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Report of the Bills Committee on Karaoke Establishments Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Karaoke Establishments Bill.

Background

2. Following a major fire at the Top One Karaoke in January 1997 which killed 17 persons, an inter-departmental working group was set up to co-ordinate efforts to better control karaoke establishments (KEs). The inter-departmental working group concluded that the most effective way to institute the necessary fire safety, building safety and public safety requirements on KEs is to introduce a statutory licensing system.

The Bill

3. The Bill proposes that all establishments providing karaoke facilities, whether attached to restaurants or other licensed premises, should be brought under the control of a licensing scheme administered by a licensing authority, i.e. KEs should be required to obtain a licence or permit for their operations. An applicant will be required to meet the prescribed fire safety, building safety, public safety and health requirements. The detailed fire services and building safety requirements for KEs are set out in the Karaoke Establishments (Licensing) Regulation to be made under section 20 of the Bill. A copy of the draft Regulation has been provided to the Bills Committee for reference.

4. Under the proposed licensing system, the licensing authority may grant a permit to KEs located in premises in respect of which a licence or certificate of compliance has been issued under other legislation, i.e. restaurants, clubs, hotels and guesthouses. For KEs located elsewhere, the operators concerned will be required to apply for a licence.

The Bills Committee

5. At the House Committee meeting on 9 February 2001, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon James TO kun-sun, the Bills Committee has held 29 meetings. The Bills Committee has invited the public to give views on the Bill, and has received a total of 161 written submissions from KEs and individual persons including employees of KEs (**Appendix II**).

7. The Bills Committee has also met with the Karaoke Requirements Concern Group (the Concern Group) which represents KEs of seven operators and the International Federation of the Phonographic Industry (Hong Kong Group) Ltd (IFPI) on two occasions. At the request of the Concern Group, the Bills Committee has also met with Professor D D Drysdale of the Department of the Civil and Environmental Engineering of The University of Edinburgh and representatives from the Northcroft Hong Kong Ltd (Chartered Quantity Surveyors and Construction Cost Consultant). Professor Drysdale has made comments on the Regulatory Impact Assessment Report on Licensing Control of Karaoke Establishments (the RIA Report) prepared by a consultant commissioned by the Business and Services Promotion Unit of the Commerce and Industry Bureau. The Northcroft Hong Kong Ltd has prepared reports on the estimated costs for three KEs to undertake alteration works to comply with the licensing requirements proposed in the Bill.

8. To enable the Bills Committee to have a better understanding of the safety and building standards of existing KEs, some members visited a number of KEs in Kowloon on 7 June 2001.

Deliberations of the Bills Committee

<u>Objective of the Bill</u>

9. The Administration has explained that at present, there is no specific control of KEs, other than some general requirements applicable to the premises in which they are located. As most of the KEs also serve food or are attached to clubs or hotels, they are subject to some form of regulatory controls, if the karaoke business is conducted -

(a) in a place licensed as a general restaurant or a light refreshment restaurant under the Public Health and Municipal Services Ordinance, or is operated with a liquor licence under the Dutiable Commodities (Liquor) Regulations; or

(b) within a clubhouse the safety of which has been certified under the Clubs (Safety of Premises) Ordinance, or within a hotel or guesthouse licensed under the Hotel and Guesthouse Accommodation Ordinance.

If a KE does not operate as any of the above, it can still conduct business with a business registration certificate.

10. The Administration has further explained that without proper fire safety construction and installations, the risk of fire in a KE remains high in view of the unique characteristics of its operations. General alertness of the customers or patrons may be affected by the consumption of alcoholic drinks and loud music inside the premises. These premises are often partitioned into small, sound proof cubicles and accessed through long and narrow passages. Such special layout makes it difficult to escape in case of fire. General fire safety provisions cannot adequately address the fire risk associated with, e.g. the special closed-cubicle layout of most KEs. A set of prescribed minimum standards to safeguard fire and public safety in KEs is essential.

11. Hon Andrew WONG considers that the public is mainly concerned about the high risk of fire in premises with closed-cubicle layout, not karaoke activities per se. It is a fundamentally wrong approach for the Administration to introduce a bill for the regulatory control of KEs. He points out that the RIA Report has made reference to the general approach to karaoke licensing in four places i.e. the United Kingdom, Singapore, Japan and Taiwan. It is noted that KEs are not regulated in their own right in all these four places at the moment. Instead, they are regulated by licensing requirements applicable to other forms of places of public entertainment and/or premises for the consumption of liquor/tobacco. In other words, the licensing conditions are general and relate to all entertainment venues rather than specific activities. Hon Andrew WONG is of the view that the Administration should review the adequacy of the fire safety standards imposed on compartmentalised premises, instead of introducing a licensing regime for KEs. He has indicated that he does not support the resumption of the Second Reading debate on the Bill.

12. Hon Tommy CHEUNG Yu-yan has strong reservations about various provisions of the Bill and the draft Regulation which impose stringent requirements on the karaoke trade. He shares the views of some of the major karaoke operators that many existing KEs have already undertaken adequate measures to improve fire and building safety of the premises, and consideration should be given by the Administration to exempt them from the proposed licensing requirements.

13. The Administration points out that the licensing scheme outlined in the Bill is similar to regulatory schemes of amusement game centres, massage establishments, hotels and guesthouses, club premises and residential care homes.

All have the common goal and mission of protecting the health, safety and welfare of the public.

Phased implementation programme and grace period

14. The Bills Committee notes that one of the major concerns of the karaoke trade is the cost of implementing the proposed fire and building safety requirements. The Administration has advised that according to the analysis of the RIA Report, some KEs, particularly those with poor cashflow and in unsuitable buildings, may face considerable financial constraints during the first year. As a result of continued discussion with the trade, the Administration has refined the fire safety construction requirements, and has adopted a phased implementation approach to minimise the financial impact, while maintaining the objective of improving fire safety in KEs. Highlights of the Bills Committee's discussion on the fire and building safety requirements as provided in the draft Regulation are set out in paragraphs 84 - 94 below.

