

**Business Facilitation Advisory Committee
Food Business Task Force**

***Progress Report on the Study on the Business-friendliness
of the Regulatory Regime for
Outside Seating Accommodation (OSA) of Restaurants***

This paper reports the progress of the Study on the Business-friendliness of the Regulatory Regime for OSA of Restaurants (*the Study*) and the Study Team's initial findings, which are subject to further examination and discussion with relevant departments as the project proceeds.

Major Tasks Completed

2. The Study Team has completed the first round of interviews with eight departments [i.e. Food and Environmental Hygiene Department (FEHD), Buildings Department (BD), Fire Services Department (FSD), Planning Department (PlanD), Lands Department (LandsD), Transport Department (TD), Home Affairs Department (HAD) and Environmental Protection Department (EPD)] which are usually involved in processing OSA applications, and established an overview of the current regulatory system for OSA.

3. We have also conducted an opinion survey to collect the views of the trade by issuing questionnaires to 11 selected food premise associations and 14 restaurants in consultation with FEHD and Business Facilitation Division (BFD). The associations were requested to distribute the questionnaires to their members so that interested parties can complete and return the questionnaires directly to the Study Team. The respondents' views are presented in the later part of this paper.

4. The questionnaire recipients were invited to share their opinions with the Study Team in details by joining focus group session(s). Up to 6 June 2006, a total of 11 completed questionnaires have been received, and eight respondents have indicated interest to participate in the focus group scheduled in mid June 2006.

Current Regulatory and Licensing Regime for OSA

Restaurant Licence with OSA

5. In accordance with the Food Business Regulation under the Public Health and Municipal Services Ordinance (Cap. 132), the Director of Food and Environmental Hygiene (DFEH) is the licensing authority of food premises in the territory. When a restaurant licensee/licence applicant wishes to use the open area outside his restaurant for alfresco dining, he is required to obtain permission from DFEH.

6. Before an OSA application can be approved, it must fulfill the following requirements:

- (a) Land Use Right - The applicant has to secure the legal right to use the land (*including government land and private land*).
- (b) Planning Permission - The OSA should normally be located in an area where the use of “eating place” is permitted in the Outline Zoning Plan. Otherwise, the applicant has to seek planning permission from Town Planning Board (TPB).
- (c) Other Regulatory Requirements - The application must also comply with the regulatory requirements of FEHD and other departments concerned, including BD, FSD, TD and EPD.
- (d) Public Opinions - Public opinions collected by HAD will also be considered by DFEH.

Right of Land Use

7. If the OSA is located on government land, the permission of the Director of Lands is required under the Land (Miscellaneous Provision) Ordinance (Cap. 28) for its use by the applicant. If approved, a Land Licence (LL) or Short Term Tenancy (STT) may be issued, depending on whether the applicant intends to use the area exclusively for a specified short period of time (i.e. STT), or non-exclusively on a make-shift basis (i.e. LL). A nominal standard fee (*\$1 to \$10 per square metre per annum depending on the districts*) will be charged for LL while the market rate will be charged for STT.

8. If the area is on private land, the applicant has to prove the identity of the landowner and that the owner has agreed in writing to the setting up of OSA there. If the terms of land lease of the private land have not provided for operating OSA, a Short Term Waiver (STW) should be obtained from the Director of Lands. For issue of a STW, a fee approximately equal to half of the market value of the area concerned will be charged as the OSA operator may generate extra income from the change in land use.

9. Over the past three years, about 85% of OSA applications were on government land. Owing to the significant difference in the rental charges between LL and STT, most OSA applicants claim to operate on a make-shift basis in order to get LL.

Planning Permission

10. Planning Department is responsible to confirm whether the OSA is located in an area where the use of “eating place” is permitted in the Outline Zoning Plan. In general, “eating place” is always permitted in Commercial zone and the lowest three floors of a building in Residential (A) zone, while for other zones (such as Residential (B), Residential (C), Village Type Development, Open Space and Recreation zones), planning permission from the TPB may be required. The application for planning permission under Section 16 of the Town Planning Ordinance (Cap. 131) has to be considered by the TPB separately from the OSA application. The statutory processing time for planning permission is two months upon receipt of the application by TPB. However, very few applications in relation to OSA have been processed (*Since 2003, only 13 cases were processed of which 12 were approved*).

11. For OSA operates on a make-shift nature in urban and new town areas and the duration of use is expected to be less than five years, it could be regarded as a temporary use in land use planning. In such cases, no planning permission from the TPB would be required.

