

**For discussion
on 8 April 2014**

Legislative Council Panel on Food Safety and Environmental Hygiene

Legislative Proposals to Amend the Liquor Licensing Regime

Purpose

This paper briefs Members on certain proposed amendments to the Dutiable Commodities (Liquor) Regulations (Cap. 109B) (“DCLR”) to improve the liquor licensing regulatory regime.

Background

2. The Administration launched a two-month public consultation in July 2011 to gauge public views on a review of the liquor licensing regime. As part of the process to engage relevant stakeholders, officials responsible for the subject attended a number of trade consultation forums, and presented the proposals to advisory bodies including the Retail and Tourism Committee of the Hong Kong General Chamber of Commerce and the Food Business Task Force under the Business Facilitation Advisory Committee. We also went before the District Councils (“DCs”) of the three districts with the largest number of liquor-licensed premises in Hong Kong (i.e. Yau Tsim Mong, Wan Chai, Central and Western). During the consultation period, the Government received some 180 written submissions from individuals and organizations.

3. At the meeting of this Panel on 10 January 2012, we briefed Members on the outcome of the public consultation exercise. Taking into account the views collected and having consulted the Liquor Licensing Board (“LLB”), we decided to implement a number of measures to improve the regulatory regime¹. At that time, we had foreshadowed that the implementation of some of the measures required amendments to the DCLR.

¹ The four main proposals are detailed in paragraphs 7 to 11 of the Panel paper discussed on 10 January 2012 (ref.: LC Paper No. CB(2)719/11-12(03)). They include the following:

- (a) LLB to prepare a set of guidelines that capture the criteria used in vetting liquor licence applications;
- (b) to allow liquor licence applications to be advertised on the Internet;
- (c) to extend the maximum liquor licence period to a period of two years for those businesses with a good track record for at least two consecutive years; and
- (d) to implement the proposed reserve licensee mechanism.

Key Legislative Proposals

4. The key legislative proposals are highlighted in paragraphs 5 and 14 below.

(A) Extension of the Liquor Licence Duration to a Maximum of Two Years

5. Regulation 20(3) of the DCLR stipulates that “(a) liquor licence shall be valid for a period of 1 year or such lesser period as the Board shall determine...”. We propose to extend the maximum liquor licence duration to a period of two years for those with a good track record for at least two consecutive years immediately before the liquor licence renewal application is submitted². By reducing the workload that would otherwise arise from the processing of straight forward licence renewal cases (i.e. cases with good track records), this proposal will allow LLB as well as relevant government departments to focus their attention on handling new applications or contested or contentious licence renewal applications.

6. In taking forward this proposal, we are mindful of the views that had been expressed during the consultation, including concerns from members of individual DCs. Whilst they have no in-principle objection to granting licences of duration up to 24 months to liquor-licensed premises with an unblemished record in the two years preceding licence renewal, some DC members pointed out that the possibility of deterioration in performance on the part of such licensed premises (after the granting of a 24-month licence) could not be ruled out. Instead of allowing the licence to run its full two-year course in these cases, they considered that safeguards should be built in.

7. The Administration attaches importance to effective management of liquor-licensed premises. Only cases with a good track record for at least two consecutive years immediately before the liquor licence renewal application (in other words, continuously good performance) may be considered for licence renewal by two years. As is the case at present, when the licence is due for renewal, the applicant is required to place advertisement to inform members of the public of the renewal application. Applications

² Liquor-licensed premises with good track record are defined as those that:

- (a) do not have any substantiated complaint/enforcement action recorded against the licensed premises or the licensees in the licences register in the past two years;
- (b) have been granted a full term licence at the time when their licences were last approved or renewed; and
- (c) do not receive objection or adverse comment from the public from its licence renewal application notice.

with objections or adverse comments may be given a shorter licence period as LLB may deem fit. Also, it is open to LLB to impose additional licensing conditions where appropriate.

8. To address the concerns recorded in paragraph 6 above, we have formulated a mid-term review mechanism for licences of a two-year period.

9. Under this mechanism, the mid-term review will be conducted in the 11th month during the validity period of a two-year liquor licence. The Liquor Licensing Office (“LLO”) under the Food and Environmental Hygiene Department (“FEHD”) will compile a register for individual liquor-licensed premises whereby they can check the complaint and enforcement against the premises concerned and report to LLB as an integral part of the mid-term review.

10. At the time of the mid-term review, liquor-licensed premises with no record of enforcement action or substantiated complaint will be deemed to have passed the mid-term review whereby they could carry on with the rest of the 24-month licence period, and subject to maintaining such an unblemished record, may have a favourable prospect of being granted another 24-month licence by LLB upon the expiry of the current licence. For cases with record of enforcement action or substantiated complaints, either one of the following scenarios will apply. Where the enforcement action or substantiated complaint does not fall within the category which warrants immediate action under Regulation 23(1A)³ of the DCLR on revocation, suspension and refusal of renewal of a licence, they could carry on with the rest of the licence period, but LLB would critically consider, upon expiry of the current licence, whether the licensee should be granted a further 24-month licence. In those cases where the substantiated complaint warrants immediate action under Regulation 23(1A), LLB may consider revoking or suspending the licence(s) concerned as appropriate.

