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Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	3	Heading:	<b>Approval of codes of practice by Broadcasting Authority</b>	Version Date:	07/07/2000

#### PART II

#### CODES OF PRACTICE AND GUIDELINES

(1) Subject to subsection (8), for the purpose of providing practical guidance for licensees in respect of any requirements under this Ordinance imposed on licensees or in respect of licence conditions, the Broadcasting Authority may-

- (a) approve and issue such codes of practice (whether prepared by it or not) as in its opinion are suitable for that purpose; and
- (b) approve such codes of practice issued or proposed to be issued otherwise than by it as in its opinion are suitable for that purpose.

(2) Where a code of practice is approved under subsection (1), the Broadcasting Authority shall, by notice in the Gazette-

- (a) identify the code concerned and specify the date on which its approval is to take effect; and
- (b) specify for which of the requirements under this Ordinance or licence conditions the code is so approved.

(3) The Broadcasting Authority may-

- (a) from time to time revise the whole or any part of any code of practice prepared by it under this section; and
- (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section,

and the provisions of subsection (2) shall, with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1).

(4) The Broadcasting Authority may at any time withdraw its approval from any code of practice approved under this section.

(5) Where under subsection (4) the Broadcasting Authority withdraws its approval from a code of practice approved under this section, it shall, by notice in the Gazette, identify the code concerned and specify the date on which its approval of it is to cease to have effect.

(6) References in this Ordinance to a "Code of Practice" are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(7) The power of the Broadcasting Authority under subsection (1)(b) to approve a code of practice issued or proposed to be issued otherwise than by it shall include power to approve a part of such a code and, accordingly, in this Ordinance "Code of Practice" may be read as including a part of such a code.

(8) The Broadcasting Authority shall, before approving a code of practice under subsection (1) or any revision or proposed revision of the code under subsection (3), consult with-

(a) such bodies representative of licensees to which the code or the code as so revised, as the case may be, will apply (whether in whole or in part); and

(b) in so far as the code or the code as so revised, as the case may be, relates to the technical standards of a broadcasting service, the Telecommunications Authority,

as it thinks fit.

(9) For the avoidance of doubt, it is hereby declared that different codes of practice may be approved under subsection (1) for different classes of licensees, and may be so approved for the same or different requirements mentioned in that subsection or licence conditions.

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Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	4	Heading:	<b>Guidelines</b>	Version Date:	07/07/2000

(1) The Broadcasting Authority may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of licensees or companies seeking to be licensees, guidelines not inconsistent with this Ordinance-

- (a) indicating the manner in which the Broadcasting Authority proposes to perform functions conferred by this Ordinance upon the Broadcasting Authority;
- (b) on such other matters relevant to this Ordinance as the Broadcasting Authority thinks fit.

(2) Without prejudice to the generality of subsection (1), the Broadcasting Authority shall, as soon as is practicable, issue guidelines indicating the manner in which it proposes to-

- (a) perform its function under section 9(2), including the licensing criteria and other relevant matters it proposes to consider;
- (b) perform its function under section 10(2), including the licensing criteria and other relevant matters it proposes to consider;
- (c) perform its function in forming an opinion under section 13 or 14;
- (d) perform its function under section 18(2), including the criteria it proposes to consider.

(3) The Broadcasting Authority shall, before issuing guidelines under subsection (2)(c), carry out such consultation with such bodies representative of licensees who may be affected by the guidelines as is reasonable in all the circumstances of the case.

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Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	8	Heading:	<b>To whom licence may be granted</b>	Version Date:	07/07/2000

#### PART IV

#### LICENCES-GENERAL PROVISIONS

(1) The Chief Executive in Council may in accordance with this Ordinance grant a licence to provide a domestic free television programme service or domestic pay television programme service on application made to him in the specified form by a company.

(2) The Broadcasting Authority may in accordance with this Ordinance grant a licence to provide a non-domestic television programme service or an other licensable television programme service on application made to it in the specified form by a company.

(3) Subject to subsection (4), a domestic free television programme service licence shall not be granted to a company which is a subsidiary of a corporation.

