

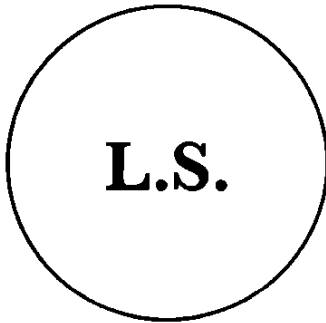
FILM CENSORSHIP ORDINANCE 1988**ARRANGEMENT OF SECTIONS**

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HONG KONG

No. 25 OF 1988



I assent.

David WILSON,
Governor.
19 May 1988

An Ordinance to provide for the establishment of a Film Censorship Authority, a panel of censors and a panel of advisers, and for regulating and imposing restrictions on the exhibition of films; for the approval and classification of films; for the establishment of a Board of Review; for the creation of offences; to make consequential and other amendments to other Ordinances; and for matters connected therewith.

*Ordinance not
disallowed see
G.N. 262/88*

[10 November 1988]

L.A. 248/88

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

1. This Ordinance may be cited as the Film Censorship Ordinance 1988 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. (1) In this Ordinance, unless the context otherwise requires—

Interpretation.

“advertising material” means a display, figure, film, poster, picture or text used or intended to be used for the purpose of advertising a film exhibited or intended for exhibition;

“adviser” means an adviser appointed to the panel of advisers under section 6(2);

“Authority” means the Film Censorship Authority established by section 3;

“Board” means the Board of Review established by section 16(1);

“censor” means a censor appointed under section 5;

(Cap. 371.) “cigarette advertisement” has the meaning assigned to it by section 14 of the Smoking (Public Health) Ordinance;

“exercise”, in relation to any function, includes perform and discharge;

“exhibition”, in relation to a film, means the screening of the film in Hong Kong—

(Cap. 172.) (a) at any place of public entertainment within the meaning of section 2 of the Places of Public Entertainment Ordinance;

(Cap. 1.) (b) at any public place within the meaning of section 3 of the Interpretation and General Clauses Ordinance which is not a place of public entertainment referred to in paragraph (a); or

(c) at any place to which a person has access by reason of the fact of being a member of a club, society, company, partnership or association of persons, incorporated or unincorporated,

but does not include any such screening to—

- (i) the persons who made the film or who arranged or organized the making of the film;
- (ii) a person who distributes, or intends to distribute, the film in or outside Hong Kong;
- (iii) a person who exhibits, or intends to exhibit, the film in or outside Hong Kong;
- (iv) the projectionist of the film; or
- (v) any combination of the persons referred to in paragraphs (i), (ii), (iii) and (iv),

where no other person is present at such screening; and “exhibit” shall be construed accordingly;

“film” means—

- (a) a cinematograph film and includes any sound-track associated with such film;
- (b) a video-tape and includes any sound-track associated with such video-tape;
- (c) a still film and includes any sound-track associated with such film;
- (d) any other record of visual moving images that is capable of being used for the subsequent screening of those images and includes any sound-track associated with such record;
- (e) any combination of the films referred to in paragraphs (a), (b), (c) and (d); or
- (f) an excerpt or part of a film referred to in paragraph (a), (b), (c), (d) or (e);

“functions” includes powers and duties;

“inspector” means a public officer authorized under section 23(1) to be an inspector for the purposes of this Ordinance;

“meeting” means a meeting of the Board;

- “member” means a member of the Board;
 - “panel of advisers” means the panel of advisers established by section 6(1);
 - “panel of censors” means the panel of censors established by section 4(1);
 - “proof of identity” means proof of identity within the meaning of section 17B of the Immigration Ordinance; (Cap. 115.)
 - “Secretary” means the Secretary for Administrative Services and Information;
 - “still film” means a slide, or a series of slides, including single frames of a film, of visual non-moving images that is or are capable of being used for the subsequent screening of those images;
 - “working day” means any day other than a public holiday or a gale warning day within the meaning of section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance. (Cap. 62.)
- (2) For the purposes of this Ordinance, where a film is exhibited—
- (a) at any place of public entertainment—
 - (i) within the meaning of section 2 of the Places of Public Entertainment Ordinance; and (Cap. 172.)
 - (ii) in respect of which a licence granted under that Ordinance is in force,
 the person holding that licence shall be taken to be the person who exhibits that film; and
 - (b) at any other place, the person who arranges or organizes that exhibition of the film shall be taken to be the person who exhibits that film.
- (3) Where a certificate of exemption is issued under section 9, or a certificate of approval is issued under section 13, in respect of a film, that certificate shall apply to each copy of that film as if that copy were that film and, for that purpose, any reference in this Ordinance (including section 21(3)) or section 3(a) of the Control of Obscene and Indecent Articles Ordinance to that film shall be deemed to include a copy of that film. (9 of 1987.)
- (4) For the avoidance of doubt, it is hereby declared that where a certificate of exemption issued under section 9, or a certificate of approval issued under section 13, in respect of a film is revoked or deemed to be revoked under this Ordinance, that revocation shall apply in respect of each copy of that film as it applies to that film.

PART II

ESTABLISHMENT OF FILM CENSORSHIP AUTHORITY AND
 PANEL OF CENSORS AND PANEL OF ADVISERS

- 3. For the purposes of this Ordinance, there is hereby established a Film Censorship Authority who shall be the Commissioner for Television and Entertainment Licensing. Film Censorship Authority.
- 4. (1) For the purposes of this Ordinance, there is hereby established a panel of censors. Panel of censors.

