

## **BILLS COMMITTEE**

### **NOISE CONTROL (AMENDMENT) BILL 2001**

#### **INTRODUCTION**

This paper provides the following information as requested by Members at the second meeting of the Bills Committee held on 22 March 2002 -

- (a) human rights implications of the Bill;
- (b) cases of Government departments assuming the role of a contractor of a project and engaging workers for carrying out works;
- (c) number of cases in which the Environmental Protection Department (EPD) required Government departments to take remedial actions under the Noise Control Ordinance (NCO), and number of cases that were subsequently reported to the CS and their outcome;
- (d) number of convicted companies which carried out construction work without a construction noise permit (CNP), and number of those which did not carry out work in accordance with the relevant permit condition;
- (e) overseas practices in handling noise offences; and-
- (f) views of the Advisory Council on the Environment and green groups on the Bill.

2. This paper also sets out the ways in which EPD assists the construction industry in complying with the statutory requirements of the NCO, and the Administration's response to the submissions of the Hong Kong Environmental Law Association, Federation of Hong Kong Industries,

Hong Kong Institute of Acoustics, Tai Po Environmental Association and further submission from the Hong Kong Construction Association, as well as comments made by deputations at the last meeting.

### **Human Rights Implications of the Bill**

3. The Department of Justice has advised that the proposed offence provision, which seeks to impose criminal liability on a director, his delegate and an officer who is concerned in the management of a corporation, for an act committed by the corporation, without requiring the prosecutions to prove that the offence was committed with the consent or connivance of the director or officer, does not infringe the right to presumption of innocence and is consistent with the human rights provisions of the Basic Law. This is because -

- (a) offences relating to noise control are concerned with public well-being and are very closely related to concerns of public health and are therefore matters of social concern;
- (b) the imposition of strict liability on a director, or officer concerned in the management of a corporation, is considered to be effective to promote the objective of the proposed statutory amendments, by encouraging greater vigilance on the part of directors/officers concerned in the management of a company to ensure observance of the compliance requirements by the corporations; and-
- (c) the proposed provision of a due diligence defence would be in accordance with the requirement of a strict liability offence, as this would advance the objective of the proposed amendment without convicting blameless persons.

### **Cases involving government departments assuming the role of a contractor of a project**

4. Public works projects of Government are normally procured through works contracts awarded to private contractors. However, some works departments like Drainage Services Department and Water Supplies Department may deploy direct labour for plant operation, maintenance work

or emergency duties such as clearing of blocked drains during heavy rainstorms.

5. We have no record of NCO violations committed by government departments as work agents. If there are any such cases, EPD will follow the steps set out in section 38 of the NCO.

### **Breakdown of construction noise offences**

6. A breakdown of the number of convicted cases that involved companies carrying out work during restricted hours without a valid CNP, and the number of convicted cases that involved companies issued with a CNP but did not carry out work in accordance with the relevant permit condition is provided below (some companies are involved in more than one conviction cases, hence the difference between number of conviction cases and the companies involved) -

	<b>Carried out work without a valid CNP</b>	<b>Carried out work not in accordance with permit conditions</b>	<b>Total number of construction related convictions</b>
<b>1999</b>	210 cases involving 82 companies (80% of total no. of cases)	54 cases involving 27 companies (20% of total no. of cases)	264 cases involving 109 companies
<b>2000</b>	283 cases involving 111 companies (78% of total no. of cases)	81 cases involving 44 companies (22% of total no. of cases)	364 cases involving 155 companies
<b>2001</b>	169 cases involving 79 companies (70% of total no. of cases)	71 cases involving 36 companies (30% of total no. of cases)	240 cases involving 115 companies

### **Overseas practices in handling noise offences**

7. We have studied overseas environmental legislations and found that there are legislations in Australia, Canada and the United Kingdom which impose liability on the director or officer of a body corporate for

environmental offences including noise committed by the body corporate. Details are at Annex A.

### **Views of the Advisory Council on the Environment and green groups**

8. At the meeting of the Advisory Council on the Environment (ACE) on 29 November 1999, members considered and supported our proposed amendments to the NCO. At a subsequent ACE meeting on 23 April 2001, members re-affirmed their full support for the Bill. The green groups represented on the ACE are Green Power, Friends of the Earth, World Wide Fund for Nature Hong Kong, Conservancy Association are.