15. The Bills Committee also notes that an applicant for a KE permit or licence will be required to meet the prescribed fire safety, building safety, public safety and health requirements. However, for existing KEs, a transitional period of 12 months will be granted in the first instance to allow time for their compliance work. Another grace period of 12 months will be given if their licence applications made within the transitional period are refused (clause 3(3)).

Scope of applicability of the Bill

Definition of "karaoke establishment" and exemption provision under clause 3(1)

16. A major criticism of the Bills Committee is that the definitions of "karaoke" and "karaoke establishment" under clause 2 of the Bill may be too wide. The Bills Committee also considers the scope of applicability of the Bill unclear, as clause 3 seeks to disapply the Bill in relation to certain categories of KEs on one hand, and provide for the exemption of KEs from the operation of the Bill on the other hand.

17. According to the Administration, three categories of KEs are specifically exempted under clause 3(1)(a) to (c) either because they are not of "closed-cubicle" type, or they are not the type of KEs which the Bill is intended to control. For the KEs referred to in clause 3(1)(d), they are those so-called "bona fide" restaurants i.e. restaurants serving food and drink, not providing karaoke activities as their main business. "Bona fide" restaurants are by definition, those restaurants with aggregate areas of all karaoke rooms not exceeding 30% of the seating area and having no more than one karaoke room per $100m^2$ in the seating area. Provided an order under clause 3(1)(e) is issued by the licensing authority, these "bona fide" restaurants will be exempted from applying for karaoke permits.

18. Regarding the definition of "karaoke establishment", the Administration advises that firstly, the activities carried out in KEs must first meet the definition of "karaoke" in the Bill. Secondly, the karaoke activities must be carried out by way of trade or business in that establishment. The Bills Committee has asked the Administration to consider whether the definition of "karaoke establishment" could be revised to the effect that it only applies to any place used for the purpose of karaoke by way of trade or business with a view to gain or profit. This would prevent premises having karaoke activities on an ad hoc basis from being caught by the Bill.

19. The Administration explains that the meaning of "trade or business" is not restricted only to "gain or profit", although if those elements are present, they would show the fact of "trade or business". The addition of "with a view to gain or profit" would require the licensing authority to first establish the intention of the operator before seeking to act under the Ordinance. In the absence of an admission or direct evidence from the operator, this would be impractical. The Administration does not see how the definition of "karaoke establishment" can be amended without running the risk of compromising the integrity of the control system.

20. Members have also expressed concern that certain small-scale karaoke activities which are ancillary to another trade or business activity e.g. certified clubs might be caught by the definition of "karaoke" or "karaoke establishment" under clause 2, and subject to control under the Bill. According to the Administration, there are at present 539 clubs certified under the Clubs (Safety of Premises) Ordinance. Of the 85 certified clubs providing karaoke activities, 24 are reported to have ancillary karaoke activities, i.e. karaoke activities being only an optional extra to the main activities of the clubs. Members have requested the Administration to consider exempting these clubs from applying for a KE permit.

21. Having re-considered the definition of "karaoke establishment" and the exemption provision in clause 3(1), the Administration proposes that the Bill will not apply to premises satisfying the following criteria -

(a) the aggregate floor area of the karaoke rooms is not more than 30 square metres; and

(b) the number of rooms used for karaoke activities does not exceed three.

22. The Administration has advised that the criteria are formulated on the understanding that clubs with three karaoke rooms do not constitute a long corridor situation, and the total population accommodated in these rooms do not present an unacceptable risk in case of fire or emergency. However, exemption for other KE activities not covered by the proposed exemption criteria will be considered, upon application, under clause 3(1)(e).

23. Some members have criticised that the "three rooms/30 square metres" exemption provision is so stringent that it is rendered meaningless. These members have proposed that the trade should be consulted. The Bills Committee has sought the views of the 24 certified clubs which are reported to have ancillary karaoke activities on the criteria proposed by the Administration. Only one response has been received. It suggests that the proposed exemption criteria should be relaxed.

24. The Administration has pointed out that the proposed exemption criteria, once provided in the Bill, will be tantamount to almost giving a blanket exemption to any KEs which can meet the specified criteria. As such, the criteria need to be set at a low threshold in order to ensure the integrity of the licensing regime and public safety. The Administration has reiterated that KEs not meeting the proposed criteria could still be considered for exemption on a case-by-case basis. According to the information available, only six of the 24 certified clubs would not meet the exemption criteria. The Administration has assured the Bills Committee that the licensing authority would be reasonable and pragmatic in making a decision for granting exemption.

25. Members consider it important that the criteria for granting an exemption order under clause 3(1)(e) should be expressly provided in the Bill, e.g. for the purpose of protecting the safety of persons using KEs. Some members have also suggested that the fact that "bona fide" restaurants could be exempted by way of an order under the clause should be spelt out clearly in the Bill. Having made reference to the relevant statutory provisions for hotels, guesthouses, clubs and bedspace apartments, the Administration proposes to introduce a Committee Stage amendment (CSA) to clearly stipulate that an exemption order made will be for reasons connected with the situation, means of ingress or egress, design (including the percentage of the area allocated for karaoke activity), construction or size of, or the equipment, installations or facilities in any KEs. In addition, the Administration has also proposed to include in the CSA the element that the licensing authority is satisfied that the safety of persons using a KE will not be adversely affected. The Administration also explains that the reference to "percentage of the area allocated for karaoke activity" in the proposed CSA seeks to address the situation of "bona fide" restaurants, and undertakes to make clear this point when moving the CSA at the resumption of the Second Reading debate on the Bill.

Proposed CSAs

26. The Administration has explained that the CSAs to clause 3(1) will narrow the scope of applicability of the Bill, and rationalise the types of premises to be exempted under the Bill, as follows -

(a) the existing sub-clauses 3(1)(a) to (e) will be deleted and replaced by new sub-clauses (a) to (c) which set out more clearly the premises to

which the Ordinance shall not apply, including the "three rooms/ 30 square metres" exemption provision in new clause 3(1)(a); and

(b) a new sub-clause (1A) is added to spell out the criteria to be adopted by the licensing authority in granting exemption from applying for a KE permit or licence.

