

**Guidance Note for licensees and
companies seeking to be licensees on information to be
provided in relation to restrictions on persons
not regarded as fit and proper under
section 21 of the Broadcasting Ordinance (Cap. 562)**

Communications Authority

Notes:

- A. This Guidance Note is issued by the Communications Authority pursuant to section 4(1) of the Broadcasting Ordinance (Cap. 562) as guidelines for the guidance of licensees and companies seeking to be licensees.
- B. This Guidance Note is issued subject to the provisions of the Broadcasting Ordinance, the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391), the Communications Authority Ordinance (Cap. 616) and all legislation applicable to the provision of a television programme service. 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, 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. An interested should make himself fully conversant with all relevant requirements in relation to his position and obtain independent professional advice.
- D. Save where the contrary intention appears expressly or the context otherwise requires, words and expressions used in this Guidance Note 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.
- E. The Communications Authority may vary, modify, replace or supplement any information contained in this Guidance Note by notice published in the Gazette.

Introduction

This Guidance Note is issued by the Communications Authority (“CA”) under section 4(1) of the Broadcasting Ordinance (Cap. 562) (“BO”).

2. This Note sets out the information and records that should be disclosed / attached to statutory declaration submitted by television programme service licensees and companies seeking to be licensees to enable the CA to assess compliance with the fit and proper person requirement under section 21 of the BO.

Background

Fit and Proper Person Requirement

3. Section 21(1) of the BO requires that a television programme service licensee and any person exercising control of the licensee shall be and remain a fit and proper person.

4. Pursuant to section 21(4) of the BO, in determining whether a licensee or person exercising control over the licensee is a fit and proper person, account shall be taken of –

- (a) the business record of the licensee or person;
- (b) the record of the licensee or person in situations requiring trust and candour;
- (c) the criminal record in Hong Kong of the licensee or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonestly; and
- (d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which, if done in Hong Kong would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in paragraph (c) above.

Statutory Declaration

5. Section 21(2) of the BO stipulates that a television programme service licensee shall, on or before the 1st of April of each year, provide information in the specified form to the CA to enable the CA to determine whether the licensee or a person exercising control of the licensee is a fit and proper

person.

6. Section 9(1) of the BO provides that applications for television programme service licences shall be submitted to the CA in specified form.

7. Section 41(1) of the BO empowers the CA to specify the form of any document required under the BO to be in the specified form as it thinks fit. Section 41(3)(a) provides that the CA may exercise the power in such a way as to include a statutory declaration to be made by the person completing the form and as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief.

8. The CA has specified the forms on statutory declaration for the purposes of section 21(2) of the BO and for the companies seeking to be licensees. The statutory declaration for a company seeking to be a domestic free/domestic pay/non-domestic/other licensable television programme service licensee (type A); statutory declaration for a company seeking to be an other licensable television programme service licensee (hotel); statutory declaration on persons regarded as fit and proper for a domestic free/domestic pay/nondomestic/other licensable television programme service licensee (type A); and statutory declaration on persons regarded as fit and proper for an other licensable television programme service licensee (hotel), are OFCA SF0008 (12), OFCA SF 0004 (12), OFCA SF0015 (12) and OFCA SF0016 (12) respectively.

The CA's Assessment of the "Fit and Proper" Requirement

9. To enable the CA to establish and verify the persons mentioned in the statutory declaration are fit and proper persons, it is required that the following information and records should be disclosed / attached to the statutory declaration –

Business record

10. Information concerning the business records of each of the licensee / company seeking to be a licensee and the persons exercising control of the licensee / company seeking to be a licensee ("Relevant Persons") should be attached. For licensees, information concerning the business records of the licensee and the Relevant Persons as at the date of declaration should be attached. For companies seeking to be licensees, information concerning the business records (for at least seven years immediately prior to the date of the statutory

declaration) of each of the company seeking to be a licensee and Relevant Persons should be attached. Such information includes, but not limited to, whether the licensee / company seeking to be a licensee or a Relevant Person –

- (a) is a director or principal officer of any corporation or a person responsible for the management of any Undertaking¹ other than the licensee / company seeking to be a licensee (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 licensee / company seeking to be a licensee;
- (c) has any obligation or liability to contribute to more than 50% of the losses, debts or expenses of, an Undertaking other than the licensee / company seeking to be a licensee;
- (d) is a voting controller² of more than 50% of the voting shares in any Undertaking other than the licensee / company seeking to be a licensee;
- (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 licensee / company seeking to be a licensee, 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 licensee /

¹ “Undertaking” means a body corporate, a partnership or an unincorporated association carrying on a trade, professional or business, whether for profit or not.

² “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.

- company seeking to be a licensee;
- (g) is, or has been, subject to liquidation, bankruptcy or other similar proceedings / orders; and
 - (h) any relevant information in addition to the above in respect of the business record of the licensee / company seeking to be a licensee or a Relevant Person which may be useful for assessing whether the licensee / company seeking to be a licensee or a Relevant Person is a fit and proper person.

Record in situations requiring trust and candour

11. Information and records concerning each of the licensee / company seeking to be a licensee 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 licensee / company seeking to be a licensee 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 licensee / company seeking to be a licensee 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

12. Information and criminal records of each of the licensee / company seeking to be a licensee 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

13. Information and criminal records of each of the licensee / company seeking to be a licensee 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 12 above.

Assessment

14. In respect of the information supplied pursuant to paragraphs 10 to 13 above, the CA, in establishing and verifying the fitness and properness of a person, 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.

15. This Guidance Note does not contain a definitive or an exhaustive list of factors with which the CA will assess whether a person is fit and proper. The CA may require further information from a licensee / company seeking to be a licensee and / or the relevant party concerned as the CA thinks fit.

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Communications Authority