
REGULATORY OVERVIEW

HONG KONG REGULATORY OVERVIEW

The following summarises the laws and regulations governing the specific licences required for the carrying on of our Group's business in Hong Kong.

(A) Key licences for business operation

Every person carrying on business in Hong Kong is required to register his business with the Business Registration Office of the Inland Revenue Department pursuant to section 5 of the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong). The application for the business registration shall be made within 1 month of the commencement of such business.

In addition, there are the following specific licences required for the operation of our Group's business in Hong Kong, including:

- (a) general restaurant licence granted by the Director of Food and Environmental Hygiene ("DFEH") of the Food and Environmental Hygiene Department ("FEHD");
- (b) light refreshment restaurant licence granted by the DFEH of the FEHD;
- (c) food factory licence granted by the DFEH of the FEHD; and
- (d) liquor licence granted by the Liquor Licensing Board ("LLB").

General restaurant licence and light refreshment restaurant licence

Any person carrying on restaurant business in Hong Kong is required to obtain a restaurant licence granted by the DFEH under the Public Health and Municipal Services Ordinance (Chapter 132 of the Laws of Hong Kong) and the Food Business Regulation (Chapter 132X of the Laws of Hong Kong) ("FBR") before commencing the restaurant business. Section 31(1) of the FBR provides that no person shall carry on or cause, permit or suffer to be carried on any restaurant business except under and in accordance with a restaurant licence, which is required for the food business involving the sale of meals or unbottled non-alcoholic drinks other than Chinese herbal tea for consumption on the premises, but does not include a factory canteen or any business carried on by a licensed hawkers. In considering the suitability of the premises for use as a restaurant, the FEHD will ensure the relevant requirements relating to health, ventilation, gas safety, building safety and fire safety of the premises have been complied with before a restaurant licence is issued. During the process, the FEHD will consult the Buildings Department relating to the building safety requirements and the Fire Services Department relating to the fire safety requirements on whether the necessary pre-requisites are met before approving the licence application.

While a general restaurant licence permits the licensee to prepare and sell any kind of food for consumption on the premises, a light refreshment restaurant licence restricts the licensee to prepare and sell for consumption on the premises certain limited range of food items only.

Under section 33C of the FBR, the DFEH may grant a provisional general/light refreshment restaurant licence to an applicant who has met the relevant requirements for the issue of provisional licence, pending the issue of a full licence when the other outstanding requirements are complied with. A provisional licence shall be valid for a period of 6 months, and may be renewed on one occasion for a period of not exceeding 6 months at the absolute discretion of the DFEH. A full restaurant licence shall be valid for a period of 12 months and renewable annually. Both the provisional and full licences are subject to payment of the respective prescribed fees and the continuing compliance with the relevant requirements under applicable legislation and regulations.

Food factory licence

Section 31(1) of the FBR also provides that no person shall carry on or cause, permit or suffer to be carried on any food factory business except under and in accordance with a food factory licence, which is required for

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the food business involving the preparation of food for sale for human consumption off the premises, but does not include a frozen confection factory, a milk factory or any business carried on by a licensed hawkker. The operation of a take-away food shop is amongst the numerous more common food preparation and manufacturing trades in Hong Kong which requires a food factory licence granted by the DFEH before commencement of business. In assessing the suitability of the premises for use as a food factory, the FEHD will ensure the relevant requirements have been complied with before a food factory licence is issued. The FEHD will also consult the Fire Services Department and the other HK Government departments concerned for comments as appropriate.

The DFEH may grant a provisional food factory licence to an applicant who has met the relevant requirements for the issue of provisional licence, pending the issue of a full licence when the other outstanding requirements are complied with. A provisional licence shall be valid for a period of 6 months, and may be renewed on one occasion for a period of not exceeding 6 months at the absolute discretion of the DFEH. A full food factory licence shall be valid for a period of 12 months and renewable annually. Both the provisional and full licences are subject to payment of the respective prescribed fees and the continuing compliance with the relevant requirements under applicable legislation and regulations.

Demerit points system

The demerit points system is a penalty system operated by the FEHD to sanction food businesses for repeated violations of relevant hygiene and food safety legislation. Under the system:

- (a) if within a period of 12 months, a total of 15 demerit points or more have been registered against a licensee in respect of any licensed premises, the licence in respect of such licensed premises will be subject to suspension for 7 days (“First Suspension”);
- (b) if, within a period of 12 months from the date of the last offence leading to the First Suspension, a total of 15 demerit points or more have been registered against the licensee in respect of the same licensed premises, the licence will be subject to suspension for 14 days (“Second Suspension”);
- (c) thereafter, if within a period of 12 months from the date of the last offence leading to the Second Suspension, a total of 15 demerit points or more have been registered against the licensee in respect of the same licensed premises, the licence will be subject to cancellation;
- (d) for multiple offences found during any single inspection, the total number of demerit points registered against the licence will be the sum of the demerit points for each of the offences;
- (e) the prescribed demerit points for a particular offence will be doubled and trebled if the same offence is committed for the second and the third time within a period of 12 months; and
- (f) any alleged offence pending, that is the subject of a hearing and not yet taken into account when a licence is suspended, will be carried over for consideration of a subsequent suspension if the licensee is subsequently found to have violated the relevant hygiene and food safety legislation upon the conclusion of the hearing at a later date.

