

## 2024 AVIA Regulating for Growth – Pay TV Matrix for Sri Lanka

Questions	Pay TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<ul style="list-style-type: none"> <li>The relevant Acts of Parliament that regulate pay TV are: <ul style="list-style-type: none"> <li>I. Sri Lanka Rupavahini Corporation Act, No. 6 of 1982 (SLRC Act);</li> <li>II. Sri Lanka Broadcasting Corporation Act, No. 37 of 1966 (SLBC Act); and</li> <li>III. Sri Lanka Telecommunication Act, No. 25 of 1991 (Telecom Act).</li> </ul> </li> <li>There is no single authority that regulates this sector but several governmental organisations have the power to regulate this sector. They include: <ul style="list-style-type: none"> <li>I. <u>Ministry of Mass Media (MMM)</u> – responsible for issuing the private television broadcasting licence under the SLRC Act;</li> <li>II. <u>Sri Lanka Rupavahini Corporation (SLRC)</u> – under the SLRC Act, the Minister may issue the private television broadcasting licence in consultation with the SLRC;</li> <li>III. <u>Sri Lanka Broadcasting Corporation (SLBC)</u> – under the SLBC Act the Minister may, after consulting the SLBC, issue a licence for establishing and maintaining a private broadcasting station. Broadcasting here includes the broadcasting of television programmes; and</li> <li>IV. <u>Telecommunication Regulatory Commission of Sri Lanka (TRCSL)</u> – issues licences for television broadcasting carried out via a telecommunications system, such as through an internet-based or a telephone-based broadcasting station within Sri Lanka.</li> </ul> </li> <li>The MMM may, after consultation with the SLBC or the SLRC, issue to any person a licence for the establishment and maintenance of any private broadcasting station in any area in Sri Lanka.</li> <li>Further, the licence to operate the telecommunications system under the Telecom Act is granted by the Minister in charge of telecommunication on the recommendation of the TRCSL. However, the Minister has the power to reject such recommendations and grant a licence at his own discretion.</li> <li>The MMM has, by way of Gazette (Extraordinary) No. 1426/16 dated 4<sup>th</sup> January 2006 promulgated under the SLBC and SLRC Acts, appointed a Consultative Committee on Broadcasting and a Consultative Committee on Television Broadcasting. The function of the Committee is to advise the</li> </ul>	<p>We do not anticipate any changes in relation to the applicable regulatory structure.</p>

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	<p>Corporation on matters relating to television broadcasting as referred by the SLBC or SLRC to such Committees.</p> <ul style="list-style-type: none"> <li>• The regulatory bodies are therefore not autonomous from the government. Furthermore, SLBC and SLRC are themselves engaged in the business of broadcasting in Sri Lanka and there is no separation in the regulatory and broadcasting functions of SLRC and SLBC.</li> <li>• Every regulation made by the MMM under the SLRC Act must be published in the Gazette and brought before Parliament for approval. If a regulation is not approved, it is deemed to be rescinded from the date of disapproval. There is no consultation process made available for local or international pay TV operators in the event the MMM promulgates regulations.</li> <li>• There are no specific provisions for appeals against the regulator's decisions on pay TV. However, under the Finance Act No. 11 of 2006 (Finance Act) and the Finance (Teledrama, Films and Commercial Levy) Regulations No. 01 of 2017 (Levy Regulations), an appeal process is set out for any aggrieved party where the secretary to the MMM finds any foreign teledrama, film and commercial likely to be being obnoxious to Sri Lankan values, identity or ethics. Judicial review of regulatory decisions may be available in the appellate courts.</li> </ul>	
2. Copyright protection?	<ul style="list-style-type: none"> <li>• Intellectual property rights, including copyright, are protected under the Intellectual Property Act, No. 36 of 2003 (IP Act). The copyright owner may seek an injunction, damages and any other remedy the Court may find appropriate against any person who infringes or is about to infringe on his/her copyright.</li> <li>• Sri Lanka is also a member of the World Intellectual Property Organisation and has acceded to the treaties made thereunder providing better protection against copyright infringements.</li> <li>• Section 6 of the IP Act protects audiovisual works<sup>1</sup> by law. The IP Act states that only the copyright owner has the exclusive right to carry out or to authorise broadcasting of the work and other communication to the public.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.

<sup>1</sup> Defined as “a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds susceptible of being made audible.”

