

For information

**Bills Committee on
Telecommunications (Amendment) Bill 2009**

**Licensing of Sound Broadcasting Services and
Other Related Matters**

At the Bills Committee meeting held on 5 November 2009, Members requested the Administration to provide supplementary information in relation to the licensing of sound broadcasting services in Hong Kong, the radio listening habits of Hong Kong people as well as the sound broadcasting licensing regimes of overseas jurisdictions. This note sets out the supplementary information requested by the Bills Committee.

**Sound broadcasting licensing regime under the
Telecommunications Ordinance**

2. Under section 13C of the Telecommunications Ordinance (Cap. 106) (TO), after considering recommendations made by the Broadcasting Authority (BA), the Chief Executive (CE) in Council may grant a licence for the maintenance and operation of sound broadcasting services.

Membership list of the BA

3. The BA is a statutory authority established under the Broadcasting Authority Ordinance (Cap. 391) (BAO). Pursuant to section 4 of the BAO, the BA consists of nine non-official Members (including the Chairman) and three Public Officers. The current membership list is at **Annex A**.

Existing application processing procedures and assessment criteria

4. The procedures for processing of applications for sound broadcasting licences are as follows –

Assessment by the BA

- (a) Upon enquiries by prospective applicants, the BA Secretariat, i.e. the Broadcasting Division of the Television and Entertainment Licensing Authority will provide the prospective applicants with a copy of the assessment criteria for the grant of sound broadcasting licences (**Annex B**) and a list of information required for applications for a sound broadcasting licence (**Annex C**).
- (b) After an application is submitted to the BA under section 13B of the TO, the BA Secretariat will examine to see if all the required information as set out in Annex C has been furnished and may require the applicant to provide further information as necessary.
- (c) After the applicant has submitted sufficient information, the BA will consult the public on the application in accordance with the *Guide to the Consultation Process of the Broadcasting Authority*. It will publish a notice stating details of the application in the specified form on the BA website and in one English and one Chinese language daily newspaper and invite the public to make representations within 21 days.
- (d) The BA will, after consulting the Telecommunications Authority on technical matters and taking into account the public views received, assess the application in accordance with established criteria and make recommendations thereon to the CE in Council pursuant to section 13C(1) of the TO. The BA Secretariat will convey the BA's recommendations to the Commerce and Economic Development Bureau (CEDB).

Decision by the CE in Council

- (e) CEDB is responsible for submitting the application together with the BA's recommendations to the CE in Council. In the event that the BA makes an

unfavourable recommendation and/or the Administration has a negative assessment, CEDB will inform the applicant of such recommendation and/or assessment and invite the applicant to make representations, before referring the case to the CE in Council for a decision.

- (f) The CE in Council will, having regard to the applicant's submissions, the BA's recommendations and the Administration's assessment and the applicant's representations if any, make a decision on the application pursuant to section 13C(2) of the TO.

Appeal to the CE in Council's decision

5. Judicial review is the established appeal mechanism against licensing decision made by the CE in Council. Aggrieved parties can seek judicial review in respect of the CE in Council's decisions.

Guidance note on applications

6. After the enactment of the Telecommunications (Amendment) Bill 2009, the BA will promulgate a set of guidelines under section 13CA(1) of the TO on how it will process sound broadcasting licence applications, having regard to the licensing criteria prescribed in the TO. The guidelines would largely be modelled on the *Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong* issued by the BA (**Annex D**) which aims to provide guidance to those intending to apply for domestic free television programme service licences.

Radio Listening Habits of Hong Kong People

7. The BA conducts regular territory-wide surveys on the use of broadcasting services in Hong Kong. The scope / objectives of the surveys are to gauge public views on various aspects of broadcasting services in Hong Kong, such as penetration and use of different types of services and views on programme standards. The

major findings of the Broadcasting Services Surveys conducted in 2002, 2005 and 2007 in respect of the radio listening habits of Hong Kong people are summarised below –

- (a) The percentage of respondents who listened to radio broadcast gradually increased from 52% in 2002 to 60.4% in 2005, and to 66.5% in 2007.
- (b) In 2002, respondents on average listened to radio broadcast for 1.18 hours daily which was increased to 2 hours in 2005 but there was a fall to 1.7 hours in 2007.
- (c) The most common time slot respondents listened to radio was the hours from 8:00am to 11:59am in 2007. This was shorter than the hours from 8:00am to 12:59pm as recorded in 2005.¹
- (d) The radio channels most listened to were CR 1, CR 2, RTHK 1 and RTHK 2 in 2002 and 2005; and CR 1, RTHK 1, CR 2 and RTHK 2 in 2007.

Sound broadcasting licensing regimes of overseas jurisdictions

8. A summary of the sound broadcasting licensing regimes in major economies, covering the licensing criteria for the grant of sound broadcasting licences and the criteria applicable to community broadcasting, is at **Annex E**.

Commerce and Economic Development Bureau
Television and Entertainment Licensing Authority
November 2009

¹ This aspect was not covered in the 2002 survey.

Membership of the Broadcasting Authority

廣播事務管理局成員名單

Full Name 姓名		Position Held 職銜
<i>English 英文</i>	<i>Chinese 中文</i>	
Mr Ambrose HO, SC, JP	何沛謙先生	Chairman 主席
Mr Duncan Pescod, JP Permanent Secretary for Commerce and Economic Development (Communications and Technology)	栢志高先生 商務及經濟發展局常任 秘書長(通訊及科技)	Vice- Chairman 副主席
Mrs Yvonne SIU SUN Yuk-bui	蕭孫郁標女士	Member 委員
Mr KWOK Lit-tung	郭烈東先生	Member 委員
Mr Adrian WONG Koon-man, MH, JP	黃冠文先生	Member 委員
Mr Henry TSANG Yuk-wong	曾玉煌先生	Member 委員
Ms Marina WONG Yu-pok, JP	黃汝璞女士	Member 委員
Ms WONG Sau-ying	黃秀英女士	Member 委員
Dr Jane LEE Ching-yee	李正儀博士	Member 委員
Dr William LO Wing-yan, JP	盧永仁博士	Member 委員
Mrs Marion Lai, JP Director-General of Telecommunications	黎陳芷娟女士 電訊管理局總監	Member 委員
Ms Grace Lui, JP Deputy Secretary for Home Affairs	雷潔玉女士 民政事務局副秘書長	Member 委員

**Pre-requisite and Criteria for
grant of licences for sound broadcasting services
by the CE in Council**

(A) Pre-requisite

Availability of suitable frequency spectrum on which the proposed sound broadcasting services may be broadcast.

