

**For Discussion  
on 10 April 2018**

## **LegCo Panel on Food Safety and Environmental Hygiene**

### **The Liquor Licensing Regime**

#### **Purpose**

This paper gives an overview of the existing liquor licensing system in Hong Kong, sets out the trade facilitation measures introduced over the past few years, and charts the way forward.

#### **Overview of the Current Licensing Framework**

2. The existing liquor licensing system in Hong Kong has been in place since 2000 when the Liquor Licensing Board (“LLB”) was established as the sole liquor licensing authority in the territory. Any person intending to sell or supply liquor for on-premises consumption is required to obtain a liquor licence or a club liquor licence from LLB.

3. The Dutiable Commodities (Liquor) Regulations (Cap. 109B) (“Regulations”) is the principal legislation governing the liquor licensing system in Hong Kong. LLB is established under the Regulations as an independent decision-making authority for liquor licensing.

4. LLB appointed by the Chief Executive consists of a Chairman, a Vice Chairman and nine other members. The current LLB has a broad representation of interests with members coming from different backgrounds, ranging from elected Member of the District Council, company director, catering business owner, accountant, solicitor to social worker.

5. The Food and Environmental Hygiene Department (“FEHD”) is the executive arm of LLB that processes and issues liquor licences. Enforcement duties relating to liquor licensing and relevant regulations are undertaken by various government departments (e.g. the Police, the Fire Services Department and the Environmental Protection Department) according to their respective purview.

6. The Regulations empower LLB to impose conditions on the licensed premises as it thinks fits. A number of standard conditions are imposed across-the-board on these premises. These standard conditions mainly cover maintenance of public order and duty of licensees (e.g. no disorder should be permitted on the premises and the licensees should personally supervise the premises).

7. Based on a case-by-case assessment, LLB may impose additional conditions on the licensed premises to minimize the nuisance caused to nearby residents, such as restricting liquor selling hours and setting number of persons permitted on the premises. Moreover, upstairs bars are subject to two additional conditions in accordance with the Guidelines on Assessing Liquor Licence Applications (“Guidelines”), i.e.:

- (a) requiring the licensees to attend a mandatory seminar on liquor licensing to help ensure the proper management of upstairs bars; and
- (b) imposing a more stringent capacity limit for upstairs bars to provide more room for the safe evacuation, at times of emergencies, of their employees and customers as well as occupants of the buildings where these premises are located.

## **Application for Liquor Licence**

### Eligibility criteria of applicants

8. A liquor licence will only be granted to a natural person who can be held criminally liable for any breach of law or licensing conditions in respect of the premises. In other words, a body corporate or a company formed by partnership cannot apply for the liquor licence.

### Consultation with the public

9. The applicants are required to notify the public about the applications through posting notices in newspapers and on the LLB website. In addition, FEHD will post notice about the applications at the buildings where the premises under application are located. On behalf of LLB, the Home Affairs Department will consult stakeholders in the local communities directly affected by the applications, including members of the District Council concerned and representatives of the relevant residents’ organizations (e.g. Owners Corporations or Manual Aid

Committees), and refer their views to LLB. During the consultation, the public can comment on the applications through submission to LLB or the consultation conducted by the Home Affairs Department.

#### Advice from the relevant government departments

10. LLB also seeks advice from the relevant government departments (e.g. the Police, the Fire Services Department and the Environmental Protection Department), which on the basis of their professional knowledge and experience, examine the applications including assessing the background of the applicants, suitability of the premises and possible reaction of the neighbourhood.

#### Approval process

11. In considering liquor licence applications, LLB takes into account the views of the relevant government departments and local residents, and considers each application on its own merits. The total number of liquor licence applications processed in 2017 is 7 101.

12. LLB has delegated FEHD to approve applications with no objection or adverse comments. If objections or adverse comments are received, LLB will conduct an open hearing or a closed-door meeting. The open hearing provides an opportunity for the applicants, the public and the relevant government departments to express their views before LLB makes its decisions.

13. In considering the grant of a liquor licence, LLB has to be satisfied that the application fulfils the three criteria stipulated in Regulation 17(2) of the Regulations:

- (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 having regard to the location and structure of the premises, and the fire safety and hygienic conditions in the premises; and
- (c) in all the circumstances the grant of the licence is not contrary to the public interest.

14. Due to the special physical environment and public concerns over nuisance, fire safety and crimes caused by these premises, LLB

adopts more stringent criteria as appropriate for applications from upstairs bars as specified in the Guidelines.

