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**Paper for the House Committee meeting
on 1 November 2002**

**Report of the Subcommittee on Places of Public Entertainment Ordinance
(Amendment of Schedule 1) Regulation 2002 and
Places of Public Entertainment (Exemption) Order**

Purpose

This paper reports on the deliberations of the Subcommittee on Places of Public Entertainment Ordinance (Amendment of Schedule 1) Regulation 2002 and Places of Public Entertainment (Exemption) Order.

Background

2. The Places of Public Entertainment Ordinance (Cap. 172) (the Ordinance) provides for the regulation of places of public entertainment in that no person shall keep or use any place of public entertainment without a licence granted under the Ordinance. Schedule 1 to the Ordinance specifies the events, activities or other things which are regarded as "entertainment" under the Ordinance. Schedule 1 of the Ordinance does not explicitly refer to rave parties nor to other dancing activities as falling within the definition of "entertainment" laid down in the Ordinance.

3. According to the Administration, drug abuse, law and order problems and noise nuisance at rave parties have attracted much media and public concern. However, it is the advice of the Department of Justice (D of J) that a rave party cannot be classified beyond doubt as a concert, stage performance or other musical, dramatic or theatrical entertainment as specified in paragraph 1(a) of the Schedule. Accordingly, it will not be prudent to rely on Schedule 1 as presently drafted to regulate rave parties. D of J has further advised that Schedule 1 should be suitably amended before organisers of rave parties should be required to obtain a licence under the Ordinance.

The Amendment Regulation and the Exemption Order

4. In order to bring rave parties and other dancing activities at premises not licensed for dancing activities under the ambit of the Ordinance, the Administration proposes to amend Schedule 1 of the Ordinance by adding "dance party" as one of the events, activities or other things referred to as entertainment for the purpose of the Ordinance. The Administration also proposes to define "dance party" as an event with all of the following attributes -

- (a) Music or rhythmic sound of any kind or source is provided at the event;
- (b) The primary activity at the event is dancing by the persons attending the event; and
- (c) Either the number of persons attending the event exceeds 200 on at least one occasion during the event, or any part of the event occurs between 2:00 am and 6:00 am.

5. Under section 3A of the Ordinance, the Secretary for Home Affairs (SHA) may by order published in the Gazette exempt places of public entertainment from the application of the Ordinance or any part thereof. The Places of Public Entertainment (Exemption) Order is an exemption order made under that section to exempt the following places of public entertainment from certain requirements to obtain a licence under the Ordinance -

- (a) Places that are under the management of the Leisure and Cultural Services Department (LCSD) or the Home Affairs Department (HAD);
- (b) Places issued with a liquor licence under the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg.);
- (c) Places that are club-houses under the Clubs (Safety of Premises) Ordinance (Cap. 376); and
- (d) Places issued with a public dance-hall licence under the Miscellaneous Licences Ordinance (Cap. 114).

6. The Amendment Regulation shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette. The Exemption Order shall come into operation on the commencement of the Amendment Regulation.

The Subcommittee

7. The House Committee agreed at its meeting on 4 October 2002 to form a Subcommittee to study the Amendment Regulation and the Exemption Order. To allow time for the Subcommittee to scrutinise the two items of subsidiary legislation, the Chairman of the House Committee moved a motion at the Council meeting on 9 October 2002 to extend the scrutiny period of the two items of subsidiary legislation to the Council meeting on 6 November 2002. The motion was passed by the Council.

8. The Subcommittee held its first meeting on 11 October 2002 and Hon James TO was elected Chairman. The membership of the Subcommittee is in **Appendix I**. The Subcommittee held a total of three meetings with the Administration.

Deliberations of the Subcommittee

Overall views and concerns

9. Members in general support the Government's decision to bring rave parties and other dancing activities at premises not licensed for dancing activities under the ambit of the Ordinance. However, members have expressed concern that there may be loopholes in the licensing regime and the proposed licensing requirement will not achieve the intended purpose effectively. Members are concerned that proposed scope of the licensing regime is too wide, i.e. dance parties not meant to be subject to licensing control will be regulated unnecessarily. They are also concerned that decent dance party organisers, e.g., community organisations and students of tertiary education institutions, will be burdened with unnecessary administrative work and expensive administrative cost. Some members have also expressed dissatisfaction that the time taken for the issue of a licence under the Ordinance is too long. The gist of the deliberations of the Subcommittee is summarised in the following paragraphs.