(B) Criteria

(a) Financial soundness and commitment to investment

The applicant must demonstrate a commitment to invest sufficiently in the proposed project and must possess sufficient financial capability to invest to the level proposed. The proposals on performance bond will be evaluated on their effectiveness as a means to bind the applicant to his commitments and obligations.

(b) Managerial and technical expertise

The applicant must possess relevant managerial and proven technical expertise to operate a satisfactory service in Hong Kong. The knowledge of the applicant or the consortium partners about the local environment and their experience in the operation of a broadcasting service will be relevant factors for consideration.

(c) The variety, quantity and quality of programmes

The proposals will be evaluated on the appeal of the programming to audience, the quantity and quality of proposed programmes and the extent to which they will broaden audience's choice.

(d) Technical soundness and a satisfactory quality of broadcasting service

The proposed service must be technically sound and is likely to give a satisfactory quality of service.

(e) Service roll-out

The speed of service roll-out will be a relevant factor for consideration.

(f) **Minimum inconvenience to members of the public**

The proposals which involve construction works will be assessed against their impact on members of the public.

(g) **Benefits to the local broadcasting industry, the audience and the community as a whole**

Any benefits the proposals will bring to the broadcasting industry and the community as a whole will be considered favourably. The installation fees and equipment cost to be charged to audience, if applicable, must be set at levels which are affordable and accessible to the general public.

(h) **Quality control and compliance**

The applicant must propose an effective internal monitoring mechanism to ensure that the terms of the licence and the applicable laws are complied with.

(i) **Fit and proper persons**

In determining whether the applicant or person exercising control of the applicant is a fit and proper person, account shall be taken of –

- (i) the business record of the applicant or person;
- (ii) the record of the applicant or person in situations requiring trust and candour;
- (iii) the criminal record in Hong Kong of the applicant or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
- (iv) the criminal record in places outside Hong Kong of the applicant or person in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the applicant or person as mentioned in paragraph (iii) above.

Information to be provided by sound broadcasting licence applicants

Company Information

1. The following information and documents are required from the company applying for a licence –
 - (a) detailed information on the corporate and shareholding structure including relationships with holding or related companies;
 - (b) details of the shareholders of the applicant, the voting rights attaching to the shares in the applicant and any shareholders' agreement;
 - (c) certified true copies of each of the company's Memorandum and Articles of Association, Certificate of Incorporation, Business Registration Certificate, and relevant returns filed with the Companies Registry;
 - (d) the organisational/management structure and details of management (including, without limitation, the staffing levels required for the operation);
 - (e) relevant experience in running similar operations or providing similar services;
 - (f) details of what decisions are to be taken at the shareholders level, and what decisions are to be taken at the board of directors level of the licensee, with details of effective procedures for resolving disputes at both levels; and
 - (g) a duly completed statutory declaration declaring that all the details of disqualified persons and unqualified persons, if any, are disclosed in the declaration.

2. If there are any documents, instruments, contracts, trusts, arrangements or understandings (whether having legal or equitable effect or otherwise) relating to the items in paragraph 1 above, one set of certified true copies of the same should be provided.

Financial Information

3. The following financial information is required –
 - (a) evidence of sound financial backing, including details of any shareholders' loans, undertakings or guarantees;
 - (b) if the applicant is an established company (i.e. established and in operation for more than three years), the proposal should include certified true copies of audited profit and loss accounts and balance sheets and auditors' reports for the last three full years, together with the most recently published interim results;
 - (c) if the applicant is a newly-formed company (i.e. established and in operation for three years or under), the proposal should include –
 - (i) the directors' certificate of the amount of issued and paid-up share capital;
 - (ii) bankers' confirmation of the amount of its deposits and/or available credit facilities; and
 - (iii) copies of audited profit and loss accounts and balance sheets and auditors' reports for the years in operation, together with the most recently published interim results;

- (d) a business and capital investment plan, including details of proposed financing structure, credit facilities and financial arrangements;
- (e) projected profit and loss account including details of revenue, fixed and variable costs, balance sheet and budgeted cash flow statements, showing the amount of capital to be invested on an annual basis;
- (f) projected market share, where appropriate;
- (g) the level of the shareholders' support to satisfy the Government that the applicant is capable of bearing the financial risks of variations in the costs of establishing the operation/service and in the revenues from advertisers;
- (h) the amount of the banker's performance bond (tied to proposed milestones) to be lodged with the Government and the name of the issuing bank, if any; and
- (i) any economic and market study conducted and the projected market share that the applicant will be able to acquire.

Programming Information

- 4. The following programming information, where applicable, is required –
 - (a) details of the programmes to be provided, both by type and by number of channels and programme hours and sources of programmes;
 - (b) the minimum daily broadcasting hours;
 - (c) details of any proposed internal monitoring system to ensure compliance with applicable law, licence

conditions, Codes of Practice and directions or orders issued or made by the BA;

- (d) details of copyright agreements and other legal arrangements in respect of programme suppliers.

Technical Information

5. The following technical information, where applicable, is required –

- (a) the locations of each communications and transmission station, the frequencies to be used, transmission power, transmission modes, polarization, characteristics of antenna and other technical matters etc. The amount of spectrum that will be made available and the exact limits of the frequency bands will be decided after reviewing the proposals received and taking into account the demand for frequency spectrum for other services in Hong Kong and other factors as the TA considers relevant in the circumstances;
- (b) technology to be employed, the likely choice of equipment, system design, proposed quality of service, how the ancillary equipment and facilities are planned to meet the proposed service, and other technological characteristics;
- (c) the planned geographical coverage of the network;
- (d) studio facilities, and details of production equipment and facilities;
- (e) the applicant should give an indication of the preferred frequency bands and the amount of frequency spectrum that will be used for the provision of the proposed service.

