

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1075/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB2/SS/2/11

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

**Minutes of meeting  
held on Thursday, 2 February 2012, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Cyd HO Sau-lan (Chairman)  
Dr Hon Margaret NG  
Hon Emily LAU Wai-hing, JP  
Hon LEE Wing-tat

**Member absent** : Hon IP Kwok-him, GBS, JP

**Public Officers attending** : Item II  
Miss Winnie TSE  
Principal Assistant Secretary for Home Affairs  
(Civic Affairs)  
  
Ms YEUNG Yuk-ip, Rita  
Senior Superintendent (Licensing)  
Food and Environmental Hygiene Department  
  
Ms YAU Sau-ling, Cindy  
Senior Assistant Law Officer (Civil Law)  
Department of Justice

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**Attendance  
by invitation** : Item II  
*Legislative Council Secretariat*

Mr Jimmy MA, JP  
Legal Adviser

Mrs Percy MA  
Assistant Secretary General 4

**Deputations  
attending** : Hong Kong Human Rights Monitor

Mr LAW Yuk-kai  
Director

Wing Lung Art

Mr FU Luo-yeung  
Chief Executive Officer

Hong Kong Alliance in Support of Patriotic  
Democratic Movements of China

Mr LI Yiu-kee  
Standing Committee member

**Clerk in  
attendance** : Mr Thomas WONG  
Chief Council Secretary (2)2

**Staff in  
attendance** : Ms Clara TAM  
Assistant Legal Adviser 9

Mr Raymond LAM  
Senior Council Secretary (2)2

Miss Jasmine TAM  
Council Secretary (2)2

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Miss Emma CHEUNG  
Legislative Assistant (2)2

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**I. Confirmation of minutes**

The minutes of the meeting on 17 January 2012 were confirmed.

**II. Meeting with deputations and the Administration**

LC Paper No. CB(2)940/11-12(01) -- The Administration's response to issues raised at the Subcommittee meeting on 17 January 2012

LC Paper No. CB(2)914/11-12(01) -- Submission from Hong Kong Bar Association

LC Paper No. CB(2)902/11-12(01) -- Letter dated 20 January 2012 from the Law Society of Hong Kong

LC Paper No. CB(2)902/11-12(02) -- Submission from Wing Lung Art

LC Paper No. CB(2)902/11-12(03) -- Submission from Museum of Site

2. The Subcommittee deliberated (index of proceedings at **Annex**).

3. Members received views from the Hong Kong Human Rights Monitor ("HKHRM"), Wing Lung Art ("WLA") and Hong Kong Alliance in Support of Patriotic Democratic Movements of China ("HKASPDMC") on the Places of Public Entertainment (Exemption) (Amendment) Order 2011 ("the Amendment Order") made by the Secretary for Home Affairs under section 3A of the Places of Public Entertainment Ordinance (Cap. 172) ("PPEO").

Discussion

*Applicability of PPEO to the Legislative Council ("LegCo") Complex*

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4. HKHRM raised no objection to the Amendment Order which relieved The Legislative Council Commission ("LCC") of the need to obtain a licence granted under PPEO ("PPE licence") for conducting activities falling within the scope of Schedule 1 to PPEO at places under its management. However, HKHRM opined that the need for LCC to seek exemption under PPEO indicated that the current scope of "public entertainment" under PPEO was too wide, giving rise to uncertainty over how the Administration might exercise its powers under PPEO.

5. HKASPDMC expressed concern about whether LCC had been given exemption from the requirement to obtain a PPE licence for conducting at the former LegCo Building activities similar to those proposed by LCC to be held at the LegCo Complex and, if not, why exemption had to be sought for the LegCo Complex. HKASPDMC was worried that the exemption given by the Administration to LCC might legitimize the extension of the scope of PPEO and put pressure on many other organizations to follow LCC to seek exemption. In particular, HKASPDMC queried whether public organizations also needed to seek exemption if activities falling within the scope of Schedule 1 to PPEO would be held at places under their management. In HKASPDMC's view, LCC should not seek exemption until after the court had delivered its judgment in respect of the appeal case relating to the prosecution against Mr LI Yiu-kee, a member of HKASPDMC, for using a place of public entertainment without a PPE licence to erect a replica of the Goddess of Democracy statue outside Times Square in Causeway Bay in May 2010 ("the HKASPDMC case").

