

LEGISLATIVE COUNCIL BRIEF

Broadcasting Ordinance
(Chapter 562)

Telecommunications Ordinance
(Chapter 106)

BROADCASTING AND TELECOMMUNICATIONS LEGISLATION (AMENDMENT) BILL 2019

INTRODUCTION

At the meeting of the Executive Council on 19 February 2019, the Council ADVISED and the Chief Executive ORDERED that the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 at **Annex A** should be introduced into the Legislative Council.

JUSTIFICATIONS

2. The popularity of Internet media in recent years has changed the operating environment of the broadcasting industry in Hong Kong. The disparities in the regulatory arrangements for traditional broadcasting and Internet media have become more acute. Traditional broadcasting service providers are subject to stringent statutory and licensing controls on different aspects of their business operations, licensed services, as well as control and management of the licensees. On the other hand, Internet-based television (TV) and sound programme service providers are not. They are only liable to sanction against repulsive contents delivered to the public through the Internet as with other non-broadcast means such as printed books, video discs, etc. As such, the Review seeks to provide a more balanced competitive environment for the broadcasting market.

3. The Review concluded that the existing broadcasting regulatory framework is proportionate and reasonable, and should remain intact. The four categories of TV services below should continue to be licensed under the Broadcasting Ordinance (BO):–

- (a) domestic free TV programme service (free TV);
- (b) domestic pay TV programme service (pay TV);
- (c) non-domestic TV programme service (non-domestic TV) (e.g. satellite TV);
and
- (d) other licensable TV programme service (other licensable TV) (e.g. hotel TV).

4. The review also considers that sound broadcasting services should also continue to be licensed under Part 3A of the Telecommunications Ordinance (TO). In line with international practice and in view of the enforcement difficulties involved, Internet-based TV and radio programme services should remain not subject to licensing control.

Legislative Proposals

5. While keeping the existing regulatory framework intact, we consider that there is room to relax certain restrictions and propose to introduce legislative amendments to give effect to these measures. Details are set out in ensuing paragraphs.

(A) Cross-media ownership restrictions and scope of “disqualified persons”

6. The policy objective of cross-media ownership restrictions is to promote competition as well as to encourage plurality of views and programming diversity by forestalling concentration of media ownership and control, conflict of interest and editorial uniformity across different media platforms. The restrictions are manifested through the stipulation of “disqualified persons” (DPs) under the BO and Part 3A of the TO. A DP [in the case of the BO, including - an “associate” of a DP; a person who “exercises control” over a DP; and an associate of a person who exercises control over a DP; and in the case of Part 3A of the TO, including - a person who exercises control of a DP, and an “associate” of certain categories of DP (namely, free TV licensee and pay TV licensee)] may not hold/exercise control of a free TV or pay TV licence/licensee under the BO, or a sound broadcasting licence/licensee under Part 3A of the TO, unless the Chief Executive in Council in the public interest so approves.

7. With respect to free TV and pay TV services, we recommend that the following be removed from the definition of DPs under the BO, *viz.* –

- (a) **non-domestic TV licensee** - non-domestic TV licensees mostly provide satellite TV services which do not primarily target Hong Kong. Some of their services are not even available for viewing in Hong Kong. Their removal from the definition of DPs would not affect the local broadcasting landscape or lessen editorial plurality;
- (b) **other licensable TV licensee** - other licensable TV services are either intended or available for reception by an audience of a small number of users (not more than 5 000 specified premises^{Note}) or hotel rooms. The removal of other licensable TV licensee from the definition of DPs would not affect the local broadcasting landscape or lessen editorial plurality;
- (c) **advertising agency** - with the abundance of infotainment sources alternative to traditional broadcasting channels, coupled with the operation of new

^{Note} According to section 2 of the BO, “specified premises” means any domestic premises, or hotel room, in Hong Kong.

entrants to the traditional free TV market in the past few years, there is now a wide spectrum of choices for businesses to place their advertisements. In such a competitive market as Hong Kong, it is highly unlikely that an advertising agency could sustain its business on the basis of operating an “in-house channel”, or a TV channel could sustain its operation with only advertisements placed through its advertising agency. The removal of advertising agency from the definition of DPs would not affect the local broadcasting landscape or give rise to conflict of interest concerns; and

- (d) **proprietor of a local newspaper** - the concern over the possibility of the news and broadcasting media joining forces, rendering them disproportionately influential, and powerful enough to dominate public opinions may not be borne out by the circumstances today. Given the existence of a large number of alternative information sources in various forms, it is rather unlikely that an alliance of broadcasting licensee(s) and newspaper(s) could dominate public opinions. The availability of choices will effectively guard against possible editorial uniformity. The removal of proprietor of local newspaper from the definition of DPs would not affect the local broadcasting landscape or give rise to conflict of interest concerns.

