



Review of Liquor Licensing Public Consultation



Food and Health Bureau

July 2011

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Chapter 1 Overview

Purpose

- 1.1 The purpose of this consultation document is to facilitate an informed discussion by the public and the trade about the liquor licensing policy in Hong Kong. The Administration will conduct consultation between mid July till mid September 2011 and we would like to seek your views on the various issues relating to our liquor licensing regime.

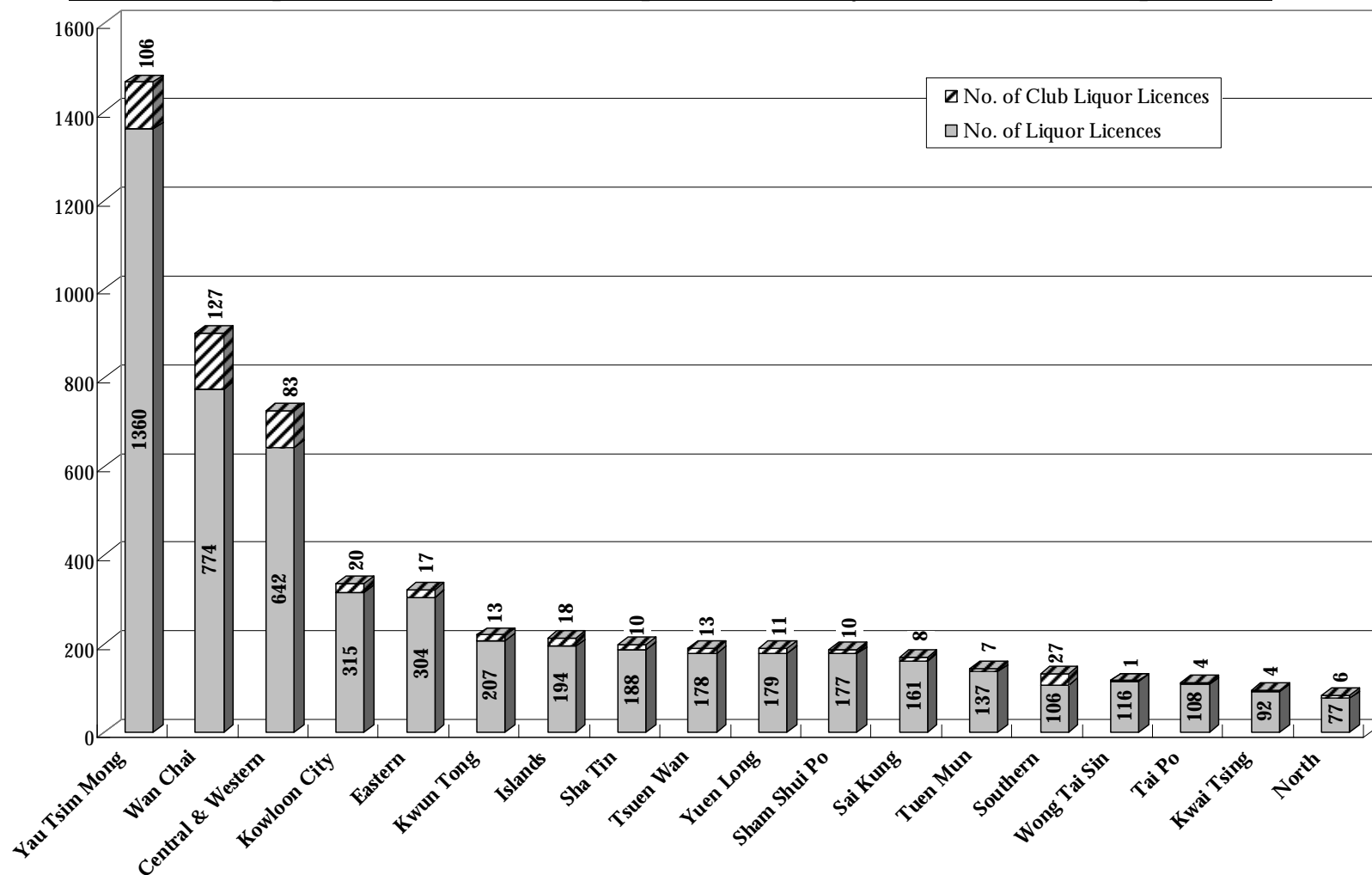
Background

The Liquor Licensing System

- 1.2 As in other cosmopolitan cities in the world, liquor business plays an important role in our food, leisure, tourism and entertainment industries. In Hong Kong, one of the most densely populated cities in the world, it is not uncommon to find a mixture of uses juxtaposing one another within the same development, e.g. the co-existence of commercial and residential uses within the same building. This poses challenges to the community when it comes to liquor licensing.
- 1.3 On the one hand, we would like to nurture a business friendly environment for the industry to grow, but on the other we need to protect the community from the possible problems that may come with such premises which include crime, environmental nuisance and fire hazards etc. While the two objectives are not necessarily mutually exclusive, how to weigh the economic and commercial interests against the interests of the neighbouring community is often a difficult balancing act.
- 1.4 As at 30 April 2011, there were 5 800 valid liquor licences¹. The breakdown by districts is in the following chart –

¹ Under the Dutiable Commodities (Liquor) Regulations (Cap. 109B), the sale of liquor at any premises for consumption on those premises is prohibited except on the authority of a liquor licence. Also, no liquor shall be supplied at any premises used by any club for the purposes of the club to any members of the club except under and in accordance with a club liquor licence. For the sake of easy reference, whenever the term “liquor licence” appears in this consultation document, it includes “club liquor licence”. Among the 5 800 liquor licences as at 30 April 2011, 485 are club liquor licences.

Number of Liquor Licences and Club Liquor Licences by District (as at 30 April 2011)



- 1.5 The liquor licensing system in Hong Kong regulates the sale of liquor to the public for consumption in public premises through allowing only approved applicants on suitable premises to engage in the sale of liquor. The licensee must ensure that the premises so licensed are properly managed and are suitable for receiving customers. The licensing system is enforced through the Dutiable Commodities (Liquor) Regulations (Cap. 109B) (“the Regulations”). A copy of the Regulations is in **Appendix II**.

The Liquor Licensing Board

- 1.6 The Liquor Licensing Board (“LLB”) is an independent statutory body established under the Regulations to consider liquor licence applications. It comprises one Chairman, one Vice Chairman and nine other members, all non-officials appointed by the Chief Executive. The members are of different occupations and background, representing various walks of life to ensure that applications for liquor licence are thoroughly considered with a balanced perspective.

Licensing Criteria

- 1.7 In considering liquor licence applications, LLB adopts an open, transparent and fair approach and aims to balance the interests of legitimate commercial activities and those of the locality. Pursuant to Regulation 17 of the Regulations, LLB will consider three factors in considering each application, namely (i) whether the applicant is a fit and proper person to hold the licence; (ii) whether the premises are suitable for selling and supplying intoxicating liquor, having regard to the location and structure of the premises and the fire safety and hygienic conditions in the premises; and (iii) whether in all the circumstances the grant of the licence is not contrary to the public interest.

- 1.8 To assist LLB to consider an application, the Secretariat of LLB will seek the views of government departments concerned, such as the Police, the Buildings Department (“BD”), the Fire Services Department (“FSD”) and/or the Food and Environmental Hygiene Department (“FEHD”) as appropriate. These departments will, based on their respective expertise, advise LLB as to whether the applicant is a fit and proper person and the premises concerned is compliant with the relevant building safety, fire safety and environmental hygiene requirements as well as suitable for selling and consuming intoxicating liquor. The Home Affairs Department (“HAD”), being the licensing authority for clubs, also advises LLB on whether the premises concerned are issued with a certificate of compliance (“CoC”).
- 1.9 The public at large could also comment on the applications, through direct communication with LLB, or through the consultation done by the District Offices (“DOs”) (district consultation will be covered in detail in Chapter 3). LLB conducts hearings for every application with objections, be they from the public or government departments. All parties involved are given an opportunity to express their views before LLB.

Licensing Conditions

- 1.10 Under the Regulations, a liquor licence is valid for a period of one year or such lesser period as LLB shall determine. The Regulations also empower LLB to impose conditions in the liquor licences as it thinks fit. In practice, LLB imposes conditions on every liquor licence. A list of the standard conditions which are applicable to all liquor licences and club liquor licences are at **Table 1** and **Table 2** respectively. In addition, LLB imposes additional licensing conditions on individual licences as the case circumstances so warrant, such as a ban on selling or supplying liquor after certain hours, installation of a CCTV system and deployment of security guards, as well as prohibition of patrons’ activities in open area of the flat roof or the balcony of the premises after certain hours.

Enforcement under the Liquor Licensing System

- 1.11 The Police are the main enforcement department for the liquor licensing regime. Statistics regarding their enforcement work against breaches of licensing conditions and other nuisance-related offences in liquor-licensed premises in 2010 are tabulated at **Table 3**. The number of referrals by the Police to other government departments in relation to irregularities at liquor-licensed premises in 2010 is tabulated at **Table 4**.
- 1.12 Other relevant government departments such as FSD and FEHD enforce the laws and regulations under their respective purview with regard to liquor-licensed premises. In the course of their normal duties, the enforcement agencies conduct regular and surprise checks on liquor-licensed premises so as to ensure continued compliance with the respective statutory or administrative requirements.

