

OUR REF.: D,P&IT/320/14/01

14 March 2002

Clerk to the Bills Committee on Noise Control (Amendment) Bill 2001,
3/F, Citibank Tower,
3 Garden Road,
Central, Hong Kong.

By fax and mail (fax no. 2121-0420)

Attn: Ms. Polly Yeung,

Dear Ms. Yeung,

BILLS COMMITTEE ON NOISE CONTROL (AMENDMENT) BILL 2001

Thank you for your letter of 26 February 2002 inviting us to submit views on the captioned Bill. We would like to make the following comments.

1. We opine that a warning notice should only be served to the management concerned if the specified body corporate has been convicted of an offence under the Ordinance. The Bill proposes to serve a written warning to management suspected of not diligently avoiding his/her body corporate committing an offence under the Ordinance. However, it is up to the court to confirm/exonerate the body corporate of such allegations. Unless convicted, the body corporate remains not guilty and the charges cannot stand which means that the warning to the management is not justified. It is unfair to label the management as being environmentally irresponsible when there is no genuine conviction. This is somewhat similar to the existing provision on the fines for repeated offences where conviction of previous offences has to be fulfilled.
2. A reasonable validity period should also be applied for a warning notice because it is unreasonable to keep the management personally labelled for an indefinite period within which he/she may change for the better.
3. We cannot see why there is no explicit due diligence defence for an offence related to the carrying out of construction work without a construction noise permit. Whether the management concerned has exercised due diligence should be judged case by case by the court irrespective of the kind of offence. Putting down an exception to the provision of due diligence defence for a particular kind of offence may therefore be inappropriate unless the Authorities could prove that the concerned management must have not exercised due diligence in all cases in relation to such kind of offence. For instance, management may have set up for a body corporate a proper system requiring that CNP's be applied for, when work has to be carried out in restricted hours. However, the responsible personnel may have overlooked the required procedures, either intentionally or otherwise. Under such circumstances, the Bill should not jeopardise the management of his/her right of claiming due diligence.

Please find enclosed the completed reply slip for your necessary arrangement. Should you have any enquiry, please do not hesitate to contact our Senior Environmental Engineer, Mr. Y.C. Yeung, at Tel: 2843-3451.

Thank you for your kind attention.

Yours sincerely,
THE HONGKONG ELECTRIC CO. LTD.,
香港電燈有限公司

G. Chang
GENERAL MANAGER (DEVELOPMENT & PLANNING)

Encl.
YCY/HYL