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Legislative Council

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**Paper for the House Committee meeting
on 2 June 2000**

**Report of the Bills Committee on
Entertainment Special Effects Bill**

Purpose

This paper reports on the deliberations of the Bill Committee on the Entertainment Special Effects Bill.

Background

2. The use of fireworks (including pyrotechnic materials) in Hong Kong has been generally prohibited since 1967. This has resulted in the illegal use of pyrotechnics in film shooting for the purpose of producing special effects scenes. In view of the film industry's genuine need to produce special effects scenes and to protect public safety, a regulatory system was introduced in March 1993. Under this system, the use of pyrotechnic materials is allowed in the production of special effects in films, television programmes and theatrical performances, subject to the issue of a permit under the Dangerous Goods Ordinance (Cap. 295) by the relevant authorities. The use of other dangerous goods in the production of entertainment special effects continues to be regulated under the Dangerous Goods Ordinance and the Gas Safety Ordinance (Cap. 51), as appropriate.

3. Since the provisions of the two Ordinances named above are not designed to meet the operational needs of the film and entertainment industry, the industry has encountered considerable difficulties in complying with the statutory requirements specified. In addition, since the conveyance, storage, use and discharge of pyrotechnic materials and other dangerous goods are under the jurisdiction of five different departments, the industry has to deal with different departments to obtain all the required approvals. Moreover, as a permit is required for each and every discharge of pyrotechnic materials, multiple permits are required to cover rehearsals, re-shooting as well as serial discharge in the same scene.

4. In view of the inadequacies of the current regulatory system, the Administration has conducted a comprehensive review on the subject. The

review concluded that a new regulatory system should be established to meet the operational needs of the film and entertainment industry on the one hand and to ensure public safety and security on the other.

The Bill

5. The Bill proposes to set up a new regulatory authority, to be called the Entertainment Special Effects Authority (the Authority). The Authority will be the Commissioner for Television and Entertainment Licensing (CTEL), who will be responsible for carrying out the following functions -

- (a) licensing of special effects operators;
- (b) issuance of permits for the discharge of special effects materials;
- (c) registration of pyrotechnic special effects materials;
- (d) regulation of the supply, use, conveyance and storage of pyrotechnic special effects materials;
- (e) approval and issue of codes of practice; and
- (f) surveillance by means of inspections and checks to ensure compliance with the regulatory requirements.

The Bills Committee

6. The House Committee agreed at its meeting on 3 March 2000 to form a Bills Committee to study the Bill. The Bills Committee first met on 12 May 2000 and Hon Howard YOUNG was elected Chairman. The membership of the Bills Committee is in **Appendix I**.

7. The Bills Committee has held three meetings with the Administration. It received four written submissions and met representatives of the film industry and the Hong Kong Academy for Performing Arts at the second and third meetings respectively.

Deliberations of the Bills Committee

8. The main deliberations of the Bills Committee are summarized in the following paragraphs.

Merits of the proposed regulatory regime

9. Members note that the new Authority would provide a one-stop service for applications for special effects operator licences and permits/licences for storage, conveyance and discharge of special effects materials. The processing period for the issue of discharge permits would be reduced from the existing 12 working days to three working days for simple applications and six working days for complicated applications. In addition, the register of pyrotechnic special effects materials to be maintained by the Authority will facilitate the sourcing by local suppliers and special effects operators of those materials from overseas suppliers or manufacturers and local suppliers.

Training and licensing of special effects operators

10. Under the new licensing system, a special effect operator, once licensed, will be permitted to use the special effects materials specified in his licence and will not be required to separately register for each discharge of pyrotechnic materials.

11. Members note that to facilitate transition to the new licensing system, the Television and Entertainment Licensing Authority (TELA) had conducted training courses for local special effects operators between October 1998 and January 2000, and has issued provisional recognition to those who have passed the assessment on completion of the training course. A special effects operator who has been provisionally recognized may, within 90 days after the new legislation comes into force, apply for a special effects operator licence in the same stream and class of licence as provisionally recognized and will be exempted from separate assessment.

12. The Administration has informed members that TELA will conduct training courses again from June to November this year for the benefit of those operators who were unable to attend the earlier courses or failed in the previous assessment on completion of the training course. In addition, operators may get trained under the supervision of licensed special effects operators and apply for a special effects operator licence after gaining sufficient experience.

Interpretation of a "fit and proper" person

13. Under clause 6(2)(b) of the Bill, the Authority has to be satisfied that the applicant is a fit and proper person before he issues a special effects operator licence. The same provision applies in respect of a pyrotechnic special effects materials supplier licence or a store licence under clauses 19(1)(b) and (c) and 24(1)(b) and (c).