(2) The panel of censors shall consist of such persons as are, from time to time, appointed to it by the Governor and any such appointment shall be notified in the *Gazette*.

Appointment of censors.

5. The Authority may appoint such censors from the panel of censors as may from time to time be necessary for the purposes of this Ordinance.

Panel of advisers.

6. (1) For the purposes of this Ordinance, there is hereby established a panel of advisers.

(2) The panel of advisers shall consist of such persons as are, from time to time, appointed to it by the Authority by notice in writing.

PART III

RESTRICTION ON EXHIBITION OF FILMS

Restriction on exhibiting films unless exempted or approved.

7. (1) A person who exhibits a film in respect of which neither of the conditions specified in subsection (2) has been satisfied commits an offence and is liable on conviction to a fine of \$50,000 and imprisonment for 1 year.

(2) The conditions referred to in subsection (1) are—

- (a) that a certificate of exemption has been issued under section 9 in respect of the film; or
- (b) that a certificate of approval has been issued under section 13 in respect of the film.

PART IV

CENSORSHIP OF FILMS

Films to be submitted to Authority before exhibition.

8. (1) A film intended for exhibition shall be submitted to the Authority to be dealt with under section 9 or 10.

(2) A film submitted under subsection (1) shall—

- (a) be accompanied by a statement as to the classification under section 12(1) which is sought for the film; and
- (b) be submitted—
 - (i) in such manner and at such place; and
 - (ii) together with such information and particulars, as is prescribed.

Exemption of films by Authority.

9. (1) Where a film is submitted under section 8, the Authority may, not later than 7 working days after it is so submitted, exempt it from being dealt with under section 10 if it is, in the Authority's opinion, of a class or description of film prescribed as suitable to be exempted under this section.

(2) A film may be exempted under this section subject to such conditions, if any, relating to the suitability or unsuitability of the film for exhibition—

- (a) to the public in general;
- (b) to any class of the public;
- (c) at a particular place;
- (d) at a particular time;
- (e) for a particular purpose;
- (f) on one occasion; or
- (g) on more than one occasion,

as the Authority thinks fit, and shall be subject to a condition that the film shall not be exhibited with—

- (i) any additions to; or
- (ii) any excisions from,

the film in the form in which it was submitted under section 8.

(3) Where a film is exempted under this section, the Authority shall forthwith issue to the person who submitted it under section 8 a certificate of exemption—

- (a) in the prescribed form; and
- (b) endorsed with the conditions to which the exemption is subject.

(4) The Authority may revoke a certificate of exemption issued under this section by notice in writing served either personally or by registered post on the person to whom the certificate was issued if, having taken into consideration the matters referred to in section 10(2), he is of the opinion that the film in respect of which the certificate was issued should again be submitted under section 8.

(5) No fee shall be payable for a film dealt with under this section.

10. (1) Where a film is submitted under section 8, the Authority shall, unless the film is dealt with under section 9, assign in respect of the film, as soon as practicable but in any case not later than 7 working days after the film is so submitted, a censor and may at the same time assign not less than 2 advisers.

Action to be taken by Authority and censor in relation to film which is not exempted.

(2) The censor shall as soon as practicable view the film and consider the following matters for the purpose of making his decision under subsection (4)—

- (a) whether the film portrays, depicts or treats cruelty, torture, violence, crime, horror, disability, sexuality or indecent or offensive language or behaviour;
- (b) whether the film denigrates or insults any particular class of the public by reference to the colour, race, religious beliefs or ethnic or national origins or the sex of the members of that class; and
- (c) whether there is a likelihood that the exhibition of the film would seriously damage good relations with other territories.

(3) The censor shall, in viewing the film and considering the matters referred to in subsection (2), also take into account the following matters—

- (a) the effect of the film as a whole and its likely effect on the persons likely to view the film;
- (b) the artistic, educational, literary or scientific merit of the film and its importance or value for cultural or social reasons;
- (c) in relation to the intended exhibition of the film, the circumstances of such exhibition; and
- (d) article 19 of the International Covenant on Civil and Political Rights (which deals with the principle of freedom of expression).

(4) Subject to subsections (5) and (6), the censor shall as soon as practicable after viewing the film, considering the matters referred to in subsection (2) and taking into account the matters referred to in subsection (3)—

- (a) if he is of the opinion that the film is suitable for exhibition, approve the film for exhibition, give it a classification under section 12(1) and record in writing by reference to the relevant matter referred to in subsection (2) or (3) a statement of the reasons for his decision;
- (b) if he is of the opinion that the film is not suitable for exhibition because of a matter referred to in subsection (2), refuse to approve the film for exhibition and record in writing by reference to the relevant matter referred to in subsection (2) a statement of the reasons for his decision; or
- (c) if he is of the opinion, by reason of a specified piece or specified pieces of the film, that the film is not suitable for exhibition because of a matter referred to in subsection (2), or that he is unable to give the film an appropriate classification under section 12(1), record in writing—
 - (i) the classification under section 12(1) he would be prepared to give to the film if such specified piece or pieces were excised from the film; and
 - (ii) by reference to the relevant matter referred to in subsection (2), a statement of the reasons for his decision, or the reasons why he is unable to give the film an appropriate classification under section 12(1), as the case may be.

