

Liquor licensing system in selected places

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Executive summary

1. In Hong Kong, any person intending to sell or supply liquor for on-premises consumption is required to obtain a liquor licence or a club liquor licence from the independent Liquor Licensing Board ("LLB"). In recent years, there have been concerns over the representativeness of LLB, availability of business facilitation measures, consideration of public views during the liquor licence application process, the regulatory control of the licensed premises and transparency of the liquor licensing system.
2. This research examines the liquor licensing system in Hong Kong, New South Wales ("NSW") of Australia, Ontario of Canada and England and Wales of the United Kingdom in terms of the composition and functions of the liquor licensing authorities, features of the liquor licensing systems, procedures and approach for considering public views during the liquor licence application process, complaint handling mechanism, and enforcement and regulatory control.
3. Hong Kong, NSW and Ontario have established an independent licensing authority for approving liquor licence applications. In NSW, there is a requirement for at least one of the appointed members of the licensing authority to be or have been a judge or have been an Australian lawyer for at least seven years. However, there is no statutory requirement on the composition of the licensing authorities in Hong Kong and Ontario. In Hong Kong, members of the licensing authority are appointed by the Chief Executive. In Ontario, members of the board of directors of the licensing authority are appointed by the provincial government. In England and Wales, the liquor licensing authorities are committees set up under the local councils with members being drawn from the elected Members in the local councils concerned.
4. Regarding the functions of the licensing authorities, LLB in Hong Kong mainly serves as a decision-making authority on liquor licensing, whereas the licensing authorities in NSW, Ontario and England and Wales carry out a wider range of functions, including decision-making, administration, complaint handling and enforcement.

5. Compared with the three overseas places studied, the valid period of a liquor licence is the shortest in Hong Kong, which is one year or less, whereas in the other three overseas places, the valid period is much longer, ranging from two years to perpetual licence. In NSW, on-premises liquor licences are classified into four categories to reflect their risk levels but in Hong Kong, Ontario and England and Wales, the risk level of the liquor licences is determined on a case-by-case basis. NSW and England and Wales allow an individual or a corporation to apply for a liquor licence but in Hong Kong, only an individual can make the application.
6. The liquor licensing systems in Hong Kong and the overseas places studied have put in place public notification and consultation procedures to collect and consider views of the local residents and other stakeholders. Nevertheless, the approaches of the licensing authorities in considering public views and objections vary in these places. Compared with Hong Kong, the three overseas places have put in place procedures to resolve concerns and objections of the local communities before the licensing decisions are made.
7. The licensing authorities in NSW and Ontario have also introduced risk assessment schemes for determining the risk level of a proposed licensed premises in a systematic manner before the licensing decision is made. In NSW, the licensing authority has adopted the Environment and Venue Assessment Tool as a pilot scheme to assess the location and venue risks of proposed licensed premises located in Sydney and Newcastle. Before making its decision, the licensing authority will assess a number of risk factors such as rate of alcohol-related assaults, rate of offensive behaviour, assessment of the police and the local council, average number of liquor licences within a 1 km radius, proportion of high-risk venues at the location concerned, licence type, patron capacity of the proposed venue as well as any mitigation strategies to reduce alcohol-related harm. In Ontario, the licensing authority will make an assessment of the identifiable risks of a liquor licence application posed to public safety and public interest, and of non-compliance with the law. Under this risk assessment, the applicant and the proposed licensed premises will be evaluated based on specified criteria such as past conduct, liquor-related infractions, financial responsibility, training and experience, as well as types, location, activities and hours of operation of the proposed premises. In contrast, Hong Kong and England and Wales assess the risk level of the proposed licensed premises on a case-by-case basis.

8. All the licensing authorities in the overseas places studied have set up their own complaint handling or licence review mechanism to receive and address complaints and protect public interest. Unlike the three overseas places studied, LLB in Hong Kong does not have complaint handling responsibility. Complaints against the licensed premises are handled by various government departments according to the nature of complaints. While the concerned departments will not notify LLB upon receipt of complaints against the licensed premises, they have put in place mechanisms to provide the complaint and enforcement records to LLB upon request or on a regular basis.

9. As for regulatory control on the licensed premises, the licensing authorities in the overseas places studied have enforcement responsibilities to ensure licensees' compliance with the relevant legislation. They also adopt a risk-based enforcement approach and work closely with the police force in conducting targeted inspections on high-risk and problem licensed premises. For example, in NSW, the licensing authority has introduced a temporary licence freeze in high-risk precincts. It has also implemented a scheme to classify high-risk licensed premises on the basis of the number of violent incidents recorded in a year where additional licensing conditions will be imposed on them accordingly. Moreover, it has introduced the three strikes disciplinary scheme under which licensees convicted of three serious offences will be subject to disciplinary actions. In contrast, LLB in Hong Kong does not have enforcement authority and the Police are the main enforcement agency carrying out routine inspections on premises to ensure compliance with the licensing conditions and combat crimes.

Liquor licensing system in selected places

Chapter 1 – Introduction

1.1 Background

1.1.1 In Hong Kong, any person intending to sell or supply liquor for on-premises consumption is required to obtain a liquor licence or a club liquor licence from the Liquor Licensing Board ("LLB"), which is an independent statutory body established under the *Dutiable Commodities (Liquor) Regulations* (Cap. 109B) to consider liquor licence applications. Under the *Regulations*, a liquor licence is valid for a period of one year or such lesser period as determined by LLB. In 2013, 6 424 restaurants, pubs, bars and clubs were licensed to engage in the sale of liquor.

1.1.2 In recent years, there have been different views on the liquor licensing system. Representatives of the local communities and residents residing in the area or neighbourhood in which a large number of bars are located have urged the Government to impose more stringent control on the licensed premises and strengthen enforcement actions against premises causing nuisance and fire/personal safety problems. On the other hand, the trade does not favour further tightening of the regulation over the licensed premises and has called for trade facilitation measures to help improve the business operating environment.

1.1.3 In 2007, the Efficiency Unit of the Government reviewed the liquor licensing system and made a number of recommendations to streamline the licensing process. The Government has implemented most of the short- to medium-term recommendations while leaving those recommendations requiring legislative amendments for further review.¹

1.1.4 The Government launched in July 2011 a two-month public consultation exercise on the liquor licensing system. Based on the views received, LLB has prepared a set of non-binding guidelines setting out the factors that it will take into account when assessing liquor licence applications, as well as issues to be addressed when considering liquor licence applications from upstairs bars.

¹ These recommendations include extending the duration of liquor licence and reviewing the appropriate party for holding a liquor licence.

1.1.5 The Panel on Food Safety and Environmental Hygiene ("the Panel") has discussed the subject matter of liquor licensing at five meetings since 2008. During these meetings, members expressed their concerns over various aspects of the liquor licensing system, including the composition of LLB, the criteria and procedures of liquor licence applications, and the mechanism to handle public views and complaints. At its meeting on 10 December 2013, the Panel requested the Research Office to conduct a research on the liquor licensing system in overseas places with special reference to the composition, functions, operation, and appeal and complaint mechanism of the liquor licensing authorities.

1.1.6 A research outline was presented to the Panel at its meeting on 14 January 2014, proposing to study the liquor licensing system in New South Wales ("NSW") of Australia, Ontario of Canada and England and Wales of the United Kingdom ("UK"). Taking note of members' concerns on the liquor licensing regime in the Asian cities which share similar socio-economic conditions with Hong Kong, the Research Office also undertook to conduct a preliminary study on the regulatory regime in Tokyo of Japan and Taipei of Taiwan.

1.2 Scope of research

1.2.1 The Research Office has conducted a preliminary study on the liquor licensing system in a number of overseas places² and observed that different places have developed their own regulatory regime based on their unique socio-economic situation, liquor drinking culture, and interests of the trade and the public.

1.2.2 This research report studies the regulatory regime of NSW, Ontario and England and Wales as these places have established either an independent authority or a licensing committee under the local council to administer the liquor licensing regime. The regulatory regime of NSW emphasizes a balanced approach towards the interests of the trade and the community. While there is no requirement for renewal of the liquor licence in NSW, the applicants are required to conduct social impact assessments to fully address the interests of the community before they are issued with the liquor licence.

² These places include NSW, Ontario, England and Wales, Tokyo, Taipei, Singapore, Denmark, New Zealand and the United States.

1.2.3 In Ontario, applications for liquor licence are considered on a risk-based approach, i.e. assessment is based on the risks posed to public safety and public interest and of non-compliance with the law. This approach allows greater flexibility in dealing with risks posed by the licensed premises as well as easing the administrative burden for those lower risk licensees.

1.2.4 For England and Wales, licensing committees are established under the local councils for regulating liquor licensing. This regulatory regime provides the flexibility in allowing holders of premises licence to operate up to 24 hours a day subject to the approval of the local council. In order to balance any corresponding need to maintain public safety, the UK government may introduce measures such as imposing a levy for late night licence holders to contribute to the policing costs.

1.2.5 Similar to Hong Kong, Tokyo is a cosmopolitan city with high population density and a dynamic catering industry. There are also bars operating on the higher floors of multi-storey buildings, i.e. upstairs bars. However, unlike Hong Kong, these upstairs bars are located far away from the residential area, thus minimizing the nuisance caused to residents. While the *Liquor Tax Law* of Japan provides that liquor-selling establishments should obtain a liquor licence from the National Taxation Agency, the purpose of such licensing requirement is to facilitate the collection of liquor tax rather than regulating the sale and supply of liquor for on-premises consumption. In this regard, coupled with the lack of English information in relation to this licensing regime, Tokyo will not be covered in this report.

1.2.6 Taipei has developed a regime for regulating eight types of entertainment and catering businesses, including pubs and bars³, as they are considered having higher risks to public order. These businesses, collectively known as "special businesses", are required to obtain a special business permit before they can operate. However, there is no requirement to obtain a separate licence for the sale and supply of liquor for on-premises consumption. Since the regulatory regime in Taipei targets at eight types of entertainment and catering business rather than the sale and supply of liquor for on-premises consumption, Taipei will not be covered in the comparative analysis. However, an overview of the regulatory regime in Taipei, in particular information about measures instituted against the nuisance caused to residents by these "special businesses", is provided in **Appendix I** for members' reference.

³ Other businesses regulated under the regime include ballrooms, dance halls, audiovisual singing services and sauna houses.

