

**立法會**  
**Legislative Council**

LC Paper No. CB(2)507/17-18  
(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 Wednesday, 1 November 2017, at 8:45 am**  
**in Conference Room 2A 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  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon KWONG Chun-yu
- Member absent** : Dr Hon Junius HO Kwan-yiu, JP
- Public Officers attending** : Items I  
Miss Amy YUEN Wai-yin  
Deputy Secretary for Food and Health (Health) 2  
  
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

**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

**I. Meeting with the Administration**

(LC Paper Nos. CB(3)658/16-17, CB(2)1911/16-17(02) & (03),  
CB(2)1927/16-17(01), CB(2)173/17-18(01) & (02))

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

2. The Bills Committee continued clause-by-clause examination of the Bill and examined up to the proposed regulation 44 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) under Clause 7 of the Bill.

Follow-up actions required of the Administration

3. The Administration was requested to provide written response to issues raised by members at the meeting and to consider introducing Committee stage amendments ("CSAs") in relation to the proposed regulations 39(2) and 44(1)(a) (see **Annex B**).

Admin

**II. Any other business**

Date of next meeting

4. Members agreed that the next meeting of the Bills Committee would be held on Tuesday, 21 November 2017 from 8:45 am to 10:45 am

Action

to continue clause-by-clause examination of the Bill and to consider the draft CSAs to be proposed by the Administration and, if any, by members.

5. There being no other business, the meeting ended at 10:27 am.

Council Business Division 2  
Legislative Council Secretariat  
12 December 2017

**Proceedings of meeting of the  
Bills Committee on Dutiable Commodities (Amendment) Bill 2017  
on Wednesday, 1 November 2017, at 8:45 am  
in Conference Room 2A of the Legislative Council Complex**

| Time marker     | Speaker                   | Subject(s)  | Action Required |
|-----------------|---------------------------|---|-----------------|
| 000603 - 000657 | Chairman                  | The Chairman's opening remarks.   |                 |
| 000658 - 002300 | Chairman<br>Admin<br>ALA1 | <p>Briefing on the Administration's response to issues raised at the meeting on 9 October 2017, including its draft Committee stage amendments ("CSAs") in relation to the proposed regulations 35 and 37 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) ("the Regulations") (LC Paper No. CB(2)173/17-18(02)).</p> <p>The Bills Committee continued clause-by-clause examination of the Dutiable Commodities (Amendment) Bill 2017 ("the Bill"), with the aid of the Blue Bill (LC Paper No. CB(3)658/16-17) and the marked-up copy of the relevant provisions to be amended by the Bill prepared by the Legal Service Division (LC Paper No. CB(2)1911/16-17(02)).</p> <p><u>The proposed regulation 37 of the Regulations (Selling or supplying intoxicating liquor to minors prohibited)</u></p> <p>In response to the enquiry of the Legal Adviser to the Bills Committee ("the Legal Adviser"), the Administration affirmed that in relation to a sale or supply of intoxicating liquor, the proposed CSA to the proposed regulation 37 (i.e. the new paragraph (1A)) sought to clearly provide that a person who delivered the liquor in the course of business for another person who sold or supplied the liquor (who was not employed directly by the seller or supplier and was not otherwise involved in the sale or supply of the liquor) would not be subject to the regulatory regime under the Bill and therefore would not be criminally liable if he/she did not take any measures to prevent intoxicating liquor from being sold or supplied to a minor by another person in the course of business. Examples were the Post Office, delivery and courier companies and their delivery staff. In other cases, i.e. if the person responsible for delivering the intoxicating liquor was under the direct employment of the seller or supplier, that</p> |                 |

| Time marker                | Speaker   | Subject(s)   | Action Required  |
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|                            |   | <p>person would be subject to the regulatory regime under the Bill and should take reasonable actions to prevent intoxicating liquor from being sold or supplied in the course of business to a minor.</p>   |  |
| <p>002301 -<br/>004113</p> | <p>Chairman<br/>Admin<br/>ALA1<br/>Mr SHIU Ka-fai</p> | <p><u>The proposed regulation 38 of the Regulations (Defences for face-to-face distribution)</u></p> <p><u>The proposed regulation 39 of the Regulations (Defences for remote distribution)</u></p> <p>The Legal Adviser pointed out that under the proposed regulation 39(2), if a person was charged because of the person's act, it was a defence for the person to establish that, before the intoxicating liquor was sold or supplied, (a) the person received a declaration to the effect that the purchaser or recipient of the liquor had reached the age of 18 years; and (b) there was no circumstance that caused the person to reasonably suspect that the declaration was false. The Legal Adviser sought clarification from the Administration as to whether the proposed defence was intended to apply to persons including employees who were only responsible for delivering intoxicating liquor which was sold or supplied by their employers, and whether such employees, who might only be responsible for making deliveries and not otherwise involved in the transaction process, would be deemed to have received a declaration under sub-section (a), which was one of the conditions for invoking the defence.</p> <p>The Chairman and Mr SHIU Ka-fai cited scenarios and enquired how the person responsible for delivering the intoxicating liquor could invoke the defences under regulation 39(2) and (3).</p> <p>The Administration's response that:</p> <p>(a) regarding the defence under the proposed regulation 39(2), the defendant had the burden to show that he/she had received a declaration (which might be verbal or in writing) to the effect that the purchaser or recipient of the liquor had reached the age of 18 years;</p> <p>(b) regarding the defence under the proposed regulation 39(3), if the person responsible for delivering the liquor was under the direct</p> | <p><b>Admin</b><br/>(para. 2(a)<br/>of Annex B<br/>refers)</p> |

