

LEGISLATIVE COUNCIL BRIEF

Dutiable Commodities (Liquor) Regulations (Cap. 109B)
Dutiable Commodities (Liquor Licences) (Fees) Regulation (Cap. 109H)

**DUTIABLE COMMODITIES (LIQUOR) (AMENDMENT)
REGULATION 2015
DUTIABLE COMMODITIES (LIQUOR LICENCES) (FEES)
(AMENDMENT) REGULATION 2015**

INTRODUCTION

At the meeting of the Executive Council on 27 January 2015, the Council ADVISED and the Chief Executive ORDERED that the Dutiable Commodities (Liquor) (Amendment) Regulation 2015 (“the Liquor Regulation”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”). This paper briefs Members on the Liquor Regulation and the Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015 (“the Fees Regulation”), at **Annex B**, made by the Secretary for Food and Health (“SFH”) to provide for the relevant fees.

JUSTIFICATIONS

2. The liquor licensing system in Hong Kong regulates the sale or supply of liquor for consumption on the premises. The Liquor Licensing Board (“LLB”), established under the Dutiable Commodities (Liquor) Regulations (Cap. 109B) (“DCLR”), will not grant a liquor licence unless it is satisfied that (a) the applicant is a fit and proper person to hold the licence; (b) the premises to which the application relates are suitable for selling or supplying intoxicating liquor; and (c) granting the licence is not contrary to the public interest.

3. As in other cosmopolitan cities in the world, liquor business is an important adjunct to the food, leisure, tourism and entertainment industries in Hong Kong. In considering liquor licence applications, the

LLB has to balance the interests of legitimate commercial activities and those of the neighbourhood nearby.

4. In recent years, there have been persistent concerns about crime, nuisance and potential fire danger brought about by the proliferation of bars particularly those accommodated on the upper floors of multi-storey domestic/commercial buildings (commonly referred to as “upstairs bars”). At the same time, there are calls from the trade to lower the regulatory burden and nurture a business-friendly environment.

5. Taking into account the views collected from a public consultation exercise in July to September 2011, we have in the past two years put into motion a number of measures to improve the regulatory regime. To provide added room for sensitive handling of voices from the neighbourhood, the LLB has revamped its procedures for dealing with applications for the renewal or transfer of liquor licence. With effect from May 2013, for liquor-licensed premises which (a) drew objections when the licence was renewed on the previous occasion; or (b) were the subject of complaints in the past 12 months, the District Council (“DC”) member of the respective geographical constituency where the premises are located would be consulted as a matter of course before the case was put before the LLB.

6. In the interest of enhancing transparency, the LLB published in December 2013 a set of Guidelines capturing the factors that are taken into account when assessing liquor licence applications. Due to their special physical environment and the relatively greater difficulties involved in taking enforcement actions and conducting inspections in respect of fire safety, noise, environmental hygiene and public nuisance, etc., upstairs bars are prone to attract public concerns and draw complaints from the neighbourhood. In the Guidelines, we have highlighted the vetting that applications from upstairs bars would have to go through, as well as the more stringent conditions that the LLB may impose including those relating to capacity limit and measures to abate noise nuisance for premises with serious noise problem etc. The Guidelines are reproduced at **Annex C**.

7. Separately, in response to recommendations made by the Ombudsman and the Efficiency Unit on ensuring compliance with fire safety requirements by food premises, we have since June 2014 added express provisions in the licensing conditions stipulating that restaurant licensees must comply with fire safety requirements at all times (such that minor breaches, if repeatedly not attended to promptly, would render

them liable to suspension/cancellation of licence). In addition, documentary evidence of continuous compliance with fire safety requirements (namely that the fire safety related certificates issued by registered specialist contractors remain valid at the material time) must be adduced when the Food and Environmental Hygiene Department (“FEHD”) processes applications for licence renewal. As at 31 October 2014, there are 6 800 liquor-licensed premises. Over 90% of these premises, including practically all the upstairs bars, have restaurant licences.

8. The above measures are administrative in nature. This brief deals with further measures that require amendments to the DCLR.

Proposals

(A) Extending the validity period of a liquor licence (currently capped at one year) to a maximum of two years

9. At present, Regulation 20(3) of the DCLR stipulates that “liquor licence shall be valid for a period of one year or such lesser period as the Board shall determine...”. We propose to extend the maximum validity period of a liquor licence from one year to two years so that the LLB would have greater flexibility in granting liquor licences of a longer duration in meritorious cases. By reducing the LLB’s workload that would otherwise arise from the processing of straight-forward licence renewal cases (i.e. cases with a good track record¹), this proposal allows the LLB to focus their attention on handling new applications and contested licence renewal applications.

10. While it is ultimately for the LLB to determine the exact licence period to be granted, it is expected that 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) would be considered favourably by the LLB for licence

¹ By “good track record”, we mean those cases that:

- (a) do not have any substantiated complaint/enforcement action recorded against the licensed premises or the licensees in the licences register for at least two consecutive years immediately before licence renewal;
- (b) have been granted a full term (at present one year) 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.

