

For discussion on  
25 April 2017

**Legislative Council Panel on Health Services**

**PROPOSED REGULATORY REGIME TO PROHIBIT  
COMMERCIAL SALE AND SUPPLY OF  
INTOXICATING LIQUOR TO MINORS**

**PURPOSE**

We propose 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 (i.e. persons under the age of 18).

**BACKGROUND**

*Global situation*

2. As pointed out by the World Health Organization (“WHO”), there is a causal relationship between alcohol consumption and a range of psychosocial and behavioural problems including alcohol dependence, foetal alcohol syndrome, non-communicable diseases (such as liver diseases, some cancers, cardiovascular diseases) as well as injuries and negative consequences resulting from violence, risky sexual behaviour and road accidents. Furthermore, there are causal relationships between harmful use of alcohol and incidence of infectious diseases such as tuberculosis and pneumonia, as well as Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome and other sexually transmitted diseases. In 2012, about 3.3 million deaths, or 5.9 % of all global deaths, were attributable to alcohol consumption. Alcohol use is the single biggest risk factor for deaths among young people aged 15 to 29 globally.

3. Adolescence is a key time of behavioural change and brain development. Alcohol consumption during this period adversely affects these developmental changes. Besides, young people react differently to alcohol. While they are less sensitive to its sedation and mobility effects, they are more sensitive to its social and rewarding effects. These reactions make young people more easily intoxicated by alcohol, placing them and the community at greater risk of physical, sexual and emotional harm. Furthermore, young people can develop dependence on alcohol more quickly than adults. The earlier a person engages in drinking, the greater the likelihood of alcoholism developing in his/her later life.

4. The WHO has named (a) raising taxes on alcohol; (b) enforcing restrictions and bans on alcohol advertising; and (c) restricting access to retailed alcohol, the three “best buys” for tackling harmful use of alcohol. Among these measures, setting a minimum age for purchasing alcohol is a very common tool adopted by many economies to restrict access and exposure to alcohol and delay the age at which young people begin to drink. According to the “Global status report on alcohol and health 2014” published by the WHO, only 21 of 166 reporting economies had no age restrictions for off-premise purchase of any type of alcoholic beverage in 2012. Among the economies which have imposed a minimum age for purchasing alcohol, the minimum age ranges from 10 to 25, but the most common minimum age is 18.

### ***Local situation***

5. The existing liquor licensing system has been in place since 2000, under which no licensee shall permit any person under the age of 18 to drink any intoxicating liquor<sup>1</sup> on any licensed premises.

6. Currently, there is no regulation that prohibits the sale of intoxicating liquor to minors on licensed premises, or sale of intoxicating liquor to minors on non-licensed premises including retail stores (such as

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<sup>1</sup> As stipulated under section 53 of the Ordinance, “intoxicating liquors” (令人醺醉的酒類) includes spirits, liqueurs, wines, beer and all other liquors fit or intended for use as a beverage. Under the same section 53, “liquor” (酒類), “alcoholic liquor” (飲用酒類), “spirituous liquor” (烈酒) or “spirit” (酒精) means any liquid which contains more than 1.2% of ethyl alcohol by volume except-

- (a) denatured spirits;
- (b) any such liquid that is an ingredient in any goods, if that liquid cannot be converted to pure ethyl alcohol or to an intoxicating liquor or if such a conversion would not be economical.

liquor stores, convenience stores and supermarkets). There is also no regulation that prohibits the sale of intoxicating liquor to minors through remote means (such as mail order, order made over the phone and by any electronic means).

7. Whilst the operators of retail stores do not require a liquor licence for selling intoxicating liquor to their customers, the retail industry has been refraining from selling intoxicating liquor to minors on a voluntary basis for a number of years. For instance, the Hong Kong Retail Management Association (members representing more than 8 000 retail outlets employing over half of the local retail workforce) has stated in the Code of Practice first published in 1985 for its members that liquor should not be sold to persons under the age of 18. However, there have been concerns over the effectiveness of this voluntary measure. It is noted that there were some test-purchasing operations conducted by stakeholders in the community in the past showing that teenagers could purchase alcohol products such as beer in different retail stores without much obstacle. By way of example, a project conducted by KELY Support Group in August 2016 showed that among the 112 purchase attempts made by trained underage volunteers in several types of retail outlets across Hong Kong, only 10.7% retail establishments specifically checked for the purchasers' /recipients' age identification. The rates of successful purchase attempts were 87.9%, 82.6% and 71.4% in supermarkets, high-end supermarkets and convenience stores respectively.

