

For discussion
on 26 May 2003

**LEGISLATIVE COUNCIL
PANEL ON ENVIRONMENTAL AFFAIRS**

**Noise Control (Amendment) Ordinance 2002
Codes of Practice on Good Management Practice**

INTRODUCTION

This paper seeks Members' views on the draft Codes of Practice to be issued under the Noise Control (Amendment) Ordinance 2002 for providing practical guidance to industries on good management practice for preventing violation of the Noise Control Ordinance.

BACKGROUND

2. The Noise Control (Amendment) Ordinance 2002 (the Amendment Ordinance) at Annex A, which the Legislative Council passed in June last year, will come into effect on a date to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette. The Amendment Ordinance provides that, where an offence under the Noise Control Ordinance (NCO) has been committed by a body corporate, the directors and officers concerned in the management of the body corporate shall be guilty of the like offence if a further offence is committed by the body corporate at the same site within two years. The objective of the Amendment Ordinance is to deter recurrent noise offences by bodies corporate.

3. Section 28A(3) of the Amendment Ordinance provides for a due diligence defence for the management of a body corporate if it can be proved that

the management has taken reasonable precautions and exercised due diligence to prevent violation of the NCO. For the purpose of providing industries with guidance on good management practice to prevent violation of the NCO, section 28C of the Amendment Ordinance provides that the Noise Control Authority, i.e. the Director of Environmental Protection, may issue Codes of Practice containing such practical guidance as he thinks fit. The Administration has undertaken to consult the relevant trades and the Panel on Environmental Affairs on such draft Codes of Practice before issuing them.

DRAFT CODES OF PRACTICE

4. The Codes of Practice are intended to set out good management practice recommended by the Noise Control Authority for the prevention of noise offences by bodies corporate. They are to provide general guidance to industries on good management practice to prevent violation of the NCO and its subsidiary legislation. Compliance with such Codes of Practice is voluntary. Non-compliance with them is not an offence. The management of bodies corporate is free to establish its own management system and practice to prevent violation of the NCO.

5. The draft Code of Practice for the construction industry is at Annex B. It is largely the same as the one developed by the Task Group set up between the Environmental Protection Department (EPD) and the Hong Kong Construction Association at Annex D, which was provided to the Bills Committee in 2002 (attached to Legislative Council Paper CB(1)1822/01-02). The only changes that have been made are minor ones to make certain provisions more clear and to take account of a technical comment we have received during the consultation exercise (please see para.10 below).

6. Other than the draft Code of Practice for the construction industry, we

have also prepared the draft Code of Practice for industrial and commercial operations at Annex C. It is very similar to the draft Code of Practice for the construction industry but with modifications to take account of the particular circumstances of industrial and commercial operations.

PUBLIC CONSULTATION

7. We have consulted the trades and professional bodies concerned. They include 18 trade associations, which represent developers, construction companies, estate management, restaurants, hotels, and the industrial and commercial sector; 12 public utility companies; two railway operators; three professional organizations and 15 labour unions. We have received feedbacks from 10 parties.

8. The draft Code of Practice for the construction industry is considered acceptable by the Hong Kong General Building Contractors Association Limited. The Hong Kong Construction Association has raised a number of comments although the draft code was jointly prepared and agreed by them under the Task Group mentioned in para.5 above. Other parties generally consider the draft Codes of Practice acceptable. Their detailed comments and the Administration's responses are set out at Annex E. Their major concerns are on the following two areas -

- (a) the legal implications of the Codes of Practice; and
- (b) the definition of "Noise Incidents" in the draft Codes of Practice.

Legal Implications of the Codes of Practice

9. Some parties have sought clarification on whether compliance with the Codes of Practice is mandatory or voluntary. Some have asked whether the

Codes are intended to be a benchmark by which the courts are to determine whether the management concerned has taken reasonable precautions and exercised due diligence to prevent noise offences by the body corporate.

10. The Codes of Practice are for providing guidance on good management practice only. Compliance is voluntary. Non-compliance with the Codes of Practice does not in itself give rise to any civil or criminal cause of action or liability under the Ordinance. The management of the body corporate is free to adopt alternative management practices and operate its own system to prevent violation of the NCO. To avoid doubts, we have amended the draft Codes of Practice by stating explicitly that compliance with the Codes is voluntary.

Definitions of “Noise Incidents” in the draft Codes of Practice

11. The explanatory note of the Codes states that “Noise Incidents” are incidents which have generated or may generate complaints, may lead to violations of the NCO, or have resulted in warning, serving of Noise Abatement Notice or prosecution by the Authority. As stated in the Codes, such incidents should be reviewed and reported to the management concerned. Some parties have commented that the definition is too extensive and suggested that “Noise Incidents” should be confined to those which have resulted in warning, serving of Noise Abatement Notice, or prosecution by the Authority.

12. Since the purpose of the Codes is to provide good management practice on the prevention of noise offences, we believe the inclusion of incidents that have generated or may generate complaints, or may lead to violations of the NCO is appropriate. To help the corporate management to implement preventive measures, it is reasonable to bring potential noise problems to their attention.

COMMENCEMENT

13. We aim to commence the Noise Control (Amendment) Ordinance 2002 on 5 December 2003. We believe this will give bodies corporate sufficient time to establish and implement proper systems to prevent violation of the NCO. The Codes of Practice will be published in the Gazette and take effect on the same date.

COMMENTS SOUGHT

14. Members' views on the draft Codes of Practice are sought.

Environment, Transport and Works Bureau

May 2003

HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE NO. 19 OF 2002**A circular stamp containing the letters "L.S." in a bold, serif font.

