

**Guidance Note for Those Interested in  
Applying for Other Licensable Television  
Programme Service Licences\*  
in Hong Kong**

**Communications Authority**

**February 2021**

- \* This Guidance Note is for those interested in applying for a licence to provide the type A other licensable television programme service mentioned in Schedule 4 to the Broadcasting (Licence Fees) Regulation (Cap. 562A).

*Pursuant to section 4(2)(b) of the Broadcasting Ordinance (Cap. 562), this Guidance Note is issued by the Communications Authority as a guide for prospective applicants of a licence to provide a type A other licensable television programme service in Hong Kong.*

*This Guidance Note, which is expressly subject to the terms of the licences granted and the legislation in force from time to time, highlights the principal conditions and licensing criteria for a non-exclusive type A other licensable television programme service licence.*

*Save where the contrary intention appears expressly or by necessary implication in this Guidance Note, words and expressions used in this document shall bear the same meaning, if any, as in the Broadcasting Ordinance and in the Interpretation and General Clauses Ordinance (Cap.1), and in the event of any conflict or inconsistency between their meanings, the meaning in the Broadcasting Ordinance shall prevail over that in the Interpretation and General Clauses Ordinance.*

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## I INTRODUCTION

### Broadcasting Ordinance (Cap. 562)

- 1.1 Under the Broadcasting Ordinance (“BO”), which came into effect on 7 July 2000, the Communications Authority (“CA”) may grant a licence to provide an other licensable television programme service (“OLTVPS”) subject to such conditions as it thinks fit specified in the licence. Ss8(2) & 10(1) of the BO
- 1.2 Parties interested in providing a television programme service intending or available for reception by an audience of not more than 5,000 specified premises (unless otherwise permitted by the CA where it is satisfied that the service concerned is only intended or available for reception by a single housing estate) in Hong Kong, whether free of charge or on payment of a subscription, need to apply for a type A other licensable television programme service (“Type A OLTVPS”) licence mentioned in Schedule 4 to the Broadcasting (Licence Fees) Regulation (Cap. 562A). S2(1) of the BO, Schedule 4 of Broadcasting (Licence Fees) Regulation.
- 1.3 Applicants may refer to the definitions of “broadcasting service”, “television programme service”, “specified premises” and ‘other licensable television programme service’ in section 2(1) of the BO. S2(1) of the BO
- 1.4 There is no pre-set ceiling on the number of licences to be issued.
- 1.5 A Type A OLTVPS licensee, the persons exercising control of the licensee, and the associates of the licensee and those persons exercising control of the licensee, shall not hold such number of OLTVPS licences, or exercise control of OLTVPS licensees, the combined services of which are intended or available for reception by an audience of more than 200,000 specified premises. S1 of Schedule 7 to the BO
- 1.6 This Guidance Note does not bind the CA to consider any application or to grant any licence or to the terms and conditions of the licence to be granted. The CA will not be responsible for any claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs or expenses which any applicant may become liable for or have incurred or sustained in connection with this Guidance Note. Certain requirements and restrictions described in this Guidance Note may be modified, for example, in the light of the proposals received or other relevant considerations. This Guidance Note shall not be relied upon to create any expectation that a licence will be granted to the applicant on the terms and conditions referred to in this Guidance Note or otherwise.

### Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391)

- 1.7 Under section 9(1) of the Broadcasting (Miscellaneous Ss9(1) & 11 of the BMPO

Provisions) Ordinance (“BMPO”), the CA is responsible for, among others, carrying out the functions imposed on it under the BO, administering the provisions of licences and any other provisions of such licences that confer a function on it and securing proper standards of television and sound broadcasting with regard to both programme content (including advertisements) and technical performance of broadcasts. The statutory provisions on the consideration of complaints by the Broadcast Complaints Committee is laid down under section 11 of the BMPO.

### **Telecommunications Ordinance (Cap. 106)**

1.8 Under section 8 of the Telecommunications Ordinance (“TO”), no person shall in Hong Kong establish or maintain any means of telecommunications save under and in accordance with a licence granted by the Chief Executive in Council or with the appropriate licence granted or created by the CA. A Type A OLTVPS licensee shall hire the services of a licensee authorised under the TO or obtain a suitable licence under the TO for the transmission of its television programme services to its audience.

