

LEGISLATIVE COUNCIL BRIEF

ENTERTAINMENT SPECIAL EFFECTS BILL

INTRODUCTION

A At the meeting of the Executive Council on 1 February 2000, the Council ADVISED and the Chief Executive ORDERED that the Entertainment Special Effects Bill, at Annex A, should be introduced into the Legislative Council, to establish a new regulatory framework to govern the supply, use, conveyance and storage of dangerous goods for producing special effects in films, television programmes and theatrical performance.

BACKGROUND AND ARGUMENT

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 industry's genuine need to produce special effects scenes and to protect public safety, a regulatory system was introduced in March 1993 whereby 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 (such as liquefied petroleum gas) 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. An outline of the existing regulatory system is at Annex B.

B

3. The major shortcoming of the existing regulatory system is that the provisions of the Dangerous Goods Ordinance and the Gas Safety Ordinance are not designed to meet the operational needs of the film and entertainment industry. The industry thus encounters considerable difficulties in complying with these statutory requirements. These difficulties include –

- (a) the conveyance, storage, use and discharge of pyrotechnic materials and other dangerous goods are under the jurisdiction of five different departments. In the absence of a central licensing authority, the industry has to deal with different departments to obtain all the required approvals. This is time-consuming, inefficient and not user-friendly;
- (b) at present, a permit is required for each and every discharge of pyrotechnic materials. This means that multiple permits are required to cover rehearsals, re-shooting as well as serial discharge in the same scene. The industry has found such a requirement onerous;
- (c) currently, a special effects operator has to register with the Commissioner of Mines for each discharge of pyrotechnic materials. This is a very cumbersome procedure. Moreover, in the absence of a licensing system for local special effects operators, a local person wishing to register with the Commissioner of Mines to discharge pyrotechnic materials must have been trained under the supervision of special effects operators with overseas qualifications. This has severely limited the build up of a local pool of recognised expertise; and
- (d) the existing regulatory regime does not specifically regulate the combined use of pyrotechnic materials and other dangerous goods in producing special effects. Therefore, the concerned regulatory authorities tend to set stringent permit conditions for the proposed discharge. Difficulty in complying with such conditions has led to illegal discharges by the film industry occasionally, thus putting the safety of the production crew and the public in jeopardy.

4. In view of the inadequacies of the current regulatory system, we have conducted a comprehensive review on the use of dangerous goods for the purpose of producing special effects in films, television programmes and

theatrical performances. 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. We have subsequently engaged a US consultant to advise us on the essential parameters of the new regulatory system, having regard to the specific needs of the local entertainment industry and the Californian regulatory regime to which the film industry in Hollywood is subject.

The Proposed Regulatory Framework

5. The Entertainment Special Effects Bill, which provides the framework for the new regulatory system, will regulate the supply, conveyance, storage and use (including discharge) of pyrotechnic special effects materials and non-pyrotechnic special effects materials for the purpose of producing special effects. A new regulatory authority, to be called the Entertainment Special Effects Licensing Authority (the Authority), will be set up. The Authority will be the Commissioner for Television and Entertainment Licensing (CTEL), who will be responsible for the following –

- (a) licensing of special effects operators;
- (b) issuing permits for the discharge of special effects materials¹;
- (c) registration of pyrotechnic special effects materials;
- (d) regulating 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.

¹ Special effects materials are dangerous goods which for the purpose of this Bill are classified as -

- pyrotechnic special effects materials which contain pyrotechnic and explosive substances; and
- non-pyrotechnic special effects materials which are dangerous goods other than pyrotechnic special effects materials, such as petrol and liquefied petroleum gas.

Licensing of Special Effects Operators

6. To ensure that special effects materials for use in the production of special effects scenes for entertainment purposes will be discharged by qualified practitioners, we propose that only licensed special effects operators should be permitted to handle and discharge special effects materials. An applicant for a special effects operator licence must be a fit and proper person. The types of licence to be issued, the types of activities and materials that the holders of each type of licence are allowed to carry out or handle, and the eligibility criteria and qualifications and experience required for each type of licence will be stipulated in the regulations to be made under the Bill. An outline of the proposed licensing system is at Annex C.

Transitional Arrangements for Local Special Effects Operators

7. In anticipation of the introduction of the new licensing system for special effects operators, the Television and Entertainment Licensing Authority (TELA) has engaged a First Class Special Effects Operator from Hollywood to conduct training courses for local operators in the entertainment industry and to draw up guidelines and standards for the use of special effects materials in the production of special effects. The training courses cover proper practices and procedures in the safe handling, preparation, conveyance, storage and discharge of special effects materials. Such practices and procedures will be promulgated as codes of practice under the Bill. In addition, trainees are taught how to prepare detailed work records and documentation for the purpose of applying for the relevant licences and permits under the new regulatory system. So far, 68 local operators (representing the bulk of the local operators) have received provisional recognition as Special Effects Assistants. Of these, 12 have, following further training, received provisional recognition as Special Effects Operators Class II (Film/Television). Seven of these Special Effects Operators Class II (Film/Television) have received further training with a view to gaining provisional recognition as Special Effects Operators Class I (Film/Television).

