

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 29 March 2019**

**Legal Service Division Report on
Broadcasting and Telecommunications
Legislation (Amendment) Bill 2019**

I. SUMMARY

- 1. The Bill** The Bill seeks to amend the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) to facilitate the operation of the television and sound broadcasting industries; and to remove obsolete provisions relating to the repealed Television Ordinance.
- 2. Public Consultation** A three-month consultation was completed in May 2018. According to the Administration, the stakeholders supported the direction of the proposal to relax obsolete statutory requirements and rationalise the regulatory arrangements.
- 3. Consultation with LegCo Panel** The Panel on Information Technology and Broadcasting was consulted on 12 March 2018. While members have no objection to the proposed amendments to Cap. 106 and Cap. 562, some members have expressed concerns on matters relating to foreign ownership of local media, current domestic free television programme service licensing process, code of practice for television and regulation of alternative media.
- 4. Conclusion** The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In the light of the proposed changes to the regulation of sound broadcasting services and domestic free or pay television programme services, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 ("Bill") is 27 March 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: CCIB/SD 605-5/1 C11) issued by the Commerce and Economic Development Bureau ("CEDB") dated 13 March 2019 for further details.

Object of the Bill

2. The Bill seeks to amend the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) to facilitate the operation of the television and sound broadcasting industries; and to remove obsolete provisions relating to the repealed Television Ordinance.

Background

3. Cap. 562 and Cap. 106 respectively provide for the regulatory regimes for the provision of television programme services and sound broadcasting services. Under Cap. 562, the Chief Executive in Council ("CE in Council") may grant a licence to a company to provide a domestic free or pay television programme service on the recommendations of the Communications Authority ("CA"). Further, CA may grant a licence to a company to provide a non-domestic television programme service¹ or an other licensable television programme service². Under Cap. 106, CA may grant a licence to a corporation to establish and maintain a broadcasting service for transmitting sound (otherwise than as part of a television broadcast) for general reception by means of radio waves ("sound broadcasting licence"). Under Cap. 562 and Cap. 106, certain persons are disqualified from holding domestic free and pay television programme service licences, or exercising control over the licensees of such licences or a licensee of a sound broadcasting licence.

4. According to paragraphs 2 to 4 of the LegCo Brief, CEDB has conducted a review on the above regulatory regimes in view of the technological developments, such as internet media ("Review").³ The Review concluded that

¹ In gist, non-domestic television programme service is defined in section 2 of Cap. 562 to mean a television programme service which does not primarily target Hong Kong.

² Under section 2 of Cap. 562, other licensable television programme service means a television programme service which is intended or available for reception in Hong Kong by an audience of not more than 5000 specified premises or in hotel rooms.

³ See also paragraph 1.3 of the Consultation Paper on the Review of Television and Sound Broadcasting Regulatory Regimes issued by CEDB in February 2018, which is available at the hyperlink below (as at 25 March 2019):

[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).

the existing regulatory regimes on television programme services and sound broadcasting services should be maintained but there is room to relax certain restrictions.

Provisions of the Bill

5. The Bill mainly seeks to amend Cap. 562 and Cap. 106 to implement the measures proposed in the Review and to provide for transitional and saving provisions. The key provisions of the Bill are set out in the ensuing paragraphs.

Amendments to Cap. 562

Proposed relaxation of the restriction against cross-media ownership

6. Schedule 1 to Cap. 562 provides for, among others, the persons who are disqualified for holding a domestic free or pay television programme service licence or for exercising control of the licensee concerned ("DPs"). These DPs include a licensee of a non-domestic television programme service, a licensee of an other licensable television programme service, an advertising agency and the proprietor of a local newspaper (collectively known as "DPTVs"). In addition, DP also includes a DP's associate⁴ and, in the cases where the DP is an individual, a DP's associate includes the DP's relative as defined in section 1 of Schedule 1 to Cap. 562.⁵

7. Clause 5 of the Bill seeks to amend Schedule 1 to Cap. 562 mainly to:

- (a) remove the above DPTVs as DPs in relation to a domestic free or pay television programme service licence granted under Cap. 562. Other DPs, such as a sound broadcasting licensee and its associate, would remain as DPs; and
- (b) amend the definition of "relative" to narrow the scope of "associate".

