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Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 8 April 2014**

Liquor licensing regime

Purpose

This paper summarizes the concerns of the members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the liquor licensing regime.

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. 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 (i.e. bars operated in multi-storey buildings which were formerly used to house residential flats or office) as well as the Administration's proposals on trade facilitation measures in respect of liquor licensing. The proposals to streamline licensing procedures included the following -

- (a) allowing liquor licence applicants to advertise their applications through means other than publishing an advertisement on the newspaper;
- (b) extending the duration of liquor licence to more than one year;
- (c) introducing an optional "reserve licensee" mechanism while maintaining the requirement for a liquor licence to be applied for and held by a natural person; and
- (d) exploring the need for classifying liquor licences by types of liquor sold so as to better manage the risks of different types of liquor-selling premises.

5. At the Panel meeting on 10 January 2012, the Administration reported the outcome of the public consultation on the review and briefed members on the proposals to be implemented by the Administration. The Panel was advised that LLB might consider adopting more stringent criteria in assessing liquor licence applications from upstairs bars to address public concerns about public order, safety and nuisance of upstairs bars. In this regard, LLB would draw up a set of guidelines on the vetting of upstairs bar applications. Regarding the proposed trade facilitation measures, the Administration advised that the community generally supported the proposals of allowing liquor licence applications to be advertised on the Internet and maintaining the existing requirement that liquor licensees must be natural persons. The proposal of extending the liquor licence period to a maximum of two years received strong support from the trade and was agreed by LLB.

Deliberations of the Panel

6. The Panel discussed the subject of liquor licensing regime at five

meetings between 2008 and 2013, and met with the representatives of LLB and deputations to receive views on the draft guidelines of LLB on assessing liquor licence applications at one of these meetings. The deliberations and concerns of members are summarized below.

Business facilitation measures

Duration of a liquor licence

7. 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.

8. 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

9. 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.

10. 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.

11. 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

12. 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.

13. 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.

Regulation of upstairs bars

14. 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. The Administration was urged to implement more stringent control measures to tighten the regulation of upstairs bars. Some members considered that the Administration should adopt a more stringent fire safety assessment for a liquor licence applications from an upstairs bar if it was located in a building with a large number of upstairs bars. They suggested that the Administration and LLB should conduct stress tests to assess whether people in those buildings could promptly escape to place of safety in case a fire broke out.

15. 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.

16. Concern was raised whether the Administration applied the same criteria for assessing liquor licence applications for upstairs bars and bars located at street level. The Administration advised that the criteria for assessing liquor licence applications applied to all types of liquor-licensed premises, including

upstairs bars and bars located at street level. In the light of public concerns about the safety of upstairs bars, LLB had proposed two additional licensing conditions in the liquor licences for upstairs bars, namely (a) requiring the licensees to attend a "seminar on liquor licensing" and (b) imposing more stringent capacity limit for their premises.

17. In response to members' views that the definition of upstairs bars was unclear, the Administration advised that any person intending to sell liquor at any premises for consumption on the premises was required to obtain a liquor licence. While there was no statutory definition of upstairs bars, they generally referred to liquor-licensed premises which operated as bars (i.e. with the sale and consumption of liquor on the premises being the main line of business) and were not located a street level.

18. There were views objecting to the proposal to impose a more stringent capacity limit for upstairs bar. Some members questioned the effectiveness and the basis of setting a safety margin of 90% of the capacity limit for upstairs bars, and considered the requirement for a liquor licence applicant to possess sufficient experience in managing liquor-licensed premises not conducive to the business environment.

19. The Administration explained that in the light that people under the influence of alcohol might not be able to make their way to safety with ease through staircase during emergencies, it was considered necessary to impose a more stringent capacity limit for the premises of upstairs bars. The expected number of users of the premises was calculated in accordance with the Code of Practice for Fire Safety in Buildings 2011, having taken into account the size, design and use of the premises, as well as the means of escape of the building where the premises were located.

Enforcement of licensing conditions of upstairs bars

20. Concern was 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.

21. 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.

22. Another concern was 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

23. 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.

24. 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.

25. 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.

26. Referring to the case of a Superintendent of the Police who had been convicted of misconduct in relation to an application for a liquor licence from a restaurant, some members expressed grave concern about the probity and integrity of Police officers who gave advice to LLB on liquor licence applications. In response to members' enquiry, LLB stressed that it would consider the recommendations of the Police in conjunction with recommendations and views from other Government departments and stakeholders before making its final decision.

Composition of LLB

27. Some members expressed concern about the composition of LLB and doubted whether LLB could balance the interests of the trade and members of the public when considering liquor licence applications. These members 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.

28. 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.

29. The Panel passed a motion at the meeting on 13 June 2013 urging the Food and Health Bureau to comprehensively review the LLB in respect of, among others, its composition, functions and operational transparency.

Latest development

30. The Administration will brief the Panel on the legislative proposals to amend the liquor licensing regime on 8 April 2014.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
2 April 2014

Relevant papers on liquor licensing regime

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)
Panel on Food Safety and Environmental Hygiene	13.6.2013 (Item I)	Agenda Minutes CB(2)1249/12-13(01) CB(2)1292/12-13(02)