

LEGISLATIVE COUNCIL BRIEF

Broadcasting Ordinance (Cap. 562)

BROADCASTING (REVISION OF LICENCE FEES) REGULATION 2006

INTRODUCTION

A The Broadcasting (Revision of Licence Fees) Regulation 2006 (the Revision Regulation) at **Annex A** has been made to revise the fees prescribed in the Broadcasting (Licence Fees) Regulation (the Regulation) (Cap. 562 sub. leg. A).

BACKGROUND

2. It is government policy that fees should in general be set at levels sufficient to recover the full costs of providing the services. The television programme service licensees generally agreed to the aforesaid cost recovery principle when consulted in 1998 in the context of the public consultation on the 1998 Review of Television Policy.

3. The Regulation provides that holders of television programme service licences under the Broadcasting Ordinance (BO) (Cap. 562) shall pay an annual licence fee. The fee levels are prescribed in Schedules 1 to 4 to the Regulation. The existing fees have taken effect since February 2001, reflecting the Television and Entertainment Licensing Authority (TELA)'s administrative costs of assisting the Broadcasting Authority (BA) in regulating the television industry.

4. There are four categories of television programme service licence under the BO. They are:

- (a) domestic free television programme service licence;
- (b) domestic pay television programme service licence;
- (c) non-domestic television programme service licence (this is primarily satellite television service uplinked from Hong Kong

targeting the regional market. It is sub-divided into two types: Type A refers to free service, while Type B refers to subscription service); and

- (d) other licensable television programme service licence (it is sub-divided into two types: Type A refers to television service provided for an audience of not more than 5,000 specified premises, while Type B refers to television service provided for hotel rooms).

5. The amount and structure of the fees differ, reflecting the differences in the nature of service and the costs of administering different licences. For example, the administrative costs for ensuring licensees' compliance with the statutory requirement for providing locking devices for parental control purposes will be incurred for administering subscription television services only. Most of the fees comprise a fixed fee and a variable fee calculated on a per subscriber/channel/hotel basis. The fixed fee reflects the costs incurred by general licence administration including the preparation and regular revision of codes of practice issued by the BA. The variable fee primarily reflects the costs of handling complaints, which is assumed to relate proportionally to the number of viewers served or the number of programme channels provided by a licensee, as the case may be.

FEE REVISION PROPOSAL

6. Based on the result of the costing exercise TELA recently conducted, we propose to revise the licence fees prescribed in the Regulation. B The existing and new fees are set out at **Annex B**. On the one hand, some fees will be reduced due to reduction in general administrative costs as a result of improvement of efficiency and streamlining of work procedure. On the other hand, intensified competition in the television market and technological convergence in the communications industry have led to increased workload and complexity of regulatory issues. Very often, the BA needs to commission market and economic analyses as well as obtaining external legal and technical opinions in resolving regulatory matters, resulting in increase in administrative costs. In addition, from time to time, the BA needs to conduct benchmarking exercises to ensure that the regulatory practices are on a par with international best practices. Details of the fee revision proposal are appended below and the cost computations are set out at C **Annex C**.

Domestic Free Television Programme Service Licence

7. The existing annual licence fee comprises a fixed fee of \$3,811,000 and a variable fee of \$1,566,000 per programme channel. As a result of reduction of administrative cost due to improved efficiency and streamlining of workflow in handling complaints, we propose to reduce the variable fee by 9% to \$1,421,600 per programme channel. On the other hand, we propose to raise the fixed fee by 13% to \$4,308,900 to recover increase in costs as a result of increase in workload including those arising from the implementation of digital terrestrial television broadcasting, as well as the costs of commissioning professional services to deal with regulatory issues. The proposed net increase in overall licence fee for an existing licensee which provides two programme channels will be 3% or \$209,100.

Domestic Pay Television Programme Service Licence

8. The existing annual licence fee comprises a fixed fee of \$1,371,000 and a variable fee of \$4 per subscriber. We do not propose change to the variable fee of \$4 per subscriber for all licence fees which comprise this component because, on average, this rate represents a fair share of the administrative cost of handling complaints related to pay television services. On the other hand, we propose to raise the fixed fee by 12% to \$1,533,000 to recover the rise in administrative costs which include those of commissioning market and economic analyses for adopting an evidence-based approach to deal with regulatory issues.

