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NEW BROADCASTING LEGISLATION ADOPTED

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PUBLISHED IN *ASIAN LEGAL BRIEFING*
AUGUST 2000



The Broadcasting Ordinance

The recently promulgated Broadcasting Ordinance of Hong Kong SAR came into force on July 7, 2000. The new Ordinance replaces the Television Ordinance and provides a technology and transmission neutral framework for the regulation of television broadcast services. Under this Ordinance, television programme services are divided into four categories:

- *domestic free TV programme services*—free TV services primarily targeting Hong Kong and which are available for reception by more than 5,000 domestic households or hotel rooms in Hong Kong. These services include the existing free-to-air TV programming services that target the whole population of Hong Kong;
- *domestic pay TV programme services*—subscription TV services primarily targeting Hong Kong, and which are available for reception by more than 5,000 domestic households or hotel rooms in Hong Kong, such as the existing pay TV services;
- *non-domestic TV programme services*—TV services not primarily targeting Hong Kong, whether or not it is intended or available or reception by the public in Hong Kong with or without charge, such as regional satellite broadcasters that provide the same services to other places outside Hong Kong; and
- *other licensable TV programme services*—TV services intended for reception by less than 5,000 domestic premises or hotel rooms in Hong Kong with or without charge, such as small scale or niche TV programme services targeting specific viewer groups in Hong Kong.

Persons wishing to provide television programming services in Hong Kong are required to apply to the Broadcasting Authority, for a determination as to whether the service is considered as “primarily targeting Hong Kong.” As part of this process, the Broadcasting Authority will have the power to ascertain the category of licence that would be applicable to the service to be provided. Different degrees of regulatory controls will apply to the different categories of licences. Each category of licence has different requirements on ownership, restrictions, minimum investment by licensees, content and advertising controls to reflect the characteristics, pervasiveness and influence of the services provided to the society of Hong Kong

New pay TV licences

As part of the government's policy to increase competition in the broadcasting industry in Hong Kong, the government has announced that five new pay TV licences will

**This article was first published in the Country File section
of the August 2000 issue of *Asian Legal Briefing*
published by Pacific Business Press www.pbpress.com**

be offered under the Broadcasting Ordinance. Together with the existing two pay TV licences already granted to CWHKT VOD Limited and Hong Kong Cable Television Limited, there will be seven different providers of pay TV services in Hong Kong. This announcement follows the government's invitation last year to interested parties to submit proposals for provision of pay TV services in Hong Kong. The following companies have been awarded the new licence:

- Hong Kong Network TV Limited;
- Elmsdale Limited;
- Pacific Digital Media (HK) Corp. Limited;
- Hong Kong DTV Company Limited; and
- Galaxy Satellite Broadcasting Limited.

Galaxy Satellite Broadcasting Limited (Galaxy), one of the new prospective licensees, is a subsidiary of Television Broadcasts Limited (TVB), itself a holder of domestic free TV programme service licence. Concerns have been raised as to the possible unfair competition and abuse of dominant market position of TVB. In order to address these concerns, additional anti-competitive conduct safeguards will be incorporated into the licences of TVB and Galaxy. These include:

- prohibition of cross-subsidies or preferential treatment between TVB and Galaxy;
- postponement of the launch date for Galaxy's services—Galaxy may only commence services after 18 months from the grant of the licences;
- exclusive programming deals between Galaxy and TVB will be subject to open bidding processes that must be approved by the Broadcasting Authority.

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