

Internal Audit Report

DEPARTMENT OF COMMERCE & INVESTMENT

LIQUOR LICENSING BOARD RE: PEANUTS LTD APPLICATIONS

Audit Reference 2017-S15

SEPTEMBER 2017



**INTERNAL
AUDIT SERVICE**

CAYMAN ISLANDS GOVERNMENT

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SECTION I. AUDIT SUMMARY

1. Introduction

- 1.1. The Ministry of Commerce, Planning & Infrastructure (CPI) requested on August 8th, that the Internal Audit Service (IAS) conduct an internal investigation relating to matters surrounding recent Liquor Licensing Board (LLB) decisions taken in respect of two applications submitted on behalf of Peanuts Ltd.
- 1.2. This request followed numerous articles in the media which suggested irregularities on the decisions and internal processes of the LLB.
- 1.3. This report summarizes the findings of our investigation. Our agreed objectives were;
 - To determine whether LLB decisions regarding the February 2017 liquor license applications from Peanuts Ltd. were taken appropriately and in accordance with its stated mandate.
 - To determine the appropriateness of the processes and public communications which led to and emanated from LLB decisions regarding the February 2017 applications from Peanuts Ltd.
 - To determine whether the transfer of the LLB Secretary to another civil service entity was connected with her involvement in handling the February 2017 applications from Peanuts Ltd.

2. Scope / Limitations on Work Undertaken

- 2.1. The scope of the audit was limited to the two liquor license applications submitted in February 2017 on behalf of Peanuts Ltd. The review focused on the regulatory framework and the operating and administrative policies and procedures in place throughout the approval process.
- 2.2. Interviews were limited to all LLB members and Department of Commerce and Investment (DCI) staff who were present at the March 24th and / or 28th Board meeting, the applicant and appointed representative. We received full cooperation from all those contacted with the exception of the then Acting Chair who we met on September 1st, but opted to refer our questions to legal counsel. No response was received prior to the issuance of this report on September 20th.

3. Audit Conclusion

- 3.1. It is our opinion that the Board acted in good faith in their attempt to arrive at a proper and just decision based on all information and facts available at the time. However, the Board erred in their approach and subsequent rationale for their decisions. It is recognized that the issuance of a licence is a two-step process. The Board's granting of the retail licence was the first step. The second step is the issuance of the actual licence (Form 3) which requires the signature of the Chair of the Board. As concerns with the Board's decision started to materialize, the Chair requested that the Department not proceed with the processing of licences associated with the

March meeting. As further information became available, the LLB, while in recess, came to the realization that the assumptions on which they based their decision to grant a retail licence was incorrect. The Board then proceeded to change the official records and introduce a new policy which was not within their purview.

- 3.2. The Liquor Licensing Law (2016 Revision) however, does provide for the Board to revoke a licence. Given that the Board approved a retail liquor licence and in the absence of a duly signed and issued Form 3, an appropriate alternative course of action could have been for the Board to follow up with another hearing at a future meeting of the Board to allow all interested parties an open and transparent forum in which to discuss the new information. Then, if deemed necessary, the Board could exercise their authority to revoke the licence which had previously been granted but not issued.
- 3.3. Based on the audit the Internal Audit Service concludes;
- The LLB acted in good faith throughout both phases in the licencing process in their attempts to carry out due diligence in arriving at their decisions regarding the applications for liquor licences related to Peanuts Ltd.
 - The LLB failed however in their approach taking inappropriate actions while in recess and developing an interpretation of the Liquor Licencing Law (2016 Revision) which was outside their remit. *(See recommendations 1 and 6)*
 - The LLB must take further action to address the Retail Licence application for Peanuts Ltd. by either revoking the licence or issuing the licence (Form 3). *(See recommendation 2)*
 - Administrative and procedural errors occurred resulting in the unauthorized issuance of LLB decisions to the media and public notifications of licence holders. *(See recommendations 4 and 5)*
 - The transfer of the then Secretary of the LLB was not as a result of her involvement with the Peanuts Ltd. applications for liquor licences.
- 3.4. We have made six audit recommendations. Implementation of these recommendations should result in enhanced public transparency, governance and operational improvements and mitigate the chances of a similar situation from reoccurring.

Andy Bonner

Director, Internal Audit Service

September 20th 2017

SECTION II. THE OPERATIONAL PROCESS

The following outlines the recognized and expected processes which provided the framework on which we based our subsequent observations.