S8 of the TO

## **II REGULATORY FRAMEWORK**

2.1 The Type A OLTVPS is regulated by a combination of legislation (including any subsidiary legislation, regulations, directions, orders, determinations and Codes of Practice made thereunder) and the licence conditions. The relevant legislation includes the BO, the Communications Authority Ordinance (Cap. 616) and the BMPO. Certain key features of the legislation in relation to the Type A OLTVPS licences are set out below in general terms.

S23(2) of the BO

### **To Whom Licence May be Granted**

#### ***Incorporation in Hong Kong***

2.2 The CA may in accordance with the BO grant a licence to provide a Type A OLTVPS on application made to it in the specified form by a company which is incorporated in Hong Kong under the Companies Ordinance (Cap.622) or a former Companies Ordinance as defined in section 2(1) of the Companies Ordinance and satisfies the relevant requirements in section 8 of the BO.

Ss2(1) & 8(2) of the BO

***Residency Requirement***

2.3 A Type A OLTVPS licence shall not be granted to and held by a company unless not less than one director or principal officer of the company is an individual who is for the time being ordinarily resident in Hong Kong and has been so resident for at least one continuous period of not less than seven years. “Ordinarily resident in Hong Kong” and “principal officer” are defined in section 2(1) of the BO.

Ss2(1) &  
8(4)(b) of the  
BO

2.4 There is no restriction on foreign ownership and the company can be a subsidiary of another company.

***Fit and Proper Person Requirement***

2.5 A licensee and any person exercising control of the licensee shall be and remain a fit and proper person. “Exercise control” is defined in section 2(1) of the BO. The factors that will be taken into consideration in determining whether a licensee or a person exercising control of the licensee is fit and proper are set out in section 21 of the BO. An applicant is required to provide a statement on oath or a statutory declaration given by its company secretary or one of its directors or principal officers in the specified form (OFCA SF0008 (12)), which is available at the CA’s website at <http://www.coms-auth.hk>, that this requirement is met when applying for a licence. A licensee shall provide information in the specified form to the CA on a regular basis to establish and verify whether this requirement is being complied with.

Ss2(1) & 21  
of the BO

**Determination of Whether Television Programme Service Primarily Targets Hong Kong**

2.6 A licensee (including a person seeking to be a licensee) shall, before providing a television programme service, make an application in the specified form (OFCA SF0001 (12)) to the CA for a determination of whether or not the service would, if provided, primarily target Hong Kong. The specified form is available at the CA’s website at <http://www.coms-auth.hk>.

S12(1) of the  
BO

**III CONDITIONS TO WHICH LICENSEES WILL BE SUBJECT**

3.1 A Type A OLTVPS licence will consist of general terms and conditions embodying the main regulatory framework adopted by the CA for the licensing of a Type A OLTVPS. The regulatory authority for Type A OLTVPS licences is the CA. Some of the provisions governing a Type A OLTVPS are

outlined in paragraphs 3.3 to 3.26 below.

3.2 The terms and conditions of a licence will reflect the prevailing policy and other considerations which the CA considers relevant. The CA may vary or impose additional terms and/or conditions for individual licences. Prospective licensees will be consulted in finalising the actual licences.

### **Variation of Licence**

3.3 Whenever there is a need to amend the terms and conditions of a licence during the term of the licence, a licensee will be given reasonable time to make representations. Details of the CA's power to amend the licence are set out in the BO and will be incorporated as licence conditions in the licence.

Ss10(4), (5) & (6) of the BO

### **Term of the Licence**

3.4 The term of a licence granted will be determined by the CA having considered the views expressed by an applicant. Applicants should propose a term of licence based on his needs. Normally, the CA would not approve a term of licence exceeding 12 years. The term of the licence will be specified in the licence.

### **Publication of Licence**

3.5 It will be a condition in the licence that a licensee is required to make its licence publicly available. The Licensee's Proposal may be excluded in the Licensee's discretion.

### **Compliance with Licensee's Proposal**

3.6 It will be a condition in the licence that a licensee shall comply at all material times with the statements (including statements of intention) and representations made by or on its behalf in the Licensee's Proposal, unless otherwise approved by the CA.

### **General Requirements as to Television Programme Services**

3.7 A licensee shall have regard to the general requirements as to television programme services stipulated in the BO, including the prohibition of "subliminal messages".

