



**Removal of Trades in Offensive Trades Clause
and Relaxation of the Requirement for Applying for
Offensive Trades Licences for Specified Food Businesses**

Offensive Trades Licence granted upon application

Many of the old Government leases contain the offensive trades clause which reads as follows:-

“that (the said Lessee) or any other person or persons shall not nor will during the continuance of this demise, use, exercise, or follow, in or upon the demised premises or any part thereof, the trade or business of a Brazier, Slaughterman, Soap-maker, Sugar-baker, Fellmonger, Melter of Tallow, Oilman, Butcher, Distiller, Victualler or Tavern-keeper, Blacksmith, Nightman, Scavenger or any other noisy noisome or offensive trades or business whatever without the previous licence of Her said Majesty signified in writing by the Governor or other person duly authorized in that behalf”

2. Owners of a lot or premises held under Government leases containing the offensive trades clause have to apply to the Lands Department (“LandsD”) for an offensive trades licence (“OT Licence”) to carry on the trades of sugar baker, oilman, butcher, victualler and tavern-keeper (collectively “the five trades”) contained in the offensive trades clause. In general, LandsD deals with applications for OT Licence for cases involving the whole of the lot in the following manner:-

- (i) Upon the grant of the OT Licence, the applicant can carry on the five trades on the concerned lot which were previously restricted. As hotel use will be permitted as a result of removing the restriction on “tavern keeper”, the terms of the OT Licence will include conditions restricting the sale of any hotel except as a whole and restricting the letting of hotel rooms for not more than one year. The applicant should clearly delineate the portion of the lot or building to be used for hotel purpose on the building plans.
- (ii) Any OT Licence, if granted, will be subject to payment of a fee, which is currently \$32,600 per lot. This fee is subject to review from time to time. LandsD aims to make an offer within two months from the date of receiving an application for straightforward cases.

3. For lots in multi-ownership and premises comprising only where the application covers one or more units in a building, subject to payment of the administrative fee mentioned in para. 2(ii) hereof, an OT Licence may be issued to the registered owner of the premises to allow him to carry on the five trades on the premises. The OT Licence will contain a condition prohibiting the use of the premises for hotel purpose.

4. Applicants have to submit their applications with two sets of:-

- (i) computer printout containing the historical and current ownership particulars of the subject property; and
- (ii) copy of the Government lease (including all modifications and attachments to it) of the lot or premises.

One set of the above documents must be certified either by the Land Registry or by the solicitor acting for the applicant while the other set of the documents can be a photocopy of the certified documents.

5. Applicants should also note that obtaining OT Licences from LandsD does not absolve their obligations to obtain all other necessary permissions, approvals, permits and licences, whether statutory or contractual.

Relaxed requirement of applying for OT Licences for specified food businesses covered by three types of licences

6. To foster a business facilitating environment, LandsD would relax the requirement of applying for an OT Licence for the operation of a business which requires one or more of the following three types of licences: (a) General Restaurant Licence and (b) Light Refreshment Restaurant Licence granted by the Director of Food and Environmental Hygiene, and (c) Liquor Licence granted by the Liquor Licensing Board (collectively "the Statutory Licences"). Under the new arrangement, upon the grant of any of the Statutory Licences in respect of a lot or premises which is subject to the offensive trades clause under the Government lease, an OT Licence would be deemed to be granted to the owner of the concerned lot or premises by LandsD. The new arrangement shall take effect from the date of this Practice Note and apply to cases where the following three criteria ("the Criteria") are satisfied:-

- (i) the concerned lot or premises is not covered by an OT Licence;
- (ii) the proposed use of the concerned lot or premises falls within one or more of the five trades; and
- (iii) the concerned lot or premises does not form part of a hotel development and shall remain so during the term of the relevant Statutory Licence(s).

7. For the avoidance of doubt, the OT Licence deemed to be granted under the new arrangement shall be co-terminus with the relevant Statutory Licence(s). Upon the expiration or cancellation of all relevant Statutory Licence(s) in respect of the

concerned lot or premises or in the event that the concerned lot or premises no longer satisfy all the Criteria, the OT Licence deemed to be granted under the new arrangement shall automatically terminate and cease to have effect and the concerned lot or premises shall in all respects be subject to all the provisions, restrictions and covenants in the Government lease, including the offensive trades clause in its entirety.

8. Nothing in this Practice Note shall in any way fetter or affect or prejudice the exercise of the rights of the Government, the LandsD and their officers under the relevant statutes and Government leases.

9. Nothing in this Practice Note, including any words and expressions used, shall in any way be construed as any variation or waiver of any provisions under Government lease or affect or bind the Government in relation to the interpretation or enforcement of the terms and conditions of the relevant Government lease or otherwise.

10. Moreover, any OT Licence, whether issued upon application or deemed to be granted under the new arrangement, shall not affect other terms, covenants and conditions in the Government lease, the Buildings Ordinance, the Town Planning Ordinance and other legislations or otherwise, and shall not prejudice any rights and remedies of other parties under the deed of mutual covenant of the building involved (if applicable).

11. LandsD Lands Administration Office Practice Note No. 6/2007 is hereby superseded.



(Andrew LAI)
Director of Lands
5 November 2021