8. With respect to sound broadcasting, we recommend that the following be removed from the definition of DPs under Part 3A of the TO, *viz.* –

- (a) **advertising agent** - the same considerations in paragraph 7(c) regarding removal of advertising agency from the scope of DPs under the BO are also applicable to the proposed removal of advertising agent from the definition of DPs under Part 3A of the TO;
- (b) **person who in the course of business supplies material for broadcasting by a sound broadcasting licensee** - the same category was removed from the BO in 2000 because the justification for barring programme suppliers to exercise control in a licensee in order to safeguard editorial or programme plurality is weakened as new services come on stream and viewers’ choice increases. With the wide range of infotainment choices on the Internet, the argument is equally valid to support the removal of the same category from the definition of DPs under Part 3A of the TO; and
- (c) **person who in the course of business transmits sound or TV material, whether in or outside Hong Kong** - the category was removed from the BO in 2000, to enable diversification and cross-fertilisation of the telecommunications and broadcasting markets. The ground is equally applicable to justify removal of this DP category from the definition of DPs under Part 3A of the TO in the current exercise.

9. With the above amendments, the scope of DPs under the BO and Part 3A of the TO would be narrowed to focus on the licensees of the three most pervasive broadcasting services, *viz.* free TV, pay TV and sound broadcasting services.

10. The definition of “relative” under the definition of “associate” extends the disqualification to a comprehensive coverage of familial relations of a DP and his business affiliates. In this regard, we see scope for narrowing the coverage of “relative”. As Hong Kong’s broadcasting market is highly competitive, monopolisation by any familial or business group of any segment of the sector that would undermine editorial plurality nowadays is rather improbable. Also, having a more focused definition of “relative” that is commensurate with our policy objective of forestalling possible editorial uniformity would also go a long way towards addressing unintended breaches that arise from extended blood relations only.

11. We recommend that the current definition of “relative” should be limited to immediate family members only, i.e. (a) spouse; (b) parent; (c) child, adopted child and stepchild; and (d) sibling. In other words, (a) aunt and uncle; (b) cousin; (c) niece and nephew; (d) grandmother and grandfather; (e) sister-in-law and brother-in-law; (f) mother-in-law and father-in-law; and (g) daughter-in-law and son-in-law would be removed from the definition of “relative”.

(B) Foreign control restrictions

12. The BO and Part 3A of the TO embody a number of foreign control restrictions to ensure continuous control and management of free TV, pay TV and sound broadcasting licensees to be held by local individuals or companies who/which should be in the best position to cater for local interest, taste and culture. We propose to maintain most of these restrictions as set out below:

- (a) residency requirement on a licensee (applicable to free TV, pay TV and sound broadcasting licensees);
- (b) residency requirement on a licensee’s directors and principal officers (applicable to free TV, pay TV and sound broadcasting licensees);
- (c) residency requirement on quorum at directors’ meetings (applicable to free TV and pay TV licensees);
- (d) cap on aggregate voting shares (applicable to sound broadcasting licensees);
and
- (e) attenuation of voting control exercised by non-Hong Kong resident shareholders at general meetings (applicable to free TV licensees).

13. We only propose minor refinements to the threshold percentages of total voting control of a free TV licensee by an unqualified voting controller that are subject to prior approval of the Communications Authority (CA) from the existing “2%, 6%, 10% and above”, to “5%, 10%, 15% and above”. This approval mechanism enables the CA to conduct the assessment needed whenever there is interest from non-Hong Kong residents in investing in Hong Kong’s broadcasting market up to certain levels of voting control in a free TV licensee.

(C) Requirement of a licensee being a non-subsidiary company

14. Under the BO and Part 3A of the TO, there is a requirement that a free TV or sound broadcasting licence must not be granted to a company which is a subsidiary of a corporation. The then policy objective was to avoid interference from or conflict of interest with the parent company or other member companies of the same group. The requirement was also devised to ensure accurate assessment of a licensee's advertising and/or subscription revenue for calculating royalty payment (which is no longer in place since 2001).

15. We recommend removing this requirement not only because it is no longer needed for calculating royalty payment, but more importantly, on account of its hindering effect on the flexibility of licensee companies to explore new business opportunities. In reality, given the significant capital investments and recurrent expenditures required of founding and running a licensee company, undertaking from some licensees' "parent"/related companies through trust arrangement have been in place to ensure quality and uninterrupted services to the public.