Liquor licence

Any person who intends to carry on business in Hong Kong involving the sale of liquor for consumption on the premises is required to obtain a liquor licence granted by the LLB under the Dutiable Commodities (Liquor) Regulations (Chapter 109B of the Laws of Hong Kong) (“DCLR”) before commencing such business. Section 17(3B) of the Dutiable Commodities Ordinance (Chapter 109 of the Laws of Hong Kong) provides that where regulations prohibits the sale or supply of any liquor except on the authority of a prescribed licence or permit, no person shall sell, or advertise or expose for sale, or supply, or possess for sale or supply, such liquor except on the authority of such a licence or permit and in accordance with the terms thereof. Regulation 25A of the DCLR provides that the sale of liquor at any premises for consumption on those premises is prohibited except

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on the authority of a liquor licence. A liquor licence will only be issued when the premises have also been issued with a full restaurant or a provisional restaurant licence. A liquor licence will only be valid if the premises remain licensed as a restaurant. All applications are referred to the Commissioner of Police and the District Officer concerned for comments. Public opinion will also be sought.

Under Regulation 17(2) of the DCLR, the LLB shall not grant a liquor licence unless it is satisfied that:

- (a) that the applicant is a fit and proper person to hold the licence;
- (b) that the premises concerned are suitable for selling or supplying intoxicating liquor, having regard to:
 - (i) the location and structure of the premises; and
 - (ii) the fire safety and hygienic conditions in the premises;
- (c) that in all the circumstances the grant of the licence is not contrary to the public interest.

A liquor licence shall be valid for a period of 2 years or such lesser period as the LLB shall determine, and subject to any conditions as may be imposed by the LLB. The liquor licence is subject to payment of the prescribed fee and the continuing compliance with the relevant requirements under applicable legislation and regulations. A liquor licence is renewable upon application to the LLB if it considers the relevant requirements are met.

(B) Licence required for environmental protection

Water pollution control licence

In Hong Kong, discharge of effluents from all types of industrial, manufacturing, commercial, institutional and construction activities into the specified water control zones are subject to control under the Water Pollution Control Ordinance (Chapter 358 of the Laws of Hong Kong) (“WPCO”), and requires a water pollution control licence granted by the Director of Environmental Protection (“DEP”) of the Environmental Protection Department (“EPD”) before the discharge.

Under sections 8(1) and 8(2) of the WPCO, a person who discharges (a) any waste or polluting matter into the waters of Hong Kong in a water control zone; or (b) any matter into any inland waters in a water control zone which tends (either directly or in combination with other matter which has entered those waters) to impede the proper flow of the water in a manner leading or likely to lead to a substantial aggravation of pollution, commits an offence; and where any such matter is discharged from any premises, then the occupier of the premises also commits an offence.

Sections 9(1) and 9(2) of the WPCO further provides that a person who discharges any matter into a communal sewer or communal drain in a water control zone (other than a discharge of domestic sewage or unpolluted water into a communal sewer or communal drain in the manners specified therein) commits an offence; and where any such matter is discharged into a communal sewer or communal drain in a water control zone from any premises, then the occupier of the premises also commits an offence.

Nevertheless, section 12(1)(b) of the WPCO provides that a person does not commit an offence under section 8(1), 8(2), 9(1) or 9(2) of the WPCO if the discharge is made under, and in accordance with a water pollution control licence. A water pollution control licence will be granted with terms and conditions specifying requirements relevant to the discharge, for example, the discharge location, provision of wastewater treatment facilities, maximum allowable quantity, effluent standards, self-monitoring requirements and keeping records. A water pollution control licence may be granted for a period of not less than 2 years, and is subject to payment of the prescribed fee and the continuing compliance with the relevant requirements under applicable legislation and regulations. A water pollution control licence is renewable upon application to the EPD if it considers the relevant requirements are met.

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(C) Copyright issues

Civil liability

Copyright is a property right given to the owner of those original works as set out in section 2 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong) (“CO”), including original literary, dramatic, musical or artistic works, sound recordings, films broadcasts or cable programmes, and the typographical arrangement of published editions. Section 22 of the CO provides that the owner of the copyright in a work has various exclusive rights in relation to such work referred to as “acts restricted by the copyright” including performing, showing or playing the work in public, and copyright of the owner is infringed when a person does, or authorises others to do, any of the acts restricted by the copyright without the licence of the copyright owner.

Section 27 of the CO states that the performance, playing or showing of the work in public is an act restricted by the copyright in the described work, and so the copyright of the owner will be infringed if that other person playing the work in public does not have the licence of the copyright owner.