Appeal Mechanism

- 1.13 Under the Regulations, the Secretary to LLB must give notice in writing of LLB's decision regarding an application, together with reasons, to the applicant and any other person who or body which has expressed an interest in the application. The applicant or 20 or more persons residing within a radius of 400 metres from the premises to which the application relates may, within 28 days after the date of the notice, appeal to the Municipal Services Appeals Board ² against the decision.

² The Municipal Services Appeals Board ("MSAB") is an independent statutory body established under the Municipal Services Appeals Board Ordinance (Cap. 220). MSAB has the statutory power to hear and determine any appeal in relation to LLB's decision made under the Regulations. In determining an appeal against a decision made by LLB, MSAB may exercise all the powers and directions that are conferred on LLB under the Regulations, and shall affirm, vary or set aside the decision and where it sets aside the decision, it shall substitute its own decision.

Views of Residents

1.14 Residents in certain localities are concerned about the nuisance caused by liquor-licensed premises located in or near residential areas. They opined that the uses are incompatible with each other. There are occasions when the neighbourhood of these licensed premises suffered from the environmental hygiene and noise nuisance caused by these premises. Some also felt exposed to the potential threat to their personal safety due to the congregation of people under the influence of alcohol near to their residence. They believed the Government should take a hard-line approach to discourage the establishment of more liquor premises in the vicinity of residential districts. While the enforcement agencies will react swiftly to complaints and take enforcement action where appropriate, it is often quite difficult to prove the liability of the licensees when the alleged offences are committed by their customers and the nuisance occurs outside the premises. The community as a whole must strike a balance between the rights of individuals to relax oneself and be entertained on the one hand and the right not to be disturbed on the other.

Recent Developments

1.15 There have been a few notable developments which warrant a closer look at the liquor licensing policy, by both the Administration and the public. These can be summarised by the discussions over “upstairs bars” and “proposed streamlining by the trade” in the ensuing paragraphs.

Upstairs Bars

1.16 In recent years, there is a trend for more bars moving upstairs to operate in multi-storey buildings which were formerly used to house residential flats or offices. This phenomenon is mainly rental-driven. These bars are generally referred to as “upstairs bars”. Some customers are attracted to these upstairs bars because of the exceptionally low prices of alcoholic beverages offered therein. Some upstairs bars even offer binge drinking at a highly competitive price that is very affordable to

the younger generation. Some upstairs bars are also restricted to members, so customers could enjoy a certain level of privacy while gathering with friends for late night entertainment. These upstairs bars are usually concentrated in well-established commercial districts like Yau Tsim Mong, Wan Chai and Central, and their clustering could bring about problems of public safety, crime and public nuisance. Local community and relevant District Councils have raised their concerns from time to time.

- 1.17 The proliferation of upstairs bars is also a concern of the Government and LLB. Not only does the concentration of bars in certain multi-storey buildings constitute a source of chronic complaints about nuisance and crime, some believe the congregation of a large number of patrons in a multi-storey setting, and their reduced ability to escape from fires when under the heavy influence of alcohol is like a social time bomb. There are calls from different quarters to tighten up the control of upstairs bars.
- 1.18 While the above presents valid concerns from the community, one must not overlook the equally legitimate interests of the trade and our objective to nurture a business-friendly environment. From the trade's point of view, it may not be appropriate to hold the licensee liable for all the nuisance because in many cases, the alleged offenders are their customers and the nuisance occurs outside the licensed premises.

Proposed Streamlining by the Trade

1.19 The trade has been calling on the Government to further streamline the licensing procedures with a view to lowering the regulatory burden to the trade. There have been proposals to –

- (a) allow liquor licence applicants to advertise their application through other means instead of publishing an advertisement on newspapers;
- (b) extend the duration of liquor licences to more than one year;
- (c) allow a body corporate be issued with a liquor licence instead of requiring a natural person to apply for and hold the licence or, if that is found not feasible, to consider multiple licensees or a “reserve licensee” mechanism; and
- (d) explore the need for classifying liquor licences by types of liquor sold so as to better manage the risks of different types of liquor-selling premises.

1.20 The issues set out in this document are important for they impact our society as well as economy. We must balance the interests of different sectors. A broad consensus as to what is the most appropriate and acceptable to the society as a whole is essential to take our liquor licensing system forward. We appeal to you to share your views with us.

Chapter 2 Upstairs Bars

- 2.1 There is no statutory definition of “upstairs bars”. “Upstairs bars” could refer to all the liquor-licensed premises which are operating as bars (i.e. the main business being the sale and consumption of liquor on the premises) and are not located at street level. However, the risks associated with these licensed premises could be completely different. Based on the past experience, the upstairs bars which tend to be problematic and attract complaints are those located in office buildings or in buildings which are concurrently used for residential purpose. The premises located in shopping centres, hotels or buildings specifically designed for entertainment are of a much lesser concern and thus are not regarded as “upstairs bars” in the context of this consultation.
- 2.2 According to information of the Police, there were 335, 472 and 433 upstairs bars in the territory in 2008, 2009 and 2010 respectively. There was an increase of 41% (+137 premises) from 2008 to 2009, but a decrease of 8% (-39 premises) from 2009 to 2010. Almost all of these premises are in Yau Tsim Mong (50%), Wan Chai (38%) and Central (11%).
- 2.3 The concentration of upstairs bars in the buildings described in paragraph 2.1 above could bring about problems of public safety, crime and public nuisance. Local community and the District Councils have raised their concerns from time to time.

Public Safety

- 2.4 There is much concern over whether people, under the influence of alcohol and gathering in large numbers in a concentration of bars in a multi-storey building, can make their way to safety through the stairs while fighting for exit during emergencies. The situation would be worsened by slippery (with vomit) or blocked staircases, customers crowding at staircases for a rest or smoking and excessive drinking. In the many night visits conducted by LLB and government departments, it was noticed that quite a number of operators of upstairs bars failed to observe the fire safety precautions by

blocking the exits with groceries or furniture, or were making use of the exit staircases to create additional space for standing guests, as well as to serve as temporary smoking areas. Some licensed premises were also found with the number of customers exceeding the maximum capacity specified in the licence conditions. While relevant government departments have been stepping up enforcement against these irregularities, there may be room to consider whether the control over upstairs bars needs to be further tightened.

- 2.5 At present, liquor licence will only be issued if there is a restaurant licence or a CoC for clubs in respect of the concerned premises, unless otherwise exempted by LLB. The restaurant licence or the CoC already requires the premises to meet the fire safety standards, including the provision of adequate means of escape with reference to the *Code of Practice for the Provision of Means of Escape in Case of Fire* promulgated by BD, the provision of appropriate fire service installations and equipment (e.g. fire alarm system, fire extinguishers, sprinkler system, fire hydrant/hose reel system, exit signs, emergency lighting), the use of fire retardant materials for furniture and decorations, and the safe use of fuel, e.g. electricity, as stipulated by FSD. However, some members of the public consider that more stringent and specific requirements should be applied to upstairs bars where customers are more likely to get drunk than restaurants, and thus are exposed to a higher risk.

Crime

- 2.6 Since upstairs bars are tucked inside multi-storey buildings, additional challenges exist for law enforcement operations mounted to check these premises as, unlike bars at street level, more manpower and different tactics are required for the conduct of any well-coordinated raids aimed, for example, at combating drug trafficking activities. The challenge to investigators in detecting these cases is great given that traffickers and drug abusers could easily dispose of the drugs before police arrival.

- 2.7 Besides, patrons under the influence of alcohol are more prone to enter into disputes, and engage in fights, with other customers of neighbouring bars. Such situation will be aggravated in a multi-storey context, when bar patrons mingle with other users in the same building in communal areas such as common washrooms, lift lobbies and stairs in buildings not designed for a high concentration of bars in a single location.
- 2.8 **Table 5** presents a detailed breakdown of crimes in liquor-licensed premises in 2009 and 2010.
- 2.9 The total number of liquor-licensed premises increased from 5 218 in 2009 to 5 782 in 2010. Whilst the total number of crimes at all licensed premises decreased in 2010, those at upstairs bars increased. Upstairs bars, making up of 7.4% of all licensed premises, accounted for 11% of all the crimes which occurred at licensed premises. The fact that the number of upstairs bars has dropped from 472 to 433 from 2009 to 2010 but the number of crimes has recorded an increase from 254 to 284 over the same period shows a worrying trend. Moreover, Police information shows that the nature of the crimes in the upstairs bars tended to be more serious, which could endanger the personal safety of their patrons in general. For example in 2010, over 40% of the crimes in upstairs bars involved rape, indecent assault, other assault, dangerous drugs and disorder or fighting in a public place.

Public Nuisance

- 2.10 Due to the proximity of many upstairs bars to residential premises and the competing use for communal facilities with other building users, there are constant complaints of public nuisance, ranging from noise complaints, environmental hygiene to disorderly conduct. Where appropriate, LLB also imposes additional licensing conditions to address these problems (e.g. a ban on selling or supplying liquor after certain hours and restriction on playing of music and/or karaoke facility after certain hours) on a case-by-case basis, taking into account the environment, the nature of business and views of nearby residents and relevant government departments.

- 2.11 In the three districts with most upstairs bars, namely Yau Tsim Mong, Wan Chai and Central, the number of upstairs bars-related public nuisance complaints reported to the Police in 2010 is 440.