### **Assistance to the construction industry in complying with the NCO**

9. EPD has published a number of guidelines to help the industry better understand the requirements under the NCO. For instance, booklets like "A Concise Guide to Noise Control Ordinance", "How to apply for a Construction Noise Permit" and "A Practical Guide for the Reduction of Noise from Construction Works" are made available to the construction industry. In addition, Practice Notes on noise control have also been widely distributed to professional persons through the Professional Persons Environmental Consultative Committee which consists of representatives from the Hong Kong Construction Association (HKCA), professional institutions and developers. Examples of the publications are ProPECC PN1/93 on "Noise from Construction Activities - Statutory" and ProPECC PN1/96 on "Use of Quiet Construction Equipment for Road Opening Works during Non-Sociable Hours".

10. EPD regularly conducts seminars for the industry. In the past three years, more than 60 seminars have been arranged specially for the construction industry on the statutory requirements and good practices to avoid noise problems. EPD also maintains close liaison with the HKCA in tackling environmental pollution problems. For example, an Information Sharing Sub-working Group has been formed between EPD and HKCA to develop a one-stop environmental information centre to promote environmentally friendly construction equipment/construction methods for the industry.

11. EPD also proposed in late 2001 a three-pronged partnership

programme in collaboration with HKCA to raise environmental awareness among workers through publicity and training, to encourage contractors to adopt environmental friendly construction methods through award schemes, and to enhance communications among the stakeholders.

### **Administration's response to various deputations**

12. The Administration's response to the submissions of the Hong Kong Environmental Law Association, Federation of Hong Kong Industries, Hong Kong Institute of Acoustics and Tai Po Environmental Association, comments made by deputations at the last meeting, and further submission from the Hong Kong Construction Association is set out at Annex B.

**Environment and Food Bureau**  
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(EFB 9/55/02/28)

Annex A**An overview of similar provision in overseas environmental legislation**

Section 60	<p><b>Legislation in Australia (Tasmania):</b></p> <p><b>ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL ACT 1994</b></p> <p><b>Liability of officers of body corporate</b></p> <p>(1) Where a body corporate commits an offence against this Act, a person who is an officer of the body corporate is –</p> <p>(a) subject to the general defence under this Part, guilty of an offence; and</p> <p>(b) subject to subsection (2), liable to the same penalty as may be imposed for the principal offence when committed by a natural person.</p> <p>(2) Where an officer of a body corporate is convicted of an offence under subsection (1), the officer is not liable to be punished by imprisonment for the offence.</p> <p>(3) Where a body corporate commits an offence of contravening a provision of this Act, an officer of the body corporate who knowingly promoted or acquiesced in the contravention is also guilty of an offence against that provision.</p> <p>(4) An officer of a body corporate may be prosecuted and convicted of an offence pursuant to subsection (1) or (3) whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.</p>
Section 55.	<p><b>General criminal defence</b></p> <p>(1) It is a defence to a charge of an offence against this Act, including -</p> <p>(a) an offence by a body corporate or a natural person where conduct or a state of mind is imputed to the body corporate or person under this Part; and</p> <p>(b) an offence by an officer of a body corporate under this Part -</p> <p>if it is proved that the alleged offence did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the commission of the offence or offences of the same or a similar nature.</p> <p>(2) The defence provided by subsection (1) includes the defence that the act or omission alleged to constitute the offence was justified by the need to protect life, the environment or property in a situation of emergency and that the defendant was not guilty of any failure to take all reasonable and practicable measures to prevent or deal with such an emergency.</p> <p>(3) Where a body corporate or other employer seeks to establish the defence provided by this section by proving the establishment of proper workplace systems and procedures designed to prevent a contravention of this Act, that proof must be accompanied by proof -</p>

