

**Guidance Note for Those Interested in
Applying for Non-Domestic Television
Programme Service Licences in
Hong Kong**

Communications Authority

February 2021

Pursuant to section 4(2)(b) of the Broadcasting Ordinance (Cap. 562), this document is issued by the Communications Authority as a guide for prospective applicants of a licence to provide a non-domestic 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 Non-domestic 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

1.1 In Hong Kong, the licensing and regulatory framework for the “provision” and “carriage” of television programme services are separately provided for under the Broadcasting Ordinance (Cap. 562) (BO) and the Telecommunications Ordinance (Cap. 106) (TO).

1.2 The BO, which came into effect on 7 July 2000, seeks to regulate television programme services originating from, or being provided for viewers in, Hong Kong. A person commits an offence if he provides a broadcasting service without or not in accordance with a licence.

S5 of the BO

Interpretation

1.3 Prospective applicants may refer to the definitions of “broadcasting service”, “television programme service” and “non-domestic television programme service” (the “Non-domestic service”) in section 2(1) of the BO.

S2(1) of the BO

Grant of licence

1.4 Under section 8(2) of the BO, the Communications Authority (CA) is empowered to grant Non-domestic service licences. In considering the applications, the CA will have regard to the extent of the applicants’ compliance with the basic requirements stipulated in this Guidance Note and the statutory and regulatory requirements.

S8(2) of the BO

1.5 This Guidance Note does not bind the CA to consider any application or to grant any licence or to the terms of any 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.

1.6 Without prejudice to paragraph 1.5 above, a sample of the Non-domestic service licence is posted on the CA’s website at <http://www.coms-auth.hk> for reference. It consists of general terms and conditions embodying the main regulatory framework adopted by the CA for the licensing of Non-domestic service. The regulatory authority for the Non-domestic service licences is the CA.

Services outside the scope of a Non-domestic service licence

1.7 Please note that a Non-domestic service licence only covers the provision of Non-domestic services as defined under the BO. Other services such as datacasting and Internet services etc. will require appropriate licences issued under the TO. Further information on telecommunications licences is available at the website of the Office of the Communications Authority (OFCA) at <http://www.ofca.gov.hk>.

1.8 As regards the “carriage” of the television programme service, a Non-domestic service licensee may appoint an appropriate carrier licensee to carry its service. OFCA’s website mentioned in paragraph 1.7 above has a full list of telecommunications licensees. Alternatively, a licensee may apply for an appropriate Carrier Licence under the TO to carry the service. Information for applications for licences issued under the TO is available for downloading at OFCA’s website.

II REGULATORY FRAMEWORK

2.1 The Non-domestic service will be 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 Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) (BMPO). Certain key features of the legislation in relation to Non-domestic service licences are set out below in general terms. S23 of the BO

To whom licence may be granted

2.2 The CA may in accordance with the BO grant a licence to provide a Non-domestic service on application made to it in the specified form by a company. The definition of a “company” is provided in section 2(1) of the Companies Ordinance (Cap. 622). S8(2) of the BO

2.3 In the case of a Non-domestic service licence, at least one director or one principal officer of the licensee company must be for the time being ordinarily resident in Hong Kong and who has been so resident for at least one continuous period of not less than seven years. “Ordinarily resident in Hong Kong” is defined in section 2(1) of the BO. There is no restriction on foreign ownership and the company can be a subsidiary of another company. S8(4)(b) of the BO

2.4 A licence shall not be granted to and held by a company unless the company is empowered under its articles of association to comply fully with the provisions of the BO and its licence conditions, whether actual or proposed. S8(4)(c) of the BO

2.5 The CA may grant a Non-domestic service licence subject to such conditions as it thinks fit specified in the licence. Without prejudice to the discretion of the CA, prospective applicants may wish to refer to the sample licence for the general conditions that may be included in such a licence.

