Information requested by the Bills Committee at its meeting held on 15 March 2002 regarding the Karaoke Establishments Bill

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

1. To review the drafting of clause 7(1) to ensure that it would reflect the policy intent that "a person authorized by the body corporate or the partnership" should be construed to mean a natural person;

The Administration has responded previously to this point which is summarized in LC Paper No. LS 77/00-01 (Page 5). It is reproduced below-

"In the context of sub-clause (1), the word "person" means a person other than a body corporate or a partnership. It is true that the definition of "person" in Cap. 1 includes a body corporate or a partnership, but that meaning applies save where the contrary intention appears from the context. Given the juxtaposition of the words "body corporate", "partnership" and "person", it seems very clear that in the context of the provision, "person" is to be construed as not including a "body corporate" or a "partnership"."

2. To explain the basic requirements that an applicant had to meet in order to be granted a provisional licence or permit under clause 9(1);

Before a provisional licence or permit under clause 9(1) may be issued or granted, the applicant has to comply with the four areas of basic requirements as follows-

(a) *Building safety requirements* such as provision of adequate means of escape including adequate width and number of exit routes and exit doors and the premises in question is structurally suitable for the operation of KE.

(b) *Fire safety requirements* such as provision of required fire service installations and equipment and provision of low-level directional exit signs.

(c) *Ventilation requirements* such as provision of fire dampers to ductwork and provision of non-combustible filters in the ventilating system.

(d) *Health requirements* such as provision of toilets and water supply and provision of sanitizing equipment for microphones.

3. To justify the need to retain clause 10(v) as "public interest" was already covered in clause 10(iv), and to clarify whether clause 10(v) might give rise to a situation whether a karaoke establishment would still be penalised even though it no longer operated in a way contrary to the public interest during the latter period of a "current" licence;

Clause 10(iv) primarily deals with the facts and circumstances surrounding or relevant to an application for licence or permit before the same is issued or granted. These facts and circumstances, including but not limited to the consideration of "public interest" under clause 5(3)(c), are required to be in continued existence while a licence or permit is in force. The "public interest" as covered in clause 10(iv) refers to the pre-requisite for the grant of a licence or permit i.e. it is in general not contrary to public interest for the KE to operate.

Clause 10(v), however, is concerned with the manner in which the karaoke establishment is operated after the issue or grant of the licence or permit. As regards "public interest" in clause 10(v), it refers to specific occasions on which a KE is operated while a licence or permit is in force. The emphases in the two subclauses are different.

In determining whether any action is to be taken under clause 10, the licensing authority has to take into account all factors relevant to the way the karaoke establishment has been operated during the period of the "current" licence or permit. It will hamper the effective administration of the licensing regime if the licensing authority is barred from taking into consideration any incident after a certain lapse of time within the validity period of the "current" licence or permit. It is reasonable and necessary for the licensing authority to take a serious view of any operation of a karaoke establishment in a manner contrary to the public interest throughout the period of the licence or permit.

4. To confirm whether all decisions made by the licensing authority under clauses 5, 6, 8, 9 or 10, in particular the imposition of conditions under clause 5(2), were subject to appeal to the Administrative Appeals Board (AAB);

All decisions made by the licensing authority under clauses 5, 6, 8, 9 or 10 are subject to appeal to the Administrative Appeals Board. The imposition of conditions under clause 5(2) is no exception.

5. To consider whether an express provision should be provided in the Bill to the effect that a licence would remain in force if the licence had expired but the period for lodging an appeal against the decision of non-renewal of licence (i.e. 28 days under clause 12(1)) had yet to expire;

For the avoidance of doubt, we propose to add an express provision to the effect that without prejudice to the public interest, a decision of the licensing authority to refuse to renew a licence is not to take effect until after the expiry of the period for lodging an appeal and where an appeal is lodged within the specified period, until the appeal is disposed of, withdrawn or abandoned.

As regards the computation of the 28-day period in clause 12(1), the interpretation of s.71(1)(a) of the Interpretation and General Clauses Ordinance (Cap. 1) applies given that there is no apparent contrary intention in the Bill. In other words, the 28-day period for lodging an appeal would count **exclusive** of the date on which the notice is received.

6. To consider whether the licensing authority should be required to employ <u>all</u> the means under clause 18 for service of orders and notices in respect of serious offences (e.g. revocation or refusal of renewal of licence);

It is in the mutual interest of the licensing authority and the party on whom the notice or order is to be served that service of the notice or order is properly effected. The licensing authority will certainly employ more than one mode of service under clause 18 depending on the circumstances of a particular case. This will be included in the guidelines to be promulgated by the licensing authority.

If stipulated in law as a statutory requirement to employ all different modes of service of notices or orders, it would cause practical difficulties if the notice or order is unable to be served by one or some of the means. Of the three modes of service stipulated under clause 18, while service by registered post under clause 18(b) can in most cases be carried out, the other two modes under clauses 18(a) and (c) could face inherent difficulties in practice. For "personal" service under clause 18(a), the person to be served with the notice or order may deliberately choose not to receive the notice or order. For service under clause 18(c), there may be circumstances where access to the subject premises are denied or cannot be gained, making it impossible to comply with the requirements under this sub-clause.

The effective enforcement of the licensing regime will also be hampered if the licensing authority is required to prove on each occasion that he has effected service through every mode stipulated under the law.

Members may also wish to note that similar provision of clause 18 is found in numerous Ordinances insofar as the service of notices and orders is concerned.

7. To advise the average waiting time before an appeal case was heard by AAB;

According to the AAB, the average waiting time before an appeal case was heard was about four months in 2000 and 2001.

8. To quote the relevant statutory provisions to explain whether a decision of AAB was final or subject to further appeal to other courts; and

A decision of AAB is final insofar as appeal against the original decision of the licensing authority is concerned. There are no provisions under the Administrative Appeals Ordinance, Cap. 442 for further appeal. Nevertheless, a decision of the AAB is subject to judicial review by the Court of First Instance in the High Court, given that a decision of an inferior tribunal is always subject to the supervisory jurisdiction of the High Court as to lawfulness of its decision.

9. To give examples of provisions in other Ordinances which were similar to clause 12.

Examples of provisions in other Ordinances that are similar to clause 12 can be found in s.26(2) of the Security and Guarding Services Ordinance (Cap.460), s.5(6) of the Miscellaneous Licences Ordinance (Cap.114), s.22(3) of the Marine Parks Ordinance (Cap.476), s.24(3) of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap.566) and s.18(2) of the Control of Chemicals Ordinance (Cap.145).

Security Bureau
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