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Bills Committee on Broadcasting and Telecommunications Legislation (Amendment) Bill 2019  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Attention: The Honorable Dr Elizabeth Quat (Chairman of the Bills Committee)

c/o Mr Daniel Sin  
Chief Council Secretary and Clerk to Bills Committee

30 May 2019

Dear Honorable Dr Quat,

**Bills Committee on Broadcasting and Telecommunications  
Legislation (Amendment) Bill 2019 (the “2019 Bill”)**

We refer to the Bills Committee meeting held on 7 May 2019 and would like to thank you for inviting us to further submit information regarding the potential areas for further regulatory relaxation at the content regulation level. We are pleased to submit this written submission to facilitate the review of the existing television regulatory regime.

While we are in support of the review of the Broadcasting Ordinance and the 2019 Bill, we are concerned that the present control and restrictions on the traditional television programming and advertising, in particular those specified under the Generic Codes of Practice on Television Advertising Standards and Programming Standards issued by the Communications Authority (collectively referred to as the “Codes”) are too restrictive. As such, reasonable relaxation of the Codes is highly desirable especially in view of the significantly more relaxed OTT content regulation regime.

Our detailed rationales and recommendations are hereby enclosed for your kind reference.

We must stress that the present submission and recommendations on the Codes is not intended to and shall not interfere with the legislative process of the 2019 Bill. Indeed, it should not delay the legislative process or the passage of the Bill, but serves to (i) draw members’ attention to the current stringent restrictions under the existing Codes, (ii) facilitate future discussions and dialogues with the Communications Authority, or even in the Panel on Information Technology and Broadcasting if considered appropriate; and (iii) seek possible relaxation of the Codes in the near future with the intention to foster a more balanced competitive environment, as compared with OTT, conducive to the growth of the traditional broadcasting market.

Thank you for your kind attention in this matter.

**HKTVE**

Yours sincerely



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Encl.

**(This written response is intended to be submitted to the Bills Committee and the Communications Authority only and is not intended for public disclosure)**

### **Response to the Broadcasting Ordinance Amendment Bills Committee**

We are pleased to note that the Bills Committee and the Commerce and Economic Development Bureau recognize the prevalence of digital media and its impact on traditional broadcasting licensees and are reviewing the existing television and sound broadcasting regulatory regimes with an aim to redress the imbalance of the existing regulatory framework in governing traditional broadcasting media and Internet media to foster a more balanced competitive environment for the broadcasting market.

However, traditional broadcasting licensees are subject to not only statutory and licensing controls, as discussed in the Bill, but also content regulations. Such continuing stringent restrictions imposed on the advertising of products and services in television broadcasting platforms shift advertising income, the main source of income for Free TV, from traditional media to digital media. In particular, there is a long list of products and services that are not acceptable for advertising broadcast on traditional television (“unacceptable products for advertising”) whilst there are no such restrictions on internet-based television (“OTT”). HKTVE urges the Government and the Communications Authority (“CA”) to undertake regular and timely review of the scope of “unacceptable products for advertising” and the standard of complying with the advertisement restrictions. Additionally, we also include other aspects of potential areas for relaxation, including (i) time restriction for broadcast and (ii) sponsorship and advertising requirements in live broadcasting events of great public interest, in our recommendations for review. Such review is proposed with a view to providing a more balanced competitive business environment, as compared with OTT, conducive to the growth of the traditional broadcasting market.

## **I. Unacceptable Products and Services**

### **A. General List**

The existing list of unacceptable products and services for broadcast advertising as listed in Chapter 5 of the Generic Code of Practice on Television Advertising Standard (“Advertising Code”) is summarized below:-

1. firearms and associated equipment;
2. fortune-tellers and the like...;
3. unlicensed employment services, registries or bureau...;
4. advertise for the purpose of giving betting tips;
5. betting (including pools)...;
6. night clubs, dance halls, massage parlours, sauna houses, bath houses or similar establishments in which hosts or hostesses are employed for the primary purpose of attracting or entertaining customers or in which floor shows or other live performances or activities involving sexual behaviour of whatever nature are presented;
7. escort services in general and dating services targeting young persons under the age of 18;
8. pay per call information services which offer adult material of a sexual nature...

