

21. 對不被視為適當人選的人的限制

- (1) 持牌人及任何對持牌人行使控制的人，須為適當人選，並須保持為適當人選。
- (2) 除第(3)款另有規定外，持牌人須在每年的4月1日或該日之前，以指明格式向廣管局提供資料，使該局能確定並核實該持牌人或對該持牌人行使控制的人是否適當人選。
- (3) 第(2)款不適用於持牌不足4個月的持牌人。
- (4) 在決定持牌人或對持牌人行使控制的人是否適當人選時，須考慮——
- 持牌人或該人的業務紀錄；
 - 持牌人或該人在其必須具誠信公正品格的情況下的紀錄；
 - 持牌人或該人在香港的刑事紀錄，而該等紀錄是關於香港法律所訂的涉及賄賂、偽造帳目、貪污或不誠實的罪行的；及
 - 持牌人或該人在香港以外地方的刑事紀錄，而該等紀錄所關乎的行為，假若是在香港作出的即會構成或組成(c)段所述的持牌人或該人的香港刑事紀錄部分內容者。

21. Restrictions on persons not regarded as fit and proper

- (1) A licensee and any person exercising control of the licensee shall be and remain a fit and proper person.
- (2) Subject to subsection (3), a licensee shall, on or before the 1st of April of each year, provide information in the specified form to the Broadcasting Authority to enable the Broadcasting Authority to establish and verify whether the licensee or a person exercising control of the licensee is a fit and proper person.
- (3) Subsection (2) shall not apply to a licensee which has been a licensee for less than 4 months.
- (4) In determining whether a licensee or person exercising control over the licensee is a fit and proper person, account shall be taken of—
- the business record of the licensee or person;
 - the record of the licensee or person in situations requiring trust and candour;
 - the criminal record in Hong Kong of the licensee or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
 - the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in paragraph (c).

25. 對持牌人業務的調查

(1) 廣播局如信納為妥善履行其根據某訂明條例而具有的職能以確保持牌人遵守某牌照條件，或遵守該條例所訂並適用於該持牌人的規定，或遵守根據該條例發出或作出的並適用於該持牌人的指示、命令、決定或裁定，或遵守適用於該持牌人的業務守則條文，以致有此需要，可以書面授權任何人在該局於授權書內指明的時間，作出以下全部或任何一項行動——

- (a) 規定持牌人或獲授權的人合理地相信是受僱於或從事某名本條適用人士的有關業務的人，出示與該業務有關並由持牌人或該人(視屬何情況而定)管有或控制的任何數據、簿冊、文件或紀錄，以供檢查；
 - (b) 檢查根據(a)段出示的數據、簿冊、文件或紀錄或其中任何記項，並如認為合適的話，將該等文件或其中任何記項複製副本；
 - (c) 移走(a)段所提述的數據、簿冊、文件或紀錄或(b)段所提述的副本，以供他本人及廣播局檢查；及
 - (d) 規定持牌人或獲授權的人合理地相信是受僱於或從事某名本條適用人士的有關業務的人，向獲授權的人及廣播局提供任何獲授權的人指明並與根據(a)段出示的數據、簿冊、文件或紀錄有關的解釋或進一步詳情。
- (2) 任何與根據本條作出的調查有關的資料或事項如非以可閱讀形式或易於明白的方式記載，第(1)款所賦的規定出示任何數據、簿冊、文件或紀錄的權力，包括規定將該等數據、簿冊、文件或紀錄或其中任何有關部分以可閱讀形式和易於明白的方式出示或複製的權力；
- (3) 裁判官如根據廣播局主席、廣播局副主席或《廣播事務管理局條例》(第391章)所指的行政主管經宣誓而作的告發，信納——

25. Investigation of licensee's business

(1) Where the Broadcasting Authority is satisfied that it is necessary for the proper performance of its functions under a prescribed Ordinance in order to ensure a licensee's compliance with a licence condition, a requirement under the Ordinance which is applicable to it, a direction, order, or determination, under the Ordinance which is applicable to it, or a provision in a Code of Practice which is applicable to it, it may authorize in writing any person to do all or any of the following at such times as are specified by it in the authorization—

- (a) require a licensee or a person whom such authorized person reasonably believes to be employed or engaged in connection with the relevant business of a person to whom this section applies to produce for examination any data, book, document or record which relates to such business and which is in the possession or under the control of the licensee or person, as the case may be;
 - (b) examine and, if he thinks fit, to take copies of any data, book, document or record produced under paragraph (a) or any entry therein;
 - (c) remove the data, book, document or record referred to in paragraph (a) or the copies referred to in paragraph (b) for examination by him and the Broadcasting Authority; and
 - (d) require a licensee or a person whom such authorized person reasonably believes to be employed or engaged in connection with the relevant business of a person to which this section applies to give the authorized person and the Broadcasting Authority any explanation or further particulars as specified by the authorized person in respect of any data, book, document or record produced under paragraph (a).
- (2) Where any information or matter relevant to an investigation under this section is recorded otherwise than in a readily legible or comprehensible form, the powers conferred by subsection (1) to require the production of any data, book, document or record shall include power to require the production or reproduction of the data, book, document or record of a relevant part of it in a readily legible and comprehensible form.
- (3) A magistrate may, if satisfied by information on oath laid by the chairman or vice chairman of the Broadcasting Authority or by the principal executive officer within the meaning of the Broadcasting Authority Ordinance (Cap. 391)—

