

BROADCASTING BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Information

Technology and Broadcasting

Clause

Amendment Proposed

1(2)

By deleting the clause and substituting -

“(2) Subject to subsection (3), this Ordinance shall come into operation on the day it is published in the Gazette.

(3) Sections 13, 14, 15 and 16 shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette.”.

2

(a) In subclause (1) -

(i) by deleting the definition of “domestic household”

();

(ii) in the definition of “other licensable television programme

service” (), by deleting paragraph (b) and substituting -

“(b) either -

- (i) subject to subsection (11A), by an audience of not more than 5000 specified premises; or
- (ii) in hotel rooms;”;

[(iii) in the definition of

“Telecommunications Authority” (),

by deleting “[]” and substituting “[]”.]

(b) In subclause (11) -

- (i) in paragraph (a), by adding “under this Ordinance” after “decision”;
- (ii) by deleting paragraph (b) and substituting -

“(b) when forming an opinion or making a determination, direction or decision under this Ordinance, provide reasons in writing for it.”.

(c) By adding -

“(11A) The Broadcasting Authority may, by notice in writing served on the licensee, or the person seeking to be a licensee, concerned, waive the requirement specified in paragraph (b) (i) of the definition of “other licensable television programme service” if the Broadcasting Authority is satisfied that the other licensable television programme service concerned is only intended or available for reception by a single housing estate.”.

4

(a) By renumbering it as clause 4(1).

(b) By adding -

“(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 17(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.”.

6

- (a) In subclause (1), by adding “export,” after “import,”.
- (b) In subclause (3), by adding “exported,” after “imported,”.
- (c) In subclause (4), by adding “exports,” after “imports,”.

9

By adding -

“(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.”.

10(4), (5),

By deleting the clause and substituting -

(6) and (7)

“(4) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, where he or it considers it is 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 take into account the representations, if any, made under subsection (5) before implementing any proposed variation

under subsection (4).”.

11

(a) By adding -

“(3A) 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.”.

(b) In subclause (4), by adding “as soon as is practicable” after “them and”.

(c) In subclause (5), by adding”, at a time reasonable in all the circumstances before the expiry of the licence” after “shall”.

12

(a) In subclause (4), by deleting “Where” and substituting “Subject to subsection (4A), where”.

(b) By adding -

“(4A) 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) take into account the representations, if any, made.

(4B) 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.”.

13

- (a) In subclause (1), by adding”, distorting” after “preventing”.
- (b) In subclause (5) (a), by adding “wholly or substantially” after “produced”.
- (c) By deleting subsection (6) and substituting -

“(6) For the avoidance of doubt, it is hereby declared that nothing in this section shall prejudice the existence of any rights arising from the operation of the law relating to copyright or trademarks.”.

14(4)

By adding”, distorting” after “preventing”.

New

By adding -

**“14A. Provisions supplementary
to sections 13 and 14**

(1) The conduct of an associate of a licensee, or the position of the associate in a television programme service market, may be considered for the purposes of section 13 or 14.

(2) A person sustaining loss or damage from a breach of section 13(1) or 14(1), or a breach of a licence condition, determination or direction relating to that section, may bring an action for damages, an injunction or other appropriate remedy, order or relief against the licensee who is in breach.

(3) No action may be brought under subsection (2) more than 3 years after -

(a) the commission of the breach concerned referred to in that subsection; or

(b) the imposition under section 27 of a penalty in relation to the breach,

whichever is the later.

(4) For the avoidance of doubt, it is hereby declared that a breach of section 13(1) or 14(1) occurs when the
Broadcasting

Authority forms the opinion referred to in section 13(1) or 14(4) respectively.”.

16(2) (c) By deleting “practices” and substituting “principles”.

18 By adding “educational” after “any”.

20 (a) In subclause (2) -

(i) by deleting “A” and substituting “Subject to subsection (2A), a”;

(ii) by deleting “at all reasonable times when directed in writing to do so by the Broadcasting Authority” and substituting “on or before the 1st of April of each year”.

(b) By adding -

“(2A) Subsection (2) shall not apply to a licensee which has been a licensee for less than 4 months.”.

23 By adding -

“(3) The Broadcasting Authority shall cause directions under subsection (1) to be published in the Gazette or in such other manner as it thinks fit.”.

