

For discussion
on 11 November 1999

Legislative Council Panel on Security

Proposed Amendments to the Security and Guarding Services Ordinance

Purpose

This paper invites Members' advice on the proposed amendments to the Security and Guarding Services Ordinance, Cap. 460 ("the Ordinance").

Background

2. The Ordinance was enacted in December 1994 to provide for the establishment of a Security and Guarding Services Industry Authority ("the Authority"), the issue of security personnel permits to individuals doing security work and the licensing of security companies. The objective of the licensing system is to promote and encourage higher standards in the industry so as to ensure that security and guarding services provided to consumers are of a reasonable and reliable standard. This also helps in the fight against crime.

3. Under the Ordinance, the Authority's main functions are to consider and determine applications for licences by companies, and for specifying the criteria and conditions for issuing permits ("the security

personnel permit”) to individuals and licences (“the security company licence”) to companies. Applications for security personnel permits are considered and determined by the Commissioner of Police (“the Commissioner”), taking into account the criteria specified by the Authority. There are at present around 149,970 permits and 757 licences issued.

4. A person who does security work for another person for reward without a permit commits an offence and will be liable upon conviction to a fine of \$10,000 and imprisonment for three months. The same penalty will apply where a person supplies an individual, who does not have a permit, to do security work for another person for reward. If a company operates as a security company without a licence, it commits an offence and will be liable on conviction to a fine of \$100,000 and imprisonment for two years.

5. The Ordinance has been in full operation since 1 June 1996. We have reviewed the Ordinance and identified three main areas for improvement. These include the following –

- (a) the provisions relating to the scope of activities for regulation under the Ordinance that should be clarified to remove doubts (see paragraphs 6 to 11 below);
- (b) the provisions relating to the operation of the Authority that should be streamlined for the better implementation of the licensing scheme (see paragraphs 12 to 18 below); and
- (c) the provisions relating to the fees for licence and permit that need to be rationalised (see paragraphs 19 to 24 below).

Proposals relating to the scope of regulation

Definition of "security work"

6. For the purpose of the licensing scheme prescribed under the Ordinance, "security work" is defined in section 2 to mean any of the following activities –

- (a) guarding any property;
- (b) preventing or detecting the occurrence of any offence;
- (c) installing, maintaining or repairing a security device;
- (d) designing for any particular premises or place a system incorporating a security device.

7. In the course of the implementation of the Ordinance, it has been brought to our attention that the definition of "security work" might have inadvertently covered some activities which we have no intention to regulate. They include:

- (a) the investigation work for detecting irregularities, fraud or other offences conducted by professional accountants and lawyers or their employees; and
- (b) the installation, maintenance and repairing of devices or systems on vehicles for security purpose.

8. We have also obtained feedback from the industry that they have

doubts on whether or not the Ordinance covers the regulation of private investigation services, although such services that prevent or detect the occurrence of any offence have been covered by the Ordinance.

9. To address these concerns, we **propose** to amend the Ordinance to clarify its scope of regulation by adopting a two-pronged approach: first, to put beyond doubt that the definition of "security work" includes investigation services that are for prevention and detection of offences; and secondly, to add a new Schedule to the Ordinance to make it clear that the two activities mentioned in paragraph 7 above are to be excluded from the application of the Ordinance. The new Schedule may in future be amended by the Chief Executive-in-Council by notice published in the Gazette.

Companies with in-house security work

10. Section 11(1) of the Ordinance provides that no person other than a company acting under and in accordance with a licence shall supply, agree to supply, or hold himself out as supplying any individual to do security work for another person for reward.

11. The wording of this section has, however, led to doubts on whether a company which provides its own in-house security services not for reward or as a business, is required to obtain a licence under the Ordinance because its security guards work for a salary as reward. As it is not our intention to require such companies to obtain a licence, we **propose** that section 11(1) should be revised to remove the ambiguity.

Proposals relating to the operation of the Authority

Size of the Authority

12. According to section 4 of the Ordinance, the Authority consists of a Chairman and three members appointed by the Chief Executive, and the Secretary for Security or her representative. We consider that the membership of the Authority should be slightly enlarged so that two additional non-official members could be appointed to assist in its work. We therefore **propose** that the membership of the Authority be increased from five to seven.

Transaction of business by circulation of papers

13. All applications made to the Authority under the Ordinance are required to be determined by the Authority through holding public hearings. These include applications for new issue of licence, for renewal of licence and for variation of licence conditions.

