

**立法會**  
**Legislative Council**

LC Paper No. CB(2)392/17-18  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/7/16

**Bills Committee on Dutiable Commodities (Amendment) Bill 2017**

**Minutes of meeting**  
**held on Monday, 9 October 2017, at 2:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon YIU Si-wing, BBS (Chairman)  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Dr Hon KWOK Ka-ki  
Dr Hon Junius HO Kwan-yiu, JP  
Hon SHIU Ka-fai  
Hon KWONG Chun-yu

**Member absent** : Hon Holden CHOW Ho-ding

**Public Officers attending** : Items I & II  
  
Miss Amy YUEN Wai-yin  
Deputy Secretary for Food and Health (Health) 2  
  
Ms Wendy AU Wan-sze  
Principle Assistant Secretary for Food and Health  
(Health) Special Duties 1  
  
Dr Tina CHAN Siu-mui  
Assistant Director of Health (Special Health Services)  
  
Dr Jeff LEE Pui-man  
Head (Tobacco Control Office)  
Department of Health

Ms Lonnie NG Wah-chi  
Senior Government Counsel  
Department of Justice

Miss Queenie WU Chung-Yi  
Government Counsel  
Department of Justice

**Attendance : Item I**  
**by invitation**

The Lion Rock Institute

Mr NG Kin-wah  
Event Officer

The Civic Party

Mr LEE Ka-ho  
District Developer of the New Territories West

Liberal Party

Mr HO Wang  
Member

Hong Kong Ample Love Society Limited

Ms TSANG Cheuk-yi  
Chairlady

Democratic Alliance for the Betterment and Progress  
of Hong Kong

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Mr YIP Man-pan  
Deputy Spokesperson of Policy

KELY Support Group

Miss Sky SIU Ka-yan  
Executive Director

Tung Wah Group of Hospitals 「Stay Sober Stay Free」  
Alcohol Abuse Prevention and Treatment Service

Ms CHUNG Yin-ting  
Supervisor

Tung Wah Group of Hospitals Integrated Centre on  
Addiction Prevention and Treatment

Dr CHAN Mei-lo  
Supervisor

**Clerk in attendance** : Miss Josephine SO  
Chief Council Secretary (2) 2

**Staff in attendance** : Miss Joyce CHAN  
Assistant Legal Adviser 1

Ms Wendy LO  
Senior Council Secretary (2) 2

Miss Cally LAI  
Legislative Assistant (2) 2

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Action

The Bills Committee deliberated (index of proceedings attached at **Annex A**).

**I. Meeting with deputations and the Administration**

2. The Bills Committee received oral representations from eight deputations on the Dutiable Commodities (Amendment) Bill 2017 ("the Bill") at the meeting, and noted one written submission from an organization which did not attend the meeting (LC Paper No. CB(2)2146/16-17(01)).

Action

**II. Meeting with the Administration**

(LC Paper Nos. CB(3)658/16-17, CB(2)1911/16-17(02) & (03) and CB(2)2146/16-17(02))

Follow-up actions required of the Administration

Admin

3. The Administration was requested to provide written responses to issues raised by members at the meeting and its draft Committee stage amendments to the Bill in respect of the definition of the term "agent" in order to clarify who would be considered under the Bill as an "agent" involved in the sale or supply of intoxicating liquor (as set out in **Annex B**).

Clause-by-clause examination

4. The Bills Committee completed discussion on the policy aspects and commenced clause-by-clause examination of the Bill. The Bills Committee examined up to Clause 7 of the Bill.

**III. Any other business**

Date of next meeting

5. Members agreed that the next meeting of the Bills Committee would be held on Wednesday, 1 November 2017 at 8:30 am to continue clause-by-clause examination of the Bill.

*(Post-meeting note: On the instruction of the Chairman, the starting time of the meeting was deferred to 8:45 am. The revised agenda for the meeting was issued on 30 October 2017.)*