(5) The censor shall make his decision under subsection (4) not later than 21 days after the film is submitted under section 8 or such longer period, but in any case not more than 35 days after the film is so submitted, as the Secretary may allow in any particular case.

(6) The censor, before making his decision under subsection (4) and for the purpose of forming an opinion on which to base such decision—

- (a) shall consult with the advisers, if any, assigned under subsection (1) in respect of the film; and
- (b) may, with the approval of the Authority in writing, consult with any other person,

but, in making such decision, is not bound by such consultation.

(7) For the purpose of subsections (2), (3), (4), (5) and (6), the references to “censor” and “film” mean, respectively, the censor assigned under subsection (1) in respect of a film and the film in respect of which that censor is so assigned.

(8) A prescribed fee shall be payable for a film dealt with under this section.

11. Where a film is screened for the purpose of section 10, no person shall be present at such screening other than—

Viewing of films screened for purpose of censorship.

- (a) a censor;
- (b) the advisers, if any, assigned under section 10(1) in respect of the film;
- (c) the projectionist of the film;
- (d) the Authority and such other persons as the Authority may allow to attend; or
- (e) any combination of the persons referred to in paragraphs (a), (b), (c) and (d).

PART V

MATTERS CONSEQUENTIAL UPON CENSOR'S DECISION
IN RESPECT OF A FILM

12. (1) Where a censor approves a film for exhibition under section 10(4)(a), he shall classify it as—

Classification of films.

- (a) approved for exhibition to persons of any age;
- (b) approved for exhibition to persons of any age subject to the condition that any advertising material which relates to the film shall contain the following notice, or a notice to the like effect, in block letters and Chinese characters prominently and legibly displayed—

“NOT SUITABLE FOR CHILDREN.

不適合兒童 ”; or

- (c) approved for exhibition only to persons who have attained the age of 18 years.

(2) The classification of a film under subsection (1) shall be designated by such symbols for each of the classifications under that subsection as are prescribed.

13. (1) Where a censor approves a film for exhibition under section 10(4)(a) and gives it a classification under section 12(1), the Authority shall forthwith issue to the person who submitted the film under section 8 a certificate of approval—

Certificate of approval, notice of refusal to approve and notice concerning excision.

- (a) in the prescribed form;
- (b) in the case of a film given a classification under section 12(1)(b), endorsed with the condition referred to in that section;
- (c) endorsed with a condition that the film shall not be exhibited with—
 - (i) any additions to; or
 - (ii) any excisions from,

the film in the form in which it was submitted under section 8;

- (d) setting out the classification of the film under section 12(1);
- (e) endorsed with the appropriate symbol referred to in section 12(2); and
- (f) endorsed with the censorship mark referred to in section 24.

(2) Where a censor refuses to approve a film for exhibition under section 10(4)(b), the Authority shall forthwith give written notice of the censor's decision under that section to the person who submitted the film under section 8 and shall state in the notice the reasons for the censor's decision.

(3) Where a censor deals with a film under section 10(4)(c), the Authority shall forthwith give written notice of the censor's decision under that section to the person who submitted the film under section 8 and shall—

- (a) specify in the notice the piece or pieces of the film requiring excision; and
- (b) state in the notice the reasons for the censor's decision.

(4) Where subsection (3) applies in relation to a film, the Authority shall—

- (a) return the film to the person who submitted the film under section 8 to make the required excision, or upon that person's request make or arrange such excision; and
- (b) after any such excision has been made—
 - (i) approve the film for exhibition;
 - (ii) give the film the classification under section 12(1) which the censor who dealt with the film under section 10(4)(c) recorded in writing as the classification he would be prepared to give the film if such excision were made; and
 - (iii) issue to the person who submitted the film under section 8 a certificate of approval—
 - (A) in the prescribed form;
 - (B) in the case of a film given a classification under section 12(1)(b), endorsed with the condition referred to in that section;
 - (C) endorsed with a condition that the film shall not be exhibited with any additions to, or any excisions from, the film in the form in which it is after such excision;
 - (D) setting out the classification of the film under section 12(1);
 - (E) endorsed with the appropriate symbol referred to in section 12(2); and
 - (F) endorsed with the censorship mark referred to in section 24.

(5) No certificate of approval shall be issued under this section in respect of a film unless any fee payable under section 10(8) for the film has been paid.

14. (1) Where a person other than the Authority makes any excision to a film for the purpose of section 13(4), he shall forthwith deposit with the Authority the piece of film so excised. Excised film to be retained by Authority.

(2) Subject to subsection (3), the Authority shall retain each piece of film excised by him under section 13(4), or deposited with him under subsection (1) of this section, for not less than 5 years, and thereafter the piece of film may be disposed of in such manner as he thinks fit.

(3) The person who submitted the film under section 8 from which a piece of film retained by the Authority under subsection (2) was excised may, at any time, request in writing the Authority to return to him that piece of film and, unless that piece of film has otherwise been disposed of under subsection (2), the Authority shall forthwith return that piece of film to that person if that person returns to the Authority the certificate of approval issued under section 13(4) in respect of that film.

(4) Where a certificate of approval issued under section 13(4) is returned to the Authority under subsection (3), the certificate shall be deemed to be revoked.

