

Broadcasting and Telecommunications Legislation (Amendment) Bill 2019

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A BILL

To

Amend the Broadcasting Ordinance and the Telecommunications Ordinance to facilitate the operation of the television and sound broadcasting industries; and to remove obsolete provisions relating to the repealed Television Ordinance.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Broadcasting and Telecommunications Legislation (Amendment) Ordinance 2019.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

2. Enactments amended

- (1) The Broadcasting Ordinance (Cap. 562) is amended as set out in Part 2.
 - (2) The Telecommunications Ordinance (Cap. 106) is amended as set out in Part 3.
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Part 2

Amendments to Broadcasting Ordinance

3. Section 8 amended (to whom licence may be granted)

Section 8—

Repeal subsection (3).

4. Section 45 added

After section 44—

Add

“45. Transitional and savings provisions—Broadcasting and Telecommunications Legislation (Amendment) Ordinance 2019

Schedule 10 sets out the transitional and savings provisions relating to the Broadcasting and Telecommunications Legislation (Amendment) Ordinance 2019 (of 2019).”.

5. Schedule 1 amended (disqualification for holding domestic free or pay television programme service licences and restriction on voting control of voting controllers)

(1) Schedule 1—

Repeal

“Schs. 4 & 8]”

Substitute

“Schs. 4, 8 & 10]”.

(2) Schedule 1, section 1(1)—

Repeal the definition of *advertising agency*.

- (3) Schedule 1, section 1(1), definition of *disqualified person*—
Repeal
“section 4, 5, 6 or 7”
Substitute
“section 4 or 5”.
- (4) Schedule 1, section 1(1)—
Repeal the definition of *relative*
Substitute
“*relative* (親屬), in relation to an individual, means a spouse, parent, child, brother or sister of the individual, and for the purposes of this definition—
(a) an adopted child is regarded as a child both of the natural parents and the adoptive parents; and
(b) a stepchild is regarded as a child both of the natural parents and any step-parents;”.
- (5) Schedule 1, section 4(1)(b)—
Repeal
everything after “of licence”
Substitute a semicolon.
- (6) Schedule 1—
Repeal sections 6 and 7.
- (7) Schedule 1, section 20, heading—
Repeal
“2% to 10% control”
Substitute
“Control”.

- (8) Schedule 1, English text, section 20(1)—

Repeal

“shall”

Substitute

“must”.

- (9) Schedule 1, section 20(1)—

Repeal

“2% or more but less than 6%, or 6% or more but not more than 10%, or more than 10%,”

Substitute

“5% or more but less than 10%, or 10% or more but not more than 15%, or more than 15%,”.

- (10) Schedule 1, section 20—

Repeal subsection (2)

Substitute

“(2) If an unqualified voting controller holds more than 15%, in the aggregate, of the total voting control of a licensee in contravention of subsection (1), despite—

- (a) anything contained in the articles of association of the licensee; or
- (b) any provision of the laws of Hong Kong apart from this section,

the controller must not exercise or cause or permit to be exercised, in relation to any question or matter arising at a general meeting of the licensee, voting rights exceeding, in the aggregate, 15% of the total voting control of the licensee.”.

(11) Schedule 1, section 22(1)(e)—

Repeal

“2%”

Substitute

“5%”.

6. Schedule 4 amended (domestic free television programme service supplementary provisions)

(1) Schedule 4—

Repeal

“& 8]”

Substitute

“, 8 & 10]”.

(2) Schedule 4—

Repeal section 2.

7. Schedule 5 amended (domestic pay television programme service supplementary provisions)

Schedule 5, section 1—

Repeal

“2,”.

8. Schedule 8 amended (transitional and savings provisions)

Schedule 8, section 4(5)—

Repeal

“sections 3 and 7”

Substitute

“section 3”.

9. Schedule 9 amended (consequential amendments)

Schedule 9—

Repeal section 5.

