



"Richard Feldman"
[Redacted]
[Redacted]

14/09/2011 17:59

To <liquor@fhb.gov.hk>

cc

bcc

Subject Review of Liquor Licensing Public Consultation

Urgent Return receipt Sign Encrypt

Dear Assistant Secretary for Food and Health (Food) 5,

Enclosed please find my submission in response to your public consultation regarding the matters raised in your Review of Liquor Licensing Public Consultation document dated July 2011.

The files size is large, so kindly confirm receipt by return email.

If you have any questions or concerns please contact me on either [Redacted] or on my cell phone number [Redacted]

Sincerely,

Richard Feldman

TEL: [REDACTED]
FAX: [REDACTED]

Back To Front Restaurant Consultants

14 September 2011

Assistant Secretary for Food and Health (Food) 5
Food Branch
Food and Health Bureau
20/F, Murray Building
Garden Road
Central, Hong Kong

Dear Sirs/Madam,

Re: Public Consultation on the Review of Liquor Licensing

General Comments

Thank you for giving me the opportunity to comment on the *Review of Liquor Licensing Public Consultation*.

I have the following comments, concerns, and views.

I have served Hong Kong's Food & Beverage industry in many capacities.

I have owned, operated and held multiple food factory, light refreshment, general restaurant and liquor licenses. I have served on the Liquor License Review Panel and many other Food and Beverage trade institutions and committees.

I know from those experiences, that the overwhelming majority of government employees and department heads that I have had the pleasure to work with, have truly been very supportive of our trade, and incredibly helpful.

But there is also no doubt, that our industry as a whole, is over burdened by bureaucracy and a plethora of licensing conditions which result in what I call a *Collective Failure* on the part of the government to understand and support

TEL: [REDACTED]
FAX: (852) [REDACTED] 8

Back To Front Restaurant Consultants

our industry, particularly given that our industry is so vital to job creation, the economy, quality of life, and tourism in Hong Kong.

In my view this *Collective Failure* is due in part, to a fundamental 'Reactionary Approach' to changes in the market, that triggers a new round of licensing conditions, which often wrongly treat the symptom and not the true cause. Unless the government understands the true cause, it will continue to get the treatment (the legislation) wrong.

The inclusion of 'The Proliferation of Upstairs Bars' in your report (and the basis for your view that there is a need for new licensing conditions) is proof of this *reactionary approach*, when in fact, the latest numbers that you quote show that Upstairs Bars are on the decline: "decrease of 8% for 2009-2010". It is important to understand, that the sudden rise in "Upstairs Bars" is not, as the consultation paper suggests, primarily and historically due to rising rents of lower ground floor shops (Paragraph 1.16 "This phenomenon is mainly rental-driven") though naturally, that is a logical assumption, it is however a completely un-supported claim.

Hong Kong has had for decades increasing rents, and the Food & Beverage industry has year after year borne the brunt of these increases. Looking at Paragraph 2.2 under Chapter 2, quoting your data there was an increase of 41% from 2008-2009 in upstairs bars, and there is a decrease of 8% from 2009-2010. There has been hardly sufficient time, and your very own data self contradicts the argument you put forward by your report that upstairs bars are a growing trend.

If Bars & Restaurants have for decades had to deal with ever increasing rents what happened in 2008, other than the "increase" in rents (when in fact Hong Kong was suffering an economic tsunami and rents were falling) to explain the 41% increase in upstairs bars? In my view the key factor to explain the sudden increase, the true impetus behind the increase relates directly to the ban on smoking from January 1st 2007, and qualified bars with their extension to June 30th 2009. As a result of the smoking ban in restaurants and then later in qualified bars, patrons simply moved to upstairs bars to avoid detection and prosecution and, the free market simply followed the demand by the public

TEL: [REDACTED]
FAX: [REDACTED]

Back To Front Restaurant Consultants

for bars whereby the Tobacco Control Officers could not easily see patrons smoking, and then fine them accordingly. Which demonstrates my point about treating the symptom, and not the cause. Your good office, proposes in your consultation paper, a treatment for upstairs bars, when you have totally misdiagnosed the cause. The cause was not "mainly higher rents". A far better and true assessment shows that the sudden increase in Upstairs Bars is directly due to the introduction of the anti-smoking laws in Hong Kong.

In you like, you can think of it this way: "Smokers went underground, by moving upstairs!"

Continuing on my general comments...

