

LEGISLATIVE COUNCIL BRIEF

Places of Public Entertainment Ordinance (Cap.172)

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) REGULATION 2006

INTRODUCTION

 A
The Secretary for Home Affairs, in exercise of the power under section 7 of the Places of Public Entertainment Ordinance (Cap.172), made the Places of Public Entertainment (Amendment) Regulation 2006 (the Amendment Regulation) at **Annex A** to introduce a provisional licensing regime for cinemas/ theatres. The proposal aims to expedite the licensing process for cinemas/ theatres.

JUSTIFICATIONS

Background

2. At present, any person who wishes to keep or use premises specially designed as a theatre or cinema shall apply to the licensing authority¹ for a licence under the Places of Public Entertainment Regulations (Cap.172 sub.leg.A). The Food and Environmental Hygiene Department (FEHD) will issue the licence to the applicant after –

- (a) the applicant has submitted certificates from Authorized Person (AP)/ Registered Structural Engineer (RSE) and registered

¹ The Director of Food and Environmental Hygiene is the licensing authority authorized by the Secretary for Home Affairs.

contractors² certifying compliance of the respective requirements and other supporting documents to the departments concerned; and

- (b) all relevant departments have conducted site inspections and confirmed that all the imposed requirements have been complied with.

Experience has revealed that the above processes usually take a few months because the respective departments will not confirm full compliance even if there are minor deviations from the final proposed layout plans (e.g. location/ size of a door) or the applicant cannot produce full set of certificates from the manufacturer/ laboratories on flammability standard of the materials used as false ceilings, partitions, or wall furnishings, etc.

3. In November 2004, the Subgroup on Business Facilitation of the then Economic and Employment Council (EEC)³ commissioned a review on cinema licensing. The review recommended a series of measures to speed up the licensing process which were endorsed by the then EEC in June 2005. A major recommendation of the review is the introduction of provisional licences for cinemas/ theatres. Based on the findings of a case sampling exercise (relevant findings at **Annex B**), the review estimated that the time required for getting a provisional licence could be roughly five months shorter than that for getting a full licence.

B

² The AP/ RSE are registered under the Buildings Ordinance (Cap.123) and recognized for certifying compliance with requirements in respect of building safety under the ordinance. The registered contractors are registered specialist contractors (ventilation works) under the Buildings Ordinance and fire service installation contractors registered under the Fire Service (Installation Contractors) Regulations (Cap.95 sub.leg.A). They are recognized for certifying compliance with the requirements with regard to ventilating system and fire service installations and equipment respectively under the respective ordinances.

³ The EEC was disbanded in December 2005 with the establishment of the Committee on Economic Development and Economic Co-operation with the Mainland under the Commission on Strategic Development. The Business Facilitation Advisory Committee was set up in January 2006 to take forward the business facilitation efforts of the former EEC.

The Proposal

4. To allow cinemas/ theatres to commence business as soon as renovation is completed without compromising public safety, it is proposed that an applicant for a cinema/ theatre licence may apply for a provisional cinema/ theatre licence at the same time; and FEHD will issue a provisional licence to the applicant as soon as the applicant submits the required certifications from AP/ RSE and registered contractors certifying compliance of the requirements for the issue of a provisional licence. With the provisional licence, a cinema/ theatre can legally commence business, pending confirmation of compliance of the requirements for the issue of a full licence.

5. As far as public safety is concerned, the proposal will not have any adverse impact because AP/ RSE and registered contractors are required to certify compliance of all the essential safety requirements. These professionals are registered under the respective ordinances² and subject to disciplinary actions if they produced false or misleading certificates. Moreover, the licensing authority may cancel any licence including a provisional licence if it is satisfied that any false or misleading statement or information was made or furnished by an applicant in connection with the application for the grant or renewal of the licence.

6. After the issue of the provisional licence, departments concerned will conduct site inspections to confirm full compliance of the requirements. If non-compliance of the requirements is found, the applicant will be asked to take necessary actions to rectify such non-compliance. If there is any deviation from the requirements for the issue of a provisional licence that affects public safety (e.g. unauthorized building works, installation of the ventilating and sprinkler systems does not conform to the required safety standards), the applicant will be asked to rectify the deviation within a specified period, failing which the provisional licence will be cancelled. FEHD will only issue a full licence to the applicant after the respective departments have confirmed full compliance with all the imposed requirements.

7. The provisional licence will be valid for six months which provides a reasonable period of time for the departments concerned to

complete all necessary inspection procedures and for the applicant to comply with all requirements. To prevent abuse, a provisional licence may be renewed only once. The renewal approval will only be granted on an exceptional basis if the need for renewal is due to factors beyond the reasonable control of the applicant and his/ her contractors/ agents.

