

Natural Person and Reserve Licensee

Author

Food
and
Health
Bureau

Message

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We sincerely invite Forum members to share with us your views on the following matters regarding natural person and reserve licensee (details at Chapter 5 of the Consultation Document):

(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?

Background

Regulation 17 of Dutiable Commodities (Liquor) Regulations (Cap. 109B) 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, the Liquor Licensing Board ("LLB") would impose a more stringent condition on duty hours of the licensee except his weekly day off. 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.

The above circumstances will cause 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. 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.

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 Dutiable Commodities (Liquor) Regulations, which may include imprisonment. The Administration considers the control necessary and appropriate as 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. Apart from that, we have also looked into the possibility of allowing multiple authorised persons to supervise the licensed premises. However, this option will still give rise to the same problem of unclear liability and legal responsibility.

<Reserve licensee mechanism>

The purpose of a reserve licensee system is to minimize 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.

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 replaces the original licensee. 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.

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. In this case, 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. The major drawback of the suggestion 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. In addition, 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. This will benefit the food chain owners as they are able 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 licensees 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.

To strike a reasonable balance between trade facilitation and minimising administrative burden, we suggest not more than one reserve licensee should be allowed for the same liquor licence but 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.

Ma Kam Wah Posted: 2011-08-01 12:19:34

Timothy

Posts:71

Votes:25

Credits:5

I do believe the license should be only applied to the natural person so that one designated person of the operator would be liable to the duties and operation.

To ensure the continuity, a revised working cycle can be worked out to allow ample time for the licensee to start his / her application of renewal.