

**Business Facilitation Advisory Committee
Food Business and Related Services Task Force**

***Implementation Details of the New Licensing Conditions
in the Guidelines on Assessing Liquor Licence Applications***

Purpose

This paper presents the implementation details of the new licensing conditions in the Guidelines on Assessing Liquor Licence Applications (“the Guidelines”).

Background

2. Between July and September 2011, the Food and Health Bureau (“the Bureau”) consulted the public on a review of the liquor licensing regime. The outcome of the consultation exercise was reported to this Task Force on 27 February 2012, as per FRSTF Paper 2. We briefed this Task Force on 26 February 2013, as per FRSTF Paper 13, on the follow-up actions. A further presentation focusing on the draft Guidelines prepared by the Liquor Licensing Board (“the LLB”) was given to the Task Force on 20 June 2013, as per FRSTF Paper 19.

3. Between June and October 2013, the Bureau also consulted the Legislative Council Panel on Food Safety and Environmental Hygiene (“the Panel”) and the deputations/individuals attending the same Panel meeting, as well as the Advisory Council on Food and Environmental Hygiene. Meanwhile, District Council members of the three districts with most liquor-licensed premises (i.e. Yau Tsim Mong, Wan Chai, Central and Western) had written to the Bureau, expressing views on the draft Guidelines.

4. Having considered the views of various stakeholders, the LLB has revised the Guidelines where appropriate. A summary of the views from stakeholders and the response from the LLB formed the subject of

an information paper that the Bureau presented to the Panel on 7 October 2013. A copy each of the document and the confirmed Guidelines are at **Appendix**. The LLB has uploaded the Guidelines onto their website on 1 December 2013 for the easy reference of the trade and the public. A copy of the Guidelines has also been provided to individual holders of liquor licences.

Implementation of the New Licensing Conditions in the Guidelines

5. The Guidelines set out the factors that are taken into consideration by the LLB when assessing liquor licence applications. They have been developed from the three criteria stipulated under Section 17(2) of the Dutiable Commodities (Liquor) Regulations (Cap. 109B), namely whether the applicant is a fit and proper person to hold the licence, whether the premises are suitable for the sale of liquor, and whether the grant of the licence is contrary to the public interest. In general, the criteria for assessing liquor licence applications are applicable to all types of liquor-licensed premises. Bearing in mind the fact that “upstairs bars”¹ are relatively more prone to attract public concerns, we have, under each of the three major criteria in the Guidelines, set out the factors that the LLB would specifically take into account when vetting liquor licence applications from “upstairs bars”.

6. Whilst most of the criteria cited in the Guidelines have all along been adopted by the LLB in assessing liquor licence applications, the LLB proposes to impose two additional licensing conditions in the liquor licence for upstairs bars in the Guidelines, namely requiring the licensee to attend the “Seminar on Liquor Licensing” and imposing a more stringent capacity limit for their premises. For liquor-licensed premises with serious noise problem, the LLB proposes to impose more stringent

¹ The term “upstairs bars” refers to liquor-licensed premises which operate as bars with the sale and consumption of liquor on the premises being the main line of business and which are not located at the street level. These premises are mostly situated in office buildings or domestic/commercial buildings. Due to their special physical environment and the relatively greater difficulties inherent in taking enforcement actions and conducting inspections in respect of fire safety, noise, environmental hygiene and public nuisance, etc., they are prone to attract public concerns and draw complaints from the neighbourhood nearby. In general, for liquor-licensed premises that are located in shopping centres, hotels or buildings specifically designed for entertainment businesses, we do not put them under the “upstairs bars” category.

noise abatement requirement on the liquor licence.

7. The new licensing conditions will take effect in future by phases. A brief description of these conditions and their respective inception dates are set out in paragraphs 8 to 10 below.

New Licensing conditions for “upstairs bars”²

“Seminar on Liquor Licensing”

8. With effect from 1 December 2013, upon receipt of (i) applications for new issue or transfer of liquor licence; or (ii) applications for renewal of liquor licence, the LLB will impose an additional licensing condition requiring the licensee to attend the “Seminar on Liquor Licensing” (the Seminar) within the licence period. The Seminar will cover the topics of fire safety, public order and environmental hygiene in a manner sensitive to the management needs of upstairs bars. In general, each licensee is required to attend the Seminar once.

