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(Total page: 10)

7 May 2007

Clerk to Panel on
Information Technology and Broadcasting
3/F, Citibank Tower
3 Garden Road, Central
Hong Kong
(Attn: Miss Erin Tsang)

Dear Miss Tsang,

**Panel on Information Technology and Broadcasting
Meeting on 14 May 2007**

**Proposed acquisition of shares of
Asia Television Limited (ATV) and related matters**

I refer to your letter dated 20 April 2007 to the Administration, and a letter of the even day to the Broadcasting Authority (BA) to follow up the discussion on transfer of ATV's shares and related matters.

2. Set out below are some background information concerning the ownership and corporate control applicable to ATV and the latest position with respect to the two proposed acquisitions of ATV's shares as announced by ATV. The Administration has consulted the BA Secretariat (i.e. the Television and Entertainment Licensing Authority) in preparing the following response.

Background Information

3. ATV is a domestic free television programme service licensee and is subject to four areas of ownership and corporate control under the Broadcasting Ordinance (the Ordinance) (Cap. 562), namely –

- (a) fit and proper person requirement;
- (b) corporate status requirement;
- (c) ordinarily-resident in Hong Kong requirement; and
- (d) restrictions on disqualified persons.

4. The Administration, having consulted the BA Secretariat, prepared a background note on the above in May 2006. It is still valid now and is attached (**Annex A**) again for your easy reference.

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5. In addition, all television programme service licensees including ATV are required under their licences to comply with the statements and representations submitted in their applications for a new licence or renewal of an existing licence, as the case may be (collectively known as “Licensee’s Proposal”), unless otherwise waived by the BA. Licensee’s proposal includes, among others, the shareholding structure of the licensee. Thus, any change to the shareholding structure of a broadcasting licensee requires the BA’s approval.

ATV’s applications for its proposed shareholding change

6. In May 2006, ATV announced that CITIC Guoan Group intended to acquire and subscribe shares in ATV constituting in aggregate 22.22% of all issued share capital of ATV. In October 2006, ATV tendered its formal applications with the relevant detailed information to the Chief Executive in Council (CE-in-Council) for approval for certain disqualified persons to exercise control of ATV, and to the BA for approval for certain unqualified voting controllers (i.e. voting controllers not ordinarily resident in Hong Kong) to acquire the shares and for a change in ATV’s shareholding structure. The two authorities have been processing the applications according to established procedures.

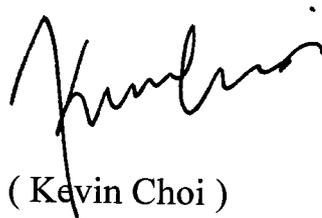
7. On 4 April 2007, ATV announced that ATV and some of its shareholders had entered into another set of conditional agreements with

B Mingly Corporation (**Annex B**). According to the announcement, Mingly Corporation, supported by Soft-trek Corporation and ABN AMRO (the latter acting as a financing partner for the transaction) may become the majority shareholder of ATV.

8. ATV wrote to the CE-in-Council and the BA on 17 and 26 April 2007 to apply for the requisite approval based on the latest proposed changes in its shareholding structure as a result of the two proposed acquisitions in paragraphs 6 and 7 above. In particular, ATV advised that the newly proposed acquisition in paragraph 7 above will impact on the overall corporate and shareholding structure of ATV as well as the previous applications involving disqualified persons and unqualified voting controllers under processing by the relevant authorities.

9. The Administration and the BA Secretariat are now seeking ATV's clarification and supplementary information. Upon receipt of ATV's response, the CE-in-Council and the BA will process ATV's revised applications concerning the two proposed acquisitions according to the relevant statutory provisions and established procedures.

Yours sincerely,



(Kevin Choi)

for Secretary for Commerce, Industry and Technology

Encls.

c.c.

Secretary, Broadcasting Authority

Administrative Assistant to

Secretary for Commerce, Industry and Technology

CEO(Adm), Communications and Technology Branch

**Background Note on
Ownership and corporate control applicable to
domestic free television programme service licensees**

Introduction

Under the Broadcasting Ordinance (Ordinance)(Cap.562), there are four areas of ownership and corporate control applicable to a domestic free television programme service licensee, namely, -

- (a) fit and proper person requirement;
- (b) corporate status requirement;
- (c) ordinarily-resident in Hong Kong requirement; and
- (d) restrictions on disqualified persons.