1. Application & Approval Process

- 1.1. Applications for liquor licences (Form L.L. 1 (Section 12(1))) are submitted to the Department of Commerce & Investment. The Department validates that all information is in order and prepares the file for consideration by the LLB.
- 1.2. LLB meetings are held quarterly in December, March, June and September, the latter of which is deemed to be the annual meeting. Public notice of a LLB meeting is provided at least 14 days in advance of the meeting. Applications submitted 21 days ahead of a LLB meeting will be heard at that meeting. Those submitted less than 21 days in advance of a meeting will be heard at the next meeting.
- 1.3. LLB meetings consist of two parts, an open session in which the public is permitted to attend and make representation on applications before the Board, and a closed session for the Board to deliberate and make decisions.
- 1.4. The Board's decisions shall be provided to the applicants and published by Government Notice (Sections 5.6 & 5.8 Liquor Licensing Law (2016 Revision)) & (Section R(g) of the Standing Orders and Rules of Procedure for the Liquor Licensing Board).
- 1.5. The approval of an application is a two phase process:
 - The first phase is the granting of the licence by the Board.
 - The second phase is the issuance of a liquor licence (Form 3) signed by the LLB Chairman.

2. Power of the Board

- 2.1. The Board may grant, renew, vary or revoke any licence. (Section 5.1 Liquor Licensing Law (2016 Revision))
- 2.2. The Board has the authority to implement policies and procedures which affect the administrative processes of its operations (Section 4.9C Liquor Licensing Law (2016 Revision) & Section F(a) of the Standing Orders and Rules of Procedure for the LLB).

3. Board Meetings

- 3.1. Members of the Board may participate in a Board meeting via numerous means provided that they are able to communicate with each other at the same time (Section 4.9B of the Liquor Licensing Law (2016 Revision)).

- 3.2. The Board's decision on an application shall be determined by a vote (Section 5.5 Liquor Licensing Law (2016 Revision)).
- 3.3. At each quarterly meeting the Board ratifies the minutes from the previous quarterly meeting.

4. LLB Secretariat

- 4.1. With the enactment of the Liquor Licensing Law (2016 Revision) which came into effect in January 2016, the Department of Commerce and Investment (DCI) was designated as the Secretariat for the LLB (Section 4.9 Liquor Licensing Law (2016 Revision)).
- 4.2. The Secretariat's responsibilities include the day to day administration of the Board including, but not limited to, recording and keeping the minutes and decisions of all Board meetings (Section 4.9A Liquor Licensing Law (2016 Revision) & Section J of the Standing Orders and Rules of Procedure for the Liquor Licensing Board).

SECTION III. AUDIT OBSERVATIONS & FINDINGS

The audit has established the following chronology of events associated with two applications filed on behalf of Peanuts Ltd. for a retail licence and a wine & beer licence.

Date	Event
February 22 nd , 2017	DCI received two applications on behalf of Peanuts Ltd. for a retail liquor licence and a wine & beer licence.
March 24 th , 2017	<p>Quarterly meeting of the LLB, at which time the two applications submitted on behalf of Peanuts Ltd. were before the Board.</p> <p>Various issues were raised by the public including the possible existence of a moratorium on the issuance of liquor licences to gas stations.</p>
March 28 th , 2017	<p>Quarterly meeting of the LLB continued and arrived at a decision to grant a retail licence to Peanuts Ltd., which was then subject to the issuance of Form 3 (the actual licence), and to not grant a wine and beer licence. This decision is so noted in the original set of minutes prepared for the March 24th meeting as well as a separate set of minutes prepared following the March 28th session. The minutes made no reference to the rationale used by the Board to grant the retail licence however stated the following regarding the wine and beer licence, "The Board agreed that this category of license was not required for operations at the said location."</p> <p>The outcome of the Board's decision to grant a retail licence to Peanuts Ltd. would permit the sale of alcohol at the gas station on Sundays. Due to the sensitive nature of this decision it was agreed that DCI would arrange for a Government media communications specialist to contact the Acting Chair of the LLB for the purpose of drafting a press release to explain the reasoning behind the Board's decision.</p> <p>After the Board meeting was recessed on March 28th, the Secretary of the Board remained behind with the Acting Chair to validate the Board's decisions as per standard procedures.</p>
March 29 th , 2017	The Secretary to the Board released to the media and senior DCI staff, by way of a generic e-mail account (DCI Information), a record of decision, as per her customary procedures over the past number of years. This record of decision indicated that a retail licence was granted for the Peanuts Ltd. application for a retail licence and not granted for their wine & beer licence.
March 30 th , 2017	The first of numerous articles related to the March LLB meetings was published in the media.

