

Our Ref : HWF(F) (CR) 10/8/7/1 III
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11 December 2002

Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central, Hong Kong

(Attn: Ms Bernice Wong,
Assistant Legal Adviser)

Dear Ms Wong,

**Appeal Board on Closure Orders
(Immediate Health Hazard) [ABCO(IHH)] Rules**

I refer to your letter of 9 December seeking a number of clarifications on the above Rules. I set out below the additional information you requested in seriatim.

- (a) **Section 3 requires a person to serve on the Chairman a notice of appeal. Section 14 provides that service shall be effected by delivery to the Chairman by hand or by leaving the notice at the office of the secretary. Are there any administrative arrangements to facilitate the appellant to deliver the notice to the Chairman in person? Should Form 1 be addressed to the Chairman instead of the secretary?**

Our experience as the Secretariat of the Licensing Appeals Board (LIAB) is that an overwhelming majority of the appellants have delivered their notices of appeal to the office of the secretary rather than the Chairman in person. The rationale is two-fold. First, it is more convenient for an appellant to lodge his appeal with the LIAB Secretariat which is manned by at least a public officer during office hours. Second, it could be difficult for an appellant to lodge his appeal direct with the Chairman who very often is pre-occupied with other public or private commitments. As far as the ABCO(IHH) is concerned, while the lately gazetted Rules do not rule out the possibility of delivery of notices of appeal to the Chairman in person, we believe that in practice, most appellants will submit such notices to the office of the secretary pursuant to S.14(a) (ii) of the Rules. We see this as the most reliable and convenient means for lodging an appeal and will promote it among prospective appellants through the following administrative means.

- When issuing a closure order or a notice of refusal to rescind a closure order, the Authority will categorically remind the recipient of his rights to appeal to the ABCO(IHH) within 7 days if he is dissatisfied with the Authority's decision. We will request the Authority to attach the Form at Annex I to its closure or refusal letter. This Form was designed in such a manner as to facilitate the appellants in delivering the completed notices of appeal to the office of the secretary. For example, the secretary has been designated as the default recipient of this Form with his address, telephone number and fax number included in the footnotes. Similar arrangements are being adopted by the Licensing Appeals Board and the Municipal Services Appeals Board (see Annexes II & III).
- Before commencement of the operation of the ABCO(IHH) next February, we will upload the details of its Secretariat onto the website of the Health, Welfare and Food Bureau. The corresponding web-page of the LIAB can be found at <http://www.hwfb.gov.hk/feh/board>.
- We will issue a press release to remind food business premises licensees of the commencement of operation of the ABCO(IHH) nearer the time. The steps and procedures for lodging appeals with the ABCO(IHH) Secretariat will be highlighted in this press release.

(b) Who would be the persons other than the appellant referred to in section 4(b) that are bound by the Authority's decision or order ("relevant persons")? Would they be allowed to participate in the appeal?

“Relevant persons” refer to those persons entered by an appellant in paragraph 6 of the notice of appeal together with proper addresses and contact telephone numbers, excluding those entries which the secretary has good reason to believe have been frivolously or erroneously included. The “relevant persons” may take part in the proceedings of an appeal as follows.

Section 6(2): The person who is to preside at the hearing of the appeal may by order require the “relevant persons” to produce any document or material in their possession or under their respective control.

Section 8: The “relevant persons” may be invited by the person who is to preside at the hearing of the appeal to make representations at the hearing.

- (c) **Why is it not necessary for the Authority to serve on the relevant persons the documents specified in section 5? Please also explain why section 5(a)(iv) imposes the time limit of one month before the making of the decision or order during which representations have been made.**

There is nothing in the ABCO(IHH) Rules to prevent an appellant from copying to the “relevant persons” the statement/documents received from the Authority. In the interest of administrative efficiency, we do not see fit to over-burden the Authority with a requirement to copy indiscriminately the bulky statement/documents it prepared to each and every “relevant person”. A more flexible and administratively viable option is for the secretary to serve such statement/documents on those “relevant persons” who will take part in the proceedings of the appeal, consulting the person who is to preside at the hearing as appropriate.

