

立法會
Legislative Council

LC Paper No. LS115/20-21

**Paper for the House Committee Meeting
on 3 September 2021**

**Legal Service Division Report on
Film Censorship (Amendment) Bill 2021**

I. SUMMARY

- 1. The Bill**

The Bill seeks to:

 - (a) amend the Film Censorship Ordinance (Cap. 392) to provide for the censorship of films in the interests of national security and for various matters including matters relating to the film censorship procedure, prohibition of the exhibition or publication of certain films, powers and membership of the Board of Review and the enforcement of Cap. 392; and
 - (b) make related and miscellaneous amendments to Cap. 392 and related legislation.

- 2. Public consultation**

It is not mentioned in the Legislative Council Brief issued by the Communications and Creative Industries Branch of the Commerce and Economic Development Bureau on 24 August 2021 whether the Administration has conducted public consultation on the Bill.

- 3. Consultation with LegCo Panel**

The Administration briefed the Panel on Information Technology and Broadcasting on 12 July 2021 on its plan to review Cap. 392 to prohibit and prevent exhibition of films which may endanger national security. Members raised no objection to the Administration's plan.

- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to propose changes to various aspects of the film censorship mechanism, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 1 September 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: CCIB/A 230-5/1(C)) issued by the Communications and Creative Industries Branch of the Commerce and Economic Development Bureau on 24 August 2021 for further details.

Object of the Bill

2. The Bill seeks to:

- (a) amend the Film Censorship Ordinance (Cap. 392) to provide for the censorship of films in the interests of national security and various matters including matters relating to the film censorship procedure, prohibition of the exhibition or publication of certain films, powers and membership of the Board of Review ("the Board") and the enforcement of Cap. 392; and
- (b) make related and miscellaneous amendments to Cap. 392 and related legislation.

Background

3. Under Cap. 392, any film intended for exhibition in Hong Kong must be submitted to the Film Censorship Authority¹ ("Authority") to be dealt with (section 8). The Authority shall assign a censor to decide whether a film is suitable for exhibition and its classification (section 10) or exempt the film from classification (section 9). The Board established under section 16 of Cap. 392 may review the decision of the Authority or the censor (sections 17, 18 and 19).

4. Article 3 of the Law of the People's Republic of China on Safeguarding National Security in Hong Kong Special Administrative Region ("NSL") provides that it is a constitutional duty of the Hong Kong Special Administrative Region ("HKSAR") to safeguard national security, and the executive authorities, legislature and judiciary of the HKSAR shall prevent, suppress and impose punishment for any act or activity endangering national security. According to paragraphs 4 and 5 of the LegCo Brief, the Secretary for Commerce and Economic Development ("SCED") issued an updated version of

¹ Under section 3 of Cap. 392, the Film Censorship Authority is the public officer appointed by the Secretary for Commerce and Economic Development.

guidelines for censors under section 30 of Cap. 392 ("Guidelines") in June 2021 to provide guidance to censors when performing film censorship duties to consider the implications of a film on national security. The Administration is of the view that Cap. 392 should be amended to ensure more effective implementation of the duty to safeguard national security as required by NSL.

Provisions of the Bill

5. The Bill consists of three Parts and a Schedule. The major provisions of the Bills are summarized below.

National security to be one of the matters considered by censors

6. Under section 10(2) of Cap. 392, the censor shall consider specified matters when deciding the suitability of the film for exhibition.² Clause 7 of the Bill seeks to amend section 10(2) of Cap. 392 to require a censor to consider, in addition to matters in existing section 10(2), whether the exhibition of a film would be contrary to the interests of national security when deciding whether the film is suitable for exhibition and its classification under section 10.

Extending the period for making film censorship decisions in cases involving national security

7. Under section 10(5) of Cap. 392 and Part II of Schedule 5 to the Film Censorship Regulations (Cap. 392A), the time limit for a censor to make a decision under section 10(4) of Cap. 392 ("decision period") 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 after the film is so submitted and accepted as SCED may allow in any particular case.

8. Clause 8 of the Bill seeks to add a new section 10A to Cap. 392 to allow SCED, on the recommendation of the Authority, to extend the decision period for not more than 28 days after the expiry of the original decision period if SCED is of the opinion that the exhibition of the film might be contrary to the interests of national security and the censor concerned could not reasonably be expected to make a decision for the film within the original decision period.

² These matters include (i) whether the film portrays matters such as violence, crime, sexuality, and offensive language and behaviour; and (ii) whether the film denigrates or insults any particular class of the public by reference to matters such as race, religion and gender.

