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Clerk to Bills Committee on
Broadcasting and Telecommunications
Legislation (Amendment) Bill 2019
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By email (bc_09_18@legco.gov.hk)

Dear Sir/ Madam

**Bills Committee on Broadcasting and Telecommunications
Legislation (Amendment) Bill 2019**

Thank you for your invitation to the meeting on 7 May 2019 on the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019. We regret that we are unable to attend the meeting personally, but are pleased to attach our written submission for your consideration.

Yours faithfully
For and on behalf of
Television Broadcasts Limited

Desmond S.H. Chan

Encl.

**Submission from Television Broadcasts Limited
to Bills Committee on Broadcasting and Telecommunications
Legislation (Amendment) Bill 2019**

We, Television Broadcasts Limited (*TVB*), welcome the opportunity to provide comments on the Broadcasting and Telecommunications Legislation (Amendment) Bill 2019 (the *Bill*). TVB applauds the Government's overall goal of providing a more balanced competitive environment for local traditional broadcasting service providers by relaxing obsolete statutory requirements and rationalizing the regulatory arrangements. Our views over the Bill are as follows.

Executive Summary

- further narrowing the scope of DPs by removing the “partnership” or “partner” element from the definition of “associate” under the BO
- maintaining status quo in respect of the threshold percentages of total voting control of a free TV licensee by an unqualified voting controller that are subject to the CA's prior approval (i.e. 2%, 6%, 10% and above)
- welcoming removal of the non-subsidiary restriction on free TV licensees
- welcoming keeping the same licensing procedures and licensing authority

Cross-media ownership and scope of “disqualified persons”

1. TVB supports the proposed relaxation of the existing restrictions on cross-media ownership, specifically the removal of “non-domestic TV licensee”, “other licensable TV licensee”, “advertising agency” and “proprietor of a local newspaper” from the definition of “disqualified persons (*DPs*)” under the Broadcasting Ordinance (*BO*) with respect to free TV and pay TV services. We consider such removal will facilitate investment and be beneficial to the business development of the licensed broadcasting industry, and will bring about a more level playing field between traditional broadcasting and Internet-based TV services which are not subject to stringent statutory and licensing restrictions.
2. TVB welcomes the proposed simplification of the classes of persons from being treated as DPs by narrowing the scope of “relative” under the definition of “associate” in the BO, as the structure under the existing provisions is excessive, cumbersome and difficult to comply with.
3. Nonetheless, TVB considers that the definition of DPs under the BO is still unnecessarily complicated even after the proposed simplification, and takes the view that further simplification of the definition of “associate” is necessary.
4. Specifically, we consider it appropriate to further narrow the scope of “DPs” by

removing the “partnership” or “partner” element from the definition of “associate” on the following grounds:-

- (a) The law requires that a free TV licensee, a pay TV licensee or a sound broadcasting licensee must be a company formed and registered in Hong Kong under the Companies Ordinance (s.8 BO/ s.13F TO). A partnership cannot be such a licensee. Thus, removal of “partnership” and “partner” from the scope of “associate” and hence DPs does not increase the risk of getting around the DP restrictions.
- (b) It is not common in Hong Kong for a partnership to be a shareholder of a company. Indeed, to the best of our knowledge, there has never been a partnership exercising control of a free TV, pay TV or sound broadcasting licensee by holding shares in the licensee or otherwise.
- (c) Partnership is rarely used as a business entity for doing business in Hong Kong largely because partners are personally liable for all the debts of the business. Its adoption is restricted to mainly legal or accountancy profession. Such a profession is not related to mass broadcasting services. Thus, it is inconceivable why a partner in an international accountancy firm is disqualified from being appointed as an independent non-executive director of say TVB if one of his hundreds of co-partners has been appointed a non-executive director of say Commercial Radio. It simply does not increase the risk of cross-media monopolies or editorial uniformity for such two partners to separately sit in the boards of two distinct broadcasting companies.

5. In light of the aforesaid, we propose the definition of “associate” in Section 1(1) of Schedule 1 to the BO be revised as follows: –

“ *associate* (相聯者), in relation to a voting controller holding voting control (whether the controller is qualified or unqualified), means—

(a) where the voting controller holding the voting control is an individual—

(i) a relative of the voting controller;

~~(ii) a partner of the voting controller or a relative of the partner;~~

~~or~~

~~(iii) a partnership in which the voting controller is a partner;~~

~~(iv)(ii) a corporation influenced by—~~

~~(A) the voting controller;~~

~~(B) a partner of the voting controller; or~~

~~(C) a partnership in which the voting controller is a partner; or~~

(v) a director or principal officer of a corporation mentioned in ~~(iv)(ii)~~;

(b) where the voting controller holding the voting control is a corporation—

(i) an associated corporation;

