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***Remedial Order [Clause 19 of the Bill – new section 20]***

(20) *Please also consider if it is necessary to provide that an enforcement officer may enter any place at a reasonable time (instead of at any time) if no time is specified in the remedial order made by the District Court for effecting the closure of premises under the new section 20(6)(a).*

36. Please see our response in paragraph 35 above.

(21) *A "responsible person" (as referred to in the new section 20(5)(c), (9)(b) and (10)) is defined in the new section 20(11) to mean a person who operates, keeps, manages or otherwise has control of the hotel or guesthouse. Please clarify why the landlord and tenant of the hotel or guesthouse are excluded from the definition.*

37. The new section 20(11) requires the person who operates, keeps, manages or otherwise has control of the hotel or guesthouse (“the operator”) to pay back debt due to the Government for expenses incurred because of the work executed to give effect to the remedial order (e.g. to remove the danger to guests in the hotel or guesthouse). The expenses incurred should be related to the operation of the licensed hotel or guesthouse by the operator. As the landlord or tenant may not be involved in the operation of the licensed hotel or guesthouse, it may be unfair to require them to be responsible for the payment of the expenses. That said, it is of course up to the operator to consider whether to pursue against the landlord or tenant in respect of the expenses incurred having regard to their contractual arrangement by reference to its tenancy agreement with the landlord or tenant.

***Closure Order [Clause 20 of the Bill – new section 20A]***

(22) *Please consider if it is necessary to provide that no person shall occupy the premises to which a closure order relates during the continuance in force of the order.*

38. The new section 21(6)(j) has specified that it is an offence for a person to enter or be in the premises when a closure order is in force without reasonable excuse.

***Issue of Warrant to bailiff after Making Closure Order [Clause 20 of the Bill – new section 20B]***

(23) *Please consider if it is necessary to provide that a bailiff executing the*

*warrant may enter any place at a reasonable time (instead of at any time), if no time is specified in the warrant for effecting the closure of the premises under the new section 20B(2)(a).*

39. Please see our response in paragraph 35 above.

***Rescission of Closure Order on Application [Clause 20 of the Bill – new section 20C]***

*(24) Under the new section 20C(5), the court or magistrate may rescind the closure order if the court or magistrate is satisfied that (a) at the time the applicant became a bona fide purchaser of the premises, the applicant did not know of the charge mentioned in subsection 2(b) or the appeal mentioned in subsection (3)(b), and (b) having regard to all the circumstances, it would be unjust for the applicant's interest in the premises to be affected by the order.*

*(a) Please clarify whether it is necessary for the applicant to show that he could not with reasonable diligence and inquiries discover the existence of the charge or the appeal before the applicant could be said to have no knowledge of the charge or the appeal.*

40. Under the new section 20C(5)(a), the applicant should convince the court that the applicant did not know of the charge or the appeal. That the applicant could not with reasonable diligence and inquiries discover the existence of the charge or the appeal may be one of the applicant's arguments, but this should not be considered as a decisive and/or the only acceptable argument.

*(b) Please explain the circumstances that the court or magistrate may take into account in determining that it would be unjust for the applicant's interest in the premises to be affected by the order as provided for in the new section 20C(5)(b).*

41. The new section 20C(5)(b) aims to protect the interests of an "interested person" as defined in the new section 20C(2) and (3). The court or magistrate will take into account the circumstances of each individual case when considering whether it would be unjust for the applicant's interest in the premises to be affected by the closure order. What constitutes "unjust" will be case-specific, and hence the legislation does not seek to limit or restrict the court's or magistrate's discretion by setting out what should be regarded as "unjust".

***Rescission of Closure Order on Successful Appeal against Conviction [Clause 20 of the Bill – new section 20B]***

*(25) Under the new section 20D(2)(b), the appellate court may decide not to rescind the closure order if it substitutes a verdict of guilty of another offence*

*by reference to which the order could, if the appellant had originally been convicted of that other offence, have been made. Please clarify the meaning of "another offence". Does it refer to another offence under Cap. 349? If "another offence" refers to an offence other than under the new section 5 or 5A, what are the considerations that the appellate court would take into account in determining that the closure order would not be rescinded?*

42. The "another offence" as mentioned in the new section 20D(2)(b) refers to "another offence that the order could have been made". As it is stated in the new section 20A, a closure order may be made only for convictions of an offence under the new section 5 or 5A. In other words, "another offence" in the new section 20D(2)(b) refers to "another offence" under the new section 5 or 5A of Cap. 349.

