

(5) 在本條中——

“潛送訊息”(subliminal message) 指播送時間短暫而不足以使人對所播送材料留下有意識的印象；

“標準”(standards) 就電視節目內容而言，包括規定可於一天內的哪個時間提供某類別電視節目內容的限制。

第 VI 部

牌照的執行

24. 廣管局及電訊局長的指示

(1) 廣管局可向持牌人發出書面指示(關於技術標準的指示除外)，規定持牌人須採取有關通知指明的該局認為必須的行動，以使持牌人遵守某訂明條例的任何條文、任何牌照條件或適用於持牌人的業務守則的任何條文。

(2) 電訊局長可向持牌人發出書面指示，規定持牌人須採取關乎技術標準而在有關通知內指明的該局認為必須的行動，以使持牌人遵守某訂明條例的任何條文、任何牌照條件或適用於持牌人的業務守則的任何條文。

(3) 廣管局須安排在憲報刊登根據第(1)款發出的指示，或以其認為合適的其他方式刊登。

25. 對持牌人業務的調查

(1) 廣管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——

(5) In this section—

“standards” (標準), in relation to television programme content, includes restrictions on the time of day when content of a particular class may be provided;

“subliminal message” (潛送訊息) means the transmission of material the duration of which is so brief that it does not enable a person to obtain a conscious picture of the material.

PART VI

ENFORCEMENT OF LICENCES

24. Directions of Broadcasting Authority and Telecommunications Authority

(1) The Broadcasting Authority may issue directions in writing to a licensee (except directions relating to technical standards) requiring it to take such action specified in the notice as the Broadcasting Authority considers necessary in order for the licensee to comply with any requirement under a prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it.

(2) The Telecommunications Authority may issue directions in writing to a licensee requiring it to take such action specified in the notice with regard to technical standards as the Telecommunications Authority considers necessary in order for the licensee to comply with any requirement under a prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it.

(3) The Broadcasting Authority shall cause directions under subsection (1) to be published in the Gazette or in such other manner as it thinks fit.

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) 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，以供他本人及廣管局檢查；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，向獲授權的人及廣管局提供任何經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) 裁判官如根據廣管局主席、廣管局副主席或《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——

- (a) 為妥善履行第(1)款所提述的廣管局的職能，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)款所指明的權力；及

- (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) 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) 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管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，但上述准許須受廣管局就保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，以顯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；

(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

- (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) 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) 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。

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) 述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，述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”)，述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

(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. 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述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) 款所提述的中述 (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，但該資料或文件可顧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) 如廣管局擬披露任何人根據本條提供或交出的資料或文件，則廣管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發放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。

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）而行事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。

(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. 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，對指稱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) 任何人可在他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。

28. 持牌人須支付罰款

(1) 在符合本條規定下，廣管局可藉送達持牌人的書面通知，規定持牌人繳付憑藉本條而施加並在該通知中指明的罰款。

(2) 廣管局如信納持牌人違反——

- (a) 牌照條件；
- (b) 本條例所訂並適用於該持牌人的規定；
- (c) 根據本條例發出或作出並適用於該持牌人的指示、命令、決定或裁定；或
- (d) 適用於該持牌人的業務守則條文，

可向該持牌人施加罰款。

(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).

28. Licensee to pay financial penalty

(1) Subject to this section, the Broadcasting Authority may, by notice in writing served on a licensee, require the licensee to pay the financial penalty specified in the notice where that penalty may be imposed by virtue of this section.

(2) The Broadcasting Authority may impose a financial penalty on a licensee if it is satisfied that the licensee contravened—

- (a) a licence condition;
- (b) a requirement under this Ordinance which is applicable to it;
- (c) a direction, order, or determination, under this Ordinance which is applicable to it; or
- (d) a provision in a Code of Practice which is applicable to it.

(3) 根據本條施加的罰款，首次施加者不得超過 \$200,000，第二次施加者不得超過 \$400,000，而其後任何一次施加者則不得超過 \$1,000,000。

(4) 如廣管局認為根據第 (3) 款施加罰款，就持牌人違反第 13(1) 或 14(1) 條而言並不足夠——

(a) 則在以下兩個期間中較遲屆滿的期間內——

(i) 該項違反發生後的 3 年；或

(ii) (如廣管局在該項違反發生後的 3 年內知悉該項違反) 廣管局知悉該項違反後的 3 年，

廣管局可向原訟法庭提出申請；

(b) 並根據 (a) 段提出申請，在不損害本條例的條文、根據本條例訂立的規例的條文或任何牌照條件賦予廣管局的權力的原則下，原訟法庭可對該持牌人施加罰款，罰款額不超過 \$2,000,000 或該持牌人於有該違反行為的期間在有關電視節目服務市場的營業額的 10% 的款額 (兩者以較高者為準)，原訟法庭並可指明罰款到期須繳付的時限。

(5) 除非在有關個案的整體情況下，根據本條施加的罰款就引致罰款的一項或一連串違反行為而言屬適當及合理，否則廣管局不得施加該項罰款。

(6) 除非廣管局已給予持牌人合理機會就擬施加罰款所關乎的事宜向其作出申述，否則該局不得施加罰款。

(7) 如已就持牌人牌照條件的違反而通知兌現履約保證，廣管局不得就該項違反而施加罰款。

(8) 如持牌人已因違反本條例某規定而就有關罪行被定罪，廣管局不得就該項違反而施加罰款。

29. 追討罰款

(1) 根據第 28(1) 條施加的罰款，可由廣管局作為民事債項追討。

(3) The financial penalties imposed under this section shall not exceed \$200,000 for the first occasion on which a penalty is imposed, \$400,000 for the second occasion on which a penalty is imposed, and \$1,000,000 for any subsequent occasion on which a penalty is imposed.

(4) Where the Broadcasting Authority considers that if it were to impose a financial penalty under subsection (3) it would not be adequate for a breach of section 13(1) or 14(1)—

(a) the Broadcasting Authority may—

(i) within 3 years of the commission of the breach; or

(ii) if the breach comes to the notice of the Broadcasting Authority within 3 years of its commission, within 3 years of it so coming to the notice of the Broadcasting Authority, whichever is the later, make an application to the Court of First Instance; and

(b) upon such application, the Court of First Instance may, without prejudice to any powers conferred on the Broadcasting Authority by any provision of this Ordinance or any regulation made thereunder or any licence condition, impose upon the licensee who has committed the breach a financial penalty of a sum not exceeding 10% of the turnover of the licensee in the relevant television programme service market in the period of the breach, or \$2,000,000, whichever is the higher, and also specify when any such financial penalty is due for payment.

(5) The Broadcasting Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty.

(6) The Broadcasting Authority shall not impose a financial penalty unless it has given the licensee a reasonable opportunity to make representations to it in relation to the matters in respect of which a financial penalty is proposed to be imposed.