(5) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine of \$10,000.

PART VI

EXHIBITION OF FILMS

15. (1) A person shall not exhibit a film in respect of which a certificate of exemption has been issued under section 9 or a certificate of approval has been issued under section 13 unless the certificate, or a legible photocopy thereof, is displayed and kept displayed in a conspicuous position in or about the entrance to the part of the place intended to be occupied by persons viewing the exhibition of the film during the period of the exhibition of the film. Film not to be exhibited without display of certificate of exemption or approval.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$10,000.

PART VII

ESTABLISHMENT OF BOARD OF REVIEW AND FUNCTIONS OF BOARD

16. (1) For the purposes of this Ordinance, there is hereby established a Board of Review. Board of Review.

(2) The Board shall consist of the following members—

(a) the Secretary ex officio;

(b) 3 other persons being public officers appointed by the Governor; and

(c) 6 other persons not being public officers appointed by the Governor.

(3) Subject to sections 17(6), 18(7) and 19(8), at a meeting 6 members shall form a quorum.

(4) The procedure of the Board at a meeting shall be determined by the Board.

(5) The Governor shall appoint a member referred to in subsection (2)(c) to be the chairman of the Board, but in the event of the chairman's absence from a meeting, the members present shall appoint one of their number to preside as chairman; and the chairman or person presiding shall have a deliberative and a casting vote.

(6) The validity of any proceedings of the Board shall not be affected by—

- (a) any defect in the appointment of any member;
- (b) the absence of any member from the meeting at which any such proceeding occurred; or
- (c) any vacancy among members.

Request of person who submitted film to review decision of Authority or censor.

17. (1) Where a person who submits a film under section 8 is aggrieved by a decision of the Authority or a censor made under this Ordinance in respect of the film, that person may, by notice in writing which—

- (a) states the reasons why he is so aggrieved; and
- (b) is delivered to the Secretary, in such manner and at such place as is prescribed, not later than 28 days after the day on which he is notified under this Ordinance of the decision,

request the Board to review under this section that decision.

(2) Where a request is made under subsection (1), the Secretary shall—

- (a) forthwith issue to the members who are in Hong Kong—
 - (i) a copy of the notice under that subsection which makes that request; and
 - (ii) a copy of the decision to which that request relates;
- (b) after consultation with the members appointed under section 16(2)(c) who are in Hong Kong, fix a date and time for a meeting to review the decision to which that request relates which shall be not later than 21 days after delivery of the notice under subsection (1) which makes that request; but if, after that consultation, in the opinion of the Secretary, it is not practicable for him to fix a date and time within that period, he may fix a date and time not later than 35 days after delivery of that notice; and
- (c) after a date and time is fixed under paragraph (b) for a meeting to review the decision to which that request relates, forthwith by notice in writing served either personally or by registered post on the person who made that request—
 - (i) require that person to produce to the Secretary, at a place specified in that notice, on or before that date and time, the film (or a copy thereof) to which that decision relates; and
 - (ii) inform that person that he, or his authorized representative, or both, may attend before the Board on that date and time and, if so attending, shall be permitted to make representations.

(3) Subject to subsection (6), the Board shall at a meeting review the decision to which a request under subsection (1) relates by—

- (a) viewing the film (or a copy thereof) to which the decision relates;
- (b) considering the documents concerned issued to it under subsection (2)(a); and
- (c) considering the representations, if any, made in pursuance of subsection (2)(c)(ii),

and thereafter, taking into consideration the matters referred to in section 10(2) and taking into account the matters referred to in section 10(3), shall complete the review by—

- (i) in relation to the decision, giving directions in writing to the Authority or a censor with respect to the exercise by him of any of his functions under this Ordinance, and the Authority or the censor, as the case may be, shall comply with any such directions; or
- (ii) in writing, refusing to give any such directions.

(4) Where under subsection (3) the Board completes the review of the decision to which a request under subsection (1) relates, the Secretary shall forthwith serve either personally or by registered post on the person who made that request a copy of the directions or refusal, as the case may be, given under subsection (3) in respect of that review.

(5) Where at a meeting for the purpose of subsection (3) the Board does not complete the review of the decision to which a request under subsection (1) relates, the Board may complete the review at any subsequent meeting, and the review may be continued notwithstanding any change in the membership of the Board.

(6) At a meeting for the purpose of subsection (3), 6 members shall form a quorum but if, after 30 minutes have elapsed since the time fixed for the meeting, less than 6 members are in attendance at the meeting, then 4 members shall form a quorum.

(7) Where, consequent upon a request under subsection (1), a person fails to comply with a requirement under subsection (2)(c)(i) as specified in a notice served on him under subsection (2)(c), the Board shall refuse to review the decision to which that request relates.

(8) Where, consequent upon a request under subsection (1), a person complies with a requirement under subsection (2)(c)(i) as specified in a notice served on him under subsection (2)(c), the Secretary shall, after that request is fully disposed of under this section, forthwith return to that person the film produced to the Secretary in accordance with that notice.

(9) The Authority and a censor shall each have such powers as are necessary to give effect to any directions given to him under subsection (3)(i) by the Board, and such powers shall include, in the case of the Authority, the power to revoke a certificate issued under this Ordinance.

