

Report on Current Regulatory Issues and Needs in Mongolia

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Introduction

Media and Freedom of Expression Law Expert, Toby Mendel, undertook a mission to Ulaanbaatar, Mongolia, from 9-12 December 2009. The purpose of the mission was to discuss current media law developments taking place in Mongolia – including efforts to develop a press law and discussions around the need for a broadcasting law – and to assess ways in which AIBD could contribute to help ensure that these developments take place in a manner that is consistent with international standards.

Mendel met with a number of local stakeholders during his mission (a full list is provided in Annex 1) to discuss media regulation in Mongolia. The discussions covered a wide range of issues, although it was by no means a comprehensive assessment of media development or even regulatory needs. This Report provides an overview of the issues raised and how they are dealt with under international law. It also makes a number of recommendations for reform.

Everyone met agreed that the lack of a proper broadcasting law in the country is a serious problem, and that it is important to address this situation. The reasons for this, along with some of the key needs for such a law, are discussed below. A draft Broadcasting Law, adapted to the situation in Mongolia, is provided in Annex 2. It is hoped that this will help prompt more debate about this issue in the country, and eventually lead to the adoption of a local broadcasting law.

The Report addresses a number of issues relating to the public broadcaster, Mongolia National Broadcaster (MNB). Two main issues came up in this regard, both of which received much attention during the debates leading to the adoption in January 2005 of the Law on Public Radio and Television. First, the Law imposes very stringent limits on advertising by MNB, which is having problems raising sufficient funds to do its job in the public interest. It is, in particular, heavily dependent on a direct government subsidy, which impacts negatively on its independence, as well as stability. Second, there have been problems with the process of appointing the governing body of MNB, the National Council. In particular, the process is not clearly delineated in the Law, which has led to confusion and political interference in the appointments processes which have taken place so far.

Finally, this Report addresses a number of other issues relating to the environment for the media in Mongolia. These include a climate of politicisation of the media, as well as the need to reform a number of other laws which affect the ability of the media to operate freely, independently and effectively.

Issues

Broadcasting Law

Almost all democracies have specific laws governing broadcasting. These laws provide for the licensing of broadcasters, including who is responsible for this and what the rules are, as well as setting out certain minimum standards for broadcasters, for example relating to local content, programming practices and respect for copyright. The former is necessary to avoid chaos and interference in the airwaves, while the latter is justified on the basis that the airwaves are public property, the use of which is subject to certain minimum standards. Regulation is also necessary to ensure a robust democracy in which all groups in society are able to receive relevant information and to voice their concerns and interests.

Under international law, the principle of diversity in the media is central to the right to freedom of expression. The European Court of Human Rights, for example, has stated: “[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism.”¹ The Inter-American Court has held that freedom of expression requires that “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media.”²

As noted, there is no dedicated broadcasting law in Mongolia. There is a 2001 Law on Communications, which establishes the Communications Regulatory Commission (CRC) and addresses issues relating to the licensing of broadcasters. But this law does not address other issues specific to broadcast regulation. The need for a broadcasting law has been a matter of debate in Mongolia for many years, and there is widespread support for it among many stakeholders, although not necessarily agreement as to what it should contain.

There are two main reasons why Mongolia needs a broadcasting law. First, there are few rules governing the activities of private broadcasters, and some sort of regulatory framework is needed to ensure that broadcasters operate in the public

¹ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, para. 38.

² *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, 13 November 1985, Series A, No. 5, Inter-American Court of Human Rights, para. 34.

interest. Several stakeholders met during the mission complained of a lack of professionalism in the broadcast media, as well as the absence of any real standards against which to reference behaviour.

The problem of television stations airing text messages, which range from innocuous to offensive (for example, a male sending a text message asking for a woman to accompany him that night) to illegal (for example, there was a case of someone asking for a killer through a text message on television). Other examples of unethical behaviour, such as extorting bribes from politicians in exchange for not giving them bad coverage, were also mentioned. This latter highlights the fact that there is no obligation on the broadcast media in Mongolia to respect rules of fairness and balance, common in other countries. Concerns were also raised that the extent of local content in many media outlets in Mongolia is low, undermining the ability of the media to serve the information and voice needs of citizens.

Second, the few rules that do exist are often ignored in practice due to the absence of any system for implementation. Examples provided during the mission included advertising of alcohol products during the daytime, even though the rules only permit this after 10pm, and carrying extensive election campaign materials, even though the rules restrict this to 10% of overall programme time. In both cases, there is no real oversight body to enforce the rules.

Some media – such as MNB and TV9 – have their own internal councils to handle complaints from the public concerning programming issues. This is useful but, firstly, it is restricted to these broadcasters and, secondly, these systems may not be able to address more serious problems.

A few other concerns that are often addressed through broadcasting laws were raised. The existing legal framework does not affirm that the airwaves are a public resource, unlike in many other countries and as recognised under international law. There are no rules on concentration of media ownership and cross-media ownership, again unlike in many other countries. Under international law, preventing the emergence of media concentrations is part of the obligation of all States to promote diversity in the media. Although patterns of cross-ownership and concentration are just starting to emerge in Mongolia, this is something that is better addressed early on, since trying to deconstruct monopolies once they have emerged is extremely difficult.

Most, if not all, Mongolian broadcast media fail to respect international copyright rules, and there are also problems with broadcasters in other countries, as well as domestically, failing to respect copyright held by Mongolia broadcasters. There are different views on what would happen if copyright rules were strictly enforced in Mongolia. There is little doubt that Mongolian broadcasters cannot afford the very high fees that are charged for popular television shows, and even radio stations would have problems paying for all of the music they broadcast. On the other hand, it was suggested that if broadcasters use a little imagination, they can obtain good

content for very little and so continue to be successful. Regardless, there is no doubt that the current situation breaches international standards and leads to other problems.

Finally, some problems with the existing framework, established by the 2001 Communications Law, were noted. Under international law, bodies with regulatory powers over the media must be independent, in the sense of being protected against political or commercial interference. For example, in 2003, the special international mandates for the protection of freedom of expression – the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression³ – stated in a Joint Declaration:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.⁴

The CRC lacks the guarantees of independence required by international law, in part because its oversight body is composed largely of government employees appointed by the Prime Minister. Moreover, applicants for a broadcasting license need a letter of support from the Governor, a political figure. Furthermore, broadcasters need to apply yearly for two licences from the CRC (one to be allowed to broadcast and one to use a frequency). This is unnecessarily burdensome and also opens up an opportunity for regular political interference. In most countries, these licences are valid for at least five years and often longer.