Other Information

6. Other information required includes the following –
- (a) details of any construction work required and an assessment of its impact on the public;
 - (b) the period between the grant of the licence and commencement of service;
 - (c) applicant's preferred period of validity of the licence;
 - (d) any demonstration that the implementation of the proposal will offer significant benefits to Hong Kong, for example, employment, manufacturing and wider trading opportunities, introduction of innovation and improvements to local broadcasting industry and the promotion of Hong Kong as an international broadcasting hub;
 - (e) an Executive Summary summarising in a concise manner the significant and salient points of the proposals; and
 - (f) any other information not specified above which the applicants consider helpful to their applications.

**Guidance Note For Those Interested in
Applying For
Domestic Free Television Programme Service Licences
in Hong Kong**

Broadcasting Authority

December 2008

Pursuant to section 4(2)(a) of the Broadcasting Ordinance (Cap. 562), this Guidance Note is issued by the Broadcasting Authority as a guide for prospective applicants of a licence to provide a domestic free television programme service in Hong Kong.

This Guidance Note, which is expressly subject to the terms of the licences granted and the legislation in force from time to time, highlights the principal conditions and licensing criteria for a non-exclusive domestic free television programme service licence.

Save where the contrary intention appears expressly or by necessary implication in this Guidance Note, words and expressions used in this document shall bear the same meaning, if any, as in the Broadcasting Ordinance and in the Interpretation and General Clauses Ordinance (Cap.1), and in the event of any conflict or inconsistency between their meanings, the meaning in the Broadcasting Ordinance shall prevail over that in the Interpretation and General Clauses Ordinance.

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I INTRODUCTION

Broadcasting Ordinance (Cap. 562)

1.1 Under the Broadcasting Ordinance (Cap.562), which came into effect on 7 July 2000, the Chief Executive in Council (CE in C) may, after considering recommendations made by the Broadcasting Authority (BA), grant a licence to provide a domestic free television programme service subject to such conditions as he thinks fit specified in the licence.

Ss8(1), 9(2) & 10(1) of the Broadcasting Ordinance (BO)

1.2 Applicants may refer to the definitions of “broadcasting service”, “television programme service” and “domestic free television programme service” in section 2(1) of the Broadcasting Ordinance.

S2(1) of the BO

1.3 This Guidance Note does not bind the CE in C and/or the BA to consider any application or to grant any licence or to the terms and conditions of the licence to be granted. The CE in C and/or the BA will not be responsible for any claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs or expenses which any applicant may become liable for or have incurred or sustained in connection with this Guidance Note. Certain requirements and restrictions described in this Guidance Note may be modified, for example, in the light of the proposals received or other relevant considerations. This Guidance Note shall not be relied upon to create any expectation that a licence will be granted to the applicant on the terms and conditions referred to in this Guidance Note or otherwise.

1.4 There is no pre-set ceiling on the number of licences to be issued.

Broadcasting Authority Ordinance (Cap. 391)

1.5 Under section 9(1) of the Broadcasting Authority Ordinance, the BA is responsible for, among others, carrying out the functions imposed on it under the Broadcasting Ordinance, administering the provisions of licences and any other provisions of

Ss9(1) & 11 of the Broadcasting Authority Ordinance

References

such licences that confer a function on it and securing proper standards of television and sound broadcasting with regard to both programme content (including advertisements) and technical performance of broadcasts. The statutory provisions on the consideration of complaints by the Complaints Committee is laid down under section 11 of the Broadcasting Authority Ordinance.

II REGULATORY FRAMEWORK

2.1 Domestic free television programme service is regulated by a combination of legislation (including any subsidiary legislation, regulations, directions, orders, determinations and Codes of Practice made thereunder) and the licence conditions. The relevant legislation includes the Broadcasting Ordinance and the Broadcasting Authority Ordinance. Certain key features of the legislation in relation to domestic free television programme service licences are set out below in general terms.

S23(2) of the BO

To Whom Licence May be Granted

Incorporation in Hong Kong

2.2 The CE in C may in accordance with the Broadcasting Ordinance grant a licence to provide a domestic free television programme service on application made to him in the specified form by a company which is incorporated in Hong Kong under the Companies Ordinance (Cap.32) and satisfies the relevant requirements in section 8 of the Broadcasting Ordinance. Under section 2 of Schedule 4 to the Broadcasting Ordinance, a licence shall not be granted to or held by a company which is the subsidiary of a corporation.

Ss2(1) & 8(1) of & s2 of Schedule 4 to the BO

2.3 The company shall be empowered under its memorandum and articles of association to comply fully with the provisions of the Broadcasting Ordinance and its licence conditions (whether actual or proposed).

S8(4)(c) of the BO

Residency Requirement

2.4 A domestic free television programme service licence shall not be granted to and held by a company unless the company complies with paragraph (b) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of the Broadcasting Ordinance.

Ss2(1) & 8(4)(a)(i) of the BO

2.5 Except with the prior approval in writing of the BA, the

Ss2(1) &

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, shall each be 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) of the Broadcasting Ordinance and has been so resident for at least one continuous period of not less than seven years.

References
8(4)(a)(iv) of
the BO

Control and Management Bona Fide Exercised in Hong Kong

2.6 The majority of the directors required in paragraph 2.5 above shall actively participate in the direction of the company. A quorum of every meeting of the directors of the company shall have 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) of the Broadcasting Ordinance and has been so resident for at least one continuous period of not less than seven years.