### Appeal mechanism

15. In case the applicants or 20 or more residents living near the premises concerned are aggrieved by the licensing decisions made by the LLB, they may appeal to a separate statutory body, the Municipal Services Appeals Board (“MSAB”). In determining an appeal against LLB’s decision, MSAB may affirm, vary or set aside the decision made by LLB. The parties concerned may challenge the decisions of MSAB by seeking judicial review.

### **Inspection and Enforcement**

16. The Police are the main enforcement agency carrying out routine inspections on the licensed premises to ensure compliance with the licensing conditions and combat crimes. The Police will determine the frequency of inspections to the licensed premises having regard to the business nature and track record of the premises. However, all licensed premises will be inspected at least once a year. Other government departments (e.g. the Fire Services Department) are also responsible for inspecting the licensed premises to ensure their compliance with the respective statutory or administrative requirements.

17. Under the existing arrangement, when the Police find the licensed premises associated with serious crimes (e.g. sale of dangerous drugs) or in serious breach of the licensing conditions (e.g. sale and supply of liquor to persons aged below 18 for consumption on the licensed premises), which warrant revocation of the liquor licence, they may make such recommendation to LLB regardless of whether the licence is due to expire or not. While the government departments do not notify LLB immediately upon receipt of complaints against the licensed premises, mechanisms have been put in place to provide the complaint and enforcement records to LLB upon request or on a regular basis.

### **Trade Facilitation Measures Introduced Over the Years<sup>1</sup>**

18. In 2011, the Government conducted a public consultation on the

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<sup>1</sup> A paper (ref. LC Paper No. CB(2)1220/13-14(05)) detailing the improvement measures was submitted to the Panel for information.

review of liquor licensing to gauge the public's views on various proposals. Taking into account the views received from the consultation exercise, as well as the Government's continuous review of matters related to the LLB and the efficacy of the liquor licensing regime, we have put in place the following improvement measures over the past few years with a view to optimizing the operation of the LLB and facilitating the trade:

- (a) Liquor licence applications may be advertised on the internet other than on newspaper since November 2012;
- (b) Publication on the LLB website a set of Guidelines capturing the factors that are taken into account when assessing liquor licence applications since December 2013;
- (c) Licensees may submit renewal applications between three and four months prior to the expiry of liquor licence instead of the previous two to three months since December 2013;
- (d) Extension of the maximum duration of a liquor licence to two years since August 2015. The number of premises issued with a 2-year liquor licence as at 31 December 2017 is 5 762;
- (e) Applicants may submit application forms electronically with the assigned passwords and digital signature since the second half of 2016;
- (f) Implementation of an optional "reserve licensee" mechanism since March 2017, which minimizes disruption to the liquor selling business due to sudden departure of the licensee by identifying and nominating at an early stage a suitable person as a reserve licensee to take over the role from the licensee on vacation leave or under unforeseen situation. As at 31 December 2017, the number of reserved licensee applications received and approved was 1 885 and 1 247 respectively;
- (g) Implementation of a mechanism to monitor the progress of new liquor licence applications received in May and June each year with a view to ensuring the timely issue of liquor licences since the summer of 2017; and
- (h) Implementation of a mechanism to deal with applications for transfer of liquor licence in the absence of the licensee's consent

(i.e. the liquor licensee refuses to transfer the licence to another person for various reasons) since July 2017.

## **Way Forward**

19. Notwithstanding the trade facilitation measures taken above, some in the trade have proposed that the Government should consider a few refinement to our regulatory regime. These include the requirements for a natural person to apply for the liquor licence and the licensee to renew the liquor licence on an annual or biennial basis. In the past, it has suggested allowing a body corporate to be issued with a liquor licence. Some members of the trade have requested consideration be given to classifying liquor licences into different categories in accordance with their risk levels, such that low-risk licensed premises (e.g. licensed premises with a good track record) are subject to less stringent control.

20. Prima facie, there are clear merits in calibrating scrutiny and enforcement (including licence renewal frequency) by a risk-based approach, as this could enable greater time and attention to possibly higher-risk cases while reducing the compliance cost and time for the clear-cut low-risk cases. Relevant factors to assess risks may include, for example, past conduct/track record of the applicant and/or the premises, liquor-related infractions, locations, hours of operation, etc. Whether a licensee must be a natural person or could be a body corporate requires careful consideration as it could have important enforcement implications. In respect of this and the proposal for adopting a risk-based approach to scrutiny/enforcement, we shall conduct more detailed analysis including drawing reference from experiences in other jurisdictions. If refinements should seriously be considered, we shall deliberate the operational implications and consult relevant stakeholders.

## **Views Sought**

21. Members are invited to offer views on the content of this paper.

**Food and Health Bureau  
Food and Environmental Hygiene Department  
April 2018**