

For discussion
on 13 June 2013

LegCo Panel on Food Safety and Environmental Hygiene

Liquor Licensing - Guidelines on Assessing Liquor Licence Applications

Purpose

This paper presents the “Guidelines on Assessing Liquor Licence Applications” (“the Guidelines”) prepared by the Liquor Licensing Board (“LLB”).

Background

2. Between July and September 2011, the Food and Health Bureau consulted the public on a review of the liquor licensing regime. The outcome of the consultation exercise was reported to this Panel on 10 January 2012, as per LC Paper No. CB(2)719/11-12(03).

3. According to the views received, the trade supported the proposed trade facilitation measures but did not favour tightening of the regulation over liquor-licensed premises. On the other hand, representatives and residents of local communities where a large number of bars existed urged the Government to impose more stringent control on liquor-licensed premises and strengthen enforcement actions against premises causing nuisances. At the same time, a significant number of respondents pointed out that safety should be accorded the first priority in vetting liquor licence applications from “upstairs bars”. To help the trade and the public better understand the factors that are taken into account by the LLB when assessing liquor licence applications (including those from “upstairs bars”), the LLB agreed to issue guidelines that capture the criteria used in vetting liquor licence applications.

Dutiable Commodities (Liquor) Regulations

4. Established under the aforesaid Regulations, the LLB is an independent statutory body vested with power under the Regulations to consider liquor licence applications. By virtue of Section 17(2) of the Regulations, it is incumbent upon the LLB to give due consideration to all relevant issues in respect of each liquor licence application when discharging its statutory

functions, including (a) whether the applicant is a fit and proper person to hold the licence; (b) whether the location and structure of the premises and their fire safety and hygienic conditions are suitable for the sale of liquor; and (c) whether the grant of the licence is contrary to the public interest. In assessing whether the grant of the licence is contrary to the public interest, the LLB will have to consider all the circumstances of the case and relevant factors such as the prevailing socio-economic environment, public attitude towards liquor-licensed premises, youth problems (alcohol or drugs abuse) as well as the views of nearby residents. Each decision that is made by the LLB will have to be based on a thorough deliberation of matters pertinent to the case at the material time. The LLB will also have to review from time to time the licensing yardsticks in the light of present-day circumstances and other relevant factors.

Upstairs Bars

5. There is no statutory definition for “upstairs bars”. In general, the term refers to liquor-licensed premises which operate as bars (i.e. with the sale and consumption of liquor on the premises being the main line of business) and are not located at street level. Since these premises are mostly situated in office buildings or domestic/commercial buildings, they are prone to attract public concerns over safety, public order, nuisance, etc, and draw complaints from the neighbourhood nearby.¹

6. As at March 2013, there are 413 “upstairs bars” in the territory, representing 6.6% of all liquor-licensed premises. In 2012, “upstairs bars” accounted for 9.7% of all the reported crimes which occurred at liquor-licensed premises. Moreover, of all the cases where enforcement actions were taken by the Police in 2012 against liquor-licensed premises for breaches of licensing conditions, nuisance-related offences and other crimes, 26.2% involved “upstairs bars”.

7. In the interest of ensuring effective regulation, the LLB has adopted more stringent criteria as appropriate when assessing liquor licence applications from “upstairs bars”.

Guidelines on Assessing Liquor Licence Applications

8. In the light of the outcome of the public consultation as outlined in

¹ For liquor-licensed premises that are located in shopping centres, hotels or buildings specifically designed for entertainment businesses, we do not put them under the “upstairs bars” category since these premises are relatively less prone to attract public concerns.

paragraph 3 above, the LLB has prepared a set of Guidelines at Annex. The Guidelines set out the factors that the LLB would take into account when assessing liquor licence applications, as well as the issues that the LLB would specifically cover when considering applications from “upstairs bars”.

9. The purpose of producing the Guidelines is to articulate the principal criteria that are taken into consideration when the LLB processes liquor licence applications. The Guidelines do not carry the force of law and, as such, are not meant to bind LLB members. When considering the merits of individual applications, it is incumbent upon the LLB to give a full and fair hearing to each case in accordance with the requirements under the legislation. The factors set out in the Guidelines have been developed from the three criteria stipulated under Section 17(2) of the Regulations, namely whether the applicant is a fit and proper person to hold the licence, whether the premises are suitable for the sale of liquor, and whether the grant of the licence is contrary to the public interest.