16. Possibility of conglomerates controlling free TV licensees or radio licensees, or interference or conflict of interest amongst member companies, should be unlikely as such moves will undermine the editorial choice and programme quality of the concerned licensee, lowering its competitiveness in the prevailing highly competitive market comprising multiple players and an abundance of Internet infotainment sources. In contrast, potential newcomers will find it easier to raise funds for their business with the proposed relaxation.

(D) Licensing authority

17. Under the BO and Part 3A of the TO, the Chief Executive in Council is empowered to grant and renew free TV, pay TV and sound broadcasting licences, following consideration of the CA's recommendations. The CA, on the other hand, is vested with the statutory power to grant and renew non-domestic TV and other licensable TV licences.

18. We propose to maintain the status quo, as the current decision-making hierarchy is commensurate with the pervasiveness and influence of different types of broadcasting service. Free TV, pay TV and sound broadcasting services, despite the decline in audienceship in the past decade, are still amongst the most pervasive media outlets that have great influences on public morals and children. Generally speaking, the more influential the service is, the greater the need for wider public interest considerations and hence it is appropriate for the Chief Executive in Council to remain as the licensing authority for these services. Non-domestic and other licensable TV services, on the other hand, have a much smaller scale of operation. They do not target Hong Kong's general viewing public or are only available for reception by a small number of local viewers. It is appropriate for the CA to remain as the licensing authority.

19. Details of our considerations and deliberations, as well as each control aspect can be found in the public consultation document at: [https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTOREview_1\(eng\).pdf](https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTOREview_1(eng).pdf).

20. We completed a three-month public consultation on the above proposals in May 2018. We have received comments from 20 stakeholders, namely the CA (1), major broadcasting licensees (6), industry associations and statutory institutions (3), political parties and Legislative Council (LegCo) members (2), social media company (1) as well as individuals (7). In general, they supported the direction of the legislative proposals to relax obsolete statutory requirements and rationalise the regulatory arrangements.

Administrative and Other Measures

21. Apart from the above legislative proposals, a few stakeholders have recommended that further measures be introduced to modernise the broadcasting regulatory framework and reduce the industry's compliance cost.

22. A multipronged approach has been adopted to facilitate the development of our broadcasting industry. Other than legislative amendments, non-legislative measures will also be taken forward. For instance, the CA revised its Code of Practice to relax the regulation of indirect advertising in TV programme services and to lift the prohibition on the broadcast of advertisements for undertakers and associated services in July 2018. Such measures help the industry diversify their sources of advertising and provide a more conducive business environment for the industry while safeguarding viewers' interests.

23. Stakeholders have also made a number of other suggestions on relaxation of regulatory requirements and existing administrative arrangements. The CA has taken note of such comments and has implemented a number of facilitating measures as set out in **Annex B**.

BROADCASTING AND TELECOMMUNICATIONS LEGISLATION (AMENDMENT) BILL 2019 (THE BILL)

24. The main provisions which serve to put forward the recommendations set out in paragraphs 6 to 18 above are as follows -

- (a) **Long title** to confine the scope of the Bill to facilitate the operation of the television and sound broadcasting industries; and to remove obsolete provisions relating to the repealed Television Ordinance;
- (b) **Clause 1** sets out the short title and provides for commencement;
- (c) **Clauses 3 and 6** 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;
- (d) **Clause 4** adds a new section 45 to the BO to provide that a new Schedule 10 sets out the transitional and savings provisions;

- (e) **Clause 5** amends Schedule 1 to the BO mainly to -
- (i) 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 -
 - a non-domestic television programme service licensee;
 - an other licensable television programme service licensee;
 - an advertising agency; and
 - a proprietor of local newspaper;
 - (ii) revise the definition of “relative” so as to narrow the scope of “associate” in that Schedule; and
 - (iii) 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;
- (f) **Clauses 7 and 8** make consequential amendments;
- (g) **Clause 9** repeals section 5 of Schedule 9 to the BO to remove an obsolete consequential amendment;
- (h) **Clause 10** adds the new Schedule 10 to the BO to provide for the transitional and savings provisions relating to the Bill;
- (i) **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 -
- (i) an advertising agent;
 - (ii) a person who in the course of business supplies material for broadcasting by a licensee; and
 - (iii) a person who in the course of business transmits sound or television material;
- (j) **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).
- (k) **Clause 13** amends section 36A of the TO to remove an obsolete reference relating to the repealed Television Ordinance;

- (l) **Clause 14** adds a new section 44 to the TO to provide that a new Schedule 4 sets out the transitional and savings provisions; and
- (m) **Clause 15** adds the new Schedule 4 to the TO to provide for the transitional and savings provisions relating to the Bill.