Other Regulatory Requirements

12. Apart from the clearance of land and planning issues, OSA applications are also subject to the applicant's compliance with the key criteria and licensing requirements/conditions as stipulated by various departments for setting up and operating OSA, including:

- (a) Building safety requirements (BD);
- (b) Fire safety requirements (FSD);
- (c) Traffic safety requirements (TD);
- (d) Hygiene requirements (FEHD); and
- (e) Environmental requirements (EPD).

Such criteria and licensing requirements/conditions are provided in “A Guide to Application for Outside Seating Accommodation” (OSA Guide), which are extracted and shown at **Appendix 1**.

Public Opinion

13. FEHD also refers OSA applications to HAD for conducting public consultation. The targeted groups of consultation usually include the District Councils, Area Committees, and community organizations of the district where the OSA is located. HAD generally will not provide its own views on the application but only coordinate the public consultation and pass the opinions collected to FEHD. In case there are any unsettled public objections to the OSA, DFEH has to make his final decision to approve or reject the OSA application after careful examination of the case.

Post-licensing Monitoring

14. After permission is granted for the setting up of OSA for licensed restaurants, FEHD would conduct routine restaurant inspections (*covering the OSA*) according to normal practices, and handle complaints on breach of conditions in relation to the OSA where necessary. Other departments would also react on complaints to investigate whether any licensing conditions for the OSA have been breached, and to request rectification measures. The OSA approval can be revoked by FEHD when its existence is incompatible with its surrounding area or environment, but there is no such precedent case so far.

Workflow and Lead Time for Processing OSA Applications

15. At present, the applicants can either apply for inclusion of OSA into an existing restaurant licence, or embed the OSA application with the application for a new restaurant licence. In the past two years, the overwhelming majority of applicants (*over 90%*) made the former type of application because they intend to get the provisional licence (*without OSA*)

first which involves less complicated issues, e.g. right of land use and public consultation, so that they can start business quickly. They would apply for the inclusion of OSA into the restaurant licence afterwards.

16. The workflow of processing applications for inclusion of OSA into an existing restaurant licence involves the following major steps:

- (a) Receipt of application by FEHD;
- (b) FEHD consults relevant departments and consolidates their comments;
- (c) FEHD sends the Letter of Requirements (LR) to the applicant for him to take necessary measures in compliance with the requirements specified by various departments;
- (d) Applicant confirms compliance;
- (e) Departments to conduct verification inspection as required; and
- (f) FEHD approves the application.

Assuming the case is straight forward (*without the need to seek clarification and further information from the applicant*) and the applicant acts promptly in complying with government's requirements, the lead time for processing the application is 73 working days according to FEHD. A high level flowchart for the above processes is shown in **Appendix 2**.

The Number and Breakdown of Applications

17. The number of OSA applications received and processed since 2002 are shown in the table below:

No. of Applications	2002	2003	2004	2005
Received	194	71	63	50
Approved	29	50	42	18
Rejected	N/A	N/A	12	6
Withdrawn	N/A	N/A	9	11
Abandoned	N/A	N/A	15	10

Note: The number of approved/ rejected/ withdrawn/abandoned cases may be cases carried forward from previous years.

18. The above table shows that there is a decreasing trend in the number of OSA applications since 2002, and the number of applications has fallen to 50 in 2005. The approval rate of OSA applications has been low over the years (*less than 40%*). There were a total of 18 rejected cases in 2004 and 2005. According to FEHD, the reasons of rejection were mainly due to –

- (a) Proposed OSA was not annexed to the restaurant (*2 cases in 2004 and 5 cases in 2005*);
- (b) Walkway was less than 5 meters wide and lacked a 2 meters clear width for circulation (*6 cases in 2004*);
- (c) Local objection (*4 cases in 2004*); and
- (d) Proposed OSA area was not in open space and it also required to use Leisure and Cultural Services Department's area (*1 case in 2005*).

