

Ms Lee Ee Jia

Director (Media Policy)

Infocomm Media Development Authority

(Attention: Ms Tee Yock Sian)

Email: [consultation@imda.gov.sg](mailto:consultation@imda.gov.sg)

**30 December 2017**

Dear Ms Lee,

We enclose our submissions for the Proposed Amendments to the Films Act for your kind consideration.

Thank you.

Yours sincerely,

Anthony Chen

Boo Junfeng

Jasmine Ng

Tan Pin Pin

## Introduction

1. These submissions are written with reference to the public consultation on the Proposed Amendments to the Films Act conducted by the Ministry of Communication and Information (“**MCI**”) and the Info-communications Media Development Authority (“**the IMDA**”). These submissions are further elaborations of the Position Paper submitted by 50 local filmmakers to the MCI and the IMDA on 22 December 2017.
2. We have four main concerns with the Proposed Amendments to the Films Act which we detail and set out below:

### *The refused classification of certain films should not be permitted*

3. Presently, for films that do not meet the Film Classification Guidelines, such films will be classified as Not Allowed for All Ratings (“**NAR**”). An example of a film given such a classification is “To Singapore, With Love” by filmmaker Tan Pin Pin.<sup>1</sup> The effect of such a classification is that such a film are banned from distribution and exhibition but can be possessed for private usage.
4. The proposed section 16 of the Films (Amendment) Bill (“**the Amendment Bill**”) provides, amongst others, to confer IMDA the power to the refuse classification of any film that:
  - (1) is an obscene film;
  - (2) is a party political film;
  - (3) is a prohibited film; or
  - (4) is against national security to be classified; or
  - (5) contains any material prescribed.
5. In the MCI/IMDA’s Public Consultation Paper (“**the Public Consultation Paper**”), it is explained that:

“[t]here is also a very small number of films that exceed acceptable community norms or are against the public interest and are therefore not allowed for distribution or public exhibition. Such films are currently determined to be Not Allowed for all Ratings (“**NAR**”). MCI/IMDA propose to introduce a new section 16 to specify the films that IMDA and film content assessors will refuse to classify, which will replace NAR. This shift from NAR to refused classification is a change in terminology for improved clarity and to suit the legislative construct of the amended Films Act. Essentially, there is no

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<sup>1</sup> See the Press Release by Media Development Authority, “MDA has classified the film “ To Singapore, With Love” as Not Allowed for All Ratings (NAR)” (10 September 2014) <<https://www.imda.gov.sg/about/newsroom/archived/mda/media-releases/2014/mda-has-classified-the-film-to-singapore-with-love-as-not-allowed-for-all-ratings-nar>>

difference between a NAR film and a film that has been refused classification, as both cannot be distributed or publicly exhibited, but can be possessed for private use”.

6. The wording of section 16 of the Amendment Bill is confusing as it gives the wrong impression that the IMDA will not be reviewing or classifying films that fall into any of the categories where classification may be refused. A reconsideration of the wording of the proposed section 16 is necessary to correct such confusion.
7. There is also a lack of clarity as to what constitutes “*national security*” under the proposed section 16 of the Amendment Bill.
8. Further, under section 2 of the Amendment Bill, it appears that should a film contain “*contentious material*”, the IMDA may refuse to classify the film. The definition of contentious material is set out in the Amendment Bill as follows:

““contentious material”, for a film, means material comprised in the content of film which would likely cause the Authority to refuse to classify the film”

9. The definition of a “contentious material”, similar to the definition of “national security” not only lacks a clear definition but is left to be determined and interpreted by the relevant authorities.
10. As far as possible, the law must be accessible, clear and predictable. Decisions as to whether a film should be refused classification must be resolved by the application of the law and not by the exercise of discretion by the relevant authorities.
11. We further note that in the Explanatory Statement at page 83 of the Amendment Bill, it is stated that where a film “*comes within the new section 16, the IMDA must refuse to classify or re-classify the film and state its reasons for that opinion*”. However, the proposed section 16 of the Amendment Bill does not statutorily confer that the Authority, the Committee of Appeal and/or the film content assessor must state its reasons for its refused classification of the film.
12. In this regard, we note that when the Media Development Authority classified “*To Singapore, With Love*” as NAR, reasons were provided. We urge the IMDA to continue publishing its decision if it decides to refuse classification of a film so as to ensure accountability and transparency on such matters of public interest.

***Intrusive and excessive powers of enforcement given to IMDA and police officers should be curtailed and the enforcement powers under this section should only be given to the police***