18. (1) Where the Authority, having taken into consideration the matters referred to in section 10(2), is of the opinion that the decision under section 10(4) in respect of a film which has resulted in the issue of a certificate of approval under section 13 for the film is not, or is no longer, the appropriate decision under section 10(4) in respect of that film, he may by notice in writing which—

Request of Authority to review decision of censor.

- (a) states the reasons why he is of that opinion; and
- (b) is delivered to the Secretary, in such manner and at such place as is prescribed,

request the Board to review under this section that decision.

(2) The Authority shall, at the same time as he makes a request under subsection (1), deliver to the person to whom the certificate referred to in that subsection was issued in respect of the film to which that request relates—

- (a) a copy of the notice under subsection (1) which makes that request; and
- (b) a statement informing that person that he may, not later than 7 days after delivery of that notice and statement, make written representations to the Board in respect of that request by delivering such representations to the Secretary at such place as is specified in that statement.

(3) Where a request is made under subsection (1), the Secretary shall, after the expiration of 7 days from the making of that request—

- (a) forthwith issue to the members who are in Hong Kong—
 - (i) a copy of the notice under that subsection which makes that request;
 - (ii) a copy of the decision to which that request relates; and
 - (iii) a copy of any written representations made under subsection (2) in respect of that request;
- (b) after consultation with the members appointed under section 16(2)(c) who are in Hong Kong, fix a date and time for a meeting to review the decision to which that request relates which shall be not later than 21 days after the issue of the documents concerned under paragraph (a); but if, after that consultation, in the opinion of the Secretary, it is not practicable for him to fix a date and time within that period, he may fix a date and time not later than 35 days after the issue of those documents; and
- (c) after a date and time is fixed under paragraph (b) for a meeting to review the decision to which that request relates, forthwith by notice in writing served either personally or by registered post on the person to whom the certificate referred to in subsection (1) was issued in respect of the film to which that request relates—
 - (i) require that person to produce to the Secretary, at a place specified in that notice, on or before that date and time, that film (or a copy thereof); and
 - (ii) inform that person that he, or his authorized representative, or both, may attend before the Board on that date and time and, if so attending, shall be permitted to make representations.

(4) Subject to subsection (7), the Board shall at a meeting review the decision to which a request under subsection (1) relates by—

- (a) viewing the film (or a copy thereof) to which the decision relates;

- (b) considering the documents concerned issued to it under subsection (3)(a); and
- (c) considering the representations, if any, made in pursuance of subsection (3)(c)(ii),

and thereafter, taking into consideration the matters referred to in section 10(2) and taking into account the matters referred to in section 10(3), shall complete the review by—

- (i) in relation to the decision, giving directions in writing to the Authority or a censor with respect to the exercise by him of any of his functions under this Ordinance, and the Authority or the censor, as the case may be, shall comply with any such directions; or
- (ii) in writing, refusing to give any such directions.

(5) Where under subsection (4) the Board completes the review of the decision to which a request under subsection (1) relates, the Secretary shall forthwith serve either personally or by registered post on the person to whom the certificate referred to in subsection (1) was issued in respect of the film to which that request relates a copy of the directions or refusal, as the case may be, given under subsection (4) in respect of that review.

(6) Where at a meeting for the purpose of subsection (4) the Board does not complete the review of the decision to which a request under subsection (1) relates, the Board may complete the review at any subsequent meeting, and the review may be continued notwithstanding any change in the membership of the Board.

(7) At a meeting for the purpose of subsection (4), 6 members shall form a quorum but if, after 30 minutes have elapsed since the time fixed for the meeting, less than 6 members are in attendance at the meeting, then 4 members shall form a quorum.

(8) Where, consequent upon a request under subsection (1), a person fails to comply with a requirement under subsection (3)(c)(i) as specified in a notice served on him under subsection (3)(c)—

- (a) the Board shall refuse to review the decision to which that request relates; and
- (b) the certificate referred to in subsection (1) issued in respect of the film to which that request relates shall be deemed to be revoked.

(9) Where, consequent upon a request under subsection (1), a person complies with a requirement under subsection (3)(c)(i) as specified in a notice served on him under subsection (3)(c), the Secretary shall, after that request is fully disposed of under this section, forthwith return to that person the film produced to the Secretary in accordance with that notice.

(10) The Authority and a censor shall each have such powers as are necessary to give effect to any directions given to him under subsection (4)(i) by the Board, and such powers shall include, in the case of the Authority, the power to revoke a certificate issued under this Ordinance.

Request of person aggrieved by exhibition of film to review decision of Authority or censor.

19. (1) Where a film in respect of which a certificate of exemption has been issued under section 9 or a certificate of approval has been issued under section 13 is exhibited, a person who upon moral, religious, educational or other grounds is aggrieved by the exhibition of the film may by notice in writing which—

- (a) states the reasons why he is so aggrieved; and
- (b) is delivered to the Chief Secretary, in such manner and at such place as is prescribed,

request the Board to review under this section the decision of the Authority or a censor under this Ordinance which has resulted in the issue of the certificate in respect of the film to which that request relates.

(2) Where a request is made under subsection (1), the Chief Secretary may, after taking into consideration the matters referred to in section 10(2), by delivering that request to the Secretary, refer to the Board the decision to which that request relates.

