
GENERAL NOTICE

NOTICE 152 OF 2006



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

SUBSCRIPTION BROADCASTING SERVICES REGULATIONS

The Independent Communications Authority of South Africa, in terms of section 78(1) read with sections 56 and 57 of the Independent Broadcasting Authority Act, No.153 of 1993, and sections 4 (3), 4 (4), 30 (6), and 31(2) of the Broadcasting Act, No.4 of 1999, has made the regulations in the Schedule.

SCHEDULE

1. Preamble

The objectives of these regulations are to:

- 1.1 regulate subscription broadcasting services in South Africa;
- 1.2 impose payment to the Authority of charges and fees in respect of subscription broadcasting licences, including applications of all descriptions, the issue, renewal, and amendment of subscription broadcasting licences;
- 1.3 prescribe the procedure and the appropriate conditions for the authorisation of channels in a multi-channel environment for subscription broadcasting services; and
- 1.4 ensure that subscription broadcasting services' largest source of revenue is not advertising or sponsorships, or a combination thereof.

The provisions of the IBA Act, the Broadcasting Act, and other pieces of legislation pertaining to broadcasting and telecommunications are applicable to these Regulations.

2. Definitions

In these regulations any word to which a meaning has been assigned in the Independent Broadcasting Authority Act and the Broadcasting Act shall have that meaning unless the context indicates otherwise:-

- 2.1 **“Advertising”** has the same meaning to the meaning set out in the Authority’s Advertising, Infomercials and Programme Sponsorship Regulations, 1999;
- 2.2 **“Bouquet”** means a collection of video and / or audio channels marketed as a single package, or a thematic environment where channels are devoted to a specific programming genre;
- 2.3 **“Channel Supplier”** means any person(s) that package(s) individual programmes into channels for distribution by a network operator;
- 2.4 **“Programme Sponsorship”** has a similar meaning to the meaning set out in the Authority’s Advertising, Infomercials and Programme Sponsorship Regulations, 1999;
- 2.5 **“Special Event Channel”** means the transmission of a channel within the network operators’ bouquet of channels, for a specified temporary duration;

- 2.6 **“Sound Broadcasting Service”** has the same meaning to the meaning set out in section 1 of the Broadcasting Act;
- 2.7 **“Subscription Broadcasting Service”** has the same meaning to the meaning set out in section 1 of the Broadcasting Act;
- 2.8 **“Television Broadcasting Service”** has the same meaning to the meaning set out in the Broadcasting Act;
- 2.9 **“the Authority”** means the Independent Communications Authority of South Africa established by the Independent Communications Authority Act, No 13 of 2000;
- 2.10 **“the Broadcasting Act”** means the Broadcasting Act, No.4 of 1999;
- 2.11 **“the IBA Act”** means the Independent Broadcasting Authority Act, No.153 of 1993;

3. Authorisation of Channels

- 3.1 A subscription broadcasting service licensee may not add a channel to its service unless the Authority, on application by the licensee, has authorised the channel.
- 3.2 An application by a subscription broadcasting service licensee to the Authority for the authorisation of one or more channels must be made in writing and must state -
- 3.2.1 the name of the channel;
 - 3.2.2 the nature of the channel and its content;
 - 3.2.3 the country where the channel was packaged;

- 3.2.4 the full name of channel supplier;
 - 3.2.5 the primary language(s) of channel; and
 - 3.2.6 the duration of the channel (whether it is a special event channel).
- 3.3 The application must be accompanied by the prescribed fee.
- 3.4 Within sixty days of receipt of an application made in terms of this regulation, the Authority shall issue a certificate authorising or refusing to authorise the channel.
- 3.5 If, upon the expiry of the sixty day period contemplated in 3.4, the Authority has not issued such certificate, the channel shall be regarded as having been authorised.
- 3.6 If the Authority refuses to authorise a channel, the Authority shall give written reasons thereof to the applicant within thirty days of the issuing of the certificate.

4. Fees

- 4.1 Every application for the grant, amendment or renewal of a subscription sound broadcasting service licence must be accompanied by a fee of thirty thousand rand (R30 000.00).
- 4.2 Every application for the grant, amendment or renewal of a subscription television broadcasting service licence must be accompanied by a fee of seventy thousand rand (R70 000.00).