14. Members have asked the Administration to provide further information on the factors to be considered by the Authority in determining whether an applicant for a licence under clause 6 is a "fit and proper" person, and whether it would involve checking with the Police for criminal conviction record. One

member holds the view that persons with criminal convictions should be given the opportunity to integrate into the community and lead a normal life. Therefore their applications for licences should be carefully considered in the light of the seriousness of the offences and the time lapse since the convictions.

15. The Administration has advised that in considering whether an individual is a fit and proper person under clauses 6(3), 19(2) and 24(2) of the Bill, the Authority will consult the Commissioner of Police. The Commissioner of Police will consider whether the individual has a criminal conviction record and will also take into consideration other records or information known to the Police when assessing whether the individual is a fit and proper person. In considering the criminal record of that individual, the Commissioner of Police may take into account the following factors -

- (a) whether the conviction is taken as spent under the Rehabilitation of Offenders Ordinance (Cap. 297);
- (b) the nature of the offence;
- (c) the age of that individual at the time of committing the offence;
- (d) the penalty awarded by the court; and
- (e) whether that individual has any other conviction record.

16. In response to members' request, the Administration has provided information on the qualifications and experience required of an applicant for the different types of special effects operator licence for members' reference. Members note that such requirements will be prescribed in the regulations to be made under the Bill.

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

17. Upon members' request, the Administration has listed out the types of information that applicants for the different licences and permits will be required to provide in the application forms.

18. During the discussion with the representatives of the film industry, a licensed special effects pyrotechnic operator with experience in filmmaking in both Hollywood and Hong Kong has commented that under the current provisional registration system, applicants are required to supply extensive documentation far beyond what would be required in Hollywood. In view of this observation and the concerns expressed by the other representatives in this regard, members have urged the Administration to minimize the paperwork burden on the applicants.

19. As the representatives are particularly concerned about the information to be furnished in an application for a discharge permit, members have asked the

Administration to further discuss with the film industry before setting out the requirements clearly in the guidelines to be drawn up for the industry to follow. Members have pointed out that with a registration system in place, licensed operators have the responsibility to ensure public safety and Government should allow greater flexibility and freedom for the film industry. The Administration has assured members that the application procedures will be kept as simple as possible, having regard to the operational needs of the industry. The information required to be provided in such applications will also be kept to a minimum. The Authority will handle such applications flexibly and ensure that a right balance is struck between meeting the operational needs of the industry and public safety concerns.

Proposed licence and permit fees

20. Another issue of concern to both the film industry and the Bills Committee is the level of licence and permit fees to be collected under the Bill. Members note that all the fees under the Bill are to be prescribed by regulations which are subject to negative vetting by the Legislative Council. The Administration has pointed out that the fees to be charged under the Bill, whilst set on a full-cost recovery basis, will be kept to a minimum through streamlined procedures. In response to members' request, the Administration has provided -

- (a) a comparison between the licence and permit fees under the current regulatory regime and the estimated fees under the Bill; and
- (b) a comparison between the permit fees required under the current regulatory regime and such fees under the Bill for producing a typical entertainment special effects scene.

The comparisons show that the estimated fees are generally lower than the present fees. To ameliorate the economic impact of the additional licensing requirements under the Bill, the validity period of the special effects operator licences and supplier licences will be up to two years. Representatives of the film industry present at the second meeting have been provided with copies of the relevant papers and they have not raised any objection to the level of the estimated fees.

Validity period of discharge permits

21. The Administration proposes that, for both Stream A (films/television programmes) and Stream B (theatrical performances) discharge permits, the permit issued will be valid for up to 24 hours. Under this proposed arrangement, the permit fee is estimated to be \$500. To save the need for daily permits, members have asked the Administration to consider requiring only one discharge permit for multiple shows of a theatrical or stage performance if the special effects scene involved is the same.

22. The Administration has advised that according to statistics on the

discharge permits issued for artistic performances such as ballet and drama in 1998 and 1999, each performance required three discharge permits on average. If the discharge permits to be issued under the Bill are to be valid for up to 24 hours, the total discharge permit fee required for a normal artistic performance is estimated to be \$1,500 on average. However, if only one discharge permit is required as proposed by members, the fee for a Stream B discharge permit is estimated to increase to \$3,125, if full cost recovery is to be achieved. Such calculation is based on an estimated 40 applications involving 250 permits in a year and the estimated total cost of \$125,000 for processing applications. Therefore the proposal will benefit performances extending over a longer period of time such as pop concerts but will not work to the advantage of artistic performances such as ballet and drama.