Proposed relaxation of the restriction against foreign control of domestic free television programme service licensee

8. Under section 20 of Schedule 1 to Cap. 562, an unqualified voting controller (such as a corporation which is not ordinarily resident in Hong Kong⁶) of a licensee of a domestic free television programme service licence shall not, without the prior approval of CA, hold, acquire or exercise or cause or permit to

⁴ See sections 4 to 7 of Schedule 1 to Cap. 562.

⁵ See the definition of associate under section 2 and section 1 of Schedule 1 to Cap. 562.

⁶ See section 1 of Schedule 1 to Cap. 562.

be exercised 2% or more but less than 6%, or 6% or more but not more than 10%, or more than 10%, in the aggregate, of the total voting control of such licensee.

9. Clause 5 of the Bill seeks to change the above limits of voting control held by an unqualified voting controller in a domestic free television programme service licensee that are subject to CA's approval to 5% or more but less than 10%, or 10% or more but not more than 15%, or more than 15%, in the aggregate, of the total voting control of a licensee.

Removing the prohibition against granting a domestic free television programme service licence to a subsidiary of a corporation

10. Under section 8(3) of Cap. 562, a domestic free television programme service licence shall not be granted to a company which is a subsidiary of a corporation. Clause 3 of the Bill seeks to amend section 8 of Cap. 562 to remove this restriction so that a subsidiary of a corporation would not be precluded from holding a domestic free television programme service licence subject to other relevant conditions being satisfied.

Amendments to Cap. 106

11. The Bill also proposes similar relaxation measures in relation to a sound broadcasting licence. These measures are summarized below:

- (a) Clause 11 proposes to amend section 13A of Cap. 106 to remove the restriction that the following persons may not exercise control over 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 sound broadcasting licensee; and
 - (iii) a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong.
- (b) Clause 12 proposes to amend section 13F of Cap. 106 to remove the requirement that a sound broadcasting licence may only be granted to or held by a corporation that is not a subsidiary.

12. The Bill also proposes to amend section 36A of Cap. 106 to repeal an obsolete reference to the repealed Television Ordinance (Cap. 52).

Transitional and saving provisions

13. The Bill proposes to introduce a new Schedule 10 and a new Schedule 4 to Cap. 562 and Cap. 106 respectively to provide for transitional and saving provisions to cover matters done or started under the two Ordinances before the commencement of the Bill after it is published in the Gazette as an Ordinance. These matters include ongoing inquiry or investigation conducted by CA and pending applications for licences or renewal of licences.

Commencement

14. The Bill, if passed, will come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

Public Consultation

15. According to paragraph 27 of the LegCo Brief, a three-month public consultation on the Review was completed in May 2018. Stakeholders in general supported the direction of the legislative proposals to relax obsolete statutory requirements and rationalise the regulatory arrangements.

Consultation with LegCo Panel

16. As advised by the Clerk to the Panel on Information Technology and Broadcasting ("Panel"), the Administration briefed members on the outcome of the Review and the public consultation on the legislative amendment proposals at the Panel meeting on 12 March 2018. Members had no objection to the proposed amendments to Cap. 106 and Cap. 562. Some members expressed concerns that the proposed relaxation in foreign ownership of local media might result in larger control by Mainland corporations and further restriction to information and press freedom. Other members had commented on the current two-tier domestic free television programme service licensing process which involved the decision of CA and CE in Council. There were also comments on the Generic Code of Practice for Television (including the Advertising Standards) and the regulation of alternative media (such as Internet television and radio).

Conclusion

17. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In the light of the proposed changes to the regulation of sound broadcasting services and domestic free or pay television programme services, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

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