

**Cultural and Creative Industries Development Agency
Entertainment Special Effects Licensing Authority
Guidance Notes No. 1**

**Liability for Offences
Committed by Employees/Agents or a Body Corporate
under the Entertainment Special Effects Ordinance**

In general, any person holding a licence or permit issued under the Entertainment Special Effects Ordinance (Cap. 560) (the Ordinance) shall be held liable for the offences committed by his employees or agents and a director or an officer concerned in the management of a body corporate shall be guilty of offences committed by the body corporate. However, sections 50 and 51(1) of the Ordinance provide for defences to such charges.

For ease of reference, sections 50 and 51(1) of the Ordinance are reproduced below:

Section 50 – Liability of holder of licence or permit for offences committed by his employees and agents

(1) *Subject to this section, where it is proved to the satisfaction of a court that an offence against this Ordinance has been committed by any employee or agent of any person holding any licence or permit issued under this Ordinance, such person shall, unless -*

(a) the offence was committed without his knowledge or consent; and

(b) he had exercised all due diligence to prevent the commission of the offence,

also be held to be liable for such offence and to the penalty therefor.

(2) *No such person shall be sentenced to imprisonment (except in default of payment of a fine) for any offence under this section.*

(3) *Nothing in this section shall be deemed to exempt the employee or agent from the penalties provided for the offence committed by such employee or agent.*

(4) *In any proceedings against the person in relation to which subsection(1) is alleged to apply, it shall, in relation to the offence against this Ordinance concerned committed by the employee or agent concerned of the person, be presumed, in the absence of evidence to the contrary, that -*

(a) the offence was committed with the knowledge and consent of the person; and

(b) the person did not exercise all due diligence to prevent the commission of the offence.

Section 51 – Liability for offences by body corporate, etc.

(1) *Where an offence under this Ordinance has been committed by a body corporate, any person who at the time of commission of the offence was a director or an officer concerned in the management of the body corporate shall also be guilty of such offence unless he proves that the offence was committed without his consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.*

A. Liability for Offences Committed by Employees/Agents

In essence, section 50 of the Ordinance provides that any person holding a licence or permit issued under this Ordinance shall not be held liable for an offence committed by his employees or agents if he can prove to the satisfaction of the court that :

- the offence was committed without his knowledge or consent; and
- he had exercised all due diligence to prevent the commission of the offence.

It should be noted that the operative words in this section is that any person who can prove that **“the offence was committed without his consent”** and **“he had exercised all due diligence to prevent the commission of the offence”** will not be guilty of the offence.

B. Liability for Offences Committed by a Body Corporate

According to section 51(1) of the Ordinance, where an offence has been committed by a body corporate, any person who at the time of commission of the offence was a director or an officer concerned in the management of the body corporate shall also be guilty of such offence unless he proves that :

- the offence was committed without his consent or connivance; and
- he exercised all such diligence to prevent the commission of the offence as he ought to have exercised.

Similar to section 50, any person who can prove that **“the offence was committed without his consent”** and **“he had exercised all such diligence to prevent the commission of the offence”** will not be guilty of the offence.

Another important phrase in section 51(1) is **“at the time of commission”**. Even though the body corporate was dissolved after the commission of the offence, the person who at the time of commission of the offence was a director or an officer concerned in the management of the body corporate shall still be held liable for the offence.

C. Points to be Observed in using Special Effects Materials

In view of their liability under the Ordinance, employers and directors or officers concerned in the management of body corporates are advised to observe the following with respect to the use of special effects materials (SEM) in producing entertainment special effects -

- (a) Section 10 of the Ordinance provides that no person shall discharge or **cause or permit to be discharged** any SEM except under and in accordance with a discharge permit. Hence, prior to the discharge of SEM, apply to the Authority for a discharge permit. It should be noted that under section 11(1) of the Ordinance, an application for a discharge permit may be made by the person who organizes the entertainment programme which involves the use of SEM or the licensed special effects operator (SEO) who is responsible for using the SEM for such entertainment programme.
- (b) As provided for under section 10 of the Entertainment Special Effects (General) Regulation (the Regulation), an application for a discharge permit shall contain the particulars of the person proposed to be engaged as the operator-in-charge. The operator-in-charge must hold a SEO licence the type and the scope of operation of which are acceptable to the Authority. In case of doubts, check with the Authority first before engaging a licensed SEO as the operator-in-charge.
- (c) Ensure that the application for a discharge permit contains the type of SEM and the maximum quantities of each type of SEM to be used. It is not necessary to provide the exact quantities or to use up all SEM brought to the discharge venue.
- (d) Never force or give consent to the operator-in-charge or any other persons to use SEM not specified in the discharge permit or use more than the quantities specified in the discharge permit.
- (e) Apply to the Authority for approval prior to the change of the operator-in-charge.
- (f) Never ask, or give consent to, any person to contravene any provisions of the Ordinance or any terms or conditions attached to a permit or licence. Exercise all due diligence to prevent the commission of any offence or the violation of any licence/permit conditions. In case of doubt, inform the Authority of any contravention or suspected contravention of any provisions of the Ordinance.

For enquiries, please call the Special Effects Licensing Section at 2594 0465.

Entertainment Special Effects
Licensing Authority
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