It is also my firm view that after 23 years in the Food & Beverage Industry in Hong Kong, that our industry is not afforded a level playing field by the Hong Kong government, and that our industry is held to a safety standard -- which I support -- that few other retailers and industries, if any, are required to meet. This is totally unfair to our industry, and in fact puts the public at risk.

I site three examples of injustices for your reference, though I be would happy to supply you with more.

Example 1

Restaurants cannot be licensed if there are Unauthorized Building Works on or around the premises, and yet most other trades and retailers can secure a license, for example a Business Registration license, regardless as to whether or not their premises have Unauthorized Building Works. If restaurants can't get licensed to operate a business on premises where there are Unauthorized Building Works, why is it that all other retailers can? This is a totally unacceptable double standard which puts the public at risk and unfairly burdens only our industry.

Example 2

Control of Liquor for off premise consumption, particularly, but not limited to, pedestrianised entertainment districts. How for example can stores such as 7-Eleven be allowed to sell liquor without a liquor license, when it seems clear



Back To Front Restaurant Consultants

that their intention is to supply and sell alcohol to individuals for the purpose of immediate consumption within an entertainment district. How is it that most ground floor Bars and Restaurants would be quickly shut down and the shop owner and/or bartender arrested and charged for selling alcohol without a license, when so many of the 7-Eleven patrons, in the Lan Kwai Fong and Wanchai areas for example, drink alcohol within the 7-Eleven premises? And how is it, that 7-Eleven can legally sell liquor to minors? Why is it that little if anything is done about these issues? The 7-Eleven in the Lan Kwai Fong area, is actually not a convenience store, but in my view a full scale liquor store selling to any and all people: chilled beers, cocktails, wines, champagnes, and even bottles of hard liquors, all for immediate consumption, either on their premises or just out side their premises. They even sell flasks of liquor that customers can hide in their pockets, to avoid detection from licensed premises. The problem is so serious, that young people now "Shotgun" or "Drunk-up" their drinks (a term used to drink a multiple drinks in rapid succession) and then enter licensed premises to dance and enjoy the music, vomit, use the toilets etc, putting the licensed establishment at risk for failing to meet its licensing conditions, for individuals that Shotgunned their drinks from 7-Eleven. This puts the licensed establishment at great risk for something totally outside of their control. This situation with 7-Eleven, is such an outrageous abuse of the sale of liquor for off premise, (but for immediate) consumption, and yet, no action is taken by either the LLB, the Police, or other relevant government authorities.

Example 3

Why is it that Private Kitchens, -- which in fact are open to the public, and which are openly promoted, often visited by government officials and members of the general public -- are not closed and shut down for operating a restaurant without a valid restaurant license? How is it, these Private Kitchens are tolerated, and in fact celebrated, when they are nothing more than illegal Restaurants & illegal Bars undermining all the other restaurants and bars that actually invested in and meet all the licensing conditions to secure a license and ensure public safety? Does their name "Private" Kitchen fool the authorities? There is nothing private about them. They are all open the public. Food and often liquor is sold on the premises, and yet, month after month,

TEL: [REDACTED]

FAX: (8) [REDACTED]

Back To Front Restaurant Consultants

year after year they continue to violate the laws and undermine the law abiding members of our industry with apparent immunity.

As is often the case, the unlicensed premises continue to operate under the radar and with what appears to be tacit approval of the authorities, and then when these unlicensed venues create complaints or safety issues, the government typically responds by adding more burdens, more legislation and more restrictions on the entire community of licensed venues. The Review of Liquor Licensing Public Consultation and the proposed new requirements, is just another example of how our industry is facing yet again another round of requirements, when all around us many 7-Eleven's and Private Kitchens continue to abuse the lack of enforcement under the closed eye of the Hong Kong government, and therefore continue unchecked, to undermine our industry, and the public's safety.

It always ends up, that our trade suffers many more restrictions, more requirements, fewer options for the licensed and law abiding trade members, when the illegal and unlicensed outlets continue to undermine our trade.

The situation with Private Kitchen's and 7-Eleven does not only undermine our industry, in my view it undermines the Food and Environmental Hygiene Department, it undermines the Police, it undermines the Liquor Licensing Board and it undermines the laws of Hong Kong.

Turning to the report here are some overall comments before answering your specific questions.