Actions taken by LLB and Government departments

- 2.12 LLB shares the public concern over the safety and nuisance of upstairs bars, and have been imposing additional licensing conditions like capacity limit, restriction on the liquor selling hours, the duty hours of the licensee so as to subject the upstairs bars concerned to additional regulatory measures.
- 2.13 It has already become an established practice of LLB to impose capacity limits for upstairs bars³ as an additional licensing condition. Such limits are not normally imposed on licensed premises at street level or those within purpose-built entertainment complexes. The Police may prosecute a licensee if the maximum capacity limit of the premises imposed by LLB is exceeded during licence checks.
- 2.14 In addition, where circumstances so warrant, LLB will set a maximum number of bars permissible within the same building by refusing new liquor licence applications, after considering relevant factors such as the number of existing bars in the building concerned and their respective maximum capacity.

³ Capacity limits are imposed by LLB for bars not at street level. Other than those for club liquor-licensed bars, the capacity limits are imposed on the basis of BD's professional advice on the number of persons (including staff) normally expected in the premises used as a restaurant. BD's calculation does not pay specific regard to the potential evacuation risks of patrons of such premises when they are under the influence of alcohol.

For all club liquor-licensed premises, irrespective of their locations and whether they are upstairs bars, LLB has all along imposed capacity limit on the club liquor licence concerned, making reference to the capacity limit under the Certificate of Compliance issued by HAD. HAD's calculation also does not pay specific regard to the potential evacuation risks of patrons of such premises when they are under the influence of alcohol.

***Problems caused by upstairs bars are
unique to Hong Kong***

Land suitable for development is scarce in Hong Kong. Due to the competing demands for various uses, the co-existence of commercial and residential uses within the same building is quite common. This is not often seen in other major cities in the world. In Tokyo, Japan, some bars operate in the higher floors of multi-storey buildings, but seldom are these buildings located near residential blocks, thus minimising the nuisance caused to residents. The problem of upstairs bars that we are now facing is rather unique to Hong Kong.

Next Steps

2.15 Comments are invited on the following –

- (a) Do the specific circumstances of upstairs bars require more stringent licensing control?
- (b) If the answer to (a) is yes, should the following options for practical measures be taken to reduce the potential risk of upstairs bars, in addition to compliance with existing statutory and administrative requirements regarding the premises or building in question?
 - (i) Set a limit on the number of liquor-licensed premises that may be housed in a multi-storey building, say not more than half of the floors or a certain percentage of the gross floor area to be occupied by liquor-licensed premises.
 - (ii) Refuse to issue new liquor licences and new club liquor licences for premises in buildings which are concurrently used for residential purpose except for the lowest three storeys with separate access.

- (iii) Refuse to issue new liquor licences and new club liquor licences altogether in certain high risk targeted buildings (e.g. those with a large number of residents in adjacent buildings or with a track record of higher incidence of crime or complaints in the past).
 - (iv) As the capacity limits for bars not at street level are set without considering the influence of alcohol on customers' behaviour, apply a discount factor to reduce the maximum capacity currently imposed so as to build in an appropriate "safety margin". The size of the "safety margin" will depend on the discount factor. A 70% discount factor will reduce the capacity limit of say, 200 persons to 140 persons. Moreover, instead of a particular discount factor, it is also possible to have a range of discount factors, say from 50% to 90%, depending on the location of the licensed premises in the concerned building and/or other relevant factors.
- (c) Even if the measures in (b) are not pursued, should more stringent criteria be adopted when assessing a liquor licence application, so as to avoid the concentration of bars in non-purpose-built entertainment buildings or complexes? Relevant considerations could include –
- (i) whether the building concerned is shared by others for non-entertainment purpose and if so, the potential impact of introducing an upstairs bar on such joint users (e.g. if the other premises in the same building are used for educational/tutorial purposes, should liquor-licensed premises be allowed?);
 - (ii) whether the building concerned is located among densely populated residential blocks, and if so, the potential impact of introducing an upstairs bar on the neighbourhood;
 - (iii) whether the building is purpose-built for restaurants, bars or entertainment;

- (iv) the layout of the building concerned – where a joint-user building is concerned, the existence of separate access to cater for different user groups will have an edge over those with shared access;
- (v) the number of liquor-licensed premises already in the building concerned – if, say, half of the floors were already taken up by liquor-licensed premises, it could be arguable whether it is socially desirable to allow more such premises to operate in the same building; and
- (vi) the number of alcohol-related crimes and public nuisance reports in the building concerned or the precinct (e.g. within 50 or 100 metres' distance from the building concerned)?

The above questions are meant to initiate discussion and are by no means exhaustive. Views and suggestions are welcome.

Chapter 3 Advertising an Application

3.1 Upon receiving an application for liquor licence, the Secretariat of LLB will consult relevant government departments and the local community through the relevant DO. At the same time, the applicant is required to place a newspaper advertisement to inform members of the public. An application will be approved if LLB is satisfied with the considerations mentioned in paragraph 1.7 above, and if no objection or adverse comment is received. If objections or adverse comments are received, LLB will consider and discuss the application in accordance with established procedures under which the applicant and the objectors will be invited to make representations to LLB in person.

3.2 LLB adopts a three-pronged approach in notifying the public on liquor licence applications. They are –

(a) Advertisement required under Regulation 16 of the Regulations:

LLB requires all applicants for new liquor licences to advertise their applications on three local newspapers (two Chinese and one English) in a specified size and format. For transfer, renewal and amendment applications, the applicant is required to place an advertisement on one local newspaper only (either Chinese or English), but the size of the advertisement is twice that for a new application, and the content of the advertisement is bilingual;

(b) Posting of notice nearby the premises:

Staff of FEHD posts three copies of the notice about the application for new liquor licence in conspicuous locations of the building (such as the entrance of the premises, lift, lobby, etc.) in which the premises under application are located; and

(c) Consultation through DOs:

FEHD, on LLB's behalf, also seeks the assistance of relevant DOs in gathering the views of nearby residents through residents' organisations and District Councillors on the applications for LLB's consideration. For each liquor licence application referred to the relevant DO by FEHD, DO staff would assist FEHD and play an advisory role as to which stakeholders should be consulted. DO will seek the views of those directly affected by an application as far as possible, which may, generally speaking, include the District Councillors, the relevant residents' organisations and other local stakeholders (if any), depending on the characteristics of the neighbourhood concerned.

- 3.3 From past experience, residents are more likely to get to know the applications through the local consultation process conducted by FEHD and DO as set out in paragraphs 3.2 (b) and (c) above. The purpose of the present requirement to advertise liquor licence applications on newspapers (paragraph 3.2(a) above) is to enable notice of the applications to be given to the public at large. Since more and more people are getting their information on the Internet, there have been suggestions to replace the requirement for newspaper advertisement with alternative public channels like the Internet. This will keep the advertisement requirement up with the changes in the channels of communication of the society and will also reduce cost to the business.
- 3.4 One suggestion is to post the advertisement at a designated webpage maintained by LLB for new, renewal, transfer or amendment applications of liquor licence for public information.
- 3.5 The current practice of posting notices at or near the premises and consultation through DOs will be maintained.

Advertisement requirement in some overseas jurisdictions

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| <i>United Kingdom</i> | <i>Applicants for the grant or variation or review of premises licences are required to (i) publish a notice in a local newspaper or, if there is none, in a local newsletter, circular or similar document circulating in the vicinity of the premises; and (ii) display a brief summary of the application on an A4 size notice immediately on or outside the premises.</i> |
| <i>California, United States</i> | <i>The applicant is required to post a public notice of application at the premises for 30 days. In some cases, the Department of Alcoholic Beverage Control may also require the applicant to publish a notice in a newspaper.</i> |

Source of information:

- a. Home Office, United Kingdom: <http://www.homeoffice.gov.uk/drugs/alcohol/>
- b. Department of Alcoholic Beverage Control, California: <http://www.abc.ca.gov/>

Invitation of Comments

- 3.6 Comments are invited on whether liquor licence applicants should be allowed to choose between advertising their application on newspapers or on a designated website maintained by LLB.
- 3.7 Other suggestions or alternative means of advertisement are also welcome.

Chapter 4 Duration of a Licence

- 4.1 Under the Regulations, a liquor licence shall be valid for a period of one year or such lesser period as LLB shall determine. A licensee has to apply to renew the licence and advertise the application afresh. On the one hand, this annual renewal exercise provides a natural opportunity for LLB to gauge the views of various government departments and the community on the operation of a licensee in the past year and to take necessary actions (e.g. refusing a new or renewal application, renewing a licence for a period less than a year with or without imposing additional licensing conditions). On the other hand, the annual renewal is considered a burden on the trade and the large number of renewals to be handled annually also adds to the caseload of LLB and relevant government departments. There have hence been suggestions to explore the extension of the duration of a liquor licence to more than one year based on a risk-management approach.
- 4.2 The Administration will not compromise the effective control of licensed premises, but is prepared to consider the proposal on extending the duration of a licence to a maximum of two years only for those businesses with a good track record for at least two consecutive years. LLB may continue to impose additional licensing conditions to the liquor licence where appropriate. New applications and those renewal applications with objections may be given a shorter licence period as LLB so decide. This proposal, if supported, will be pursued through legislative amendment.
- 4.3 Irrespective of the length of the licence period, the licensed premises will have to ensure the concurrent coverage by a valid restaurant licence (for liquor licence) or a valid CoC (for club liquor licence) during the licence period, thus continuing to comply with and observe the fire safety and other licensing requirements at all times.

