

**Business Facilitation Advisory Committee
Task Force on Business Liaison Groups**

***Regulatory Control over Internet Computer Services Centres and other
Places of Entertainment Installed with Game Machines***

Purpose

This paper briefs Members on the Administration's proposed regulatory arrangements for Internet Computer Services Centres (ICSCs) (commonly known as "cyber cafes") and other places of entertainment within the ambit of the Amusement Game Centres Ordinance (AGCO) (Cap 435) to ensure public safety.

Background

2. Under the AGCO, enacted in 1993, a licensing regime was established to regulate the operation of Amusement Game Centres (AGCs). Licences under the AGCO are issued by the public officer appointed by the Secretary for Home Affairs (currently the officer of the Office of the Licensing Authority (OLA) of the Home Affairs Department (HAD)). The AGCO has regulated primarily the conventional AGCs, commonly known as "electronic game centres". The purpose of the AGCO is to ensure the proper operation of AGCs for the safety of customers and minimise their impact on nearby residents. Therefore, the definition of "amusement game centre" in the AGCO refers to any place installed with any machine or device specified in section 2¹. All ICSCs and any other places of entertainment including Electronic Darting Centres (EDCs), premises installed with electronic darting machines (EDMs) as well as Family Amusement Centres (FACs) are "amusement game centres" and theoretically should be subject to regulation under the AGCO.

¹ Under section 2 of the AGCO, "amusement game centre" means, subject to section 3 (which provides for exemptions), any place in which there is installed or placed for use or operation for the purpose, in whole or in part, of amusement, recreation or entertainment on payment directly or indirectly of any consideration in money or money's worth, any machine or device, not being a machine or device specified in Schedule 2 -

- (a) which enables or is capable of enabling any person by any means whatever to release, set in motion, manipulate, control or direct the movement of any ball, projectile, or other object, and registers any score or combination in any manner whatever; or
- (b) which enables or is capable of enabling any person by any means whatever to release, set in motion, manipulate, control or direct the movement of any image, signal or electrical impulse; or
- (c) which upon the insertion therein by any person of any coin, token, disc, card or object, produces or is capable of producing to him any prize, coin, token or disc or any other object or article whatever; or
- (d) specified in Schedule 1.

3. On 8 April 2011, we consulted the Legislative Council (LegCo) Panel on Home Affairs on the regulatory control over ICSCs. Members generally supported the proposed control and recommended consultations with various stakeholders. We have completed consultation and, taking into account the views gathered, have drawn up proposals for regulation of ICSCs. During the consultation, we noted that some members of the public showed concerns about any appropriate regulation of the above-mentioned places of entertainment which are also subject to the AGCO. As such, we have studied these places and now report our recommendations to the Panel.

Recommendations

4. Having regard to the considerations set out in paragraphs 5 to 18 below, the following measures are recommended for ICSCs, premises installed with EDMs, EDCs and FACs:

- (a) to regulate ICSCs through the licensing regime under the AGCO, with licensing conditions similar to those provided under the existing voluntary-based Code of Practice;
- (b) to exempt from the AGCO the EDCs, other premises installed with EDMs and FACs already licensed under other licensing regimes with similar safety requirements; and
- (c) as a trade facilitation measure, to exempt the above-mentioned FACs from the AGCO and allow them to install non-mechanical non-prize-giving amusement game devices approved by OLA for persons under 16, which should not constitute more than 10% of the total number of games installed therein.

Justifications

(a) ICSCs/ “cyber cafes”

5. ICSCs are identified by their primary chargeable service of providing computers and related facilities for access to Internet. There is now no specific statutory licensing scheme for such ICSCs but operators of these premises must comply with relevant requirements under other existing legislations in respect of building and fire safety. As a result of consultations with stakeholders, a Code of Practice (the Code) for ICSCs to comply with on a voluntary basis was introduced in 2003. The Code sets out comprehensive guidelines on fire and building safety, noise control, public order and crime prevention, smoking, ventilation and hygiene.

6. In respect of regulatory control over ICSCs, we consulted the LegCo

Home Affairs Panel, the 18 District Councils, parent-teacher associations, Commission on Youth, youth groups and the trade in 2011. While there was general support for reasonable regulation of ICSCs to ensure fire and public safety, the trade expressed grave concerns over the impact on their operations, e.g. rising rent and location limitations. It is also noted that the overall crime situation in ICSCs is not serious (mostly related to miscellaneous theft) and there is a clear downward trend of ICSC establishments, which witnessed a decrease from about 300 premises in 2002 to about 100 in late 2013.

7. Taking the above into account, we consider that regulation of ICSCs for building and fire safety are still necessary and the regulatory requirements should give due consideration of the operational needs of ICSCs. Safety requirements in these respects have already been covered in the licensing regime under the AGCO, and hence there is no need for introducing another piece of legislation specifically for ICSCs.

