

Proposed research outline

Liquor licensing system in selected places

1. Background

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. As at end-December 2013, about 6 600 restaurants, pubs, bars and clubs were licensed to engage in the sale of liquor.

1.2 In recent years, there have been diverse views in the society regarding the liquor licensing regime. Representatives and residents of the local communities with a large number of bars urge the Government to impose more stringent control on liquor-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 liquor-licensed premises and calls for trade facilitation measures to help improve the business operating environment.

1.3 In 2007, the Efficiency Unit reviewed the liquor licensing regime 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

1.4 The Government subsequently launched a public consultation exercise between July and September 2011 to consult the public on a review of the liquor licensing regime. 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 licensing applications, as well as the issues that LLB will specifically cover 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.

1.5 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 regime, 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.

2. Proposed places to be studied

2.1 The Research Office has conducted a preliminary study on the liquor licensing regime in overseas places. Places such as Japan² and Taiwan³ do not establish a specific regulatory regime for liquor licensing. For those places with a dedicated liquor licensing regime, they broadly feature three categories of regulatory model. The first model, which is adopted in places such as New South Wales ("NSW") of Australia, Ontario of Canada and Singapore, is characterized by the establishment of an independent authority to administer the liquor licensing regime. The second model, which is adopted in places such as the United Kingdom ("UK"), Denmark and New Zealand, features the establishment of a regulatory board or committee under the local council for regulating liquor licensing. The third model, which is largely adopted by states in the United States, involves the regulation of liquor licensing by a dedicated government agency or department.⁴

² In Japan, the *Liquor Tax Law* provides that liquor-selling establishments should obtain a liquor licence from the National Taxation Agency. However, the purpose of licensing is more on facilitating the collection of liquor tax than on regulating the sale of liquor. There is scanty English information available in the public domain about the liquor licensing regime in Japan.

³ In Taiwan, premises engaging in entertainment and catering businesses are governed by the same regulation which does not require the application of a separate licence for the sale of liquor. Restaurants and bars are covered under this regulation.

⁴ Many states set out restrictions on the liquor selling hours. However, some states such as Louisiana and Nevada allow bars to remain open 24 hours a day. In addition, many states have established a complex licensing system which issues liquor licences according to the nature of business, types of premises, and/or types of liquor allowed to sell. For example, New York State has 96 types of liquor licence and 91 types of temporary or special liquor licence.

2.2 To facilitate the comparison with the liquor licensing regime in Hong Kong, the Research Office suggests the study of places that adopt the first or second model of liquor licensing as mentioned in paragraph 2.1. In this connection, the Research Office proposes to study the liquor licensing regime in NSW of Australia, Ontario of Canada and the UK.

New South Wales of Australia

2.3 Liquor licensing legislation in Australia is developed independently in each state and territory, which is characterized by a high degree of diversity and variation. The liquor licensing regime of NSW came into force in July 2008. 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.

2.4 NSW's liquor regulatory regime provides for the establishment of an independent statutory authority – the Independent Liquor and Gaming Authority ("ILGA") – for making decisions regarding liquor licensing applications and determining disciplinary complaints against licensees. ILGA comprises a Chief Executive and such other members as appointed by the Governor of NSW. In addition, at least one of the appointed members must be a person who is or has been a judge, or has been an Australian lawyer for at least seven years. The current ILGA members include two lawyers, one accountant and an executive with substantial experience in alcohol policy and regulation.

2.5 In NSW, liquor licences are classified into seven categories according to the types of premises or establishments.⁵ The licensing regime is business-friendly in terms of the perpetual nature of the licences granted⁶ and the allowance for the application for extending liquor trading hours.⁷ Nevertheless, the NSW government balances the interests of the community by requiring social impact assessment⁸ for liquor licence applications, as well as implementing regulatory measures such as temporary licensing freeze for certain high-risk districts.⁹

⁵ In some places, liquor licences are classified into different categories to reflect different levels of risk associated with different premises/establishments. More stringent conditions are imposed on the more risky licensed premises/establishments. Such a categorization system is believed by some members of the industry to be able to further enhance efficiency in licence processing.

⁶ Liquor-licensed premises will be subject to short-term or long-term closure if they breach relevant liquor licensing laws.

⁷ For example, application can be made to ILGA to extend the trading hours of a small bar from 10 a.m. up until 5 a.m. In NSW, a small bar licence allows liquor to be sold in a bar that is restricted to a maximum of 60 patrons.

⁸ Apart from a National Police Certificate, a community impact statement ("CIS") must accompany an application for most types of liquor licences. The statement is a summary of consultation between the applicant and the local community about any issues/concerns with a proposed application and the ways to address these issues/concerns. CIS allows IGLA to be aware of the impact that granting an application would have on the local community. Applicants can choose to engage professional assistance when preparing CIS.