(3) Where a request under subsection (1) is delivered to the Secretary under subsection (2), the Secretary shall forthwith deliver to the person to whom the certificate referred to in subsection (1) was issued in respect of the film to which that request relates—

- (a) a copy of the notice under subsection (1) which makes that request; and
- (b) a statement informing that person that he may, not later than 7 days after delivery of that notice and statement, make written representations to the Board in respect of that request by delivering such representations to the Secretary at such place as is specified in that statement.

(4) Where, pursuant to a request under subsection (1) which is delivered to the Secretary under subsection (2), the documents referred to in subsection (3)(a) and (b) are delivered, the Secretary shall, after the expiration of 7 days from the delivery of those documents—

- (a) forthwith issue to the members who are in Hong Kong—
 - (i) a copy of the notice under subsection (1) which makes that request;
 - (ii) a copy of the decision to which that request relates; and
 - (iii) a copy of any written representations made under subsection (3) in respect of that request;
- (b) after consultation with the members appointed under section 16(2)(c) who are in Hong Kong, fix a date and time for a meeting to review the decision to which that request relates which shall be not later than 21 days after the issue of the documents concerned under paragraph (a); but if, after that consultation, in the opinion of the Secretary, it is not practicable for him to fix a date and time within that period, he may fix a date and time not later than 35 days after the issue of those documents; and
- (c) after a date and time is fixed under paragraph (b) for a meeting to review the decision to which that request relates, forthwith by notice in writing served either personally or by registered post on the person to whom the certificate referred to in subsection (1) was issued in respect of the film to which that request relates—

(i) require that person to produce to the Secretary, at a place specified in that notice, on or before that date and time, that film (or a copy thereof); and

(ii) inform that person that he, or his authorized representative, or both, may attend before the Board on that date and time and, if so attending, shall be permitted to make representations.

(5) Subject to subsection (8), the Board shall at a meeting review the decision to which a request under subsection (1) which is delivered to the Secretary under subsection (2) relates by—

- (a) viewing the film (or a copy thereof) to which the decision relates;
- (b) considering the documents concerned issued to it under subsection (4)(a); and
- (c) considering the representations, if any, made in pursuance of subsection (4)(c)(ii),

and thereafter, taking into consideration the matters referred to in section 10(2) and taking into account the matters referred to in section 10(3), shall complete the review by—

- (i) in relation to the decision, giving directions in writing to the Authority or a censor with respect to the exercise by him of any of his functions under this Ordinance, and the Authority or the censor, as the case may be, shall comply with any such directions; or
- (ii) in writing, refusing to give any such directions.

(6) Where under subsection (5) the Board completes the review of the decision to which a request under subsection (1) which is delivered to the Secretary under subsection (2) relates, the Secretary shall forthwith serve either personally or by registered post on the person to whom the certificate referred to in subsection (1) was issued in respect of the film to which that request relates a copy of the directions or refusal, as the case may be, given under subsection (5) in respect of that review.

(7) Where at a meeting for the purpose of subsection (5) the Board does not complete the review of the decision to which a request under subsection (1) which is delivered to the Secretary under subsection (2) relates, the Board may complete the review at any subsequent meeting, and the review may be continued notwithstanding any change in the membership of the Board.

(8) At a meeting for the purpose of subsection (5), 6 members shall form a quorum but if, after 30 minutes have elapsed since the time fixed for the meeting, less than 6 members are in attendance at the meeting, then 4 members shall form a quorum.

(9) Where, consequent upon a request under subsection (1) which is delivered to the Secretary under subsection (2), a person fails to comply with a requirement under subsection (4)(c)(i) as specified in a notice served on him under subsection (4)(c)—

- (a) the Board shall refuse to review the decision to which that request relates; and
- (b) the certificate referred to in subsection (1) issued in respect of the film to which that request relates shall be deemed to be revoked.

(10) Where, consequent upon a request under subsection (1) which is delivered to the Secretary under subsection (2), a person complies with a requirement under subsection (4)(c)(i) as specified in a notice served on him under subsection (4)(c), the Secretary shall, after that request is fully disposed of under this section, forthwith return to that person the film produced to the Secretary in accordance with that notice.

(11) The Authority and a censor shall each have such powers as are necessary to give effect to any directions given to him under subsection (5)(i) by the Board, and such powers shall include, in the case of the Authority, the power to revoke a certificate issued under this Ordinance.

PART VIII

ENFORCEMENT AND MISCELLANEOUS

Offence in relation to exhibition of films classified for exhibition only to persons who have attained the age of 18 years.

20. (1) A person shall not exhibit a film which has the classification referred to in section 12(1)(c) to a person under the age of 18 years.

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on a first or second conviction to a fine of \$10,000; and

(b) on a third or subsequent conviction to a fine of \$100,000.

(3) It shall be a defence to a charge under subsection (2) that the person charged took all reasonable precautions during the exhibition of the film to which the charge relates to prevent the exhibition of the film to persons under the age of 18 years.

Offence in relation to contravention of conditions endorsed on certificate.

21. (1) A person who contravenes a condition endorsed on—

(a) a certificate of exemption issued under section 9; or

(b) a certificate of approval issued under section 13,

commits an offence and is liable on conviction to a fine of \$10,000 and imprisonment for 6 months.

