

LEGISLATIVE COUNCIL BRIEF

Film Censorship Ordinance
(Chapter 392)

FILM CENSORSHIP (AMENDMENT) BILL 2021

INTRODUCTION

At the meeting held on 24 August 2021, the Executive Council **ADVISED** and the Chief Executive **ORDERED** that the Film Censorship (Amendment) Bill 2021 (“the Bill”) at **Annex** should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

2. The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“NSL”) was enacted by the Standing Committee of the National People’s Congress on 30 June 2020. Pursuant to Article 2 of the NSL, and the provisions in Articles 1 and 12 of the Basic Law on the legal status of the Hong Kong Special Administrative Region (“HKSAR”) which are the fundamental provisions in the Basic Law, no institution, organisation or individual in the HKSAR shall contravene these provisions in exercising their rights and freedoms. Article 3 of the NSL provides that it is the constitutional duty of the HKSAR to safeguard national security, and the executive authorities, legislature and judiciary of the HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the NSL and other relevant laws. Article 6 of the NSL further provides that all institutions, organisations and individuals in the HKSAR shall abide by the NSL and the laws of the HKSAR in relation to the safeguarding of national security and shall not engage in any act or activity which endangers national security.

3. The Film Censorship Ordinance (Cap. 392) (“FCO”), which was last amended in 1999, provides that any film intended for exhibition in

Hong Kong shall be submitted to the Film Censorship Authority (“the Authority”), who shall assign a censor to view the film and decide whether the film can be approved for exhibition and, if so, its appropriate classification. In doing so, the censor shall consider (i) whether the film portrays matters such as violence, crime, sexuality, and offensive language and behaviour; and (ii) whether it denigrates or insults any class of the public by reference to matters such as race, religion and gender. In considering the above matters, the censor shall take into account the effect of the film as a whole and its likely effect on persons likely to view it; the artistic, educational, literary, scientific, social or cultural value of the film; and the circumstances of its intended exhibition. Section 30 of the FCO stipulates that the Secretary for Commerce and Economic Development (“SCED”) may from time to time cause to be prepared guidelines for censors (“Guidelines”) not inconsistent with the FCO indicating the manner in which it is proposed that censors exercise their functions.

4. Film is an important medium, art form and source of entertainment that can have a profound impact on the community, particularly for young persons and children. Following the enactment of the NSL, there have been a number of films (some of them purport to be documentaries or stories based on true events) depicting acts and activities endangering national security, such as those portraying offences under the NSL and other serious criminal behaviours disrupting public order, and it is apparent from their overall content, context and arrangement that such films would have an objective effect of endorsing, supporting, promoting, glorifying, encouraging or inciting those acts or activities, thereby undermining viewers’ awareness of national security and their obligation to abide by the law, weakening their respect of law and order, causing or encouraging them to support or imitate similar criminal behaviours, and posing risks to national security. In the light of operation experience, SCED issued an updated version of the Guidelines in June 2021 to provide clearer guidance to censors when performing film censorship duties to consider the implications of a film on national security within the statutory framework of the FCO, so as to decide whether the film is suitable for exhibition and its classification.

5. Upon review of the FCO, we recommend that it should be amended to enhance the film censorship regulatory framework to ensure more effective implementation of the duty to safeguard national security as required by the NSL, to prevent and suppress acts or activities which may endanger national security, to close any identified loopholes, and to meet the needs of recent circumstances.

Key Features of the Bill

(A) National security as one of the matters to be considered by a censor

6. The FCO sets out, among other things, matters to be considered by a censor when deciding whether a film should be approved for exhibition and its appropriate classification. We propose to set out explicitly in the FCO that a censor should consider whether the exhibition of a film would be contrary to the interests of national security, so as to provide clear statutory backing for a censor to give due consideration to national security when making film censorship decisions.

(B) Powers to be exercised on national security ground

7. Under the existing legal framework, a certificate of approval issued in respect of a film is generally not subject to any validity period. We propose to empower the Chief Secretary for Administration (“CS”) to direct the Authority to revoke certificates of approval or certificates of exemption previously issued for films if their exhibition would be contrary to the interests of national security. CS, as a member of the HKSAR Committee on National Security, which is accountable to the Central People’s Government for affairs relating to safeguarding national security in HKSAR under Article 12 of the NSL, is well positioned to make the relevant assessments and decisions.

8. Currently, the Film Censorship Regulations (Cap. 392A) stipulate that the time limit for a censor to make a decision under section 10(4) of the FCO is not later than 14 days after a film is submitted to and accepted by the Authority, or such longer period, but in any case not more than 28 days as SCED may allow in any particular case. In dealing with cases that may involve national security considerations, a censor may require more time to obtain information from the applicants, to seek legal advice, and to consult relevant parties in accordance with section 10(6) of the FCO. We therefore propose that the processing of films where the Authority is of the opinion that the exhibition of the film might be contrary to the interests of national security need not be subject to the prescribed time period, if SCED so agrees, in order to allow sufficient time for due consideration by the censor. Instead, SCED may grant extension of time for a period of no more than 28 days (which may be further extended) for the censor to make a decision.

