

**Eighth Meeting of
the Business Facilitation Advisory Committee**

***Agenda Item 3(c) : Report on the work of the
Food Business Task Force***

Purpose

This paper reports on the work of the Food Business Task Force (FBTF) since the last Business Facilitation Advisory Committee (BFAC) meeting on 25 February 2008.

Work progress of the FBTF

2. The FBTF is monitoring the implementation of the recommendations of two recently completed reviews on “Food factory licence” and “Transfer of food-related licences”. It has continued to facilitate the trade’s communication with the Administration concerning the “Review of the Design Manual: Barrier Free Access 1997” and the “Offensive trades clause in old Government leases”. The FBTF is also following up the trade’s concerns about the regulatory proposal under the “Demerit Points System”. Details are given below.

Reviews on food factory licence and the transfer of food-related licences

3. The Efficiency Unit Study Team worked closely with the departments concerned to refine the recommendations of the two regulatory reviews and work out an implementation plan following the issue of its earlier progress report to the FBTF in January 2008. The study team subsequently presented the final recommendations and reported the implementation progress to the FBTF in May 2008, as detailed in **Annex**. A draft report of the reviews has separately been issued to the departments concerned for comment.

4. The FBTF is pleased that the departments concerned have already implemented a number of recommendations, which will help streamline the processing of applications for food factory licences and transfer of food

business licences. Some notable recommendations implemented include elimination of unnecessary departmental referrals/certification on compliance, provision of enhanced training to frontline staff on processing applications for alterations, publication of enhanced licensing guide on drawing of layout plan and establishment of standard referral procedures to the Planning Department. The Study Team will continue to work out how to take forward the remaining review recommendations with the departments concerned. The FBTF will continue to monitor the progress of implementing the review recommendations.

Review of the Design Manual: Barrier Free Access 1997

5. Having reviewed the Design Manual: Barrier Free Access 1997, the Administration had issued a draft revised Design Manual for public consultation. The Administration finalised a new version of the Design Manual in November 2007 after consultation with the public and the Legislative Council Panel on Welfare Services.

6. The food business trade supports in principle the provision of a barrier-free physical environment for people with disabilities (PWDs). However, the trade considers that some of the requirements governing the provision of barrier-free access and facilities for PWDs under the new Design Manual proposed by the Administration are over-stringent. For example, the requirement that ramps shall be provided at all changes in level restricts the ideas of decoration design for a restaurant. To address the trade's concerns, the FBTF discussed with the Administration in 2007 whether a more balanced and flexible approach could be adopted to meet the revised requirements, but the feedback was not promising. The BFAC Secretariat has subsequently arranged a meeting on 25 March 2008 for PWDs and the food business trade to exchange views, and explore feasible ways to meet the revised requirements of the new Design Manual. The responses from PWDs were generally positive and clarified some misunderstandings of the food industry. In May 2008, the Convener of the FBTF discussed further with the Buildings Department (BD) and the Labour and Welfare Bureau (LWB) for more flexible approach in enforcing the new Design Manual. BD clarified in this meeting that Braille and tactile floor plan is not required if no floor plan for the use of the public is provided. Also, BD will not request ramp for non-permanent platform. BD and LWB explained that the barrier-free access requirements with regard to change of levels in buildings had been in place since 1985, and the new Design Manual did not propose any enhancement in this regard. If any restaurant considered itself faced with any unjustifiable

hardship in order to comply with the existing barrier-free regulations, they could apply to the Advisory Committee on Barrier Free Access under BD for exemption.

7. The Amendment Bill to tie in with the revised design requirements set out in the new Design Manual was gazetted on 16 May 2008 and tabled in the Legislative Council on 21 May 2008. The Legislative Council has formed a Sub-committee to vet the Bill, which is expected to be completed in early July 2008.

Offensive trades clause in old Government leases

8. At the meeting held in May 2007, Members of the FBTF had expressed concern on the change in policy governing lease modification for restaurant and hotel uses within lots subject to offensive trades clause. In August 2007, the Lands Department (LandsD) issued a Practice Note on its web site explaining that it would continue with the former practice of charging only an administrative fee for the variation of the offensive trades clause to accommodate restaurant and hotel use under the Government lease. However, there were concerns that the clauses in the relevant licence agreement issued after the publication of the Practice Note could be interpreted as the entire licence relating to a lot in respect of singly-owned building situation would be cancelled automatically if any user of that lot has breached the conditions of his licence. This means that if any merchant of a commercial centre has breached the conditions of his licence, all merchants of that commercial centre would be deemed to have breached the conditions of their licences leading to automatic cancellation of the licences. Members raised at the meeting held in October 2007 that this arrangement was unreasonable.

