

**Guidance Note for Those Interested in  
Applying for Licences to Establish and  
Maintain in Hong Kong a Broadcasting Service  
under Part 3A of the  
Telecommunications Ordinance (Cap. 106)**

**Communications Authority**

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Notes:

- A. This Guidance Note is issued by the Communications Authority pursuant to section 13CA of the Telecommunications Ordinance (Cap. 106) as guidelines for the guidance of corporations applying for a licence to establish and maintain a broadcasting service in Hong Kong under Part 3A of the Telecommunications Ordinance.
- B. This Guidance Note is issued subject to the provisions of the Telecommunications Ordinance, the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) and all legislation applicable to an application for a licence to establish and maintain a broadcasting service in Hong Kong under Part 3A of the Telecommunications Ordinance. This Guidance Note shall not be construed to derogate from any statutory provision. In the case of any conflict between any statutory provision and this Guidance Note, the former shall prevail.
- C. This Guidance Note is not intended to and shall not create or give rise to any right or expectation on the part of any person, or any obligation, duty, representation, statement, warranty or promise, whether implied or inferred, on the part of the Chief Executive in Council or the Communications Authority that a licence will be granted to any person on the terms or conditions referred to in this Guidance Note or otherwise.
- D. This Guidance Note is not, and should not be regarded, as a complete or authoritative statement of the law or court practice, or a substitute for legal or other professional advice. A person interested in making an application for a licence to establish and maintain a broadcasting service under Part 3A of the Telecommunications Ordinance should make himself fully conversant with all relevant requirements in relation to his application and obtain independent professional advice concerning the application.
- E. This Guidance Note applies to all applications that are pending at the time of the issue of this Guidance Note or made after the issue.
- F. Save where the contrary intention appears expressly or the context otherwise requires, words and expressions used in this Guidance Note (including **Annexes A and B**) shall bear the same meaning, if any, as in the Telecommunications 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 Telecommunications Ordinance shall prevail over that in the Interpretation and General Clauses Ordinance.
- G. The Communications Authority may vary, modify, replace or supplement any information contained in this Guidance Note by notice published in the Gazette.

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## I INTRODUCTION

### Telecommunications Ordinance (Cap. 106)

- 1.1 Under Part 3A of the Telecommunications Ordinance (Cap. 106) (“TO”), the Chief Executive in Council (“CE in C”), after having considered the recommendations made by the Communications Authority (“CA”) on an application for a licence to establish and maintain a broadcasting service under Part 3A of the TO (“Application”), may grant a licence to the applicant (“Applicant”) and such licence shall, without prejudice to the TO or the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) (“BMPO”), be subject to the payment of such fee or other charge whatsoever, whether annual or otherwise, and to such terms and conditions as the CE in C may specify in the licence. S13C(2) of the TO
- 1.2 For the purposes of Part 3A of the TO and this Guidance Note, unless the context otherwise requires, “broadcasting” means transmitting sound (otherwise than as part of a television broadcast) for general reception by means of radio waves. S13A(1) of the TO
- 1.3 Section 13B(2) of the TO provides that an Application may be entertained only if the CA is satisfied that – S13B(2) of the TO
- (a) the frequency in the radio spectrum that the Applicant proposes to use is available as at the date of the Application; and
  - (b) that frequency is suitable for use in providing the proposed broadcasting service,
- (collectively, the “Pre-requisites”).
- 1.4 Section 13C(1) of the TO provides that if, in relation to an Application, the CA is satisfied as to the Pre-requisites, it must consider the Application and make recommendations thereon to the CE in C. S13C(1) of the TO

### Regulatory framework for broadcasting services

1.5 Broadcasting services are regulated by legislation, regulations, directions, orders, determinations, Codes of Practice and licence conditions. The relevant legislation includes the TO, the Communications Authority Ordinance (Cap. 616) (“CAO”) and the BMPO. The full text of the TO, CAO and BMPO is available at the Hong Kong e-Legislation run by the Department of Justice at [www.elegislation.gov.hk](http://www.elegislation.gov.hk). The existing licences can be found at the Commerce and Economic Development Bureau’s website at <http://www.cedb.gov.hk/ccib/en>.