Capacity limit: safety margin

9. This new requirement will come into effect on 1 June 2014. Upon receipt of applications for new issue of liquor licence of upstairs bars on or after 1 June 2014, the LLB will, having regard to the actual circumstances and the advice of the departments concerned, consider adopting a 90% safety margin on the capacity limit for upstairs bars as a licensing condition. For licences of upstairs bars that already exist on or before 31 May 2014, the LLB will, when dealing with the renewal application immediately subsequent to the next renewal, consider adopting the 90% safety margin on the capacity limit as a licensing condition. This is to give ample grace period.

²Individual holders of liquor licences who have doubts on whether their premises fall under the category of “upstairs bars”, or any person who wishes to rent or buy a building unit for operating bar business and wants to know whether it will be classified as an “upstairs bar”, may make enquiries with the LLB Secretariat or the respective Liquor Licensing Offices.

New Licensing conditions for all liquor-licenced premises

More stringent noise abatement measures

10. This new requirement will come into effect on 1 June 2014. Upon receipt of applications for new issue or renewal of liquor licence on or after 1 June 2014, the LLB will consider imposing licensing conditions regarding noise insulation which are more stringent than the existing ones in cases with serious noise problems. When considering doing so, the LLB will take into account the actual circumstances of individual premises, such as the practicability of installing double-glazed windows or double doors at the entrance of such premises as well as the availability of any other more appropriate acoustic insulation materials.

Conclusion

11. The Guidelines do not carry the force of law and, as such, are not meant to bind LLB members. When considering the merits of individual applications, it is incumbent upon the LLB to give a full and fair hearing to each case in accordance with the requirements under the legislation. The LLB will keep the Guidelines under review and will update them as necessary, so as to ensure that the work of the LLB moves with the times in keeping with prevailing circumstances.

12. Members are invited to note the above implementation details and offer comments, if any.

**Food and Health Bureau
February 2014**

For information

LegCo Panel on Food Safety and Environmental Hygiene

Liquor Licensing - Guidelines on Assessing Liquor Licence Applications

Purpose

This paper summarises the views of stakeholders on the “Guidelines on Assessing Liquor Licence Applications” (“the Guidelines”) produced by the Liquor Licensing Board (“LLB”) and the LLB’s response to these views. The finalised Guidelines (**Annex**) are also attached for Members’ reference.

Background

2. To enhance transparency as well as to help the trade and the public better understand the factors that are taken into account by the LLB when assessing liquor licence applications (including those from “upstairs bars”), the LLB, after several rounds of discussion earlier this year, has drafted a set of guidelines that capture the criteria used in vetting liquor licence applications. The LLB, together with the Food and Health Bureau (“FHB”) and relevant Government departments, attended the special meeting of the LegCo Panel on Food Safety and Environmental Hygiene (“the Panel”) on 13 June 2013 to listen to the views of Members on the draft Guidelines, as well as the commentaries of deputations/individuals¹ invited to the

¹ Deputations/individuals attending the meeting include Institution of Dining Art, Hong Kong Bar & Club Association, the Lion Rock Institute, Civic Party, Democratic Alliance for the Betterment and Progress of Hong Kong, the Federation of Hong Kong and Kowloon Ballroom and Night Club Merchants, Entertainment Business Rights Concern Group, Democratic Party, the Concern Group on the Issue of

meeting. The reference materials provided by the FHB to the Panel are set out in LC Paper No. CB(2)1249/12-13(01). As regards the follow-up questions raised by the Panel after the meeting, the FHB provided written responses in July and August 2013, as per LC Papers No. CB(2)1668/12-13(01) and CB(2)1753/12-13(0)2.

3. To solicit the views of stakeholders at large, the FHB also consulted the Advisory Council on Food and Environmental Hygiene as well as the Food Business and Related Services Task Force under the Business Facilitation Advisory Committee on the content of the Guidelines on 14 and 20 June 2013 respectively. District Council Members of the three districts with most liquor-licensed premises in Hong Kong (i.e. Yau Tsim Mong, Wan Chai, Central and Western) also issued letters to the FHB, expressing views on the same.

