

立法會
Legislative Council

LC Paper No. CB(2)2571/99-00

(These minutes have been
seen by the Administration
and cleared with the Chairman)

Ref : CB2/BC/18/99

Bills Committee on Entertainment Special Effects Bill

**Minutes of the meeting
held on Wednesday, 24 May 2000 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Howard YOUNG, JP (Chairman)
Hon Cyd HO Sau-lan
Hon MA Fung-kwok
Hon YEUNG Yiu-chung

Members Absent : Hon David CHU Yu-lin
Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon Timothy FOK Tsun-ting, SBS, JP

Public Officers Attending : Mr Alan SIU
Deputy Secretary for Information Technology and
Broadcasting (2)

Mr Esmond LEE
Acting Commissioner for Television and Entertainment
Licensing

Miss Adeline WONG
Principal Assistant Secretary for Information
Technology and Broadcasting (B)

Miss Miranda NG
Senior Assistant Law Draftsman

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Mr John MAK
Senior Engineer (Special Effects)
Television and Entertainment Licensing Authority

Deputations by : The Hong Kong Academy for Performing Arts
Invitation

Mr Philip SODEN
Associate Director (Operations)

Mr Hugh CHINNICK

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr Stanley MA
Senior Assistant Secretary (2) 6

I. Meeting with representatives of the Hong Kong Academy for Performing Arts (APA)
(Annex to LC Paper No. LS83/99-00 - Submission from APA)

The Chairman welcomed representatives of the APA and the Administration to the meeting.

2. At the invitation of the Chairman, Mr Philip SODEN, Associate Director (Operations) of the APA, said that APA held the following views -

- (a) Pyrotechnic special effects materials (PSEM) were not only used in film and television production, but also in theatrical performances. Special effects operators and venue managers of live performances should possess the special skills and knowledge to handle and discharge the PSEM in theatrical stages under different safety considerations;
- (b) Membership of the Appeal Board Panel should comprise representatives who were experienced in theatrical productions and the use of PSEM in theatrical performances;

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- (c) There should be separate transitional arrangements for training of qualified special effects operators with a theatrical background; and
- (d) In the interest of public safety, the Administration should allow theatrical organizations such as the APA to maintain a licenced store for storage of PSEM on its premises. He pointed out that such arrangement would facilitate proper storage of PSEM in suitable stores and reduce the potential risks arising from requiring special effects operators to bring the PSEM to the premises.

3. Mr Hugh CHINNICK of the APA echoed the views of Mr SODEN and stressed the need for a different set of safety requirements for the special effects operators in theatrical productions because different techniques were involved.

4. The Chairman asked whether the present proposals of the Bill would preclude APA from having a permanent store on its premises which was located in a safe and secure non-residential location.

5. Deputy Secretary for Information Technology and Broadcasting (2) (DS/ITB(2)) responded that the Administration was aware of the different requirements for special effects operators in the film and television stream, and those in the theatre stream. Under the proposed licensing regime and the regulations to be made under the Bill, there would be two streams of licences and discharge permits, namely, Stream A for films and television programmes and Stream B for theatrical performances. The codes of practice to be prepared would set out the different arrangements and requirements for issue of the licences and permits for the two streams.

6. DS/ITB(2) further said that the Administration would include producers who were experienced in the use of PSEM for theatrical performances in the Appeal Board Panel. In view of the concern of the APA, the Administration would propose Committee Stage amendments (CSAs) to Schedules 1 and 2 of the Bill to ensure appropriate representation of the theatre industry on the Appeal Board Panel and the Appeal Board to be established under the Bill. Specifically, the Administration would propose to –

- (a) amend clause (c) of Schedule 1 to provide that the appeal board panel should include not more than three persons who were executive producers in film, theatrical or television production; and
- (b) amend clause (b)(iii) of Schedule 2 to provide that one of the members of an appeal board should be an executive producer in film, theatrical or television production, or from amongst the nominees of the Hong Kong Film Directors' Guild.

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7. The Chairman asked whether a special effects operator who wished to engage in film, theatrical and television productions should obtain the two licences under Streams A and B. DS/ITB(2) responded in the affirmative.

8. Acting Commissioner for Television and Entertainment Licensing (CTEL(Atg)) said that the Bill aimed to simplify the existing procedures and requirements for issue of the various licences and permits necessary for the production of special effects scenes. He pointed out that under the proposed regulatory system, there would be two types of PSEM store licences, namely, the non-movable and the movable store licences. For the purpose of storing and carrying small amounts of PSEM (including detonators, detonating cords and shaped charges) to the discharge venue, licenced special effects operators only needed to obtain movable store licences. He added that the APA could apply for a non-movable licence for maintaining its existing storage facility in due course.

