

Broadcasting Ordinance (Chapter 562)

Notice is hereby given that the Communications Authority (“CA”) has received an application from Forever Top (Asia) Limited (“Forever Top”), a company duly incorporated in Hong Kong whose registered office is situated at 16th Floor, Far East Consortium Building, 121 Des Voeux Road Central, 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 Forever Top. 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

Forever Top is a newly formed private company in Hong Kong. The company’s shares are held by four parties as follows –

- (a) Mr David Chiu (42%);
- (b) Expand Ocean Limited (28%), which is wholly owned by Hony Capital Group, L.P.¹ (collectively referred to as the “Hony Group”);
- (c) Profit Surge Investment Limited (16%), which is wholly owned by Mr Li Sze Lim; and
- (d) Iconic Vision Limited (14%), which is wholly owned by Ms Ho Chiu King Pansy Catilina.

¹ Hony Capital Group, L.P. manages private equity funds totalling approximately US\$7 billion with investments in various companies across the world, including media and entertainment companies in China and overseas. Mr John Zhao is the President and founder of Hony Capital Group, L.P.

Compliance with statutory requirements

- (a) Forever Top submits that it is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 622) in 2015.
- (b) Forever Top submits that it is not a subsidiary of a corporation².
- (c) Forever Top submits that the company and all persons exercising control of the company will be and remain fit and proper persons³.
- (d) Forever Top submits that the majority of the directors and principal officers of Forever Top, including the principal officer in charge of the selection, production or scheduling of television programmes, will be ordinarily residents in Hong Kong and have been so residents for at least one continuous period of not less than 7 years⁴.
- (e) Forever Top submits that the control and management of Forever Top 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.

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.

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.

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) Forever Top submits that there are no disqualified persons⁶ exercising control of Forever Top or vice versa.
- (g) Forever Top submits that a number of entities and persons within the Hony Group are unqualified voting controllers⁷ and will need the approval of the CA to hold, acquire, exercise or cause or permit to be exercised 28% of the total voting control of Forever Top⁸. Forever Top seeks the requisite approval of the CA in the application.
- (h) Forever Top submits that Forever Top 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

Forever Top submits that the programming expenditure, capital expenditure and operating expenditure in its first six years of operation are projected to be \$4,123 million in aggregate. Forever Top plans to invest \$1,986 million on programming expenditure, \$420 million on capital expenditure and \$1,717 million on operating expenditure in the initial six years.

Forever Top submits that the funding requirement of the proposed service will be supported by a combination of equity, bank financing and cash flow generated

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 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 this 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.

“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 seven years; and
 - (ii) the control and management of the corporation is bona fide exercised in Hong Kong.

⁸ 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.

from the business. According to Forever Top's submission, it has substantial financial support from its shareholders to ensure a smooth ramp up of the operation of a new free television station.

Managerial and technical expertise

Forever Top submits that its management team will have proven managerial and technical expertise in various facets of the broadcasting industry. Mr Ho Ting Kwan is the Chief Executive Officer overseeing the day-to-day operations of Forever Top under the direction of the Board of Directors, and Mr Ho Koon Chung is the Programme Controller in charge of programming strategy, and programme production and procurement under the direction of the Chief Executive Officer.

According to Forever Top's submission, the Board of Directors of the company will comprise five directors, namely Mr David Chiu, Mr Hoong Cheong Thard, Mr Lin Tun, Mr Ho Ting Kwan and Mr Ho Koon Chung.

Quality control and compliance

Forever Top submits that the controllers of its Programme Division and Production Division will be responsible for overseeing the quality control of programmes produced and broadcast.

Forever Top submits that it will set up (a) an Internal Monitoring Unit under the Programme Division and (b) a Commercial Traffic and Censorship Unit under the Sales and Marketing Division to ensure that all its programme and advertising contents will comply with applicable laws, licence conditions, codes of practice and directions or orders issued or made by the CA. These two units will meet regularly to further improve the working procedure and to resolve issues arising from review of on-air materials.

2. PROGRAMMING INFORMATION

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

Forever Top submits that it plans to operate a three-channel (Cantonese, English and sports) free TV service transmitted in digital format comprising the following proposed programme channels –

- (a) "New Asia Network" will be a Chinese language channel targeting general audience, comprising news, current affairs programmes, general entertainment and programmes catering to the elderly and youth groups;
- (b) "New Asia International" will be an English language channel targeting non-Chinese speaking audience, comprising news, documentary programmes and children's programmes; and

- (c) “New Asia Sports” will be a Chinese language channel comprising a variety of sports programmes from the Mainland and other countries including horseracing programmes, and sports news.

Forever Top submits that it plans to provide on its three programme channels local productions as follows –

- (a) 115 hours of local productions per week on New Asia Network channel;
- (b) 33 hours of local productions per week on New Asia International channel; and
- (c) 58 hours of local productions per week on New Asia Sports channel.