Views of stakeholders and decisions of the LLB

4. By and large, the stakeholders were supportive of the formulation of a set of guidelines to enhance transparency of the licensing criteria. Among them, representatives of residents and local neighbourhoods agreed that the LLB should enhance regulation of liquor-licensed premises (especially “upstairs bars”) through the licensing scheme in order to reduce nuisances caused to the neighbourhood by the business concerned. On the other hand, the trade opined that the proposals in the Guidelines were too stringent and that tightened regulation of “upstairs bars” would jeopardise their business leaving little room for viable operations. There were also comments that the authorities, apart from leveraging on the licensing criteria to better manage liquor-licensed premises, would need to tackle the problems arising from such premises more actively

Liquor Licences, Ms CHENG Lai-king, Central and Western District Council Member, Hong Kong Bars and Karaoke Rights Advocacy and Hong Kong Federation of Restaurants and Related Trades, while Mr AU Nok-hin, Southern District Council Member, and Hong Kong Catering Industry Association made written submissions without attending the meeting.

at the law enforcement level.

Seminar on Liquor Licensing

5. The stakeholders were unanimous in supporting the LLB's proposal to require the licensees of "upstairs bars" to attend the "Seminar on Liquor Licensing", thus helping to ensure proper management of these bars. Some members of the trade expressed views on how they would like to see the "Seminar on Liquor Licensing" being rolled out (e.g. the organiser, time and venue). They called upon the LLB and relevant Government departments to take charge of the seminars (as opposed to outsourcing them to outside parties) and organise these seminars at a time and venues convenient for the licensees. The trade also hoped that the LLB could clarify the meaning of licensees having to attend the seminar "within a specified period".

6. As in the past, the Food and Environmental Hygiene Department ("FEHD") would coordinate the "Seminar on Liquor Licensing" for the LLB. At present, the seminar is held once every month at Lai Chi Kok Government Offices free of charge. To tie in with the new requirements applicable upon promulgation of the Guidelines, the FEHD will cover in the seminar such topics as fire safety, public order and environmental hygiene in a manner sensitive to the management needs of upstairs bars. The frequency and venue of the "Seminar on Liquor Licensing" organised by the LLB will generally remain unchanged. Having regard to the actual circumstances, the FEHD will exercise due flexibility to meet the needs of relevant licensees as far as possible, such as conducting additional sessions of the "Seminar on Liquor Licensing" in English as required. As to the meaning of attending the seminar "within a specified period", it will be clearly stated in the Guidelines that starting from the date that the LLB plans to introduce the Guidelines (i.e. 1 December

2013), the LLB would impose such a licensing condition on applications for liquor licences for “upstairs bars” and would require the licensee to attend the “Seminar on Liquor Licensing” before the licence is due for renewal. In general, each licensee is only required to attend the “Seminar on Liquor Licensing” once.

Capacity Limit

7. It was proposed in the Guidelines that the LLB may, having regard to the actual circumstances and the advice of the departments concerned, consider imposing a safety margin on the capacity limit for “upstairs bars” that is more stringent, say 90% of the capacity limit that is otherwise applicable, and prescribing it as one of the licensing conditions. Resident representatives were agreeable to this proposal and hoped it would help provide more room for the safe evacuation, at times of emergencies, of the employees and customers of “upstairs bars” as well as occupants of the buildings where the “upstairs bars” are located. Trade members, however, raised objections to this proposal. They were of the view that the existing capacity limit was already quite rigorous, and that applying a discount factor that is based on less than scientific calculations to a limit that should have been worked out after holistic considerations in the first place would not help ensure the safety of people in escape but would deal a severe blow to the business of “upstairs bars” instead. Besides, some trade members held that should the LLB decide to take forward this proposal, a grace period should be granted to “upstairs bars” to allow for adequate preparation.

8. Before advancing the proposal, the LLB has looked into various factors, including the fact that the current capacity limit mechanism does not give full regard to the unique circumstances of upstairs bars. Medical advice also pointed out that alcohol impairs judgment and physical coordination, and confirmed the need to impose a safety margin on the capacity limit. As

to the comment that this new proposal might cause difficulties to the business of “upstairs bars”, the LLB has, after deliberations, decided to give a six-month grace period so that the trade would have more ample time to prepare for the new proposal. As far as the existing “upstairs bars” (i.e. those that already exist on or before 31 May 2014) are concerned, after the expiry of the grace period (i.e. starting from 1 June 2014), the LLB will impose this licensing condition on these upstairs bars when they apply for renewal for the second time, regardless of whether these licensees have renewed their licences before or the number of renewals. However, for those applying for new licences for the first time on or after 1 June 2014, the LLB will impose the more stringent safety margin as mentioned above in determining their capacity limit right away.