8. The grant and renewal of a provisional licence will be charged at \$2,680 and \$2,420 respectively to cover the administrative costs.

THE AMENDMENT REGULATION

9. The Amendment Regulation will -

- (a) amend the definition of “licence” in regulation 2 to include a provisional licence;
- (b) add a new regulation 3A to provide for the grant and validity of a provisional licence;
- (c) add a new regulation 3B to provide for the renewal of a provisional licence. To prevent abuse, a provisional licence can only be renewed once and the need for renewal has to be due to factors beyond the reasonable control of the applicant and his contractors/ agents;
- (d) add a new regulation 3C to provide for the fees for the grant and renewal of a provisional licence, as well as the fee payable for the issue of a duplicate of or any amendment to a provisional licence;
- (e) add a new regulation 3D to provide for the mechanism for appeal against the licensing authority’s decision to refuse to grant or renew a provisional licence, which is the same as that for an appeal against the licensing authority’s decision to refuse to grant or renew a full licence;

- (f) amend regulation 171(a) so that the penalty for breach of licence conditions and provisions in the Regulations will also apply to cases involving a provisional licence; and
- (g) amend regulation 173(1) to empower the licensing authority to cancel any licence, including a provisional licence, if an applicant has made or furnished any false or misleading statement or information in connection with the application for the grant or renewal of the licence.

LEGISLATIVE TIMETABLE

10. The legislative timetable will be as follows -

Publication in the Gazette	6 October 2006
Tabling at the Legislative Council	11 October 2006
Commencement of operation of the Amendment Regulation	30 November 2006

IMPLICATIONS OF THE PROPOSAL

11. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of the Ordinance or the Regulations. There is no civil service, environmental or sustainability implications. The proposal will facilitate business by enabling cinemas/ theatres to commence business immediately after completion of renovation with relevant certification by the AP/RSE and registered contractors. It will not generate significant government revenue. The departments concerned will absorb the additional resource requirements, if any, arising from the implementation of the proposal.

PUBLIC CONSULTATION

12. We have consulted the Hong Kong Theatres Association (the Association) on the proposed provisional licensing regime including the detailed procedures for the application and grant of provisional licences. The Association supports the proposal and would like to see its early implementation. We also consulted the Legislative Council Panel on Home Affairs (the Panel) at its meeting on 17 July 2006. The Panel supported the proposal.

PUBLICITY

13. A press release will be issued on 6 October 2006. A spokesman will be made available to answer media enquiries.

ENQUIRIES

14. Any enquiry on this brief can be addressed to Mr. Anthony LI, Principal Assistant Secretary for Home Affairs (Tel.: 2835 1373).

Home Affairs Bureau
October 2006

**PLACES OF PUBLIC ENTERTAINMENT
(AMENDMENT) REGULATION 2006**

(Made by the Secretary for Home Affairs under section 7 of the Places of Public Entertainment Ordinance (Cap. 172))

1. Commencement

This Regulation shall come into operation on 30 November 2006.

2. Interpretation

(1) Regulation 2 of the Places of Public Entertainment Regulations (Cap. 172 sub. leg. A) is amended by repealing the definition of “licence” and substituting –

““licence” (牌照) means a licence granted or renewed under regulation 3, 3A, 3B or 162;”.

(2) Regulation 2 is amended, in the Chinese text, in the definition of “激光設備”, by repealing “。” and substituting “;”.

(3) Regulation 2 is amended by adding –

““provisional licence” (臨時牌照) means a licence granted under regulation 3A or renewed under regulation 3B;”.

3. Licences

Regulation 3 is amended by adding –

“(5) For the avoidance of doubt, this regulation does not apply to an application for the grant or renewal of a provisional licence.”.

4. Regulations added

The following are added –

“3A. Grant of provisional licence

(1) Where an application for the grant of a licence is made under regulation 3(1)(a), the licensing authority may grant a provisional

licence permitting the applicant to keep or use the premises to which the application relates as a theatre or cinema.