Forever Top submits that it plans to provide initially, on New Asia Network channel, high definition television programmes and, on New Asia International channel and New Asia Sports channel, standard definition television programmes. It also submits that all its programmes will be produced in high definition and its playout system will also be high definition ready.

Compliance with programming requirements

Forever Top submits that it will carry positive programmes⁹, 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 free TV licensees.

Forever Top submits that it plans to provide subtitling service as currently required for free TV licensees¹⁰.

The daily operating hours of the service

Forever Top submits that it plans to provide, on New Asia Network channel, 24-hour daily broadcasting¹¹ and, on New Asia International channel and New

⁹ The positive programme requirements comprise the minimum amount of news, documentary, current affairs programmes and programmes for children to be broadcast on each of the licensee’s service, and programmes for young persons, senior citizens and art and cultures, to be broadcast on the licensee’s Chinese language service.

¹⁰ The free TV licensees are currently required to provide subtitling for all news, current affairs, weather programmes and emergency announcements on the integrated Chinese and English channels. In addition, on the integrated Chinese 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 on 8:00 p.m. to 11:30 p.m. and educational programmes for teenagers (two hours per week) shall carry English subtitles.

¹¹ 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.

Asia Sports channel, 21-hour daily broadcasting from 6:00 a.m. to 3:00 a.m. A total of 315 hours per week of Chinese programmes and 147 hours of English programmes will be broadcast.

3. TECHNICAL INFORMATION

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

Forever Top submits that it plans to provide the proposed service in the form of digital terrestrial television (“DTT”). Forever Top requests to make use of the digital spectrum to be withdrawn from¹², and facilities owned¹³ by, Asia Television Limited (“ATV”) for the delivery of its proposed service. The technology employed and geographical coverage will be the same as those of ATV’s free TV service.

The CA has advised Forever Top that in view of its decisions promulgated in the ATV Spectrum Statement¹⁴, Forever Top cannot expect to be assigned all (or indeed any) of the digital spectrum to be withdrawn from ATV. Subject to the availability of digital broadcasting spectrum, approval, if granted, of Forever Top’s request for spectrum assignment is conditional upon Forever Top being granted a free TV licence by the Chief Executive in Council.

¹² 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 existing 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.

Under its fixed carrier licence issued under the Telecommunications Ordinance, ATV currently holds two sets of analogue television frequency channels and 1.5 digital multiplexes for territory-wide broadcasting of its licensed analogue and DTT services respectively. Following the expiry of ATV’s free TV licence, other than the two sets of analogue television frequency channels that are reserved for Government use, the 1.5 digital multiplexes to be withdrawn from ATV will be available for re-assignment from 2 April 2016.

¹³ Forever Top submits that it will seek to acquire ATV’s assets including all necessary facilities, transmission network, software and hardware and human resources to implement its vision for a new television station in Hong Kong. If Forever Top fails to take over ATV’s assets, it would hire another studio to set up the necessary production and playout facilities.

¹⁴ 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 HK Television Entertainment Company Limited (“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, 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:

Proposed service coverage milestones

Forever Top submits that if it successfully takes over ATV's transmission network and facilities, the proposed service will achieve the same coverage as ATV's free TV service starting from service commencement, i.e. 99% of the population in Hong Kong.

Equipment and facilities required at the customer end

Forever Top 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

Forever Top proposes to commence –

- (a) New Asia Network channel and New Asia International channel within six months from the grant of licence if Forever Top manages to take over the assets from ATV, or within nine months from the grant of licence by hiring another studio (please see footnote 13); and
- (b) New Asia Sports channel within another three months.

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

Forever Top submits that riding on the existing network infrastructure already built by ATV, there is no need to carry out construction work for rolling out the proposed service.

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

Forever Top submits that it is able to contribute to the Hong Kong society in the following ways: –

- (a) *Fostering competition in the television industry* – Forever Top submits that the grant of a new licence to it will introduce new competition into the free television market, which is constantly dominated by one of the incumbent operators.
- (b) *Bringing benefits for viewers* – Forever Top submits that by providing entertainment and information to the general audience and paying particular

attention to the elderly and the young generation, Forever Top will strive to promote family values, social values and responsibility, and community harmony and cohesiveness.

- (c) *Delivery of a sound and viable service* – Forever Top submits that the shareholders of the company are committed to providing a sound and viable television station, which is true to its role as a responsible provider of information, education and entertainment for the Hong Kong audience.
- (d) *Revitalising the local television industry* – Forever Top submits that by launching a new television station, Forever Top aims to bring back the passion for the local television industry and re-brand Hong Kong's image in television programming. The revival of the television industry will bring about economic gains and intangible benefits to Hong Kong.

Members of the public may provide comments on Forever Top's application to the CA by **2 October 2015** by mail, fax or e-mail as follows: –

Office of the Communications Authority
20th Floor, Wu Chung House
213 Queen's Road East
Wan Chai
Hong Kong

Fax Number: 2507 2219

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

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21 August 2015
Secretary, Communications Authority