Noise Management

9. In the Guidelines, the LLB proposed to enhance the existing licensing condition dealing with noise abatement by imposing more stringent requirements on liquor licences in cases with serious noise problems. Resident representatives pointed out that given the particularly serious noise problems caused by liquor-licensed premises in certain areas, they supported the LLB’s proposal to enhance the existing licensing conditions on noise abatement so as to reduce the nuisances concerned. Some representatives of the trade maintained that the proposal of installing double-glazed windows or appointing qualified professionals for conducting noise impact assessment and certifying the efficacy of the noise insulation facilities inside the premises might not work in practice and would only serve to increase their operating costs.

10. In tackling the issue of noise management, the LLB needs to balance the interests of different stakeholders before imposing licensing conditions as appropriate. In fact, the LLB will only consider requiring

liquor-licensed premises to take additional noise insulation measures in cases with serious noise problems. When considering doing so, the LLB will take into account the actual circumstances of individual premises, such as the practicability of installing double-glazed windows in such premises or the availability of any other more appropriate acoustic insulation materials. In view of the trade's reservations about these proposals, the LLB has decided to grant a six-month grace period to allow more ample time for the trade to prepare for the new proposal. In brief, the LLB will introduce the new requirement starting from 1 June 2014. By then, the LLB will, when processing liquor licence new applications or renewals, consider imposing licensing conditions regarding noise insulation which are more stringent than the existing ones in cases with serious noise problems.

Others

11. Many trade members pointed out that the definition of “upstairs bars” was ambiguous and that holders of liquor licences could not tell whether their business fell under the category of “upstairs bars” and hence were subject to additional regulation. They suggested that the LLB enhance transparency regarding the definition of “upstairs bars”.

12. The LLB agrees that a clearer definition for “upstairs bars” would facilitate easy reference by the trade. The LLB will provide the following definition in the Guidelines:

In general, the term “upstairs bars” refers to liquor-licensed premises which operate as bars with the sale and consumption of liquor on the premises being the main line of business and which are not located at the street level. These premises are mostly situated in office buildings or domestic/commercial buildings. Due to

their special physical environment and the relatively greater difficulties inherent in taking enforcement actions and conducting inspections in respect of fire safety, noise, environmental hygiene and public nuisance, etc., they are prone to attract public concerns and draw complaints from the neighbourhood nearby.²

13. Currently, the LLB makes public on its webpage the list of “upstairs bars” and the additional licensing conditions imposed on them (e.g. regulation of the number of persons permitted on the premises) for inspection by the trade and public. Meanwhile, individual holders of liquor licences who have doubts on whether their premises fall under the category of “upstairs bars”, or any person who wishes to rent or buy a building unit for operating bar business and wants to know whether the unit will be classified as “upstairs bars”, may also make enquiries with the LLB.

14. Some representatives of the trade considered that among the existing criteria for assessing liquor licence applications, the LLB’s rationale for imposing restriction on the number of liquor-licensed premises in a building according to the number of floors of that building was not persuasive. If a standard had to be set for the number of liquor-licensed premises in a building, the LLB should look into various factors such as the number of lifts and visitors.

15. In assessing whether the premises are suitable for the sale of liquor, the LLB will take into account a number of factors, including the number, type, mode of operation and distribution of liquor-licensed premises already in the same building. Given the public concerns that have been articulated over the issue of means of escape in case of emergencies, and

² In general, for liquor-licensed premises that are located in shopping centres, hotels or buildings specifically designed for entertainment businesses, we do not put them under the “upstairs bars” category.

having regard to the precedents set by the Municipal Services Appeals Board, the LLB is of the view that, in general, it may not be acceptable if the total number of upstairs bars exceeds half of the number of floors of the building. Apart from such reference, the LLB will, when processing individual applications, make judgments taking into account the actual circumstances of each case and prudently balance the interests of the local community and the legitimate business interests of the trade.