(7) The Broadcasting Authority shall not impose a financial penalty in respect of a contravention by a licensee of a licence condition where a performance bond has been called in respect of the contravention.

(8) The Broadcasting Authority shall not impose a financial penalty in respect of a contravention by a licensee of a requirement under this Ordinance where the licensee has been convicted of an offence in respect of the contravention.

29. Recovery of financial penalty

(1) A financial penalty required to be paid under section 28(1) may be recovered by the Broadcasting Authority as a civil debt.

- (2) 如有根據第 34 條提出的上訴，而行政長官會同行政會議——
- (a) 免除有關罰款，則第 (1) 款不適用；或
 - (b) 減少有關罰款的款額，則第 (1) 款就該已減少的罰款而適用。
- (3) 任何看來是由廣管局作出、表明有罰款到期並須支付給該局的證明書，即為該項事實的表面證據。
- (4) 在第 28(1) 條所指的通知送達持牌人後的 30 天內，該持牌人須向庫務署署長支付藉該通知所施加的罰款。

30. 持牌人須在電視節目服務內作出 一項更正或道歉

- (1) 在第 (3) 款的規限下，廣管局可在第 (2) 款指明的情況下，藉送達持牌人的書面通知，指示持牌人以該通知所指明的方式 (包括指明限期及指明於一天內的哪個時間) 在其領牌服務內作出一項該局所批准的形式之更正或道歉或同時包括兩者。
- (2) 廣管局如信納持牌人有以下情況，可根據第 (1) 款發出指示——
- (a) 違反牌照條件；
 - (b) 違反本條例所訂並適用於該持牌人的規定；
 - (c) 違反根據本條例發出或作出並適用於該持牌人的指示、命令、決定或裁定；或
 - (d) 違反適用於該持牌人的業務守則條文。
- (3) 除非持牌人已獲給予合理機會就其遭投訴的事宜向廣管局作出申述，否則廣管局不得根據第 (1) 款發出指示。
- (4) 在持牌人執行根據本條發出的指示時，持牌人可宣布是依據該指示行事的。

31. 暫時吊銷牌照

- (1) 在符合本條條文的規定下，廣管局可藉送達持牌人的書面通知，將持牌人的牌照暫時吊銷，為期該通知指明的不超過 30 天的期間。
- (2) 只有在以下情況下，方可根據第 (1) 款暫時吊銷牌照——
- (a) 持牌人沒有——
 - (i) 在自付款到期須付之日起計的 30 天內，支付持牌人根據本條例所欠的任何牌照費或任何其他費用或收費；或

- (2) Where, on an appeal under section 34, the Chief Executive in Council—
- (a) remits a financial penalty, subsection (1) shall not apply; or
 - (b) reduces the amount of a financial penalty, subsection (1) shall apply in respect of the reduced financial penalty.
- (3) A certificate in writing purporting to have been made by the Broadcasting Authority to the effect that a financial penalty is due and payable to the Broadcasting Authority shall be prima facie evidence of that fact.
- (4) A licensee shall pay to the Director of Accounting Services the financial penalty imposed by a notice under section 28(1) served on it not later than 30 days after the date on which the notice is served.

30. Licensee to include correction or apology in television programme service

- (1) Subject to subsection (3), the Broadcasting Authority may, in a case falling within subsection (2), by notice in writing served on a licensee, direct the licensee to include in its licensed service a correction or apology, or both, in a form approved by the Broadcasting Authority, in such manner (including within such period and within such time of day) as is specified in the notice.
- (2) The Broadcasting Authority may issue a direction under subsection (1) if it is satisfied that the licensee contravened—
- (a) a licence condition;
 - (b) a requirement under this Ordinance which is applicable to it;
 - (c) a direction, order, or determination, under this Ordinance which is applicable to it; or
 - (d) a provision of a Code of Practice which is applicable to it.
- (3) The Broadcasting Authority shall not issue a direction under subsection (1) unless the licensee has been given a reasonable opportunity to make representations to the Broadcasting Authority regarding the matter complained of.
- (4) Where a licensee carries out a direction under this section, it may announce that it is doing so pursuant to the direction.

31. Suspension of licence

- (1) Subject to the provisions of this section, the Broadcasting Authority may, by notice in writing served on a licensee, suspend its licence for a period of not more than 30 days as is specified in the notice.
- (2) A licence shall only be suspended under subsection (1)—
- (a) for failure by the licensee to pay—
 - (i) any licence fee, or any other fee or charge owing by the licensee under this Ordinance, within 30 days beginning on the date the payment is due; or

- (ii) 支付——
 - (A) 按原訟法庭根據第 28(4)(b) 條所指明的到期須付的罰款；或
 - (B) 根據第 29(4) 條到期須付的罰款；或
- (b) 經顧及所有情況 (包括自牌照發出以來以下事件發生的次數和嚴重程度) 後，有適用於有關個案的以下事件——
 - (i) 持牌人違反——
 - (A) 牌照條件；
 - (B) 本條例所訂並適用於該持牌人的規定；
 - (C) 根據本條例發出或作出並適用於該持牌人的指示、命令、決定或裁定；或
 - (D) 適用於該持牌人的業務守則條文；
 - (ii) 另一人違反第 (i) 節所述的條件、規定、指示、命令、決定、裁定或條文，而該項違反是在持牌人的同意或縱容下發生。
- (3) 在根據第 (1) 款決定是否暫時吊銷牌照前，廣管局須——
 - (a) 向持牌人送達書面通知，述明——
 - (i) 廣管局正在考慮暫時吊銷其牌照，以及考慮暫時吊銷牌照的理由及任何其他原因；
 - (ii) 關於暫時吊銷牌照的建議的申述，可在該通知所指明的一段不少於自該通知送達之日起計的 28 天的期間內向廣管局作出；及
 - (b) 考慮就暫時吊銷牌照的建議而向該局作出的申述；及
 - (c) (如屬本地免費電視節目服務或本地收費電視節目服務，而第 (2)(b) 款適用) 按照廣管局所決定的聆訊程序進行公開聆訊。
- (4) 根據第 (1) 款作出的暫時吊銷牌照——
 - (a) 在不抵觸 (b) 段的條文下，在根據第 34 條提出反對暫時吊銷牌照的上訴期限屆滿之前，不得生效；或
 - (b) 在有根據第 34 條提出反對暫時吊銷牌照的上訴的情況下，則在上訴撤回、放棄或裁定之前，不得生效。