9. The Chairman informed representatives of the APA that the Bill would be enacted in the current session and its subsidiary regulations would be introduced in the new term. He added that the Administration would further consult the industry before introducing these regulations into the Legislative Council (LegCo). He thanked the representatives for attending the meeting.

II. Meeting with the Administration

Responses to written submissions from deputations (LC Paper No. CB(2)2084/99-00(01))

10. The Chairman referred to the Administration's paper in response to the written submissions from deputations and drew members' attention to the following -

- (a) the level of fees for issue of licences and permits under the Bill would be lower than the existing level in most cases and would not include expenses incurred for monitoring the system, staff training and law enforcement; and
- (b) it would not be appropriate to reconsider the issue of modified firearms in the context of the Bill as it had already been dealt with under the Firearms and Ammunition Ordinance (FAO).

11. Mr MA Fung-kwok said that he would continue to persuade the film and entertainment industry to accept the fact that modified firearms for filming purposes had been put under the FAO.

12. CTEL(Atg) said that the Administration had seriously considered the

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views and concerns of the deputations expressed at the last meeting on 19 May 2000 and consulted the relevant authorities in California. He assured members that the application procedures and information required for issue of licences and permits under the Bill would be kept as simple and minimal as possible. The Administration would exercise discretion and adopt a flexible approach to ensure a right balance between meeting the operational needs of the industry and public safety concerns. The Television and Entertainment Licensing Authority (TELA) would prepare a set of codes of practice which would, among other things, incorporate the basic safety requirements for the industry to follow. Except for complicated applications involving large-scale explosion scenes, the TELA would not require the production of storyboards and detailed descriptions of safety measures for film shootings and would consider applications for minor changes to the discharge over the telephone provided that such applications had to be confirmed in writing by fax or other means. The Chairman responded that the TELA should make use of computers and information technology to facilitate the processing of such applications.

13. Mr MA Fung-kwok said that the film and entertainment industry was most concerned whether the TELA had the high level of expertise in motion picture techniques and knowledge in production needs which were essential for enforcing the legislative requirements in a flexible and pragmatic manner. He pointed out that the design of the existing regulatory system had not taken into account the needs of the industry and as a result, the industry had experienced considerable difficulties in complying with the various requirements. In this connection, the Chairman asked about the qualifications and expertise of the Senior Engineer who had been seconded to TELA to head a special team to run and enforce the new regulatory system.

14. DS/ITB(2) responded that Mr John MAK, Senior Engineer (Special Effects) (SE(SE)) of the TELA, had been seconded to the TELA to assist in the drafting of the new legislation and to enforce the new regulatory system. Mr MAK had been with the existing regulatory regime since 1995 and possessed the necessary experience and expertise in regulatory matters relating to explosives and pyrotechnic materials. He had twice visited the Californian authorities to learn about the system and practices in Hollywood and would soon revisit them for further development needs. He assured members that the TELA would continue to maintain close liaison with the industry in implementing the new regulatory system, particularly in drafting the regulations and codes of practice after enactment of the Bill. He stressed that the TELA had the qualified staff to ensure effective and smooth implementation of the new regulatory system.

15. In response to the Chairman, DS/ITB(2) undertook to mention the Administration's commitment to continue consultation with the industry in preparing the subsidiary regulations and codes of practice at the resumption of the Second Reading debate on the Bill.

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16. Mr MA Fung-kwok expressed doubts as to whether the TELA would fully understand the needs and the prevailing difficult situation of the film and entertainment industry. He supported the Administration's proposal to adopt a flexible approach in enforcement but was still worried that there would be operational problems during the process of implementation. He cited the implementation of legislative control on modified firearms under the FAO and said that the initial response of the industry to the new regulatory system was not favourable. He pointed out that many qualified special effects operators had recently refused offers for production of special effects scenes in Hong Kong. He added that the average investment for each film production had decreased from about \$10 million a decade ago to around \$4 million at present, and it was impractical to require the industry to produce a sketch for each shot of a special effects scene.

17. The Chairman pointed out that unlike the Police whose prime concern was public safety and security, the TELA was tasked to enforce the new regulatory regime with a view to facilitating the long-term healthy development of the industry, and was equipped with qualified staff to handle applications for the required licences and permits. DS/ITB(2) reiterated that the TELA would consult the industry on detailed requirements and arrangements before introducing the regulations into the LegCo. He added that the TELA would follow the practices in California wherever applicable and would not require detailed sketches and drawings for film shootings involving simple gunfight or small-scale explosion scenes.