The draft Broadcasting Law provided in Annex 2 addresses all of these concerns. A primary mechanism it introduces is that of a Broadcasting Council to oversee the various rules and systems it provides for. Various measures are put in place to protect the independence of the Council. The primary measure is that members are appointed by established bodies in society, such as the bar council, the university and the Buddhist establishment. This helps promote balance among the members, and independence from vested political or commercial interests. Other measures – such as a prohibition on individuals with strong political connections or interests in broadcasting, and protection of tenure – are also provided for.

The Council is tasked with developing a programming code for broadcasters governing various aspects of programming practice, such as the issue of fairness and balance, noted above, protection of children, treatment of grief and suffering, accuracy and so on. These primary categories are listed in the law, but the Council is responsible for developing a detailed code to govern them, in consultation with broadcasters and other interested stakeholders.

³ A fourth mandate, at the African Commission, was appointed in 2004.

⁴ Adopted 18 December 2003.

The draft law sets out specific rules on a number of other programming matters, such as local content and copyright, as well as rules on media concentration. It also proposes some revisions to the Communications Law, to address the concerns noted above, namely regarding the independence of the CRC and the need for annual licensing.

The Council has the power to enforce the various rules set out in the law. Anyone may complain to the Council about a breach of the programming code and the Council is tasked with processing such complaints. The Council also has the power to investigate matters *suo moto*, or of its own motion. Breach of the code, or of the other rules contained in the law, will usually lead to a warning, as the purpose of the code is to set standards, not to punish the media. However, more serious or repeated breaches may lead to more severe sanctions, such as a requirement to broadcast a statement by the Council, fines or even a recommendation to CRC to suspend or revoke a licence.

Instead of making specific recommendations relating to this issue here, it is recommended that serious consideration be given to the ideas contained in the attached draft Broadcasting Law.

Mongolia National Broadcaster

As noted above, two key concerns were raised in relation to the Mongolia National Broadcaster, namely about its funding base and its independence. It is well-established under international law that States must provide sufficient funding to public service broadcasters to enable them to meet their public service obligations, and in a way that is protected against interference.

For example, the special international mandates for the protection of freedom of expression – the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information – adopted a Joint Declaration in 2007 on Diversity in Broadcasting,⁵ which states:

Innovative funding mechanisms for public service broadcasting should be explored which are sufficient to enable it to deliver its public service mandate, which are guaranteed in advance on a multi-year basis, and which are indexed against inflation.

The reasons for this are reasonably clear. Public broadcasters are given special mandates to operate in the public interest – Articles 8 and 9 of the 2005 Mongolia

⁵ Adopted on 12 December 2007.

Law on Public Radio and Television set out the mandate of MNB – and funding is required to enable them to fulfil this mandate. This is recognised in the 2005 Law, which provides, at Article 7.1, that the State will provide sufficient funding to enable MNB to meet its programming mandate.

At present, MNB has three main sources of funding, the television licence fee, sponsorship and a direct grant from the government. There are problems with all three and these go to both the sufficiency and the independence of that funding.

The level of the licence fee is set by government (see Article 18.2 of the 2005 Law), which means that it is not as insulated from political interference as it could be. It would be preferable for the level of this fee to be set by parliament, although this is still potentially problematical. Furthermore, the level of the licence fee is relatively low, leaving MNB dependent on other sources of funding. Increasing these fees is never popular, but they provide a relatively independent and stable source of funding for public broadcasters, and so this should be considered.

Equally serious is the fact that for most of the country, the fee is still collected by MNB, through agents, and that collection rates are still low. Moves are underway to shift the system of collection to power companies, through the electricity bill, and this is already happening in some areas, mostly for apartments and homes in Ulaanbaatar. Progress on this front is hampered by the fact that there are numerous power companies in different parts of the country, and that arrangements have to be concluded with each one. There are obvious efficiencies to having power companies collect this fee, rather than MNB running a parallel collection system.

The 2005 Law also imposes extraordinarily stringent restrictions on advertising by MNB. It limits overall advertising on MNB to two percent of overall broadcast time (Article 13.3) and this was further reduced by Presidential Decree. MNB is allowed to carry sponsored programmes, but the scope of this is necessarily limited as compared to advertising income, since it only serves to help companies increase the profile of their brand, and not to sell products.

Around the world, only a few public service broadcasters, all in rich countries with long and strong traditions of public broadcasting – such as the UK, Japan and Denmark – are prohibited altogether from carrying commercial advertisements, and all of these broadcasters benefit from very generous licence fees. Otherwise, public broadcasters around the world carry advertisements. In some countries, the overall amount of such advertising is limited. In Canada, for example, the public broadcaster is limited to raising 25 percent of its funding from advertisements. In no country that the author is aware of, are the limitations on advertisements as stringent as they are in Mongolia.

At this point, however, it is may be too late to change this situation, due to the patterns that have developed and the dependency of commercial broadcasters on an advertising market that no longer includes MNB.

The third source of funding for MNB is a direct government grant. This is highly problematical in terms of independence, adequacy and stability, particularly as MNB has to negotiate this grant from the government on an annual basis. Indeed, in most respects, a direct government grant is the worst form of funding for a public broadcaster. At the same time, MNB is heavily dependent on this funding, and so the only solution is to explore ways to enhance its independence, adequacy and stability.

Proposals have been mooted of the idea of guaranteeing MNB a specific percentage of the overall government budget. This is not an approach that has been adopted in other countries. However, in Thailand, the new public service broadcaster has been granted a 1.5 percent levy on taxes collected on liquor and tobacco, up to maximum of 2 billion Bhat, with the maximum to be revisited after three years. This provides a very stable and largely adequate source of funding which is strongly insulated against government control. Other options along these lines might include a tax on mobile phones or any other relatively stable and rich source of revenue.

If only less radical reforms are being contemplated, ways to minimise the problems with the current form of funding could be explored. Other players could include be involved in setting the level of funding, guarantees against reductions in the funding could be introduced, and there could be a move to multi-year allocations, in advance (for example, three year allocations agreed one year before the existing funding agreement expires).

Just as international law is clear on the need for adequate funding for public broadcasters, so is it clear on the need for them to be protected against political interference. Several Declarations adopted under the auspices of UNESCO, for example, stress this. The 1997 *Declaration of Sofia*⁶ notes the need for State-owned broadcasters to be transformed into proper public service broadcasters with guaranteed editorial independence and independent supervisory bodies. The 1992 *Declaration of Alma Ata*⁷ also calls on States to, “encourage the development of journalistically independent public service broadcasting in place of existing State-controlled broadcasting structures”.

The process of appointing MNB’s governing body, the National Council, as set out in the 2005 Law, is unique. It provides for the appointment of 15 members – four by the President, seven by the State Great Hural and four by the government – from among individuals proposed by civil society (Article 21). Although potentially a good approach, the fact that civil society is largely undefined and a wide open group has led to serious problems and a board that is not necessarily independent.

