

**Drug Dependent Persons Treatment and Rehabilitation Centres
(Licensing) Bill**

**Liability of directors and persons concerned in the management of a
body corporate or partnership**

At the meeting of the Bills Committee on the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Bill (the Bill) on 5 February 2001, Members discussed clause 21 of the Bill on criminal liability of the directors and persons concerned in the management of a body corporate or partnership who operates drug treatment centres. Clause 21(1) states that “ If a person who commits an offence under the Bill is a body corporate; and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of a director of, or other person concerned in the management of, the body corporate, the director or that other person also commits the offence”. Clause 21(2) provides for similar liability of offences by any other partner or person concerned in the management of the partnership, if a person who commits the offence under the Bill is a partner of a partnership.

2. In considering the element of ‘neglect’, a Member was concerned whether sufficient safeguard had been provided for directors or partners of the centre who might have little involvement in the centre, and may therefore not be fully aware of the licensing status and/or the actual operation of the centre. The Member was worried that the word ‘neglect’ in clause 21 might catch these “innocent” directors or partners inadvertently.

Consideration

3. Regarding breaching licensing conditions, as the Bill is currently drafted, clause 5(2) already provides an express defence provision for contravention of conditions of a licence or certificate of exemption. Clause 5(2) stipulates that “it shall be a defence for a person charged with an offence under section 5(1) to prove that he did not know and had no reason to suspect the existence of the circumstances giving rise to the

contravention; and he could not, by the exercise of reasonable supervision and reasonable diligence, have prevented those circumstances arising”.

4. As regards the offence of operating a centre without a licence or certificate of exemption, as explained at the Bills Committee meeting on 5 February 2001, a person who has taken up the role of a director or partner should be well aware of the responsibilities associated with such directorship or partnership. It is also logical to expect him to be aware of the major deliberations about the centre. Moreover, it is not unreasonable to expect him, in the first place and before his acceptance of such directorship or partnership, to ascertain whether the centre is licensed or not, or whether it is planning to obtain a licence. Clause 21 is but a reasonable clause to reflect this.

5. Moreover, under clause 21, if a director or partner can be proved that he has exercised reasonable diligence to supervise the operation of a centre and prevent offence against the Bill, he will not be penalized under the future Ordinance. In proving an offence against a director or partner on the ground that the offence is attributable to his neglect, the prosecution needs to prove (a) that the body corporate committed an offence under the Ordinance; (b) the existence of negligence on the part of the director/partner; and (c) that the director/partner's negligence attributed to the commission of the offence by the body corporate. For (a), prosecution has to prove beyond reasonable doubt all the elements of the particular offence against the body corporate. In relation to (b), subject to the Court's interpretation, a director/partner is negligent if he fails to exercise such care, skill or foresight as a reasonable man in his situation would exercise. This is an objective test. As for (c), prosecution has to prove beyond reasonable doubt that the director/partner's neglect did lead the corporate into committing the offence.

6. It needs to be stressed that clause 21 with the phrase ‘attributable to any neglect on the part of, a director....’ is not unique to this Bill. It can be found in a number of ordinances in Hong Kong, e.g. the Employment Ordinance, Cap. 57 (s.64B), Water Pollution Control Ordinance, Cap. 358 (s.10A), Dumping at Sea Ordinance, Cap. 466 (s.25), Registered Designs Ordinance, Cap. 522 (s.89), etc.

7. Having regard to the above and balancing the objectives of the Bill to protect the well-being of the residents of drug treatment and rehabilitation centres and to afford reasonable safeguard to directors and partners of the centre, the Administration considers that clause 21 should remain as it is currently proposed in the Bill.

Security Bureau
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