Annual review mechanism

- 4.4 To complement the proposal to extend the licence duration, there should also be a mid-term review mechanism to enable LLB to address public complaints against licensed premises during the extended licence period.
- 4.5 Public objections are usually handled by LLB at the time of the renewal application, which is done at least once a year for each premises under the current system. If the Police or any other department sees a need to immediately penalise the liquor licensee concerned, it may so recommend to LLB at any time during the licence period. LLB may, on the basis of objections from the public or government departments, suspend or cancel/revoke the licence in the middle of the licence period.
- 4.6 If the maximum licence period is extended, the Administration considers it necessary to empower LLB to proactively trigger a mid-term review for two-year licences in justifiable cases (e.g. if the number of complaints against a particular licensed premises exceeded a certain threshold to be decided by LLB), so that those who are adversely affected by a two-year licensed premises during the first half of the licence period would have the chance to voice their concerns to LLB which would in turn be able to exercise a decision to suspend or cancel/revoke the licence as appropriate.

Duration of Licence in some overseas jurisdictions

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| <i>California, United States</i> | <i>All alcoholic beverage licences are renewed on an annual basis.</i> |
| <i>Singapore</i> | <i>Liquor licences are issued for a period of two years.</i> |
| <i>United Kingdom</i> | <p><i>Any individual who may be engaged in making and authorising the sale and supply of alcohol require a “personal licence”. A personal licence holder may sell and supply alcohol for consumption on and off any premises possessing a “premises licence”.</i></p> <p><i>Personal licences are valid for ten years unless surrendered, suspended, revoked or declared forfeit by the courts. Premises licences may be issued on a permanent basis or for a time-limited period. At any stage following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the licensing objectives. The licensing authority may modify the licensing conditions, remove the designated premises supervisor, suspend or revoke the licence etc..</i></p> |

Source of information:

- a. Department of Alcoholic Beverage Control, California: <http://www.abc.ca.gov/>
- b. Electronic Licence Application, Singapore: <http://licences.business.gov.sg>
- c. Home Office, United Kingdom: <http://www.homeoffice.gov.uk/drugs/alcohol/>

Invitation of Comments

4.7 Comments are invited on the following –

- (a) whether the maximum duration of liquor licences should be extended to two years; and
- (b) if the response to (a) is yes, whether an annual review mechanism should be introduced.

4.8 Views or suggestions on the operation (e.g. the threshold on the number of complaints received against a licensed premises) of the annual review mechanism are also welcome.

Chapter 5 Natural Person and Reserve Licensee

- 5.1 Regulation 17 of Regulations stipulates that a liquor licence should only be issued to a “fit and proper person”. An analysis of the provisions of the Regulations suggests that the legislative intent of this provision is for a natural person instead of a company to hold a liquor licence. It is one of the licensing conditions that licensees of liquor-licensed premises are required to personally supervise the premises. In respect of specific cases, where circumstances require, LLB would impose a more stringent condition on duty hours of the licensee except his weekly day off. In the case of illness or temporary absence of the licensees, the secretary to LLB may authorise any person to manage the liquor-licensed premises for a period not exceeding three months and during that period such person shall be deemed to be the licensee of the premises under and in accordance with Regulation 24 of the Regulations. The purpose is to ensure that the licensee will be present on the premises to supervise the operation. In practice, the role of a liquor licensee is usually assumed by an employee of the business. Any change of employment (e.g. resignation) means the business will have to go through the application procedures for a transfer or a new licence.
- 5.2 This has understandably caused both financial and administrative burden to the trade. To address the above issue, some in the food business have requested the Administration to review the “natural person” requirement to allow a body corporate or a partnership to hold a liquor licence.
- 5.3 As a matter of principle, the Administration considered that under all scenarios, the legal responsibility of the licensee and law and order should not be affected and the integrity of the licensing regime must not be compromised.
- 5.4 Liquor licensing aims to regulate the sale of liquor to the public for consumption in public premises and to ensure that the premises so licensed are properly managed and are suitable for receiving customers. Liquor-licensed premises exist in many

and varied forms, ranging from restaurant, bar, nightclub, disco, karaoke to upstairs bar etc. Excessive consumption of alcoholic drinks could give rise to a host of law and order problems, as people under the influence of alcohol are more prone to resort to violence. In 2010, there were 2 593 crime cases related to liquor-licensed premises, of which 671 were violent crimes.

5.5 The enforcement under the current liquor licensing regime relies heavily on a clear liability and legal responsibility of the licensee to supervise and manage the licensed premises personally. If the licensee fails to do so, LLB could revoke, suspend or refuse to renew the licence depending on the circumstances of the case. The licensee may risk losing his job or even face penalties under the Regulations, which may include imprisonment. The Administration considers the control necessary and appropriate as it is commonly known that licensed premises, if not properly managed, could be a breeding ground of crimes and a source of public nuisance. If a body corporate becomes a licensee, it is doubtful whether the body corporate, and its directors or partners, could be held liable for the breaches of the licensing conditions. The complexity of the composition of the body corporate concerned may exacerbate the problems of criminal prosecution. This will hinder effective enforcement and maintenance of law and order at licensed premises, and clearly not in the public interest.

5.6 Apart from the corporate licensee option, we have also looked into the possibility of allowing multiple authorised persons to supervise the licensed premises. This suggestion was mooted by the food business and is said to be able to ensure business continuity during times of sudden departure of the licensee under the Regulations. However, the option of allowing multiple authorised persons will still give rise to the same problem of unclear liability and legal responsibility. There are grave enforcement concerns on who exactly is managing the licensed premises at any particular point of time and who should be held accountable for breaches detected. It is not difficult to envisage the scenario where licensees shift the blame

to each other; and that multiple co-management may be used as a cover for collective evasion of responsibility.

Reserve licensee mechanism

5.7 To address the food business's concern that businesses occasionally suffer from a disruption in operation when the licensee leaves the service without transferring his licence to his successor, consideration may be given to introducing an optional system of "reserve licensee".

5.8 The purpose of a reserve licensee system is to minimise disruption to businesses by identifying at an early stage a suitable person to take over the role of the original licensee at any given time during the licence period. Similar to a licensee, a person nominated as a reserve licensee must meet the following requirements –

- (a) the nominee should be capable of properly managing and supervising the liquor-selling premises concerned. He should have the operational knowledge of the premises concerned as if he were the actual licensee. It is expected that the reserve licensee should be an employee working in the premises concerned or an owner/partner of the business; and
- (b) the nominee should be able to pass the same "fit and proper person" test applicable to licensees.

5.9 A reserve licensee may be nominated –

- (a) at the time of the new, renewal or transfer applications by the applicant; or
- (b) at any time not less than three months prior to the expiry of the existing liquor licence by the licensee.

However, in view of the administrative work involved in processing the reserve licensee application, there should be a limit on the number of reserve licensee applications to be

accepted during the licence period. A change of the reserve licensee should normally be disallowed unless he leaves the business permanently or in situation described in paragraph 5.17 below. To facilitate better management and to prevent abuse of the system, the tenure of the reserve licensee should not exceed that of the actual licensee.

5.10 The reserve licensee option may benefit the businesses in that if LLB accepts the nominee, the reserve licensee could, upon final scrutiny by the Police to affirm his suitability and with the endorsement by LLB, take over the liquor licence upon the departure of the original licensee from the business. The presence of a suitable and readily available reserve licensee could shorten the processing time for the replacement of the original licensee, minimising possible disruption caused to businesses.

5.11 In order to preserve the integrity of the liquor licensing regime, the following principles on reserve licensee should be maintained –

(a) at no time should there be two licensees legally responsible and liable for a single premises. The departure of the original licensee should not be of a temporary nature and should only relate to permanent departure due to reasons like resignation or serious sickness; and

(b) each person should only be the licensee of a single premises. In other words, any holder of a valid liquor licence should not be permitted to be the reserve for any other premises. Once a person who acts as the reserve licensee has taken up the role as a licensee, he should not be allowed to become a reserve for any other premises.

5.12 It should be noted that the proposed reserve licensee mechanism would incur an increase in the workload of LLB, FEHD and the Police. The proposal, if found feasible, would require an amendment of the Regulations.

How many reserves for each licence?

- 5.13 When discussing with the food business on the proposal to introduce an optional “reserve licensee”, some suggested that we should also consider allowing each liquor licence to have more than one reserve licensee.
- 5.14 Permitting more than one reserve licensee for each premises will benefit the licensed business in that if one or some of the reserve licensees left the business before the original licensee, then the remaining reserve licensees could still replace the original licensee shortly after the latter left the business, and the business owner would not need to go through a fresh exercise of transfer application.
- 5.15 The major drawback of allowing more than one reserve licensee per premises is that it will incur significant additional administrative workload for LLB and relevant government departments, as every nominated person needs to go through the “fit and proper person” test and the reduction in processing time as expected by the trade might not happen. To strike a reasonable balance between trade facilitation needs and minimising administrative burden, we suggest limiting the number of reserve licensees allowable for each licence to one.

For how many licences can each person act as reserve?