## The CA's Processing of Applications

1.6 The following are the primary steps that the CA will take in processing an Application–

- (a) After an Application is submitted to the CA in accordance with section 13B(1) of the TO, the Office of the Communications Authority (“OFCA”), the executive arm of the CA, will examine the Application to see if all applicable information required (please see **Annexes A and B** to this Guidance Note) has been furnished. The CA may require the Applicant to provide further information which the CA reasonably considers necessary for processing the Application.
- (b) The CA will consider whether the Application meets the Pre-requisites (please see Part II of this Guidance Note).
- (c) If the CA is satisfied that the Application meets the Pre-requisites, the CA will consult the public on the Application after the Applicant has submitted to the CA all relevant information (please see paragraphs 3.12(b) and 3.15 of this Guidance Note).
- (d) The CA will, after having taken into account the availability and suitability of the Applicant’s proposed frequency spectrum, the Applicant’s compliance with and ability to comply with the statutory requirements under the TO, the assessment criteria prescribed in section 13C(4) of the TO and all other factors relevant to the Applicant’s Application, assess the Application and make recommendations thereon to the CE in C under section 13C(1) of the TO (please see Part III of this Guidance Note).

## II. PRE-REQUISITES ON AVAILABILITY OF SUITABLE FREQUENCY SPECTRUM

2.1 An Applicant should identify the frequency it proposes to use and provide technical details as specified in paragraph 5 at **Annex A** to this Guidance Note. If an Applicant sees such a need, it may apply for a permit, issued by the CA pursuant to section 7E of the TO, to conduct technical field tests to verify the availability and suitability of the proposed frequency for the proposed broadcasting service. Information about allocation and assignment of frequencies in Hong Kong is available at OFCA’s website at <http://www.ofca.gov.hk>.

S13B(2) of  
the TO

2.2 In considering whether an Applicant’s proposed use of frequency meets the Pre-requisites, the CA will take into account, among other things, the following matters –

- (a) whether the proposed frequency complies with the frequency allocation set out in the Hong Kong Table of Frequency

Allocations, which is available at OFCA's website;

- (b) whether the proposed frequency complies with relevant international constitution and convention, agreement, protocol, understanding or the like to the extent that the instruments impose obligations on Hong Kong;
- (c) whether the use of the proposed frequency meets the coordination requirements with neighbouring economies;
- (d) whether the use of the proposed frequency will interfere with any existing broadcasting and telecommunications services, such as aeronautical radio communications services; and
- (e) feasibility of the Applicant's proposed use of frequency to meet its planned geographical coverage of the proposed broadcasting service.

The CA will also take into account other factors which the CA reasonably considers relevant to the specific Application in question.

2.3 In the event that the CA arrives at a provisional decision that it is not satisfied that an Applicant's proposed use of frequency meets the Pre-requisites, the Applicant will be notified in writing of the CA's provisional decision and will be invited to submit further representations upon receipt of the letter of notification. The period within which the Applicant shall submit its further representations depends on the facts and circumstances of the Application. Normally, a period of one month will be given.

2.4 If the CA, after having considered the Applicant's further representations, if any, is not satisfied as to the availability of the Applicant's proposed frequency as at the date of its Application or the suitability of the frequency for use in providing the Applicant's proposed broadcasting service, it will inform the Applicant in writing of this fact.

S13B(3) of  
the TO

### **III. EVALUATION OF APPLICATIONS**

3.1 If the CA is satisfied that an Application meets the Pre-requisites, it will proceed to further evaluate the Application and make recommendations to the CE in C. In doing so, the CA will take into account, among other things, the following –

- (a) the Applicant's compliance with the statutory requirements under the TO, and to the extent that the requirements are imposed on a licensee, the ability of the Applicant to comply with such requirements should a licence be granted by the CE in C to it; and
- (b) the assessment criteria prescribed in section 13C(4) of the TO.