8. While the total alcohol per capita consumption in Hong Kong is relatively low as compared with other developed economies, the prevalence of local underage drinking is alarming. A survey commissioned by the Department of Health ("DH") to the University of Hong Kong in 2013<sup>2</sup> showed that 43.5% of Primary 4 to 6 students and 62.4% of secondary school students in Hong Kong were ever-drinkers, corresponding proportions of at-least-monthly drinkers were 4.7% and 10.6%. Half of the primary school ever drinkers (49.1%) first drank alcohol at 8 years old or below. Among secondary school students, one

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2 The survey was conducted by the University of Hong Kong for Action 12 of the "Action Plan to Reduce Alcohol-related Harm in Hong Kong" ("Action Plan"). The Action Plan was published in October 2011 by the Working Group on Alcohol and Health set up under the Steering Committee on Prevention and Control of Non-communicable Diseases. Action 12 recommended to develop age-specific education materials to facilitate parents, teachers and other parties to appropriately communicate with children to prevent underage drinking.

in five ever-drinkers (20.7%) first drank alcohol at 7 years old or below. Although the major source of alcohol for underage ever-drinkers was from parents (51.1% of upper primary school ever-drinkers and 39.7% of secondary school ever-drinkers), 9.9% of upper primary school ever-drinkers and 27.4% of secondary school ever-drinkers bought alcohol themselves. The usual venues where secondary school ever-drinkers who had bought alcohol were, in descending order, convenience stores (56.5%), supermarkets (37.3%), groceries (31.6%), other sources (12.6%) and vending machines (2.3%).

## **AMENDMENT PROPOSALS**

9. We consider that the Ordinance and its subsidiary legislation provide a legislative framework for implementing the proposed regulatory regime to prohibit commercial sale and supply of intoxicating liquor to minors. Section 6(1)(p) of the Ordinance empowers the Chief Executive in Council to regulate or prohibit the sale and supply of liquor to minors.

10. The scope of the regulation covers the prohibition of sale and supply of intoxicating liquor to minors, including face-to-face distribution and remote distribution. Similar restrictions and regulations have been implemented in Australia, the United Kingdom and New Zealand.

11. In addition to the current liquor licensing regime as laid down in the Dutiable Commodities (Liquor) Regulations (Cap. 109B), the Government proposes to introduce the following measures –

- (a) sale and supply of intoxicating liquor to minors will be prohibited;
- (b) prohibition of sale of intoxicating liquor from vending machines with a view to ensuring that intoxicating liquor is not accessible to minors;
- (c) for face-to-face distribution and remote distribution, vendors are required to display the prescribed notice on prohibition of the sale or supply of intoxicating liquor to minors;

- (d) vendors to take reasonable steps to require the purchaser/recipient to declare that he or she is 18 years of age or over; and
- (e) the Secretary for Food and Health (“the Secretary”) is empowered to appoint public officers of the DH to perform the functions under the proposed legislation.

### *Age limit*

12. Our proposed minimum age of 18 for sale or supply of intoxicating liquor is in line with the legal age for consumption of intoxicating liquor on licensed premises as stipulated under the Regulations, as well as the legal age of majority as stipulated under section 2(2) of the Age of Majority (Related Provisions) Ordinance (Cap. 410).

### *Scope*

13. As a measure to plug the loophole in sale of intoxicating liquor to minors on licensed premises and non-licensed premises, as well as through remote means, we propose to adopt a comparable level of control for different parties such as that under the liquor licensing regime. In view of the significant number of retail stores which sell or supply intoxicating liquor, however, we do not propose to introduce a licensing system for the sale and supply of intoxicating liquor.

14. In order to establish an effective regulatory regime, sale or supply of intoxicating liquor in the course of business, or for the purpose of promotion or advertisement, to any minor will not be allowed. In other words, the proposal will apply to the following –

- (a) face-to-face distribution;
- (b) remote distribution; and
- (c) promotional events, etc.

### ***Duty of business operators***

15. For face-to-face distribution, we do not intend to impose legal requirement on business operators to check purchasers'/recipients' identification as in some overseas countries in order to avoid over-burdening the trade. Salespersons may take steps to ask for proof of age unless it is beyond doubt that a purchaser/recipient is over 18 years of age. In the event that a purchaser/recipient fails to prove he is 18 years of age or over, the distribution should not proceed. It shall be a defence to a charge for selling or supplying intoxicating liquor to minors to prove that at the time the offence is alleged to have been committed, the person charged inspected an identity document purporting to be the identity document of the minor and believed on reasonable grounds that the minor was not under the age of 18.

16. Remote distribution, which takes place without the physical presence of the purchaser/recipient, has to be regulated as well. To prevent the excessive collection of personal data, we intend to impose legal requirement on business operators to take reasonable steps to allow the purchaser/recipient to declare that he is 18 years of age or over at any time before the distribution is completed, such as providing a check box for the purchaser/recipient to confirm that he has reached 18 years of age.

17. For both face-to-face distribution and remote distribution, it shall be a defence to a charge for selling or supplying intoxicating liquor to minors to prove that at the time the offence is alleged to have been committed, the person charged by reason of the act or default of another person put in place reasonable and practical procedures<sup>3</sup> to prevent the sale or supply of intoxicating liquor to minors.