(2) It shall be a defence to a charge under subsection (1) alleging the contravention of a condition referred to in section 9(2)(i) and (ii) or 13(1)(c) or (4)(b)(iii)(C) that the person charged—

(a) did not know that the film to which the charge relates did not comply with that condition; and

(b) made such inquiries as were reasonable in his circumstances to ascertain whether that film complied with that condition.

(3) A person to whom a certificate of exemption is issued under section 9, or a certificate of approval is issued under section 13, in respect of a film who—

(a) provides the film to another person; and

(b) knows that the film so provided—

(i) is intended for exhibition, whether by the person so provided with the film or any other person; and

(ii) does not comply with a condition referred to in section 9(2)(i) and (ii) or 13(1)(c) or (4)(b)(iii)(C) endorsed on the certificate,

commits an offence and is liable on conviction to a fine of \$10,000 and imprisonment for 6 months.

22. (1) A person shall not exhibit a film in respect of which a certificate of exemption issued under section 9 has been revoked or is deemed to be revoked under this Ordinance unless and until there is in force in respect of the film—

Offence in relation to revocation, etc.

- (a) a further certificate of exemption issued under section 9; or
- (b) a certificate of approval issued under section 13.

(2) A person shall not exhibit a film in respect of which a certificate of approval issued under section 13 has been revoked or is deemed to be revoked under this Ordinance unless and until there is in force in respect of the film—

- (a) a certificate of exemption issued under section 9; or
- (b) a further certificate of approval issued under section 13.

(3) A person who knowingly contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine of \$10,000 and imprisonment for 6 months.

23. (1) The Authority may authorize in writing any public officer to be an inspector for the purposes of this Ordinance.

Inspection and enforcement.

(2) An inspector may—

- (a) at all reasonable times enter any place in which he has reason to believe a film is exhibited or intended to be exhibited;
- (b) at any time enter any place in which he has reason to believe that an offence under this Ordinance is being or has been committed; and
- (c) in any place entered under paragraph (a) or (b)—
 - (i) seize a film which appears to him to be evidence of an offence under this Ordinance; and
 - (ii) require any person found in that place to furnish to him for his inspection, his proof of identity.

(3) An inspector shall, if requested by any person in any place entered under subsection (2)(a) or (b), produce his authority as such inspector.

(4) A person who—

- (a) wilfully obstructs an inspector in the exercise of a power under subsection (2); or
- (b) fails without reasonable excuse to furnish his proof of identity if so required under subsection (2)(c)(ii),

commits an offence and is liable on conviction to a fine of \$10,000 and imprisonment for 6 months.

Censorship
mark.

24. (1) The Authority may, by notice in the *Gazette*, adopt, and, in his discretion, by notice in the *Gazette*, change or amend a censorship mark and such censorship mark shall be evidence that a film in connection with which it is displayed has been approved for exhibition under this Ordinance.

(2) A person who displays the censorship mark adopted under subsection (1), including the censorship mark as changed or amended under that subsection, or a mark calculated to be mistaken for the censorship mark, in connection with a film without the written consent of the Authority commits an offence and is liable on conviction to a fine of \$10,000 and imprisonment for 6 months.

Authority may
issue
replacement
certificates.

25. (1) Where the Authority is satisfied that a certificate issued under a provision of this Ordinance to a person has been destroyed, lost or stolen, he may, upon application in the prescribed form by that person, issue to that person a further certificate in like terms and, where any such further certificate is so issued, it shall, for the purposes of this Ordinance, be deemed—

- (a) to be issued under that provision; and
- (b) to be the certificate which the Authority is satisfied has been destroyed, lost or stolen.

(2) A prescribed fee shall be payable for a certificate issued under this section, and no such certificate shall be so issued unless the fee for such certificate has been paid.

Proof of certain
matters.

26. A document purporting to be under the hand of the Authority stating that a certificate attached to the document is a copy of a certificate issued under this Ordinance in respect of a film described in that document shall in any proceedings be admitted in evidence on its production without further proof, and until the contrary is proved it shall be presumed that—

- (a) the person who signed that document was the Authority;
- (b) the certificate attached to that document is a true copy of the certificate issued under this Ordinance in respect of the film described in that document; and
- (c) the matters contained in the certificate attached to that document are true.

Risk and
expense relating
to submission
of film.

27. (1) The submission or production of a film under section 8(1), 17(2)(c)(i), 18(3)(c)(i) or 19(4)(c)(i) shall be at the risk and expense of the person so submitting or producing any such film.

- (2) The—
 - (a) excision of film by the Authority under section 13(4)(a);
 - (b) deposit of pieces of excised film under section 14(1);
 - (c) retention of pieces of excised film under section 14(2),

shall be at the risk and expense of the person who submitted the film under section 8.

Delegation of
powers.
Schedule.

28. (1) The public officers specified in the Schedule may each exercise any of the functions which the Authority may exercise under this Ordinance except the function under section 6(2).

(2) The Chief Secretary may, by notice in the *Gazette*, amend the Schedule. Schedule.

29. (1) The Governor in Council may by regulation provide for— Regulations.