1.3 Research method

1.3.1 This study adopts a desk research method, which involves literature review, documentation analysis, Internet research and correspondence with relevant authorities.

Chapter 2 – Hong Kong

2.1 Overview

2.1.1 The existing liquor licensing system in Hong Kong has been in place since 2000 when an independent Liquor Licensing Board ("LLB") was formed as the sole liquor licensing authority in the territory to replace the two LLBs established under the Urban Council and the Regional Council respectively.⁴ Any person intending to sell or supply liquor for on-premises consumption is required to obtain a liquor licence or a club liquor licence from LLB.

2.1.2 Liquor business plays an important role in the catering, tourism and entertainment industries in Hong Kong. The number of licensed premises increased from 5 218 in 2009 to 6 424 in 2013, representing a growth of 23% during the period. Nevertheless, representatives of the local communities have expressed concern about the nuisance caused by the licensed premises, especially upstairs bars⁵ which accounted for 6.6% of all licensed premises as at March 2013. As such, they have called for the Government to tighten regulatory control on the licensed premises.

2.2 Regulatory framework

Responsible authorities

2.2.1 The *Dutiable Commodities (Liquor) Regulations* (Cap. 109B) ("*Regulations*") is the principal legislation governing the liquor licensing system in Hong Kong. LLB is established under the *Regulations* as an independent decision-making authority for liquor licensing. However, it does not have executive and enforcement responsibilities.

⁴ Prior to 2000, the two Municipal Councils established its own LLB to consider liquor licence applications. The status of LLB was equivalent to other select committees of the Municipal Councils which were designated with the responsibility of overseeing specific policy areas.

⁵ In recent years, an increasing number of bars have moved upstairs to operate in multi-storey buildings, which were formerly used to house residential flats or offices. These bars are generally referred to as "upstairs bars".

2.2.2 LLB consists of the Chairman, the Vice Chairman and nine other members, with all of them being appointed by the Chief Executive.⁶ Their term of office is two years. There is no statutory requirement on the qualifications of LLB members. The current LLB has a broad representation of interests with members coming from different backgrounds, ranging from senior executive of non-governmental organization, elected Member of the District Council, company director, catering business owner, accountant, solicitor, social worker to educator.

2.2.3 The Food and Environmental Hygiene Department ("FEHD") serves as the executive arm of LLB to process and issue liquor licences. With no centralized enforcement authority, enforcement duties relating to liquor licensing and relevant regulations are undertaken by various government departments (e.g. the Police and the Fire Services Department) according to their respective purview.

Classification of liquor licences

2.2.4 The liquor-selling licence is broadly categorized into two types, namely the liquor licence and the club liquor licence.⁷ The liquor licence is issued to persons who intend to supply liquor in premises like restaurants, pubs and bars for on-premises consumption. As for the club liquor licence, it is granted to those who intend to supply liquor at clubs for members' consumption.⁸ The liquor licence is valid for a period of one year or such lesser period as determined by LLB.

Licensing conditions

2.2.5 The *Regulations* empower LLB to impose conditions on the licensed premises as it thinks fits. At present, a number of standard conditions are imposed across-the-board on these premises. These standard conditions mainly cover maintenance of public order and duty of licensees (e.g. no disorder should be permitted on the premises and the licensees should personally supervise the premises).

⁶ This is different from the membership of the two LLBs under the former Municipal Councils, which comprised Members of the two Municipal Councils.

⁷ Temporary liquor licence may also be issued by the Police to liquor licence holders for the retail sale of liquor at any public entertainment or on any public occasion of a temporary nature.

⁸ For the sake of easy reference, whenever the term "liquor licence" appears in this chapter, it includes "club liquor licence".

2.2.6 Based on a case-by-case assessment, LLB may impose additional conditions on the licensed premises to minimize the nuisance caused to nearby residents, such as restricting liquor selling hours⁹ and setting number of persons permitted on the premises. Moreover, upstairs bars are subject to two additional conditions in accordance with the *Guidelines on Assessing Liquor Licence Applications* ("*Guidelines*")¹⁰, i.e.:

- (a) requiring the licensees to attend a mandatory seminar on liquor licensing¹¹ to help ensure the proper management of upstairs bars; and
- (b) imposing a more stringent capacity limit for upstairs bars¹² to provide more room for the safe evacuation, at times of emergencies, of their employees and customers as well as occupants of the buildings where these premises are located.

2.3 Application for liquor licence

Eligibility criteria of applicants

2.3.1 According to the *Guidelines*, the applicant should have sufficient experience in managing the licensed premises. Moreover, the liquor licence will only be granted to a natural person who can be held criminally liable for any breach of law or licensing conditions in respect of the premises. In other words, a body corporate or a company formed by partnership cannot apply for the liquor licence.¹³

⁹ LLB does not impose an across-the-board restriction on the liquor selling hours for all licensed premises.

¹⁰ In December 2013, LLB released the *Guidelines* which set out (a) factors that it takes into account when assessing liquor licence applications, and (b) issues that it specifically covers when considering applications from upstairs bars.

¹¹ The seminar covers the topics of fire safety, public order and environmental hygiene that are specific to the management needs of upstairs bars.

¹² Having regard to the actual circumstances and the advice of the government departments concerned, LLB will impose a more stringent safety margin on the capacity limit for upstairs bars, say 90% of the capacity limit that is otherwise applicable.

¹³ According to the Government, the liquor licensee must be a natural person as the enforcement under the liquor licensing regime relies heavily on a clear liability and legal responsibility of the licensee to supervise and manage the licensed premises personally. A body corporate is not allowed to become the liquor licensee as the Government considers that the body corporate and its directors or partners may not be liable for the breaches of the licensing conditions. The complexity of the composition of the body corporate may also exacerbate the problems of criminal prosecution.

Consultation with the public

2.3.2 The applicants are required to notify the public about the applications through posting notices in newspapers and on the LLB website. FEHD will also post notices about the applications at the buildings where the premises under application are located. On behalf of LLB, the Home Affairs Department will consult stakeholders in the local communities directly affected by the applications, including members of the District Council concerned and representatives of the relevant residents' organizations (e.g. Owners Corporations or Mutual Aid Committees), and refer their views to LLB.¹⁴ During the consultation process, the public can comment on the applications through submission to LLB or the consultation conducted by the Home Affairs Department.

Advice from the relevant government departments

2.3.3 LLB also seeks advice from the relevant government departments (e.g. the Police and the Fire Services Department), which exercise their professional knowledge and experience to examine the applications including assessing the background of the applicants, suitability of the premises and possible reaction of the neighbourhood. Based on their assessment, the relevant government departments tender their advice to LLB for consideration.

Approval process

2.3.4 While LLB is a decision-making authority for liquor licence applications, it has no power to conduct independent investigation for each application. In assessing liquor licence applications, LLB takes into account the views of the relevant government departments and local residents and considers each application on its own merits.

2.3.5 LLB has delegated FEHD to approve applications with no objection or adverse comments. If objections or adverse comments are received, LLB will conduct an open hearing or a closed-door meeting.¹⁵ The open hearing provides an opportunity for the applicants, the public and the relevant government departments to express their views before LLB makes its decisions.

¹⁴ The areas and buildings to be covered in the consultation are decided by the Home Affairs Department, having regard to the uniqueness of the district concerned.

¹⁵ If objectors do not wish to disclose their identities or decline to attend the open hearing, the case will be considered in a closed-door meeting.

2.3.6 In considering the grant of the liquor licence, LLB has to satisfy that the application fulfils the three criteria stipulated in Regulation 17(2) of the *Regulations*:

- (a) the applicant is a fit and proper person to hold the licence;
- (b) the premises to which the application relates are suitable for selling or supplying intoxicating liquor having regard to the location and structure of the premises, and the fire safety and hygienic conditions in the premises¹⁶; and
- (c) in all the circumstances the grant of the licence is not contrary to the public interest.¹⁷

2.3.7 LLB adopts more stringent criteria as appropriate for applications from upstairs bars as specified in the *Guidelines*, due to the special physical environment and public concerns over nuisance, fire safety and crimes caused by these premises.¹⁸

Appeal mechanism

2.3.8 In case the applicants or 20 or more residents living near the premises concerned are aggrieved by the licensing decisions made by LLB, they may appeal to a separate statutory body, the Municipal Services Appeals Board ("MSAB").¹⁹ In determining an appeal against LLB's decision, MSAB may affirm, vary or set aside the decision made by LLB. The parties concerned may challenge the decisions of MSAB by seeking judicial review.

¹⁶ In general, the food premises or clubhouses concerned should first obtain a full or provisional Restaurant Licence issued by FEHD or the Certificate of Compliance issued by the Home Affairs Department before applying for the liquor licence. The issuance of such licence/certificate means that the premises meet the required standards of building safety, fire safety and hygienic conditions.

¹⁷ On weighing the public interest, LLB adopts an approach of striking a balance of the interests of all parties as set out in the *Guidelines*.

¹⁸ For example, LLB may not accept an application if the total number of upstairs bars exceeds half of the number of floors of the building. The building where an upstairs bar is located must also have adequate means of escape and two or more staircases.

¹⁹ MSAB comprises the Chairman, seven Vice Chairmen and 71 panel members, with all of them being appointed by the Chief Executive.

2.4 Complaint handling mechanism

2.4.1 Under the existing liquor licensing system, LLB is not responsible for handling public complaints against the licensed premises. There is also no dedicated authority to handle such complaints. Instead, complaints against licensed premises sent to LLB will be channelled to and handled by the responsible government departments depending on the nature of complaints.²⁰

2.5 Enforcement and regulatory control

2.5.1 The Police are the main enforcement agency carrying out routine checks on the licensed premises to ensure compliance with the licensing conditions and combat crimes. The Police will determine the frequency of inspections to the licensed premises having regard to the business nature and track record of the premises. However, all licensed premises will be inspected at least once a year. Other government departments (e.g. the Fire Services Department) are also responsible for inspecting the licensed premises to ensure their compliance with the respective statutory or administrative requirements.

2.5.2 Under the existing arrangement, when the Police find the licensed premises associated with serious crimes (e.g. sale of illegal drugs) or in serious breach of the licensing conditions (e.g. sale and supply of liquor to persons aged below 18 for consumption on the licensed premises), which warrant revocation of the liquor licence, they will make such recommendation to LLB regardless of whether the licence is due to expire or not. While the government departments will not notify LLB immediately upon receipt of complaints against the licensed premises, mechanisms have been put in place to provide the complaint and enforcement records to LLB upon request or on a regular basis.²¹

²⁰ For example, noise complaints are handled by the Police and the Environmental Protection Department and complaints regarding hygienic conditions of the premises are handled by FEHD.