TUNG Chee-hwa
Chief Executive
4 July 2002

An Ordinance to amend the Noise Control Ordinance.

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Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Noise Control (Amendment) Ordinance 2002.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

2. Sections added

The Noise Control Ordinance (Cap. 400) is amended by adding—

“28A. Liability of directors

(1) Subject to section 28B, where an offence under this Ordinance has been committed by a body corporate, any person who at the time of the offence was—

- (a) a director concerned in the management of the body corporate;
- (b) a director who has delegated his authority for the management of the body corporate to an officer;
- (c) an officer mentioned in paragraph (b); or
- (d) an officer—
 - (i) concerned in the management of the body corporate; and
 - (ii) acting under the immediate authority of a director of the body corporate,

shall be guilty of the like offence.

(2) For the purpose of subsection (1), “body corporate” (法團) means any company, or other body corporate, incorporated in Hong Kong or elsewhere, but does not include any corporation registered under the Building Management Ordinance (Cap. 344).

(3) It is a defence to a charge brought under any provision of this Ordinance (other than section 6(1)(a), (2)(a) or (3)(a)) for a person charged under subsection (1) to prove that he took reasonable precautions and exercised due diligence to prevent the commission of the offence by the body corporate.

(4) Without affecting the generality of subsection (3), a person establishes a defence under that subsection if he proves that he had—

- (a) established a proper system to prevent the commission of the offence concerned; and
- (b) ensured the effective operation of the system.

28B. Restrictions on application of section 28A(1)

(1) Section 28A(1) shall not apply to a specified person in relation to a specified offence unless—

- (a) proceedings have been instituted against the specified body corporate for an offence under this Ordinance in relation to a specified place (and whether or not the specified body corporate is convicted of that offence);
- (b) the Authority has, in relation to those proceedings, served on the specified person a notice in the form specified in the Schedule; and
- (c) the specified offence—
 - (i) relates to that specified place; and
 - (ii) occurs after the date on which that notice is served on the specified person but before the 2nd anniversary of that date.

(2) The Authority may, by notice published in the Gazette, amend the Schedule.

(3) In this section—

“proceedings have been instituted” (法律程序已經提出), in relation to an offence under this Ordinance, means a complaint or information in respect of the offence has been made or laid, as the case may be;

“specified body corporate” (指明法團), in relation to a specified person, means a body corporate mentioned in section 28A(2) in respect of which the specified person is such a specified person;

“specified offence” (指明罪行) means a like offence mentioned in section 28A(1);

“specified person” (指明的人) means a director mentioned in section 28A(1)(a) or (b) or an officer mentioned in section 28A(1)(c) or (d); “specified place” (指明地方) means—

- (a) any domestic premises, public place or construction site; or
- (b) any place other than any domestic premises, public place or construction site.

(4) For the avoidance of doubt, it is hereby declared that the Authority has the power to serve the notice referred to in subsection (1)(b).

28C. Codes of practice

(1) The Authority may issue codes of practice containing such practical guidance as he thinks fit for the purpose of providing industries with good management practice in respect of section 28A(3).

(2) The Authority may from time to time revise the whole or any part of any code of practice issued under subsection (1) by revoking, varying or adding to its provisions or requirements.

(3) A code of practice or any revision to a code of practice shall be published in the Gazette.

(4) A code of practice or any revision to a code of practice commences at the beginning of the day on which it is published.”.

3. Schedule added

By repealing “SCHEDULE” and substituting the following—

“SCHEDULE

[s. 28B]

NOTICE UNDER SECTION 28B(1)(b) OF THE NOISE CONTROL
ORDINANCE (CHAPTER 400) TO DIRECTOR OR
OFFICER OF BODY CORPORATE

FROM : The NOISE CONTROL AUTHORITY appointed under section 3(1) of the Noise Control Ordinance (Cap. 400)

TO : (name of person)

1. YOU ARE HEREBY ADVISED that—

- (a) proceedings have been instituted against
..... (name of body corporate) for an offence under the Noise Control Ordinance (Cap. 400) in relation to
(address or other identifying particulars of domestic premises, public place, construction site, or other place, to which the offence relates); and

- (b) it is believed that you are one or more of the following—
 - (i) a director concerned in the management of the above-named body corporate;
 - (ii) a director who has delegated his authority for the management of the above-named body corporate to an officer;
 - (iii) an officer mentioned in subparagraph (ii) above;
 - (iv) an officer—
 - (A) concerned in the management of the above-named body corporate; and
 - (B) acting under the immediate authority of a director of the above-named body corporate; and
- (c) whether or not the above-named body corporate is convicted of the offence mentioned in paragraph (a) above—
 - (i) in relation to any offence under any provision of the Noise Control Ordinance (Cap. 400) committed in relation to the same domestic premises, public place, construction site, or other place, mentioned in that paragraph by that body corporate after the date of service of this notice on you but before the 2nd anniversary of that date; and
 - (ii) by virtue of sections 28A and 28B of the Noise Control Ordinance (Cap. 400),
 proceedings may also be taken against you for the offence mentioned in subparagraph (i) above in your capacity mentioned in paragraph (b) above.

2. Copies of sections 28A and 28B of the Noise Control Ordinance (Cap. 400) are attached for your information.

Dated this day of 20

Signed :
Noise Control Authority/
public officer authorized under
section 3(3) of the Noise
Control Ordinance (Cap. 400)*

*Delete whichever is inapplicable.”.

