The Administration's response to concerns raised on the FIU (Medical Examinations) Regulation at the meeting of the Subcommittee on Regulations relating to Occupational Safety and Health on 27 July 1999

(a) **The reasons for not specifying in the proposed Regulation the employer's responsibility to re-deploy the worker to another post if the latter is found medically unfit for his present occupation.**

A worker who is found medically unfit for employment in a designated occupation can be redeployed to another job where the hazards concerned are not present. Such redeployment arrangement may entail a change of wages and working conditions, and subject to the experience and skills of the worker as well as the availability of a suitable job. In this regard, mutual agreement between the worker and his employer on the redeployment arrangements is required as in all other situations involving a change of job. However, it would not be reasonable to require an employer to arrange a job for an employee in law since such provisions are not enforceable. It would be difficult to determine, for example, whether a suitable job does exist. Problems could also arise as to whether the employee finds the job acceptable. For this reason, the Administration considers that specifying in the proposed Regulation the employer's responsibility to redeploy such a worker to another post might create more problems for both sides than offering additional employment protection to the worker concerned. Nevertheless, in a guidance note to be published by the Labour Department, employers will be advised on what to do in these situations as a good management practice.

(b) **Whether suspension or termination of employment of a worker who is suffering from a certain degree or type of disability is in contravention of the Disability Discrimination Ordinance (DDO)**

The paramount consideration of the Administration in making the proposed Regulation is the protection of the health and safety of the employee. The proposed Regulation is a statutory requirement deemed by the Administration to be necessary to expand the scope of mandatory medical examinations to cover some 195,000 workers who are exposed to hazardous substances and physical agents at work so as to protect their safety and health. Under section 10 of the proposed Regulation, an examining appointed medical practitioner will make a recommendation as

to any condition and limitations or suspension from employment, as per subsections (a), (b), (c) or (d), ONLY if he "is of opinion that the interests of the health and safety of the employee being the subject of the report so require".

On the other hand, section 57(1) of the Disability Discrimination Ordinance (DDO) creates an exception from the prohibitions in Parts III and V of the Ordinance for anything done in compliance with a statutory requirement for the protection of persons with a disability. Hence the Administration is of the view that the suspension or termination of employment within the context of the proposed Regulation would not contravene the DDO.

(c) **Whether the Regulations could provide similar provisions on conciliation, reinstatement and remedies as the DDO**

Comprehensive appeal procedures are already provided under section 13 of the proposed Regulation, i.e. an avenue of appeal to an Appeal Board comprising 2 medical practitioners and Occupational Health personnel. If, having undertaken these procedures, a worker remains aggrieved, helps under Part VIII of the DDO, in particular sections 79 to 81 still remain available to him, namely, assistance in obtaining information, assistance by way of conciliation and other than by way of conciliation. Part VIII of the DDO remains applicable notwithstanding the exception created in section 57(1). We are therefore of the view that similar provisions on reconciliation, reinstatement and remedies as in the DDO are not necessary in the proposed Regulation.

(d) **Recent statistics on noise levels in other establishments such as western restaurants and karaoke, and the reasons for not including them for regulation.**

In a recent survey by the Labour Department on the noise level of kitchens in 20 western-style restaurants, it was found that the daily personal noise exposure of workers ranged from 67dB(A) to 83 dB(A). This assessment had taken into account noise levels during both peak and non-peak hours, and the work pattern of kitchen workers. As the results reveal that the noise exposure of these workers is below 85dB(A), it is unlikely that such exposure will cause any significant hearing impairment.

Notwithstanding the above, as kitchens are covered by the Factories and Industrial Undertakings Ordinance, should any worker in kitchens of

western-style restaurants be exposed to excessive noise, i.e. a daily personal noise exposure of 85dB(A) and above, he will be required to undergo medical examinations under the proposed Regulation, but generally speaking, such need is unlikely because of the way food is prepared or cooked .

On the other hand, a karaoke establishment is not an industrial undertaking as defined in the Factories and Industrial Undertakings Ordinance. For this reason, workers in these establishments will not be covered by the proposed Regulation. It may be relevant to note that the noise level in each karaoke room varies and is adjustable.

(e) **The administrative arrangements for the medical examinations of construction workers, as well as the issue, production and replacement of such certificates.**

In consultation with the relevant parties and subject to the final version of the proposed Regulation, the Construction Industry Training Authority (CITA) is now working on the administrative arrangements for the medical examinations of construction workers. The initial proposal is that the CITA will appoint a list of service providers, by tender, which will employ appointed medical practitioners for providing the required medical examination service. On referring a construction worker for medical examination, a proprietor will have to seek the principal contractor's endorsement of the employment status of that worker, and specify on a request form the worker's job title and recommend the types of medical examination required by reference to the guide to be published by the Labour Department. The examination requested will be verified by the appointed medical practitioner when he examines the worker and goes through his employment history. On completion of an examination, the appointed medical practitioner will furnish a medical examination report to the proprietor, with a copy to the worker concerned and the CITA. The worker will not be charged for the examination fee which will be settled, in accordance with a package rate, between the appointed medical practitioner and the CITA.

The format of the medical examination report will be specified by the Commissioner for Labour. A replacement copy of a medical examination report issued by an appointed medical practitioner may be obtained from the doctor, the proprietor concerned or the CITA.

(f) **The Administration to consider incorporating in the proposed Regulation**:

i) the scope of recommendations to be included in the medical reports

The scope of the recommendation to be made by an appointed medical practitioner in a medical examination report is already governed by section 10 of the proposed Regulation. The appointed medical practitioner may recommend that the worker concerned either a) continues to be employed in his present occupation subject to such conditions and limitations as may be specified; or b) be temporarily suspended from that occupation for a specified period or until certified medically fit again; or c) be permanently suspended from that occupation. We do not envisage many cases of the last type of recommendation which implies that the workers' occupational disease(s) has reached the final stages or their health impairment is rapidly deteriorating despite adequate protection, particularly in young workers. Generally speaking, workers suffering from hearing impairment need not be permanently suspended from their current occupation but will be recommended to wear ear-muffs or plugs while at work.

Insofar as conditions or limitations are concerned, these would be confined mainly to the personal matters of the worker concerned, such as the use of personal protective equipment, personal hygiene, personal work practice and further laboratory tests, rather than specific environmental improvement measures. Guidance on this aspect will be provided by the Labour Department to appointed medical practitioners in a guide book to be published later.

ii) **guidelines for proprietors to act in accordance with the recommendations**

The Labour Department will publish a guidance note on the proposed Regulation to assist all duty-holders, i.e. the contractors, proprietors and workers, in discharging their obligations.

iii) **right of appeal by the employer**

The proposed Regulation will be amended to provide that a proprietor who is aggrieved by a recommendation made by an appointed medical practitioner in respect of his employee may also appeal to an Appeal Board to be appointed by the Commissioner for Labour. However, we must stress that the matter to be considered by the Appeal Board should relate to the recommendation only and not other labour relations matters.