

Broadcasting Ordinance (Chapter 562)

Notice is hereby given that the Communications Authority (“CA”) has received an application from Phoenix Hong Kong Television Limited (“Phoenix HK”), a company duly incorporated in Hong Kong whose registered office is situated at No. 2 – 6, Dai King Street, Tai Po Industrial Estate, New Territories, Hong Kong, for a domestic free television programme service (“free TV”) licence.

The particulars of the application in this Notice, as set out below, are provided by Phoenix HK. By issuing this Notice, the CA and the Government are not to be treated as confirming the veracity of the particulars of the application nor are they to be treated as, in any way, accepting, approving, permitting or providing consent to the application. Nothing in this notice shall affect or prejudice any powers, duties, discretion and rights of the CA or the Government.

1. COMPANY INFORMATION

Principal shareholders

Phoenix HK is currently a wholly-owned subsidiary of Phoenix Satellite Television (Hong Kong Channel) Limited (“Phoenix HK Channel”) and its ultimate parent company is Phoenix Satellite Television Holdings Limited (“Phoenix Holdings”)¹, a publicly listed company in Hong Kong under the Stock Exchange of Hong Kong (Stock Code: 2008). Phoenix HK submits that upon receiving an approval-in-principle to grant the licence by the Chief Executive in Council, or at any other time that the Chief Executive in Council may consider appropriate, Phoenix HK will reorganise its corporate structure. Following the corporate restructuring, Mr Yang Chuen Liang, Charles will hold 85.01% of the voting shares in Phoenix HK and Phoenix HK Channel, a member of the Phoenix Group, will hold the remaining 14.99% of the voting shares (and 100% of the non-voting shares) in Phoenix HK.

Compliance with statutory requirements

- (a) Phoenix HK submits that it is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 622) in 2016.
- (b) Phoenix HK submits that upon completion of the corporate restructuring as described above, it will not be a subsidiary of a corporation².

¹ Phoenix HK Channel is wholly owned by Phoenix Satellite Television (B.V.I.) Holding Limited, which is a direct wholly-owned subsidiary of Phoenix Holdings.

² Section 8(3) of the Broadcasting Ordinance and section 2 of Schedule 4 to the Ordinance prohibit a free TV licence to be granted to or held by a company which is the subsidiary of a corporation. Under section 2 of the Ordinance, “subsidiary” has the same meaning as in the Companies Ordinance.

- (c) Phoenix HK submits that the company and all persons exercising control of the company will be and remain fit and proper persons³.
- (d) Phoenix HK submits that all the directors and principal officers of Phoenix HK, including the principal officer in charge of the selection, production or scheduling of television programmes, will be ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than 7 years⁴.
- (e) Phoenix HK submits that the control and management of Phoenix HK will be bona fide exercised in Hong Kong, and the majority of its directors described in (d) will actively participate in the direction of the company⁵.

³ Section 1(6) of Schedule 1 to the Broadcasting Ordinance provides that a person exercises control of a corporation if he is –

- (a) a director or principal officer of the corporation;
- (b) the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) a voting controller of more than 15% of the voting shares in the corporation; or
- (d) a person who has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that corporation or any other corporation, to ensure that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

Under section 21(1) of the Broadcasting Ordinance, a television programme service licensee and any person exercising control of the licensee shall be and remain a fit and proper person.

⁴ Under section 8(4)(a)(iv) of the Broadcasting Ordinance, a free TV licence shall not be granted to or held by a company unless, except with the prior approval in writing of the CA, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officer of the company in charge of the selection, production or scheduling of television programmes, is each an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

“Ordinarily resident in Hong Kong” means –

- (a) in relation to an individual, 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;
- (b) in relation to a corporation, a corporation which satisfies the following –
 - (i) if the number of directors who actively participate in its direction –
 - (A) is 2, each is an individual;
 - (B) is more than 2, each of a majority of them is an individual,
 for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than 7 years; and
 - (ii) the control and management of the corporation is bona fide exercised in Hong Kong.