- (a) the payment of allowances to advisers;
- (b) the manner in, and the place at, which a film is to be submitted under section 8;
- (c) the information and particulars to be submitted together with a film under section 8;
- (d) the classes or descriptions of films that are suitable to be exempted under section 9;
- (e) the form of a certificate of exemption issued under section 9;
- (f) the fee payable under section 10(8);
- (g) the symbols designating the classifications of a film under section 12;
- (h) the form of a certificate of approval issued under section 13;
- (i) the manner in, and the place at, which a request under section 17 or 18 is to be delivered to the Secretary;
- (j) the manner in, and the place at, which a request under section 19 is to be delivered to the Chief Secretary;
- (k) the form of an application under section 25(1);
- (l) the fee payable under section 25(2);
- (m) the service of any document;
- (n) in relation to a film containing a cigarette advertisement, the inclusion in the advertisement of a health warning in such manner as is specified and prohibiting the exhibition in Hong Kong of any such advertisement which does not include such warning; and
- (o) the better carrying into effect of the provisions of this Ordinance.

(2) Any regulations made under subsection (1)(f) may provide for a fee to be fixed at a level which provides for the recovery of expenditure incurred or likely to be incurred in the exercise of any functions under this Ordinance and shall not be limited by reference to the amount of any administrative or other costs incurred or likely to be incurred in the exercise of any particular function.

(3) Any regulations made under this section may provide that a contravention thereof shall be an offence and may provide penalties for such offences not exceeding a fine of \$10,000 and imprisonment for 6 months.

30. The Secretary may, for information, from time to time cause to be prepared and published in the *Gazette*, for the guidance of censors, guidelines not inconsistent with this Ordinance, indicating the manner in which it is proposed that censors exercise their functions under this Ordinance. Guidelines for censors.

31. No liability shall be incurred by any public officer in respect of anything done or omitted to be done by him bona fide in the exercise or purported exercise of any of his functions under this Ordinance. No liability in the case of the bona fide exercise of functions under this Ordinance.

Transitional.
(L.N. 154/87.)

32. (1) Subject to this section, where any film or matter has been submitted or delivered under regulation 3 or 8 of the revoked regulations at any time before the commencement of this Ordinance, then the provisions of the Film Censorship Regulations 1987, as in force immediately before that commencement, shall apply to such film or matter—

(a) in the same manner as they applied to such film or matter immediately before that commencement; and

(b) as if this Ordinance had not been enacted.

(2) Notwithstanding subsection (1), at any time on and from the commencement of this Ordinance, any film referred to in that subsection may be submitted under section 8(1) and, where any such film is so submitted, on and from the date of such submission, the provisions of this Ordinance shall apply to such film so submitted as if such film so submitted had not been submitted under regulation 3 of the revoked regulations.

(3) For the purposes of this section, “revoked regulations” means—

(Cap. 172,
sub. leg.)

(a) the Film Censorship Regulations as in force at any time before 5 June 1987; or

(L.N. 154/87.)

(b) the Film Censorship Regulations 1987 as in force at any time before the commencement of this Ordinance.

Consequential
and other
amendments.
(Cap. 172.)

33. (1) The Places of Public Entertainment Ordinance is amended—

(a) by repealing section 5;

(b) in section 7(1), by deleting paragraphs (h), (i) and (ia);

(c) in section 8(1), by inserting after “public entertainment” the following—

“, except a cinematograph display,”; and

(d) in section 9, by deleting subsection (3).

(L.N. 154/87.)

(2) The Film Censorship Regulations 1987 are revoked.

(Cap. 52.)

(3) Section 32 of the Television Ordinance is repealed.

(9 of 1987.)

(4) The Control of Obscene and Indecent Articles Ordinance 1987 is amended—

(a) by repealing section 3 and substituting the following—

“Ordinance not
to apply in case
of certain films,
etc.
(25 of 1988.)

3. This Ordinance shall not apply in relation to any—

(a) film within the meaning of section 2(1) of the Film Censorship Ordinance 1988—

(i) in respect of which there is in force a certificate of exemption issued under section 9, or a certificate of approval issued under section 13, of that Ordinance; or

(ii) which is approved for exhibition under regulation 5 of the revoked regulations within the meaning of section 32(3) of that Ordinance;

- (25 of 1988.) (b) matter referred to in section 32(1) of the Film Censorship Ordinance 1988 which is approved for publication or exhibition under regulation 8 of the revoked regulations within the meaning of section 32(3) of that Ordinance; or
- (Cap. 52.) (c) material within the meaning of section 2 of the Television Ordinance permitted to be broadcast under that Ordinance.”;
- (b) in section 10(1), by deleting paragraph (a) and substituting the following—
- “(a) standards of morality, decency and propriety that are generally accepted by reasonable members of the community, and in relation thereto may, in the case of an article, have regard to any decision of a censor under section 10 of the Film Censorship Ordinance 1988 in respect of a film within the meaning of section 2(1) of that Ordinance;” and
- (25 of 1988.) (c) in section 21(2)(c)(ii), by deleting “to the panel of censors under section 32 of” and substituting the following—
- “under that Ordinance for broadcast under”.

SCHEDULE

[s. 28.]

PUBLIC OFFICERS WHO MAY EXERCISE FUNCTIONS OF AUTHORITY EXCEPT
FUNCTION UNDER SECTION 6(2)

1. The Assistant Commissioner for Television and Entertainment Licensing.
2. The Chief Entertainment Standards Control Officer (Films).

Passed by the Hong Kong Legislative Council this 18th day of May 1988.

LAW Kam-sang,
Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

LAW Kam-sang,
Clerk to the Legislative Council.