I want to call attention to the value laden terminology in Section 1.17 where you use words the "proliferation" and "social time bomb", I believe this to be both misleading and emotive in nature and not appropriate terms of language use, in a consultation paper of this kind.

In 2.1 what is the criteria used by the government to determine what qualifies as its "main business be the sale of liquor."? I recall the Tobacco Control

TEL: [REDACTED]
FAX: [REDACTED] 8

Back To Front Restaurant Consultants

Office refusing to classify a venue as a bar whose sales were over 80% liquor/beverage, because in their view, the 'bar' in question sold set lunches and had ketchup and mustard jars on the tables. The Tobacco Control Office steadfastly refused to accept the venue as "main business be the sale of liquor", despite the fact that the sale of food accounted for less than 20% of that venue's income, and despite the fact that evidence was submitted to the Tobacco Control Office confirming the liquor/beverage vs. food sales. Is there a criterion for determining what qualifies as "main business be the sale of liquor."?

In 2.4 I find it hard to understand the logic in this section of the report. Is it your view that customers crowd at the "staircase for a rest, smoking or excessive drinking"? It does not seem even logical that customers would choose stairwells to rest or drink excessively. Furthermore, the evidence you put forward that stairwells are being use for smoking would support that the "upstairs bars" have in accordance to the law, told its patrons that no smoking is allowed on the premises which is why, I suppose, those patrons stepped outside into the fire exits to smoke. So why penalize the outlets for following and enforcing the law as per your request?

I have seen exits being blocked with tables, chairs, and even goods and I totally support that they should be zero tolerance for blocking fire exit routes by any trade (not only the Food & Beverage industry) but the same holds true for many retailers. To me this is not a Liquor Licensing concern; it should simply be a territory wide criminal offence to block a fire exit.

Now turning to the Summary or Questions:

7.1(I)(a)

(a) Do the specific circumstances of upstairs bars require more stringent licensing control?

In my view, sincerely "No" from the point of view of the Liquor Licensing Board. There may be some Building Department (BD) or Fire Service Department (FSD) issues involved like those for basements and for safety; I would support these if reasonably

TEL: [REDACTED]
FAX: [REDACTED]

Back To Front Restaurant Consultants

recommended by the BD and FSD. But it seems to me the LLB has sufficient tools at its disposal to address any licensed premises, be they on the ground floor, 1st floor, or any other floor for that matter.

7.1(I)(b)

(b) If the answer to (a) is yes, should the following options for practical measures be taken to reduce the potential risk of upstairs bars, in addition to compliance with existing statutory and administrative requirements regarding the premises or building in question?

Kindly see my response in 1A)

7.1(I)(b)(i)

(i) Set a limit on the number of liquor-licensed premises that may be housed in a multi-storey building, say not more than half of the floors or a certain percentage of the gross floor area to be occupied by liquor-licensed premises, and if yes, the appropriate limit.

This is far too abstract of a concept. It is too premature to even be considering such an approach, and in any event, it should already be covered by the DMC of the building. The LLB does not need this tool; it would only make things far more complicated. If licensed premises are creating a nuisance, then deal with those individual venues.

7.1(I)(b)(ii)

(ii) Refuse to issue new liquor licenses and new club liquor licenses for premises in buildings which are concurrently used for residential purpose except for the lowest three storeys with separate access.

I still feel this should be done on a case by case basis, and not by a blanket policy.

7.1(I)(b)(iii)

(iii) Refuse to issue new liquor licenses and new club liquor licenses altogether in certain high risk targeted buildings (e.g. those with a large

TEL: (06) [REDACTED]

FAX: (06) [REDACTED]

Back To Front Restaurant Consultants

number of residents in adjacent buildings or with a track record of higher incidence of crime or complaints in the past).

Don't agree. The government should punish the offenders, not the new applicants.

7.1(I)(b)(iv)

(iv) As the capacity limits for bars not at street level are set without considering the influence of alcohol on customers' behaviour, apply a discount factor to reduce the maximum capacity currently imposed under a liquor license so as to build in an appropriate "safety margin"; if yes, should the "discount factor" be a percentage applied to all upstairs bars, or a range of "discount factors? What should be the appropriate percentage used?

Don't agree. This is already dealt with by the FSB based on the size of fire exits in the building, and could cause the LLB and the FSD to be quoting two contrarian numbers.