- (a) 為妥善履行第(1)款所提述的廣電局的職能，有必要進入該告發人有合理理由相信是由某名本條適用人士使用或佔用，並且用作存放、貯存或使用關乎該人的有關業務的數據、簿冊、文件或紀錄的處所；及
- (b) 進入上述處所的要求已遭拒絕或相當可能遭拒絕，
- 可發出手令授權根據第(1)款獲授權的人進入上述處所，而該人——
- (i) 可在上述處所行使第(1)款所指定的權力；及
- (ii) 可檢走、移走和扣留上述處所內他有合理理由相信會提供相當可能會協助廣電局妥善履行其根據本條例所具職能的數據、簿冊、文件或紀錄或其任何副本，及將其複製副本。
- (4) 本條適用人士的僱員、董事、主要人員或代理人，須協助而不得妨礙根據本條行使權力的人。
- (5) 根據本條移走的數據、簿冊、文件或紀錄可在不超過自移走當日起計的6個月的期間內予以保留，但如為進行任何刑事法律程序而需要該等數據、簿冊、文件或紀錄，則可在該等程序所需的較長期間內予以保留。
- (6) 根據本條移走任何數據、簿冊、文件或紀錄的人須在切實可行的範圍內盡快發出收據，並須准許假使該項目並無遭移走則會有權查閱該項目的人在任何合理時間查閱該項目，將其複製副本及摘錄其中內容，但上述准許須受廣電局執照管或其他方面所施加的合理條件規限。
- (7) 根據第(1)或(3)款行使權力的人，均須獲給予授權予他的授權書文本，並須在有人提出要求時，出示其身分證明及授權證明以供查閱。
- (8) 第(1)(a)或(b)及(3)款所賦予的權力，包括以下權力——
- (a) 規定第(1)(a)款所述的人，以原象或印刷或其他書面形式或以電腦磁碟，或兼以此兩種形式，提取或檢索或安排提取或檢索第(10)款所提述並由正行使該權力的人所指明的資料；如資料經提取或檢索後屬印刷或其他書面形式，則亦包括規定第(1)(a)款所描述的人將資料交付正行使該權力的人；

- (a) that it is necessary for the proper performance of the functions of the Broadcasting Authority as referred to in subsection (1) that entry be obtained to any premises which the chairman, vice chairman or principal executive officer has reasonable grounds for believing is used or occupied by a person to whom this section applies for the purposes of keeping, storing or using any data, book, document or record which relates to the relevant business of the person to whom this section applies; and
- (b) that permission to enter such premises has been refused or that entry is likely to be refused,
- issue a warrant authorizing a person authorized under subsection (1) to enter such premises, and such person—
- (i) may exercise therein the powers specified in subsection (1); and
- (ii) copy, seize, remove and detain any data, book, document or record therein or any copy thereof which the authorized person has reasonable grounds for believing will afford evidence likely to assist the Broadcasting Authority in the proper performance of its functions under this Ordinance.
- (4) A person who is an employee, director, principal officer or agent of a person to whom this section applies shall assist and shall not obstruct a person exercising a power under this section.
- (5) Any data, book, document or record removed under this section may be retained for any period not exceeding 6 months beginning on the day of its removal or, where the data, book, document or record is required in connection with any criminal proceedings, for such longer period as may be necessary for the purposes of those proceedings.
- (6) Where a person removes any data, book, document or record under this section, he shall, as soon as is practicable, give a receipt for it, and he shall permit any person who would be entitled to inspect it but for its removal to inspect the same at any reasonable time and to make copies of and take extracts from it; but any such permission shall be subject to such reasonable conditions as to security or otherwise as the Broadcasting Authority may impose.
- (7) Every person exercising any power under subsection (1) or (3) shall be furnished with a copy of his authorization and shall, upon request, produce for inspection, evidence of his identity and of his authorization.
- (8) The powers conferred by subsections (1)(a) or (b) and (3) include a power—
- (a) to require the person mentioned in subsection (1)(a) to extract or retrieve, or cause to be extracted or retrieved, in a visual or printed or other written form or on a computer disc, or in both, any information referred to in subsection (10) and specified by the person exercising the power, and if when extracted or retrieved the information is in a printed or other written form, to require the person so described to deliver it to the person exercising the power;

- (b) 藉着通常用於提取或檢索的設備，以上述的其中一種或兩種形式自行提取或檢索任何如此提述的資料；及
- (c) 檢查任何如此提取或檢索的資料，及在認為合適時將該項資料帶走。
- (9) 本條適用於持牌人及其相聯者。
- (10) 在本條中——
- “有關業務”(relevant business) 指與提供電視節目服務直接相關或相聯的業務；
- “數據、簿冊、文件或紀錄”(data, book, document or record) 包括符合以下說明的資料——
- (a) 關乎任何有關業務；及
- (b) 其記錄形式使資料可藉在收到提取或檢索的指示後即自動操作的設備而提取或檢索的。
- (11) 為免生疑問，現宣布：《釋義及通則條例》(第 1 章) 第 XII 部的條文適用於本條。

- (b) to extract or retrieve himself, in either of or both such forms, by means of the equipment normally used for that purpose, any information so referred to; and
- (c) to examine any information so extracted or retrieved and if thought fit to remove it.
- (9) This section applies to a person who is a licensee or its associate.
- (10) In this section—
- “data, book, document or record” (數據、簿冊、文件或紀錄) includes any information which—
- (a) relates to a relevant business; and
- (b) is recorded in a form in which it can be extracted or retrieved by equipment operating automatically in response to instructions given for that purpose.
- “relevant business” (有關業務) means business directly connected or associated with the provision of a television programme service.
- (11) For the avoidance of doubt, it is hereby declared that the provisions of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) apply to this section.