We have applied the above criteria to the liquor licence premises as at 31 December 2013. It is reckoned that about 78% of them will meet the “good track record” test.

renewal by two years. In line with the current practice, when the licence is due for renewal, the applicant is required to place advertisement to notify members of the public of the renewal application. Applications which draw objections or adverse comments may be given a licence period shorter than the full term as the LLB deems fit. Also, it is open to the LLB to impose additional licensing conditions where appropriate.

11. In taking forward this proposal, we are mindful of the views expressed during the consultation, including concerns from members of individual DCs. Whilst they had no in-principle objection to the proposal, some DC members pointed out that we could not rule out the possibility of deterioration in performance on the part of such licensed premises after the granting of a 24-month licence. Instead of allowing the licence to run its full two-year course in these cases, they considered that safeguards should be built in. To address these concerns, we are formulating, in consultation with the LLB, a mid-term review mechanism for licences of a two-year validity period. The proposed administrative mechanism is set out at **Annex D** for easy reference.

Fees

12. Ancillary to extending the licence duration to two years, we need to formulate the corresponding fee. A comprehensive fee review for liquor licences (including the licence renewal service) on a full cost recovery basis is underway. Meanwhile, we have good reasons to believe that the cost for processing a two-year application will not be as high as double that for a one-year one, even after the cost for a mid-term review for a two-year licence is included. For two-year licences which will only go to premises with good track record, the processing of renewal applications is not expected to require consultation with the Police and a hearing by the LLB.

13. We therefore propose setting the fee for a licence that is valid for more than one year at a level which is 1.5 times higher than the fee prescribed for a one-year licence. The fee payable for licences granted for any period less than one year must, as at present, be such proportion of the prescribed fee as the period for which such licence will be valid bears to a period of 12 months; whereas for licences granted for a period of two years or any period more than one year but less than two years, we propose that the fee payable should be the same. This would help provide an added incentive for licensees to keep up their good track record, even though the difference in fees payable is not significant in proportion to total operating cost.

14. The Fees Regulation at Annex B is made by SFH, pursuant to section 6A of the Dutiable Commodities Ordinance (Cap. 109), to provide for the relevant fees. The fees for liquor licences are currently set out in the Schedule to the Dutiable Commodities (Liquor Licences) (Fees) Regulation (Cap. 109H) (“DCLLR”).

Taking the opportunity to amend the provisions on temporary absence

15. At present, Regulation 24 of the DCLR allows the secretary to the LLB to authorise a person to manage the licensed premises for a liquor licence holder who is ill or temporarily absent for a period not exceeding three months. The three-month period can mean a single period not exceeding three months, or multiple periods which do not exceed three months in total.

16. We consider it not unreasonable for a licensee to be temporarily absent for more than once during a licence duration (especially when the duration could be as long as two years after the legislative amendment proposed in paragraph 9 above). It is difficult to defend why a licensee could be allowed to be absent for a consecutive three-month period but not two separate but much shorter periods. We therefore propose to take this opportunity to amend Regulation 24, making it clear that the period means an aggregate of periods rather than a single one.

17. As a corollary of our proposal to extend the licence duration to two years, we propose capping the period of temporary absence at 25% of the licence duration, i.e. the same proportion as stipulated under the existing provision (three months out of 12). We also propose that a caveat should be imposed for licences that bear a duration exceeding one year such that each period of absence must not exceed 90 days (no worse than the present situation), and that the total period of absence must not at any time exceed 90 days within any 12 consecutive months during the validity period of the licence. Without this caveat, the maximum period for a two-year licence would be as long as six months. Such a prolonged period of absence if indeed sought by the licensee in one go and allowed may arguably call into question the propriety of having the temporary absence provisions in the first place.

(B) Facilitation for electronic submission of applications

18. Under the DCLR, any person seeking a liquor licence, or any renewal, transfer or amendment thereof, must make application in writing

to the LLB. At present, electronic submission of liquor licence applications accompanied by a digital signature is permitted. However, the utilisation rate is low given that only a small number of applicants are equipped with a digital signature.

19. Apart from digital signature, we note that certain Government services also allow the use of a prescribed password to verify the identity of the service user (e.g. e-Tax). We propose to amend the DCLR such that electronic submission of applications for the issue, renewal, transfer or amendment of liquor licences may be allowed if accompanied by either a password assigned or approved by the LLB or by digital signature.

Other Measures

20. Under Regulation 16 of the DCLR, the LLB must “...cause advertisement to be made *at the expense of the applicant...*” for every liquor licence application. The present practice is that an applicant advertises on three local newspapers with prescribed specifications. The applicants will foot the bill. Respondents to the public consultation conducted in 2011 generally raised no objection to allowing liquor licence applications to be advertised on the Internet.

21. We have previously indicated to the LegCo Panel on Food Safety and Environmental Hygiene (“the FSEH Panel”) that amendments to Regulation 16 of the DCLR might be required to pave way for full implementation of this proposal (i.e. allowing advertisements on a liquor licence application on free channels or media). Upon further study in the context of drafting the Liquor Regulation, it is found that this proposal could be implemented without amending the DCLR.

