

Public Consultation on Relaxation of Television and Radio Codes of Practice

Purpose

Pursuant to section 3 of the Broadcasting Ordinance (Cap. 562) (“BO”) and section 19 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) (“BMPO”), the Communications Authority (“CA”) may issue or revise codes of practice to provide practical guidance for TV and sound broadcasting licensees in respect of any requirement imposed on licensees or in respect of licence conditions. In response to suggestions received from broadcasting licensees, the CA is considering proposals to revise the provisions under the Television and Radio Codes of Practice on Programme and Advertising Standards regarding the following matters –

- (a) the substantiation requirements for real property advertising under the Generic Code of Practice on Television Advertising Standards (“TV Advertising Code”) and the Radio Code of Practice on Advertising Standards (“Radio Advertising Code”);
- (b) insertion of advertising material in programmes covering sports and live events under the TV Advertising Code; and
- (c) broadcast hours of mature (“M”) programmes under the Generic Code of Practice on Television Programme Standards (“TV Programme Code”).

Members of the public are invited to give written views and comments on these proposals.

Proposal 1: The Substantiation Requirements for Real Property Advertising

Background

2. The TV Advertising Code and the Radio Advertising Code (collectively the “Advertising Codes”) require that advertisements of real property should be subject to certain substantiation requirements¹ as set out in paragraphs 3 to 5 below.

¹ Paragraphs 36 and 37 of Chapter 6 of the TV Advertising Code and paragraphs 22 and 23 of the Radio Advertising Code.

3. For properties situated in Hong Kong, no advertisement offering for sale or to let any flat, shop, office or other unit of accommodation is allowed –

- (a) in respect of a completed building, unless the advertiser is able to substantiate that the proposed sale or letting does not constitute any breach of the conditions relating to such sale or letting as imposed in the lease conditions affecting the land on which such completed building stands;
- (b) in respect of an uncompleted building –
 - (i) unless the prior consent of the Director of Lands or any other Government authority relating to such sale or letting as required under the lease conditions affecting the land on which such uncompleted building stands has been given; or
 - (ii) unless the developer is able to produce evidence that his solicitor has deposited a statutory declaration under Rule 5C(3) of the Solicitors Practice Rules in regard to the sale and purchase of the affected real property in the relevant Land Registry where consent as mentioned in (b)(i) above is not required for the sale of units in such uncompleted building.

4. For properties situated outside Hong Kong, no advertisement offering for sale to Hong Kong residents any flat, shop, office or other unit of accommodation in a building or proposed building or any land or any sub-division, share of interest thereof or therein is allowed unless the developer or vendor is able to produce –

- (a) a letter from a firm of solicitors/attorneys registered and recognised in the country/region where the real property or land is situated confirming issues concerning the sale of the real property to non-residents²; and
- (b) a letter from a firm of solicitors who are qualified to practise in Hong Kong confirming that the firm of solicitors/attorneys referred to in (a) above is registered in the country/region where the real

² The issues requiring confirmation from the firm of solicitors/attorneys are –

- (a) all the requirements imposed by the local government relating to the development and sale of the real property or land to be advertised have been properly complied with by the developer or vendor;
- (b) the developer or vendor has obtained the requisite consent (if necessary under the local laws) from the local government for the sale of the real property or land to non-residents; and
- (c) housing loan is available to prospective purchasers from a licensed financial institution, either locally or elsewhere.

property or land is situated for the provision of legal advice within that jurisdiction.

The letter from the firm of solicitors/attorneys required under (a) includes confirmation that housing loan is available to prospective purchasers from a licensed financial institution.

5. Apart from the above substantiation requirements, all advertisements of real property broadcast on television and radio are subject to the provisions governing truthful presentation of any product or service³, and specific requirements on the descriptions in truthful presentation⁴.

6. It is noted that the sale and advertising of properties situated in and outside Hong Kong by licensed estate agents are already regulated under the Estate Agents Ordinance (“EAO”) (Cap. 511) and/or guidelines issued by the Estate Agents Authority (“EAA”). Given that licensed estate agents are already required to comply with the relevant statutes and regulatory requirements in relation to their business (governing both the sale and advertising of completed and uncompleted properties situated in and outside Hong Kong), there is a case to relax the existing requirements upon the relevant broadcasting licensees under the Advertising Codes with reliance on the existing regulatory requirements imposed by the EAA. Such relaxation of requirements will also avoid duplication of the regulatory effort. Meanwhile, the advertisements of first-hand residential properties situated in Hong Kong are regulated under the Residential Properties (First-hand Sales) Ordinance (Cap. 621) (“RPO”).

