

File Ref.: ITBB(CR) 9/5/1(98) Pt. 3

PROVISIONAL LEGISLATIVE COUNCIL BRIEF

Television Ordinance
(Chapter 52)

APPLICATION BY ASIA TELEVISION LIMITED FOR CHANGE OF SHAREHOLDING AND INTRODUCTION OF "DISQUALIFIED PERSON" AND "UNQUALIFIED VOTING CONTROLLER" TO EXERCISE CONTROL OF THE COMPANY

INTRODUCTION

At its meeting on 26 May 1998, the Executive Council considered ATV's application for the introduction of additional shareholders and directors to "exercise control" of ATV. In exercise of the power granted under section 11A(1)(b) of the Television Ordinance (the Ordinance), the Council ADVISED and the Chief Executive ORDERED that the application in respect of the introduction of a "disqualified person" to exercise control of ATV be approved.

BACKGROUND

The acquisition

2. The existing shareholders of ATV have signed a conditional Sale and Purchase Agreement (the Agreement) with Dragon Viceroy Limited (DVL) (龍維有限公司) and Rankon Limited (RL) (聯旺有限公司) for the latter companies to acquire equity shares in ATV. The acquisition will involve DVL and RL purchasing shares from the existing shareholders on a pro-rata basis to attain 46% and 5% shareholding in ATV respectively. Following the transfer of shares, DVL will become the largest shareholder of ATV. A table showing the

shareholders of ATV and their effective interests in ATV after the acquisition is at Annex A.

3. Consequently, there will be changes to the board of directors of ATV. DVL and RL will each appoint new directors to the board and some existing directors will be replaced. As a result, the number of directors will increase from 12 to 16 and Mr Wong Po-yan will replace Mr Lim Por-yen to become the Chairman. The new board of directors of ATV is shown at Annex B.

4. On the management side, Mr Bruno Wu (吳征), in addition to his appointment as a director, will assume the post of Chief Operating Officer (COO). Mr Kenneth Kwok will continue to be the Acting Chief Executive Officer.

5. ATV is a commercial television broadcasting licensee and is subject to ownership and corporate structure restrictions laid down in the Ordinance. There are specific requirements governing the "exercise of control" of a licensee by "disqualified persons" (DP) and of voting control held by "unqualified voting controllers" (UVC). Accordingly, the acquisition will require the respective approvals from the Chief Executive in Council and the Broadcasting Authority (BA).

Disqualified Person

6. Under section 10(1)(f) of the Ordinance, no "DP" shall "exercise control" of the company holding a television licence. Section 2(1) of the Ordinance defines a DP to mean, among others, a company which transmits sound or television material, whether within or without Hong Kong, and the associates of that company. "Exercise control of a company" is defined in section 2(1) of the Ordinance as -

- (a) to hold office in that company; or
- (b) to be the beneficial owner of more than 15% of voting shares in that company; or
- (c) to be a voting controller of more than 15% of the voting shares of that company.

7. Section 11A(1)(b) stipulates that on the application of a licensee, the Chief Executive in Council may, if he is satisfied that the public interest so requires, approve the introduction of a "DP" to "exercise control" of the company. Mr Liu Changle is a DP as defined in Section 2 of the Ordinance by virtue of his position as the Chairman and Chief Executive Officer of the Phoenix Chinese Channel which, according to ATV, is transmitting television material.

8. The consideration of public interest is the criterion for relaxing the restriction with regard to DP. In addressing the issue of what may be required by the public interest in relation to those exercising common control of a commercial television licensee and a company which transmits sound or television material, i.e. Phoenix Chinese Channel, the Government's primary considerations are whether the relaxation will lead to any risk of monopoly build-up, risk of conflict of interest and risk of lack of diversity in editorial opinion and programming. Having considered ATV's application, the Chief Executive in Council was satisfied that the relaxation of the DP restriction in respect of Mr Liu's appointment as a director of ATV should not give rise to the risks mentioned above.

9. In reaching this decision, the Chief Executive in Council has taken the following factors into account :-

- (a) ATV's confirmation that Mr Liu will not involve himself in the day to day management of ATV nor will he have any role in making programming and editorial decisions;
- (b) the market and target audience of ATV and the Phoenix Chinese Channel being different;
- (c) Mr Liu's beneficial interest in the voting shares of ATV being 13.79% is below the 15% limit laid down in the Ordinance; and
- (d) Mr Liu's expertise and experience in the media field and the potential contributions he might be able to make to ATV's strategic business decisions.

Unqualified Voting Controllers

10. RL, one of the new shareholders of ATV, is an "UVC" by virtue of the fact that it is not ordinarily resident in Hong Kong as defined in the Ordinance. The approval of the BA is required for it to acquire 5% voting control of ATV under Section 17F of the Ordinance.

11. The BA considered ATV's application on 7 May 1998 and decided to support the acquisition and to give the necessary approval as outlined in paragraph 10 above. In coming to this decision, the BA has taken into account the financial strength of the new shareholders, the present state of operation of ATV and the potential benefits the acquisition would bring to ATV. The BA noted in particular that the Ordinance does not prohibit foreign investment per se albeit it is Government policy to have the control of television firmly rooted in the hands of local people. In this case, the majority of the new shareholders and new directors of ATV are permanent residents of Hong Kong. In this regard, ATV has confirmed that ATV's control and management will be bona fide exercised in Hong Kong and that the various new and remaining shareholders will ensure that the directors will exercise an independent judgement bona fide for the benefit of ATV in reaching decisions on the management and control of ATV.

Other considerations

12. In support of its application, ATV has provided proof of financial commitments by way of Letters of Comfort from three financial institutions indicating that they are supportive of DVL and RL participation in ATV and that they are interested, subject to further negotiations on terms and conditions, in providing banking facilities to ATV for the purpose of working capital and business development.

13. The Government believes that ATV will benefit from the injection of new capital and modern management expertise and as a result its competitiveness will be better enhanced.

HUMAN RIGHTS IMPLICATIONS

14. The Department of Justice has advised that the giving of

approval has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

15. There are no financial and staffing implications for Government.

PUBLICITY

16. A press release will be issued and a press conference will be held on 26 May 1998 to announce the Government and the BA's decisions.

Information Technology and Broadcasting Bureau
Government Secretariat
26 May 1998

Annex AEffective interest in ATV after the shares transfer

	%
Mr Lim Por Yen	16.08
Lai Sun Group	16.67
New World Group	13.75
STDM	2.50
Feng Xiao Ping	24.12
Liu Changle	13.79
Bruno Wu	3.00
Chan Wing Kee	3.00
Wong Po Yan	2.00
Wang Wen Huan	2.90
Chan Wing To	1.00
Other parties individually holding less than 1%, including Szeto Yuen Kit, Chan Kar Lok, Steve Loo and Random Services Ltd.	<u>1.19</u>
	100.00

Annex B**New Board of Directors of Asia Television Limited**

* Wong Po Yan (Chairman)	黃保欣 (主席)
Lim Por Yen	林百欣
* Liu Changle #	劉長樂
Lam Kin Ngok, Peter	林建岳
Lam Kin Ming	林建名
* Chan Wing Kee	陳永棋
* Feng Xiao Ping	封小平
* Bruno Wu #	吳征
* Michael Spiessbach #	
Lee Po On, Mark	李寶安
Cheng Kar Shun, Henry	鄭家純
Ho Chiu King, Pansy Catilina	何超瓊
* Kwok Kwan Ying #	郭鞏英
* Wang Wen Huan	王文煥
* Steve C K Loo	盧重強
Leung Chi Kin, Steward	梁志堅

* New Directors to be appointed

Not of permanent residence status