

**For discussion on
19 September 2011**

**Legislative Council Panel
on Information Technology and Broadcasting
Complaints Relating to Asia Television Limited**

Purpose

The Broadcasting Authority (“BA”) is investigating into complaints concerning the news and finance programmes broadcast by Asia Television Limited (“ATV”) and its control and management. This paper briefs Members on the relevant regulatory requirements in the Broadcasting Ordinance (Cap. 562) (the Ordinance), codes of practice¹ issued by the BA and licence conditions, and on the latest progress in the BA’s investigation.

Background

2. The Government adopts a liberal, light-handed and pro-competition regulatory approach to promote the development of the local broadcasting industry and facilitate the provision of more programme choices to the public. Under this policy framework, the BA, as the regulator of the broadcasting industry, does not preview or pre-censor any broadcast materials. The BA respects the independent operation of broadcasters as well as their editorial independence in the production of different types of programmes, including news programmes. The BA is responsible for ensuring the compliance of all relevant legislation and licence conditions by licensees. Where appropriate, the BA may initiate an investigation on its own volition. The BA may also initiate an investigation in response to complaints to ascertain whether the licensees in question are in breach of any statutory provisions, code of practice or licence conditions. Depending on the severity and nature of the breach, the BA may impose a range of sanctions on the offending licensees, including an advice, a warning, a financial penalty, suspension of licence or even a recommendation to the Chief Executive in Council for a revocation of licence.

¹ The BA has, pursuant to the power conferred upon it by section 3 of the Ordinance, issued the General Code of Practice on Television Programme Standards and the General Code of Practice on Television Advertising Standards. These codes are applicable to holders of a domestic free television programme service licence.

Domestic Free Television Programme Service Licence of ATV

3. In November 2002, the Chief Executive in Council renewed the licence of ATV, with a validity period of 12 years from 1 December 2003 to 30 November 2015 (both dates inclusive). In June 2010, the Chief Executive in Council concluded the mid-term review of the licence of ATV. The Panel was briefed on the results by the Administration in July 2010. As a domestic free television programme service licensee, ATV is required to comply with all regulatory requirements applicable to it under the Ordinance, its licence and the codes of practice issued by the BA.

Complaints about ATV's Misreporting of Death News

Particulars

4. As at 14 September 2011, the BA has received a total of 43 complaints against the misreporting of the death of the former national leader on ATV Home and ATV World on 6 July 2011. The complainants were dissatisfied that the news was unverified, misleading, confusing and aroused public panic. The complainants also alleged that the retraction of the report almost 24 hours after the original broadcast of the news was in violation of the relevant provision of the code of practice concerning correction of factual errors in news. Some complainants considered that the response of Mr Wong Ching (also known as Mr Wang Zheng) on the incident was irresponsible and cast doubt on the editorial independence of ATV's News Department.

Relevant Provisions

5. According to the provisions in the Generic Code of Practice on Television Programme Standards ("TV Programme Code") regarding accuracy, impartiality and fairness, the licensees are required to make reasonable efforts to ensure that the factual contents of news are accurate. When reporting news, the licensees should avoid morbid, sensational, or alarming details not essential to factual reporting. Licensees are required to present news in such a manner as to avoid unnecessary alarm, and make correction of factual errors as soon as practicable after the original error. An extract of the relevant provisions in the TV Programme Code is at **Annex A**.

Investigation

6. The BA is handling the complaints about the misreporting of death news in accordance with the established procedures. The BA will consider whether ATV was in breach of the TV Programme Code, including whether ATV had made reasonable efforts to ensure the accuracy of the factual contents of the news. The BA will make known the investigation result at an appropriate time. Regarding the complaint against Mr Wong Ching for casting doubt on the editorial independence of ATV's News Department, the BA announced in August this year that it would conduct a separate investigation into the role played by Mr Wong Ching in the management of ATV, including his role in the misreporting of death news (please see paragraphs 14 to 16 below for details).

