

**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***

Purpose

This paper reports the findings and recommendations by the Efficiency Unit (EU) of the Chief Secretary for Administration's Office in the "Study on the Business-friendliness of the Regulatory Regime for Outside Seating Accommodation (OSA) of Restaurants" (the Study).

Study Objectives

2. The Efficiency Unit (EU) was commissioned by the Business Facilitation Division (BFD) of the Financial Secretary's Office to conduct the Study. The objectives of the Study are:

- ◆ To study the regulatory regime for OSAs with a view to eliminating excessive regulation and to cut red tape;
- ◆ To develop a business-friendly environment for setting up and operating OSAs for licensed restaurants;
- ◆ To streamline the application process for OSAs; and
- ◆ To develop cost-effective licensing services in processing OSA applications.

Background

3. 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 HKSAR Government. When a restaurant licensee or licence applicant wishes to use the open area outside his restaurant for alfresco dining, he is required to obtain permission from DFEH.

4. Upon receiving an OSA application, FEHD usually refers the case to seven collaborating departments, i.e. Fire Services Department (FSD), Buildings Department (BD), Planning Department (PlanD), Lands Department (LandsD), Home Affairs Department (HAD), Environmental Protection Department (EPD) and Transport Department (TD), for comments. FEHD together with these 7 departments will assess the applications and ensure that the following key criteria and licensing requirements are met before giving approval:

- ◆ Permission from land use planning perspective (PlanD / Town Planning Board);
- ◆ Land status and right of land use for OSAs (LandsD);
- ◆ Building safety requirements (BD);
- ◆ Fire safety requirements (FSD);
- ◆ Traffic safety requirements (TD);
- ◆ Hygiene requirements (FEHD);
- ◆ Environmental requirements (EPD); and
- ◆ Public consultation (HAD)

5. During the past four years, there has been a decreasing trend in the number of OSA applications:

No. of Applications	2002	2003	2004	2005	2006 *	Total
Received	194	72	62	50	25	403
Approved	29	50	42	19	4	144
Rejected	N/A	N/A	12	6	2	20
Withdrawn	N/A	N/A	8	11	1	20
Abandoned	N/A	N/A	15	11	2	28

Note: The number of approved/ rejected/ withdrawn/ abandoned cases may be cases carried forward from previous years.

** For 2006, the figures provided are up to 30.6.06.*

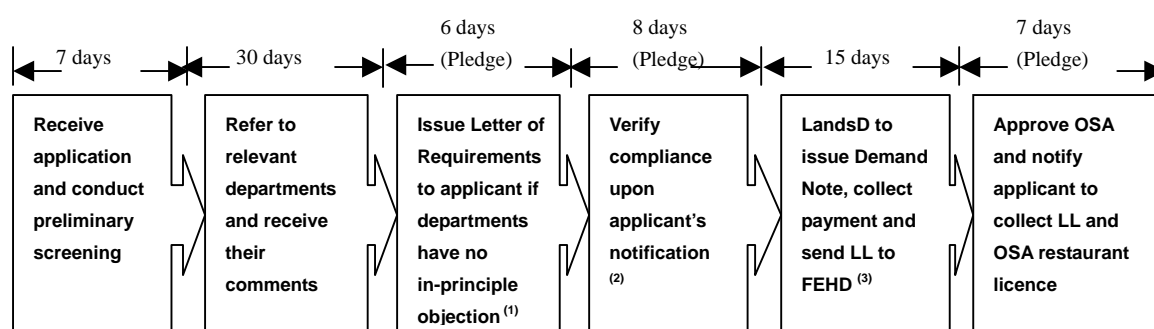
6. Of the 403 applications received since 2002, 144 cases were approved. As at 30 June 2006, the number of OSA applications under processing was 71.

Existing Process and Lead Time

Standard Time

7. Assuming an OSA application is straight forward and the applicant acts promptly in complying with all the government's requirements and makes payment immediately for the issue of Land Licence (LL), the existing standard lead time for processing a simple normal case is estimated at 73 working days as shown in the following chart:

Existing Standard Time (73 days)



- Notes: (1) Upon issue of Letter of Requirements (LR), LandsD starts to prepare the LL.
(2) The time taken by applicant to comply with the requirements has not been included.
(3) The time taken by applicant to settle payment for the Demand Note (DN) of the LL has not been included.

Actual Time

8. According to FEHD, the actual average time for processing the selected OSA applications is 228 working days. Based on our case review, it is 282 working days while the shortest and longest time for approving an OSA application are 114 and 473 working days respectively. The time taken by applicants for compliance with the requirements is included. Nevertheless, the actual processing time is much longer than the standard time for a normal case.

Opinions and Concerns of the Trade

9. Apart from the documentary fact findings, interviews with the staff of departments concerned and our review of case files, the Study Team has conducted an opinion survey to collect the views of the trade by issuing questionnaires to 11 food business associations and 14 restaurants. We have also invited the questionnaire respondents to attend a focus group meeting to share their views with us.

