

C039-e

A BILL

To

Amend the Noise Control Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Noise Control (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment and Food by notice published in the Gazette.

2. Sections added

The Noise Control Ordinance (Cap. 400) is amended by adding---

"28A. Liability of directors

(1) Subject to section 28B, where an offence under this Ordinance has been committed by a body corporate, any person who at the time of the offence was---

(a) a director concerned in the management of the body corporate;

(b) a director who has delegated his authority for the management of the body corporate to an officer;

(c) an officer mentioned in paragraph (b); or

(d) an officer---

(i) concerned in the management of the body corporate; and

(ii) acting under the immediate authority of a director of the body corporate, shall be guilty of the like offence.

(2) For the purpose of subsection (1), "body corporate" (法團) means any company, or other body corporate, incorporated in Hong Kong or elsewhere, but does not include any corporation registered under the Building Management Ordinance (Cap. 344).

(3) It is a defence to a charge brought under any provision of this Ordinance (other than section 6(1)(a), (2)(a) or (3)(a)) for a person charged under subsection (1) to prove that he took reasonable precautions and exercised due diligence to prevent the commission of the offence by the body corporate.

(4) Without affecting the generality of subsection (3), a person establishes a defence under that subsection if he proves that he had---

(a) established a proper system to prevent the commission of the offence concerned; and

(b) ensured the effective operation of the system.

28B. Restrictions on application

of section 28A(1)

(1) Section 28A(1) shall not apply to a specified person in relation to a specified

offence unless---

(a) proceedings have been instituted against the specified body corporate for an offence under this Ordinance in relation to a specified place (and whether or not the specified body corporate is convicted of that offence);

(b) the Authority has, in relation to those proceedings, served on the specified person a notice in the form specified in the Schedule; and

(c) the specified offence---

(i) relates to that specified place; and

(ii) occurs after the date on which that notice is served on the specified person.

(2) The Authority may, by notice published in the Gazette, amend the Schedule.

(3) In this section---

"proceedings have been instituted" (法律程序已經提出), in relation to an offence under this Ordinance, means a complaint or information in respect of the offence has been made or laid, as the case may be;

"specified body corporate" (指明法團), in relation to a specified person, means a body corporate mentioned in section 28A(2) in respect of which the specified person is such a specified person;

"specified offence" (指明罪行) means a like offence mentioned in section 28A(1);

"specified person" (指明的人) means a director mentioned in section 28A(1)(a) or (b) or an officer mentioned in section 28A(1)(c) or (d);

"specified place" (指明地方) means---

(a) any domestic premises, public place or construction site; or

(b) any place other than any domestic premises, public place or construction site.

(4) For the avoidance of doubt, it is hereby declared that the Authority has the power to serve the notice referred to in subsection (1)(b).

28C. Codes of practice

(1) The Authority may issue codes of practice containing such practical guidance as he thinks fit for the purpose of providing industries with good management practice in respect of section 28A(3).

(2) The Authority may from time to time revise the whole or any part of any code of practice issued under subsection (1) by revoking, varying or adding to its provisions or requirements.

(3) A code of practice or any revision to a code of practice shall be published in the Gazette.

(4) A code of practice or any revision to a code of practice commences at the beginning of the day on which it is published."

3. Schedule added

By repealing "SCHEDULE" and substituting the following---

"SCHEDULE [s. 28B]

Notice under Section 28B(1)(b) of the Noise Control Ordinance (Chapter 400) to Director or Officer of Body Corporate

FROM : The NOISE CONTROL AUTHORITY appointed under section 3(1) of the Noise Control Ordinance (Cap. 400)

TO : (name of person)

1. You are Hereby Advised that---

(a) proceedings have been instituted against

(name of body corporate) for an offence under the Noise

Control Ordinance (Cap. 400) in relation to

(address or other identifying particulars of domestic premises, public place, construction site, or other place, to which the offence relates); and

(b) it is believed that you are one or more of the following---

(i) a director concerned in the management of the above-named body corporate;

(ii) a director who has delegated his authority for the management of the above-named body corporate to an officer;

(iii) an officer mentioned in subparagraph (ii) above;

(iv) an officer---

(A) concerned in the management of the above-named body corporate; and

(B) acting under the immediate authority of a director of the above-named body corporate; and

(c) whether or not the above-named body corporate is convicted of the offence mentioned in paragraph (a) above---

(i) in relation to any offence under any provision of the Noise Control Ordinance (Cap. 400) committed in relation to the same domestic premises, public place, construction site, or other place, mentioned in that paragraph by that body corporate after the date of service of this notice on you; and

(ii) by virtue of sections 28A and 28B of the Noise Control Ordinance (Cap. 400),

proceedings may also be taken against you for the offence mentioned in subparagraph (i) above in your capacity mentioned in paragraph (b) above.

2. Copies of sections 28A and 28B of the Noise Control Ordinance (Cap. 400) are attached for your information.

Dated this day of 20

Signed :

Noise Control Authority/ public officer authorized under section 3(3) of the Noise

Control Ordinance (Cap. 400)*

*Delete whichever is inapplicable."

Explanatory Memorandum

The principal purpose of this Bill is to amend the Noise Control Ordinance (Cap. 400) ("the principal Ordinance") to provide that where an offence under the principal Ordinance has been committed by a body corporate, then persons who at the time of the offence were certain directors or officers of the body corporate shall be guilty of the like offence (new section 28A(1) at clause 2). However, such persons may only be convicted of that like offence if proceedings for an earlier offence under the principal Ordinance have been instituted against the body corporate (and whether or not there is a conviction for that earlier offence), the Noise Control Authority has served on those persons a notice about those proceedings and the like offence occurs after that notice has been served (new section 28B at clause 2 and the new Schedule at clause 3).

2. New section 28A(3) at clause 2 provides a general defence to a charge brought under any provision of the principal Ordinance (other than section 6(1)(a), (2)(a) or (3)(a)) for the person charged under new section 28A(1) to prove that he took reasonable precautions and exercised due diligence to prevent the commission of the offence.

3. New section 28C at clause 2 empowers the Noise Control Authority to issue codes of practice for the purpose of providing industries with good management practice in respect of new section 28A(3).