27. To address Hon Tommy CHEUNG Yu-yan's concern that the term "bona fide" restaurants is not defined in the Bill, the Administration agrees to explain the meaning of the term, and to state that these restaurants could apply for exemption under the new clause 3(1A) in the Guide for Application for Karaoke Establishments to be promulgated by the licensing authority.

Clause 4(4)

28. Clause 4(4) provides that the definition of KEs "does not include premises used wholly for residential purposes and constituting a separate household unit to which only persons residing in the premises and their guests are admitted and where no fee is charged for the activity of karaoke". Members have requested the Administration to clarify the legislative intent of and the need for this provision.

29. The Administration has advised that clause 4(4) is intended to state, for the avoidance of doubt, that karaoke activities conducted in a separate household unit would not be subject to control under the Bill, provided that it is not run by way of trade or business. The inclusion of the words "no fee is charged for the activity of karaoke" aims to prevent loopholes for operating commercial karaoke activities in residential premises without a permit or licence. In the light of members' concern, the Administration proposes to delete clause 4(4), so that any KEs falling within the definition and not eligible for exemption under clause 3 will have to apply for a permit or licence.

Recording studios etc

30. IFPI has expressed concern that the scope of the definitions of "karaoke establishment" and "karaoke" might cover recording studios, rehearsal halls, production houses for movies and records, etc. which are rented for public use and have the characteristics of karaoke as defined in the Bill. IFPI has requested that the Bill should contain express provisions to exempt these premises.

31. Following a visit to several major recording studios, the Administration has advised the Bills Committee that a recording studio would not normally involve the display or exhibit of any visual image or other information on a screen or any surface during its operation which is one of the basic criteria for an activity to be categorised as "karaoke" under the Bill. The Administration has therefore come to the conclusion which has been confirmed by IFPI that recording studios would

not be caught by the definitions of "karaoke" or "karaoke establishment" in the Bill by virtue of their mode of operation.

Penalty for operating KEs without permit or licence (clause 4(1))

32. Under clause 4(1), any person who operates a KE without a permit or licence commits an offence and is liable on conviction to a fine at level 5 ($50,000) and imprisonment for six months, and in the case of a continuing offence to a further daily fine of $1,000. Hon James TO has expressed concern that the proposed level of fine might be too low to create a deterrent effect. He has requested the Administration to make reference to the penalty imposed on similar offences under other ordinances.

33. Having reviewed the proposed level of penalty in the light of similar provisions in other ordinances, the Administration proposes to introduce a CSA to impose a penalty of a fine at level 6 ($100,000) and imprisonment of one year on a second or subsequent conviction for operating KEs without a licence or permit. In the case of a continuing offence, the daily fine is proposed to be increased from $1,000 to $2,000 for each day during which the offence continues.

Application for permit or licence (clause 5)

34. Clause 5 deals with the application for the grant and issue of permits and licences. A permit or a licence may not be granted or issued unless the licensing authority is satisfied with certain matters concerning the proposed operation of the KE, the character of the applicant and the location of the KE. The Bills Committee has deliberated in detail the implications of this clause.

The need for permit or licence

35. Hon Tommy CHEUNG Yu-yan echoes the view of the Concern Group that under the existing licensing system, a liquor licence is granted under very stringent conditions to a person who is considered by the Liquor Licensing Board to be a fit and proper person to operate the premises. It would be a duplication of efforts on the part of the licensing authority to require KEs operating in premises in respect of which a valid liquor licence has been issued, such as a licensed restaurant, to apply for a separate permit under the Bill. He considers that these KEs should be exempted from the proposed licensing scheme.

36. In the view of the Administration, it is not a prerequisite for an establishment to be granted a liquor licence before it may apply for a KE permit or licence, even though statistics indicate that some 95% of KEs also hold a liquor licence. Besides, the Administration cannot rule out the possibility that premises considered suitable for the grant of a liquor licence may not be suitable for the operation of a KE. Any premises or place having a separate licence for another purpose is licensed only for that purpose. Having regard to the characteristics of

KEs as discussed in paragraph 10 above, the Administration maintains the view that all KEs should comply with the licensing requirements specifically applicable to KEs, notwithstanding the fact that existing ones may have already been granted a separate licence for the purpose of restaurant, club, hotel or guesthouse.

Licensing conditions (clause 5(2))

37. In response to the request of the Bills Committee, the Administration has provided a copy of the draft Standard Conditions for Karaoke Establishment and Licences (or Permits) for members' reference. The Administration advises that most licensing conditions are standard ones and would be attached to the Guide for Application for Karaoke Establishments to be published. Other special conditions are specific requirements relating to the premises itself on building and fire safety aspects, and shall be considered on a case-by-case basis. The Administration has also confirmed that the existing Resource Centre of the Food and Environmental Hygiene Department will also provide advisory services and licensing information to KE permit applicants.

Requirement for the applicant to be a fit and proper person (clause 5(3)(a))

38. Clause 5(3)(a) requires that the person making an application for a permit or a licence should be a fit and proper person to operate the KE. Under clause 7(1), where a body corporate or a partnership wishes to obtain a permit or licence, a person authorised by the body corporate or the partnership should apply as the representative of the body corporate or partnership.

39. In response to members' request for clarification, the Administration has explained that the policy intent is to make a physical person held responsible for all matters pertaining to a permit or licence granted or issued under the Bill, when the permit or licence is granted or issued to a group of persons, a partnership or legal entity. If a permit or licence is granted or issued to a body corporate or partnership, the authorised person alone should satisfy the requirement of being "a fit and proper person to operate the KE" under clause 5(3)(a)(i). The Administration has also clarified that the body corporate and an individual person can be holder of more than one permit or licence and that the authorised person can be authorised person of more than one KE, provided that the requirements laid down in clause 5(3) for the granting or issue of a permit or licence are met.