The CA will also take into account other factors which the CA reasonably considers relevant to the specific Application in question.

### **Compliance with the statutory requirements under the TO**

#### Competence of licensees

3.2 Under section 13F of the TO, a licence may be granted to or held only by a corporation that is – S13F of the TO

- (a) a company formed and registered in Hong Kong under the Companies Ordinance (Cap. 622) or under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance; and
- (b) empowered under its articles of association to comply fully with the provisions of the TO and the terms and conditions of its licence.

#### Disqualified persons

3.3 No disqualified person (“DP”), as defined in section 13A(1) of the TO, shall exercise control of a licensee without the approval of the CE in C. Hence, all DPs exercising or proposing to exercise control of the Applicant should be disclosed in the Application. The CE in C may grant a licence to a corporation that is a DP and/or in respect of which a DP exercises control, and the licence may, without prejudice to the generality of section 13C(2) of the TO, contain such conditions relating to the DP and to the control exercised by him as the CE in C may impose under section 13C of the TO. An Applicant should therefore also disclose in the Application the reasons for each person being or proposing to be a DP of the Applicant. Ss13A(1), 13C and 13G of the TO

3.4 DP is defined in section 13A(1) of the TO to mean any of the following – S13A(1) of the TO

- (a) a licensee;
- (b) a person who is –
  - (i) a domestic free television programme service licensee, or a domestic pay television programme service licensee, within the meaning of section 2(1) of the Broadcasting Ordinance (Cap. 562); or
  - (ii) an associate, within the meaning of that section, of a licensee referred to in subparagraph (i);
- (c) a person who exercises control of a corporation that is a person referred to in paragraph (a) or (b)(i).

3.5 For the purpose of Part 3A of the TO, a person “exercises control” of a company or corporation if he –

S13A of the TO

- (a) holds office in that company or corporation. The CA considers that a person holds office in a company or corporation under section 13A(2)(a) of the TO if that person is a director or principal officer of that company or corporation. “Principal officer” means, in relation to a corporation, –
  - (i) a person employed or engaged by the corporation who, by himself or with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
  - (ii) a person so employed or engaged who, under the immediate authority of a director of the corporation or a person to whom paragraph (i) applies, performs managerial functions in respect of the corporation; or
- (b) subject to paragraph (c), is the beneficial owner of more than 35% of the voting shares in that company or corporation; or
- (c) in the case of a corporation that is a licensee, is the beneficial owner of more than 15% of the voting shares in that corporation.

A person shall not be a DP in relation to a corporation that is a licensee by reason only that he holds office in, or is the beneficial owner of more than 15% of the voting shares in, that corporation.

3.6 No DP who exercises control of a licensee shall augment the basis of such control unless with the permission of the CE in C.

3.7 For the purposes of paragraphs 3.3 to 3.6 above, “voting shares” means the shares in a corporation which entitle the shareholder to vote at shareholders’ meeting of the corporation.

#### Ownership of voting shares by unqualified person

3.8 Under section 13I of the TO, all unqualified persons of a licensee may not at any time together have any direct or indirect right, title or interest to or in the voting shares in the licensee exceeding an aggregate of 49% of all voting shares in the licensee. In this context, “voting shares” refers to shares in which the voting rights carried by them are for the time being exercisable as regards any question or other matter which may be determined by a poll at general meetings of the licensee.

S13I of the TO

3.9 A person shall be an unqualified person unless the person is (i) an individual who is for the time being ordinarily resident in Hong Kong and has at

S13I(3) of the TO



any time been resident for a continuous period of not less than 7 years, or (ii) a company that is ordinarily resident in Hong Kong.

