

立法會
Legislative Council

LC Paper No. LS88/99-00

**Paper for the House Committee Meeting
of the Legislative Council on 18 February 2000**

**Legal Service Division Report on
Noise Control (Amendment) Bill 2000**

Objects of the Bill

- (a) To provide that where an offence under the Noise Control Ordinance (Cap. 400) has been committed by a company, certain directors and officers of the company shall be guilty of the same offence; and
- (b) to empower the Noise Control Authority to issue codes of practice to provide industries with practical guidance of good management practice.

LegCo Brief Reference

- 2. The Environment and Food Bureau has issued a LegCo Brief in February 2000. No reference number is stated in the Brief.

Date of First Reading

- 3. 16 February 2000.

Comments

- 4. The reason for the proposed amendment, as stated in the LegCo Brief, is that the situation of companies violating the Noise Control Ordinance ("the Ordinance") is becoming more serious. There are instances that companies are involved in a large number of repeated offences. The Administration considers that the repeated offences indicate that the controlling persons of the companies concerned tend to give less regard to compliance with the Ordinance due to a lack of

personal liability, and they may even treat the fines imposed on their companies as part of the project cost.

5. The Bill proposes that, where a company has committed an offence under the Ordinance, the following persons shall be guilty of the same offence :-

- (a) a director concerned in the management of the company, or a director who has delegated his authority for management to an officer; or
- (b) an officer concerned in the management of the company and acting under the immediate authority of a director.

6. Members may wish to note that under the existing provisions of the Ordinance, directors and officers of companies may be prosecuted for offences. However, in practice only companies were prosecuted, apparently due to the lack of explicit provisions making directors and officers liable for the same offence.

7. Members may also wish to note that in existing ordinances relating to pollution control and in various other ordinances, there are similar provisions making directors and officers liable for the same offence committed by the company they manage. At the meeting of the Panel on Environmental Affairs on 20 December 1999, the Administration provided a list of such ordinances. Members may obtain a copy of the list from the Clerk of the Panel or the Legal Service Division.

8. The Administration also provided a draft Codes of Practice in the same meeting. The Codes of Practice proposed in the Bill contains guidelines of good management practice. According to the Administration, adoption of the good management practice suggested in the Codes would be relevant to the defence contained in the proposed section 28A(3), i.e. that the director or officer has taken reasonable precautions and exercised due diligence to prevent commission of the offence by the company. The Bill requires that the Codes of Practice be gazetted. We understand that some refinement would be made to the draft Codes.

Public Consultation

9. According to the LegCo Brief, the Administration has consulted the Advisory Council on the Environment, Provisional District Boards, green groups and the Hong Kong Construction Association ("HKCA"). Except the HKCA, bodies consulted supported the proposed amendment. The HKCA, on the other hand, suggested to adopt a non-punitive approach.

Consultation with the LegCo Panel

10. The Administration briefed the Panel on Environmental Affairs on the proposed amendments on 5 March 1999, 29 March 1999 and 20 December 1999. In the December meeting, Members attending the meeting supported the proposed amendments.

Conclusion

11. The policy intent of the Bill is to make directors and officers who control or direct the activities of a company punishable for offences committed by the company. The Legal Service Division has raised certain technical drafting points with the Administration. While we are waiting for comments of the Administration on the drafting points, Members may wish to consider at this stage whether a Bills Committee is necessary.

Prepared by

LEE Yu-sung
Senior Assistant Legal Adviser
Legislative Council Secretariat
16 February 2000