- (ii) any financial penalty when it is due for payment—
 - (A) as specified by the Court of First Instance under section 28(4)(b); or
 - (B) under section 29(4); or
- (b) if, as may be applicable in the particular case, having regard to all the circumstances, including the number of occasions and the gravity in respect of which, after the issue of the licence—
 - (i) the licensee has contravened—
 - (A) a licence condition;
 - (B) a requirement under this Ordinance which is applicable to it;
 - (C) a direction, order, or determination, under this Ordinance which is applicable to it; or
 - (D) a provision of a Code of Practice which is applicable to it;
 - (ii) another person has contravened a condition, requirement, direction, order, determination or provision mentioned in subparagraph (i) and such contravention has taken place with the consent or connivance of the licensee.
- (3) The Broadcasting Authority shall, before making a decision whether or not to suspend a licence under subsection (1)—
 - (a) serve on the licensee a notice in writing stating that—
 - (i) the Broadcasting Authority has under consideration the suspension of the licence and the grounds upon which and any other reason why such suspension is being considered;
 - (ii) representations as regards the proposed suspension may be made to the Broadcasting Authority during the period specified in the notice (being a period of not less than 28 days beginning on the date of service of the notice); and
 - (b) consider any representations made to it in relation to the proposed suspension; and
 - (c) in the case of a domestic free television programme service or a domestic pay television programme service where subsection (2)(b) is applicable, conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority.
- (4) The suspension of a licence under subsection (1) shall not come into force—
 - (a) subject to paragraph (b), until the expiration of the period during which an appeal under section 34 against the suspension may be made; or
 - (b) if an appeal under section 34 against the suspension is made, until the appeal is withdrawn, abandoned or determined.

32. 撤銷牌照

(1) 廣管局如認為行政長官會同行政會議或該局(視情況所需而定)可能有因由根據第(4)款撤銷任何牌照,該局須按照第33條的規定進行研訊;如該牌照是由行政長官會同行政會議批給的,該局亦須就撤銷事宜向行政長官會同行政會議呈交建議。

(2) 廣管局可按該局所決定的聆訊程序進行公開聆訊,以作為其研訊的一部分,如廣管局的研訊涉及第(4)(c)款的條文,則該局須按該等程序進行公開聆訊,以作為其研訊的一部分。

(3) 在不損害廣管局根據第(2)款所決定的程序的一般性的原則下——

(a) 儘管第27條另有規定,該局可將其於公開聆訊中收取的任何數據、簿冊、文件或紀錄,在保密條件或其他條件的限制下向該局認為適當的人透露,或將該等數據、簿冊、文件或紀錄視為機密;及

(b) 該局須以其認為合適的方式,發表一份公開聆訊報告,如牌照是由行政長官會同行政會議批給的,則報告須連同該局向行政長官會同行政會議作出的建議一同發表。

(4) 如在符合第(5)款的規定下,在第33條已獲遵從後,行政長官會同行政會議或廣管局(視情況所需而定),可在以下情況下藉送達持牌人的書面通知撤銷有關牌照——

(a) 持牌人沒有——

(i) 在自持牌人根據本條例所欠的任何牌照費或任何其他費用或收費到期須付之日起計的60天內,支付該等牌照費、費用或收費;或

(ii) 在——

(A) 按原訟法庭根據第28(4)(b)條所指明的到期須付的罰款;或

(B) 根據第29(4)條到期須付的罰款,

到期須付之日起計的60天內,支付該等罰款;

(b) 持牌人——

(i) 並非為合併或重整而正在進行強制清盤或自動清盤;或

(ii) 與其債權人訂立債務重整協議或債務償還安排;或

32. Revocation of licence

(1) Where the Broadcasting Authority considers that there may be cause for the Chief Executive in Council or it, as the case may require, to revoke a licence under subsection (4), it shall conduct an inquiry in accordance with section 33 and, if the licence was granted by the Chief Executive in Council, submit recommendations to the Chief Executive in Council concerning the revocation.

(2) The Broadcasting Authority may as part of its inquiry, and shall where its inquiry concerns the provisions of subsection (4)(c), conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority.

(3) Without prejudice to the generality of procedures which the Broadcasting Authority may determine under subsection (2), it—

(a) may, notwithstanding section 27, divulge any data, book, document or record it has received in the course of the public hearing to any person it considers appropriate on terms of confidentiality or otherwise or treat the same as confidential; and

(b) shall publish in such manner as it considers fit a report of the public hearing and, if the licence was granted by the Chief Executive in Council, together with its recommendations to the Chief Executive in Council.

(4) After section 33 has been complied with but subject to subsection (5), the Chief Executive in Council or the Broadcasting Authority, as the case may require, may, by notice in writing served on the licensee, revoke a licence—

(a) for failure by the licensee to pay—

(i) any licence fee, or any other fee or charge owing by the licensee under this Ordinance, within 60 days beginning on the date the payment is due; or

(ii) any financial penalty within 60 days beginning on the date the payment is due—

(A) as specified by the Court of First Instance under section 28(4)(b); or

(B) under section 29(4);

(b) if the licensee—

(i) goes into compulsory liquidation or into voluntary liquidation other than for the purposes of amalgamation or reconstruction; or

(ii) enters into a composition or arrangement with its creditors; or

- (c) 經顧及整體情況 (包括自牌照發出以來以下事件發生的次數和嚴重程度) 後, 有適用於有關個案的以下事件——
- (i) 持牌人違反——
 - (A) 牌照條件;
 - (B) 本條例所訂並適用於該持牌人的規定;
 - (C) 根據本條例發出或作出並適用於該持牌人的指示、命令、決定或裁定; 或
 - (D) 適用於該持牌人的業務守則條文, 並且沒有遵守根據第 24(1) 條就該項違反所發出的指示;
 - (ii) 另一人違反第 (i) 節所述的條件、規定、指示、命令、決定、裁定或條文, 而該項違反是在該持牌人的同意或縱容下發生的。
- (5) (a) 在考慮廣管局的建議之前, 行政長官會同行政會議不得行使第 (4) 款所賦予的權力; 而
- (b) 在考慮其認為合適的資料、事項及意見之前, 行政長官會同行政會議或廣管局不得行使第 (4) 款所賦予的權力。
- (6) 行政長官會同行政會議根據第 (4) 款作出的撤銷, 在撤銷通知送達持牌人當日或該通知指明的較後日期生效。
- (7) 廣管局根據第 (4) 款作出的撤銷——
- (a) 在不抵觸 (b) 段的條文下, 在根據第 34 條提出反對撤銷牌照的上訴期限屆滿之前, 不得生效; 或
 - (b) 在有根據第 34 條提出反對撤銷牌照的上訴的情況下, 則在上訴撤回、放棄或裁定之前, 不得生效。

33. 廣管局所作的研訊

- (1) 廣管局如根據第 32(1) 條進行研訊, 可考慮從任何來源所收取的資料及事項。
- (2) 以下條文就根據第 32(1) 條所進行的研訊而適用——
- (a) 廣管局須向持牌人送達書面通知, 述明——