- 5.16 The operation of chain stores in the food business has become popular in recent years. Some in the food business have therefore suggested that the proposed reserve licensee mechanism should maximise its flexibility by allowing each person to act as the reserve licensee for more than one liquor-licensed premises.
- 5.17 Allowing one person to act as reserve for a few premises may enable food chain owners to flexibly deploy staff who work in more than one chain store. However, it should be noted that once a person who acts as the reserve for a few premises replaces the original licensee of any licence, then his identity as reserve licensee for the other premises would become invalid

automatically. The business owner would need to substitute him with another employee for being the reserve licensee of the other premises. This will not only entail significant additional resources on the part of LLB and relevant government departments, but business owners will also have to bear additional administrative cost for making applications to nominate another reserve licensee.

- 5.18 Although it is quite common for chain stores to adopt the same set of operating procedure to all stores, the person nominated as reserve may not have good knowledge of all the premises that he has been nominated as reserve for since he may not be familiar with the unique environment and management challenges of each premises. Bearing in mind that one of the considerations in evaluating the suitability of a person as a reserve licensee is the operational knowledge of the premises, any lack of the operational knowledge unique to each premises may risk the chance of failing the scrutiny procedure by the Police as a “fit and proper person” to properly manage and supervise the premises.
- 5.19 To strike a reasonable balance between trade facilitation and minimising administrative burden, we suggest allowing one person to be the reserve licensee for at most three premises only, on condition that the nominee could adequately demonstrate his knowledge of all these liquor-licensed premises.

Invitation of Comments

5.20 Comments are invited on –

- (a) whether the liquor licence should continue to be issued to a natural person; if not, how the integrity of the licensing regime could be maintained;
- (b) whether a reserve licensee mechanism should be introduced to protect the food business from the possible disruption caused to the business due to the sudden departure of the licensee-employee;
- (c) the number of applications for nominating reserve licensee allowed during each licence period;
- (d) whether not more than one reserve licensee should be allowed for the same liquor licence; and
- (e) whether each person should be permitted to be the reserve licensee for more than one premises. If yes, should the person be permitted to be reserve for at most three premises?

Chapter 6 Classification of Licence

- 6.1 At present, a single type of liquor licence applies to all premises selling liquor for consumption therein. The conditions attached to each licence, however, may vary depending on the circumstances and merits of each case.
- 6.2 There have been suggestions that liquor licences should be classified into different categories because different types of premises pose a different level of risk. Some suggested that different categories of licences should be subject to different sets of licensing conditions, i.e. more stringent conditions should be imposed on the more risky licensed premises. Such a categorisation system is believed to be able to further enhance efficiency in licence processing.

Classes of liquor licences overseas

| | |
|----------------------------------|---|
| <i>Singapore</i> | <p><i>For the sale of liquor for consumption on the premises, there are two main types of licence:</i></p> <ul style="list-style-type: none"> ● <i>“Public House Licence”, which permits the sale of all types of liquor (inclusive of beer and stout) for consumption on the premises. Standard operating hours: from 6 a.m. to 12 midnight; and</i> ● <i>“Beer House Licence”, which permits the sale of only beer and stout for consumption on the premises. Standard operating hours: from 6 a.m. to 10 p.m..</i> <p><i>A holder of a valid liquor licence may apply for an “extension hours liquor licence” to extend the operating hours of the premises concerned.</i></p> |
| <i>California, United States</i> | <p><i>For the sale of liquor for consumption on the premises, there are three main types of licence:</i></p> <ul style="list-style-type: none"> ● <i>“On-Sale General”, which authorises the sale of all types of alcoholic beverages including beer, wine and distilled spirits, for consumption on the premises, and the sale of beer and wine for consumption off the premises;</i> ● <i>“On-Sale Beer and Wine”, which authorises the sale of all types of wine and malt beverages (e.g., beer, porter, ale, stout and malt liquor) for consumption on and off the premises; and</i> ● <i>“On-Sale Beer”, which authorises the sale of malt beverages for consumption on and off the premises.</i> |

Source of information:

a. Electronic Licence Application, Singapore: <http://licences.business.gov.sg>

b. Department of Alcoholic Beverage Control, California: <http://www.abc.ca.gov/>

The Hong Kong context

6.3 We need to assess the practicability and effectiveness of the suggestion in the light of the following characteristics of the liquor entertainment scene in Hong Kong –

(a) Trade practice:

In Hong Kong, given that there is currently no restriction on the type of liquors sold at each licensed premises, most licensed premises are selling a wide range of products. The proposed classification according to the variety of liquors sold (as in the case of Singapore and California) may not directly apply to our current mode of operation. Seldom do food businesses in Hong Kong sell just beer or stout, or wine or hard liquor. Chinese restaurants or western bars alike usually offer a sufficiently wide range of liquor products to cater for the demands of their customers. Transplanting the overseas classification systems in Hong Kong might unnecessarily restrict the business opportunities or alter the operation mode of many existing businesses.

(b) Evolving dining behaviour:

The dining behaviour of Hong Kong people is evolving. In recent years, we found the distinction between bars and restaurants becoming blurred, with many new restaurants also having a bar next to the dining areas and the consumption of wine being very common in general restaurants. This renders a classification according to the nature of business (e.g. restaurants or bars) infeasible.

(c) Risk-based approach:

From the risk-management point of view, LLB is already adopting such an approach by the imposition of additional conditions. As at April 2011, LLB imposed additional conditions on 1 544 licences. Examples of such conditions include restricting the liquor-selling hours, requiring all doors and windows to be closed after certain hours, prohibiting the

playing of music or karaoke facilities, etc. In other words, LLB has been effectively classifying the licences according to the risks of the licensed premises.

The processing of non-contested cases is simple and straightforward and it takes on average 31 working days to issue a licence. Even for contentious and contested cases, the processing time is on average 46 working days. As the Regulations require LLB to examine each application on its own merits weighing the suitability of the applicant, the location as well as public interest, categorising the licence types might not necessarily lead to enhanced efficiency.

Other feasible classification models?

- 6.4 Apart from exploring classification by the type of liquor sold or by nature of the food business, we have also looked at the classification by permitted opening hours as in the case of Singapore. In fact, it has been the practice of LLB to stipulate, on a case-by-case basis, the permitted opening hours or liquor-selling hours for selected liquor-licensed premises through imposing an additional licensing condition. This additional licensing condition is commonly found in the liquor licences of premises which are located in the proximity of residents, and its purpose is to minimise the nuisance caused to nearby residents by the premises concerned.
- 6.5 We must point out that even if the liquor licences are categorised, whether by way of permitted opening hours, or types of liquor they sell, LLB would still need to examine an application in accordance with the principles set out in the Regulations, so as to factor in considerations regarding the suitability of the applicant, the premises and public interest. In the event that an application is found meeting all the requirements, LLB would also need to decide which category of liquor licence should be granted.

Invitation of Comments

6.6 Comments are invited on –

- (a) the relevance and merits of a statutory licence classification system in the Hong Kong context; and
- (b) the practicability of such a classification system.

6.7 Suggestions on such classifications are welcome.

Chapter 7 Summary of Questions

7.1 Comments are invited on the following issues –

(I) Upstairs Bars (Chapter 2)

- (a) Do the specific circumstances of upstairs bars require more stringent licensing control?
- (b) If the answer to (a) is yes, should the following options for practical measures be taken to reduce the potential risk of upstairs bars, in addition to compliance with existing statutory and administrative requirements regarding the premises or building in question?
 - (i) Set a limit on the number of liquor-licensed premises that may be housed in a multi-storey building, say not more than half of the floors or a certain percentage of the gross floor area to be occupied by liquor-licensed premises, and if yes, the appropriate limit.
 - (ii) Refuse to issue new liquor licences and new club liquor licences for premises in buildings which are concurrently used for residential purpose except for the lowest three storeys with separate access.
 - (iii) Refuse to issue new liquor licences and new club liquor licences altogether in certain high risk targeted buildings (e.g. those with a large number of residents in adjacent buildings or with a track record of higher incidence of crime or complaints in the past).
 - (iv) As the capacity limits for bars not at street level are set without considering the influence of alcohol on customers' behaviour, apply a discount factor to reduce the maximum capacity currently imposed under a liquor licence so as to build in an appropriate "safety margin"; if yes, should the "discount factor" be a percentage applied to all upstairs bars, or a range of "discount factors? What should be the appropriate percentage used?

- (c) Even if the measures in (b) are not pursued, should more stringent criteria be adopted when assessing the liquor licence applications, so as to avoid the concentration of bars in non-purpose-built entertainment buildings or complexes? Relevant considerations could include –
- (i) whether the building concerned is shared by others for non-entertainment purpose and if so, the potential impact of introducing an upstairs bar on such joint users (e.g. if the other premises in the same building are used for educational/tutorial purposes, should liquor-licensed premises be allowed?);
 - (ii) whether the building concerned is located among densely populated residential blocks, and if so, the potential impact of introducing an upstairs bar on the neighbourhood;
 - (iii) whether the building is purpose-built for restaurants, bars or entertainment;
 - (iv) the layout of the building concerned – where a joint-user building is concerned, the existence of separate access to cater for different user groups will have an edge over those with shared access;
 - (v) the number of liquor-licensed premises already in the building concerned – if, say, half of the floors were already taken up by liquor-licensed premises, it could be arguable whether it is socially desirable to allow more such premises to operate in the same building; and
 - (vi) the number of alcohol-related crimes and public nuisance reports in the building concerned or the precinct (e.g. within 50 or 100 metres' distance from the building concerned)?

