

立法會
Legislative Council

LC Paper No. CB(2)1292/12-13(02)

Ref : CB2/PL/FE

Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 13 June 2013**

Regulation of upstairs bars

Purpose

This paper summarizes the concerns of the members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the regulation of upstairs bars.

Background

2. At present, any person intending to sell liquor at any premises for consumption on the premises are required to obtain a liquor licence or a club liquor licence from the Liquor Licensing Board ("LLB") before commencement of such business. LLB is an independent statutory body established under the Dutiable Commodities (Liquor) Regulations (Cap. 109B) ("the Regulations") to consider liquor licence applications. In considering an application for a liquor licence, LLB will consider (a) whether the applicant is a fit and proper person to hold the licence; (b) whether the premises are suitable for selling and supplying intoxicating liquor; and (c) whether in all the circumstances the grant of the licence is not contrary to the public interest.

3. Under the Regulations, a liquor licence is valid for a period of one year or such lesser period as determined by LLB. The Regulations also empower LLB to impose conditions in the liquor licences as it thinks fit. Apart from the

standard licensing conditions applicable to all liquor licences and club liquor licences, LLB may also impose additional licensing conditions on individual licences as the case circumstances so warrant, such as a ban on selling or supplying liquor after certain hours, installation of a CCTV system, and prohibition of patrons' activities in the open area of the flat roof or the balcony of the premises after certain hours.

4. In recent years, there is a trend for more bars moving 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. Most licensed upstairs bars are located in the districts such as Yau Tsim Mong, Wan Chai and Central. There is public concern that the concentration of bars in high-rise composite buildings might bring along problems of public safety, crime, noise and other environmental nuisance. There are calls from the local community and some District Councils for tightening up the regulation of upstairs bars.

5. A public consultation exercise was launched from July to September 2011 to gauge public views on the need to impose more stringent licensing control on upstairs bars as well as the Administration's proposal on trade facilitation measures in respect of liquor licensing. At the Panel meeting on 10 January 2012, members were briefed on the outcome of the public consultation exercise. According to the Administration, it would not propose to impose additional across-the-board statutory restriction on upstairs bars in view of the legislative requirements already in place which had empowered LLB to vet each application from upstairs bars according to the circumstances of the case. However, LLB would draw up a set of guidelines on the vetting of upstairs bar applications so as to adopt more stringent criteria in assessing liquor licence applications from upstairs bars to address the public concerns about public order, safety and nuisance.

Deliberations of the Panel

6. The Panel discussed the subject of liquor licensing review at four meetings between 2008 and 2012, and received views of representatives of LLB and deputations at one of these meetings. The deliberations and concerns of members on issues relating to the regulation of upstairs bars are summarized below.

Regulation of upstairs bars

7. Many members were concerned about the problems such as fire safety, noise and other environmental nuisance caused by upstairs bars, particularly those located in single staircase residential or composite commercial/residential buildings. They expressed worry that the proliferation of upstairs bars in those buildings would exacerbate the problems. They called on the Administration to implement without delay more stringent control measures to tighten the regulation of upstairs bars.

8. The Administration explained that the prerequisite for granting a liquor licence was a full or provisional restaurant licence issued by the Food and Environmental Hygiene Department ("FEHD"). To obtain a restaurant licence, the applicant was required to comply with fire safety requirements imposed by the Fire Services Department and building safety requirements imposed by the Buildings Department. These members were disappointed at the Administration's decision not to impose additional statutory restriction on the applications for liquor licences by upstairs bars. Noting that LLB would draw up guidelines for the vetting of upstairs bar applications, these members requested that the Panel should be consulted on the draft guidelines. The Administration agreed to convey members' request to LLB. Some other members, however, expressed reservations about the further strengthening of the regulation of upstairs bars. They considered it important to strike a balance between the interests of the public and the trade when considering proposals for further regulation of upstairs bars.

Enforcement of licensing conditions of upstairs bars

9. Members expressed concern about the enforcement of the licensing conditions of upstairs bars as upstairs bars were tucked inside high-rise buildings that made enforcement actions more difficult. In particular, members noted that while upstairs bars represented 7.4% of all the liquor-licensed premises, they accounted for 11% of all crimes at liquor-licensed premises in 2010. This showed that the number of crimes related to upstairs bars was higher than other liquor-licensed premises. Concern was also raised over the adequacy of Police manpower in carrying out licence inspections and handling public nuisance. Some members were of the view that the Police had attached more importance to combating crimes associated with upstairs bars than dealing with their nuisance problems, which were the major areas of public complaints.

10. According to the Administration, there were separate teams in the Police for handling applications for liquor licences and conducting inspections to ensure compliance with the licensing conditions. The Police also tackled problems such as illegal parking and noise nuisance by imposing additional licensing conditions, such as liquor selling hours, capacity limit of the premises and the requirements to close the doors and windows of the premises. Members were assured that the Police was aware of the public concern about the nuisance caused by upstairs bars and would take due enforcement actions to minimize the disturbance to the public.