Trade's Concerns and Opinions

19. According to the questionnaires returned so far for our opinion survey, the trade has the following major concerns and opinions related to the regulatory regime for OSA:

- (a) Long processing time – Some respondents indicated that the processing time for their OSA applications was unreasonably long. One case was reported to take two to three years for approval. Most respondents consider that the acceptable length of processing time for OSA application is about two months.
- (b) Inflexibility of assessments – Officers are rigid in interpreting the guidelines without taking into account special circumstances of each case. The guidelines may not be applicable to all types of restaurants in all districts.
- (c) Lack of communication with applicants - It is difficult for the applicant to check the status of their applications, and the departments seldom inform them of the progress proactively.
- (d) Lack of co-ordination among government departments - Some departments separately contact applicants on various issues which may confuse the applicants and violate the intention of providing an one-stop service.
- (e) Low licence fee for LL - The current nominal standard fee for LL should be adjusted to market value since business activities taking place on OSA areas should not be subsidized by the government.

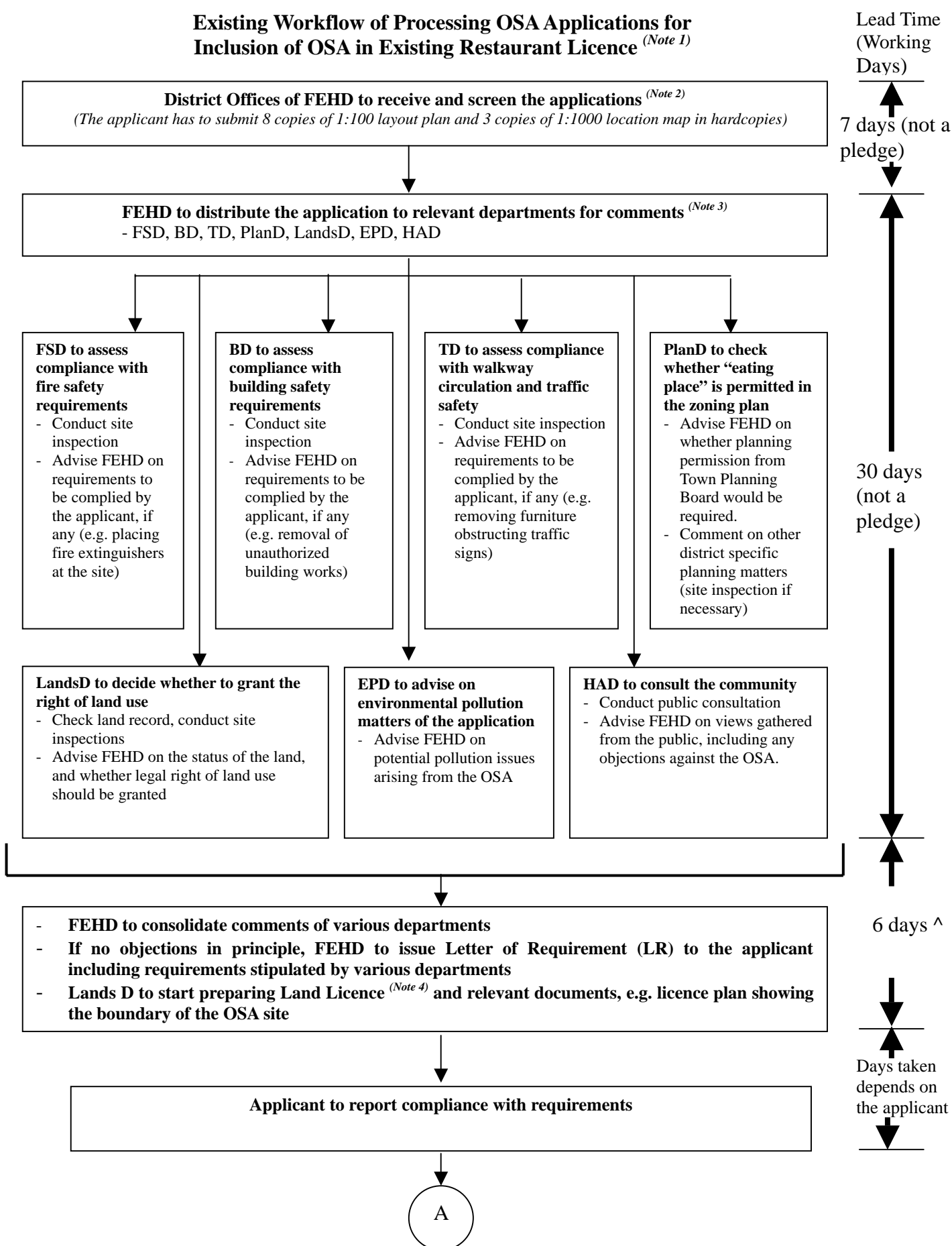
- (f) Insufficient post-licensing enforcement – Departments should strengthen enforcement and control to tackle breach of licensing conditions.
 - (g) Mixed views on public consultation – Over half of the respondents agree that public consultation should be conducted.
20. Clarification of the views in the returned questionnaires will be made and more opinions of the trade will be collected and consolidated after the focus group discussion is over in mid-June.