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- 4.3 Every application for the grant, amendment or renewal of a composite subscription broadcasting service licence must be accompanied by a fee of one hundred thousand rand (R100 000.00).
- 4.4 A licence granted to any applicant in terms of 4.1, or 4.2, or 4.3 shall not be issued unless a fee of five thousand rand (R5 000.00) has been paid to the Authority.
- 4.5 Every application for the authorisation of channels must be accompanied by a fee of three thousand rand (R3000.00).
- 4.6 Every subscription broadcasting service shall pay to the Authority a maximum annual licence fee of 2% of its turnover derived from the provision of the subscription broadcasting service, less agency fees and discounts to the maximum of 20% of the 2%.
- 4.7 The annual licence fee must be payable to the Authority within 120 days of the financial year-end of the licensee or such other period as the Authority may determine.
- 4.8 The payment of all amounts due to in terms of Regulation 4.6 must be by way of an electronic transfer or a crossed cheque payable to the Independent Communications Authority of South Africa or such other form of payment as may be acceptable and agreed to by the Authority.
- 4.9 All fees are non-refundable.

5. Advertising and Sponsorship

A subscription broadcasting service shall, within 120 days after the end of its financial year of operation, submit to the Authority audited financial statements stating that, in the opinion of the auditor, the accompanying statements give a true and fair view of the licensee's subscription, advertising and sponsorship revenue derived from the provision of the subscription broadcasting service.

6. Code of Conduct

- 6.1 Subject to the provisions of 6.2, all subscription broadcasting service licensees must adhere to a Code of Conduct for subscription broadcasting service licensees as prescribed.
- 6.2 The provisions of 6.1 do not apply to any subscription broadcasting service licensee if that licensee is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a Code of Conduct for subscription broadcasting service licensees enforced by that body by means of its own disciplinary mechanisms, and provided such Code and disciplinary mechanisms are acceptable to the Authority.
- 6.3 Subscription broadcasting services licensees, or a body representing such licensees, must present to the Authority a Code and disciplinary mechanisms as contemplated in 6.2 by 1 June 2006.

7. Records to be kept by all Subscription Broadcasting Services

7.1 A subscription broadcasting licence shall, to the satisfaction of the Authority, in addition to records prescribed by any other law, keep the following records relating to its broadcasting activities -

- (a) documentation relating to the person or entity who or which is in control of or in a position to exercise control over the licensee concerned including documentation relating to -
 - (i) its legal status including all founding documentation pertaining to the licensed entity and any member organisations of the entity;
 - (ii) details of the directors, members or trustees including the gender, race and address of such person or entity, as the case may be; and
 - (iii) in the case of a licensee which is a company, the shareholding, the extent thereof and any changes which may occur in the control thereof;
- (b) a list of capital assets, books of account, financial records and audited financial statements;
- (c) details of all financial and non-monetary donations received by the licensee;
- (d) all documentation pertaining to the opening, maintenance and changes in the status to banking accounts;
- (e) all contracts entered into by or on behalf of the licensee in connection with the daily operational activities of the licensee;
- (f) a public file for keeping -
 - (i) written complaints received by the licensee;
 - (ii) correspondence between the licensee and complainants;

- (g) a log of telephonic complaints received by the licensee;
- (h) information pertaining to personnel records including full details of individuals employed by the licensee on a full time or part-time basis including an indication of the race and gender of each employee, the length of service and information pertaining to the status of each employee as well as training programmes arranged by a licensee;
- (i) a log of all advertisements broadcast;
- (j) a log of all sponsorships for programmes together with details of payment, financial or otherwise, received for such sponsorship; and
- (k) a log of all direct and indirect on-air fundraising activities for the stations.

7.2 A licensee may, by notice directed to him or her, be required to produce or furnish to the Authority, at a time and place specified in the notice such records, including documents, accounts, estimates, returns and information as may be specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee by the Act or these regulations or by the relevant licence.

7.3 The logs, statistical forms and records contemplated in 7.1 and 7.2 must be preserved for the duration of the broadcasting licensee's licence period.

8. Amendment and Review of Regulations

8.1 The Authority may, every successive eight years after these regulations have come into effect, hold an inquiry to review these regulations.

8.2 In reviewing the regulations the Authority shall determine the procedure to be followed during the inquiry.

8.3 The Authority shall consider submissions made by licensees, and any interested person and may make such determination as it considers equitable in the circumstances.

9. Effective Date

The effective date of these regulations will be the date published in the Gazette: Provided that in relation to subscription broadcasting services licensed after the effective date, the Authority may determine, as a licence condition, that the effective date is a later date.

10. Short Title

These regulations will be called the Subscription Broadcasting Services Regulations, 2006.