Draft

**Code of Practice on Good Management Practice
to Prevent Violation of the Noise Control Ordinance (Chapter 400)
(for construction industry)**

Preamble

This Code of Practice provides general guidance to the construction industry on good management practice to prevent violation of the Noise Control Ordinance and its subsidiary legislation. It is issued in respect of section 28A(3) of the Noise Control Ordinance for the purpose of the establishment of a defence to a charge brought under any provision (other than section 6(1)(a), (2)(a) or (3)(a)) of the Ordinance. Compliance with this Code of Practice is voluntary. Non-compliance with the Code of Practice is not an offence by itself. The Top Management of bodies corporate is free to establish its own management system and practice to prevent violation of the Noise Control Ordinance by the body corporate.

Management Practice for the Top Management

Persons described in section 28A(1) of the Noise Control Ordinance (collectively called the Top Management) shall apply the following practices in managing the operation or activity of the body corporate:

1. Prepare and issue a policy statement ratified by the board of directors or equivalent governing body of the body corporate committing all staff to:
 - (a) compliance with all relevant provisions of the Noise Control Ordinance; and
 - (b) prevention of noise pollution.

2. Establish, put in operation, and periodically review a management system to address issues related to the Noise Control Ordinance.

3. Establish noise management responsibility for different levels of staff, with an organization chart, job and duty description, for co-ordination, policy implementation and adherence to statutory noise control requirements, including the provision of regular noise control performance reporting.
4. Ensure that the officer who coordinates the noise control activities required under items 2 and 3 remains current with regard to statutory requirements and keeps the Top Management up to date on noise control activities affecting the body corporate.
5. Include an item for noise control matters on the agenda of the Top Management meetings that address the performance of any project.
6. Establish a regular meeting to review construction noise incidents and the operation and effectiveness of the associated noise control activities. Ensure that construction noise incidents and issues are reported to the Top Management.
7. Regularly check and review via reports or personally that noise control activities are being carried out on each project to ensure compliance with statutory requirements.
8. Ensure that a report is prepared for the personal attention of those who are part of the Top Management advising whether each project is properly addressing noise concerns raised by Government Agencies and other concerned parties.
9. Establish a notification system for construction noise incidents (including non-compliance with the Noise Control Ordinance) to ensure that persons who are part of the Top Management is personally advised immediately and in any case within 3 days of an incident occurring on a project.

10. Take actions to correct any incident and non-compliance as described in item 9 which is not forthwith satisfactorily rectified or effectively prevented from recurrence.

11. Ensure a report is prepared for the personal attention of those who are part of the Top Management that the necessary corrective action related to the incident and non-compliance as described in item 9 has been taken to his satisfaction.

Explanatory Notes

Noise Control Ordinance

All references to the Noise Control Ordinance include the Ordinance and its subsidiary legislation.

Top Management

The Top Management are persons in a body corporate described under section 28A(1) of the Noise Control Ordinance, i.e.

any person who is -

- (a) a director concerned in the management of the body corporate;
- (b) a director who has delegated his authority for the management of the body corporate to an officer;
- (c) an officer mentioned in paragraph (b); or
- (d) an officer -
 - (i) concerned in the management of the body corporate; and
 - (ii) acting under the immediate authority of a director of the body corporate.

Management System

A management system shall, but not limited to, include:

- establishment of responsibility;
- prevention, review, report and rectification of noise incidents; and
- performance reporting.

Noise Control Activities

Noise control activities are activities which shall be adopted to:

- prevent violation of the Noise Control Ordinance; or
- rectify any non-compliance with the management system.

Construction Noise Incidents

Construction noise incidents are incidents which:

- have generated or may generate complaints;
- may lead to violations of the Noise Control Ordinance; or
- have resulted in warning or prosecution by the Noise Control Authority.

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Draft**Code of Practice on Good Management Practice
to Prevent Violation of the Noise Control Ordinance (Chapter 400)
(for industrial/commercial operations)****Preamble**

This Code of Practice provides general guidance to industrial and commercial operations on good management practice to prevent violation of the Noise Control Ordinance and its subsidiary legislation. It is issued in respect of section 28A(3) of the Noise Control Ordinance for the purpose of the establishment of a defence to a charge brought under any provision (other than section 6(1)(a), (2)(a) or (3)(a)) of the Ordinance. Compliance with this Code of Practice is voluntary. Non-compliance with the Code of Practice is not an offence by itself. The Top Management of bodies corporate is free to establish its own management system and practices to prevent the violation of the Noise Control Ordinance by the body corporate.

Management Practice for the Top Management

Persons described in section 28A(1) of the Noise Control Ordinance (collectively called the Top Management) shall apply the following practices in managing the operation or activity of the body corporate:

1. Prepare and issue a policy statement ratified by the board of directors or equivalent governing body of the body corporate committing all staff to :
 - (a) compliance with all relevant provisions of the Noise Control Ordinance; and
 - (b) prevention of noise pollution.

2. Establish, put in operation, and periodically review a management system to address issues related to the Noise Control Ordinance.

3. Establish management responsibility for the relevant staff in the body corporate for co-ordination, policy implementation and adherence to statutory noise control requirements.
4. Ensure that the officer who coordinates the noise control activities required under items 2 and 3 remains current with regard to statutory noise control requirements and keeps the Top Management up to date on noise control activities affecting the body corporate.
5. Ensure that persons who are part of the Top Management is personally advised whether concerns on noise pollution raised by Government Agencies and other concerned parties have been or are being properly addressed.
6. Establish a regular meeting to review noise incidents and noise control activities. Ensure that noise incidents and issues are reported to the Top Management immediately and in any case within 3 days of a noise incident.
7. Take actions to correct any noise incident as described in item 6 which is not forthwith satisfactorily rectified or effectively prevented from recurrence and ensure that persons who are part of the Top Management is personally advised whether the necessary corrective action has been taken to his satisfaction.