24

- (a) In subclause (1), by deleting “this Ordinance, the Broadcasting Authority Ordinance (Cap. 391) or any other Ordinance” and substituting “a prescribed Ordinance in order to ensure a licensee’s compliance with a licence condition, a requirement under the Ordinance which is applicable to it, a direction, order, or determination, under the Ordinance which is applicable to it, or a provision of a Code of Practice which is applicable to it”.
- (b) In subclause (3) (a), by adding “as referred, to in subsection (1)” after “Authority”.
- (c) By adding -

“(11) For the avoidance of doubt, it is hereby declared that the provisions of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) apply to this section.”.

25

By adding -

“(3) Nothing in this section shall require a person to give any information or document, or to produce any document, which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance.”.

26(3) By deleting the clause and substituting -

“(3) The Broadcasting Authority shall give the person supplying the information in confidence a reasonable opportunity to make representations on a proposed disclosure of the information under subsection (2) (c) or (d) before the Broadcasting Authority makes a final decision to disclose the information.”.

27 By adding -

“(3A) Where the Broadcasting Authority considers that if it were to impose a financial penalty under subsection (3) it would not be adequate for a breach of section 13(1) and 14(1)

-

(a) the Broadcasting Authority may -

- (i) within 3 years of the commission of the breach; or
- (ii) if the breach comes to the notice of the Broadcasting Authority within 3 years of its commission, within 3 years of it so coming

to the notice of the Broadcasting
Authority,

whichever is the later, make an application to
the Court of First Instance; and

- (b) upon such application, the Court of First Instance may, without prejudice to any powers conferred on the Broadcasting Authority by any provision of this Ordinance or any regulation made thereunder or any licence condition, impose upon the licensee who has committed the breach a financial penalty of a sum not exceeding 10% of the turnover of the licensee in the relevant television programme service market in the period of the breach, or \$2,000,000, whichever is the higher, and also specify when any such financial penalty is due for payment.

(3B) The Broadcasting Authority shall not

impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty.”.

29(1) By adding “(including within such time)” after “manner”.

30 (a) In subclause (2) -

(i) by deleting paragraph (a) (ii) and substituting -

“(ii) any financial penalty when it is due for
payment -

(A) as specified by the Court of First

Instance under section 27(3A) (b); or

(B) under section 28(4); or”;

(ii) in paragraph (b) (ii), by deleting “, or has been
facilitated by a neglect of,”.

(b) In subclause (3) -

(i) in paragraph (a) (i), by deleting “; and” and substituting “;”;

(ii) in paragraph (b), by deleting “suspension.” and substituting “suspension; and”;

(iii) by adding -

“(c) in the case of a domestic free television programme service or a domestic pay television programme service where subsection (2) (b) is applicable, conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority.”.

31(4)

By deleting the clause and substituting -

“(4) After section 32 has been complied with but subject to subsection (4A), the Chief Executive in Council or the Broadcasting Authority, as the case may require, may, by notice in writing served on the licensee, revoke a licence -

(a) for failure by the licensee to pay -

(i) any licence fee, or any other fee or charge owing by the licensee under this Ordinance, within 60 days beginning on the date the payment is due; or

(ii) any financial penalty within 60 days beginning on the date the payment is due -

(A) as specified by the Court of First Instance under section 27 (3A) (b); or

(B) under section 28 (4);

(b) if the licensee -

(i) goes into compulsory liquidation or into voluntary liquidation other than for the purposes of amalgamation or reconstruction; or

- (ii) enters into a composition or arrangement with its creditors; or
- (c) if, as may be applicable in the particular case, having regard to all the circumstances, including the number of occasions and the gravity in respect of which, after the issue of the licence -
 - (i) the licensee has contravened -
 - (A) a licence condition;
 - (B) a requirement under this Ordinance which is applicable to it;
 - (C) a direction, order, or determination, under this Ordinance which is applicable to it; or

(D) a provision of a Code of Practice

which is applicable to it,

and the licensee has failed to comply

with a direction under section 23(1)

relating to that contravention;

(ii) another person has contravened a

condition, requirement, direction,

order, determination or provision

mentioned in subparagraph (i) and

such contravention has taken place

with the consent or connivance of the

licensee.

(4A) The Chief Executive in Council or the Broadcasting

Authority shall not exercise a power under subsection (4) until

after considering -

- (a) in the case of the Chief Executive in Council, the recommendations of the Broadcasting Authority; and
- (b) in the case of both the Chief Executive in Council and the Broadcasting Authority, such information, matter and advice as he or it thinks fit.”.

35

By adding -

“(5A) Where subsection (3) applies to an application under subsection (2), the Court of First Instance shall not make an interim order under subsection (4) or (5) unless it is satisfied that it is a case of urgency.”.

