

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1911/16-17(04)

Ref : CB2/BC/7/16

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

### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper provides background information on the Dutiable Commodities (Amendment) Bill 2017 ("the Bill") and gives a brief account of the discussion by the Panel on Health Services ("the Panel") on the Administration's proposal to amend the Dutiable Commodities Ordinance (Cap. 109) ("the Ordinance") and its subsidiary legislation to prohibit commercial sale and supply of intoxicating liquor to minors<sup>1</sup>.

#### **Background**

2. According to the World Health Organization ("WHO"), alcohol consumption is associated with major non-communicable diseases such as cancers, cardiovascular diseases and diabetes. Alcoholic beverages are classified as a Group 1 carcinogen (cancer-causing to humans) by the International Agency for Research on Cancer of WHO, the same grouping as tobacco smoke, asbestos and ionizing radiation. Alcohol particularly affects the developing brain in adolescence, including impairing the memory and affecting the development of the nervous system as well as reducing self-control ability. In 2010, the Sixty-third session of the World Health Assembly<sup>2</sup> endorsed a global strategy to reduce the harmful use of alcohol. A policy option and intervention proposed therein is to establish an appropriate minimum age for purchase or consumption of alcoholic beverages and other policies in order to raise barriers against sales to, and consumption of alcoholic beverages by, adolescents. According to the Global status report on alcohol and health 2014 published by WHO,<sup>3</sup> only 21 out of the 166 reporting economies had no age restrictions for off-premises purchase of any of the three types of alcoholic beverage under survey (i.e. beer, wine and spirits) in 2012. Among those economies which have imposed a

---

<sup>1</sup> Under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), "minor" is defined to mean a person who has not attained the age of 18 years.

<sup>2</sup> The World Health Assembly is the decision-making body of WHO.

<sup>3</sup> The Global status report on alcohol and health 2014 can be accessed at the website of WHO ([http://www.who.int/substance\\_abuse/publications/alcohol\\_2014/en/](http://www.who.int/substance_abuse/publications/alcohol_2014/en/)).

minimum age for purchasing alcohol, the minimum age ranges from 10 years to 25 years, with 18 years being the most common minimum age.

3. In Hong Kong, intoxicating liquor<sup>4</sup> is available for sale on licensed premises<sup>5</sup> (such as bars) and non-licensed premises (such as liquor stores, convenience stores and supermarkets). For the former, regulation 28 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) ("the Regulations") provides that no licensee shall permit any minors to drink any intoxicating liquor on any licensed premises. However, there is currently no restriction on the sale or supply of intoxicating liquor to minors on licensed premises for off-premises consumption, in non-licensed premises and through remote means (such as orders received through electronic means, over the phone and by mail).

4. To reduce alcohol-related harm for the prevention and control of non-communicable diseases, a Working Group on Alcohol and Health ("the Working Group") was set up under the Steering Committee on Prevention and Control of Non-communicable Diseases<sup>6</sup> in June 2009 to advise on the priority areas for action and to draw up targets and action plans related to alcohol-related harm for the Steering Committee's consideration. The Working Group drew up an Action Plan to Reduce Alcohol-related Harm in Hong Kong in October 2011<sup>7</sup> which recommended, among others, the relevant authorities to review and consider the feasibility of imposing age restrictions on off-premises sale of alcohol.

---

<sup>4</sup> Under section 53 of the Ordinance, "intoxicating liquor" includes spirits, liqueurs, wines, beer and all other liquors fit or intended for use as a beverage.

<sup>5</sup> Under regulation 2 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B), "licensed premises" means the premises specified in a liquor licence on which the sale of intoxicating liquor is permitted pursuant to the licence.

<sup>6</sup> The Department of Health published a strategy document entitled "Promoting Health in Hong Kong: A Strategic Framework for Prevention and Control of Non-communicable Diseases" in 2008 to set out the strategic directions for the prevention and control of non-communicable diseases. To implement the strategies, the Steering Committee on Prevention and Control of Non-communicable Diseases was set up in the same year to steer the work on the prevention and control of non-communicable diseases and oversee the work progress.

<sup>7</sup> The Action Plan, which can be accessed at the Change for Health website of DH ([http://www.change4health.gov.hk/filemanager/common/image/strategic\\_framework/alcohol\\_action\\_plan/action\\_plan\\_e.pdf](http://www.change4health.gov.hk/filemanager/common/image/strategic_framework/alcohol_action_plan/action_plan_e.pdf)), has set out a total of 17 specific actions, which are grouped under five priority areas (i.e. generate an effective information system to understand the epidemiology of alcohol-related harm and to provide advice and support on prevention and control of alcohol-related harm; strengthen partnership and foster engagement of all relevant stakeholders; build the capacity and capability to prevent and control alcohol-related harm; ensure a health sector that is responsive to the non-communicable diseases challenges and to improve the healthcare system; strengthen and develop supportive health promotion legislation) and 10 recommendations.

## **The Dutiable Commodities (Amendment) Bill 2017**

5. The Administration introduced the Bill into the Legislative Council ("LegCo") on 21 June 2017. According to the LegCo Brief (File Ref.: FH CR 1/4050/17) issued by the Food and Health Bureau on 7 June 2017, the Bill seeks to amend the Ordinance and the Regulations to, among others, prohibit the sale of intoxicating liquor from vending machines; prohibit the sale or supply of intoxicating liquor to minors in the course of business; impose a notice requirement for sale and supply of intoxicating liquor by way of face-to-face distribution and notice and declaration requirements for the sale and supply of intoxicating liquor by way of remote distribution<sup>8</sup>; and confer certain powers on inspectors appointed by the Secretary for Food and Health for the purposes of enforcing the new requirements. The key features of the legislative proposals are set out in paragraphs 5 to 12 of the LegCo Brief.