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	<ul style="list-style-type: none"> <li>The most commonly used enforcement mechanism is injunctive relief obtained by the copyright owner immediately preventing the infringements of the copyright. Provisions for injunctive relief is specified in Section 22 of the IP Act.</li> <li>Under the IP Act, subject to the condition that the source and name of the author are indicated as far as practicable, reproducing and broadcasting short excerpts of a work seen or heard in the course of events is permitted without the authorisation of the copyright owner, provided it is for the purpose of reporting current events.</li> <li>Broadcasting is defined in the IP Act as the communication of a work, a performance or a sound recording to the public by wireless transmission, including transmission by satellite and therefore includes both pay TV and OCC TV (delivered by mobile telephony).</li> </ul>	
3. Convergence and new technologies	<ul style="list-style-type: none"> <li>Competing pay TV providers in Sri Lanka operate via cable, satellite and IPTV networks.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<ul style="list-style-type: none"> <li>Under the SLBC Act and the SLRC Act, the MMM may, after consultation with the SLBC or the SLRC, issue to any person a licence for the establishment and maintenance of any private broadcasting station in any area in Sri Lanka.</li> <li>The conditions applicable to the landing rights of foreign television channels will be determined by the MMM by the licence conditions issued under the SLBC Act or the SLRC Act. Generally, such licence conditions provide that foreign channels must be licensed or permitted for being broadcast by the licensing authority of the country and the transmission and proof of the same has to be submitted at the time of the application.</li> <li>The conditions applicable to the uplinking or downlinking of channels will be determined by the MMM by the licence conditions issued under the SLRC Act.</li> <li>Under the Finance Act every institution licensed under the SLRC Act, or any other licensing authority, is charged a Teledrama, Film and Commercials Levy for every teledrama, film or commercial, made and/or filmed outside Sri Lanka and bought or imported into Sri Lanka for the purpose of being telecast, at a rate in relation to the duration of the teledrama, film or commercial, as specified by the Minister of Finance. The Teledrama, Film and</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.

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	<p>Commercials Levy is not chargeable in respect of any teledrama or film in one or more of the following categories;</p> <ul style="list-style-type: none"> <li>▪ documentary;</li> <li>▪ educational;</li> <li>▪ solely for the purpose of providing entertainment for children;</li> <li>▪ prescribed categories in the Gazette Notification made under the Finance Act:– <ul style="list-style-type: none"> <li>- religious;</li> <li>- any international or regional event;</li> <li>- any teledrama or film originally produced in Sinhala, Tamil or English, and not dubbed;</li> <li>- any teledrama or film of which the main cast and the majority of the production crew are Sri Lankan citizens.</li> </ul> </li> </ul> <ul style="list-style-type: none"> <li>• In terms of the Levy Regulations, all foreign teledrama, film and commercial require a certificate of clearance issued by the secretary to the MMM which may be refused on the basis of such teledrama, film or commercial being obnoxious to Sri Lankan values, identity or ethics.</li> <li>• The practice in the pay TV industry is to obtain the prior approval of the MMM for the foreign channel. When a licensed operator broadcasts a new foreign channel, the licensed operator makes an application to the MMM with a description of the programmes on that channel and obtain prior approval for the channel as opposed to obtaining the approval for each programme.</li> </ul>	
5. Licence fees and taxation	<ul style="list-style-type: none"> <li>• A non-refundable fee of LKR 100,000 must be paid together with the application for the licence of a Private Television Broadcasting Station from the MMM.</li> <li>• For the licence under the Telecom Act, a non-refundable evaluation fee of LKR 200,000 must be paid to the TRCSL together with the application for the pay TV operator licence under section 17 of the Telecom Act. In addition to the evaluation fee, the licence conditions may specify payment of an annual licence fee. Further, if the operations of the entity involve the use of any frequency or frequency emitting apparatus, a frequency licence under the Telecom Act must be obtained and the relevant licence fees specified in the</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.