Scope of the licensing regime

10. Private dance parties where members of the public cannot gain access by buying tickets or giving other monetary consideration are not subject to the licensing regime of the Ordinance. However, members are concerned that private dance parties organised by and for students of a tertiary education institution with an attendance of more than 200 persons will be caught by the Ordinance if some participants are members of the general public who are admitted to the venue by buying tickets from students of the tertiary institution. Members note that section 2 of the Ordinance defines "public entertainment" as "any entertainment within the meaning of this Ordinance to which the general public is admitted with or without payment". Members have raised queries

about the interpretation of admission of "general public" in the context of the Ordinance.

11. The Administration has explained that the term "general public" in the context of the Ordinance has so far not been discussed in any courts in Hong Kong. However, the meaning of the term "public" or "member of the public" has been considered by courts in the context of other legislation. Based on these court judgments, the Administration has advised that whether an entertainment is a "public entertainment to which the general public is admitted" will depend on the facts and circumstances in each case. In considering whether a private party is conducted in a place of public entertainment, the court will look at the question of whether in fact any members of the public can participate in the event and whether they are admitted as being members of the public. If the private party is open to a certain target group or students of a tertiary education institution and their guests only, the party will not be regarded as a "public entertainment" for the purpose of the Ordinance.

12. Hon Mrs Selina CHOW is of the view that a place of public entertainment (PPE) licence should not be required for holding a dance party in premises which have already complied with the structural and fire safety requirements of the Buildings Department (BD) and the Fire Services Department (FSD) when they were built. She has suggested that premises like halls, theatres, multi-purpose sports centres or playground, auditorium, etc, of tertiary education institutions should be exempted from the licensing requirement under the Ordinance.

13. The Administration has expressed reservations about the suggestion. The Administration has explained that although some of these premises such as halls, theatres, multi-purpose sports centres or playground, auditorium, etc, of tertiary education institutions are designed for the congregation of public, most of them are not purposely designed/built for all kinds of entertainment activities, e.g. dance party in sports centre; circus inside a school hall; stage performance inside a playground, etc. These entertainment activities, which may involve the use of stage, combustible materials for sets and props as well as the provision of additional seating accommodation for attendees, will either increase the fire load in the premises or require additional consideration on the available means of escape. The Administration has pointed out that original provisions for fire and building safety may not be adequate after the change in use of the premises.

14. The Administration has further explained that premises under the management of LCSD or HAD can be exempted because as an administrative arrangement, these departments will refer entertainment applications received to FSD for comments. A set of fire safety recommendations will be formulated accordingly for the department concerned to impose as part of the conditions for hiring the premises.

15. Members reiterate that the Administration should not burden decent organisers of dance parties with unnecessary administrative work. Members note that the inclusion of dance parties in Schedule 1 of the Ordinance is aimed to facilitate relevant Government departments including the Food and Environmental Hygiene Department (FEHD), BD, FSD and the Environmental Protection Department to conduct on-site visit to the specified premises in order to assess any relevant risks to public safety, public nuisance and law and order. Hon CHOY So-yuk has suggested that the Administration should consider using a notification system so that huge administrative cost will be avoided and Government departments will have prior knowledge of the event for the purpose of visiting dance party venues in advance to assess any relevant risks to public safety, public nuisance and law and order. Hon Mrs Selina CHOW has also suggested that the Administration should grant exemption to organisers of certain background such as non-profit-making organisations.

16. The Administration has explained that SHA is empowered to grant exemption under section 3A of the Ordinance to places of public entertainment only. Implementation of the suggestions made by Hon CHOY So-yuk and Hon Mrs Selina CHOW will require amendments to the principal Ordinance.

17. Members are of the view that that there is little risk in exempting premises of voluntary organisations, tertiary education institutions and public sector schools from application of the Ordinance because these organisations will be very cautious in renting out their premises for holding public entertainment activities such as rave parties. Moreover, the Administration can liaise closely with the organisations concerned to prevent any occurrence of irregularities.

18. The Administration has responded that most dance parties organised by community organisations and voluntary organisations for the general public are held in premises managed by LCSD and HAD which are already exempted from application of the Ordinance. Only very few organisations will be required to apply for a PPE licence if they hold parties in premises other than those exempted in the Exemption Order.