### **Deliberations of the Panel**

6. The Panel was consulted on the legislative proposals on 25 April 2017. The deliberations and concerns of members are summarized in the following paragraphs.

#### Enforceability of the new requirements

7. Members in general expressed support for the requirements of prohibiting commercial sale and supply of intoxicating liquor to minors, which were on par with that under the existing tobacco control regime.<sup>9</sup> However, some members considered that in the absence of a licensing system for premises offering sale and supply of intoxicating liquor for off-premises consumption and active enforcement, it was difficult to ensure compliance by the retailing premises with the proposed new requirements. Concern was raised about the effectiveness of the enforcement actions taken by the Tobacco Control Office against persons selling tobacco products to minors and the number of cases convicted so far.

8. According to the Administration, the annual number of complaint cases concerning sale of tobacco products to minors had decreased from more than 100 cases in 2010 to around 20 cases in recent years. There had been around 30 convicted cases in this regard since 2007. On enforcement of the new requirements under the Bill after its enactment, inspectors would conduct

---

<sup>8</sup> Remote distribution covers any orders by mail, phone and electronic means, etc.

<sup>9</sup> Under the Smoking (Public Health) Ordinance (Cap. 371), no person shall sell or offer for sale any tobacco product from a vending machine; or shall sell any cigarette, cigarette tobacco, cigar or pipe tobacco to any person under the age of 18 years or given to any person. Any person offering for sale, or promoting the sale, purchase, smoking or use of these products shall display a sign on the above prohibition.

inspections and carry out enforcement actions upon receipt of intelligence and complaints. They might also inspect, either randomly or targeted, places selling or supplying intoxicating liquor by way of face-to-face distribution to ascertain whether a sign containing the prescribed notice had been displayed in a prominent position at the places. Compliance check would also be conducted on businesses offering the sale or supply of intoxicating liquor by way of remote distribution as to whether the relevant notice and declaration requirements had been complied with.

9. Members noted that under the legislative proposals, a person who, in the course of business, sold or supplied intoxicating liquor to minors would commit an offence and would be liable on summary conviction to a maximum penalty at level 5 (i.e. a fine of \$50,000). Concern was raised as to whether the business operators or the salespersons concerned would bear criminal liability. There was a view that sanctions should also be imposed on purchasers or recipients of the liquor concerned in order to deter minors from purchasing intoxicating liquor.

10. The Administration advised that the question of which party should bear criminal liability for selling or supplying intoxicating liquor to minors in the course of business depended on the circumstances of each case. It was one of the defences to a charge for selling or supplying intoxicating liquor to minors to establish that the person charged had, in the case of face-to-face distribution, inspected a proof of identity purporting to be the proof of identity of the purchaser or recipient of the intoxicating liquor and was reasonably satisfied that the purchaser or recipient was not a minor; and in the case of remote distribution, 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. In case the person was charged by reason of the act of another person, it was a defence for the former to establish that reasonable measures had been put in place to prevent intoxicating liquor from being sold or supplied by that other person in the course of business to a minor. After passage of the Bill, the Department of Health ("DH") would provide guidelines to facilitate compliance of the trade and step up publicity of the new requirements. This apart, efforts had been and would continuously be made to strengthen public education on harms of alcohol use.

11. Some members expressed concern that the checking by the salesperson of the proof of identity of a purchaser or recipient if in doubt in a face-to-face distribution would overburden the trade and might give rise to disputes between the above two parties. The Administration advised that the requirement that a sign containing the prescribed notice, which stated that intoxicating liquor could not be sold or supplied under the law of Hong Kong to a minor in the course of business, had to be displayed in a prominent position at the places concerned would facilitate the frontline staff to carry out the checking. There was a

suggestion that a prescribed label showing information on the harms of alcohol use and the prohibition of the sale or supply of intoxicating liquor to minors should be required to be displayed on retail containers of intoxicating liquor. The Administration took note of the suggestion.

### Consultation with the trade

12. Members noted that the Administration had conducted briefing sessions on the legislative proposals for relevant stakeholders including, among others, the wine industry, retail industry, medical and health sector and education sector between January and February 2017, and had invited stakeholders to provide written submissions. There was a concern that not all relevant members of the retail trade had been consulted on the legislative proposals. According to the Administration, DH would further meet with the stakeholders to facilitate their understanding of the operational details of the new requirements.

### Other proposals for minimizing alcohol-related harm

13. Referring to the three "best buy" interventions for reducing harmful alcohol use (i.e. tax increases; restricted access to retailed alcohol; and bans on alcohol advertising) identified by WHO, some members urged the Administration to increase liquor duty and require advertisements of liquor to include a health warning message and the message that intoxicating liquor could not be sold or supplied to minors. The Administration advised that the current legislative exercise was a first step to strengthen control of alcohol-related harm. As regards advertising of liquor or alcoholic liquor, the codes of practice issued by the Communications Authority to television programme service licensees and sound broadcasting licensees required that such advertising should only target the adult audience; should not be shown in proximity to children's programmes, or programmes which targeted minors; should not be broadcasted between the hours of 4:00 pm and 8:30 pm; and such advertisements must not encourage or depict immoderate drinking.

### **Relevant papers**

14. A list of the relevant papers on the LegCo website is in the **Appendix**.

**Relevant papers on the Dutiable Commodities (Amendment) Bill 2017**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Health Services	25.4.2017 (Item IV)	<u>Agenda</u>

Council Business Division 2  
Legislative Council Secretariat  
17 July 2017