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	<p>Radio Frequency Licensing Fees (Broadcasting) Rules No. 02 of 1999 of the Telecom Act must be paid for the use of such apparatus.</p> <ul style="list-style-type: none"> <li>In terms of the Telecommunication Levy Act, No. 21 of 2011 as amended, there is a 15% Telecommunication Levy for services provided to end subscribers by telecommunication and other operators licensed under section 17 of the Telecom Act. In addition, Value Added Tax will apply to pay TV subscribers.</li> <li>As per Gazette (Extraordinary) No. 1686/4 dated 27<sup>th</sup> December 2010 published under section 22G of the Sri Lanka Telecommunications Act, No. 25 of 1991, cess is payable at the rate of 2% on the annual gross turnover of the operator under the operator licence.</li> </ul>	
6. Rate regulation <i>Including wholesale and retail rate regulation and whether there are any price controls on e.g. basic tier</i>	<ul style="list-style-type: none"> <li>The conditions of the pay TV operator licence usually require the tariff for the services to be pre-approved by the TRC. Further, the pay TV operator must provide the services at the charges, terms and conditions as approved by the TRC and must not depart from them without the prior written approval of the TRC.</li> <li>The licence conditions could also impose restrictions on prices charged on each tier of channels provided by the broadcaster.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.
7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	"A la carte" is not mandatory in Sri Lanka. Tiering/a la carte/other forms of programme packaging are carried out by the existing pay TV operators in Sri Lanka.	We do not anticipate any changes in relation to the applicable regulatory structure.
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> <li>Unless the conditions of the MMM licence provide otherwise, there is no restriction on pay TV advertisements.</li> <li>There is no minutage restriction imposed on the broadcaster.</li> <li>The conditions of the MMM licence may differentiate between foreign and domestic advertisements. The licence conditions provide that foreign channels must not carry advertisements that specifically target Sri Lankan viewers.</li> <li>There are no specific taxes which are payable on advertising apart from the Teledrama, Film and Commercials Levy in terms of the Finance Act.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.

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9. (a) Content regulation <i>Including local content quotas, content control and insertion of classification and other content labels into international feeds</i>	<ul style="list-style-type: none"> <li>Local content quotas will depend on the conditions of the MMM licence and copies of such licences are not publicly available.</li> <li>In terms of the conditions of the pay TV operator licence issued under Section 17 of the Telecom Act, the pay TV operator must not distribute harmful or illegal content that may affect national security, within the framework of technical possibility of control of such contents. The operator must also undertake to not carry objectionable, obscene, unauthorised or any other content, or communications through the licensed system.</li> <li>Unless otherwise provided in the licence conditions of the MMM licence, there are no requirements for the insertion of local classification and other content labels into international feeds.</li> <li>As stated above, in terms of the Finance (Teledrama, Films and Commercial Levy) Regulations No. 01 of 2017 made under the Finance Act, all foreign teledrama, film and commercial require a certificate of clearance issued by the secretary to the MMM, which may be refused on the basis of such teledrama, film or commercial being obnoxious to Sri Lankan values, identity or ethics.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.
9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i>	<ul style="list-style-type: none"> <li>Unless otherwise provided in the MMM licence conditions, there are no requirements for broadcasting in a specific language, dubbing, subtitling and captioning.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.
10. Programme supply restrictions <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i>	<ul style="list-style-type: none"> <li>Unless otherwise provided in the MMM licence there are no “must carry” or “must provide” requirements imposed on pay TV operators.</li> <li>Exclusivity in content distribution is permissible in the re-transmission of television programmes.</li> <li>Since pay TV operators require a licence under section 17 of the Telecom Act, the TRC usually regulates anti-competition practices between the operators in the licence agreement itself. However, there are no specific regulations made in the law that are applicable other than those in the licence conditions.</li> <li>The Government does not maintain a list of programmes which must be transmitted by the pay TV operators.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.

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	<ul style="list-style-type: none"> <li>There are no general restrictions on tiering or bundling TV channels by the pay TV operator in Sri Lanka. However, the conditions of the operator licence may state that the operator must not engage in any anti-competitive practice. An anti-competitive practice is defined in the licence conditions as "any practice whereby the Operator, in the course of business, pursues a course of conduct which of itself, or when taken together with a course of conduct pursued by persons associated with him, has or is intended to have or is likely to have the effect of, restricting, distorting or preventing competition in connection with the production supply or acquisition of goods in Sri Lanka or the supply or securing of services in Sri Lanka."</li> </ul>	
11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and cross-media ownership restrictions</i>	<ul style="list-style-type: none"> <li>FDI is limited to 40% in mass communication companies, although approval can be sought from the Board of Investment of Sri Lanka for a higher percentage of foreign investments in a particular company.</li> <li>There are no restrictions on cross-media ownership or vertical integration unless otherwise provided in the licences of the pay TV operator under section 17 of the Telecom Act.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> <li>There is no general requirement for pay TV operators to carry free-to-air television channels.</li> <li>There are also no specific copyright exemptions that will apply to pay TV platforms in the retransmission of content/ television programmes.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.
13. Consumer protection <i>Including cooling-off period, termination rights and payment mechanism</i>	<ul style="list-style-type: none"> <li>There are no specific consumer protection laws applicable to pay TV subscribers. However, licence conditions of the pay TV licence under the Telecom Act usually include conditions for consumer protection including a mechanism for resolving customer complaints.</li> <li>In addition to the licence conditions of the pay TV operator, the provisions of the Consumer Affairs Authority Act No. 9 of 2003 (CAA Act) is applicable, which provides that the CAA may investigate concerns of anti-competitive practice.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.
14. Entering a new market: FAST TV	N/A	N/A

