
REGULATORY OVERVIEW

LICENCES AND PERMITS

The following sets forth the major areas of Hong Kong laws and regulations in relation to the licences and permits which are required for the operation of our business in Hong Kong during the Track Record Period:

- (a) a general restaurant licence granted by the DFEH of the FEHD;
- (b) a water pollution control licence granted by the DEP of the EPD;
- (c) a liquor licence granted by the LLB;
- (d) a design approval and a permit to use and operate amusement ride granted by the DEMS;
- (e) certificate of results of thorough examinations in the preceding twelve months under FIU(LALG)R;
- (f) certificate of test and thorough examination of lifting appliances (except cranes, crabs and winches) under FIU(LALG)R;
- (g) certificate of compliance for club-houses granted by the Secretary for Home Affairs; and
- (h) club liquor licence granted by the LLB.

General restaurant licence

In Hong Kong, any person carrying on a restaurant business is required to obtain a restaurant licence granted by the DFEH under the PHMSO and FBR before commencing the restaurant business. It is provided under section 31(1) of the FBR that no person shall carry on or cause, permit or suffer to be carried on any restaurant except with a restaurant licence. Generally, the general restaurant licence will be granted subject to fulfilment of various pre-requisites in relation to the premises at which where the restaurant is proposed to be operated relating to health, ventilation, hygiene, structural features, building safety and means of escape. In assessing the suitability of premises for use as a restaurant, the FEHD will consult the Buildings Department and Fire Services Department for advice on the building and fire safety aspects, respectively. The DFEH may grant provisional restaurant licences to new applicants who have fulfilled the basic requirements in accordance with the FBR pending completion of all outstanding requirements for the issue of a full restaurant licence.

Any person who contravenes section 31(1) of the FBR shall be liable on summary conviction to a fine of HK\$50,000 and imprisonment for 6 months and, where the offence is a continuing offence, to an additional fine of HK\$900 for each day.

A provisional restaurant licence is valid for a period of six months or a lesser period and a general restaurant licence is valid generally for a period of one year, both subject to payment of the prescribed licence fees and continuous compliance with the requirements under the relevant legislation and regulations. A provisional restaurant licence is renewable on one occasion and a full restaurant licence is renewable annually.

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Under section 30 of the FBR, no person shall, except with the permission in writing of the DFEH, sell or offer or expose any restricted food as specified in Schedule 2 to the FBR. Under Schedule 2 to the FBR, sashimi is categorised as restricted food. The applicant for a restaurant licence shall indicate at the time of submitting his application that he intends to sell restricted food in the restaurant, the FEHD will process the application for sale of restricted food together with the application for a restaurant licence. Upon compliance with the licensing requirements by the applicant, including the requirements for sale of restricted food, permission will be endorsed free of charge on the restaurant licence.

Any person who contravenes section 30 of the FBR shall be liable on summary conviction to a fine of HK\$50,000 and imprisonment for 6 months and, where the offence is a continuing offence, to an additional fine of HK\$900 for each day.

Demerit points system

FEHD operates a demerit points system (the “**Demerit Points System**”) under which prescribed points are registered against a restaurant licence in respect of violations of the PHMSO and its subsidiary legislation. Under the Demerit Points System:

- (i) on conviction of an offence under sections 52 and 54 of PHMSO (which includes selling any food or drug which is not of the quality demanded by the purchaser and selling any food which is unfit for human consumption), a total of 5 points will be registered against the restaurant licence;
- (ii) if a total of 15 points or more are accumulated within a period of 12 months, the restaurant licence will be subject to a suspension period of seven days;
- (iii) if a total of 15 points or more are accumulated within a period of 12 months on a subsequent occasion, the restaurant licence will be subject to a suspension period of 14 days;
- (iv) if a total of 15 points or more are accumulated within a period of 12 months on a third occasion, the restaurant licence is subject to cancellation; and
- (v) the prescribed demerit points for a particular offense will be doubled and trebled if the same offense is committed for the second and the third time within a period of 12 months, respectively.

