

SBCR 1/2/1866/97 Pt.5  
LS/S/4/02-03

Secretary for Security  
(Attention: Mr Damian CHAN, AS(S)B2)  
Security Bureau  
6/F Main and East Wings  
Central Government Offices  
Hong Kong

5 November 2002

**BY FAX**

Total Nos. of pages : (2)

Dear Mr Chan

**Karaoke Establishments (Licensing) Regulation  
(L.N. 153 of 2002)**

Thank you for your letter of 31 October 2002. Having considered the Administration's response, I would like to comment as follows:

Section 3

- (a) If it is intended that the factors set out in section 3(1) are exhaustive, would it be more appropriate to provide that these are the factors that the licensing authority *shall* take into account? As you are aware, to provide that the licensing authority "may" take into account certain factors could be construed as giving the licensing authority the discretion to take or not to take into account those factors.
- (b) If it is intended that the licensing authority may take into account other matters in determining whether section 3(1)(b), (c) and (d) have been satisfied in the particular circumstances even if the requirements in Schedule 2 have not been complied with, should it be made clear that the requirements set out in Schedule 2 will not limit the matters that the licensing authority may take into account?

Section 4

I do not think the contexts of section 34D of the Food Business Regulation (Cap. 132 sub. leg.) and section 4 of this Regulation are different. Although section 4(4) and (5) of this Regulation refer to "the layout of any premises" which is not mentioned in section 34D of the Food Business Regulation, the reference to the term "alteration or addition" in both Regulations relates to matters which are required to be shown on a plan and on comparison, the matters set out in both Regulations are similar in nature. Given that the Chinese text for "alteration or addition" in section 34D of the Food Business Regulation is "更改或增添", it would appear desirable to adopt the same rendition in this Regulation to achieve consistency and to avoid unnecessary disputes over the interpretation of the term.

Schedule 1

While I accept that "override" in the context of section 2(12) of Schedule 1 can bear the meaning of "replace", it would appear that the Chinese text does not match the corresponding English text. The Chinese text, as drafted, suggests that the music or other sound and visual images produced by the karaoke establishment can be replaced or superseded by other sound and images produced by the audio and visual alert system. However, in the English text, there is no corresponding reference to the Chinese text "其他聲音及影像". Please make both texts match as far as possible.

Schedule 2

- (a) What is the legal basis for the administrative measures relating to the relaxation of the width of corridors and the dead-end situation? Would it be better if the relevant relaxation is provided expressly in the Regulation? For example, will the Administration consider amending section 3(1) of Schedule 2 by stipulating that the width of exit routes including internal corridors within a karaoke establishment shall be at least 1.2m *or another dimension acceptable to the licensing authority*?
- (b) It is noted that section 21(3) of the Karaoke Establishments Ordinance provides that the licensing authority may waive wholly, partly or conditionally the requirements of any regulation in respect of any karaoke establishment, if he is satisfied that the safety of a person using the karaoke establishment will not be adversely affected. Does the Administration intend that this provision will be invoked in allowing other options in place of the requirements set out in Schedule 2 to the Regulation? If so, please explain how section 21(3) of the Ordinance will operate in practice. For instance, will an operator of a karaoke establishment be required to apply to the licensing authority for waiver, or will the waiver be automatically granted if the options fall within the terms agreed by the Administration in the Bills Committee on Karaoke Establishments Bill?

I should be grateful if you could let me have your reply in both languages by 12 November 2002.

Yours sincerely,

(Connie Fung)  
Assistant Legal Adviser

c.c. DoJ (Attention: Miss Monica LAW, SALD)  
LA

SBCR 1/2/1866/97 Pt.5  
LS/S/4/02-03

**Urgent by Fax**

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14 November 2002

Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Hong Kong

(Attn: Ms Connie FUNG)

Dear Ms FUNG,

**Karaoke Establishments (Licensing) Regulation**

Thank you for commenting on the above Regulation. Attached is the Administration's Response to the issues you raised. The Chinese version of the response will follow shortly. Should you have any further questions, please feel free to contact the undersigned.

Yours sincerely,

( Damian Chan )  
for Secretary for Security

**Karaoke Establishments (Licensing) Regulation**  
**and Karaoke Establishments (Fees) Regulation**

**Administration's response to issues raised by**  
**the Assistant Legal Adviser on 5.11.2002**

**Section 3**

**Question (a)**

To replace “may” with “shall” in the context of section 3(1) will make it mandatory for the licensing authority to consider all the factors therein. While those factors are expected to be exhaustive, we think that the word “may” should be retained to give the licensing authority the flexibility of not taking into account *some* of those factors, where the particular circumstances so warrant. For example, the Buildings Department may not raise objection under section 3(1)(f) in respect of certain types of unauthorised building works such as a small scale light-weight canopy.

**Question (b)**

2. As indicated in our previous response, by virtue of sections 3(2), (3) and (4), the requirements under sections 3(1)(b), (c) and (d) are deemed to have been complied with if the requirements set out in sections 1-7 of Schedule 2 are met, but non-compliance with those requirements does not necessarily result in a failure to satisfy sections 3(1)(b), (c) and (d) in determining the suitability of karaoke premises. The purpose of the deemed compliance provision is to make it known what can be done to satisfy the authority in so far as the relevant factors are concerned. There is nothing in the proposed provision which restricts the licensing authority's power to consider alternative ways proposed by the applicants to make a place suitable for the operation of a karaoke establishment. We consider that the current drafting is appropriate and no amendment is necessary.

**Section 4**

3. While it is acceptable to say “更改或增添 (圖則指明的) 事項” as in section 34D of the Food Business Regulation (Cap.132 sub. leg.), we do not think that “更改或增添” reads just as well when they are matched with layout: “更改或增添 (圖則所示的) 布局”. The objects being different in

these two cases, consistency is not an issue. In any event, the Food Business Regulation is of referential value only. Each ordinance should be construed on its own. We consider that retaining the existing draft will not give rise to any interpretation problem.

### Schedule 1

4. We consider that both the Chinese and the English versions correctly reflect the legislative intent, but we have no objection to amending either the English or the Chinese rendition to make the two look alike.

### Schedule 2

#### Question (a)

5. As explained in our response to your comments on section 3, the current drafting clearly allows the licensing authority to consider alternative measures other than those set out in Schedule 2. Sections 3(2), (3) and (4) are merely deeming provisions regarding compliance with sections 3(1)(b), (c) and (d) respectively. A precise standard must be stipulated for the operation of such deemed compliance provisions. We consider it neither necessary nor desirable to add “*or another dimension acceptable to the licensing authority*” or similar stipulations in Schedule 2.

#### Question (b)

6. As explained above, the “requirements” set out in Schedule 2 are only reference standards for the operation of the deeming provisions in section 3. Thus, the power of waiver in section 21(3) of the Karaoke Establishments Ordinance may not be required in respect of karaoke establishment premises involving non-compliance with the requirements in Schedules 1 and 2. Be that as it may, the discretion to accept administratively a measure other than those set out in Schedules 1 and 2, and the discretion to grant a waiver under section 21(3), can be exercised by the licensing authority in consultation with the Fire Services Department and the Buildings Department in the course of considering an application for a license or permit. In exercising such discretions, the licensing authority will stand by the Administration’s undertaking to accept options that fall within the terms agreed between the Administration and the Bills Committee.