References
S10(2) of the
BO

Determination of whether a television programme service is primarily targeting 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 to the CA for a determination of whether or not the service would, if provided, primarily target Hong Kong. The specified application form for a determination of whether or not a service primarily targets Hong Kong (OFCA SF0001 (12)) and the Supplementary Information on the completion of the form are available on the CA's website at <http://www.coms-auth.hk>.

S12(1) of the
BO

Competition Ordinance

2.7 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

2.8 A licensee who also holds a licence under the TO shall adopt separate accounting practices in compliance with section 17 of the BO.

S17 of the BO

Fit and proper person

2.9 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 its managing director that this requirement is met when applying for a licence. A licensee shall provide information to the CA on a regular basis to enable the CA to establish and verify whether this requirement is being complied with.

S21 of the BO

General requirements as to television programme services

2.10 Prospective applicants should have regard to the general requirements as to television programme services under section 23 of the BO, including the prohibition of “subliminal messages”.

S23 of the BO

Sanctions

2.11 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 requirements, direction, order or determination under the BO; and Codes of Practice which are 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*Licensee to submit returns*

2.12 A licensee shall submit to the CA an annual return showing the names and places of residence of the directors and principal officers of the licensee and indicating whether or not those directors and principal officers are for the time being ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than 7 years. “Principal officer” is defined in section 2(1) of the BO. Notwithstanding the above requirement, a licensee shall submit to the CA a return showing particulars of any change of its directors or principal officers within 7 days beginning on the date the change takes place. The CA is also empowered to require from a licensee any information it considers necessary for the purpose of performing its functions under the BO.

S39 of the BO

Supplementary provisions

2.13 Pursuant to section 2(8)(c) of, and Schedule 6 to the BO, a licensee shall comply with the supplementary provisions which include the prohibition of any advertisement of a religious or political nature or concerned with any industrial dispute, and the annual payment of licence fees and other charges.

S2(8)(c) &
Schedule 6 to
the BO

Subsidiary legislation – licence fees

2.14 A licensee shall pay annually to the CA a licence fee as prescribed from time to time by regulation made under section 42 of the BO.

S1 of Schedule
6 to the BO

Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391)

2.15 Under section 9(1) of the 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.

Ss9(1) & 11 of
the BMPO

Codes of Practice and Guidelines

2.16 Section 3 of the BO empowers the CA to approve and issue codes of practice as in its opinion are suitable for that purpose. The Codes of Practice issued by the CA set out the standards on programmes and advertisements provided by a licensee. Programme 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 services.

S3 of the BO

2.17 One of the basic principles of the Codes of Practice is that a Non-domestic service licensee should have respect for the cultural, religious and racial sensitivities of the intended recipient countries and places. The programme standards are drawn up with particular concern on material unsuitable for children, which should be shown with discretion. The portrayal of sex, nudity and violence shall also be handled with care. Advertising shall be legal, clean, honest and truthful.

2.18 Guidelines may also be issued by the CA under the BO to provide guidance for licensees or companies seeking to be licensees, indicating the manner in which the CA proposes to perform functions conferred by the BO upon the CA.

S4 of the BO

2.19 Any Codes of Practice or guidelines issued by the CA are publicly available at the CA's website at <http://www.coms-auth.hk>. They are subject to periodic revision in the light of representations by interested parties and other considerations.

Subscription services provided in Hong Kong

2.20 Where a Non-domestic service is provided in Hong Kong on payment of a subscription excluding such a service provided to hotel rooms, a licensee shall provide a television programme service locking device to the satisfaction of the CA. S20 of the BO

Arrangement of Transmission Network

2.21 For the transmission and distribution of the Non-domestic services, a licensee may appoint any of the relevant licensed telecommunications network operators to provide the service or may apply to the CA for a relevant Carrier (fixed) Licence under the TO to establish its own network.

III GENERAL LICENCE CONDITIONS

Non-domestic service licence

3.1 The Non-domestic service licence will set out, among other things, the period of validity of the licence, the terms of the licence, prohibition on assigning the licence, the intellectual property rights and other provisions. Some of the general licence conditions are outlined below.