The one-month time limit was imposed to enable the Authority to focus its research on the most relevant correspondence when identifying third persons who have made representations relevant to the subject matter of the appeal. Given that the Authority has to work under a very tight schedule, we believe a time limit should be set to facilitate the Authority in identifying only those third persons who are materially associated with the appeal.

- (d) **Please explain the policy intent of making reference to Article 10 of the Hong Kong Bill of Rights in section 9(2).**

It is our policy intention to ensure that the appeal proceedings comply with Article 10 of the Hong Kong Bill of Rights (BOR) which provides, inter alia, that every person shall be entitled to a public hearing in the

determination of his rights and obligations in a suit at law. Section 9(2) of the ABCO(IHH) Rules provides for two scenarios where the Appeal Board may deviate from this general rule. To ensure that the deviation is still in compliance with Article 10 of the BOR, sections 9(2)(a) & (b) make reference to Article 10 and provide that the Appeal Board may hear the whole or part of the hearing in private where the parties have mutually agreed to waive their rights under that Article or any party applies on any ground provided in that Article to hear the appeal in private.

(e) Why is it not required under section 11 for the appellant to serve on the relevant persons the notice to abandon the appeal?

It is our intention to cover this service requirement administratively rather than legislatively. We do not wish to over-burden the appellant with a requirement to serve a notice on the “relevant persons”, particularly those who have no role to play in the proceedings of the appeal. We consider it more cost-effective for the secretary, upon receipt of a notice of abandonment from the appellant, to distribute it to those “relevant persons” who have been taking part in the proceedings.

(f) Why is it not required under section 15 for the secretary to serve on the relevant persons the notice of date, time or place changed for hearing of the appeal?

As with item (e), we consider it more appropriate to provide for this service requirement administratively rather than legislatively, given that not all “relevant persons” may take part in the proceedings of an appeal. From the administrative efficiency perspective, it may be a waste of time and resources to obligate the secretary to inform each and every “relevant person” of the change in date, time or place of the hearing.

Please feel free to contact me if you need clarification or additional information about the ABCO(IHH) Rules or this letter.

(Edward Law)
for Secretary for Health, Welfare and Food

c.c. Ms Lily YEW, Chairman of ABCO(IHH) Fax: 2845 2668
(with LegCo's letter dated 9.12.2002)

D of J (Attn: Ms Marie SIU)

Fax: 2845 2215

DFEH (Attn: Mr C P HUNG)

Fax: 2530 1368

Internal

AS(4)

SEO(FEH)

APPEAL BOARD ON CLOSURE ORDERS
(IMMEDIATE HEALTH HAZARD)

NOTICE OF APPEAL

To: Secretary, Appeal Board on Closure Orders
(Immediate Health Hazard)

1. Full name of Appellant: (Chinese)
..... (English)

2. Address of Appellant:
.....

Telephone No. of Appellant:.....

3. Address of Appellant for service of documents (if different from
the above):
.....
.....

4. Address of premises affected by the Authority's closure order
or the Authority's refusal to issue a notice to rescind the
closure order:
(A copy of the closure order or the notice issued by the
Authority declaring his refusal to rescind the closure order
must be attached to this form.)
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5. Details of the Authority's decision or order and grounds for
this appeal are: (Please set them out in full and attach
additional sheets, if necessary.)
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6. Other persons who are affected by Authority's decision or order:
 (Please list out their names (English and Chinese), addresses and contact telephone numbers.)

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Dated this day of 20.....

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 (Signature of Appellant)

- Note :
- (1) You are required to attach to this notice copies of all documents, if any, on which you intend to rely in support of your appeal.
 - (2) The completed form should be delivered by hand to the Secretary, Appeal Board on Closure orders (Immediate Health Hazard) at Room 1013, 10/F Citibank Tower, 3 Garden Road, Central, Hong Kong
 - (3) For enquiries, please contact the Appeal Board Secretariat at 2136 3331 or by fax at 2136 3282.

**Personal Data in the Notice of Appeal to the
Appeal Board on Closure Orders (Immediate Health Hazard)**

Purpose of Collection

The personal data you provide in the Notice of Appeal will be used by the Appeal Board for the following purposes :

- (a) activities relating to the appeal lodged by you to the Appeal Board; and
- (b) facilitating communication between the Appeal Board and yourself.