Ss2(1),
8(4)(a)(ii) &
(iii) of the BO

Fit and Proper Person Requirement

2.7 A licensee and any person exercising control of the licensee shall be and remain a fit and proper person. “Exercise control” is defined in section 2(1) of the Broadcasting Ordinance. The factors that will be taken into consideration in determining whether a licensee or a person is fit and proper are set out in section 21 of the Broadcasting Ordinance. An applicant is required to provide a statement on oath or a statutory declaration given by its company secretary or one of its directors or principal officers in the specified form (BA S.F. 08/2002), which is available at the BA’s web site at <http://www.hkba.hk>, that this requirement is met when applying for a licence. A licensee shall provide information in the specified form to the BA on a regular basis to enable the BA to establish and verify whether this requirement is being complied with.

Ss 2(1) & 21
of the BO

No Disqualified Persons (“DP”) Exercising Control

2.8 No disqualified person shall exercise control of a domestic free television programme service licensee and vice versa without the prior written approval of the CE in C. Hence, all disqualified persons exercising control of the applicant must be disclosed in the application. “Disqualified person” shall be construed in accordance with section 2(1) of the Broadcasting Ordinance.

Ss2(1) & 8(4)(a)(v) of & Parts 2 & 4 of Schedule 1 to the BO

2.9 Certain categories of companies and persons engaged in or are associated with certain types of business are disqualified persons. A “*disqualified person*” may fall within one or more of the four categories of persons as described under sections 4 – 7 of Schedule 1 to the BO. Namely –

Ss2(8)(a) of & Parts 1, 2 & 4 of Schedule 1 to the BO

- (a) a licensee under the BO;
- (b) a sound broadcasting licensee under Part IIIA of the Telecommunications Ordinance (Cap.106);
- (c) an advertising agency;
- (d) a proprietor of a newspaper printed or produced in Hong Kong;
- (e) a person who exercises control over the above-mentioned four categories of persons;
- (f) an associate of any of the above-mentioned categories of persons.

2.10 A licensee shall not exercise control on a disqualified person unless the CE in C is satisfied that the public interest so requires and approves otherwise; and except in accordance with such conditions as are specified in the approval.

S33, Part 4 of Schedule 1 to the BO

2.11 For the purposes of Schedule 1 to the BO, any reference to “exercise control” –

References
S1(5), Part 1
of Schedule 1
to the BO

- (a) in relation to a corporation shall be construed in accordance with paragraph 2.12;
- (b) in relation to a body other than a corporation, means the power of a person to ensure, by virtue of the rules regulating that or any other body, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person.

2.12 For the purposes of paragraph 2.11 above, a person exercises control of a corporation if –

S1(6), Part 1
of Schedule 1
to the BO

- (a) he is a director or principal officer of the corporation;
- (b) he is the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) he is a voting controller of more than 15% of the voting shares in the corporation; or
- (d) he otherwise has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that corporation or any other corporation, to ensure that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

Restrictions on Voting Control Held by Unqualified Voting Controllers

2.13 Voting controllers, who are not ordinarily resident in Hong Kong, are “unqualified voting controllers” in accordance with Part 1 of Schedule 1 to the Broadcasting Ordinance, and shall not hold 2% or more but less than 6% of the total voting control of a domestic free television programme service licensee without the prior approval of the BA. The BA’s approval is required for any

Ss2(8)(a) of
the BO &
Parts 1 & 3 of
Schedule 1 to
the BO

References

further increase to 6% or more but not more than 10%, or for holding of more than 10% in the aggregate of the total voting control of the licensee. There is no upper limit on the total voting control which may be held by unqualified voting controllers, but their votes cast on a poll at a general meeting of the licensee will be scaled down in accordance with the formula stipulated in section 19 of Schedule 1 to the Broadcasting Ordinance.

Determination of Whether Television Programme Service Primarily Targets Hong Kong

2.14 A licensee (including a person seeking to be a licensee) shall, before providing a television programme service, make an application in the specified form (BA S.F. 01/2000) to the BA for a determination of whether or not the service would, if provided, primarily target Hong Kong. The specified form is available at the BA's web site at <http://www.hkba.hk>.

S12(1) of the
BO

III CONDITIONS TO WHICH LICENSEES WILL BE SUBJECT

3.1 A domestic free television programme service licence will consist of general terms and conditions embodying the main regulatory framework adopted by the Government for the licensing of domestic free television programme services. The regulatory authorities for domestic free television programme service licences are the BA and the Telecommunications Authority (TA). Some of the provisions governing domestic free television programme services are outlined in paragraphs 3.3 to 3.31 below.

3.2 The terms and conditions of the licence may be amended from time to time in light of any policy changes and other considerations which the Government considers relevant. Prospective licensees will be consulted in finalizing the actual licences. The CE in C may vary or impose additional terms and/or conditions for individual licences.

Variation of Licence

3.3 Whenever there is a need to amend the terms and conditions of a licence during the term of the licence, a licensee will be given reasonable time to make representations. Details of the CE in C's power to amend the licence are set out in the Broadcasting Ordinance and will be incorporated in the licence.

Ss10(4), (5) &
(6) of the BO

Term of the Licence

3.4 The term of a licence granted will be determined by the CE in C having considered the views expressed by an applicant and the recommendations of the BA based on the merits of each application. Applicants should propose a term of licence based on his needs. Normally, the CE in C would not approve a term of licence exceeding 12 years.

Publication of Licence

3.5 A licensee is required to make its licence publicly available. The Licensee's Proposal may be excluded in the Licensee's discretion.

Compliance with Licensee's Proposal

3.6 A licensee shall comply at all material times with the statements (including statements of intention) and representations made by or on its behalf in the Licensee's Proposal, unless otherwise approved by the BA.

Provision of Service and Capital Expenditure

3.7 A licensee is required to perform the rollout of the Service and capital expenditure in the first three years as committed in its application, which will form part of the licence.

Performance Bond

3.8 A licensee may be required to submit a duly issued performance bond in favour of the Government on the commencement date of the licence to secure the performance of the licence conditions in paragraph 3.7 above. "Performance bond" shall be construed in accordance with section 2(1) of the Broadcasting Ordinance. Certain requirements in relation to the provision of a broadcasting service as stipulated in the licence, including but not limited to, the service commencement date, the service roll-out schedules and the capital expenditure will be set as milestones. The performance bond will be discharged once the relevant milestones referred to in the performance bond have been fulfilled to the satisfaction of the BA. Applicants should indicate the amount of bonded sums tied to milestones to be provided under the performance bond.