40. Given that a person can be the authorised person of more than one KE, members have asked whether the conviction of a person who is an authorised person of a KE of an offence under the Bill or its regulations will affect other KEs of which the person is also the authorised person. The Administration has responded that for the purpose of new clause 10(iia), the latter KEs will not be affected unless the said offence is directly related to the latter KEs. The Bills Committee has requested the Administration to give an undertaking in this respect during the resumption of the Second Reading debate on the Bill.

41. Having regard to the fact that many KEs are operating 24 hours a day, members have expressed concern whether "personal supervision" of the KE by the grantee or licensee will be imposed as a licensing condition. The Administration has advised that clause 5(3)(a)(ii) provides that the person making the application "will adequately supervise or will ensure the adequate supervision of the operation of the karaoke establishment". Hence, a licensing condition requiring personal supervision and, only personal supervision of the grantee or licensee, would be ultra vires the enabling Ordinance.

42. Some members have also raised concern that undue disruption might be caused to the operation of a KE if the authorised person dies, disappears or otherwise fails to function. The Administration has advised that under clause 7, the body corporate would be the grantee or licensee, not the authorised person. Thus, in the event of the death, disappearance, failure to function of such authorised person or otherwise cessation of authority by the body corporate, the permit or licence would not automatically lapse in such circumstances. However, in the case of the death of a grantee or licensee who is an individual person, the permit or licence would lapse in the circumstances.

43. The Administration has also agreed to stipulate a licensing condition to address the issue of consequences of a break in the continued existence of an authorised person. Under the proposed arrangements, the grantee or licensee will inform the licensing authority of the change of the authorised person. Pending a determination on the acceptance (or otherwise) of the new authorised person, there will be no breach of condition on grounds of there being no approved authorised person.

Suitability of place and area (clause 5(3)(b) and 5(6))

44. The Bills Committee notes that in considering the suitability of the place and area of the proposed operation under clause 5(3)(b), the licensing authority may take into account the views of persons whose place of residence or employment is in the immediate vicinity of the place of the proposed operation under clause 5(6). The Bills Committee has sought clarification about the meaning of "suitable place" and "suitable area", and how clause 5(6) would affect a decision made under clause 5(3)(b).

45. The Administration has explained that "suitable place" means that the premises under application for a permit or licence have complied with all the relevant hygiene, building and fire safety requirements to the satisfaction of the licensing authority. The requirements will be specified in the draft Regulation. The "place" must be suitable for the operation of a KE, e.g. in relation to fire safety, an industrial building is not a suitable place. Nor is Level 4, or below, of any basement. The place must be located in an "area" suitable for the operation of a KE. "Suitable area" is related to the neighborhood of a KE rather than the premises of the KE itself.

46. In response to members' enquiry on how the public consultation referred to in clause 5(6) will be conducted, the Administration has explained that the procedure would be similar to that for the purpose of issuing a liquor licence. The Administration has stressed that under clause 5(6), it is not mandatory for the licensing authority to seek the views of the public before an application for permit or licence may be determined, but that it only empowers the authority to consider such view if it is then given in some cases. The suitability of the premises and the area in which it is located remains the prime consideration. In the event that the licensing authority does take into account the local views under clause 5(6), any decision made by the licensing authority must be reasonable and relevant, and in accordance with established and pre-existing policy.

47. Some members, including Hon Audrey EU and Hon Tommy CHEUNG Yu-yan, consider that objective criteria for assessing "suitable place" and "suitable area" should be expressly provided in the Bill. The Administration has advised that the licensing authority will be obliged to be reasonable and objective in deciding whether the place of the proposed operation of KEs is suitable and located in a suitable area. Any decision of the licensing authority to refuse to grant or issue a KE permit or licence on grounds that the place or area is not suitable will be subject to appeal under clause 12. Nevertheless, in the light of the strong objection of some members, the Administration has agreed to delete clause 5(6). However, the Administration points out that as a matter of policy, the licensing authority can take into account the views of persons residing or working in the immediate vicinity of the place of proposed operation, with or without the statutory provision of clause 5(6).

Public interest (clause 5(3)(c))

48. Clause 5(3)(c) requires that the grant and issue of permits or licences is not contrary to the public interest. Members have sought clarification about the meaning of "public interest", and how this factor would come into play in the context of the clause.

49. The Administration has explained that the general sense of the term "public interest" is that it gives the licensing authority statutory power to take into account interests wider and more abstract than those of the applicant, and also take into account the policy of the Administration and considerations wider than those mentioned in clause 5(3). The term "public interest" does not mean "what interests the public" nor "public opinion". Nor does it mean the views of persons who are referred to in clause 5(6), although the licensing authority may take them into account by virtue of the separate statutory power created by that clause.

50. Hon Tommy CHEUNG Yu-yan is of the view that the term "public interest" in the Bill is too wide and should be qualified with reference to the main objective of the Bill, i.e. instituting the necessary fire and building safety requirements on KEs. The Administration has advised that the term "public interest" has been

used in 250 provisions in ordinances and in 59 provisions in subsidiary legislation. The term, being fluid in itself, is rarely qualified. It is neither appropriate nor necessary to set out the criteria for assessing "public interest" under clause 5(3)(c). Any person who felt aggrieved or prejudiced by the decision of the licensing authority in making a "wrongful" use of the "public interest" clause may appeal to the Administrative Appeals Board under clause 12 or seek judicial review through the courts.

51. Having regard to the objective of the Bill, Hon James TO has requested the Administration to consider replacing the reference to "public interest" in clause 5(3)(c) by a reference to "fire safety, building safety and public safety". The Administration maintains the view that it is desirable to keep the sub-clause in its present form so that should circumstances so warrant, the licensing authority, in considering whether or not to issue a licence, would not be precluded from considering factors other than fire safety, building safety and public safety in the wider interest of the community at large. Nevertheless, in view of members' strong views, the Administration has agreed to delete clause 5(3)(c).