April 3 rd , 2017	Media inquiries continued resulting in the Acting Chair preparing notes for a response to a particular set of questions. These notes provided the basis for the Boards decision by stating, "Peanuts was not the first ...precedent was set ...with Anchors Gas Station". This was in reference to a decision taken by a previous Board (redacted as per the Freedom of Information Law (2015 Revision) 20.(1)(c)).
April 6 th , 2017	The Acting Chair directed Departmental officials not to process any licences related to the March LLB meeting until the press release was completed.
April 11 th , 2017	In response to the issues raised at the March 24 th LLB meeting, the Ministry of Financial Services, Commerce & Environment issued a statement clarifying that the 2010 moratorium affecting gas stations had been lifted.
June 9 th , 2017	(Redacted as per the Freedom of Information Law (2015 Revision) 20.(1)(c)) the issuance of a liquor licence prior to the Liquor Licencing Law (2016 Revision) which was used by the Board as their justification for granting the retail liquor licence to Peanuts Ltd.
June 22-29, 2017	(Redacted as per the Freedom of Information Law (2015 Revision) 20.(1)(c)) the Liquor Licencing Board commenced an extensive exchange of e-mails concluding with a revised set of minutes being circulated to the Board.
June 30 th , 2017	Quarterly LLB meeting. In preparation for this meeting the Secretariat of the LLB provided the members with the minutes as they were originally prepared. As noted above a different set of minutes were circulated amongst Board members on June 29 th . At the June 30 th LLB meeting the members recognized that the minutes before them (original version) were not the same as those of June 29 th , however proceeded to ratify a version of minutes not before the LLB noting that the updated version would be provided to the Secretariat at a later date.
July 5 th , 2017	The Acting Chairman provided the Secretariat with the final version of the minutes which indicated that the application for a retail licence for Peanuts Ltd. was "Denied". In addition this version of the minutes now contained a justification for the denial stating it was based on a new interpretation that only one category of licence is to be held by a Licence Holder for a single premise. These minutes continued to show the application for the wine & beer licence was "NOT GRANTED", however the rationale for this decision was changed to read, "The Board denied this application based on the reasons reached in the Retail submission by the applicant." This version of minutes was different from the June 29 th version in that the decision for the retail licence was changed to denied and the rational for both licences reference the new "One licence – One premise" LLB interpretation.
July 28 th , 2017	(redacted as per the Freedom of Information Law (2015 Revision) 20.(1)(c)).

AUDIT OBJECTIVE #1: To determine whether LLB decisions regarding the February 2017 liquor license applications from Peanuts Ltd. were taken appropriately and in accordance with its stated mandate.

1.1. The audit finds the decisions of the LLB, as recorded in the original set of minutes of the March 24th & March 28th meetings were taken appropriately and within their mandate. Based on the points below the audit finds that the decisions of the LLB as stated in the ratified minutes relating to the Peanuts Ltd. applications for a retail licence and a wine and beer licence were taken inappropriately and not in accordance with their stated mandate.

	Decision from March 28 th Meeting (from initial minutes / LLB Member accounts)		Decision from June deliberations (as reported in the current approved Minutes)	
	Appropriate Procedures?	Within Mandate?	Appropriate Procedures?	Within Mandate?
<i>Peanuts Ltd.</i> Application for a retail licence	✓	✓	✗ <small>(see 1.2 & 1.3)</small>	✗ <small>(see 1.4 & 1.5)</small>
<i>Peanuts Ltd.</i> Application for a wine & beer licence.	✓	✓	✗ <small>(see 1.3 & 1.7)</small>	✗ <small>(see 1.8)</small>

1.2. The approved minutes indicated a different decision than what was taken during the Board meetings in March. All Board members interviewed acknowledged that the approved minutes are an inaccurate representation of those proceedings. When the LLB recessed their March meeting, the decision of the Board was to grant the retail liquor licence as stated in the original minutes of the meeting. Over the course of the next few months as the above noted events transpired the decision was changed and the approved minutes for the March LLB meeting now indicate that the retail licence was "Denied". Changing official Board decisions while the Board was in recess was inappropriate.

