

Analysis of the newly revised Implementing Rules for the Administrative Regulations on Commercial Performance (promulgated on September 3, 2009)

In order to meet the changing requirements of commercial performance administration and better implement the *Administrative Regulations on Commercial Performance* (Order No. 528 of the State Council, the “**Regulations**”), the Ministry of Culture revised and promulgated these new *Implementing Rules for the Administrative Regulations on Commercial Performance* (the “**New Implementing Rules**”) to replace the old rules issued in August 2005 (the “**Old Implementing Rules**”). The New Implementing Rules will become effective as of October 1, 2009 and the Old Implementing Rules will be abrogated therefrom.

The New Implementing Rules has 61 articles. It tightens the governmental supervision and administration over the commercial performance industry, further opening the performance market and broadening the financing channels so as to augment the strength of the performance industry. It further simplifies the examination and approval procedures, reducing the administrative costs and making things more convenient for the performance operators. In addition, it further regulates the business conduct, severely cracking down on illegal business activities so as to ensure the healthy and orderly development of the performance market. Set forth below is a detailed analysis on main articles revised by the New Implementing Rules for your reference.

1. Revisions regarding “commercial performance operators”

1.1 Specifying the definition of performance brokerage institutions

Performance brokerage institutions are commonly compared to salespersons who sell intellectual products. They lead social cultural consumption and play an important role in expanding performance market. Under the Old Implementing Rules, performance brokerage institutions are simply defined as “*business entities which undertake performance operation activities and brokerage activities*”. In order to better regulate various kinds of activities of performance brokerage institutions, Article 3 of the new Implementing Rules specify what constitutes “*operation activities*” and “*brokerage activities*” of a performance brokerage institution. In addition, brokerage activities such as performer’s engagement, promotion and agency fall under the administration of performance market regulator(s). Henceforth, all entities engaging in performance brokerage business such as performer’s engagement, promotion, agency and etc. shall apply for a commercial performance license according to the conditions and procedures prescribed in the Regulations and the New Implementing Rules.

1.2 Relaxing the filing conditions of self-employed performers and self-employed performance brokers

In order to encourage self-employed performers and self-employed performance brokers to

conduct business activities in accordance with law, Article 9.2 of the New Implementing Rules relaxes the filing conditions of self-employed performers and self-employed performance brokers. The Old Implementing Rules prescribed that self-employed performers and self-employed performance brokers shall obtain a business license from the competent administration of industry and commerce and file with the competent administration of culture. According to the new Implementing Rules, self-employed performers and self-employed performance brokers do not need to obtain any business licenses and can directly apply to the administration of culture at the county level in the place where their permanent residence is registered or where they habitually reside with their identification documents and art performance competence certificates(for self-employed performers) or their identification documents and performance brokers' qualification certificates (for self-employed performance brokers).

1.3 Clarifying the procedures of establishment of a wholly-owned performance brokerage institution by investors of Hong Kong or Macao

The Old Implementing Rules only prescribed that performance brokerage institutions from the Hong Kong Special Administrative Region (“Hong Kong”) or Macao Special Administrative Region (“Macao”) may, upon approval, establish branches in the mainland, and that investors of Hong Kong or Macao may, upon approval, establish wholly-owned business entities of performance places, equity joint-venture or contractual joint-venture performance brokerage institutions or business entities of performance places in the mainland; however, the old rules are silent on the procedures of establishment of wholly-owned performance brokerage institutions by investors of Hong Kong or Macao. In order to provide good policy environment for capital from Hong Kong and Macao and to expand the mainland performance market, Article 14 of the New Implementing Rules clearly state that investors from Hong Kong or Macao may, upon approval, set up wholly-owned performance brokerage institutions.

2. Revisions regarding “performance administration”

2.1 Clarifying the quality acceptance procedures of stage or stand temporarily built up

With the prosperity of China's cultural market and the increase in performance activities in various cities of China, quality of the stage or stand temporarily built up has become a chief concern of the public. Article 19 of new Implementing Rules prescribes that where a commercial performance uses the stage or stand temporarily built up in compliance with the *Regulations on the Safety Administration of Large-scale Mass Activities*, the administration of culture at the county level shall strictly exam the acceptance certificate of the stage or stand submitted by the sponsoring entity of performance to protect the lives and property of the performers and audience.