14. At present, hearings are held even if the applications are not contested by the opposite party, viz. the Commissioner or the applicant. To streamline operations, we **propose** that the Authority should be afforded the flexibility to transact its business by circulation of papers unless an application is contested or as otherwise specified in the Ordinance, viz. where the Commissioner applies for revocation of a permit or a licence and where an application for variation of the conditions of a permit is made. An application in circulation will be dealt with by a hearing, if a member of the Authority so requires.

Protection against personal liability

15. We **propose** that no personal liability should be incurred by any member of the Authority in respect of anything done, or omitted to be done, by him in good faith in relation to the performance or purported performance of any function under the Ordinance. This is to supplement the existing privileges and immunities provided under section 9 of the Ordinance to participants in a hearing and is a common provision in many other ordinances for protecting members of the statutory authorities and other people concerned when discharging their duties.

Maximum time for investigation of a licence application

16. Under section 20 of the Ordinance, there is a maximum period of 60 days within which the Commissioner has to complete investigation into an application for a licence and after which follow-up procedures will take place. This period may sometimes need to be extended where a large number of applications are received within a short period of time with which the Police are unable to cope, and where the applicant needs more than 60 days to satisfy all the licensing requirements.

17. In order to provide the necessary flexibility for the applicant and the Police, we **propose** to empower the Authority to extend the stipulated time period where justified. For transparency, the Authority will be required to specify the criteria to which it shall have regard before approving an extension and publish them.

18. At present, no provision has been made in the Ordinance for the Commissioner to carry out investigation within the said 60-day period in the

case of an application by a licensee for variation of the licence conditions. We consider such investigations to be necessary and therefore **propose** that the investigation by the Police within a time period, and the power to extend the time limit by the Authority, should be provided for in such cases. If the application is made by the Police, we **propose** that the licensee should be given 30 days for consideration. However, to avoid unnecessary delay in processing the application, we will propose to specify that follow-up action on the application may be taken after the said 30-day period or after the licensee has indicated acceptance of, or objection to, the variation of licence conditions, whichever is the earlier.

Proposals relating to the fees under the Ordinance

Nature and size of a business in prescribing fees

19. Section 30(1) of the Ordinance provides that the Chief Executive in Council may by regulation provide for the imposition of fees for a licence that are fixed by reference to the nature and size of the licensee. The fees charged under the Ordinance are stipulated in the Security and Guarding Services (Fees) Regulation (“the Fees Regulation”).

20. We consider that when setting the licence fees, the costs to be incurred for issuing the licence depend on the nature, rather than the size of the licensee's operations. Our observation is that regardless of the size of the applicant's business, the difference in the costs involved has been insignificant. We therefore **propose** to remove from section 30(1)(b) of the Ordinance the reference to the size of a company as a factor to be considered in fixing the licence fee.

Fee payable upon renewal of permit and licence

21. Section 15(2)(c) and section 23(3)(c) of the Ordinance provide for the payment of an application fee for the renewal of permit or licence, as the case may be. The power to charge a fee upon actual renewal, however, has not been made explicit. We consider that it is important to minimize any possible doubts that only an application fee for renewal, but not a fee upon actual renewal, will be charged. We therefore **propose** to add an express provision to make it clear that a fee will be charged upon actual renewal of a permit and licence.

Fees payable to General Revenue

22. Section 2 of the Fees Regulation provides that the fees payable in respect of permits should be paid to the Commissioner and the fees payable in respect of licences should be paid to the Authority. In practice, all such fees are paid into the General Revenue of the Government. To reflect this, we **propose** to insert an express provision in the Ordinance to provide that all fees payable under the Ordinance should be paid into the General Revenue.

Annual instalment versus annual fee

23. Under the Fees Regulation, a licensee is required to pay fees according to the type of security work he provides. The Ordinance provides for a licence to be valid for five years or such shorter period as the Authority may specify. At present, a single licence fee is payable by the licensee by five equal annual instalments. Our experience indicates that it would be simpler administratively to change the present method of payment: instead of

charging a single fee payable by five annual instalments, we **propose** to charge five separate annual fees instead. Under the new payment arrangement, the licence shall remain valid for five years. The proposed separate fees shall include a fee payable upon the issue of a licence plus four subsequent annual fees payable upon each successive anniversary of the date of issue of a licence during the term of its validity. A licensee who defaults in payment of any fee will be liable to revocation of his licence as at present.

Replacement permit or licence

24. The Ordinance has no explicit provision empowering the issue of replacement permit or licence, or to charge fees for such purpose. There is a need to make such provisions to cater for situations where the permit or licence is lost, stolen, damaged or destroyed.

Advice Sought

25. Members are invited to advise on the proposals outlined above.

Security Bureau
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