⁵ Under sections 8(4)(a)(i) to (iii) of the Broadcasting Ordinance, a free TV licence shall not be granted to or held by a company unless –

- (i) the company complies with paragraph (b) of the definition of “ordinarily resident in Hong Kong” in section 2(1);
- (ii) the majority of the directors required under section 8(4)(a)(iv) actively participate in the direction of the company; and
- (iii) a quorum of every meeting of the directors of the company has a majority of directors who is each for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

- (f) Phoenix HK submits that a director of Phoenix HK is a disqualified person⁶ under the Broadcasting Ordinance by virtue of his being associated with Phoenix Satellite Television Company Limited (“Phoenix Satellite”), a non-domestic television programme service licensee, and Phoenix Metropolis Media Technology Company Limited, a company engaging in advertising agency business in the Mainland. Phoenix HK submits that the said person has experience in the television and media industries, and is an invaluable resource to the applicant. Phoenix HK seeks the requisite approval from the Chief Executive in Council under the Broadcasting Ordinance for the said person to be a director of Phoenix HK⁷.
- (g) Phoenix HK submits that two members of the Phoenix Group are unqualified voting controllers⁸ and will need the approval of the CA to hold, acquire, exercise or cause or permit to be exercised 14.99% of the total voting control of Phoenix HK⁹. Phoenix HK seeks the requisite approval of the CA in the application.
- (h) Phoenix HK submits that Phoenix HK will be empowered under its Articles of Association to comply fully with the provisions of the Broadcasting Ordinance and the terms and conditions of the free TV licence.

Financial soundness

Phoenix HK submits that the programming expenditure, capital expenditure and operating expenditure in the first six years of its operations are projected to be \$2,374 million in aggregate. Phoenix HK plans to invest \$623 million on programming expenditure, \$131 million on capital expenditure and \$1,620 million on operating expenditure in the initial six years.

⁶ Generally, under sections 4 to 7 of Schedule 1 to the Broadcasting Ordinance, television programme service licensees, sound broadcasting licensees, advertising agencies, proprietors of newspapers printed or produced in Hong Kong, and all persons exercising control of them, as well as associates of the above, are all disqualified persons in relation to a free TV licensee.

⁷ Sections 3(2), 4(1) and 6 of Schedule 1 to the Broadcasting Ordinance provide that a non-domestic television programme service licensee and an advertising agency, the persons exercising control of them and associates of the above shall not exercise control of a free TV licensee unless the Chief Executive in Council approves on public interest grounds.

⁸ Under section 1 of Schedule 1 to the Broadcasting Ordinance, “unqualified voting controller” means a voting controller who is not a qualified voting controller. A qualified voting controller means, inter alia, a voting controller who –

- (i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of the Ordinance and has been so resident for at least one continuous period of not less than 7 years;
- (ii) in the case of a corporation, is ordinarily resident in Hong Kong.

⁹ Under section 20(1) of Schedule 1 to the Broadcasting Ordinance, an unqualified voting controller shall not without the prior approval in writing of the CA hold or acquire 2% or more of the total voting control of a free TV licensee.

Phoenix HK submits that subject to compliance with the requirements of the “Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited”, Phoenix Holdings, a publicly listed company with a market capitalisation of \$7,952 million as at 15 September 2016, will provide full financial support to fund the investment and operations of the applicant. The total revenue of Phoenix Holdings was \$4,201 million for 2015, and the total assets of Phoenix Holdings amounted to \$9,562 million as at 31 December 2015. According to Phoenix HK’s submission, Phoenix Holdings is financially sound and is well positioned to enable the applicant to carry out the business plan.

Managerial and technical expertise

Phoenix HK submits that its management team will have proven managerial and technical expertise in all aspects of broadcasting. Persons with substantial experience in the local broadcasting industry will be in charge of the day-to-day operation of Phoenix HK.

At the initial launch of the service, Phoenix HK plans to enter into agreements with Phoenix Satellite for it to provide Phoenix HK with the necessary assistance in administrative, operational, production and technical aspects. Phoenix HK will set up its own teams to carry out the daily operation for its long-term development.

Phoenix HK submits that following the corporate restructuring as described above, the Board of Directors of Phoenix HK will comprise two directors to be nominated and appointed by its shareholders in accordance with the Articles of Association of the company. Currently, the sole director of Phoenix HK is Mr Yeung Ka Keung.

Quality control and compliance

Phoenix HK submits that it will deploy an experienced Standards and Practice team to ensure compliance of all the programmes of Phoenix HK with applicable laws, licence conditions, codes of practice and directions issued by the CA. The Standards and Practice team will be responsible for checking the programme and advertising contents of broadcasts. Further, the said team will work closely with various departments within Phoenix HK to ensure that the scheduling and presentation of the programmes will comply with applicable requirements.

2. PROGRAMMING INFORMATION

Programmes to be provided, by nature, and number of channels and extent of local production

Phoenix HK submits that it aims to bring to Hong Kong viewers a wider range of programme choices, and round-the-clock information and entertainment programmes with high quality.