⁶ Adopted 13 September 1997. Endorsed by the General Conference at its 29th session, 12 November 1997, Resolution 35. Clause 7.

⁷ Adopted 9 October 1992. Clause 5.

There are a number of different approaches to appointing members of the governing bodies of public broadcasters around the world. Some of them do involve nominations by civil society, but usually by established civil society groups – such as a council of human rights NGOs or federation of development groups. Leaving this important matter to individual civil society groups is likely to lead to manipulation of the sort that has been witnessed in Mongolia.

Another approach is having an open appointments process overseen by parliament, with an opportunity for the public to make representations and the publication of a shortlist, again with an opportunity for public comment. In some countries, an appointments committee, made up of certain leading figures in society (such as the chair of the bar council, the dean of the journalism faculty at the university, a leading religious personality and so on), makes nominations and parliament formally appoints members. In other countries, these leading figures are directly responsible for appointing members.

Recommendations:

- Consideration should be given to increasing the television licence fee for MNB.
- Support should be provided as necessary to ensure that power companies make appropriate agreements with MNB regarding the collection of the television licence fee.
- Consideration should be given to increasing the amount of advertising that MNB is allowed to carry, while still subjecting it to overall limits. As an alternative, consideration should be given to requiring private broadcasters to provide MNB with some portion of their advertising revenues, as a way of compensating MNB for not competing with them for advertising.
- Consideration should be given to allocating MNB with a set percentage, up to a specified maximum, of either the national budget, or some other revenue source (like mobile phone charges or tax on luxury items).
- As an alternative to the above, some or all of the measures noted above could be introduced to increase the independence and stability of the government grant to MNB.
- Steps should be taken to enhance the independence of the MNB National Council.

Other Issues

A number of other issues were raised during the mission. Several stakeholders talked about various ways in which various authorities were undermining the independence of the media. It was repeatedly pointed out that many media outlets are owned by politicians and that these outlets serve the interests of their owners, rather than the public interest. This is so widespread that some stakeholders even talked about a problem of a conflict of interest in parliament, whereby voting might be influenced by ownership rather than serving the public interest.

This problem has been observed in other countries and it can have a seriously negative impact on the role of the media in supporting democracy. It is, however, extremely difficult to address once it is already in place.

Another problem mentioned was that of politicians engaging in harsh attacks on media which criticise them, even to the point of calling for their licences to be revoked. It is, of course, open to politicians to respond to criticism in the media and this is part of the give and take of politics and democracy. At the same time, it is incumbent upon politicians to respect certain boundaries in their criticism, given the influence they wield. Calling for media to have their licences revoked is certainly going too far. Again, this is a difficult problem to address and the real solution lies in politicians acting responsibly and others criticising them when they fail to.

Several stakeholders mentioned various problems arising from the relationship between the media and the police. There is concern about the police undertaking raids on media houses for purposes of discovering the sources of stories carried in the media. This is contrary to international law, which clearly guarantees the right of journalists to protect their sources. For example, Principle 6 of Recommendation No. R(2000)7 of the Committee of Ministers of the Council of Europe on the Right of Journalists not to Disclose Their Sources of Information,⁸ states that the authorities should not, with a view to finding a source, execute “search or seizure orders or actions concerning the private or business premises, belongings or correspondence of journalists or their employers or personal data related to their professional work”.

Concern was also expressed about police manipulation of the media regarding coverage of demonstrations. For example, the police have apparently encouraged media to sign agreements with them to the effect that if the media carry the police versions of events, then the police will in turn protect them (or not harass them). This is clearly illegitimate.

Several stakeholders also highlighted the need for various law reform measures. One obvious example, flowing from the above, is the need for a law providing for clear protection for confidential media sources. These laws are found in all democracies and are essential to prevent the sort of police action noted above.

The need for a right to information, or freedom of information law in Mongolia was highlighted by many stakeholders. International guarantees of the right to information require States to adopt laws giving effect to the right to access information held by public bodies, as part of the wider right to freedom of expression. There have been ongoing discussions in Mongolia about this for a long time, but no law has so far been adopted. Furthermore, the existing secrecy law is vastly overbroad so that a lack of transparency in government operations is a

⁸ Adopted on 8 March 2000.

serious problem. A particular openness issue that was highlighted is the need for greater transparency around media ownership, with a view to monitoring and addressing the media concentrations that are starting to emerge.

Finally, several stakeholders highlighted the need for defamation law reform. International law calls for the repeal of criminal defamation laws, which exert an unacceptable chilling effect on freedom of expression, and for their replacement by civil defamation laws. These latter should provide for adequate defences, in particular to protect reasonable criticism of officials and comment on matters of public interest.

Recommendations:

- Politicians who own media outlets should refrain from skewing the editorial line of those outlets for political purposes. Consideration should be given to concluding agreements with the editorial team as a way of bolstering their independence.
- Politicians should also refrain from engaging in unduly harsh attacks on media outlets.
- A law providing for a right to protect the confidentiality of sources of information for media outlets and journalists should be adopted. In the meantime, the police should refrain from abusing their power to search media outlets to obtain information about these sources.
- The police should also refrain from abusing their powers to try to get media outlets to report in ways which are less critical of them.
- A comprehensive right to information law should be adopted, recognising the right to access information held by public bodies.
- Criminal defamation should be abolished and the civil defamation rules should be amended, in particular to provide for a defence of reasonable publication.

People Met: 9-12 December 2009

1. Chilaajav, Khaidav, Chairman, Mongolian National Broadcaster
2. Enkhbat, Tsend, General Director, 9TV
3. Ider-Uugan, Ganbat, Director of International Relations, Mongolian National Broadcaster
4. Munkhmandakh, M., Executive Director, Press Institute of Mongolia
5. Munkhsoyol, Baatarjav, Manager of Economic Policy, Open Society Forum
6. Naranbaatar, Director, Mongolian National Broadcaster
7. Naranjargal, Khashkhuu, President, Globe International
8. Oyunday, Tsagaan, Deputy Director of NMPRTV, Director of Public Television, Mongolian National Broadcaster
9. Oyungerel, Tseveddamba, Advisor to the President of Mongolia on Human Rights and Public Participation

Draft Broadcasting Law

THE BROADCASTING LAW

Approved [ADD DATE] Ulaanbaatar City

CHAPTER ONE

General Provisions

Article 1. Purpose of the Law

The purpose of this Law is to provide for the regulation of broadcasting in the public interest, including through the establishment of an Independent Broadcasting Council.

Article 2. Legislation on Broadcasting

2.1. The Legislation on Broadcasting shall consist of the Constitution of Mongolia, this Law, the Law on Communications and other legislative acts and regulations consistent with those laws.

2.2. If the provisions of any international treaties which Mongolia has ratified are inconsistent with those in this Law, then the provisions of the international treaty shall prevail.