Section 3.	<p>(a) that proper systems and procedures were also in place whereby any such contravention or risk of such contravention of this Act that came to the knowledge of a person at any level in the workforce was required to be reported promptly to the governing body of the body corporate or to the employer, or to a person or group with the right to report to the governing body or to the employer; and</p> <p>(b) that the governing body of the body corporate or the employer actively and effectively promoted and enforced compliance with this Act and with all such systems and procedures within all relevant areas of the workforce.</p> <p>(4) A person who would, but for the defence provided by this section, be guilty of an offence of contravening a provision of this Act is, despite that defence, to be taken to have contravened that provision for the purposes of -</p> <p>(a) any civil proceedings under this Act in respect of the contravention; and</p> <p>(b) the issuing or enforcement of any environment protection notice under this Act in respect of the contravention; and</p> <p>(c) the making by a court of an order under section 63 in proceedings for an offence in respect of the contravention.</p> <p><b>Interpretation</b></p> <p>"officer", in relation to a body corporate, means -</p> <p>(a) a director of the body corporate; or</p> <p>(b) the chief executive officer of the body corporate; or</p> <p>(c) a receiver or manager of any property of the body corporate or a liquidator of the body corporate -</p> <p>(ref: <a href="http://www.thelaw.tas.gov.au/fullview/44++1994+AT@EN+2002032500">http://www.thelaw.tas.gov.au/fullview/44++1994+AT@EN+2002032500</a>)</p>
Section 183	<p><b>Legislation in Australia (Queensland):</b></p> <p><b>ENVIRONMENTAL PROTECTION ACT 1994</b></p> <p><b>Executive officers must ensure corporation complies with Act</b></p> <p>(1) The executive officers of a corporation must ensure that the corporation complies with this Act.</p> <p>(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with this Act.</p> <p>Maximum penalty-the penalty for the contravention of the provision by an individual.</p> <p>(3) Evidence that the corporation committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.</p> <p>(4) However, it is a defence for an executive officer to prove-</p> <p>(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence--the officer took all reasonable steps to ensure the</p>

	<p>corporation complied with the provision; or  (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.</p> <p>(ref: <a href="http://www.austlii.edu.au/au/legis/qld/consol_act/epa1994295/s183.html">http://www.austlii.edu.au/au/legis/qld/consol_act/epa1994295/s183.html</a>)</p>
<p>Section 280(1)</p> <p>Section 280(2)</p> <p>Section 283</p>	<p><b>Legislation in Canada:</b></p> <p><b>CANADIAN ENVIRONMENTAL PROTECTION ACT 1999</b></p> <p><b>Liability of directors</b>  Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.</p> <p><b>Duties of directors</b>  (2) Every director and officer of a corporation shall take all reasonable care to ensure that the corporation complies with</p> <p>(a) this Act and the regulations; and  (b) orders and directions of, and prohibitions and requirements imposed by, the Minister and enforcement officers and review officers.</p> <p><b>Defence</b>  No person shall be found guilty of an offence under this Act, other than an offence under section 273 if the offence is committed knowingly or under section 228 or 274, where the person establishes that the person exercised all due diligence to prevent its commission.</p> <p>(ref: <a href="http://laws.justice.gc.ca/en/C-15.31/27585.html">http://laws.justice.gc.ca/en/C-15.31/27585.html</a>)</p>
<p>Section 157(1)</p>	<p><b>Legislation in United Kingdom:</b></p> <p><b>ENVIRONMENTAL PROTECTION ACT 1990</b></p> <p><b>Offences by bodies corporate</b>  Where an offence under any provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</p> <p>(ref: <a href="http://www.hmso.gov.uk/acts/acts1990/Ukpga_19900043_en_10.htm#mdiv157">http://www.hmso.gov.uk/acts/acts1990/Ukpga_19900043_en_10.htm#mdiv157</a>)</p>



**Annex B**

<b>Views of concerned groups</b>	<b>Administration's Response</b>
<p><b>Submissions:</b></p> <p><b>A. Hong Kong Environmental Law Association</b></p> <p>1. The Administration should conduct a regulatory impact assessment on the cumulative impact of environmental legislation on the construction industry vis-à-vis the community.</p> <p>2. Under the proposed procedure (s.28B(1)(a) and (b)), a director may subsequently commit an offence, even though the company was acquitted on the first occasion. And under s.28A(1) and (2), any person who is a director at the time of the offence is guilty of an offence provided he or she has been served with a notice. No evidence of a "guilty mind" or culpability is required. These powers are excessive and potentially oppressive.</p>	<p>The present proposal does not target against the construction industry only. It applies to other commercial and industrial sectors as well. The proposed amendment does not change the existing legislative control under the NCO. It only seeks to specify the responsibility of the corporate management of those bodies corporate which are already liable for prosecution under the existing NCO provisions. The Administration is separately dealing with the question of assessing the cumulative impact of environmental legislation on the construction industry vis-à-vis the community as it is one of the recommendations made by the Construction Industry Review Committee.</p> <p>A body corporate, like anybody else, should comply with the Noise Control Ordinance (NCO) at all times. The warning provision is added at the request of the construction trade. The intention is to draw attention to the management concerned and provide them with early opportunity to rectify any potential noise problems at a particular construction site. The management concerned would only be held personally liable for offences committed by the company after the warning has previously been served. It would defeat the purpose of putting the management concerned on notice of potential noise problem at a particular site if we are to wait until after the conviction of the first offence committed by the body corporate at that site before we issue a warning to the management, in view of the limited duration of a construction period.</p>
<p>3. It is unrealistic to presume that every director should be responsible for environmental management at every site. At a corporate level, a director's ability to take precautions will depend</p>	<p>The directors and officers concerned who are to be held liable for a noise offence committed by the body corporate are clearly set out in the proposed section 28A(1) in the Amendment Bill. EPD will issue a written warning to each of the directors and officers named in the above section,</p>