11. For cases where, at the time of mid-term review, the licensed premises is the subject of a complaint yet to be decided, LLB will invite comments from the DC member of the constituency in which the licensed

³ Under Regulation 23(1A) of the DCLR, LLB may revoke, suspend or refuse to renew a liquor licence, if in its opinion –

- (a) the person holding the licence has failed to comply with any condition of the licence;
- (b) the person holding the licence has ceased to be a fit and proper person to hold the licence;
- (c) the premises specified in the licence have ceased to be suitable for selling or supplying intoxicating liquor, for reasons connected with –
 - (i) the location and structure of the premises;
 - (ii) the fire safety and hygiene conditions in the premises; or
- (d) public interest so requires.

premises is situated, so that LLB, in conducting the mid-term review, could take into account any comments made by the DC member as to the suitability of the licensed premises to qualify for a further 24-month licence as and when the current licence is next due for renewal.

(B) Advertising an Application on Free Channels or Media, such as the Internet

12. Under Regulation 16 of the DCLR, LLB shall "...cause advertisement to be made at the expense of the applicant..." for every liquor licence application. At present, the prevailing practice is to require an applicant to advertise on local newspapers with prescribed specifications. The applicants will foot the bill. While advertisements on a limited number of newspapers would only be able to reach a certain number of readers, advertising on the Internet may be able to capture a larger audience. Respondents to the public consultation generally raised no objection to allowing liquor licence applications to be advertised on the Internet.

13. To enhance transparency and enable smooth implementation, we have adopted a phased approach for advertisements to be made on the Internet, for which the cost is negligible. In Phase I, alongside the applicant's advertising on local newspapers, the same advertisement will be published on the LLB website by the LLO of FEHD. In Phase II, applicants would be given a choice between advertising on newspapers or the LLB website. In Phase III, advertisements would all be made on the LLB website without the need to incur any expense from the applicants. With the agreement from LLB, Phase I has been introduced since November 2012. Its operation is efficient so far. We will keep in view response to the new arrangement under Phase I in due course, before taking the matter further.

14. To fully implement the proposal which will require no cost on the part of the applicant, amendments to Regulation 16 of the DCLR will be required.

Other Measures

15. We reported to the FSEH Panel meeting on 10 January 2012 that we intended to implement a proposed reserve licensee mechanism to minimise disruption to businesses by identifying at an early stage a suitable person to take over the role of the original licensee at any given time during the licence period should circumstances so warrant. We indicated that amendments to the DCLR might be required for the purpose.

16. Upon further study, it is found that this proposal could be implemented via administrative procedures. We are currently working out the operational details of the scheme with the relevant departments and will adhere to the principles that there should be a clear delineation of responsibility at any one time during the licence period between the licensee and the reserve licensee, and a simplified procedure should be in place to facilitate the reserve licensee to take over the licence in a matter of days to minimise the disruption to the business.

17. At the Panel meeting on 10 January 2012, we also reported that LLB would draw up a set of guidelines to enhance transparency as well as to help the trade and the public better understand the factors that are taken into account by the Board when assessing liquor licence applications. More information on the “The Guidelines on Assessing Liquor Licence Applications” (“the Guidelines”) produced by LLB was subsequently presented to this Panel in October 2013 (ref.: LC Paper No. CB(2)20/13-14(01)).

18. The Guidelines were promulgated by LLB on 1 December 2013. The Guidelines have been developed with due regard to the three criteria stipulated under Regulation 17(2) of the DCLR, 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. Other than the vetting criteria which have all along been adopted, LLB proposes to suitably impose two additional licensing conditions in the liquor licence for upstairs bars, namely requiring the licensee to attend the “Seminar on Liquor Licensing” which covers the topics of fire safety, public order and environmental hygiene, and imposing a more stringent capacity limit for their premises having regard to the circumstances. For liquor-licensed premises with serious noise problem, LLB proposes to impose a new licence condition prescribing more stringent noise abatement requirement. These new licensing conditions have been taking effect by phases since 1 December 2013. The full version of the Guidelines is available at the LLB website.

Timetable

19. We are preparing the amendments to the DCLR on the basis of the proposals highlighted in paragraphs 5 and 14 above. We aim to table the amendment regulation before LegCo within 2014.

Advice Sought

20. Members are invited to note the contents of this paper.

**Food and Health Bureau
Food and Environmental Hygiene Department
April 2014**