Fit and Proper

2. It is our policy objective that a television programme service licensee and any person exercising control of it shall be and remain a fit and proper person. The requirement is laid down in section 21 of the Ordinance. Section 21(4) of the Ordinance also sets out the factors to be taken into account in determining a fit and proper person, including the person's business record, criminal record in respect of offences involving bribery, false accounting, corruption or dishonesty.

Corporate Status

3. Pursuant to section 8(1) of the Ordinance and the definition of "company" in section 2(1) of the Ordinance, a domestic free television programme service licensee must be a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32). In addition, section 8(3) of the Ordinance stipulates that a domestic free television programme service licence shall not be granted to a company that is a subsidiary of a corporation so as to ensure that a licensee company remains an independent entity.

“Ordinarily resident in Hong Kong” requirement

4. The existing regulatory regime in Hong Kong does not restrict foreign ownership as such but limit or restrict the influence and control of a domestic free television programme service licensee by those who do not satisfy the “ordinarily resident in Hong Kong” requirement.

5. Briefly, “ordinarily resident in Hong Kong” means residence in Hong Kong for not less than 180 days in any calendar year, or residence in Hong Kong for not less than 300 days in any two consecutive calendar years. In relation to a company, it means the majority of the directors are ordinarily resident in Hong Kong continuously for not less than seven years, and the control and management of the company is bona fide exercised in Hong Kong.

6. A voting controller who is not ordinarily resident in Hong Kong is an “unqualified voting controller”. The statutory “ordinarily resident in Hong Kong” requirement and restrictions on “unqualified voting controller” are:

- (a) without prior written approval of the Broadcasting Authority (BA), an unqualified voting controller shall not hold, acquire, or exercise, or cause or permit to be exercised, 2% or more but less than 6%, or 6% or more but not more than 10%, or more than 10%, in the aggregate of the total voting control under section 20 of Schedule 1 to the Ordinance;
- (b) the votes cast by unqualified voting controllers who have voting rights, on a poll (if any) at a general meeting of the licensee company will be attenuated to 49% in accordance with the formula stipulated in section 19(1)(c) of Schedule 1 to the Ordinance (at **Annex**). The licensees are required to submit annual returns on compliance with this provision; and
- (c) unless with the prior approval of the BA in writing under section 8(4)(a)(iv) of the Ordinance, the majority of the directors and the principal officers, including the principal officers of the company in charge of the selection, production or scheduling of programmes, shall be each

ordinarily resident in Hong Kong for not less than 7 years.

7. According to the BA Secretariat, when considering whether prior approval should be granted under section 20 of Schedule 1 to the Ordinance (see para. 6(a) above), the BA will take account of the following considerations:

- (a) the financial ability of the applicant and the financial position of the licensee in question;
- (b) the benefit which the applicant can bring to the operation of the licensee and whether the approval will bring added value to the broadcasting scene;
- (c) whether the applicant is willing to give undertakings on its long term commitment to Hong Kong, and if approved, whether the licensee will continue to provide a service catering for the needs of the Hong Kong community;
- (d) whether the approval will result in control and management of the licensee being exercised outside Hong Kong; and
- (e) whether the applicant will maintain and uphold the licensee's freedom of expression and editorial independence.

Restrictions on Disqualified Persons

8. Persons or companies engaged in or are associated with certain types of businesses are not allowed to hold a domestic free television programme service licence or exercise control¹ of such a licensee unless the Chief Executive in Council (CE in C), on application by the concerned licensee, is satisfied that public interest so requires and approves otherwise. They are defined as “disqualified persons” under the Ordinance and the relevant provisions are set out in Part 2 of Schedule 1 to the Ordinance. Disqualified persons prohibited from exercising control of a domestic free television programme service licensee are:

¹ “Exercise control” means, inter alia, to be a director or a principal officer of the company or to be a beneficial owner or voting controller of more than 15% of voting shares in the company.