3.10 For the purposes of section 13I of the TO, a company is ordinarily resident in Hong Kong if– S13A(1) of the TO

- (a) it is formed and registered in Hong Kong under the Companies Ordinance or under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance; and
- (b) in the case where:
  - (i) not more than 2 of its directors take an active part in the management of the company, each of those directors is; or
  - (ii) more than 2 of its directors take an active part in the management of the company, the majority of those directors are each of them,

for the time being ordinarily resident in Hong Kong and has at any time been resident for a continuous period of not less than 7 years; and

- (c) the control and management of the company is bona fide exercised in Hong Kong.

3.11 To facilitate the CA to assess whether an Applicant meets the statutory requirement referred to in paragraph 3.2 and whether the Applicant will be able to meet the statutory requirements referred to in paragraphs 3.3 to 3.10 above should a licence be granted to it, the Applicant should provide information specified in paragraph 1 at **Annex A** to this Guidance Note, including a duly completed and signed statutory declaration in the form specified by the CA (Form No. OFCA SF0025 (12)) given by its company secretary, or one of its directors or principal officers (“Statutory Declaration”).

#### **Assessment criteria prescribed in section 13C(4) of the TO**

3.12 Section 13C(4) of the TO sets out the matters that the CE in C must have regard to in exercising the discretion whether to grant a licence. Accordingly, in evaluating an Application and making recommendations to the CE in C, the CA will also take into account the matters set out in section 13C(4) of the TO –

Ss13C(4),  
13C(5) and  
13C(6) of the  
TO

- (a) Whether the Applicant and all persons exercising control of the Applicant are fit and proper persons

Section 13C(5) of the TO provides that in determining whether a person is a fit and proper person, account must be taken of –

- (i) the business record of the person;
- (ii) the record of the person in situations requiring trust and candour;
- (iii) the criminal record in Hong Kong of the person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
- (iv) the criminal record in places outside Hong Kong of the person in respect of conduct that, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the person as mentioned in (iii) above.

(b) The opinion of the public

If the CA is satisfied that an Application meets the Pre-requisites, it will consult the public on the Application by publishing a notice on the CA's website (<http://www.coms-auth.hk>) and in one English and one Chinese language daily newspaper in Hong Kong. The notice will state the name of the Applicant and the type of licence sought by the Applicant, together with information provided by the Applicant in the form specified by the CA (Form No. OFCA SF0026 (12)) ("Consultation Form"). Interested members of the public may make representations on the Application to the CA by a date specified in the notice, being a date not less than 21 days after the notice is published. The CA will consider the representations received by the date.

(c) The Applicant's financial soundness and ability to maintain, throughout the period for which the licence would be in force, the proposed broadcasting service

The CA will consider whether the Applicant has demonstrated a commitment to invest sufficiently in the proposed broadcasting service and possesses sufficient financial capability to invest to the level proposed. Any proposals on performance bond will be evaluated on their effectiveness as a means to bind the Applicant to its commitments and obligations.

(d) Whether the Applicant has the necessary technical expertise and the relevant managerial skill to operate the proposed broadcasting service

The CA will consider whether the Applicant possesses relevant managerial and proven technical expertise to operate the proposed broadcasting service satisfactorily in Hong Kong. The knowledge of the Applicant about the local environment and its experience in the operation of a broadcasting service are relevant

factors which the CA will take into account.

(e) The variety, quantity and quality of programmes to be provided

The proposals will be evaluated on the appeal of the programming to audience, the quantity and quality of proposed programmes and the extent to which they will broaden audience's choice.

(f) The quality and technical viability of the proposed broadcasting service

The CA will consider whether the proposed broadcasting service is technically sound and is likely to give a satisfactory quality of service.

(g) The speed of service roll-out

The speed of service roll-out will be a relevant factor for consideration.

(h) Where any construction work is to be carried out, the extent of any inconvenience that may be caused to the public by the work

The proposals which involve construction works will be assessed against their impact on members of the public.

(i) The benefits to the local broadcasting industry, the audience and the community as a whole

The CA will consider whether the Applicant's proposals will bring any benefit to the broadcasting industry and the community as a whole. The CA will also take into account whether the proposed installation fees and equipment cost to be charged to audience, if applicable, are set at levels which are affordable and accessible to the general public.