10. In general, the criteria for assessing liquor licence applications are applicable to all types of liquor-licensed premises. Bearing in mind the fact that “upstairs bars” are relatively more prone to attract public concerns, we have, under each of the three major criteria in the Guidelines, set out the factors that the LLB would specifically take into account when vetting liquor licence applications from “upstairs bars”.

11. When preparing the Guidelines, the LLB has also taken the opportunity to review the effectiveness of the existing licensing conditions and proposed amendments to certain licensing conditions or the inclusion of new conditions as appropriate, in the interest of ensuring that the licensing mechanism remains appropriate and relevant in present-day circumstances. A more detailed account of the relevant conditions is given in the ensuing paragraph.

12. The LLB proposes to impose two additional licensing conditions in the liquor licences for “upstairs bars”, namely requiring the licensees to attend the “Seminar on Liquor Licensing”² and imposing a more stringent capacity limit for their premises (paragraphs 2(d)(ii) and 3(e)(v) of the Guidelines refer). The purpose of the two proposals is to help ensure proper management of “upstairs bars” and provide more room for the safe evacuation, at times of emergencies, of their employees and customers as well as occupants of the buildings where the “upstairs bars” are located. Separately, due to the fact that the problem of noise nuisance is particularly serious in certain

² Unlike the current “Seminar on Liquor Licensing” which stakeholders may attend on a voluntary basis, the new seminar will cover topics such as fire safety, public order and environmental hygiene in a manner sensitive to the management needs of upstairs bars.

liquor-licensed premises which are not just confined to “upstairs bars”, the LLB proposes to enhance the existing licensing condition dealing with noise abatement by imposing more stringent requirements on liquor licences in cases with serious noise problems (paragraph 4(e) of the Guidelines refers). The above three proposals are shown in bold italic in the Guidelines for easy reference.

13. The LLB welcomes feedback from stakeholders on the new proposals set out in the Guidelines. The finalised Guidelines will be published on the LLB’s webpage. As before, the LLB will review the criteria for approving liquor licence applications and update the contents of the Guidelines on a regular basis, so as to ensure that the work of the LLB moves with the times in keeping with prevailing circumstances.

Conclusion

14. Hong Kong is a diverse and cosmopolitan city. We are committed to fostering a business-friendly environment conducive to the vibrant sustainable development of different legitimate trades and industries, including the catering, entertainment and tourism industries. On the other hand, we are also duty bound to safeguard the interests of our citizens such that their daily lives are not unduly affected by problems that may be caused by establishments such as liquor-licensed premises. The LLB has been discharging a very challenging gate-keeping role in seeking to strike a reasonable balance between the benefits brought by commercial and economic activities and the social cost to the nearby community in terms of matters such as public order, building safety, environmental hygiene and nuisances. The Government and the LLB hope that the release of the Guidelines will, by enhancing transparency, facilitate compliance by the trade and help address the concerns of the public.

Advice Sought

15. Members are invited to note the contents of this paper and comment on the details of the Guidelines.

**Food and Health Bureau
May 2013**

Guidelines on Assessing Liquor Licence Applications

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Statutory Requirements

In accordance with Regulation 17(2) of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) (“the Regulations”), the Liquor Licensing Board (“LLB”) shall not grant a liquor licence unless it is satisfied:

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

(A) Whether the applicant is a fit and proper person to hold the licence

2. In vetting an application for liquor licence, the LLB may determine whether the applicant is a fit and proper person to hold the licence with reference to his character, relevant working experience, and past performance as a liquor licensee. The factors for consideration include the following:

- (a) The applicant being in possession of sufficient experience in managing liquor-licensed premises
(Such as having served as a liquor licensee for two years or more; or having worked on the premises concerned for five years or more)

An applicant lacking the above experience should satisfy the

LLB that he understands the management responsibility of a licensee as the person-in-charge of the liquor-selling premises and that he has the ability to manage the premises.

- (b) The applicant being able to devote sufficient time and attention to the proper management of the liquor-licensed premises

It is a licensing condition that the licensee shall personally supervise the premises. The licensee shall be on duty on the premises during the busiest part of the operating hours or when special circumstances so warrant. The applicant has to satisfy the LLB that he will be present to personally supervise the premises during the busiest part of the operating hours or in those periods as specified by the LLB.