10. The major comments of the trade based on the opinion survey and focus group are summarized below:

- (a) Long processing time – The processing time for their OSA applications was unreasonably long. Many respondents considered that the acceptable length of processing time was about two months.
- (b) Inflexibility of assessments – Subject officers were rigid in interpreting the guidelines without taking into account the special circumstances of each case.
- (c) Lack of communication with applicants – It was difficult for applicants to check the status of their applications, and the government departments seldom informed them of the progress proactively.
- (d) Lack of co-ordination among government departments – Some departments separately contacted applicants on various issues which could confuse applicants and violated the intention of providing an one-stop service. The co-ordination role of FEHD should be strengthened.
- (e) Rigid OSA requirements/conditions – Some of the OSA licensing requirements (e.g. restricted operation hours) were considered by the applicants as inflexible and unreasonable.
- (f) Public consultation – Over half of the respondents considered that public consultation should be conducted as public interest was involved. However, the application process should not be delayed by groundless objections.

11. The above views of the trade have been given due consideration by the Study Team in exploring the improvement opportunities and recommendations.

Issues and Recommendations

12. The major issues in the OSA regulatory regime are identified below for further improvements:

- ◆ Lengthy processing time for OSA applications
- ◆ Lack of standard guidelines and timeframe to conduct public consultation and settle objections
- ◆ Rigidity of some OSA licensing criteria, requirements and conditions
- ◆ Inadequate customer relationship management and coordination

13. The Study Team has developed the following recommendations to tackle the issues and the trade's concerns in order to bring benefits to the business, public and the government:

Quick-win Measures (to be implemented within 6 months)

- (a) To enhance the OSA Guide by including relevant information (*e.g. application form with guidance notes*) to help applicants better understand the licensing requirements and prepare their applications, and review the Guide subsequently on a regular basis.
- (b) To make more use of e-mails and e-documents for inter-departmental communication.
- (c) To establish additional performance pledges for providing end-to-end standard time in processing an OSA application.
- (d) To enhance the coordination role of FEHD for provision of one-stop shop service.
- (e) To relax the requirement of the walkway width for OSA and specify a minimum width of 2 metres or more for pedestrian circulation only.
- (f) To allow more flexibility in considering applications with different range of business hours for OSA taking account of the situations of individual cases.
- (g) To streamline the process for settlement of land charges and issue of relevant land documents (*i.e. LL / Short Term Tenancy (STT) / Short Term Waiver (STW)*).
- (h) To develop and maintain an application tracking system through which the departments concerned can monitor the licensing process for necessary follow-up actions (*the system should be enhanced to allow applicants to track the progress on-line in the longer term*).

- (i) To suspend inactive cases exceeding a certain period for better deployment of limited resources in processing OSA applications.

Short-term Measures (to be implemented between 6 months and 1 year)

- (j) To establish a mechanism for conducting public consultation and handling objections to OSA applications within a specified timeframe.
- (k) To enhance preliminary screening and develop referral rules.
- (l) To review and update the key criteria, licensing requirements and conditions to enhance business-friendliness for OSA:
 - ◆ Allow more flexibility in considering applications with intervening walkway between the proposed OSA and the restaurant premises.
 - ◆ Define clearly permitted types of sunshades or other alternatives for use in OSA.
- (m) To improve the end-to-end standard time continuously for processing an OSA application and update the performance pledges accordingly.

Expected Improvements

14. Upon implementation of the recommendations, the following improvements are anticipated:

- ◆ Improved lead time for processing OSA applications
- ◆ Greater transparency in OSA licensing services by providing more comprehensive guidelines and performance pledges
- ◆ More rationalised OSA licensing requirements
- ◆ Better communication and monitoring of the progress of each application case
- ◆ More cost-effective services in processing OSA applications

The Study Team considered that the potential standard time for processing an OSA application could be shortened to 53 working days, an improvement of 27% compared to the existing standard time of 73 working days.

Other Issues

15. We have consulted the stake-holding departments and carefully considered the feasibility of temporary endorsement for OSA. However, the arrangement is considered not suitable after our critical examination. The major reasons are as follows:

- ◆ The purpose of temporary endorsement is to shorten the approval time. In fact, if no objection is received, the potential end-to-end processing time could be shortened to about 2 months, which would meet the expectation of most applicants. Temporary endorsement would not significantly reduce the time further, given that basic licensing requirements for public safety (*e.g. fire and building safety*) have to be inspected for compliance.
- ◆ If temporary endorsement is granted without going through the public consultation, government may be criticized of sacrificing public interest in favour of the business sector. Actually, the trade considers that public consultation is necessary and the consultation should be conducted in a fair and efficient way with appeal mechanism. In view of that, we have already recommended the establishment of a mechanism for conducting public consultation and handling objections within a specified timeframe.

16. If temporary endorsement is granted prior to public consultation, the applicant might be given the false hope of forthcoming formal approval, which might not happen eventually and it is beyond the control of the applicant. (*Unlike roofed-over restaurants where the applicant with provisional licence understands that full licence will be granted if he has complied with the specified requirements stated in the LR.*) If the proposed OSA is finally rejected due to public objection, the applicant may be frustrated and he may suffer loss on fitting out and additional equipment installed in the restaurant.

Way Ahead

17. Subject to the views of the FBTF Members and the departments concerned, the stake-holding departments will work together and proceed to the implementation of the recommendations.