3.2 The terms and conditions of the licence to be granted to any successful applicants will be based on those of the sample licence which may be amended from time to time in light of any policy changes and other considerations which the CA considers. The CA may vary or impose additional terms and/or conditions for individual licences.

3.3 Prospective licensees will be consulted in finalizing the actual licences. 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 on the CA's power to amend the licence are set out in section 10(4) of the BO and Conditions 4.1 and 4.2 of the sample licence. S10(4) of the BO
Conditions 4.1 & 4.2 of the sample licence

References*Term of licence*

- 3.4 An applicant should propose a term of licence based on his needs, up to a maximum of 12 years. The term will be determined by the CA having regard to the proposal of the applicant. Condition 3 of the sample licence

Publication of licence

- 3.5 A licensee is required to make its licence publicly available. The Licensee's Proposal may be excluded. Condition 6.1 of the sample licence

Compliance with the Licensee's Proposal

- 3.6 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. Conditions 10.1 & 10.2 of the sample licence

Indemnity

- 3.7 The licensee shall indemnify and keep indemnified the Government and the CA against any and all losses, claims, charges, expenses, actions and demands which it may incur. Condition 13 of the sample licence

Licence fee

- 3.8 The licensee shall pay to the CA every year during the period of validity such licence fee in advance as may be prescribed from time to time by regulation made under section 42 of and section 13 of Schedule 4 to the BO. Condition 14 of the sample licence

Performance bond

- 3.9 An applicant may, on its own initiative, provide a performance bond issued by a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) as a commitment to deliver his proposed service. The performance bond may be tied to milestones of channel rollout and capital investment and will be incorporated into the licence. The performance bond will be discharged once the relevant milestones referred to in the performance bond have been fulfilled to the satisfaction of the CA. Applicants should indicate the amount of bonded sums tied to milestones to be provided under the performance bond. S2(1) of the BO Condition 28 of the sample licence

References*Intellectual property rights*

3.10 A licensee shall not permit or suffer any act in providing or in relation to a Non-domestic service which is an infringement of any intellectual property right of others.

Condition 18 of the sample licence

Reception outside Hong Kong

3.11 A licensee must take all reasonable steps to ensure the acceptability of its services in, and to comply with the laws and programme and advertising standards stipulated by the relevant authorities of, recipient countries and places.

Condition 16 of the sample licence

Comments and complaints

3.12 A licensee shall 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 3 months and submit the same to the CA on demand. A licensee shall also supply video-tapes and recordings of good quality and in such forms as the CA may direct in accordance with Condition 17.5 of the sample licence.

Condition 17 of the sample licence

Compliance with codes of practice and the statements of the CA

3.13 A licensee shall monitor and ensure strict compliance with the directions, the relevant codes of practice, technical specifications and statements issued by the CA from time to time regarding the use of frequency channels in in-building coaxial cable distribution systems (IBCCDS).

Condition 22 of the sample licence

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 providing, where appropriate, information set out in paragraphs 4.5 to 4.9 below. In addition, applicants may provide as much relevant information as they consider appropriate. The standard application form (OFCA SF0003 (12)) can be downloaded from the CA's website at <http://www.coms-auth.hk>.

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. Except with the approval of the CA, and subject to the terms of the licence, any law or ordinance, a licensee is required under its licence to comply at all material times with the statements (including statements of intention) and representations made by or on its behalf in a Licensee's Proposal.

Condition 10.1 of the sample licence

References

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 section 27 of 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 website, will be published on the CA website (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 (if the applicant is a subsidiary, full details of its direct and indirect controlling companies should be provided);
- (b) detailed information on all persons exercising control of the applicant submitted with a statutory declaration. A sample form (OFCA SF0008 (12)) can be downloaded from the CA's website at <http://www.coms-auth.hk>; S1(6)(a) to (c) of Part 1 of Schedule 1 to the BO
- (c) certified true copies of each of the company's Articles of Association, Certificate of Incorporation and the Business Registration Certificate, and relevant returns filed with the Companies Registry; S8(4)(c) of the BO
- (d) the organizational/management structure and details of the management including, without limitation, the names and places of residence of the directors and principal officers of the applicant with indications whether or not such persons satisfy the residency requirement referred to in paragraph 2.3 above and the staffing levels required for the operation;
- (e) relevant experience in running similar operations or providing similar services; and

- (f) statutory and any relevant supporting evidence that the applicant company and all persons controlling it are fit and proper. A sample form of the statutory declaration (OFCA SF0008 (12)) is available on the CA's website at <http://www.coms-auth.hk>.