³ Under paragraph 9 of Chapter 3 of the TV Advertising Code, no advertisements may contain any descriptions, claims or illustrations which expressly or by implication depart from truth or mislead about the product or service advertised or about its suitability for the purpose recommended. Under paragraph 9(c) of the Radio Advertising Code, great care should be exercised by the licensee to prevent the presentation of false, misleading or deceptive advertising. No matter should be included which in any way departs from truth as to the composition, character or action of a product or its suitability for the purposes for which it is recommended.

⁴ Paragraph 39 of Chapter 6 of the TV Advertising Code and paragraph 25 of the Radio Advertising Code provide that the licensee must ascertain that any descriptions, demonstrations and claims of a specific nature with regard to real property advertisements have been adequately substantiated by the advertisers. In particular,

- (a) no claim may expressly or by implication misrepresent the location, size and value of the real property and the available transport facilities;
- (b) the lowest selling price of a real property should be stated as such and should not give an impression that it is the average price;
- (c) a price being offered to local purchasers only should be stated as such and should not give an impression that it is also being offered to non-local purchasers, if there is a significant difference in the prices; and
- (d) advertisements must not offer any furniture, home appliances or any other goods as “free gifts” unless such items are supplied at no cost or no extra cost to the recipient. The licensee needs to obtain a statement to this effect from the advertiser.

The licensee should have his responsibility under this paragraph discharged if he did not know and had no reason to suspect that the information contained in the advertisement or data supplied by the developer or advertiser were false or misleading and could not, with reasonable diligence, have ascertained that the claims were false or misleading.

Similar to the consideration above, there is likewise a case to exempt advertisements of first-hand residential properties situated in Hong Kong regulated under the RPO from the substantiation requirements under the Advertising Codes.

7. Regarding the requirement under the Advertising Codes for confirmation on the availability of housing loan to prospective purchasers of properties situated outside Hong Kong from a licensed financial institution, the CA notes that there is no similar requirement for the sale or advertising of property under the EAO or regulations under the purview of the EAA. It is considered that the requirement under the Advertising Codes should be removed.

Proposed Changes

8. Given paragraphs 6 and 7 above, the CA proposes that –

- (a) in respect of advertisements of real properties situated in Hong Kong **placed by estate agents licensed under the EAO** as well as advertisements of local first-hand residential properties **governed by the RPO**, the **substantiation requirements** under the Advertising Codes **should be exempted**; and
- (b) in respect of advertisements of real properties situated outside Hong Kong **placed by estate agents licensed under the EAO**, the **substantiation requirements should be exempted**, and the **requirement** for confirmation from a firm of solicitors/attorneys registered and recognised in the country/region where the real property or land is situated that **housing loan is available** to prospective purchasers from a licensed financial institution **should be removed**.

9. Except for estate agents licensed under the EAO and advertisements of first-hand residential properties regulated by the RPO as mentioned in paragraph 8 above, other parties⁵ placing real property advertisements which are not regulated by the RPO should continue to comply with the existing substantiation requirements under the Advertising Codes for protection of the interest of the public audience.

10. All real property advertisements, whether they are placed by licensed estate agents and/or for local residential properties for first-hand sale, should continue to comply with the requirements under the Advertising Codes

⁵ For example, vendors, developers and agents operating exclusively in relation to properties situated outside Hong Kong who are not required to be licensed under the EAO.

regarding truthful presentation, which generally apply to all kinds of products and services being advertised, as well as the specific provisions governing the descriptions in advertising of real property.

11. The CA considers that the proposed changes would help reduce the compliance burden on broadcasting licensees without compromising the interests of audience and potential buyers.

***Question 1:** Do you have any views on the proposal to exempt real property (both situated in and outside Hong Kong) advertisements placed by estate agents licensed under the EAO from the substantiation requirements under the Advertising Codes?*

***Question 2:** Do you have any views on the proposal to exempt advertisements of local residential properties for first-hand sale regulated under the RPO from the substantiation requirements under the Advertising Codes?*

***Question 3:** Do you have any views on the proposal to remove the requirement for confirmation from a firm of solicitors/attorneys registered and recognised in the country/region where the real property or land is situated that housing loan is available to prospective purchasers from a licensed financial institution?*

Applicability of the Proposal

12. The existing provisions on real property advertising apply to domestic free (“free TV”), domestic pay (“pay TV”) and other licensable television programme services⁶, as well as sound broadcasting services. The above proposal, if accepted, would accordingly apply to all these services.

