

**For discussion
on 9 February 2015**

**Legislative Council
Panel on Information Technology and Broadcasting**

**Issues Relating to the Operation and
Latest Developments of Asia Television Limited**

Purpose

In response to Members' concern over the operation and recent developments surrounding Asia Television Limited ("ATV"), this paper briefs Members of the current regulatory framework for the related matters, the latest developments and the up-to-date progress of the processing of the application for renewal of the domestic free television programme service licence ("free TV licence") of ATV by the Administration.

Background

2. The free TV licence of ATV will expire on 30 November 2015. As a free TV licensee, ATV has an ongoing obligation to observe the Broadcasting Ordinance (Cap. 562) ("BO"), the licence conditions and the codes of practice issued by the Communications Authority ("CA") during the validity of its licence. These include inter alia the need to provide free TV service to the viewing public in accordance with all the requirements in the BO and its free TV licence, to pay the licence fees by the deadlines stipulated in the relevant legislation, and to comply with various commitments and representations, including its capital and programming investment and shareholding structure, made in its Licensee's Proposal.

3. ATV also has an ongoing obligation to observe the statutory requirements that are applicable to it outside of the broadcasting regulatory regime, e.g. like all other employers in Hong Kong, it has a statutory duty to comply with the Employment Ordinance (Cap. 57) in respect of wage payment to its staff.

Recent Developments Concerning ATV

Impact of Late Payment of Wages by ATV on its Broadcasting Service

4. ATV is required under its free TV licence to provide and

maintain adequate staff resources to avoid or minimize any service interruption to the viewing public. In respect of news services, ATV is required to provide on each of its Cantonese and English channel a minimum of two comprehensive news bulletins, each of not less than 15 minutes, between 6:00 p.m. and 12:00 midnight, unless otherwise approved by the CA upon ATV's application. An extract of the relevant provisions in ATV's free TV licence is at **Annex A**.

5. Following the departure of staff in its news department from its employ due to late payment of wages, ATV has reduced the amount of news services provided on its licensed service starting from 1 January 2015. ATV Home has since ceased to provide its regular 2-hour morning news programme "Good Morning Asia", but continued to broadcast news programme at noon and two comprehensive news bulletins (each lasts about 23 minutes and 28 minutes) between 6:00 p.m. and 12:00 midnight each day. On ATV World, two regular comprehensive news bulletins have continued to be broadcast between 6:00 p.m. and 12:00 midnight each day.

Follow-up Action

6. The CA has been seriously concerned about ATV's repeated failures to pay wages to its staff on time in context of its implications on ATV's ability to comply with the statutory/licence requirements set out above. The CA has since early December 2014 repeatedly requested ATV to exercise due care and to take actions as appropriate to comply with all the relevant requirements under the BO and the provisions in its free TV licence, including the provisions of various types of programmes in accordance with the requirements relating to positive programmes, and to ensure that there will be no interruption of its licensed service to the viewing public. The CA notes that so far, ATV has been able to meet the licensing requirement on news services and will continue to closely monitor ATV's compliance with the various regulatory requirements.

Non-Payment of Licence Fees

7. Under the Broadcasting (License Fees) Regulation (Cap. 562A), ATV shall pay annually to the CA a fixed fee of its free TV licence not later than 14 days after the commencement of the licence year. ATV is also required to pay a provisional amount of variable fee which is calculated on the basis of the aggregate programme time in the licence year not later than 60 days after the commencement of the licence year.

8. As ATV also holds a fixed carrier licence ("FCL") issued under the Telecommunications Ordinance (Cap.106) for conveyance of its free TV service, it is required under the Telecommunications (Carrier Licences) Regulation (Cap. 106V) to pay a licence fee annually on the anniversary of the issue of the FCL. An extract of the relevant

regulatory requirements is at **Annex B**.

Follow-up Action

9. For the licence year 2014/2015, the fixed fee of ATV's free TV licence and the annual fee of its FCL were due for payment on 15 December 2014 and 1 December 2014 respectively. No payment was made by ATV by the respective deadlines. Despite the issue of two rounds of written reminders, ATV has not made any payment for the above mentioned fees. On 9 January 2015, ATV submitted an application for the CA's approval to pay the fixed fee¹ of its free TV licence and the annual fee of its FCL for the licence year of 2014/2015 by five instalments.

10. The CA considers ATV's failure to settle the annual licence fees in accordance with the statutory and licence provisions, being the second breach of the same requirement in three years, a serious breach of the relevant statutory/licence conditions. Having considered the representations of ATV, the CA has decided to sanction ATV by imposing a financial penalty of \$200,000 on ATV in accordance with established procedures.