(j) The Applicant's proposed arrangements to ensure compliance with the provisions of the TO, all other applicable law and the terms and conditions that may be specified in the licence

The CA will consider whether the Applicant has proposed any internal monitoring mechanism to ensure that the terms of the licence and the applicable laws are complied with, and if so, the effectiveness of the proposed mechanism.

3.13 To facilitate the CA's assessment of an Application in accordance with the criteria listed in paragraph 3.12 above, an Applicant should provide all applicable information requested in **Annex A** to this Guidance Note, including the Statutory Declaration. In addition, to enable the CA to assess whether the fit and proper person criterion referred to in paragraph 3.12(a) is

met, information and records set out at **Annex B** to this Guidance Note should be disclosed or attached to the Statutory Declaration submitted by an Applicant in the manner specified in this Guidance Note or the Statutory Declaration.

3.14 Under section 13C(6) of the TO, the CE in C may, by order published in the Gazette, prescribe additional matters to which the CE in C must have regard in exercising the discretion whether or not to grant a licence. If such order is being so published, the CA may by notice published in the Gazette issue further guidelines or amend this Guidance Note accordingly.

S13C of the  
TO

3.15 To enable the CA to consult the public in accordance with paragraph 3.12(b) above, an Applicant should submit a duly completed Consultation Form together with its Application.

#### **IV SUBMISSION OF APPLICATIONS**

4.1 Applications should be made in writing, in the Chinese and/or English languages, and should contain the following documents, each in the form specified by the CA pursuant to section 13B of the TO and duly completed and signed:

- (a) Application Form (Form No. OFCA SF0024 (12));
- (b) Statutory Declaration;
- (c) Consultation Form; and
- (d) if personal data is included in the Application, in respect of each individual whose personal data is so included, an acknowledgement (Form No. OFCA SF0027 (12)).

They should be submitted together with all information required that is applicable to the Application to the CA in the manner described in paragraph 4.2.

4.2 An Applicant shall submit five sets of its Application (each including the documents and information referred to in paragraph 4.1) to the CA at the following address –

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

4.3 To enable the CA to process and assess an Application, the CA may request an Applicant to provide additional information to the CA by a specified deadline.

4.4 Save in relation to information provided in the Consultation Form, an Applicant is advised to clearly mark confidential any other material submitted to the CA which it claims to be commercially confidential. By submitting an Application, an Applicant is regarded to have authorised the CA to disclose to the public or any person all information provided in or pursuant to the Consultation Form. For the avoidance of doubt, no information provided in or pursuant to the Consultation Form will be regarded as confidential information.

4.5 Each of the forms referred to in paragraph 4.1(a), (b), (c) and (d) is available at the CA's website at <http://www.coms-auth.hk> or OFCA at the address specified in paragraph 4.2.

4.6 Applications will be accepted all year round.

4.7 Receipt of each Application will be acknowledged individually.

4.8 Enquiries on this Guidance Note should be made to OFCA at the address given in paragraph 4.2 above or sent to –

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

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

OR by phone to : (852) 2961 6309

Communications Authority

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**Information that should be provided for applying for licences to establish and maintain in Hong Kong a broadcasting service under Part 3A of the Telecommunications Ordinance (Cap. 106)**

**Company Information**

An Applicant should submit the following information and documents –

- (a) detailed information on the corporate and shareholding structure including relationships with its holding corporations or subsidiaries<sup>1</sup>, and a standalone chart illustrating the structure;
- (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) the organisational/management structure and details of management (including, without limitation, the staffing levels required for the operation);
- (e) relevant experience in running similar operations or providing similar services;
- (f) details of what decisions are to be taken at the shareholders level, and what decisions are to be taken at the board of directors level of the Applicant, with details of effective procedures for resolving disputes at both levels;
- (g) details of each disqualified person, proposed disqualified person, unqualified person and proposed unqualified person, if any; and
- (h) a duly completed and signed Statutory Declaration declaring that each of the Applicant and the persons exercising control of the Applicant is a fit and proper person, that the Applicant complies with the corporate status requirements under section 13F of the TO and that all the details of disqualified persons (including the reasons for each of such persons being a disqualified person) and unqualified persons, if any, are disclosed in the Statutory Declaration.