(II) Advertising an Application (Chapter 3)

- (a) whether liquor licence applicants should be allowed to choose between advertising their application on newspapers or on a designated website maintained by LLB; and
- (b) other suggestions or alternative means of advertisement are also welcome.

(III) Duration of a Licence (Chapter 4)

- (a) whether the maximum duration of liquor licences should be extended to two years;
- (b) if the response to (a) is yes, whether an annual review mechanism should be introduced; and
- (c) views or suggestions on the operation (e.g. the threshold on the number of complaints received against a licensed premises) of the annual review mechanism are also welcome.

(IV) Natural Person and Reserve Licensee (Chapter 5)

- (a) whether the liquor licence should continue to be issued to a natural person; if not, how the integrity of the licensing regime could be maintained;
- (b) whether a reserve licensee mechanism should be introduced to protect the food business from the possible disruption caused to the business due to the sudden departure of the licensee-employee;
- (c) the number of reserve licensee applications allowed during the licence period;
- (d) whether not more than one reserve licensee should be allowed for the same liquor licence; and
- (e) whether each person should be permitted to be the reserve licensee for more than one premises. If yes, should the person be permitted to be reserve for at most three premises?

(V) Classification of Licence (Chapter 6)

- (a) the relevance and merits of a statutory licence classification system in the Hong Kong context; and
- (b) the practicability of such a classification system.

7.2 The questions in paragraph 7.1 above are by no means exhaustive. We welcome other views on the existing liquor licensing regime, including shortcomings and suggested improvement measures. We are prepared to consider these views as and when appropriate.

7.3 Please send us your views and comments by mail, facsimile or email on or before 14 September 2011:

Address: Food Branch
Food and Health Bureau
20/F, Murray Building
Garden Road
Central, Hong Kong

Fax Number: 2136 3281

Email Address: liquor@fhb.gov.hk

7.4 It is voluntary for any member of the public to supply his/her personal data upon providing views on the consultation document. Any personal data provided with a submission will only be used for the purpose of this consultation exercise.

7.5 The submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to this consultation exercise. The Government bureaux and departments receiving the data are bound by such purposes in their subsequent use of such data.

- 7.6 The names and views of individuals and organisations which put forth submissions in response to the consultation document (“senders”) may be published for public viewing after conclusion of the public consultation exercise. This Bureau may, either in discussion with others or in any subsequent report, whether privately or publicly, attribute comments submitted in response to the consultation document. We will respect the wish of senders to remain anonymous and/or keep the views confidential in relation to all or part of a submission; but if no such wish is indicated, it will be assumed that the sender can be named.
- 7.7 Any sender providing personal data to this Bureau in the submission will have the right of access and correction with respect to such personal data. Any requests for data access or correction of personal data should be made in writing to –

Assistant Secretary for Food and Health (Food) 5
Food Branch
Food and Health Bureau
20/F, Murray Building
Garden Road
Central, Hong Kong
(Fax Number: 2136 3281)
(Email Address: liquor@fhb.gov.hk)

Food and Health Bureau
July 2011

Appendix I

Tables

Table 1 Standard Licensing Conditions Imposed on Liquor Licences

Table 2 Standard Licensing Conditions Imposed on Club Liquor Licences

Table 3 Enforcement Statistics of the Police Against Breaches of Licensing Conditions and Other Nuisance Related Offences in Liquor-Licensed Premises for Year 2010

Table 4 Number of Referrals by the Police to Other Departments in Relation to Irregularities at Liquor-Licensed Premises for Year 2010

Table 5 Crime Statistics Related to Liquor-Licensed Premises

Table 1: 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 THE AGE OF 18". In the said notice, the size of each Chinese character shall not be less than 3 cm (height) x 3 cm (width) and the size of each English letter shall not be less than 2 cm (height) x 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.*

Note: Apart from the standard conditions listed above, the Liquor Licensing Board may impose additional licensing conditions as it thinks fit.

Table 2: Standard Licensing Conditions Imposed on Club Liquor Licences

1. *No disorder shall be permitted on the club premises.*
2. *No person shall be allowed to become drunk on the club premises, nor shall liquor be supplied to any person who is drunk.*
3. *The licensee shall personally supervise the club premises.*
4. *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) x 3 cm (width) and the size of each English letter shall not be less than 2 cm (height) x 2 cm (width).*
5. *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.*
6. *The licensee shall not permit any person to occupy or use any portion of the club premises for any immoral or illegal purpose.*
7. *The licensee shall not permit any common prostitutes or reputed thieves to assemble or remain on the club premises.*
8. *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.*
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.*

Note: Apart from the standard conditions listed above, the Liquor Licensing Board may impose additional licensing conditions as it thinks fit.

Table 3: Enforcement Statistics of the Police Against Breaches of Licensing Conditions and Other Nuisance Related Offences in Liquor-Licensed Premises for Year 2010

| | | | Forcewide | Total | Sub-total | Grand Total |
|---------------------------------------|---|---------------------------|-----------|------------|--------------------|-------------|
| Upstairs Bars | Suspected Breach / Breach of Licensing Conditions | Summons / Prosecutions | 65 | 277 | 342 (37.5%) | 911 |
| | | Warnings (Verbal+Written) | 163 | | | |
| | | Advisory Letters | 49 | | | |
| | Other Offences (Noise, Smoking, Obstruction, Fire Safety) | Summons / Prosecutions | 50 | 65 | | |
| | | Warnings (Verbal+Written) | 15 | | | |
| | | Advisory Letters | 0 | | | |
| Other Liquor-licensed Premises | Suspected Breach / Breach of Licensing Conditions | Summons / Prosecutions | 32 | 303 | 569 (62.5%) | 911 |
| | | Warnings (Verbal+Written) | 224 | | | |
| | | Advisory Letters | 47 | | | |
| | Other Offences (Noise, Smoking, Obstruction, Fire Safety) | Summons / Prosecutions | 33 | 266 | | |
| | | Warnings (Verbal+Written) | 231 | | | |
| | | Advisory Letters | 2 | | | |

Table 4: Number of Referrals by the Police to Other Departments in Relation to Irregularities at Liquor-Licensed Premises for Year 2010

| | Number of Other Offences (Noise, Smoking, Obstruction, Fire Safety) Referred to Other Departments (Environmental Protection Department, FSD, FEHD, Tobacco Control Office) |
|--------------------------------|---|
| Upstairs Bars | 97 (25%) |
| Other Liquor-licensed Premises | 297 (75%) |
| Total | 394 |

Table 5: Crime Statistics Related to Liquor-Licensed Premises

| Items | 2009 | 2010 |
|--|-------------|-------------|
| No. of upstairs bars | 472 | 433 |
| Total no. of liquor-licensed premises | 5 218 | 5 782 |
| No. of crime at Chinese/Western restaurants | 1 754 | 1 681 |
| No. of crime at upstairs bars | 254 | 284 |
| No. of crime at other bars | 703 | 628 |
| Total no. of crime at all liquor-licensed premises | 2 711 | 2 593 |
| No. of violent crime at liquor-licensed premises | 670 | 671 |

Appendix II

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|----------|------|---|----------------|--------------|
| Chapter: | 109B | DUTIABLE COMMODITIES (LIQUOR) REGULATIONS | Gazette Number | Version Date |
| | | Empowering section | | 30/06/1997 |

(Cap 109, section 6)

[24 April 1970]

(Originally L.N. 58 of 1970)

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|-------|---|-------------|--|------------|
| Part: | I | PRELIMINARY | | 30/06/1997 |
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|-------------|---|----------|--|------------|
| Regulation: | 1 | Citation | | 30/06/1997 |
|-------------|---|----------|--|------------|

These regulations may be cited as the Dutiable Commodities (Liquor) Regulations.

| | | | | |
|-------------|---|----------------|------------------|------------|
| Regulation: | 2 | Interpretation | L.N. 130 of 2007 | 01/07/2007 |
|-------------|---|----------------|------------------|------------|

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

- (1) In these regulations, unless the context otherwise requires-
- "bar" (酒吧) means any place exclusively or mainly used for the sale and consumption of intoxicating liquor;
- "Board" (酒牌局) means the Liquor Licensing Board established under regulation 2A; (78 of 1999 s. 7)
- "club liquor licence" (會社酒牌) means a club liquor licence issued under regulation 26;
- "licensed premises" (領有牌照處所) means the premises specified in a liquor licence on which the sale of intoxicating liquor is permitted pursuant to the licence;
- "licensee" (持牌人) means a person holding a liquor licence and also means-
- (a) a person authorized to manage any licensed premises under regulation 24; and
 - (b) in the case of a club liquor licence, a person nominated by the club under regulation 26(2);
- "liquor licence" (酒牌) includes a club liquor licence;
- "Municipal Services Appeals Board" (市政服務上訴委員會) means the Municipal Services Appeals Board established under section 3 of the Municipal Services Appeals Board Ordinance (Cap 220); (78 of 1999 s. 7)
- "prescribed fee" (訂明費用) means the fee prescribed by the Schedule to the Dutiable Commodities Regulations (Cap 109 sub. leg. A) or, the fee prescribed by the Secretary for Food and Health under section 6A of the Ordinance, as the case may require; (19 of 1973 s. 54; L.N. 140 of 1987; 48 of 1994 s. 4; 78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007)
- "secretary" (秘書), in relation to a club, includes any officer of the club or other person performing the duties of the secretary;
- "temporary liquor licence" (臨時酒牌) means a temporary liquor licence issued under regulation 25.
(78 of 1999 s. 7)
- (2) (Repealed 46 of 1996 s. 34)

| | | | | |
|-------|----|------------------------|------------------|------------|
| Part: | II | LIQUOR LICENSING BOARD | L.N. 130 of 2007 | 01/07/2007 |
|-------|----|------------------------|------------------|------------|

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|-------------|----|---|------------------|------------|
| Regulation: | 2A | Establishment and composition of Liquor Licensing Board | L.N. 130 of 2007 | 01/07/2007 |
|-------------|----|---|------------------|------------|

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

- (1) There is established a board to be known as the Liquor Licensing Board.
- (2) The Board is to consist of-
 - (a) a Chairman;
 - (b) a Vice Chairman; and
 - (c) 9 other members,

appointed by the Chief Executive.