Duration of the licence or permit (clause 5(8))

52. Hon James TO has requested the Administration to consider extending the duration of the permit or licence for KEs specified under clause 5(8)(c), having regard to the potential benefits in facilitating the trade and reducing the operating cost for the licensing authority.

53. The Administration has agreed to move a CSA to extend the duration of the permit or licence from 12 months to 24 months, subject to the condition that, in the case of a permit, the "parent" licence viz. a restaurant licence, a hotel or guesthouse licence or a certificate of compliance issued under the Clubs (Safety of Premises) Ordinance to which the KE permit relates must remain valid throughout the duration of the KE permit.

Provisional permits and provisional licences (clause 9)

54. The Bills Committee notes that for KEs in restaurants or premises serving light refreshment, the Director of Food and Environmental Hygiene will act as the licensing authority. In other cases where, for example, the KEs are attached to hotels or clubs, the Secretary for Home Affairs will be the licensing authority. The Administration has advised that the standards adopted by the two licensing authorities would be the same, and the licensing requirements would be laid down in detail in the draft Regulation.

55. Given that there are two licensing authorities, members have expressed concern that the inspections conducted to KEs by respective departments might be different, thus resulting in different levels of control in enforcement. Hon LAU Kong-wah has also expressed concern about the equity of the two licensing

systems proposed by the Administration. He has pointed out that while a provisional permit could be granted by the Food and Environmental Hygiene Department, no such arrangement is adopted by the Home Affairs Department. After consideration, the Administration has agreed that a provisional permit may also be granted to KEs in certified clubs/licensed hotels or guesthouses, as in the case of licensed restaurants.

Revocation, suspension etc of permit or licence (clause 10)

56. Under clause 10(iv) and (v), the licensing authority may revoke, suspend, refuse to renew or transfer, or vary the conditions of a permit or licence if he ceases to be satisfied of any matter in respect of which he is required to be satisfied under clause 5(3), or he is of the view that the KE has on any occasion since the date on which the permit or licence was granted or issued been operated in a manner contrary to the public interest.

57. Hon James TO has requested the Administration to consider the need to retain clause 10(v) given the consideration of "public interest" under clause 5(3)(c), one of the matters which the licensing authority will take into account in considering whether a permit or license should be revoked, etc. under clause 10, is already covered in clause 10(iv).

58. The Administration has explained that clause 10(iv) primarily deals with the facts and circumstances surrounding or relevant to an application for permit or licence before the same is granted or issued. These facts and circumstances, including but not limited to the consideration of "public interest" under clause 5(3)(c), are required to be in continued existence while a permit or licence is in force. Clause 10(v), however, is concerned with the manner in which the KE is operated after the grant or issue of the permit or licence. The "public interest" as covered in clause 10(v) refers to specific occasions on which a KE is operated while a permit or licence is in force. The emphases in the two clauses are different. Nevertheless, the Administration accepts that there is a certain degree of overlap between the two clauses. In order to address members' concern, the Administration has agreed to delete clause 10(v) by way of a CSA.

59. Hon James TO is of the view that clause 10(iv) would give the licensing authority too much power, as it could revoke the permit or licence of a KE on the basis that the KE is no longer located in an area suitable for the operation of KE during the validity period of its permit or licence. The Administration has explained that the licensing authority will exercise its power under the Bill cautiously and vigilantly. It would only revoke the permit or licence of a KE on the basis that the KE is no longer located in an area suitable for the operation of KE in extreme cases and on very rare occasions. In addition, clause 12(1) will provide a check and balance on the power vested in the licensing authority. Members request the Administration to give an undertaking in this respect during the resumption of the Second Reading debate on the Bill.

Appeals (clause 12)

60. The Bills Committee has requested the Administration to consider whether an express provision should be provided in the Bill to the effect that a permit or licence will remain in force if the permit or licence has expired, but the period for lodging an appeal against the decision of non-renewal of permit or licence (i.e. 28 days under clause 12(1)) has yet to expire.

61. For the avoidance of doubt, the Administration proposes to move a CSA to add an express provision to the effect that without prejudice to the public interest, a decision that may be appealed against under this clause shall not come into force until the period for lodging an appeal has expired, or if an appeal is lodged within the specified period, until the appeal is disposed of, withdrawn or abandoned.

62. As the Administration has agreed to delete the reference to "public interest" in clause 5(3)(c) (paragraph 51 above refers) and clause 10(v) (paragraph 58 above refers), members consider that the reference to "pubic interest" in the proposed CSA should also be deleted and replaced by "fire safety, building safety or public safety" having regard to the objective of the Bill. After consideration, the Administration has counter-proposed to use "the safety of persons using a karaoke establishment". The Bills Committee finds the proposal acceptable.

63. As regards the computation of the 28-day period in clause 12(1), the Administration advises that the interpretation of section 71(1)(a) of the Interpretation and General Clauses Ordinance (Cap. 1) applies. The 28-day period for lodging an appeal would count exclusive of the date on which the notice is received.

Powers of seizure and forfeiture (clauses 13 and 19)

64. Under clause 13(1)(iii), an enforcement officer can take possession and remove for examination a wide range of things including karaoke apparatus and equipment which he has reason to suspect is evidence of the commission of an offence under the Bill. Under clause 19, the court may, on the conviction of any person of an offence under clause 4 or clause 16 of the Bill, order the forfeiture of the apparatus or equipment taken possession of and removed under clause 13. Hon Tommy CHEUNG Yu-yan and Hon Audrey EU consider that the scope of power provided to the enforcement officers under clause 13 is too wide. Mr CHEUNG also considers that clauses 13 and 19 are too harsh on the karaoke trade and queries the need for the Bill to be modelled on legislation dealing with serious crimes, such as vice activities, illegal gambling and dangerous drugs.