26. 廣管局可獲取資料

- (1) 廣管局如信納有合理理由相信任何人(持牌人除外)管有或相當可能管有關於廣管局對違反或涉嫌違反本條例的牌照條件、規定或根據本條例發出或作出的指示、命令、決定或裁定的調查的資料或文件，則可向該人送達書面通知——
- (a) 視情況所需而要求該人於該通知所指明的、一個在有關個案的整體情況下屬合理的日期(“有關日期”)之前——
- (i) 以書面向廣管局提供該資料或文件；或
 - (ii) 向廣管局交出該文件；及
- (b) 證明如該人認為不能夠或不願遵從該要求，則該人可在有關日期之前以書面向廣管局作出申述，說明該人為何持有該意見；而
- (c) 該通知須附有本條的中文及英文文本各一份。
- (2) 廣管局如收到任何人作出的第(1)(b)款所提述的申述，須——
- (a) 考慮該申述；及
 - (b) 向該人送達書面通知(“首述通知”)，說明廣管局已考慮該申述以及——
 - (i) 根據第(1)款送達該人的通知自首述通知的送達日期起撤回；或

26. Broadcasting Authority may obtain information

- (1) If the Broadcasting Authority is satisfied that there are reasonable grounds for believing that a person, other than a licensee, is, or is likely to be, in possession of information or a document that is relevant to the Broadcasting Authority's investigation of a breach or suspected breach of a licence condition, a requirement under this Ordinance, or a direction, order, or determination, under this Ordinance, the Broadcasting Authority may serve a notice in writing on the person—
- (a) requesting the person to—
- (i) give the information or document in writing to the Broadcasting Authority; or
 - (ii) produce the document to the Broadcasting Authority, as the case requires, before a date (“the relevant date”) specified in the notice, being a date reasonable in all the circumstances of the case;
- (b) stating that if the person is of the view that he cannot, or does not wish to, comply with the request, then he may make representations in writing to the Broadcasting Authority as to why he is of that view before the relevant date; and
- (c) accompanied by a copy of this section in the Chinese and English languages.
- (2) Where the Broadcasting Authority receives representations referred to in subsection (1)(b) from a person, the Broadcasting Authority shall—
- (a) consider them; and
 - (b) serve a notice in writing on the person stating that the Broadcasting Authority has considered the representations and that—
 - (i) the notice under subsection (1) served on the person is withdrawn with effect from the date of service of the notice under this subsection; or

- (ii) 該根據第(1)款送達的通知繼續有效，並且廣管局將會在首達通知所指明的日期根據第(3)款尋求作出命令，除非該人已在該日期前遵從該根據第(1)款送達的通知。
- (3) 如根據第(1)款向任何人送達的通知("有關通知")沒有根據第(2)(b)(i)款被撤回，而該人亦沒有在有關日期之前或在根據第(2)款送達該人的通知所指明的日期之前(視情況所需而定)遵從有關通知，則裁判官——
- (a) 如基於經宣誓而作的告發，信納有合理理由相信該人管有或相當可能管有與有關通知有關的資料或文件，而且該資料或文件是關乎廣管局對違反或涉嫌違反本條例的牌照條件、規定或根據本條例發出或作出的指示、命令、決定或裁定的調查的；並
- (b) 經考慮廣管局就有關通知而收到的第(1)(b)款所提述的申述(如有的話)後，
- 可作出命令，規定該人須在該命令所指明的時間內，以書面向廣管局提供該資料或文件或向廣管局交出該文件(視情況所需而定)。
- (4) 任何人為遵從第(1)款所指的通知或第(3)款所指的命令而向廣管局提供或交出的資料或文件，在如此提供或交出時須以該通知送達時的資料或文件為準，但該資料或文件可屬及符合以下說明的處理——
- (a) 在上述時間與在該資料或文件如此提供或交出的時間之間所作出的；而且
- (b) 不論是否有該通知的送達亦會作出的。
- (5) 廣管局不得披露根據本條向其提供或交出的資料或文件，但如第(6)款的規定獲得符合，而廣管局認為披露有關資料或文件(視屬何情況而定)是符合公眾利益的，則屬例外。

- (ii) the notice under subsection (1) served on the person remains in force and the Broadcasting Authority will on a date specified in the notice under this subsection seek an order under subsection (3) unless the person has, before the date, complied with the notice under subsection (1) served on the person.
- (3) Where a notice under subsection (1) served on a person has not been withdrawn under subsection (2)(b)(i) and the person has not complied with the notice before the relevant date, or before the date specified in the notice under subsection (2) served on the person, as the case requires, then a magistrate may—
- (a) if satisfied by information on oath that there are reasonable grounds for believing that the person is, or is likely to be, in possession of the information or a document to which the first-mentioned notice relates and that the information or document is relevant to the Broadcasting Authority's investigation of a breach or suspected breach of a licence condition, a requirement under this Ordinance, or a direction, order, or determination, under this Ordinance; and
- (b) after considering the representations, if any, referred to in subsection (1)(b) received by the Broadcasting Authority in consequence of the service of the notice,
- issue an order that the person shall, within the time specified in the order, give the information or document in writing to the Broadcasting Authority or produce the document to the Broadcasting Authority, as the case requires.
- (4) Any information or document to be given or produced to the Broadcasting Authority by a person in compliance with a notice under subsection (1) or an order under subsection (3) shall be so given or produced by reference to the information or document at the time of service of that notice except that the information or document may take account of any processing—
- (a) made between that time and the time when the information or document is so given or produced; and
- (b) that would have been made irrespective of the service of that notice.
- (5) The Broadcasting Authority shall not disclose any information or document given or produced to him under this section except subject to the requirement in subsection (6) and if the Broadcasting Authority considers that it is in the public interest to disclose that information or document, as the case may be.

(6) 如廣播局擬披露任何人根據本條提供或交出的資料或文件，則廣播局須給予該人合理機會就擬作的披露作出申述，並須在作出披露該資料或文件（視屬何情況而定）的最後決定前，考慮所有該等申述。

(7) 為免生疑問，現宣布凡任何人（“前者”）根據本條提供或交出任何資料或文件，即使該資料或文件屬某項與另一人訂立的並且是防止前者濫用該資料或文件的保密協議的標的，前者亦無須就該項提供或交出違反該協議而承擔任何民事法律責任或對任何申索負上法律責任。

(8) 任何人無合理辯解而——

- (a) 沒有遵從第 (3) 款所指的命令；
- (b) 沒有遵從第 (4) 款；或
- (c) 明知而提供虛假或具誤導性的資料，以充作遵從第 (1) 款所指的通知或第 (3) 款所指的命令。

該人即屬犯罪，一經定罪，可處第 5 級罰款及監禁 2 年。

(9) 在本條中，“處理”（processing）就任何資料或文件而言，包括藉自動化方法或其他方法將該資料或文件的全部或任何部分修訂、擴增、刪除或重新排列。

(6) The Broadcasting Authority shall give a person giving or producing any information or document under this section a reasonable opportunity to make representations on a proposed disclosure of the information or document, as the case may be, and shall consider all representations made before the Broadcasting Authority makes a final decision to disclose the information or document, as the case may be.