Hygiene Manager and Hygiene Supervisor Scheme

To strengthen food safety supervision in licensed food premises, the FEHD has introduced the Hygiene Manager (“**HM**”) and Hygiene Supervisor (“**HS**”) Scheme (the “**Scheme**”).

(A) The requirements

Under the Scheme, all large food establishments and food establishments producing high risk food are required to appoint an HM and an HS; and all other food establishments are required to appoint an HM or an HS. General restaurants which accommodate over 100 customers are required to appoint an HM plus an HS.

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(B) Training / Appointment of HM and HS

Food business operators are required to train up their staff or appoint qualified persons to take up the post of HM or HS.

According to “A Guide to Application for Restaurant Licences” of the FEHD (January 2012 Edition), one of the criteria for the issuance of a provisional licence/full general restaurant licence is the submission of a duly completed nomination form for HM and/or HS together with a copy of the relevant course certificate(s).

Water pollution control licence

In Hong Kong, discharges of trade effluents into specific water control zones are subject to control and the discharger is required to obtain a water pollution control licence granted by the DEP under the WPCO before commencing the discharge. Under sections 8(1) and 8(2) of the WPCO, a person who discharges (i) any waste or polluting matter into waters of Hong Kong in a water control zone; or (ii) 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 substantial aggravation of pollution, commits an offence and where any such matter is discharged from any premises, the occupier of the premises also commits an offence. Under sections 9(1) and 9(2) of the WPCO, a person who discharges any matter into a communal sewer or communal drain in a water control zone 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, the occupier of the premises also commits an offence. A person who commits an offence under section 8(1), 8(2), 9(1) or 9(2) is liable to imprisonment for 6 months and (a) for a first offence, a fine of HK\$200,000; (b) for a second or subsequent offence, a fine of HK\$400,000, and in addition, if the offence is a continuing offence, to a fine of \$10,000 for each day during which the offence has continued. Under section 12(1)(b) of the WPCO, a person does not commit an offence under section 8(1), 8(2), 9(1) or 9(2) of the WPCO if the discharge or deposit in question is made under, and in accordance with, a water pollution control licence. Generally, a water pollution control licence will be granted with terms and conditions specifying requirements relevant to the discharge, such as 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 two years and generally five years, subject to payment of the prescribed licence fee and continuous compliance with the requirements under the relevant legislation and regulations. A water pollution control licence is renewable.

Liquor licence

In Hong Kong, any person who intends to operate a business which involves the sale or supply of liquor must obtain a liquor licence from the LLB under the DCR before commencement of such business. It is provided under section 17(3B) of the DCO that where regulations prohibit the sale or supply of any liquor except with a liquor licence, no person shall sell, or advertise or expose for sale, or supply, or possess for sale or supply, liquor except with a liquor licence. Any person who contravenes section 17(3B) of the DCO commits an offence and is liable on conviction to a fine of HK\$1,000,000 and to imprisonment for 2 years. Regulation 25A of the DCR prohibits the sale of liquor at any premises for consumption on those premises or at a place of public entertainment or a public occasion for consumption at the place or occasion except with a liquor licence. Such licence is applied by and granted to an individual. A liquor licence will only be issued when the relevant premises have also been issued with a full or provisional restaurant licence. A liquor licence will only be valid if the relevant premises remain licensed as a restaurant. All applications for liquor licences are referred to the Commissioner of Police and the District Officer concerned for comments.

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A liquor licence is valid for a period of one year or a lesser period, subject to the continuous compliance with the requirements under the relevant legislation and regulations. A liqueur licence is renewable.