65. The Administration has explained that the powers provided under clause 13 are for the effective administration of the regulatory regime and for the investigation of offences or suspected offences under clause 4 relating to operation without a permit or licence, and clause 16 relating to breach of conditions, failure

to comply with directions and obstruction of the Bill. Similar provisions can be found in the Hotel and Guesthouse Accommodation Ordinance, Clubs (Safety of Premises) Ordinance and Residential Care Homes (Elderly Persons) Ordinance.

66. In response to members' enquiry, the Administration has explained that there are no specific guidelines on the seizure of items as court exhibits. Enforcement officers are instructed to exercise their power in a cautious and reasonable manner. The general principle is to collect evidence and take away articles of sufficient number and relevance for proving the alleged offences. Very often, enforcement officers could take photographs of the premises including the equipment, etc, instead of seizing operational equipment especially those of large size or great monetary value.

67. Members consider that a balance should be struck between effective enforcement and the commercial interests of the operators of KEs. After consideration, the Administration has agreed that the power of seizure under clause 13 will only be exercised under a warrant issued by a magistrate. The Administration will move a CSA accordingly.

68. To address members' concern that the power of enforcement officers provided in clause 13(1)(i) and (ii) to enter and inspect any KE and to require the production of documents or information relating to a KE may be too wide, the Administration will move a CSA to stipulate that the exercise of such power is only for the purpose of ensuring compliance with the provisions of the Bill.

69. Members have expressed concern about the time required for return of the seized property and in particular the time required by the Government Laboratory to conduct tests for articles seized under the clause. The Administration has explained that the time would vary depending on what the seized article is, the specific test conducted, the findings required and the number of articles involved. In view of members' concern, the Administration has agreed to add a new sub-clause (4) in clause 13 to provide for the return of seized articles within six months after the date of seizure, if no prosecution action is instituted.

70. As regards clause 19, the Administration has explained that any article seized under clause 13 are liable to be forfeited only upon the conviction of any person of an offence under clauses 4 and 16 of the Bill. It is entirely a matter for the court whether or not to order forfeiture. Similar provisions can be found in other legislation, e.g. the Amusement Game Centres Ordinance, Dangerous Drugs Ordinance, Gambling Ordinance, Public Health and Municipal Services Ordinance, as well as Control of Obscene and Indecent Articles Ordinance.

71. Although the power of forfeiture under clause 19 would only be invoked in the case of conviction of serious offences i.e. operating without permit or licence or operating in contravention of licensing conditions, members have requested the Administration to provide information on how the court would exercise its

discretion to order forfeiture under other ordinances. Members note that most of the ordinances that authorise seizure and forfeiture of seized property by order of court in connection with or on conviction of offences confer discretion on the court in exercising the power of forfeiture. The court will apply the test of reasonableness and proportionality having regard to the circumstances and the purpose of the ordinance in making a forfeiture order. The court will also apply the proportionality test to ensure that the value of the goods or the property to be forfeited will not have a punitive effect far out of the proportion to the gravity of the offence committed.

72. In response to the Bill Committee's request, the Administration will move a CSA to clause 19 to delete the requirement that the owner of the seized property has to satisfy the court that there is special and exceptional reason not to order forfeiture. Members agree that the revised clause 19 will better reflect the policy intent that the court should be given discretion in the matter of forfeiture.

Remedial works and closure order (clauses 14 and 15)

73. Clause 14 enables the licensing authority to direct remedial measures to be taken in respect of a KE, whereas clause 15 enables it to apply to the District Court for an order to effect the closure and cessation of the use of premises as a KE if a direction given under clause 14 has not been complied with.

74. In response to members' view that a complete closure of a KE may not be necessary in certain circumstances, the Administration will introduce a CSA to amend clause 15 to empower the District Court to order a partial closure of a KE, instead of a complete closure as stipulated in the Bill, if circumstances warrant.

75. Members consider that an express provision should be provided in the Bill to stipulate that the closure order would not prevent human habitation. The Administration has advised that a KE is regarded as a type of "place of public entertainment" use for town planning purpose. Hence, human habitation is not permissible or anticipated in a KE. Members are not satisfied with the reply and suggest that the Administration should make reference to a similar provision in the Public Health and Municipal Services (Amendment) Ordinance 2002. After consideration, the Administration has agreed to amend the clause by way of a CSA to provide that, if on the day a closure order is made, any part of the KE is used for human habitation, the closure order will not operate to prevent such habitation in that part. Additionally, the closure order shall not operate to affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.

76. Both Mr Tommy CHEUNG Yu-yan and Mr LAU Kong-wah have expressed concern about the ways to ensure that there is no undue delay for the licensing authority to discharge a closure order. To address members' concern, the Administration has agreed to institute a system for the processing of requests for

the discharge of a closure order. Under the proposed CSA, the licensing authority shall, as soon as practicable and in any event within 28 days after receiving a request for discharge of the closure order, declare that the order shall cease to have effect, or notify the person of any outstanding matter that requires to be remedied. Regarding members' request to shorten the 28-day period, the Administration considers that the proposed period is reasonable bearing in mind the need for inspections and assessments, and in some cases, re-assessments. Moreover, the licensing authority may have to ask the operator of a KE to undertake outstanding remedial works before discharging the closure order.

Offences (clause 16)

77. Some members note with concern that any person who operates a KE under any name other than the name of the KE indicated in the permit or licence, as the case may be, commits an offence. They have requested the Administration to explain the circumstances under which prosecution will be taken and whether the licensing authority can exercise discretion not to prosecute.

78. The Administration has explained that the requirement for a KE to operate under the registered name will help ensure compliance with the provisions of the Ordinance and the licensing conditions and facilitate effective enforcement. It is not envisaged that a first offence involving a minor deviation from the registered name of a KE will be prosecuted. However, the licensing authority may take a serious view in the case of the use of a substantially different name. The Administration has advised that if a KE wishes to use a name other than the one indicated in the permit or licence, it can apply to the licensing authority for endorsement of a change of name in the permit or licence. This is a relatively simple matter and the estimated time for processing an application for change of name of a KE will be within two weeks under normal circumstances. In response to the request of members, the Administration has agreed that this will be set out in the Guide for Application for Karaoke Establishments to be promulgated by the licensing authority.