(7) For the avoidance of doubt, it is hereby declared that where a person gives or produces any information or document under this section notwithstanding that the information or document is the subject of a confidentiality agreement with another person that prevents the first-mentioned person from releasing the information or document, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the giving or production of that information or document contrary to that agreement.

(8) A person commits an offence if he, without reasonable excuse—

- (a) fails to comply with an order under subsection (3);
- (b) fails to comply with subsection (4); or
- (c) in purported compliance with a notice under subsection (1) or an order under subsection (3), knowingly gives information that is false or misleading,

and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(9) In this section, “processing” (處理), in relation to any information or document, includes amending, augmenting, deleting or rearranging all or any part of the information or document, whether by automated means or otherwise.

27. 機密資料須予保密

- (1) 除第(2)款另有規定外——
- (a) 任何人以保密方式，向廣管局、該局授權的人、該局委出的委員會、該委員會委出的委員會、電訊局長或電訊局長授權的人提供的任何資料及出示的任何數據、簿冊、文件或紀錄，均須視為機密；及
- (b) 所有上述資料、數據、簿冊、文件或紀錄及其任何副本，均屬以保密方式向廣管局的委員、該局委出的委員會、為執行責任或施行本條例或《廣播事務管理局條例》(第 391 章)而行使的公職人員透露或展示而不得向任何其他人士透露或展示，但有提供或出示上述資料、數據、簿冊、文件或紀錄的人的書面准許並按照該准許而行事者，則不在此限。

27. Confidential matter to be safeguarded

- (1) Subject to subsection (2)—
- (a) any information which is furnished, and any data, book, document or record which is produced, by a person in confidence to the Broadcasting Authority or any person authorized by it or any committee appointed by it or by that committee, the Telecommunications Authority or any person authorized by him, shall be treated as confidential; and
- (b) unless the person otherwise permits in writing and except in accordance with such permission, no such information, data, book, document or record or any copy thereof shall be divulged or shown to any person other than in confidence to members of the Broadcasting Authority or any committee appointed thereby, or to a public officer acting in the performance of his duties or for the purposes of this Ordinance or the Broadcasting Authority Ordinance (Cap. 391).

- (2) 第(1)款不得解釋為禁止在以下情況下披露資料——
- (a) 目的是在香港提起或進行任何刑事法律程序或任何與刑事法律程序相關的調查，不論該等程序或調查是否根據本條例提起或進行；
 - (b) 與民事法律程序相關，而廣管局是該程序的一方；
 - (c) 利便廣管局或電訊局長，對持牌人違反訂明條例某條文的行為的投訴作出調查或裁定；或
 - (d) 廣管局認為是符合公眾利益的，但須受第(3)款所規限。
- (3) 廣管局在作出根據第(2)(c)或(d)款披露某人以保密方式提供的資料的最後決定前，須給予該人合理機會就擬作的披露作出申述，並考慮所有該等申述。
- (4) 任何人可在其指明的條件的規限下，准許廣管局、獲該局授權的人、電訊局長或獲電訊局長授權的人，向任何人或任何指明的人——
- (a) 透露該人向其提供的指明資料；或
 - (b) 展示該人向其交出的指明文件或該文件的任何副本。
- (5) 在本條中，“數據、簿冊、文件或紀錄”(data, book, document or record)的涵義與第 25(10)條中該等詞語所具有者相同。

- (2) Subsection (1) shall not be construed as prohibiting the disclosure of information—
- (a) with a view to the institution of or otherwise for the purposes of any criminal proceedings or any investigation in connection therewith, whether under this Ordinance or otherwise, in Hong Kong;
 - (b) in connection with civil proceedings to which the Broadcasting Authority is a party;
 - (c) which facilitates the Broadcasting Authority or the Telecommunications Authority investigating or determining a complaint that a licensee is engaging in conduct that contravenes a provision of a prescribed Ordinance; or
 - (d) subject to subsection (3), which the Broadcasting Authority considers it is in the public interest to disclose.
- (3) The Broadcasting Authority shall give the person supplying the information in confidence a reasonable opportunity to make representations on a proposed disclosure of the information under subsection (2)(c) or (d) and shall consider all representations made before the Broadcasting Authority makes a final decision to disclose the information.
- (4) A person may permit, subject to such conditions as the person may specify, the Broadcasting Authority, the Telecommunications Authority or any person authorized by the Broadcasting Authority or the Telecommunications Authority—
- (a) to divulge specified information which the person has given thereto; or
 - (b) to show any specified document or any copy thereof which the person has produced thereto,
- to any person or to any specified person.
- (5) In this section, “data, book, document or record” (數據、簿冊、文件或紀錄) means the same as it does in section 25(10).

