

**Sixth Meeting of
the Economic and Employment Council**

***Agenda Item 5 : Report of the Retail Task Force on the regulatory
review affecting the food retail business***

Purpose

This paper presents the findings and recommendations of the Retail Task Force on the food licensing regime affecting the retail sector.

Background

2. The Retail Task Force was set up in October 2004 to review and make recommendations on regulatory regimes which have a significant impact on the retail sector. The work programme of the Retail Task Force initially covers two major aspects – food retail business (including supermarkets/convenience stores) and retail of medical/beauty products.

3. The Retail Task Force has completed a review of the food licensing regime on retail, making recommendations to streamline the licensing framework and the related processes with a view to reducing the costs of compliance to the trade. The review covered 15 types of non-restaurant food licences and permits issued by the Food and Environmental Hygiene Department (FEHD). A list of these licences/permits is at **Annex A**. Issues related to setting up food retail business in premises under the Housing Authority will be covered in a separate report.

Trade's concerns

4. There were several rounds of discussions with the food retail sector which had specifically requested the following –

- Strengthening the public consultation process when legislative proposals are introduced;

- Reducing the number of food related licences/permits;
- Shortening the lead time to obtain licences for food business;
- Simplifying the licensing framework; and
- Improving the licensing process.

Overseas experience

5. Research was conducted on the licensing practices in Singapore, Victoria (Australia), UK and Shenzhen (PRC). There are major differences between the practice in Hong Kong and other jurisdictions as highlighted below –

Type of food retail licences

- ❑ Overseas operators generally require a single food establishment licence to prepare and sell a variety of raw and cooked food. In Hong Kong, operators apply for multiple licences and/or permits according to products sold.

Building and fire safety requirements

- ❑ Overseas food licensing authorities focus solely on food safety and hygiene standards. Operators will separately approach the respective authorities for fire and building safety approval. In Hong Kong, licensing requirements and conditions often embrace building, fire safety and food hygiene aspects.

Licensing lead time

- ❑ The pledged time for different stages of the food licensing process in Hong Kong are slightly longer than Singapore and UK. Although Shenzhen has a longer pledged time, operators' experience suggests that the entire licensing process, including premises set-up, can be as short as one month.

Temporary licensing arrangement

- ❑ In Hong Kong, a provisional licence, valid for 6 months, is issued when compliance of essential licensing requirements has been certified by authorized persons. Among the overseas countries researched, only Singapore issues temporary permission for business if outstanding requirements are not hazardous to consumers' health and safety. Temporary permission is valid for one month.

Recommendations

Enhancing the public consultation mechanism

6. The trade is of the view that there is insufficient public consultation prior to introducing new regulatory requirements. Bureaux/departments have selectively sought feedback from the trade and industry bodies. Not all stakeholders are given the opportunity to comment on proposed regulations and the views of the trade are not given due consideration. There were occasions that the Government seemed to have made the final decision on an issue before the consultation started.

7. To address the above, the Task Force **recommends** that the public consultation procedure be formalized. An independent committee should be set up for public consultations. All stakeholders including members of the public and the trade must be invited to comment on the proposals. For proposals having a significant impact on the business sector, Regulatory Impact Assessment studies should be conducted before such proposals are submitted to the Legislative Council (LegCo), and working sessions should be held with respective stakeholders to better understand and address their concerns. All views collected, including those not accepted after consultation, as well as the reasons for not taking such views should be incorporated in the submission to LegCo for consideration in the legislation process.

Composite licensing

8. While a few food licences have unique basic requirements involving building and fire safety (e.g. bakery, fresh food provision and food factory), the licensing requirements and conditions of many licences/permits are similar. The Task Force therefore **recommends** that the licensing regime be simplified by combining the existing 12 food licences/permits for the retail of the ready-to-eat food into one composite licence as shown below. The products under the proposed composite licence do not require complex food preparation or manufacturing activities and the involvement of other departments is minimal.