²¹ The Police, FEHD and the Fire Services Department provide their complaint and enforcement records of the licensed premises to LLB upon request. The Environmental Protection Department provides the complaint records to LLB on a monthly basis.

2.6 Issues and concerns

Representativeness of the Liquor Licensing Board

2.6.1 There are concerns that membership of LLB cannot adequately represent the views of stakeholders on liquor licensing. Some Members have considered that representatives of the local communities are under-represented in LLB. There is a view that the District Councils should be empowered to consider the liquor licence applications. The trade representatives have also opined that LLB should comprise more representatives from the catering and entertainment industries to represent their views.

Business facilitation measures

2.6.2 The trade has considered that the regulatory requirements for a natural person to apply for the liquor licence and the licensee to renew the liquor licence on an annual basis are not conducive to the business environment. It has suggested allowing a body corporate to be issued with the liquor licence, or if it is found not feasible, authorizing a reserve licensee to temporarily manage the licensed premises. It has also suggested lengthening the duration of the liquor licence to more than a year. Some members of the trade have requested consideration be given to classifying the liquor licence into different categories in accordance with their risk levels, such that low-risk licensed premises (e.g. small and medium restaurants) are subject to less stringent control.

Consideration of public views

2.6.3 Concerns have been expressed that premises have their liquor licences granted or renewed despite public objections or repeated complaints.²² Some Members and representatives of the local communities have also urged LLB to take the initiative to investigate whether selling or supplying liquor on the premises is in breach of the Deed of Mutual Covenant ("DMC").²³ Nevertheless, the *Guidelines* provide that LLB will only consider the relevant provisions if an application is contested on the grounds that the use of premises for sale or supply of liquor is in breach of DMC.

Regulatory control of licensed premises

2.6.4 Some Members and representatives of the local communities are concerned about crimes that take place at the licensed premises, in particular upstairs bars. As at March 2013, upstairs bars represented 6.6% of all the licensed premises. In 2012, they accounted for 9.7% of all crimes at the licensed premises. They have also expressed grave concern about the noise and environmental nuisance caused by the licensed premises. Regarding the existing arrangement of handling public complaints against the licensed premises by different government departments, representatives of the local communities have considered it ineffective and suggested that a joint departmental office should be set up to handle these complaints. Moreover, they are dissatisfied with the inactive role played by LLB in addressing these complaints.

Transparency of the liquor licensing system

2.6.5 Some Members are of the view that the liquor licensing system is not transparent. Regarding the assessment of liquor licence applications, they have considered that the current case-by-case assessment approach is difficult for the public and the trade to follow the reasons for the licensing decisions. Some Members have called for the introduction of a demerit points system for the liquor licence. There is also a concern about the operational transparency of LLB.

²² The 2012 statistics indicated that the number of cases turned down by LLB was small even though applications were faced with public objections: out of 487 liquor licence applications with public objections, only 5% of them were turned down by LLB.

²³ DMC is a private contractual agreement among all the co-owners, the manager and the developer of a building, which sets out their rights, interests and obligations. It also contains provisions relating to user restriction of a property or building.

Chapter 3 – New South Wales of Australia

3.1 Overview

3.1.1 The states and territories in Australia develop their liquor licensing system independently with a high degree of diversity and variation among them. New South Wales ("NSW") is studied in this research as it has the largest population (i.e. 7.4 million as at July 2013) and the second largest number of liquor licences (i.e. 17 870 as at July 2013) among the states and territories in Australia.

3.1.2 In NSW, the existing regulatory framework for liquor licensing is principally set out in the *Liquor Act 2007* and its subordinate legislation, the *Liquor Regulation 2008*. The current liquor licensing system was implemented in July 2008 which aimed to improve the efficiency of the system. Under the system, an independent licensing authority has been established to replace the Licensing Court in approving liquor licence applications.²⁴ The NSW government has also reviewed the categories of liquor licence and streamlined the licence application procedures. It aims at regulating the sale of liquor for consumption in a way that is consistent with the interests of the community while facilitating the balanced development of the liquor industry through a flexible and practical regulatory system with minimal formality and technicality. It also aims at minimizing the harm associated with liquor consumption while contributing to the amenity of community life.

3.1.3 The NSW government recognizes that the degree of risks associated with the sale and supply of liquor and the needs of the operators will vary by their business types. To enhance efficiency of the regulatory system, the NSW government has classified liquor licences into seven categories according to business types, of which four types allow on-premises sale and supply of liquor on an on-going basis. The licences granted are perpetual, except for licences for time limited functions or events. Flexibility is also provided for different types of licensed businesses to operate through the application of common standards for all and tailored conditions and restrictions based on the risk level of the specific licence category.²⁵ As at July 2013, there were 12 099 liquor licences in force that allowed on-premises sale and supply of liquor on an on-going basis.

²⁴ The objective of introducing an administrative licensing decision maker to replace the former Licensing Court is to reduce formality and cost for the trade.

²⁵ For example, small bar licence, which is restricted to serve a maximum of 60 patrons, is subject to less stringent licence application requirements and licensing conditions compared with other higher risk licences such as hotel/bar licence.

3.2 Responsible authorities

Independent Liquor and Gaming Authority

3.2.1 The *Gaming and Liquor Administration Act 2007* provides for the establishment of the Independent Liquor and Gaming Authority ("ILGA") as an independent statutory authority to perform decision-making and licensing functions. The functions of ILGA include: (a) determining applications for new liquor licences and alterations of existing liquor licences; (b) determining serious disciplinary complaints against licensees; and (c) reviewing the regulatory decisions of the Director-General, NSW Trade and Investment²⁶ ("the Director-General").

3.2.2 ILGA comprises a Chief Executive who holds the office as a public officer, and a Chairperson, a Deputy Chairperson and other members appointed by the Governor of NSW. According to the *Gaming and Liquor Administration Act 2007*, at least one of the appointed members (i.e. members other than the Chief Executive) must be a person who is or has been a judge, or has been an Australian lawyer for at least seven years. The appointment of appointed members may be on a full-time or part-time basis. They are appointed on renewable terms of not more than five years. The current ILGA members include two lawyers, one accountant and an executive with substantial experience in alcohol policy and regulation.

3.2.3 ILGA members make decisions on the higher impact and more contentious liquor licence applications while delegates of ILGA exercise decision-making functions on its behalf for the other applications. ILGA is required to submit annual reports of its activities to the responsible Minister. Information such as the number of licences in force by districts, new licences granted, and licences suspended or cancelled are required to be included in the annual reports. The annual reports will be laid before both Houses of the Parliament of NSW.

²⁶ NSW Trade and Investment is a government department responsible for driving the economic development of NSW.

Office of Liquor, Gaming and Racing

3.2.4 The Office of Liquor, Gaming and Racing ("OLGR") under NSW Trade and Investment provides secretariat and administrative support for ILGA to perform its functions. It is responsible for the development and implementation of the liquor licensing system in NSW. It provides overall policy direction and advice in relation to the regulation of the sale and consumption of liquor, and co-ordinates the licensing, compliance and enforcement operations under the liquor licensing system.

3.2.5 The Director-General and his or her delegates have the responsibilities to (a) impose conditions on licences and give directions to licensees where necessary to reduce risk; (b) determine disturbance complaints against licensed premises; and (c) approve training courses and training providers for the responsible service of liquor.

3.3 Application for on-premises liquor licence

Eligibility criteria of applicants

3.3.1 In NSW, a liquor licence application can be made by an individual, a corporation or a club. An individual is not allowed to apply for a liquor licence if he or she (a) is aged under 18; (b) has been disqualified from holding a licence or is holding a suspended licence; or (c) is a member of a criminal organization who is under a control order of the court.

3.3.2 A club licensee with multiple premises²⁷ and a corporate licensee must appoint a manager who is approved by ILGA to manage and supervise the licensed premises and notify ILGA about the appointment. The manager must have his or her criminal record checked and attend responsible service of alcohol training.²⁸ The manager will be held liable for any offences committed under *the Liquor Act 2007* with regard to the operations of the licensed premises. A club or a corporate licensee can replace the manager with another individual who has obtained approval from ILGA and notify ILGA about the change.

²⁷ For club with a single premise, the secretary of the club takes up the responsibilities of an approved manager.

²⁸ Liquor licensees and other persons involved in the sale and supply of liquor on the licensed premises are required to complete the responsible service of alcohol training which aims at reducing excessive alcohol consumption and risky drinking practices on licensed premises by equipping staff with skills and knowledge to serve liquor responsibly.

Consultation with the public and social impact assessment

3.3.3 As the liquor licences granted in NSW are perpetual in nature, the government has built in consultation and social impact assessment procedures in the liquor licence application process to capture and consider the views of the local community so that their interests can be protected. These procedures are described in the ensuing paragraphs.

Development consent

3.3.4 Prior to submitting a liquor licence application to ILGA, an applicant has to obtain development consent from the local council or other relevant authorities if it is required under the *Environmental Planning and Assessment Act 1979*. The procedure involves consultation with the public on the applicant's development plan with regard to the proposed licensed premises, and assessment of the environmental, social and economic impact of the proposed licensed premises by the relevant authorities. The local council concerned has the power to determine trading hours and impose conditions such as noise levels and security on the approved applications.

Community Impact Statement

3.3.5 When lodging a liquor licence application to ILGA, applicants for some higher risk liquor licence categories must submit a community impact statement ("CIS") with their applications.²⁹ CIS is a summary of consultation between the applicant and the local community about any issues and concerns with a proposed application and the ways to address these issues and concerns. CIS allows ILGA to be aware of the views of the local community on a proposed licence application and the social impact of granting the application.

²⁹ Submission of CIS is required for applications of hotel/bar and club licences, and on-premises licence for a public entertainment venue. Submission of CIS is not required for applications for small bar licence if the development consent process is required, and for applications of low-risk on-premises licence such as for selling liquor in restaurants and cafes.