1.3. In preparation for the June LLB meeting the Secretariat of the Board provided the members with the minutes as they were originally prepared. A different set of minutes were circulated amongst Board members on June 29th. At the June 30th LLB meeting the members recognized that the minutes before them (original version) were not the most recent version, however proceeded to ratify a set of minutes noting that the revised version would be provided to the Secretariat at a later date. Following the June 30th LLB meeting further changes were made to the June 29th version of minutes. This changed version became the "approved" version of minutes. The ratification of minutes not before the Board and the subsequent changes to the minutes following a vote of ratification are inappropriate.

SUMMARY OF DIFFERENT VERSIONS OF MINUTES



Minutes of the Quarterly Session of the LLB on March 24th. **Original Version.**

	<i>Decision</i>	<i>Rationale</i>
Retail Licence	Granted	None provided
W&B Licence	NOT Granted	None provided



Minutes of the March 24th Session continuation on March 28th. **Original Version.**

	<i>Decision</i>	<i>Rationale</i>
Retail Licence	Granted	None provided
W&B Licence	NOT Granted	This category of license was not required for operations. Based on granting the retail licence.



Minutes of the March 24th Session continuation on March 28th. **June 29th Version.**

	<i>Decision</i>	<i>Rationale</i>
Retail Licence	Granted	None provided
W&B Licence	NOT Granted	This category of license was not required for operations. This was based on the granting of the retail licence.



Minutes of the March 24th Session continuation on March 28th. **Approved Version.**

	<i>Decision</i>	<i>Rationale</i>
Retail Licence	Denied	Only one category of licence is to be held by a Licence Holder for a premise (redacted as per the Freedom of Information Law (2015 Revision) 20.(1)(c)).
W&B Licence	NOT Granted	Based on the reasons reached in the Retail submission.

- 1.4. The introduction by the Board of a new interpretation or policy limiting one category of licence to a single premise is contrary to section 4.9C of the Liquor Licensing Law (2016 Revision) which limits the Board to making rules to regulate its own internal management. Furthermore Section 7.5 of the Liquor Licensing Law (2016 Revision) outlines conditions that the Board must be satisfied are met in order for the Board to grant a new licence to the same premise for which a licence has already been granted. This specific case shows that the spirit of the Liquor Licensing Law (2016 Revision) is to permit multiple licences for a single premise based on the nature of the business activities being conducted.
- 1.5. (Redacted as per the Freedom of Information Law (2015 Revision) 20.(1)(c)).
- 1.6. The points noted above demonstrate how the introduction of the "One Licence – One Premise" interpretation by the LLB falls outside the Board's remit.
- 1.7. The decision not to grant a wine & beer licence to Peanuts Ltd. has remained consistent from the March 24th meeting through to the approved minutes. However, changing the rationale for not granting the licence while the Board was recessed was inappropriate.
- 1.8. The rationale for not granting the wine & beer licence currently recorded in the approved minutes is now referencing the explanation provided for the Retail licence that being, one licence for one premise. As previously stated the development of this new policy is outside the remit of the Board and therefore the decision of the Board to not grant the wine & beer licence was not taken in accordance with its stated mandate.

AUDIT OBJECTIVE #2: To determine the appropriateness of the processes and public communications which led to and emanated from LLB decisions regarding the February 2017 applications from Peanuts Ltd

- 2.1. The audit finds, based on the points below, that certain administrative procedures and communication activities relating to the March LLB meeting were inappropriate.
- 2.2. Based on completed interviews with all Board members present at the March 24th and 28th sessions, all but one agreed that the meeting on March 28th concluded with the decision being to grant the retail liquor licence to Peanuts Ltd. The rationale provided by one Board member as to this apparent difference in the Board's decision was attributed to the lack of a formal vote by show of hands on applications. Other Board members provided a variety of examples on how and if a formal vote is taken on applications. This lack of a standard formal vote is contrary to section 5.5 of the Liquor Licensing Law (2016 Revision) and is an internal weakness of the LLBs operating procedures.
- 2.3. Section 5.6 of the Liquor Licensing Law (2016 Revision) states that, "A Boards decision shall be promulgated as soon as practicable after the conclusion of the relevant hearing." It was based on this requirement of the law and in accordance with the process she had followed for a many years that the Secretary acted to inform the applicants and the media of the LLB's decisions.