Explanatory Notes

Noise Control Ordinance

All references to the Noise Control Ordinance include the Ordinance and its subsidiary legislation.

Top Management

The Top Management are persons in a body corporate described under section 28A(1) of the Noise Control Ordinance, i.e.

any person who is -

- (a) a director concerned in the management of the body corporate;
- (b) a director who has delegated his authority for the management of the body corporate to an officer;
- (c) an officer mentioned in paragraph (b); or
- (d) an officer -
 - (i) concerned in the management of the body corporate; and
 - (ii) acting under the immediate authority of a director of the body corporate.

Management System

A management system shall, but not limited to, include:

- establishment of responsibility;
- prevention, review, report and rectification of noise incidents; and
- performance reporting.

Noise Control Activities

Noise control activities are activities which shall be adopted to:

- prevent violation of the Noise Control Ordinance (e.g. by identifying potential noise problems and, in particular when a noise problem is being identified, adopting measures to abate the noise and maintain those associated operations/equipment in proper conditions); or
- rectify any non-compliance with the management system.

Noise Incidents

Noise incidents are incidents which:

- have generated or may generate complaints;
- may lead to violations of the Noise Control Ordinance, or
- have resulted in warning, serving of Noise Abatement Notice, or prosecution by the Noise Control Authority.

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**Draft Code of Practice for Construction Industry
Provided to the Bills Committee in 2002**

Management Practice for the Top Management

Persons described in the proposed amendment of the Noise Control Ordinance (collectively called the top management) shall apply the following practices in managing the operation or activity of the body corporate:

1. Prepare and issue a policy statement ratified by the Board of Directors committing all staff to :
 - (a) compliance with all relevant provisions of the Noise Control Ordinance; and
 - (b) prevention of noise pollution.
2. Establish, put in operation, and periodically review a management system to address issues related to the Noise Control Ordinance.
3. Establish noise management responsibility for different levels of staff, with an organization chart, job and duty description, for co-ordination, policy implementation and adherence to statutory noise control requirements, including the provision of regular noise control performance reporting.
4. Ensure that the officer who coordinates the noise control activities described in item 2 and 3 remains current with regard to statutory ordinances and regulations and keeps the Board of Directors up to date on significant noise control activities affecting the company.
5. Include an item for noise control matters on the agenda of the Top Management Meetings that address the performance of each project.
6. Establish a regular meeting to review significant construction noise incidents and the operation and effectiveness of the associated noise control activities. Ensure that significant construction noise incidents and issues are reported to the Top Management.
7. Regularly check and review via reports or personally that a practical noise pollution prevention system sufficient to ensure compliance with legislation and regulations is operating on each Project.
8. Ensure that a report is prepared for the personal attention of the Top Manager / Director (such as General Manager and Chief Executive Officer) advising whether each Project is properly addressing noise concerns raised by Government Agencies and other concerned parties.
9. Establish a notification system for significant construction noise incidents (including non-compliance with the Noise Control Ordinance) to ensure that the

relevant Top Manager / Director is personally advised immediately and in any case within 3 days of an incident occurring on a Project.

10. Take actions to correct any incident and non compliance as described in item 9 which is not forthwith satisfactorily rectified or effectively prevented from recurrence.

11. Ensure a report is prepared for the Top Manager's / Director 's personal attention that the necessary corrective action related to the incident and non-compliance as described in item 9 has been taken to his satisfaction.

Explanatory Notes

Top Management

The top management are persons in a body corporate described under the proposed new section 28A(1) of the Noise Control Ordinance, i.e.

any person who was -

- (a) a director concerned in the management of the body corporate;
- (b) a director who has delegated his authority for the management of the body corporate to an officer;
- (c) an officer mentioned in paragraph (b); or
- (d) an officer -
 - (i) concerned in the management of the body corporate; and
 - (ii) acting under the immediate authority of a director of the body corporate.

Noise Control Activities

Noise control activities are activities which shall be adopted to:

- prevent violation of the Noise Control Ordinance; or
- rectify any non-compliance with the management system.

Construction Noise Incidents

Construction noise incidents are incidents which:

- have generated or may generate complaints, or
- may lead to violations of the Noise Control Ordinance, or
- have resulted in warning or prosecution by the Noise Control Authority

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Administration's Response to Feedback on the Draft Codes of Practice

I. Draft Code of Practice for the construction industry

Major views from concerned parties	Administration's response
<p>A. Hong Kong General Building Contractors Association Ltd.</p> <p>1. We consider the draft Code of Practice acceptable.</p> <p>2. If the management of a body corporate had already implemented the management practices in the Code of Practice, will the management be exempted from prosecution in the unfortunate event that the NCO was violated?</p>	<p>We welcome the position of the Hong Kong General Building Contractors Association Ltd.</p> <p>The management of a body corporate will be prosecuted only if the body corporate has committed further noise offences at the same site within 2 years. Compliance with the Code of Practice, depending on the circumstances, can be used as a due diligence defence if proceedings were instituted against the management.</p>
<p>B. Masons International Law Firm</p> <p>1. Is it intended that compliance with the Code of Practice by Top Management should be voluntary or mandatory?</p>	<p>Compliance with the Code is voluntary. The Code of Practice is for providing guidance to the industry on good management practice. The Top Management could establish and operate its own system suitable for the body corporate's operations to prevent the violation of the NCO.</p>

