

Cultural Services

1. What are the requirements for applying to become a “Hong Kong Service Supplier”?

For the definition and requirements of “Hong Kong Service Suppliers”, please visit TID’s website at
http://www.tid.gov.hk/english/cepa/tradeservices/hkss_def.html.

2. What is “commercial performance”?

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

- (1) with tickets sold or being sponsored;
- (2) the performing unit or individual being remunerated;
- (3) performance as a medium to advertise or promote a product; and
- (4) performance organised in other profit-making ways.

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

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

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

The *Regulations on the Administration of Commercial Performance* (in Chinese only) is available on the following website:
(http://www.gov.cn/zhengce/2020-12/27/content_5573569.htm)

5. 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://zwgk.mct.gov.cn/zfxxgkml/zcfg/bmgz/202205/t20220517_933037.htm)

- 6. The two types of approval mentioned under Supplement IV are prior approval by the Ministry of Culture (now known as the Ministry of Culture and Tourism) 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 and Tourism 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 and Tourism through the cultural authorities of the Guangdong Province or the Shanghai Municipality. The Ministry of Culture and Tourism 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 from Hong Kong are required to submit specific plans and detailed information of the performance on each occasion to the relevant authorities in the pilot areas, that is, Guangdong Province or Shanghai Municipality, to apply for approval.

Internet Culture Business Units and Online Games

- 7. What is the meaning of “Mainland party holding controlling shareholding”? What is the meaning of “Mainland party holding dominant interests”?**

“Mainland party holding controlling 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%.

8. What is the meaning of “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.

9. 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 cafes for Internet users to browse, enjoy, use or download; and
- (3) Exhibition and competition etc. of Internet cultural products.

10. 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.

11. 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.

12. 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, relevant requirements in 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, organising agency and bylaws;
- (2) Clearly defined areas of Internet cultural activities;
- (3) Having the professionals, equipment and workplaces that can satisfy the needs of Internet cultural activities as well as corresponding operational managerial technical measures for operating Internet cultural activities ;
- (4) Having a well-defined domain name; and
- (5) Other provisions set forth in relevant laws, regulations and rules.

13. 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 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) Business license and bylaws;
- (3) Identification documents of the statutory representative(s) and the primary responsible person(s);

- (4) An explanation on its business scope;
- (5) Explanatory materials for professionals, workplaces and corresponding operational managerial and technical measures;
- (6) The domain name registration certificate; and
- (7) Other documents required for submission under law.

14. What internet cultural activities relating to online games are permitted to be conducted by those Internet Culture Business Units established by equity joint venture or contractual joint ventures of the Hong Kong Service Suppliers and Mainland enterprises?

According to the prevailing policies of the Mainland, the scope of business of those Internet Culture Business Units established by equity joint venture or contractual joint ventures of the Hong Kong Service Suppliers and Mainland enterprises may cover creation and development of online games products, but not publishing of the products on the internet.

For the game products developed by the aforementioned Internet Culture Business Units to be published on the internet, an application needs to be submitted by a Mainland partner which possesses an *Online Publishing Service Permit* issued by the National Press and Publication Administration (National Copyright Administration).

http://www.tid.gov.hk/english/cepa/tradeservices/files/set-up_of_internet_culture_business_units.pdf

15. Can the Internet Culture Business Units established by equity joint venture or contractual joint ventures of the Hong Kong Service Suppliers and the Mainland enterprises apply for an *Online Publishing Service Permit*?

According to the prevailing policies of the Mainland, the Internet Culture Business Units concerned are not eligible for applying for issue of an *Online Publishing Service Permit*.

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 National Press and Publication Administration (National Copyright Administration) is required.

The National Press and Publication Administration (National Copyright Administration) is also responsible for monitoring the contents of online publishing. Under Article 7 of the *Regulations for Administering Online Publishing Service* of the Mainland, prior approval is mandatory for online publishing. No entities or individuals should engage in online publishing without approval.

Hong Kong's industry practitioners engaged in online games may partner with relevant Mainland enterprises. The Mainland partners can apply for importing online games developed in Hong Kong into the Mainland market. The time limit for completion of the examination of contents (including examination conducted by experts) of imported online game products developed by Hong Kong shall be 100 days, subject to provision of full supporting documents. For details, please refer to the article entitled "*Approval procedures and time required by the relevant Mainland authorities for importing Hong Kong developed online game products*" (in Chinese only) at the following TID webpage:

http://www.tid.gov.hk/english/cepa/tradeservices/files/cult_other_re.pdf

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://zwgk.mct.gov.cn/zfxxgkml/zcfg/bmgz/202012/t20201204_905340.html

18. Where can one get a copy of the “*Regulations for Administering Online Publishing Service*” of the Mainland for reference?

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

http://www.cac.gov.cn/2016-02/15/c_1118048596.htm

19. Under the “*Agreement on Trade in Services*”, what kinds of game and amusement equipment would Hong Kong Service Suppliers be allowed to sell?

According to the “Management Method of Game and Amusement Equipment” (Method) announced by the Ministry of Culture and Tourism in 2019, the game and amusement equipment are dedicated electronic and mechanic equipment providing game and amusement content or services. The types of equipment can be divided into digital game equipment (devices) and amusement equipment. Digital game equipment (devices) refers to the game content services, that can be integrated with audio-visual systems, provided mainly for entertainment venues or other business

venues, and the dedicated equipment contains content and format that are not suitable for minors to use independently or for long time, such as fighting games equipment. Amusement equipment refers to other game and amusement equipment apart from digital game equipment (devices).

Suppliers who target the Mainland market should submit application to the provincial cultural and tourism administration authority for content examination. For details about the Method (in Chinese only), please refer to the following webpage:

http://zwgk.mct.gov.cn/zfxxgkml/zcfg/gfxwj/202101/t20210111_920654.html

- 20. Under the “Agreement on Trade in Services” (Agreement), Hong Kong Service Suppliers are allowed to engage in the sales services of amusement game equipment, what is the difference of the measure in this Agreement with the similar one in the Pilot Free Trade Zone in Shanghai announced in 2013?**

Under the Agreement, Hong Kong Service Suppliers are only allowed to engage in sales services of amusement game equipment but not the production of it whereas the Pilot Free Trade Zone in Shanghai allows engagement in both sales and production service.