***Variation of Conditions of Suspension Order [Clause 20 of the Bill – new section 20F]***

*(26) Under the new section 20F(1), if a suspension order is subject to a condition, an affected person may apply in writing to a court or magistrate for a variation of the condition. "Affected person" is defined under the new section 20F(5)(b) to include a person who would be held liable if a condition of the suspension order is breached. Please clarify who this person would be.*

43. The purpose of the new section 20F(5)(b) is to cater for special cases and help protect the rights of a person who would be held liable if a condition of the suspension order is breached. Who such a person would be will depend on the actual terms of the condition concerned. In most circumstances, an "affected person" would be the mortgagee, chargee or the occupier of the premises.

***Order and Notice to be Registered in Land Registry [Clause 20 of the Bill – new section 20J]***

*(27) Under the new section 20J(5), a copy of an order or a notice required to be registered in the Land Registry under the new section 20J is taken to be an instrument affecting land, but a failure to register the copy of the order or the notice does not affect its validity as against any person.*

*(a) Please clarify whether the order which affects land but is not registered would be void as against a subsequent bona fide purchaser in good faith for valuable consideration.*

*(b) If your answer in (a) above is in the affirmative, please clarify whether the order (which is not registered in the Land Registry) to which the premises is subject would cease to have effect.*



(c) *Subject to your answer in (b) above, please clarify in what ways the failure to register the order does not affect its validity as against any person.*

44. It is expressly provided in the new section 20J(5) that a failure to register a copy of the order or the notice does not affect the validity of the order or notice as against any person. Hence, the order or notice would not be void as against any person, i.e. including a subsequent bona fide purchaser. In the case of a closure order, if a subsequent bona fide purchaser considers it unjust to be bound by the closure order, the purchaser may apply for rescission of the closure order under the new section 20C.

***Offences in relation to Certificates of Exemption and Licences [Clause 23 of the Bill – section 21 amended]***

(28) *The amended section 21(6)(a) provides that a person commits an offence if the person in, or in connection with, an application under Cap. 349, makes a statement (whether oral or written) or furnishes any information that is false in a material particular; and that the person knows or reasonably ought to know is false in that material particular (clause 23(6)). Please clarify whether the amended section 21(6)(a) applies to the giving of evidence or production of document(s) by a witness summoned to appear before an appeal board under the new section 17D(8)(c), and if not, please consider if it is necessary to provide for similar legal consequences to that effect.*

45. The new section 21(6)(a) is not intended to apply to the giving of false evidence or the production of false document(s) by a witness before an appeal board. Such a conduct however may be certified as an alleged contempt as provided in the new section 17G.

***Liability of Partners, Office Holders, etc. of Unincorporated Bodies [Clause 25 of the Bill – new section 21C]***

(29) *Please clarify the meaning of "an office holder" as referred to in the new section 21C(3)(c) and (4)(b).*

46. Please see our response in paragraphs 20 and 21 above.

***Renewal under Section 12C [Clause 28 of the Bill – section 6 of new Schedule]***

(30) *Please explain to members the effect of section 6(1) of the new Schedule and clarify the relevant part(s) of the new Part 4A (which includes the new licensing requirements for the issue, renewal, cancellation etc of the hotel licence or guesthouse licence and their related matters) that would not be applicable to the renewal of an old regime licence.*

47. Under section 3(1)(b) of the new Schedule, the former Part IV applies in relation to an old regime licence. Section 6(1) of the new Schedule enables the renewal of an old regime licence under the new section 12C by stating that the new Part 4A, in so far as it relates to the renewal of the licence would be applicable to that old regime licence for the purposes of the renewal. However, as the licence is, in other respects, still an old regime licence, some parts of the new Part 4A relating to matters other than renewal that are applicable to a new regime licence should not apply in relation to the old regime licence. Section 6(1)(a), (b) and (c) aims to exclude such parts (e.g. the new section 12O on the Authority's power to request documents, information and legal advice; and the new section 12P on the duty of Authority to give notices of certain intentions or decisions).