19. Members have pointed out that the fee for the issue of an annual PPE licence is over \$10,000 and the time taken is very long. They consider that dance parties organised by community organisations, voluntary organisations, students of tertiary education institutions are usually held at premises of satisfactory safety level. Members are of a strong view that decent organisers of dance parties should not be burdened with any unnecessary administrative work and cost. They have requested the Administration to consider -

- (a) Exempting premises under the management of public bodies, voluntary organisations, tertiary education institutions and public sector schools from the requirements to obtain a licence under the

Ordinance for holding dance parties with over 200 participants;
and

- (b) Making special administrative arrangement for processing the licence applications from non-profit-making organisations within seven working days and charging a nominal licence fee for these applications.

20. The Administration has expressed reservations about expanding the scope of the Exemption Order on the following considerations -

- (a) It is virtually impossible to compile a specific and exhaustive list of public bodies, voluntary organisations, tertiary education institutions and public sector schools for the purpose of expanding the scope of the Exemption Order. Moreover, grey area and loopholes may be created as there is no precise legal definition for these organisations;
- (b) A blanket exemption of the premises of these organisations will deprive the relevant authorities, in particular the Police, of the necessary powers under the Ordinance to conduct inspections of dance parties being held there for safety and crime prevention purposes; and
- (c) Premises of local community organisations vary greatly in terms of design, construction and location and the maximum capacity of persons for which they can safely accommodate, and hence not all such premises are suitable for the purpose of holding dance parties.

21. The Administration has proposed an alternative arrangement to address members' concerns. The Administration has undertaken to entertain, as long as they are eligible, all applications for permanent PPE licences for holding dance parties in respect of premises managed by public bodies, voluntary organisations, tertiary education institutions and public sector schools. The permanent licences are valid for 12 months and can be renewed upon application. The Administration will review, within one year's time, whether the valid period of a permanent PPE licence can be extended to at least 24 months.

22. The Administration has further undertaken that when processing applications for PPE licences for holding dancing parties, the licensing authority will not impose more fire safety requirements than those currently require for other PPE licences, and existing building safety standards for permitting dance activities in premises with liquor licences and club house licences will apply. If the premises which have already been issued with PPE licences are found suitable for holding dance parties, their licences can be amended to provide for holding dance parties in these premises by way of payment of an amendment fee

by the licencees to FEHD, and the amendment fee will be of a nominal nature.

23. The Administration has pointed out that the alternative arrangement has the following advantages -

- (a) Through issuing permanent PPE licences to the premises concerned, the relevant authorities may, having regard to the specific structure and conditions of the premises involved, put in the necessary licensing conditions on holding dance parties at these premises to ensure the safety of party-goers;
- (b) Relevant authorities will be empowered under the Ordinance to enter the premises concerned for the purposes of ensuring compliance with the licensing conditions and crime prevention;
- (c) The authorities concerned can ensure that only premises managed by bona fide organisations will be issued with permanent PPE licences; and
- (d) The authorities concerned will have the flexibility of not renewing the permanent PPE licences of certain premises should the circumstances so warrant.

24. The Administration has further explained that under Regulation 178 of the Places of Public Entertainment Regulation (Cap. 172 sub. leg.), the licensing authority may reduce or waive the fees for PPE licences if it appears to the licensing authority that the place of public entertainment is to be kept or used by certain bodies, organisations or institutions (including religious, charitable or welfare body and educational institutions etc.) recommended by Director of Home Affairs or Director of Education or their designated officers, as the case may be, for the purpose of the Regulation. As such, in accordance with existing practice, the licensing authority under the Ordinance will exercise his power to charge only a nominal licence fee for the premises managed by the relevant bodies, organisations or institutions in accordance with Regulation 178. The amount of the nominal licence fee will be in the range of \$100 to \$200. The Administration has also undertaken to review, within one year's time, the discrepancy between the existing fees for the issue of an annual PPE licence in the urban and New Territories areas.

25. The Administration has also pointed out that under this alternative arrangement, a large proportion of premises managed by public bodies, voluntary organisations, tertiary education institutions and public sector schools will either be exempted or covered by permanent PPE licences. Non-profit-making organisations such as voluntary organisation and students of tertiary education institutions will no longer need to apply for PPE licences for holding dance parties in these premises.

26. Members find the alternative arrangement proposed by the Administration acceptable.

Loopholes of the licensing regime

27. Some members expressed doubt as to whether the proposed licensing requirement could effectively achieve the purpose of combating drug dealing and abuse in rave parties. These members have pointed out that an organiser of a dance party can evade application of the Ordinance by way of on-the-spot registration of a club membership for every participant before admittance to the dance venue. The Administration has explained that when deciding whether an entertainment which is open to members of a club/association is a public entertainment, the court will consider whether (a) the club is a bona fide and genuine club/association, and all the members are bona fide members; or (b) it is a place to all intents and purposes open to all comers and the club is a mere sham and the membership is a mere fiction. From this perspective, any person organises any dance party the admission to which is by way of on-the-spot registration of a club membership is most likely subject to the licensing control under the Ordinance.