11. The CA has decided to reject ATV's application for settling the licence fees in arrears in five instalments, and having considered ATV's representations, has decided to direct ATV to settle the outstanding licence fees and interests in two instalments, by 18 February and 18 March 2015, respectively. The CA has put ATV on clear notice that if ATV fails to comply with the said direction to pay the outstanding licence fees and interests according to the specified timeframe, the CA will consider imposing on it a more serious sanction, including invoking the licence revocation procedures in accordance with the BO.

Possible Shareholding Change of ATV

12. Following the proceedings of HCMP 2840/2012², the court issued an order to ATV and relevant parties on 18 December 2014. According to the court order, two managers ("Managers") were appointed to the board of directors of ATV on 24 December 2014 as independent non-executive directors. One of the Managers' duties is to sell 10.75%

¹ ATV's application does not cover the provisional variable fee of its free TV licence which will be due for payment on 30 January 2015.

² In December 2012, Antenna Investment Limited ("Antenna"), a shareholder of ATV jointly controlled by Mr Tsai Eng-meng, Mr Payson Cha and Mr Johnson Cha, filed a petition to the court against ATV in respect of alleged unfair prejudice and oppression suffered by Antenna as a non-controlling shareholder of ATV due to mismanagement of the company and exclusion of Antenna-appointed directors from the management of ATV. The hearing had completed in end 2013. Upon application of Antenna, the court decided to reopen the hearing of the case, and the hearings were conducted from 25 to 28 November 2014.

or more of ATV's shares to an independent third party at the best price reasonably obtainable as ascertained by the Managers.

13. On 12 January 2015, the Managers issued an open invitation for bids for acquiring 10.75% or more of ATV's shares by 26 January 2015. As far as we understand, the Managers are reviewing and considering the proposals received.

14. All broadcasting licensees including ATV are required under their licences to comply with the statements and representations, including those relating to their shareholding structure, submitted in their applications for a new licence or for renewal of an existing licence (i.e. the Licensee's Proposal) unless otherwise approved by the CA. Thus, a broadcasting licensee needs to apply for the CA's approval if there is any change in its shareholding structure. An extract of the relevant provision in the free TV licence of ATV is at **Annex A**.

Follow-up Action

15. The CA has not received any application for changes in ATV's shareholding structure. In case there is such an application, the CA will consider it in accordance with the BO and established procedures.

Licence Renewal Application of ATV

16. The free TV licence of ATV will expire on 30 November 2015. Section 11 of the BO sets out the regime for extension or renewal of licences granted under the BO. A licensee shall submit to the CA an application for the extension or renewal of its licence not less than 24 months before the date on which the period of the validity of the licence expires. In respect of free TV licence, the CA shall as soon as practicable after the receipt of an application and, in any case, not later than 12 months before the expiry of the period of validity of the licence, submit recommendations to the Chief Executive in Council ("CE in C") in relation to the extension or non-extension or renewal or non-renewal of the licence, and where appropriate, the conditions subject to which the licence may be renewed or extended. The CE in C shall consider the recommendations of the CA, and as soon as practicable, renew or extend the licence to which they relate subject to such conditions as he thinks fit specified in that licence; or decide not to renew or extend the licence.

17. ATV submitted an application for renewal of its free TV service licence ("licence renewal application") in November 2013. The CA had completed a comprehensive assessment of ATV's licence renewal application in accordance with the requirements under the BO and established procedures, and submitted its recommendations on the application to the CE in C on 4 November 2014. In the event that there

is any change to ATV's compliance record during the remaining validity of its licence, or in case any subsequent developments of ATV has an impact on its recommendations on ATV's licence renewal application, the CA will provide the CE in C with supplementary information and observations as necessary and appropriate. Since 4 November 2014 and to date, the CA has provided supplementary information to update the CE in C on its imposition of a financial penalty on ATV arising from ATV's failure to pay the licence fees in accordance with the statutory/licence provisions.

18. The CE in C is processing the licence renewal application of ATV and will consider all relevant factors, including the licensee's operational capability, financial condition, etc., before making a decision.

Advice Sought

19. Members are invited to note the content of this paper.

**Communications and Technology Branch,
Commerce and Economic Development Bureau and
Office of the Communications Authority
February 2015**

**Extract from
Domestic Free Television Programme Service Licence
of Asia Television Limited**

News Programmes

- 4 Subject to the proviso, the Licensee shall provide on each language service a minimum of two comprehensive news bulletins, each of not less than 15 minutes duration, each evening between 6:00 p.m. and 12:00 midnight provided that upon application in writing by the Licensee the Broadcasting Authority may approve alternative arrangements for broadcasting news bulletins.

