional Licence. However, application for a Provisional Licence without applying for a Full Licence will not be considered by the MSDs.

9.6 A Provisional Licence will be issued once the food premises are certified by qualified professionals to have met the essential requirements.

3-tier System for Verification of Compliance with Building Safety Requirements

9.7 Since August 1996, BD has adopted a 3-tier system to streamline and simplify the process of verification of compliance with building safety requirements for restaurant licensing. Under the system, all building requirements are graded into Categories 1, 2 and 3. Building requirements under Categories 1 and 2 are either related to matters of facts or to well-established standards, therefore, the applicant or his Authorized Person (AP) or Registered Structural Engineer (RSE) is required to certify compliance to the relevant MSDs. For Category 3, since requirements are related to more serious concerns about building safety, the applicant is still required to certify compliance to BD through the MSDs.

Departments Involved in Licensing

9.8 Table 15 lists the departments concerned for restaurant licensing. BD mainly oversees the safety requirements for buildings whereas FSD oversees the fire safety requirements. Apart from overseeing the hygiene and sanitation requirements, the MSDs also act as a co-ordinator among BD, FSD and the applicant.

Table 15 – Departments Involved in Restaurant Licensing

Department	Responsibilities
Municipal Services Department	<ul style="list-style-type: none"> • Issue Full and Provisional Licences; • Co-ordinate the whole licensing process; and • Inspect premises
Buildings Department	<ul style="list-style-type: none"> • Oversee building, structural and escape requirements; • Check if the premises comply with Buildings Ordinance and Regulations; and • Inspect premises
Fire Services Department Fire Protection Command (Ventilation Division)	<ul style="list-style-type: none"> • Oversee fire safety, ventilation, electricity and gas installation requirements; • Issue Dangerous Goods Licence or Letter of Approval for storage and use of dangerous goods; and • Inspect premises • Issue Letter of Compliance (Ventilating System)

Requirements to be Met Before Issue of Licences

9.9 To obtain a restaurant licence, each food premise must conform to the followings:

1. meet stringent health and hygiene requirements;
2. provide adequate ventilation;
3. meet structural requirements;
4. contain no unauthorized building works;
5. provide adequate means of escape; and
6. meet fire safety requirements.

Please refer to Appendix 3 for details of the requirements.

9.10 Since Light Refreshment Restaurant Licences are issued to premises which offer a limited range of food items, the requirements, e.g. areas for food room, kitchen, etc. are less stringent than those for general restaurants.

System of Appeal

9.11 The Public Health and Municipal Services Ordinance Cap. 132 Section 125 stipulates that if any person is dissatisfied with the decision of the licensing authority, he may apply for a review of the decision to the licensing authority and if he remains dissatisfied with the determination of licensing authority upon review, he may appeal to the Municipal Services Appeal Board.

Procedures for Renewal

Duration

9.12 The Provisional Licence is valid for six months and can only be renewed once for another six months. A Full Licence is valid for 12 months and may be renewed upon expiry.

Renewal Procedures

9.13 Renewal of restaurant licences is an annual routine. Licensees will be advised in writing by the District Secretary to renew the licences at least two weeks before expiry of the licence. The licence is renewed on payment of the prescribed fees at the appropriate shroff office.

Time Involved in Scrutinizing Application

9.14 If the applicant complies with all requirements from the outset of the application, according to the performance pledges given by the departments concerned, it will take about less than 50 working days for the MSDs to issue a Full Licence to the applicant. Diagram 4 summarizes the time involved in each step.

9.15 BD and FSD have also set performance pledges on the parts they play in the restaurant licensing system. Upon passing the Quality Audit, applications are referred by the MSDs to BD and FSD for comments. BD has pledged to provide comments to the MSDs on building safety requirements within 30 days for cases to be discussed in the Application Vetting Panel meeting and within 45 days for re-submission cases.⁵

9.16 FSD has two sets of performance pledges, one set for the Fire Protection Regional Offices and the other for the Ventilation Division. The Fire Protection Regional Office has pledged to notify the MSDs within seven working days upon full compliance with the relevant fire safety requirements whereas the Ventilation Division has pledged that inspections would be carried out within 14 working days upon receipt of report of completion. The internal procedures of Fire Protection Command also states that the LR on fire safety will be issued five days after the Joint Site Inspection, if the premises are found to be suitable for licensing.⁶

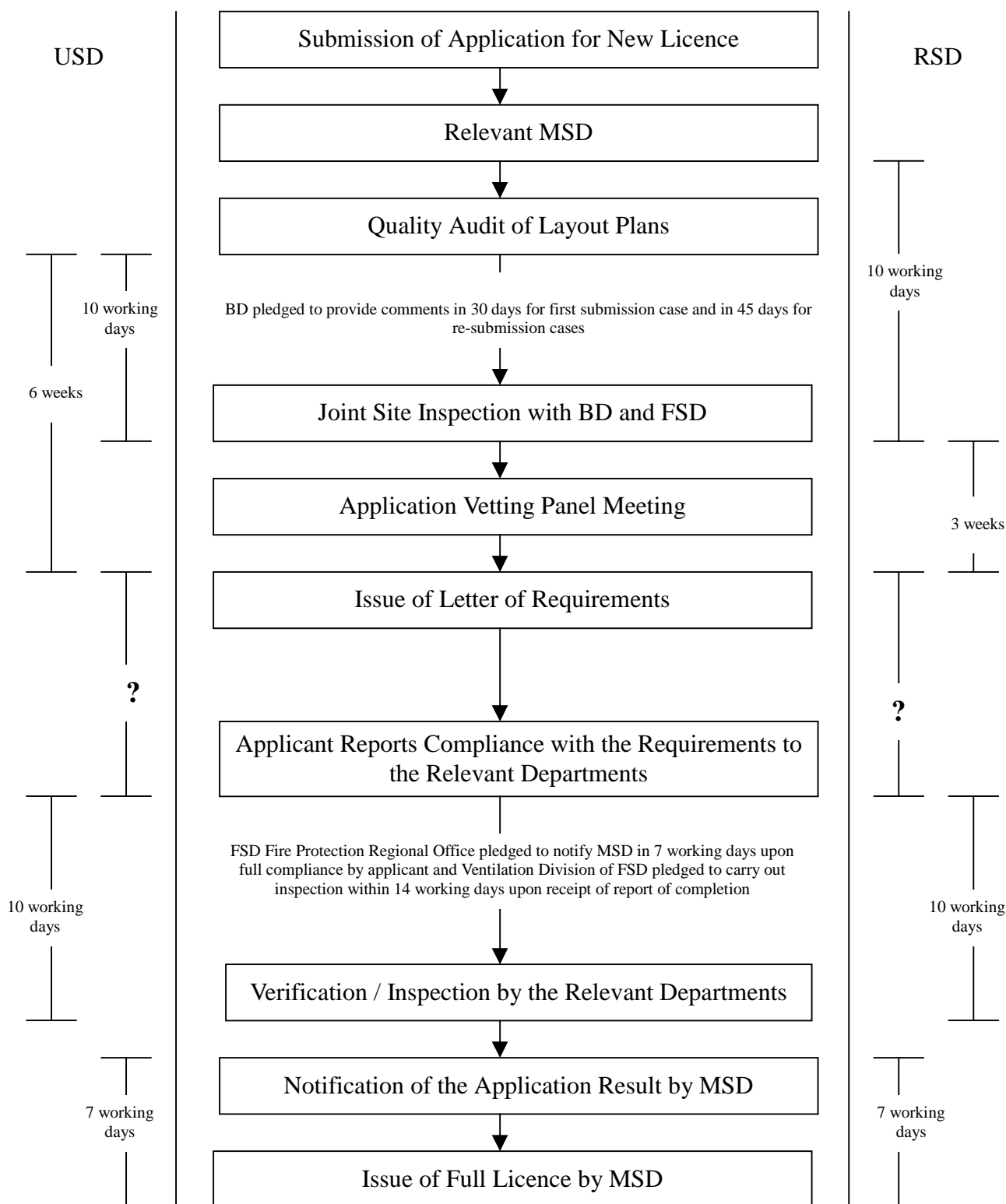
9.17 Licensed food premises under the jurisdiction of the USD are now subject to a grading system (which took effect since November 1992). This system categorizes restaurants into three grades:

- Grade A - Maintain a high standard of hygiene and will be checked once every eight weeks.
- Grade B - Maintain a satisfactory standard of hygiene and will be checked once every four weeks.
- Grade C - Maintain a standard of hygiene of acceptable levels and will be checked once every fortnight.

⁵ Office of the Ombudsman, Report of the Investigation on Restaurant Licensing System, January 1999, p.28.

⁶ Office of the Ombudsman, Report of the Investigation on Restaurant Licensing System, January 1999, p.28.

Diagram 4 – Performance Pledge made by the MSDs, BD and FSD in the Licensing Procedures for a Full Licence



- Sources: 1. USD, A Guide to Application for Restaurant Licences
 2. Office of the Ombudsman, Report of the Investigation on Restaurant Licensing System

9.18 The grades will be reviewed annually. If the licensees do not know the grade of their premises, they can consult the Health Inspectors during their inspections.

9.19 Food premises under the jurisdiction of the RSD are also subject to selective inspection system and licence suspension/cancellation policies.

10. Liquor Licences

Types of Liquor Licences

10.1 There are two types of liquor licences, namely, the Restaurant Liquor Licence and the Club Liquor Licence. The former is issued to persons who intend to supply liquor in restaurants for consumption. The latter is issued to those who intend to supply liquor at clubs for members' consumption. Temporary liquor licence is also available.

Application Procedures

10.2 To apply for a liquor licence for a restaurant, the applicant needs to submit to the LLB application forms and copies of the followings:

1. Full or Provisional Restaurant Licence relating to the premises;
2. Applicant's Identity Card;
3. Business Registration Certificate of the Restaurant; and
4. Three copies of the layout plan.

- 10.3 Each application has to go through the following steps:
1. Applicant needs to meet the MSDs to verify the information;
 2. MSDs will then refer the application to the Commissioner of Police and District Officer concerned for comments;
 3. MSDs will then refer the application to the Office of the Licensing Authority, Home Affairs Department (HAD) for comments;
 4. Applicant needs to place an advertisement in four newspapers on the same date; and
 5. Applicant needs to post notices in the building where the premises under application are located.

If there is no objection, a liquor licence will be issued to the applicant.

Authorities Involved in Issuing Licences

10.4 The LLBs of the PMC are the licensing authorities for issuing liquor licences. The Liquor Licensing Office of the respective MSDs is the executive arm of the PMCs.

10.5 For non-contested cases, the LLB of the Provisional Urban Council has delegated its powers to approve liquor licences to Delegated Members, while the LLB of the Provisional Regional Council approves the licences by circulation.

10.6 The Police is also responsible for issuing temporary liquor licence.

Other Authorities Involved in Processing Application

10.7 The Home Affairs Department (HAD), the Police and District Offices are also involved in processing the applications.

Requirements to be Met Before Issue of Licences

10.8 Liquor licence for restaurants will only be issued for premises holding Full or Provisional Restaurant Licence. There are 15 standard conditions the applicant needs to meet. Please refer to Appendix 4 for details.

System of Appeal

10.9 If there is objection to an application, the applicant will be invited to make representations before the LLB personally or with his legal representative or an agent. He can make use of this opportunity to air his grievances.

Procedures for Renewal

10.10 Any renewal for Restaurant Liquor Licence or Club Liquor Licence are submitted to the MSDs six months before the licence is due for renewal.

10.11 For renewal of Restaurant Liquor Licence, the applicant needs to submit an application form, recent photographs and copy of valid restaurant licence to the MSDs. The MSDs will advertise the renewal notice and the applicant is required to pay for the cost of advertisement.

10.12 For renewal of Club Liquor Licence, the applicant has to substantiate his application by providing the MSDs with an application form, recent photographs and copy of the Certificate of Exemption or Compliance issued by the HAD. The MSDs will also advertise the renewal notice and the applicant is required to pay for the cost of advertisement.

Time Involved in Scrutinizing Application

10.13 The average time required to process the applications by the MSDs is reported to be within the MSDs' performance pledge of about two and a half months. The average time taken by the applicants to meet the licensing requirements is reported to be six months to eight months.⁷

10.14 Under the performance pledges of MSDs, a liquor licence will be issued within 5 working days after the issue of a restaurant licence.

⁷ Constitutional Affairs Bureau, Restaurant and Liquor Licensing, 10 May 1999.

PART 5 – ANALYSIS

11. Licensing for General Restaurants

Full Licences

11.1 Appendix 5 shows the licensing statistics of Full Licences for General Restaurant by the MSDs in 1996-1998. It is noted that except in 1997, neither USD nor RSD could finish vetting all the applications received that year. For the RSD, the number of applications carried over to the next year has increased since 1996. This explains partly why there are unlicensed food businesses.