附表 1 [第 2、8、42 及 43 條及附表 4 及 8]

SCHEDULE 1 [ss. 2, 8, 42 & 43 & Schs. 4 & 8]

不符合本地免費或收費電視節目服務的特許資格以及對表決控制權人的表決控制權的限制

DISQUALIFICATION FOR HOLDING DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE LICENCES AND RESTRICTION ON VOTING CONTROL OF VOTING CONTROLLERS

第 1 部 釋義及適用範圍

PART 1 INTERPRETATION AND APPLICATION

1. 釋義

1. Interpretation

- (1) 在本附表中，除文意另有所指外—
- “一般表決權人”(qualified voting controller)指—
 - (a) (i) 屬通常居於香港的個人，並最少曾於一段不少於 7 年的連續期間通常居於香港的表決控制權人；或
 - (ii) 屬通常居於香港的法團的表決控制權人；或
 - (b) 屬以下人士的表決控制權人—
 - (i) 根據《證券條例》(第 333 章)第 15 條獲認可的任何單位信託或互惠基金法團的受託人或管理人；
 - (ii) 將任何具司法管轄權的法院所作出的命令而成立的慈善計劃的受託人；
 - (iii) 在死者去世遺產管理書發出期間內死者遺產所歸屬的司法人員；
 - (iv) 高等法院司法常務官；或
 - (v) 訂明的其他人上；
- “不符合持牌資格人士”(disqualified person)指第 4、5、6 或 7 條所指的不符合持牌資格人士的人；
- “主要人員”(principal officer)就任何法團而言，指—
 - (a) 該法團所僱用或聘用並在該法團的董事的直接權限下、本人或連同其他人負責處理該法團業務的人；或
 - (b) 該法團所僱用或聘用並在該法團的一名董事或一名(a)段所適用的人的直接權限下，或該法團而執行管理職能的人；
- “表決控制權”(voting control)指控制(不論直接或間接)附於 1 股或多於 1 股持牌人的有表決權的股份的表決權的行使的控制權，亦指控制(不論直接或間接)該等表決權的行使的能力，而該項控制是—
 - (a) 藉行使一項權利(此項權利的行使是賦予行使表決權的能力或控制行使表決權的能力)而進行的；
 - (b) 藉一行使上述表決權的權利而進行的；
 - (c) 根據任何責任或義務而進行的；
 - (d) 透過代理人而進行的；
 - (e) 透過或藉着一項信託、協議、安排、諮詢或常規而進行的，不論該項信託、協議、安排、諮詢或常規是否具有法律上或衡平法上的效力，亦不論其是否基於法律上或衡平法上的權利；或
 - (f) 作為持牌人的有表決權股份的押記人而進行的，但如該等股份的承押記人(或承押記人的代理人)已根據有表決權押記人發出書面通知，表示有意行使附於該等股份的表決權，則作別論；

- (1) In this Schedule, unless the context otherwise requires—
- “advertising agency” (廣告宣傳代理商) means a person who—
 - (a) carries on business as an advertising agent; or
 - (b) exercises control of a person who carries on business as an advertising agent;
- “associate” (相關者), in relation to a voting controller holding voting control (whether the controller is qualified or unqualified), means—
 - (a) where the voting controller holding the voting control is an individual—
 - (i) a relative of the voting controller;
 - (ii) a partner of the voting controller or a relative of the partner;
 - (iii) a partnership in which the voting controller is a partner;
 - (iv) a corporation influenced by—
 - (A) the voting controller;
 - (B) a partner of the voting controller; or
 - (C) a partnership in which the voting controller is a partner; or
 - (v) a director or principal officer of a corporation mentioned in paragraph (iv);
 - (b) where the voting controller holding the voting control is a corporation—
 - (i) an associated corporation;
 - (ii) a voting controller who—
 - (A) influences the corporation and, if the voting controller is an individual, a relative of the voting controller; or
 - (B) is a partner of the voting controller to whom or which sub-paragraph (A) applies, and if the partner is an individual, a relative of the partner;
 - (iii) a director or principal officer of the corporation or of an associated corporation and a relative of the director or officer;
 - (iv) a partner of the corporation and, if the partner is an individual, a relative of the partner; or
 - (c) where the voting controller holding the voting control is a partnership—
 - (i) a member of the partnership and, if the partner is an individual, a relative of the member;
 - (ii) a partner of the partnership and, where the partner—
 - (A) is an individual, a relative of the partner; or
 - (B) is itself a partnership, a relative of a member of the partnership who is an individual;
 - (iii) a corporation influenced by—
 - (A) the partnership;
 - (B) a partner of it; or
 - (C) where the partner is an individual, a relative of the partner;
 - (iv) a corporation of which a partner of the partnership is a director or principal officer;
 - (v) a director or principal officer of a corporation mentioned in subparagraph (iii);

“表決控權人”(voting controller)指單獨或連同 1 名或多於 1 名其他人持有表決控制權的人；

“受限制表決控權人”(unqualified voting controller)指不屬一般表決控權人的表決控權人；

“持牌人”(licensee)指牌照持有人；

“持牌人登記冊”(licensee's register)就某持牌人而言，指根據《公司條例》(第 32 章)第 95 條規定備存的登記冊；

“相聯法團”(associated corporation)就任何持有表決控制權的表決控權人(不論符合資格與否)而言，指——

- (a) 受該表決控權人影響的法團；
- (b) 對本身是法團的表決控權人(“另一法團”)有影響力的法團；
- (c) 受另一法團影響的法團；

“相聯者”(associate)就任何持有表決控制權的表決控權人(不論符合資格與否)而言——

- (a) 如該表決控權人屬個人，指——
 - (i) 該表決控權人的親屬；
 - (ii) 該表決控權人的合夥人或該合夥人的親屬；
 - (iii) 該表決控權人擔任合夥人的合夥；
 - (iv) 受下述人士影響的法團——
 - (A) 該表決控權人；
 - (B) 該表決控權人的合夥人；或
 - (C) 該表決控權人擔任合夥人的合夥；或
 - (v) 第(iv)段所述法團的董事或主要人員；
- (b) 如該表決控權人屬法團，指——
 - (i) 相聯法團；
 - (ii) 符合以下說明的表決控權人——
 - (A) 對該法團及(如該表決控權人屬個人)該表決控權人的親屬有影響力；或
 - (B) (A)分節適用的表決控權人的合夥人及(如該合夥人屬個人)該合夥人的親屬；
 - (iii) 該法團或任何相聯法團的董事或主要人員，以及該董事或主要人員的親屬；
 - (iv) 該法團的合夥人及(如該合夥人屬個人)該合夥人的親屬；或
- (c) 如該表決控權人屬一個合夥，指——
 - (i) 該合夥的成員及(如該合夥人屬個人)該成員的親屬；
 - (ii) 該合夥的合夥人及——
 - (A) (如該合夥人屬個人)該合夥人的親屬；或
 - (B) (如該合夥人本身是一個合夥)該合夥屬個人的成員的親屬；
 - (iii) 受下述人士影響的法團——
 - (A) 該合夥；
 - (B) 該合夥的其中一名合夥人；或
 - (C) (如該合夥人屬個人)該合夥人的親屬；
 - (iv) 該合夥的其中一名合夥人擔任董事或主要人員的法團；
 - (v) 第(iii)節所述法團的董事或主要人員；