Licensee to comply with statements

- 10.4 Without prejudice to any statutory and other regulatory requirements regarding the legal and beneficial interest in the voting control and shares in the Licensee, the Licensee shall inform the Broadcasting Authority about any change and series of changes:

- (a) involving 10% or more of the voting shares in the Licensee; and
- (b) involving 1% or more of the voting shares in the Licensee of any person who holds 10% or more of the voting shares in the Licensee

within 14 days after:

- (i) the change or series of changes, as the case may be, takes place; or;
- (ii) the Licensee becomes aware of the change or series of changes, whichever is earlier.

Standby equipment and spare parts

- 27 The Licensee shall provide and maintain adequate standby equipment (including but not limited to spare parts) and staff to ensure that any interruption to the Service under this Licence is avoided or minimised, and that necessary repairs or replacements are made or provided promptly.

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**Extracts of
Broadcasting (License Fees) Regulation (Cap. 562A), and
Telecommunications (Carrier Licences) Regulation
(Cap. 106V)**

**Broadcasting (License Fees) Regulation (Cap. 562A)
Schedule 1**

**Annual Licence Fee for Domestic Free Television Programme Service
Licence**

2. Annual licence fee

- (1) The annual licence fee for a licence is payable in respect of a licence year and consists of the following—
 - (a) a fixed fee of \$4701400; and
 - (b) a variable fee calculated at the rates specified in section 4 and on the basis of the aggregate programme time of the television programmes broadcast in the licence year.

3. Time and manner of payment

- (1) The holder of a licence shall pay to the Authority the fixed fee not later than 14 days after the commencement of a licence year.
- (2) The holder of a licence shall, in respect of a licence year, pay to the Authority a provisional amount of the variable fee not later than 60 days after the commencement of the licence year.
- (3) The provisional amount is to be calculated at the rates specified in section 4—
 - (a) in relation to a licence year commencing on the specified day, on the basis of the estimated aggregate programme time of the television programmes to be broadcast in the licence year as recorded in the licence; and
 - (b) in relation to a licence year commencing on an anniversary of the specified day, on the basis of the aggregate programme time of the television programmes broadcast in

the preceding licence year.

- (4) If a television programme service, television programme or any part of a television programme service or television programme is approved or directed by the Authority to be simulcast in both analogue and digital formats, the programme time is to be calculated only by reference to the duration of the television programme or the part of the programme broadcast in digital format.

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Telecommunications (Carrier Licences) Regulation (Cap. 106V)

Schedule 3

Part 1

Fixed Carrier Licences Other Than Fixed Carrier (Restricted) Licences

1. A fee of \$1000000 shall be payable on the issue of a fixed carrier licence (excluding a fixed carrier (restricted) licence) and, in each year while the licence remains in force, on the anniversary of the issue of the licence. If the licence permits the provision of external services only, the fee is \$200000. (L.N. 134 of 2003; L.N. 34 of 2004)
2. A fee of \$700 shall be payable on each anniversary of the issue or the renewal of a fixed carrier licence (excluding a fixed carrier (restricted) licence) for each 100 customer connections, made by telecommunications line or radiocommunications means, to the network established and maintained under the licence. If the licence permits the provision of external services only, no such fee is payable. (L.N. 134 of 2003)
3. Subject to section 4, a fee for the management of radio frequency assigned shall be payable on the issue and on each anniversary of the issue of the fixed carrier licence concerned (excluding a fixed carrier (restricted) licence) and calculated as follows-
 - (a) where the radio frequency is assigned exclusively to the licensee-
 - (i) \$50 for every 1 kHz or part thereof of frequency then

assigned below 1 GHz;

- (ii) $\$(50-4F)$ for every 1 kHz or part thereof of frequency then assigned within 1 GHz to 10.999 GHz, where F is the frequency rounded down to the nearest GHz in the band then assigned;
- (iii) $\$(20-F)$ for every 1 kHz or part thereof of frequency then assigned within 11 GHz to 18.999 GHz, where F is the frequency rounded down to the nearest GHz in the band then assigned;
- (iv) \$1 for every 1 kHz or part thereof of frequency then assigned at or above 19 GHz;

(b) where any part of the radio frequency is assigned to the licensee on a non-exclusive or shared basis, the fee calculated in accordance with the formula set out in paragraph (a) shall be proportionally reduced by a reduction factor-

- (i) equal to the number of users authorized or reserved by the Authority to use that particular part of the radio frequency;
- (ii) determined on the date on which the fee is payable.

4. No fee is payable under section 3 for the management of radio frequency within any of the following frequency bands-

6.765 -- 6.795 MHz
13.553 -- 13.567 MHz
26.957 -- 27.283 MHz
40.66 -- 40.7 MHz
2400 -- 2500 MHz
5.725 -- 5.875 GHz
24.0 -- 24.25 GHz
61 -- 61.5 GHz
122 -- 123 GHz
244 -- 246 GHz

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