⁹ During the freeze period, IGLA will not grant an on-premises liquor licence if the granting of new licence is likely to increase the number of people entering the freeze precinct to consume alcohol.

2.6 ILGA compliance officers undertake inspections and other enforcement functions on a targeted basis to ensure that liquor licensing laws are being implemented. They also conduct operations in association with the NSW Police Force, which focus on the reduction of alcohol-related crimes and antisocial behaviour by targeting identified hotspots and licensed premises.

Ontario of Canada

2.7 In Canada, liquor licences are issued by the licensing authority of each province and territory to allow an individual or business to manufacture or sell alcoholic beverages. The liquor licensing regimes vary among these provinces/territories. In Ontario, liquor licensing is regulated by the Alcohol and Gaming Commission of Ontario ("AGCO") which is an independent regulatory agency established under the *Alcohol and Gaming Regulation and Public Protection Act 1996*. The Board of Directors of AGCO, comprising at least five members appointed by the provincial government, is responsible for the overall governance of the Commission. The current Board members comprise 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.

2.8 Liquor licences are classified into seven categories according to the types of premises or establishments, and the licences are valid for one to three years depending on the category of licence. The distinctive feature of the regulatory regime of Ontario is the risk-based licensing approach adopted by AGCO to focus resources on licensing and enforcement on those establishments that pose a higher risk to public safety.

2.9 Under the risk-based licensing approach, licensees/applicants are evaluated under the criteria of past conduct, liquor-related infractions, honesty and integrity, financial responsibility and training and experience. The premises themselves are evaluated under the criteria of type, location, activities and hours of operation. After reviewing all the available information on both the licensee/applicant and the establishment, AGCO assesses the risks and determines if the licence should have a Level I, Level II and Level III risk designation, or no designation. A licensee designated as Level I (low risk), Level II (moderate risk) or Level III (high risk) is subject to additional licensing conditions. He or she may also 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 laws and protect public safety.

2.10 AGCO's Inspection and Investigation Branch adopts the risk-based approach to conduct liquor-related inspections, monitor liquor licensed premises for compliance with liquor license laws, and investigate complaints and/or breach of the laws, often in partnership with local police services.

The United Kingdom

2.11 In the UK, the liquor licensing regime is governed by the *Licensing Act 2003* which came into force in 2005. Under the regime, the Home Office is responsible for setting the licensing policy and overseeing its implementation. Local councils are responsible for administering the liquor licensing system, which includes approving applications, issuing licenses and working with the police force in enforcing the conditions of the licences. According to the *Licensing Act 2003*, each licensing authority (i.e. the local council) must establish a licensing committee consisting of at least 10, but not more than 15, members of the local council to discharge liquor licensing-related functions on behalf of the authority.

2.12 The *Licensing Act 2003* provides for the issue of four classes of licences, i.e. premises licences, club premises certificate, temporary event notice and personal licences, and each licence class has a different scope of authorization. In general, any business selling or supplying liquor on a permanent basis has to apply for a premises licence which allows the use of the premises concerned for the regulated activities. However, it cannot sell or supply liquor unless there is a designated premises supervisor at the premises who is holder of a personal licence to authorize the sale of liquor. A change of designated premises supervisor is allowed if he or she is replaced by another holder of a personal licence. The duration of a premises licence is determined by the local authority concerned while the duration of a personal licence is 10 years.

2.13 The regulatory regime of the UK is distinctive in terms of its flexibility in allowing holders of premises licence to extend trading hours up to 24 hours a day subject to the approval of the relevant 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 policing costs.

3. Proposed research outline

3.1 Subject to the consent of members on the places to be studied, the Research Office proposes the following outline for the research:

Chapter 1 – Introduction

Chapter 2 – New South Wales of Australia

Chapter 3 – Ontario of Canada

Chapter 4 – the United Kingdom

Chapter 5 – Hong Kong

Chapter 6 – Analysis

3.2 Chapter 1 depicts the general background, scope and methodology of the research and provides an overview of the liquor licensing system in overseas places.

3.3 Chapters 2 to 5 examine the liquor licensing system in selected overseas places and Hong Kong in terms of the following aspects:

- (a) relevant legislation;
- (b) responsible licensing authorities, including their composition, functions and operation;
- (c) classification of liquor licences;
- (d) licensing procedures, including application requirements, consultation with stakeholders, criteria of licensing and renewal process;
- (e) appeal and complaint mechanism; and
- (f) issues and concerns.

3.4 Based on the findings in Chapters 2-5, Chapter 6 compares the salient features of the liquor licensing system in the places studied.

4. Proposed completion date

4.1 The Research Office proposes to complete the research by mid-March 2014.

Research Office
Information Services Division
Legislative Council Secretariat
10 January 2014