<ul style="list-style-type: none">• Chinese herb tea• Cut fruits• Meat to be eaten in raw state• Milk• Non-bottled drinks• Non-packaged frozen confections (e.g. soft ice-cream)	<ul style="list-style-type: none">• Oysters to be eaten in raw state• Packaged frozen confections• Pre-cooked food requiring re-heating facilities• Siu mei and lo mei• Sushi• Sashimi
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Ready-to-eat Food Licence

9. The main features of this proposal are that –
- One licence to cover a wide variety of food which would otherwise need separate licensing or endorsement under the present regulatory regime, thereby reducing the number of non-restaurant food licences and permits under review from 15 to 4;
 - Applicants to comply with the basic licensing requirements which are common to all food products allowable under the composite licence, prior to the issue of the composite licence;
 - The Licensing Authority to publish all licensing requirements and conditions for different food types; and
 - Licensees to be allowed to change food products to be sold without a new licence, provided that the new food item is

allowable under the composite licence and the product-specific licensing requirements have been complied with.

———— More details about this proposal are at **Annex B**.

Other improvement measures

10. The Retail Task Force sees room for improvement in the current licensing process and the regulatory framework to facilitate business. The Retail Task Force **recommends** that –

- A comprehensive review of the licensing requirements, including details shown on layout plans, be conducted to remove obsolete and outdated provisions. As regulations and licensing requirements are meant to be complied with, the review should take account of the practical situation and the development of the trade. The Retail Task Force also urges the Licensing Authority to proceed with the review at full speed in consultation with the industry;
- Performance pledges be extended to application processes other than food licences (e.g. food permits and layout alterations) which have no performance pledges at present. This would help business operators plan ahead and have a reasonable expectations on the performance level of the Licensing Authority;
- An option be provided to the trade to allow for further use of private professional practitioners and registered contractors to speed up the licensing approval process, and a full licence be issued upon receipt of private certification. Nevertheless, the Retail Task Force reckons that some traders may wish to continue with the current practice by which the Licensing Authority defines the licensing requirements and conducts compliance checks prior to the issue of a licence. The proposed option would require the stepping up of enforcement effort to ensure that the trade and its professionals do not compromise their social obligations; and

- The licensing procedures be revisited to remove the non-value added tasks and strengthen communication between offices. These minor improved measures would work together to facilitate and speed up the issue of licences/permits.

Views of the industry

11. A meeting session was recently held with representatives of the trade. They confirmed that the proposals would help improve the business environment. Some trade members stressed that consultation exercises must be conducted with no “pre-set” conclusion and consultation documents should be comprehensive, and, most importantly, they should be presented impartially without favouring any particular proposal.

12. The trade welcomed composite licensing for ready-to-eat food and greater use of private certification as these would substantially simplify the licensing regime for non-restaurant food business without compromising food hygiene and safety. The trade also wished to be involved and fully consulted when FEHD reviewed licensing requirements and processes.

FEHD’s comment

13. FEHD generally supports the proposals. On enhancing the public consultation mechanism, FEHD explains that the standing practice is to consult the trade through various established/formal channels including the Advisory Council on Food and Environmental Hygiene which is an advisory committee with members from different community sectors and the Legislative Council Panel on Food Safety and Environmental Hygiene. FEHD will step up its consultation with the trade on new proposals in the light of the concerns expressed by the trade. On the proposal to conduct regulatory impact assessment studies, FEHD points out that it would be useful to first gauge the Legislative Council’s views to weed out non-starters as such studies often involve substantial cost. FEHD also stresses that when making decisions, it will take into account the trade’s views as appropriate but it is not possible to accept the trade’s views en bloc as there is a need to balance them against public interest.