According to Chapter 5 of Advertising Code, the above list is not exhaustive. For details, please refer to Chapter 5 of the Advertising Code.

In addition, Chapter 6 of Advertising Code provides that certain specific categories of advertisement are restricted for broadcast, subject the detailed descriptions in the code provisions and various Ordinance, Codes, rules and regulations referred by the code. The categories are listed below:-

1. Alcoholic Beverages
2. Tobacco and Tobacco Related Products
3. Medical Preparations and Treatments
4. Claims Relating to Nutrition or Dietary Effects
5. Personal Products
6. Financial Advertising
7. Real Property Advertising
8. Film Advertisements

For details, please refer to Chapter 6 of the Advertising Code.

## **B. Potential Areas for Relaxation**

In particular, whilst we invite the Government and the CA to take an ongoing review of the aforementioned restrictions with a view to relax them, we would like to highlight some potential areas for relaxation that could be adopted in the near term to facilitate the broadcasting industry.

### **(i) Hair Transplant**

Restriction under Section 10(f) of Chapter 6 of Advertising Code:-

*“10. Advertisements for products or services coming within the recognised character of, or specifically concerned with, the following are not acceptable:*

...

*(f) cosmetic surgery and slimming or weight reducing measures involving the use of medical preparations; ...”*

With the rapid advancement of new hair-treatment technologies in the last twenty years, two main streams of treatment have been introduced in the market, namely “hair weaving” and “hair transplant”. The nature of hair transplant is very similar to that of hair weaving but they provide different solutions to solve the hair-loss issue. Whilst hair weaving is acceptable for traditional television broadcasting, hair transplant is not.

Hair transplant is now widely accepted as a common way of hair treatment by the general public. However, it is regarded as cosmetic surgery under Section 10(f) of Chapter 6 of the Advertising Code and thus restricted for broadcast advertising. It is evident that advertisements of various hair treatment services, including hair transplant, are published in newspaper and displayed at prominent public areas such as MTR and carried on the internet platforms (please see Appendix 1).

We do not see that traditional television broadcasting should be subject to such a restriction anymore and that we seek to request for relaxation of such a restriction in the Advertising Code. We would like to stress that the same restriction does not apply to advertisements in OTT or even in newspaper.

Therefore, we propose to amend (as underlined below) Section 10(f) of Chapter 6 of the Advertising Code to:-

*“10. Advertisements for products or services coming within the recognised character of, or specifically concerned with, the following are not acceptable:*

...

*(f) cosmetic surgery (except for the minimally invasive treatment for hair loss or procedure for hair restoration including hair transplant) and slimming or weight reducing measures involving the use of medical preparations; ...”*

## (ii) Clinical Laboratory Testing Services

There is a general prohibition for advertising of “clinical laboratory testing services” under Section 10(d) of Chapter 6 of the Advertising Code. Absent appropriate specificity the scope is too wide and in the course of recent decades, there have been new developments in the healthcare industry that would justify the scope to be refined. Like many high GDP jurisdictions, healthcare services are developing rapidly in Hong Kong. Our Government also promotes the strengthening of public healthcare system as a matter of its policy objective<sup>1</sup>. Commercially, such healthcare services are evolving in areas like pregnancy tests, ovulation tests, storage of cord blood and tissue, diagnostics and clinical laboratory testing services.

The range of clinical laboratory testing services includes regular health check through collection of test specimen (such as hair and saliva) from human to give information about their health. It is observed that health check and the relating laboratory testing services are advertised in different media, including public transportation, accessible to the general public (see Appendix 2). New types of testing services, including DNA testing, are growing in popularity now and enquiries from potential advertisers are also increasing. Further, products for body check-up and/or provision of information of our health, including pregnancy and ovulation test kits and glucometer (see Appendix 3), are currently advertisable on TV. Hence, TV advertisements of clinical laboratory testing services for the purpose of body check-up and/or provision of health information would be a natural extension of the trend that attempts to keep abreast of the evolving cultural values and social and ethical standard of acceptable conduct. There are therefore justifiable reasons to relax the Advertising Code to cope with the market demand for promoting and advertising for new technology developments.