Since liquor-licensed premises are more prone to cause noise and other nuisances to nearby residents (especially those who are living in adjacent domestic/commercial buildings or residential buildings), liquor licence applicants should be mindful of their social responsibility in taking appropriate measures, including the installation of acoustic insulation equipment and automatic doors, etc. on the premises, to prevent or minimise these nuisances. They should satisfy the LLB that they have fulfilled their duty to ensure that the operation of the premises will not cause excessive nuisance to nearby residents.

When handling an application for licence renewal, the LLB may consider not renewing the licence if the licensee is often found absent from the premises (being evidence that he is less than committed to managing the premises properly according to the law), or if there has been a number of irregularities involving the premises (being evidence that the applicant is less than capable of managing the premises properly according to the law or that he fails to be a law-abiding person himself).

- (c) The applicant being in possession of good personal

background and character

Members of the LLB may consider the past record of the applicant, including whether there was any breach of the relevant ordinances or licensing conditions.

The LLB may also consider the information provided by the Police about the applicant (e.g. record of criminal conviction) and the severity, frequency of the irregularities, as well as the lapse of time since the previous irregularity. Such information includes:

- (i) the severity of the criminal offences, especially those involving the sale of liquor without a licence;
- (ii) instance of the applicant having been warned or prosecuted by the Police for selling liquor without a valid licence during the time he applies for a liquor licence;
- (iii) instance of the applicant having been warned or prosecuted by the Police for keeping or operating a vice establishment or gambling establishment;
- (iv) instance of the applicant having been warned or prosecuted by the Police for trafficking of dangerous drugs;
- (v) instance of the applicant having breached the Dutiable Commodities Ordinance or its subsidiary legislation;
- (vi) instance of the applicant having sold liquor to non-club members at will on club liquor-licensed premises; or
- (vii) instance of any person under the age of 18 having been allowed to consume intoxicating liquor on the premises.

(d) Upstairs Bars

- (i) In recognition of the relatively greater difficulties inherent in taking enforcement actions in and conducting inspections of upstairs bars, the LLB may consider enhancing the regulation of upstairs bars through the licensing system. Criteria more stringent than those mentioned above may be adopted in considering the eligibility of the applicants, particularly the nature of the criminal offences in which they were involved.

- (ii) *Furthermore, for the purpose of ensuring that the operators of upstairs bars have the knowledge to put their premises under proper management, the LLB may consider imposing additional licensing conditions on the liquor licences requiring the licensees of upstairs bars to attend the “Seminar on Liquor Licensing” organised by the LLB within a specified period and to obtain certificates of attendance issued by the LLB.*

(B) The location and structure of and the fire safety and hygienic conditions in the premises

3. The premises must be suitable for selling or supplying liquor to customers for drinking on the premises, having regard to their hardware such as the building structure, means of escape, fire safety and hygiene facilities. The LLB may also have to consider whether the proposed use of the premises is compatible with the purpose for which it is originally intended. According to past experience, the requirements applicable to the grant of a liquor licence, in terms of the location, structure, fire safety and hygienic conditions, are similar to those for the grant of a restaurant licence by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132). The LLB may take a view on whether the premises fulfil the requirements for a liquor licence by making reference to the outcome of the application for the restaurant licence or comments from departments concerned on the location, structure, fire safety and hygienic conditions of the premises. As regards an application for a club liquor licence, the premises to

which the application relates are normally required to obtain a Certificate of Compliance or a Certificate of Exemption issued by the Home Affairs Department under the Clubs (Safety of Premises) Ordinance (Cap. 376). It is incumbent upon the LLB to consider each application on its own merits. Pertinent considerations include:

- (a) The character of the area in which the premises are located. For example, whether the area is predominantly a commercial area or a mixed commercial/residential area; whether there are commercial buildings or streets that may serve as a protective barrier between the premises and the neighbouring residential buildings; and whether the measures proposed by the applicant could suitably reduce the noise and other nuisances caused to persons living in the adjacent residential or commercial/residential buildings;
- (b) The suitability of the premises as a place much frequented by people (including customers). Premises with a valid restaurant licence should have met the standards, in terms of structure, means of escape, fire safety and hygiene facilities required for the grant of a liquor licence. In this respect, the premises should be suitable for the grant of a liquor licence or allowed to continue holding or renew its licence. As for the club liquor licence, premises with a Certificate of Compliance issued by the Secretary for Home Affairs should have met the structural and fire safety requirements;
- (c) The LLB is not required to take the initiative to question or investigate whether selling or supplying liquor on the premises is in breach of the Government lease, occupation permit or deed of mutual covenant. However, if an application for a new liquor licence or licence renewal is contested on the grounds that the use of the premises for supply or sale of liquor is in breach of the specified use as set out in these three documents, the LLB will consider the relevant clause(s) before making a decision on the application;

- (d) The following buildings or premises are usually more suitable to be used for selling or supplying liquor:
- (i) The units inside the building concerned are mostly used as restaurants, food premises or other public entertainment establishments;
 - (ii) The premises have a separate access directly leading to the street;
 - (iii) The building concerned has two or more staircases/means of escape, the width of which are sufficient for the purpose;
 - (iv) Generally speaking, premises on lower floors are more suitable than those on high floors, as it will be easier for people on lower floors to escape in case of emergencies.