6. Principal Assistant Secretary for Home Affairs (Civic Affairs) 3 ("PAS(CA)3") responded that the Administration's decision to make the Amendment Order was based on its view that the activities proposed by LCC to be held at the LegCo Complex might fall within the meaning of "public entertainment" as defined in PPEO and LCC as the occupier of the LegCo Complex might be subject to the requirement for a PPE licence for conducting activities therein. The Amendment Order was concerned with the places under the management of LCC, while LCC and LegCo were believed to have their own identity. Whether public organizations needed to apply for a PPE licence would hinge on whether the activities to be conducted at places under their management fell within the meaning of "public entertainment" as defined in PPEO.

7. Dr Margaret NG considered that the Administration's unprecedented move to invoke section 4 of PPEO to prosecute members of

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HKASPDMC in 2010 had prompted LCC to consider the issue of seeking exemption under PPEO. In her view, activities proposed by LCC to be held at the LegCo Complex were related to the work of LegCo and for civic education purposes. Should such activities be considered as public entertainment activities, it was difficult to envisage the types of activities which could fall outside the scope of Schedule 1 to PPEO.

*Scope of public entertainment and the place of public entertainment*

8. Referring to Annex 2 to the Administration's paper on rejected applications for PPE licences from 2007 to 2011, Dr Margaret NG sought information on why the applicants concerned needed to apply for the licences. Senior Superintendent (Licensing), Food and Environmental Hygiene Department ("SS(Licensing)") advised that any activity which would admit the general public and fell within Schedule 1 to PPEO would fall under the regulation of PPEO.

9. Dr Margaret NG considered that the scope of "public entertainment" under PPEO was too wide and had conferred wide discretionary powers on the Administration to deal with activities to which the general public was admitted. As the delivery of speech was a basic human right under the common law system, she expressed grave concern that the inclusion of lecture and story-telling in Schedule 1 to PPEO would undermine freedom of speech and expression.

10. Noting from section 2 of PPEO that "place of public entertainment" was defined as "so much of any place, building, erection or structure, whether temporary or permanent, capable of accommodating the public" in which "a public entertainment is presented or carried on whether on one occasion or more", Dr Margaret NG sought clarification on whether the delivery of a speech and the conduct of a drama without a PPE licence on the street would contravene section 4 of PPEO. SS(Licensing) advised that "place of public entertainment" was primarily applicable to public entertainment activities conducted at delineated places. Dr Margaret NG pointed out that there was no express requirement in section 2 for a place of public entertainment to be delineated; nor was the general public required to have tickets for admission to such a place. HKHRM shared a similar view and called on the Administration to clarify whether a non-delineated place at which an activity falling within the meaning of public entertainment under PPEO would be conducted would need a PPE licence.

11. Referring to Annex 2 to the Administration's paper on rejected applications for PPE licences, Mr LI Wing-tat sought clarification on

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whether each of the applicants concerned had applied for a PPE licence for conducting only one specified type of activity or whether only one specified type of activity was permitted under a PPE licence. SS(Licensing) advised that a PPE licence would set out the activity or activities to be conducted by the licensee.

*Objective of PPEO*

12. Dr Margaret NG noted from the sample of the PPE licence application form at Annex 1 to the Administration's paper that applicants had to submit documents on plans to maintain the public safety in the activities under application. She considered that PPEO appeared to regulate primarily the operation of places of public entertainment businesses and, if so, this primary objective should be expressly stated in PPEO. If the scope of the licensing regime under PPEO was so wide as to cover exhibitions and the delivery of speeches on school open days and seminars to which the general public was admitted at universities, the Administration should proactively enhance publicity to facilitate compliance with the licensing requirements under PPEO.