<p>2. Is it intended that the code of practice should be a strict benchmark by which the courts are to determine a director of a company had been taken “reasonable precautions and exercised due diligence to prevent the commission of the offence by the body corporate” (s.28A(3))? If so, would a director have to demonstrate compliance with each and every one of the practices in the code of practice?</p>	<p>The Code of Practice is for guidance purpose only and is not intended to be a benchmark. We have amended the draft Code of Practice by explicitly stating that compliance with the Code is voluntary.</p>
<p>C. The Hong Kong Electric Co. Ltd.</p> <p>1. In item 1, the phrase “compliance with all relevant provisions of the NCO” would sufficiently meet the objective as stated in the title of the Code of Practice. If the phrase “prevention of noise pollution” is to be included, the term “noise pollution” should be clearly defined.</p> <p>2. In item 6, the term “construction noise issues” needs to be defined.</p> <p>3. In item 9, the definition of “Construction Noise Incidents” is too extensive for the purpose and the</p>	<p>“Noise pollution” is a general term. Besides compliance with the NCO, we believe the policy statement should also commit all staff to the prevention of noise pollution so as to drum up their awareness of potential noise problems that may arise in the corporate’s operation.</p> <p>This is a general term. The Top Management of a body corporate has the flexibility to decide on what should be reported to them.</p> <p>The purpose of the Codes is to provide good management practice on the prevention of noise offences. We believe the inclusion of</p>

<p>requirement of reporting within 3 calendar days sometimes is not practicable. We suggest that only those incidents which have resulted in warning or prosecution by the Noise Control Authority need to be reported immediately and in any case within 3 working days to the relevant manager/director and that other incidents be reported to him/her regularly.</p>	<p>incidents that have generated or may generate complaints, or may lead to violations of the NCO is appropriate. To enable the corporate management to implement preventive measures, it is reasonable to bring potential noise problems to their attention. The reporting of Noise Incidents within 3 calendar days is also a good and realistic practice to demonstrate the Top Management's commitment in preventing violation of the NCO. The Top Management can spend more time to deal with the Noise Incidents as they consider necessary.</p>
<p>D. The Hong Kong and China Gas Company Limited</p> <p>1. We have no adverse comment on the draft guidelines. We appreciate your understanding on the trades' concern and welcome the warning system as well as the "rehabilitated" policy to be incorporated into the Bill.</p> <p>(Remark: The same comment applies to the draft Code of Practice for industrial/commercial operations)</p>	<p>We welcome the position of The Hong Kong and China Gas Company Limited.</p>
<p>E. MTR Corporation Limited</p> <p>1. The all-inclusive definition of "Noise Incidents" appears to be based on a misconception that all noise complaints</p>	<p>The purpose of the Codes is to provide good management practice on the prevention of noise offences. The inclusion of incidents that</p>

<p>require positive actions, which according to our experience, is not always the case. The definition of “noise incidents” should be confined to violations of the NCO only.</p> <p>2.The three-day reporting requirement is considered unrealistic and the reporting time should be extended to seven days from the initial report of a noise incident.</p> <p>3.For the avoidance of doubt, the term “noise concerns” and “noise issues” in the code of practice should be explicitly defined.</p> <p>4.We would like to propose that for those companies that have ISO14001 in place to effectively manage the noise pollution should be exempted from this code of practice.</p> <p>(Remark: The same comments apply to the draft Code of Practice for industrial/commercial operations)</p>	<p>have generated or may generate complaints, or may lead to violations of the NCO is appropriate. To enable the corporate management to implement preventive measures, it is reasonable to bring potential noise problems to their attention.</p> <p>The reporting of Noise Incidents within 3 calendar days is a good and realistic practice to demonstrate the Top Management’s commitment in preventing violations of the NCO. The Top Management can spend more time to deal with the Noise Incidents as they consider necessary.</p> <p>These are general terms. A definition is not necessary.</p> <p>Compliance with the Code of Practice is voluntary. The Top Management is free to establish and operate its own management system or adopt other widely recognized systems as it thinks fit to prevent violation of the NCO.</p>
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<p>F. The Hong Kong Electrical and Mechanical Contractors' Association Limited; and The Hong Kong Federation of Electrical and Mechanical Contractors Limited</p> <p>1. In items 8 and 9, the difference between the “Top Management” and the “top manager/director” is not clearly defined. In item 8, the term “personal attention” takes fairly broad range of interpretation, further clarification is necessary.</p> <p>2. In items 6 and 9, the term “Noise Incidents” shall only include incidents which have generated complaints; or have resulted in warning, or prosecution by the Noise Control Authority. Incidents which may generate complaints or may lead to violations of the NCO shall be referred as Noise Issues and shall not be bound by the 3 days limit.</p> <p>(Remark: The same comments apply to the draft Code of Practice for industrial/commercial operations)</p>	<p>We have amended the draft Codes of Practice by replacing “top manager/director” by “persons/those who are part of the Top Management”. Regarding the term “personal attention”, the Top Management has the flexibility to establish and operate its own communication and reporting system suitable for the body corporate’s operations.</p> <p>The purpose of the Codes is to provide good management practice on the prevention of noise offences. The inclusion of incidents that may generate complaints, or may lead to violations of the NCO is appropriate. To enable the corporate management to implement preventive measures, it is reasonable to bring potential noise problems to their attention. We believe that the reporting of Noise Incidents within 3 calendar days or less would be a good and realistic practice to demonstrate the Top Management’s commitment in preventing violation of the NCO.</p>
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G. Hong Kong Institute of Acoustics

1. The draft code is, in general, clear cut and specific in terms of recommending an effective framework for relevant “Top Management” to consider in adopting within their organizations. The draft code in general is not suggesting procedures that are exceedingly onerous for the operators.

2. Regarding the definition of “Noise Incidents” as provided under the Explanatory Notes, the suggestion to include incidents that “may generate complaints”, while well intended, appears to be vague. As some complaints may be subjective in nature, it may be difficult for concerned operators to forecast if certain actions or incidents “may generate complaints”.