Article 3. Definitions in this Law

3.1. In this Law, the following terms shall be interpreted as follows:

- 3.1.1. “advertisement” means any public announcement intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea or to bring about some other effect desired by the advertiser, for which broadcasting time has been given up to the advertiser for remuneration or similar consideration;
- 3.1.2. “Advertising Code” means a set of standards governing broadcast content which constitutes an advertisement;
- 3.1.3. “Annual Report” is the report required to be prepared by the Council pursuant to Article 20.
- 3.1.4. “basic service” means the minimum package of television and/or radio channels which subscribers to a satellite or cable service are required to purchase;

- 3.1.5. “broadcasting” means the dissemination of broadcast programming, including through terrestrial transmitters, cable, satellite or any other medium, for public consumption and for simultaneous reception, whether or not by subscription, through a radio and/or television broadcast receiver or other related electronic equipment, but does not include communications internal to a private organisation or government body, such as closed circuit television or internal address systems, or communications disseminated through the Internet;
- 3.1.6. “broadcaster” means an organisation that engages in broadcasting, be it a public service broadcaster, a commercial broadcaster or a community broadcaster;
- 3.1.7. “Broadcasting Frequency Plan” means a plan for the allocation of the broadcasting frequency spectrum among the various uses such as television and radio, national and local licences, and public, commercial and community broadcasters;
- 3.1.8. “broadcasting frequency spectrum” means that part of the electromagnetic wave spectrum which is part of the public domain and which may from time to time be assigned to be used for broadcasting uses, but does not include other frequencies, such as those used for telecommunications purposes;
- 3.1.9. “broadcasting service” means a defined service which consists in the broadcasting of audiovisual or sound material to the public, sections of the public or subscribers to such service;
- 3.1.10. “commercial broadcaster” means a broadcasting organisation that is neither a public broadcaster nor a community broadcaster and which is operated on a for-profit basis;
- 3.1.11. “Commission” or “Communications Regulatory Commission” means the Commission established under the Law on Communications, 2001, to issue communications licences and otherwise regulate communications;
- 3.1.12. “community broadcaster” means a broadcaster which is controlled by a non-profit entity and operates on a non-profit basis, carries programming serving a particular community including by reflecting the special interests and needs of that community, and is managed and operated primarily by members of that community;
- 3.1.13. “Council” means the Independent Broadcasting Council established by Article 6;
- 3.1.14. “free-to-air” means terrestrial broadcasting which is provided without a direct charge for reception to the recipient;
- 3.1.15. “independent producer” means an individual or company who produces programmes for radio or television and who is not controlled by any individual broadcaster;
- 3.1.16. “licence” means a licence issued by the Commission for purposes of providing a broadcasting service to the public;
- 3.1.17. “licensee” means an individual or organisation who has been granted a licence to provide a broadcasting service to the public;
- 3.1.18. “local content” means broadcast material produced by a licensee, by a permanent resident of Mongolia or by a company the majority of whose

shareholdings are held by permanent residents, or a co-production in which the above mentioned persons have at least a 50% financial interest but does not include advertisements;

- 3.1.19. “Minister” means the minister in charge of the ministry responsible for broadcasting;
- 3.1.20. “Ministry” means the ministry responsible for broadcasting;
- 3.1.21. “Programme Code” means a set of standards relating to general broadcasting content and practices;
- 3.1.22. “Programme Schedule” means a plan indicating the general types of programmes proposed to be broadcast, along with the proportion of broadcasting time to be devoted to such programmes and to advertising, and the target audience, but for cable or satellite services the Programme Schedule means a description of the basic service and of all other services provided;
- 3.1.23. “public broadcaster” means a broadcaster subject to public ownership which has a mandate to broadcast in the public interest;
- 3.1.24. “satellite broadcasting” means the dissemination of a broadcasting service by means of satellite transmission;
- 3.1.25. “sponsorship” means the participation of a natural or legal person who is not engaged in broadcasting activities or the production of audiovisual works in the direct or indirect financing of a programme with a view to promoting the name, trademark or image of that person;
- 3.1.26. “subscriber” means a person who receives a broadcasting service at a specific location in exchange for a prescribed fee, without further transmitting that service to any other person; and
- 3.1.27. “terrestrial broadcasting” means the dissemination of a broadcasting service via the electromagnetic wave spectrum for direct reception by homes or businesses without needing equipment other than radio or television equipment.

Article 4. Name of this Law

- 4.1. This Law may be cited as the Mongolian Broadcasting Law 2010.
- 4.2. This Law shall come into operation on such date as the Minister may, by notification published in the *Official Gazette*, appoint, provided that in the absence of such notification, this Law shall come into effect six months after it has been passed by the Great State Hural.

CHAPTER TWO

Broadcasting Policy

Article 5: Broadcasting Policy

- 5.1. The airwaves are a public resource which shall be used to promote the public interest and the right of the public to a diverse range of information and ideas.
- 5.2. Broadcast regulation shall seek to promote the following policy goals:
 - 5.2.1. to uphold the Constitution of Mongolia, as well as human rights, democracy and the rule of law;
 - 5.2.2. to protect and promote freedom of expression;
 - 5.2.3. to encourage creative national broadcasting;
 - 5.2.4. to promote a diverse range of quality broadcasting services, including by licensing all three types of broadcaster, namely public, commercial and community;
 - 5.2.5. to enhance the public's right to know through promoting pluralism and a wide variety of programming on matters of public interest;
 - 5.2.6. to prevent monopolisation of ownership and promote fair competition in the broadcasting sector;
 - 5.2.7. to promote accurate, informative and balanced programming;
 - 5.2.8. to encourage the provision of quality educational programming;
 - 5.2.9. to promote the widest possible geographic distribution of broadcasting services;
 - 5.2.10. to develop and promote broadcasting reflecting national and regional culture and identity;
 - 5.2.11. to promote the appropriate use of new technology; and
 - 5.2.12. to enhance the overall financial and competitive viability of broadcasting in Mongolia.

CHAPTER THREE

The Independent Broadcasting Council

Article 6: Establishment of the Council

- 6.1. The Independent Broadcasting Council is hereby established as a body corporate having perpetual succession and a common seal which may:
 - 6.1.1. sue and be sued;
 - 6.1.2. purchase, acquire, hold or alienate real and personal property; and
 - 6.1.3. do or perform such other things as bodies corporate may by law do or perform.
- 6.2. The Council is an independent institution which is accountable to the people through the Great State Hural.

- 6.3. The Council shall enjoy operational and administrative autonomy from any other person or entity, except as specifically provided for in this or any other law. This autonomy of the Council shall be respected at all times and no person or entity shall seek to influence its members or staff in the discharge of their duties, or to interfere with its activities, except in the discharge of a specific authority or duty provided for by law.