(4) Without prejudice to the operation of Schedules 1, 4, 5, 6 and 7, unless otherwise provided in this Ordinance, a licence shall not be granted to and held by a company unless-

(a) in the case of a domestic free television programme service licence or domestic pay television programme service licence-

(i) the company complies with paragraph (b) of the definition of "ordinarily resident in Hong Kong" in section 2(1);

(ii) the majority of the directors required under subparagraph (iv) actively participate in the direction of the company;

(iii) a quorum of every meeting of the directors of the company has a majority of directors who is each for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) and has been so resident for at least one continuous period of not less than 7 years;

(iv) except with the prior approval in writing of the Broadcasting Authority, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officer of the company in charge of the selection, production or scheduling of television programmes, is each an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) and has been so resident for at least one continuous period of not less than 7 years; and

(v) no disqualified person, other than a person whose disqualification is

disclosed in the application for the licence, exercises control in the company;

(b) in the case of a non-domestic television programme service licence or an other licensable television programme service licence, not less than one director or principal officer of the company is an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) and has been so resident for at least one continuous period of not less than 7 years; and

(c) in the case of any licence, the company is empowered under its memorandum and articles of association to comply fully with the provisions of this Ordinance and its licence conditions (whether actual or proposed).

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Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	9	Heading:	<b>Recommendations by the Broadcasting Authority on applications for licences</b>	Version Date:	07/07/2000

(1) An application for the purposes of section 8(1) or (2) shall be submitted to the Broadcasting Authority in the specified form.

(2) The Broadcasting Authority shall consider applications for a domestic free television programme service licence or a domestic pay television programme service licence and make recommendations thereon to the Chief Executive in Council.

(3) Where an application is submitted to the Broadcasting Authority, it shall-

- (a) cause a notice to be published in the Gazette as soon as is practicable-
    - (i) stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the Broadcasting Authority thinks fit; and
    - (ii) stating that members of the public who are interested may make representations on the application to the Broadcasting Authority by a date specified in the notice, being a date not less than 21 days after the notice is published; and
  - (b) consider the representations, if any, received by the date.
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Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	<b>10</b>	Heading:	<b>Grant of licence</b>	Version Date:	07/07/2000

(1) The Chief Executive in Council may, after considering recommendations made pursuant to section 9(2), grant a licence under section 8(1) subject to such conditions as he thinks fit specified in the licence.

(2) Subject to subsection (3), the Broadcasting Authority may grant a licence under section 8(2) subject to such conditions as it thinks fit specified in the licence.

(3) The Chief Executive in Council, in the case of licences, or a class of licences, that may be granted under section 8(1) and the Broadcasting Authority, in the case of licences, or a class of licences, that may be granted under section 8(2), may by notice in writing specify conditions to which the licences shall be subject.

(4) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, where he or it considers it is in the public interest to do so, vary a licence at any time during its period of validity after the licensee has been given a reasonable opportunity to make representations under subsection (5).

(5) A licensee may make representations to the Broadcasting Authority in relation to any proposed variation under subsection (4) and, in the case of a licence granted by the Chief Executive in Council, the Broadcasting Authority shall fairly reflect the representations to the Chief Executive in Council.

(6) The Chief Executive in Council or the Broadcasting Authority, as the case may require, shall consider the representations, if any, made under subsection (5) before implementing any proposed variation under subsection (4).

(7) A licence or an interest in a licence shall not be transferred in whole or in part.

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Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	11	Heading:	<b>Extension or renewal of licence</b>	Version Date:	07/07/2000

(1) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, during the period of validity of a licence, extend or renew the licence, in accordance with the provisions of this Ordinance, to take effect upon expiry of the validity of the licence.

(2) A licensee shall submit to the Broadcasting Authority an application in the specified form-

(a) for the extension or renewal of its licence; and

(b) not less than 24 months, or such shorter period as the Broadcasting Authority may specify in a particular case, before the date on which the period of validity of the licence expires.

(3) The Broadcasting Authority shall, in respect of a domestic free television programme service licence or domestic pay television programme service licence, as soon as is practicable after the receipt of an application under subsection (2) and, in any case, not later than 12 months before the expiry of the period of validity of the licence, submit recommendations to the Chief Executive in Council in relation to the extension or non-extension or renewal or non-renewal of the licence, and where appropriate, the conditions subject to which the licence may be extended or renewed.

(4) Where subsection (3) applies to a domestic free television programme service licence, or a domestic pay television programme service licence, which may be extended or renewed for a period of 6 years or more, the Broadcasting Authority shall conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority.