Proposal 2: Insertion of Advertising Material in Programmes Covering Sports and Live Events

Background

13. At present, in-programme advertising material is allowed under the TV Advertising Code only through the following ways –

⁶ The other licensable television programme service licensees provide television programme services in hotel rooms in Hong Kong.

- (a) in-programme advertising material⁷ as approved by the CA upon application by TV licensees, which is subject to the advertising time limit pursuant to section 11(1) of Schedule 4 to the BO⁸. The CA has in the past approved applications for insertion of in-programme advertising material within sports programmes on free TV and on sports channels on pay TV, with conditions/restrictions on number, size, frequency, duration, etc. imposed on these programmes to protect viewing interests;
- (b) in-programme sponsor identifications for sponsored programme title/programme segment title/programme feature title⁹, or alongside sponsored material i.e. local date, time and weather, in-programme promotion and text messages within a travelogue or cuisine programme¹⁰, provided that the display of references to sponsors complies with basic ground rules and specific conditions on presentation, size, frequency and duration of the display; or
- (c) product/service sponsorship (also commonly referred to as “product placement”)¹¹.

For (b) and (c) above, such material are not counted towards the advertising time allowed for free TV¹².

14. It is noted that the broadcast of international sports events involves substantial fees to acquire the broadcasting right and there may be a need for the licensee concerned to enhance its revenue to recover the costs of broadcast of such events. The licensees may also have difficulties in inserting normal advertisements at regular intervals during such programmes without affecting viewing pleasure. In view of the above, there is a case to relax the conditions

⁷ Pursuant to paragraph 1 of Chapter 8 of the TV Advertising Code, unless permitted under Chapter 11 of the TV Programme Code or otherwise approved by the CA, advertising or non-programme material may be placed only at the beginning or end of a programme or in a natural break occurring therein.

⁸ Section 11(1) of Schedule 4 to the BO provides that the aggregate advertising time of a free TV service shall not exceed 10 minutes per clock hour between the period from 5 p.m. to 11 p.m. each day and at other times the aggregate advertising time shall not exceed 18% of the total time the service is provided in that period.

⁹ Paragraph 2B of Chapter 9 of the TV Advertising Code.

¹⁰ Paragraph 2C of Chapter 9 of the TV Advertising Code.

¹¹ Paragraph 2A of Chapter 9 of the TV Advertising Code.

¹² Paragraph 20B of Chapter 9 of the TV Advertising Code provides that the programme sponsorship (including product placement), sponsor identifications and references to sponsors permitted under that chapter will not count towards the aggregate advertising time allowed for free TV under section 11(1) of Schedule 4 to the BO.

for the insertion of in-programme advertising material in programmes of sports events and to obviate the need for the licensees to make applications for insertion of such material on a case-by-case basis with a view to encouraging free TV licensees to broadcast popular and prestigious sports events to benefit the general audience.

15. To strike a balance between facilitating advertising and protecting viewing interest, the CA considers that the proposed relaxation should only be applicable to the broadcast of programmes covering sports events during the actual proceeding of a match and associated events¹³. For programmes/segments tailor-made for promoting or providing updates of matches and commentaries made outside the actual proceeding of a match and associated events, placement of in-programme advertising material should continue to be subject to the approval of the CA on a case-by-case basis, and the display of such advertising material should continue to be counted towards the advertising time limit applicable to free TV. As regards pay TV, in addition to the proposed relaxation above, licensees are allowed to insert advertising material in sports channels in accordance with the approvals granted by the CA¹⁴, following the established policy of imposing less stringent requirements on pay TV vis-à-vis free TV.

Proposed Changes

Programmes Covering Sports Events

16. The CA proposes to relax the insertion of in-programme advertising material in programmes covering sports events, with reference to previous approvals mentioned in paragraph 13(a) above and the conditions/restrictions applicable to sponsor identifications in paragraph 13(b) above. It is suggested that –

- (a) in-programme advertising material for programmes covering sports events should be **exempted from being counted towards the aggregate advertising time limit applicable to free TV;**

¹³ Such associated events, including marching-in of players, overview of the stadium and spectators, other incidental leads-in before the match commences as well as celebration by winners and prize presentation, form an integral part of sports events programme. Commentary sessions and the like within a sports programme would not be included.