13. PAS(CA)3 advised that she did not consider it necessary to enhance publicity on the PPEO at this moment in time, as activity organizers should have carefully assessed whether they needed to obtain a PPE licence and sought legal advice when necessary. She added that in 2010 and 2011, some 1400 and 1200 temporary PPE licences were issued respectively and the activities involved were not held only by universities and public organizations. This reflected that there was general public awareness of the licensing requirements under PPEO.

*Enforcement of PPEO*

14. HKHRM and HKASPDMC criticized the Administration for invoking PPEO to selectively prosecuting some members of HKASPDMC in 2010. PAS(CA)3 explained that the Administration had never instituted prosecutions selectively or used PPEO to curb political activities. The licensing authority together with the relevant government departments involved in the licensing process had considered applications for PPE licences from the perspective of protecting public safety and would not take into account the contents of the activities under application.

15. Dr Margaret NG noted the Hong Kong Bar Association's view in its written submission that any use of PPEO, the requirements of which were mainly to ensure the safety of participants at events of public

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entertainment, should not undermine the Government's stated continued efforts to give effect to its commitment to promote freedom of expression. In her view, the Administration's handling of the HKASPDMC case and its view that demonstration activities might fall under the regulation of PPEO had aroused grave concern about whether the Administration had stayed well within the boundaries of PPEO.

16. Ms Emily LAU opined that even though there might be a need for PPEO, she found it difficult to understand why the Administration had invoked PPEO to prosecute some members of HKASPDMC, as the activities conducted by them at Times Square in May 2010 had not posed any threat to public safety, and public procession and demonstration activities had been subject to the regulation of the Public Order Ordinance (Cap. 245) ("POO"). Members of the public had expressed worry about possible political motive behind the Administration's enforcement of PPEO.

17. Ms Emily LAU sought details on the 16 successful prosecutions instituted from January 2007 to November 2011. SS(Licensing) advised that in 2007, only one successful prosecution, which was related to stage performance, was instituted. In 2008, there were three successful prosecutions, of which one was related to stage performance and the other two were related to entertainment machine centres. In 2009, there were five successful prosecutions, of which one was related to stage performance and the other four were related to entertainment machine centres. In 2010, of the seven successful prosecutions, four were related to stage performance and three were related to an exhibition, a bazaar and an entertainment machine centre respectively. There were no successful prosecutions in 2011.

18. Dr Margaret NG sought clarification on the persons that might be subject to section 4 of PPEO which provided that no person should keep or use any place of public entertainment without a licence granted under PPEO. Senior Assistant Law Officer (Civil Law) advised that for the purposes of section 4, "keep" connoted ownership or management of a place of public entertainment, while the meaning of "use" should be understood in the context of an individual case as held in the court judgment relating to the prosecution against Mr LI Yiu-kee of HKASPDMC.

*Review of PPEO*

19. Dr Margaret NG, Ms Emily LAU and the Chairman called on the

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Administration to narrow down the scope of "public entertainment" and "place of public entertainment" under PPEO and exempt more places from the regulation of PPEO. Mr LI Wing-tat opined that PPEO was draconian and outdated.

20. Dr Margaret NG sought deputations' views on the action LegCo should take in relation to PPEO. In response, HKHRM called on the Administration to review PPEO. To better safeguard people's freedom of expression and right to demonstrate and in line with international human rights covenants, human rights activities such as public rallies and processions in which exhibitions, dramas, etc. might be held, should be expressly excluded from Schedule 1 to PPEO.

21. HKASPDMC considered it unnecessary to require organizers of public processions to apply for PPE licences, as such activities had been subject to the regulation of POO under which an organizer of any public procession of more than 30 persons was required to give notice to the Police not less than seven days prior to the intended event and it could only be conducted with a "notice of no objection" issued by the Police. Dr Margaret NG, Ms Emily LAU and the Chairman shared a similar view.

22. PASHA(CA)3 advised that as shown in Annex 2 to the Administration's paper, the Administration had rejected applications for PPE licences mainly on public safety grounds. There was a need for the licensing regime under PPEO and whether PPEO should be amended needed to be considered comprehensively. At the present stage, the Administration considered it appropriate to listen to more views instead of amending PPEO in haste.