Provisional Licences

11.2 Appendix 6 shows the licensing statistics of Provisional Licences for General Restaurants by the MSDs in 1996-1998. It is noted that the number of processed application has been increasing since 1996 and thus reducing the number of applications being carried over to the next year.

12. Licensing for Light Refreshment Restaurants

Full Licences

12.1 Appendix 7 shows the licensing statistics of Full Licences for Light Refreshment Restaurant by the MSDs in 1996-1998. Again, during the study period, neither USD nor RSD could finish vetting all the applications received that year. Indeed, the number of applications carried over to the next year has been increasing since 1996 which in turn, increased the number of unlicensed food businesses.

Provisional Licences

12.2 Appendix 8 shows the licensing statistics of Provisional Licences for Light Refreshment Restaurants by the MSDs in 1996-1998. Again, the appendix indicates that during the past three years, neither USD nor RSD could finish vetting all the applications received that year. Indeed, the MSDs could only process less than 70% of applications received that year. Therefore, there has been an increasing number of unlicensed food businesses during the period.

13. Processing Time of Applications

Overview

13.1 Table 16 shows the actual time used in the examination of applications by the MSDs in the period 1993 to 1997. The findings show that the average time used in the examination has been decreasing since 1993. For the USD cases, the average processing time has been reduced from 15.5 months in 1993 to 8 months in 1997; whereas for the RSD cases, it has been reduced from 8.6 months to 6.9 months. Considerable improvement was found in the maximum time taken. For the USD cases, the maximum time taken has been reduced from 47 months to 10 months in the corresponding period; whereas for the RSD cases, the maximum time has been reduced from 28 months to 10.7 months. The minimum processing time has remained more or less the same, that is, around 4 months for the USD cases and 3 months for the RSD cases.

13.2 However, despite the improving trend, if we compare the time taken by the USD and the RSD to process an application with that of the overseas authorities, we can see that the average time taken by the USD and RSD was much longer than that of the authorities in Tokyo (eight days if all requirements were fulfilled), Los Angeles (two to four weeks for an actual licence) and Sydney (six to eight weeks).

Table 16 – Time Actually Used in the Examination of Applications between 1993 and 1997

Year	USD cases			RSD cases		
	Min. time (months)	Max. time (months)	Ave. time (months)	Min. time (months)	Max. time (months)	Ave. time (months)
1993	5.0	47.0	15.5	2.5	28.0	8.6
1994	7.0	27.0	14.0	2.6	25.3	8.9
1995	7.0	31.0	15.0	3.2	17.5	8.8
1996	4.0	20.6	10.6	3.0	17.5	7.6
1997 (up to Nov.)	4.0	10.0	8.0	2.8	10.7	6.9

Source: Office of The Ombudsman, Report of the Investigation on Restaurant Licensing System, January 1999

Full Licences for General Restaurants

13.3 Table 17 shows that the time required for processing application for Full Licence for General Restaurants. It is noted that in 1998, the longest time that the USD took to finish vetting an application was within 12 to 15 months whilst in the previous years, the longest time taken was more than 18 months. For the RSD, the longest time taken was between 11 to 12 months which was an improvement over the previous years which took more than 12 months.

Table 17 - Number of Applications Showing the Time Taken for Processing Each Application for Full Licence for General Restaurants Between 1996 and 1998

Processing time (months)	USD			RSD		
	1996	1997	1998	1996	1997	1998
<3	0	0	0	0	0	0
3-4	0	0	5	0	0	1
4-5	1	0	5	0	0	1
5-6	0	3	2	1	0	2
6-7	5	3	2	3	2	2
7-8	4	6	5	2	3	2
8-9	5	4	8	0	3	3
9-10	4	3	3	2	2	0
10-11	2	1	0	2	4	1
11-12	0	4	2	1	1	2
12-15	6	4	1	3	2	0
15-18	3	2	0	2	0	0
>18	6	4	0	2	0	0
Total	36	34	33	18	17	14

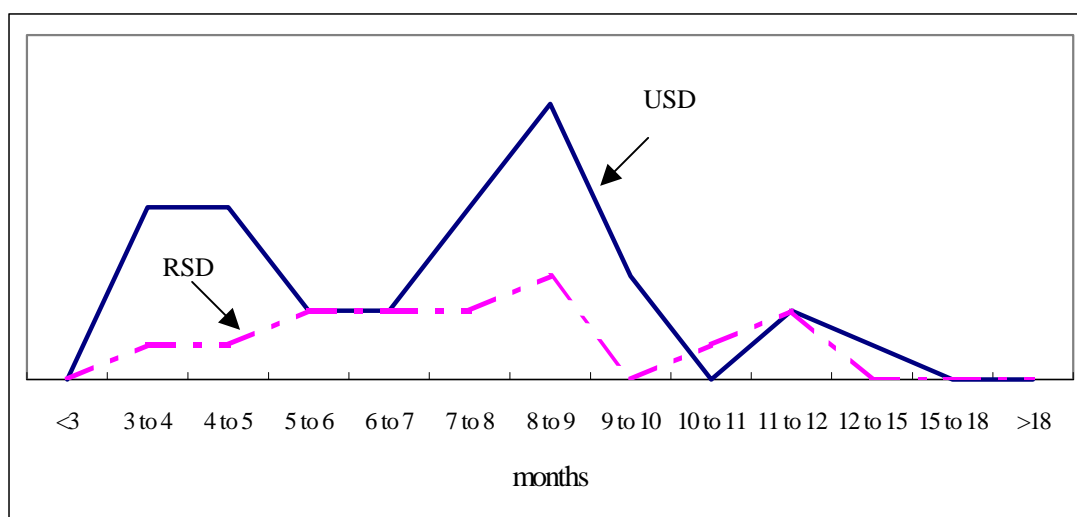
Remark: Statistics based on a sample drawn in 1996-1998. Please refer to Part 1- Methodology for details of the sampling method.

Sources:

1. Urban Services Department
2. Regional Services Department

13.4 Diagram 5 gives a graphical presentation of the processing time taken by the USD and RSD for each application for Full Licence for General Restaurants in 1998. It is illustrated in the graph that the mode processing time for both the USD and the RSD cases in 1998 was eight to nine months. The shortest time was three to four months and the longest time taken was 12 to 15 months for the USD and 11 to 12 months for the RSD. In other words, most applicants have to wait for eight to nine months to obtain a Full Licence. The 'fortunate one' would have to wait for three to four months whilst the 'less fortunate one' would have to wait for a year or even more than that.

Diagram 5 - Processing Time for Application for Full Licence for General Restaurants in 1998



Full Licences for Light Refreshment Restaurants

13.5 Table 18 shows the time taken for processing applications for Full Licence for Light Refreshment Restaurant. The findings show that the time used has been decreasing since 1996.