9. To address the concerns and after seeking legal advice, LandsD has recently agreed to make the following changes -

- (a) They will revise the “automatic” termination to “reserving the right” to terminate the licence when the condition is in breach; and
- (b) In respect of the singly-owned building situation, given that there may be many units within the building, the Government may terminate the licence (under lease) for the whole lot, or in respect of the unit that is in breach only. Prior notice or warning will be given before revoking the licence.

10. LandsD has started issuing consent letters to allow offensive trades to be carried out on individual units in buildings of multiple ownership, subject to satisfactory payment of the necessary administrative fee.

11. To further facilitate the trade, LandsD has also been maintaining a close dialogue with the Real Estate Developers Association (REDA) on whether removal of the offensive trade clause for singly-owned building case can be done by means of a lease modification, which will enable the permanent removal of the relevant offensive trades in the clause. Pending an outcome of the LandsD's discussion with REDA, the issue of consent letter for allowing offensive trades in buildings under single ownership will be held up for the time being.

New Proposals on Demerit Points System

12. The Food and Environmental Hygiene Department (FEHD) has been reviewing the Demerit Points System (DPS) to strengthen its effectiveness. DPS is an administrative regulatory regime operated by FEHD to deter licensed food business operators from breaching legislative provisions on food safety and environmental hygiene under the Public Health and Municipal Services Ordinance and its subsidiary legislation. Prescribed number of demerit points will be registered against a licence upon conviction of specified offences, and accumulation of certain points within a specified period of time may lead to suspension or even cancellation of licence. The food business sector has great concern on the potential impact of the new proposal which intends to impose penalties that will reflect the severity of offences. The FBTF will further gauge the trade's views and convey their concerns to FEHD for consideration.

Way forward

13. Members are invited to note the work progress of the FBTF.

**Recommendations of the reviews on
food factory licence and the transfer of food-related licences**

(I) Food factory

Recommendations	Status reported in last FBTF meeting	Progress-to-date
<p>1. To eliminate unnecessary referrals / certificate on compliance:</p> <ul style="list-style-type: none"> • Cease referring to the Planning Department relating to premises located in the Housing Authority (HA) and Government properties and Mass Transit Railway Corporation stations • Cease requesting applicants whose premises are located in the HA and Government properties to submit Unauthorised Building Works-free certificate 	Agreed-in-principle	Implemented
<p>2. To provide enhanced training to frontline staff on processing alterations</p>	Agreed-in-principle	Implemented
<p>3. To enhance the licensing guide to facilitate applicants' better understanding of the licensing requirements on layout plan.</p>	Agreed-in-principle	Implemented
<p>4. To request applicants to highlight changes in proposed layout plan for alteration applications</p>	Agreed-in-principle	Implementation arrangements being worked out
<p>5. To review the list of items that must be included in the approved layout plan to eliminate the need for unnecessary alteration approval</p>	To be considered	In progress. The Efficiency Unit is conducting a separate review on alteration applications.

Recommendations	Status reported in last FBTF meeting	Progress-to-date
6. To establish performance pledge for alteration applications	To be considered	The Food and Environmental Hygiene Department will look into this matter after the review on alteration application has been completed.
7. To take actions to revoke inactive alterations	Agreed-in-principle	Agreed-in-principle
8. To differentiate (by administrative means) food factories into small retailing and other food factories and establish a fast track licensing process for small retailing food factories which do not involve any 'complications'	To be considered	Being considered
9. To conduct a legislative review on provisions relating to layout plan and alterations at an appropriate time	To be considered	Being considered
10. To expand the Application Tracking Facility to enable better monitoring of alteration applications	To be considered	Being considered

(II) Transfer of Food Business Licences

Recommendations	Status reported in last meeting	Progress-to-date
11. Similar to new applications for food factories, to eliminate unnecessary referrals / certification on compliance	Agreed-in-principle	Implemented
12. To cease referring successive transfer applications where transfer of food business licence has been effected since 18 April 2006	Agreed-in-principle	Agreed-in-principle

Recommendations	Status reported in last meeting	Progress-to-date
13. To establish performance pledges for transfer applications	Agreed-in-principle	Agreed-in-principle
14. To expand the Application Tracking Facility to enable better monitoring of transfer applications	To be considered	Being considered

(III) Cross-licence issues

Recommendations	Status reported in last meeting	Progress-to-date
15. For lease modification cases (removing offensive trade clause), issue licences once applicants have settled the administrative fee without having to wait for legal documents	Agreed	Implemented
16. To establish referral template to the Planning Department	Agreed-in-principle	Implemented
17. To intensify enforcement against false declarations	Agreed-in-principle	Agreed-in-principle
18. To rationalise the requirements on Hygiene Manager and Hygiene Supervisor to allow flexibility for them to be appointed on a premises-based rather than licence-based approach	To be considered	Being considered
19. To reduce the layers of staff to process refund of provisional licence fee	To be considered	Being considered
20. To conduct a study to explore the feasibility of adopting third party certification	To be considered	Being considered