

(TRANSLATION)

**Subcommittee on Places of Public Entertainment
(Exemption) (Amendment) Order 2011**

**Administration's Response to Follow-up Issues Raised at the
Subcommittee Meeting on 2 February 2012**

This paper sets out the Administration's response to the follow-up issues raised by the Subcommittee at its meeting on 2 February 2012 in relation to the various matters on the Places of Public Entertainment Ordinance ("PPEO") (Cap. 172).

Whether the PPEO is applicable only to "delineated places"

2. The definition of "places of public entertainment" in section 2 of the PPEO is –

“(a) **so much of any place**, building, erection or structure, whether temporary or permanent, capable of accommodating the public; and

(b) any vessel,

in or on which a public entertainment is presented or carried on whether on one occasion or more.”

3. “Public entertainment” means “any entertainment within the meaning of this Ordinance to which the general public is admitted with or without payment”, and “entertainment” includes any event, activity or other thing specified in Schedule 1 to the PPEO.

4. As such, in light of the above definitions, the applicability of the PPEO is not restricted by whether or not the place is “delineated”.

Conditions for “place of public entertainment”

5. Section 2 of the PPEO lists out clearly the conditions under which a place would become a “place of public entertainment”. As for the question raised by a member of the Subcommittee at the meeting on 2 February on whether the intention of the keeper or the user of a place over an activity to be carried on at that place should be considered when determining whether a place is a “place of public entertainment”, whether or not an event or activity is “entertainment” for the purposes of the PPEO depends on whether the event or activity meets the definition of “entertainment” in the PPEO. The matters for consideration include the form of the event or the activity, but do not include the intention of the keeper or user in carrying on the event or activity. If an event or activity which is an event or activity specified in Schedule 1 to the PPEO is carried on therein or thereon, depending on evidence, a street or a place may become a “place of public entertainment”.

6. Whether the Government would take prosecution action in respect of a contravention of the PPEO depends on whether the evidence is sufficient to justify the institution and whether the public interest requires a prosecution to be pursued.

Street Drama, Delivery of Speech and Display of an Exhibit without Places of Public Entertainment Licences

7. At the meeting between the Subcommittee and deputations on 2 February, an organization asked whether some specific situations, such as carrying on street performance on a street without a Places of Public Entertainment licence (“PPE licence”), would constitute an offence under the PPEO.

8. To determine whether the activity or act has contravened the PPEO, the starting point is whether that conduct would constitute “entertainment” as stipulated by the PPEO, such as “a concert, opera, ballet, stage performance or other musical, dramatic or theatrical entertainment”. Unless and until a matter has been fully and thoroughly investigated, we should not offer an over-generalized view lightly.

Liability Issues of Unlicensed Keeping or Using of Places of Public Entertainment

9. At the meeting, a member asked which party/parties would be held liable in case of someone keeping or using places of public entertainment without a PPE licence.

10. Under the PPEO, more than one person may be prosecuted when there is a contravention of section 4 of the PPEO. Who may have contravened it and how the contravention can be so proved are matters of evidence.

11. Similarly, it is a matter of evidence and public interest when it comes to be decided which party should be prosecuted for “keeping” or “using” a place of public entertainment.

Whether a PPE licence is required for an election candidate or a person who had declared intention to run in an election to conduct election campaign

12. A member mentioned at the meeting that some of the election candidates might carry out promotional activities on streets, such as singing. The member asked whether such a candidate has to obtain a PPE licence if the activities fall within the scope specified by Schedule 1 to the PPEO.

13. On the example raised by the member, to determine whether “singing” requires a PPE licence depends firstly on whether the act constitutes “entertainment” as defined under the PPEO, such as “a concert, opera, ballet, stage performance or other musical, dramatic or theatrical entertainment”, and secondly, whether the other conditions stipulated under the PPEO, including whether the definitions of “public entertainment” and “place of public entertainment”, are fulfilled.