Therefore, we propose to amend (as underlined below) Section 10(d) of Chapter 6 of the Advertising Code to:-

*“10. Advertisements for products or services coming within the recognised character of, or specifically concerned with, the following are not acceptable:*

...

*(d) clinical laboratory testing services, except for the purpose of body check-up or obtaining information about human; ...”*

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<sup>1</sup> [https://www.policyaddress.gov.hk/2018/eng/policy\\_ch06.html](https://www.policyaddress.gov.hk/2018/eng/policy_ch06.html)

## **II. Onerous Burden on Traditional Broadcasting Licensee**

Corporate governance responsibilities such as ascertaining truthfulness in advertisement and compliance with laws and regulations of advertising products and services the advertiser presenting should rest with the particular industry especially the more specialized ones like financial institutes, property agencies, medical preparation and treatments and claims relating to nutrition or dietary effect. However, the Advertising Code has assigned the responsibility of such also on the broadcasting licensees which might not have been appropriate due to the lack of specialized knowledge.

### **A. General List**

The following contains a list of categories such advertisements (in Chapter 6 of Advertising Code) which may require specialized knowledge from broadcasting licensees.

#### **(i) Financial Advertising**

Broadcasting licensees have the responsibility to ensure that advertisements comply with all the relevant legal and regulatory requirements including, but not limited to, the following:

- (a) the Companies Ordinance (Cap. 32);
- (b) the Banking Ordinance (Cap. 155);
- (c) the Insurance Companies Ordinance (Cap. 41);
- (d) the Securities and Futures Ordinance (Cap. 571);
- (e) the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
- (f) the Codes of the Securities and Futures Commission (SFC), including without limitation:
  - (i) the Code on Unit Trusts and Mutual Funds;
  - (ii) the Code on Investment-linked Assurance Schemes;
  - (iii) the Code on Pooled Retirement Funds;
  - (iv) the Code on Immigration-linked Investment Schemes;
  - (v) the SFC Code on MPF Products;
  - (vi) the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission;
  - (vii) the Fund Manager Code of Conduct;
  - (viii) the Corporate Finance Adviser Code of Conduct; and
  - (ix) any other prevailing rules and guidelines on other types of investment products regulated by the SFC such as paper gold schemes; and
- (g) the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited.

(The list is for reference only and it is the responsibility of the broadcasting licensees to ascertain the applicable and up-to-date legal and regulatory requirements.)

**(ii) Real Property Advertising**

Broadcasting licensees must ascertain that any descriptions, demonstrations and claims of a specific nature with regard to real property advertisements have been adequately substantiated by the advertisers.

**(iii) Claims Relating to Nutrition or Dietary Effects**

Broadcasting licensee must comply with the provisions of the Undesirable Medical Advertisements Ordinance (Cap. 231) and ensure that the advertisements which make claims relating to nutrition or dietary effects comply with all relevant legislation including without limitation the Public Health and Municipal Services Ordinance (Cap. 132).

**(iv) Medical Preparations and Treatments**

Broadcasting licensee should ensure that all medical advertisements conform with the laws of Hong Kong, including without limitation the Undesirable Medical Advertisements Ordinance (Cap. 231).

**(v) Tobacco and Tobacco Related Products**

Broadcasting licensee must comply with all relevant provisions relating to tobacco advertisements under the Smoking (Public Health) Ordinance (Cap. 371).

For details, please refer to Chapter 6 of the Advertising Code.



## **B. Potential refinement of Advertising Code**

In particular, we are of the view that some requirements are considered too onerous to broadcasting licensees. Whilst we invite the Government and the CA to take an ongoing review of these restrictions with a view to relax them, we would like to highlight some potential areas for relaxation that could be adopted in the near term to facilitate the broadcasting industry.