79. Members have suggested that clause 16(2) should be amended to reflect the policy intent that the "person" referred therein should be construed to mean a natural person only. The Administration will move a CSA to clarify that the defence provided under clause 16(2) will be available to individual grantees or licensees and authorised persons of corporations and partnerships if they are charged with an offence relating to contravention of any condition of a permit or licence.

Service of notices and orders (clause 18)

80. Some members request the Administration to consider whether all the three different means stipulated in clause 18 should be employed for service of notice on remedial works under clause 14(1), and notice of intention to apply for a closure

order under clause 15(1). They have expressed serious concern that personal service of a notice or order is deemed to be valid, even if it is served on any staff member, such as a cleaner or watchman of a KE.

81. The Administration has explained that under clause 18, the licensing authority may serve notices or orders by personal service, registered post or by posting the same in a prominent position near the premises. The last mode of service will enable a notice or order to be validly served where personal service or postal service is proved ineffective. The licensing authority will, as a matter of administrative procedure, employ more than one mode of service depending on the circumstances of a particular case. Moreover, to impose on the licensing authority a statutory requirement to employ all different modes of service of notices or orders would cause practical difficulties if the notice or order is unable to be served by one or some of the means, and would hamper the effective enforcement of the licensing regime.

82. The Administration has also explained that the notice under section 14(1) and section 15(1) is required to be served on the person "being the operator, keeper, manager or otherwise having control of the KE". The reference clearly refers to a person of significant responsibility in respect of the operation of the KE, i.e. grantee, licensee or authorised person. Nevertheless, to allay members' worry, the Administration has agreed to give an undertaking at the resumption of the Second Reading debate on the Bill that it will not serve a notice under clause 14(1) on a person who is not a person being "the operator, keeper, manager or otherwise having control of the KE".

83. As regards the service of notice of intention to apply for a closure order under clause 15(1), members consider that the matter is of a more serious nature. Members have pointed out that there is a requirement for service of notice by registered post and by posting the same at a conspicuous place on the premises in relation to the making of a closure order under the Public Health and Municipal Services (Amendment) Ordinance 2002. Members have requested the Administration to reconsider the matter. The Administration has subsequently agreed to move a CSA to the effect that a notice under clause 15(1) should be served by registered post addressed to the last known place of business or residence of the person to be served, and by leaving a copy with an adult occupier or posting a copy in a prominent position of the premises concerned. Provided that the two modes of service had been employed, it shall be deemed a good service of the notice even if the notice sent by registered mail is returned undelivered.

Draft Karaoke Establishments (Licensing) Regulation

84. The Bills Committee has discussed the draft Karaoke Establishments (Licensing) Regulation (draft Regulation) provided by the Administration. It has also noted the initial grave concern of the Concern Group about the proposed fire

safety and building safety requirements for KEs, and their eventual declared acceptance of these requirements at the meeting of the Bills Committee on 15 April 2002.

One-hour fire resistance internal corridors

85. The draft Regulation stipulates that the internal corridors within a KE must be separated from the remaining areas by walls having a fire resistance period (FRP) of not less than one hour, and the doors therein should be self-closing, having a FRP of not less than half an hour. However, the partition or separation walls between KE cubicles are not required to be fire-rated.

86. The Administration has explained that the requirement to upgrade exit corridors to protected corridors having a FRP of one hour may be carried out in phases. For a KE installed with sprinklers, the upgrading works can be carried out within 36 months from the date on which the Ordinance comes into operation. For a KE without sprinklers, the upgrading works can be carried out within 18 months from date of operation of the Ordinance. In both situations, an existing KE should be provided with audible and visual alarm signals in every room and at suitable location of corridor.

87. Some members have queried the need for the internal corridors of a KE to have one hour FRP. The Administration has advised that the current Code of Practice for Fire Resisting Construction requires that every internal corridor, other than that of shopping arcade, serving rooms or flats in different occupancies, should be separated from such occupancies by walls having an FRP of one hour. Hence, it is not unreasonable to treat each cubicle in KEs as a different occupancy in the light of the special characteristics of the operation of KEs, and hence the walls of internal corridors should have an FRP of one hour. In addition, the internal corridors of hotels, guesthouses and holiday camps are also required to be of fire resisting construction.

Minimum width of 1.2m of corridor

88. Under the draft Regulation, the width of exit route including internal corridors within a KE is proposed to be at least 1.2m. The Administration has made reference to the requirement of the means of escape in places of entertainment in setting the standard on the width of internal corridor for a KE.

89. In response to the concerns expressed by the Concern Group, the Administration has advised the Bills Committee that it is prepared to accept the reduction of the width of the corridor to not less than 1.05m to facilitate the installation of fire resisting partitions along the corridors of existing KEs subject to the following conditions -

(a) the total capacity of the KE within the floor is not more than 500 persons; and

(b) the width of the corridor shall be widened upon the carrying out of major alteration works.

Dead-end corridor

90. The draft Regulation proposes that the exit from every entertainment room of a KE must have and must enable at least two directions of travel to a staircase or a point of discharge to a street. A dead-end situation is only permitted in circumstances where it is unavoidable due to building design, subject to the provision of additional safety measures to the satisfaction of the licensing authority. For the purpose of this requirement, a "dead-end situation"' means a position where the direction of travel to a staircase or a point of discharge to a street, is possible only in one direction.