<p>upon whether this is within his/her area of control. Also a director needs adequate time to take remedial action.</p>	<p>before they will be prosecuted for any subsequent offences committed by the body corporate at the same site in question. A statutory due diligence defense will also be made available to the corporate management concerned who can show that a proper system has been established and has been in effective operation to prevent the offences.</p>
<p>4. The content of these codes of practice is entirely within the discretion of the Authority. There are no limits on the standards that can be set by the Authority in the codes of practice.</p>	<p>The codes of practice are meant to provide industries with practical guidance on good management practice to prevent violation of the NCO. Corporate management is free to establish and operate its own system to prevent the violation of the NCO. EPD is working with the HKCA to develop a specific set of code of practice for the construction industry. A task force has been set up since 1999 with HKCA/EPD representatives to collaboratively draw up the code and a draft code of practice has already been agreed to.</p>
<p>5. There is no defence at all for directors of construction companies to construction noise offence committed with a valid construction noise permit in force. This is a draconian provision which is likely to leave the industry with an acute feeling of injustice.</p>	<p>The permit system for carrying out construction works during restricted hours has been in operation since 1988. There should not be any excuse for the management of a body corporate to ignore this basic requirement.</p>
<p>6. The prosecution would no longer need to show the “consent, connivance, negligence or omission of a director as they do with air and water offences. The Bill seeks to replace this normal requirement for a criminal offence, by merely fixing a director with notice of a previous complaint.</p>	<p>Much more serious problem of repeated noise offences committed by bodies corporate indicate that individual proprietors give more serious regard to compliance with the NCO since they are personally liable while some corporate management continue to give little regard to compliance with the NCO due to a lack of personal liability for the actions of their companies. Adding a strict liability provision into the NCO would more effectively deter companies from repeating noise offences.</p>
<p>7. These provisions could potentially have human rights implications.</p>	<p>The Department of Justice has advised that the proposed amendment does not have any human rights implications. Please refer to paragraph 3 of this paper.</p>
<p>8. It is unclear whether the Government have plans to increase</p>	<p>The proposed amendment does not seek to increase the level of fines or introduce terms of</p>

the level of fines or even ultimately to introduce terms of imprisonment.

9. Section 10A of Water Pollution Control Ordinance and section 47A of the Air Pollution Control Ordinance requires: (a) there is a conviction against the company for the breach. (b) there is proof of consent, connivance, negligence or omission on the part of the director or manager in respect of the company's breach. If the personal liability under the NCO is to be brought into force. It should not be different in principle from the existing legislation in relation to air and water.

10. There is procedural uncertainty concerning whether the individual and the company should be prosecuted at the same time or consecutively. The amendment should require there to have been a previous conviction (not merely a charge).

11. The Authority may have difficulty in identifying the appropriate person to be prosecuted. This problem can be addressed by a notice requiring the director or other officer upon whom it is served to notify the Authority of the name of the person responsible for the site. Service of such a counter-notice identifying the appropriate person would obviate the need to draw the legislation so widely and ensure that, if need be, proceedings may be brought against the correct individual.

imprisonment.

Under the existing provisions of the NCO, the penalty for offences is a fine. The significantly higher number of conviction cases involving bodies corporate indicate that the fine provision lacks sufficient deterrent effect against bodies corporate as some of them may just treat the fines imposed on the body corporate as part of the project cost. Much more serious problem of repeated offences committed by bodies corporate also indicate that individual proprietors give more serious regard to compliance with the NCO since they are personally liable while some corporate management continue to give little regard to compliance with the NCO due to a lack of personal liability for the actions of their companies.

