

Responses to questions raised by the Clerk to the Legislative Council Panel on Information Technology and Broadcasting

Agenda Item I (A) Disqualified Persons

(a) *What are the circumstances leading to the recent revelation that the nine persons listed in question have been disqualified persons exercising of ATV since May 2000?*

1. Phoenix Satellite Television Company Limited (Phoenix), a satellite television station which uplinks its television services from Hong Kong, has been providing television services for the Region since 1996. Phoenix's services formed part of the television services licensed under the non-domestic television programme service licence held by STARVISION Hong Kong Limited. There were nine directors, principal officers and intermediary companies who are either exercising control of both ATV and Phoenix or being associates with those exercising control of the companies. They are not disqualified persons in relation to ATV by reason only of the fact that they exercise control (or being associates with those exercising control) of both ATV and Phoenix as long as Phoenix is not a broadcasting licensee, nor engaging in advertising, newspaper (including magazine) publishing business.
2. Phoenix decided to apply for a non-domestic television programme service licence for its own satellite television service and submitted an application to the BA, the licensing authority for such a licence, in February 2005. According to the statutory definition of "disqualified persons" of the Ordinance, the granting of a non-domestic television programme service licence to Phoenix will render the nine persons/companies disqualified persons in relation to ATV. These nine persons/companies should resign from their positions in ATV or relinquish their shares of ATV to comply with the law. Alternatively, ATV may apply for the approval of CE in C for them to continue to exercise control of ATV.
3. ATV chose to apply for the approval of CE in C for the nine persons concerned to exercise control over ATV as disqualified persons,

alongside with Phoenix's application for a non-domestic television programme licence. When exercising due diligence in scrutinizing the application, the Television and Entertaining Licensing Authority (TELA), acting as the BA Secretariat, found that Phoenix has been publishing a magazine called Phoenix Weekly Magazine since May 2000. Although the magazine is primarily circulated in the Mainland, it is published and printed in Hong Kong and therefore falls under the statutory definition of "newspaper" under the Ordinance. As such, the nine concerned persons and companies have been disqualified persons since May 2000 by reason of the fact that they are exercising control of a newspaper or being associates with those exercising such control. ATV should have requested them to relinquish control of the magazine, or failing which to resign from their positions in ATV or relinquish their shares of ATV upon the publication of the magazine. Otherwise, ATV should have applied for CE in C's prior approval for them to continue exercising control of ATV before the publication of the magazine. The BA Secretariat has sought explanation from ATV on the lapse in complying with the statutory requirement. ATV admitted inadvertence in writing and applied for retrospective approval by the CE in C for the concerned disqualified persons to exercise control of ATV.

- (b) *What are the statutory/administrative obligations, if any, on the domestic free television programme service licensee (i.e. ATV) and the regulator (i.e. the BA) in respect of any DP exercising control of the licensee? What is BA's regulatory role in ensuring licensees' compliance with the requirements under the Broadcasting Ordinance and monitoring irregularities on the part of the licensees?*
4. The onus of complying with the statutory provisions on restrictions in relation to DPs rests with the licensees. Section 39(2) requires a domestic free (or domestic pay) television programme service licensee to submit annual statutory declarations showing whether or not any disqualified person has exercised any control in the licensee during the year to which the return relates. Section 9 of Schedule 1 to the Ordinance empowers the licensee to investigate if a person or company is a disqualified person. After receiving the particulars

obtained under this section, the licensee shall give them to the BA within 15 days pursuant to section 9(4) of Schedule 1 to the Ordinance.

5. The abovementioned statutory requirement for submission of annual compliance returns by licensees enables the BA to monitor their compliance. Like other broadcasting regulators, the BA expects that licensees act in good faith in making statutory declarations when compiling regulatory returns and exercising due diligence in complying with the law and regulations. The BA Secretariat exercises due diligence in scrutinizing compliance returns submitted by licensees and if it has reasonable doubt on the accuracy of the information submitted, it will verify it with the licensees. If the BA Secretariat reasonably suspects that there may be disqualified persons exercising control of the licensee, it may, pursuant to section 10(1) of Schedule 1 to the Ordinance obtain information from the concerned persons or, pursuant to section 10(5) of the same Schedule, direct the concerned licensee to exercise its powers of investigation under section 9 of the same Schedule.
 6. If the BA has found a contravention by a licensee, it may consider taking the following action:
 - (a) issue administrative advice or warning to a licensee;
 - (b) issue, pursuant to section 24 of the Ordinance, a direction to the licensee requiring it to take necessary action in order to comply with the statutory provisions; and
 - (c) impose appropriate sanctions ranging from financial penalty (section 28 of the Ordinance), directing a licensee to include in its service a correction or apology (section 30 of the Ordinance), suspend (section 31 of the Ordinance), or, subject to the outcome of an inquiry, recommending to the CE in C to revoke a licence (section 32 of the Ordinance).
- (c) *What sanctions, if any, are being contemplated against ATV for its contravention during 7 July 2000 to 1 June 2005? Has any action been taken? What factors are taken into consideration by the BA/Administration in deciding the sanctions to be imposed on ATV?*

7. The Administration has informed the BA of the CE in C's decision. As explained in the response to the preceding question, the BA will consider appropriate action to be taken. According to the BA Secretariat, in deciding the appropriate action to be taken, the BA would take account of all relevant factors, including the number of previous breaches against the particular provision by the licensee, duration and gravity of the breach, precedent sanctions for similar cases and mitigating factors, if any.

Agenda Item I(B) Announced acquisition of ATV's shares by Citic Guoan Group

- (a) The Administration/BA's comments, if any, on the proposed acquisition which has been reported in the press and on ATV's website.*
8. The BA has not yet received any ATV's applications relating to the announced acquisition of ATV's shares by the Citic Guoan Group. The BA and the Administration (if the approval of CE in C is required) will process the applications according to established procedures.
 - (b) Please explain the statutory requirements/restrictions on ownership and corporate control applicable to domestic free television programme service licensees.*
 - (c) What are the restrictions on non-resident ownership of domestic free television programme service licensees? Under what circumstances would the approval of the Chief Executive in Council/BA be required in respect of non-resident ownership of domestic free television programme service licensees? What factors are taken into consideration when considering whether or not such approval should be given?*
9. Please refer to the Background Note.

The BA will consult the public on, among other things, major

regulatory issues before making decisions according to the promulgated procedures.

**Communications and Technology Branch
Commerce, Industry and Technology Bureau
May 2006**