Article 7: Appointment of Members

- 7.1. The Council shall consist of five (5) Members, all of whom shall have some expertise, by virtue of their education or experience, in the areas of broadcasting, policy, law, technology, journalism and/or business and who shall be known for their high moral standards, integrity, impartiality and competence.
- 7.2. Each of the following bodies shall nominate one member to sit on the Council:
- 7.2.1. The Bar Association.
 - 7.2.2. The National University of Mongolia.
 - 7.2.3. The Press Institute.
 - 7.2.4. The Gandantegchinlen Khiid Monastery.
 - 7.2.5. Human rights NGOs having been registered and active for at least three years.

[NOTE: THIS IS JUST AN INDICATIVE LIST WHICH SHOULD BE FINALISED TAKING INTO ACCOUNT THE LOCAL SITUATION]

- 7.3. The bodies listed in sub-article 7.2 shall publish the name of their proposed candidate and the public shall be given an opportunity to make representations concerning that candidate prior to appointment.
- 7.4. Members shall be appointed by the Prime Minister, provided that if the Prime Minister rejects any member proposed by the bodies listed in sub-article 7.2, he or she shall provide reasons for this and the proposing body shall have the right to nominate another member.
- 7.5. All Members of the Council shall be independent and impartial in the exercise of their functions, shall represent the public interest and not the body that nominated them or any other particular interest, and shall, at all times, seek to promote broadcasting policy as set out in Article 5.
- 7.6. Members of the Council must not actively engage in politics.

Article 8: Disqualifications of Members

- 8.1. No one shall be appointed as a Member of the Council if he or she:
- 8.1.1. is not a citizen of Mongolia;

- 8.1.2. is, or has been within the last two years, employed in the civil service or any other branch of government;
 - 8.1.3. holds, or has held within the last two years, an elected position in the Great State Hural or in any local government, or holds an official office in, or is an employee of, a political party;
 - 8.1.4. holds, directly or indirectly, significant financial interests in telecommunications or broadcasting;
 - 8.1.5. is an undischarged bankrupt or insolvent; or
 - 8.1.6. has been convicted of a violent crime and/or a crime of moral turpitude unless five years has passed since the sentence was discharged.
- 8.2. Where, by virtue of a will, gift or otherwise, a Member obtains an interest noted in sub-article 8.1.4, he or she shall, within a period of two (2) months, either dispose of the interest or resign from his or her position as Member.
- 8.3. In any case where sub-article 8.2 becomes applicable to a Member, he or she shall not take part in any decision-making process of the Council until he or she has disposed of the relevant interest.

Article 9: Tenure and Removal

- 9.1. Members shall serve on the Council for five (5) years and may be re-appointed to serve a maximum of two terms, provided that the Minister shall identify two (2) individuals from among the original group of appointees whose initial term of office shall be just two (2) years.
- 9.2. A Member may be removed from office only where that individual:
- 9.2.1. becomes, by virtue of sub-article 8.1, ineligible for appointment to the Council, subject to the provisions of sub-article 8.2;
 - 9.2.2. commits a serious violation of his or her responsibilities under this Law, including by failing to promote broadcasting policy as set out in Article 5, by engaging in corrupt practices, or for gross negligence of duty;
 - 9.2.3. is no longer able to perform his or her duties effectively, whether due to physical or mental disability or any other cause; or
 - 9.2.4. fails, without valid excuse, to attend three consecutive meetings of the Council.
- 9.3. The Prime Minister may remove a Member from office but only upon receiving the agreement of either the body which nominated that Member or the other four Members.
- 9.4. No Member shall be removed from office without first being given an opportunity to be heard.

- 9.5. Any Member who is removed from office pursuant to this Article shall be provided with written reasons for his or her removal and shall have the right to appeal his or her removal to the courts.
- 9.6. A Member may at any time resign his or her office by giving notice in writing to the Minister.
- 9.7. Where a Member is removed from office, or a Member resigns or dies, that Member shall be duly replaced under the same conditions, and in the same manner, as he or she was appointed.

Article 10: Remuneration of Members

- 10.1. Members of the Council shall be compensated for actual expenses, including travel, accommodation and subsistence, incurred as a result of their duties as members of the Council.
- 10.2. Members of the Council shall receive compensation on an equal basis for attendance at Council meetings, based on a schedule which has been agreed in advance and approved as part of the process for agreeing the Council's budget.

Article 11: Rules of Procedure

- 11.1. The Council shall appoint its own Chairperson and Vice-Chairperson from among its Members.
- 11.2. The Council shall, subject to this Law, adopt such rules, in relation to meetings and other matters, as it considers necessary and appropriate to enable it to perform its functions and all business shall be conducted in accordance with such rules.
- 11.3. The Council shall meet as often as it deems necessary and shall, in any case, meet at least once in every two months.
- 11.4. Meetings of the Council shall be convened by the Chairperson, or in his or her absence the Vice-Chairperson, provided that it shall be mandatory to convene a meeting within seven days of a request for such a meeting by not less than two Members.
- 11.5. The Chairperson or, in his or her absence the Vice-Chairperson, shall preside at all meetings of the Council.
- 11.6. The quorum for meetings of the Council shall be three members.
- 11.7. A decision at a meeting of the Council shall be adopted by a simple majority of the Members present and voting except as otherwise decided by the Council. In

case of an equality of votes, the Member presiding at the meeting shall have a casting vote in addition to his or her original vote.

- 11.8. Minutes shall be kept in proper form of each meeting of the Council and shall be confirmed by the Council at the next meeting and signed by the Member presiding at the meeting.

Article 12: Disclosure of Interest

- 12.1. A Member of the Council who has, directly or indirectly, an interest in a matter under discussion by the Council shall disclose that fact and the nature of his or her interest to the Council.
- 12.2. A disclosure under sub-article 12.1 shall be recorded in the minutes of the Council or committee.
- 12.3. After a disclosure under sub-article 12.1, the Member in question:
- 12.3.1. shall not take part in nor be present during any discussion, deliberation or decision of the Council; but
 - 12.3.2. may be counted for the purpose of forming a quorum of the Council.

CHAPTER FOUR

Functions, Duties and Powers of the Council

Article 13: Functions of the Council

- 13.1. The Council is charged with the oversight of broadcasting, consistent with constitutional and international guarantees of freedom of expression, and with promoting the public interest in the broadcasting sector.
- 13.2. The functions of the Council are:
- 13.2.1. to oversee the development of the Advertising Code and Programme Code;
 - 13.2.2. to oversee the implementation of the Advertising Code and Programme Code;
 - and
 - 13.2.3. to ensure that the other rules provided for in this Law are respected by licensees.
- 13.3. In discharging its responsibilities, the Council shall endeavour to promote broadcasting policy as set out in Article 5.