14. FEHD will review the licensing requirements and processes. The Department proposes that while composite licensing for ready-to-eat food will be considered, the intention is to retain the existing food permit system in parallel to cater for small operators selling only a few food items. There is no objection in principle for the licensee to change food products as specified within a composite licence provided that all the basic requirements plus the specific requirements for the food items concerned have been complied with. However, for effective enforcement, approval of such changes should only be given upon checking of compliance by FEHD staff or by means of a certification system. FEHD is prepared to consider the acceptance of certificates signed by professionals for the issue of a composite licence as in the case of the provisional licence system. Under the latter, there is already sufficient sanction in the form of immediate cancellation of the provisional licence if the licensee is found to have contravened the licensing requirements in subsequent inspections. The same enforcement regime should apply to the issue of the composite licence if a certification system is to be adopted. Details of these initiatives will be worked out for public consultation.

Advice sought

15. Members of the Economic and Employment Council are requested to comment on the above recommendations.

Retail Task Force
June 2005

Licences/Permits under Review

1. Bakery Licence and Provisional Bakery Licence
2. Chinese Herb Tea Permit
3. Food Factory Licence and Provisional Food Factory Licence (e.g. fast food without seats)
4. Food Factory Licence and Provisional Food Factory Licence (Reheating pre-cooked food) (e.g. snacks re-heat)
5. Fresh Provision Shop Licence and Provisional Fresh Provision Shop Licence
6. Frozen Confection Factory Licence and Provisional Frozen Confection Factory Licence
7. Frozen Confection Permit (Pre-packed ice cream)
8. Milk Permit
9. Non-bottled Drinks Permit
10. Restricted Food Permit (Sale of Sashimi)
11. Restricted Food Permit (Sale of Sushi)
12. Restricted Food Permit (Sale of Oyster)
13. Restricted Food Permit (Sale of Meat to be eaten in raw)
14. Restricted Food Permit (Cut fruit)
15. Siu Mei and Lo Mei Shop Licence / Provisional Siu Mei and Lo Mei Shop Licence

Composite Licensing

The proposal

- ☐ It will initially cover 12 ready-to-eat food items. Other food items could be incorporated depending on the development of the industry. Primarily, the food items allowable under the ready-to-eat food composite licence should not involve complex preparation or manufacturing processes.
- ☐ FEHD will categorically define and publish the basic licensing requirements and the product-specific requirements for all food items under the ready-to-eat food licence. The basic licensing requirements are applicable to all food items.
- ☐ When an applicant first applies for a ready-to-eat food licence for a particular establishment, he has to satisfy the licensing authority that all basic licensing requirements are fully complied. He also has to comply with the specific requirements for the food items he intends to sell, before a ready-to-eat food licence is issued.
- ☐ If a licensee wishes to change the food product subsequently, he is not required to apply for a new licence provided that the following conditions are met –
 - there is no layout change affecting fire or building safety;
 - the basic health and hygiene requirements attained under the first-time application are maintained;
 - the licensee confirms compliance with the specific requirements of the new product to be sold, in accordance with the standards and guidelines published by FEHD; and
 - the licensing authority is notified of the intended change prior to product change and the licensee has received acknowledgement from the former.

Mechanics for the proposal

To implement the proposed licensing regime, it is important that an adequate enforcement mechanism is set up to allow FEHD to take prompt corrective and punitive action. Detailed licensing requirements and conditions for each product under the composite licence should also be made available to the public.

Stepping up enforcement

The licensing authority should be empowered to take the following enforcement actions against non-compliance –

- Issue of Improvement Notices requiring rectification to non-compliance within a specified timeframe;
- Issue of Prohibition Orders barring the conduct of specified activities, sale of specified products, etc.; and
- Suspension or cancellation of a licence for repeated offences or serious violation that affects the overall hygiene or safety.

The requirement for licensees to notify the licensing authority in advance of change in product mix also provides an opportunity for FEHD to conduct inspection, if in doubt.

Transparent licensing requirements

FEHD has to regularly update requirements for the ready-to-eat food licence. Trade and new licence applicants should be provided with ready access to all these licensing requirements and conditions.

Licensees may conduct minor changes to the layout to facilitate the sale of new or additional products. In most cases, such works do not affect fire or building safety. The published guidelines should enable licensees to carry out the required work without first seeking consent from the licensing authority.