- 2.4. (Redacted as per the Freedom of Information Law (2015 Revision) 20.(1)(d)).
- 2.5. (Redacted as per the Freedom of Information Law (2015 Revision) 20.(1)(d)).
- 2.6. On a monthly basis DCI publishes on their website a Liquor Licensing List which includes a listing of all approved liquor licences. The published list for April, May and June all indicated that a Retail Licence for Peanuts Ltd. had been approved. These records were subsequently amended to remove the reference to the retail licence, only to have this reference reappear in the July list.
- 2.7. The information contained in this Liquor Licensing List is extracted into an Excel file from the IMSS database and then converted into a PDF document for publishing on the web. It was these Excel files which were manually changed to remove the reference to the retail licence and subsequently reposted on the departments' website for the months of April, May and June leaving the original information untouched in IMSS. When the report for July was extracted the reference to the retail licence again appeared and was published on the departments' website.
- 2.8. The criterion used to extract the information from IMSS was based on a status code entered into IMSS related to the Board's decision on an application rather than on the actual issuance of a licence. In essence the list is generated on completion of the first phase of a two phase process. When a licence is issued, IMSS automatically updates the status code thus reflecting the completion of phase two.

AUDIT OBJECTIVE #3: To determine whether the transfer of the LLB Secretary was connected with her involvement in handling the February 2017 applications from Peanuts Ltd.

- 3.1. The audit also looked at the circumstances related to the transfer of the former Secretary of the LLB to another civil service entity. A series of documents on this subject were reviewed dating back to July 7th, 2016. To protect the privacy of the employee, details will not be provided in this report. However, based on the review of said documentation and interviews with involved parties the audit found sufficient evidence to show that arrangements for the transfer were already underway prior to her involvement with the February licence applications from Peanuts Ltd.

SECTION IV. RECOMMENDATIONS

RECOMMENDATION 1

The Liquor Licensing Board with support from their Secretariat should implement a mechanism which would effectively result in the ratification and publishing of minutes which accurately reflect the decisions and rationale of the LLB for their meetings on March 24th and 28th of 2017.

Based on findings in Section III, 1.3

Management Response from the Chair of the LLB

We are a new Board and I believe that we need to review the Audit Report in its entirety, meet with the full Board, gather all the facts, and discuss new policies and procedures going forward with respect to the operations of the Board and the Secretariat in order to find solution beneficial to all involved.

Main Person(s) responsible for implementation: Chairman of the Liquor Licensing Board

Expected Implementation Date: One to six months.

RECOMMENDATION 2

The Liquor Licensing Board should at its next meeting, address the outstanding retail liquor licence application from Peanuts Ltd. and, with the benefit of the additional information available since the original decision, ensure a decision is arrived at within the parameters set out in the Liquor Licensing Law (2016 Revision).

Based on findings in Section III, 1.2 & 1.4

Management Response from the Chair of the LLB

Agreed.

Main Person(s) responsible for implementation: Chairman of the Liquor Licensing Board

Expected Implementation Date: One to six months

RECOMMENDATION 3

The Liquor Licensing Board with support from their Secretariat should agree on and implement a consistent approach for casting and recording Member votes.

Based on findings in Section III, 2.2

Management Response from the Chair of the LLB

Agreed.

Main Person(s) responsible for implementation: Chairman of the Liquor Licensing Board

Expected Implementation Date: One to six months.

RECOMMENDATION 4

The Department of Commerce & Investment should develop and document a procedure to govern when and by what process decisions of the LLB will be promulgated as soon as practicable to the applicants, the media and through publication of Government Notice.

Based on findings in Section III, 2.3

Management Response from Director, Department of Commerce & Investment

Agreed, additional procedures will be implemented to ensure compliance with this recommendation.

Main Person(s) responsible for implementation: Director, Department of Commerce & Investment

Expected Implementation Date: September 2017.

RECOMMENDATION 5

The Department of Commerce & Investment should modify their criteria of generating the monthly Liquor Licensing List to be based on the issuance of an actual licence in recognition of completion of the two phase process.

Based on findings in Section III, 2.8

Management Response from Director, Department of Commerce & Investment

Agreed DCI will ensure this process is implemented.

Main Person(s) responsible for implementation: Director, Department of Commerce & Investment

Expected Implementation Date: October 2017.

RECOMMENDATION 6

The Liquor Licencing Board should defer any future reference to the "One licence – One Premise" interpretation until such a time as the appropriate framework for implementing such an interpretation can be duly developed.

Based on findings in Section III, 1.4

Management Response from Chairman of the LLB

Agreed.

Main Person(s) responsible for implementation: Chairman of the Liquor Licencing Board

Expected Implementation Date: One to six months.



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