Below are examples of possible refinement in the Advertising Code to facilitate broadcasting licensees to strike a better balance between the broadcasting licensee and the advertiser in terms of each's respective social responsibility.

### **(i) Overseas Property Advertising**

Section 37 of Chapter 6 of the Advertising Code regarding overseas property advertising requires the broadcasting licensee to secure letters of confirmation of particulars from both the firm of (i) solicitor/attorneys in the country where the property is situated and (ii) Hong Kong practising solicitor. This strict requirement deters overseas property developer or vendor from advertising through television.

Our stance is that it would be suffice for a broadcasting licensee to fulfill its obligation to verify the accuracy of the information contained in the property advertisement by obtaining the overseas property vendor's express endorsement from the advertiser or its legal representative in writing of the accuracy and completeness of the information contained in such advertisement before its broadcast, which is similar to the relevant advertising requirements applicable to an estate agency under the Guidelines on the Sale of Uncompleted Properties Situated Outside Hong Kong (Circular No. 17-03(CR))<sup>2</sup> issued by the Estate Agents Authority in 2017. The Advertising Code should not create a more onerous obligation on the part of the broadcasting licensee when there are trade safeguards in the industry being advertised.

### **(ii) Advertising Claims Relating to Nutrition or Dietary Effects**

Section 21 of Chapter 6 imposes obligation on advertisements for products and services containing claims relating to nutrition or dietary effects. Specifically, sub-section (f) provides that the broadcasting licensee must ensure that the advertisements which make claims relating to nutrition or dietary effects comply with all relevant legislation including without limitation the Public Health and Municipal Services Ordinance (Cap. 132).

We would like to respectfully draw your attention that it might not be reasonable for a broadcasting licensee (not being an expert in the respective industries of products and services being advertised) to bear the burden of observing wide range of legislations for various kinds of advertising products or services and assume the responsibilities of ensuring the compliance of various legislations, provided that in most situations, the advertiser has already assumed the responsibilities of representing its products and services to its consumers.

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<sup>2</sup> [http://www.eaa.org.hk/Portals/0/Sections/LGA/Circular/17-03\\_CRE.pdf](http://www.eaa.org.hk/Portals/0/Sections/LGA/Circular/17-03_CRE.pdf)

As such, we are of the view that it would suffice for a broadcasting licensee to fulfill the concerned Advertising Code by obtaining express endorsement in writing from the advertiser or its legal representative of compliance in the relevant laws and regulations governing the respective advertising claims before the broadcast of advertisements for products or services containing such claims.

### **III. Reasonable Diligence Obligation**

The current Advertising Code (Section 9 of Chapter 3) imposes a “reasonable diligence” obligation to broadcasting licensees in ascertaining the claim in the advertisement of products such as dietary products. However, the degree of burden in fulfillment of “reasonable diligence” obligation remains uncertain.

To ease the difficulty of broadcasting licensees in discharging the “reasonable diligence” obligation, we are of the opinion that it would suffice for a broadcasting licensee to fulfill its “reasonable diligence” obligation to ascertain the truthfulness of any descriptions, claims or illustrations in the advertisement by obtaining express endorsement in writing from the advertiser or its legal representative of the accuracy and completeness of the information contained in such advertisement before the broadcast of such advertisements.

#### **IV. Time Restriction and Broadcasting Events of Public Interest**

##### **A. Watershed Time**

With reference to the global media trend of relaxation of broadcasting hours for mature content in neighboring countries and common law jurisdictions, we respectfully urge the authority to relax the viewing hours for mature audience to such an extent to be in line with the international trend e.g. United Kingdom has the watershed at 9:00pm, Canada has the watershed at 9:00pm (see Appendix 4 for watershed time of some other jurisdictions). We further note that there is no watershed time restriction for OTT. The restriction on free television programme service for the provision of material unsuitable for children which should only be relaxed on a gradual and progressive basis after 8:30p.m is not applicable to OTT platform as well. In view of the above, we propose to shift the watershed time from 11:30pm to 11:00pm and look for progressively further relaxation of watershed time in the future. (Section 7 of Chapter 2 of Generic Codes of Practice on Television Programming Standards)

##### **B. Sports or other Live Events**

It would be of the great interest to general public if viewers from the public could enjoy free viewing of international mega sports and live event broadcasting, including FIFA World Cup, BPL and NBA, over the conventional FREE television platform. Indeed, HKTVE has made significant investment into securing the broadcasting rights for such broadcast which were mostly only made available to the viewers of pay, instead of free, television service in the past.