6. There being no other business, the meeting ended at 4:29 pm.

Council Business Division 2  
Legislative Council Secretariat  
24 November 2017

**Proceedings of meeting of the  
Bills Committee on Dutiable Commodities (Amendment) Bill 2017  
on Monday, 9 October 2017, at 2:30 pm  
in Conference Room 1 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
<i>Agenda Item I - Meeting with deputations and the Administration</i>			
000401 - 000748	Chairman	The Chairman's opening remarks	
000749 - 001116	Chairman Mr NG Kin-wah, The Lion Rock Institute	Presentation of views (LC Paper No. CB(2)2172/16-17(01))	
001117 - 001422	Chairman Mr LEE Ka-ho, The Civic Party	Presentation of views (LC Paper No. CB(2)2180/16-17(01))	
001423 - 001652	Chairman Mr HO Wang, Liberal Party	Presentation of views	
001653 - 001950	Chairman Ms TSANG Cheuk-yi, Hong Kong Ample Love Society Limited	Presentation of views	
001951 - 002258	Chairman Mr YIP Man-pan, Democratic Alliance for the Betterment and Progress of Hong Kong	Presentation of views	
002259 - 002610	Chairman Miss Sky SIU Ka-yan, KELY Support Group	Presentation of views	
002611 - 002901	Chairman Ms CHUNG Yin-ting, Tung Wah Group of Hospitals 「Stay Sober Stay Free」 Alcohol Abuse Prevention and Treatment Service	Presentation of views (LC Paper No. CB(2)2180/16-17(02))	
002902 - 003249	Chairman Dr CHAN Mei-lo, Tung Wah Group of	Presentation of views (LC Paper No. CB(2)2172/16-17(02))	

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	Hospitals Integrated Centre on Addiction Prevention and Treatment		
003250 - 003649	Chairman Admin	In response to deputations' views, the Administration explained (a) the legislative intent of the Dutiable Commodities (Amendment) Bill 2017 ("the Bill"), (b) the new requirements (including display of the prescribed notice and age declaration) as well as statutory defence for the new offences under the proposed regulatory framework prohibiting the sale and supply of intoxicating liquor to minors in the course of business, and (c) enforcement actions to be carried out by officers of the Department of Health ("DH") to ensure compliance with the new requirements.	
003650 - 004244	Chairman Dr KWOK Ka-ki Admin	<p>Dr KWOK Ka-ki expressed support for the Bill. He requested the Administration to provide information on the estimated manpower and resources provision for carrying out inspections and enforcement actions under the new regulatory regime.</p> <p>Dr KWOK's enquiry and the Administration's response on (a) the publicity efforts made by DH to educate the public on alcohol-related harm and (b) the damage to the society (i.e. social cost/ healthcare expenses incurred) caused by alcohol abuse.</p>	<b>Admin</b> (para. 2 of Annex B refers)
004245 - 004714	Chairman Mr SHIU Ka-fai Admin	<p>Mr SHIU Ka-fai said that the retail industry in general supported legislating to prohibit the sale and supply of intoxicating liquor to minors. His view that the Administration should step up publicity on the proof of age requirement, so as to avoid disputes between frontline staff (including salespersons and persons responsible for delivery) and purchasers/recipients during the sale, supply or delivery of the intoxicating liquor.</p> <p>The Administration's response that:</p> <p>(a) in a face-to-face distribution, frontline staff should check the proof of identity of a purchaser or recipient if he was uncertain whether the purchaser or recipient was aged 18 or above (i.e. not a minor), and should not</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>sell any intoxicating liquor if he was not reasonably satisfied that the purchaser or recipient was not a minor. The requirement that a sign containing the prescribed notice, which stated the prohibition of sale or supply of intoxicating liquor to minors, had to be displayed in a prominent position at the place of sale or supply would facilitate the frontline staff to carry out inspection of proof of identity;</p> <p>(b) regarding delivery of intoxicating liquor, the term "agent" in the Bill, in relation to a sale or supply of intoxicating liquor, did not include a person who delivered the liquor in the course of business but was not otherwise involved in the sale or supply. To avoid doubt, the Administration would consider proposing Committee stage amendments ("CSAs") to the Bill to clarify that any person who only delivered the liquor in the course of business and who was not under the direct employment of the seller or supplier would not be considered under the Bill as an "agent" involved in the sale or supply of the liquor and therefore the person would not be subject to the new regulatory regime. Examples of such a person included the Post Office, delivery and courier companies and their employees; and</p> <p>(c) the Administration would, after the enactment of the Bill, step up publicity on the new regulatory regime to facilitate compliance with the new requirements by sellers (salespersons) and suppliers.</p>	
004715 - 005321	Chairman Dr KWOK Ka-ki Mr SHIU Ka-fai Admin	Dr KWOK Ka-ki's suggestion that comprehensive studies on the impact of alcohol abuse on society should be conducted.	
<b>Break</b>			
<b>Agenda Item II - Meeting with the Administration</b>			
005958 - 010309	Chairman Admin	Briefing on the Administration's response to issues raised at the meeting on 18 July 2017 (LC Paper No. CB(2)2146/16-17(02)).	
010310 - 011436	Chairman Mr Paul TSE	Clause-by-clause examination of the Bill, with the aid of the Blue Bill and the marked-up copy of the	