Direction to revoke the certificate of a film on grounds of national security

9. Under section 13(1) of Cap. 392, the Authority shall issue a certificate of approval in respect of a film after a censor has approved the film for exhibition and gave it a classification. The Authority may also exempt the film from classification under section 10 and issue a certificate of exemption in respect of the film concerned under section 9. The Authority may revoke the certificate of exemption (section 9(4)) or the certificate of approval in some circumstances (sections 17(9), 18(10) and 19(11)).

10. Clause 12 of the Bill seeks to add a new section 14A to Cap. 392 to empower the Chief Secretary for Administration ("CS") to direct the Authority to revoke the certificate of approval or exemption of a film that is in force if CS is of the opinion that the exhibition of the film concerned would be contrary to the interests of national security.

Powers and membership of the Board

11. Clause 16 of the Bill seeks to (i) amend section 16(2)(c) of Cap. 392 to adjust the number of persons (not being public officers) required to be appointed to the Board from nine to not less than five; and (ii) add a new section 16(5B) to Cap. 392 to empower SCED to appoint a public officer to act on behalf of SCED at a meeting of the Board.

12. Under sections 17, 18 and 19 of Cap. 392, the Board may review the decision of the Authority or a censor at the request of a person who submits a film under section 8, a person who is aggrieved by the exhibition or publication of the film or upon a request made by the Authority.

13. Clause 17 of the Bill seeks to add a new section 19A to Cap. 392 to provide that the review mechanism provided in sections 17, 18 and 19 of Cap. 392 would not apply in relation to a decision made by the Authority or a censor if the decision is based on the opinion that the exhibition of a film would be contrary to the interests of national security.

Enforcement powers of the Authority

14. Clause 13 of the Bill seeks to add a new section 14B to Cap. 392 to empower the Authority to require a person who has been issued a certificate of exemption or approval for a film to provide any information about the exhibition of the film concerned. Under the proposed new section 14C, failure to comply with the requirement would be an offence punishable by a fine at level 3 (\$10,000) on the first conviction and a fine at level 5 (\$50,000) on a subsequent conviction.

15. Currently, under section 23 of Cap. 392, an inspector is authorized by the Authority to, with a warrant issued by a magistrate, enter any place in which he has reason to believe that a film is exhibited or an offence under Cap. 392 is being committed and take enforcement actions (e.g. seize a film or require any person to produce proof of identity for his inspection). Clause 21 of the Bill seeks to amend section 23 of Cap. 392 to allow an authorized inspector to enter and search any place without warrant if the delay to obtain a warrant is likely to result in the loss of evidence of an offence under Cap. 392, or it would not be reasonably practicable to obtain a warrant in the circumstances of the case.

Increasing the penalties for certain offences under Cap. 392

16. Sections 7, 15A, 15K, 20 and 22 of Cap. 392 provide for various offences relating to exhibition or publication of films. These include exhibition of films or publication of videotapes or laserdiscs without a certificate of approval or exemption, or exhibition of films in respect of which the certificate of approval or exemption has been revoked. The maximum penalty for each of these offences is a fine of \$200,000 and imprisonment for one year.

17. The Bill proposes to increase the penalties for the above offences to a fine of \$1,000,000 and imprisonment for three years.

Other amendments

18. Other amendments proposed in the Bill include:
- (a) empowering a censor to impose a condition that a particular notice be added to the film for it to be approved for exhibition (clause 7);
 - (b) amending certain provisions of Cap. 392 related to videotapes and laserdiscs to cover other physical storage medium for films (clause 2(2) of and Part 1 of the Schedule to the Bill); and
 - (c) related technical amendments relating to references to videotapes and laserdiscs in Cap. 392A and the Control of Obscene and Indecent Articles Ordinance (Cap. 390) as set out in Parts 2 and 3 of the Schedule to the Bill (clauses 23 and 24).

Commencement

19. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public consultation

20. It is not mentioned in the LegCo Brief whether the Administration has conducted public consultation on the Bill.

Consultation with LegCo Panel

21. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Administration informed the Panel on 12 July 2021 that the Administration would review whether amendments to Cap. 392 would be required in order to prohibit exhibition of films which might endanger national security, and that an amendment Bill would be introduced into LegCo at an appropriate time. While members were not given any information on how Cap. 392 might be amended, they supported the amendments to the Guidelines which would prevent the exhibition of films that incite violence and endanger national security.

Conclusion

22. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to propose changes to various aspects of the film censorship mechanism, Members may consider forming a Bills Committee to study the Bill in detail.

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