10. Schedule 10 added

After Schedule 9—

Add

“Schedule 10

[s. 45]

**Transitional and Savings Provisions—
Broadcasting and Telecommunications Legislation
(Amendment) Ordinance 2019**

1. Interpretation

In this Schedule—

Amendment Ordinance (《修訂條例》) means the
Broadcasting and Telecommunications Legislation
(Amendment) Ordinance 2019 (of 2019);

commencement date (生效日期) means the day on which
the Amendment Ordinance comes into operation.

**2. Act or thing previously done by Chief Executive in Council
or Authority**

An act or thing that—

- (a) has been done before the commencement date in the performance of a function by the Chief Executive in Council or the Authority under this Ordinance; and
- (b) is in force immediately before the commencement date,

continues to be in force on or after the commencement date as if the Amendment Ordinance had not been enacted.

3. Ongoing inquiry, investigation, etc.

- (1) An inquiry or investigation that—
 - (a) has been started before the commencement date by the Authority under this Ordinance; and
 - (b) has not been determined, concluded or otherwise disposed of immediately before the commencement date,may continue on or after the commencement date as if the Amendment Ordinance had not been enacted.
- (2) A right of appeal under section 34 of this Ordinance that—
 - (a) subsists immediately before the commencement date; or
 - (b) concerns a decision, direction, order or determination in relation to an act or omission that occurred before the commencement date,continues to subsist on or after the commencement date as if the Amendment Ordinance had not been enacted.

- (3) An appeal under section 34 of this Ordinance that is pending immediately before the commencement date may be continued and disposed of on or after the commencement date as if the Amendment Ordinance had not been enacted.
- (4) This Ordinance applies to a non-compliance or suspected non-compliance with a provision of this Ordinance, a direction, order or determination under this Ordinance or a licence condition, that occurred before the commencement date as if the Amendment Ordinance had not been enacted, even if the act or omission constituting the non-compliance or suspected non-compliance is only discovered on or after the commencement date.
- (5) However, if the act or omission—
 - (a) continues on or after the commencement date; and
 - (b) no longer constitutes such a non-compliance or suspected non-compliance under this Ordinance as amended by the Amendment Ordinance,this Ordinance applies only to the non-compliance or suspected non-compliance that occurred before the commencement date and as if the Amendment Ordinance had not been enacted.

4. Pending application for approval

- (1) This section applies if—
 - (a) an application has been made before the commencement date to seek approval of the Chief Executive in Council or the Authority under section 3(2), 20 or 33(1) of Schedule 1 or section 6 of Schedule 4; and

- (b) the application is pending immediately before the commencement date.
- (2) The application is to be dealt with under this Ordinance as amended by the Amendment Ordinance.
- (3) However, if the application or part of the application would not be necessary under this Ordinance as amended by the Amendment Ordinance, the application or the part is taken to have been withdrawn on the commencement date.

5. Pending application for licence

- (1) If—
 - (a) an application has been submitted before the commencement date to the Authority under section 9(1) of this Ordinance for a domestic free television programme service licence or domestic pay television programme service licence; and
 - (b) the application has not been determined immediately before the commencement date, the application is to be dealt with under this Ordinance as amended by the Amendment Ordinance.
- (2) If, before the commencement date, the Authority has made recommendations on the application under section 9(2) of this Ordinance, the Chief Executive in Council may on or after the commencement date—
 - (a) rely on the recommendations for the purposes of sections 9(2) and 10(1) of this Ordinance; or
 - (b) request the Authority to—

- (i) reconsider the application; and
- (ii) make fresh recommendations.

6. Pending application for extension or renewal of licence

- (1) If—
 - (a) an application has been submitted before the commencement date to the Authority under section 11(2) of this Ordinance for the extension or renewal of a domestic free television programme service licence or domestic pay television programme service licence; and
 - (b) the application has not been determined immediately before the commencement date, the application is to be dealt with under this Ordinance as amended by the Amendment Ordinance.
 - (2) If, before the commencement date, the Authority has submitted recommendations on the application under section 11(3) of this Ordinance, the Chief Executive in Council may on or after the commencement date—
 - (a) rely on the recommendations for the purposes of section 11(3) and (5) of this Ordinance; or
 - (b) request the Authority to submit fresh recommendations.”.
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Part 3

Amendments to Telecommunications Ordinance

11. Section 13A amended (interpretation)

(1) Section 13A(1), definition of *disqualified person*—

Repeal paragraphs (a), (b) and (d).

