

**LegCo Panel on Food Safety and Environmental Hygiene
Follow-up to Special Meeting on 13 June 2013**

**Supplementary Information Note:
Liquor Licensing – Guidelines on Assessing Liquor Licence Applications**

Purpose

At the special meeting on 13 June 2013, the Panel on Food Safety and Environmental Hygiene discussed the “Guidelines on Assessing Liquor Licence Applications” (“the Guidelines”) prepared by the Liquor Licensing Board (“LLB”). In response to Members’ enquiries, we are providing the following supplementary information¹.

The Liquor Licensing Board [Questions 19-20]

2. Established under the Dutiable Commodities (Liquor) Regulations (“the Regulations”), the LLB is an independent statutory body vested with power under the Regulations to consider liquor licence applications. The Regulations also set out the composition and functions of the LLB as well as the mode of operation. The LLB has taken proactive steps to enhance transparency including, for example, publishing on line the procedures for handling liquor licences applications, the contact details of the Liquor Licensing Offices and other related information, as well as the promulgation of the Guidelines. We will from time to time review matters related to the LLB and the efficacy of the liquor licensing regime, with a view to optimising the operation of the LLB when necessary.

3. The LLB is responsible for assessing liquor licence applications whereas the statutory functions related to town planning fall under the purview of the relevant authorities. In general, the issue of a liquor licence is subject to the premises in question having first obtained a restaurant licence from the Food and Environmental Hygiene Department (“FEHD”). Food business premises will have to comply with the provisions in various ordinances and regulations including planning requirements before they are granted a restaurant licence.

¹ The question numbers in the incoming letter are marked up in the sections that provide corresponding response in the supplementary information note.

Criteria for Assessing Liquor Licence Applications

[Questions 13-16 and 21-22]

4. When examining a liquor licence application, the LLB is required to give due consideration to all relevant issues under section 17(2) of the Regulations 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.

5. In assessing whether the applicant is a fit and proper person to hold the licence, the LLB will consider if he is in possession of sufficient experience in managing liquor-licensed premises. The LLB will not issue the licence unless it is satisfied that the applicant 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. In this connection, the LLB will analyse the case based on the advice from the Police to ensure that liquor-licensed premises are properly managed.

6. In assessing whether the premises are suitable, the LLB will take into account a number of factors, including the number, type, mode of operation and distribution of liquor-licensed premises already in the same building. Given the public concerns that have been articulated over the issue of means of escape in case of emergency, and having regard to the precedents set by the Municipal Services Appeals Board, the LLB is of the view that, in general, it may not be acceptable if the total number of upstairs bars exceeds half of the number of floors of the building. Apart from such reference, the LLB will, when processing individual applications, make judgements taking into account the actual circumstances of each case and prudently balance the interests of the local community and the legitimate business interests of the trade. Since each individual liquor licence application may have its own unique features and bearing in mind the onus placed on the LLB to make decisions on each case after full and fair considerations of all relevant issues on the basis of circumstances prevailing at the material time, making public the list of places in a building which were at different times in the past considered not suitable for operation as a liquor-licensed premises may not necessarily offer much value in terms of reference.

7. In assessing whether the grant of the licence is contrary to the public interest, the LLB will give due regard to 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), the views of nearby residents as well as the relevant departments (e.g. the Environmental Protection Department (EPD)). 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. For example, in respect of the introduction of additional licensing conditions against noise nuisance, the EPD will provide professional advice on the content of the conditions and related technical issues for consideration by the LLB.

8. In 2010, 2011 and 2012, the number of liquor licence applications received by the LLB, applications with Police consent and those that are turned down by the LLB, applications with public objections and those that are turned down by the LLB as a result of public objections are as follows:

	Number of cases		
	2010	2011	2012
Liquor licence applications (including new application, renewal, transfer and amendment)	7 071	7 274	7 789
Applications with Police consent	7 005	7 200	7 732
Applications with Police consent that are turned down by the LLB	6	16	26
Applications with public objections	360	469	487
Applications turned down by the LLB as a result of public objections	19	34	25

9. To safeguard public interest, the LLB has to ensure that the liquor-licensed premises will not turn into a gathering place for undesirable elements or a venue for criminal activities and that they are suitable to be frequented by members of the public. Where appropriate, the LLB may impose licensing conditions which require that “The licensee shall not permit any person to occupy or use any portion of the premises for any immoral or illegal purpose” and that “The licensee shall not permit any common prostitutes or reputed thieves to assemble or remain on the premises”, for fulfilling the provisions stipulated in Section 17(2) of the Regulations as mentioned in paragraph 4 above. These conditions will have no impact on sex workers spending their pastime in liquor-licensed premises as customers.

“Upstairs Bars” [*Questions 1-6*]

10. The LLB agrees that a clearer definition for “upstairs bars” would facilitate easy reference by the trade. The LLB will provide the

following definition in the Guidelines:

In general, the term “upstairs bars” refers to liquor-licensed premises which operate as bars with the sale and consumption of liquor on the premises being the main line of business and which are not located at the street level. These premises are mostly situated in office buildings or domestic/commercial buildings. Due to their special physical environment and the relatively greater difficulties inherent in taking enforcement actions and conducting inspections in respect of fire safety, noise, environmental hygiene and public nuisance, etc, they are prone to attract public concerns and draw complaints from the neighbourhood nearby.²

11. Making public the list of “upstairs bars” might bring a labelling effect on individual premises and cause negative impact on the operation of the trade. Individual holders of liquor licences who have doubts on whether their premises fall under the category of “upstairs bars” may make enquiries with the LLB.