Licensing Conditions

8. It is therefore suggested that the licensing conditions should be developed on the basis of the existing voluntary-based Code. The Code has been in effect for 10 years, during which experience has been gained and revisions have been made, and it is more familiar to the trade and those in the community who are concerned about this issue. In addition, it is also suggested that the licensing conditions should exclude the most stringent requirements that apply to conventional AGCs, i.e. maintaining 100 metres distance between an AGC and another AGC, and between an AGC and an educational institution; that an AGC could either be an adult AGC (where only people aged 16 or above are allowed to enter) or a children AGC (where only people under the age of 16 are allowed to enter) only; and that no conduct of other businesses (e.g. café, etc.) is allowed.

9. The Code covers regulatory requirements on building and fire safety, and also includes requirements about the restriction of access by people under the age of 16 at specified hours, requirement for using only software that complies with intellectual property rights and installation of filtering device against pornography, etc. Such requirements should address the public concern over the influence of ICSCs on young people. The proposed major licensing conditions for ICSCs are at Annex A. For the detailed conditions, please refer to the requirements of the existing Code (which could be downloaded from the webpage of OLA: <http://www.hadla.gov.hk/el/en/related/index.html>).

10. The above proposed regulation of ICSCs under the existing regime under the AGCO does not involve amendments to the AGCO. We will publish a set of application guidelines for ICSCs to provide for the licensing conditions they need to comply with. We will also make an exemption order

under section 3(1)(a) of the AGCO to exempt ICSCs from the application of the stringent requirements of the Ordinance that apply to conventional AGCs as mentioned in paragraph 8 above.

Transitional Period

11. We will allow for a transitional period of 18 months before the guidelines formally take effect. ICSCs should make use of this period to submit their licence applications, which will be processed on a first-come-first-served basis. Like the arrangement for conventional AGCs, ICSC operators should comply with other legislations such as the Buildings Ordinance, Fire Services Ordinance, etc. when they are planning for licence applications or when such applications are being processed. ICSCs which have not submitted valid applications after 18 months from the release of guidelines will be subject to enforcement action under the AGCO.

Premises for Exemption

12. As we have pointed out in paragraphs 13 to 14 of the paper submitted to the Panel in April 2011, it is suggested that exemption should be provided for establishments that are equipped with five or less computers, or premises whose major businesses are not provision of internet services (e.g. food premises, lounges within Airport, business centres, clubhouses in private residential estates, computer centres run by non-profit-making bodies, libraries, tutorial centres, schools, etc.) As these premises are not used for operation of internet business, the scale of operation and size of problems associated with them is relatively small, and their safety has already been subject to regulation under other Ordinances. We therefore propose to exempt them from the AGCO by an exemption order made under section 3(1)(a) of the AGCO.

(b) Other places of entertainment covered by the AGCO

13. For some premises that are caught by the broad definition of “Amusement Game Centres” under the AGCO, the operation of their business has been regulated under other statutory licensing regimes, such as a licence for restaurant, liquor licence, etc. The major requirements for public safety (such as ventilation, building and fire safety and public health) of these premises have already been provided under these licensing regimes. To avoid double regulation, we propose to exempt from the AGCO those premises with valid licences of specified licensing regimes (as in **Annex B**) by way of an order made under section 3(1)(a) of the AGCO. These are explained in paragraphs 14 to 18 below.

(i) Premises installed with EDMs with other licenses

14. In recent years, some licensed premises such as pubs/bars, restaurants as well as billiard establishments, public bowling-alleys, karaokes and clubs, have replaced their dart boards with EDMs which have become very popular of late. We estimate that there are about 500 such premises in the territory. The respective licensing regimes which regulate these establishments² require prior approval of the layout plans to protect building and fire safety. We therefore recommend to exempt from the AGCO these premises if they already have a valid and relevant licence.

(ii) EDCs

15. The number of EDCs has grown quite noticeably in recent years. They are places whose primary business is to provide EDMs, although some of them may also provide some ancillary services such as pre-packed food and drinks, or selling of darts equipment, etc. We estimate that there are about 110 EDCs in the territory. It should be noted that darting is widely recognised as a sport/hobby and EDMs are known to be commonly used for formal darting tournaments and competitions. Excessive regulation may have an impact on advocates of the sport. The major concerns of the Administration regarding such premises are fire and building safety. We therefore propose to exempt from the AGCO EDCs which are already licensed under other relevant regimes, e.g. the Certificate of Compliance (for Club) issued by the HAD which regulates premises operating as a club with a membership system, and various types of restaurant licences or liquor licences for those serving food and beverages. These licensing regimes require operators to submit layout plans of the premises and obtain prior approval to ensure building and fire safety. As EDCs are relatively new, we will take necessary actions to alert the trade to the need for obtaining valid licences.