41

(a) In subclause (1) -

- (i) in paragraph (a), by adding “, additional to those specified elsewhere in this Ordinance,” after “requirements”;
- (ii) in paragraph (b), by adding “on the grounds specified in the regulation” after “case”.

(b) By deleting subclause (2) and substituting -

“(2) Regulations under subsection (1)

shall be subject to the approval of the Legislative Council

except -

- (a) regulations under subsection (1) (f) (but excluding regulations relating to section 13 (4) (b)); and
- (b) regulations under subsection (1) (g) to the extent that they relate to subsection (1) (f) as specified in paragraph (a).”.

42(1) By adding “or 3” after “Schedule 1”.

- Schedule 1
- (a) In the heading immediately before Part 1, by adding “DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE” after “HOLDING”.
 - (b) In Part 2, in the heading, by adding “DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE” after “HOLDING”.
 - (c) In section 3, by adding -
 - “(3) In considering the public interest for the purposes of subsection (2), account shall be taken of, but not limited to, the following matters -

- (a) the effect on competition in the relevant service market;
 - (b) the extent to which viewers will be offered more diversified television programme choices;
 - (c) the impact on the development of the broadcasting industry; and
 - (d) the overall benefits to the economy.”.
- (d) In section 7 (a), by deleting “local newspaper within the meaning of the Registration of Local Newspapers Ordinance (Cap. 268)” and substituting “newspaper printed or produced in Hong Kong”.
- (e) In section 15 (6), by deleting paragraph (c).
- (f) In Part 3, in the heading, by adding “(NOT APPLICABLE IN RELATION TO DOMESTIC PAY TELEVISION PROGRAMME SERVICE LICENCES)” after “CONTROLLERS”.
- (g) In section 29 -
- (i) by deleting subsection (5) and substituting -
“(5) Subject to subsection

(6), any information which is furnished by a person in confidence under this Part shall be treated as confidential.”;

(ii) by deleting subsection (6) (c).

(h) In Part 4, in the heading, by adding “DOMESTIC FREE OR PAY TELEVISION SERVICE PROGRAMME” after “RESTRICTION ON”.

(i) By deleting section 33 and substituting -

“33. Restrictions on licensees exercising control on disqualified person without Chief Executive in Council’s approval

(1) A licensee shall not exercise control on a disqualified person -

- (a) unless the Chief Executive in Council, on application in the specified form by a licensee, is satisfied that the public interest so requires and approves otherwise; and
- (b) except in accordance with such conditions as are specified in the approval.

(2) In considering public interest

for the purposes of subsection (2), account shall be taken of, but not limited to, the following matters -

- (a) the effect on competition in the relevant service market;
- (b) the extent to which viewers will be offered more diversified television programme choices;
- (c) the impact on the development of the broadcasting industry; and
- (d) the overall benefits to the economy.”.

Schedule 4

- (a) In section 3(1) (a), (b) and (c), by adding “or the Broadcasting Authority” after “Government”.
- (b) By deleting section 10 and substituting -

“10. Minimum duration of television programme service

The duration of each language television programme service provided under a deemed licence, within the meaning of Schedule 8 to this Ordinance, falling within section 2(1) of that

Schedule shall be not less than 5 hours for each day.”.

(c) In section 11(2), by adding”, or would have adversely affected,” after “affect”.

(d) By deleting section 13 and substituting -

“13. Annual payment of fees

Subject to section 5 of Schedule 8 to this Ordinance, a licensee shall pay annually to the Director of Accounting Services a prescribed licence fee and such other fees as may be prescribed.”.

Schedule 5 In section 1, by adding “, 10” after “3”.

Schedule 7 In section 1, by deleting “, without the prior approval in writing of the Chief Executive in Council,”.

Schedule 8 (a) By deleting section 5 and substituting -

“5. Payment of annual fees

(1) In the case of a deemed licence falling within section 2(1), (2) or (3) -

(a) the Financial Secretary may, by notice in writing served on the licensee, specify the fee to be paid

to the Government by the licensee -

(i) for the year commencing on the relevant day; and

(ii) not later than 30 days after the relevant day; and

(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until the expiration of that year.

(2) In the case of a deemed licence falling within

section 2(4) -

(a) the licensee shall continue to comply with the provisions of the licence relating to a licence fee until -

(i) the expiration of the licence; or

(ii) the surrender of the licence for

another licence,

whichever is the earlier; and

- (b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until the occurrence of the event mentioned in paragraph (a) (i) or (ii).