It is the Authority's intention that the individual and the company should be prosecuted at the same time for the subsequent offence committed by the body corporate at the same site. To address the trades' concern, we have already modified the original legislative proposal put forward in 2000 by adding a warning provision and holding corporate management concerned liable only when the body corporate commits further offence at the same site. The corporate management should ensure that the NCO is complied with at all times.

The directors and officers concerned who are to be held liable for a noise offence committed by the body corporate are clearly set out in the proposed section 28A(1) in the Amendment Bill. EPD will issue a written warning to each of the directors and officers named in the above section, before they are prosecuted for any subsequent offences committed by the body corporate at the same site in question. A statutory due diligence defense will also be made available to the corporate management concerned who can show that a proper system has been established and has been in effective operation to prevent the offences.

<p><b>B. Federation of Hong Kong Industries</b></p> <ol style="list-style-type: none"> <li>1. The Bills would set a very dangerous precedent in our law if the conviction of a company was automatically extended to its senior management.</li> <li>2. The regulation on Hong Kong businesses is already too much. The addition of new ones would just make Hong Kong a less favourable place to do business.</li> </ol>	<p>There are already similar provisions holding the senior management of a body corporate liable for offence committed by the body corporate in other ordinances (LegCo Bills Committee paper [ref. CB(1)1350/01-02(01)] dated 22 March 2002 refers). The proposed amendment will enhance the deterrence on the repeated violations of the NCO as well as bring NCO in line with other environmental legislation.</p> <p>The proposed amendment does not change the existing legislative control under the NCO. It only seeks to specify the responsibility of the corporate management of those bodies corporate which are already liable for prosecution under the existing NCO provisions. It will help to provide a level playing field for law abiding companies, which would be favourable to the business environment of Hong Kong.</p>
<p><b>C. Hong Kong Institute of Acoustics</b></p> <ol style="list-style-type: none"> <li>1. It supports the proposed amendment which aims to provide a better noise environment for the community.</li> <li>2. The proposed amendment will provide a better and more effective enforcement of the provisions of the NCO and hence maintains the tranquillity.</li> <li>3. The proposed amendment would provide a useful mechanism to foster better and more effective enforcement.</li> <li>4. The proposed amendment would provide a quality noise environment matching our aspiration to be a world-class city.</li> </ol>	<p>The Administration welcomes the position of Hong Kong Institute of Acoustics of supporting the proposed amendment. We expect that the amendment would deter noise violations and lead to a better environment in Hong Kong.</p>
<p><b>D. Tai Po Environmental Association</b></p> <ol style="list-style-type: none"> <li>1. Support the proposed amendment, which will bring NCO in line with</li> </ol>	<p>The Administration welcomes the position of Tai Po Environmental Association. We expect the</p>

<p>other environmental legislation for protection and well-beings of the general public, and a good standard and quality of living.</p>	<p>amendment would deter noise violations and lead to a better environment in Hong Kong.</p>
<p><b>E. Further comments made by deputations and Members at the meeting</b></p> <ol style="list-style-type: none"> <li>1. The Administration is suggested to set up reward system to encourage environmental compliance.</li> <li>2. HKCA's concern about the special characteristics of noise pollution and the liability of the corporate management on acts over which they did not have absolute control.</li> <li>3. The majority of construction companies undertaking large-scale works were bodies corporate and they would inevitably stand a higher chance of committing offences than partnership or proprietorship.</li> </ol>	<p>We believe that a combination of incentives and disincentives would help promote better environmental compliance. Various reward schemes have been set up. For example, the "Hong Kong Awards for Industry" recognizes and promotes successful practices and strategies in different aspects of industrial performance, including environmental performance. The Administration will continue to promote and assist the trades to better meet their environmental obligations.</p> <p>About 70% of construction noise offences committed in 2001 involved works carried out without a Construction Noise Permit. The "special characteristics of noise pollution" is not an excuse for not following this fundamental statutory permit system which has been in place since the enactment of the NCO in 1988.</p> <p>The proposed amendment does not change the existing legislative control. Under the existing NCO provisions, EPD may institute proceedings against any person who commits an offence. The proposed amendment only seeks to specify the responsibility of the corporate management of those bodies corporate which are already liable for prosecution under the existing NCO provisions. A statutory due diligence defense will also be made available to the corporate management concerned who can show that a proper system has been established and has been in effective operation to prevent the offences.</p> <p>Although this may be a reason to explain the higher number of first offences committed by bodies corporate, statistics show that individual proprietors are less likely to repeat an offence than bodies corporate, as the former are held personally liable for an offence. Individual proprietors were involved in some 29%, 21% and 25% of the first</p>