¹⁴ The CA has granted approvals for pay TV licensees to display sponsor logos, commercial names or trademarks within programmes on their sports channels subject to certain conditions/restrictions on size, duration and position of display.

- (b) the commercial logo¹⁵ appearing in the programme, including any sponsor identification or other commercial material as allowed under separate provisions in the TV Advertising Code, should be **limited to one at any one time**;
- (c) the size of the commercial logo should not exceed **5% of** the entire television **screen**;
- (d) the appearance of such commercial logo should **not be too frequent** to the extent that viewing pleasure would likely be adversely affected;
- (e) for a programme segment or programme without breaks of 7 minutes or more in duration, the **aggregate duration of such commercial logo appearing should not exceed 1 minute per every 7 minutes calculated on a pro-rata basis, with each appearance not exceeding 1 minute**. For a programme segment or mini-programme of less than 7 minutes in duration, the duration of such display of commercial logo within each programme segment or mini-programme should not exceed 1 minute in aggregate; and
- (f) such commercial logo should be **displayed alongside and/or next to** any clock or scoreboard or other information which is relevant to the sports events, **or near the margin** of the screen in case of showing of such information.

Question 4: *Do you have any views on the proposal to relax the restriction on in-programme advertising material in programmes covering sports events and to exempt such material from being counted towards the advertising time limit applicable to free TV?*

Question 5: *Do you have any views on the proposal that the relaxation for insertion of in-programme advertising material in programmes covering sports events should be applicable only to the actual proceeding of a match and associated events?*

Question 6: *Do you consider it appropriate to limit commercial logo appearing in programmes covering sports events to one at any one time, and to limit the appearance of such commercial logo to not exceeding 5% of the entire television screen? If not, do you have any other suggestion for the number and size of commercial logo for display?*

¹⁵ Commercial logos refer to sponsor's name, his house/trade/brand/product/service name or trademark/logo.

Question 7: *Do you have any views on the durations of commercial logos allowed in programmes covering sports events in paragraph 16(e) above? Do you have any other suggestions on the limits of the above durations?*

Question 8: *Do you consider it appropriate to limit the display of commercial logo in programmes covering sports events alongside and/or next to any clock or scoreboard or other information which is relevant to the sports events, or near the margin of the screen? Do you have any other suggestions on how such commercial logo should display on screen?*

Programmes Covering Non-Sports Live Events

17. Similar to sports events programmes, there is a case for relaxation for placement of in-programme advertising material in non-sports live events as inserting normal advertisements at regular intervals may affect viewing pleasure during such live events. However, as there could be a wide range of non-sports live events, and the programme types as well as the form and manner of the placement of the in-programme advertising material within these programmes could vary significantly, the CA considers that any such proposal to insert in-programme advertising material should be **subject to consideration by the CA on a case-by-case basis**¹⁶. The CA also proposes that in-programme advertising material in non-sports live events **be similarly exempted from being counted towards the advertising time limit applicable to free TV**.

Question 9: *Do you have any views on the proposal that the CA may, on a case-by-case basis, exempt in-programme advertising material in programmes covering non-sports live events from being counted towards the advertising time limit applicable to free TV?*

Question 10: *Do you have any other comments on the review of the restriction on insertion of in-programme advertising material in programmes covering sports and live events?*

Applicability of the Proposal

18. The existing provisions on in-programme advertising material generally apply to free TV, pay TV and other licensable television programme

¹⁶ The CA's approval will be made pursuant to paragraph 1 of Chapter 8 of the TV Advertising Code as mentioned in paragraph 13(a) above. The CA will consider the conditions/restrictions in terms of number, size, frequency, duration, etc. for each application on a case-by-case basis, and the conditions/restrictions set out in paragraph 16 above should not be taken as the yardstick.

services⁶. The proposal, if accepted, would accordingly apply to all these services¹⁷.