Requirement for pyrotechnic special effects materials to be properly labelled and packed

23. Clause 20(1) of the Bill stipulates that no person shall convey or store any pyrotechnic special effects materials in Hong Kong unless such materials have been labelled and packed in the prescribed manner. Clause 20(2) sets out the penalties for contravening subsection (1).

24. Members have asked the Administration to -

- (a) clarify who should be responsible for meeting the labelling and packing requirement;
- (b) consider stipulating different penalty levels on first and subsequent breaches of the conveyance or storage requirement, with the penalties on first conviction lower than those currently proposed in clause 20(2); and
- (c) consider providing a defence to charges under this clause to persons who cannot be reasonably expected to have known that the materials in question have not been labelled or packed in the prescribed manner, such as the driver of the vehicle conveying the materials.

25. After examination of members' views, the Administration considers that the provision should apply to those who supply, convey or store such materials. However, it has agreed to include a defence provision for those who did not know and could not with reasonable diligence have known that the materials in question had not been labelled or packed in the prescribed manner. In addition, it has also accepted the suggestion in paragraph 24(b) above and will revise the penalties as follows -

- (a) on a first conviction, a fine at level 5 and imprisonment for three months; and

- (b) on a second or subsequent conviction, a fine at level 6 and imprisonment for six months.

Membership of the Appeal Board panel and composition of the Appeal Board

26. In response to the concern expressed by the Hong Kong Academy for Performing Arts, the Administration has proposed amendments to Schedules I 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.

Subsidiary legislation to be introduced

27. The Administration has informed members that after enactment of the Bill, it would aim to introduce the necessary subsidiary legislation in October 2000 in order that the main proposals under the Bill could be implemented by the end of this year. It has agreed to provide an undertaking in the Secretary for Information Technology and Broadcasting's speech to be made during the resumption of the Second Reading debate on the Bill that the Administration will maintain close liaison with the film and entertainment industry when drawing up the various regulations, codes of practice and guidelines. It has also undertaken to submit these papers to Members for their scrutiny after extensive consultation with the industry.

Committee Stage amendments (CSAs)

28. In addition to the CSAs referred to in paragraphs 25 and 26 above, the Administration will also move a number of technical and minor amendments. The proposed CSAs as set out in **Appendix II** are supported by the Bills Committee.

Recommendation

29. The Bills Committee supports the Bill and recommends that the Second Reading debate on the Bill be resumed on 14 June 2000.

Advice sought

30. Members are invited to note the recommendation in paragraph 29 above.

Legislative Council Secretariat

31 May 2000

Bills Committee on Entertainment Special Effects Bill

Membership List

Hon Howard YOUNG, JP (Chairman)

Hon David CHU Yu-lin

Hon Cyd HO Sau-lan

Hon MA Fung-kwok

Hon James TO Kun-sun

Hon Andrew WONG Wang-fat, JP

Hon YEUNG Yiu-chung

Hon Timothy FOK Tsun-ting, SBS, JP

Total : 8 Members

Legislative Council Secretariat

17 May 2000

Appendix II to LC Paper No. CB(2)2138/99-00

(Revised version)

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ENTERTAINMENT SPECIAL EFFECTS BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Information Technology and Broadcasting

<u>Clause</u>	<u>Amendment Proposed</u>
8	In paragraph (d), by deleting "適用".
13(1)(d)	By deleting "適用".
15	(a) In the heading, by adding " , etc. " after " in transit ". (b) In subclause (1), by deleting "in transit" and substituting - "- (a) in transit; (b) air transshipment cargoes within the meaning of section 2 of the Import and Export Ordinance (Cap. 60)". (c) In subclause (2), by deleting "(1)" and substituting "(1)(a)".

19(1)(b) By adding "and" at the end.

DRAFT

20 By deleting subclauses (1) and (2) and substituting -

"(1) Subject to this Ordinance, no person shall supply, convey or store any pyrotechnic special effects materials in Hong Kong unless such materials have been labelled in the prescribed manner.

(2) Subject to this Ordinance, no person shall supply, convey or store any pyrotechnic special effects materials in Hong Kong unless such materials have been packed in the prescribed manner.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable -

(a) on a first conviction to a fine at level 5 and to imprisonment for 3 months; and

(b) on a second or subsequent conviction to a fine at level 6 and to imprisonment for 6 months.

(4) It shall be a defence to a charge under this section for the person charged to prove that he did not know and could not with reasonable diligence have known that the materials in question had not been labelled or packed in the prescribed manner, as the case may be."

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24(1)(b) By adding "and" at the end.

47(3) By adding "with reasons therefor" after "in writing".

Schedule 1 In paragraph (c), by deleting "or television" and substituting ", television or stage".

Schedule 2 In paragraph (b)(iii), by deleting "or television" and substituting ", television or stage".