Notification of and consultation with the public

3.3.6 Within two days after lodging the liquor licence application to ILGA, the applicants are required to notify occupiers of nearby premises (i.e. within 50 m or 100 m of the boundary of the proposed licensed premises depending on the types of licence), the local council and the police, and post a notice at the proposed licensed premises. Any member of the public or relevant authorities can make a submission on a liquor licence application. ILGA will provide all the submissions received to the applicant concerned and give him or her an opportunity to respond to the submissions. The *Liquor Act 2007* requires that all submissions must be considered by ILGA when determining an application.

Environment and venue assessment

3.3.7 In addition to the development consent and CIS procedures, OLGR adopted the Environment and Venue Assessment Tool ("EVAT") as a trial scheme in 2013 for licence applications for premises located in Sydney and Newcastle. EVAT assesses the location and venue risks of the proposed licensed premises to assist ILGA in making informed liquor licensing decisions. The location risk factors considered in EVAT include: rate of alcohol-related assaults, rate of offensive behaviour, assessment of the police and local council, average number of liquor licences within a 1 km radius, and proportion of high-risk venues at the location concerned. The venue risk factors include: licence type, patron capacity and any mitigation strategies to reduce alcohol-related harm.

Approval criteria

3.3.8 When considering a licence application, ILGA will review all the relevant information including the National Police Certificate and CIS accompanied with the application (if required), the venue and location risk assessments (if required), submissions from the public and relevant local authorities in response to the application, and socio-economic indicators such as demographic and crime data. ILGA may carry out or request the Director-General to carry out investigation in relation to the application if necessary before making the approval decision.

3.3.9 According to the *Liquor Act 2007*, ILGA will not grant a liquor licence unless it is satisfied that:

- (a) the applicant is a fit and proper person to carry on the business to which the proposed licence related;
- (b) development consent from the relevant local authorities is in force if required;
- (c) overall social impact of granting the licence will not be detrimental to the well-being of the local or broader community for applications requiring CIS; and
- (d) practices will be in place at the licensed premises as soon as the licence is granted to ensure that liquor is sold or supplied responsibly on the premises.

3.3.10 The *Liquor Act 2007* does not provide for a mechanism for licence applicants and other parties to appeal against ILGA's decision on granting or rejecting a licence application.

Applications for variations of existing liquor licences

3.3.11 Existing liquor licensees have to make applications to ILGA for variations of the licences such as extending the trading hours, transferring the licences to other holders and removal of the premises. Some applications such as extension of trading hours and removal of the licensed premises have to be accompanied by CIS. Applications for transfer of the licences to other holders are considered by ILGA as new liquor licence applications. However, ILGA may grant a provisional approval for the transfer of licence if circumstances of the case justify the approval.

3.4 Complaint handling mechanism

3.4.1 The NSW government adopts a three-level approach in handling complaints against the licensed premises. At the first level, members of the public having concerns about undue disturbance caused by the conduct of a licensed premises and/or its patrons may report their concerns to the local councils or police, and seek resolution on a voluntarily basis.

3.4.2 At the second level, the local residents, police or local council may lodge a disturbance complaint to the Director-General in case the disturbance issues cannot be resolved voluntarily among the parties concerned at the local level. The complainants and the licensees may be invited to provide further information about the complaint and views on measures to address the issues by attending a conference. The Director-General may impose, vary or revoke a condition on the liquor licence³⁰, or issue a warning to the licensee in determining a disturbance complaint. The complainants and licensees can request ILGA to review a decision made by the Director-General regarding a disturbance complaint.

3.4.3 At the third level, the Director-General, police or local council can lodge a serious disciplinary complaint with ILGA where the problems associated with a licensed premises are serious and cannot be properly addressed by other means such as the imposition of conditions. ILGA can impose sanctions in determining a disciplinary complaint such as suspending or cancelling the licence, or disqualifying the licensee. The complainants and licensees can request the Administrative Decisions Tribunal to review the disciplinary decision of ILGA.

3.5 Enforcement and regulatory control

3.5.1 OLGR compliance officers undertake inspections and other enforcement functions on a targeted basis to ensure liquor licensees' compliance with the liquor licensing legislation. They also conduct operations in association with the NSW Police Force targeting at high-risk licensed premises.

³⁰ The conditions may include restrictions on noise emission, trading hours and the sale and supply of alcohol.

Licence freeze

3.5.2 In order to minimize alcohol-related crime and incidents, the NSW government has introduced a series of regulatory measures to tighten control on high-risk licensed premises. One of these measures is the introduction of a temporary liquor licence freeze in prescribed precincts in Sydney³¹ to prevent establishment of new licensed premises (except for small bars), extension of trading hours and business alterations of existing licensed premises. The measure aims at preventing an increase in the patron capacity of the licensed premises within the freeze precincts and number of people entering the freeze precincts to consume alcohol.

Measures to regulate high-risk licensed premises

3.5.3 The NSW government has also introduced a scheme to regulate licensed premises that have recorded a large number of violent incidents by categorizing them into level one (with 19 or more violent incidents per year), level two (with 12 to 18 violent incidents per year) or level three (with 8 to 11 incidents per year) premises. Level one and level two venues have to comply with additional licensing conditions imposed on them.

3.5.4 Another regulatory measure is the three strikes disciplinary scheme which provides for a strike to be incurred by a liquor licence where a licensee is convicted of a serious offence under the *Liquor Act 2007*. A third strike can result in imposition of licensing conditions, licence suspension for up to 12 months or licence cancellation. The scheme provides regulatory incentives for licensees to continually review their operations to minimize the risk of incurring a strike.

³¹ The prescribed precincts have a large number of licensed premises, particularly those with late night trading, and are identified to be trouble spots for alcohol-related violence.

3.6 Review of the liquor licensing system

3.6.1 The NSW government commissioned an independent review on the liquor licensing system in mid-2013.³² The review report released in November 2013 indicated that while the total number of liquor licences had increased by 24% from 14 431 in July 2008 to 17 870 in July 2013, the number of violent incidents on licensed premises had decreased by 28%, and the number of alcohol-related domestic and non-domestic assaults had decreased by 12% and 28% respectively during the same period. The review also revealed that the stakeholders generally supported the objectives and overall structure of the existing regulatory system. Nonetheless, the review report has made some recommendations on improving the regulatory system which are discussed in the ensuing paragraphs. Meanwhile, the NSW government is considering the recommendations of the review and concrete action plans on how to address the issues identified in the review have yet to be released.

Structure and operation of the regulatory system

3.6.2 Some stakeholders raised issues about the existing regulatory structure, including confusion of the roles of ILGA and the Director-General, inconsistencies in the regulatory approaches adopted by ILGA, OLGR and the NSW Police Force, low transparency in relation to the decision-making processes, and inefficiencies in the application and disciplinary processes. To address these issues, the review made recommendations such as: (a) developing a "one-stop-shop" website to provide aggregated information from various responsible authorities on liquor licensing; (b) requiring mandatory publication of brief written reasons for decisions on contentious and high impact licence applications and regulatory interventions, and allowing applicants and other interested parties to request brief written reasons for ILGA's decisions in respect of other applications; and (c) introducing a new statutory position of the Director of Licensing to determine low-risk or non-contentious liquor licence applications.

³² The *Liquor Act 2007* provides that a review on the liquor licensing system should be conducted five years after its implementation.

Consultation procedures

3.6.3 With regard to the procedures of consulting the public and relevant authorities during the licence application process, recommendation had been made on combining the development consent and CIS processes to reduce red tape and improve co-ordination among the responsible authorities involved in the consultation and decision-making processes. The review also supported the formal adoption of EVAT as a social impact assessment tool for all liquor licence applications. However, the risk factors to be covered and their weightings should be subject to research and public comment before its adoption.

Regulatory control

3.6.4 Regarding regulatory control of the licensed premises, some stakeholders called for greater risk-based regulation and enforcement, such as introducing annual risk-based licence fees to ensure that licensees contributed to the costs of regulating and policing, and suspending or revoking the licences for premises having recorded a large number of violent incidents. The review suggested that a co-ordinated and consistent risk-based approach to regulatory enforcement should be pursued with the support of the regulatory tools prescribed under the existing regulatory system.

Chapter 4 – Ontario of Canada

4.1 Overview

4.1.1 In Canada, the liquor licensing systems vary among the provinces and territories. Ontario is studied in this research as it has the largest population (13.5 million as at July 2013) and second largest number of liquor licences (16 828 in 2011-2012³³) among the provinces and territories in Canada.

4.1.2 The liquor licensing system in Ontario is laid down in the *Liquor Licence Act* and its *Regulations*. The *Liquor Licence Act* is supported by the *Alcohol and Gaming Regulation and Public Protection Act 1996* which prescribes the establishment of the Alcohol and Gaming Commission of Ontario ("AGCO") as the independent regulatory agency for administering the liquor licensing system.

4.1.3 In Ontario, the main objectives of the liquor licensing system are to ensure that: (a) alcohol is sold and served responsibly; (b) interests of the local communities are considered during the licensing process; (c) the liquor industry can develop in a level playing field; and (d) public safety is maintained through enforcement and compliance activities. To fulfil the regulatory objectives, the Ontario government has adopted a compliance-focused strategy for liquor licensing since 2007 which was supported by the implementation of risk-based licensing, risk-based enforcement and monetary penalties programmes.

4.1.4 Among the seven licence categories in Ontario, liquor sales licence is the main category allowing on-premises sales and supply of alcoholic beverages on an on-going basis.³⁴ Liquor sales licence is valid for two years on first application and for three years upon renewal. In 2012-2013, there were 17 016 liquor sales licences in Ontario.

³³ The figure refers to the number of licences issued by the regulatory authority for on-premises sale and supply of alcoholic beverages on an on-going basis.

³⁴ The other six categories are: (a) mini bar licence; (b) manufacturer's licence; (c) licence to represent a manufacturer; (d) ferment on premise facility licence; (e) liquor delivery service licence; and (f) special occasion permits.

4.2 Responsible authority

4.2.1 With respect to liquor licensing, AGCO is responsible for (a) conducting background investigations on individuals and companies seeking liquor licensing; (b) approving liquor licence applications; (c) handling complaints against licensed premises; and (d) inspecting and monitoring licensed premises to ensure compliance with the relevant legislation. AGCO reports to the Ministry of the Attorney General. It is required by law to submit annual reports of its activities and affairs to the Attorney General. The reports will be submitted to the Lieutenant Governor in Council and laid before the Legislative Assembly of Ontario. The annual reports cover information such as AGCO's liquor licensing objectives and strategies, number of licences issued and progress of the regulatory programmes implemented.