3. It will be most helpful if certain mechanisms of noise monitoring are included in the draft code. While the draft code highlights the importance of “division of responsibility and upward reporting”, we feel that it would be most advantageous if appointment of relevant professionals, such as members of HKIOA, to conduct independent audit or

We welcome the observations of the Hong Kong Institute of Acoustics.

The purpose of the Codes is to provide good management practice on the prevention of noise offences. The inclusion of incidents that may generate complaints is appropriate. To enable the corporate management to implement preventive measures, it is reasonable to bring potential noise problems to their attention. The Top Management can decide whether any actions will need to be taken depending on the case.

Since the Top Management is free to establish and operate its own system suitable for the body corporate’s operations to prevent violation of the NCO, it is up to them whether professionals of any relevant disciplines should be appointed to conduct independent audit or monitoring in relation to noise control.

<p>continual monitoring who may help on the control of noise in all construction activities.</p> <p>(Remark: The same comments apply to the draft Code of Practice for industrial/commercial operations)</p>	
<p>H. Hong Kong Cable Television Limited</p> <p>1. We suggest that even when the EPD issues the Code of Practice, the Code of Practice should take effect on a later date so that a company can establish and implement the management system in the meantime. If this recommendation is not accepted, the EPD should clarify the responsibility of the management in the context of the due diligence defence in s.28A of the NCO while a company is in the process of preparing and implementing the management system.</p> <p>2. As the noise management should be the responsibility of the line manager but not the low level workers, we propose to delete item 3 of the Code of Practice. (This comment applies to the Code of Practice for construction industry only.)</p>	<p>We intend to commence the Amendment Ordinance and the Codes of Practice on 5 December 2003. There should be sufficient time for bodies corporate to establish and implement proper management systems. Also, compliance with the code is voluntary and the Top management could establish and operate its own system to prevent violation of the NCO.</p> <p>The principle is to establish and implement an effective management system. The Top Management of a body corporate has the flexibility to decide on the appropriate levels of staff to whom the noise management responsibility should be assigned.</p>

<p>3. We would like to clarify whether the EPD would pass the conviction records of an individual under the NCO to the Police and whether such conviction records will have any bearing on the so-called “Certificate of No Criminal Conviction” issued by the Police.</p> <p>(Remark: The same comments apply to the draft Code of Practice for industrial/commercial operations)</p>	<p>At present, there is no established mechanism for the EPD to pass conviction records under the NCO to the Police on a routine basis. However, the Police may request for specific conviction records from the EPD for the purpose of court hearings for specific prosecution cases under the NCO. Nevertheless, offences under the NCO are not classified by the Police as “recordable” or ones for which fingerprints will be taken. Conviction under the NCO is irrelevant to the Certificate of No Criminal Conviction.</p>
<p>I. The Hong Kong Construction Association (HKCA)</p> <p>1. It is noted that the draft Code of Practice departs substantially from the Code of Practice previously published and provided to LegCo during the course of its deliberation on the Noise Control (Amendment) Ordinance 2002. However, the revision does not address the overriding concerns of the HKCA.</p>	<p>We do not agree that “the current draft departs substantially from the Code of Practice previously published and provided to LegCo.” The measures specified in the draft Code at Annex B are essentially the same as the ones agreed by the HKCA/EPD Task Group and provided to the LegCo Bills Committee in 2002.</p>

<p>2. Whilst the Ordinance does not specify that failure to comply with the Code of Practice will amount to a failure to take reasonable precautions or exercise due diligence under s.28A (or the converse) as a matter of practical reality, magistrates will rely on the Code of Practice and it is therefore likely to become a de facto standard.</p>	<p>The Code of Practice is for guidance on good management practice only and the adoption and compliance of the Code by the Top Management is voluntary. The Top Management could establish and operate its own system suitable for the body corporate's operations. We have added these explicitly in the draft Codes of Practice.</p>
<p>3. In order to satisfactory function in this way, we consider that the Code of Practice should be clear and explicit, identifying the steps which any director or officer is required to take to comply with those obligations. The steps should be realistic practical steps, which can be taken, rather than statements of intent or aspiration. Generally, the draft Code of Practice fails to provide this guidance.</p>	<p>The measures specified in the draft Code at Annex B are essentially the same as the ones agreed by the HKCA/EPD Task Group and provided to the LegCo Bills Committee. The Code of Practice is for guidance on good management practice only and the adoption and compliance of the Code by the Top Management is voluntary. The Top Management could establish and operate its own system suitable for the body corporate's operations.</p>
<p>4. Overall, the Code of Practice fails to recognize the variety of situations in which it may apply. Its provisions may be more applicable to small companies, where all directors and managers are engaged in day-to-day construction activities. It is far less applicable to large entities, where not</p>	<p>“Top Management” refers to directors and officers concerned in the management of the body corporate as specified under section 28A(1) of the Ordinance. Non-executive directors and officers who are not concerned in the management of the body corporate will not be held liable.</p>