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15. Data handling	<ul style="list-style-type: none"> <li>Following inspiration from the European Union's General Data Protection Regulations (GDPR), Sri Lanka has enacted the local equivalent being the Personal Data Protection Act, No. 9 of 2022 (PDPA), which is still in the transitional stage to allow time for compliance mechanisms to be put in place. If the personal data or information of any person is processed, all obligations of a controller under the PDPA would be applicable.</li> <li>In this regard, please also note that GDPR-equivalent cross border data transfer requirements are imposed in the PDPA in relation to any cross-border data transfer. However, the PDPA does not recognise binding corporate rules as a basis for intra group transfer of any personal data.</li> <li>Moreover, the conditions of the ISP licence issued under the Telecom Act will usually include conditions on the confidentiality of customer information. The ISP licence will usually include the condition that the ISP must not disclose the information of a customer without the customer's consent, except in relation to the services provided under the licence or in the circumstances provided in the licence.</li> </ul>	We do not anticipate any changes in relation to the applicable regulatory structure.
Other country-specific information not already covered	<ul style="list-style-type: none"> <li>Sri Lanka recently enacted the Online Safety Act, No. 9 of 2024 (OSA) which applies where:               <ol style="list-style-type: none"> <li>a person commits an offence under the OSA in respect of a citizen of Sri Lanka, while being present in Sri Lanka or outside Sri Lanka;</li> <li>a loss, damage or harm is caused within or outside Sri Lanka by the commission of an offence under this Act, to the State or to a person resident in Sri Lanka; or</li> <li>an offence under this Act, wherever committed, is committed by a person who is a citizen of Sri Lanka.</li> </ol> </li> <li>The OSA provides <i>inter alia</i> that a natural or legal person who makes a prohibited statement or impersonation commits an offence thereunder. If such offence is committed by a legal person, the directors and principal officers will also be held liable for the offence.</li> <li>The OSA also states that attempting to commit an offence, abetment of an offence and conspiring to commit an offence are also offences under the OSA.</li> </ul>	<p>The draft Ant-Terrorism Bill published in the Gazette on 15<sup>th</sup> September 2023 states <i>inter alia</i> that, where reasonable grounds of suspicion exists against any person in the commission of an offence thereunder, the officer in charge of the relevant police station shall be entitled to apply for an order from a Magistrate to require any telecommunication, satellite or digital service or data service provider to provide information including:</p> <ol style="list-style-type: none"> <li>information pertaining to services provided or being provided by such service provider to any person;</li> <li>information pertaining to services enjoyed by any person to whom such services have been made available;</li> </ol>



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	<ul style="list-style-type: none"> <li>• The provisions of the OSA are relevant to a broadcaster where content thereon amounts to a prohibited statement and has been communicated to end users in Sri Lanka on an online location in terms of section 28(1)(a) and (b) of the OSA.</li> <li>• In this event, the Online Safety Commission can declare such online location as a “declared online location” following which the owner or operator of such online platform is bound to publish the notice provided by the said Commission and failure to do so may result in a Magistrate declaring <i>inter alia</i> that access to such online location be disabled to end users in Sri Lanka. The owner or operator can also appear before the Magistrate and show cause as to why the order should not be made absolute.</li> <li>• Where the owner or operator of the declared online location fails to comply with the order made by the Magistrate, the owner or operator thereof will have committed an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 6 years or to a fine not exceeding LKR 10,000,000 and order the Commission to take steps to disable access by the end users in Sri Lanka to the declared online location.</li> <li>• Although the OSA has extra-territorial jurisdiction, there may be issues with enforcement against a provider who has no presence in Sri Lanka.</li> </ul>	<p>(c) any information, data or document or record that may be stored, archived or otherwise kept, by such service provider; and</p> <p>(d) information pertaining to the uploading or downloading of data or information, to or from any instrument through the service provided by such service provider.</p> <p>Hence, a pay TV provider may be required to comply with such an order from the Magistrate. Non-compliance with such an order (being a judicial order) may amount to a contempt of court. However, although this aspect of the Bill has extra-territorial jurisdiction, there may be issues with enforcement against a provider who has no presence in Sri Lanka.</p>