4.2.2 The Board of Directors of AGCO, comprising at least five members appointed by the provincial government, is responsible for the overall governance of AGCO. The Board of Directors meets on a monthly basis, and sets goals and develops policy and strategic directions for AGCO to fulfil its mandate. The current Board of Directors comprises six members, including a former assistant deputy minister, a lawyer, an educator, a public school trustee, a former Ottawa Chief of Police, and a former Chief Administrative Officer of the Police Association of Ontario.

4.2.3 The organizational structure of AGCO is based on functional responsibilities. The Licensing and Registration Branch is responsible for reviewing and processing liquor licence applications while the Inspection and Investigation Branch is responsible for the enforcement of the *Liquor Licence Act*.

4.3 Application for liquor sales licence

Eligibility criteria of applicants

4.3.1 Only owners of a registered business³⁵ can apply for a liquor sales licence. AGCO requires the applicant to submit with the application personal history reports, which contain information on the criminal record and previous connections with liquor businesses, for all owners of the business concerned. The owners of the business concerned are also subject to a police and financial background check as part of the application process.

³⁵ Owners of a business include a sole proprietor, all partners in partnership, and all officers, directors and shareholders who hold 10% or more of the equity shares of a corporation.

Public notification and consultation process

4.3.2 AGCO requires an applicant to notify local residents about the application and consult their views if there has been no liquor sales licence at the location of the proposed licensed premises for six months or above. For those cases, AGCO will post a notice of the application on its website and require the applicant to post a poster at the proposed licensed premises. The public notification and consultation processes aim at advising the community about the licence application and allowing local residents to raise their concerns or objections within the time period set in the notice.

4.3.3 In case there are objections to the application, AGCO will send information of the objections to the applicant and encourage the applicant to resolve the issues with the objectors. If the parties concerned cannot resolve the issues on their own, AGCO may schedule a public meeting among the applicant, the objectors and a Deputy Registrar of AGCO to resolve the issues and determine the application. A public hearing³⁶ will be arranged before the Licence Appeal Tribunal to determine the application if the issues about the application cannot be resolved at the public meeting. The Licence Appeal Tribunal is an adjudicative agency responsible for adjudicating compensation claims and licensing activities regulated by various Ministries.

Approval process

Inspection of the proposed licensed premises

4.3.4 AGCO will conduct an inspection of the proposed licensed premises before issuing a licence to ensure that all the proposed licensed areas are eligible for licensing, and that the areas match those shown on the floor plan submitted with the application.

³⁶ The public hearing is a quasi-judicial proceeding. The applicant and objectors can be represented by a lawyer or representative to give evidence and call upon witnesses to give evidence.

Risk-based licensing

4.3.5 To support its compliance-focused regulatory strategy, AGCO has adopted the risk-based licensing approach where applications for liquor sales licence are considered based on an assessment of identifiable risks posed to public safety and public interest, and of non-compliance with the law. Under this approach, the applicant and the premises concerned are evaluated using a set of criteria approved by the Board of Directors of AGCO. The criteria for evaluating the applicant include past conduct, liquor-related infractions, honesty and integrity, financial responsibility, and training and experience. The criteria for evaluating the premises include type, location, activities and hours of operation.

4.3.6 After reviewing all the available information on both the applicant and the premises, AGCO assesses the risks and determines if the licence should have a Level I (low risk), Level II (moderate risk), Level III (high risk) designation, or no designation (very low risk). During the assessment process, the applicant may discuss with AGCO on ways to mitigate the identified risks before the risk designation is determined. AGCO may impose one or more conditions on a liquor sales licence with Level I, Level II or Level III risk designations to help the licensee minimize risks identified during the assessment process. In addition, the licensee may be required to submit a plan, such as a safety and security plan, nuisance mitigation plan (covering noise, litter, etc.) or patron control plan, to help him or her comply with liquor licensing legislation and protect public safety. Licences with no designation will not be imposed with any licensing conditions.

4.3.7 According to AGCO, risk-based licensing is an on-going process. The assessment of risk can occur at any point in the lifecycle of a liquor sales licence, including when a new or renewal application is received, if a licensee requests a reassessment of his/her risk designation, or if AGCO becomes aware of information that will require or merit a reassessment.

Approval of applications

4.3.8 AGCO will only grant a liquor sales licence to an applicant if it is satisfied that all application requirements have been met, a risk-based assessment has been completed, and concerns and/or objections (if any) from the public and the local authorities have been addressed.

Appeal mechanism

4.3.9 Applicants or licensees who dispute a decision of AGCO to refuse, suspend or revoke a liquor sales licence may appeal to the Licence Appeal Tribunal. Following a hearing to consider the appeal, the Licence Appeal Tribunal may confirm or vary the decision of AGCO. The Tribunal may also impose conditions on a licence where necessary after a hearing.

4.4 Complaint handling mechanism

4.4.1 Members of the public can complain to AGCO about the operation of licensed premises, such as overcrowding or intoxicated patrons disturbing the peace of the neighbourhood. AGCO is responsible for investigating the complaints. Licensees who are found to have breached their licensing conditions or relevant requirements under the *Liquor Licence Act* may face disciplinary actions such as warnings, monetary penalties, additional licensing conditions, or suspension or revocation of the licences.

4.5 Enforcement and regulatory control

4.5.1 The Inspection and Investigation Branch, comprising AGCO staff and members of the Ontario Provincial Police assigned to AGCO, is responsible for conducting inspections at the licensed premises³⁷, monitoring the licensed premises for compliance with the *Liquor Licence Act*, and investigating complaints and/or breach of the laws, often in partnership with local police services. The Inspection and Investigation Branch adopts a risk-based enforcement approach and focuses resources on those licensees and establishments that pose a greater risk to public safety and are less likely to comply with the laws.

³⁷ In 2011-2012, the Inspection and Investigation Branch conducted 26 442 inspections on liquor sales licensed premises.

Monetary penalties

4.5.2 AGCO has introduced monetary penalties as a compliance tool in addition to warnings, additional licensing conditions, and suspension or revocation of licences. Monetary penalties are designed to encourage compliance before suspension or revocation of licences may need to be imposed. The range of monetary penalties is designed to address the specific risks posed by each infraction. The amount of an assessed monetary penalty is based on the particular circumstances of the infraction, including the compliance history of the licensee, and is subject to a maximum limit listed in the relevant schedule. AGCO is required to use funds collected through monetary penalties exclusively for education and training programmes for licensees as well as for public awareness campaigns, which will promote future compliance with the laws.

4.6 Review of the liquor licensing system

4.6.1 According to AGCO, compliance with the liquor licence laws among the liquor sales licensees had improved since the introduction of the compliance-focused liquor licensing strategy. Even though the number of inspections conducted by AGCO remained largely the same, the number of infractions of the *Liquor Licence Act* had decreased 34% from 13 046 in 2008-2009 to 8 549 in 2010-2011. As infractions had declined, and with the introduction of monetary penalties as an alternative to suspensions for less serious offences, the number of liquor sales licence suspensions had decreased from 416 in 2008 to 166 in 2011.

4.6.2 Nonetheless, the liquor licensing system provides that all types of premises under the liquor sales licence category including restaurants, bars and nightclubs are subject to the same regulatory control imposed by the municipalities regardless of their risk level.³⁸ A Member of the Legislative Assembly of Ontario representing a district in downtown Toronto has therefore recently introduced a bill to amend the relevant legislation in order to give municipalities the ability to establish different classes of liquor sales licensed establishment. The proposal will facilitate municipalities to develop targeted regulatory tools to address nightlife concerns, e.g. limiting concentration of a specific class of liquor sales premises in a community. The bill is under consideration by the Legislative Assembly of Ontario.

³⁸ Such regulatory control includes regulating the operating hours of licensed premises and controlling the establishment of licensed premises in a particular area.

Chapter 5 – England and Wales of the United Kingdom

5.1 Overview

5.1.1 In the United Kingdom ("UK"), the liquor licensing systems of England and Wales, Scotland, and Northern Ireland are governed under separate legislation. In England and Wales, the existing liquor licensing system is governed by the *Licensing Act 2003* which provides for the regulation of premises that are used for the sale or supply of alcohol, and/or provision of regulated entertainment or late night refreshment. This system was implemented in 2005 to replace the then fragmented regime which regulated liquor-related businesses³⁹ under several pieces of legislation. One major change to the then system is the transfer of liquor licensing responsibility from the magistrates' courts to the local councils. Another major change is the abolition of statutory limit on trading hours of licensed premises, allowing potentially 24-hour trading.

5.1.2 The purpose of the liquor licensing system in England and Wales is to promote four licensing objectives. They are: (a) preventing crime and disorder; (b) ensuring public safety; (c) preventing public nuisance; and (d) protecting children from harm. In addition, the system aims at providing a liquor regulatory framework which reflects the needs of local communities, encourages greater community involvement in licensing decisions, and empowers local authorities to make and enforce decisions on the most appropriate licensing strategies for their local areas. The system also aims at minimizing the regulatory burden on the liquor industry and supporting responsible businesses.

5.1.3 Any business selling or supplying liquor for on-premises consumption on an on-going basis has to apply for a premises licence which allows the use of the premises concerned for the sale or supply of liquor. Nonetheless, the holder of a premises licence can only sell or supply liquor at the premises concerned if the sale of liquor is authorized by a designated premises supervisor⁴⁰ at the premises who is the holder of a personal licence. A change of designated premises supervisor is allowed if he or she is replaced by another holder of a personal licence. This arrangement aims at ensuring that liquor is sold responsibly and preventing crime and disorder at the licensed premises through requiring all personal licence holders to have their criminal records checked and attend alcohol-related training course accredited by the government.

³⁹ These businesses included pubs and bars, cinemas, theatres, late night refreshment houses and night cafes.

⁴⁰ The designated premises supervisor is usually the person who has day-to-day responsibility for running the licensed premises.

5.1.4 The duration of a premises licence can be on a permanent or a time-limited basis depending on the intention of the applicant and subject to approval of the licensing authority. The duration of a personal licence is 10 years.

5.1.5 As at March 2013, there were 118 200 premises licences in England and Wales which allowed on-premises sale and supply of liquor. Among them, 8 900 premises licences had 24-hour trading authorization. The number of personal licences in force as at March 2013 was 544 600.