S2(1) of the
BO

Service Provision Requirements

3.9 A domestic free television programme service licensee shall, within such period as is specified in the licence or such other period as may be determined in writing by the BA, provide the service in such manner as to enable the service to be received throughout Hong Kong to the satisfaction of the BA. The BA may, by notice in writing to the licensee, exempt the licensee from complying with service provision requirements in relation to any parts in Hong Kong and during any period specified in the notice. The *Guideline on Exemption from Service Provision Requirements* issued by the BA is available at the BA's web site at <http://www.hkba.hk>.

S18 of the BO

General Requirements as to Television Programme Services

3.10 A licensee shall have regard to the general requirements as to television programme services stipulated in the Broadcasting Ordinance, including the prohibition of "subliminal messages".

S23 of the BO

Code of Practice

3.11 Codes of practice are issued by the BA to provide practical guidance for licensees in respect of any requirements under the Broadcasting Ordinance imposed on licensees or in respect of licence conditions. They are subject to periodic revision in light of representations by interested parties and other considerations.

S3 of the BO

3.12 Broadcasting materials are not subject to any previewing by the BA. A licensee will be expected to observe the codes of practice issued by the BA from time to time, the licence conditions and the relevant legislation, and to exercise self-regulation in accordance with them. A licensee will be responsible for all the contents it carries (excluding the material supplied by the Government) as part of its television programme service.

3.13 The programme, advertising and technical standards to

be observed by a domestic free television programme service licensee are promulgated respectively in the *Generic Code of Practice on Television Programme Standards*, *Generic Code of Practice on Television Advertising Standards*, and *Generic Code of Practice on Television Technical Standards*, which are available at the BA's web site at <http://www.hkba.hk>.

3.14 The programme standards applicable to a domestic free television programme service provide, among other things, that nothing unsuitable for children should be shown within the family viewing hours (i.e. between 4 p.m. – 8:30 p.m.), and at times when programmes are specifically targeting children, or under circumstances such that a large number of children might be expected to be watching television. Obscene material will not be permitted.

3.15 The advertising standards applicable to a domestic free television programme service govern, among other things, general advertising standards; factual and best-selling claims; unacceptable products or services; specific categories of advertisement; advertising and children; and programme sponsorship.

Supplementary Provisions in the BO

3.16 A domestic free television programme service licensee shall comply with the supplementary provisions, which include the minimum broadcasting hours per day, the requirement to carry television programmes supplied by the Government, the restrictions on advertising time during peak viewing hours (i.e. between 5 p.m. – 11 p.m.) and during times outside the period, the prohibition of any advertisement of a religious or political nature or concerned with industrial dispute, and the annual payment of licence fee and such other fees as may be prescribed.

Ss2(8)(a) of
& Schedule 4
to the BO

Television Programmes for Schools

3.17 The BA is empowered under section 19 of the Broadcasting Ordinance to require a licensee to include in its television programme service, without charge, any educational television programme for schools supplied by the Government.

Language of Broadcast

3.18 A licensee is required to provide both Cantonese and English services, and any other language services as may be imposed by the BA from time to time.

Positive Programme Requirements

3.19 A licensee is required to broadcast, in designated periods, a minimum amount of positive programmes (which may include news programmes, children's programmes, current affairs programmes, documentary programmes, programmes for young persons and senior citizens, arts and culture programmes, educational programmes etc.) as may be directed by the BA from time to time.

Licence Fee

3.20 The calculation of licence fee is adhered to the full-cost recovery principle, under which the licensees should pay the licence fees in advance for the licensing year, comprising a fixed fee and a variable fee based on the total number of hours of television programme time provided in the preceding licensing year. Licensees must make up any shortfall of the variable fee or be refunded in case of surplus. Licensees shall pay licence fee based on the above formula for the first annual licence fee, on the day the licence comes into force; and for any subsequent annual licence fee, on each anniversary of the day the licence comes into force.

S3 of &
Schedule 1 to
the
Broadcasting
(Licence
Fees)
Regulation,
S2 of the
Broadcasting
(Licence
Fees)
(Amendment)
Regulation
2008

Competition Provisions

3.21 A licensee shall not engage in conduct which, in the opinion of the BA, has the purpose or effect of preventing, distorting

Ss13(1) &
14(1) of the

or substantially restricting competition in a television programme service market. A licensee which, in the opinion of the BA, is in a dominant position in a television programme service market shall not abuse its position in a television programme service market. *Guidelines to the Application of the Competition Provisions of the Broadcasting Ordinance and Competition Investigation Procedures* issued by the BA are available at the BA's web site at <http://www.hkba.hk>.

Separate Accounting

3.22 A licensee who also holds a licence under the Telecommunications Ordinance shall adopt separate accounting practices in compliance with the Broadcasting Ordinance.

S17 of the BO

Licensee to Submit Returns

3.23 A licensee shall submit to the BA annual returns on directors and principal officers and disqualified persons under sections 39(1) & (2) of the Broadcasting Ordinance.

Ss39(1) & (2)
of the BO

3.24 Without prejudice to the above requirement, a licensee shall submit to the BA a return showing particulars of any change of its directors or principal officers within seven days beginning on the date the change takes place.

S39(3) of the
BO

Comments and Complaints

3.25 A licensee shall receive and consider any comment and complaint from the public about the television programme service it provides. A licensee shall keep a complete record of comments and complaints received by it for not less than two years and submit the same to the BA on a regular basis and on demand. A licensee shall also supply recordings of good quality of all material on the Service provided during such period, and in such forms as the BA may direct.

Publicity Material and Announcements in the Public Interest

3.26 A licensee shall include publicity material to promote knowledge and understanding of the activities and functions of the BA, and such material in the public interest provided by the Government as directed by the BA.