### ***Prohibit the sale of intoxicating liquor from vending machines***

18. Sale from vending machines is a special sale channel where there is no direct contact between the business operator and the purchaser. It

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<sup>3</sup> For face-to-face distribution, business operators could put in place procedures for checking the purchaser's/recipient's age and asking for proof of age (e.g. identity cards) if necessary. For remote distribution, business operators could put in place procedures to comply with the requirement set out in paragraph 16 above.

would be difficult, if not impossible, to prevent sales to minors through vending machines. Even though sale of intoxicating liquor by vending machines is not common, we consider it necessary to prohibit the sale of intoxicating liquor from vending machines. This measure is on par with the existing tobacco control regime regarding the prohibition on sale of tobacco products from vending machines in order to ensure that tobacco products are not accessible to minors (as stipulated under Section 8B of Smoking (Public Health) Ordinance (Cap. 371)).

### ***Display of prescribed notice***

19. For face-to-face distribution, we propose that vendors of intoxicating liquor must visibly and prominently display at the point of sale or place of promotion a prescribed notice prohibiting the sale or supply of intoxicating liquor to minors. Drawing reference from a similar requirement for tobacco products, the notice shall be in English and Chinese to indicate that no intoxicating liquor may be sold or supplied to minors.

20. Similarly, for remote distribution, we propose that vendors selling or supplying intoxicating liquor through mail order or any electronic means (e.g. internet) must display on the order form or by electronic means (e.g. on-screen) the wording of the same prescribed notice. Vendors selling or supplying intoxicating liquor through an order made over the phone must read out the wording of the same prescribed notice to the purchaser/recipient. For remote distribution, the display of prescribed notice should be accompanied by the age verification or declaration measures.

21. To facilitate compliance of the trade, the DH would prepare guidelines on the display of the prescribed notice at the point of sale or place of promotion for face-to-face distribution and remote distribution. The DH would also prepare guidelines on the age verification or declaration measures for face-to-face and remote distributions respectively.

### ***Penalty and legal liability***

22. We propose to impose a penalty level sufficiently high to achieve the desired deterrent effect without being unduly harsh. We will make reference to the regulatory regime related to on-site consumption of alcohol on licensed premises under the Dutiable Commodities (Liquor) Regulations (Cap. 109B), tobacco products under the Smoking (Public Health) Ordinance (Cap. 371) and overseas experience.

23. The act(s) of selling and/or supplying, for the purpose of promotion or advertisement, intoxicating liquor to persons under the age of 18 can be committed by both the business operator/employer and the sales person/employee. The question of which party should bear criminal liability depends on the circumstances of each case. In any event, it would be a defence for the person to establish at the time when intoxicating liquor is sold or supplied that he has inspected the identity document of the purchaser/recipient. In case the person is charged by reason of the act of another person, it is a defence for the first mentioned person to establish that reasonable and practical procedures have been put in place.

### ***Enforcement***

24. We propose that the Secretary should have the authority to empower public officers of the DH to carry out enforcement actions. The DH has the advantage of experience in enforcing similar provisions in the tobacco control regime.

25. Routine inspection of all premises selling or supplying intoxicating liquor is not practicable. DH officers will conduct inspections and carry out enforcement actions upon receipt of intelligence and complaints. DH officers may conduct inspections, either randomly or targeted, on vendors to check whether the latter has displayed the prescribed notice, and enhance inspection of black spots. The DH will also conduct compliance checks on remote distribution.



## ***Commencement***

26. Sufficient time would be allowed for business operators to put in place reasonable and practical procedures they deem necessary in order to comply with the proposed regulatory regime, such as staff training and system updates to prompt identification alerts to staff. The DH would also prepare a set of guidelines to facilitate compliance in response to the trade's request. We will further consult relevant stakeholders, including the wine and retail industries, on the date of commencement of the proposed regulatory regime in due course.

## **CONSULTATION**

27. The Government conducted briefing sessions between January and February 2017 for relevant stakeholders including the wine industry, retail industry, medical and health sector, and education sector as well as the Chairmen and Vice-Chairmen of the District Councils to introduce our proposal and exchange ideas. We have also invited stakeholders to provide written submission in order to gauge their views on the proposal. Among 100 written submissions received, 78 submissions supported the legislative intention, 20 submissions had reservations on the proposed legislation and suggested introducing a Government-led voluntary scheme instead, and none expressed in-principle objection. The trade requested the Government to provide guidelines to facilitate their compliance with the new requirements, including display of the prescribed notice, age verification measures, etc., as well as statutory defence for the new offences and a reasonable adaptation period. The trade also enquired about the penalty level. The DH will further consult the trade on the implementation details before the legislative proposal is introduced into the Legislative Council.

## **WAY FORWARD**

28. We aim to introduce the amendments in the current legislative session. Subject to the passage of the amendments by LegCo, the exact commencement date will be specified by the Secretary in a notice

published in the Gazette. Meanwhile, the DH will enhance publicity and education activities to combat underage drinking.

**Food and Health Bureau**  
**Department of Health**  
**April 2017**