- (a) another television programme service licensee;
- (b) a sound broadcasting licensee;
- (c) an advertising agency;
- (d) a proprietor of a newspaper (including magazine) printed or produced in Hong Kong; and
- (e) persons exercising control of (a) and (d) above, as well as their associates.

9. Pursuant to section 3(3) of Schedule 1 to the Ordinance, in considering the public interest for granting the approval, the CE in C shall take account of, but not limited to, the following matters –

- (a) the effect on competition in the relevant service market;
- (b) the extent to which viewers will be offered more diversified television programme choices;
- (c) the impact on the development of the broadcasting industry; and
- (d) the overall benefits to the economy.

**Communications and Technology Branch
Commerce, Industry and Technology Bureau
May 2006**

Broadcasting Ordinance (Cap. 562)
Schedule 1

**DISQUALIFICATION FOR HOLDING DOMESTIC FREE OR PAY
TELEVISION PROGRAMME SERVICE LICENCES AND
RESTRICTION ON VOTING CONTROL OF VOTING
CONTROLLERS**

PART 3

**RESTRICTIONS ON VOTING CONTROL HELD BY
UNQUALIFIED VOTING
CONTROLLERS (NOT APPLICABLE IN RELATION TO
DOMESTIC PAY
TELEVISION PROGRAMME SERVICE LICENCE)**

19. Restrictions on percentage of voting control of unqualified voting controllers

(1) Subject to subsection (2), notwithstanding anything contained in the memorandum or articles of association of a licensee or any provision of any law apart from this section, where any question or matter is to be determined by a poll at any general meeting of the licensee, the following shall apply-

- (a) no vote shall be cast on the poll, whether in person or by proxy, other than by or by proxy on behalf of any person who, at the time of the general meeting, is a registered shareholder of voting shares of the licensee in respect of which a document mentioned in section 22(1)(b) has, in accordance with any direction in that behalf issued by the Broadcasting Authority under section 30, been completed and returned to the licensee;
- (b) where the total voting control exercised by unqualified voting controllers would otherwise exceed, in the aggregate, 49% of the total voting control exercised on the poll by both qualified

and unqualified voting controllers, the votes cast on the poll by unqualified voting controllers shall, for the purpose of determining the question or matter, be reduced by multiplying those votes by the percentage determined by the formula specified in paragraph (c);

(c) the formula for the purposes of paragraph (b) is-

$$\frac{1}{B} \times \frac{(49 \times A)}{51} \times 100$$

where A = the percentage of the total votes cast on the poll, the voting controllers of which are qualified voting controllers;

B = the percentage of the total votes cast on the poll, the voting controllers of which are unqualified voting controllers.



PRESS RELEASE

4 April, 2007

Asia Television Limited Introduces New Investors

Asia Television Limited (“ATV”) and certain Shareholders have entered into conditional agreements with Mingly Corporation, which may become a leading shareholder in ATV.

Mingly Corporation is a company controlled by the Cha Family and of which Mr Payson Cha is the Chairman. It is supported by Soft-trek Corporation and ABN AMRO. ABN AMRO is acting as a financing partner for the transaction. The transaction is subject to a number of conditions including the approval of the Broadcasting Authority of Hong Kong and the timing of the consummation of the transaction is uncertain at this time. An application will be made to the Broadcasting Authority and pertinent government departments for the change of ownership.

The current shareholders and employees of ATV welcome the new investors. The current shareholders pledge to work together with the new investors in boosting the growth of ATV and leading ATV into a new era.

About ATV

Being established on 29 May 1957, ATV was the first television station [not only] in Hong Kong [but also in the world]. Over the past 50 years, ATV has been diligently providing news, factual and entertainment contents to the Chinese communities locally and globally. It is one of the most established TV broadcasters in Asia.

About Mingly Corporation

Mingly Corporation is an investment holding company of the Cha Group, whose investments span real estate, financial services and venture capital.

About Soft-trek Corporation

Soft-trek Corporation, a company headed by Louis Page, is a media company focusing on time-block management, drama-production and artist management with offices in Hong Kong, Beijing and Shanghai, PRC.

Contacts

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