(2) Section 13A(1), definition of *disqualified person*, paragraph (e)—

Repeal

“paragraph (a), (b), (c), (d) or (da)(i)”

Substitute

“paragraph (c) or (da)(i)”.

(3) Section 13A(1)—

Repeal the definition of *subsidiary*.

12. Section 13F amended (competence of licensees)

(1) Section 13F(a), English text, after “(Cap. 622);”—

Add

“and”.

(2) Section 13F—

Repeal paragraph (b).

13. Section 36A amended (Authority may determine terms of interconnection)

Section 36A(3D)(a)(i)—

Repeal

everything after “section 7,”

Substitute

“or expressed as being licensed under section 7 or 34;”.

14. Section 44 added

After section 43—

Add

“44. Transitional and savings provisions—Broadcasting and Telecommunications Legislation (Amendment) Ordinance 2019

Schedule 4 sets out the transitional and savings provisions relating to the Broadcasting and Telecommunications Legislation (Amendment) Ordinance 2019 (of 2019).”.

15. Schedule 4 added

At the end of the Ordinance—

Add

“Schedule 4

[s. 44]

**Transitional and Savings Provisions—
Broadcasting and Telecommunications Legislation
(Amendment) Ordinance 2019**

1. Interpretation

In this Schedule—

Amendment Ordinance (《修訂條例》) means the Broadcasting and Telecommunications Legislation (Amendment) Ordinance 2019 (of 2019);

commencement date (生效日期) means the day on which the Amendment Ordinance comes into operation;

licence (牌照) has the meaning given by section 13A(1);

licensee (持牌人) has the meaning given by section 13A(1).

2. Act or thing previously done by Chief Executive in Council or Authority

An act or thing that—

(a) has been done before the commencement date in the exercise of a power or performance of a function or duty by the Chief Executive in Council or the Authority under this Ordinance; and

(b) is in force immediately before the commencement date,

continues to be in force on or after the commencement date as if the Amendment Ordinance had not been enacted.

3. Ongoing inquiry, investigation, etc.

(1) An inquiry or investigation that—

(a) has been started before the commencement date by the Authority under this Ordinance or the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391); and

(b) has not been determined, concluded or otherwise disposed of immediately before the commencement date,

may continue on or after the commencement date as if the Amendment Ordinance had not been enacted.

(2) A right of appeal under section 26 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) that—

(a) subsists immediately before the commencement date; or

(b) concerns a decision or direction in relation to an act or omission that occurred before the commencement date,

continues to subsist on or after the commencement date as if the Amendment Ordinance had not been enacted.

(3) An appeal under section 26 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) that is pending immediately before the commencement date may be continued and disposed of on or after the commencement date as if the Amendment Ordinance had not been enacted.

(4) This Ordinance applies to a non-compliance or suspected non-compliance with a provision of this Ordinance, a direction, order or determination under this Ordinance or a licence condition, that occurred before the commencement date as if the Amendment Ordinance had not been enacted, even if the act or omission constituting the non-compliance or suspected non-compliance is only discovered on or after the commencement date.

(5) However, if the act or omission—

(a) continues on or after the commencement date; and

- (b) no longer constitutes such a non-compliance or suspected non-compliance under this Ordinance as amended by the Amendment Ordinance, this Ordinance applies only to the non-compliance or suspected non-compliance that occurred before the commencement date and as if the Amendment Ordinance had not been enacted.

4. Pending application for licence

- (1) If—
 - (a) an application has been made before the commencement date to the Authority under section 13B(1);
 - (b) the Authority is satisfied as to the matters set out in section 13B(2); and
 - (c) the application has not been determined immediately before the commencement date, the application is to be dealt with under this Ordinance as amended by the Amendment Ordinance.
- (2) If, before the commencement date, the Authority has made recommendations on the application under section 13C(1), the Chief Executive in Council may on or after the commencement date—
 - (a) rely on the recommendations for the purposes of section 13C(1) and (2); or
 - (b) request the Authority to—
 - (i) reconsider the application; and
 - (ii) make fresh recommendations.