<p>all directors and managers are involved in day-to-day management of construction activities. It is particularly inappropriate in the case of Listed Companies (and similar), where the Top Management includes non-executive directors who do not work on a full time basis for the company in question and often do not have a construction background.</p> <p>5. The view may be taken that it is sufficient to rely on the Prosecution exercising appropriate discretion in deciding who to prosecute. In our view, this is not an appropriate approach to the Code of Practice (which will effectively have the force of law), and may well be used in the future as a precedent for similar documents.</p> <p>6. We consider that the Code of Practice should be judged from the perspective of each individual director or manager, and the question asked whether each individual is able to comply with the burdens imposed by the Code of Practice. The Code therefore should recognize the very limited role that some Top Management can take, or should be asked to take in respect of these matters. For example, a non-</p>	<p>The Code of Practice is for guidance purpose only. Non-compliance is not an offence and hence irrelevant to the institution of prosecution.</p> <p>The Code of Practice is intended for providing guidance on good management practice only. It is up to the Top Management whether to adopt the measures in the Code, and if so, how these measures should be implemented in detail. Non-executive directors and officers who are not concerned in the management of the body corporate will not be held liable.</p>
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<p>executive director of a listed company might be required to do no more than seek a report on compliance with the Ordinance, perhaps annually.</p>	
<p>7. In para. 2, the reference to “periodic review” is unfortunately vague. It would be preferable to have reference to, say an annual review, in order that it would be clear whether this requirement was complied with. This concern should be read at the same time as the more serious concern regarding para. 5. It should be noted here that it will be the burden of the director or officer to prove compliance with this obligation, not for the Prosecution to establish non-compliance. The adoption and effectiveness of the Code of Practice would be much enhanced if it was integrated with the international management standards widely adopted in the industry, such as ISO 9001:2000 or ISO 14001. Such an approach has the attraction that these systems are in place and audited, which will improve adherence and self-enforcement.</p>	<p>The Top Management is free to establish and operate its own management system or other widely recognized system as it thinks fit to prevent violation of the NCO. As such, it is up to the Top Management to decide the appropriate time period for regular review. We think that the present wording in para. 2 provides flexibility to the Top Management to work out the implementation details of its own management system.</p> <p>It should be clarified that pursuant to sections 28A(3) and (4) of the NCO, the burden of a director or officer is not to prove compliance with any term in the Code of Practice, but to prove that he has taken reasonable precautions and exercised due diligence to prevent the commission of the offence by the body corporate.</p>

<p>8. In para. 3, the language of this obligation is unsatisfactory. It is not clear whether the intention is that all levels of staff should have some obligation for noise management, or that those responsible for noise measurement should be identified.</p>	<p>Top Management of a body corporate could establish and operate its own management system, and decide on the appropriate levels of staff to whom noise management responsibilities should be assigned. The present wording in para. 3 provides flexibility to the Top Management to work out the implementation details of its own management system.</p>
<p>9. In para. 4, no comment, save for the observation that this is the first of a number of obligations which require “Top Management” to undertake matters. The question therefore arises how, as a matter of practice, this will be implemented, particularly with regard to those officers that have no responsibility for the execution of projects (e.g. non-director level financial officers). A better approach would be to identify specific individuals who have responsibilities imposed on them. The responsibilities should reflect roles which they can reasonably be expected to discharge.</p>	<p>Non-executive directors and officers who are not concerned in the management of the body corporate will not be held liable.</p>

<p>10. In para. 5, it appears to suggest that whenever Top Management meet to address the performance of any project they must consider noise control matters. It is not realistic to suggest that each of these meetings should address noise matters, the Code should avoid such language. One concern which we have is that this may be one of a number of Codes of Practice which seeks to dictate management procedures. Certainly, it may be used as a precedent to justify similar legislation in the future. We question whether it is good for the industry to have numerous such requirements imposed upon its senior management. Certainly, these requirements should be rigorously examined in light of the way in which they would work in practice. A better solution may be to require certain limited specific matters to be referred to specific level of corporate management or for there to be a requirement for periodic review.</p>	<p>For the purpose of preventing noise offences, we believe it is good management practice to include an item for noise control matters on the agenda of the Top Management meetings. However, measures specified in the Code of Practice are not requirements. They are guidelines on good management practice. The Top Management could establish and operate its own system suitable for their body corporate's operations and situation and work out the implementation details of its own management system so as to prevent violation of the NCO.</p>
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<p>11. Para. 6 appears to impose two distinct obligations. With regard to the first obligation, it is unclear who is to attend the regular meeting. Given the content of the second sentence it is probably not intended that Top Management attend this meeting, however the ambiguity is undesirable. Again given the definition of Top Management includes individuals with no involvement in construction activities, it is questionable what would be achieved by their attendance at such meetings.</p> <p>With regard to the second sentence one of the difficulties is identifying who Top Management is. It is also unclear as to the detail in which matters must be addressed to these individuals, again particularly those who have no involvement in the actual execution of the relevant construction project.</p>	<p>The Top Management of a body corporate is free to decide the appropriate persons who should attend the regular meetings to review Construction Noise Incidents and the operation and effectiveness of the associated noise control activities. The terms “Construction Noise Incidents” and “noise control activities” as well as the definition of “Top Management” are elaborated in the Explanatory Notes. It will be up to the individual body corporate to further define the scope and details of matters to be addressed or reviewed at the regular meeting depending on their operations and situation.</p>
<p>12. In para. 7, it is not clear whether this is intended to be a pro-active or passive role. It is one thing to say that the Top Management should receive a regular report that noise control activities are being carried out and be responsible for making sure that they receive this report. Again however the issue of who is Top Management arises. However, at</p>	<p>The definition of “Top Management” is elaborated in the Explanatory Notes. It is up to the Top Management how they wish to check and review whether noise control activities are being carried out on each project. It could be done by reviewing reports or by their personal examinations, as long as it serves the purpose. Non-executive directors and officers who are not concerned in the</p>

