

**For discussion on
11 April 2011**

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

**Changes in the Shareholding Structure of
Television Broadcasts Limited**

Purpose

This paper briefs Members on the recent application submitted by the Television Broadcasts Limited (“TVB”) to the Broadcasting Authority (“BA”) for a change in its shareholding structure.

Background

2. All television programme service licensees including TVB 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 (“the Licensee’s Proposal”) unless otherwise approved by the BA. Thus, a licensee needs to apply for the BA’s approval for any change in its shareholding structure.

3. On 1 February 2011, TVB submitted an application to the BA for approval of a change in its shareholding structure. The change involved the acquisition by an investor group of the entire stake in Shaw Brothers (Hong Kong) Limited (“Shaw Brothers”), which owns 26% of voting shares of TVB. The investor group comprises Dr Charles CHAN Kwok-keung (“Dr Chan”), Ms Cher Wang Hsiueh Hong (“Ms Wang”) and Providence Equity Partners LLC (“PEP”).

Regulatory Requirements under the Broadcasting Ordinance

4. In respect of applications for a change in shareholding structure by a domestic free television programme service licensee (“free TV licensee”), the BA considers the following regulatory requirements under the Broadcasting Ordinance (“the Ordinance”) (Cap 562) –

- (a) fit and proper person requirement;
- (b) corporate status requirement;
- (c) residence requirement; and
- (d) restrictions on disqualified persons.

Fit and Proper Person

5. Pursuant to section 21 of the Ordinance, a free TV licensee and any person exercising control 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 includes the person’s business records, record in situations requiring trust and candour, and criminal record in respect of offences involving bribery, false accounting, corruption and dishonesty.

Corporate Status

6. Pursuant to section 2 (in relation to the definition of a “company”) and section 8(1) of the Ordinance, a free TV licensee must be a company incorporated in Hong Kong so that it is subject to Hong Kong laws. In addition, section 8(3) of the Ordinance stipulates that a free TV licence shall not be granted to a company that is a subsidiary of a corporation. This is to ensure that a licensee remains an independent entity with its management and control free from interference from other companies.

Residence Requirement

7. The Ordinance limits or restricts the influence and control of a free TV licensee by persons/companies who are not qualified voting controller. In the case of an individual, a qualified voting controller is one

who satisfies the “ordinarily resident in Hong Kong” requirement¹ and who has been so resident for at least one continuous period of not less than seven years. In the case of a corporation, the majority of its 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 corporation is bona fide exercised in Hong Kong. The relevant restrictions against “unqualified voting controller” are as follows –

- (a) without prior written approval of the 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% in accordance with the formula stipulated in the Ordinance. 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 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.

Restrictions on Disqualified Persons

8. Under the Ordinance, persons or companies engaged in or associated with certain types of businesses (“disqualified persons”) are not allowed to hold a free TV licence or exercise control² of such a licensee

¹ “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.

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.

unless the Chief Executive in Council (CE in C), on application by the concerned licensee, is satisfied that public interest so requires and approves otherwise³. The following disqualified persons are prohibited from exercising control of a free TV licensee –

- (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) to (d) above, as well as their associates.

BA's Assessment of the Application

9. The BA has carefully examined TVB's application and is satisfied that the 26% shareholding would not adversely affect TVB's commitments under the Broadcasting Ordinance and under its free TV licence. In respect of ownership and corporate control, the BA's findings are summarised below –

- (a) Fit and proper person requirement – Based on the documents submitted by TVB and information available, the BA determined that TVB's proposed shareholding change would not involve the exercise of control of TVB by persons who were not fit and proper;
- (b) Corporate status requirement – TVB would remain a company incorporated in Hong Kong and would not become a subsidiary

³ 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.

of a corporation after the shareholding change;

- (c) Residence requirement – The majority of directors and all principal officers, including the principal officers of the company in charge of the selection, production or scheduling of programmes would, after the shareholding change, be ordinarily residents in Hong Kong and have been so resident for a period of not less than seven years and the control and management of the company would continue to be bona fide exercised in Hong Kong.