Phoenix HK submits that it plans to operate a two-channel (Cantonese and English) free TV service transmitted in digital format. According to Phoenix HK's submission, the Cantonese channel will be a general entertainment channel comprising a variety of self-produced and acquired programmes, including news, finance, documentary, current affairs and lifestyle programmes, reality shows and programmes catering to the elderly, children and young persons. The English channel, on the other hand, will comprise documentary, current affairs, arts and culture programmes, and other programmes of different genres catering for the needs of English-speaking audience of Hong Kong. Phoenix HK submits that most of the programmes on the English channel will be acquired programmes.

Phoenix HK submits that it plans to provide, on its two-channel digital programme service, high definition television programmes.

Compliance with programming requirements

Phoenix HK submits that it will carry positive programmes¹⁰, CA publicity materials, announcements in the public interest and television programmes (including programmes of Radio Television Hong Kong and educational programmes for schools) supplied by the Government as currently required for spectrum-based free TV licensees.

Phoenix HK submits that it plans to provide subtitling services as currently required for spectrum-based free TV licensees¹¹.

The daily operating hours of the service

Phoenix HK submits that it plans to provide, on the Cantonese channel, 24-hour daily broadcasting and, on the English channel, 18-hour daily broadcasting from 6:30 a.m. to 12:30 a.m.¹²

¹⁰ The positive programme requirements comprise the minimum amount of news, documentary, current affairs programmes and programmes for children to be broadcast on the licensee's integrated Cantonese and English channels, and programmes for young persons, senior citizens and arts and culture, to be broadcast on the licensee's integrated Cantonese channel.

¹¹ The spectrum-based free TV licensees are currently required to provide subtitling for all news, current affairs, weather programmes and emergency announcements on the integrated Cantonese and English channels. In addition, on the integrated Cantonese channels, Chinese subtitles must be provided for programmes shown between 7:00 p.m. and 11:00 p.m. and drama programmes. On the integrated English channels, all programmes shown from 8:00 p.m. to 11:30 p.m. and educational programmes for teenagers (two hours per week) shall carry English subtitles.

¹² Section 10 of Schedule 4 to the Broadcasting Ordinance provides that the minimum duration of each language television programme service shall not be less than five hours for each day.

3. TECHNICAL INFORMATION

Transmission mode to be employed, geographical coverage and service roll-out

Phoenix HK submits that it plans to provide the proposed service in the form of digital terrestrial television (“DTT”). Phoenix HK plans to make use of the digital spectrum withdrawn from¹³, and facilities owned¹⁴ by, Asia Television Limited (“ATV”) for the delivery of its proposed free TV service.

Phoenix HK plans to hire a DTT service contractor to set up the transmission network for the delivery of its proposed free TV service. As per Phoenix HK’s initial discussion with the said contractor, the project will be divided into two phases –

- (a) phase one targets to complete the setup of seven major DTT hilltop sites within nine months from licence grant; and
- (b) phase two targets to complete the setup of the remaining 22 DTT fill-in stations within 24 months after service commencement.

The CA has advised Phoenix HK that in view of its decisions promulgated in the ATV Spectrum Statement¹⁵, Phoenix HK cannot expect to be assigned any of the

¹³ On 1 April 2015, the Chief Executive in Council decided not to renew the free TV licence of ATV and to extend the term of ATV’s licence to 1 April 2016. Following the Chief Executive in Council’s decision, the CA decided to withdraw all spectrum assigned to ATV following expiry of its free TV licence as from 2 April 2016. After the expiry of ATV’s free TV licence, 1.5 digital multiplexes withdrawn from ATV became available for re-assignment.

Following the re-assignment of the television frequencies from ATV to HK Television Entertainment Company Limited (“HKTVE”) on 2 April 2016 (please see footnote 15 below), only one digital multiplex is currently available for assignment for the delivery of DTT services by free TV licensees.

¹⁴ Phoenix HK has submitted that it plans to acquire or hire the transmission equipment and facilities of ATV for the delivery of its proposed free TV service. In the event that Phoenix HK is unable to acquire or hire ATV’s equipment and facilities, Phoenix HK will hire a DTT service contractor to build transmission stations and procure brand new equipment. Phoenix HK will also explore the option of sharing the DTT transmission network with other free TV licensees.