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	Admin	<p>relevant provisions to be amended by the Bill prepared by the Legal Service Division (LC Paper Nos. CB(3)658/16-17 and CB(2)1911/16-17(02)).</p> <p><u>Part 1 - Preliminary</u></p> <p><i>Clauses 1 and 2</i></p> <p><u>Part 2 - Amendment to the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance")</u></p> <p><i>Clause 3 - the newly added section 6(1)(oa)</i></p> <p><u>Part 3 - Amendments to the Dutiable Commodities (Liquor) Regulations (Cap. 109B) ("the Regulations")</u></p> <p><i>Clauses 5 and 6</i></p> <p><i>Clause 7 which sought to add a new Part 5 and a Schedule to the Regulations</i></p> <p><u>The proposed regulation 35 of the Regulations (Interpretation of Part 5)</u></p> <p>As the Administration had indicated that in order to address members' concern, it would consider proposing CSAs to clarify who would be considered under the Bill as an "agent" involved in the sale or supply of the liquor and therefore subject to the regulatory regime, the Chairman requested the Administration to provide its draft CSAs for members' consideration at the next meeting.</p> <p>In response to Mr Paul TSE's enquiry, the Administration advised that the term "licensed premises" in the proposed regulation 35 had the same meaning as defined under the existing regulation 2(1) of the Regulations, which referred to "the premises specified in a liquor licence on which the sale of intoxicating liquor was permitted pursuant to the licence".</p> <p><u>The proposed regulation 36 of the Regulations (Selling intoxicating liquor from vending machines prohibited)</u></p>	<p><b>Admin</b> (para. 3 of Annex B refers)</p>



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011437 - 011508	Chairman Mr Paul TSE Mr SHIU Ka-fai ALA1 Admin	<p><u>The proposed regulation 37 of the Regulations (Selling or supplying intoxicating liquor to minors prohibited)</u></p> <p>Responding to the enquiries of Mr Paul TSE and Mr SHIU Ka-fai, the Administration explained the application of the proposed regulation 37(3), which stated that "to avoid doubt, if a person sells a product that is not intoxicating liquor but that is accompanied by intoxicating liquor as a gift, the person supplies the liquor". The Administration further advised that "intoxicating liquors" was defined under section 53 of the Ordinance, which included spirits, liqueurs, wines, beer and other liquors fit or intended for use as a beverage. It was given as an example that while "rice wine" was a kind of "intoxicating liquors", "liqueur chocolates" were not. The Legal Adviser to the Bills Committee advised and highlighted the fact that since "intoxicating liquors" as defined in section 53(1) of the Ordinance meant, in a gist, liquors fit or intended for use as a beverage, the example of liqueur chocolates as a complimentary gift would not constitute "intoxicating liquor" under the Bill and thus would not be caught by the proposed regulation 37(3).</p>	
011509 - 013452	Chairman Admin	<p><u>The proposed regulation 38 of the Regulations (Defences for face-to-face distribution)</u></p> <p>Members noted that under the proposed regulation 38, for face-to-face distribution, it was a defence for a person charged for selling or supplying intoxicating liquor to minors to establish that he/she had inspected a proof of identity of the purchaser or recipient purportedly before the intoxicating liquor was sold or supplied and had been reasonably satisfied that the purchaser or recipient was not a minor. According to the Administration, the term "proof of identity" was defined under the proposed regulation 35 as having the meaning under section 17B(1) of the Immigration Ordinance (Cap. 115), which provided that a person's valid identity card and a valid travel document held by that person (e.g. a passport), among others, constituted "proof of identity". Mr Paul TSE suggested that the Administration should consider whether the definition of "proof of identity" should also include Hong Kong driving licence or other</p>	<p><b>Admin</b> (para. 1 of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>identity documents on which a person's date of birth was shown (e.g. Home Return Permit) to give greater flexibility to persons when asked to provide proof of identity for inspection during the sale or supply of intoxicating liquor.</p> <p>The Administration's advice that since under section 17C(1) of the Immigration Ordinance, every person who had attained the age of 15 years and was the holder of an identity card should have with him/her at all times proof of his/her identity, and that apart from a valid identity card, there were other proof of identity (including a valid travel document) provided under section 17B of the Immigration Ordinance, it was therefore reasonable to adopt the meaning of "proof of identity" under the Immigration Ordinance for the purpose of the Bill, as the meaning provided therein was sufficiently clear and would enable effective compliance by sellers (salespersons) and suppliers.</p>	
013453 - 015513	Chairman Admin Dr KWOK Ka-ki	<p><u>The proposed regulation 39 of the Regulations (Defence for remote distribution)</u></p> <p>Members noted that in respect of remote distribution, the Bill proposed a requirement that a purchaser or recipient had to declare that he/she was 18 years of age or over before intoxicating liquor would be sold or supplied. The proposed regulation 39 provided that it was a defence to a charge under the proposed regulation 37 for selling or supplying intoxicating liquor to minors to establish that the person charged had received a declaration from the purchaser or recipient that he/she had reached the age of 18 years, and there was no circumstance that caused the person to reasonably suspect that the declaration was false.</p> <p>Dr KWOK Ka-ki expressed concern that enforcement agencies would be unable to verify the truthfulness of the purchasers' declarations made online or through other remote means if production of proof of identity was not required in the ordering process. His view that this would create a loophole whereby minors might purchase intoxicating liquor through remote means to avoid the need to provide proof of identity upon request when purchasing intoxicating liquor. To ensure that the declaration requirement for remote</p>	