Intellectual Property Rights

3.27 A licensee shall not do, or permit, any act or conduct in relation to the Service which is an infringement of any intellectual property right, including but not limited to any copyright.

Compliance with Codes of Practice issued by the Telecommunications Authority

3.28 A licensee shall monitor and ensure strict compliance with the Codes of Practice, and technical standards and directions issued by the TA.

Use of Frequency Channels in In-building Coaxial Cable Distribution Systems

3.29 Unless otherwise approved by the TA, the maximum number of frequency channels that a licensee may use in any in-building coaxial cable distribution systems (IBCCDS) shall be as specified in the licence condition. The TA will consult the BA on all applications for allocation of IBCCDS channels.

Sanctions

3.30 The BA is empowered under section 28 of the Broadcasting Ordinance to require a licensee to pay financial penalties for failure to comply with any licence condition; any

Ss28, 30, 31
& 32 of the
BO

requirement, direction, order or determination under the Broadcasting Ordinance which is applicable to it; or any provision in a Code of Practice which is applicable to it. The BA is empowered under section 30 of the Broadcasting Ordinance to direct a licensee to include in its licensed service a correction or apology in a form approved by the BA. Under section 31 of the Broadcasting Ordinance, the BA may suspend a licence in certain circumstances, and the licensee will be allowed an opportunity to appeal to the CE in C before the suspension comes into force. The CE in C is empowered under section 32 to revoke a licence under certain circumstances.

Changes to Channel Line-up

3.31 A licensee shall notify the BA in advance of all changes to channel line-up and provide details regarding any new channels to be included in the Service.

IV INFORMATION TO BE PROVIDED IN APPLICATIONS

4.1 Applications must be made in writing, in the Chinese and/or English languages, and contain a duly completed and signed application form (BA S.F. 07/2002), which is available at the BA's web site at <http://www.hkba.hk>, providing where appropriate, information set out in paragraphs 4.5 to 4.10 below.

4.2 The BA may request an applicant to provide additional information by a specified deadline and all such subsequent submission, statements and representations so provided will form part of the Licensee's Proposal.

4.3 Applicants are advised to clearly mark any material claimed to be commercially confidential. Any information submitted in confidence to the BA will be treated in accordance with the Broadcasting Ordinance.

S27 of the BO

4.4 When an application is submitted to the BA, a notice in the specified form (BA S.F. 15/2006), which is available at the BA website, will be published on the BA website (www.hkba.hk) and in one English and one Chinese language daily newspaper in Hong Kong. In addition, a notice in relation to the application will be gazetted in accordance with the Broadcasting Ordinance as soon as practicable. Applicants are required to submit a duly completed BA S.F. 15/2006 together with the application. Members of the public who are interested may make representations on the application to the BA by a date specified in the notice. The BA shall consider any representations received by the date.

S9(3) of the BO

Company Information

4.5 The following information and documents are required from the company applying for a licence –

- (a) detailed information on the corporate and shareholding structure including relationships with holding or related companies;

- (b) details of the shareholders of the applicant, the voting rights attaching to the shares in the applicant and any shareholders' agreement;
- (c) certified true copies of each of the company's Memorandum and Articles of Association, Certificate of Incorporation, Business Registration Certificate, and relevant returns filed with the Companies Registry;
- (d) the organisational/management structure and details of management (including, without limitation, the staffing levels required for the operation);
- (e) relevant experience in running similar operations or providing similar services;
- (f) details of what decisions are to be taken at the shareholders level, and what decisions are to be taken at the board of directors level of the licensee, with details of effective procedures for resolving disputes at both levels; and
- (g) a duly completed statutory declaration declaring that the applicant and all persons exercising control of the applicant are fit and proper; that the residency requirements referred to in paragraphs 2.4 and 2.5 are fulfilled; and that all the details of disqualified persons and unqualified voting controllers, if any, are disclosed in the declaration. The specified statutory declaration form (BA S.F. 08/2002) is available at the BA's web site at <http://www.hkba.hk>.

4.6 If there are any documents, instruments, contracts, trusts, arrangements or understandings (whether having legal or equitable effect or otherwise) relating to the items in paragraph 4.5 above, one set of certified true copies of the same should be provided.

Financial Information

- 4.7 The following financial information is required –
- (a) evidence of sound financial backing, including details of any shareholders' loans, undertakings or guarantees;
 - (b) if the applicant is an established company (i.e. established and in operation for more than three years), the proposal should include certified true copies of audited profit and loss accounts and balance sheets and auditors' reports for the last three full years, together with the most recently published interim results;
 - (c) if the applicant is a newly-formed company (i.e. established and in operation for three years or under), the proposal should include –
 - (i) the directors' certificate of the amount of issued and paid-up share capital;
 - (ii) bankers' confirmation of the amount of its deposits and/or available credit facilities; and
 - (iii) copies of audited profit and loss accounts and balance sheets and auditors' reports for the years in operation, together with the most recently published interim results;
 - (d) a business and capital investment plan, including details of proposed financing structure, credit facilities and financial arrangements;
 - (e) projected profit and loss account including details of revenue, fixed and variable costs, balance sheet and budgeted cash flow statements, showing the amount of capital to be invested on an annual basis;
 - (f) projected market share, where appropriate;
 - (g) the level of the shareholders' support to satisfy the Government that the applicant is capable of bearing the

- financial risks of variations in the costs of establishing the operation/service and in the revenues from advertisers;
- (h) the amount of the banker's performance bond (tied to proposed milestones) to be lodged with the Government and the name of the issuing bank; and
 - (i) any economic and market study conducted and the projected market share that the applicant will be able to acquire.

Programming Information

4.8 The following programming information, where applicable, is required –

For all applications –

- (a) details of the programmes to be provided, both by type and by number of channels and programme hours;
- (b) the minimum daily broadcasting hours;
- (c) details of any proposed internal monitoring system to ensure compliance with applicable law, licence conditions, Codes of Practice and directions or orders issued or made by the BA;
- (d) details of copyright agreements and other legal arrangements in respect of programme suppliers;
- (e) details of any installation and equipment charges; and

For applications for the provision of services on an on-demand basis –

- (f) the percentage of total viewers the system will be able to respond to regarding requests at any one time and the maximum response time to such requests.