S23 of the BO



## Codes of Practice

3.8 Codes of practice are issued by the CA to provide practical guidance for licensees in respect of any requirements under the BO imposed on licensees or in respect of licence conditions. They are subject to periodic revision in light of representations by interested parties and other considerations. S3 of the BO

3.9 Broadcasting materials are not subject to any previewing by the CA. A licensee will be expected to observe the codes of practice issued by the CA from time to time, the licence conditions and the relevant legislation, and to exercise self-regulation in accordance with them. A licensee will be responsible for all the contents it carries (excluding the material supplied by the Government) as part of its television programme service.

3.10 The programme, advertising and technical standards to be observed by a Type A OLTVPS licensee are promulgated respectively in the *Generic Code of Practice on Television Programme Standards*, *Generic Code of Practice on Television Advertising Standards*, and *Generic Code of Practice on Television Technical Standards*, which are available at the CA's website at <http://www.coms-auth.hk>.

3.11 The programme standards governing a Type A OLTVPS are drawn up with the principle that as the target audience of other licensable services may range from members of the general public to hotel guests and other special interest groups, the licensee should be sensitive to the expectations of different audiences. Television programme services targeted at hotel guests and special interest groups may be subject to a lighter control than those targeted at members of the general public.

3.12 The programme standards applicable to a Type A OLTVPS govern, among other things, the portrayal of crime and violence; the use of language; the portrayal of sex and nudity, protection of children; information for viewers; impartiality and fairness; and privacy. Licensees shall observe the provision that nothing which is unsuitable for children or young viewers should be shown in programmes or on channels targeting children or young viewers. Programme material which is suitable for viewing by adults only should be clearly labelled as such.

3.13 The advertising standards applicable to a Type A OLTVPS govern, among other things, general advertising standards; factual and best-selling claims; unacceptable products or services; specific categories of advertisements; advertising and children; and programme sponsorship.

**Supplementary Provisions in the BO**

3.14 A Type A OLTVPS licensee shall comply with the supplementary provisions which include the prohibition of any advertisement of a religious or political nature or concerned with industrial dispute, and the annual payment of licence fee and such other fees as may be prescribed.

S2(8)(d) of &  
Schedule 7 to  
the BO

**Licence Fee**

3.15 The prevailing annual licence fee payable for a Type A OLTVPS licence consists of a fixed fee of HK\$73,500 and a variable fee calculated by multiplying HK\$4 with the number of subscribers (if any) to the television programme service provided under the licence, for the first annual licence fee, on the day the licence comes into force; and for any subsequent annual licence fee, on each anniversary of the day the licence comes into force.

S3 of &  
Schedule 4 to  
the  
Broadcasting  
(Licence  
Fees)  
Regulation.

**Competition Ordinance**

3.16 The Competition Ordinance (Cap. 619) (“CO”), a cross-sectoral competition law, fully commenced in December 2015. The CA is conferred concurrent jurisdiction with the Competition Commission to enforce the CO in respect of conduct of undertakings in the broadcasting and telecommunications sectors. The CO prohibits anti-competitive conduct through three competition rules. The first conduct rule prohibits anti-competitive agreements, concerted practices and decisions of associations of undertakings. The second conduct rule provides that an undertaking that has a substantial degree of market power must not abuse that power by engaging in anti-competitive conduct. The merger rule provides that an undertaking must not directly or indirectly carry out a merger that has, or is likely to have, the effect of substantially lessening competition in Hong Kong. At present, the merger rule only applies to cases where one or more undertakings involved in the transaction directly or indirectly holds a carrier licence under the TO. For more details (including the relevant guidelines issued by the CA), please refer to the CA’s website at <http://www.coms-auth.hk>.

**Separate Accounting**

3.17 A licensee who also holds a licence under the TO shall adopt separate accounting practices in compliance with the BO.

S17 of the BO

**Television Programme Service Locking Device**

3.18 A Type A OLTVPS licensee shall provide a television programme service locking device (excluding service provided to hotel rooms) to the satisfaction of the CA. The *Guideline on Television Programme Service Locking Device* issued by the CA is available at the CA's website at <http://www.coms-auth.hk>. S20 of the BO

**Licensee to Submit Returns**

3.19 A licensee shall submit to the CA annual returns on directors and principal officers under section 39(1) of the BO. S39(1) of the BO

3.20 Without prejudice to the above requirement, a licensee shall submit to the CA a return showing particulars of any change of its directors or principal officers within seven days beginning on the date the change takes place. S39(3) of the BO

**Comments and Complaints**

3.21 A licensee shall under the licence receive and consider any comment and complaint from the public about the television programme service it provides. A licensee shall keep a complete record of comments and complaints received by it for not less than two years and submit the same to the CA on demand. A licensee shall also supply recordings of good quality of all material on the service provided during such period, and in such forms as the CA may direct.