2. 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 1 above, certified true copies of the same should be provided.

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<sup>1</sup>“Holding corporation” and “subsidiary” shall have the meanings assigned to “holding company” and “subsidiary” under the Companies Ordinance (Cap. 622).

### **Financial Information**

3. The following financial information should be provided –
- (a) evidence of sound financial backing, including details of any shareholders' loans, undertakings or guarantees;
  - (b) if an Applicant is a company that is established and in operation for more than three years, certified true copies of audited profit and loss accounts and balance sheets and auditors' reports for the last three full years, together with the most recently published interim results;
  - (c) if an Applicant is a newly-formed company which is established and in operation for three years or less –
    - (i) the directors' certificate of the amount of issued and paid-up share capital;
    - (ii) bankers' confirmation of the amount of its deposits and/or available credit facilities; and
    - (iii) copies of audited profit and loss accounts and balance sheets and auditors' reports for the years in operation, together with the most recently published interim results;
  - (d) a business and capital investment plan, including details of proposed financing structure, credit facilities and financial arrangements;
  - (e) projected profit and loss account including details of revenue, fixed and variable costs, balance sheet and budgeted cash flow statements, showing the amount of capital to be invested on an annual basis;
  - (f) projected market share that the Applicant will be able to acquire, where applicable;
  - (g) the level of the shareholders' support to show that the Applicant is capable of bearing the financial risks of variations in the costs of establishing the operation/service and in the revenues;
  - (h) the amount of the banker's performance bond (tied to proposed milestones) to be lodged with the Government and the name of the issuing bank, if any; and
  - (i) any economic and market study conducted.

### **Programming Information**

4. The following programming information, where applicable, should be submitted –

- (a) details of the programmes to be provided, both by type and by number of channels and programme hours and sources of programmes;
- (b) the minimum daily broadcasting hours;
- (c) details of any proposed internal monitoring system to ensure compliance with applicable law, licence conditions, Codes of Practice, directions and orders issued or made by the CA or the CE in C;
- (d) details of copyright agreements and other legal arrangements in respect of programme suppliers; and
- (e) details of the programme associated data services, where applicable (e.g. Radio Data System (RDS) etc.).

### **Technical Information**

5. The following technical information, where applicable, is required –
- (a) the location of each transmission station, the frequency to be used, transmission power, polarisation, characteristics of antenna and other technical matters etc. It should include an overall technical configuration of the transmission infrastructure including any requirements of radio frequencies for feeding programme signals to transmission stations, telemetry and control applications etc. If wireless transmission is used as part of the network for providing service, the Applicant should give an indication of the preferred frequency bands and the amount of frequency spectrum that will be used for the provision of the proposed service. The amount of spectrum that will be made available and the exact limits of the frequency bands will be decided after reviewing the proposals received and taking into account the demand for frequency spectrum for other services in Hong Kong and other factors as the CA considers relevant in the circumstances;
  - (b) technology to be employed, the likely choice of equipment, system design, proposed quality of service, how the network and its ancillary equipment and facilities are planned to meet the proposed service, and other technological characteristics;
  - (c) the planned geographical coverage of the network and service roll-out plan;
  - (d) details of the proposed implementation plan;
  - (e) studio facilities, and details of production equipment and facilities;
  - (f) details of any plan on acquisition of hilltop transmission site and/or proposal on sharing use of transmission sites and facilities with the existing broadcasters and/or incumbent hilltop transmission site users; and
  - (g) equipment and facilities required at the listener end to access the proposed



service and details of any installation fees and equipment cost to be charged to audience.