- (c) if, as may be applicable in the particular case, having regard to all the circumstances, including the number of occasions and the gravity in respect of which, after the issue of the licence—
- (i) the licensee has contravened—
 - (A) a licence condition;
 - (B) a requirement under this Ordinance which is applicable to it;
 - (C) a direction, order, or determination, under this Ordinance which is applicable to it; or
 - (D) a provision in a Code of Practice which is applicable to it,
 and the licensee has failed to comply with a direction under section 24(1) relating to that contravention;
 - (ii) another person has contravened a condition, requirement, direction, order, determination or provision mentioned in subparagraph (i) and such contravention has taken place with the consent or connivance of the licensee.
- (5) The Chief Executive in Council or the Broadcasting Authority shall not exercise a power under subsection (4) until after considering—
- (a) in the case of the Chief Executive in Council, the recommendations of the Broadcasting Authority; and
 - (b) in the case of both the Chief Executive in Council and the Broadcasting Authority, such information, matter and advice as he or it thinks fit.
- (6) The revocation by the Chief Executive in Council under subsection (4) of a licence shall take effect on the date the notice of the revocation is served on the licensee or on such later date as is specified in the notice.
- (7) The revocation by the Broadcasting Authority under subsection (4) of a licence shall not take effect—
- (a) subject to paragraph (b), until the expiration of the period during which an appeal under section 34 against the revocation may be made; or
 - (b) if an appeal under section 34 against the revocation is made, until the appeal is withdrawn, abandoned or determined.

33. Inquiry by Broadcasting Authority

- (1) Where the Broadcasting Authority conducts an inquiry under section 32(1), it may consider information and matter received from any source.
- (2) The following provisions shall apply in relation to an inquiry under section 32(1)—
- (a) the Broadcasting Authority shall serve on the licensee a notice in writing stating—

- (i) 該局正在考慮撤銷其牌照；
- (ii) 考慮撤銷其牌照的理由及任何其他原因；及
- (iii) 關於撤銷牌照的建議的申述，可在該通知所指明的一段不少於自該通知送達之日起計的 28 天的期間內向廣管局作出；
- (b) 廣管局須考慮就撤銷牌照的建議而向該局作出的申述。
- (3) 廣管局須考慮持牌人作出的申述，以及該局基於該等申述而認為有需要的進一步資料及事項。

34. 向行政長官會同行政會議提出上訴

- (1) 除本條條文另有規定外，持牌人(包括尋求成為持牌人的人)如因——
 - (a) (i) 廣管局在行使本條例或《廣播事務管理局條例》(第 391 章)賦予該局的酌情權時所作的決定(包括在牌照上指明某項條件的決定)；或
 - (ii) 電訊局長在行使本條例賦予他的酌情權時所作的決定；
 - (b) 根據本條例發出或作出的指示、命令、決定或裁定所載的任何事項；或
 - (c) 業務守則所載的任何事項，
 感到受屈，可於自有關決定、指示、命令或裁定發出或作出之日或業務守則公布之日(視屬何情況而定)起計的 30 天內，以呈請方式向行政長官會同行政會議提出上訴。
- (2) 在符合第 31(4) 及 32(7) 條的規定下，在根據第 (1) 款提出的上訴有所裁定之前，持牌人須遵從該款提述而該項上訴所針對的事項。

35. 上訴的裁定

- (1) 在裁定根據第 34 條提出的上訴時，行政長官會同行政會議——
 - (a) 可聽取廣管局或行政長官會同行政會議認為適當的其他人士的意見及從該局或該等其他人士收取資料；及

- (i) that the revocation of its licence is under consideration;
- (ii) the grounds upon which and any other reason why the revocation of its licence is being considered; and
- (iii) that representations as regards the proposed revocation may be made to the Broadcasting Authority during such period as shall be specified in the notice (being a period of not less than 28 days beginning on the date of service of the notice);

- (b) the Broadcasting Authority shall consider any representations made to it as regards the proposed revocation.

- (3) The Broadcasting Authority shall consider any representations submitted by the licensee and such further information and matter as it may consider necessary by reason of such representations.

34. Appeal to Chief Executive in Council

- (1) Subject to the provisions of this section, a licensee (including a person seeking to be a licensee) aggrieved by—

- (a) a decision of—
 - (i) the Broadcasting Authority in the exercise of a discretion conferred on it under this Ordinance or the Broadcasting Authority Ordinance (Cap. 391) (including a decision to specify a condition in a licence); or
 - (ii) the Telecommunications Authority in the exercise of a discretion conferred on him under this Ordinance;

- (b) anything contained in a direction, order, or determination, under this Ordinance; or

- (c) anything contained in a Code of Practice,
- may appeal by way of petition to the Chief Executive in Council, not later than 30 days beginning on the date of the relevant decision, the issue or making of the direction, order, or determination, or the publication of the Code of Practice, as the case may be.

- (2) Subject to sections 31(4) and 32(7), pending the determination of an appeal under subsection (1), the licensee shall comply with the matter mentioned in that subsection being appealed against.

35. Determination of appeal

- (1) In determining an appeal under section 34, the Chief Executive in Council—

- (a) may receive information and advice from the Broadcasting Authority or any other person he considers appropriate; and

(b) 須給予有關持牌人合理機會就所聽取或收取的該等意見及資料(如有的話)作出申述。

(2) 行政長官會同行政會議可藉確認、更改或推翻上訴所針對的決定、指示、命令或裁定而裁定任何上訴，而在適當的情況下，亦可藉指示按其所指明者修改有關業務守則的條文而裁定任何上訴。

第 VII 部

法庭作出的禁止及禁制

36. 法庭可禁播某些電視節目等

(1) 持牌人不得將相當可能有以下情況的節目或其任何部分納入其領牌服務內——

- (a) 在香港煽動針對任何群體的仇恨，而該群體是按膚色、種族、性別、宗教、國籍、族裔或原屬國籍所界定的；
- (b) 導致香港的法律與秩序全面崩潰；或
- (c) 嚴重損害香港的公共衛生或道德風化。

(2) 凡司長合理地相信將任何電視節目或其任何部分納入某領牌服務內會違反第(1)款，司長可根據本條向原訟法庭申請作出命令。

(3) 在緊急情況下，司長可藉暫章以單方面的法律程序申請根據第(2)款作出臨時命令，但在其他情況下，申請須藉動議或傳票提出。

(4) 凡司長根據第(2)款提出申請，原訟法庭如信納將任何電視節目或其任何部分納入某領牌服務內會違反第(1)款，則可作出命令，禁止將該節目的全部或其任何部分納入該領牌服務內，並規定原訟法庭認為會明知而牽涉入上述違反的人採取原訟法庭指示的步驟，以實行該項禁止。

(5) 凡司長根據第(2)款提出申請，原訟法庭可藉命令規定第(4)款提述的持牌人或任何其他人士，向原訟法庭交出該持牌人或該人所管有或控制的任何關乎該申請所針對的電視節目的材料。

(b) shall afford the licensee concerned a reasonable opportunity to make representations on such information and advice, if any, received.