5.2 Responsible authorities

5.2.1 The Home Office is responsible for setting the liquor licensing policy in England and Wales and overseeing its implementation. The local licensing authorities, i.e. the local councils, are responsible for administering the liquor licensing system, which includes approving applications, issuing licences, reviewing licences, and working with the Police to enforce the licensing conditions. The licensing authorities are required to publish a licensing policy statement setting out how they intend to run and enforce the licensing process and promote the four licensing objectives in their local areas.

5.2.2 According to the *Licensing Act 2003*, each licensing authority must establish a licensing committee consisting of 10 to 15 Members of the local council⁴¹ to discharge liquor licensing-related functions on behalf of the authority. The licensing committee may delegate these functions to sub-committees consisting of three members of the committee, or to officials designated by the licensing authority in cases such as determining licence applications without receiving objections.

⁴¹ Members of the local councils are elected by the local communities for a term of four years to represent their views.

5.3 Application for premises licence and personal licence

Premises licence

Eligibility criteria of applicants

5.3.1 Applicants of a premises licence can be a person, a partnership or a corporate body. An individual applicant of a premises licence must be aged 18 or above.

Advertising and consultation process

5.3.2 Applicants of premises licence are required to publish a notice in a local newspaper or a local newsletter circulating in the area in which the premises are located, and display a notice outside the proposed licensed premises after lodging their applications to the licensing authority. Applicants are also required to give notice to the responsible authorities such as the local police, planning, fire and environmental health authorities about their applications. In addition, the licensing authority will post notices of new premises licence applications on its website.

5.3.3 In case any persons or responsible authorities have submitted relevant representations⁴² regarding a premises licence application to the licensing authority within the consultation period and the parties concerned cannot resolve the issues on their own through mediation, the licensing authority will hold a public hearing to consider the representations and determine the application.⁴³ The licensing authority will consider the representations and determine the application concerned in the context of the four licensing objectives and its own statement of licensing policy.

⁴² A representation is relevant if it relates to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives.

⁴³ The public hearing is held by a licensing sub-committee comprising three members of the licensing committee.

Approval criteria

5.3.4 The licensing authority will grant a premises licence to an applicant if he or she meets all the application requirements and the authority does not receive any representations regarding the application concerned during the consultation period. The granted licence will be subject to conditions which are consistent with the operating schedule submitted with the application⁴⁴ and relevant mandatory licensing conditions⁴⁵. In case a public hearing is held for an application, the licensing authority may grant the licence with or without imposing additional conditions⁴⁶ to promote the four licensing objectives or reject the application.

Application for renewal or variations of premises licence

5.3.5 Holders of premises licences intending to extend a time limited premises licence or transfer the licence from one premises to another have to make a new licence application. Licensees applying for other variations of their premises licences (except for some minor variations⁴⁷ and transfer of premises licence to another holder⁴⁸) are subject to the same requirements to advertise their applications, and consult the local residents and all the relevant responsible authorities as new applications.

⁴⁴ An application for premises licence must be accompanied by an operating schedule which contains information including the relevant licensable activities, opening hours of the premises, valid period of the licence, information about the designated premises supervisor, and steps proposed to be taken to promote the licensing objectives.

⁴⁵ Holders of premises licences for selling liquor are required to comply with a set of mandatory conditions including: (a) requiring a designated premises supervisor to authorize the sale of liquor at the premises; (b) banning irresponsible promotions; (c) verifying age of patrons; and (d) providing free tap water.

⁴⁶ Additional conditions are imposed on a case-by-case basis depending on the size, type, location and activities of the licensed premises concerned. For example, the licensing authority may impose a prescribed capacity on high-risk licensed premises.

⁴⁷ Licensees applying for minor variations of their premises licences are only required to display a notice at the premises concerned. While the licensing authority will consider any relevant representations received and may consult the relevant responsible authorities where necessary in the approval process, no hearing will be held to consider the representations. Examples of minor licence variations are: reducing the hours of selling liquor and making small changes to the layout of the licensed premises.

⁴⁸ Applicants for transfer of premises licences are only required to notify the Police about the applications and are not subject to the advertising requirement.

Personal licence

Eligibility criteria of applicants

5.3.6 The eligibility criteria for applicants of a personal licence are: (a) aged 18 or above; (b) holding an accredited licensing qualification; (c) not having been forfeited a personal licence within five years of their application; and (d) not having been convicted of any relevant offence.

Approval criteria

5.3.7 The licensing authority will grant a licence to an applicant if he or she meets all the eligibility criteria listed in paragraph 5.3.6. It will reject the application if the applicant fails to meet the first three criteria. If the applicant fails to meet the relevant offence criteria, the licensing authority must consult the Police on the application. The licensing authority will grant a personal licence to the applicant in case the Police do not object to the application. If the Police object to the application, the licensing authority must hold a hearing to consider and determine the application in the context of the four licensing objectives.

Appeal mechanism

5.3.8 Applicants and objectors aggrieved by the decisions of the licensing authority in granting or rejecting applications for a premises licence or a personal licence may appeal to the magistrates' court.

5.4 Licence review mechanism

5.4.1 The *Licensing Act 2003* provides for a review mechanism to address alcohol-related harm or nuisance caused by the licensed premises to the local communities. Under the mechanism, any person or responsible authority may apply to the licensing authority for reviewing a premises licence that brings alcohol-related harm or nuisance. The licensing authority must also review a licence if it is subject to a closure order⁴⁹ made by the magistrates' court or the Police due to nuisance or disorder.

⁴⁹ The Police are empowered under the *Licensing Act 2003* to seek court orders to temporarily close all licensed premises in an area, or to temporarily close down individual licensed premises that cause disorder or nuisance up to 24 hours.

5.4.2 The licensing authority will conduct a hearing to consider the review application and any relevant representations if the application is not frivolous or repetitive. Following a hearing, the licensing authority may determine to modify the conditions of the premises licence concerned, remove the designated premises supervisor of the licensed premises, suspend the licence for a period not exceeding three months or revoke the licence. Applicants and licensees aggrieved by the decisions of the licensing authority regarding the review applications may appeal to the magistrates' court.

5.5 Enforcement and regulatory control

5.5.1 The licensing authority works with the Police and other relevant responsible authorities such as the fire authority to enforce conditions of the premises licences. The licensing authority may set out joint-enforcement protocols with the local police and other local authorities to clarify the division of responsibilities and ensure efficient deployment of resources among the authorities. The risk-based approach is adopted targeting inspections on high-risk and problem premises.

5.5.2 Since 2012, the local licensing authorities are empowered under the *Police Reform and Social Responsibility Act 2011* to impose early morning restriction order and late night levy on licensed premises that are authorized to operate late at night to address disorders and nuisance caused by these premises. Early morning restriction order enables a licensing authority to prohibit the sale of alcohol for a specified time period between midnight and 6 am in the whole or part of its area to promote the licensing objectives. Regarding late night levy, the local licensing authority may impose the levy on premises licences that are allowed to sell alcohol at late night to help cover the cost of policing the late night economy.⁵⁰

⁵⁰ The levy will be collected by the licensing authority at the time of collecting the annual licence fee. The net levy revenue will be split between the licensing authority and the local police.

5.6 Review of the liquor licensing system

5.6.1 The UK government considers that alcohol-related crime and anti-social behaviour have reached an unacceptable level in recent years. Alcohol misuse is regarded as a strong contributory factor in a wide range of offences such as public order offences, criminal damage and violent offences.⁵¹ In this connection, the government has reformed the liquor licensing system to enable the local licensing authorities to address alcohol-related harm caused by high-risk licensed premises.

5.6.2 The reforms introduced by the government include: (a) empowering the local licensing authorities to impose early morning restriction order and late night levy on premises licences with authorization to operate at late night; (b) encouraging greater community involvement in local alcohol licensing decisions by requiring licensing authorities to publish key information about new licence applications and guidance on how to make representation to the licensing authorities; and (c) piloting the provision of information on crimes occurring on or near local alcohol hotspots.

5.6.3 In September 2013, the government launched a consultation on its proposal to abolish the personal licence system which is intended to ensure responsible sale of alcohol and to prevent crime and disorder at the licensed premises. The government has considered that the current system is not effective because it does not require staff other than the designated premises supervisor working at the licensed premises to hold a personal licence. Hence, it cannot prevent those with criminal records and a poor understanding of alcohol harms from working at the licensed premises.

5.6.4 The government has proposed to replace the personal licence system with the arrangement for local licensing authorities to impose conditions on higher risk premises licences requiring staff working on the premises to be trained and have their criminal records checked. By adopting this flexible, risk-based arrangement, the government aims to free up the majority of responsible premises licence holders from unnecessary red tape while maintaining the safeguards needed to tackle the irresponsible licensees. The outcome of the consultation released in March 2014 indicated that the stakeholders did not support the proposal to abolish the personal licence system and the government had decided not to proceed with the proposal.

⁵¹ According to the UK government, a fifth of all violent incidents took place in or around a pub or club, and in 47% of violent incidents, the victims believed that their attackers were under the influence of alcohol.

Chapter 6 – Analysis

6.1 Introduction

6.1.1 Based on the findings in the previous chapters, this chapter compares the liquor licensing system in New South Wales ("NSW") of Australia, Ontario of Canada and England and Wales of the United Kingdom with that of Hong Kong in terms of the representation of stakeholders in the licensing regime, business facilitation measures, public consultation and risk assessment of licence applications, regulatory control of licensed premises and transparency of the liquor licensing system. A summary table comparing these features is provided in **Appendix II**.

6.2 Representation of stakeholders in the liquor licensing system

6.2.1 In Hong Kong, there are views that representatives of the local communities and the trade are under-represented in the Liquor Licensing Board ("LLB"). However, it is observed that except for the licensing committees in England and Wales which are made up of the elected Members in the local councils⁵², there is no statutory requirement for the licensing authorities in NSW and Ontario to include trade or local community representatives in their membership. NSW is the only place studied with a statutory requirement on the membership of the licensing authority, namely, at least one of the appointed members is or has been a judge or has been an Australian lawyer for at least seven years. Nonetheless, the overseas places studied have put in place consultation, complaint handling and appeal mechanisms under their liquor licensing system to solicit and consider the views of the stakeholders on liquor licensing.

⁵² This arrangement is similar to the one adopted by Hong Kong prior to 2000, where the two LLBs under the former Municipal Councils were responsible for approving liquor licence applications. The then LLBs comprised Members of the two Municipal Councils.