| Time marker     | Speaker                            | Subject(s)  | Action Required                                     |
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|                 |                                    | <p>employment of the seller or supplier, the person would be under a duty to take reasonable measures to prevent intoxicating liquor from being sold or supplied by his/her employer in the course of business to a minor. For instance, he/she might have to call his employer and/or the purchaser or recipient to verify that the liquor was sold or supplied to a person over 18 years of age, if the circumstances gave rise to suspicion that intoxicating liquor was being sold or supplied to a minor in the course of business by his/her employer; and</p> <p>(c) 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.</p>   |   |
| 004114 - 005813 | Chairman<br>Dr KWOK Ka-ki<br>Admin | <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. He considered that the Administration should impose a requirement that for remote distribution of intoxicating liquor, a purchaser would have to furnish a copy of his or her proof of identity or to settle the payment using only primary/principal credit cards, so as to ensure that intoxicating liquor would not be sold to minors. He also suggested that the Administration should make it a requirement for sellers and suppliers to keep proper transaction records of the sale and supply of intoxicating liquor for the purpose of inspection by officers of the Department of Health ("DH").</p> <p>The Administration's response that:</p> <p>(a) under the proposed regulation 42(4), a person must not, in the course of business, by the person's own act, sell or supply intoxicating liquor to another person in a remote distribution unless, before the sale or supply the person received a declaration to the effect that the other person 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><b>Admin</b><br/>(para. 1 of Annex B refers)</p> |

| Time marker     | Speaker                             | Subject(s)  | Action Required |
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|                 |                                     | <p>(b) a requirement on sellers or suppliers to check purchasers' or recipients' proof of identity in the case of remote distribution would involve collection of personal data by the sellers or suppliers and would have significant implications on issues of privacy;</p> <p>(c) the main objective of this legislative exercise was to remove a loophole in the current regulatory regime, whereby regulation 28 of the Regulations provided that no licensee should permit any person under the age of 18 years to drink any intoxicating liquor on any licensed premises, but the sale or supply of intoxicating liquor to minors in both licensed and non-licensed premises was not prohibited. More stringent control on remote distribution to impose a statutory requirement on sellers or suppliers to check purchasers' or recipients' proof of identity would involve elaborate requirements and significant implications in implementation and it was not the priority in this legislative exercise; and</p> <p>(d) it should be noted that if a person willfully made a false declaration, he might commit an offence under section 36(b) or 36(c) of the Crimes Ordinance (Cap. 200). Inspectors would conduct compliance checks on remote distribution and also conduct inspections upon receipt of intelligence or complaints. Enforcement actions would be taken against contravention of the new requirements.</p> |                 |
| 005814 - 010426 | Chairman<br>Mr Holden CHOW<br>Admin | Mr Holden CHOW's view that DH should step up publicity of the new requirements and conduct more frequent compliance checks on remote distribution. His further enquiry and the Administration's response on how the person responsible for delivering intoxicating liquor sold by his/her employer could invoke the defences under the proposed regulation 39.  |                 |
| 010427 - 011533 | Chairman<br>Admin<br>ALA1           | <p><u>The proposed regulation 40 of the Regulations (Burden of proof for defences)</u></p> <p><u>The proposed regulation 41 of the Regulations (Notice requirement for face-to-face distribution)</u></p> <p><u>The proposed regulation 42 of the Regulations</u></p>   |                 |

| Time marker     | Speaker                                     | Subject(s)  | Action Required |
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|                 |   | <p><u>(Notice and declaration requirements for remote distribution)</u></p> <p>In response to the Chairman's enquiry, the Administration advised that having considered the technical difficulties that might be encountered in actual operation, the Administration would not specify the size of the prescribed notice for remote distribution which should be published in the form of a visual image or a series of moving visual images. The prescribed notice should, however, be reasonably legible. The Administration would provide guidelines and samples to facilitate the trade's compliance with the display of the prescribed notice.</p> <p>The Legal Adviser's enquiry and the Administration's explanation on the kind of act(s) the proposed new regulation 42(5) intended to regulate.</p>   |                 |
| 011534 - 012915 | Chairman<br>Mr Holden CHOW<br>ALA1<br>Admin | <p><u>The proposed regulation 43 of the Regulations (Appointment of inspectors)</u></p> <p><u>The proposed regulation 44 of the Regulations (Powers of inspectors)</u></p> <p>The proposed regulation 44(1)(a) provided that inspectors might "at any reasonable time enter and inspect an area in a public place as the inspector considers necessary to ascertain whether this Part is complied with". Referring to her letter dated 11 July 2017 to the Administration (LC Paper No. CB(2)1911/16-17(03)) and the Administration's reply dated 17 July 2017 (LC Paper No. CB(2)1927/16-17(01)), the Legal Adviser drew members' attention that "public place" was not defined in the Bill or in the Regulations and according to the above Administration's reply, the definition of "public place" contained in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) would apply. Mr Holden CHOW expressed concern as to whether such definition might affect the effective enforcement of the requirements under the Bill. He also enquired whether inspectors had to obtain warrants in order to enter certain premises for routine checking or other law enforcement purposes.</p> |                 |