(3) In the case of a deemed licence falling within section 2(5) -

- (a) the licensee shall continue to comply with the provisions of the licence relating to a licence fee until -
 - (i) the expiration of the licence; or
 - (ii) the surrender of the licence for

another licence,

whichever is the earlier; and

- (b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee

until -

- (i) the occurrence of the event mentioned in paragraph (a) (i) or (ii); and
- (ii) the licence held by the licensee does not specify a licence fee to be paid by the licensee to the Government.

(4) A notice under subsection (1) (a) served on a licensee shall be deemed to be a condition specified in the deemed license held by the licensee requiring the licensee to pay to the Government the fee specified in the notice.

(5) Where -

- (a) a licensee has before the relevant day paid an annual fee for a deemed licence falling within section 2(1), (2) or (3);
- (b) the period for which that fee has been paid would,

but for the commencement of section 43(1) of this Ordinance, expire on or after the relevant day; and

- (c) the licensee has paid the fee required by subsection (1) (a),

then the Financial Secretary shall remit to the licensee so much of the annual fee referred to in paragraph (c) as is equivalent to so much of the fee referred to in paragraph (a) which, on a pro rata basis, relates to so much of the period referred to in paragraph (b) which would, but for the commencement of section 43(1) of this Ordinance, run on and after the relevant day.”.

- (b) In section 8 -

- (a) by renumbering it as section 8(1);

- (b) by adding -

- “(2) It is hereby declared that a royalty within the meaning of the repealed Ordinance payable by a licensee (or former licensee) within the

meaning of that Ordinance is payable on a pro rata basis in respect of that portion of the licensee's (or former licensee's) accounting year which has effluxed before the relevant day, and subsection (1) shall apply accordingly.”.

(c) By adding -

“10. Certain Codes of Practice applicable for interim period for licensees that are holders of deemed licence

Where -

- (a) a Code of Practice (“old Code”) within the meaning of section 2 of the repealed Ordinance was in force immediately before the relevant day; and
- (b) a licensee who is the holder of a deemed licence was required to comply with the old Code immediately before the relevant day,

then -

- (i) the old Code shall, in

relation to the licensee, be deemed to be a Code of Practice within the meaning of section 2 of this Ordinance until the date on which a Code of Practice approved under section 3 of this Ordinance, and expressed to be in substitution for the old Code, comes into effect; and

(ii) subject to paragraph (iii), the licensee shall comply with the old Code until that date; and

(iii) the old Code shall be read and have effect with such modifications as are necessary to take into account the provisions of this Ordinance,

and the provisions of this Ordinance (including sections 22(2) (d), 23, 27(2) (d), 29(2) (d), 30(2) (b) (i) (D) and 31(4) (c) (i) (D) of this Ordinance) shall be construed accordingly.”.

Schedule 9

(a) By adding immediately before section 6 -

“5A. Schedule 1

Schedule 1 to the Telecommunications Regulations (Cap. 106 sub. leg.) is amended, in Part II, by repealing “HOTEL TELEVISION SERVICES LICENCE” and substituting “HOTEL TELEVISION (TRANSMISSION) LICENCE”.”.

(b) In section 6 -

(i) by deleting “of the Telecommunications Regulations (Cap. 106 sub. leg.)”;

(ii) by deleting paragraph (a) and substituting -

“(a) by repealing “HOTEL TELEVISION SERVICES LICENCE” and substituting “HOTEL TELEVISION (TRANSMISSION) LICENCE”;;”;

(iii) in paragraph (b) -

(A) by adding “a service, licence or licensee under” after “form to”;

(B) by adding “a service, licence or licensee under” after “reference to”.

(c) In section 14, in the proposed section 9(1) (d), by adding “including, without limitation, restrictions on the time of day when programmes and advertisements may be provided, whether for the same or different licensees or broadcasts” after “broadcasts”.

(d) By deleting section 19 and substituting -

**“19. Authority may impose
financial penalties**

Section 24 is amended -

(a) in subsection (3) -

(i) in paragraph (a), by repealing

“\$20,000” and substituting

“\$80,000”;

(ii) in paragraph (b), by repealing

“\$50,000” and substituting

“\$200,000”;

(iii) in paragraph (c), by repealing

“\$100,000” and substituting

“\$400,000”;

(b) by adding -

“(3A) The Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty.”.

- (e) In section 20, in the proposed section 25A, by adding “(including within such time)” after “manner”.