(2) The Chief Executive in Council may determine an appeal by confirming, varying or reversing the decision, direction, order, or determination, appealed against or, where appropriate, by directing that the relevant provision of the Code of Practice be amended as specified by him.

PART VII

PROHIBITION AND PROSCRIPTION BY COURT

36. Court may prohibit certain television programmes, etc.

(1) A licensee shall not include in its licensed service a television programme, or any part thereof, that is likely, in Hong Kong, to—

- (a) incite hatred against any group of persons, being a group defined by reference to colour, race, sex, religion, nationality or ethnic or national origins;
- (b) result in a general breakdown in law and order; or
- (c) gravely damage public health or morals.

(2) Where the Chief Secretary reasonably believes that the inclusion of a television programme, or any part thereof, in a licensed service would contravene subsection (1), the Chief Secretary may apply to the Court of First Instance for an order under this section.

(3) In a case of urgency, the Chief Secretary may, under subsection (2), make an application for an interim order, ex parte and on affidavit, but otherwise the application shall be made by motion or summons.

(4) Where the Chief Secretary makes an application under subsection (2), the Court of First Instance may, where it is satisfied that the inclusion of a television programme, or any part thereof, in a licensed service would contravene subsection (1), make an order prohibiting the inclusion of the whole or any part of the programme in the licensed service and requiring any person who in the opinion of the Court would be knowingly involved in that contravention to take such steps as the Court may direct for the purpose of giving effect to the prohibition.

(5) Where the Chief Secretary makes an application under subsection (2), the Court of First Instance may, by order, require the licensee or any other person referred to in subsection (4) to produce to it any material in the possession or control of the licensee or other person and which relates to the television programme the subject of the application.

附表 1

[第 2、8、42 及
43 條及附表
4 及 8]

不符合本地免費或收費電視節目服務的持牌資格以及
對表決控權人的表決控制權的限制

第 1 部

釋義及適用範圍

1. 釋義

(1) 在本附表中，除文意另有所指外——

“一般表決控權人”(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權人；或
- (ii) 屬通常居於香港的法團的表決控權人；或
- (b) 屬以下人士的表決控權人——
 - (i) 根據《證券及期貨條例》(第 571 章)第 104 條獲認可為集體投資計劃的任何單位信託或互惠基金的受託人或管理人；(由 2002 年第 5 號第 407 條修訂)
 - (ii) 藉任何具司法管轄權的法院所作出的命令而設立的慈善計劃的受託人；
 - (iii) 在死者去世至遺產管理書批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) 訂明的其他人士；

“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，就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的)而進行的；
- (b) 藉一項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) 透過代名人而進行的；
- (e) 透過或藉着一項信託、協議、安排、諒解或常規而進行的，不論該項信託、協議、安排、諒解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(或承押記人的代名人)已根據有關押記向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；

SCHEDULE 1

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

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

PART 1

INTERPRETATION AND APPLICATION

1. Interpretation

(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”(相聯者), 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-subparagraph (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”、“影響力”(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 authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (Cap. 571); (Amended 5 of 2002 s. 407)
 - (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;

(b) 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所賦予的任何權力，以確保前述法團的事務是按照該表決控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、兄或弟、姊或妹、配偶之父或母、嫂或弟婦或配偶的姊或妹、姊夫或妹夫或配偶的兄或弟、媳婦、女婿、父或母的姊或妹或父或母的嫂或弟婦、父或母的兄或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、姪兒或外甥、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既是其親生父母的子女，亦是其領養父母的子女，而繼子女則須當作既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 名表決控權人就同一有表決權股份而言同屬表決控權人；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，該段提述的表決控權人中的每一人，均須視為不符合持牌資格人士。

(3) 如有多於 1 名表決控權人就同一有表決權股份而言同屬表決控權人，而他們之中有人是受限制表決控權人，則為施行本附表，就該股份而言，該等表決控權人中的每一人，均須視為受限制表決控權人。

(4) 就本附表而言，不能識別以某人作為表決控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，任何人如屬下述人士，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控權人；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控權人，

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。

2. 適用範圍

第 3 部不適用於本地收費電視節目服務、本地收費電視節目服務牌照或本地收費電視節目服務牌照的持牌人。

(c) under a duty or obligation;

(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 chargor of voting shares of a licensee unless the chargee of the voting shares or the nominee of the chargee has given notice in writing to the chargor under the charge of an intention to exercise the right to vote attaching to such voting shares;

“voting controller”(表決控權人) 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).

2. Application

Part 3 shall not apply to a domestic pay television programme service, domestic pay television programme service licence or domestic pay television programme service licensee.

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) 觀眾獲提供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。

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。

PART 2

DISQUALIFICATION FOR HOLDING DOMESTIC FREE OR PAY
TELEVISION PROGRAMME SERVICE LICENCES AND
RESTRICTIONS ON VOTING CONTROL3. 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 licence—

- (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 another 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 licence);
- (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. 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. 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。

8. 對表決控權人與不符合持牌資格人士相聯行事的限制

(1) 如表決控權人作為不符合持牌資格人士的相聯者而持有或獲取持牌人有表決權股份的表決控制權，而廣管局覺得該項持有或獲取的目的是逃避本部施加於不符合持牌資格人士的限制，則廣管局可藉送達該局相信是該項持有或獲取其中一方的表決控權人的書面通知，向該表決控權人作出該局覺得是導致以下兩者所需的指示——

- (a) 終止該項持有或獲取；及
- (b) 確保該項限制獲得遵從。
- (2) 根據第 (1) 款送達的通知——
- (a) 在有關指示是為第 (1)(a) 款的目的而作出的情況下，須指明該等指示；
- (b) 在有關指示是為第 (1)(b) 款的目的而作出的情況下，須指明該等指示及須予遵從的限制；及
- (c) 須指明遵從該等指示的限期。
- (3) 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。
- (4) 如有多於 1 人共同行事，以持有或獲取持牌人有表決權股份的表決控制權，則為施行本部，就持牌人的有表決權股份而言，該等人士中的每一人，均須視為其餘的人的相聯者，並須視為按照他們之中任何一人的指示行事以持有或獲取該等有表決權股份的表決控制權的任何其他人的相聯者。

9. 持牌人調查不符合持牌資格人士的權力

- (1) 如持牌人知道或有合理理由相信任何人——
 - (a) 是持牌人的有表決權股份的表決控權人；
 - (b) 在有關期間內的任何時間曾是持牌人的有表決權股份的表決控權人；或
 - (c) 在有任何交易就任何該等有表決權股份而言涉及表決控權人的更改的情況下，曾在該宗交易中提供協助或作為該宗交易的一方，
- 則持牌人可藉送達該人的書面通知，要求該人——
- (i) 確認或否認該項事實；及
 - (ii) 在確認該項事實的情況下，提供可根據第 (2) 款要求他提供的進一步詳情。
 - (2) 凡持牌人根據第 (1) 款向某人送達通知——
 - (a) 該通知可要求該人提供關於他在有關期間內的任何時間屬不符合持牌資格人士或其他人士的身分的詳情；

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).