Design approval and permit to use and operate amusement ride

In Hong Kong, an owner of an amusement ride shall obtain the approval for installation and a permit to operate by the DEMS before commencing the operation of the ride. Under section 6 of the ARSO, a person wishing to install an amusement ride shall not carry out any part of the installation works until the designs and specifications (including any plans and calculations) connected with the ride, together with the method and programme of installation of the ride, are approved by the DEMS. In addition, section 10 of the ARSO provides that the owner of an amusement ride (other than an existing amusement ride) shall not operate the ride for the use of members of the public until the DEMS has approved the commencement of operation of the ride and the owner has paid to the DEMS the prescribed fee for such approval. Any person who contravenes section 10 of the ARSO commits an offence and is liable to a fine of HK\$10,000 and to imprisonment for 6 months. Under section 8(1) of the AR(S)(O&M)R, the owner of an amusement ride shall not operate the ride unless he has at all times employed a competent person in respect of the ride and such number of operators to perform such duties as approved by the DEMS. Any owner of an amusement ride who contravenes section 8(1) of the AR(S)(O&M)R commits an offence and is liable on conviction to a fine of HK\$10,000 and to imprisonment for 6 months. Pursuant to sections 1.3 and 4 of the Code of Practice for Amusement Rides issued by the EMSD, the owner of an amusement ride must also appoint an independent surveyor to thoroughly inspect, examine, test and certify the integrity of the ride upon completion of the installation works. After the permit is issued, under section 18(1) of the AR(S)(O&M)R, the owner of an amusement ride shall ensure that the ride is examined by a surveyor not less than once every 12 months or anytime as required by the DEMS, the examination to include any structure, electrical, mechanical and safety equipment that may be necessary to ascertain the integrity and safe operation of the ride. Any owner of an amusement ride who contravenes section 18(1) of the AR(S)(O&M)R commits an offence and is liable on conviction to a fine of HK\$50,000 and to imprisonment for 2 years.

The licensing processes on design approval before construction and “permit to use and operate” upon completion of installation of any amusement ride are required on a “one-off” basis. Renewal or re-submission is not necessary until such time that a major alteration involving modifications on the safety-critical elements is required.

Certificate of results of thorough examinations in the preceding 12 months

A person who owns a lifting appliance in Hong Kong must ensure that such appliance is examined by a competent examiner before it is used. Under regulation 5(1) of the FIU(LALG)R, an owner of a lifting appliance shall ensure that it is not used unless it has been thoroughly examined by a competent examiner at least once in the preceding 12 months. In addition, the owner must obtain a certificate in the approved form in which the competent examiner has made a statement to the effect that it is in safe working order. A competent examiner must be a registered professional engineer registered under the ERO within a relevant discipline specified by the Commissioner of Labour, and by reason of his qualifications, training and experience, competent to carry out the test and examination. The certificate does not have an expiration date.

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Regulation 5(4) of the FIU(LALG)R provides that if any lifting appliance which has been thoroughly examined or tested and thoroughly examined as required under regulation 5(1) of the FIU(LALG)R but has since undergone substantial repair, re-erection, failure, overturning or collapse, the owner of the lifting appliance shall ensure that it is not used unless it has been further tested and thoroughly examined by a competent examiner, and there has been obtained from him in respect of the test and thorough examination a certificate in the approved form in which he has made a statement to the effect that it is in safe working order.

Certificate of test and thorough examination of lifting appliances (except cranes, crabs and winches)

Under regulation 5(2) of the FIU(LALG)R, an owner of a lifting appliance other than a crane, crab or winch shall ensure that it is not used unless it has been tested and thoroughly examined by a competent examiner in the manner prescribed in Schedule 1 to the FIU(LALG)R. In addition, the owner must obtain a certificate in the approved form in which the competent examiner has made a statement to the effect that it is in safe working order. A competent examiner must be a registered professional engineer registered under the ERO within a relevant discipline specified by the Commissioner of Labour, and by reason of his qualifications, training and experience, competent to carry out the test and examination. The certificate does not have an expiration date.