| Time marker     | Speaker                                    | Subject(s)  | Action Required  |
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|                 |  | <p>The Administration's response that:</p> <p>(a) the present version of the Bill had not defined "public place" and as such the definition under Cap. 1 would apply. As that definition might affect how the requirements under the Bill were to be enforced, the Administration would consider proposing CSA to provide a definition of the term "public place"; and</p> <p>(b) the Administration would also consider specifying clearly in the Bill how inspectors could enforce the statutory requirements under the Bill in certain premises.</p> <p>The Administration's briefing on its responses to other issues raised by the Legal Adviser in relation to the proposed regulation 44, as detailed in its reply dated 17 July 2017 (LC Paper No. CB(2)1927/16-17(01)).</p>  | <p><b>Admin</b><br/>(para. 2(b) of Annex B refers)</p> |
| 012916 - 014418 | Chairman<br>Dr KWOK Ka-ki<br>Admin<br>ALA1 | <p>In response to Dr KWOK Ka-ki's concern about the notice and age declaration requirements for remote distribution, the Administration advised that apart from providing detailed guidelines and samples on the content, layout/format of the prescribed notice to be published in different forms for the trade's reference, inspectors would conduct compliance checks to see whether the notice and age declaration requirements for remote distribution were complied with.</p> <p>Dr KWOK's view that consideration should be given to (a) extending the existing liquor licensing regime to also regulate the sale or supply of intoxicating liquor through remote distribution such that business operators that sold or supplied intoxicating liquor through remote distribution would have to apply for and obtain liquor licences; and (b) requesting the trade to include a health warning in the signs containing the prescribed notice for both face-to-face distribution and remote distribution to remind the public of the health hazards caused by intoxicating liquor.</p> <p>The Administration's response that:</p> <p>(a) the Administration had to strike a balance between safeguarding public health and avoiding undue regulation in proposing the prohibition of sale and supply of intoxicating</p> |  |

| Time marker     | Speaker                    | Subject(s)   | Action Required |
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|                 |                            | <p>liquor to minors. It would be more appropriate to regulate the sale or supply of intoxicating liquor to minors through remote means by conducting compliance checks and carrying out enforcement actions, instead of requiring the business operators to obtain a liquor licence, under which the licensees concerned had to comply with various requirements imposed by different government departments; and</p> <p>(b) the purpose of requiring the display of signs containing the prescribed notice was to inform potential customers and to remind persons working at the distribution point of the age requirement for the sale and supply of intoxicating liquor and to avoid misunderstanding. The Administration considered including a health warning in the signs containing the prescribed notice not necessary at this stage. According to the World Health Organization, in contrast to the graphical health warning on packets of tobacco products, currently there was no clear evidence that the inclusion of a health warning on product packaging/publicity materials would discourage people from consuming intoxicating liquor, although the warnings did impact on intervening variables such as having conversations about drinking and intention to change drinking patterns that could heighten risk. The Administration would step up publicity efforts to educate the public on alcohol-related harm.</p> |                 |
| 014419 - 014610 | Chairman<br>Mr Holden CHOW | <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 1 November 2017**

Members noted that in respect of remote distribution, the Dutiable Commodities (Amendment) Bill ("the Bill") proposed a requirement that a purchaser or recipient had to declare that he or she was 18 years of age or over before intoxicating liquor would be sold or supplied. The proposed regulation 39 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) 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 or 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. Concern was raised 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. To ensure that the declaration requirement for remote distribution would have actual effect in prohibiting the sale or supply of intoxicating liquor to minors, a member suggested that the Administration should impose a requirement that for remote distribution of intoxicating liquor, a purchaser would have to furnish a copy of his or her proof of identity or to settle the payment using only primary/principal credit cards. The Administration was requested to consider and provide a written response to this suggestion.

2. In its response to the enquiries and suggestions made by members and the Legal Adviser to the Bills Committee at the meeting on 1 November 2017, the Administration advised that it would consider proposing the following Committee stage amendments ("CSAs") to the Bill:

- (a) in relation to the proposed regulation 39(2), to make clear that the proposed defence was intended to apply to persons including employees who were only responsible for delivering intoxicating liquor which was sold or supplied by their employers, and to also clarify whether such employees, who might only be responsible for making deliveries and not otherwise involved in the transaction process, would be deemed to have received a declaration under sub-section (a), which was one of the conditions for invoking the defence; and
- (b) in relation to the proposed regulation 44(1)(a), to provide a definition of the term "public place".

The Administration was requested to provide its draft CSAs for consideration at the next meeting.