(ii) a voting controller who—

- ~~(A) influences the corporation and, if the voting controller is an individual, a relative of the voting controller; or~~
- ~~(B) is a partner of the voting controller to whom or which sub-subparagraph (A) applies, and if the partner is an individual, a relative of the partner;~~
- ~~(iii) a director or principal officer of the corporation or of an associated corporation and a relative of the director or officer; or~~
- ~~(iv) a partner of the corporation and, if the partner is an individual, a relative of the partner; or~~
- ~~(e) where the voting controller holding the voting control is a partnership—~~
 - ~~(i) a member of the partnership and, if the partner is an individual, a relative of the member;—~~
 - ~~(ii) a partner of the partnership and, where the partner—~~
 - ~~(A) is an individual, a relative of the partner; or~~
 - ~~(B) is itself a partnership, the relative of a member of the partnership who is an individual;~~
 - ~~(iii) a corporation influenced by—~~
 - ~~(A) the partnership; or~~
 - ~~(B) a partner of it; or~~
 - ~~(C) where the partner is an individual, a relative of the partner;~~
 - ~~(iv) a corporation of which a partner of the partnership is a director or principal officer; or~~
 - ~~(v) a director or principal officer of a corporation mentioned in subparagraph (iii).—”~~

Foreign control restrictions of free TV licensees

6. TVB expresses concern that the proposed adjustment on the shareholding percentage thresholds that trigger the Communications Authority (CA)'s prior approval may have profoundly negative implications for the public interest, as the CA would be impeded to review the proposed foreign ownership of a free TV licensee at an early stage. TVB considers it appropriate to maintain the status quo for the reasons set out below.
7. Free TV is the most influential mass media in Hong Kong. The existing regulatory regime, which requires a non-Hong Kong resident shareholder to seek the CA's prior approval in order to hold, acquire or exercise certain percentage of the voting control of a free TV licensee, has been working well to ensure that: –
 - (a) the local free TV licensees are controlled by local residents who would have the interest of the Hong Kong people at heart, yet permitting foreign investment on terms that aim at restricting voting control only;
 - (b) the culture and other interest of the people of Hong Kong will not be compromised;

- (c) the programmes broadcast by the local free TV licensees would continue to cater for local audience's interest, taste, and culture;
 - (d) foreign conglomerates cannot use their power to influence the broadcasting, economic and other social policies of the HKSAR Government;
 - (e) foreign conglomerates cannot use their market power to reduce the competitiveness of the local free TV licensees;
 - (f) foreign conglomerates cannot drain away money from Hong Kong by using the Hong Kong TV stations as a financing vehicle;
 - (g) foreign conglomerates cannot use broadcast facilities to spread propaganda which may put public security of Hong Kong at risk;
 - (h) the control and management of the local free TV licensees will be bona fide exercised in Hong Kong rather than outside of Hong Kong;
 - (i) the local free TV licensees' freedom of expression and editorial independence will be upheld;
 - (j) local programming will continue to be produced so that people of Hong Kong have the opportunity to see their own lives and communities reflected in programming;
 - (k) the cultural expression of Hong Kong will continue to be promoted and preserved; and
 - (l) all investments by foreigners in a local free TV is genuine and long-term, rather than speculative.
8. The assertion that relaxing the shareholding thresholds that trigger the CA approval process can encourage investment and facilitate injection of new capitals in the free TV market is misconceived. Even if, after the relaxation, a foreign investor may readily buy more shares of a local free TV licensee, the consideration paid by the foreign investor will go to the pocket of the selling shareholder, NOT the local free TV licensee. Take, TVB (a listed company), for instance. There have been a lot of acquisitions of its shares from the market by foreign investors on each trading day. Nonetheless, the operating capital for TVB has not been thereby increased because the investment paid by the foreign investors did not go to TVB.
9. We consider that the long established shareholding thresholds (viz. 2%, 6%, 10% and above) for approval have worked effectively in ensuring that the control and management of a free TV licensee are vested in the hands of Hong Kong residents, and safeguarding the interests and aspirations of the Hong Kong people. We therefore consider it appropriate to maintain the status quo.

10. That said, TVB welcomes the CA's revised measures of disclosing to a free TV licensee its approval of an unqualified voting controller application for acquiring/holding the licensee's shares after obtaining the consent of the applicant, simplifying the prescribed form for the declaration on voting control, and adjusting the deadlines relating to submission of declaration.

Requirement of a licensee being a non-subsidiary company

11. TVB supports the proposed removal of the non-subsidiary restriction on free TV licensees. Such restrictions are not necessary in the prevailing highly competitive market, and the removal of which will provide licensees with greater flexibility in arranging corporate structure of their business.

Licensing authority

12. TVB welcomes the Government's proposal to maintain the status quo with respect to licensing procedures, including the requirement that the Chief Executive in Council be the licensing authority for free TV, pay TV and sound broadcasting services.

Conclusion

13. To conclude, we are of the view that the scope of "DPs" shall be further narrowed by removing the "partnership" or "partner" element from the definition of "associate" under the BO, and that the threshold percentages of total voting control of a free TV licensee by an unqualified voting controller that are subject to the CA's prior approval shall maintain at "2%, 6%, 10% and above".
14. We hope our views are useful to the Bills Committee as it considers its way forward on the reform of the BO.