7.1(I)(c)

(c) Even if the measures in (b) are not pursued, should more stringent criteria be adopted when assessing the liquor license applications, so as to avoid the concentration of bars in non-purpose-built entertainment buildings or complexes? Relevant considerations could include –

In my view more stringent criteria is not needed. Because the existing criteria already has a full range of options which are sufficient do address all the concerns raised in your report.

7.1(I)(c)(i)

(i) whether the building concerned is shared by others for non-entertainment purpose and if so, the potential impact of introducing an upstairs bar on such joint users (e.g. if the other premises in the same building are used for educational/tutorial purposes, should liquor-licensed premises be allowed?);

Again, each application has to be dealt with on a case by case basis. Not based on a blanket rule. For example, what if a bar is there first,

TEL: [REDACTED]

FAX: [REDACTED]

Back To Front Restaurant Consultants

before the school? It seems to me, that the LLB has sufficient powers to deal with individual licensees if they violate their license conditions. It also seems to me, that others in the building, have every right to work with their Owners' Committees and Management Companies to ensure a balanced approach is taken by all tenants.

7.1(I)(c)(ii)

(ii) whether the building concerned is located among densely populated residential blocks, and if so, the potential impact of introducing an upstairs bar on the neighbourhood;

Because each application is unique, I believe the LLB has sufficient tools, experience and vision to handle each case as a unique application.

7.1(I)(c)(iv)

(iv) the layout of the building concerned – where a joint-user building is concerned, the existence of separate access to cater for different user groups will have an edge over those with shared access;

Separate access – I am not sure what you mean by separate access. Does this mean front door and corridor? – Or could for example, residents in a mixed domestic-commercial premise be issued with access codes limiting access (creating a so-called separate access) to different levels or areas of a building – as is done in so many multi-function complexes. This is yet again a case of treating the symptom and not the cause. Is the problem that they share a common entrance, or is the problem that once in, they can access all parts of the residential property? Would it not be a matter for the Owners' Corporation or the Building Management rather than the LLB? The issue of shared or separate access needs to be defined clearly – which is impossible to do to cover all situations in HK. It seems to me an easier and more appropriate, if an upstairs bar is not following their licensing conditions, then surely the LLB can impose additional conditions or even cancel the license.

Back To Front Restaurant Consultants

7.1(I)(c)(v)

(v) the number of liquor-licensed premises already in the building concerned – if, say, half of the floors were already taken up by liquor-licensed premises, it could be arguable whether it is socially desirable to allow more such premises to operate in the same building; and

Again, each application deserves the right to be viewed and considered uniquely – having such a rule would create an unnecessary requirement, and may work against the best interest of the public in numerous cases.

7.1(I)(c)(vi)

(vi) the number of alcohol-related crimes and public nuisance reports in the building concerned or the precinct (e.g. within 50 or 100 metres' distance from the building concerned)?

Don't agree. The abuser should be punished, not the law abiding venue.

(II)(a)

(a) whether liquor license applicants should be allowed to choose between advertising their application on newspapers or on a designated website maintained by LLB; and

I would support granting them the option.

(II)(b)

(b) other suggestions or alternative means of advertisement are also welcome.

The government web site alternative is a good idea.

(III)(a)

(a) whether the maximum duration of liquor licenses should be extended to two years;

Seems reasonable to extend for two years. Currently the FEHD does have a time based assessment criteria for the number of visits based on risk with high scoring premises requiring fewer visits, and low scoring

TEL: (852) 2222 2222
FAX: (852) 2222 2222

Back To Front Restaurant Consultants

premises requiring more visits. The FEHD program has proven successful and a good tool for the better use of manpower. Accordingly it seems to me, it would also prove helpful to the LLB to renew licenses based on a two year interval.

(III)(b)

(b) if the response to (a) is yes, whether an annual review mechanism should be introduced; and

In my view a mandated annual review is not necessary. I think the LLB could always ask for an annual review in special cases.

(III)(c)

(c) views or suggestions on the operation (e.g. the threshold on the number of complaints received against a licensed premises) of the annual review mechanism are also welcome.

I am very weary of this issue. It has long been my view that noise complaints and objection to licenses being issued or renewed, must not and should not remain anonymous. I believe this is a violation of the basic law and laws governing the right of all defendants to face their accuser.

Unless or until there is transparency in the cases of noise complaints and objections to the issuance and renewal of licenses, the entire system is undermined and discredited.