5. Pending application for renewal of licence

(1) If—

(a) before the commencement date, a licensee, in accordance with the terms and conditions of a licence, has indicated interest in the licence being renewed; and

(b) renewal of the licence and the terms and conditions to be imposed have not been determined under section 13E(2) immediately before the commencement date,

renewal of the licence is to be dealt with under this Ordinance as amended by the Amendment Ordinance.

(2) If, before the commencement date, the Authority has submitted recommendations concerning the renewal of the licence and the terms and conditions to be imposed under section 13E(1), the Chief Executive in Council may on or after the commencement date—

(a) rely on the recommendations for the purposes of section 13E(1) and (2); or

(b) request the Authority to submit fresh recommendations.

6. Pending application for permission or extension

(1) This section applies if—

(a) an application has been made before the commencement date to seek permission from the Chief Executive in Council under section 13H(2), or to seek an extension or a further extension from the Authority under section 13K(2); and

-
- (b) the application is pending immediately before the commencement date.
- (2) The application is to be dealt with under this Ordinance as amended by the Amendment Ordinance.
- (3) However, if the application or part of the application would not be necessary under this Ordinance as amended by the Amendment Ordinance, the application or the part is taken to have been withdrawn on the commencement date.”
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Explanatory Memorandum

The main purpose of this Bill is to amend the Broadcasting Ordinance (Cap. 562) (*BO*) and the Telecommunications Ordinance (Cap. 106) (*TO*) to facilitate the operation of the television and sound broadcasting industries.

2. The Bill contains 3 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to Broadcasting Ordinance

4. Clauses 3 and 6(2) repeal section 8(3) of, and section 2 of Schedule 4 to, the BO respectively to remove the requirement that a domestic free television programme service licence must not be granted to or held by a company that is a subsidiary of a corporation.
5. Clause 4 adds a new section 45 to the BO to provide that a new Schedule 10 sets out the transitional and savings provisions.
6. Clause 5 amends Schedule 1 to the BO mainly to—
 - (a) remove the restriction that the following persons may not become the holder of a domestic free or pay television programme service licence or exercise control of the holder of the licence—
 - (i) a non-domestic television programme service licensee;

- (ii) an other licensable television programme service licensee;
 - (iii) an advertising agency; and
 - (iv) a proprietor of a local newspaper;
 - (b) revise the definition of *relative* so as to narrow the scope of *associate* in that Schedule; and
 - (c) adjust the limits of voting control held by unqualified voting controllers in a domestic free television programme service licensee that are subject to prior approval of the Communications Authority.
7. Clauses 6(1), 7 and 8 make consequential amendments.
8. Clause 9 repeals section 5 of Schedule 9 to the BO to remove an obsolete consequential amendment.
9. Clause 10 adds the new Schedule 10 to the BO to provide for the transitional and savings provisions relating to the Bill.

Part 3—Amendments to Telecommunications Ordinance

10. Clause 11(1) and (2) amends section 13A(1) of the TO to remove the restriction that the following persons may not exercise control of a corporation that is the holder of a sound broadcasting licence—
- (a) an advertising agent;
 - (b) a person who in the course of business supplies material for broadcasting by a licensee; and
 - (c) a person who in the course of business transmits sound or television material.

11. Clause 12 amends section 13F of the TO to remove the requirement that a sound broadcasting licence may be granted to or held only by a corporation that is not a subsidiary. The definition of *subsidiary* in section 13A(1) of the TO is also repealed under clause 11(3).
12. Clause 13 amends section 36A of the TO to remove an obsolete reference relating to the repealed Television Ordinance (Cap. 52).
13. Clause 14 adds a new section 44 to the TO to provide that a new Schedule 4 sets out the transitional and savings provisions.
14. Clause 15 adds the new Schedule 4 to the TO to provide for the transitional and savings provisions relating to the Bill.