Conclusion

16. The LLB has considered the views of various stakeholders and revised the Guidelines accordingly. The LLB plans to publish the Guidelines on the LLB website on 1 December 2013 for inspection by the trade and the public.

17. Members are invited to note the content of this paper.

Food and Health Bureau

7 October 2013

Guidelines on Assessing Liquor Licence Applications

* * *

Introduction

The factors set out in the Guidelines have been developed from the three criteria stipulated under Regulation 17(2) of the Dutiable Commodities (Liquor) Regulations (Cap. 109B) (“the Regulations”), with a view to facilitating the public and the trade to understand the major factors that are taken into account by the Liquor Licensing Board (“LLB”) when accessing liquor licence applications. The Guidelines do not carry the force of law and, as such, are not meant to bind LLB members. When considering the merits of individual applications, it is incumbent upon the LLB to give a full and fair hearing to each case in accordance with the requirements under the legislation. The LLB will keep the Guidelines under review and will update them as necessary.

2. In general, the criteria for assessing liquor licence applications are applicable to all types of liquor-licensed premises. Bearing in mind the fact that “upstairs bars”¹ are relatively more prone to attract public concerns, we have, under each of the three major criteria in the Guidelines, set out the factors that the LLB would specifically take into account when vetting liquor licence applications from “upstairs bars”.

¹ The term “upstairs bars” refers to liquor-licensed premises which operate as bars with the sale and consumption of liquor on the premises being the main line of business and which are not located at the street level. These premises are mostly situated in office buildings or domestic/commercial buildings. Due to their special physical environment and the relatively greater difficulties inherent in taking enforcement actions and conducting inspections in respect of fire safety, noise, environmental hygiene and public nuisance, etc., they are prone to attract public concerns and draw complaints from the neighbourhood nearby. In general, for liquor-licensed premises that are located in shopping centres, hotels or buildings specifically designed for entertainment businesses, we do not put them under the “upstairs bars” category.

Statutory Requirements

3. In accordance with Regulation 17(2) of the Regulations, the LLB shall not grant a liquor licence unless it is satisfied:

- (a) that the applicant is a fit and proper person to hold the licence;
- (b) that the premises to which the application relates are suitable for selling or supplying intoxicating liquor, having regard to:
 - (i) the location and structure of the premises; and
 - (ii) the fire safety and hygienic conditions in the premises;and
- (c) that in all the circumstances the grant of the licence is not contrary to the public interest.

(A) Whether the applicant is a fit and proper person to hold the licence

4. In vetting an application for liquor licence, the LLB may determine whether the applicant is a fit and proper person to hold the licence with reference to his character, relevant working experience, and past performance as a liquor licensee. The factors for consideration include the following:

- (a) The applicant being in possession of sufficient experience in managing liquor-licensed premises
(Such as having served as a liquor licensee for two years or

more; or having worked on the premises concerned for five years or more)

An applicant lacking the above experience should satisfy the LLB that he understands the management responsibility of a licensee as the person-in-charge of the liquor-selling premises and that he has the ability to manage the premises.

- (b) The applicant being able to devote sufficient time and attention to the proper management of the liquor-licensed premises

It is a licensing condition that the licensee shall personally supervise the premises. The licensee shall be on duty on the premises during the busiest part of the operating hours or when special circumstances so warrant. The applicant has to satisfy the LLB that he will be present to personally supervise the premises during the busiest part of the operating hours or in those periods as specified by the LLB.

Since liquor-licensed premises are more prone to cause noise and other nuisances to nearby residents (especially those who are living in adjacent domestic/commercial buildings or residential buildings), liquor licence applicants should be mindful of their social responsibility in taking appropriate measures, including the installation of acoustic insulation equipment and automatic doors, etc. on the premises, to prevent or minimise these nuisances. They should satisfy the LLB that they have fulfilled their duty to

ensure that the operation of the premises will not cause excessive nuisance to nearby residents.

When handling an application for licence renewal, the LLB may consider not renewing the licence if the licensee is often found absent from the premises (being evidence that he is less than committed to managing the premises properly according to the law), or if there has been a number of irregularities involving the premises (being evidence that the applicant is less than capable of managing the premises properly according to the law or that he fails to be a law-abiding person himself).

- (c) The applicant being in possession of good personal background and character

Members of the LLB may consider the past record of the applicant, including whether there was any breach of the relevant ordinances or licensing conditions.