**Intellectual Property Rights**

3.22 It will be a condition of the licence that a licensee shall not do, or permit, any act or conduct in relation to the service which is an infringement of any intellectual property right, including but not limited to any copyright.

**Compliance with Codes of Practice Issued by the CA**

3.23 It will be a condition in the licence that a licensee shall monitor and ensure strict compliance with the Codes of Practice, technical standards and directions issued by the CA.

### **Use of Frequency Channels in In-building Coaxial Cable Distribution Systems**

3.24 Unless otherwise approved by the CA, the maximum number of frequency channels that a licensee may use in any in-building coaxial cable distribution systems (“IBCCDS”) shall be as specified in the licence condition.

### **Sanctions**

3.25 The CA is empowered under section 28 of the BO to require a licensee to pay financial penalties for failure to comply with any licence condition; any requirement, direction, order or determination under the BO which is applicable to it; or any provision in a Code of Practice which is applicable to it. The CA is empowered under section 30 of the BO to direct a licensee to include in its licensed service a correction or apology in a form approved by the CA. Under sections 31 and 32 of the BO, the CA may suspend and/or revoke a licence in certain circumstances, and the licensee will be allowed an opportunity to appeal to the Chief Executive in Council before the suspension and/or revocation comes into force.

Ss28, 30, 31  
& 32 of the  
BO

### **Changes to Channel Line-up**

3.26 It will be a condition in the licence that a licensee shall notify the CA in advance of all changes to channel line-up and provide details regarding any new channels to be included in the service.

#### IV INFORMATION TO BE PROVIDED IN APPLICATIONS

4.1 Applications must be made in writing, in the Chinese and/or English languages, and contain a duly completed and signed application form (OFCA SF0010 (12)), which is available at the CA's website at <http://www.coms-auth.hk>, providing where appropriate, information set out in paragraphs 4.5 to 4.12 below.

4.2 The CA may request an applicant to provide additional information by a specified deadline and all such subsequent submission, statements and representations so provided will form part of the Licensee's Proposal.

4.3 Applicants are advised to clearly mark any material claimed to be commercially confidential. Any information submitted in confidence to the CA will be treated in accordance with the BO. S27 of the BO

4.4 When an application is submitted to the CA, a notice in the specified form (OFCA SF0011 (12)), which is available at the CA's website, will be published on the CA's website ([www.coms-auth.hk](http://www.coms-auth.hk)) and in one English and one Chinese language daily newspaper in Hong Kong. In addition, a notice in relation to the application will be gazetted in accordance with the BO as soon as practicable. Applicants are required to submit a duly completed OFCA SF0011 (12) together with the application. Members of the public who are interested may make representations on the application to the CA by a date specified in the notice. The CA shall consider any representations received by the date. S9(3) of the BO

#### Company Information

4.5 The following information and documents are required from the company applying for a licence –

- (a) detailed information on the corporate and shareholding structure including relationships with holding or related companies (if the applicant is a subsidiary, full details of its direct and indirect controlling companies should be provided);
- (b) details of the shareholders of the applicant, the voting rights attaching to the shares in the applicant and any shareholders' agreement;
- (c) certified true copies of each of the company's Articles of Association, Certificate of Incorporation, Business Registration

Certificate, and relevant returns filed with the Companies Registry;

- (d) a duly completed statutory declaration declaring that the applicant and all persons exercising control of the applicant are fit and proper; and that the residency requirement referred to in paragraph 2.3 is fulfilled. The specified statutory declaration form (OFCA SF0008 (12)) is available at the CA's website at <http://www.coms-auth.hk>;
- (e) for applicants who are OLVPS licensees, the persons exercising control of an OLVPS licensee, the associates of an OLVPS licensee, or the associates of those persons exercising control of an OLVPS licensee, a statutory declaration confirming that the service under application, if approved, will not result in contravention of section 1 of Schedule 7 to the BO.