***Further Particulars [Clause 31 of the Bill – new regulation 5 of Cap. 349A]***

*(31) Under the new regulation 5(5), the relevant authority may, on application, direct that the requested party need not comply with subregulation (3) in respect of a requested particular ("exempted particular") if it is satisfied that the request for the exempted particular was unreasonable or reasonable grounds exist for not giving the exempted particular. Please clarify what are the circumstances under which the request for particulars would be considered as unreasonable, and provide illustration as to what are the reasonable grounds for not giving the requested particular.*

48. This provision is introduced to cater for situations in which the requested party does not have the requested information. Under the new regulation 5(5), what amounts to "reasonable grounds" is to be considered against the context having regard to the fact and circumstances of each individual case, and the legislation does not seek to limit or restrict the relevant authority's discretion by setting out what should be regarded as "reasonable grounds".

***Failure of Appellant to Attend Hearing [Clause 34 of the Bill – new regulation 12 of Cap. 349A]***

*(32) If the appellant is a body corporate, please clarify whether the appellant is to be regarded as attending the hearing in person if it participates through any of its directors, and if so, please consider providing for this in the Bill.*

49. A body corporate is a legal person who has to act through an authorised person. It is our policy intent to regard a body corporate as attending an appeal hearing in person if one of its directors attends the hearing as its authorised representative.

***Failure of Appellant to Serve Notice of Appeal, etc. [Clause 34 of the Bill – new regulation 13 of Cap. 349A]***

(33) *Please consider if it is necessary to provide for an exception of reasonable defence for the appellant in relation to his non-compliance with the new regulation 4(1) (service of notice of appeal and other accompanying documents) or 5(3) (giving requested particulars) as a ground for the appeal board not to dismiss the appeal under the new regulation 13.*

50. It is not necessary to provide for an exception because under the new regulation 13, the appeal board has the discretion on how to deal with non-compliance of the new regulations 4(1) and 5(3) and it is not mandatory for the appeal board to dismiss the appeal.

***Service of Notices and Other Documents [Clause 36 of the Bill – new regulation 15 Cap. 349A]***

(34) *Under the new regulation 15(b), a notice or any other document permitted or required to be served on a person under Cap. 349A may be sent to the person by registered post at the person's address last known to the sender.*

(a) *If the person to be served with the notice or any other document is a body corporate, please clarify whether the last known address includes its registered office or a place at which the body corporate carries on business*

51. In the general context of civil procedure in court, according to the Hong Kong Civil Procedure 2018, service to a “last known” address means the address known to the plaintiff. Hence, it is the knowledge of the plaintiff that matters. If a person to be served with the notice is a body corporate, the last known address may include its registered office or a place at which the body corporate carries on business, depending on what is known to the plaintiff. The essence is a location where the person/the body corporate may be reached or where contact or communication in written form could be established.

52. In the context of an appeal board under Cap. 349, the new regulation 15(b) of Cap. 349A, which refers to the address “last known to the sender”, reflects the similar approach. In the absence of other information known to the sender, the last known address of an appellant could be the address provided by the appellant in the notice of appeal, while the last known address of a witness could be the address provided in the application for summons to witness submitted by a party to an appeal.

(b) *Regarding the mode of service by registered post, please clarify whether the notice or the document is taken, in the absence of*

*evidence to the contrary, as having been served or given on the second day after the day on which it was posted, and if so, please consider providing this in the Bill.*

53. Regarding the service of notices and other documents by registered post under the new regulation 15(b) of Cap. 349A, section 8 of the Interpretation and General Clauses Ordinance (Cap. 1) provides, among other matters, that unless the contrary is proved, the service of notices and documents by registered post shall be deemed to have been effected at the time at which the notice or document would be delivered in the ordinary course of post. It is therefore unnecessary to make further provisions in the Bill.

***Failure of Appellant to Serve Notice of Appeal, etc. [Clause 34 of the Bill – new regulation 13 of Cap. 349A]***

*(35) The new regulation 16 provides that the Convenor may specify a form to be used for the purposes of any matter provided for under Cap. 349A. Unlike the existing forms (in the Schedule to Cap. 349A) which form part of Cap. 349A, please let members know the rationale for empowering the Convenor to specify forms, instead of providing for these forms by way of regulation under Cap. 349A.*

54. The forms may be modified from time to time having regard to practical experience. Specifying the forms under Cap. 349A does not allow flexibility for making immediate enhancement to the forms.

Yours sincerely,



(Miss Grace Li)  
for Director of Home Affairs

cc. Department of Justice (Attn: Mr Peter Sze)  
Clerk to Bills Committee