8. Under our proposal, a local special effects operator who has been provisionally recognised by CTEL will, upon entry into force of the proposed legislation, be deemed to have been granted a special effects operator licence for a period of 90 days. He may, before the expiry of this period, apply for a special effects operator licence in the same stream and class of licence as

provisionally recognised², and the Authority will waive the requirements on qualifications, work experience and assessment requirements. For local special effects operators of the theatrical performance stream, they have by and large already acquired the relevant qualifications. CTEL will in due course issue provisional recognition to these operators to ensure that they will be able to continue their practice uninterrupted pending the issue of new licences upon the promulgation of the new licensing system.

Issue of Permits for the Discharge of Special Effects Materials

9. We propose that a permit is required for discharging any special effects materials for the purpose of producing special effects scenes in films, television programmes and theatrical performances. The Authority will be the central body responsible for granting all discharge permits regardless of the type and quantity of materials used. And a single discharge permit may be used to cover multiple discharges at the same location for a designated period of time. The holder of a discharge permit and the licensed special effects operator appointed to produce special effects are required to comply with the permit conditions. The regulations to be made under the Bill will provide for the issue of two types of discharge permit, namely, Stream A for films and television programmes and Stream B for theatrical performance. The regulations will also require the applicant to take out a policy of public liability and property damage insurance.

Registration of Pyrotechnic Special Effects Materials

10. To protect the safety of the operators, the production crew and the general public, we propose that only those pyrotechnic special effects materials registered with the Authority should be allowed to be used in Hong Kong for producing special effects. The Authority will maintain, and make publicly available, a register of the manufacturer, item description, classification, authorisation and restrictions of all pyrotechnic special effects materials for use in Hong Kong. Pyrotechnic special effects materials commonly used in Hong Kong by the local entertainment industry will be included in the register at the

² Depending on the nature of his work, a provisionally recognised Special Effects Assistant may apply for either a Special Effects Assistant (Stream A) licence or a Special Effects Assistant (Stream B) licence. A provisionally recognised Special Effects Operator Class I (Film/Television) and a Special Effects Operator Class II (Film/Television) may apply for a Special Effects Operator Class I (Stream A) licence and a Special Effects Operator Class II (Stream A) licence respectively.

outset. This register will facilitate the sourcing by local suppliers and special effects operators of pyrotechnic special effects materials from overseas suppliers/manufacturers and local suppliers. This new arrangement will obviate the need for special effects operators to demonstrate to the Authority in respect of each application for a discharge permit that the pyrotechnic special effects materials to be used for producing a particular special effects scene can be safely discharged.

Supply of Pyrotechnic Special Effects Materials

11. To meet the operational needs of the entertainment industry, the new regulatory regime will permit the use of pyrotechnic special effects materials of a higher hazard level (such as detonators, detonating cords and shaped charges) subject to certain safeguards. To ensure proper control over the import and supply of such materials, we propose that suppliers of pyrotechnic special effects materials should take out a licence. Licensed suppliers will be allowed to supply pyrotechnic special effects materials to other licensed suppliers or licensed special effects operators, provided that the licences of the latter allow them to supply or use such materials. A licensed supplier will be required by the regulations to be made under the Bill to keep a register of transactions for at least three years for inspection by the Authority.

Storage of Pyrotechnic Special Effects Materials

12. We propose that pyrotechnic special effects materials should be stored in a licensed pyrotechnic special effects materials store. The types and maximum quantity of pyrotechnic special effects materials allowed to be stored will be governed by the licence conditions attached to the store licence issued by the Authority. More stringent safety, security and capacity requirements will be imposed for more hazardous pyrotechnic special effects materials (such as detonators, detonating cords and shaped charges). An applicant for a store licence must be a fit and proper person and has to engage a licensed special effects operator to manage the store.

13. The types of pyrotechnic special effects materials store licence to be issued by the Authority, the requirements regarding the construction and siting of the stores, and other safety requirements will be stipulated in the regulations to be made under the Bill. The intention is that there will be two

types of store licences, namely, non-movable store licence and movable store licence. In general, special effects materials suppliers and individuals who need to store a large amount of pyrotechnic special effects materials are required to apply for a non-movable store licence. Such stores shall be located in safe and secure non-residential premises approved by the Authority. For the purpose of storing and carrying small amounts of pyrotechnic special effects materials (including detonators, detonating cords and shaped charges) to the discharge venue, licensed special effects operators only need to obtain movable store licences. When not in use, a movable store containing pyrotechnic special effects materials should be kept in a designated location approved by the Authority.

