

**Information requested by the Bills Committee
at its meeting held on 29 November 2001 regarding
the Karaoke Establishments Bill**

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

Clause 5 and 7

- 1. To set out in writing the administrative arrangement explained by the Administration at the meeting to allow continued operation of the licensed premises in the case of death, disappearance or failure to function of the authorized person and whether this administrative arrangement should be spelled out in the Bill;**

As explained in Question No. 2 of the Administration's response to issues raised at the meeting on 18 May 2001 (LC Paper No. CB(2)502/01-02(02)), although a person must be duly authorized when the application for licence is made and when the permit or licence is granted or issued, the body corporate would be the licensee, **not** the authorized person (AP). Thus, in the event of the death, disappearance or failure to function of such AP, or otherwise cessation of authority by the company, the permit or licence would not automatically lapse in such circumstances.

In order to address the issue of consequences of a break in the continued existence of an AP, we propose stipulating a licensing condition to the following effect:-

- The licensee (i.e. the company) has to inform the licensing authority of any change of AP within 14 working days from the date of change. Particulars of the replacement AP have to be submitted for vetting at the same time.
- Upon receipt of the notification within the aforesaid period and before a determination is made on the acceptance (or otherwise) of the new AP by the licensing authority, there will be no breach of condition on grounds of there being no approved AP.

- If the new AP is found to be acceptable for the purpose of clause 5(3)(a)(i), the extant licence will be amended by way of changing the name of the AP appearing thereon.

The above administrative arrangements will be spelt out as licensing conditions, rather than in the Bill itself.

2. **To clarify whether it was the policy intent that both the body corporate and the authorized person, or the authorized person alone, should satisfy the requirement of being “a fit and proper person to operate the karaoke establishment” under clause 5(3)(a)(i), and whether the existing provisions were adequate to such effect;**

The policy intent is that the authorised person alone should satisfy the requirement for being “a fit and proper person to operate a karaoke”. This is clearly reflected in the bill as presently drafted.

Clause 7(1) provides that, where a body corporate or a partnership wishes to obtain a permit or a licence, **a person** authorized by the body corporate or the partnership **shall apply** as the representative of the body corporate or the partnership. Given this and the reference to “the person making that application is a fit and proper person” in clause 5(3)(a)(i), it is clear that only the authorized person is required to go through the fit and proper test.

We are satisfied that this arrangement will not compromise the effective administration of the licensing regime as ultimately it is the licence of the body corporate or the partnership which may be cancelled or suspended under clause 10 should the licensing authority cease to be satisfied of any matter of which he is required to be satisfied under clause 5(3).

3. **To advise whether a body corporate holding licences for different karaoke establishments was required to appoint different authorized persons for these licensed premises;**

It is not a mandatory requirement for a body corporate holding licences for different karaoke establishments to appoint different authorized persons (AP) for these licensed premises. However the AP so appointed has to satisfy the licensing authority as regards clause 5(3)(a).

- 4. To clarify whether both the body corporate and the authorized person could be holder of more than one licence or permit, and if so, whether an express provision to that effect should be provided in the Bill;**

Both the body corporate and the authorized person could be holder of more than one licence or permit provided that the requirements laid down in clause 5(3) for the granting or issue of a permit or a licence are met. We do not consider it necessary to include an express provision to that effect in the Bill.

- 5. To explain what would happen to a licence/permit if the licensee/grantee who was an individual person had died with or without a will;**

If the licensee/grantee who was an individual person had died, the licence/permit would lapse irrespective of whether there is a will.

- 6. To consider whether specific provision for case of death of the licensee/grantee should be included in the Bill, similar to section 54 of the Dutiable Commodities Ordinance (Cap, 109); and**

Section 54 of the Dutiable Commodities Ordinance (Cap. 109) is reproduced below-

“In case of the death or insolvency of the holder of a licence issued under this Ordinance, his executor or administrator or trustee may carry on the business on the licensed premises until the expiration of the licence, subject in every respect to the same regulations and conditions as the licensee.”

In the proposed licensing regime for karaoke establishments (KE), it is not a mandatory requirement that the licensee or grantee has to be a physical person. In view of the mode of KE operation, we believe the operators would in most cases apply in the name of the body corporate, rather than as an individual.

Furthermore, there are tedious and time-consuming procedures to go through before the executor or administrator would emerge upon the death of a person, whereas the licence period is only for one year. Thus, the practicability of providing for the continued operation of the KE business for the remainder of the licence period is in doubt.

In the experience of administering the liquor licence, the Director of Food and Environmental Hygiene has not encountered any case where section 54 has been invoked in recent years.

In view of the foregoing, we do not propose to adopt a provision similar to clause 54 of the Dutiable Commodities Ordinance in the KE Bill.

Clause 19

- 7. To allay some members' concern that clause 19 might be too harsh, to provide information on the types of apparatus or commodity etc. ordered by the court for forfeiture vis-à-vis the offences committed under different Ordinances.**

Under clause 19 of the proposed Bill, items are liable to be forfeited **only upon the conviction** of any person of an offence under clauses 4 and 16 of the Bill. Whether or not to order forfeiture is entirely a matter for the court.

The types of apparatus or commodity etc. ordered by the court for forfeiture under different Ordinances would depend on the nature and severity of offence committed, the business involved and the circumstances of individual cases. For example, in a case of liquor licensed premises breaching liquor licensing condition no. 12 (i.e. no dancing shall be taken place except with the permission of the board endorsed therein), the apparatus seized by the Police included CD players, speakers, microphone, cables and CD etc. These items were subsequently forfeited by order of the court upon conviction of the accused.

When taking enforcement action on unlicensed food premises such as meat roasting factory, food factory or slaughterhouse, officers of the Food and Environmental Hygiene Department can, under section 133 of the Public Health and Municipal Services Ordinance (Cap. 132), remove equipment and commodities in respect of which they have reason to believe that the relevant offence has been committed. From experience, upon conviction, the court will order forfeiture of all the equipment and commodities so removed such as the pig carcasses (food items which are perishable will have been disposed of), the meat roasting ovens and the refrigerator used.