The LLB may also consider the information provided by the Police about the applicant (e.g. record of criminal conviction) and the severity, frequency of the irregularities, as well as the lapse of time since the previous irregularity. Such information includes:

- (i) the severity of the criminal offences, especially those involving the sale of liquor without a licence;
- (ii) instance of the applicant having been warned or prosecuted by the Police for selling liquor without a

valid licence during the time he applies for a liquor licence;

- (iii) instance of the applicant having been warned or prosecuted by the Police for keeping or operating a vice establishment or gambling establishment;
- (iv) instance of the applicant having been warned or prosecuted by the Police for trafficking of dangerous drugs;
- (v) instance of the applicant having breached the Dutiable Commodities Ordinance or its subsidiary legislation;
- (vi) instance of the applicant having sold liquor to non-club members at will on club liquor-licensed premises; or
- (vii) instance of any person under the age of 18 having been allowed to consume intoxicating liquor on the premises.

(d) Upstairs Bars

- (i) In recognition of the relatively greater difficulties inherent in taking enforcement actions in and conducting inspections of upstairs bars, the LLB may consider enhancing the regulation of upstairs bars through the licensing system. Criteria more

stringent than those mentioned above may be adopted in considering the eligibility of the applicants, particularly the nature of the criminal offences in which they were involved.

- (ii) Furthermore, for the purpose of ensuring that the operators of upstairs bars have the knowledge to put their premises under proper management, the LLB will impose additional licensing conditions on the liquor licences requiring the licensees of upstairs bars to attend the “Seminar on Liquor Licensing” organised by the LLB before the licence is due for renewal and to obtain certificates of attendance issued by the LLB.²

(B) The location and structure of and the fire safety and hygienic conditions in the premises

5. The premises must be suitable for selling or supplying liquor to customers for drinking on the premises, having regard to their hardware such as the building structure, means of escape, fire safety and hygiene facilities. The LLB may also have to consider whether the proposed use of the premises is compatible with the purpose for which it is originally intended. According to past experience, the requirements applicable to the grant of a liquor licence, in terms of the location, structure, fire safety and hygienic conditions, are similar to those for the grant of a restaurant licence by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132). The LLB may take a view on whether the premises fulfil the requirements for a liquor licence by making

² In general, each licensee is only required to attend the “Seminar on Liquor Licensing” once.

reference to the outcome of the application for the restaurant licence or comments from departments concerned on the location, structure, fire safety and hygienic conditions of the premises. As regards an application for a club liquor licence, the premises to which the application relates are normally required to obtain a Certificate of Compliance or a Certificate of Exemption issued by the Home Affairs Department under the Clubs (Safety of Premises) Ordinance (Cap. 376). It is incumbent upon the LLB to consider each application on its own merits. Pertinent considerations include:

- (a) The character of the area in which the premises are located. For example, whether the area is predominantly a commercial area or a mixed commercial/residential area; whether there are commercial buildings or streets that may serve as a protective barrier between the premises and the neighbouring residential buildings; and whether the measures proposed by the applicant could suitably reduce the noise and other nuisances caused to persons living in the adjacent residential or commercial/residential buildings;
- (b) The suitability of the premises as a place much frequented by people (including customers). Premises with a valid restaurant licence should have met the standards, in terms of structure, means of escape, fire safety and hygiene facilities required for the grant of a liquor licence. In this respect, the premises should be suitable for the grant of a liquor licence or allowed to continue holding or renew its licence. As for the club liquor licence, premises with a Certificate of Compliance issued by the Secretary for

Home Affairs should have met the structural and fire safety requirements;

- (c) The LLB is not required to take the initiative to question or investigate whether selling or supplying liquor on the premises is in breach of the Government lease, occupation permit or deed of mutual covenant. However, if an application for a new liquor licence or licence renewal is contested on the grounds that the use of the premises for supply or sale of liquor is in breach of the specified use as set out in these three documents, the LLB will consider the relevant clause(s) before making a decision on the application;
- (d) The following buildings or premises are usually more suitable to be used for selling or supplying liquor:
 - (i) The units inside the building concerned are mostly used as restaurants, food premises or other public entertainment establishments;
 - (ii) The premises have a separate access directly leading to the street;
 - (iii) The building concerned has two or more staircases/means of escape, the width of which are sufficient for the purpose;
 - (iv) Generally speaking, premises on lower floors are more suitable than those on high floors, as it will be easier for people on lower floors to escape in case of emergencies.