Technical Information

4.9 The applicant should confirm whether it will operate its own transmission network or hire the network services of other carrier licensees and provide the relevant details. For applicants who would like to operate their own transmission networks, they should apply for a suitable licence under the Telecommunications Ordinance to carry the service. The following technical information, where applicable, is required –

- (a) the technology to be employed, the likely choice of equipment, system design, proposed quality of service, how the ancillary equipment and facilities are planned to meet the proposed service, and other technological characteristics;
- (b) the planned geographical coverage of the network upon launch of service and the service roll-out plan, with timing if introduced in phases;
- (c) the planned location of the central headend system and studio facilities, and details of production equipment and facilities;
- (d) the planned equipment and facilities required to be installed at customer end in order to receive the service, including the interconnection arrangement if IBCCDS is used for distributing the services;
- (e) details of interface standard and design of technical equipment;
- (f) the access method by which viewers will request and receive a programme. If a set top box is used, details of the set top box design, connection method, equipment cost and any installation charge etc.;
- (g) if wireless transmission is used as part of the network for providing the service, the applicant should give an indication of the preferred frequency bands and the amount of frequency spectrum that will be used for the provision of the proposed

service. The amount of spectrum that will be made available and the exact limits of the frequency bands will be decided after reviewing the proposals received and taking into account the demand for frequency spectrum for other services in Hong Kong and other factors as the TA considers relevant in the circumstances;

- (h) if IBCCDS is used for distributing the service in buildings, the applicant should also give an indication of the ranges of frequencies required in any IBCCDS. The TA may consider allocating certain number of channels from the frequency plan, which is available at the web site of the Office of the Telecommunications Authority (OFTA) at <http://www.ofta.gov.hk/broadcast/main.html>, in case the applicant wishes to deploy the IBCCDS. The applicant should indicate the number of channels which they will require, with full justifications and calculation given; and
- (i) any arrangements envisaged or entered into with network operators.

Other Information

4.10 Other information required includes the following –

- (a) details of any construction work required and an assessment of its impact on the public;
- (b) the period between the grant of the licence and commencement of service;
- (c) applicant's preferred period of validity of the licence;
- (d) any demonstration that the implementation of the proposal will offer significant benefits to Hong Kong, for example, employment, manufacturing and wider trading opportunities, introduction of innovation and improvements to local broadcasting industry and the promotion of Hong Kong as an international broadcasting hub;

- (e) an Executive Summary summarising in a concise manner the significant and salient points of the proposals; and
- (f) any other information not specified above which the applicants consider helpful to their applications.

V CRITERIA FOR ASSESSMENT

5.1 The factors for the assessment of the application by the BA include –

(a) **Financial soundness and commitment to investment**

The applicant must demonstrate commitment to invest sufficiently in the proposed project and must possess sufficient financial capability to invest to the level proposed. The proposals on performance bond will be evaluated on their effectiveness as a means to bind the applicant's commitments and obligations.

(b) **Proven managerial and technical expertise**

The applicant must possess proven managerial and technical expertise to operate a satisfactory service in Hong Kong. The knowledge of the applicant or the consortium partners about the local environment and their experience in the operation of a broadcasting service will be relevant factors for consideration.

(c) **The variety, quantity and quality of programmes**

The proposals will be evaluated on the appeal of the programming to viewers, the quantity and quality of proposed programmes and the extent to which they will broaden viewers' choice.

(d) **Technical soundness and a satisfactory quality of service**

The proposed services must be technically sound and is likely to give a satisfactory quality of service. Where IBCCDS spectrum is used, applicants must ensure compliance with the requirements in the *TA Statement on Frequency Layout Plan of In-Building Coaxial Cable Distribution Systems* issued on 15 July 1999 (the Statement). The Statement concludes, among others, that spare channels in the existing IBCCDS should be allocated by the TA to licensed service providers employing spectrum efficient technologies.

(e) **Service roll-out**

The speed of service roll-out will be a relevant factor for consideration.

(f) **Minimum inconvenience to members of the public**

The proposals which involve construction works will be assessed on their impact on members of the public.

(g) **Benefit to the local broadcasting industry, viewers/customers and the economy as a whole**

Any benefits the proposals will bring to the broadcasting industry and the community as a whole will be considered favourably. These benefits will include creation of new job opportunities, technology transfer and contributions to the local economy as a result of the investment. The installation fees and equipment cost to be charged to viewers, if applicable, must be set at levels which are affordable and accessible to the general public.

(h) **Quality control and compliance**

The applicant must propose an effective internal monitoring mechanism to ensure that the terms of the licence and the applicable laws are complied with.

5.2 The criteria set out in this Guidance Note may be changed from time to time depending on the circumstances. The final decision in awarding a licence shall rest with the CE in C. The CE in C will not be obliged to give any explanation as to why an application has not been approved.

VI SUBMISSION OF APPLICATIONS

6.1 A set of frequently asked questions about applications for a television programme service licence is available at the BA's web site at <http://www.hkba.hk>. The application form for a licence and other related forms referred to in this document are available at the BA's web site at <http://www.hkba.hk> or for collection from the BA Secretariat at the following address. Interested parties should submit five copies of their applications to –

The Broadcasting Authority
c/o Television and Entertainment Licensing Authority
39/F Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

6.2 Applications will be accepted all year round.

6.3 Receipt of each application will be acknowledged individually.

6.4 Enquiries on this Guidance Note should be made to the Secretariat of the BA at the address given in paragraph 6.1 above or sent to –

Facsimile : (852) 2507 2219 (General)

(852) 2598 5509 (Confidential)

E-mail Address : ba@tela.gov.hk

OR by phone to : (852) 2594 5786

OR

Secretary for Commerce and Economic Development at the following address –

Secretary for Commerce and Economic Development
Commerce and Economic Development Bureau
Communications and Technology Branch
(Attn: Assistant Secretary, A1, CTB)
2/F, Murray Building
Central
Hong Kong

Facsimile : (852) 2511 1458 (General)
(852) 2827 0119 (Confidential)

E-mail Address : keithgiang@cedb.gov.hk

OR by phone to : (852) 2189 2238

Broadcasting Authority
Issued in May 2002
Amended in March 2006
Further amended in July 2007

Sound Broadcasting Licensing Regimes of Overseas Jurisdictions

Australia

In Australia, the Australian Communications and Media Authority (ACMA) is responsible for licensing radio broadcasting services.