	<p>convictions in 1999, 2000 and 2001 respectively, but the figure dropped drastically to 5%, 2% and 3% for subsequent offences.</p>
<p>4. EPD did not provide the trade with clear guidance on what and how improvements should be made so as to prevent being prosecuted again.</p>	<p>Please refer to paragraphs 9-11 of this paper.</p>
<p>5. The management was personally criminally liable where they had no absolute control over certain behaviour of their workers or subcontractor's workers.</p>	<p>The proposed amendment does not change the existing legislative control. Under the existing NCO provisions, EPD may institute proceedings against any person who commits an offence. The proposed amendment only seeks to specify the responsibility of the corporate management of those bodies corporate which are already liable for prosecution under the existing NCO provisions. The proposed amendment includes a warning provision so that the corporate management concerned of the body corporate will be given a written warning after the body corporate has committed a noise offence at a particular site. The corporate management concerned would be prosecuted only if the body corporate has committed further noise offences at the same site after the warning. A statutory due diligence defense will also be made available to the corporate management concerned who can show that a proper system has been established and has been in effective operation to prevent the offences.</p>
<p>6. The defence under the Bill would be open to judicial interpretation, Such defence was quite narrow as the director had to prove to the Court that he had taken reasonable precautions and exercised due diligence to prevent the commission of the offence by a body corporate.</p>	<p>The directors and officers concerned is only liable for a like offence committed by the body corporate at the same site after a written warning has previously been served on the directors and officers concerned. The liabilities of the directors and officers concerned are therefore contingent upon the conviction of the body corporate for the said offence.</p>
<p>7. The construction trade would be under a continuous threat throughout the duration of the construction period if the warning could be valid for an infinite period of time.</p>	<p>To address the trades' concern, we have already modified the original legislative proposal put forward in 2000 by adding a warning provision and holding corporate management concerned liable only when the body corporate commits further offence at the same site. Imposing a time limit on the warning system will weaken the</p>

	<p>deterrent effect significantly and run counter to the principle that the corporate management of a body corporate should comply with the NCO at all times.</p>
<p><b>F. Further submissions from the Hong Kong Construction Association</b></p> <ol style="list-style-type: none"> <li>1. Section 38(2) of the NCO bars criminal proceedings against “public officers” when they are acting in the course of their duty, and hence exempts them from any formal control under the NCO. When government departments are providing a service to other government department or the public, they should be bound by the law like any other body and should not be exempted from criminal proceedings.</li> <li>2. There should be a level playing field among private sector contractors and government trading funds. A trading fund enjoys all privileges and exemptions accorded to government departments including exemption from prosecutions granted by section 38(2) of NCO, even though it is a commercial operation competing against the private sector. If a trading fund contravenes the NCO, not only will it be exempted from any criminal liability, there shall also be no automatic criminal liability on the manager of the trading fund or the head of the department</li> </ol>	<p>Government departments are bound by the provisions of the NCO, for example, the requirement to apply for a Construction Noise Permit before it can proceed with any construction works in the restricted hours, and to abide by the permit conditions if a permit is granted. No criminal liability can be imposed on Government or any public officer who causes or permits to be made any noise in the course of carrying out his duties in the service of Government by virtue of section 38(2) of the NCO. But that does not mean the Government or public officers carrying out their official duties are exempted from compliance with the NCO. Sections 38(3) to (6) set out the procedures in dealing with any contraventions made by government departments. This system has proven to be effective in preventing government departments from contravening the provisions of NCO. There have not been any cases where Government departments have been found to be in breach of the NCO.</p> <p>A trading fund is merely an accounting entity within the Government. It does not have a separate legal existence. The points mentioned above in respect of government departments do apply to trading funds.</p>

concerned.

3. Unless the SAR Government obeys the same law as the private sector – at least in this regard, the Amendment Bill should be dismissed.

The Government is bound by the NCO. We do not see any justifications why the proposed amendment should be withdrawn. As we explained earlier, the proposed amendment does not change the existing legislative control under the NCO. It only seeks to specify the responsibility of the corporate management of those bodies corporate which are already liable for prosecution under the existing NCO provisions. It will help to provide a level playing field for law abiding companies, which would be favourable to the business environment of Hong Kong.