8. Restriction on disqualified persons acting in association with voting controllers

(1) Where a voting controller holds or acquires voting control of the voting shares of a licensee as an associate of a disqualified person and it appears to the Broadcasting Authority that a purpose of the holding or acquisition is to avoid a restriction imposed on a disqualified person under this Part, then the Broadcasting Authority may, by notice in writing served on any voting controller whom it believes to be a party to the holding or acquisition, give directions to the voting controller which appear to the Broadcasting Authority to be necessary to—

- (a) effect a cesser of the holding or acquisition; and
- (b) ensure compliance with the restriction.
- (2) A notice under subsection (1) shall specify—
- (a) where the directions are given for the purpose of subsection (1)(a), those directions;
- (b) where the directions are given for the purpose of subsection (1)(b), those directions and the restriction required to be complied with; and
- (c) the period within which the directions are required to be complied with.
- (3) Nothing in this section shall be construed as restricting or otherwise affecting a person's power to transfer a voting share.
- (4) Where 2 or more persons act together to hold or acquire the voting control of the voting shares of a licensee, then, for the purposes of this Part, each of those persons shall be regarded in relation to the voting shares of the licensee as being an associate of the other and of any other person acting on the directions of any of them to hold or to acquire voting control over those voting shares.

9. Licensee's power to investigate a disqualified person

- (1) Where a licensee knows or has reasonable cause to believe a person—
 - (a) to be a voting controller of voting shares of the licensee;
 - (b) to have been such a controller at any time during the relevant period; or
 - (c) to have assisted in or been a party to any transaction involving, in respect of any such voting share, a change of voting controller,
- then the licensee may, by notice in writing served on the person, require the person—
- (i) to confirm or refute that fact; and
 - (ii) if he confirms it, to give such further particulars as may be required under subsection (2).
 - (2) A notice under subsection (1) may require the person on whom it is served—
 - (a) to give particulars as to his status as a disqualified person or otherwise at any time during the relevant period;

- (b) 該通知可要求該人提供關乎身為第 8(1)條所述的持有或獲取的一方的人的地址及身分，並且是在他所知或所信的範圍內的詳情；
- (c) 而該人在有關期間內的任何時間曾是表決控權人，但在獲發通知時已不再是表決控權人，該通知可要求該人提供關乎緊接他不再是表決控權人之後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情；及
- (d) 而該人在有關期間內的任何時間，在有任何交易就任何有表決權股份而言涉及表決控權人的更改的情況下，曾在該交易中提供協助或作為該宗交易的一方，該通知可要求該人提供關乎在該項更改後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情。

(3) 根據第 (1) 款送達的通知，須指明遵從該通知的要求的限期。

(4) 如有任何詳情根據本條向持牌人提供，持牌人須於自收到該等詳情之日起計 15 天內，就該等詳情向廣播局發出書面通知。

(5) 在本條中，“有關期間”(relevant period) 就某通知而言，指緊接該通知的送達日期前的 3 年期間。

10. 廣播局獲取不符合持牌資格人士資料的權力

(1) 如廣播局覺得有理由調查持有持牌人的有表決權股份的表決控權人，而該局有合理理由相信某人管有關於任何現任或前任表決控權人的姓名或名稱及地址，以及關於代表該等控權人人事或曾代表他們行事的人的資料，或該人能夠提供或取得該等資料，則廣播局可要求該人向該局提供該等資料。

(2) 在不損害第 (1) 款的一般性原則下，如廣播局有合理理由相信任何人——

- (a) 是持牌人有表決權股份的表決控權人；
- (b) 在有關期間內的任何時間曾是持牌人的有表決權股份的表決控權人；或
- (c) 在有任何交易就任何該等有表決權股份而言，涉及表決控權人的更改的情況下，曾在該宗交易中提供協助或作為該宗交易的一方，

則廣播局可藉送達該人的書面通知，要求該人——

- (i) 確認或否認該項事實；及
- (ii) 在確認該項事實的情況下，提供可根據第 (3) 款要求他提供的進一步詳情。

(3) 凡廣播局根據第 (2) 款向某人送達通知——

- (a) 該通知可要求該人提供關乎他在有關期間內的任何時間屬不符合持牌資格人士或其他人士的身分的詳情；
- (b) 該通知可要求該人提供關乎身為第 8(1) 條所述的持有或獲取的一方的人的地址及身分，並且是在他所知或所信的範圍內的詳情；
- (c) 而該人在有關期間內的任何時間曾是表決控權人，但在獲發通知時已不再是表決控權人，該通知可要求該人提供關乎緊接他不再是表決控權人之後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情；及
- (d) 而該人在有關期間內的任何時間，在有任何交易就任何有表決權股份而言涉及表決控權人的更改的情況下，曾在該交易中提供協助或作為該宗交易的一方，該通知可要求該人提供關乎在該項更改後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情。

(4) 根據第 (2) 款送達的通知，須指明遵從該通知的要求的限期。

- (b) to give particulars which are within his knowledge or belief relating to the address and identity of any person who is a party to any holding or acquisition mentioned in section 8(1);
- (c) where he has at any time during the relevant period been a voting controller, but at the time the notice is given has ceased to be so, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller immediately upon his ceasing to be a voting controller; and
- (d) where he has at any time during the relevant period assisted in or been a party to any transaction involving, in respect of any voting share, a change of voting controller, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller upon the change.

(3) A notice under subsection (1) shall specify a period within which the requirements of the notice are to be complied with.

(4) Where any particulars are given to a licensee under this section, it shall, not later than 15 days beginning on the date it receives the particulars, give the Broadcasting Authority notice in writing of the particulars.

(5) In this section, “relevant period” (有關期間), in relation to a particular notice, means the period of 3 years immediately preceding the date on which the licensee serves the notice.

10. Broadcasting Authority's power to obtain information as to disqualified persons

(1) If it appears to the Broadcasting Authority that there is reason to investigate the voting controllers of any voting shares of a licensee, it may require any person whom it has reasonable cause to believe to have, or to be able to provide or obtain, any information as to any present or past voting controllers and their names and addresses and of those persons who act or have acted on their behalf, to give that information to the Broadcasting Authority.