Article 14: Powers of the Council

14.1. The Council shall have all such powers as may be reasonably necessary for the purpose of carrying out its functions under this Law and of regulating its own procedure.

Article 15: Investigations

15.1. The Council shall have the power to conduct investigations and hold hearings as necessary to discharge its responsibilities under this Law.

Article 16: Appointment of Secretariat

16.1. The Council shall, in accordance with the budget, establish a Secretariat, along with such staff as it considers necessary and appropriate to enable it to perform its functions.

16.2. The Secretariat shall be responsible to the Council for the proper administration and management of the functions of the Council in accordance with policy laid down by the Council.

16.3. Employees of the Council shall be independent and impartial in the exercise of their functions and shall, at all times, seek to promote broadcasting policy as set out in Article 5.

Article 17: Limitation of Liability

17.1. No proceedings, civil or criminal, shall lie against the Council for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it did not act in good faith or with reasonable care.

17.2. No proceedings, civil or criminal, shall lie against any member, officer or employee of the Council for anything done or said, or any failure to do or say anything in the course of the discharge of his or her duties as a member, officer or employee of the Council, unless it is shown that the person did not act in good faith or with reasonable care.

CHAPTER FIVE

Funding and Accountability of Council

Article 18: Fiscal Year

18.1. The Council's fiscal year shall be from the 1st day of January to the 31st day of December of each year.

Article 19: Funding for the Council

19.1. The Council may receive funds from the following sources:

- 19.1.1. grants from the general budget;
- 19.1.2. grants from local or foreign bodies;
- 19.1.3. loans; and
- 19.1.4. moneys received from other sources.

19.2. Not less than three months prior to the end of each fiscal year, the Council shall submit to the Great State Hural, through the Minister, a budget statement for the following fiscal year, including any operating funds requested by the Council from the general budget.

19.3. The Great State Hural may approve or modify the Council's proposed budget, provided that it shall not reduce the funds available to the Council by more than five (5) percent from the previous year.

19.4. Upon approval of the Council's budget by the Great State Hural, the Minister of Finance shall include that budget in the general budget and make payments to the Council for its operations on a quarterly basis in advance.

19.5. Notwithstanding any contrary provision in any other law, the Council shall not be liable to pay income tax on any property held or received, or on any income earned and the Council is hereby exempted from the payment of such tax.

Article 20: Audit and Annual Report

20.1. Within four (4) months after the end of each fiscal year the Council shall prepare a report of its activities during that fiscal year (the Annual Report).

20.2. The Council shall maintain accounts of all monies received and spent by it and shall, within four (4) months after the end of each fiscal year, commission an audited statement of accounts, prepared in accordance with generally accepted accounting practice.

20.3. The Council shall submit copies of the Annual Report and audited accounts to the Minister, who shall cause them to be laid before the Great State Hural as soon as practicable.

20.4. The Annual Report shall include the following information:

- 20.4.1. a copy of the auditor's report;

- 20.4.2. a statement of financial performance and of cash flows;
 - 20.4.3. the budget for the current fiscal year;
 - 20.4.4. a description of the activities of the Council during the previous year;
 - 20.4.5. information relating to complaints and research;
 - 20.4.6. a description of any sanctions applied by the Council and the decisions relating thereto;
 - 20.4.7. an analysis of the extent to which the Council has met its objectives of the previous year;
 - 20.4.8. the Council's objectives for the current year; and
 - 20.4.9. any recommendations in the area of broadcasting.
- 20.5. The Council shall publish and distribute widely the Annual Report, along with its audited accounts, including through its website.

CHAPTER SIX

Frequency Planning

Article 21: Broadcasting Frequency Plan

- 21.1. The Communications Regulatory Commission shall consult with the Council and other key stakeholders to determine which part of the electromagnetic wave spectrum is from time to time assigned to be used for broadcasting uses.
- 21.2. The Commission shall, in close consultation with the Council, as well as with interested stakeholders and the Government, develop and from time to time revise a Broadcasting Frequency Plan, which shall include a locator map, in order to promote the optimal use of these frequencies and the widest possible broadcasting diversity.
- 21.3. The Broadcasting Frequency Plan shall ensure that, in accordance with broadcasting policy as set out in Article 5, the broadcasting frequency spectrum is shared equitably and in the public interest among the three types of broadcasters – public, commercial and community – as well as broadcasters of different geographic reach.
- 21.4. The Broadcasting Frequency Plan, along with any revisions to it, shall be published and disseminated widely.
- 21.5. The Broadcasting Frequency Plan may reserve certain frequencies for future use for specific categories of broadcasters in order to ensure diversity and equitable access to frequencies over time.

CHAPTER SEVEN

Licensing by the Commission

Article 22: New Licences

- 22.1. The Commission shall, from time to time, determine whether it is in the public interest, based on the Broadcasting Frequency Plan, broadcasting policy, interest by potential broadcasters and market capacity, to issue a competitive tender with a view to issuing an additional licence(s) to provide a broadcasting service(s).
- 22.2. The Commission may also, in lower population density areas, receive applications, in the absence of a call for applications, to provide a broadcasting service.
- 22.3. The Commission shall adopt regulations in advance setting out the process to be followed to apply for a licence, along with a description of what information must be provided and a published schedule of the annual licence fees.
- 22.4. Where a tender is issued pursuant to sub-article 22.1, the Council shall publish widely a notice to that effect, including the information stipulated in sub-article 22.3.
- 22.5. Applicants for a broadcasting service licence must provide at least the following information:
 - 22.5.1. their ownership structure;
 - 22.5.2. their sources of finance and proposed financial plan;
 - 22.5.3. their organisational and management structure, including the personnel and expertise available to deliver the service;
 - 22.5.4. the programme schedule or, in the case of a cable or satellite service, information about the channels proposed to be provided within the basic service, as well as any other channels which may be purchased; and
 - 22.5.5. the technical facilities for delivery of the service.
- 22.6. Applicants for a broadcasting service licence to operate at the sub-national level do not need a letter of endorsement for their application from the local governor.

Article 23: Assessing Licence Applications

- 23.1. The process by which the Commission assesses licences shall be fair, non-discriminatory and transparent.