91. The Administration has clarified that for both new and existing KEs, unavoidable dead-end due to building design is acceptable if the KEs is protected by an automatic sprinkler system and a portable fire extinguisher and additional manual fire alarm are provided in each entertainment room open off the dead-end corridor. For existing KE rooms in dead-end corridors not due to building design, an acceptable option is the provision of an access panel giving access to the adjacent room where its exit discharges to another corridor. In order to facilitate the trade to address the problem on dead-end, the Administration has drawn up two additional alternative emergency escape route arrangements -

(a) Creation of a second emergency exit route in event of fire - the proposal is to link up two adjoining dead-end corridors with additional protection by transforming the two KE rooms at the end of two dead-end corridors into an exit corridor in the event of an emergency; or

(b) Utilizing access panel in other KEs rooms for emergency escape - the proposal is to provide additional protection to a dead-end corridor to enable patrons in a KE room not provided with emergency access panel to escape through another KE room fitted with an access panel.

Structural suitability

92. Members have requested the Administration to explain the basis for requiring KEs to withstand an imposed load of 5 kPa and how the requirement will affect existing and new KEs in premises which were designed with an imposed load less than 5kPa.

93. The Administration has advised that under the Building (Construction) Regulations, restaurants, night-clubs, dining rooms subject to crowd loading, canteens and fast food shop are required to have a minimum imposed load of 5 kPa. As KEs are considered to be comparable to these premises, the floors for KEs should be designed with a minimum imposed load of 5 kPa.

94. For premises designed with an imposed load of less than 5 kPa, structural justification is required to demonstrate its structural suitability for use as a KE. If its approved layout is to be altered after the licence is issued, re-checking of its structural suitability based on the revised layout would be required. However, for existing licensed premises with a designed imposed load of less than 5 kPa, they will be accepted as suitable for use as KEs from the perspective of structural suitability provided that the layout and the design of the premises remain the same as licensed. Otherwise, structural justifications to substantiate the suitability of the premises for such proposed use are required.

Committee Stage amendments (CSAs)

95. Apart from the major CSAs as mentioned in this report, the Administration will also move some technical and consequential CSAs. A full set of the CSAs to be moved by the Administration is in **Appendix III**. The Bills Committee supports these CSAs.

Undertakings by the Administration

96. The Administration has agreed to give undertakings as follows during the resumption of the Second Reading debate on the Bill or Committee Stage -

(a) To provide the definition of the term "bona fide" restaurants, and confirm that these restaurants will be covered by the proposed new clause 3(1A) (paragraph 25 above refers);

(b) Regarding new clause 10(iia), to confirm that the conviction of a person who is an authorised person of a KE of an offence under the Bill or its regulations will not affect other KEs of which the person is also the authorised person, unless the said offence is directly related to the latter KEs (paragraph 40 above refers);

(c) To make it a licensing condition that a body corporate or a partnership, as the case may be, will be required to inform the licensing authority of any change of authorised person within 14 days from the date of change, and pending a decision of the licensing authority, there will be no breach of condition on grounds of there being no approved authorised person (paragraph 43 above refers);

(d) To confirm that the licensing authority will only revoke the permit or

licence of a KE on the basis that the KE is no longer located in an area suitable for the operation of KE in extreme cases and on very rare occasions (paragraph 59 above refers); and

(e) To confirm that the Administration will not serve a notice under clause 14(1) on a person who is not a person being the "operator, keeper, manager or otherwise having control of the KE", and that "person being operator, keeper, manager or otherwise having control…" refers to a person of significant responsibility in respect of the operation of the KE and is of a supervisory class (paragraph 82 above refers).

Follow-up actions by the Administration

97. The Administration has also agreed to take follow-up actions on the following matters -

(a) To provide the definition of "bona fide" restaurants in the Guide for Application for Karaoke Establishments and to explain that "bona fide" restaurants can apply for exemption from the application of the Bill (paragraph 27 above refers);

(b) To make arrangements for the existing Resource Centre of the Food and Environmental Hygiene Department to provide the same advisory services for KE permit applicants (paragraph 37 above refers);

(c) To standardise the licensing procedure to be adopted by the two licensing authorities in respect of granting of provisional permits to KEs in certified clubs as well as licensed hotels, guesthouses and restaurants (paragraph 55 above refers); and

(d) To stipulate in the Guide for Application for Karaoke Establishments that the estimated time for processing an application for change of name of a KE will be within two weeks under normal circumstances (paragraph 78 above refers).

Follow-up action by the Panel on Security

98. In the course of its deliberation concerning the time for the return of seized property, the Bills Committee has made reference to the general guidelines in the Police General Orders. Hon James TO is of the view that the Police guidelines should set out more information such as whether the seizure is absolutely necessary, the quantity of items which should be seized and whether the quantity

seized will have a punitive effect. He has instructed that the matter be referred to the Panel on Security for follow-up discussion.

Consultation with the House Committee

99. The Bills Committee consulted the House Committee on 21 June 2002 and sought the latter's support that the Second Reading debate on the Bill be resumed on 3 July 2002.

Council Business Division 2
Legislative Council Secretariat
28 June 2002

Appendix I

Bills Committee on Karaoke Establishments Bill

Membership list

Chairman	Hon James TO Kun-sun
Members	Hon David CHU Yu-lin, JP
	Hon Fred LI Wah-ming, JP
	Hon Andrew WONG Wang-fat, JP
	Hon Howard YOUNG, JP
	Hon LAU Kong-wah
	Hon Tommy CHEUNG Yu-yan, JP
	Hon Michael MAK Kwok-fung
	Hon LAU Ping-cheung
	Hon Audrey EU Yuet-mee, SC, JP
	Total : 10 members
Clerk	Mrs Percy MA
Legal Adviser	Miss Connie FUNG
Date	1 March 2001

Appendix II

LegCo Bills Committee on Karaoke Establishments Bill

List of organisations/individuals who have submitted views to the Bills Committee

I. 11 submissions from the following organisations

- The Karaoke Requirements Concern Group
- California Red Ltd.
- Advance Group Hong Kong Ltd.
- Energy International Entertainment Enterprise Ltd.
- International Federation of the Phonographic Industry (Hong Kong Group) Ltd.
- Hong Kong Federation of Restaurants & Related Trades

II. 138 submissions from individual employees of karaoke establishments

III. 12 submissions from individual persons