Regulation 5(4) of the FIU(LALG)R provides that if any lifting appliance which has been thoroughly examined or tested and thoroughly examined as required under regulation 5(2) of the FIU(LALG)R but has since undergone substantial repair, re-erection, failure, overturning or collapse, the owner of the lifting appliance shall ensure that it is not used unless it has been further tested and thoroughly examined by a competent examiner, and there has been obtained from him in respect of the test and thorough examination a certificate in the approved form in which he has made a statement to the effect that it is in safe working order.

Any owner who contravenes any of the provisions of regulation 5 of the FIU(LALG)R shall be guilty of an offence and be liable to a fine of HK\$200,000.

Club liquor licence

In Hong Kong, any person who intends to operate a business which involves the supply of liquor at any premises used by a club for the purpose of the club must obtain a club liquor licence from the LLB under the DCR before commencement of such business. It is provided under section 17(3B) of the DCO that where regulations prohibit the sale or supply of any liquor except with a liquor licence, no person shall sell, or advertise or expose for sale, or supply, or possess for sale or supply, liquor except with a liquor licence. Regulation 26 of the DCR prohibits the supply of liquor at any premises used by any club for the purposes of the club to any member of the club except with a club liquor licence. Such licence is applied by and granted to an individual. Application for a club liquor licence must be made by the secretary of the respective club and a person nominated by the club if the proposed licence holder is not the club secretary. All applications for club liquor licences are referred to the Commissioner of Police and the District Officer concerned for comments.

If any liquor is supplied to a member of a club in contravention of regulation 26 of the DCR, the secretary of the club or other person nominated under regulation 26 shall be guilty of an offence and shall be liable on conviction to a fine of HK\$50,000 and to imprisonment for 6 months.

A liquor licence is valid for a period of one year or a lesser period, subject to the continuous compliance with the requirements under the relevant legislation and regulations. A club liquor licence is renewable.

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Certificate of compliance for club-houses

Under section 4 of the C(SOP)O, any person who on any occasion operates, keeps, manages or otherwise has control of a club-house commits an offence and is liable on conviction to a fine of HK\$200,000 and to imprisonment for 2 years and to a fine of HK\$20,000 for each day during which the offence continues, unless a certificate of compliance has been issued in respect of the club-house. Section 5 of the C(SOP)O provides that an application by a person for a certificate of compliance shall be made to the Secretary for Home Affairs in such form and manner as the Secretary for Home Affairs may determine. Applicants may either be an individual (who is an office-bearer of the club or the appointed person representing the club), or a body corporate. The certificate of compliance is issued by the Secretary for Home Affairs.

A certificate of compliance for club-houses is valid for a period of one year, subject to the continuous compliance with the requirements under the relevant legislation and regulations. A certificate of compliance for club-houses is renewable annually.

We held a club liquor licence and certificate of compliance for club-houses for the operation of Choi Fook Club (Wan Chai) during the Track Record Period. Choi Fook Club (Wan Chai) was closed in April 2013. For details, see “Business — Our restaurants — Wan Chai operations”.

OTHER APPLICABLE LAWS AND REGULATIONS

In addition to the aforementioned licences and permits, our Group’s business in Hong Kong is also generally regulated by the following major ordinances and regulations, which include but not limited to:

- (A) Food and Drugs (Composition and Labelling) Regulations (Cap. 132W)
- (B) Waste Disposal Ordinance (Cap. 354)
- (C) Employees’ Compensation Ordinance (Cap. 282)
- (D) Employment Ordinance (Cap. 57)
- (E) Immigration Ordinance (Cap. 115)
- (F) Minimum Wage Ordinance (Cap. 608)
- (G) Factories and Industrial Undertakings (Fire Precautions in Notifiable Workplaces) Regulations (Cap. 59V)
- (H) Occupational Safety and Health Ordinance (Cap. 509)
- (I) Occupiers Liability Ordinance (Cap. 314)
- (J) Trade Descriptions Ordinance (Cap. 362)

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Food labelling

The Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) (“**FDR**”) regulates nutrition facts labels on packaged foods sold in Hong Kong.