9. At present, the Board of Review (Film Censorship) (“Review

Board”) is responsible for considering requests for review of the decisions of the Authority or a censor, as the case may be, in respect of a film, the film’s title or the packaging/advertising materials. We propose to disapply the relevant sections such that the Review Board would not process requests for reviewing any decision of the Authority or a censor made on national security ground, as consideration of such matters will involve judgement outside the Review Board’s intended remit.

(C) Penalty, enforcement and other operational measures

10. It is the existing practice for a censor to request the addition of a specific notice to a film, to serve as a reminder to or advice for viewers (or their parents) to mitigate potentially undesirable effects and to exercise their discretion when deciding whether to watch the film. The absence of such notices would result in the censor’s refusal to approve the film or inability to give the film an appropriate classification. We propose to expressly provide statutory authority for the censors to request such additions for the avoidance of doubt.

11. We notice that some organisations have been trying to circumvent enforcement actions under the FCO, such as by using social media or instant messaging applications to conceal information about the screening of films in breach of the law. In order to effectively ensure that the holders of certificates of exemption or certificates of approval comply with the regulation and relevant conditions, we propose to empower the Authority to require them to provide information about the exhibition of their respective films, such as the date, time and venue. We also propose to enhance an inspector’s ability to take enforcement actions and stop unauthorised exhibition or publication of films under the FCO, by empowering the inspector to enter and search any place without warrant if it is not reasonably practicable to obtain one in light of the risk of destruction or loss of relevant evidence or materials.

12. In addition to active monitoring, we propose to impose heavier penalties for exhibiting films that are not exempted or approved.

13. The FCO also regulates the publication of films contained in the form of videotapes and laserdiscs. We propose to extend the control to include any other physical storage media (such as USB flash drives and other portable storage media) containing the digital version of the film.

14. Section 16 of the FCO specifies that the Review Board shall consist of SCED as an ex-officio member and nine other persons appointed

by the Chief Executive. In order to allow greater flexibility to determine the size and composition of the Review Board, we propose to remove the specified number of non-official members to be appointed by the Chief Executive, as well as to empower SCED to appoint a public officer as his representative to attend and vote at the Board meetings.

THE BILL

15. The main provisions of the Bill are as follows –
- (a) Clause 3 and Part 1 of the Schedule provide for the definition of “physical storage medium for films” and set out amendments to extend the scope of certain provisions covering videotapes and laserdiscs only under the existing FCO;
 - (b) Clauses 4, 14, 15, 18 and 20 respectively amend sections 7, 15A, 15K, 20 and 22 of the FCO to increase the penalties for certain offences under the FCO;
 - (c) Clause 7 amends section 10 of the FCO to –
 - (i) require a censor to, in dealing with a film under that section, consider whether the exhibition of the film would be contrary to the interests of national security; and
 - (ii) enable a censor to impose a condition that a particular notice be added to a film for it to be approved for exhibition;
 - (d) Clause 8 adds a new section 10A to the FCO to provide for a mechanism to extend the period for making a film censorship decision where national security may be involved;
 - (e) Clause 11 amends section 13 of the FCO to provide that if a censor requires a particular notice to be added to a film, the Authority must inform the person who submitted the film under section 8 of the FCO of the censor’s decision;
 - (f) Clause 12 adds a new Division 2 of Part IV to the FCO to

empower the CS to direct the Authority to revoke any certificates of exemption or certificates of approval that are in force for films the exhibition of which would be contrary to the interests of national security;

- (g) Clause 13 adds new sections 14B, 14C and 14D to the FCO to empower the Authority to require relevant persons to provide information about the exhibition of a film;
- (h) Clause 16 amends section 16 of the FCO to empower SCED to appoint a public officer to act on his behalf at a meeting of the Review Board, and adjust the number of non-official members required to be appointed to the Review Board;
- (i) Clause 17 adds a new section 19A to the FCO to provide that the review mechanism of the Review Board under sections 17, 18 and 19 of the FCO does not apply in relation to decisions of the Authority or a censor made on the grounds of national security; and
- (j) Clause 21 amends section 23 of the FCO to adjust the requirement to obtain a warrant for an inspector's entry into, and search of, any place for enforcing the FCO.

LEGISLATIVE TIMETABLE

16. The legislative timetable will be –

Publication in the Gazette	27 August 2021
First Reading and commencement of Second Reading debate	1 September 2021
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSALS

17. The proposals are in conformity with the Basic Law, including

the provisions concerning human rights. They have no sustainability, productivity, economic, environmental, financial, civil service, family and gender implications. The Bill would not affect the current binding effect of the FCO.

PUBLICITY

18. We will issue a press release and arrange a spokesperson to answer media and public enquiries.

ENQUIRIES

19. For enquiries on this brief, please contact Mr Keith GIANG, Principal Assistant Secretary for Commerce and Economic Development (Communications and Creative Industries) A, at 2810 2708.

Communications and Creative Industries Branch
Commerce and Economic Development Bureau
24 August 2021