Proposal 3: Broadcast Hours of Mature (“M”) Programmes

Background

19. The TV Programme Code provides that nothing which is unsuitable for children should be shown between the hours of 4:00 p.m. and 8:30 p.m. (that is, “family viewing hours”). Programmes generally not suitable for viewing by children must be classified into Parental Guidance Recommended (家長指引) (“PG”) or Mature (成年觀眾) (“M”) categories. No PG programmes or M programmes should be included within family viewing hours. M programmes should only be shown between 11:30 p.m. and 6:00 a.m.¹⁸ In addition, programmes of classified category are required to broadcast an aural and visual advice on the classification of programmes and a description of the principal elements which have contributed to the classification before the start of the programme¹⁹.

Proposed Changes

20. To provide licensees with more flexibility in scheduling programmes and advertising material, the CA proposes that **the start of broadcast hours of M programmes be advanced to 11:00 p.m.** It is noted that TV viewership among youngsters after 11:00 p.m. is relatively low. Meanwhile, the requirement for advisory information (i.e. aural and visual advice on programme classification and description of the principal elements which have contributed to the classification) would enable viewers to make an informed choice about viewing by themselves and their children. Given the above, it is considered that the impact of advancing the start of broadcast hours by half an hour should not be significant. Separately, the TV Programme Code also adopts 11:30 p.m. as the time before which certain material of an adult nature (viz. use of language, sex and nudity, and violence) should not be

¹⁷ Pay TV and other licensable television programme services are not subject to the advertising time limit.

¹⁸ Paragraph 7 of Chapter 2 of the TV Programme Code.

¹⁹ Under paragraphs 6 and 7 of Chapter 8 of the TV Programme Code, aural and visual advice on the classification of programmes should be given before the start of the programme. In addition, a classification symbol as approved by the CA signifying the classified category of the programme should be superimposed on the screen. Under paragraph 8 of the same chapter, in addition to the programme classification advice, an aural and visual statement must be given at the start of the programme describing the principal elements which have contributed to the classification and indicating their intensity and/or frequency (e.g. “strong violence”, “frequent coarse language”, etc.).

shown²⁰. If the start of broadcast hours of M programmes is to be advanced to 11:00 p.m., the same should also be applied to the broadcast hours of material of an adult nature.

Question 11: *Do you have any views on the proposal to advance the start of broadcast hours of M programmes and material of an adult nature (viz. use of language, sex and nudity and violence) from 11:30 p.m. to 11:00 p.m.?*

Applicability of the Proposal

21. The existing provisions on M programmes and relevant provisions adopting the 11:30 p.m. time restriction apply to free TV services. The proposal, if accepted, would accordingly apply to free TV services only.

Invitation of Views and Comments

22. The CA would like to invite views and comments from members of the public on the proposals in this Consultation Document. Any person wishing to respond to this Consultation Document should submit in writing to the CA on or before **23 July 2020** through any of the following means –

By post: The Communications Authority
20/F, Wu Chung House
213 Queen's Road East
Wan Chai, Hong Kong
(Attn: Licence Administration Section 22 – Consultation on Codes Review)

By fax: 2507 2219
(Attn: Licence Administration Section 22 – Consultation on Codes Review)

By e-mail: consultation-cop@ofca.gov.hk

23. The CA and its Broadcast Codes of Practice Committee will consider all views and comments submitted in writing on or before the deadline,

²⁰ Under the TV Programme Code, the following materials can only be shown after 11:30 p.m. –

- (a) crude expressions with sexual connotations, more explicit adult jokes and other offensive language where they are used infrequently and are defensible in terms of context (paragraph 5 of Chapter 4);
- (b) depictions of intimate sexual behaviour where they are discreetly implied or simulated and must not be grossly offensive taking into consideration the likely composition of the audience for the time of day at which they are shown (paragraph 5 of Chapter 5); and
- (c) realistically depicted violence where the scenes are justifiable in context and not overly frequent (paragraph 8 of Chapter 6).

may publish all or part of such views and comments received, and disclose the identity of the source as deemed necessary. Any material in the submission considered as confidential information should be clearly marked. The CA would take such marking into account in making the decision as to whether or not to disclose such information.

24. For enquiries, please send e-mail to consultation-cop@ofca.gov.hk or call the Licence Administration Section 22 at 2961 6456 or 2961 6309.

25. For the avoidance of doubt, all the views expressed in this Consultation Document are for the purpose of discussion and consultation only. Nothing in this Consultation Document represents or constitutes any decision made by the CA. The consultation contemplated by this Consultation Document is without prejudice to the exercise of the powers by the CA under the Communications Authority Ordinance (Cap. 616), the BO, the BMPO or any subsidiary legislation.

Communications Authority
23 June 2020