(iii) FACs

16. FACs are places installed with game machines for family amusement. There are about 80 FACs in Hong Kong. They are now regulated through an Amusement with Prizes Licence (AWPL) under the Gambling Ordinance³ (Cap. 148) because they give out prizes to patrons.

17. Most FACs focus on games with prizes for family amusement. Currently, only “mechanical” game machines are allowed to be installed in FACs, i.e. those commonly known as “electronic amusement game machines” are not allowed. As a result, FACs are now differentiated from conventional AGCs. Moreover, since a Places of Public Entertainment Licence (PPEL) is a

² General Restaurant Licence, Liquor Licence, Karaoke Establishment Permit; Place of Public Entertainment Licence, Billiard Establishment Licence, etc.

³ The Gambling Ordinance provides that an AWPL may be issued to an applicant who organises or conducts a game of amusement with prizes, provided that the premise concerned is licensed under the Places of Public Entertainment Ordinance.

pre-requisite for the granting of AWPL, FACs have to comply with the relevant fire and other safety requirements. We therefore consider that we should continue to regulate FACs under AWPL and exempt all premises with valid AWPL (almost all are FACs) from the AGCO.

18. Furthermore, with the advancement of electronic entertainment technologies, we appreciate that only allowing mechanical games will significantly affect the competitiveness of the trade. We therefore propose a slight relaxation for allowing FACs to install a small number (the upper limit is 10% of the total number of game devices installed therein) of non-mechanical non-prize-giving games approved by the OLA for persons under 16.

Next steps

19. Subject to Members' views, we will draw up the exemption orders, which are subsidiary legislation required for the implementation of the above arrangements, as well as other detailed proposals for submission to the Legislative Council within 2014.

Home Affairs Bureau
June 2014

**Regulation of Internet Computer Services Centres
Proposed major licence conditions**

We propose licenses issued under the AGCO for ICSCs to have the following major licence conditions -

Criteria for application

- (a) requirement on the applicants -- an applicant is a fit and proper person to operate an ICSC;
- (b) location -- an ICSC under application is not located in a building where only residential purposes are allowed, in premises designated for domestic use only (i.e. residential portion of a composite building is not allowed), in industrial buildings, in the industrial portions of a building, or in an upper floor of a single staircase building;
- (c) statutory and relevant requirements -- an ICSC under application has to comply with all statutory and relevant requirements such as those relating to fire safety, building safety, crime prevention, safety of electrical installations, ventilation, health, etc. as required by the relevant government departments;

Conditions under a licence

- (d) crime prevention -- no alcohol should be allowed to be sold or consumed on the premises; no partitions higher than 1.5 metre shall be erected in areas accessible to the public;
- (e) building and fire safety -- (i) licensees should comply with the statutory and relevant building and fire safety requirements at all times, and (ii) provide documentary proof of compliance with fire safety requirements when submitting applications of licence renewal;
- (f) access of patrons – a person under 16 shall not be allowed to remain in the centre from midnight to 8 a.m. on weekdays

and from 2 a.m. to 8 a.m. on weekends;

- (g) control of indecent and obscene articles -- operators should ensure that there are up-to-date devices filtering pornographic or violent content on the Internet and such devices should be activated at all times during business hours of the centres; and
- (h) intellectual property rights -- operators should ensure that the use of software provided by them does not infringe intellectual property rights; and
- (i) prevention of gambling -- no bet shall be wagered or paid at the premises; no prizes or cash refund shall be offered to any person in consequence of the result of any activities performed in the computing devices.

List of licences relevant to the proposed exemption under the AGCO

We propose exempting the following by way of an order made under section 3(1)(a) of the AGCO:

For licensed premises installed with electronic darting machines or electronic darting centres

- (a) premises installed with electronic darting machines (as defined and announced by OLA) with a valid licence of one or more of the following:

Under FEHD:

- (i) General Restaurant Licence;
- (ii) Light Refreshment Restaurant Licence;
- (iii) Marine Restaurant Licence;
- (iv) Liquor Licence;
- (v) Karaoke Establishment Permit in connection with licences for restaurants issued by FEHD;
- (vi) Places of Public Entertainment Licence;

Under LCSD:

- (vii) Billiard Establishment Licence;
- (viii) Public Bowling-alley Licence;
- (ix) Public Skating Rink Licence;

Under HAD:

- (x) Certificate of Compliance (for Club);
- (xi) Karaoke Establishment Licence / Karaoke Establishment Permit in connection with licences for clubs, guesthouse, etc. issued by HAD; and

Others:

- (xii) Massage Establishment Licence issued by Police.

For Family Amusement Centres

- (b) Premises with a valid Amusement with Prizes Licence issued by HAD.