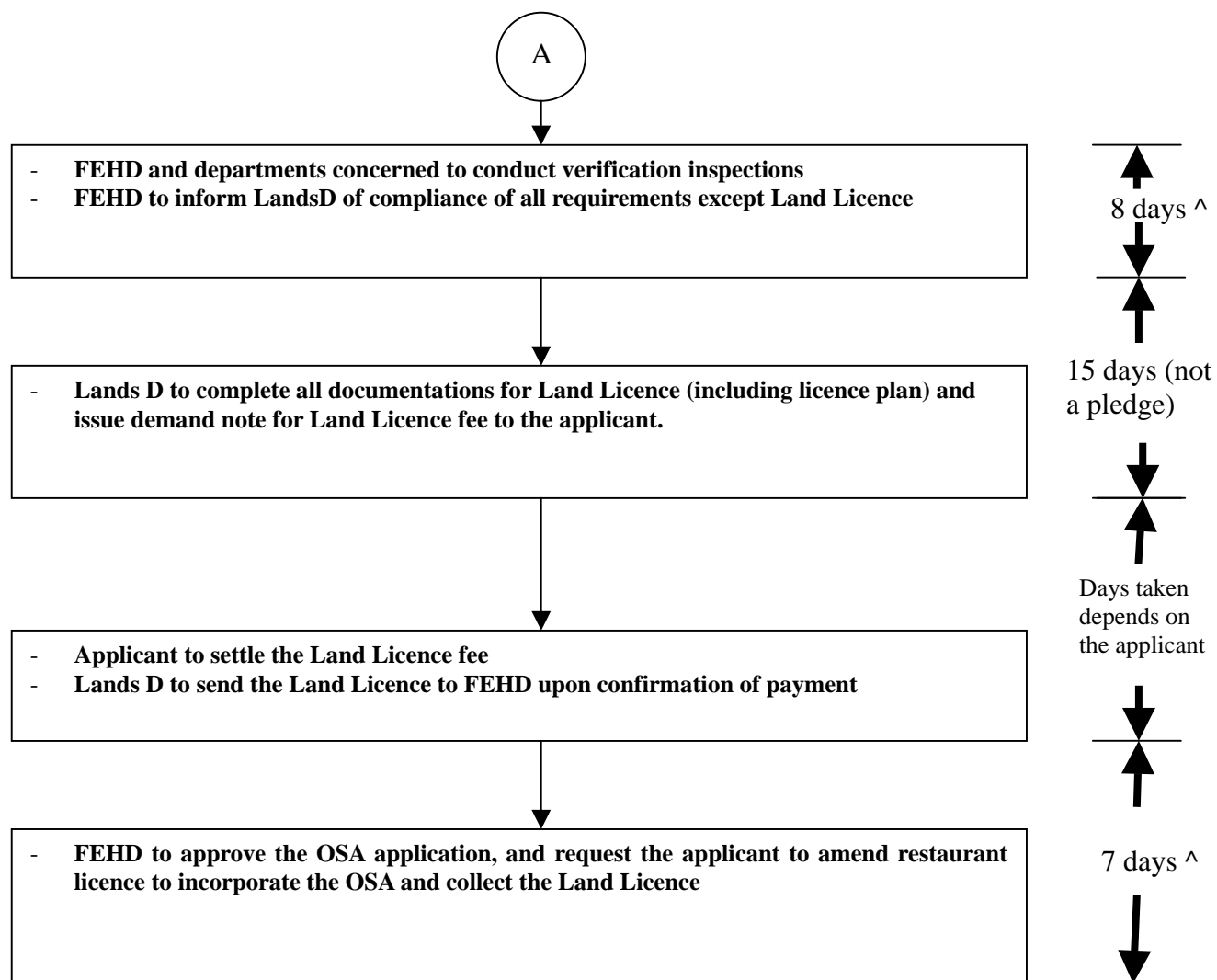
Way Forward

21. The study is proceeding according to the schedule in the study proposal. In the coming two months, the Study Team will continue to explore concerned issues and potential improvement areas; develop possible solutions; and prepare an action programme for taking the recommendations forward.
22. The next deliverable will be the final report which will be submitted to BFD after completion of the study in August.