OTHER OPTIONS

22. Proposals (A) and (B) have to be effected by amendments to the DCLR. The relevant fees have to be provided for by the Fees Regulation. There are no alternatives.

THE SUBSIDIARY LEGISLATION

23. The Liquor Regulation at Annex A seeks to amend the DCLR to implement the proposals (A) and (B) above. The main provisions of the Liquor Regulation are explained below –

- (a) Section 1 provides that the Liquor Regulation comes into operation on 3 August 2015.
- (b) Section 3 amends Regulation 20 to extend the maximum validity period of a liquor licence from one year to two years.
- (c) Section 4 amends Regulation 24 to adjust the maximum period for which a person may be authorised to manage the licensed premises during the illness or temporary absence of the licensee, to tie in with the adjustment made to the maximum validity period of a licence. It also clarifies that the total period of illness or temporary absence of licensee may be made up of an aggregate of periods.
- (d) Section 5 introduces new provisions to provide that the requirement for a signature in an application submitted in the form of electronic records can be satisfied by a digital signature or a password assigned or approved by the LLB.

24. The Fees Regulation at Annex B mainly seeks to amend the Schedule to the DCLLFR in which the fees for liquor licences are currently set out.

25. The existing provisions of the DCLR and DCLLFR being amended by the Liquor Regulation and the Fees Regulation respectively are at **Annex E**.

LEGISLATIVE TIMETABLE

26. The legislative timetable is as follows –

Publication in the Gazette	30 January 2015
Tabling before LegCo	4 February 2015

IMPLICATIONS OF THE PROPOSALS

27. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. The proposals are not expected to have environmental, productivity, civil service, family, economic or

significant sustainability implications. The financial implications are set out in **Annex F**.

PUBLIC CONSULTATION

28. The Government launched a two-month public consultation in July 2011 to gauge the views of the community on the regulation of upstairs bars and further streamlining of licensing procedures. As part of the process to engage relevant stakeholders, we 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 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. We have also consulted the LLB and the FSEH Panel on both the legislative and administrative proposals. Members were supportive.

PUBLICITY

29. We will issue a press release and a government spokesperson will be available to answer media and public enquiries.

ENQUIRIES

30. For enquiries about this brief, please contact Miss Diane Wong, Principal Assistant Secretary for Food and Health, at 3509 8926.

Food and Health Bureau
Food and Environmental Hygiene Department
January 2015

Dutiable Commodities (Liquor) (Amendment) Regulation 2015

(Made by the Chief Executive in Council under section 6 of the Dutiable
Commodities Ordinance (Cap. 109))

1. **Commencement**
This Regulation comes into operation on 3 August 2015.
2. **Dutiable Commodities (Liquor) Regulations amended**
The Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) are amended as set out in sections 3 to 6.
3. **Regulation 20 amended (issue and duration of licences)**
 - (1) Regulation 20(1)—
Repeal
“or such proportion thereof as is provided by paragraphs (4) and (5)”.
 - (2) Regulation 20(3)—
Repeal
“1 year”
Substitute
“2 years”.
 - (3) Regulation 20—
Repeal paragraph (4).
 - (4) Regulation 20—
Repeal paragraph (5).

4. **Regulation 24 substituted**

Regulation 24—

Repeal the regulation

Substitute

“24. **Illness or absence of licensee**

- (1) In the case of illness or temporary absence of the holder of a liquor licence, the holder may make an application in writing to the secretary to the Board for an authorization under this regulation.
- (2) On receiving an application under paragraph (1) and on payment of the prescribed fee, the secretary to the Board may authorize a person to manage the applicant’s licensed premises for a period that the secretary thinks fit.
- (3) Subject to paragraph (4), a period, or the aggregate of the periods, authorized under paragraph (2) in relation to a liquor licence must not exceed 25% of the number of days of the validity period of the licence.
- (4) For a liquor licence with a validity period of more than 1 year—
 - (a) each period authorized under paragraph (2) must not exceed 90 days; and
 - (b) the aggregate of the periods authorized under paragraph (2) must not exceed 90 days within any 12 consecutive months in the validity period.
- (5) A person who is authorized under paragraph (2) to manage an applicant’s licensed premises is, during the period for which the person is so authorized, regarded as the licensee of the premises.

- (6) For calculating under paragraph (3) the maximum number of days that may be authorized under paragraph (2), a fraction of a day is to be counted as a full day.”.

5. Regulation 26C added

Part III, after regulation 26B—

Add

“26C. Submission of applications in form of electronic records

- (1) If a person makes an application under regulation 15(1), 24(1) or 26(2) in the form of an electronic record, the requirement for a signature in the application is satisfied by—
- (a) a digital signature of the person; or
 - (b) a password assigned or approved under paragraph (2).
- (2) The Board may, for enabling a person to make an application under regulation 15(1), 24(1) or 26(2) in the form of an electronic record, assign or approve any sequence or combination of letters, characters, numbers or symbols as the person’s password.
- (3) In this regulation—
digital signature (數碼簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).”.