(2) Without prejudice to the generality of subsection (1), where the Broadcasting Authority has reasonable cause to believe a person—

- (a) to be a voting controller of voting shares of the licensee;
- (b) to have been such a controller at any time during the relevant period; or
- (c) to have assisted in or been a party to any transaction involving, in respect of any such voting shares, a change of voting controller,

then it may, by notice in writing served on the person, require the person—

- (i) to confirm or refute that fact; and
- (ii) if he confirms it, to give such further particulars as may be required under subsection (3).

(3) A notice under subsection (2) may require the person on whom it is served—

- (a) to give particulars as to his status as a disqualified person or otherwise at any time during the relevant period;
- (b) to give particulars which are within his knowledge or belief relating to the address and identity of any person who is a party to any holding or acquisition mentioned in section 8(1);
- (c) where he has at any time during the relevant period been a voting controller, but at the time the notice is served has ceased to be so, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller immediately upon his ceasing to be a voting controller; and
- (d) where he has at any time during the relevant period assisted in or been a party to any transaction involving, in respect of any voting share, a change of voting controller, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller upon the change.

(4) A notice under subsection (2) shall specify a period within which the requirements of the notice are to be complied with.

(5) 廣管局可藉送達持牌人的書面通知，指示持牌人向該通知所指名的人行使持牌人根據第 9 條具有的調查權力；凡廣管局有此指示——

- (a) 持牌人須予遵從；及
- (b) 以下條文即適用——
 - (i) 持牌人須於調查完成後 15 天內，將他經調查而收到的任何資料及詳情，以書面向廣管局提供；
 - (ii) 在不損害第 (i) 節的原則下，如調查未能於自該通知送達持牌人之日起計的 3 個月內完成，持牌人須在自下述時間起計的 15 天內——
 - (A) 該 3 個月限期屆滿時；及
 - (B) 調查完成前的每段 3 個月的接續期間屆滿時，
 就其在 (A) 或 (B) 分節（視屬何情況而定）提述的期間內收到的資料及詳情，向廣管局作出中期報告；
 - (iii) 當持牌人已作出所有為進行調查而屬必要或合宜的查訊，調查須視為已完成；而當持牌人已收到回應或持牌人所定的回應限期已屆滿，則任何該等查訊須視為已完成。

(6) 在本條中，“有關期間”(relevant period) 就某通知而言，指緊接該通知的送達日期前的 3 年期間。

11. 關於持牌人紀錄的格式及內容的額外規定

(1) 持牌人如根據第 9(1) 條送達通知，或由於根據第 10(5) 條作出的指示而送達該通知，則須以指明格式，備存一份載有下述事項的紀錄——

- (a) 該通知的日期；
 - (b) 獲送達該通知的人的姓名或名稱；及
 - (c) 持牌人所收到的回應該通知的詳情。
- (2) 持牌人須按照廣管局根據第 16 條就此作出的任何指示，保留第(1)款所述的紀錄。

12. 廣管局施加限制的權力

(1) 如——

- (a) 有不符合持牌資格人士就第 17(2) 或 (3) 條所訂罪行而被定罪；或
- (b) 有任何人就第 17(1)、(4)、(5) 或 (6) 條所訂罪行而被定罪，

而廣管局覺得該罪行是就持牌人的有表決權股份而犯的，則廣管局可藉指明該股份的書面通知，指示該股份須受第 (3) 款所述並在該通知指明的限制所規限，直至廣管局根據本款就該股份另作通知為止。

(2) 如在與根據第 9 或 10 條進行的調查有關連的情況下，廣管局覺得難以確定任何關於該局認為是或看似是持牌人的任何有表決權股份的表決權人的人的有關事實，則廣管局可藉指明該股份的書面通知，指示該股份須受第 (3) 款所述並在該通知指明的限制所規限，直至廣管局根據本款就該股份另作通知為止。

(3) 就第 (1) 及 (2) 款而言的限制是——

- (a) 轉讓該有表決權股份或（如屬未發行的有表決權股份）轉讓獲發該股份的權利或發行該股份，均屬無效；

(5) The Broadcasting Authority may, by notice in writing served on a licensee, direct the licensee to exercise its powers of investigation under section 9 in respect of a person named in the notice and, where the Broadcasting Authority gives such a direction—

- (a) the licensee shall comply with it; and
- (b) the following shall apply—
 - (i) the licensee shall, not later than 15 days after the investigation is concluded, give in writing to the Broadcasting Authority any information and particulars received by the licensee as a result of the investigation;
 - (ii) without prejudice to subparagraph (i), where the investigation is not concluded within 3 months beginning on the date the relevant notice under this subsection was served on the licensee, the licensee shall, not later than 15 days beginning on—
 - (A) the expiry of that 3 months period; and
 - (B) the expiry of every successive period of 3 months before the conclusion of the investigation,
 give to the Broadcasting Authority an interim report relating to the information and particulars received by it during the period referred to in sub-subparagraph (A) or (B), as the case may be;
 - (iii) an investigation shall be regarded as concluded when the licensee has made all the inquiries necessary or expedient for the purpose of the investigation and any such inquiry shall be regarded as concluded when a response has been received by the licensee or the time given by it for a response has expired.

(6) In this section, “relevant period” (有關期間), in relation to a particular notice, means the period of 3 years immediately preceding the date on which the Broadcasting Authority serves the notice.

11. Additional requirements regarding form and content of licensee's records

(1) Where a licensee serves a notice under section 9(1), or serves such notice in consequence of a direction under section 10(5), it shall keep a record in the specified form containing—

- (a) the date of the notice;
- (b) the name of any person on whom it is served; and
- (c) the particulars received by the licensee in response to the notice.

(2) A licensee shall retain a record mentioned in subsection (1) in accordance with any direction in that behalf given by the Broadcasting Authority under section 16.

12. Power of Broadcasting Authority to impose restrictions

(1) If—

- (a) a disqualified person is convicted of an offence under section 17(2) or (3); or
- (b) a person is convicted of an offence under section 17(1), (4), (5) or (6),

and it appears to the Broadcasting Authority that the offence was committed in relation to any voting share of a licensee, then the Broadcasting Authority may, by notice in writing, direct that the share, which shall be specified in the notice, shall be subject to such of the restrictions mentioned in subsection (3) as are specified in the notice until the Broadcasting Authority makes a further notice under this subsection in respect of the share.

(2) If, in connection with an investigation under section 9 or 10, it appears to the Broadcasting Authority that there is difficulty in ascertaining the relevant facts regarding a person who, in the opinion of the Broadcasting Authority, is or appears to be the voting controller of any voting share of a licensee, then the Broadcasting Authority may, by notice in writing, direct that the share, which shall be specified in the notice, shall be subject to such of the restrictions mentioned in subsection (3) as are specified in the notice until the Broadcasting Authority makes a further notice under this section in respect of the share.