12. 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 over safety, public order, nuisance, etc, we have set out in the Guidelines the factors that the LLB would specifically take into account when vetting liquor licence applications from “upstairs bars”.

Seminar on Liquor Licensing [Question 12]

13. At present, the FEHD coordinates the “Seminar on Liquor Licensing” for the LLB. The seminar is held once every month at Lai Chi Kok Government Offices free of charge. To tie in with the new requirements that would be introduced upon promulgation of the Guidelines, the FEHD will cover in the seminar topics such as fire safety, public order and environmental hygiene in a manner sensitive to the management needs of upstairs bars. The seminar will last for about two hours. The frequency and venue of the “Seminar on Liquor Licensing” organised by the LLB will generally remain unchanged under the new requirements. As to

² In general, 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.

the meaning of attending the seminar “within a specified period”, it will be clearly stated in the Guidelines that the LLB, when imposing such as a licensing condition, would require the licensee to attend the “Seminar on Liquor Licensing” before the licence is due for renewal.

Fire safety and capacity limit [Questions 7-11]

14. The LLB will determine the capacity limit for an upstairs bar having regard to the advice from the Police and the assessment made by the Buildings Department (“BD”) in accordance with the Code of Practice for Fire Safety in Buildings 2011. Based on the size, design and use of the premises and taking into account the means of escape of the building where the premises are located, BD will calculate the expected number of occupants/users of the premises under normal circumstances in accordance with the Code of Practice for Fire Safety in Buildings 2011.

15. Upstairs bars may pose greater potential danger to the public as well as bar customers due to their special physical environment. For instance, people who are 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 staircase 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. Before putting forward the proposal to impose a more stringent capacity limit for “upstairs bars”, the LLB has looked into various factors, including medical advice that alcohol impairs judgment and physical coordination. If the actual circumstances of an individual “upstairs bar” indicate that there is no need to impose a safety margin on the capacity limit, the LLB will give due consideration.

16. Basically, an “upstairs bar” has to obtain a valid restaurant licence before applying for a liquor licence. All the premises applying for a restaurant licence are required to obtain a Fire Services Certificate and a Letter of Compliance (Ventilating System) (if applicable) issued by the Fire Services Department (“FSD”), certifying respectively that the premises have complied with the fire services requirements and that their ventilation system has met the fire services requirements with respect to the mechanical ventilation system under the Ventilation of Scheduled Premises Regulation, before they are issued with the relevant food business licence. Therefore, all “upstairs bars” with a valid restaurant licence should have fully complied with the fire safety requirements in respect of restaurants set by the FSD.

The FSD records the number of fire incidents in the territory every year according to the types of buildings (e.g. commercial buildings, commercial/residential buildings, residential buildings and factory premises, etc) but it does not keep a breakdown of the number relating to “upstairs bars”. As such, the FSD cannot provide separate figures on the number of fires or other emergencies caused by “upstairs bars” and the number of casualties involved.

17. On law enforcement, the Police and the FSD will inspect liquor-licensed premises regularly to ensure compliance with the licensing conditions and relevant ordinances. The Police will determine the number of inspections to be carried out having regard to the business nature, track record and operation of different liquor-licensed premises. All these premises will be inspected at least once a year. If breaches of the law or licensing conditions are identified, the Police will take appropriate enforcement actions such as giving advice, issuing warnings, taking out summons or making arrests. At the same time, the FSD will conduct independent random inspections or participate in joint or surprise inspections organised with other Government departments. If breaches of the law or fire safety requirements are found, the FSD will issue a Fire Hazard Abatement Notice to the liquor-licensed premises concerned or institute prosecutions against them.

Cases Involving the Licensing Sub-unit of the Wanchai Police District
[Questions 17-18]

18. According to the Police, there are stringent requirements on the conduct of police officers and great importance is attached to integrity management, with zero-tolerance towards offences such as corrupt practices. The Police have promulgated clear guidelines for preventing conflict of interests or malpractices when performing duties, which include an established mechanism for the declaration of interest and internal monitoring. The department also endeavours to uphold the probity and professional conduct of police officers as well as their sensitivity to such matters through internal dissemination of information, publicity, education and related training, etc.

19. A designated team in each Police district is responsible for handling liquor licence applications. The comments made by the designated teams are reviewed by police officers at different ranks before onward transmission to the Licensing Office in Police Headquarters for consideration and formulation of an appropriate recommendation to the LLB. The case of the sub-unit in question is an isolated incident. It does not

imply that the malpractice is common in the Force.

20. In assessing each liquor licence application, the LLB takes into account the views of the relevant Government departments (including the Police) before it ultimately makes a decision by exercising independent judgement. Notwithstanding the aforesaid incident, the LLB does not consider it necessary to review the decisions already made. The LLB has nonetheless issued a letter to the Police urging them to consider reviewing their existing internal mechanism for handling liquor licence applications and the related monitoring system. The LLB and relevant Government departments will continue to process liquor licence applications in a fair, just and impartial manner under the law.

Conclusion

21. Members are invited to note the content of this paper.

Food and Health Bureau
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