

**Information requested by the Bills Committee
at its meeting held on 28 May 2001 regarding
the Karaoke Establishments Bill**

The information requested by the Bills Committee is set out in the following paragraphs –

- 1. In consultation with the legal adviser to the Bills Committee, to review the drafting of the definition of “karaoke establishment” to reflect the policy intention that recording studios etc are not covered by the definition.**

Further to the Bills Committee meeting held on 28 May 2001, the Assistant Legal Advisor (ALA) of LegCo has exchanged views on the drafting of the definition of “karaoke establishment” with the Law Draftsman. The ALA’s view was that the proposed definition of “karaoke establishment” in the Bill might be too wide as to cover recording studios.

With the assistance of International Federation of the Phonographic Industry (Hong Kong Group) Limited (IFPI), we have visited several major recording studios. During the visits, we were explained how a typical recording studio operates. Based on our discussion with the studio operators and confirmed by Mr Ricky Fung of IFPI, it was noted that a recording studio would not normally involve the display or exhibit image or other information on a screen during its operation. This is one of the basic criteria for an activity to be qualified as “karaoke” under the Bill. We have therefore come to the conclusion that recording studios would not be caught by the definition of “karaoke” or “karaoke establishments” by virtue of their mode of operation which is dissimilar to that of “karaoke establishment” as defined in the Bill. A copy of letter dated 23 August 2001 from Secretary for Security to IFPI is at Annex for members’ information.

We are of the view that the proposed definitions of “karaoke” and “karaoke establishment” are appropriate for the regulatory control of the karaoke establishments.

2. On clause 3(1), to explain

(i) the types of karaoke establishments exempted under the clause;

Three categories of karaoke establishments (KE) specifically exempted under clauses 3(1)(a) to (c). The reason for exempting the premises specified in subclause (1)(a) and (b) is because most of these premises are not of “closed-cubicle” type. Furthermore the fire load is low due to their simple decoration and compartmentation. Also, the karaoke activities carried out therein are usually on an ad hoc basis and of a small scale. For subclause (1)(c), performances given in a place of public entertainment (PPE) e.g. a vocal recital, are caught by the definition of “karaoke” but they are not the type of karaoke which the Bill is intended to control. Please refer to page 2 of the Summary of Administration’s response to queries/comments raised by the Legal Services Division (LC Paper No. LS 77/00-01) for further details

For clause 3(1)(d), these KE are within the so-called “bona fide” restaurants (i.e. restaurants serving food and drinks, not providing karaoke activities as their main business). “Bona-fide” restaurants are defined to mean restaurants with aggregate areas of all karaoke rooms not exceeding 30% of the seating area and having no more than one karaoke room per 100m² in the seating area. Provided an order under clause 3(1)(e) is issued by the licensing authority, these “bona fide” restaurants will be exempted from applying for karaoke permits.

(ii) whether an application for exemption is required to be made under the clause and the fees, if any, for the application; and

Exemptions under clause 3(1)(e) will be dealt with by administrative means and no formal application for exemption will be required, save for the category of “bona fide” restaurants which we have identified and covered under clause 3(1)(d). The only fees that are able to be charged for anything done by the Administration under or by virtue of the Ordinance are as respects applications or renewals for permits or licences. Fees cannot be charged for “exemptions”.

(iii) the need for clause 3(1)(e) and whether it can be deleted.

Clause 3(1)(e) is a very useful provision, since it enables the licensing authority to disapply the Ordinance to particular types or descriptions of KE in accordance with relevant policy, without the need for an amendment to the Ordinance. In practice, very few cases are envisaged.

3. To advise what premises are exempted from the requirements to apply for a liquor licence, what are the criteria for consideration and the approving authority for such an application.

Under Regulations 25A and 26 of the Dutiable Commodities (Liquor) Regulations, the sale or supply of liquor is prohibited except on the authority of a liquor licence, a club liquor licence or a temporary liquor licence-

- (a) at any premises for consumption on those premises; or
- (b) at any premises used by any club; or
- (c) at a place of public entertainment or a public occasion for consumption at the place or occasion.

No premises where liquor is sold and consumed have been given exemption from applying for a liquor licence under the law.