(e) Upstairs Bars

Upstairs bars may pose greater potential danger to the public and bar customers due to their special physical environment. For instance, people under the influence of alcohol and gathering in large numbers in a multi-storey building with a concentration of bars may not be able to make their way to safety with ease through the stairs while seeking to find the exit during emergencies. The situation would hardly be helped by slippery staircases (littered by vomit), customers congregating at staircases for a rest or smoking, or customers influenced by excessive drinking, all of which might cause danger or hinder escape. Such being the case, the LLB may take the following factors into consideration:

- (i) With regard to the location of premises under application, it is easier to take enforcement actions in and conduct inspections of the premises located at the lowest three storeys from the street level of a building. In case of emergencies, their customers may reach the street level

within a short span of time;

- (ii) The building concerned must have adequate means of escape and two or more staircases;
- (iii) The layout of the building concerned should best be able to insulate other building users from the nuisances that may be caused by upstairs bars (e.g. the existence of separate access that caters for different user groups would be a plus);
- (iv) The building concerned must be properly managed. For instance, it is being looked after by a management office or an owners' corporation, which has not been prosecuted for improper management; it is served by self-closing smoke lobby doors; its means of escape are kept free from obstruction; and its fire service installations and equipment are well maintained and in efficient working order, etc.; and
- (v) *In case of fire or other emergencies, the safe evacuation of customers from an upstairs bar is more difficult to achieve than a case of evacuating crowds at street level because alcohol impairs judgment and physical coordination. As such, the LLB may, when determining the capacity limit for an upstairs bar having regard to the actual circumstances and the advice of the departments concerned, consider imposing a safety margin that is more stringent than that hitherto referred to, say 90% of the capacity limit that is otherwise applicable, and prescribing it as one of the licensing conditions.*

(C) Whether the grant of the licence is contrary to the public interest

4. The LLB is bound by the statutory requirements to consider liquor licence applications with prudence. Section 17(2)(c) of the Regulations

expressly stipulates that in all the circumstances the grant of the licence should not be contrary to the public interest. It is a well-established practice on the part of the LLB to seek to strike a balance between the interests of all parties and refrain from considering the applications in a mechanical manner. Due to the special nature of liquor-licensed premises, in approving an application, the LLB may impose additional licensing conditions on top of the standard ones (see **Appendix**) for compliance by the licensee, striking a balance between protecting the commercial interest of the operators on the one hand, and helping to preserve tranquillity and public order in the local community on the other hand. However, this is applicable only to those cases where the premises in question are deemed suitable in principle for holding a liquor licence. An application will be rejected if the LLB considers that the grant of a liquor licence is contrary to the public interest. The additional licensing conditions that may be imposed include but are not limited to the following:

- (a) Liquor shall only be sold within specified hours;
- (b) The doors and windows of the premises shall be kept closed within specified hours;
- (c) No liquor shall be sold or supplied for consumption on the balcony within specified hours;
- (d) Imposing a capacity limit; and
- (e) *Measures that are required, as additional licensing conditions, to contain noise nuisance. They may include the installation of double-glazed windows, and the appointment of qualified professionals for conducting noise impact assessment and certifying the efficacy of the noise insulation facilities inside the premises.*

5. When examining applications, it is incumbent upon the LLB to take all relevant circumstances into account in seeking to strike a balance between the interests of the applicants and those of the neighbours who may be affected. The considerations include the following:

- (a) Where illegal establishments are repeatedly found in a

building such that the premises concerned are more prone to turn into a gathering place for undesirable elements or even a venue for criminal activities, it is more than probable that the units in the upstairs portion or basement of the building would not be suitable for operation as a bar, bearing in mind the need to avoid affecting other users of the building and the neighbourhood;