Efficiency Unit
June 2006

Existing Workflow of Processing OSA Applications for Inclusion of OSA in Existing Restaurant Licence ^(Note 1)





^ These are performance pledges and the targets are 95% of the cases to be dealt within the standard time specified.

Notes

1. This workflow together with the lead time is based on the assumption that the case is straight forward and the applicant responds promptly to comply with the requirements raised by departments.
2. To check whether the plans are in order and properly prepared, and assess the additional food preparation and scullery area required after inclusion of OSA (normally it should be at least 10% of the OSA area)
3. While FEHD consults other departments, it will also conduct site visit to assess food hygiene implications of the OSA application, e.g. the route of passing food from roofed-over premises to the outside seating area.
4. The issue of Land Licence (LL) is assumed in this flowchart as the majority of OSA application involves the issue of LL, the processes for the issue of Short Term Tenancy/Short Term Waiver are more complicated and take a longer processing time.

Key Criteria to Assess the Suitability of Premises to be Used for OSA

Premises

- (a) All OSA shall normally be annexed to restaurant premises without passing through intervening public thoroughfare and is situated on Government land or within private property, which is suitable for alfresco dining.

Building Safety Requirements

- (b) The proposed OSA should not obstruct the emergency exits of the adjoining buildings.
- (c) The OSA should be suitable for restaurant use with regard to the aspects on structural stability, means of escape, fire resisting construction and clear of unauthorised building works affecting public safety.

Fire Safety Requirements

- (d) OSA should not be situated within 6m from any dangerous goods store or installation, or within 1.5m from any fire hydrant, ground valve or notice plate.
- (e) OSA should not cause obstruction to any emergency vehicular access and operation of fire services aerial appliances or equipment.
- (f) OSA should not cause obstruction to any building fire services installation or notice plate.
- (g) Except with approval, no heating activities involving the use of naked flame (*like hot-pot or barbecue*) is generally allowed within OSA.
- (h) OSA should be provided with adequate and appropriate type of portable fire fighting equipment.

Transport Requirements

- (i) Walkway on which OSA is proposed should be at least 5m wide and a clear width of 2m or more should be available for pedestrian circulation at all times.
- (j) OSA should be away from any pedestrian crossing or problem spot and located in area where the traffic speed is low.
- (k) Furniture of OSA should not obstruct sightline and traffic aids.
- (l) OSA should be so controlled that road works and traffic diversions as well as traffic management scheme for special occasions will not be affected.
- (m) No damage to pavement and street furniture in the OSA area should be allowed.

Environmental Protection Requirement

- (n) The operation of OSA should not create any environmental nuisance (*such as water pollution, air quality nuisance and noise nuisance*).

Main Licensing Requirements for Restaurants providing OSA

1. No shelters other than movable sunshades and the like should be allowed in the OSA. Prior approval and consent should be obtained from the Building Authority under the Buildings Ordinance (Cap. 123) for the construction of awnings or other supporting structures.
2. Additional food preparation space and scullery area equivalent to 1/10 of the OSA should be provided inside the licensed restaurant premises.
3. Adequate sanitary and ablution facilities should be provided within the roofed-over area of the premises for use by the customers.
4. Building safety requirements imposed by the Buildings Department should be complied with in accordance with the 3-tier system for verification of compliance with building safety requirements.

Main Licensing Conditions for Restaurants providing OSA

1. Tables and chairs should only be set out within the approved area.
2. The boundary of the OSA should be properly delineated and clearly shown on site when business is in operation.
3. Sunshades, umbrellas and the like should be kept in good repair and in a clean condition.
4. Adequate measures should be taken to protect food from risk of contamination during conveyance to the OSA.
5. No preparation (including self-service hot-pot or barbecue), display or storage of open food, or cleaning or storage of any equipment or utensils used in the preparation or service of food is allowed in the OSA.
6. The licensee should keep the OSA clean and tidy at all times.
7. The licensee should comply with the provisions of the laws of Hong Kong and requirements and conditions imposed by other Government departments.
8. Approval for OSA may be revoked at any time when its existence is incompatible with its surrounding area or environment.
9. The business hours in the OSA should generally be confined to the period from 11 a.m. to 11 p.m. Modification to this condition will be considered on individual merits.

Advisory Note to All Applicants/Licensees

- The OSA must carry public liability insurance.