LEGISLATIVE TIMETABLE

25.	The legislative timetable will be –	
	Publication in the Gazette	15 March 2019
	First Reading and Commencement of Second Reading Debate	27 March 2019
	Resumption of Second Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

26. The proposals, if implemented, have economic and sustainability implications as set out in **Annex C**. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. They have no productivity, environmental, financial and civil service, family and gender implications. The Bill would not affect the current binding effect of the legislation it amended.

PUBLIC CONSULTATION

27. A three-month public consultation was completed in May 2018. Stakeholders in general supported the direction of the above legislative proposals to relax obsolete statutory requirements and rationalise the regulatory arrangements.

PUBLICITY

28. A press release will be issued upon gazettal of the Bill. A spokesman will be available to answer media and public enquiries.

BACKGROUND

29. In view of the rapid development of the broadcasting and telecommunications sectors, the Government is committed to modernising the regulatory framework in response to market needs and technological developments. A staged approach has been adopted in the modernising exercise. The First Stage took place in 2012, with the structural merger of the former Broadcasting Authority and the former Telecommunications Authority into the CA, as the unified regulator of the two sectors, pursuant to enactment of the Communications Authority Ordinance. At that stage, no substantive legislative changes to the regulatory and licensing regimes were introduced.

30. The Government has proceeded with the Second Stage of the modernisation exercise. The focus in this stage is on reviewing the legislative and regulatory regimes governing the broadcasting and telecommunications sectors in Hong Kong in light of technological developments. The Review is Phase One of the Second Stage of the modernisation exercise.

ENQUIRIES

31. Enquiries on this brief can be directed to Mr Tony Yip, Principal Assistant Secretary for Commerce and Economic Development (Communications and Creative Industries) (Special Duties) at telephone number 2810 2141.

Commerce and Economic Development Bureau
13 March 2019

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.

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.”.

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.”.

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.

Facilitating Measures by the Communications Authority

Having considered stakeholders' views in detail, the CA has adopted and implemented the following measures to further facilitate operation of the broadcasting industry.

Administrative Arrangements in Enforcing Foreign Control Restriction

2. Pursuant to section 20(1) of Schedule 1 to the BO, an unqualified voting controller (UVC) must seek the CA's prior approval in order to acquire, hold, or exercise 2% or more but less than 6%, or 6% or more but not more than 10%, or more than 10% of the total voting control of a free TV licensee¹. The applications of UVCs involve commercially sensitive information and are usually submitted by the applicant in confidence to the CA. Hence, the CA will not make known the approval given for a UVC application to the licensee concerned.

3. In addition, the total voting control exercised by UVCs at a general meeting of a licensee should not exceed 49% of the total voting control pursuant to section 19(1) of Schedule 1 to the BO. For this purpose, section 22(1) of Schedule 1 to the BO provides that a licensee should give notice to the CA of any general meeting and distribute to its shareholders the relevant document for declaration on voting control. For the latter requirement, a shareholder is required to declare prior to a general meeting whether or not he is an UVC and the percentage of his shareholding in the licensee. The declaration should be made on a prescribed form 21 days before a general meeting and the duly completed declaration form should reach the licensee 11 days before the meeting. With the declaration/information collected, the licensee should notify the CA of the total number of shares held by qualified voting controllers and UVCs and related information as well as the details of the conduct of any poll at the general meeting.

4. The CA has agreed to facilitate the licensees in complying with their obligations under the BO by adopting the following administrative arrangements –

- (a) on the requirement of paragraph 2 above, **disclosing to a free TV licensee its approval of an UVC application for acquiring/holding**

¹ The Administration has proposed that the threshold percentages be adjusted from 2%, 6%, 10% and above to 5%, 10%, 15% and above.

the licensee's shares after obtaining the consent of the applicant, subject to a confidentiality requirement imposed on the licensee to ensure that the disclosure is limited to employees, directors and advisers of the licensee on a need-to-know basis and that the information so disclosed will not be used for purposes other than for compliance with the BO;

- (b) on the requirement of paragraph 3 above, **simplifying the prescribed form for the declaration on voting control** by a shareholder of the licensee; and
- (c) on the requirement of paragraph 3 above, **adjusting the deadlines relating to submission of declaration** for the conduct of general meeting to allow the licensees more time to make administrative arrangements, *viz.*
 - (i) extending the deadline for declaration from 21 days to 28 days before the meeting; and
 - (ii) extending the deadline for licensee to receive the declaration from 11 days to 16 days before the meeting.

