



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

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LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2543 0486)

25 August 2010

Mr Stephen SUI
Commissioner for Rehabilitation
Labour and Welfare Bureau
10/F, Citibank Tower
3 Garden Road, Central
Hong Kong

Dear Mr SUI,

Residential Care Homes (Persons with Disabilities) Bill

We are scrutinizing the legal and drafting aspects of the captioned Bill. We would be obliged for your clarification of the following matters:

Clause 2

It is noted that the disabilities referred to in the definition of "person with disabilities" in the Bill are modelled on the definition of "disability" under the Disability Discrimination Ordinance (Cap. 487). Please clarify the reason for not including in the Bill the disabilities of "the presence in the body of organisms capable of causing disease or illness" and "a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction" which are included in the definition of "disability" under Cap. 487.

Clauses 7 and 11

It seems that clauses 7 and 11 do not preclude applications for licences and certificates of exemption by bodies corporate or partnerships. Does this reflect the Administration's intention? If so, how will the Director assess whether a corporate/partnership applicant is a fit person for the purpose of clause 7(3)(a)? Is it necessary to make provisions similar to section 7 of the Karaoke Establishments Ordinance (Cap. 573)?

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Clause 10

If it is intended that applicants for licences may be made by a body corporate or partnership, please consider whether the modes of service of orders made by the Director as provided in clause 10(3) are adequate. In this regard, you may make reference to section 19 of the Karaoke Establishments Ordinance (Cap. 573).

Clause 13

Under clause 13 the applicant for a certificate of exemption for residential care home for persons with disabilities (PWDs) will not be offered an opportunity to make written representations to the Director relating to the Director's intended refusal of his/her application. However, under clause 10 the applicants for issue/renewal of licence for residential care homes for PWDs are offered such an opportunity on the intended refusal of issue/renewal of the licences. In this regard, kindly let us know the reason(s) and/or justification(s) for proposing different treatments to these two groups of persons/applicants.

Clause 14

In Part 5 of the Bill (clause 14), we note that there is no provision specifying whether a decision or an order of the Director which is subject to an appeal to the Administrative Appeals Board should be suspended in its operation as from the day on which the appeal is made until such appeal is disposed of. There is also no provision of similar effect in the Administrative Appeals Board Ordinance (Cap. 442). As you are aware, a provision of this effect (i.e. section 12) is provided in the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) in relation to the Director's decision to cancel, suspend or refuse to renew the licence. Please consider whether it is necessary to include a similar provision in this Bill to avoid the possible uncertainties over the status and effect of the decision or order under appeal.

Clause 16

It is noted that while the power of entry and inspection under clause 16(2)(a) may be exercised in respect of any residential care home for PWDs or "any premises which the specified person has reason to suspect are used as or for the purposes of a residential care homes for PWDs" (the suspected premises), it is not clear whether the powers proposed in clause 16(2)(b) to (d) are also applicable to the suspected premises as no reference to the suspected premises is made in subclauses (2)(b) to (d). Please consider if it is necessary to make it clear in subclauses (2)(b) to (d) that the powers under those subclauses are also applicable to the suspected premises.

Clause 19

- (a) Is there any reason for proposing that an order for cessation of use of premises as residential care homes for PWDs be made by the Director instead of the courts? It is noted that in the existing Ordinances which regulate premises such as club-houses and karaoke establishments, the power to make such kind of orders is vested in the District Court. Please refer to section 20 of the Clubs (Safety of Premises) Ordinance (Cap. 376) and section 16 of the Karaoke Establishments Ordinance (Cap. 573). Should the same approach be adopted in this Bill?
- (b) Can the person affected by the order issued under clause 19 appeal against the order? Is it necessary to make provisions to cover this matter in the Bill?

Consequential and related amendments- proposed amendments to the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)

- (a) It is noted that apart from introducing consequential amendments to Cap. 459, a substantive amendment is proposed under which the avenue of appeal is to be changed from the Appeal Board constituted under section 14 of Cap. 459 to the Administrative Appeals Board under the Administrative Appeals Board Ordinance (Cap. 442). What is the reason for proposing such change? Under the existing section 12(2) of Cap. 459, the Director's decision to cancel, suspend or refuse to renew a licence shall be suspended in its operation on the making of the appeal until such appeal is disposed of, withdrawn or abandoned. There is, however, no such provision in Cap. 442. Please clarify if the existing section 12(2) of Cap. 459 will continue to apply to pending appeals notwithstanding the commencement of the new section 12 of Cap. 459. Should transitional provisions be made in this respect?
- (b) While clause 17 of the Bill proposes that enforcement officers are exempted from incurring personal liabilities arising from the acts or omissions in the inspection of residential care homes for PWDs, no similar exemption is proposed for enforcement officers performing duties under Cap. 459. Given the similar nature of the licensing schemes for residential care homes for PWDs and elderly persons, would the Administration consider including in the proposed amendments to Cap. 459 a provision similar to clause 17?

It is appreciated that your reply in both languages could reach us as soon as practicable, preferably before 17 September 2010.

Yours sincerely,



(YICK Wing-kin)
Assistant Legal Adviser

cc. DoJ (Attn.: Ms Lonnie NG, Sr Govt Counsel (By Fax: 2845 2215)
Miss Elaine NG, Govt Counsel (By Fax: 2869 1302))

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