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 The following financial information, where applicable, is required :

For all applicants: -

- (a) evidence of sound financial backing, including details of any shareholders' loans, undertakings or guarantees. Audited accounts for the last three years together with the most recently published interim results, if available, are required in respect of the applicant company or its shareholders as may be appropriate;
- (b) a business and capital investment plan, including details of proposed financing structure, credit facilities and financial arrangements adopted by the applicant;
- (c) the amount of banker's performance bond, where applicable, (tied to proposed milestones on channel rollout and capital investment) to be lodged with the Government and the name of the issuing bank;

For applicants whose service is receivable in Hong Kong: -

- (d) the projected number of specified premises able to receive the service; and

For applicants providing subscription services in Hong Kong: -

- (e) the projected number of subscribers and market share, where appropriate.

Programming information

4.8 The following programming information, where applicable, is required :

For all applicants: -

- (a) a breakdown of the programming to be provided, both by type and number of programming hours;
- (b) the channel/programme line-up; proposed launch dates of those channels/programmes and other supporting information;
- (c) the daily operation hours;
- (d) details of any proposed internal monitoring system to ensure compliance with the programme/advertising standards laid down by the CA;
- (e) details of copyright agreements and other legal arrangements in respect of programme suppliers; and

For applicants providing subscription services in Hong Kong: -

- (f) the proposed method of fixing charges and/or fees, including the installation and subscription fees to be charged.

Technical information

4.9 The following technical information, where applicable, is required:

For all applicants: -

- (a) details of the transmission network to be established and the technology to be employed;
- (b) details of any arrangements envisaged or entered into with any relevant licensed telecommunications network operators for distributing the services and provide supporting documents, if any;

For applicants whose service is receivable in Hong Kong: -

- (c) if IBCCDS is used for distributing the service in buildings in Hong Kong, the applicant should also give an indication of the ranges of frequencies required in any IBCCDS, the number of channels required, with full justifications and calculation given. Applicants should make reference to the *statement on the Frequency Layout Plan of IBCCDS* issued on 15 July 1999 which can be found in the OFCA's website mentioned in paragraph 1.7 above;

For applicants providing subscription services in Hong Kong:-

- (d) details of the television programme service locking device to be provided; and
 - (e) technical information on, and proposal on the supply of the set-top box to be used, if any. Applicants should make reference to the *statement on the Frequency Layout Plan of IBCCDS*.
- S20 of the BO

Other information

4.10 Other information required includes the following: -

- (a) the proposed date of launch of service;
- (b) an Executive Summary summarizing in a concise manner the significant and salient points of the proposals; and
- (c) 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) the financial and managerial capability of the company and commitment to invest based on the information supplied in accordance with paragraph 4.7. The proposals on performance bond, where applicable, will be evaluated on their effectiveness as a means to bind the applicant's commitments and obligations;
- (b) the technical competence and experience of the company based on information supplied in accordance with paragraphs 4.5 and 4.9;
- (c) the securing of programme sources for the proposed programming plan; and
- (d) the extent to which the terms of the licence and any laws and relevant ordinances are likely to be observed (e.g. any proposal on internal monitoring mechanism).

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 sample Non-domestic service licence, application form for the licence, and the sample forms referred to in this Guidance Note are available on the CA's website at <http://www.coms-auth.hk> or for collection from OFCA at the following address. Interested parties should submit 5 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 in writing to the 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

OR by phone to (852) 2961 6459

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