

Cultural Services (18)

1. Under CEPA, what privileges will the performing/visual arts sector enjoy?

Please refer to the “Information Database on CEPA Service Sectors” of website of Trade and Industry Department:

http://www.tid.gov.hk/english/cepa/tradeservices/cult_liberalization.html

2. What is meant by “Hong Kong Service Suppliers”?

In accordance with CEPA, a Service Supplier who provides service in the form of a juridical person should first obtain a Certificate of Hong Kong Service Supplier (HKSS) from the Trade and Industry Department (TID) before it applies to the relevant Mainland authorities to provide services in the Mainland with preferential treatments under CEPA. For details, please visit TID’s website:

www.tid.gov.hk/english/cepa/tradeservices/trade_services.html.

3. What is “commercial performance”?

“Commercial performance” refers to live performing activities organized for the public with a view to profit making, which includes the following modes:

- (1) with tickets sold or exclusive booking of venue;
- (2) the performing unit or individual being remunerated;
- (3) performance as a medium to advertise or promote a product;
- (4) with sponsorship or donation; and
- (5) performance organized in other business modes.

Such performance covers music, drama, dance, acrobatics, magic performance, circus, quyi, puppet show, shadow play, recital, folk art and other live forms of arts and cultural programmes.

4. What is the difference between “performing arts agencies” referred to in cultural services in CEPA Supplement and “performance agencies” referred to in the *Regulations on the Administration of Commercial Performance*?

The term “performing arts agencies” is synonymous to “performance agencies”.

5. Where can we access the “Regulations on Administration of Commercial Performances”?

The *Regulations on the Administration of Commercial Performance* (in Chinese only) is available on the following website:

(<http://www.tid.gov.hk/english/aboutus/tradecircular/cic/asia/2005/ci2992005.html>)

6. What are the application procedures for setting up operational units for performance venues and performance agencies in the Mainland?

Please refer to the *Implementation Details of the “Regulations on the Administration of Commercial Performance* (in Chinese only) which is available on the following website:

(<http://www.tid.gov.hk/english/aboutus/tradecircular/cic/asia/2005/ci3472005.html>)

7. The two types of approval mentioned under Supplement IV to CEPA are prior approval by the Ministry of Culture as well as the approval by the authorities concerned in the Guangdong Province and the Shanghai Municipality as pilot areas. What are the details of the two types of approval?

We understand that the prior submission and approval procedure imposed by the Ministry of Culture is a prior record filing arrangement. Performance arts agencies or performing arts groups from Hong Kong may, prior to their performances in the Guangdong Province or the Shanghai Municipality, submit simple information on the agency/group (including identification documents of the HKSS status, personal particulars of the person-in-charge and brief description of the agency, etc.) to the Ministry of Culture through the cultural authorities of the Guangdong Province or the Shanghai Municipality. The Ministry of Culture holds the preliminary view that the submitted and approved information of the agency/group concerned from Hong Kong will be valid for 12 months and will have to be submitted at the beginning or the end of the year for the year or the following year by the performing arts agencies or the performing arts groups staging performances in Guangdong and Shanghai.

As regards the arrangements for individual commercial performances, performing arts agencies or performing arts groups are required to submit specific plans and detailed information on each occasion to apply to the relevant authorities in the pilot

places, that is, Guangdong Province or Shanghai Municipality, for approval.

Online Games

8. Have Internet-related service providers in Hong Kong (including companies that develop or host online games) been granted any preferential treatment?

Under CEPA Supplement, HKSS are allowed to set up Internet culture business unit and Internet online service business premises in the Mainland with the Mainland party holding majority shareholding. Under CEPA Supplement VII, HKSS are allowed to set up Internet culture business units and Internet online service business premises in the Mainland in the form of contractual joint ventures with the Mainland party holding dominant interests. Internet culture business units may import and host online games in the Mainland.

9. What is meant by “Mainland party holding majority shareholding”? What is meant by “Mainland party holding dominant interests”?

“Mainland party holding majority shareholding” means that in enterprises jointly funded by domestic and foreign (including Hong Kong) capitals, the proportion of foreign capital shall not exceed 49%.

“Mainland party holding dominant interests” means that in contractual joint ventures set up by domestic and foreign (including Hong Kong) parties, both the domestic and foreign parties shall share the profit, risk and loss, etc in accordance with the terms and conditions as stipulated in the contract, instead of registered capital contribution ratio or shareholding proportion. Nevertheless, the proportion of profit, risk and loss, etc shared by the foreign party shall not exceed 49%.

10. What is meant by “Internet Culture Business Units”?

According to Article 4 of the *Provisional Regulations for Administering Internet Culture* of the Mainland, Internet Culture Business Units refer to Internet content providers that are given permission or put on record by the cultural administrative department and the telecommunications administration authority to engage in Internet cultural activities.