- (b) Where the premises are in close proximity to residential buildings or located in a mixed commercial/residential building, such premises would be less likely to be suitable for use as liquor-licensed premises since the operations are more prone to cause nuisance or disturbance affecting the daily lives of nearby residents, including noise nuisance and environmental hygiene problems to the neighbourhood. Liquor-licensed premises that are located in commercial districts would normally bear less such adverse impact;
- (c) Objections and the grounds underlying such objections raised by the persons affected and the departments concerned;
- (d) Whether the improvement measures initiated by the applicant are feasible and effective in reducing or eliminating the nuisances that may be caused to neighbours, in keeping with the requirement pertaining to public interest; and
- (e) Whether the inbound and outbound movements of customers or the operation of the bar would cause crowds to gather and generate incessant hassle, bringing substantive nuisances to bear on other users of the building and the neighbourhood.

(f) Upstairs Bars

In the light of the special physical environment of upstairs bars, the LLB may take the following factors into consideration:

- (i) the number, type, mode of operation and distribution of

liquor-licensed premises already in the same building. According to precedent cases and given the public concerns that have been articulated over the issue of means of escape in case of emergency, it may not be acceptable if the total number of upstairs bars exceeds half of the number of floors of the building; and

- (ii) the number, type, mode of operation and distribution of the liquor-licensed premises (including upstairs bars) in the neighbouring areas. Whether the high concentration of liquor-licensed premises in the area is such as to cause unreasonable impact (in terms of noise nuisance, environmental hygiene, public order and traffic problems, etc.) on the local environment and the people living or working in the area.

* * *

Standard Licensing Conditions Imposed on Liquor Licences

1. No disorder shall be permitted on the premises.
2. No person shall be allowed to become drunk on the premises, nor shall liquor be supplied to any person who is drunk.
3. No games of chance shall be played on the premises.
4. The licensee shall personally supervise the premises.
5. The licensee shall display a warning notice at a conspicuous place inside the premises containing the words “NO LIQUOR FOR PERSON UNDER AGE 18”. In the said notice, the size of each Chinese character shall not be less than 3 cm (height) × 3 cm (width) and the size of each English letter shall not be less than 2 cm (height) × 2 cm (width).
6. The licensee shall exhibit and keep exhibited a notice denoting its licensed status provided by the Board at the main entrance of the premises.
7. The licensee shall not permit any person to occupy or use any portion of the premises for any immoral or illegal purpose.
8. The licensee shall not permit any common prostitutes or reputed thieves to assemble or remain on the premises.
9. The licensee shall not permit drunkenness, or violence, quarrel or other disorderly conduct on the premises and shall not permit persons of known bad character to assemble and remain on the premises.
10. The name of any liquor for which a standard of quality is prescribed by regulations shall be clearly marked on the container in or from which the liquor is supplied to any customers.
11. No bar business shall be operated on the premises, except with the permission of the Board endorsed herein.

12. No dancing shall be permitted on the premises, except with the permission of the Board endorsed herein.
13. Toilets shall be maintained in a state of cleanliness and good repair for the use of customers.
14. Except exempted by the Board, the licensed premises shall be concurrently covered by a valid restaurant licence issued by the Director of Food and Environmental Hygiene.

Standard Licensing Conditions Imposed on Club Liquor Licences

1. No person shall be allowed to become drunk on the club premises, nor shall liquor be supplied to any person who is drunk.
2. The licensee shall personally supervise the club premises.
3. The licensee shall display a warning notice at a conspicuous place inside the club premises containing the words “NO LIQUOR FOR PERSON UNDER AGE 18”. In the said notice, the size of each Chinese character shall not be less than 3 cm (height) × 3 cm (width) and the size of each English letter shall not be less than 2 cm (height) × 2 cm (width).
4. The licensee shall exhibit and keep exhibited a notice denoting its licensed status provided by the Board at the main entrance of the club premises.
5. The licensee shall not permit any person to occupy or use any portion of the club premises for any immoral or illegal purpose.
6. The licensee shall not permit any common prostitutes or reputed thieves to assemble or remain on the club premises.
7. The licensee shall not permit drunkenness, or violence, quarrel or other disorderly conduct on the club premises and shall not permit persons of known bad character to assemble and remain on the club premises.
8. No disorder shall be permitted on the club premises.
9. Toilets shall be maintained in a state of cleanliness and good repair for the use of members.
10. Except exempted by the Board, the licensed premises shall be concurrently covered by a valid Certificate of Compliance issued by the Secretary for Home Affairs.