Non-domestic Television Programme Service Licence

9. The existing annual Type A non-domestic television programme service licence fee is \$56,600. The annual Type B non-domestic television programme service licence fee comprises a fixed fee of \$69,600 and a variable fee of \$4 per subscriber. The costs of administering Type A licences remain steady over the years. We propose a slight reduction of 0.4% of the fee from \$56,600 to \$56,400 to reflect the share of the reduction in general administration costs according to the result of the costing exercise.

10. We propose to raise the fixed fee of Type B licences by 6% to \$74,000 to recover a net increase in the costs of administering this type of licences, which include the administrative work of examining the annual returns on the sources of the advertising and subscription revenues, the nature and size of subscribers and the proportion of local marketing expenses for the subscription service. Such administrative work is necessary to assist the BA

in determining if a service is non-domestic television programme service not primarily targeting Hong Kong. According to section 12(6)(b) of the BO, when determining if a service primarily targets Hong Kong, the BA shall take into account, among other things, whether the sources of advertising and subscription revenues are derived principally from Hong Kong. The variable fee of \$4 per subscriber remains the same (see para. 8 above).

Other Licensable Television Programme Service Licence

11. The existing annual Type A other licensable television programme service licence fee comprises a fixed fee of \$224,000 and a variable fee of \$4 per subscriber. No such licence has been granted so far. During the recent costing exercise, we estimated that the notional cost of administering such a licence is about \$171,200 and therefore propose to revise the fee downward to the estimated sum accordingly. This represents a 24% deduction. The variable fee of \$4 per subscriber remains the same (see para. 8 above).

12. The existing annual Type B other licensable television programme service licence fee comprises a fixed fee of \$15,200 and a variable fee of \$5,400 per hotel. We propose to raise the fixed fee by 11% to \$16,800 due to increase in administration work related to licence renewal. The validity period of most of the existing Type B licences ranges from one to three years as opposed to 12 years for other categories of television programme service licences. The BA renewed 16 and 7 such licences in 2004 and 2005 respectively.

THE REVISION REGULATION

13. To revise the fees proposed above, we propose to amend the Regulation by the Broadcasting (Revision of Licence Fees) Regulation 2006.

LEGISLATIVE TIMETABLE

14. The legislative timetable is as follows:

Publication in the Gazette	12 May 2006
Tabling at the Legislative Council	17 May 2006
Commencement	7 July 2006

IMPLICATIONS

15. If implemented, the fee revisions will lead to an increase in government revenue of about \$0.9 million per annum. The Revision Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It has no civil service, productivity, economic, environmental or sustainability implications.

PUBLIC CONSULTATION

16. We have consulted the licensees and explained to them the charging mechanism and reasons for the proposed fee changes. The two domestic free television programme service licensees and three domestic pay television programme service licensees are opposed to the fee increases. Their views are summarized below:

- (a) the fee review should be withheld and revisited in the context of the Government's proposal for a rationalized broadcasting regulatory regime and the merger of the Broadcasting Authority (BA) and the Telecommunications Authority (TA);
- (b) the administrative costs relating to the investigation into non-compliance with licence conditions should be recovered either from the offenders via fines or forfeitures, or from the complainants who made frivolous and vexatious complaints;
- (c) the fees for domestic free television programme service licence should be reduced, having regard to the substantial costs of carrying government programmes and announcements in the public interest (APIs) and contribution to the digitization of terrestrial television by the domestic free television programme service licensees;
- (d) the proposed fee increases are higher than the general Consumer Price Index (CPI) and will impose additional financial burden on them in the current business environment characterized by increasing competition and high operating costs. In addition, the fee increases run counter to the trend in the telecommunications market where the licence fees have been reduced; and

- (e) TELA's increases in administrative costs could be offset by the anticipated growth in future revenue arising from projected rise in the number of licences and subscribers.

17. As regards the licensees' views in paragraph 16(a)-(b) above, the licences fees are charged and reviewed based on the principle of cost recovery as explained in paragraph 2 above. This is an established government policy that has been implemented for years. Licensees generally agreed to the principle when consulted. While the licence fee charging mechanism may undergo review in future, we should follow the cost-recovery principle in determining the licence fee unless and until the existing mechanism is modified. At the present moment, we do not consider it necessary or appropriate to change the fee charging mechanism.