11. Concern was also raised over the enforcement actions taken in case of non-compliance with the licensing requirements. Members were advised that if LLB received a major and substantiated complaint, it would immediately conduct a review and revoke the concerned liquor licence or refuse the renewal of licence as appropriate. Every year, LLB also paid late-night visits with relevant government departments to liquor-licensed premises including upstairs bars in order to have a good understanding of the operating conditions of liquor-licensed premises.

Consultation on liquor licence applications

12. Some members considered that the Administration had not attached importance to the concerns and views of neighbouring residents. Some other members were of the view that many residents were not aware of the public notices of new applications for liquor licences in their neighbourhood. They urged the Administration to improve the consultation process regarding applications for liquor licences and enhance communication with neighbouring residents.

13. In the Administration's view, there were sufficient opportunities and channels for residents to express their views on liquor licence applications. Neighbouring residents could also express their views or lodge complaints to LLB directly. According to the Administration, LLB refused 17 and 29 new liquor licence applications in 2010 and 2011 respectively due to objection raised by property owners or residents in the neighbourhood of the premises concerned.

14. As regards the concern about the consultation process, the Administration advised that FEHD would refer the liquor licence applications to the relevant departments including the Police and the Home Affairs Department for advice. The relevant District Offices would also gauge views of nearby residents, District Council members and area committees for LLB's consideration. LLB would take into account the views collected and impose additional licensing conditions where appropriate on a case-by-case basis. All applicants for new liquor licences were required to advertise their applications on local newspapers, and notices of applications for liquor licences would also be posted in conspicuous locations of the buildings in which the premises under applications were situated.

Business facilitation measure

Duration of a liquor licence

15. Noting the Administration's proposal to lengthen the duration of a liquor licence from one to two years, some members were strongly of the view that a clear and stringent mechanism should be put in place for monitoring the liquor-licensed premises' continuous compliance with the licensing conditions.

16. According to the Administration, LLB would consider extending the liquor licence period to a maximum of two years only for those businesses with a sound track record for at least two consecutive years. The Administration would consider introducing a review mechanism so that LLB might monitor the operation of the liquor-licensed premises and impose additional licensing conditions in the liquor licence of the premises concerned where appropriate.

Reserve licensee mechanism

17. Members noted that the Administration would implement a reserve licensee mechanism as a business facilitation measure. The reserve licensee mechanism was a simplified procedure to enable a reserve licensee to take over the liquor licence within a short period of time so as to minimize the disruption to the business when the licensee left the business without transferring his licence.

18. Some members welcomed the reserve licensee mechanism and urged its early implementation so that the business would not be unlawfully run without a valid liquor licence when the qualification of the licensee was revoked due to

the licensee's resignation (if the licensee was the employee) or when the licensee died intestate. Some other members, however, expressed concern about the possible abuse of the proposed reserve licensee mechanism as it might allow the liquor licensee to evade his responsibility in case of default by assigning a reserve licensee to bear the liability.

19. The Administration advised that there would be a clear delineation of the responsibility of the licensee during the licence period. Only the liquor licensee would be liable for the management of the licensed premises. The proposed arrangement of reserve licensee was a business facilitation measure which aimed to minimize the disruption to the business by shortening the time for taking over the licence when the original licensee quitted the job or departed due to serious sickness.

Proposed introduction of a demerit points system

20. Some members expressed support for the suggestion by some members of LLB that a demerit points system ("DPS"), which was similar to the one applicable to the food business licence, should also be introduced for the liquor licence. They considered that DPS could provide LLB with a more objective basis for assessing renewal applications. They requested the Administration to give consideration to the suggestion and develop guidelines on the operation of DPS.

21. According to the Administration, the factors taken into consideration when determining whether to grant a liquor licence, such as elements of public interest, were different from those for food business licences, and it was difficult to quantify such factors under a points system.

Composition of LLB

22. Some members expressed grave concern about the composition of LLB. They pointed out that there was no representative from the general public in LLB, and the expertise and qualifications of some LLB members were not relevant to the work of LLB. They questioned the criteria for appointing members of LLB and requested the Administration to disclose the political affiliations of individual LLB members.

23. According to the Administration, LLB comprised 11 members with representatives from various sectors, such as commercial, social service, education, legal, accountancy and catering. In appointing members to statutory bodies, the Administration would conduct an extensive and stringent examination of the background experience and knowledge of the nominees. The Administration stressed that all LLB members were appointed on the basis of individual merits. As political affiliation of an individual was not a consideration for the appointment, the Administration would not request members of LLB to disclose their political affiliations, and hence did not have such information.

Relevant papers

24. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
6 June 2013

Relevant papers on regulation of upstairs bars

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	10.6.2008 (Item III)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	15.2.2011 (Item IV)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	12.4.2011 (Item V)	Agenda Minutes CB(2)45/11-12(01) CB(2)1205/10-11(01)
Panel on Food Safety and Environmental Hygiene	10.1.2012 (Item III)	Agenda Minutes CB(2)1849/11-12(01)

Council Business Division 2
Legislative Council Secretariat
 6 June 2013