Complaints about the Inclusion of Advertising Materials in ATV's Programme "Wealth Blog" (理財博客)

Particulars

7. As at 14 September 2011, the BA has received four complaints about the programme "Wealth Blog". The complainants were dissatisfied with the inclusion of excerpts of the programme "Corporate Excellence" (走進上市公司), which contained advertising elements, in the programme "Wealth Blog". The complainants requested the BA to investigate whether ATV had interfered with the editorial autonomy of news reporting. Some of the complainants were also of the view that the appointment of the host of the programme "Corporate Excellence" as an anchor for financial programmes created a conflict between ATV's management and its News Department.

Relevant Provisions

8. The TV Programme Code stipulates that no bona fide news programmes (真正新聞節目) comprising local or international news item may be sponsored, and that no advertising matter should be offered as news or included in the contents of a news programme or newsreel. The Generic Code of Practice on Television Advertising Standards ("TV Advertising Code") stipulates that news programmes must not be sponsored.

9. The TV Programme Code further stipulates that advertisements should be recognisably separate from the programmes. Advertising material should be clearly identified as such. As a general rule, the

placement of advertising material should be confined to paid-for advertising time. If a television programme refers to or uses extracts from advertisements, the choice and range of advertisements should be subject to the editorial requirements of the programme, and the licensee should in no circumstances let the programme contents be influenced by advertising considerations. In addition, no undue prominence may be given in any programme to a product, service, trademark, brand name or logo of a commercial nature or a person identified with the above so that such reference amounts to indirect advertisement and has the effect of advertising. Such references must be limited to what can clearly be justified by the editorial requirements of the programme itself, or of an incidental nature.

10. The TV Advertising Code stipulates that all sponsored programmes must be clearly identified by means of sponsor identification, such as front or end sponsor credits, title sponsorship, display of sponsor references, etc. Sponsor identification within a programme should not be overly distracting and obtrude on viewing pleasure or entertainment.

11. An extract of the relevant provisions in the TV Programme Code and TV Advertising Code is at **Annex A**.

Investigation

12. The BA is handling the complaints about the inclusion of advertising materials in the programme “Wealth Blog” in accordance with the established procedures. The BA will consider whether ATV was in breach of the relevant provisions in the TV Programme Code and TV Advertising Code, taking into consideration relevant factors, including the nature of the concerned broadcast materials (including whether the programme was a news programme), whether the programme was sponsored, whether programme was clearly separated from advertisement, and whether the programme content amounted to indirect advertising. The BA will make known the investigation result at an appropriate time.

13. As regards the complaint about ATV management’s interference with its News Department, as indicated in paragraph 2 above, the BA is committed to upholding and respecting the independent operation and editorial independence of licensees. The BA would, therefore, not interfere with the day-to-day operation of licensees, including the relationship and operation between their management and News Departments and their appointment of news editors and reporters. It is clearly stated in the TV Programme Code that the BA does not preview or pre-censor any programmes. The editorial responsibility lies with the

licensees, who have the responsibility to ensure that the programmes delivered on their services comply with the codes of practice. The BA is highly concerned because of the recent series of incidents surrounding ATV's News Department. To prevent possible non-compliance with the applicable regulatory requirements by ATV, the BA has already written to the broadcaster requesting it to exercise due care in the handling of the incidents and ensure that there will be no disruption to its news and current affairs programmes. The BA has also conveyed to ATV the concerns of the media and the public about editorial independence and personnel changes in its News Department.

Control and Management of ATV

Relevant Provisions

14. In view of the extensive reach and substantial influence of free television programme services, and in order to safeguard the public's interest and ensure that such services will cater for the local interests and tastes, the Ordinance provides for a clear regulatory framework governing the ownership and corporate control of domestic free television programme service licensees. These include the fit and proper person requirement, the residence requirement, and restrictions on disqualified persons. Holders of a domestic free television programme service licence and persons who exercise control over such licence holders are required to comply with the relevant requirements. An extract of the relevant regulatory requirements is at **Annex B**.

Investigation

15. According to the information submitted by ATV to the BA, Mr Wong Ching is an investor of ATV and holds certain convertible bonds issued by ATV. At present, Mr Wong Ching is neither a shareholder, director nor principal officer of ATV. Accordingly, Mr Wong Ching does not have any capacity or rights to exercise control of ATV or participate in its day-to-day management.