Table 18 - Number of Applications Showing the Time Taken for Processing Each Application for Full Light Refreshment Restaurant Licence between 1996 and 1998

Processing time (months)	USD			RSD		
	1996	1997	1998	1996	1997	1998
<3	1	0	0	0	0	0
3-4	1	2	3	1	1	1
4-5	2	1	5	0	2	1
5-6	2	3	8	2	2	1
6-7	2	2	5	3	2	3
7-8	3	0	4	1	0	2
8-9	3	6	1	0	3	1
9-10	4	4	3	3	0	2
10-11	2	3	1	1	4	1
11-12	3	2	2	1	2	1
12-15	4	6	2	2	1	1
15-18	4	2	0	1	0	0
>18	5	3	0	3	0	0
Total	36	34	34	18	17	14

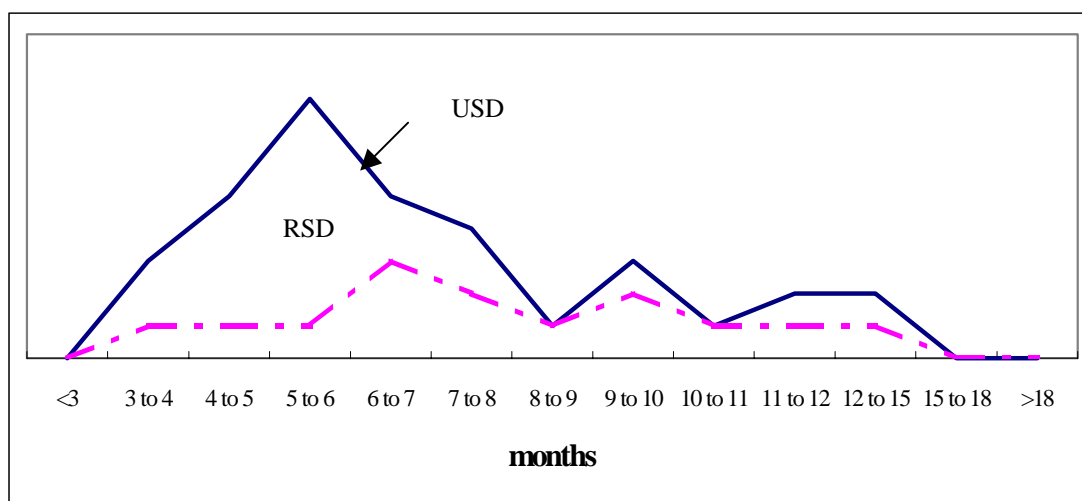
Remark: Statistics based on a sample drawn in 1996-1998. Please refer to Part I- Methodology for details of the sampling method.

Sources:

1. Urban Services Department
2. Regional Services Department

13.6 Diagram 6 gives a graphical presentation of the processing time taken by the USD and RSD for each application for Full Licence for Light Refreshment Restaurants in 1998. It is illustrated in the graph that the mode processing time for the USD cases was five to six months while for the RSD cases, six to seven months. The shortest time was three to four months and the longest time taken was 12 to 15 months for both the USD and the RSD. In other words, most applicants have to wait for a longer period if their premises are in the jurisdiction of the RSD. There are no differences regarding the shortest waiting time and the longest waiting time between the two municipal regions.

Diagram 6 - Processing Time Taken for Application for Full Licence for Light Refreshment Restaurants in 1998



Breakdown of Processing Time

13.7 According to the Ombudsman's Report, the long processing time was mainly due to the time lag between the issue of Letter of Requirements (LR) and the issue of the Full Licence: it took about 38 days to obtain the LR from the date of application but it took an average of 169 days to obtain a licence from the date of issue of LR. (Please see Table 19 for details.) It seems that the problem of long processing time lies with the period between the issue of LR and the report of compliance by the applicants.

Table 19 – Number of Days Taken by the RSD in the Issue of Letter of Requirements and Full Licences between 1993 and 1997

Year	From the date of application to the date of issue of Letter of Requirements			From the date of issue of Letter of Requirements to the date of issue of Licence		
	Min time	Max. time	Ave. time	Min time	Max. time	Ave. time
1993	32	158	53	35	792	196
1994	32	118	51	13	698	215
1995	28	73	46	49	483	217
1996	26	52	37	56	482	190
1997	30	45	38	50	280	169

Source: Office of The Ombudsman, Report of the Investigation on Restaurant Licensing System, January 1999

Unlicensed Restaurants

13.8 As at 1 April 1998, there were 739⁸ unlicensed restaurants in Hong Kong. One reason for the presence of unlicensed restaurants in Hong Kong might be the considerable economic loss⁹ involved in the long processing time of vetting applications for restaurant licences. The economic loss of restaurant receipts, i.e. operates the food business only when a licence is obtained, is far greater than that of the penalty involved, i.e., operates the food business without a valid licence. According to the reply from the RSD, the maximum penalty imposed by courts on operators in 1998 was HK\$75,000 and the minimum penalty was \$100. The average penalty was \$5,818, which could be easily absorbed into the daily operating expenses. Since the penalty is inadequate to act as a deterrent to operating an unlicensed restaurant, this might put the health of the customers at risk.

14. Possible Causes for the Delay in Application Processing

14.1 The delay in the processing of applications for licences might be caused by a combination of factors. Each party, i.e., the applicants, the MSD, the BD and the FSD might have contributed to the delay. Listed below are some possible causes made by each party, revealed by the Ombudsman's investigation or identified by the parties during interviews with us.

Applicants

Delay in Compliance and Failure to Report

14.2 As discussed above, the RSD claimed that it took 17 working days for the issue of full licence from the receipt of report of compliance. However, it actually took 169 days to obtain a full licence from the date of the issue of LR. This might be due to the applicants' delay in complying with the requirements, or the applicants might have altered the layout plans after the issue of the LR and which would require re-assessment and other additional work of the licensing authority.

⁸ Office of the Ombudsman, Report of the Investigation on Restaurant Licensing System, January 1999, p.94.

⁹ Economic loss refers to the loss of restaurant receipts. Based on the Hong Kong Monthly Digest of Statistics May 1999, the number of restaurants establishments in 1998 was 8,582 and the restaurant receipts generated by these restaurants during the same period was \$14,335.9 million. Therefore, each restaurant, on average, could generate \$0.14 million of income per month. If an applicant would not start a food business without a licence, the economic loss might amount to \$0.56 million per restaurant, calculating from the date of application to the issue of a licence in four months.