11. What services are Internet Culture Business Units permitted to provide?

According to Article 3 of the *Provisional Regulations for Administering Internet Culture* of the Mainland, Internet cultural activities refer to activities involved in the provision of Internet cultural products and related services. Such activities mainly include:

- (1) The manufacturing, duplicating, importing, publishing and broadcasting of Internet cultural products;
- (2) Displaying cultural products on the Internet, or sending cultural products via information network such as the Internet or mobile communication network, to terminals such as computers, fixed-line phones, mobile phones, televisions and game consoles, and Internet online service business premises such as Internet cafe for Internet users to browse, read, enjoy, play, use or download; and
- (3) Exhibition and competition etc. of Internet cultural products.

12. What are regarded as Internet cultural products?

According to Article 2 of the *Provisional Regulations for Administering Internet Culture* of the Mainland, Internet cultural products mainly include:

- (1) Online music entertainment, online games, online performances/drama programmes, online artifacts, online animations and the like that are especially created for Internet broadcasting; and
- (2) Music entertainment, games, performances/drama programmes, artifacts, animations, etc. that have been created and uploaded to the Internet using particular techniques for Internet broadcasting.

13. How many categories of Internet cultural activities are there?

According to Article 3 of the *Provisional Regulations for Administering Internet Culture* of the Mainland, Internet cultural activities are broadly classified into two categories: business-based and non-business-based. **Business-based Internet cultural activities** are profit-making. They consist of the provision of Internet cultural products and related services for service charges collected from Internet users or for revenue generated from e-business, advertisements, sponsorships and other similar means.

Non-business-based Internet cultural activities provide Internet cultural products and related services to Internet users not for profit-making purpose.

14. What are the requirements for establishing an Internet Culture Business Unit?

Pursuant to Article 7 of the *Provisional Regulations for Administering Internet Culture* of the Mainland, the *Administrative Measures on Internet Content Provision* should be followed and the following conditions must be complied with in order to establish an Internet Culture Business Unit:

- (1) A title, address, organizing agency and prospectus;
- (2) Clearly defined areas of Internet cultural activities;
- (3) At least eight management and technical staff who have the necessary qualifications for operating Internet cultural activities;
- (4) The facilities, work site and necessary operational managerial technical measures for operating Internet cultural activities
- (5) Not less than RMB¥ 1 million of registered capital, and not less than RMB¥ 10 million for Internet Culture Business Unit engaging in on-line games; and
- (6) Other provisions set forth in relevant laws, regulations and rules.

15. What are the application procedures for setting up an Internet Culture Business Unit?

According to Articles 8, 9 and 11 of the *Provisional Regulations for Administering Internet Culture* of the Mainland, application for establishing an Internet Culture Business Unit is required to be submitted for the approval of the local cultural administrative department of the relevant provincial, autonomous region or municipal government. Upon approval, applicant should complete the application procedure at the local telecommunications authorities or the information technology related ministry of the State Council.

In addition, when applying to establish an business-based Internet Culture Business Unit, the applicant is required to provide the following documents:

- (1) A written application;

- (2) A notice that prior approves the company title or a business licence and prospectus;
- (3) Documentary proofs of source and amount of capital and the relevant credit documents;
- (4) Credentials and identity papers of the statutory representative(s), the primary responsible person(s) and the principal management and technical staff;
- (5) Documentary proofs for the right to use the work site;
- (6) Business development report; and
- (7) Other documents required for submission under law.

16. What vetting procedures are Internet Culture Business Units required to go through in order to import online games from Hong Kong?

To import online games from Hong Kong, approval from the Ministry of Culture is required.

The Ministry of Culture is responsible for monitoring the contents of Internet cultural products. Under Article 15 of the *Provisional Regulations for Administering Internet Culture* of the Mainland, activities related to the import of Internet cultural products are to be conducted by business-based Internet Culture Business Units with *Internet Culture Business Operating Permits* issued by the cultural administrative department. The contents of the Internet cultural products are required to be submitted to the Ministry of Culture for vetting.

The General Administration of Press and Publication is also responsible for monitoring the contents of on-line publishing. Under Article 6 of the *Provisional Regulations for Administering Internet Publication* of the Mainland, prior approval is mandatory for online publishing. No entities or individuals should be engaged in online publishing without approval.

17. Where can one get a copy of the “Provisional Regulations for Administering Internet Culture” of the Mainland for reference?

The *Provisional Regulations for Administering Internet Culture* (in Chinese only) of the Mainland can be found on the Internet at:
http://www.gov.cn/flfg/2011-03/21/content_1828568.htm

18. Where can one get a copy of the “Provisional Regulations for Administering Internet Publication” of the Mainland for reference?

The *Provisional Regulations for Administering Internet Publication* (in Chinese only) of the Mainland can be found on the Internet at:

<http://www.gapp.gov.cn/cms/html/21/397/200601/447354.html>