16. In response to public concerns and a relevant complaint, the BA announced in August 2011 that it would conduct an investigation into the role played by Mr Wong Ching in the control and management of ATV, including his role in ATV's misreporting of death news, to ascertain whether ATV was in breach of any relevant statutory provisions or licence conditions. In this connection, the BA has already started to invite relevant parties to provide information and assist in the investigation. The

investigation is in progress, and the BA will make known the investigation results at an appropriate time.

Advice Sought

17. Members are invited to note the latest progress of the above investigations.

**Broadcasting Authority Secretariat
September 2011**

Extracts from the Generic Code of Practice on Television Programme Standards

Chapter 9 Accuracy, Impartiality and Fairness

Accuracy

1A. The licensees shall make reasonable efforts to ensure that the factual contents of news, current affairs programmes, financial programmes, personal view programmes, documentaries, programmes adopting an investigative style of reporting, children's programmes with educational purpose, programmes dealing with medical and health issues, and contests are accurate.

Impartiality

7. Presentation of news should observe the following rules:

- (a) Morbid, sensational, or alarming details not essential to factual reporting should be avoided. News should be presented in such a manner as to avoid unnecessary alarm.
- (e) Correction of factual errors should be made as soon as practicable after the original error, or at the end of the current programme or the beginning of a subsequent programme. In some circumstances it may be appropriate for a statement to appear in print.
- (f) No bona fide news programmes comprising local or international news item may be sponsored. No advertising matter should be offered as news or included in the contents of a news programme or newsreel.

Chapter 11 Indirect Advertising

Separation of Programme and Advertising Material

1. Indirect advertising in television programmes refers to the mingling of programme and advertising material or the embedding of advertising material within programme content, whether inadvertently or by design. As a matter of principle, advertisements should be recognizably separate from the programmes. The underlying rationale for the prohibition of indirect advertising is that viewers should not be confused as to whether they are watching a programme or a paid advertisement. Advertising material must be clearly identified as such so that viewers could attach appropriate weight to such material according to their own assessment.

2. As a general rule, the placement of advertising material should be confined to paid-for advertising time. Exceptions may be made in the following circumstances:

- (a) it may be necessary in a news or factual programme to include a reference to or extract from a particular advertisement. This should give it no greater prominence than is necessary to make the required point; or
- (b) a television programme may refer to or use extracts from advertisements provided that the choice and range of advertisements are subject only to the editorial requirements of the programme. In particular, they may in no circumstances be influenced by advertising considerations.

Undue Prominence

3. No undue prominence may be given in any programme to a product, service, trademark, brand name or logo of a commercial nature or a person identified with the above so that the effect of such reference amounts to advertising. Such references must be limited to what can clearly be justified by the editorial requirements of the programme itself, or of an incidental nature. For the avoidance of doubt, product/service sponsorship as permitted under paragraph 10 of Chapter 9 Programme Sponsorship of the Generic Code of Practice on Television Advertising Standards will be subject to the rules stipulated therein.

* * * * *

Extracts from the Generic Code of Practice on Television Advertising Standards

Chapter 3 General Advertising Standards

Identification of Advertisements

4. Advertising material should be clearly identifiable as an advertisement. Distinctions must be maintained between advertisements and programmes.

Chapter 8 Advertising Breaks

1. Unless otherwise permitted by the BA, advertising or non-programme material may be placed only at the beginning or end of a programme or in a natural break occurring therein. For the purpose of this Code, “non-programme material” excludes advertising material but includes materials for the promotion of the licensee’s station and programme services and such announcements as the BA may require to be included in the licensee’s television programme services pursuant to the Broadcasting Ordinance (Cap.562) or the relevant licence. This rule does not apply to a service or part of a service that comprises of home shopping material where the nature of the service or part of a service is, in the opinion of the BA, clearly identified to viewers.

Chapter 9 Programme Sponsorship

Sponsor Identifications

3. All sponsored programmes must be clearly identified. Sponsor identifications other than in the form of advertisements are subject to the following basic ground rules:

- (a) sponsor identifications must be distinguishable from advertisements, and should not contain superlative claims, price information and direct exhortations to the viewing public to purchase or rent the sponsor's products or services;
- (b) viewers should not be subject to hidden editorial influence; and
- (c) sponsor identification within a programme should not be overly distracting and obtrude on viewing pleasure or entertainment.