Follow-up actions

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23. Members requested the Administration to respond in writing to the following -

- (a) whether PPEO was applicable to public entertainment activities conducted within delineated places only;
- (b) whether any street or place would become a place of public entertainment whenever any activity falling within the scope of Schedule 1 to PPEO was held at that street or place, and whether prosecution would be instituted against persons who kept or used that street or place without a PPE licence;

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- (c) whether the conduct of a street drama, the delivery of a speech and display of an exhibit without a PPE licence at a place to which the general public was admitted would contravene section 4 of PPEO, and whether the keeper of that place, the organizer of the activity conducted, the activity participants and the audience would be prosecuted under section 4 of PPEO;
- (d) whether a candidate or a person who had declared intention to run in an election would contravene section 4 of PPEO if he or she conducted without a PPE licence election campaign involving any activity falling within the scope of Schedule 1 to PPEO;
- (e) whether the scope of "public entertainment" and "place of public entertainment" under PPEO would be narrowed down by legislative amendments, and whether exemption under PPEO would be granted to story-telling, lecture and exhibition at streets and schools, and public meetings and public processions;
- (f) whether PPEO was in conformity with the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383);
- (g) statistics on successful prosecutions under PPEO in the past five years, the nature of the activities (including the type of dancing show) and places involved, whether the accused were persons who occupied, managed or used the places and whether any persons had been repeatedly prosecuted;
- (h) in connection with Annex 2 to the Administration's paper, information on the nature of the places involved in the rejected applications for PPE licences between 2007 and 2011; and
- (i) details of the HKASPDMC case, including the number of persons arrested, the respective numbers of persons prosecuted and not prosecuted, the respective reasons for instituting and not instituting prosecution, the number of persons convicted, the relevant court judgment and the status of the relevant legal proceedings.

Action  
Admin

24. PAS(CA)3 undertook to relay the concerns and suggestions raised by members and deputations about the Amendment Order and PPEO and WLA's suggestion of exempting more public spaces from the regulation of PPEO for conducting arts and cultural activities to the relevant policy bureaux and government departments for consideration.

### **III. Subsequent meetings**

25. Members agreed that the meetings originally scheduled for 3 and 6 February 2012 would be cancelled and the next meeting would be held on Thursday, 9 February 2012, at 4:30 pm.

26. Members also agreed that a further meeting would be scheduled, subject to confirmation with the Chairman, for 16 February 2012.

*(Post-meeting note: With the Chairman's concurrence, the meeting originally scheduled for 16 February 2012 was subsequently re-scheduled for Monday, 13 February 2012, at 8:30 am.)*

27. There being no other business, the meeting ended at 4:10 pm.

Council Business Division 2  
Legislative Council Secretariat  
14 February 2012

**Proceedings of meeting of the  
Subcommittee on Places of Public Entertainment  
(Exemption) (Amendment) Order 2011  
on Thursday, 2 February 2012, at 4:30 pm  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
000107 - 000551	Chairman Dr Margaret NG	Confirmation of minutes of the meeting on 17 January 2012.  The Chairman's request for early provision of papers for future meetings by the Administration.	
000552 - 001237	Director of Hong Kong Human Rights Monitor ("HKHRM")	HKHRM's views that –  (a) the scope of the Places of Public Entertainment Ordinance (Cap. 172) ("PPEO") was too broad;  (b) activities regulated by other ordinances, such as public processions which were already regulated by the Public Order Ordinance (Cap. 245), should be exempted from PPEO; and  (c) the Administration had invoked PPEO to selectively prosecute some members of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China ("HKASPDMC") in May 2010.	
001238 - 001501	Chief Executive Officer ("CEO") of Wing Lung Art ("WLA")	WLA's presentation of views (LC Paper No. CB(2)902/11-12(02))  WLA's suggestion for the Administration to exempt more public spaces from the regulation of PPEO for conducting arts and cultural activities.	
001502 - 001846	Standing Committee member of HKASPDMC	HKASPDMC's presentation of views (LC Paper No. CB(2)949/11-12(01))  HKASPDMC's concern about The Legislative Council Commission ("LCC")'s move to seek exemption under PPEO for conducting activities to be held at the Legislative Council ("LegCo") Complex.	