28. Hon LAU Kong-wah remains concerned that there might still be loopholes in the licensing regime. For instance, organisers of rave parties can evade application of the Ordinance by granting membership of a dancing club to every participant who can be admitted to the dancing venue the next day, instead of instant admission.

29. The Administration has reiterated that it is clear from the jurisprudence that whether an organiser of rave parties can evade application of the Ordinance by granting club membership depends on the factual finding of each case. The court will consider all the available evidence to determine whether the club is a bona fide genuine club or a sham club. The way club membership is granted is one of the considerations but it is not a conclusive factor. All the facts and the circumstances of each case, for example, whether the club keeps a register of membership, whether the club takes any follow-up action whatsoever in respect of granting membership and the activities organised by the club, etc. will be taken into account. The Administration has stressed that in any event, the burden is on the police and prosecution to prove that the club is a sham and the general public is admitted to the dance party.

Time for processing a PPE licence

30. According to the Administration, the time taken to issue a PPE licence under normal circumstances is estimated to be 40 to 50 working days. A temporary PPE licence, however, involving no erected or fixed structures can be obtained within 18 working days. Some members consider the time taken for the issue of a PPE licence too long. They are of a strong view that the

Administration should strive to expedite the time taken for the issue of a PPE licence. These members consider that the time taken for the issue of a PPE licence should be reduced to seven working days for a premises already certified to be in compliance with standard safety requirements for public assembly, and 14 working days for a premises not yet certified.

31. The Administration has explained that the Administration only requires at most 17 working days in total for administrative proceedings. The actual time required for the issue of the licences is, however, longer than 17 working days because the applicants may require some time to comply with the requirements laid down by the licensing authority. The Administration has pointed out that taking into account of the present workload and resources of departments concerned, the maximum processing time cannot be reduced any further.

Follow-up actions by the Administration

32. The Administration has made the following undertakings -

- (a) All applications for permanent PPE licences for holding dance parties in respect of premises managed by public bodies, voluntary organisations, tertiary education institutions and public sector schools will be entertained, as long as they are eligible, and the permanent licences which are valid for 12 months can be renewed upon application (paragraph 21 above refers);
- (b) The Administration will review, within one year's time, whether the valid period of a permanent PPE licence can be extended to at least 24 months (paragraph 21 above refers);
- (c) when processing applications for PPE licences for holding dancing parties, the licensing authority will not impose more fire safety requirements than those currently require for other PPE licences, and existing building safety standards for permitting dance activities in premises with liquor licences and club house licences will apply (paragraph 22 above refers);
- (d) If the premises which have already been issued with PPE licences are found suitable for holding dance parties, their licences can be amended to provide for holding dance parties in these premises by way of payment of a nominal amendment fee to FEHD (paragraph 22 above refers);
- (e) The licensing authority under the Ordinance will exercise his power to charge only a nominal fee for PPE licence for the premises managed by public bodies, voluntary organisations,

tertiary education institutions and public sector schools in accordance with Regulation 178 of the Places of Public Entertainment Regulations (paragraph 24 above refers); and

- (f) The discrepancy between the existing fees for the issue of an annual PPE licence in the urban and New Territories areas will be reviewed within one year's time (paragraph 24 above refers).

Recommendation

33. The Subcommittee supports the Amendment Regulation and the Exemption Order, in view of the undertakings given by the Administration as detailed in paragraph 32 above.

Advice sought

34. Members are invited to note the recommendation of the Subcommittee in paragraph 33 above.

Council Business Division 2
Legislative Council Secretariat
29 October 2002

Appendix I

Subcommittee on Places of Public Entertainment Ordinance (Amendment of Schedule 1) Regulation 2002 and Places of Public Entertainment (Exemption) Order

Membership List

Chairman	Hon James TO Kun-sun
Members	Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon LAU Kong-wah Hon CHOY So-yuk Hon Michael MAK Kwok-fung Hon IP Kwok-him, JP (Total : 6 Members)
Clerk	Miss Flora TAI Yin-ping
Legal Adviser	Miss Kitty CHENG Kit-ye
Date	11 October 2002