Regarding the secondary infringement of copyright, section 31 of the CO stipulates that it is a copyright infringement if a person exhibits in public for the purpose of or in the course of any trade or business a copy of a work which is, and which he knows or has reason to believe to be, an infringing copy of the work. In addition, where copyright is infringed by a performance at a place of public entertainment any person who permitted such place to be used for the performance is also liable for infringement unless he has reasonable grounds to believe at the time of granting the permission that the performance would not constitute infringement according to section 33 of the CO. Section 34 of the CO also provides that where copyright is infringed by a public performance or the playing or showing of the work in public, by means of apparatus for playing sound recordings, any person who supplied the apparatus, or an occupier of the premises who permitted the apparatus to be brought onto the premises, or a person who supplied a copy of a sound recording used to infringe copyright, is liable for the infringement if he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright or what he supplied or a copy made directly or indirectly from it was likely to be so used as to infringe copyright (as the case may be).

Under section 168 of the CO, where the scheme for licensing restricted acts in relation to copyright works, and licences granted by licensing bodies, does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work, there is implied in every such scheme an undertaking by its operator to indemnify a person granted a licence under such scheme, and in every such licence an undertaking by the licensing body to indemnify the licensee, against any liability incurred by him by reason of his having infringed copyright by making or authorising an act restricted by the copyright in a work in circumstances within the apparent scope of his licence.

Criminal liability

Section 118 of the CO also imposes criminal sanctions in relation to certain types of copyright infringement, so that a person commits an offence if he, without the licence of the copyright owner of a copyright work, exhibits in public an infringing copy of the work, or possess an infringing copy of the work with a view to its being exhibited in public, for the purpose of or in the course of any trade or business which consists of dealing in infringing copies of copyright works; a person also commits an offence if he, without such a licence of the copyright owner, possesses an infringing copy of copyright work that is musical sound or musical visual recording for the purpose of or in the course of any trade or business with a view to its being used by any person for the purpose of or in the course of that trade or business. Any person who commits such an offence is liable on conviction on indictment to a fine of HK\$50,000 in respect of each infringing copy and to imprisonment for 4 years under section 119 of the CO.

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(D) Others

Inland Revenue Ordinance (Chapter 112 of the Laws of Hong Kong) (“IRO”)

Under section 52(2) of the IRO, every person who is an employer shall, when required to do so by notice in writing given by an assessor appointed under the IRO, furnish a return of all persons employed by him in receipt of remuneration in excess of a minimum figure to be fixed by the assessor or any other person employed by him named by the assessor.

In addition, under section 52(4) of the IRO, where any person who is an employer commences to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part 3 of the IRO, or any married person, he shall give notice thereof in writing to the Commissioner of Inland Revenue not later than 3 months after the date of commencement of such employment. Under section 52(5) of the IRO, where any person who is an employer ceases or is about to cease to employ in Hong Kong an individual who is or is likely to be chargeable to tax under Part 3 of the IRO, or any married person, he shall give notice thereof in writing to the Commissioner of Inland Revenue not later than 1 month before such individual ceases to be employed in Hong Kong.

Amusement Game Centres Ordinance (Chapter 435 of the Laws of Hong Kong) (“AGCO”)

Under the AGCO, licences are issued by the public officer appointed by the officer of the Office of the Licensing Authority of the Home Affairs Department. The AGCO has regulated primarily the conventional amusement game centres, commonly known as “electronic game centres”.

Under section 2 of the AGCO, “amusement game centre” means any place in which there is installed or placed for use or operation for the purpose, in whole or in part, of amusement, recreation or entertainment on payment directly or indirectly of any consideration in money or money’s worth, any machine or device which, among other things:

- (a) enables or is capable of enabling any person by any means whatever to release, set in motion, manipulate, control or direct the movement of any ball, projectile, or other object, and registers any score or combination in any manner whatever; or
- (b) enables or is capable of enabling any person by any means whatever to release, set in motion, manipulate, control or direct the movement of any image, signal or electrical impulse; or
- (c) upon the insertion therein by any person of any coin, token, disc, card or object, produces or is capable of producing to him any prize, coin, token or disc or any other object or article whatever.

Places of entertainment including premises installed with electronic darting machines are “amusement game centres” and theoretically should be subject to regulation under the AGCO.

Any person who on any occasion (a) operates, keeps, manages or otherwise has control of, an amusement game centre in regard to the operation of which a licence is not in force; or (b) in any capacity assists, either directly or indirectly, in the operation, keeping, management or other control of an amusement game centre in regard to the operation of which a licence is not in force, commits an offence and shall be liable on first conviction, to a fine of HK\$100,000 and to imprisonment for 6 months.

Public Health and Municipal Services Ordinance (Chapter 132 of the Laws of Hong Kong) (“PHMSO”)

Under section 92A of the PHMSO and section 22A of the Places of Amusement Regulations (Chapter 132BA of the Laws of Hong Kong), it is an offence for any person to operate a billiard establishment with 4 or more billiard tables without a valid licence issued by the Leisure and Cultural Services Department.

According to section 92C of the PHMSO, any person convicted of the offence under section 92A of the PHMSO shall be liable to a fine up to HK\$25,000 and to imprisonment for 6 months, and to a further daily fine of HK\$450.