

19 March 2002

Our ref SF5/HONGKONG\103762.1

Dear Miss Yueng,

As a party acting for various clients involved in the construction industry we would like to take this opportunity to offer out thoughts on the proposed amendments to the Noise Control Ordinance in advance of the forthcoming Bills Committee meeting.

- **Time period for issuing written warning** - do the proposed amendments intend for the written warning to be issued within a certain time period of the institution of proceedings against a body corporate? For example, if proceedings for an offence under the Noise Control Ordinance (**NCO**) are commenced on 1 January 2003, will it be possible to attempt to prosecute individuals if the offence is repeated a year (or more) later?
- **Commission of an offence** - as the NCO is currently drafted *any person* who contravenes its provisions can be held liable for an offence. What will happen in circumstances where, for example, a sub-contractor repeatedly breaches a construction noise permit which is held in the name of the main site contractor? A recent water pollution case held the named permit holder responsible for an illegal discharge of polluted water even though there was no evidence that the permit holder actually knew about or caused the discharge. Will this line of thinking be followed under NCO enforcement procedures?
- **Proof of delegation or immediate authority of a director** - what level of proof will the noise Control Authority consider sufficient in these circumstances?
- **Environmental impact assessment** - many contractors experience difficulties with the construction methods and machinery proposed at the initial planning stages of a project. The methods and machinery are often impractical and not suitable for achieving the requisite progress within the stipulated timeframe. In order to comply with its contractual obligations a contractor may consider it necessary for example, to use noisier but more effective equipment or carry out work during restricted hours. We understand that construction noise permits to work during restricted hours are generally only granted in exceptional circumstances. Will the Noise

Control Authority take into account the practicality of prescribed works methods against the background of a contractor's obligations when considering whether to grant a construction noise permit?

- **Defence** - compared to defences relating to directors' liability provided for under other environmental legislation, the proposed defence appears quite narrow. Given the strict nature of the proposed amendments will 'works carried out in an emergency', for example, amount to a defence?

Yours sincerely,

Masons International Law Firm