Conveyance of Pyrotechnic Special Effects Materials

14. We propose that the conveyance of pyrotechnic special effects materials should be covered by a conveyance permit issued by the Authority. Only one permit is required for the conveyance of pyrotechnic special effects materials by land and by sea as well as conveyance of leftover materials to designated areas upon the completion of the discharge. To facilitate the day-to-day operations of licensed special effects operators, we propose to grant, under the regulations to be made under the Bill, exemption from the conveyance permit requirement in cases where the quantities of pyrotechnic special effects materials to be conveyed do not exceed a stipulated level and that such conveyance is supervised by the appointed licensed special effects operator stipulated on the discharge permit issued by the Authority. However, for public safety and security purposes, the conveyance of more dangerous pyrotechnic special effects materials (such as detonators, detonating cords and shaped charges) must at all times be supervised by a Special Effects Operator (SEO) Class I (Stream A) or, subject to the scope of operation of his licence, an SEO (Short-term). We shall, in addition, simplify the existing requirement for conveyance of pyrotechnic special effects materials by sea. Where only small quantities are involved, we shall lift the current requirement that they must be carried by special dangerous goods vessels under a permit issued by the Director of Marine, provided that the conveyance is supervised by a special effects operator of the relevant type and the pyrotechnic special effects materials are carried by a vessel of a type specified by the Director of Marine.

Other Features

15. Under the Dangerous Goods Ordinance, conveyance and storage of non-pyrotechnic special effects materials (such as petrol) not exceeding the stipulated levels of exempted quantities are exempted from licensing requirements. Similar exemptions are provided in the Gas Safety Ordinance in respect of the storage and conveyance of liquefied petroleum gas not exceeding the exempted quantity. Notwithstanding the aforementioned exemptions, non-pyrotechnic special effects materials are required to comply with the labelling and packaging requirements under the Dangerous Goods Ordinance and the cylinders containing the liquefied petroleum gas must comply with the safety requirements in the Gas Safety Ordinance. Such provisions will apply to non-pyrotechnic special effects materials used for the production of entertainment special effects. The Fire Services Department and Electrical and Mechanical Services Department will streamline the procedures for processing special effects operators' applications for store licenses for quantities above the exempted levels.

16. The proposed legislation will empower the Authority to issue and approve codes of practice on technical standards and guidance for the conveyance, storage and use of special effects materials for the production of special effects in films, television programmes and theatrical performance. It will also provide for a mechanism to consider appeals against the decisions of the Authority in relation to the administration of the Bill.

Merits of the Proposed Regulatory Regime over the Existing One

17. The proposed regulatory framework aims to strike a balance between meeting the operational needs of the local entertainment industry and protecting public safety and security. It offers improvements over the existing regulatory regime in the following respects –

- (a) the establishment of a one-stop licensing authority to oversee the use of special effects materials in the production of entertainment special effects will considerably rationalise and streamline the existing arrangements. It is administratively more efficient and will encourage compliance by the industry;

- (b) the licensing system for special effects operators will help to build up a pool of locally qualified practitioners who will practise their trade safely. This is conducive to enhancing the professional expertise of the local entertainment industry;
- (c) the proposed regulatory measures have either dispensed with or alleviated the more onerous regulatory measures under the existing regime to the extent commensurate with appropriate safety and security considerations. For instance, a special effects operator may engage in the production of special effects scenes involving pyrotechnic special effects materials if he possesses an SEO licence and a movable store licence for the temporary storage and conveyance of small quantities of pyrotechnic special effects materials (including certain non-conventional pyrotechnic special effects materials). He will not be required to separately obtain a conveyance permit or a non-movable store licence; and
- (d) appropriate measures will be drawn up to regulate the production of special effects scenes involving the combined use of a wider range of special effects materials including detonators, detonating cords and shaped charges. This will encourage more creative use of pyrotechnic materials in film-making.