(e) Upstairs Bars

Upstairs bars may pose greater potential danger to the public and bar customers due to their special physical environment. For instance, people under the influence of alcohol and gathering in large numbers in a multi-storey building with a concentration of bars may not be able to make their way to safety with ease through the stairs while seeking to find the exit during emergencies. The situation would hardly be helped by slippery staircases (littered by vomit), customers congregating at staircases for a rest or smoking, or customers influenced by excessive drinking, all of which might cause danger or hinder escape. Such being the case, the LLB may take the following factors into consideration:

- (i) With regard to the location of premises under application, it is easier to take enforcement actions in and conduct inspections of the premises located at the lowest three storeys from the street level of a building. In case of emergencies, their customers may reach the street level within a short span of time;
- (ii) The building concerned must have adequate means of escape and two or more staircases;
- (iii) The layout of the building concerned should best be able to insulate other building users from the nuisances that may be caused by upstairs bars (e.g. the existence of separate access that caters for different user groups would be a plus);

- (iv) The building concerned must be properly managed. For instance, it is being looked after by a management office or an owners' corporation, which has not been prosecuted for improper management; it is served by self-closing smoke lobby doors; its means of escape are kept free from obstruction; and its fire service installations and equipment are well maintained and in efficient working order, etc.; and
- (v) In case of fire or other emergencies, the safe evacuation of customers from an upstairs bar is more difficult to achieve than a case of evacuating crowds at street level because alcohol impairs judgment and physical coordination. As such, the LLB will, when determining the capacity limit for an upstairs bar having regard to the actual circumstances and the advice of the departments concerned, impose a safety margin that is more stringent than that hitherto referred to, say 90% of the capacity limit that is otherwise applicable, and prescribing it as one of the licensing conditions.

(C) Whether the grant of the licence is contrary to the public interest

6. The LLB is bound by the statutory requirements to consider liquor licence applications with prudence. Regulation 17(2)(c) of the Regulations expressly stipulates that in all the circumstances the grant of the licence should not be contrary to the public interest. It is a well-established practice on the part of the LLB to seek to strike a balance between the interests of all parties and refrain from considering the applications in a

mechanical manner. Due to the special nature of liquor-licensed premises, in approving an application, the LLB may impose additional licensing conditions on top of the standard ones (see Appendix) for compliance by the licensee, striking a balance between protecting the commercial interest of the operators on the one hand, and helping to preserve tranquillity and public order in the local community on the other hand. However, this is applicable only to those cases where the premises in question are deemed suitable in principle for holding a liquor licence. An application will be rejected if the LLB considers that the grant of a liquor licence is contrary to the public interest. The additional licensing conditions that may be imposed include but are not limited to the following:

- (a) Liquor shall only be sold within specified hours;
- (b) The doors and windows of the premises shall be kept closed within specified hours;
- (c) No liquor shall be sold or supplied for consumption on the balcony within specified hours;
- (d) Imposing a capacity limit; and
- (e) Measures that are required, as additional licensing conditions, to contain serious noise nuisance. They may include the installation of appropriate acoustic insulation materials (e.g. double-glazed windows and sound insulator), and the appointment of qualified professionals for conducting noise impact assessment and certifying the efficacy of the noise insulation facilities inside the premises.

7. When examining applications, it is incumbent upon the LLB to

take all relevant circumstances into account in seeking to strike a balance between the interests of the applicants and those of the neighbours who may be affected. The considerations include the following:

- (a) Where illegal establishments are repeatedly found in a building such that the premises concerned are more prone to turn into a gathering place for undesirable elements or even a venue for criminal activities, it is more than probable that the units in the upstairs portion or basement of the building would not be suitable for operation as a bar, bearing in mind the need to avoid affecting other users of the building and the neighbourhood;
- (b) Where the premises are in close proximity to residential buildings or located in a mixed commercial/residential building, such premises would be less likely to be suitable for use as liquor-licensed premises since the operations are more prone to cause nuisance or disturbance affecting the daily lives of nearby residents, including noise nuisance and environmental hygiene problems to the neighbourhood. Liquor-licensed premises that are located in commercial districts would normally bear less such adverse impact;
- (c) Objections and the grounds underlying such objections raised by the persons affected and the departments concerned;
- (d) Whether the improvement measures initiated by the applicant are feasible and effective in reducing or eliminating the nuisances that may be caused to neighbours, in keeping with the requirement pertaining to public

interest; and

- (e) Whether the inbound and outbound movements of customers or the operation of the bar would cause crowds to gather and generate incessant hassle, bringing substantive nuisances to bear on other users of the building and the neighbourhood.