- 23.2. Licence applications shall include consideration of the application by the Commission at a public hearing and anyone may provide written comments on the application.
- 23.3. The Commission shall cause any applications for a broadcasting licence to be published in the *Official Gazette* at least 60 days prior to the hearing referred to in sub-article 23.2, provided that such publication shall not include sensitive commercial or other information provided by the applicant.
- 23.4. The Commission shall take the following factors into account in deciding whether or not to issue a broadcasting licence:
- 23.4.1. the technical capacity of the applicant to deliver a quality service, taking into account the nature of the proposed service;
 - 23.4.2. the nature and extent of the financial resources of the applicant and the financial viability of the proposal;
 - 23.4.3. the effect of licensing the proposed service in terms of concentration of ownership, cross ownership and fair competition;
 - 23.4.4. promotion of the widest possible diversity of programming, taking into account the proposed Programme Schedule, the demand and the need for that service, and the broadcasting services already being provided in that area; and
 - 23.4.5. the need to promote locally produced programming which serves the needs and interests of the people of Mongolia.
- 23.5. The Commission shall provide written notice of its decisions to all applicants for broadcasting service licences. Where an application is refused, this notice shall include the reasons for the refusal, as well as information regarding the applicant's right of appeal.
- 23.6. A licence shall not be issued to an individual who is not a resident or citizen of Mongolia, or to an entity which does not have recognised legal status in Mongolia or which is subject to majority control by non-residents or non-citizens.
- 23.7. Upon the grant by the Commission of a licence under this Article, it shall cause notification of that decision to be published in the *Official Gazette*.

Article 24: Licence Renewals

- 24.1. An application for the renewal of a licence shall be made at least four (4) months before the date of expiry of the existing licence.
- 24.2. A licensee shall be entitled to have its licence renewed, provided that the Commission may refuse to renew a licence where the licensee has operated in significant breach of its licence conditions or where this is clearly in the public interest, based on broadcasting policy as set out in Article 5.

- 24.3. At the time of renewal, either a licensee or the Commission may propose amendments to the licence conditions and the Commission may accept or reject these amendments.
- 24.4. The Commission may, when considering an application for the renewal of a licence, require such new or additional information as it may deem necessary.
- 24.5. If at the expiry of a licence the Commission has not yet reached a decision in respect of an application to renew it, the licence shall continue in effect until the application for its renewal is granted or refused by the Commission.
- 24.6. The Commission shall provide a licensee with written reasons, in advance of a final decision, of any proposed decision not to renew a licence, and shall give the licensee an opportunity to make oral and/or written representations.
- 24.7. Where the Commission does not renew a licence, it shall provide written reasons for its decision.

CHAPTER EIGHT

Licence Conditions

Article 25: General Licence Conditions

- 25.1. Licences are not transferable without the prior approval of the Commission.
- 25.2. Compliance with all matters specified in the licence application, including the Programme Schedule, is deemed to be a licence condition.
- 25.3. Terrestrial broadcasters are required to keep a master recording of all programmes and advertisements broadcast for at least twenty-eight (28) days after they have been broadcast, provided that where specific broadcast material is the subject of a dispute, the relevant broadcaster shall, at the request of the Commission or Council, keep a master recording of that broadcast material until the matter has been fully resolved.
- 25.4. Satellite broadcasters are required to keep a register of the programme channels and advertisements distributed for at least twenty-eight (28) days after they have been distributed, provided that where specific broadcast material is the subject of a dispute, the relevant broadcaster shall, at the request of the Commission or Council, keep a record of it until the matter has been fully resolved.
- 25.5. If a broadcasting service has not been initiated within six (6) months after the licence is granted, that licence shall lapse.

25.6. Licences shall be valid for the following periods of time:

- 25.6.1. three (3) years for a community broadcasting licence;
- 25.6.2. seven (7) years for a commercial radio broadcasting licence; and
- 25.6.3. ten (10) years for a commercial television broadcasting licence.

25.7. Licensees are required to report annually to the Commission on their activities, including the observance of licence conditions.

Article 26: Copyright

26.1. Broadcasters may only broadcast programmes which they produced or for which they hold broadcasting rights and copyright must be clearly indicated as part of the credits displayed with each programme.

26.2. The name of the producer of every programme shall be displayed or read out at the end of the programme.

Article 27: Undue Concentration of Ownership

27.1. No legal or natural person shall exercise direct or indirect control over more than one national free-to-air television service.

27.2. No legal or natural person shall exercise direct or indirect control over more than two free-to-air radio services available in one geographical area (i.e. overlapping services).

27.3. No legal or natural person shall exercise direct or indirect control over a national free-to-air television service and a national free-to-air radio service.

27.4. No legal or natural person shall exercise direct or indirect control over a national free-to-air broadcasting service and a national newspaper.

27.5. For purposes of this Article, financial or voting interests of 20% or more shall be deemed to constitute control.

Article 28: Local Content Requirements

28.1. Every licensed broadcaster shall be required to include within each broadcasting service the following minimum quotas of local programming:

- 28.1.1. 20% within 6 months of the coming into force of this Law;
- 28.1.2. 30% within 2 years of the coming into force of this Law; and
- 28.1.3. 40% within 3 years of the coming into force of this Law.

28.2. In exceptional circumstances, the Commission, after consultation with the Council, may agree to delay or waive the above requirements for a particular broadcasting service.

Article 29: Additional Terms and Conditions

29.1. The Commission may, from time to time, by notification published in the *Official Gazette*, adopt regulations setting out general licence terms and conditions either of general application for all licensees or for different types of licensees.

29.2. Such terms and conditions may, among other things, stipulate:

29.2.1. the minimum amount of programming to be commissioned from local independent producers; or

29.2.2. the categories of information that must be provided by licensees in their annual reports to the Commission.

Article 30: Specific Licence Conditions

30.1. The Commission may attach such reasonable conditions to a broadcasting service licence as it deems necessary to promote broadcasting policy as set out in Article 5.

Article 31: Licence Condition Amendments

31.1. Broadcasters may propose amendments to their licences to the Commission, which may approve or refuse such amendments, provided that if the Commission fails to respond to a proposal within 30 working days after receiving it, the Commission shall be deemed to have accepted it.

31.2. The Commission may, in respect of any particular licence, and after giving the licence holder an opportunity to make written representations, amend of its own motion any of the prescribed conditions, including adding further conditions:

31.2.1. if the Commission is of the opinion that this is necessary to promote broadcasting policy as set out in Article 5; or

31.2.2. in order to give effect to any international treaty governing broadcasting matters to which Mongolia is a party.

Article 32: Restriction on Licence Conditions

32.1. No licence conditions shall imposed under Articles 29, 30 or 31 unless they:

32.1.1. are relevant to broadcasting;

32.1.2. further broadcasting policy as set out in Article 5; and

32.1.3. are reasonable and realistic, given the licensee.

CHAPTER NINE

Advertising and Programme Codes

Article 33: The Advertising and Programme Codes

- 33.1. The Council shall, in consultation with broadcasters, journalists and other interested stakeholders, draw up, and from time to time review and amend, both an Advertising Code and a Programme Code for broadcasters.
- 33.2. The Codes shall be published and every licensee shall be provided with a copy of each Code.