2. ACMA is required under the Broadcasting Services Act 1992 to prepare a frequency allotment plan that determines the number of channels that are to be available in particular areas of Australia.
3. ACMA allocates commercial radio broadcasting licences by a price-based licence allocation exercise.
4. ACMA considers applications for a community radio licence on merit basis. In deciding whether to allocate such a licence for a community, ACMA will have regard to –
 - (a) the extent to which the proposed service would meet the existing and future needs of the community within the licence area;
 - (b) the nature and diversity of the interests of the community;
 - (c) the nature and diversity of other broadcasting services available within the licence area;
 - (d) the applicant's capacity to provide the proposed service or services;
 - (e) the undesirability of one person being in a position to exercise control of more than one community broadcasting in the same licence area; and
 - (f) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community radio licence.
5. ACMA may allocate temporary community radio licences to suitable applicants for up to 12 months. Such licences aim at allowing aspiring community radio broadcasters to develop their operational and

programming skills, and helping them build community support for long-term community broadcasting services. In deciding whether to allocate such a licence, ACMA is only required to take into account criteria (e) and (f) but not criteria (a) to (d) mentioned in paragraph 4 above.

6. Separately, a company is a suitable applicant for a licence if the ACMA has not decided that allowing the company to provide broadcasting services under a licence would lead to a significant risk. In deciding whether such a risk exists, the ACMA will take into account -

- (a) the business record of the company;
- (b) the company's record in situations requiring trust and candour;
- (c) the business record of each person who would be, if a licence were allocated to the applicant, in a position to control the licence;
- (d) the record in situations requiring trust and candour of each such person; and
- (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against the Broadcasting Services Act or the regulations.

Canada

7. Any person wishing to operate a radio broadcasting service must apply for a broadcasting licence from Canadian Radio-television and Telecommunications Commission (CRTC). An applicant must meet the minimum criteria, including –

- (a) whether financing is available;
- (b) whether technical capacity meets the requirements of the federal government's department of industry, viz, Industry Canada¹; and

¹ Industry Canada is responsible for allocating spectrum for radio broadcasting services.

- (c) whether programming meets the requirements set out in the government's statutory broadcasting policy.

CRTC may require an applicant to conduct a market study to confirm the demand for the proposed service and show how it will increase diversity in the market.

8. Applicants for a community radio licence are also required to meet the minimum criteria mentioned in paragraph 7 above.

9. CRTC has introduced a streamlined regulatory framework for low-power developmental community radio stations, which serve as a training ground for the future establishment of higher power community stations. Developmental community stations are generally licensed for a term of three years and at the end of the term, licensees are expected to apply for a regular community radio licence or cease operation. The stations will be subject to fundamental requirements on technical certification by Industry Canada and adherence to standard industry self-regulatory codes.

United Kingdom

10. In the UK, the Office of Communications (Ofcom) is responsible for licensing for all non-BBC² radio broadcasting services, including national commercial, local commercial and community radio services.

11. Ofcom has issued a guide on spectrum usage rights which, among others, sets out that in granting a licence, rights to transmit are capped to limit the risk that significant levels of interference may be caused to others.

12. Under the Broadcasting Act 1990, national analogue commercial radio licences are awarded through a cash bid process. Applications for local analogue commercial radio licences are assessed based on the following criteria –

- (a) applicant's ability to maintain the proposed service throughout the licence period, including the extent to which sources and levels of funding are appropriate/sufficient, the

² The British Broadcasting Corporation (BBC) is a public service broadcaster in the UK.

extent to which the people who would be running the station have relevant experience and knowledge and the extent to which the transmission proposals are appropriate and implementable;

- (b) extent to which the proposed service would cater for the tastes and interests of people living in the area or locality concerned and extent to which the proposed service would broaden the range of programmes available to people living in that area or locality; and
- (c) extent to which the application is supported by people in that area or locality.

13. When determining whether to grant a community radio licence, Ofcom will take into account an applicant's ability to –

- (a) maintain the proposed service, financially and otherwise, for the duration of the licence;
- (b) cater for the tastes and interests of members of the target community and broaden the range of programmes available;
- (c) provide evidence of demand or support for the proposed service, deliver social gain and be accountable to the public or relevant community; and
- (d) provide members of that target community with opportunities to access station facilities and be trained in their use.

14. Under the Broadcasting Act 1990, Ofcom shall not grant a radio licence to any person unless Ofcom is satisfied that the person is a fit and proper person³ to hold it.

United States

15. In the US, Federal Communications Commission (FCC) is responsible for licensing commercial, non-commercial educational and

³ The term 'fit and proper' is not defined in the Broadcasting Act 1990. It is a matter for Ofcom's discretion as to whether it regards a person as not fit and proper to hold a licence.

low power FM radio services. FCC uses auction to award commercial radio licences. Non-commercial educational and low power FM radio licences are allocated by a point system, under which points will be awarded to an applicant meeting some specific criteria in relation to programming diversity and origination, technical capability, etc.

16. Under the Communications Act 1934, FCC shall make regulations as it may deem necessary to prevent interference between stations.

17. Under the Communications Act, no licence shall be issued for the operation of any radio station unless a permit for its construction has been granted by the FCC. The application for a construction permit shall set forth such information as the FCC may prescribe by regulation in connection with –

- (a) the financial, technical, and other ability of the applicant to construct and operate the station;
- (b) location of the proposed station, the power and the type of transmitting apparatus to be used; and
- (c) character of the applicant.