13. The enforcement powers given to IMDA and police officers under the proposed section 23A of the Amendment Bill is intrusive and excessive.
14. In its proposed amendments, the IMDA seeks to be able to execute these powers through any classification or licensing officer and to grant these powers for any suspected breach of any of the clauses of the Films Act.
15. Classification or licensing officers will now be able to enter and search a premise without warrant and to “break open any door or window leading to the premises, or remove by force any obstruction” if necessary to obtain entry.
16. We find the above amendments problematic for two reasons.
17. First, such sweeping and invasive powers should only be granted to the Police, the custodians of law and order of the country. It is not clear that classification or licensing officers have the necessary law enforcement operational background to wield such powers.
18. Second, with today’s technology, film content is stored in hard disks, personal computers and phones that contain other personal and private content unrelated to the film in question. All these personal equipment will be made seizable by IMDA officers in the Films Act, with no way of ensuring that the privacy of personal data will be protected. This may potentially result in severe breaches of privacy and civil liberties by persons who may not have law enforcement backgrounds.
19. Moreover, we are concerned that the IMDA and police officers are given disproportionate powers to use “such force as is necessary to obtain entry” to “break open any door or window leading to the premises, or remove by force any obstruction to such entry or search”. It appears that the above provision may permit IMDA and police officers to use force in a manner that may not be reasonably necessary in the circumstances.
20. The above provision may be contrasted to other legislation that confers authorised officers to only use force as is reasonable in the circumstances:
  - (1) under section 29 of the Radiation Protection Act (Cap 262), it is stated that “*if force is required to enter and inspect any premises specified in a warrant issued under section 24,25 or 28 (whether by breaking down a door or otherwise), or in breaking open anything in the premises, the person executing the warrant may use such force as is **reasonable** in the circumstances*”;
  - (2) under section 19 of the Strategic Goods (Control) Act (Cap 300), it is stated that “*If, for the purposes of the exercise of any power under section 14, 15 or 16, force is required to enter any premises or board any conveyance (whether*

*by breaking down a door or otherwise) or gain access to anything on or in the premises or conveyance, the authorised officer or senior authorised officer may use such force as is **reasonable** in the circumstances”;* and

- (3) under section 23 of the Chemical Weapons (Prohibition) Act (Cap 37B), it is stated that “*If force is required to enter and inspect any premises specified in a warrant issued under section 21 or 22 (whether by breaking down a door or otherwise), or in breaking open anything in the premises, the person executing the warrant may use such force as is **reasonable** in the circumstances”.*”.

21. The proposed Section 23A of the Amendment Bill should be relooked and amended such that **only** police officers may exercise such powers under section 23A of the Amendment Bill and that the use of force to obtain entry must be **proportionate and reasonably necessary** in the circumstances. In addition, we call on the MCI/IMDA to reconsider whether such extensive powers conferred to the relevant officers under the proposed section 23A of the Amendment Bill should be curtailed.

### ***The making and production of a party political films should not be criminalised***

22. In the Explanatory Statement of the Amendment Bill, it is stated that the one of the purpose of the Bill is to “*amend the licensing framework of the Act to exclude private exhibition, and making and reproduction of films, and to regulate the import distribution and public exhibition of films in the course of business, whether or not that business is primarily connected with films*”.
23. At para 2.15 of the Public Consultation Paper, it is stated that the “*MCI/IMDA would clarify that the primary regulatory focus of the Films Act remains on the distribution and public exhibition of the films, as these activities have wider and more direct impact on consumers*”.
24. However, the making or reproduction of any party political film remains criminal under section 33(b) of the Films Act. We find the disparity in the application of standards between these sections and the rest of the Films Act troubling and call for the decriminalisation of the making and reproduction of party political films to be included as part of the Amendment Bill.

### ***Concerns pertaining to the Appeal process***

25. We have two concerns pertaining to the Appeal process provided under the Amendment Bill.
26. The first relates to the composition of the Committee of Appeal under the proposed section 25 of the Amendment Bill. We call on the Ministry of Communications and Information (“**MCI**”) and the IMDA to appoint more individuals from the film industry to be appointed to the Committee of Appeal at any given term. Presently,

only one out of the 15 members of the Films Appeal Committee (“**the FAC**”), a citizen-based committee, is from the film industry.

27. The second relates to the proposed section 24A of the Amendment Bill which gives the Minister the sole discretion to determine an appeal pertaining to a film that the IMDA has refused to classify or re-classify on the ground of national security.
28. The current appeals process for films that have been refused classification by the IMDA for undermining national security allows the filmmaker to have an audience with the FAC as he/she makes the case against the IMDA’s decision. One such incident in recent memory was the documentary To Singapore With Love by Tan Pin Pin.
29. With the proposed amendments, when a film has been refused classification or re-classification on the ground of national security by the IMDA, the appeal of such a decision will be heard by the Minister. While the Minister must consult the Committee of Appeal i.e. the present FAC before making its decision under section 24A(3)(a) of the Amendment Bill , the Minister is not bound by any advice given by the Committee of Appeal.
30. We are of the view that the proposed amendment reduces transparency and undermines public confidence in the decision making process. We call on the MCI/IMDA to reconsider this amendment and maintain the original process of appeal.
31. Further, we call on the MCI/IMDA to publish the minutes of the discussions of the Committee of Appeal in an open and transparent manner, so that there can be better accountability on such matters of public interest. If these minutes cannot be published because of national security concerns, the Committee of Appeal’s decisions and their rationale should be set out to the fullest extent practicable having regard to such concerns.

## **Conclusion**

32. In the foregoing, we call on the MCI and the IMDA to address our concerns and reconsider its proposed amendments to the Films Act.
33. Finally, we thank IMDA for its extension of the Consultation Process from its original deadline of 15 December 2017.