

**Business Facilitation Advisory Committee
Food Business and Related Services Task Force**

**Update on the Proposed Simplification of
Appeal Mechanism for Suspension/Cancellation of Food Business Licences**

Purpose

This paper updates members on the current status of the proposed simplification of the appeal mechanism for suspension/cancellation¹ of food business licences issued by the Food and Environmental Hygiene Department (FEHD) under the Food Business Regulation (FBR), Cap. 132X, since the Food Business and Related Services Task Force (FRSTF) meeting held on 17 October 2014.

Background

2. A direct investigation of the Ombudsman in 2013 had found that restaurant licences could defer the effective date of licence suspension or cancellation by taking advantage of the lengthy three-tier appeal process². To follow up with the Ombudsman's recommendation, FEHD had earlier explored a

1 Under the Demerit Point System (DPS), a pre-determined number of demerit points ranging from five to 15 (depending on the nature and severity of the offence) will be registered against a licensee upon conviction of an offence in relation to food safety and environmental hygiene under the Public Health and Municipal Services Ordinance (PHMSO), Cap.132 and its subsidiary legislation. A licence will be suspended for 7 days if 15 points are accumulated within a period of 12 months (first suspension) and 14 days if another 15 points are accumulated within 12 months from the date of the last offence that led to the first suspension (second suspension). If another 15 points are accumulated within 12 months from the date of the last offence that led to the second suspension, the licence will be cancelled.

2 If the licensee is dissatisfied with FEHD's decision to suspend or cancel its licence, he or she may –

- (a) make a representation to FEHD, as an administrative procedure, in seven days, or in four days for a serious breach;
- (b) appeal to the Licensing Appeals Board (LIAB) against FEHD's decision within 14 days under the Public PHMSO; and
- (c) in case LIAB upholds or varies FEHD's decision, appeal to the Municipal Services Appeals Board against LIAB's decision within 14 days under PHMSO.

proposal to remove the third tier of the current appeal mechanism (i.e. the Municipal Services Appeals Board). At the FRSTF meetings held on 6 June 2014 and 17 October 2014, FEHD consulted the Task Force on the proposal vide FRSTF papers 31 and 33 respectively. During the consultation, FRSTF expressed grave concern on the proposal as it would significantly undermine the legal rights of licensees and the current three-tier mechanism was very effective to prevent abuse of power and provided a good check and balance.

Latest Position

3. Having carefully considered the views of FRSTF and other stakeholders on the proposal and taken into account the effectiveness of the enhanced regulatory and enforcement measures, FEHD considers that there is no imminent need to pursue the simplification of the appeal mechanism at this moment. Nevertheless, FEHD will vigilantly monitor the situation. If abuse of the appeal mechanism for the purpose of deferring or evading the sanctions of licence suspension or cancellation (which undermines the effectiveness of the sanction system against recalcitrant offenders) is observed, FEHD will re-visit the need for simplification of the appeal mechanism.

Way Forward

4. Members are invited to note the content of this paper and offer comments, if any.

**Food and Environmental Hygiene Department
June 2016**