

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

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

Purpose

This paper reports the final recommendations of the Efficiency Unit (EU) in the “Study on the Business-friendliness of the Regulatory Regime for Outside Seating Accommodation (OSA) of Restaurants” (the Study).

Study Objectives

2. The 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.

Recommendations

3. Upon completion of the study in mid August 2006, EU has circulated the draft study report to BFD, Food and Environmental Hygiene Department (FEHD) and other stakeholding departments involved in processing OSA applications (including Lands Department, Planning Department, Buildings Department, Fire Services Department, Transport Department, Home Affairs Department and Environmental Protection Department). The final report has incorporated their views and comments where appropriate. An Executive Summary of the report is attached at Appendix 1.

4. All the departments concerned have no objection to the study recommendations which are summarized as follows:

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

- (a) To enhance the OSA Guide by including relevant information (e.g. a new application form with guidance notes), and review the Guide subsequently on a regular basis.
- (b) To make more use of e-mails to improve 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.
- (h) To develop and maintain an application tracking system (the enhanced function of on-line tracking by applicants could be provided in the longer term).
- (i) To suspend inactive cases exceeding a certain period.

Short-term Measures (to be implemented within 6 months to 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.

- (m) To improve the end-to-end standard time continuously for processing an OSA application and update the performance pledges accordingly.

Matters Arising from Previous FBTF Meeting

5. In the last FBTF meeting held on 6 October 2006, the Convener requested the Study Team to explore whether an appeal mechanism could be established for resolving the different views between the OSA applicants and objectors by drawing reference to the appeal mechanism for liquor licensing. For liquor licensing, applicants may submit appeals to a statutory body “Municipal Services Appeals Board” (MSAB) after the decision made by the Liquor Licensing Board (LLB). Regarding applications for new restaurant licence with an OSA in the proposed layout, if an application is rejected, the applicant may appeal to the Licensing Appeals Board (LIAB) (a statutory body) in the same way as other appeals in relation to licensing matters under Cap. 132.¹ There is thus an appeal mechanism.

6. For OSA applications relating to existing licensed restaurants, the situation is different:

- (a) OSA approval itself (i.e. inclusion of an OSA to the approved layout of existing licensed restaurant) is not a registration/licence/permit. There are currently no specific legal provisions allowing for appeals relating to such kinds of OSA applications.
- (b) Given the small number of OSA applications and possible appeal cases, it is difficult to justify setting up a statutory body for processing appeals on OSA applications and/or proposing amendments to relevant legislation.

7. In view of the above, the Study Team has proposed and FEHD agreed to establish an administrative mechanism for resolving objections and raising appeals. Under the proposed mechanism, both the objectors and the OSA applicants are given adequate opportunity to express their views, either by attending a case conference held by FEHD or in writing, before a final

¹ If an application for a new restaurant license (with or without OSA) is rejected, the applicant may appeal to the LIAB against the decision within 14 days after the service on him of the decision under section 125 of Cap. 132. If he is again not satisfied with the decision of the LIAB, he may lodge further appeal to the MSAB within 14 days after receiving notice of the decision under section 125B.

decision is made by FEHD on the application. If FEHD intends to reject an application, the department will notify the applicant so that he can submit representations to FEHD within a specified timeframe for reassessment of his application.

Implementation and Way Ahead

8. To expedite the implementation of the recommendations, the EU Study Team has already assisted FEHD to draft an enhanced version of the OSA Guide in consultation with other collaborating departments. This enhanced OSA Guide will provide the following additional information:

- ◆ an application form with guidance notes to help applicants provide all required information in the proper format
- ◆ a simple workflow to show the OSA application process
- ◆ the standard time for processing OSA applications
- ◆ relevant details on the licensing requirements on different aspects, including the requirement for conducting local public consultation
- ◆ the key differences between Land Licence and Short-Term-Tenancy on the use of Government land and fees
- ◆ mechanism for making representations/appeals to objections raised by other departments/local public
- ◆ licensing conditions on environmental protection to avoid creating water pollution, air quality nuisance and noise nuisance
- ◆ FAQs related to OSA applications, and samples of application form and attached plans.

9. With the enhanced OSA Guide, we expect the applicants would have a much better understanding of the OSA licensing requirements which should facilitate their applications and reduce the time spent in providing “missing” information. FEHD will consult the trade on the enhanced version of the Guide, and the new application form, before they are finalized.

10. The BFD will follow up with the stakeholding departments to take forward the study recommendations, and report the progress of implementation to the FBTF.

Study on the Business-friendliness of the Regulatory Regime for Outside Seating Accommodation of Restaurants

Executive Summary

Study Objectives

The Efficiency Unit (EU) was commissioned by the Business Facilitation Division (BFD) of the Financial Secretary's Office to conduct a study on the business-friendliness of the regulatory regime for Outside Seating Accommodation (OSA) of Restaurants. 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.

Current Situation

2. An OSA application without particular complications takes months and even up to a year (including the time taken by the applicant to meet the requirements) to obtain approval. The lengthy and arduous process has deterred restaurant operators from making OSA applications.

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.