The BA noted that Dr Chan would become the ultimate voting controller of the 26% voting shares of TVB. Ms Wang or PEP would not hold or exercise any voting control of these shares and hence they are not voting controllers of TVB. As Dr Chan is ordinarily resident in Hong Kong and has been so resident for a period of not less than seven years, he is therefore a “qualified voting controller” of TVB.

- (d) Restrictions on disqualified persons – Based on the documents submitted by TVB and information available, the persons and corporations that would exercise control of TVB upon completion of the transaction were not disqualified persons.

10. To ensure that TVB can continue to deliver its service to the viewing public in Hong Kong, the BA has considered the financial capability and funding sources of all the new shareholders. Based on the information submitted by TVB, the BA is satisfied that TVB would have sufficient financial resources to maintain its daily operations and comply with its investment commitments of \$6.3 billion from 2010 – 2015 under its licence following the shareholding change.

11. TVB has provided legal undertakings that it would uphold editorial independence and ensure that its domestic free television programme service would remain primarily targeting Hong Kong and therefore catering for the needs of Hong Kong viewers after the shareholding change.

12. In view of the above, the BA approved TVB's application for the change in shareholding structure. The BA's approval is subject to the conditions that TVB shall continue to comply with all the relevant regulatory requirements applicable to it and be bound by the statements, representations, assurances and undertakings made in its application. TVB announced on 31 March 2011 the completion of the shareholding change that day and the appointment of Dr Chan, Ms Wang and Mr Jonathan Milton Nelson of PEP as the non-executive directors of the company with effect from 1 April 2011. The relevant extract of BA's press release issued on 31 March 2011 is attached at the **Annex**.

Transfer of TVB Shares by Shaw Foundation Hong Kong Limited ("Shaw Foundation")

13. The BA received on 31 March 2011 a retrospective application from TVB in respect of the transfer by Shaw Foundation of 2.59% of TVB shares to four educational and charitable institutions (namely the University of Hong Kong, the Chinese University of Hong Kong, Hong Kong Red Cross and Hong Kong Shue Yan University Limited) by way of donation. The transaction was completed on 31 March 2011. The BA is processing the application in accordance with established procedures.

Advice Sought

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

**Commerce and Economic Development Bureau
April 2011**

Press Releases

Broadcasting Authority's deliberations in March

The following is issued on behalf of the Broadcasting Authority:

This press release summarises the outcome of the Broadcasting Authority (BA)'s deliberations in March 2011:

Changes in Shareholding Structure of Television Broadcasts Limited (TVB)

The BA has approved the application for a change in shareholding structure of Television Broadcasts Limited (TVB) arising from the introduction of an investor group controlled by Dr Charles Chan Kwok Keung under which the group will acquire the entire stake in Shaw Brothers (Hong Kong) Limited, which owns 26% of voting shares of TVB. The application was approved and the acquisition took effect on March 31, 2011.

The BA's approval is subject to the conditions that TVB shall continue to comply with all the relevant regulatory requirements applicable to it and that after the shareholding change, TVB and Dr Chan shall be respectively bound by the statements, representations, assurances and undertakings made in the application.

The BA is satisfied that the regulatory requirements under the Broadcasting Ordinance (Cap. 562) (BO) are and will continue to be complied with by TVB after the change in shareholding structure. In particular, TVB will remain a company incorporated in Hong Kong and its control and management will continue to be bona fide exercised in Hong Kong. The selection, production or scheduling of programmes will continue to be carried out by principal officers who are ordinarily resident in Hong Kong within the meaning of the

BO, and TVB's domestic free television programme service will remain primarily targeting Hong Kong.

The shareholding change will not affect TVB's investment commitment of \$6.3 billion from 2010 to 2015 made in the context of the mid-term review of its licence in 2010.

Separately, the BA has received an application from TVB in respect of the transfer by Shaw Foundation Hong Kong Limited of 2.59% of TVB shares to various education-based charities and institutions on March 31, 2011. The BA will process the application in accordance with established procedure.