

立法會
Legislative Council

LC Paper No. LS15/09-10

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

At the request of the Chairman made at the meeting of the Bills Committee held on 5 November 2009, this note is prepared to provide information on how a licence to provide a television programme service is granted under the Broadcasting Ordinance (Cap. 562) (BO) for the purpose of facilitating deliberations on the proposed section 13C(4) and (5) of the Telecommunications (Amendment) Bill 2009 (the Bill).

Applications for television programme service licences

2. There are four categories of television programme service licences under BO -

- (a) Domestic Free Television Programme Service¹ (Domestic Free) Licences;
- (b) Domestic Pay Television Programme Service² (Domestic Pay) Licences;
- (c) Non-domestic Television Programme Service³ (Non-Domestic) Licences; and
- (d) Other Licensable Television Programme Service⁴ (Other Licensable) Licences.

3. Applications for any category of television programme service licences shall be submitted to the Broadcasting Authority (BA) in the specified form. BA

¹ As defined in section 2(1) of BO, "domestic free television programme service" means a television programme service which is intended or available for reception by an audience of more than 5,000 domestic premises or hotel rooms in Hong Kong free of charge and primarily targets Hong Kong.

² As defined in section 2(1) of BO, "domestic pay television programme service" means a television programme service which is intended or available for reception by more than 5,000 domestic premises or hotel rooms in Hong Kong on payment of a subscription and primarily targets Hong Kong.

³ As defined in section 2(1) of BO, "non-domestic television programme service" means a television programme service which, inter alia, does not primarily target Hong Kong.

⁴ As defined in section 2(1) of BO, "other licensable television programme service" means a television programme service which is intended or available for reception, inter alia, either by an audience of not more than 5,000 domestic premises or hotel rooms in Hong Kong or in hotel rooms.

shall consider applications for a Domestic Free or Domestic Pay licence and make recommendations thereon to the Chief Executive in Council (CE in Council). Under section 8 of BO, CE in Council is the authority for the granting of Domestic Free and Domestic Pay licences, and BA is the authority for the granting of Non-Domestic and Other Licensable licences.

Licensing criteria

4. Apart from certain requirements such as those in relation to proposed licensees (including the "fit and proper person" requirement⁵ which is similar to that in the proposed section 13C(4)(a) and (5) of the Bill), BO does not provide for matters to which the relevant licensing authority, whether it is CE in Council or BA, should have regard when deciding whether or not to grant a licence under BO (the licensing criteria). However, BA has issued four sets of guidance notes⁶ outlining the regulatory framework, the basic requirements and procedures for those interested in applying to it as the recommending authority for a Domestic Free or Domestic Pay licence and as the licensing authority for a Non-Domestic or Other Licensable licence.

5. The licensing criteria set out in the guidance notes vary depending on the category of television programme service licence. According to paragraph 5.1 of the Guidance Note For Those Interested in Applying For Domestic Free Television Programme Service Licences in Hong Kong (the Guidance Note), the factors⁷ for assessment by BA of an application, for the purpose of making recommendations to CE in Council, include -

- (a) financial soundness and commitment to investment;
- (b) proven managerial and technical expertise;
- (c) the variety, quantity and quality of programmes;
- (d) technical soundness and a satisfactory quality of service;
- (e) service roll-out;
- (f) minimum inconvenience to members of the public;
- (g) benefit to the local broadcasting industry, viewers/customers and the economy as a whole; and

⁵ Section 21 of BO.

⁶ The guidance notes are issued pursuant to section 4(2)(a) of BO in relation to Domestic Free and Domestic Pay licences and section 4(2)(b) of BO in relation to Non-Domestic and Other Licensable licences.

⁷ Paragraph 5.2 of the Guidance Note provides that the criteria set out therein may be changed from time to time depending on the circumstances.

- (h) quality control and compliance.

The criteria set out above are substantially similar to those set out in the proposed section 13C(4)(b) to (i) of the Bill. Members may wish to refer to the guidance notes at <http://www.hkba.hk/en/tv/application.html> for further information.

Discretion

6. As indicated in paragraph 3 above, section 8 of BO empowers CE in Council and BA to grant television programme service licences. Likewise, section 13C(2) of the Telecommunications Ordinance (Cap. 106) (TO) empowers CE in Council to grant sound broadcasting licences. Neither of these provisions mentions that the exercise of the power is to be discretionary. Some members are concerned whether the reference to "discretion" in the proposed section 13C(4) of the Bill makes the power conferred by section 13C(2) of TO to grant sound broadcasting licences discretionary.

7. Members may wish to note that section 41(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides -

"Where any Ordinance confers power upon any person to issue, grant, give or renew any licence, Government lease, authority, approval, exemption or permit, the person so empowered shall have a discretion either to issue, grant, give or renew or to refuse to issue, grant, give or renew such licence, Government lease, authority, approval, exemption or permit."

Therefore, in exercising the power conferred by section 13C(2) of TO, CE in Council has a discretion either to grant or to refuse to grant sound broadcasting licences. The purpose of the proposed section 13C(4) of the Bill is merely to provide for the matters that the licensing authority shall have regard to when exercising its discretion.

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