### **Other Information**

6. The following information should also be submitted –
- (a) details of any construction work required and an assessment of its impact on the public;
  - (b) the period between the grant of the licence and commencement of service;
  - (c) the Applicant's preferred period of validity of the licence;
  - (d) the benefits brought by the implementation of the proposal to the local broadcasting industry, the audience and the community as a whole;
  - (e) an Executive Summary summarising in a concise manner the significant and salient points of the proposals; and
  - (f) any other information not specified above which the Applicant considers helpful to its Application.

## **Information and records in relation to the fit and proper person criterion under section 13C(4)(a) of the TO**

### **Information and records that should be submitted**

For the purpose of assessing whether the Applicant and all persons exercising control of the Applicant are fit and proper persons, information and records set out in paragraphs 2 – 6 below should be submitted by or on behalf of the Applicant in Statutory Declaration.

#### Business record

2. Information concerning the business records (for at least seven years immediately prior to the date of the Statutory Declaration) of each of the Applicant and the persons exercising control in the Applicant (“Relevant Person”), including but not limited to whether the Applicant or a Relevant Person –

- (a) is a director or principal officer of any corporation or a person responsible for the management of any Undertaking<sup>2</sup> other than the Applicant (whether on his own or jointly with any others);
- (b) holds or is entitled to exercise (i) any beneficial interest in more than 50% of the allotted shares in, (ii) any right to share in more than 50% of the capital of, or (iii) any right to share in more than 50% of the profits of, an Undertaking other than the Applicant;
- (c) has any obligation or liability to contribute to more than 50% of the losses, debts or expenses of, an Undertaking other than the Applicant;
- (d) is a voting controller<sup>3</sup> of more than 50% of the voting shares in any

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<sup>2</sup> “Undertaking” means a body corporate, a partnership or an unincorporated association carrying on a trade, professional or business, whether for profit or not.

<sup>3</sup> “Voting controller” means a person who either alone or with one or more other persons holds voting control. “Voting control” means the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to one or more voting shares of any Undertaking -

- (a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;
- (b) by an entitlement to exercise such a right to vote;
- (c) under a duty or obligation;
- (d) through a nominee;
- (e) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights; or
- (f) as a chargor of voting shares of any Undertaking unless the chargee of the voting shares or the nominee of the chargee has given notice in writing to the chargor under the charge of an intention to exercise the right to vote attaching to such voting shares.

Undertaking other than the Applicant;

- (e) has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating any Undertaking other than the Applicant, to ensure that the affairs of the Undertaking are conducted in accordance with his wishes;
- (f) has the right to (i) remove a majority of the directors or office holders of, or (ii) exercise a veto right over the operation or financial policies of, any Undertaking other than the Applicant; and
- (g) is, or has been, subject to liquidation, bankruptcy or other similar proceedings/orders.

3. Any relevant information in addition to the above in respect of the business record of the Applicant or a Relevant Person which may be useful for assessing whether the Applicant or the Relevant Person is a fit and proper person.

#### Record in situations requiring trust and candour

4. Information and records concerning each of the Applicant and the Relevant Persons in situations where it or he may have failed to act with trust and candour, including but not limited to those where the Applicant or the Relevant Person is, or has been, censured, disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession; disqualified by a court of competent jurisdiction from being a director, etc. in Hong Kong or elsewhere. In addition to the foregoing, any other relevant information in respect of the Applicant or the Relevant Person's record in situations requiring trust and candour which may be useful for assessing whether it or he is a fit and proper person should also be disclosed.

#### Criminal record in Hong Kong

5. Information and criminal records of each of the Applicant and the Relevant Persons in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty in Hong Kong.

#### Criminal record in places outside Hong Kong

6. Information and criminal records of each of the Applicant and the Relevant Persons in places outside Hong Kong in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of it or him as mentioned in paragraph 5 above.

#### **Assessment**

7. In respect of the information supplied pursuant to paragraphs 2 to 6 above, the CA, in forming its view for submitting its recommendations to the CE in C, may have regard to the relevance of the event, the lapse of time since the event, the seriousness of the event, and the degree of his involvement in the event.