Inadequate Performance of Contractor

14.3 According to the Ombudsman's investigation, the MSDs do not provide sufficient information and guidance to the applicants on the choice of contractors on fitting-out works. Thus, if the contractor did not perform up to the required standard, the applicants might suffer delay in the issue of a licence.

Inappropriate Choice of Authorized Persons or Registered Structural Engineers

14.4 According to the interviews with the food business practitioners, not all the Authorized Persons (APs) or the Registered Structural Engineers (RSEs) commissioned by them to undertake the building and structural works have experiences in restaurant licensing. Hence, they might not be familiar with the requirements issued by the BD or FSD and which might delay the process of obtaining the licence.

Inadequate Professional Advice to Applicants

14.5 Sometimes, applicants had chosen premises which were not suitable for food businesses, e.g. inadequate ventilation, insufficient food room, etc. According to the Ombudsman's investigation, 60% of the Category 3 cases involved building or structural problems which required more time to overcome. Thus, if the applicant had sought professional advice regarding the suitability of the premises as food premises before he decided to rent the premises, this might speed up the application.

14.6 Similarly, many applicants might not notice the existence of unauthorized building works when they rent premises but these unauthorized building works might in the end, cause rejection to their application. If the applicants could obtain advice from BD regarding the suitability of these premises as food premises, this might save resources for both of them and reduce time for making compliance.

Lack of Understanding of Jargons

14.7 In many cases, technical words or 'jargons' were used to describe building requirements¹⁰, this might pose difficulties for the applicants. As most clarifications and enquiries had to be routed through the corresponding MSDs to BD, this might in turn delay the licensing process.

¹⁰ Office of the Ombudsman, Report of the Investigation on Restaurant Licensing System, January, 1999.

Municipal Services Departments

Communications Problems

14.8 The MSDs normally conduct a preliminary vetting of the applicants' submission of layout plans and ventilation plans. If the plans are considered to be in order, a copy of which will be sent to FSD or BD for comments. However, the MSDs will not notify the other departments of the volume of these pending applications if these plans are not ready for referral. Since input from other departments are required in the licensing process, if the other departments are kept informed of the volume of work, accurate planning of resources could be made in advance and subsequent bottlenecks could be avoided.

Failure of the Three-tier System

14.9 After the implementation of the three-tier system, any questions on the building requirements of Categories 1 and 2 are supposed to be addressed to the MSDs. In fact, according to the Ombudsman's investigation, such questions were often re-directed to BD for comments as the MSDs did not have the expertise in providing advice on structural safety. The MSDs, on receipt of the reply from the BD, would then convey the comments to the AP or the applicant. This had delayed the processing of the application as the BD might take some time to attend to the questions, and the MSDs might take some more time to pass the message to the AP after receiving the reply from BD.

Insufficient Communication of Information

14.10 Except for the Joint Site Inspection, other inspections on progress checking or verification of compliance are conducted separately by the departments concerned. The Ombudsman found that in the case of RSD, if any outstanding requirements had been detected during the inspection by FSD or BD, those two departments would inform the RSD so that the RSD would compile a list of outstanding works and notify the applicant. However, instead of issuing such a notice to the applicant immediately, the RSD would hold up this information until other outstanding sanitation or health requirements were inspected by the RSD. As the date of inspection conducted by the RSD might not coincide with that conducted by the FSD, it would delay the applicant's remedial fitting-out works.

14.11 The applicant is usually given a verbal notification of outstanding requirements during inspection and the details of these requirements will be given to the applicant in writing after a period of time. It is doubtful whether the verbal explanation on the outstanding requirements is sufficient for the applicant to follow-up. The Ombudsman found that in some cases, the applicant might have failed to understand the requirements and did not respond correctly or even did not respond. As a result, the MSDs and FSD had to inspect the premises several times to check compliance before the premises were confirmed ready for the issue of a licence.

Buildings Department

No Technical Guidelines or Practice Notes for APs or RSEs

14.12 The Ombudsman's report noted that there were no technical guidelines issued by BD to the APs or RSEs for complying with the licensing of restaurants. In the absence of such necessary guidelines for the APs or RSEs, non-compliance with licensing requirements is likely to happen.

Insufficient Staff in Handling the Application

14.13 Though the BD is responsible for overseeing the structural requirements of food premises, there are no dedicated staff in the department to inspect restaurants. The staff responsible for inspecting restaurants are also responsible for inspecting other premises. At the moment, there are only six teams of surveying officers responsible for vetting applications for licences of all types of premises, including restaurants, schools, cinemas, etc. Therefore, applicants may have to wait for a long period before the BD staff could schedule for an inspection.

Fire Services Department

No Technical Guidelines or Practice Notes for APs or RSEs

14.14 Regarding the ventilation and fire safety issues, it is also noted in the Ombudsman's report that there were no practice notes or other technical instructions issued by the FSD to the APs or RSEs for complying with licensing requirements. As such, non-compliance with these requirements is likely to happen. The results are that not only the applicants have to use more resources to comply with the requirements, but the departments concerned also have to spend more time and resources to process the re-submissions.

Insufficient Staff in Handling the Application

14.15 FSD also face similar manpower difficulties as BD: the staff responsible for inspecting restaurants are also responsible for inspecting other premises. At the moment, there are only 80 fire safety officers looking after all fire safety issues in Hong Kong, including investigating complaints on dangerous goods, inspecting fire safety facilities at schools, cinemas, restaurants and places of public entertainment. There are only eight staff responsible for inspecting ventilation systems in all premises in Hong Kong. Therefore, applicants may have to wait for a long period before the FSD staff could schedule for an inspection.

Other Causes

Fragmentation of Responsibilities

14.16 Since the application has to be sent to various departments for action, the processing time may be substantially lengthened.

Incompatibility of Requirements Set by Different Departments

14.17 According to the Ombudsman's investigation, there was incompatibility between the requirements set by the different departments (i.e., the USD, RSD, BD and FSD) and they also had different interpretations. The applicants might find it difficult to proceed with the necessary fitting out works.

15. Reform Proposals

15.1 This section gives a brief introduction on the various suggestions made by different parties to improve the licensing system.

Consultant's Report on Food Safety and Environmental Hygiene Services in Hong Kong

15.2 The Consultant, Mr. Lam Chi Chiu, has rejected the suggestion of a Central Licensing Authority to issue all types of licences because of 'administrative and practical reasons'¹¹. The Consultant did not elaborate the 'administrative and practical reasons', but the USD as reported in the Ombudsman's Report said that since the biggest element of delay in the licensing process was the actual time taken by the applicants to comply with the licensing requirements, the benefits to be gained from establishing the Central Licensing Authority would be minimal. The Consultant proposed to transfer the licensing authority for restaurant licences to the new Department of Food and Environmental Hygiene and the licensing authority for liquor licences to a new Liquor Licensing Board.