4. A sponsored programme must be clearly identified as such by:

- (a) a front or an end sponsor credit or both which can be visual and/or aural (subject to paragraphs 5 to 7 of this chapter); and/or
- (b) in case of title sponsorship of a whole programme or a programme segment^(Note 1) or a programme feature^(Note 2) thereof, incorporating the sponsor's name into a programme title or a programme segment title or a programme feature title (subject to paragraphs 8, 8B and 9 of this chapter); and/or
- (c) in case of sponsorship of material within programmes permitted under paragraph 8A of this chapter, displaying (alongside the sponsored material) references to the sponsor (subject to paragraphs 8A to 9 of this chapter); and/or
- (d) in case of product/service sponsorship where payment or other valuable consideration is received by the licensee in return for the commercial product or service to be featured within the programme, sponsor credit(s) in the form as described in (a) above (subject to paragraph 10 of this chapter); and/or
- (e) a front or an end advertisement or both which should count towards the advertising time allowance.

Unsponsorable Programme

18. News programmes and programmes, announcements or other material included at the direction of the BA from time to time must not be sponsored.

^(Note 1) An example of a typical programme segment will be a contest segment in a contest programme.

^(Note 2) An example of a typical programme feature is a constituent of a contest segment in a contest programme.

**Ownership and Corporate Control Requirements
under the Broadcasting Ordinance**

Domestic free television programme service licensees shall comply with the following requirements governing ownership and control of a licensee under the Broadcasting Ordinance (Ordinance):

- (a) fit and proper persons requirement;
- (b) residence requirement;
- (c) restrictions on disqualified persons; and
- (d) reporting requirement on the change of directors and principal officers of the licensee.

Fit and Proper Person

2. Pursuant to section 21 of the Ordinance, a domestic free television programme service licensee and any person exercising control² of it shall be and remain a fit and proper person. The factors to be taken into account in determining a fit and proper person include the person's business records, record in situations requiring trust and candour, and criminal record in respect of offences involving bribery, false accounting, corruption or dishonesty.

Residence Requirement

3. The Ordinance restricts the influence and control of a domestic free television programme service licensee by persons/companies not being qualified voting controllers. In the case of an individual, a qualified voting controller is one who satisfies "ordinarily resident in Hong Kong" requirement³ and who has been so resident for at least one continuous period of not less than seven years.

² "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.

³ "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 corporation, the majority of the directors have to satisfy the “ordinarily resident in Hong Kong” requirement and have been so resident for at least one continuous period of not less than seven years, and the control and management of the company is bona fide exercised in Hong Kong. The 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;
- (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%. 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, 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.

Restrictions on Disqualified Persons

4. Under the Ordinance, persons or companies engaged in or are associated with certain types of businesses (disqualified person) are not allowed to hold a domestic free television programme service licence or exercise control 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 otherwise⁴. The following disqualified persons are prohibited from exercising control of a domestic free television programme service licensee:

- (a) another television programme service licensee;
- (b) a sound broadcasting licensee;

⁴ Pursuant to section 3(3) of Schedule 1 to the Ordinance, in considering the public interest for the granting of 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.

- (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.

Reporting Requirement on the Changes of Directors/Principal Officers of the Licensee

5. Section 39(3) of the Ordinance requires domestic free television programme service licensees to submit to the BA a return showing particulars of any change of directors or principal officers in a licensee within seven days beginning on the date the change takes place.

6. In addition, all television programme service licensees including ATV are required under their licences to comply with the statements and representations, including those relating to the control of the licensees and other aspects, submitted in their applications for a new licence or for renewal of an existing licence (the Licensee's Proposal) unless otherwise approved by the BA.

7. The BA will perform its statutory duty and vigorously enforce the statutory requirements and licence conditions including fit and proper requirements on persons exercising control of the licensees, residence requirement of directors and principal officers of the licensees, reporting requirement on the change of directors and principal officers and the licensee's compliance with the Licensee's Proposal. If a licensee has breached the provisions applicable to it under the Ordinance, licence conditions and codes of practice, depending on the severity and nature of the breach, the BA may impose a range of sanctions on the licensee, including an advice, a warning, a financial penalty, suspension of licence or even a recommendation to the Chief Executive in Council for a revocation of licence.