(5) Where recommendations are made under subsection (3), the Chief Executive in Council shall consider them and as soon as is practicable-

(a) extend or renew the licence to which they relate subject to such conditions as he thinks fit specified in the licence; or

(b) decide not to extend or renew the licence.

(6) In the case of a non-domestic television programme service licence or an other licensable television programme service licence, the Broadcasting Authority shall, at a time reasonable in all the circumstances of the case before the expiry of the licence-

(a) extend or renew the licence subject to such conditions as it thinks fit specified in the licence; or



(b) decide not to extend or renew the licence.

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Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number: 48 of 2000
Section:	12	Heading:	<b>Determination of whether television programme service primarily targets Hong Kong</b>	Version Date: 07/07/2000

(1) A licensee (including a person seeking to be a licensee) shall, before providing a television programme service in or from Hong Kong, make an application in the specified form to the Broadcasting Authority for a determination on whether or not the service would, if provided, primarily target Hong Kong.

(2) The Broadcasting Authority shall, as soon as is practicable after the receipt of an application under subsection (1), make a determination in writing that the Broadcasting Authority is of the opinion that the television programme service the subject of the application, if provided-

- (a) would primarily target Hong Kong; or
- (b) would not primarily target Hong Kong.

(3) Where the Broadcasting Authority has made a determination under subsection (2), it shall as soon as is practicable after making the determination, serve a copy of the determination on the licensee (or person seeking to be a licensee) concerned together with a statement of its reasons in support of the determination.

(4) Subject to subsection (5), where the Broadcasting Authority ceases to be of the opinion that gave rise to a determination under subsection (2) ("old determination"), then-

(a) it shall make a further determination in writing ("new determination") that the Broadcasting Authority is of the opinion that the television programme service the subject of the old determination-

- (i) primarily targets Hong Kong; or
- (ii) does not primarily target Hong Kong;

(b) it shall as soon as is practicable after making the new determination, serve a copy of the new determination on the licensee (or person seeking to be a licensee) concerned together with a statement of its reasons in support of the determination;

(c) upon the date the licensee (or person seeking to be a licensee) is served with a copy of the new determination, the old determination shall thereupon be deemed to be repealed unless the new determination provides for the repeal of the old determination at a later date; and

(d) this subsection shall, with all necessary modifications, apply to the new determination as it applies to the old determination should the Broadcasting Authority subsequently cease to be of the opinion that gave rise to the new determination.

(5) The Broadcasting Authority shall, before making a determination under subsection (4)-

(a) give the licensee concerned a reasonable opportunity to make representations to the Broadcasting Authority in relation to whether or not the television programme service concerned-

- (i) primarily targets Hong Kong; or
- (ii) does not primarily target Hong Kong; and

(b) consider the representations, if any, made.

(6) In determining whether or not a television programme service primarily targets Hong Kong, account shall be taken of, but not limited to, the following matters-

- (a) whether the service covers Hong Kong;
- (b) whether the sources of advertising and subscription revenues, where applicable, of the service are derived principally from Hong Kong;
- (c) the language of the service and the nature and size of the audiences targeted by the service; and
- (d) whether the service is actively marketed in Hong Kong by the licensee or by a third party on its behalf.

(7) In this section, "television programme service" (電視節目服務) includes any part of a television programme service.

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Chapter:	562	Title:	BROADCASTING ORDINANCE	Gazette Number:	48 of 2000
Section:	<b>39</b>	Heading:	<b>Licensee to submit returns</b>	Version Date:	07/07/2000

(1) A licensee shall submit to the Broadcasting Authority on or before the 1st of April of each year a return in the specified form showing the names and places of residence of the directors and principal officers of the licensee and indicating whether or not those directors and principal officers are for the time being ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than 7 years.

(2) A domestic free television programme service licensee or domestic pay television programme service licensee shall submit, at the same time as the return submitted under subsection (1), a statutory declaration made by the company secretary of, or a director of, the licensee showing whether or not any disqualified person has exercised any control in the licensee during the year immediately preceding the year to which the return relates.

(3) Without prejudice to the operation of subsection (1), where there is any change of directors or principal officers in a licensee, the licensee shall submit to the Broadcasting Authority a return in the specified form showing particulars of the change, within 7 days beginning on the date the change takes place.

(4) A licensee shall submit to the Broadcasting Authority, within a reasonable time after being required to do so, such other information as the Broadcasting Authority considers necessary for the purpose of performing its functions under this Ordinance.

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