2. The provision of personal data by means of the Appeal Form is voluntary. If you do not provide us with sufficient information, we may not be able to process your appeal.

Classes of Transferees

3. The personal data you provide by means of the Notice of Appeal may be disclosed to the other party to the appeal and the relevant government departments/organizations for the purposes mentioned in paragraph 1 above.

Access to Personal Data

4. You have a right of access and correction with respect to personal data as provided for in sections 18 and 22 and Principle 6 of the Schedule 1 of the Personal Data (Privacy) Ordinance. Your right of access includes the right to obtain a copy of the Notice of Appeal setting out your personal data.

Enquiries

5. Enquiries concerning the personal data collected by means of the Notice of Appeal including the making of access and corrections, should be addressed to :

Senior Executive Officer (FEH)Adm
Health, Welfare and Food Bureau
Room 905B, 9th Floor
Citibank Tower, 3 Garden Road
Central, Hong Kong
Tel : 2136 3300

LICENSING APPEALS BOARD NOTICE OF APPEAL

To: The Secretary, Licensing Appeals Board

1. Full name of Appellant: (English)
..... (Chinese)

2. Address of Appellant:
Telephone No of Appellant:

3. Address of Appellant for service of documents (if different from the above):
.....

4. Details of decision appealed against :
(Please attach a copy of the decision issued by the licensing authority and indicate the particular aspect(s) being the subject of the appeal.)
.....
.....
.....

5. The grounds for this appeal are:
.....
.....
.....
(Please set them out in full and attach additional sheets, if necessary.)

Dated this day of 20.....

.....
(Signature of Appellant)

- Note :
- (1) You are required to attach to this notice copies of all documents, if any, on which you intend to rely in support of your appeal.
 - (2) The completed form should be sent to the Secretary, Licensing Appeals Board at Room 1013, 10/F Citibank Tower, 3 Garden Road, Central, Hong Kong
 - (3) For enquiries, please contact the Licensing Appeals Board Secretariat at 21363331 or by fax at 21363282.

Personal Data in the Notice of Appeal to the Licensing Appeals Board

Purpose of Collection

The personal data you provide in the Notice of Appeal will be used by the Licensing Appeals Board for the following purposes :

- (a) activities relating to the appeal lodged by you to the Licensing Appeals Board; and
- (b) facilitating communication between the Licensing Appeals Board and yourself.

2. The provision of personal data by means of the notice of appeal is voluntary. If you do not provide us with sufficient information, we may not be able to process your appeal.

Classes of Transferees

3. The personal data you provide by means of the notice of appeal may be disclosed to the other party to the appeal and the relevant government departments/organizations for the purposes mentioned in paragraph 1 above.

Access to Personal Data

4. You have a right of access and correction with respect to personal data as provided for in sections 18 and 22 and Principle 6 of the Schedule 1 of the Personal Data (Privacy) Ordinance. Your right of access includes the right to obtain a copy of the notice of appeal setting out your personal data.

Enquiries

5. Enquiries concerning the personal data collected by means of the notice of appeal including the making of access and corrections, should be addressed to :

Senior Executive Officer (Food and Environmental
Hygiene) Administration
Health, Welfare and Food Bureau
Room 905B, 9th Floor
Citibank Tower, 3 Garden Road
Central, Hong Kong
Tel : 2136 3300

MUNICIPAL SERVICES APPEALS BOARD - APPEAL FORM

I, _____ (HKID No. _____),

the Appellant, at the address of _____

(Telephone No. _____), appeal against the decision of the _____

(A copy of the notice of decision dated _____ is at Annex A.)

The grounds of my appeal are:

Multiple horizontal lines for writing the grounds of appeal.

(Please attach additional sheets, if necessary.)
(Documentary support for my appeal is attached at Annex B.)

Date: _____ Signature of Appellant: _____

Note: This form must be filled in ink and delivered by hand to the Municipal Services Appeals Board Registry at Room 140, Central Government Offices (East Wing), Lower Albert Road, Hong Kong. For enquiries and assistance, please contact the Registry at Tel No. 2810 2829 or by Fax No. 2526 4133.