18. Mr MA Fung-kwok enquired whether the requirement of a separating distance of 4.5 metre would be relaxed and whether use of bullet hits would be allowed in theatrical performances. He pointed out that bullet hits were used in theatrical performances in overseas countries, but had not been introduced into the industry in Hong Kong because of the absence of relevant legislation. The Chairman added that the TELA should make reference to the system in California and propose suitable requirements for such use.

19. CTEL(Atg) responded that the TELA would consider the particular situation of individual special effects scenes to specify a suitable separating distance in each discharge permit, having regard to public safety and security concerns. He undertook to follow up the use of bullet hits in theatrical performances and consult the sector before drafting the related subsidiary legislation.

Proposed Committee Stage amendments to be moved by the Administration
(LC Paper No. CB(2)2084/99-00(02))

20. Members had no comments on the proposed amendments as set out in the above paper.

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Matters deferred for discussion from last meeting

Information to be furnished in an application for a licence or permit under the Bill

(Annexes C, D and E of LC Paper No. CB(2)2018/99-00(03))

21. Members had no comment on the Annexes.

Factors to be taken into account when considering whether an applicant is a "fit and proper" person

(LC Paper No. CB(2)2018/99-00(04))

22. Responding to the Chairman, Principal Assistant Secretary for Information Technology and Broadcasting (B) (PAS/ITB(B)) said that in considering whether the applicant or the relevant individuals were fit and proper persons for the issue of a special effects operator licence, a PSEM supplier licence or a store licence under clauses 6(2)(b), 19(1)(b) and (c) or 24(1)(b) and (c) of the Bill respectively, the Entertainment Special Effects Licensing Authority (the Authority) would consult the Commissioner of Police (CP) who would consider whether the applicant or the relevant individuals had criminal conviction records, together with other records or information known to the Police. She added that in view of the role and functions of special effects operators in the use of PSEM under the Bill, criminal records of more than ten years would still be taken into consideration.

23. Mr MA Fung-kwok responded that the nature and seriousness of the offences, particularly those committed a decade ago, should be carefully considered before refusing applications. He asked whether an appeal against the decision of the CP could be made to the Authority.

24. PAS/ITB(B) responded that apart from the nature of the offence, the CP would also consider the age of the individual at the time of committing the offence, the penalty awarded by the court and whether that individual had any other conviction records. An applicant might appeal against the decision of the Authority to an Appeal Board in accordance with the procedures as stipulated under clause 33 of the Bill.

Continuation of clause-by-clause examination of the Bill

Clause 15 - Pyrotechnic special effects materials in transit

25. In response to Assistant Legal Adviser 2 (ALA2), PAS/ITB(B) clarified that while exemption of air transshipment cargoes as defined under the Air Cargo Transshipment (Facilitation) Bill 2000 would be specified under clause 15 of the Bill, exemption for similar transshipment cargoes by sea would be separately dealt with in relevant regulations to be drafted after enactment of the Bill.

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Clause 16 - Application for registration

26. Mr MA Fung-kwok suggested that the Administration should review and consult the industry on the design of application forms for the registration of PSEM at an appropriate time. The Administration noted the suggestion.

Clause 18 - Restriction on supply, etc. of pyrotechnic special effects materials

27. The Chairman enquired whether the Administration had consulted the suppliers on supply of PSEM for the film and entertainment industry. SE(SE) responded that existing suppliers of blasting explosives were not interested in accommodating the needs of the industry since the size of the market was rather small.

Clause 20 - Pyrotechnic special effects materials to be labelled, etc.

28. ALA2 enquired whether a defence to charges under the clause should be provided for persons who could not be reasonably expected to have known that the PSEM in question had not been labelled or packed in the prescribed manner, such as the driver of the transport vehicle. Mr YEUNG Yiu-chung added that the Bill should specify the responsible parties for ensuring compliance.

29. Making reference to the penalty levels stipulated in clause 48 of the Bill for breaches of the terms or conditions in a licence or permit, ALA2 further said that setting the penalty at level 6 and imprisonment for six months on first breach of the requirements for PSEM to be labelled and packed in the prescribed manner might be too heavy for the industry. She suggested that the Administration should consider imposing different penalty levels for first and subsequent convictions, as in the case of clause 21(2). Mr MA Fung-kwok shared the same view and cited a few operational difficulties in ensuring compliance with the requirements.

30. In response, the Administration undertook to review the drafting of the clause to provide a defence provision for innocent offenders and revise the penalty level.

Clause 22 - Application for conveyance permit

31. Responding to Mr MA Fung-kwok, CTEL(Atg) confirmed that conveyance of PSEM below the exempted level of quantity did not require the issue of a permit.