6. Regulation 34 added

After regulation 33—

Add

“34. Transitional provisions relating to Dutiable Commodities (Liquor) (Amendment) Regulation 2015

- (1) Regulation 20 as in force immediately before 3 August 2015 applies in relation to an application for the issue of a liquor licence that is pending immediately before that day.
- (2) For an application for the renewal of a liquor licence that is pending immediately before 3 August 2015—
 - (a) regulation 20 as in force immediately before that day applies if the licence expires on or before 1 August 2015; and
 - (b) regulation 20 as in force on 3 August 2015 applies if the licence expires on or after 2 August 2015.
- (3) Regulation 24 as in force immediately before 3 August 2015 continues to apply in relation to a liquor licence the validity period of which begins before that day and the expiry date of which falls on or after 3 August 2015.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2015

Explanatory Note

Under regulation 20 of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) (*principal Regulations*), a liquor licence granted by the Liquor Licensing Board (*Board*) is valid for a maximum period of 1 year. This Regulation amends the principal Regulations so that the maximum validity period becomes 2 years. The maximum period for which the secretary to the Board may, under regulation 24 of the principal Regulations, authorize a person to manage the licensed premises during the illness or temporary absence of the licensee is also adjusted accordingly.

2. To facilitate the submission of applications in the form of electronic records, this Regulation adds a new regulation to the principal Regulations to provide that the requirement for a signature in such an application can be satisfied by either a digital signature or a password assigned or approved by the Board.

Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015

(Made by the Secretary for Food and Health under section 6A of the Dutiable Commodities Ordinance (Cap. 109))

- 1. **Commencement**
This Regulation comes into operation on 3 August 2015.
- 2. **Dutiable Commodities (Liquor Licences) (Fees) Regulation amended**
The Dutiable Commodities (Liquor Licences) (Fees) Regulation (Cap. 109 sub. leg. H) is amended as set out in sections 3, 4 and 5.
- 3. **Section 1A added**
Before section 2—
Add

“1A. **Interpretation**
In this Regulation—
liquor licence (酒牌) has the same meaning as in the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B).”
- 4. **Section 2 amended (fees)**
 - (1) Section 2—
Renumber the section as section 2(1).
 - (2) After section 2(1)—
Add

- “(2) If a liquor licence is issued or renewed for less than 1 year, the fee payable for the licence is such proportion of the prescribed fee for a liquor licence valid for 1 year as the period for which the licence will be valid bears to a period of 12 months.
- (3) For the purpose of calculating the fee payable under subsection (2), a fraction of \$1 is to be counted as \$1.”
- 5. **Schedule amended (fees in respect of liquor licences)**
 - (1) The Schedule, English text, Part 1, section 1, definition of *club liquor licence*—
Repeal the semicolon
Substitute a full stop.
 - (2) The Schedule, Part 1, section 1—
Repeal the definition of liquor licence.
 - (3) The Schedule, Part 2, item 1—
Repeal paragraphs (a) and (b)
Substitute
 - “(a) if a bar is kept on the premises concerned—

(i) for a licence valid for 1 year	\$3,940
(ii) for a licence valid for more than 1 year	\$5,910
 - (b) if no bar is kept on the premises concerned—

(i) for a licence valid for 1 year	\$1,990
(ii) for a licence valid for more than 1 year	\$2,990”.
 - (4) The Schedule, Part 2, item 2—

Repeal paragraphs (a) and (b)

Substitute

- “(a) if a bar is kept on the premises concerned—
- (i) for a licence valid for 1 year \$1,100
 - (ii) for a licence valid for more than 1 year \$1,650
- (b) if no bar is kept on the premises concerned—
- (i) for a licence valid for 1 year \$1,100
 - (ii) for a licence valid for more than 1 year \$1,650”.

Secretary for Food and Health

2015

Explanatory Note

The Dutiable Commodities (Liquor) (Amendment) Regulation 2015 amends the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) to extend the maximum validity period of liquor licences from 1 year to 2 years. The fees payable for the issue or renewal of liquor licences are set out in Part 2 of the Schedule to the Dutiable Commodities (Liquor Licences) (Fees) Regulation (Cap. 109 sub. leg. H) (*Fees Regulation*). The main purpose of this Regulation is to amend the Fees Regulation to provide for the fees payable when the validity period of liquor licences exceeds 1 year.

Guidelines on Assessing Liquor Licence Applications

* * *

Introduction

The factors set out in the Guidelines have been developed from the three criteria stipulated under Regulation 17(2) of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) (“the Regulations”), with a view to facilitating the public and the trade to understand the major factors that are taken into account by the Liquor Licensing Board (“LLB”) when assessing liquor licence applications. The Guidelines do not carry the force of law and, as such, are not meant to bind LLB members. When considering the merits of individual applications, it is incumbent upon the LLB to give a full and fair hearing to each case in accordance with the requirements under the legislation. The LLB will keep the Guidelines under review and will update them as necessary.

2. 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”¹ are relatively more prone to attract public concerns, we have, under each of the three major criteria in the Guidelines, set out the factors that the LLB would specifically take into account when vetting liquor licence applications from “upstairs bars”.

¹ 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. 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.