6.3 Business facilitation measures

6.3.1 All the places studied aim at striking a balance between protecting the interests of the community and facilitating the development of the liquor industry through their liquor licensing system. While there may be business facilitation measures such as granting perpetual liquor licences or allowing 24-hour trading, the licensing authorities concerned have correspondingly put in place mechanisms to ensure public interests are protected.

6.3.2 For example, the NSW government has established extensive consultation procedures to consider public views, and introduced tools to assess the risk level of the proposed licensed premises in some high-risk precincts before granting the licences which are perpetual in nature. It has also introduced targeted regulatory measures on high-risk, low-compliant licensed premises to address disorder or nuisance problems that they may cause. In England and Wales where licensees are allowed to operate 24 hours, the local licensing authorities are empowered to impose early morning restriction order and late night levy on these licensed premises to control the alcohol-related harm that they may bring.

6.3.3 As regards the party for holding the liquor licence, it is noteworthy that all the places studied require a natural person to be held liable for the licensed premises. At best, the liquor licensing system of NSW allows an individual or a corporation to apply for a liquor licence. Nevertheless, corporate licensees are still required to appoint a manager approved by the licensing authority to supervise the licensed premises and be held liable for the offences committed under the liquor licensing legislation. Such practice has two benefits: (a) ensuring business continuity under a corporate licence arrangement; and (b) maintaining a clear legal liability as an approved manager must be appointed for a corporate licence.

6.4 Public consultation and risk assessment of licence applications

6.4.1 In Hong Kong, LLB attempts to strike a balance of the interests of all parties in determining licence applications, and public views obtained during the consultation process are only one of the factors being considered. There is no requirement under the liquor licensing system for the applicants to resolve the issues or objections raised by the local community before LLB determines the application. Besides, there is no statutory procedure in place for assessing the risk level or social impact of the proposed licensed premises before a liquor licence is granted. Instead, the risk level of the proposed licensed premises is assessed on a case-by-case basis and licensing conditions are imposed on the licences accordingly.

Consideration of public views

6.4.2 In view of the perpetual or longer-term nature of the liquor licence granted in the overseas places studied, the public consultation procedures put in place under their liquor licensing system provide a platform to resolve concerns and objections raised by the local residents so that their interests can be protected. In the overseas places studied, applicants are informed about the objections raised during the public consultation process and are required or encouraged to resolve the issues before the licensing authority concerned makes the licensing decisions.

6.4.3 In NSW, public views and objections are considered and addressed through the procedures of (a) obtaining development consent from the local authorities; (b) preparing the Community Impact Statement, which summarizes the concerns of the local community and ways to address them, by the applicant prior to lodging the application; and (c) consulting the local community after lodging the application. Meanwhile, the NSW government is considering combining the first two public consultation procedures to reduce red tape. Nonetheless, the social impact of a licence application is one of the key approval criteria for applications of high-risk licence categories.

6.4.4 In Ontario, the licensing authority will determine a licence application only if objections are resolved. Otherwise, the case will be heard and determined by the Licence Appeal Tribunal. In England and Wales, the local licensing authority will consider representations from the public and responsible local authorities in an open hearing and determination will be made in accordance with the licensing objectives of ensuring public safety and preventing disorder and nuisance, and its statement of licensing policy.

Risk assessment of the proposed licensed premises

6.4.5 The licensing authorities in NSW and Ontario have introduced risk assessment schemes for determining the risk level of a proposed licensed premises in a systematic manner before the licensing decision is made. The schemes enable the licensing authorities to be better informed about the social impact of granting the licence and determine the appropriate licensing conditions for mitigating the risks posed to public safety and public interest by the high-risk licensees.

6.4.6 In NSW, the Environment and Venue Assessment Tool is adopted in a pilot scheme to assess the location and venue risks of proposed licensed premises locating in some high-risk precincts. The NSW government is considering formally adopting the Tool for all liquor licence applications.

6.4.7 Under the risk-based licensing approach in Ontario, the applicant and the proposed licensed premises of each application are assessed based on specified criteria. In addition to the imposition of licensing conditions, licensees with high-risk designation may be required to submit a plan, such as a safety and security plan or nuisance mitigation plan, to help them comply with liquor licensing legislation and protect public safety. As risk-based licensing is an on-going process, risk designation of a licence can be reassessed at any point during the licence period and during the licence renewal process. As a result, timely action can be taken by the licensing authority to mitigate the harm or nuisance brought by a high-risk, non-compliant licensee.

6.5 Regulatory control of licensed premises

Complaint handling mechanism

6.5.1 In all the overseas places studied, members of the public can lodge complaints against the licensed premises to the liquor licensing authorities. For example, under the three-level complaint handling approach adopted in NSW, channels are available for the public to escalate their complaints to the licensing authorities if the complaints cannot be resolved by the responsible authorities such as the Police at the local level. Under the licence review mechanism in England and Wales, any person or responsible authority may apply to the licensing authority to request a review of a premises licence that brings alcohol-related harm or nuisance. The licensing authority must also review a licence if it is subject to a closure order made by the magistrates' court or the police due to nuisance or disorder. The licensing authority will conduct a hearing to consider the application for review if the application is not frivolous or repetitive. In these two overseas places, the licensing authority concerned may impose additional licensing conditions on the licence, or suspend or revoke the licence concerned when determining the complaint or application for licence review.

6.5.2 In Ontario, the licensing authority is responsible for investigating complaints lodged by members of the public against the licensed premises. Licensees who are found to have breached their licensing conditions or relevant requirements under the liquor licensing legislation may face disciplinary actions such as warnings, monetary penalties, additional licensing conditions, or suspension or revocation of the licences.

6.5.3 In contrast to the licensing authorities in the overseas places studied, the scope of functions of LLB in Hong Kong does not cover complaint handling and enforcement. At present, complaints against the licensed premises are handled by various government departments according to the nature of complaints. Enforcement responsibilities are mainly carried out by the Police. In view of the inactive role of LLB in the complaint handling and enforcement processes, there are views that LLB cannot take timely action to review the licensing conditions of the licences concerned to mitigate the nuisance caused to the local community.

Regulatory measures to control high-risk licensed premises

6.5.4 It is noteworthy that the liquor licensing system in the overseas places studied provide for a range of regulatory measures or compliance tools for the licensing authorities to control high-risk, low-compliant licensed premises and promote compliance among them. For example, the licensing authority in NSW has introduced measures including: (a) a temporary licence freeze in high-risk precincts; (b) classification of high-risk licensed premises on the basis of the number of violent incidents recorded in a year and imposition of additional licensing conditions on them accordingly; and (c) the three strikes disciplinary scheme under which licensees convicted of three serious offences will be subject to disciplinary actions.

6.5.5 In England and Wales, the police are empowered to temporarily close down individual licensed premises or licensed premises in an area to control disorder or nuisance caused by them. The local licensing authorities have the power to impose early morning restriction order or late night levy to address disorder and nuisance caused by premises operating in the late night. In Ontario, the licensing authority has introduced monetary penalties as an additional compliance tool which has increased the level of compliance with the relevant law.

6.6 Transparency of the liquor licensing system

6.6.1 In Hong Kong, there are some views that the liquor licensing system has low transparency. Though LLB has introduced a set of non-binding guidelines in December 2013 setting out the factors that it will consider when assessing liquor licence applications, the trade and the public still consider the case-by-case assessment approach difficult to follow the reasons for the licensing decisions.

6.6.2 In NSW, the liquor licence applicants are well informed about the public consultation procedures including the development consent and Community Impact Statement procedures under which they are required to address public objections or concerns before their applications will be considered by the licensing authorities. The recent review of the liquor licensing system in NSW further recommends mandatory publication of brief written reasons for decisions on contentious and high impact licence applications and regulatory interventions to enhance the transparency of the decisions concerned.

6.6.3 In Ontario, the licensing authority has communicated the licence approval criteria to the applicants through the application guidelines, which include the requirement to address public concerns or objections before granting a licence. In England and Wales, the local licensing authorities are required to publish a licensing policy statement setting out how they plan to run and enforce the licensing process and promote the licensing objectives, i.e. (a) preventing crime, disorder and nuisance; and (b) protecting public safety and children from harm, in their local areas. These objectives are one of the guiding principles for the licensing authority in determining licence applications and complaints.

6.6.4 In NSW and Ontario, when the licensing authorities implement risk-based licensing programmes or regulatory measures in accordance with their licensing objectives, they promote transparency by setting out the risk assessment or regulatory criteria clearly and communicate them to the trade and the public through various channels such as their official website, newsletter and fact sheets.

6.6.5 To ensure institutional transparency and accountability, the licensing authorities in NSW and Ontario are also required to submit annual reports of their activities and affairs to the responsible ministers and have the reports laid before the state parliament or provincial assembly.

Appendix I

Overview of the special business regulatory system in Taipei

A.I.1 Taipei has not established a dedicated regime to regulate liquor licensing since the abolition of the liquor monopoly system in 2002⁵³, meaning that businesses can sell liquor without a liquor licence. As drinking is common in social gatherings and on business occasions, there are many liquor-selling businesses in Taipei. As at February 2014, the city had 2 036 liquor-selling businesses.

A.I.2 Nevertheless, to protect public safety and minimize public nuisance caused to nearby residents, certain liquor-selling businesses such as pubs and bars and high-risk entertainment and catering businesses including ballrooms, dance halls, audiovisual singing services and sauna houses have been governed under an overarching regulatory system since the 1980s. These regulated businesses are collectively known as "special businesses" and there were 227 of them in Taipei as at February 2014.

A.I.3 Special businesses are regulated by the *Taipei City Self-government Ordinance of Ballrooms, Dance Halls, Pubs, Bars and Special Coffee and Tea Shops* ("*Self-government Ordinance*") and the Office of Commerce under the Taipei City Department of Economic Development is empowered to enforce the *Self-government Ordinance*.

A.I.4 Operators must obtain the special business permit before applying for the business registration but a separate liquor licence is not required for selling liquor for on-premises consumption. In 2013, there were nine applications for special business permit in Taipei but only five of them were approved. An individual, a partnership or a company is eligible to apply for the special business permit, which is a perpetual arrangement once approved. All special businesses are subject to the same type of permit and there is no restriction on the operating hours of special businesses.