18. As for the licensees' views in paragraph in 16(c), the relevant licensees agreed to the licence conditions that require them to broadcast APIs and implement digital terrestrial television when they accepted their licences. As for the licensees' views in paragraph in 16(d), the fee charging mechanism is based on the principle of cost recovery and not linked to the CPI. The mild fee increases would not impose any significant burden on the licensees since they only constitute a very small proportion of the operating costs of the licensees. Furthermore, comparing the fees of broadcasting licences with those of telecommunications licences is unwarranted, because the regulatory regimes and costing structure applied to the two sectors are different. As for the licensees' views in paragraph in 16(e), revenue increases arising from the rise of the number of licences and subscribers, if any, will be reflected in future costing exercises.

19. We consulted the Legislative Council Panel on Information Technology and Broadcasting on 6 April 2006, which has no objection to the proposal.

PUBLICITY

20. A press release will be issued on 12 May 2006 on which the Revision Regulation will be published in the Gazette and a spokesman will be made available for answering media enquiries. The licensees will be informed of the fee revisions.

ENQUIRIES

21. Enquiries about this brief can be directed to Miss Lida Lam, Principal Entertainment Standards Control Officer, on 2594 5731 or at lida_wy_lam@tela.gov.hk.

Television and Entertainment Licensing Authority
12 May 2006

**BROADCASTING (REVISION OF LICENCE FEES)
REGULATION 2006**

(Made by the Secretary for Financial Services and the Treasury
under section 29A of the Interpretation and General Clauses
Ordinance (Cap. 1) by virtue of section 42 of the
Broadcasting Ordinance (Cap. 562))

1. Commencement

This Regulation shall come into operation on 7 July 2006.

**2. Annual licence fee for domestic free
television programme service
licence or deemed domestic
free television programme
service licence**

Schedule 1 to the Broadcasting (Licence Fees) Regulation (Cap. 562 sub.
leg. A) is amended –

- (a) in section 2(1)(a), by repealing “\$3,811,000” and substituting “\$4,308,900”;
- (b) in section 2(1)(b), by repealing “\$1,566,000” and substituting “\$1,421,600”.

**3. Annual licence fee for domestic pay
television programme service
licence or deemed domestic
pay television programme
service licence**

Schedule 2 is amended, in section 2(1)(a), by repealing “\$1,371,000” and substituting “\$1,533,000”.

**4. Annual licence fees for type A and type B
non-domestic television programme
service licences**

Schedule 3 is amended –

- (a) in section 2, by repealing “\$56,600” and substituting “\$56,400”;
- (b) in section 3(a), by repealing “\$69,600” and substituting “\$74,000”.

**5. Annual licence fees for type A and type B
other licensable television programme
service licences**

Schedule 4 is amended –

- (a) in section 2(a), by repealing “\$224,000” and substituting “\$171,200”;
- (b) in section 3(a), by repealing “\$15,200” and substituting “\$16,800”.

Secretary for Financial Services and
the Treasury

2006

Explanatory Note

This Regulation amends Schedules 1, 2, 3 and 4 to the Broadcasting (Licence Fees) Regulation (Cap. 562 sub. leg. A) (“the principal Regulation”) –

- (a) to reduce the variable fee of the annual licence fee for domestic free television programme service licence, annual licence fee for type A non-domestic television programme service licence and fixed fee of the annual licence fee for type A other licensable television programme service licence payable under the principal Regulation; and
- (b) to increase the fixed fee of the annual licence fee for domestic free television programme service licence, fixed fee of the annual licence fee for domestic pay television programme service licence, fixed fee of the annual licence fee for type B non-domestic television programme service licence and fixed fee of the annual licence fee for type B other licensable television programme service licence payable under the principal Regulation.