Statutory Requirements

3. In accordance with Regulation 17(2) of the Regulations, the LLB shall not grant a liquor licence unless it is satisfied:

- (a) that the applicant is a fit and proper person to hold the licence;
- (b) that the premises to which the application relates are suitable for selling or supplying intoxicating liquor, having regard to:
 - (i) the location and structure of the premises; and
 - (ii) the fire safety and hygienic conditions in the premises;and
- (c) that in all the circumstances the grant of the licence is not contrary to the public interest.

(A) Whether the applicant is a fit and proper person to hold the licence

4. In vetting an application for liquor licence, the LLB may determine whether the applicant is a fit and proper person to hold the licence with reference to his character, relevant working experience, and past performance as a liquor licensee. The factors for consideration include the following:

- (a) The applicant being in possession of sufficient experience in managing liquor-licensed premises
(Such as having served as a liquor licensee for two years or

more; or having worked on the premises concerned for five years or more)

An applicant lacking the above experience should satisfy the LLB that he 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.

- (b) The applicant being able to devote sufficient time and attention to the proper management of the liquor-licensed premises

It is a licensing condition that the licensee shall personally supervise the premises. The licensee shall be on duty on the premises during the busiest part of the operating hours or when special circumstances so warrant. The applicant has to satisfy the LLB that he will be present to personally supervise the premises during the busiest part of the operating hours or in those periods as specified by the LLB.

Since liquor-licensed premises are more prone to cause noise and other nuisances to nearby residents (especially those who are living in adjacent domestic/commercial buildings or residential buildings), liquor licence applicants should be mindful of their social responsibility in taking appropriate measures, including the installation of acoustic insulation equipment and automatic doors, etc. on the premises, to prevent or minimise these nuisances. They should satisfy the LLB that they have fulfilled their duty to

ensure that the operation of the premises will not cause excessive nuisance to nearby residents.

When handling an application for licence renewal, the LLB may consider not renewing the licence if the licensee is often found absent from the premises (being evidence that he is less than committed to managing the premises properly according to the law), or if there has been a number of irregularities involving the premises (being evidence that the applicant is less than capable of managing the premises properly according to the law or that he fails to be a law-abiding person himself).

- (c) The applicant being in possession of good personal background and character

Members of the LLB may consider the past record of the applicant, including whether there was any breach of the relevant ordinances or licensing conditions.

The LLB may also consider the information provided by the Police about the applicant (e.g. record of criminal conviction) and the severity, frequency of the irregularities, as well as the lapse of time since the previous irregularity. Such information includes:

- (i) the severity of the criminal offences, especially those involving the sale of liquor without a licence;
- (ii) instance of the applicant having been warned or prosecuted by the Police for selling liquor without a

valid licence during the time he applies for a liquor licence;

- (iii) instance of the applicant having been warned or prosecuted by the Police for keeping or operating a vice establishment or gambling establishment;
- (iv) instance of the applicant having been warned or prosecuted by the Police for trafficking of dangerous drugs;
- (v) instance of the applicant having breached the Dutiable Commodities Ordinance or its subsidiary legislation;
- (vi) instance of the applicant having sold liquor to non-club members at will on club liquor-licensed premises; or
- (vii) instance of any person under the age of 18 having been allowed to consume intoxicating liquor on the premises.

(d) Upstairs Bars

- (i) In recognition of the relatively greater difficulties inherent in taking enforcement actions in and conducting inspections of upstairs bars, the LLB may consider enhancing the regulation of upstairs bars through the licensing system. Criteria more

stringent than those mentioned above may be adopted in considering the eligibility of the applicants, particularly the nature of the criminal offences in which they were involved.

- (ii) Furthermore, for the purpose of ensuring that the operators of upstairs bars have the knowledge to put their premises under proper management, the LLB will impose additional licensing conditions on the liquor licences requiring the licensees of upstairs bars to attend the “Seminar on Liquor Licensing” organised by the LLB before the licence is due for renewal and to obtain certificates of attendance issued by the LLB.²

(B) The location and structure of and the fire safety and hygienic conditions in the premises

5. The premises must be suitable for selling or supplying liquor to customers for drinking on the premises, having regard to their hardware such as the building structure, means of escape, fire safety and hygiene facilities. The LLB may also have to consider whether the proposed use of the premises is compatible with the purpose for which it is originally intended. According to past experience, the requirements applicable to the grant of a liquor licence, in terms of the location, structure, fire safety and hygienic conditions, are similar to those for the grant of a restaurant licence by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132). The LLB may take a view on whether the premises fulfil the requirements for a liquor licence by making

² In general, each licensee is only required to attend the “Seminar on Liquor Licensing” once.

reference to the outcome of the application for the restaurant licence or comments from departments concerned on the location, structure, fire safety and hygienic conditions of the premises. As regards an application for a club liquor licence, the premises to which the application relates are normally required to obtain a Certificate of Compliance or a Certificate of Exemption issued by the Home Affairs Department under the Clubs (Safety of Premises) Ordinance (Cap. 376). It is incumbent upon the LLB to consider each application on its own merits. Pertinent considerations include:

- (a) The character of the area in which the premises are located. For example, whether the area is predominantly a commercial area or a mixed commercial/residential area; whether there are commercial buildings or streets that may serve as a protective barrier between the premises and the neighbouring residential buildings; and whether the measures proposed by the applicant could suitably reduce the noise and other nuisances caused to persons living in the adjacent residential or commercial/residential buildings;
- (b) The suitability of the premises as a place much frequented by people (including customers). Premises with a valid restaurant licence should have met the standards, in terms of structure, means of escape, fire safety and hygiene facilities required for the grant of a liquor licence. In this respect, the premises should be suitable for the grant of a liquor licence or allowed to continue holding or renew its licence. As for the club liquor licence, premises with a Certificate of Compliance issued by the Secretary for

Home Affairs should have met the structural and fire safety requirements;

- (c) The LLB is not required to take the initiative to question or investigate whether selling or supplying liquor on the premises is in breach of the Government lease, occupation permit or deed of mutual covenant. However, if an application for a new liquor licence or licence renewal is contested on the grounds that the use of the premises for supply or sale of liquor is in breach of the specified use as set out in these three documents, the LLB will consider the relevant clause(s) before making a decision on the application;
- (d) The following buildings or premises are usually more suitable to be used for selling or supplying liquor:
 - (i) The units inside the building concerned are mostly used as restaurants, food premises or other public entertainment establishments;
 - (ii) The premises have a separate access directly leading to the street;
 - (iii) The building concerned has two or more staircases/means of escape, the width of which are sufficient for the purpose;
 - (iv) Generally speaking, premises on lower floors are more suitable than those on high floors, as it will be easier for people on lower floors to escape in case of emergencies.

(e) Upstairs Bars

Upstairs bars may pose greater potential danger to the public and bar customers due to their special physical environment. For instance, people 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 stairs 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. Such being the case, the LLB may take the following factors into consideration:

- (i) With regard to the location of premises under application, it is easier to take enforcement actions in and conduct inspections of the premises located at the lowest three storeys from the street level of a building. In case of emergencies, their customers may reach the street level within a short span of time;
- (ii) The building concerned must have adequate means of escape and two or more staircases;
- (iii) The layout of the building concerned should best be able to insulate other building users from the nuisances that may be caused by upstairs bars (e.g. the existence of separate access that caters for different user groups would be a plus);

- (iv) The building concerned must be properly managed. For instance, it is being looked after by a management office or an owners' corporation, which has not been prosecuted for improper management; it is served by self-closing smoke lobby doors; its means of escape are kept free from obstruction; and its fire service installations and equipment are well maintained and in efficient working order, etc.; and
- (v) In case of fire or other emergencies, the safe evacuation of customers from an upstairs bar is more difficult to achieve than a case of evacuating crowds at street level because alcohol impairs judgment and physical coordination. As such, the LLB will, when determining the capacity limit for an upstairs bar having regard to the actual circumstances and the advice of the departments concerned, impose a safety margin that is more stringent than that hitherto referred to, say 90% of the capacity limit that is otherwise applicable, and prescribing it as one of the licensing conditions.

(C) Whether the grant of the licence is contrary to the public interest

6. The LLB is bound by the statutory requirements to consider liquor licence applications with prudence. Regulation 17(2)(c) of the Regulations expressly stipulates that in all the circumstances the grant of the licence should not be contrary to the public interest. 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. Due to the special nature of liquor-licensed premises, in approving an application, the LLB may impose additional licensing conditions on top of the standard ones (see Appendix) for compliance by the licensee, striking a balance between protecting the commercial interest of the operators on the one hand, and helping to preserve tranquillity and public order in the local community on the other hand. However, this is applicable only to those cases where the premises in question are deemed suitable in principle for holding a liquor licence. An application will be rejected if the LLB considers that the grant of a liquor licence is contrary to the public interest. The additional licensing conditions that may be imposed include but are not limited to the following:

- (a) Liquor shall only be sold within specified hours;
- (b) The doors and windows of the premises shall be kept closed within specified hours;
- (c) No liquor shall be sold or supplied for consumption on the balcony within specified hours;
- (d) Imposing a capacity limit; and
- (e) Measures that are required, as additional licensing conditions, to contain serious noise nuisance. They may include the installation of appropriate acoustic insulation materials (e.g. double-glazed windows and sound insulator), and the appointment of qualified professionals for conducting noise impact assessment and certifying the efficacy of the noise insulation facilities inside the premises.

7. When examining applications, it is incumbent upon the LLB to

take all relevant circumstances into account in seeking to strike a balance between the interests of the applicants and those of the neighbours who may be affected. The considerations include the following:

- (a) Where illegal establishments are repeatedly found in a building such that the premises concerned are more prone to turn into a gathering place for undesirable elements or even a venue for criminal activities, it is more than probable that the units in the upstairs portion or basement of the building would not be suitable for operation as a bar, bearing in mind the need to avoid affecting other users of the building and the neighbourhood;
- (b) Where the premises are in close proximity to residential buildings or located in a mixed commercial/residential building, such premises would be less likely to be suitable for use as liquor-licensed premises since the operations are more prone to cause nuisance or disturbance affecting the daily lives of nearby residents, including noise nuisance and environmental hygiene problems to the neighbourhood. Liquor-licensed premises that are located in commercial districts would normally bear less such adverse impact;
- (c) Objections and the grounds underlying such objections raised by the persons affected and the departments concerned;
- (d) Whether the improvement measures initiated by the applicant are feasible and effective in reducing or eliminating the nuisances that may be caused to neighbours, in keeping with the requirement pertaining to public

interest; and

- (e) Whether the inbound and outbound movements of customers or the operation of the bar would cause crowds to gather and generate incessant hassle, bringing substantive nuisances to bear on other users of the building and the neighbourhood.