“牌照”(licence)指本地免費電視節目服務牌照或本地收費電視節目服務牌照；

“廣告宣傳代理商”(advertising agency)指——

- (a) 經營廣告宣傳代理業務的人；或
- (b) 對經營廣告宣傳代理業務的人行使控制的人；

“影響”(influence)就任何法團而言，指一名表決控權人——

- (a) 藉着持有該法團或任何其他法團的股份中或持有與該法團或任何其他法團有關的股份，或藉着具有該法團或任何其他法團的表決權或具有該法團或任何其他法團有關的表決權；或

“associated corporation”(相聯法團), in relation to a voting controller holding voting control (whether qualified or unqualified), means—

- (a) a corporation over which the voting controller has influence;
- (b) a corporation which has influence over the voting controller being itself a corporation (“the second corporation”);
- (c) a corporation which is under the influence of the second corporation;

“disqualified person”(不符合持牌資格人士) means a person who is a disqualified person under section 4, 5, 6 or 7;

“influence”(影響·影響力), in relation to a corporation, means the power of a voting controller to ensure—

- (a) by means of the holding of shares or possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the memorandum or articles of association regulating that or any other corporation, that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of the voting controller;

“licence”(牌照) means a domestic free television programme service licence or domestic pay television programme service licence;

“licensee”(持牌人) means the holder of a licence;

“licensee's register”(持牌人登記冊), in relation to a particular licensee, means the register required to be kept under section 95 of the Companies Ordinance (Cap. 32);

“principal officer”(主要人員), in relation to a corporation, means—

- (a) a person employed or engaged by the corporation who, by himself or with 1 or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person so employed or engaged who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, performs managerial functions in respect of the corporation;

“qualified voting controller”(一般表決控權人) means—

- (a) 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; or
- (b) a voting controller who is—
 - (i) the trustee or manager of any unit trust or mutual fund corporation authorized under section 15 of the Securities Ordinance (Cap. 333);
 - (ii) the trustee of a charitable scheme made by order of a court of competent jurisdiction;
 - (iii) a judicial officer in whom the estate of a deceased is vested between the time of death and the grant of letters of administration;
 - (iv) the Registrar of the High Court; or
 - (v) such other person as may be prescribed;

“relative”(親屬), in relation to an individual, means the spouse, parent, child, brother, sister, brother-in-law, father-in-law, mother-in-law, sister-in-law, daughter-in-law, son-in-law, aunt, cousin, uncle, niece, nephew, grandfather or grandmother of the individual, and for the purposes of this definition, an adopted child shall be regarded as a child both of the natural parents and the adoptive parents and a stepchild as the child both of the natural parents and any step parents;

“total voting control”(總計表決控制權) means the aggregate of voting control;

“unqualified voting controller”(受限制表決控權人) means a voting controller who is not a qualified voting controller;

“voting control”(表決控制權) means the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to 1 or more voting shares of a licensee—

- (a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;
- (b) by an entitlement to exercise such a right to vote;
- (c) under a duty or obligation;

- (b) 應藉規管該法團或任何其他法團的組織章程大綱或章程細則所賦予的任何權力，以確保前述法團的事務是按照該表決權人的意願處理的權力；
- “親屬”(relative)就任何個人而言，指該人的配偶、父或母、子或女、兄弟、姊妹、配偶之父或母、或兄弟姊妹或配偶的姊妹、姊妹或姊妹夫或配偶的兄或弟、媳婦、女婿、父或母的姊妹或父或母的嫂或弟婦、父或母的兄弟或父或母的姊夫或妹夫、表兄、表弟、表姊、表妹或堂兄、堂弟、堂姊、堂妹、姪女或甥女、侄兒或外甥、祖父或外祖父、祖母或外祖母；而為本定義的目的，被領養的子女須當作是其親生父母的子女，亦是其親生父母的子女，而繼子女則須當作是其親生父母的子女，亦是其任何繼父母的子女；
- “總計表決控制權”(total voting control)指表決控制權的總和。
- (2) 如——
- (a) 多於 1 名表決權人就同一有表決權股份而言同屬表決權人；而
- (b) 他們之中有人是不符合持牌資格人士；
- 則為施行本附表，就 (a) 段所述的股份而言，該段所述的表決權人中的每一人，均須視為不符合持牌資格人士。
- (3) 如有多於 1 名表決權人就同一有表決權股份而言同屬表決權人，而他們之中有人是受限制表決權人，則為施行本附表，就該股份而言，該等表決權人中的每一人，均須視為受限制表決權人。
- (4) 就本附表而言，不能識別以某人作為表決權人的有表決權股份並不具關鍵性。
- (5) 為施行本附表，任何對行使控制的提述——
- (a) 就法團而言，須按照第 (6) 款解釋；
- (b) 就並非法團的團體而言，指任何人憑藉規管該團體或任何其他團體的規則確保該團體的事務是按照該人意願處理的權力。
- (6) 為施行第 (5)(a) 款，任何人如屬下列人士，即屬對某法團行使控制——
- (a) 該法團的董事或主要人員；
- (b) 實益擁有該法團多於 15% 的有表決權股份的實益擁有人；
- (c) 該法團多於 15% 的有表決權股份的表決權人；或
- (d) 除在上述情況外憑藉規管該法團或任何其他法團的組織章程大綱或章程細則或其他文書所賦予的權力，具有確保該法團的事務是按照其意願處理的權力的人，
- 而在本附表中，提述對持牌人行使控制須據此解釋。
- (7) 在本附表中，提述任何人處於以下狀況——
- (a) 持有法團股份或有權享有法團股份實益權益；或
- (b) 作為法團的有表決權股份的表決權人；
- 須解釋為提述他處於該狀況，不論是他本人或聯同其他人而處於該狀況，亦不論是直接或透過 1 名或多於 1 名代名人而處於該狀況。
- (8) 為施行本附表，2 個法團如有下述情況，即屬同一集團的成員——
- (a) 其中一個法團為另一法團的附屬公司；或
- (b) 兩個法團均為另一法團的附屬公司。
- (9) 在第 (8) 款中，“附屬公司”(subsidiary)就法團而言，其涵義與附屬公司根據《公司條例》(第 32 章)第 2(4) 及 (6) 條就公司而言所具有者相同。