Correspondingly, we would appreciate that reasonable flexibility be allowed in the future for such programme sponsorship and advertisement in free television platform.

**Remark:** The following paragraph is intended only for submission to CA:

In order to maintain reasonable income through sponsorship and advertisement for sports and live event broadcasting in FREE television platform, we urge for relaxation of Advertising Code to allow more reasonable and flexible time of sponsorship and advertisement during sports or live event broadcasting. This can be done by allowing (i) deviations from the existing Section 8B of Chapter 9 of Advertising Code of broadcast frequency and duration and sponsor identification within programmes and (ii) display of sponsor logos for match clock, recap, related information within sports event which shall not be counted towards advertising time per clock hours (in line with the pay television platform) We were disappointed that in the past such applications for relaxation were not approved (including application for the purpose of live broadcasting FIFA World Cup in year 2018) and would invite CA to look into these applications and consider the appropriate approach afresh.

## Appendix 1 Examples of Advertisements of Hair Treatment Service in Public



Advertisements in MTR

Newspaper advertisement

Mobile advertisement

Digital Banner advertisement

**Appendix 2 Examples of Advertisements of Health Check and relating Laboratory Testing Services**



### Appendix 3 TV Advertisements of Products for Body Check-up and Provision of Health Information



Television advertisement of pregnancy test and ovulation test products



Television advertisement of glucometer



## Appendix 4 Watershed Time on Free TV broadcasting of some Jurisdictions

Country	Watershed Time on Free TV	Source
UK	<p><b>9pm – 5:30am (next day)</b></p> <ul style="list-style-type: none"> <li>- watershed begins at 9pm and material unsuitable for children should not, in general, be shown before 9pm</li> <li>- unsuitable material can include everything from sexual content to violence, graphic or distressing imagery &amp; swearing</li> <li>- children means people under that age of fifteen years</li> </ul>	<p>ofcom  <a href="https://www.ofcom.org.uk/tv-radio-and-on-demand/advice-for-consumers/television/what-is-the-watershed">https://www.ofcom.org.uk/tv-radio-and-on-demand/advice-for-consumers/television/what-is-the-watershed</a></p>
Canada	<p><b>9pm – 6am (next day)</b></p> <ul style="list-style-type: none"> <li>- programming which contains sexually explicit material or coarse or offensive language intended for adult audiences shall not be telecast before the late viewing period, defined as 9pm to 6am the next day</li> </ul>	<p>Canadian Association of Broadcasters, Code of Ethics (2002), clause 10  <a href="https://www.cbac.ca/codes/cab-code-of-ethics/">https://www.cbac.ca/codes/cab-code-of-ethics/</a></p>
Australia	<p><b>8:30pm – 5am (next day)</b></p> <p>Restricted categories:  M – material for mature audiences, recommended for viewing by persons aged 15 years and over.  MA15+ – material only suitable for persons aged 15 years or over because of the intensity and/or frequency of certain elements.</p> <ul style="list-style-type: none"> <li>- M-rated programmes can be shown from 7:30pm – 6am</li> <li>- MA15+ programmes from 8:30pm – 5am on any day</li> <li>- M-rated programmes can also be shown from noon to 3pm on school days.</li> </ul>	<p>Free TV Australia  <a href="http://www.freetv.com.au/media/Code_of_Practice/Fact_Sheet_CODE_OF_PRACTICE_CLASSIFICATION_ZONES.pdf">http://www.freetv.com.au/media/Code_of_Practice/Fact_Sheet_CODE_OF_PRACTICE_CLASSIFICATION_ZONES.pdf</a></p>