Reporting Requirements

5. For the purpose of the CA's monitoring of licensees' continuous compliance with relevant statutory and regulatory requirements, the licensees are required to provide regular reports pursuant to relevant provisions in the BO and the licence conditions as well as the directions issued by the CA.

6. In this regard, the CA has **streamlined the following reporting requirements** –

- (a) allowing **pay TV and sound broadcasting licensees to submit reports on comments/ complaints received on a quarterly basis, instead of on a monthly basis** as currently required, in order to align with the requirements imposed on free TV licensees; and
- (b) **waiving the requirement for free TV licensees to submit the types and schedule of children's programmes one week in advance**,

since such information is already available in the public domain (e.g. the website of the licensee) and in the annual reports provided by the licensees on positive programmes.

Handling of Complaints

7. Complaints made to the CA about TV and sound broadcasting are processed in accordance with the relevant provisions in the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391). Upon receipt of a complaint, the Secretariat will conduct investigation to establish the facts and to examine whether there is any breach of the legislation, licence conditions and/or codes of practice. If there is prima facie evidence of a possible breach (except minor breach), the complaint will be referred to the Broadcast Complaints Committee (BCC) for consideration and recommendation to the CA. The licensee concerned and other relevant parties as appropriate (e.g. the advertiser in cases involving advertisement) will be given seven working days for making written representations to the BCC before consideration of the case by the BCC, and four working days for making further representation in response to the provisional findings of the CA.

8. The CA has agreed to **extend the period for making representations to the BCC from seven working days to 14 working days**. In addition, the CA will continue to consider request for extension of deadline for further representations on CA's provisional findings on a case-by-case basis.

Review in Coming Mid-term Review of Free TV Licences

9. The three free TV licences are due for mid-term review in 2021/2022. Following the established practice, the CA will conduct a comprehensive assessment of the performance of the licensees in the past six years and conduct public consultation to collect views of the public and relevant stakeholders on their performance and on various regulatory issues. Based on the assessment of the licensees' performance and the public views collected, the CA will formulate its recommendations, including any proposed amendments to the licences, and submit them to the Chief Executive in Council for consideration.

10. On some of the stakeholders' suggestions, the CA considers it **more appropriate to review the requirements concerned in the coming mid-term review of the free TV licensees**, given the impact on the audience and the need for a more holistic review and the wider considerations involved. An example of these

requirements to be reviewed in the coming mid-term review is the requirement for free TV licensees to **broadcast a minimum number of hours of programmes catering for different age groups** (*viz.* children, young persons and elderly) **and specific types of programmes** including news, current affairs programmes, documentaries and arts and culture programmes (collectively referred to as “positive programmes”). Certain types of positive programmes must also comply with the “wholly of Hong Kong origin”² requirement.

² “Wholly of Hong Kong origin” means –

- (a) the programme is produced
 - (i) in substance and in form in Hong Kong; or
 - (ii) by the licensee, by any employee of the licensee, by any company or employee of any company which is a subsidiary company of the licensee within the meaning given by section 2(1) of the BO, or by any other independent production company engaged by the licensee in or outside Hong Kong; and
- (b) the CA is satisfied that it is produced primarily for the Hong Kong market.

**Economic and Sustainability Implications
of the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019**

Economic Implications

The relaxation proposals aim to redress the imbalance of the existing regulatory framework in governing traditional media and Internet. They will facilitate investment and innovation and promote cross-sector fertilisation through enabling more flexibility for operators to achieve economies of scale and consolidation of businesses.

2. The provision of infotainment through both new entrants to the traditional media market and rapid growth of the Internet-based new media means that there are plenty of choices for the viewing public. Monopolisation or dominance in either market is unlikely. Also, despite the relaxation of the cross-media ownership restrictions, it is unlikely that the advertising market or the press would be more concentrated than it is now. In fact, the relaxation proposals as a whole may facilitate the entry of new market players.

Sustainability Implications

3. The relaxation proposals could help reduce the compliance costs of licensees, promote cross-sector fertilisation, facilitate investment, and bring about a more level playing field between traditional broadcasting and Internet infotainment, which should be conducive to the development of the broadcasting industry.