(3) A public officer may not be appointed under paragraph (2).

(4) A person appointed under paragraph (2) is to hold and vacate office in accordance with that person's terms of appointment.

(5) The Secretary for Food and Health may appoint a secretary to the Board and other staff as the Secretary considers necessary. (L.N. 106 of 2002; L.N. 130 of 2007)

(6) The Secretary for Food and Health may appoint a legal adviser to advise on legal matters relating to an application and the legal adviser may be present at any hearing before the Board or deliberations of the Board to so advise the Board. (L.N. 106 of 2002; L.N. 130 of 2007)

(78 of 1999 s. 7)

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|-------------|----|-----------------------------|------------------|------------|
| Regulation: | 3 | (Repealed 78 of 1999 s. 7) | L.N. 320 of 1999 | 01/01/2000 |
| Regulation: | 4 | (Repealed 78 of 1999 s. 7) | L.N. 320 of 1999 | 01/01/2000 |
| Regulation: | 5 | (Repealed 19 of 1973 s. 54) | | 30/06/1997 |
| Regulation: | 6 | (Repealed 19 of 1973 s. 54) | | 30/06/1997 |
| Regulation: | 7 | (Repealed 19 of 1973 s. 54) | | 30/06/1997 |
| Regulation: | 8 | (Repealed 19 of 1973 s. 54) | | 30/06/1997 |
| Regulation: | 9 | (Repealed 19 of 1973 s. 54) | | 30/06/1997 |
| Regulation: | 10 | (Repealed 19 of 1973 s. 54) | | 30/06/1997 |
| Regulation: | 11 | (Repealed 19 of 1973 s. 54) | | 30/06/1997 |
| Regulation: | 12 | (Repealed 19 of 1973 s. 54) | | 30/06/1997 |
| Regulation: | 13 | Meetings of Board | L.N. 320 of 1999 | 01/01/2000 |

Procedure of Board

- (1) The Board shall meet as often as may be necessary for the transaction of licensing business. (78 of 1999 s. 7)
- (2) The Board may in its discretion determine any matter by circulation of papers to its members.
- (3) A resolution in writing so circulated and approved in writing by a majority of the members shall be valid and of the same effect as if it had been passed at a meeting of the Board, but, if the opinion of the members on any such matter is equally divided, the matter shall be referred to the next meeting of the Board.

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| Regulation: | 13A | Board may delegate powers and functions | L.N. 320 of 1999 | 01/01/2000 |
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The Board may delegate any power or function of the Board to a committee of the Board, a member of the Board or a public officer.

(78 of 1999 s. 7)

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| Regulation: | 13B | Quorum for meeting of Board | L.N. 320 of 1999 | 01/01/2000 |
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The quorum for a meeting of the Board is not less than half its members for the time being.

(78 of 1999 s. 7)

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| Regulation: | 13C | Chairman or Vice Chairman to preside | L.N. 320 of 1999 | 01/01/2000 |
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The Chairman or Vice Chairman appointed under regulation 2A(2) must preside at any meeting of the Board.

(78 of 1999 s. 7)

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| Regulation: | 14 | Mode of voting | L.N. 320 of 1999 | 01/01/2000 |
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- (1) All questions arising at any meeting of the Board shall be determined by a majority of votes of the members present.
- (2) In the case of an equality of votes the person presiding shall have a second or casting vote. (78 of 1999 s. 7)

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| Regulation: | 14A | Board may determine procedure for meetings and applications | L.N. 320 of 1999 | 01/01/2000 |
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The Board may determine the procedure for meetings of and applications to the Board including the manner of making, hearing and determining applications and the documents to be lodged or served in connection with applications.

(78 of 1999 s. 7)

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| Part: | III | LIQUOR LICENCES | L.N. 320 of 1999 | 01/01/2000 |
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| Regulation: | 15 | Applications for liquor licences | L.N. 320 of 1999 | 01/01/2000 |
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- (1) Any person seeking a liquor licence, or any renewal, transfer or amendment thereof, shall make application in writing to the Board in accordance with the form determined by the Board. (46 of 1996 s. 35; 78 of 1999 s. 7)
- (2) The applicant shall furnish to the Board-
- (a) the particulars specified in the application form, and such other particulars as the Board may require;
 - (b) such references to character as are required in the application form; and
 - (c) such particulars as the Board may require of any person other than the applicant who may have charge of the premises to be licensed.
- (3) In this regulation-
- "liquor licence" (酒牌) does not include a temporary liquor licence.

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| Regulation: | 16 | Advertisement of applications | L.N. 320 of 1999 | 01/01/2000 |
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The Board shall in every case, at least 2 weeks before it meets to consider an application, cause advertisement to be made at the expense of the applicant, in such manner as the Board may decide, setting forth the name and address of the applicant and the address and proposed name of the premises to which the application relates.

(78 of 1999 s. 7)

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| Regulation: | 17 | Decisions of Board and appeals to Municipal Services Appeals Board | L.N. 320 of 1999 | 01/01/2000 |
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(1) Upon application the Board may grant a liquor licence without conditions or subject to such conditions as it thinks fit, or refuse the application.

(2) The Board 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;

(c) that in all the circumstances the grant of the licence is not contrary to the public interest.

(3) The Board must give reasons in writing-

(a) for any decision on an application in respect of which there is an objection; or

(b) for any decision to refuse an application.

(4) The secretary to the Board appointed under regulation 2A(5) must give notice in writing of the Board's decision, together with reasons, to the applicant and any other person who or body which has expressed an interest in the application.

(5) The applicant or 20 or more persons residing within a radius of 400 metres from the premises to which the application relates may, within 28 days after the date of the notice under paragraph (4), appeal to the Municipal Services Appeals Board against the decision.

(78 of 1999 s. 7)

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| Regulation: | 18 | Only one licence to be granted per person | | 30/06/1997 |
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No person may be granted more than one liquor licence which is not a club liquor licence.

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| Regulation: | 19 | Restriction against further applications | L.N. 320 of 1999 | 01/01/2000 |
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(1) Where an application is refused under regulation 17(1) or a liquor licence is revoked under regulation 23(1), the Board shall refuse to consider any further or other application for a liquor licence in respect of the premises concerned within a period of 12 months after the date of refusal or revocation-

(a) by the former applicant or by the person whose licence was revoked; or

(b) by any other person, unless such person satisfies the Board, by furnishing to the Board such particulars as it may reasonably require, that he is not acting on behalf of the former applicant or the person whose licence was revoked, as the case may be.

(2) Where the Board refuses to consider an application by a person referred to in paragraph (1)(b), the secretary to the Board must give notice in writing of the refusal, together with reasons, to the person and the person may appeal to the Municipal Services Appeals Board against the refusal within 28 days after receiving the notice. (58 of 1990 s. 22; 78 of 1999 s. 7)

(L.N. 223 of 1980)

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| Regulation: | 20 | Issue and duration of licences | L.N. 320 of 1999 | 01/01/2000 |
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(1) As soon as practicable after the granting of an application for a liquor licence or any renewal thereof, the Board shall, upon payment to the Director of Accounting Services of the prescribed fee or such proportion thereof as is provided by paragraphs (4) and (5), issue to the applicant a liquor licence. (L.N. 16 of 1977; 39 of 1985 s. 60)

(2) (Repealed 39 of 1985 s. 60)

(3) A liquor licence shall be valid for a period of 1 year or such lesser period as the Board shall determine, commencing from the date on which it is granted or such other subsequent date as the Board may determine. (L.N. 149 of 1975; L.N. 320 of 1983; 78 of 1999 s. 7)

(4) Where any liquor licence is granted for any period other than 1 year, the fee payable for such licence shall be such proportion of the prescribed fee as the period for which such licence will be valid bears to a period of 12 months.

(5) For the purpose of calculating the fee payable under paragraph (4), any fraction of \$1 shall count as \$1.

Note:

The fees payable under this regulation are subject to certain concessions within the following periods-

(a) 1 June 2003 to 31 May 2004 (please see the [Dutiable Commodities \(Waiver of Liquor Licence Fees\) Regulation 2003 \(L.N. 140 of 2003\)](#)); and

(b) 1 July 2009 to 30 June 2010 (please see the [Dutiable Commodities \(Liquor Licence Fee Concessions\) Regulation 2009 \(L.N. 140 of 2009\)](#)).