The approving authority for the granting of liquor licence and club liquor licence is the Liquor Licensing Board which is a statutory body established under the Dutiable Commodities (Liquor) Regulations. The criteria for consideration by the Liquor Licensing Board in granting or refusing an application are stated in Regulation 17(2) of the Dutiable Commodities (Liquor) Regulations which are reproduced below-

- “(2) The Board shall not grant a liquor licence unless it is satisfied-
- (a) that the applicant is a fit and proper person to hold the licence;
 - (b) that the premises to which the application relates are suitable for selling or supplying intoxicating liquor, having regard to-
 - (i) the location and structure of the premises; and
 - (ii) the fire safety and hygienic conditions in the premises;
 - (c) that in all the circumstances the grant of the licence is not contrary to the public interest.”

For temporary liquor licence, the Commissioner of Police is the approving authority to issue a licence to existing holder of a liquor licence for the retail sale of liquor at any public entertainment or on any occasion.

4. **To reconsider the need for the requirements to “take into account the views of persons whose place of residence or employment is in the immediate vicinity of the place of the proposed operation” stipulated under clause 5(6).**

The reference to clause 5(6) is discretionary and supplementary to other more fundamental considerations under clause 5(3)(b). Under clause 5(6), it is not mandatory for the licensing authority to seek the views of the public before an application for licence or permit may be determined but that it only empowers the authority to consider such view if it is then given in some cases. As explained in the Administration’s responses to Bills Committee meeting held on 1 March 2001 and 26 March 2001 (LC Paper No. CB(2)1153/00-01(02) and LC Paper No. CB(2)1408/00-01(02) respectively), the suitability of the premises and the area in which it is located remains the prime consideration.

In the event that the licensing authority does take into account the local views under clause 5(6), any decision made by the licensing authority must be reasonable and relevant and in accordance with established and pre-existing policy.

5. **To advise whether the requirement of clause 5(6) is applicable to an application for a liquor licence.**

There is no clause similar to clause 5(6) of the KE Bill in the Dutiable Commodities Ordinance or Dutiable Commodities (Liquor) Regulations, Cap. 109.

However, Regulation 16 of the Dutiable Commodities (Liquor) Regulations requires the advertisement of the application at least 2 weeks before the Liquor Licensing Board meets to consider the application, at the expense of the applicants. Currently this takes the form of advertising in one Chinese and one English newspaper for a day.

In addition, the application for liquor licence will be referred to the respective District Office of the Home Affairs Department for the carrying out of local consultation. Notices will also be posted in the building concerned to publicize the application and to seek the opinion of the residents of the building and in the immediate vicinity.

6. **To advise whether clause 5(3)(b) and 5(6) applies to both new applications and applications for renewal of licence/permit and what is the channel for an aggrieved party to appeal against the decision of the Licensing Authority.**

The considerations in clause 5(3)(b) and 5(6) apply both to the application under clause 5 and to renewal under clause 8. Under clause 5(3), the licensing authority must not grant a permit or issue a licence unless, among other things, he is satisfied as to the considerations in clause 5(3)(b) (and by reference, clause 5(6)). Under clause 10(c)(iv), the licensing authority may refuse to renew a permit or a licence if **he ceases to be satisfied of any matter in respect of which he is required to be satisfied under clause 5(3).**

An aggrieved person has an avenue of appeal to the Administrative Appeals Board under clause 12 of the Bill against decision of the licensing authority made under clauses 5, 6, 8, 9 or 10.

Letterhead of GOVERNMENT SECRETARIAT

本函檔號 OUR REF.: SBCR 2/1866/97

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Urgent By Fax
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23 August 2001

International Federation of the Phonographic Industry

(H.K. Group) Ltd.

Room 3705 Hopewell Centre

183 Queen's Road East, Wanchai

Hong Kong

(Attn.:Mr Ricky Fung)

Dear Mr Fung,

Licensing Control of Karaoke Establishments

I write to thank you for your kind assistance in arranging visits to several major recording studios so that we could better understand any possible effects that the Karaoke Establishments Bill 2000 ("the Bill") might have on recording studios.

During the visits, it was explained to us how a typical recording studio operates. Based on our disoussion with the studio operators and confirmed by yourself, we noted that a recording studio would not normally involve the display or exhibit of visual image or other information on a screen during its operation. Therefore we have come to the conclusion that recording studios would not be caught by the definition of "karaoke" or "karaoke establishments" by virtue of their mode of operation which is dissimilar to that of "karaoke establishment" as defined in the Bill.

We would like to take this opportunity to appreciate the in-principle support given by IFPI to the legislative intention of the Bill which aims to enhance the fire, building and public safety of karaoke establishments.

Once again I thank you for your invaluable input and interest in the matter.

Yours sincerely,

(S W HUI)
for Secretary for Security