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		<p>distribution would be effective in prohibiting the sale or supply of intoxicating liquor to minors, Dr KWOK suggested that the Administration should impose a requirement that for remote distribution of intoxicating liquor, a purchaser or recipient would have to furnish a copy of his or her proof of identity before intoxicating liquor would be sold or supplied and also a purchaser or recipient would have to provide proof of identity for inspection upon request when intoxicating liquor was delivered.</p> <p>The Administration's response that:</p> <ul style="list-style-type: none"><li>(a) in proposing the age declaration requirement for remote distribution of intoxicating liquor, the Administration had made reference to the experience of overseas jurisdictions, such as New Zealand. The existing proposal could strike a balance between safeguarding public health and avoiding undue regulation. If a purchaser or recipient was required to produce proof of identity through remote means, it might give rise to privacy and cyber security concerns;</li><li>(b) it should be noted that if a person wilfully made a false declaration, he might commit an offence under section 36(b) or 36(c) of the Crimes Ordinance (Cap. 200) and would be liable on conviction to imprisonment for two years and to a fine;</li><li>(c) if the person responsible for delivering the liquor was under the direct employment of the seller or supplier, that person should take reasonable actions to ensure that the purchaser or the recipient of the intoxicating liquor was aged 18 or above if he/she had reasonable suspicion that the purchaser or recipient was a minor. The Administration would provide detailed guidelines to facilitate the trade's compliance with the new requirements, including the reasonable actions to be taken at the point of delivery; and</li><li>(d) after the passage of the Bill, DH officers would conduct compliance checks on remote distribution and inspections upon receipt of intelligence and complaints. Enforcement</li></ul>	

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		<p>actions would be taken against contravention of the new requirements.</p> <p>Dr KWOK Ka-ki considered that the trade should take all necessary measures to prevent intoxicating liquor from being sold or supplied to minors through remote distribution. The Administration responded that it would provide detailed guidelines to advise the trade on how to comply with the new requirements, e.g. keeping proper records on age declarations received and maintaining transaction records of the sale and supply of intoxicating liquor through remote means for inspection by DH.</p>	
015514 - 020202	Chairman Mr Paul TSE Admin	Mr Paul TSE's enquiry and the Administration's response concerning the application of sections 36(b) and 36(c) of the Crimes Ordinance in cases involving making of false declarations through remote means.	
020203 - 020301	Chairman	<p>Date of next meeting.</p> <p>The Chairman's closing remarks.</p>	

**Bills Committee on Dutiable Commodities (Amendment) Bill 2017****List of follow-up actions arising from the discussion  
at the meeting on 9 October 2017**

Members noted that under the proposed regulatory regime, for face-to-face distribution, it was a defence for a person charged for selling or supplying intoxicating liquor to minors to establish that he or she had inspected a proof of identity of the purchasers or recipient of the intoxicating liquor and was reasonably satisfied that the purchaser or recipient was not a minor. According to the Administration, in the proposed Part 5 of the Dutiable Commodities (Amendment) Bill 2017 ("the Bill"), the term "proof of identity" was defined under the proposed regulation 35 as having the meaning under section 17B(1) of the Immigration Ordinance (Cap. 115), which provided that a person's valid identity card and a valid travel document held by that person (e.g. a passport), amongst others, constituted "proof of identity". It was suggested that the Administration should consider and provide a response to the question of whether the definition of "proof of identity" should also include Hong Kong driving licence or other identity documents on which a person's date of birth was shown (e.g. Home Return Permit) to give greater flexibility to persons when asked to provide proof of identity for inspection during the sale or supply of intoxicating liquor.

2. The Administration was also requested to provide information on the estimated manpower and resources provision for carrying out inspections and enforcement actions in respect of sale or supply of intoxicating liquor to minors under the new regulatory regime.

3. In its response to issues raised by members at the Bills Committee meeting on 18 July 2017 (LC Paper No. CB(2)2146/16-17(02)) and at the meeting on 9 October 2017, the Administration advised that the Bill was drafted with the intent to prohibit the sale or supply of intoxicating liquor to persons under 18 years of age in the course of business; and the term "agent", in relation to a sale or supply of intoxicating liquor, did not include a person who delivered the liquor in the course of business but was not otherwise involved in the sale or supply. As the Administration did indicate that to address members' concern, it would consider proposing Committee stage amendments ("CSAs") to the Bill to make clear such policy intent, members requested the Administration to provide its draft CSAs for consideration at the next meeting.