- (d) through a nominee;
- (e) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights; or
- (f) as a charger of voting shares of a licensee unless the charger of the voting shares or the nominee of the charger has given notice in writing to the charger under the charge of an intention to exercise the right to vote attaching to such voting shares;
- “voting controller”(表決權人) means a person who either alone or with 1 or more other persons holds voting control.
- (2) Where—
- (a) 2 or more voting controllers together are voting controllers in relation to the same voting share; and
- (b) 1 or more of them is a disqualified person,
- then, for the purposes of this Schedule, each of the voting controllers referred to in paragraph (a) shall, in relation to the voting share mentioned in that paragraph, be regarded as a disqualified person.
- (3) When 2 or more voting controllers together are voting controllers in relation to the same voting share and 1 or more than 1 of those voting controllers is an unqualified voting controller, then for the purposes of this Schedule, each of those voting controllers shall, in relation to that voting share, be regarded as an unqualified voting controller.
- (4) For the purposes of this Schedule, the fact that the particular voting share or shares in relation to which a person is a voting controller cannot be identified is immaterial.
- (5) For the purposes of this Schedule, any reference to exercise of control—
- (a) in relation to a corporation, shall be construed in accordance with subsection (6);
- (b) in relation to a body other than a corporation, means the power of a person to ensure, by virtue of the rules regulating that or any other body, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person.
- (6) For the purposes of subsection (5)(a), a person exercises control of a corporation if—
- (a) he is a director or principal officer of the corporation;
- (b) he is the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) he is a voting controller of more than 15% of the voting shares in the corporation; or
- (d) he otherwise 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,
- and any reference in this Schedule to exercising control of a licensee shall be construed accordingly.
- (7) Any reference in this Schedule to a person—
- (a) holding or being beneficially entitled to shares in a corporation; or
- (b) being a voting controller of any voting shares in a corporation,
- shall be construed as a reference to his being so entitled, whether by himself or jointly with other persons, and whether directly or through 1 or more nominees.
- (8) For the purposes of this Schedule, 2 corporations are members of the same group if—
- (a) 1 of them is a corporation of which the other is a subsidiary; or
- (b) both are subsidiaries of another corporation.
- (9) In subsection (8), “subsidiary”(附屬公司), in relation to a corporation, has the same meaning which a subsidiary has in relation to a company under section 2(4) and (6) of the Companies Ordinance (Cap. 32).

第 2 部

不符合本地免費或收費電視節目服務的持牌資格以
及對表決控制權的限制

3. 不符合持牌資格人士不得持有牌照或行使控制

- (1) 除非不符合持牌資格人士不符合該資格一事已在牌照申請中披露，否則該人不得成為牌照的持有人或對持牌人行使控制。
- (2) 除非行政長官會同行政會議應持牌人以指明格式提出的申請，而信納為公眾利益而有此需要並予以批准，否則——
- (a) 不符合持牌資格人士不得成為或繼續為牌照的持有人；及
- (b) 不符合持牌資格人士不得對持牌人行使控制。
- (3) 在為施行第(2)款而考慮公眾利益時，須考慮(但不限於)下述事項——
- (a) 對有關服務市場的競爭的影響；
- (b) 觀眾獲得更多元化電視節目的選擇的程度；
- (c) 對廣播業的發展的影響；及
- (d) 對經濟所帶來的整體利益。

4. 持牌人不符合資格的情況

- (1) 除第(2)款另有規定外，就牌照而言，下述人士均為不符合持牌資格人士——
- (a) 同類牌照的持牌人；
- (b) 不同類牌照(包括非本地電視節目服務牌照及其他電視節目服務牌照)的持牌人(但就本地收費電視節目服務牌照而言，非本地電視節目服務持牌人並非不符合持牌資格人士)；
- (c) 對(a)或(b)段所述的持牌人行使控制的人；
- (d) 憑藉(a)、(b)或(c)段而屬不符合持牌資格人士的相聯者。
- (2) 凡第(1)(a)或(b)款所述的持牌人已根據第4部取得行政長官會同行政會議的事先書面批准，以持有或獲取屬不符合持牌資格人士公司的權益，該持牌人並不僅因此而不符合持有牌照的資格。
- (3) 就任何屬持牌人的公司而言，任何人不會僅因他是該公司的董事或主要人員或他持有或控制該公司多於15%的有表決權股份，而屬不符合持牌資格人士。

PART 2

DISQUALIFICATION FOR HOLDING DOMESTIC FREE OR PAY
TELEVISION PROGRAMME SERVICE LICENCES AND
RESTRICTIONS ON VOTING CONTROL

3. Disqualified person not to hold licence or exercise control

- (1) A disqualified person shall not become the holder of a licence or exercise control of a licensee unless the disqualification was disclosed in the application for the licence.
- (2) Unless the Chief Executive in Council, on application in the specified form by a licensee, is satisfied that the public interest so requires and approves otherwise—
- (a) a person shall not become or remain the holder of a licence if he is a disqualified person; and
- (b) a person shall not exercise control of a licensee if he is a disqualified person.
- (3) In considering the public interest for the purposes of subsection (2), account shall be taken of, but not limited to, the following matters—
- (a) the effect on competition in the relevant service market;
- (b) the extent to which viewers will be offered more diversified television programme choices;
- (c) the impact on the development of the broadcasting industry; and
- (d) the overall benefits to the economy.