¹⁵ On 31 July 2015, the CA issued a statement (the “ATV Spectrum Statement”) in which it promulgated its decision to adopt an administrative approach to assign to free TV licensees the broadcasting spectrum to be withdrawn from ATV for the provision of their licensed free TV services. The CA considers that only free TV licensees under the Broadcasting Ordinance should be eligible for assignment of broadcasting spectrum. The CA also on the same date promulgated its decision that, subject to HKTVE’s agreement to comply with additional licence conditions it imposed, the CA was prepared to assign to HKTVE half of the transmission capacity of one digital multiplex of the multiple frequency network (“MFN”), which was to be withdrawn from ATV, for the provision of its licensed free TV services. The remainder of the broadcasting spectrum to be withdrawn from ATV will be assigned on a case by case basis to prospective free TV licensees after they have become eligible upon being granted a free TV licence. The CA’s assessment is that there are likely to be competing demands for the remainder of the broadcasting spectrum to be withdrawn from ATV. The ATV Spectrum Statement which sets out the CA’s decisions and the reasons for them can be found at:
http://coms-auth.hk/filemanager/statement/en/upload/332/ca_statements20150731_en.pdf

Following the agreement of HKTVE to comply with all the additional conditions the CA imposed, on 29 January 2016, the CA approved HKTVE’s application for using spectrum as an additional transmission means and assigned half of the capacity of the MFN multiplex to HKTVE for the delivery of its licensed free TV service from the date of withdrawal of the ATV’s broadcasting spectrum (i.e. 2 April 2016).

digital broadcasting spectrum withdrawn from ATV. Subject to the availability of digital broadcasting spectrum, approval, if granted, of Phoenix HK's request for spectrum assignment is conditional upon Phoenix HK being granted a free TV licence by the Chief Executive in Council.

Proposed service coverage milestones¹⁶

Phoenix HK submits that it commits to covering –

- (a) not less than 75% of Hong Kong households at service commencement; and
- (b) not less than 90% of Hong Kong households within 24 months after service commencement.

Equipment and facilities required at the customer end

Phoenix HK submits that, for reception of its proposed service, viewers will not require additional equipment and they can make use of their existing integrated digital television set or DTT set-top box in this regard.

4. OTHER INFORMATION

Commencement of service

Phoenix HK proposes to commence –

- (a) the Cantonese channel within 12 months from licence grant if Phoenix HK manages to acquire or hire ATV's transmission equipment and facilities, or to hire a DTT service contractor to provide the transmission service with brand new equipment; and
- (b) the English channel within another 12 months.

Construction work required and its impact on the public, if any

Phoenix HK submits that riding on the existing network infrastructure already built by ATV or the DTT service contractor, there is no need to carry out construction work for rolling out the proposed service.

¹⁶ Phoenix HK submits that the proposed milestones are contingent upon its negotiation with the DTT service contractor for carriage of the proposed service over the DTT network.

The benefit brought by the implementation of the proposal to the local industry, audience/customers and the economy as a whole

Phoenix HK submits that it is able to contribute to the Hong Kong society in the following ways –

- (a) *Fostering competition and enhancing programme choices* – Phoenix HK submits that with the support of the entire Phoenix Group and its experience and expertise in the broadcasting industry, Phoenix HK envisages that it will help foster healthy competition for the free TV industry to grow and prosper as a whole. The benefit to the viewing public will be more choice, better programming quality and different story-telling angles.
- (b) *Unique programming* – Phoenix HK submits that its proposed service will ride on the proven track record of Phoenix Satellite in producing quality programmes to meet the needs of the local community. Information programmes are designed to provide contents focusing on Hong Kong without losing sight of international dimension of the pertinent issues.
- (c) *Delivery of a sound and innovative service* – Phoenix HK submits that it commits to providing a sound and innovative television service. Phoenix HK submits that it will ride on the proven expertise of Phoenix Satellite to operate a high definition broadcasting service.
- (d) *Speed of delivery of service* – Phoenix HK submits that given the experience of the Phoenix Group in the television industry, the proposed service of the Cantonese and English channels can be launched in a timely manner, covering a large number of population within a short period of time.
- (e) *Creating job opportunities* – Phoenix HK submits that upon the grant of a free TV licence, Phoenix HK stands ready to expand its teams of professionals and create job opportunities for television veterans in the industry.

Members of the public may provide comments on Phoenix HK's application to the CA by **3 November 2016** by mail, fax or e-mail as follows –

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20th Floor, Wu Chung House
213 Queen's Road East
Wan Chai
Hong Kong

Fax Number: 2507 2219

E-mail: consultation-phoenixhk@ofca.gov.hk

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23 September 2016
Secretary, Communications Authority