Clause 26 - Power to make regulations

32. ALA2 pointed out that clause 26(1)(d) empowered the Authority, with the approval of the Secretary for Information Technology and Broadcasting, to

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provide for exemptions from the operation of the Bill or any part thereof. PAS/ITB(B) explained that all regulations to be made under the clause would be subject to the negative vetting procedures of the LegCo.

Clause 27 - Approval of codes of practice by the Authority

Clause 28 - Effects of the codes of practice

33. Responding to the Chairman, DS/ITB(2) reassured that the Administration would consult the industry on the codes of practice and their effect in due course and submit drafts of the codes of practice to the LegCo when introducing the regulations to be made after enactment of the Bill into the LegCo.

Clause 29 - Power of entry, etc.

34. ALA2 asked whether the Customs and Excise Department (CED) had a role to play under the clause. PAS/ITB(B) responded that the CED was not included under the clause, but would play its role in accordance with other relevant legislation.

Clause 38 - Amendments of Schedules 1 and 2

35. In response to the Chairman, DS/ITB(2) confirmed that all amendments to Schedules 1 and 2 were subject to the negative vetting process.

Clause 39 - Determination of appeal

36. ALA2 pointed out that given a membership of five, the official quorum for meetings of the Appeal Board required the attendance of the Chairman and three other members, and that only members who had attended all meetings of the Appeal Board held for the purpose of the appeal could take part in the determination of the Appeal Board.

37. PAS/ITB(B) responded that the required quorum and attendance were in line with the requirements for similar appeal boards established by virtue of other legislation and that it was expected that the Appeal Board should normally be able to complete the hearing and make decision at a meeting.

38. Members accepted the principle that only members who had followed through the deliberations of the Appeal Board should participate in the decision process.

Clause 47 - General provisions as to licences and permits

39. In response to the Chairman, DS/ITB(2) confirmed that the validity periods for the various licences and permits would be specified in the regulations to be made after enactment of the Bill.

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40. The Chairman noted that the Administration had agreed to add the words "with reasons therefor" after "by notice in writing" in clause 47(3), as suggested by ALA2.

Clause 50 - Liability of holder of licence or permit for offences committed by his employees and agents

Clause 51 - Liability for offences by body corporate, etc.

41. Mr MA Fung-kwok expressed concern about the liability of persons whose employees or agents had committed an offence under the Bill. He pointed out that investors and owners of companies in the industry might not be aware of the legislative requirements and could not ensure compliance with the legislative requirements and conditions specified in individual licences and permits.

42. Senior Assistant Law Draftsman responded that the purpose of the clause was to provide a defence provision for such persons who had exercised all due diligence to prevent the commission of the offence and that their employees or agents had committed the offences without their knowledge or consent. DS/ITB(2) supplemented that in general employers should bear a duty to ensure compliance with legal requirements by their employees or agents.

43. Miss Cyd HO suggested that the Administration should promote the industry's awareness of the requirements by appropriate means such as launching a comprehensive publicity programme. Mr MA Fung-kwok requested and the Administration agreed to specify in the codes of practice the necessary precautionary measures for employers to follow.

44. Members had no comment on the other clauses.

Consequential Amendments

45. Members had no questions on the consequential amendments to the Gas Safety Ordinance, Dangerous Goods Ordinance, Dangerous Goods (Application and Exemption) Regulations, Dangerous Goods (Shipping) Regulations, Merchant Shipping (Miscellaneous Craft) Regulations as stipulated under clauses 60 to 66.

Schedule 1 and 2

46. The Administration would propose CSAs as outlined in paragraphs 6(a) and 6(b).

Other issues

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47. Mr MA Fung-kwok asked whether the Administration would set up an advisory body to follow up operational problems arising from the implementation of the Bill. DS/ITB(2) responded that there were established communication channels with the industry including the Film Services Advisory Committee. He undertook to hold regular meetings with the industry during the initial stage of implementation and review the need for further meetings in due course.

48. Members expressed support for the Bill in general and agreed that if members had no comment on the Administration's revised CSAs to be provided as soon as possible, the meeting scheduled for Friday, 26 May 2000 would be cancelled. The Chairman would report the deliberations of the Bills Committee to the House Committee on 2 June 2000 recommending resumption of the Second Reading debate on the Bill on 14 June 2000.

(Post-meeting note : The Administration's CSAs were circulated to members on 25 May 2000 vide LC Paper No. CB(2)2109/99-00(01) and the meeting scheduled for 26 May 2000 was cancelled.)

49. There being no other business, the meeting ended at 10:40 am.

Legislative Council Secretariat
6 September 2000