⁵³ Prior to 2002, a government-granted liquor monopoly system was adopted across Taiwan to provide a stable source of revenue for the government. Under the monopoly system, only the Monopoly Bureau and licensed businesses were allowed to sell liquor. Along with the entry of Taiwan into the World Trade Organization, the monopoly system was abolished in 2002 as a trade liberalization measure.

Appendix I (cont'd)

A.I.5 In order to obtain the special business permit, the premises must meet the statutory criteria set out in the *Self-government Ordinance*, which include meeting the required standards of building and fire safety, being at least 100 m away from certain public facilities such as schools and hospitals⁵⁴ and complying with the zoning regulations (i.e. special businesses are banned in residential areas but not commercial areas). If the premises under application are located in commercial areas close to residential neighbourhoods, public hearings would be held to collect the views of nearby residents. The Office of Commerce must take into account the views collected in the public hearings when approving the special business permit.

A.I.6 An appeal mechanism is available for the applicants to lodge an appeal against the decisions made by the Office of Commerce relating to the special business permit. The public can also make complaints against the nuisance caused by special businesses via a centralized hotline or the Mayor's mailbox. The complaints are then channelled to and handled by the responsible government departments. To help address public complaints, serious cases will be tabled at the joint departmental meetings of the Taipei City government for discussion or submitted to the Mayor for attention.

A.I.7 On regulatory control, the Office of Commerce launches joint operations with other government departments (e.g. the Police Department and the Fire Department) to inspect premises of special businesses at least twice a year. A heavier penalty is imposed on special businesses for repeated offences, such as suspending water and electrical supply of the premises concerned for at least six months.

A.I.8 The public and Members of the Taipei City Council have expressed grave concern over the nuisance, fire safety issues and crimes associated with special businesses. They have considered that the proliferation of problems is a result of the ambiguous demarcation of powers and responsibilities among various government departments under the fragmented regulatory framework, lack of long-term regulatory policy and ineffective enforcement against special businesses.

⁵⁴ For dance halls, a shorter distance of 50 m is required.

Appendix II

Salient features of liquor licensing system in selected places

	Hong Kong	New South Wales of Australia	Ontario of Canada	England and Wales of the United Kingdom
Background information				
Total population	• 7.2 million as at end-2013.	• 7.4 million as at July 2013.	• 13.5 million as at July 2013.	• 56.6 million as at mid-2012.
Number of on-premises liquor licences	• 6 424 in 2013.	• 12 099 as at July 2013.	• 17 016 in 2012-2013.	• 118 200 premises licences and 544 600 personal licences as at March 2013.
Liquor licensing authority				
Authority responsible for making liquor licensing decisions	• Liquor Licensing Board ("LLB").	• Independent Liquor and Gaming Authority ("ILGA").	• Alcohol and Gaming Commission of Ontario ("AGCO").	• The local licensing authorities are licensing committees set up under the local councils.
Composition of the licensing authority	• Comprising a Chairman, a Vice Chairman and nine other members appointed by the Chief Executive.	• Comprising a Chief Executive and such other members as appointed by the Governor of New South Wales ("NSW").	• The Board of Directors of AGCO comprises at least five members appointed by the provincial government.	• Comprising 10 to 15 Members of the local council concerned.

Appendix II (cont'd)

Salient features of liquor licensing system in selected places

	Hong Kong	New South Wales of Australia	Ontario of Canada	England and Wales of the United Kingdom
Liquor licensing authority (cont'd)				
Statutory requirement on qualifications of members of the licensing authority	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> Yes, at least one of the appointed members is or has been a judge, or has been an Australian lawyer for at least seven years. 	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> No, but all members are elected Members in the local council concerned.
Functions of the licensing authority	<ul style="list-style-type: none"> Determining liquor licence applications. 	<ul style="list-style-type: none"> Determining liquor licence applications; handling serious disciplinary complaints; and reviewing regulatory decisions of the administrative authority. 	<ul style="list-style-type: none"> Determining liquor licence applications; administering the licensing system; handling complaints; and working with the Police to enforce the liquor legislation. 	<ul style="list-style-type: none"> Determining liquor licence applications; administering the licensing system; handling complaints and reviewing licences; and working with the Police to enforce the liquor legislation.

Appendix II (cont'd)

Salient features of liquor licensing system in selected places

	Hong Kong	New South Wales of Australia	Ontario of Canada	England and Wales of the United Kingdom
Features of liquor licences				
Duration of licence	<ul style="list-style-type: none"> One year or less. 	<ul style="list-style-type: none"> Perpetual. 	<ul style="list-style-type: none"> Two years on first application and three years on renewal. 	<ul style="list-style-type: none"> Premises licence – time-limited or perpetual depending on the intention of the applicant and subject to approval of the licensing authority. Personal licence – 10 years.
Risk-based classification of on-premises licences	<ul style="list-style-type: none"> Risk level of licences is determined on a case-by-case basis. 	<ul style="list-style-type: none"> Low-risk licence categories such as small bar licence are subject to less stringent licence application requirements and licensing conditions compared with higher risk licence categories such as hotel/bar licence. 	<ul style="list-style-type: none"> Risk level of each licence is determined according to the risk-based licensing approach. 	<ul style="list-style-type: none"> Risk level of licences is determined on a case-by-case basis.
Application for liquor licence				
Eligibility of applicants	<ul style="list-style-type: none"> An individual. 	<ul style="list-style-type: none"> An individual, a corporation or a club. A corporate or club licensee must appoint a manager who is approved by ILGA to manage the licensed premises. 	<ul style="list-style-type: none"> An individual who is the owner of the liquor sales business. 	<ul style="list-style-type: none"> An individual, a partnership or a corporate body can apply for a premises licence. A premises licence holder must appoint a designated premises supervisor who is a personal licence holder to authorize the sale of liquor.

Appendix II (cont'd)

Salient features of liquor licensing system in selected places

	Hong Kong	New South Wales of Australia	Ontario of Canada	England and Wales of the United Kingdom
Application for liquor licence (cont'd)				
Procedures/approach for considering public views or objections	<ul style="list-style-type: none"> Consulting the local communities and the relevant government departments upon receipt of liquor licence application. Holding a public hearing to enable the parties concerned to express their views if objection or adverse comments are received during the consultation. LLB will attempt to strike a balance of the interests of all parties in determining the applications and public views are only one of the factors being considered. 	<ul style="list-style-type: none"> Public objections are captured and handled through the procedures of: <ol style="list-style-type: none"> obtaining development consent from the local authorities; preparing the Community Impact Statement prior to lodging the application; and consultation process after submission of applications. ILGA will consider if the application will be detrimental to the well-being of the local community in making the licensing decision. 	<ul style="list-style-type: none"> AGCO will hold a public meeting with the applicant and objectors concerned to resolve the issues and determine the application only if the issues are resolved. The case will be heard and determined by the Licence Appeal Tribunal if the issues cannot be resolved after the public meeting. 	<ul style="list-style-type: none"> The local licensing authority will hold a public hearing to consider representations from the public and responsible local authorities. Determination will be made in the context of the licensing objectives (e.g. preventing disorder and nuisance) and its statement of licensing policy.
Procedures for assessing risks of the proposed licensed premises	<ul style="list-style-type: none"> No statutory procedure is in place. Risk level is assessed on a case-by-case basis. 	<ul style="list-style-type: none"> Assessing location and venue risks for the proposed licensed premises locating in specified high-risk areas using the Environment and Venue Assessment Tool. 	<ul style="list-style-type: none"> Designating risk level for the licences by assessing risks of the applicants and the premises under the risk-based licensing approach. 	<ul style="list-style-type: none"> No statutory procedure is in place. Risk level is assessed on a case-by-case basis.

Appendix II (cont'd)

Salient features of liquor licensing system in selected places

	Hong Kong	New South Wales of Australia	Ontario of Canada	England and Wales of the United Kingdom
Complaint handling mechanism				
Mechanism	<ul style="list-style-type: none"> Complaints are handled by various government departments (e.g. the Police) instead of LLB. The Police will notify LLB promptly in case the licensed premises are found to be associated with serious crimes or in serious breach of the licensing conditions. While the government departments will not notify LLB immediately upon receipt of complaints against the licensed premises, they have put in place mechanisms to provide the complaint and enforcement records to LLB upon request or on a regular basis. 	<ul style="list-style-type: none"> Complaints are handled at the following levels: <ol style="list-style-type: none"> seeking resolution after complaining to the local councils or the Police; seeking determination by the Director-General, NSW Trade and Investment if issues cannot be resolved at the local level; and lodging a disciplinary complaint to ILGA for serious cases. 	<ul style="list-style-type: none"> AGCO is responsible for investigating complaints against the licensed premises. Licensees found to have breached their licensing conditions may face disciplinary actions. 	<ul style="list-style-type: none"> The local licensing authority will conduct a hearing to consider application for reviewing a premises licence lodged by the public or responsible local authorities. It will also conduct a review of a premises licence that is subject to a closure order made by the court or the Police.

Appendix II (cont'd)

Salient features of liquor licensing system in selected places

	Hong Kong	New South Wales of Australia	Ontario of Canada	England and Wales of the United Kingdom
Enforcement and regulatory control				
Responsible authorities	<ul style="list-style-type: none"> Mainly the Police. 	<ul style="list-style-type: none"> The Office of Liquor, Gaming and Racing, and the Police. 	<ul style="list-style-type: none"> AGCO and the Police. 	<ul style="list-style-type: none"> The local licensing authorities and the Police.
Regulatory approach/measures	<ul style="list-style-type: none"> Carrying out routine checks on premises to ensure compliance with the licensing conditions and combat crime. Number of inspections is determined according to the business nature and track record of the premises, but all premises will be inspected at least once a year. 	<ul style="list-style-type: none"> Putting in place regulatory measures for higher risk locations and premises such as: <ol style="list-style-type: none"> introducing a temporary licence freeze in high-risk precincts; and imposing additional conditions on high-risk licensed premises classified on the basis of the number of violent incidents recorded in a year. 	<ul style="list-style-type: none"> Adopting a risk-based enforcement approach. Introducing monetary penalties to supplement other tools in promoting compliance of licensees. 	<ul style="list-style-type: none"> The Police are empowered to close down licensed premises temporarily due to disorder or nuisance. The local licensing authorities can impose early morning restriction order or late night levy to address disorder and nuisance caused by premises operating in the late night.

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