(f) Upstairs Bars

In the light of the special physical environment of upstairs bars, the LLB may take the following factors into consideration:

- (i) the number, type, mode of operation and distribution of liquor-licensed premises already in the same building. According to precedent cases and given the public concerns that have been articulated over the issue of means of escape in case of emergencies, it may not be acceptable if the total number of upstairs bars exceeds half of the number of floors of the building; and
- (ii) the number, type, mode of operation and distribution of the liquor-licensed premises (including upstairs bars) in the neighbouring areas. Whether the high concentration of liquor-licensed premises in the area is such as to cause unreasonable impact (in terms of noise nuisance, environmental hygiene, public order and traffic problems, etc.) on the local environment and the people living or working in the area.

* * *

Liquor Licensing Board
1 December 2013

Appendix

Standard Licensing Conditions Imposed on Liquor Licences

1. No disorder shall be permitted on the premises.
2. No person shall be allowed to become drunk on the premises, nor shall liquor be supplied to any person who is drunk.
3. No games of chance shall be played on the premises.
4. The licensee shall personally supervise the premises.
5. The licensee shall display a warning notice at a conspicuous place inside the premises containing the words “NO LIQUOR FOR PERSON UNDER AGE 18”. In the said notice, the size of each Chinese character shall not be less than 3 cm (height) × 3 cm (width) and the size of each English letter shall not be less than 2 cm (height) × 2 cm (width).
6. The licensee shall exhibit and keep exhibited a notice denoting its licensed status provided by the Board at the main entrance of the premises.
7. The licensee shall not permit any person to occupy or use any portion of the premises for any immoral or illegal purpose.
8. The licensee shall not permit any common prostitutes or reputed thieves to assemble or remain on the premises.
9. The licensee shall not permit drunkenness, or violence, quarrel or other disorderly conduct on the premises and shall not permit persons of known bad character to assemble and remain on the premises.
10. The name of any liquor for which a standard of quality is prescribed by regulations shall be clearly marked on the container in or from which the

liquor is supplied to any customers.

11. No bar business shall be operated on the premises, except with the permission of the Board endorsed herein.
12. No dancing shall be permitted on the premises, except with the permission of the Board endorsed herein.
13. Toilets shall be maintained in a state of cleanliness and good repair for the use of customers.
14. Except exempted by the Board, the licensed premises shall be concurrently covered by a valid restaurant licence issued by the Director of Food and Environmental Hygiene.

Standard Licensing Conditions Imposed on Club Liquor Licences

1. No person shall be allowed to become drunk on the club premises, nor shall liquor be supplied to any person who is drunk.
2. The licensee shall personally supervise the club premises.
3. The licensee shall display a warning notice at a conspicuous place inside the club premises containing the words “NO LIQUOR FOR PERSON UNDER AGE 18”. In the said notice, the size of each Chinese character shall not be less than 3 cm (height) × 3 cm (width) and the size of each English letter shall not be less than 2 cm (height) × 2 cm (width).
4. The licensee shall exhibit and keep exhibited a notice denoting its licensed status provided by the Board at the main entrance of the club premises.
5. The licensee shall not permit any person to occupy or use any portion of the club premises for any immoral or illegal purpose.
6. The licensee shall not permit any common prostitutes or reputed thieves to assemble or remain on the club premises.
7. The licensee shall not permit drunkenness, or violence, quarrel or other disorderly conduct on the club premises and shall not permit persons of known bad character to assemble and remain on the club premises.
8. No disorder shall be permitted on the club premises.
9. Toilets shall be maintained in a state of cleanliness and good repair for the use of members.
10. Except exempted by the Board, the licensed premises shall be concurrently covered by a valid Certificate of Compliance issued by the Secretary for Home Affairs.

Proposed Mid-term Review Mechanism

In taking forward the proposal of extending the maximum duration of a liquor licence from one year to two years, we are mindful of the views expressed during the consultation, including concerns from members of individual District Councils (“DCs”). Whilst they had no in-principle objection to the proposal, 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.

2. To address these concerns, we are formulating, in consultation with the Liquor Licensing Board (“LLB”), a mid-term review mechanism for licences of a two-year period.

3. 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 record of complaint and enforcement against the premises concerned and report to LLB as an integral part of the mid-term review.

4. 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 the 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)¹ of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) (“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

¹ 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.

licensee should be granted a further 24-month licence. In those cases where the substantiated complaint warrants immediate action under Regulation 23(1A), the LLB may consider revoking or suspending the licence(s) concerned as appropriate.