Regulation 4A(1) of the FDR stipulates that all prepackaged food should be labelled in either English or Chinese or in both languages with its food name or designation, list of ingredients, indication of “best before” or “use by” date, statement of special conditions for storage or instructions for use, count, weight or volume and name and address of manufacturer or packer.

Regulation 4B(1) states that, the prepackaged food shall be legibly marked or labelled with a list of nutrients setting out the energy value of the food, the content of certain nutrients contained in the food and if applicable, the content of any other nutrient contained in the food for which a nutrition claim is made on the food label.

Under Regulation 5(1AA), any person who advertises for sale, sells or manufactures for sale any prepackaged food which is not marked or labelled in compliance with Regulation 4A(1) or 4B(1); or has on its label any nutrition claim that does not conform to the statutory requirements set out in Schedule 5, commits an offence and is liable on conviction to a fine of HK\$50,000 and to imprisonment for 6 months.

Environmental regulations

The Waste Disposal Ordinance (Cap. 354) (“**WDO**”) provides for the control and regulation of the production, storage, collection and disposal including the treatment, reprocessing and recycling of waste of any class or description, the licensing and registration of places and persons connected with any such activity, the protection and safety of the public in relation to any such activity and to provide for matters incidental thereto. Under section 16 of the WDO, a person shall not use, or permit to be used, any land or premises for the disposal of waste unless he has a licence from the DEP. A person who except under and in accordance with a permit or authorisation, does, causes or allows another person to do anything for which such a permit or authorisation is required commits an offence and is liable on conviction to a fine of HK\$200,000 and imprisonment for 6 months for the first offence, and to a fine of HK\$500,000 and imprisonment for 2 years for the second or subsequent offence.

Fire safety

Factories and Industrial Undertakings (Fire Precautions in Notifiable Workplaces) Regulations (Cap. 59V) (“FIU(F)R”)

The FIU(F)R ensures that the proprietor of every workplace shall maintain a means of escape from the workplace in good condition and free from obstruction.

Under Regulation 5(1) of the FIU(F)R, the proprietor of every notifiable workplace shall maintain in good condition and free from obstruction every doorway, stairway and passageway within the workplace which affords a means of escape from the workplace in case of fire. Regulation 14(5) of the FIU(F)R stipulates that the proprietor of any notifiable workplace who contravenes regulation 5(1) without reasonable excuse commits an offence and is liable to a fine of HK\$200,000 and to imprisonment for 6 months.

Buildings Ordinance (Cap. 123)

The Building Ordinance provides for the planning, design and construction of buildings and associated works; rendering safe of dangerous buildings and land; regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe.

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Occupational Safety and Health Ordinance (Cap. 509) (“OSHO”)

OSHO is purported to ensure the safety and health of employees when they are at work and improves the safety and health standards applicable to certain hazardous processes, plant and substances used or kept in workplaces.

The employer shall ensure the safety and health at works of all his employees by:—

- (i) providing and maintaining plant and work systems that do not endanger safety or health;
- (ii) making arrangements for ensuring safety and health in connection with the use, handling, storage and transport of articles and substances;
- (iii) providing all necessary information, instruction, training and supervision for ensuring safety and health;
- (iv) providing and maintaining safe access to and egress from the workplaces; and
- (v) providing and maintaining a safe and healthy work environment.

Under section 9(1) of the OSHO, the Commissioner for Labour may serve an improvement notice on an employer, or an occupier of premises where a workplace is located, if the employer or occupier is contravening OSHO, or has contravened in circumstances that make it likely that the contravention will be continued or repeated. Section 9(2)(e) of the OSHO stipulates that an improvement notice must require the employer or occupier either to remedy the contravention within a period specified in the notice, or to refrain from continuing or repeating the contravention.