(2) The licensing authority shall not grant a provisional licence under paragraph (1) unless –

- (a) the licensing authority is satisfied that the applicant has complied with the requirements imposed by it and the following persons in respect of the grant of the provisional licence –
 - (i) the Director of Fire Services;
 - (ii) (A) in case the application relates to any premises which are under the control of the Housing Authority, the Director of Housing; or
(B) in case the application relates to any other premises, the Building Authority; and
 - (iii) in case the application relates to any premises in which laser equipment is, or is proposed to be, installed, the Director of Electrical and Mechanical Services; and
- (b) where the application is in respect of any premises in which a fixed electrical installation is, or is to be, installed, the licensing authority has received from the applicant –
 - (i) in case the installation is a new one, a copy of a work completion certificate issued both as regards the installation and for the purposes of regulation 19 of the

Electricity (Wiring) Regulations (Cap. 406 sub. leg. E); or

- (ii) in case the installation is an existing one, a copy of a periodic test certificate issued both as regards the installation and for the purposes of regulation 20 of those Regulations.

(3) A provisional licence granted in respect of any premises is valid until –

- (a) the expiration of a period of 6 months from and including the date of its issue or of such lesser period as may be indicated in the provisional licence; or
- (b) the licensing authority grants a licence under regulation 3(2)(c) in respect of the premises,

whichever occurs first.

3B. Renewal of provisional licence

(1) A provisional licence may, on one occasion only, be renewed at the absolute discretion of the licensing authority.

(2) A renewed provisional licence is valid for a further period of 6 months from and including the date of its renewal or for such lesser period as may be indicated in the provisional licence.

3C. Fees for provisional licence

(1) The fees payable for the grant and renewal of a provisional licence are \$2,680 and \$2,420 respectively.

(2) The fee payable for the issue of a duplicate of or any amendment to a provisional licence is the same as that payable for the issue of a duplicate of or any amendment to a licence granted or renewed under regulation 3(2)(c).

3D. Appeal against refusal to grant or renew provisional licence

(1) Where the licensing authority refuses to grant or renew a provisional licence, it shall notify the applicant in writing of the refusal and send the notification to the applicant by registered post.

(2) The applicant under paragraph (1) may, within 28 days after the date of the receipt by him of such notification, appeal to the Municipal Services Appeals Board as regards the refusal.”.

5. General penalty

Regulation 171(a) is amended by repealing “regulation 3” and substituting “regulation 3, 3A or 3B”.

6. Cancellation of licence

(1) Regulation 173(1) is repealed and the following substituted –

“(1) The licensing authority may cancel any licence without payment of any compensation if it is satisfied that –

- (a) any of the conditions of the licence has not been complied with;
- (b) there has been disorder at the premises to which the licence relates; or
- (c) any false or misleading statement or information was made or furnished by an applicant in connection with the application for the grant or renewal of the licence.”.

(2) Regulation 173 is amended by adding –

“(2A) Any holder of a licence who continues the performance of any public entertainment at the premises to which the licence relates after the receipt of a notification of cancellation

under paragraph (2)(a) relating to the licence commits an offence and is liable upon summary conviction to a fine at level 2.”.

7. Power of licensing authority to reduce or waive fees

Regulation 178(1)(a) is amended, in the Chinese text, by repealing “政務總署署長” and substituting “民政事務總署署長”.

Secretary for Home Affairs

25 September 2006

Explanatory Note

Under the Places of Public Entertainment Regulations (Cap. 172 sub. leg. A), any person who desires to keep or use premises specially designed as a theatre or cinema shall apply to the licensing authority for a licence. A licence will be granted subject to compliance with certain requirements. This Regulation introduces a provisional licensing regime to provide a more business-friendly environment for theatre or cinema operators. Under the new regime, a provisional licence will be granted if an applicant complies with some requirements imposed by certain Government departments.

2. This Regulation provides for the grant and renewal of a provisional licence, the fees payable for the grant and renewal of a provisional licence, the appeal against refusal to grant or renew a provisional licence and the penalty for failing to comply with the conditions of a provisional licence. It also empowers the licensing authority to cancel a licence (whether provisional or not) if an

applicant has made or furnished any false or misleading statement or information in connection with the application for the grant or renewal of the licence.

**Review of cinema licensing –
Findings of the case sampling exercise
on time taken to obtain a cinema licence**

- The exercise covered eight new applications for cinema licences received from March 1999 to February 2004.
- It was found that 6 to 15.5 months (average 10.4 months) were taken to get a cinema licence (from submission of application to issue of licence).
- It was also found that the time elapsed from completion of fitting-out works to issue of a cinema licence ranged from 2.6 to 9.7 months (average 5.4 months).
- Assuming that the provisional licensing regime had been in place, applicants should have complied with all essential safety requirements by the time of the first compliance inspection. They should then be eligible for the provisional licences on the basis of certification by recognized professionals. It was therefore estimated that the time required for getting a provisional licence will be roughly 5 months shorter than that for getting a full licence.