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| Regulation: | 21 | Liquor licence subject to conditions, etc. | | 30/06/1997 |
|-------------|----|--|--|------------|

A liquor licence shall be subject to any conditions imposed under regulation 17.

(46 of 1996 s. 37)

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|-------------|----|----------------------|--|------------|
| Regulation: | 22 | Transfer of licences | | 30/06/1997 |
|-------------|----|----------------------|--|------------|

Upon application in writing as required by the Board, the Board may exercise the same powers in relation to the transfer of liquor licences as are conferred by section 7 of the Ordinance, and, upon payment of the prescribed fee, particulars of such transfer shall be endorsed by the Director of Accounting Services on the licence.

(L.N. 16 of 1977; 46 of 1996 s. 38)

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|-------------|----|---------------------------------------|------------------|------------|
| Regulation: | 23 | Revocation and suspension of licences | L.N. 320 of 1999 | 01/01/2000 |
|-------------|----|---------------------------------------|------------------|------------|

(1) The Board may revoke or suspend for any period it thinks fit or refuse to renew any liquor licence on proof to its satisfaction of an offence against the Ordinance, whether any person has been convicted of such offence or not. (L.N. 35 of 1979; 78 of 1999 s. 7)

(1A) Without limiting paragraph (1), the Board may revoke, suspend or refuse to renew a liquor licence, if in its opinion-

- (a) the person holding the licence has failed to comply with any condition of the licence;
- (b) the person holding the licence has ceased to be a fit and proper person to hold the licence;
- (c) the premises specified in the licence have ceased to be suitable for selling or supplying intoxicating liquor, for reasons connected with-
 - (i) the location and structure of the premises;
 - (ii) the fire safety and hygienic conditions in the premises; or
- (d) public interest so requires. (78 of 1999 s. 7)

(2) The secretary to the Board must give notice in writing, together with reasons, of a decision under this regulation to the person concerned. (78 of 1999 s. 7)

(3) A person may appeal to the Municipal Services Appeals Board against any decision of the Board under this regulation within 28 days after receiving notice of the decision. (78 of 1999 s. 7)

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| Regulation: | 24 | Illness or absence of licensee | L.N. 320 of 1999 | 01/01/2000 |
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In the case of illness or temporary absence of the holder of a liquor licence, the secretary to the Board may in his discretion, on payment of the appropriate fee prescribed under section 6A of the Ordinance, authorize any person to manage the licensed premises for a period not exceeding 3 months, and during that period such person shall be deemed to be the licensee of the premises.

(78 of 1999 s. 7)

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|-------------|----|-----------------------------|------------------|------------|
| Regulation: | 25 | Issue of temporary licences | L.N. 320 of 1999 | 01/01/2000 |
|-------------|----|-----------------------------|------------------|------------|

(1) The Commissioner of Police may, on payment of the prescribed fee and subject to such conditions as he thinks fit, issue to the holder of a liquor licence a temporary liquor licence for the retail sale of liquors at any public entertainment or on any public occasion.

(2) (Repealed 78 of 1999 s. 7)

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| Regulation: | 25A | Premises to be licensed for the sale of liquor | | 30/06/1997 |
|-------------|-----|--|--|------------|

The sale of liquor is prohibited except on the authority of a liquor licence or a temporary liquor licence-

(a) at any premises for consumption on those premises; or

(b) at a place of public entertainment or a public occasion for consumption at the place or occasion.

(L.N. 453 of 1996)

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| Regulation: | 26 | Clubs to be licensed for supply of liquor to members | L.N. 320 of 1999 | 01/01/2000 |
|-------------|----|--|------------------|------------|

(1) No liquor shall be supplied at any premises used by any club for the purposes of the club to any member of the club except under and in accordance with a club liquor licence.

(2) Upon application by the secretary of a club in accordance with the form determined by the Board, the Board may, on payment of the prescribed fee and subject to such conditions as it thinks fit, issue a club liquor licence to the secretary or other person nominated by the club for the purpose. (78 of 1999 s. 7)

(3) (Repealed 78 of 1999 s. 7)

(46 of 1996 s. 40)

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|-------------|-----|--------------------------------|------------------|------------|
| Regulation: | 26A | Licensee to exhibit name, etc. | L.N. 320 of 1999 | 01/01/2000 |
|-------------|-----|--------------------------------|------------------|------------|

(1) A person holding a liquor licence must display his full name and the nature and number of his licence in legible and permanent marking in letters and characters at least 75 mm high in a conspicuous place on his licensed premises. (78 of 1999 s. 7)

(2) A person who is not the holder of a liquor licence must not display a sign that is reasonably calculated to suggest that he is the holder of a liquor licence and that the premises are licensed for the sale or supply of intoxicating liquors for consumption on the premises or that liquor is sold or supplied for consumption on the premises.

(L.N. 453 of 1996)

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|-------------|-----|---------------------------------------|------------------|------------|
| Regulation: | 26B | Board may determine forms of licences | L.N. 320 of 1999 | 01/01/2000 |
|-------------|-----|---------------------------------------|------------------|------------|

The Board may determine the form of any licence granted by it under these regulations.

(78 of 1999 s. 7)

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| Regulation: | 27 | (Repealed L.N. 124 of 1988) | | 30/06/1997 |
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| Part: | IV | OFFENCES AND SUPPLEMENTAL | | 30/06/1997 |
|-------|----|---------------------------|--|------------|

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| Regulation: | 28 | Offence to permit persons under 18 years to drink on licensed premises | | 30/06/1997 |
|-------------|----|--|--|------------|

No licensee shall permit any person under the age of 18 years to drink any intoxicating liquor on any licensed premises.

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| Regulation: | 29 | Restrictions on employment of young persons on licensed premises | L.N. 320 of 1999 | 01/01/2000 |
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(1) No licensee shall employ, or permit the employment of, on or about the licensed premises, or in connection with the business carried on therein-

- (a) at any time any person under the age of 15 years; or (L.N. 223 of 1980)
- (b) between the hours of 10 p.m. and 6 a.m. any person under the age of 18 years; or (L.N. 74 of 1982)
- (c) between the hours of 6 a.m. and 10 p.m. any person under the age of 18 years except with the written permission of the Board. (L.N. 74 of 1982; L.N. 329 of 1996; L.N. 467 of 1996)

(1AA) If the Board refuses permission for the purposes of paragraph (1)(c), the Board must give reasons in writing for the refusal. (78 of 1999 s. 7)

(1A) Any licensee aggrieved by the Board's refusal to grant permission for the purposes of paragraph (1)(c) may appeal to the Municipal Services Appeals Board within 28 days after receiving notice of the refusal. (L.N. 74 of 1982; 58 of 1990 s. 22; 78 of 1999 s. 7)

(2) For the purposes of paragraph (1) a person shall be deemed to be employed, or permitted to be employed, by the licensee for whom he works on or about the licensed premises notwithstanding that-

- (a) he receives no wages, commission or other advantage from the licensee; or
- (b) any services offered by the employee are to be performed elsewhere than on the licensed premises.

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| Regulation: | 30 | Penalties | | 30/06/1997 |
|-------------|----|-----------|--|------------|

(1) Any person who contravenes regulation 28 or 29 shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(2) If any liquor is supplied to a member of a club in contravention of regulation 26, the secretary of the club or other person nominated under that regulation, as the case may be, shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(3) Any person who contravenes regulation 27 shall be guilty of an offence and shall be liable on conviction to a fine at level 4.

(4) A person who contravenes regulation 26A is guilty of an offence and liable on conviction to a fine of \$1000000 and to imprisonment for 2 years. (L.N. 453 of 1996)

(L.N. 338 of 1995)

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| Regulation: | 31 | Police powers of access | | 30/06/1997 |
|-------------|----|-------------------------|--|------------|

Any police officer may enter at any hour of the day or night every part of any premises or place in respect of which a liquor licence is in force.

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| Regulation: | 32 | Power to apprehend persons drinking in unlicensed place | | 30/06/1997 |
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(1) If a police officer finds any person drinking intoxicating liquor in any premises or place in which such liquor is sold by retail, and a liquor licence or a temporary liquor licence in respect of such premises or place is not, on demand, produced to him, the police officer may arrest any person found drinking therein.

(2) Every such person shall, if such place is in fact unlicensed, be guilty of an offence and shall be liable on summary conviction to a fine at level 1. (L.N. 338 of 1995)

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| Regulation: | 33 | Transitional | L.N. 320 of 1999 | 01/01/2000 |
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(1) Any application under these regulations made to a former board pending immediately before the commencement date is to be treated as a new application made to the Board under these regulations as amended by the amendments and is to be disposed of by the Board accordingly.

(2) Any reference in these regulations to the prescribed fee includes a reference to a fee continued in force under section 9(2) of the Provision of Municipal Services (Reorganization) Ordinance (Cap 552) as if prescribed under section 6A of the Ordinance, until that fee is replaced under that section 6A.

(3) In this regulation-

"the amendments" (有關修訂) means amendments made by the Provision of Municipal Services (Reorganization) Ordinance (Cap 552) to these regulations;

"commencement date" (生效日期) means the date on which the amendments come into operation;

"former board" (前酒牌局) means a body which immediately before the commencement date had authority to determine an application made under regulation 15.

(78 of 1999 s. 7)

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| Schedule: | | SCHEDULE (Repealed 46 of 1996 s. 41) | | 30/06/1997 |
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