<p>least on one reading, this para. appears to impose a positive obligation on Top Management to check and review that measures are being carried out. This is extremely burdensome, particular on those members of the Top Management that have no role in the execution of the project.</p>	<p>management of the body corporate will not be held liable.</p>
<p>13. In para. 8, this provision is unsatisfactorily vague. Firstly, it requires someone to determine who is the top manager/director, bearing in mind that the receipt of this report may bring with it criminal sanctions. This appears to be a single individual, although the words in brackets suggest a company with both a general manager and a CEO should notify both. In terms of ensuring compliance, it suggested that it would be far more effective to require the appointment of a director, to take responsibility for this. Such individual is more likely to have the time to deal with the issue.</p>	<p>We have amended the draft Codes of Practice by replacing “top manager/director” by “persons/those who are part of the Top Management”, which is clearly defined in the Explanatory Notes.</p> <p>As the Code of Practice is for guidance purpose only, it is up to the Top Management to work out the implementation details of its own management system. It will be up to the Top Management to decide on specific noise concerns or complaints which are to be reported to any or all directors/officers concerned in the management of the body corporate, having regard to the specific circumstances of individual companies.</p>

<p>Secondly, the provision requires a judgement as to who are “Government Agencies and other concerned parties”. Whilst Government Agencies can be identified with a reasonable degree of certainty, should every complaint by a member of the public, as a concerned party, be drawn to the attention of the general manager and CEO. It is suggested this will not be practical for example in a substantial international company.</p> <p>Thirdly, the provision requires an assessment of whether concerns are being “properly addressed”.</p> <p>14. In para. 9, this is another obligation where the word “ensure” is used. The term “Construction Noise Incidents” is extremely widely defined, including activities which may lead to violations of the Noise Control Ordinance. Clearly many activities may lead to violations, if constraints are ignored. If such reports are to be given real weight, it would be better that they are reserved for serious situations. We would suggest that this arises where there has been whether there is a warning or prosecution by the Noise Control Authority. With the best will in</p>	<p>The purpose of the Codes is to provide good management practice on the prevention of noise offences. The inclusion of incidents that have generated or may generate complaints, or may lead to violations of the NCO is appropriate. To enable the corporate management to implement preventive measures, it is reasonable to bring potential noise problems to their attention. The Top Management can decide whether any actions will need to be taken depending on the case. We believe that reporting within 3 days or less would be a good and realistic practice to demonstrate the Top Management’s commitment in preventing violations. The Top</p>
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<p>the world on some projects it is impractical for notification to be given within 3 days. It also fails to acknowledge the fact that “the relevant top manager/director” may be absent from his office or post for a three day period. Whilst this observation may be criticized as being unduly legalistic, the Code of Practice effectively has the force of law coupled with criminal sanction. We therefore make no apology for raising this concern.</p>	<p>Management can spend more time to deal with the Noise Incidents as they consider necessary. The management system can also include the appointment of persons to stand in during absence of any manager or director.</p>
<p>15.It should be made clear this obligation in para.10 relates only to the individual referred to in para. 9.</p>	<p>As the Code of Practice is for guidance purpose only, it is up to the Top Management to work out the implementation details of its own management system.</p>
<p>16.It is not clear who is to prepare the report referred to under para.11 of the draft Code of Practice. Presumably, the reference to “his satisfaction” is to the individual who has been responsible for managing the corrective action.</p>	<p>It is up to the Top Management to decide who should be responsible for preparing the report having regard to the management system devised to suit the circumstances of individual bodies corporate.</p>
<p>17.We have been advised that this legislation and the Code of Practice conflict with individuals’ rights under the Bill of Rights.</p>	<p>As advised by the Department of Justice, the strict liability offences created as a result of the amendment to this Ordinance are in conformity with the human rights provisions of the Basic Law. As the Codes of Practice only contain practical guidance of the appropriate measures to be adopted in order to establish the “due</p>

	diligence” defence under section 28A(3) of the Ordinance, no issue of human rights concern would arise.
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II. Draft Code of Practice for industrial/commercial operations

<p>J. Hong Kong Association of Property Management Companies</p> <p>1. We have no adverse comment on the part of industrial/ commercial operations which concerns property management industry.</p>	<p>We welcome the position of the Hong Kong Association of Property Management Companies.</p>
<p>K. The Hong Kong Electric Co. Ltd.</p> <p>1. In item 1, the phrase “compliance with all relevant provisions of the NCO” would sufficiently meet the objective as stated in the title of the Code of Practice. If the phrase “prevention of noise pollution” is to be included, the term “noise pollution” should be clearly defined.</p> <p>2. In item 6, the term “noise issues” needs to be defined.</p> <p>3. In item 6, the definition of “Noise Incidents” is too extensive for the</p>	<p>“Noise pollution” is a general term. Besides compliance with the NCO, we believe the policy statement should also commit all staff to the prevention of noise pollution so as to drum up their awareness of potential noise problems that may arise in the corporate’s operation.</p> <p>This is a general term. The Top Management of a body corporate has the flexibility to decide on what should be reported to them.</p> <p>The purpose of the Codes is to provide good management practice on the prevention of</p>

<p>purpose and the requirement of reporting within 3 calendar days sometimes is not practicable. We suggest that only those incidents which have resulted in warning, serving of Noise Abatement Notice or prosecution by the Noise Control Authority need to be reported immediately and in any case within 3 working days to the relevant manager/director and that other incidents be reported to him/her regularly.</p>	<p>noise offences. We believe the inclusion of incidents that have generated or may generate complaints, or may lead to violations of the NCO is appropriate. To enable the corporate management to implement preventive measures, it is reasonable to bring potential noise problems to their attention. The reporting of Noise Incidents within 3 calendar days is also a good and realistic practice to demonstrate the Top Management's commitment in preventing violation of the NCO. The Top Management can spend more time to deal with the Noise Incidents as they consider necessary.</p>
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