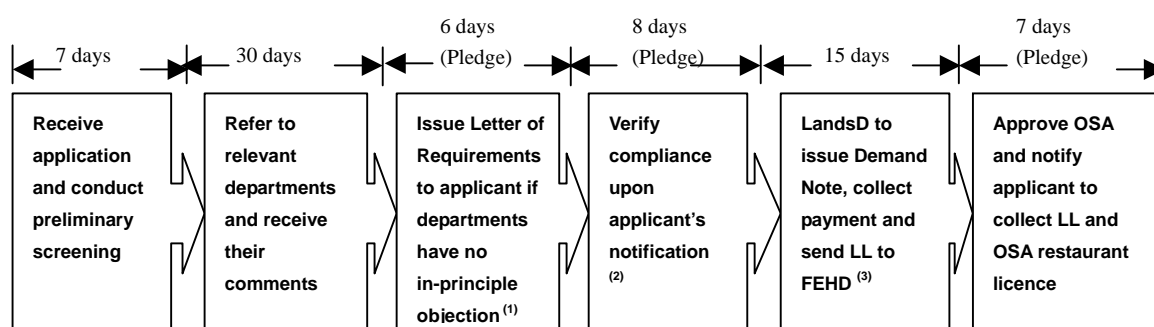
4. Upon receiving an OSA application, FEHD usually refers the case to seven collaborating departments, i.e. Fire Services Department (FSD), Buildings Department (BD), Planning Department (PlanD), Lands Department (LandsD), Home Affairs Department (HAD), Environmental Protection Department (EPD) and Transport 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 on government/ private land (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. Of the 403 applications received since 2002, only 144 cases were approved. As at 30 June 2006, the number of OSA applications under processing was 71.

6. Assuming an OSA application is straightforward 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 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.

7. According to FEHD and our case review, the actual average time for processing the selected OSA applications is 228 and 282 working days respectively, which is much longer than the standard time for processing a normal case.

8. There are two types of OSA applications. Over 90% are of the former type:

- ◆ Existing restaurant licensees who apply for inclusion of an OSA to the approved layout of their licensed restaurant; and
- ◆ Applicants who apply for a new restaurant licence with an OSA in the proposed layout.

Opinions of the Trade

9. Apart from the documentary fact findings, interviews with the departments concerned and 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 comments of the trade based on the opinion survey and focus group have been given due consideration by the Study Team in exploring the improvement opportunities and recommendations.

Issues and Recommendations

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

- ◆ Long time for issue of “Restaurant Licence with inclusion of OSA to the approved premises” (i.e. OSA Restaurant Licence)
- ◆ Lack of standard guidelines and timeframe to conduct public consultation and settle objections
- ◆ Lengthy process to issue LL and other land documents
- ◆ Difficulty in applicant’s compliance with some of the OSA licensing criteria, requirements and conditions
- ◆ Inadequate customer relationship management and coordination

12. 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:

- (1) To establish a mechanism for conducting public consultation and handling objections to OSA applications within a specified timeframe

- (2) To streamline the process for issue of relevant land documents (i.e. LL / Short Term Tenancy (STT) / Short Term Waiver (STW))
- (3) To enhance preliminary screening and develop referral rules
- (4) To enhance the coordination role of FEHD for provision of one-stop shop service
- (5) To suspend inactive cases exceeding a certain period
- (6) 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
- (7) To improve communication with the applicants and other collaborating departments :
 - ◆ Develop and maintain an application tracking system for monitoring the licensing process
 - ◆ Make more use of e-mails to improve inter-departmental communication
- (8) To review and update the prevailing key criteria, licensing requirements and conditions to enhance business-friendliness for OSA :
 - ◆ Allow more flexibility in considering applications with different range of business hours 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
 - ◆ Relax the requirement of the walkway width for OSA
- (9) To establish additional performance pledges and improve the end-to-end standard time for processing an OSA application

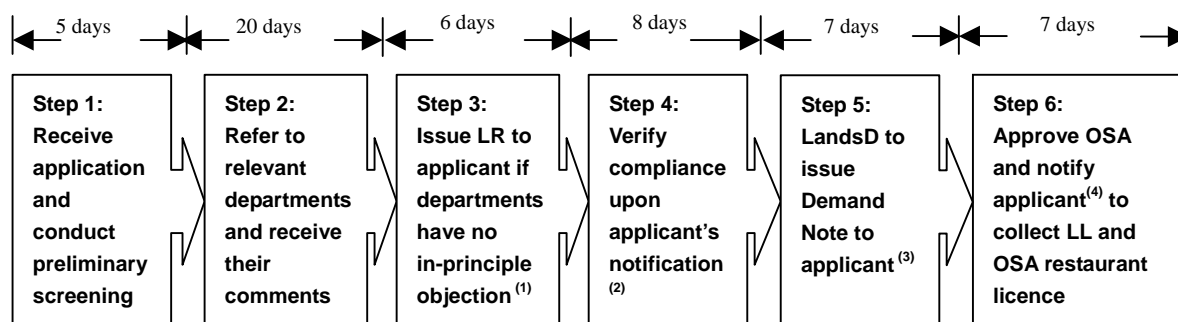
Potential Improvements

13. 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 potential standard time for processing an OSA application could be shortened to 53 working days for a simple normal case, an improvement of 27% compared to the existing standard time of 73 working days in para. 6.

Potential Standard Time (53 days)



Notes:

- (1) Upon issue of LR, LandsD starts to prepare the LL.
- (2) The time taken by applicant to comply with the requirements has not been included. FEHD will also inform LandsD upon applicant's notification.
- (3) LandsD continues to prepare LL which will reach FEHD within 5 working days after the issue of Demand Note to applicant.
- (4) Upon receipt of LL, FEHD will issue approval letter within 2 working days, and notify the applicant that approval is subject to his payment of fees for LL and OSA.

Way Ahead

14. The study report would be submitted to the BFD for distribution to the Food Business Task Force under the Business Facilitation Advisory Committee for consideration. The BFD may wish to coordinate and monitor the progress of the implementation and consultation work. EU is ready to provide more assistance, where necessary, to facilitate the implementation.