Section 9(5) of the OSHO stipulates that an employer who, without reasonable excuse, fails to comply with a requirement of an improvement notice commits an offence and is liable on conviction to a fine of HK\$200,000 and to imprisonment for 12 months.

General compliance

Employees’ Compensation Ordinance (Cap. 282) (“ECO”)

This ordinance establishes a no-fault, non-contributory employee compensation system for work injuries and lays down the respective rights and obligations of employer and employee in respect of injuries or death caused by accidents arising out of and in the course of employment, or by prescribed occupational diseases.

Under the ECO, if an employee sustains an injury or dies as a result of an accident arising out of and in the course of his employment, his employer is generally liable to pay for the compensation even if the employee might have committed acts of faults or negligence when the accident occurred. Similarly, under section 32 of the ECO, an employee who suffers incapacity or dies arising from an occupational disease is entitled to receive the same compensation as that payable to employees injured in occupational accidents. Further, section 40 of the ECO provides that an employer is not permitted to employ any employee in any employment unless there is in force in relation to such employee a policy of insurance issued by an insurer for an amount not less than that specified in the ECO.

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Employment Ordinance (Cap. 57) (“EO”)

The EO provides for, amongst other things, the protection of the wages of employees, to regulate general conditions of employment, and for matters connected therewith.

Under section 25 of the EO, where a contract of employment is terminated, any sum due to the employee shall be paid to him as soon as it is practicable and in any case not later than 7 days after the day of termination. Any employer who wilfully and without reasonable excuse contravenes section 25 of the EO commits an offence and is liable to a maximum fine of \$350,000 and to imprisonment for a maximum of 3 years. Further, under section 25A of the EO, if any wages or any sum referred to in section 25(2)(a) are not paid within 7 days from the day on which they become due, the employer shall pay interest at a specified rate on the outstanding amount of wages or sum from the date on which such wages or sum become due up to the date of actual payment. Any employer who wilfully and without reasonable excuse contravenes section 25A of the EO commits an offence and is liable on conviction to a maximum fine of \$10,000.

Minimum Wage Ordinance (Cap. 608) (“MWO”)

The MWO, which came into effect on 1 May 2011, which provides a statutory minimum wage level for employees in Hong Kong. In essence, wages payable to an employee in respect of any wage period, when averaged over the total number of hours worked in the wage period, should be no less than the statutory minimum wage, which was HK\$30 as at the Latest Practicable Date. Any provision of the employment contract which purports to extinguish or reduce the right, benefit or protection conferred on the employees by the MWO is void.

Occupiers Liability Ordinance (Cap. 314) (“OLO”)

The OLO regulates the obligations of a person occupying or having control of premises on injury or damage resulting to persons or goods lawfully on the land or other property from dangers.

Trade Descriptions Ordinance (Cap. 362) (“TDO”)

TDO is one of the key legislations regulating advertising and promotion practices in Hong Kong. A trade description includes an indication of quantity, composition, and fitness for purpose, performance, physical characteristics and place of origin with respect to any goods. It is an offence under the TDO for any person to apply a false or misleading trade description to goods or to supply goods to which false trade descriptions have been applied. The TDO also prohibits the use of false and misleading trade descriptions of goods in advertisements.

In order to enhance protection of consumers against other commonly seen unfair trade practices in consumer transactions and prohibit false trade descriptions to both goods and services, the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 has come into operation on 19 July 2013 and brought various amendments to the TDO. The key changes include:

- the expansion of the definition of “trade description” in respect of goods to mean any indication, direct or indirect, and by whatever means given, with respect to any goods or parts of goods such as price indication;
- the extension of the prohibition on false trade descriptions to services made in consumer transactions, and to define “services” under any consumer contract;
- the creation of new offences on practices such as misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment; and
- an introduction of a mechanism enabling aggrieved consumers to commence civil actions to recover any loss or damage suffered in addition to criminal sanctions.