THE BILL

18. The main provisions of the proposed Bill are -

- (a) Part I provides for the commencement of the Bill and defines the terms used in the legislation;
- (b) Part II provides for the establishment of a licensing authority, to be called the Entertainment Special Effects Licensing Authority (the Authority), to administer the Ordinance and sets out the functions of the Authority. It also stipulates that the Authority shall be the CTEL;
- (c) Part III provides for the licensing of special effects operators, certain exemptions from the licensing requirement and the transitional arrangements for the existing special effects operators who have been provisionally recognised by CTEL;

- (d) Part IV provides for the issue of permits by the Authority for the discharge of special effects materials by licensed special effects operators and certain exemptions from the permit requirement;
- (e) Part V provides for the registration of pyrotechnic special effects materials incidental to the production of entertainment special effects and the maintenance of a pyrotechnic special effects material register by the Authority. It also provides for control over the supply of pyrotechnic special effects materials through the issue of supplier licences by the Authority. In addition, it provides for the issue of conveyance permits for the purpose of conveying pyrotechnic special effects materials by land or water as well as the issue of pyrotechnic special effects materials store licences for the storage of pyrotechnic special effect materials;
- (f) Part VI empowers the Authority to make regulations and to approve and issue codes of practice as appropriate for the purpose of carrying out the provisions of this Bill. It also provides for the maximum penalties for contravention of the regulations made under this Bill;
- (g) Part VII empowers the enforcement agencies to enter and search premises; board and search any vessel, vehicle, train or aircraft; stop the discharge of special effects materials; and remove or dispose of pyrotechnic special effects materials for the purpose of carrying out the provisions of this Bill. The power to enter or search premises for dwelling purposes is subject to the issue of a warrant by a magistrate;
- (h) Part VIII provides for the establishment of an Appeal Board to consider appeals against the decisions of the Authority and stipulates the appeal procedures;
- (i) Part IX stipulates the general provisions in relation to licences and permits issued under this Bill and deals with miscellaneous issues (including interpretation of the net explosive quantity of pyrotechnic special effects materials, the delegation of powers by the Authority and transitional arrangements); and

- (j) Clauses 60 to 66 set out the consequential amendments to the Gas Safety Ordinance (Cap. 51), the Dangerous Goods Ordinance (Cap. 295) and its subsidiary legislation and the Merchant Shipping (Miscellaneous Craft) Regulations (Cap. 313 sub. leg.). The purpose and effects of these amendments are explained at Annex D.

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LEGISLATIVE TIMETABLE

19. The legislative timetable will be –
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| Publication in the Gazette | 11 February 2000 |
| First Reading and commencement of Second Reading debate | 23 February 2000 |
| Resumption of Second Reading debate, committee stage and Third Reading | to be notified |

BASIC LAW IMPLICATIONS

20. The Department of Justice advises that the Bill is consistent with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

21. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

ECONOMIC IMPLICATIONS

22. The new regulatory regime will help to raise the professional expertise of local special effects operators and promote the safe production of special effects scenes for entertainment purpose. This will in turn contribute to the long-term healthy development of, in particular, the local film industry which is world famous for its action-packed genres. It will also establish

Hong Kong as an attractive place for location shooting involving the use of special effects materials.

23. Under the new regulatory regime, special effects operators and suppliers of pyrotechnic special effects materials will be required to take out special effects operator licences and supplier licences as appropriate. There being no such licensing requirements at present, this would slightly increase the cost of doing business of the practitioners. To ameliorate the economic impact of the additional licensing requirements, the validity period of special effects operator licences and supplier licences will be up to two years. The benefits of a safer environment and a regulatory regime that takes into account the operational needs of the local entertainment industry should more than offset the slight financial burden arising from the fees for various licences and permits.

FINANCIAL AND STAFFING IMPLICATIONS

24. A dedicated professional team, consisting of a Senior Engineer, a Senior Explosives Officer, an Explosives Officer I, two Explosives Officer II and a Personal Secretary II, will be set up under TELA to administer the new regulatory system. The annual recurrent cost for the team is estimated at \$5 million. Provision has been made in the 1999/2000 Approved Estimates to meet the requirement. In line with Government's policy on fee charging, the fees to be charged under the new regulatory regime will be set on a full-cost recovery basis.

PUBLIC CONSULTATION

25. We have consulted the Information Technology and Broadcasting Panel of the Legislative Council (LegCo Panel), the Film Services Advisory Committee (FSAC) and the film and entertainment industry on the proposed regulatory regime. The industry, the LegCo Panel and the FSAC are on the whole supportive of the proposal. They agreed that in the interest of protecting public safety, the existing regulatory regime should be replaced by an administratively efficient regime which would better meet the operational needs of the industry. They have made a number of suggestions to make the proposed regime more user-friendly. These have been incorporated, as far as possible, in the proposed regulatory framework.

PUBLICITY

26. A press release will be issued on 9 February 2000. The Bill will be published in the Gazette on 11 February 2000. A spokesman will be available for answering media enquiries.

ENQUIRIES

27. Enquiries on this brief can be directed to Miss Adeline Wong, Principal Assistant Secretary for Information Technology and Broadcasting, at telephone number 2189 2229.

Information Technology and Broadcasting Bureau
9 February 2000