2.2 Removing restrictions on full-time performers of artistic-cultural performance groups and teachers or students of professional art colleges or universities to participate in commercial performance activities

The Old Implementing Rules stated that full-time performers of artistic-cultural performance groups or teachers or students of professional art colleges or universities shall not hold any commercial performance by themselves. where a full-time performer of an artistic-cultural performance group or any teacher or student of a professional art college or university is invited to participate in any commercial performance, or a full-time performer of an artistic-cultural performance group or any teacher or student of a professional art college or university intends to

participate in any commercial performance that is not sponsored by the group or college itself, he/she shall obtain consent from the same and enter into a contract. Where a foreign, Hong Kong or Macao artistic performer invited by a professional art college or university to engage in teaching and research activities needs to participate in any commercial performance activities on a temporary basis, approval from the Ministry of Culture or the administration of culture at the provincial level is required. To a certain extent, these provisions restricted the rational flow of performance resources, thus, the New Implementing Rules have removed the foregoing restrictions. Under the New Implementing Rules, full-time performers of artistic-cultural performance groups and teachers and students of professional art colleges or universities are allowed to participate in commercial performance beyond the performance activities scheduled by the group or their teaching and studying tasks. The New Implementing Rules further provide that where a foreign, Hong Kong or Macao artistic performer invited by a professional art college or university to engage in teaching and research activities needs to participate in any commercial performance activities, he/she shall only entrust a performance brokerage institution to handle the same and no approval from the competent culture administration authorities is required. These amendments not only promote the reasonable flow of performance resources but also increase the effective supply of performance resources.

2.3 Simplifying approval procedures

Article 24 of the New Implementing Rules state that in the event of any foreign-related performance held in a singing and dancing (entertainment) place, tourist attraction, theme park, amusement park, hotel, restaurant, pub and any other place, approval from the administration of culture at the province level is required. Article 25 of the New Implementing Rules states that where any commercial performance activities involve performers from both the mainland and Hong Kong, Macao, Taiwan, applications with the administration of culture at the province level may be submitted in parallel. Article 22 of the New Implementing Rules state where a sponsoring unit intends to hold a foreign-related commercial perform event approved by the Ministry of Culture in a non-approved place within the approved timeframe, it shall file the same with the administration of culture at the province level in the new performance place. These simplified approval procedures bring more convenience to the performance operators.

2.4 Clarifying administration over commercial performance under the disguise of television program recording activities

According to Zuhai Tuo, Deputy Director of Department of Cultural Markets of the Ministry of Culture, in recent years, a number of commercial performances have evaded governmental supervision under the disguise of television program recording activities, disrupting the order of the performance market. As such, with a view to building a fair and just performance market order, Article 26 of the New Implementing Rules prescribe that any on-site television program recording activities as prescribed by Article 2 of the New Implementing Rules shall be conducted through a performance brokerage institution and are subject to approval procedures under the Regulations and the New Implementing Rules.

2.5 Tightening restrictions on lip-synching and fraudulent performance

Lip-synching and fraudulent performance violates professional ethics, infringe the legitimate rights of the audience and ruin the professional atmosphere. In order to forbid lip-synching and fraudulent performance, the New Implementing Rules perfect the relevant provisions specified in

the Regulations by clearly defining the responsibilities of the performance sponsoring entity. The New Implementing Rules state that performance sponsoring entities shall assign people to supervise and record the singing and playing acts. Where no on-spot records are made, the sponsoring entity will be subject to a fine of up to RMB3,000 by the administration of culture at the county level. The new rules further prescribe that the administration of culture may use technological measures to supervise the relevant performance activities, which provides legal basis for preventing lip-synching or fraudulent performance by using technological measures.

Set forth above is a brief introduction to the newly promulgated *Implementing Rules for the Administrative Regulations on Commercial Performance*. If you have any questions regarding the foregoing, please feel free to contact us, thank you.

This Legal Update has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

If you have any questions regarding this publication, please contact:



Beijing Office

Tel.: +86-10-8525 5500
Suite 906, Office Tower C1
Oriental Plaza, 1 East Chang An Ave.
Beijing 100738, P. R. China

Leia ZHANG Attorney at-law

Tel.: +86-10-8525 5547
Email: leia.zhang@hankunlaw.com

Wenyu JIN Attorney at-law

Tel.: +86-10-8525 5557
Email: wenyu.jin@hankunlaw.com



Shanghai Office

Tel.: +86-21-6080 0919
Suite 5709, Tower 1, Plaza 66,
1266 Nanjing West Road,
Shanghai 200040, P. R. China

Yinshi CAO Attorney at-law

Tel.: +86-21-6080 0980
Email: yinshi.cao@hankunlaw.com

Joseph HWANG Attorney at-law

Tel.: +86-21-6080 0988
Email: joseph.hwang@hankunlaw.com



Shenzhen Office

Tel.: +86-755-2681 3854
Suite 4715, Diwang Commercial Centre,
Shun Hing Square, 5002 Shennan Dong
Lu, Luohu District, Shenzhen, P. R. China

Jason WANG Attorney at-law

Tel.: +86-755-2681 3854
Email: jason.wang@hankunlaw.com