4. Disqualification of licensees

- (1) Subject to subsection (2), any one of the following shall be a disqualified person in relation to a licensee—
- (a) a licensee in the same category of licence;
- (b) a licensee in a different category of licence, including a non-domestic television programme service licence and an other television programme service licence (except that a non-domestic television programme service licensee is not a disqualified person in relation to a domestic pay television programme service licensee);
- (c) a person who exercises control in the licensee mentioned in paragraph (a) or (b);
- (d) an associate of a person who is a disqualified person by virtue of paragraph (a), (b) or (c).
- (2) A licensee mentioned in subsection (1)(a) or (b) shall not be disqualified from holding a licence by reason only of the fact that it has, under Part 4, obtained the prior approval in writing of the Chief Executive in Council to hold or acquire an interest in a company which is a disqualified person.
- (3) A person shall not be a disqualified person in relation to a company which is a licensee by reason only of the fact that he is a director or a principal officer of, or holds or controls more than 15% of the voting shares in, that company.

5. 聲音廣播持牌人不符合資格的情況

就牌照而言，下述人士均為不符合持牌資格人士——

- (a) 《電訊條例》(第 106 章) 第 IIIA 部所指的聲音廣播持牌人；
- (b) 對 (a) 段所述的持牌人行使控制的人；或
- (c) (i) (a) 段所述的持牌人的相聯者；或
(ii) (b) 段所述的人的相聯者。

6. 廣告宣傳代理商不符合資格的情況

就牌照而言，下述人士均為不符合持牌資格人士——

- (a) 廣告宣傳代理商；
- (b) 對廣告宣傳代理商行使控制的人；或
- (c) (i) 廣告宣傳代理商的相聯者；或
(ii) (b) 段所述的人的相聯者。

7. 本地報刊不符合資格的情況

就牌照而言，下述人士均為不符合持牌資格人士——

- (a) 指在香港印刷或製作的報刊的東主；
- (b) 對 (a) 段所述東主行使控制的人；或
- (c) (i) (a) 段所述的東主的相聯者；或
(ii) (b) 段所述的人的相聯者。

5. Disqualification of sound broadcasting licensees

The following are disqualified persons in relation to a licence—

- (a) a sound broadcasting licensee under Part IIIA of the Telecommunications Ordinance (Cap. 106);
- (b) a person who exercises control over a licensee mentioned in paragraph (a); or
- (c) an associate of—
 - (i) a licensee mentioned in paragraph (a); or
 - (ii) a person mentioned in paragraph (b).

6. Disqualification of advertising agencies

The following are disqualified persons in relation to a licence—

- (a) an advertising agency;
- (b) a person who exercises control over an advertising agency; or
- (c) an associate of—
 - (i) an advertising agency; or
 - (ii) a person mentioned in paragraph (b).

7. Disqualification of local newspapers

The following are disqualified persons in relation to a licence—

- (a) the proprietor of a newspaper printed or produced in Hong Kong;
- (b) a person who exercises control over a proprietor mentioned in paragraph (a); or
- (c) an associate of—
 - (i) a proprietor mentioned in paragraph (a); or
 - (ii) a person mentioned in paragraph (b).

20. 受限制表決控權人須經廣播局批准始可享有的 2% 至 10% 控制限額

- (1) 如事先未經廣播局書面批准，受限制表決控權人不得——
- 持有；
 - 獲取；或
 - 行使，或導致或准許他人行使。

在持牌人的總計表決控制權中合計佔 2% 或多於 2% 但不足 6%，或 6% 或多於 6% 但不多於 10%，或多於 10% 之數；

(2) 如任何受限制表決控權人違反第(1)(a)款而持有持牌人的總計表決控制權合計多於 10%，則即使持牌人的組織章程大綱或章程細則載有任何規定或在本條以外的香港法例任何條文，該人仍不得就在持牌人的股東大會上出現的問題或事宜，行使或導致或准許他人行使合計超過持牌人的總計表決控制權 10% 的表決權。

(3) 廣播局可就違反第(1)款的受限制表決控權人，藉送達他的書面通知作出該局覺得為適宜終止該項違反所須作出的指示。

- (4) 根據第(3)款送達的通知，須指明——

- 根據該款作出的指示；及
- 遵從該等指示的限期。

- (5) 本條不得解釋為限制或以其他方式影響任何人轉讓有表決權股份的權力。

20. 2% to 10% control limits by unqualified voting controller subject to approval of Broadcasting Authority

(1) An unqualified voting controller shall not, without the prior approval in writing of the Broadcasting Authority—

- hold;
- acquire; or
- exercise or cause or permit to be exercised,

2% or more but less than 6%, or 6% or more but not more than 10%, or more than 10%, in the aggregate, of the total voting control of a licensee.

(2) If an unqualified voting controller holds more than 10%, in the aggregate, of the total voting control of a licensee in contravention of subsection (1)(a), notwithstanding anything contained in the memorandum or articles of association of the licensee or any provision of the laws of Hong Kong apart from this section, he shall not exercise or cause or permit to be exercised, in relation to any question or matter arising at a general meeting of the licensee, voting rights exceeding, in the aggregate, 10% of the total voting control of the licensee.

(3) The Broadcasting Authority may, in respect of any unqualified voting controller who is in contravention of subsection (1), by notice in writing served on him, give such directions as appear to it to be required to effect a cesser of the contravention.

- (4) A notice under subsection (3) shall specify—

- the directions given under subsection (3); and
- a period within which the directions are to be complied with.

(5) Nothing in this section shall be construed as restricting or otherwise affecting the power of a person to transfer a voting share.