

**Twenty-sixth Meeting of  
the Business Facilitation Advisory Committee**

***Agenda Item 3(b) : Report on the work of the Food Business  
and Related Services Task Force***

**Purpose**

This paper reports on the work of the Food Business and Related Services Task Force (FRSTF) since the last Business Facilitation Advisory Committee (BFAC) meeting held on 1 April 2014.

**Work progress of FRSTF**

***Public Consultation on Enhanced Measures against Shop Front Extensions***

2. The Home Affairs Department has briefed FRSTF on the public consultation document on the enhanced measures against shop front extensions (SFEs).

3. There are diverse views on the effectiveness of the proposed fixed penalty system as an additional enforcement tool to tackle SFEs. Some members opine that the proposal would have sufficient deterrent effect, provided that the amount of penalty is set at a reasonably high level. However, some members consider that stepping up existing enforcement actions, especially prosecutions which require offenders to appear in court, is more effective in deterring SFEs. In addition, it is not fair for offenders to be fined a fixed level of penalty irrespective of the seriousness of an obstruction. The fixed penalty system may even encourage offenders to illegally occupy public places as large as possible.

4. There is no conclusive view on the proposed fixed penalty system. FRSTF considers that the proposal would have high impact on SMEs and suggests that the Administration should conduct a business impact assessment when more details of the proposal are available.

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

5. Restaurants illegally extending their business areas on to public places to provide outside dining areas often lead to obstruction of public access, noise and environmental hygiene problems. The Ombudsman has earlier carried out direct investigation into the regulatory measures and enforcement actions against unauthorized extension of business area by restaurants. The investigation report mentions that restaurant licensees can defer the effective date of licence suspension or cancellation by taking advantage of the lengthy appeal process and the discretion of the Food and Environmental Hygiene Department (FEHD) to suspend the implementation of the decision pending results of the appeals. Noting there are no successful appeal cases against suspension/cancellation of food business licences relating to illegal extension of business area under the Demerit Points System in 2012, the Ombudsman recommends that FEHD should consider amending the relevant legislation to simplify the current three-tier appeal mechanism<sup>1</sup>. To follow up the Ombudsman's recommendation, FEHD is exploring a proposal to streamline the appeal system by removing the Municipal Services Appeals Board (MSAB).

6. FEHD has briefed FRSTF on the proposed simplification of appeal mechanism for suspension/cancellation of food business licences issued under the Food Business Regulation (Cap. 132X) as a result of conviction under the same regulation. FRSTF expresses its grave concern on the proposal as it will significantly undermine the licensees' existing rights of appeal. For example, there are two cases not related to illegal extension of food business area that MSAB has overruled FEHD's decisions. FRSTF requests the Administration to review and streamline the existing appeal processes (instead of removing any tier of the present appeal mechanism) with a view to shortening the appeal time.

---

<sup>1</sup> If the licensee is dissatisfied with FEHD's decision to suspend or cancel its licence, he/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 PHMSO; and
- (c) appeal to the Municipal Services Appeals Board (MSAB) against LIAB's decision within 14 days under PHMSO.

***Implementation Progress of the Recommendations of the Review on Application for Outside Seating Accommodation Permission of Restaurants***

7. In October 2013, the Outside Seating Accommodation (OSA) Working Group<sup>2</sup> completed a review on the application for OSA permission of restaurants and put forward 10 recommendations. As reported at the last BFAC meeting, two of them had already been implemented.

8. At the last FRSTF meeting held in June 2014, the OSA Working Group updated members on the implementation progress of the remaining eight recommendations: one recommendation has been implemented and the rest are in good progress.

9. From mid-June 2014 onwards, the mechanism for considering objections to OSA applications from the public has been strengthened. When there are any public objections received against an OSA application, FEHD will enquire of relevant departments whether they have any enforcement action on hand and/or records of substantiated complaints related to the premises under application. This measure helps FEHD consider whether the grounds of objections are valid so as to balance the interests of stakeholders.

10. FRSTF appreciates the efforts taken by the departments concerned in implementing the recommendations.

**Way forward**

11. Members are invited to note the work progress of FRSTF. The Task Force will continue to monitor the development of the above issues.

Economic Analysis and Business Facilitation Unit,  
Financial Secretary's Office  
July 2014

---

<sup>2</sup> The Working Group comprises representatives from the Food and Environmental Hygiene Department, Fire Services Department, Buildings Department, Lands Department, Planning Department, Housing Department, Transport Department, Home Affairs Department and Economic Analysis and Business Facilitation Unit