

Noise Control (Amendment) Bill 2001
Comments from MTR Corporation
Submission to Bills Committee

Reference is made to the above proposed amendment.

The MTR Corporation is in favor of strengthening the provisions of the Noise Control Ordinance provided that the proposed amendment is reasonable and practical, and will lead to a general improvement in the environment of Hong Kong.

Issue raised in the current amendment regards the defense allowed although the changes are an improvement from the draft last year.

It appears that the current draft caters primarily to large companies and it is difficult to see how an individual would be able to prove this if that individual is no longer in the employ of the company at the time of trial/hearing.

Additionally, no definition has been provided as to what constitutes reasonable precaution or due diligence. There is concern no checks are provided to balance the view of the Authority. As we have seen from issues raised under the EIA Ordinance (Cap 499) in the recent appeal on Long Valley, it may be necessary to rely on the courts to provide a clear definition of the terms used. The Corporation believes that final draft of the amendment should provide guidance in this area, possibly as follows.

- Reference to BATNEEC – Best Available Technology Not Entailing Excessive Cost; or
- Reliance on a professional body, for example the Hong Kong Institute of Acoustics, to provide definitions for what constitutes reasonable precaution and due diligence.

Lastly, the Corporation would like clarification that the defense is an additional defense rather than an only defense for director's and officer's liability under the Noise Control Ordinance.