

**Information requested by the Bills Committee
at its meeting held on 14 January 2002 regarding
the Karaoke Establishments Bill (Part 2)**

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

- 1. To provide legal advice as to whether clause 5(3)(c) could be invoked to reject an application for permit/licence made by a person who was authorized by a body corporate or a partnership which had a connection with triad members;**

In principle, the authorities do have the power to reject an application for a licence or a permit on ground of gravely undesirable background of the applicant if it was considered appropriate to do so in the public interest, or that granting the application/permit would be contrary to the public interest. However, we would like to point out that “connection with triad members” may not in itself be taken as valid or sufficient ground for refusal of an application for a licence or a permit. On the other hand, any information on “connection with triad members” could become a factor for serious consideration in the licensing application process. It depends on the circumstances of the particular case.

As explained previously in LC Paper Nos. CB(2)1153/00-01(02) and CB(2)502/01-02(02), the consideration of “public interest” under clause 5(3)(c) is unique according to the particular circumstances of individual cases and must be dealt with by the licensing authority according to those particular circumstances.

- 2. To advise whether establishments selling food and liquor in premises managed by the Government were required to obtain a licence;**

Establishments serving food in premises managed by the Government for their occupiers and workers only (i.e. not for the public at large) are not required to obtain a restaurant licence but they are required to apply for a liquor licence for the sale and consumption of liquor.

3. **To consider whether clause 3 should be amended to the effect that the premises specified under sub-clause 1(a), (b) and (c) had to apply for an exemption order under clause 3(1)(e), as opposed to the present drafting which expressly provided that the Bill does not apply to such premises. If the reply was negative, the Administration was requested to provide the following information –**
- (a) **the number of each category of premises specified under clause 3(1)(a), (b) and (c);**
 - (b) **findings of any surveys in support of the Administration’s advice that the risk of fire was low because of the layout of the premises in question;**
 - (c) **a comparison of the risk assessments (in terms of fire safety and public safety) for conducting karaoke business, sale of food and liquor in premises under the management of the Government; and**

We are considering the issue and will revert to the Bills Committee separately as soon as possible.

4. **To reconsider the proposed level of fine stipulated in clause 4(1), making reference to the penalty imposed on similar offences under other Ordinances.**

We have made reference to the penalty imposed on similar offences under other Ordinances, including the Amusement Games Centres Ordinance (Cap. 435), the Bedspace Apartments Ordinance (Cap. 447), the Massage Establishments Ordinance (Cap. 266), the Public Health and Municipal Services Ordinance (Cap. 132) (in connection with the granting of restaurant licences) and the Places of Public Entertainment Ordinance (Cap. 172). A comparison of the relevant offences is in the table at Annex.

Having reviewed the proposed level of penalty stipulated in clause 4(1), we propose to impose a penalty of a fine at Level 6 and imprisonment of one year for **second or subsequent convictions** for operating karaoke establishment without a licence or permit. In the case of a continuing offence, the daily fine is proposed to be increased from \$1,000 to \$2,000 for each day during which the offence continues.

In setting the maximum penalty for a particular offence, the Administration has to make reference to the gravity of that offence in relation to others, the deterring effect, consistency in the law, expectations of the society and so on. The dollar value of fine should not be viewed on its own. There is the accompanying penalty of imprisonment, in addition to the daily fine for continuing commission of offence. Members might be concerned that the actual penalty imposed by the courts might be too low to achieve a deterrent effect. However, this is a prerogative of the courts and a matter for them. In case the prosecution considered that a certain penalty handed down was too low to reflect the seriousness of the offence in a particular case, there is always the avenue for redress by way of an appeal.

Comparison of Penalty Clauses with Other Licensing Regimes

Ordinance	Operating Without a Licence			Breach of Licensing Conditions		
	Fine	Imprisonment	Daily fine	Fine	Imprisonment	Daily fine
Amusement Games Centres (Cap. 435) 遊戲機中心條例	\$100,000 [\$200,000]	6 months [1 year]	\$20,000	\$50,000 [\$100,000]	6 months [1 year]	-
Bedspace Apartments (Cap. 447) 床位寓所條例	\$100,000	2 years	\$20,000	\$50,000	1 year	\$10,000
Massage Establishments (Cap. 266) 按摩院條例	\$50,000 [\$100,000]	6 months [2 years]	-	\$50,000	6 months	-
Public Health and Municipal Services (Cap. 132) 公眾衛生及市政條例 (<i>in respect of restaurant licence</i>)	Level 5	6 months	\$900	-	-	-
Places of Public Entertainment (Cap. 172) 公眾娛樂場所條例	Level 4	6 months	\$2,000	Level 2	6 months	-
Currently Proposed in the Bill						
Karaoke Establishments Bill 卡拉 OK 條例草案	Level 5	6 months	\$1,000	Level 5	6 months	\$1,000
Proposed Amendment to the Bill						
Karaoke Establishments Bill 卡拉 OK 條例草案	Level 5 [Level 6]	6 months [1 year]	\$2,000	Level 5	6 months	\$1,000

Note : Penalties for second or subsequent conviction are in square brackets.

Level 2 - \$5,000 }

Level 3 - \$10,000 }

Level 4 - \$25,000 }

Level 5 - \$50,000 }

Level 6 - \$100,000 }

Level of fines set out in Schedule 8 of
Criminal Procedure Ordinance (Cap. 221)