14. Determining whether a person has contravened the PPEO would depend on whether the evidence gathered by the relevant departments and submitted to the Department of Justice can prove all elements of a contravention of the PPEO, namely, the place in question is a “place of public

entertainment”, the offender “keeps” or “uses” the place, and the offender has not obtained a licence for the activities he/she keeps or uses. The public interest criteria will then be considered in determining whether there should be a prosecution. The political position of the offender and whether or not the activity is of a political nature is not relevant in the assessment of whether or not a person has contravened section 4 of the PPEO.

Whether the scope of “public entertainment” or “place of public entertainment” would be amended by legislative amendments or through exemption

15. We note the comments of members and deputations on the PPEO. However, a legislative amendment involves consideration of a host of factors. We can only reach a conclusion after carefully balancing the needs of the society, the pros and cons. It is premature to comment at this moment on whether the PPEO should be amended.

Whether the PPEO is in conformity with the Basic Law and the Hong Kong Bill of Rights

16. The Basic Law protects various rights and freedoms of the Hong Kong public at the constitutional level. Article 27 of the Basic Law protects the freedoms of expression and of assembly of the public in Hong Kong. Articles 16 and 17 of the Hong Kong Bill of Rights also protect the freedom of speech and assembly.

17. According to the aforementioned provisions and the relevant jurisprudence mentioned below, the freedoms of expression and of assembly is not absolute, and can be subject to restrictions provided by law which are reasonable, proportionate and necessary to achieve legitimate aims such as to ensure public safety, public order and public hygiene, etc.

18. With respect to the PPEO, we would clarify that considerations of public safety, public order and public hygiene inevitably arise when entertainment is carried out in public places. The licensing regime prescribed under the PPEO seeks to ensure that public entertainment is carried out in accordance with the standards prescribed by the Administration according to

the PPEO to achieve the aims of protecting public safety, public order and public hygiene, etc.

19. Applications for keeping or using places of public entertainment, depending on the factual circumstances, may not necessarily engage the issues of freedom of expression and the right to peaceful assembly. Nevertheless, we reiterate that the Government of the Hong Kong Special Administrative Region respects the freedoms of expression and assembly enjoyed by the public in Hong Kong in accordance with Article 27 of the Basic Law and Articles 16 and 17 of the HKBOR, and will endeavour to protect and facilitate the public in exercising these fundamental rights in accordance with the law.

20. In fact, the licensing regime under the PPEO is not directed at the message or content which an event organizer seeks to convey through organizing the event. The licensing authority would consider an application for a PPE licence from the public safety, public order and hygiene etc. perspectives.

21. In *HKSAR v Li Yiu-kee* (ESS 43427/2010) (on appeal), the Magistrate also confirmed that the restriction imposed by s.4 of the PPEO (i.e. shall not use a place of public entertainment without a licence) on the organisers' freedom of expression and right to peaceful assembly is a reasonable, proportionate and necessary restriction. In paragraph 14 of the judgment, the Magistrate remarked,

“The reasons are obvious; an organizer of an event has the duty to maintain order and protect the safety of the audience at the site. If there were no s.4, the organizer of an event, when using a place of public entertainment, would not be subject to the licensing regime and there would be no safeguards on safety, and this would affect public safety and order and may give rise to serious consequences (the Lan Kwai Fong incident that took place on the new year's eve of 1992 is a grave lesson in this regard).”

22. To conclude, even though the licensing regime under the PPEO and an offence under section 4 of the PPEO on the keeping and using of places of public entertainment without a PPE licence may, in some circumstances, constitute a restriction on a Hong Kong resident's freedoms of expression and of assembly, we reiterate that such a restriction is not unconstitutional because –

- (1) it is provided by legislation;
- (2) it is implemented in order to achieve legitimate aims including the protection of public safety, public order and public hygiene; and
- (3) it is reasonable, proportionate and necessary to achieve the legitimate aims.

Home Affairs Bureau
Food and Environmental Hygiene Department

February 2012