15.3 The Consultant also recommended setting up a new Licensing Appeals Committee, comprising non-officials only, to hear appeals against the Director of Food and Environmental Hygiene's decisions on licensing and related matters. Regarding appeals against liquor licences, the Consultant recommended the retention of the existing Municipal Services Appeals Board but the membership of this Municipal Services Appeals Board would be slightly modified in order to cater for the new situation that there might be no municipal councillors from January 2000.

¹¹ Lam Chi Chiu, Consultant's Report on Food Safety and Environmental Hygiene Services in Hong Kong, November 1998, paragraph 9.03.

15.4 There was no discussion nor recommendation on the licensing procedures in the Consultant's Report.

Consultant's Report on Licensing Commissioned by USD

15.5 Another Consultant, Price Water House Coopers, which was commissioned by the USD, had made two proposals to expedite the licensing procedures, namely, the 'Fast Track Process' and the 'Normal Track Process'. The main feature of the 'Fast Track Process' is that the applicant should engage an AP or RSE to vet the layout plans prior to the submission of the application for licence. The AP or RSE would issue certificates of compliance to the applicant, confirming that the premises' facilities have complied with all the health, sanitation, ventilation, fire safety, building and structural requirements. It is only when these certificates of compliance are issued can the applicant apply for a restaurant licence. It is estimated that the actual time for issuing the licence could then be reduced to one day.

15.6 The objective of the 'Normal Track Process' is to streamline the existing application and licensing procedures. Some of the key features are listed below:

1. require applicants to pay application fee and review fee for change of layout plans;
2. simplify the procedures for quality audit;
3. conduct separate site inspection by the USD, FSD and BD;
4. automate the procedures for generating LR;
5. improve the efficiency of document delivery among USD, FSD and BD;
6. revise performance pledges; and
7. use of 'case manager', i.e. to assign a dedicated officer to each application.

These two proposals are under review by the Provisional Urban Council.

Ombudsman's Report of the Investigation on Restaurant Licensing System

15.7 The Ombudsman in the above report agreed that there existed much room for improvement of the present licensing system. He had made 20 recommendations in the following areas:

1. shortening the processing time for licence applications, e.g. streamlining and co-ordinating the vetting and inspection procedures, issuing more technical guidelines to applicants and their APs or RSEs, organizing a Joint Final Inspection, reviewing the performance pledges to identify areas where processing time for the various steps in the workflow might be further shortened, etc;
2. improving the monitoring mechanism, i.e., closer monitoring should be exercised for the more complex cases;
3. providing more support to applicants, e.g., introducing a help desk with specified personnel at the licensing office to provide more ready assistance to the applicants;
4. maintaining consistent licensing procedures between the RSD and the USD;
5. more publicity and consultation on the restaurant licensing system;
6. stepping up enforcement against unlicensed restaurants, e.g. extending the scope of summary arrest action taken against the operators of unlicensed restaurants so as to achieve greater deterrent effect; and
7. reviewing manpower.

15.8 All parties (i.e. USD, RSD, BD and FSD) are currently reviewing the recommendations made by the Ombudsman. Listed below are their response to the Ombudsman's recommendation. In particular, they regarded the recommendation of a Joint Final Inspection by all parties impractical and infeasible for (a) it would be difficult to find a time slot suitable for all parties to attend the inspection and (b) if the outstanding requirements were only related to, say, sanitation, there was no need for FSD and BD to attend the inspection. They would prefer to hold the inspection separately as the current arrangement.

Response from MSD

15.9 Both the USD and RSD are reviewing the recommendations made by the Ombudsman. Indeed, some of the recommendations were already implemented. For example, they had already set up a help desk with specified personnel at the licensing office to answer questions and provide assistance to the applicants, organized seminars with BD and FSD to prospective applicants, standardized the presentation used in the guidelines issued by the USD and RSD and reviewed the existing performance pledges.

15.10 Regarding the other recommendations, the MSD replied that they had formed a joint panel with BD and FSD to review and discuss the feasibility of the recommendations and it was expected that the review would be completed in a couple of months.

Response from BD

15.11 BD replied to us that they had reviewed the suggestions made by the Ombudsman and had already drafted a revised technical guidelines to the applicants. These guidelines would be incorporated into the new guidebook on application for restaurant licences.

15.12 BD had also reviewed the existing performance pledge and held that in view of the present stringent resources, the performance pledge would remain the same.

15.13 Regarding the suggestion on the improvement of the monitoring mechanism, BD considered it infeasible to implement since the complexity involved would be too much for BD to handle.

Response from FSD

15.14 FSD agreed to adopt some of the recommendations such as setting up of an additional pledge to conduct follow-up inspection within seven working days upon receipt of notification of compliance. However, for the other recommendations, they regarded them as infeasible. They would prefer to hold seminars on a regular basis with the prospective applicants rather than re-issuing new technical guidelines. They were, at the moment, drawing up new measures / procedures to provide assistance to the applicants.

16. Implications From Overseas Experiences

Central Licensing Authority

16.1 It is observed that in most overseas places, there is usually more than one authority involved in the examination of application for licences. There is no single or central licensing authority overseeing the whole licensing process. Except in Tokyo, Michigan and Sydney where a single authority has been assigned to be the co-ordinating authority, the applicant has to approach different departments to obtain the necessary licences or permits before they can be issued the restaurant licences. Yet, the processing time of vetting application in those places is less than that in Hong Kong. Therefore, it seems that the presence of a central licensing authority is not the most critical issue in accelerating the vetting process.

Application and Licensing Procedures

16.2 The application and licensing procedures are similar in overseas places under study and in Hong Kong. Both involve the procedures of vetting various documents and layout plans, on-site inspection, issue of guidance to applicants if non-compliance with the required standards are found and lastly, issue of licences if all the required standards are met.

16.3 However, the 'pre-application guidance' procedure adopted by the Food Sanitation Section of the Bureau of Public Health in Tokyo might be one point worthy to mention. This procedure allows the applicant to be fully aware of the suitability of the premise being a food premise prior to application for restaurant licence. The applicant is told, at the 'pre-application guidance' meeting with the Food Sanitation Section, that what kinds of remedial works are required to be carried out before the required facilities standards can be met. This certainly shortens the vetting time of the application and allows the applicant to estimate accurately the costs of starting the food business before submitting the application.