(f) Upstairs Bars

In the light of the special physical environment of upstairs bars, the LLB may take the following factors into consideration:

- (i) the number, type, mode of operation and distribution of liquor-licensed premises already in the same building. According to precedent cases and given the public concerns that have been articulated over the issue of means of escape in case of emergencies, it may not be acceptable if the total number of upstairs bars exceeds half of the number of floors of the building; and
- (ii) the number, type, mode of operation and distribution of the liquor-licensed premises (including upstairs bars) in the neighbouring areas. Whether the high concentration of liquor-licensed premises in the area is such as to cause unreasonable impact (in terms of noise nuisance, environmental hygiene, public order and traffic problems, etc.) on the local environment and the people living or working in the area.

* * *

Liquor Licensing Board
1 December 2013

Appendix

Standard Licensing Conditions Imposed on Liquor Licences

1. No disorder shall be permitted on the premises.
2. No person shall be allowed to become drunk on the premises, nor shall liquor be supplied to any person who is drunk.
3. No games of chance shall be played on the premises.
4. The licensee shall personally supervise the premises.
5. The licensee shall display a warning notice at a conspicuous place inside the premises containing the words “NO LIQUOR FOR PERSON UNDER AGE 18”. In the said notice, the size of each Chinese character shall not be less than 3 cm (height) × 3 cm (width) and the size of each English letter shall not be less than 2 cm (height) × 2 cm (width).
6. The licensee shall exhibit and keep exhibited a notice denoting its licensed status provided by the Board at the main entrance of the premises.
7. The licensee shall not permit any person to occupy or use any portion of the premises for any immoral or illegal purpose.
8. The licensee shall not permit any common prostitutes or reputed thieves to assemble or remain on the premises.
9. The licensee shall not permit drunkenness, or violence, quarrel or other disorderly conduct on the premises and shall not permit persons of known bad character to assemble and remain on the premises.
10. The name of any liquor for which a standard of quality is prescribed by regulations shall be clearly marked on the container in or from which the

liquor is supplied to any customers.

11. No bar business shall be operated on the premises, except with the permission of the Board endorsed herein.
12. No dancing shall be permitted on the premises, except with the permission of the Board endorsed herein.
13. Toilets shall be maintained in a state of cleanliness and good repair for the use of customers.
14. Except exempted by the Board, the licensed premises shall be concurrently covered by a valid restaurant licence issued by the Director of Food and Environmental Hygiene.

Standard Licensing Conditions Imposed on Club Liquor Licences

1. No person shall be allowed to become drunk on the club premises, nor shall liquor be supplied to any person who is drunk.
2. The licensee shall personally supervise the club premises.
3. The licensee shall display a warning notice at a conspicuous place inside the club premises containing the words “NO LIQUOR FOR PERSON UNDER AGE 18”. In the said notice, the size of each Chinese character shall not be less than 3 cm (height) × 3 cm (width) and the size of each English letter shall not be less than 2 cm (height) × 2 cm (width).
4. The licensee shall exhibit and keep exhibited a notice denoting its licensed status provided by the Board at the main entrance of the club premises.
5. The licensee shall not permit any person to occupy or use any portion of the club premises for any immoral or illegal purpose.
6. The licensee shall not permit any common prostitutes or reputed thieves to assemble or remain on the club premises.
7. The licensee shall not permit drunkenness, or violence, quarrel or other disorderly conduct on the club premises and shall not permit persons of known bad character to assemble and remain on the club premises.
8. No disorder shall be permitted on the club premises.
9. Toilets shall be maintained in a state of cleanliness and good repair for the use of members.
10. Except exempted by the Board, the licensed premises shall be concurrently covered by a valid Certificate of Compliance issued by the Secretary for Home Affairs.