5. For cases where, at the time of the mid-term review, the licensed premises is the subject of a complaint yet to be decided, the LLB will invite comments from the DC member of the constituency in which the licensed premises is situated, so that the LLB, in conducting the mid-term review, could take into account any comments made by the DC member, as well as any other relevant factors, such as the substantiation or otherwise of the complaint in question, 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.

6. The mechanism shall be finalized and ready for use before the Liquor Regulation comes into effect.

Annex E

Chapter:	109B	Title:	DUTIABLE COMMODITIES (LIQUOR) REGULATIONS	Gazette Number:	L.N. 320 of 1999
Regulation:	20	Heading:	Issue and duration of licences	Version Date:	01/01/2000

(1) As soon as practicable after the granting of an application for a liquor licence or any renewal thereof, the Board shall, upon payment to the Director of Accounting Services of the prescribed fee or such proportion thereof as is provided by paragraphs (4) and (5), issue to the applicant a liquor licence. (L.N. 16 of 1977; 39 of 1985 s. 60)

(2) (Repealed 39 of 1985 s. 60)

(3) A liquor licence shall be valid for a period of 1 year or such lesser period as the Board shall determine, commencing from the date on which it is granted or such other subsequent date as the Board may determine. (L.N. 149 of 1975; L.N. 320 of 1983; 78 of 1999 s. 7)

(4) Where any liquor licence is granted for any period other than 1 year, the fee payable for such licence shall be such proportion of the prescribed fee as the period for which such licence will be valid bears to a period of 12 months.

(5) For the purpose of calculating the fee payable under paragraph (4), any fraction of \$1 shall count as \$1.

Note:

The fees payable under this regulation are subject to certain concessions within the following periods-

(a) 1 June 2003 to 31 May 2004 (please see the [Dutiable Commodities \(Waiver of Liquor Licence Fees\) Regulation 2003 \(L.N. 140 of 2003\)](#)); and

(b) 1 July 2009 to 30 June 2010 (please see the [Dutiable Commodities \(Liquor Licence Fee Concessions\) Regulation 2009 \(L.N. 140 of 2009\)](#)).

Chapter:	109B	Title:	DUTIABLE COMMODITIES (LIQUOR) REGULATIONS	Gazette Number:	L.N. 320 of 1999
Regulation:	24	Heading:	Illness or absence of licensee	Version Date:	01/01/2000

In the case of illness or temporary absence of the holder of a liquor licence, the secretary to the Board may in his discretion, on payment of the appropriate fee prescribed under section 6A of the Ordinance, authorize any person to manage the licensed premises for a period not exceeding 3 months, and during that period such person shall be deemed to be the licensee of the premises.

(78 of 1999 s. 7)

Chapter:	109H	Title:	Dutiable Commodities (Liquor Licences) (Fees) Regulation	Gazette Number:	L.N. 88 of 2013
Schedule:		Heading:	Schedule	Version Date:	19/07/2013

[section 2]

Fees in respect of Liquor Licences

Part 1

Interpretation

1. Interpretation

In this Schedule—

bar (酒吧) has the same meaning as in the Dutiable Commodities (Liquor) Regulations (Cap 109 sub. leg. B);

club liquor licence (會社酒牌) has the same meaning as in the Dutiable Commodities (Liquor) Regulations (Cap 109 sub. leg. B);

liquor licence (酒牌) has the same meaning as in the Dutiable Commodities (Liquor) Regulations (Cap 109 sub. leg. B).

Part 2

Fees

Column 1 Item	Column 2 Matter	Column 3 Fee
1.	The issue or renewal of a liquor licence (other than a club liquor licence)— (a) if a bar is kept on the premises concerned	\$3940 per year
	(b) if no bar is kept on the premises concerned	\$1990 per year
2.	The issue or renewal of a club liquor licence— (a) if a bar is kept on the premises concerned	\$1100 per year
	(b) if no bar is kept on the premises concerned	\$1100 per year
3.	The transfer of a liquor licence	\$140
4.	Any amendment to a liquor licence	\$140
5.	The issue of a duplicate of a liquor licence	\$140

Financial Implications

In taking forward the proposal of extending the maximum validity period of a liquor licence from one year to two years, the Liquor Licensing Office under the Food and Environmental Hygiene Department (“FEHD”) will compile a register for individual liquor-licensed premises whereby they can check the record of complaints and enforcement against the premises concerned and report to the Liquor Licensing Board as an integral part of the mid-term review. It is expected that FEHD should be able to cope with such workload within their existing resources. The cost arising from the establishment of the mid-term review mechanism is expected to be out-weighed by the reduction in workload that would otherwise arise from the processing of straight forward licence renewal cases annually.

2. With our proposal of setting the fee for a licence that is valid for more than one year at a level which is 1.5 times higher than that for a licence that is valid for one year, the projected cost recovery rate of the licence renewal service, calculated on a weighted average costing approach, will be reduced from the present 149% to 119%, resulting in an estimated decrease in average annual revenue by about \$2.7 million. A comprehensive fee review for liquor licences (including the liquor renewal licence service) on a full cost recovery basis is underway.