Information requested by the Bills Committee at its meeting held on 2 May 2002 regarding the Karaoke Establishments Bill

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

1. On clause 14, to consider

(a) members' views that clause 14(1) (a), (b) and (c) should be applicable only to KEs which operated without licences/permits during the transitional period as provided under clause 3(3). However, in respect of KEs which were granted licences under the proposed licensing control scheme, the Administration should consider deleting clause 14(1)(a) and (b);

To address Members' concern, we shall introduce committee stage amendment to specify that clause 14(1) (a), (b) and (c) are applicable to KEs which operated without a licence or permit during the transitional period as provided under clause 3(3).

In respect of KEs where licences or permits had been issued or granted, clause 14(1)(a) and (b) will not apply and clause 14(1)(c) will be amended to include licensing conditions.

(b) Mr. Tommy CHEUNG's suggestion that in respect of KEs which were granted licences under the proposed licensing control scheme, clause 14(2)(a) should be revised to specify that the directions in clause 14(1) would be given only to the licensee or the authorized person, as the case might be;

The group of words "person being the operator, keeper, manager or otherwise having control …" read together clearly refers to a person of significant responsibility in respect of the operation of the KE, i.e. licensee, grantee or the authorised person of a corporate licensee or grantee, and does not refer to just any staff member, such as a cleaner or watchman, of a KE. Given this, and our response in (c) below, Members may agree that it is not necessary to amend clause 14(2) (a) to distinguish between the service of directions under clause 14(1) on "the person being the operator, keeper, manager or otherwise having control …"on the one hand, and "the licensee, grantee or authorised person" on the other. Indeed, to do so would imply that the former may not include the latter, and would throw in doubt the correct interpretation of all the other clauses where the group of words

"person being the operator, keeper, manager or otherwise having control" is used.

(c) the Chairman's suggestion that on resumption of Second Reading debate of the Bill, the Administration should give an undertaking that, in implementing clause 14(2), the licensing authority would not serve as far as possible the notice under clause 14(1) on person not being the "operator, keeper, manager or otherwise having control of the KE". The Administration would also confirm that, in law, cleaning staff would not be regarded as "the person being the operator, keeper, manager or otherwise having control of the KE";

We confirm that cleaning staff would not be regarded as "the person being the operator, keeper, manager or otherwise having control of the KE". As a matter of construction, "the person being the operator, keeper, manager …" cannot be interpreted to include minor staff of a KE as "otherwise having control of the KE" is qualified by "operator", "keeper" or "manager" to be of the same class.

The Administration will not serve a notice under clause 14(1) on a person who is <u>not</u> a person being the "operator, keeper, manager or otherwise having control of the KE", and will so undertake at the resumption of the Second Reading debate.

2. To stipulate that the service of a closure order under clause 18 should be by registered post addressed to the last known place of business or residence of the person to be served, <u>and</u> by posting the same upon a conspicuous part of the premises concerned.

The present drafting of clause 18, as found in numerous other Ordinances, will enable the licensing authority to provide good service of notice or order as it may be done by personal service, registered post or by posting the same in a prominent position near the premises. The last mode of service can be regarded as a fall back provision as it will enable a notice or order to be validly served where personal service or postal service (registered post) is proved ineffective, for example, when the licensee or grantee could not be located and the registered post is returned/undelivered. The licensing authority will certainly and as a matter of administrative procedure, employ more than one mode of service to ensure that the notice or order will be effectively served.

As we have explained in item 6 of LC paper no. CB (2) 1585/01-02(03), it would cause practical difficulties, if there is a statutory requirement to employ all the different modes of service of notices. If the notice cannot be served by one or some of the prescribed means, no good service of notice will be effected.

The same difficulties would arise if the notice of application for closure order were required to be served both by registered post and by posting the same in a prominent position upon or near the premises. If and when the notice sent by registered post is returned and undelivered, the failure in the postal service alone may mean no good service notwithstanding that a notice has been posted in a prominent position upon the premises. If the person to be served with a notice manages to evade service intentionally by deliberately choosing not to receive the registered post, this will virtually make clause 15 inoperable. Upon return of such notice undelivered, the validity of a closure order made by the District Court under clause 15 will be in doubt.

In view of the foregoing, we remain of the view that it is not appropriate to stipulate that the service of a notice of application for closure order must be by registered post and by posting the same upon a conspicuous part of the premises concerned. To do so will seriously hamper the effective enforcement of the licensing regime.

Security Bureau
May 2002