Article 34: The Advertising Code

- 34.1. The Advertising Code shall address a range of issues relating to broadcast advertising, including the following:
 - 34.1.1. all advertisements shall be clearly identified as such;
 - 34.1.2. no broadcaster shall carry advertisements for medicines which are available only with a prescription;
 - 34.1.3. the maximum daily and hourly advertising which may be carried by different licensed broadcasting services, which shall in no case exceed 20% of total daily programming, provided that, for this purpose, sponsorship shall not be deemed to constitute advertising;
 - 34.1.4. except in accordance with this Article or any regulations promulgated by the election commissions or pursuant to the Law on the State Great Hural Elections of Mongolia or the Law on the Presidential Elections of Mongolia, no broadcaster shall carry any advertisement for or on behalf of any political party or candidate for election to political office; and
 - 34.1.5. subject to any regulations promulgated by the election commissions or pursuant to the Law on the State Great Hural Elections of Mongolia or the Law on the Presidential Elections of Mongolia, the Council may, by notification published in the *Official Gazette*, adopt regulations regarding political advertisements during elections, provided that any such regulations shall be based on the principle that parties and candidates should be granted equitable, non-discriminatory access to licensees.
- 34.2. The Advertising Code may also set rules regarding programme sponsorship.

Article 35: The Programme Code

- 35.1. The Programme Code shall address a range of issues relating to programming including, among other things, the following:
- 35.1.1. balance and impartiality in news and current affairs programming and the duty to strive for accuracy in these programmes;
 - 35.1.2. protection of children;
 - 35.1.3. classification of programmes, including films, according to the recommended age of viewers;
 - 35.1.4. the terms, conduct and editing of interviews;
 - 35.1.5. the use of covert recording and subterfuge;
 - 35.1.6. keeping within accepted boundaries of taste and decency, including in relation to the portrayal of sexual conduct and violence, the use of strong or abusive language, and the broadcasting of text messages sent in by viewers or listeners;
 - 35.1.7. the coverage of crime and anti-social behaviour;
 - 35.1.8. distinguishing between factual material and comment;
 - 35.1.9. the treatment of religion, ethnic minorities, women and men, minors and disadvantaged groups;
 - 35.1.10. respect for privacy; and
 - 35.1.11. the use of subliminal images or sounds.
- 35.2. In developing and implementing the Programme Code, the Council shall have due regard to the rightful place in a pluralist democratic society of robust and challenging debate, of the strong expression of personal views, of the need for original, innovative and stimulating programme-making and of the potential for achieving proper balance over a series of programmes, or over time, rather than in every individual programme.

Article 36: Compliance

- 36.1. Compliance with the Advertising and Programme Codes are deemed to be mandatory licence conditions.

CHAPTER TEN

Breach of the Codes

Article 37: Complaints and Monitoring

- 37.1. Anyone who believes that a licensee has breached the Advertising Code or the Programme Code may lodge a complaint in writing with the Council and the Council shall investigate every such complaint, unless it considers the complaint to be frivolous or manifestly unfounded.

37.2. It shall be the duty of the Council to ensure that all licensees comply with the Codes and, to this end, the Council may monitor licensees and undertake an investigation where it believes there may have been a breach.

Article 38: Investigations

38.1. Where it conducts an investigation pursuant to Article 37, the Council shall provide the broadcaster with adequate written notice of any allegation of a breach and with a reasonable opportunity to make representations. In the case of a complaint, the Council shall also provide the complainant with a reasonable opportunity to make representations.

38.2. The Council shall, absent exceptional circumstances, come to a decision in relation to a complaint within two (2) months.

38.3. Where the Council decides that a licensee is in breach of the Advertising or Programme Code, it shall publish its decision, including reasons for its decision, any sanction to be imposed pursuant to Article 39 and notification of the broadcaster's right to appeal from this decision. The Council shall provide the broadcaster and, where relevant the complainant, with a copy of its decision.

Article 39: Sanctions

39.1. Where the Council determines that a licensee is in breach of the Advertising or Programme Code, it may apply one or more of the following sanctions:

39.1.1. issue an internal instruction to the licensee;

39.1.2. issue a public written warning to the broadcaster;

39.1.3. order the broadcaster to broadcast a statement, correction or retraction at a specified time and in a specified form; or

39.1.4. order the broadcaster to take such action or desist from taking such action as it deems necessary to rectify or prevent repetition of the breach.

39.2. In cases of repeated breach of licence conditions, the Council may order a licensee to pay a fine not exceeding 2% of its total revenues for the previous year, provided that such fines shall be paid into general government revenues.

39.3. In cases of repeated and gross breach of licence conditions, the Council may order the suspension of part or all of the Programme Schedule of a licensee, or terminate its licence.

39.4. For breach of a rule relating to broadcast content, the Council shall not impose the sanctions provided for in sub-articles 39.2 or 39.3 except as decided by at least three (3) Members and where other sanctions have failed to prevent further breach.

- 39.5. Failure to comply with an order of the Council under this Article shall be deemed to be contempt of court and, where a licensee fails within a reasonable time to comply with such an order, the Council may request the prosecutor to institute contempt proceedings.

Article 40: Appeals

- 40.1. Any person aggrieved by a decision of the Council under this Chapter may appeal to the courts for a review of that decision.

CHAPTER ELEVEN

Final Provisions

Article 41: Institutional Arrangements

- 41.1. Broadcasters already in existence on the date this Law comes into force shall make any necessary adjustments to comply with the provisions of this Law within six (6) months of that date.
- 41.2. The Council shall be established within six (6) months of this Law coming into force.

Article 42: Rules and Regulations

- 42.1. The Minister may, by notification published in the *Official Gazette*, make rules and regulations for carrying out the purposes of this Law, provided that such rules and regulations are not inconsistent with this Law.
- 42.2. In particular, the Minister may make rules or regulations relating to:
- 42.2.1. the manner for appointing and/or removing members of the Council, pursuant to Articles 7 and 9; and
 - 42.2.2. remuneration of members of the Council, pursuant to Article 10.
- 42.3. The Council make, among other things, adopt rules relating to:
- 42.3.1. its rules of procedure, pursuant to sub-article 11.2;
 - 42.3.2. dealing with conflicts of interest, pursuant to Articles 12;
 - 42.3.3. the conduct of investigations, pursuant to Article 15;
 - 42.3.4. the appointment of the Secretariat, pursuant to sub-article 16.1;
 - 42.3.5. the Advertising or Programme Codes, respectively, pursuant to Article 33;
 - 42.3.6. the process for conducting investigations pursuant to Article 38; and
 - 42.3.7. the imposition of sanctions, pursuant to Article 39.

42.4. The Commission make, among other things, adopt rules relating to:

- 42.4.1. the tendering process for licences, pursuant to sub-article 22.3;
- 42.4.2. the process for assessing licence applications, pursuant to Article 23; and
- 42.4.3. additional licence terms and conditions, pursuant to Article 29.