**Proposal for Revision of Licence Fees
under the Broadcasting (Licence Fees) Regulation**

Licence Category	Existing		Proposed	
	Fixed Fee	Variable Fee	Fixed fee	Variable fee
Domestic Free TV Programme Service Licence	\$3,811,000	\$1,566,000 per programme channel	\$4,308,900 (+13%)	\$1,421,600 per programme channel (-9%)
Domestic Pay TV Programme Service Licence	\$1,371,000	\$4 per subscriber	\$1,533,000 (+12%)	\$4 per subscriber (No change)
Type A Non-domestic TV Programme Service Licence (free service)	\$56,600	N.A.	\$56,400 (-0.4%)	N.A.
Type B Non-domestic TV Programme Service Licence (pay service)	\$69,600	\$4 per subscriber	\$74,000 (+6%)	\$4 per subscriber (No change)
Type A Other Licensable TV Programme Service Licence (for an audience of not more than 5,000 specified premises)	\$224,000	\$4 per subscriber	\$171,200 (-24%)	\$4 per subscriber (No change)
Type B Other Licensable TV Programme Service Licence (for hotels)	\$15,200	\$5,400 per hotel	\$16,800 (+11%)	\$5,400 per hotel (No change)

COST COMPUTATION
Television and Entertainment Licensing Authority
Annual Television Programme Service Licence Fees
under Broadcasting (Licence Fees) Regulation

Unit Cost at 2005-06 Price Level

Domestic Free Television Programme Service

	<u>Fixed</u>	<u>Variable</u>
	\$	\$
Staff cost	3,508,653	2,162,212
Departmental expenses	306,564	354,295
Accommodation cost	219,472	161,716
Depreciation	6,488	NA
Central administrative Overheads	267,646	164,937
Total Cost	4,308,823	2,843,160
Estimated number of programme channels per licence for 2005-06		2 programme channels
Unit cost at 2005-06 prices	\$4,308,900	\$1,421,600 per programme channel
Proposed licence fee formula under the Regulation		\$4,308,900 + \$1,421,600 per programme channel
Computed Licence fee	\$7,152,100	

Domestic Pay Television Programme Service

	Fixed	Variable
	\$	\$
Staff cost	1,138,496	1,686,709
Departmental expenses	233,719	907,288
Accommodation cost	69,634	194,164
Depreciation	4,325	NA
Central administrative Overheads	86,846	128,665
Total Cost	1,533,021	2,916,825
Total number of subscribers of domestic pay TV service		828 631 subscribers
Unit cost at 2005-06 prices	\$1,533,000	\$4 per subscriber
Proposed licence fee formula under the Regulation		\$1,533,000 + \$4 per subscriber ¹

¹ The variable fee of \$4 per subscriber to domestic pay TV programme service remains unchanged.

Non-Domestic Television Programme Service

	Type A Non-Domestic (Free)	Type B Non-Domestic (Pay)	
	Licence Fee	Fixed	Variable
	\$	\$	\$
Staff cost	43,205	55,629	10,879
Departmental expenses	5,947	6,425	1,556
Accommodation cost	2,635	3,426	730
Depreciation	1,298	4,325	NA
Central administrative Overheads	3,296	4,243	830
Total Cost	56,380	74,049	13,994
Estimated number of subscribers per licence			3 333 subscribers
Unit cost at 2005-06 prices	\$56,400	\$74,000	\$4 per subscriber
Proposed licence fee formula under the Regulation	\$56,400	\$74,000 + \$4 per subscriber ²	

² The variable fee of \$4 per subscriber to non-domestic pay TV programme service remains unchanged.

Type A Other Licensable Television Programme Service

	Type A Other Licensable (for not more than 5 000 specified premises)	
	Fixed	Variable
	\$	\$
Staff cost	135,002	12,846
Departmental expenses	4,360	4,069
Accommodation cost	8,602	872
Depreciation	12,976	NA
Central administrative Overheads	10,298	980
Total Cost	171,238	18,767
Estimated number of subscribers per licence		5 000 subscribers
Unit cost at 2005-06 prices	\$171,200	\$4 per subscriber
Proposed licence fee formula under the Regulation	\$171,200 + \$4 per subscriber ³	

³ The variable fee of \$4 per subscriber to Type A other licensable TV programme service remains unchanged.

Type B Other Licensable Television Programme Service

	Type B Other Licensable (for hotel)	
	Fixed	Variable
	\$	\$
Staff cost	13,929	4,544
Departmental expenses	423	173
Accommodation cost	891	305
Depreciation	519	NA
Central administrative Overheads	1,063	347
Total Cost	16,824	5,369
Unit cost at 2005-06 prices	\$16,800	\$5,400 per hotel
Proposed licence fee formula under the Regulation	\$16,800+ \$5,400 per hotel ⁴	

⁴ The variable fee of \$5,400 per hotel provided with Type B other licensable TV programme service remains unchanged.