I put forward to you in all sincerity that if victims of rape, or criminal assault are required by law to face their offender for such serious and horrific crimes, how is it, that so-called victims of noise and/or people that object to the issuance or the renewal of a liquor license can remain anonymous? How come these individuals, are granted anonymity and more safeguards than victims of rape?

It is well known that the system is open to abuse, by competitors, dissatisfied customer, or simply trouble makers. The possibility for the

SUITE A, 1ST FLOOR
WINNER BUILDING
LAN KWAI FONG, CENTRAL
HONG KONG, CHINA

TEL: (852) 2810 6338
FAX: (852) 2973 6518

Back To Front Restaurant Consultants

current system to be corrupted and undermined will remain endless and unjust, unless or until transparency and full disclosure is restored to the process.

(IV)(a)

(a) whether the liquor license should continue to be issued to a natural person; if not, how the integrity of the licensing regime could be maintained;

The government can successfully prosecute companies for violating their light refreshment and general restaurant license conditions; I see no reason why the same is not true for liquor license offences, if the liquor license were held in a corporate entity.

I would like to add however, that whether or not the idea of two licensees is feasible, has been pre-determined by your report as not being possible, and therefore you have closed the door to comments on this point. I would like to open that door.

Your conclusion under 5.11 of your report to preclude a multi-licensee option, is totally wrong. The correct assessment depends on, it seems to me, where the priority of the government lies. If it lies with Public Safety as its priority then having more than one licensee would be far better for public safety because more of the hours of operation could be supervised by a licensed individual. If however, Public Safety is not the primary concern of the government, but Successful Prosecution is, then having more than one licensee could I suppose complicate any prosecution. Again it depends on what is more important to the government Public Safety or Successful Prosecution.

It seems to me the government would still face the issue of a single licensee saying "not on my watch", if the offence happened while the licensee was not at work, or on break, and as is true with all criminal cases, there is a burden of proof that is needs to be met. The licensee should not simply be arrested and charged because it is expeditious to do so; the burden of proof should still be met, so I really believe having

TEL: [REDACTED]
FAX: [REDACTED]

Back To Front Restaurant Consultants

two licensees, or rather, more than one licensee is still in the public's best interest and should not be dismissed by your good office.

(IV)(b)

(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;

“YES” only if it's an instant 'transfer'/ replacement. This system has to ensure a “backup plan” for emergencies. It is in the best interest of the Food & Beverage industry and the public's interest as well.

(IV)(c)

(c) the number of reserve licensee applications allowed during the license period;

Certainly more than one, but as to how many to cap it at, I am not sure. Nor am I sure a cap is even needed. Perhaps a cap could be considered if there proves to be a problem with having numerous reserves.

(IV)(d)

(d) whether not more than one reserve licensee should be allowed for the same liquor license; and

Yes, more than one should be allowed.

(IV)(e)

(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?

In my view there is no reason for the government to limit the number. The trade will not put all their eggs in one basket. This should be self correcting and self adjusting.

TEL: (852) [REDACTED]

FAX: (852) [REDACTED]

Back To Front Restaurant Consultants

(V)(a)

(a) the relevance and merits of a statutory license classification system in the Hong Kong context; and

It is difficult to say yes or no to this question without a proper understanding of "different risk". There appears to be no evidence to the establishment of "classes of risk" within your consultation paper based on "classes of liquor".

(V)(b)

(b) the practicability of such a classification system.

See note to (V)(a).

My final remarks are to put on record, that if more restrictions are loaded on to licensed premises, you will only be increasing the number of unlicensed Private Kitchens and unlicensed Upstairs Bars, which will soon be promoted as Private Bars to avoid all these regulations. As a result, you will inadvertently be endangering the public, not safeguarding the public.

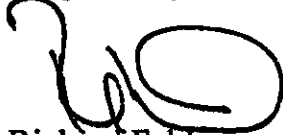
If nothing is done to regulate shops like 7-Eleven and unlicensed Private Kitchens, it is simply a matter of time, before there is a terrible accident, like a fire in one of these unlicensed Private Kitchens that leads to death(s).

In my view more regulations for licensed venues is not needed, but unlicensed Private Kitchens and shops like 7-Eleven becoming to intents and purposes unlicensed bars and liquor stores, cannot and should not be allowed to continue under the current arrangement.

TEL: (852) [REDACTED]
FAX: (852) [REDACTED]

Back To Front Restaurant Consultants

Respectfully Submitted,



Richard Feldman
Chairman