Requirements to be Met Before Issue of Licences

16.4 It is observed from the overseas experiences that the majority of requirements to be met before issue of licences are related to sanitation. There are also structural requirements but which are related to good hygiene practice as well. In Hong Kong, however, most of the requirements are related to building, structural and fire safety concerns. It might take longer time to comply with these requirements and hence, might lengthen the licensing process.

16.5 In Tokyo, it is necessary to appoint a food sanitation manager for the food business. This person must have obtained requisite qualification relating to food sanitation and is of great help to the applicant in meeting the sanitation requirements. This might be one reason that the time in vetting applications for restaurant licences in Tokyo is about eight days.

Appendix I

Food Business Licences and Permits issued by the Provisional Municipal Councils:

1. General Restaurant Licence
2. Light Refreshment Restaurant Licence
3. Marine Restaurant Licence
4. Factory Canteen Licence
5. Frozen Confections Factory Licence
6. Food Factory (Bakery) Licence
7. Milk Factory Licence
8. Food Factory Licence
9. Fresh Provision Shop Licence
10. Siu Mei & Lo Mei Shop Licence
11. Cold Store Licence
12. Liquor Licence and Club Liquor Licence
13. Restricted Food (Sale of Sashimi / Sushi / Oyster & Meat to be Eaten in their Raw State) Permit
14. Restricted Food (Coin Operated Automatic Vending Machine) Permit
15. Restricted Food (Sale of Cut-fruit) Permit
16. Restricted Food (Shell Fish) Permit
17. Restricted Food (Non-bottled Drinks) Permit
18. Restricted Food (Frozen Confections) Permit
19. Restricted Food (Milk Permit)
20. Restricted Food (Chinese Herb Tea) Permit

Source: <http://www.usd.gov.hk/ENH/fsh/applic.html>

Appendix II**List of Approved Food Items for Light Refreshment Restaurants**

1. Licensed light refreshment restaurants may only prepare and sell one of the following groups of food items for consumption on the premises:-
 2. Group A
 - Noodles/vermicelli in soup with Wantun and dumplings in soup (also known as shui kau); and
 - Boiled vegetables.
 - or 3. Group B
 - Rice congee with meat, offal, poultry, fish, seafood or frog.
 - or 4. Group C
 - Bread, cakes and biscuits;
 - Toast including French toast;
 - Sandwiches;
 - Hot cakes, pancakes and waffles;
 - Oatmeal porridge and instant cereals;
 - Pastries (baking is not allowed but an electric warmer may be used to keep the pastries warm);
 - Eggs (boiled, poached, fried or scrambled);
 - Ham, bacon, western sausages, tinned meat and tinned fish;
 - Soup (prepared from tinned soup or powdered soup);
 - Macaroni/spaghetti in soup prepared from tinned soup or powdered soup;
 - Tea, coffee, coca, any non-alcoholic drink or beverage made by adding water to prepared liquid or power;
 - Hot dogs;
 - Cold cuts (from pre-cooked meat and served cold on the premises) and vegetable/fruit salads;
 - Hamburgers (made from ready-to-cook hamburger meat from a licensed food factory or from an approved source);
 - Jelly, tinned or prepared from jelly powder; and
 - Instant noodles/vermicelli in soup from pre-prepared ingredients enclosed in the packet.

- or 5. Group D (any combination of the following nine modified items)
- Bread, cakes and biscuits;
 - Toast excluding French toast;
 - Sandwiches, neither cooked nor fried;
 - Sausage rolls and other pastries containing pre-cooked meat (baking not allowed, but a warming oven may be permitted for warming pre-baked meat pies);
 - Boiled eggs;
 - Tea, coffee, cocoa, any non-alcoholic drink or beverage made by adding water to prepared liquid or powder;
 - Hot dogs;
 - Cold cuts (pre-cooked roast chicken and roast meat to be served cold on the premises); and
 - Waffles.
- or 6. Group E (any combination of the following six items)
- Sweet soup (pre-prepared and supplied from a licensed source);
 - Double-steamed egg custard;
 - Jelly, tinned or prepared from jelly powder;
 - Soya bean curd flake (pre-prepared only);
 - Tea, coffee, cocoa, any non-alcoholic drink or beverage made by adding water to prepared liquid or powder; and
 - Desserts (pre-prepared only).

Source: A Guide To Application For Restaurant Licences, Appendix B

Appendix III**Requirements for Restaurant Licences**1. Health Requirements (Municipal Services Departments)

- Premises are laid on with mains water supply.
- Premises are provided with a proper drainage system.
- Premises are provided with proper flushed toilets.
- No manholes should be located in the proposed kitchen, food preparation room and scullery.
- Premises are capable of providing an independent and separate ventilating system to the kitchen, toilets and seating accommodation.

2. Building Requirements (Building Department)

- Particular care should be taken in the selection of premises since premises other than those approved for commercial use may not be suitable.
- Premises should not have unauthorized building works posing risks to public safety.
- If the premises are on suspended floors, they should be designed for a minimum superimposed load of 5 Kpa (i.e., 100 lbs./sq.ft.). As a general guide, all premises on solid ground floors are structurally suitable.
- Where premises are on suspended floors or where extensive alteration and additional works are to be carried out, it is strongly recommended that the advice of an authorized person (architect, engineer or surveyor) or registered structural engineer registered under the Building Ordinance be sought.
- Premises should be constructed of fire resistant materials which satisfy the provisions of the Building (Construction) Regulations.
- For means of escape, the current 'Code of Practice on Means of Escape' and part V of the Building (Planning) Regulations will apply.
- As a general guide, premises on the ground floor provided with a direct access to a street are suitable or can be adapted to meet the requirements for means of escape.
- Premises should normally have two or more exits onto the street.
- General restaurants are not permitted to run on the upper floors of single staircase buildings.
- Exit and structural safety requirements for a building as a whole are fundamental to the consideration of any subsidiary uses to be made in the building. Within the context of these composite requirements all prospective users (including restaurant licence applicants) will normally be considered on a 'first-come-first-served' Basis.

3. Fire Safety Requirements (Fire Services Department)

The following premises are considered not suitable to be licensed as restaurants:-

- Any industrial buildings;
- Any buildings or structures which are of substandard construction;
- Premises at level four of a basement or below;
- Premises in areas designated for emergency use, such as the ‘buffer’ floor (also referred to as the refuge floor); and
- Premises located vertically below, therefore posing a fire hazard to, a registered school, child care centre or elderly home.