Time marker	Speaker	Subject	Action required
001847 - 002313	Admin	<p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) it had neither instituted prosecutions selectively nor used PPEO to curb political activities;</li> <li>(b) an activity would be entertainment under PPEO if it fell within the scope of Schedule 1 to PPEO; and</li> <li>(c) it undertook to convey the suggestion of exempting more public spaces from the regulation of PPEO for conducting arts and cultural activities to the relevant policy bureaux and government departments for consideration.</li> </ul>	Admin to follow up (paragraph 24 of the minutes)
002314 - 003300	Dr Margaret NG Director of HKHRM Standing Committee member of HKASPDMC	Views of members and deputations on whether the activities to be held at the LegCo Complex should be regarded as entertainment, whether there was a need to narrow down the definition of entertainment under PPEO, and activities that should be excluded from the coverage of PPEO.	
003301 – 004626	Dr Margaret NG Admin Chairman Director of HKHRM	<p>Dr Margaret NG's concern about the scope of PPEO and definition of entertainment under PPEO and whether the requirement for a PPE licence for the delivery of speech at a place to which the general public was admitted was in conflict with the freedom of speech.</p> <p>Dr Margaret NG's request for the Administration to provide a written response on –</p> <ul style="list-style-type: none"> <li>(a) whether PPEO was applicable to public entertainment activities conducted within delineated places only; and</li> <li>(b) whether any street or place would become a place of public entertainment whenever any activity falling within the scope of Schedule 1 to PPEO was held at that street or place, and whether prosecution would be instituted against persons who kept or used that street or place without a PPE licence.</li> </ul>	<p>Admin to follow up (paragraph 23(a) of the minutes)</p> <p>Admin to follow up (paragraph 23(b) of the minutes)</p>
004627 –	Ms Emily LAU	Ms Emily LAU and the Chairman's request	Admin to follow



Time marker	Speaker	Subject	Action required
		<p>Submission from the Hong Kong Bar Association (LC Paper No. CB(2)914/11-12(01)).</p> <p>The Administration's information on the number of temporary PPE licences issued in 2010 and 2011.</p> <p>Views of members and deputations that story-telling, lecture and exhibition at streets and schools, and public meetings and public processions should be excluded from the coverage of PPEO.</p>	
012433 - 013910	<p>Dr Margaret NG Admin Chairman CEO of WLA Standing Committee member of HKASPDMC</p>	<p>Request of Dr Margaret NG and the Chairman for the Administration to provide a written response to the following –</p> <p>(a) details on the arrest of persons for breach of PPEO at Times Square in Causeway Bay in May 2010, including the number of persons arrested, the respective numbers of persons prosecuted and not prosecuted, the respective reasons for instituting and not instituting prosecution, the number of persons convicted, the relevant court judgment and the status of the relevant legal proceedings;</p> <p>(b) whether the conduct of a street drama, the delivery of a speech and display of an exhibit without a PPE licence at a place to which the general public was admitted would contravene section 4 of PPEO, and whether the keeper of that place, the organizer of the activity conducted, the activity participants and the audience would be prosecuted under section 4 of PPEO; and</p> <p>(c) whether a candidate or a person who had declared intention to run in an election would contravene section 4 of PPEO if he/she conducted without a PPE licence election campaign involving any activity falling within the scope of Schedule 1 to PPEO.</p> <p>WLA's suggestion on the provision of more public spaces for the conduct of arts and cultural activities.</p>	<p>Admin to follow up (paragraph 23(i) of the minutes)</p> <p>Admin to follow up (paragraph 23(c) of the minutes)</p> <p>Admin to follow up (paragraph 23(d) of the minutes)</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
013911 – 014108	Chairman	Dates of subsequent meetings	

Council Business Division 2  
Legislative Council Secretariat  
14 February 2012