4.6 If there are any documents, instruments, contracts, trusts, arrangements or understandings (whether having legal or equitable effect or otherwise) relating to the items in paragraph 4.5 above, one set of certified true copies of the same should be provided.

### **Financial Information**

4.7 Applicants are required to submit a business plan and means of financing.

### **Service Information**

4.8 The following service information, where appropriate, is required –

- (a) number and a list of specified premises including estates to which the service is intended or available for reception; and
- (b) for applicants whose services are intended or available for reception by an audience of more than 5,000 specified premises, information on whether the specified premises are located in a single housing estate.

### **Programming Information**

4.9 The following programming information, where applicable, is

required –

- (a) details of the programmes to be provided, both by type and by number of channels and programme hours;
- (b) the minimum daily service hours;
- (c) details of internal procedures to ensure compliance with applicable law, licence conditions, Codes of Practice and directions or orders issued or made by the CA; and
- (d) fee schedule including charges for equipment installation.

### **Technical Information**

4.10 The applicant should confirm whether it will operate its own transmission network or hire the network services of other carrier licensees and provide the relevant details. For applicants who would like to operate their own transmission networks, they should apply for a suitable licence under the TO to carry the service. Information on application of the relevant licence under the TO is available at the website of the CA at <http://www.coms-auth.hk>.

4.11 The applicant is required to submit –

- (a) if IBCCDS is used for distributing the service in buildings, the applicant should also give an indication of the ranges of frequencies required in any IBCCDS. The CA may consider allocating certain number of channels from the frequency plan, which is available at the website of Office of the Communications Authority (“OFCA”) at <http://www.ofca.gov.hk>, in case the applicant wishes to deploy the IBCCDS. The applicant should indicate the number of channels which they will require, with full justifications and calculation given; and
- (b) details of the television programme service locking device to be provided.

### **Other Information**

4.12 Other information required includes the following –

- (a) the period between the grant of the licence and commencement of service;

- (b) applicant's preferred period of validity of the licence;
- (c) an Executive Summary summarising in a concise manner the significant and salient points of the proposals; and
- (d) any other information not specified above which the applicants consider helpful to their applications.

## V CRITERIA FOR ASSESSMENT

5.1 The factors for the assessment of the application by the CA include –

(a) **Financial soundness**

The applicant must demonstrate sufficient financial capability to maintain the proposed service as described in the Licensee's Proposal.

(b) **Proven technical expertise**

The applicant must possess proven technical expertise to operate a satisfactory service and provide satisfactory customer support.

(c) **The variety, quantity and quality of programmes**

The proposals will be evaluated on the appeal of programming to viewers in terms of variety, quantity and quality.

(d) **Technical soundness and a satisfactory quality of service**

The proposed services must be technically sound and is likely to give a satisfactory quality of service. Where IBCCDS spectrum is used, applicants must ensure compliance with the requirements in the *Statement on Frequency Layout Plan of In-Building Coaxial Cable Distribution Systems* issued on 15 July 1999 (the "Statement"). The Statement concludes, among others, that spare channels in the existing IBCCDS should be allocated by the CA to licensed service providers employing spectrum efficient technologies.

(e) **Quality control and compliance**

The applicant must propose internal procedures to ensure that the



terms of the licence and the applicable laws are complied with.

5.2 The criteria set out in this Guidance Note may be amended from time to time depending on the circumstances. The final decision in awarding a licence shall rest with the CA.

## **VI SUBMISSION OF APPLICATIONS**

6.1 The application form for a licence and other related forms referred to in this Guidance Note are available at the CA's website at <http://www.coms-auth.hk> or for collection from OFCA at the following address. A sample Type A OLVPS licence will be made available in due course. Interested parties should submit five copies of their applications to –

The Communications Authority  
c/o Office of the Communications Authority  
20/F Wu Chung House  
213 Queen's Road East  
Wan Chai  
Hong Kong

6.2 Applications will be accepted all year round.

6.3 Receipt of each application will be acknowledged individually.

6.4 Enquiries on this Guidance Note should be made to OFCA at the address given in paragraph 6.1 above or sent to –

Facsimile : (852) 2507 2219 (General)  
(852) 2598 5509 (Confidential)

E-mail Address : [webmaster@ofca.gov.hk](mailto:webmaster@ofca.gov.hk)

OR by phone to : (852) 2961 6458

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