4. Gas Safety Requirements (Electrical and Mechanical Services Department)

- If town gas or liquefied petroleum gas is intended to be used as cooking fuel in the proposed restaurant, all gas installation works on the premises must be carried out in accordance with the Gas Safety Ordinance, Cap. 51.

5. Land Use and Lease Requirements (District Lands Office) – Only applicable to applications processed by the RSD

- A number of Government leases and private leases or agreements contain conditions which restrict the use of the premises. To ensure that there are no conditions prohibiting the premises from carrying on the proposed business, it is the responsibility of the applicant to study the Government lease and the lease agreement of the premises. A licence issued by the Provisional Regional Council does not confer on the licensee any right of non-compliance with such conditions.
- The Principal Government Land Agent of the Lands Administration Office would raise objection to encroachment on unleased Government land. This would constitute a valid ground for the Council to refuse an application.
- The Principal Government Land Agent may comment that the proposed use would breach some lease condition(s). Under the existing policy, the Council normally does not reject a licence application solely for this reason. The Council will advise the applicant of such adverse comment. In his own interest, the applicant should approach the relevant District Lands Office to resolve the matter. It is important to note that a license issued by the Council does not confer on the licensee any right of non-compliance with such restrictive condition(s).

Source: <http://www.info.gov.hk/rsd/english/rsd3/appe.htm>

Appendix IV**Conditions For Liquor Licence**

1. No disorder shall be permitted on the premises.
2. No person shall be allowed to become drunk on the premises, nor shall liquor be supplied to any person who is drunk.
3. No games of chance shall be played on the premises.
4. The licensee shall personally supervise the premises.
5. The licensee shall display a warning notice at a conspicuous place inside the premises to the effect that **NO PERSON UNDER THE AGE OF 18 YEARS IS PERMITTED TO DRINK INTOXICATING LIQUORS ON THE PREMISES.**
6. The licensee shall exhibit and keep exhibited a notice containing the words **LICENSED FOR THE SALE OF LIQUOR FOR CONSUMPTION ON THE PREMISES** at a conspicuous place inside the licensed premises and on the outside of its main entrance.
7. The licensee shall not permit any person to occupy or use any portion of the premises for any immoral or illegal purpose.
8. The licensee shall not permit any common prostitutes or reputed thieves to assemble or remain on the premises.
9. The licensee shall not permit drunkenness, or violent, quarrelsome or other disorderly conduct on the premises and shall not permit persons of known bad character to assemble and remain on the premises.
10. The name of any liquor for which a standard of quality is prescribed by regulations shall be clearly marked on the container in or from which the liquor is supplied to any customers.
11. No bar business shall be operated on the premises, except with the permission of the Board endorsed herein.
12. No dancing shall be permitted on the premises, except with the permission of the Board endorsed herein.
13. Toilets shall be maintained in a state of cleanliness and good repair for the use of customers.
14. The permitted liquor business hours of the premises shall be from _____ to _____ daily.
15. No more than _____ patrons and staff shall be permitted on the premises at any one time (only applicable to premises with dancing endorsement).

Source: <http://www.info.gov.hk/rsd/english/rsd3/appa.htm>

Appendix V

**Statistics of Full Licences for General Restaurants by the
Municipal Services Departments in 1996-1998**

	USD			RSD		
	1996	1997	1998	1996	1997	1998
No. of applications (a)	488	410	457	203	191	215
No. of approval (b)	284	324	362	156	157	164
No. of refusal, i.e. no. of cases failing AVP (c)	183	116	94	39	21	22
No. of processed applications, i.e. no. of approval plus no. of refusal (b+c = d)	467	440	456	195	178	186
No. of applications carried over to the next year (a-d)	21	-30	1	8	13	29
% of processed applications over total no. of applications received (d/a)	95.7%	107.3%	99.8%	96.1%	93.2%	86.5%
No. of food businesses under application for a Full Licence that operated before obtaining the Full Licence	381	370	439	95	78	68

Sources:

1. Regional Services Department
2. Urban Services Department

Appendix VI

**Statistics of Provisional Licences for General Restaurants by the
Municipal Services Departments in 1996-1998**

	USD			RSD		
	1996	1997	1998	1996	1997	1998
No. of applications (a)	382	373	392	159	168	188
No. of approval (b)	141	189	321	74	95	137
No. of refusal, i.e. no. of cases failing the AVP (c)	72	86	73	23	18	21
No. of processed applications, i.e. no. of approval plus no. of refusal (b+c = d)	213	275	394	97	113	158
No. of applications carried over to the next year (a-d)	169	98	-2	62	55	30
% of processed applications over total no. of applications received (d/a)	55.8%	73.7%	100.5%	61.0%	67.3%	84.0%
No. of food businesses under application for a Provisional Licence that operated before obtaining the Provisional Licence	134	173	204	42	34	33

Sources:

1. Regional Services Department
2. Urban Services Department

Appendix VII

**Licensing Statistics of Light Refreshment Restaurants by the
Municipal Services Departments in 1996-1998**

	USD			RSD		
	1996	1997	1998	1996	1997	1998
No. of applications (a)	171	233	274	100	117	127
No. of approval (b)	96	98	159	52	62	65
No. of refusal, i.e. no. of cases failing AVP (c)	59	56	41	13	10	14
No. of processed applications, i.e. no. of approval plus no. of refusal (b+c = d)	155	154	200	65	72	79
No. of applications carried over to the next year (a-d)	16	79	74	35	45	48
% of processed applications over total no. of applications received (d/a)	90.6%	66.1%	73.0%	65.0%	61.5%	62.2%
No. of food businesses under application for a Full Licence that operated before obtaining the Full Licence	131	165	197	32	43	50

Sources:

1. Regional Services Department
2. Urban Services Department

Appendix VIII

**Licensing Statistics of Light Refreshment Restaurants by the
Municipal Services Departments in 1996-1998**

	USD			RSD		
	1996	1997	1998	1996	1997	1998
No. of applications (a)	108	145	193	40	78	99
No. of approval (b)	45	58	97	12	25	46
No. of refusal, i.e. no. of cases failing AVP (c)	12	30	36	6	4	14
No. of processed applications, i.e. no. of approval plus no. of refusal (b+c = d)	57	88	133	18	29	60
No. of applications carried over to the next year (a-d)	51	57	60	22	49	30
% of processed applications over total no. of applications received (d/a)	52.8%	60.7%	68.9%	45.0%	37.2%	60.6%
No. of food businesses under application for a Provisional licence that operate before obtaining licence	31	73	91	8	12	16

Sources:

1. Regional Services Department
2. Urban Services Department

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