(3) The restrictions for the purposes of subsections (1) and (2) are that—

- (a) any transfer of the voting share or, in the case of a voting share that has not been issued, any transfer of the right to be issued with it or any issue of the share is void;

- (b) 不能就該有表決權股份行使表決權；
 - (c) 不得依憑該有表決權股份或根據向其持有人作出的要約而再發行任何有表決權股份；及
 - (d) 除非在清盤的情況下，否則不得支付持牌人在該有表決權股份方面欠付的任何款額，不論是否就股本而支付。
- (4) 如任何有表決權股份受第 (3)(a) 款所述限制所規限，則——
- (a) 任何轉讓該有表決權股份的協議；或
 - (b) (如屬未發行的有表決權股份) 任何轉讓獲發該股份的權利的協議，

均屬無效。

(5) 如任何有表決權股份受第 (3)(c) 或 (d) 款所述限制所規限，則任何轉讓依憑該股份而獲發任何其他有表決權股份的權利的協議，或任何轉讓在非清盤的情況下就該有表決權股份收取款項的權利的協議，均屬無效。

13. 放寬及解除根據第 12 條施加的限制

(1) 如持牌人的有表決權股份屬根據第 12(1) 或 (2) 條發出的通知的標的，持牌人或任何因該通知而感到受屈的人可向原訟法庭申請作出命令，指示——

- (a) 該股份不再受該通知指明的限制所規限；或
- (b) 在獲原訟法庭批准下將該股份出售。

(2) 如原訟法庭根據第 (1)(b) 款作出命令，原訟法庭亦可指示有關股份不再受根據第 12(1) 或 (2) 條發出的有關通知指明的限制所規限。

(3) 根據本條作出以指示任何股份不再受根據第 12(1) 或 (2) 條發出的有關通知指明的限制所規限的命令，如述明作出的目的是准許將該股份轉讓或指示將該股份出售，則可指示任何該等限制須全部或部分延續，但以該等限制是與在該項轉讓或出售前所獲取的權利或作出的要約有關者為限。

14. 關於藉原訟法庭命令進行的 出售所得收益的條文

(1) 如持牌人的有表決權股份依據根據第 13(1)(b) 條作出的命令出售，則出售所得收益在扣除出售費用後，須為擁有該股份的實益權益的人的利益而繳存於法院；而任何該等人士均可向原訟法庭申請將該等收益的全部或部分支付給他。

(2) 如有人根據第 (1) 款提出申請，原訟法庭可命令將出售所得全部收益連同利息支付給申請人；如在有關股份出售之時有另一人擁有該股份的實益權益，則原訟法庭可將該等收益及利息，按申請人及該另一人的各別實益權益所佔比例在他們之間攤分，並可指示據此付款。

(3) 如原訟法庭根據第 13(1)(b) 條作出命令，原訟法庭可進一步命令從出售所得收益中，撥款支付申請人根據第 13(1) 條提出申請的費用；如原訟法庭作出該進一步命令，而持牌人即該申請人，則持牌人有權在任何其他申請人獲支付該等收益的任何部分之前，先獲從該等收益中撥款支付其費用。

15. 關於不披露的特權以及保密

(1) 任何人如當其時正獲財政司司長藉憲報公告豁免而不受《證券及期貨條例》(第 571 章) 第 329 條所規限，則無須遵從根據第 9 條送達的通知的要求。(由 2002 年第 5 號第 407 條修訂)

- (b) no voting right can be exercised in respect of the voting share;
 - (c) no further voting share shall be issued in right of the voting share or under any offer made to the holder of it; and
 - (d) except in a liquidation, no payment shall be made of any amount due from the licensee on the voting share, whether in respect of capital or otherwise.
- (4) Where a voting share is subject to a restriction mentioned in subsection (3)(a), an agreement to transfer—
- (a) the voting share; or
 - (b) in the case of a voting share which has not been issued, the right to be issued with it,
- is void.

(5) Where a voting share is subject to a restriction, mentioned in subsection (3)(c) or (d), any agreement to transfer a right to be issued with any other voting share in the right of such voting share, or to receive any payment on it otherwise than on liquidation, is void.

13. Relaxation and removal of restrictions under section 12

(1) Where a voting share of a licensee is the subject of a notice under section 12(1) or (2), the licensee or any person aggrieved by the notice may apply to the Court of First Instance for an order directing that the share—

- (a) shall cease to be subject to the restrictions specified in the notice; or
- (b) be sold, subject to the Court of First Instance's approval for the sale.

(2) Where the Court of First Instance makes an order under subsection (1)(b), it may also direct that the voting share shall cease to be subject to any restrictions specified in the notice concerned under section 12(1) or (2).

(3) An order under this section directing that a voting share shall cease to be subject to restrictions specified in the notice concerned under section 12(1) or (2), if it is stated to be made with a view to permitting the transfer or directing the sale of the share, may direct that any such restrictions shall continue in whole or in part, in so far as such restrictions relate to a right acquired or offer made before the transfer or sale.

14. Provision as to proceeds of sale by order of Court of First Instance

(1) Where a voting share of a licensee is sold pursuant to an order under section 13(1)(b), the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of any person who is beneficially interested in the voting share and any such person may apply to the Court of First Instance for the whole or any part of those proceeds to be paid to him.

(2) Where a person makes an application under subsection (1), the Court of First Instance may order the payment to the applicant of the whole of the proceeds of sale together with any interest thereon or, if any other person had a beneficial interest in the voting share at the time of its sale, the Court of First Instance may apportion the proceeds and interest between the applicant and such other person in proportion to their respective beneficial interests and direct that payment be made accordingly.

(3) Where the Court of First Instance makes an order under section 13(1)(b), it may further order that the costs of an applicant in relation to the application under that section be paid out of the proceeds of sale and, if it makes such an order and the licensee is such an applicant, the licensee shall be entitled to the payment of its costs out of the proceeds before any other applicant is paid any part of the proceeds.

15. Privilege relating to non-disclosure and confidentiality

(1) A person is not obliged to comply with the requirements of a notice under section 9 if he is for the time being exempted by the Financial Secretary by notice in the Gazette from the operation of section 329 of the Securities and Futures Ordinance (Cap. 571). (Amended 5 of 2002 s. 407)

(2) 如法團根據第 9 或 10 條被要求提供資料，法團可利用《公司條例》(第 32 章) 第 128(3) 或 129(3) 條所賦予的利益，但該法團如因利用該項利益而致沒有提供任何資料，則須披露此一遺漏資料的事實。

(3) 除第 (4) 款另有規定外，本部不得解釋為規定任何以銀行家或財務顧問身分行事的《銀行業條例》(第 155 章) 所指的認可機構或任何此類機構的代名人披露關於其顧客的事務的資料。

(4) 第 (3) 款不適用於該款所述的認可機構或代名人披露表決權人的姓名或名稱及地址。

(5) 除第 (6) 款另有規定外，持牌人或廣管局根據本部收到的指定屬機密的資料須視為機密。

(6) 第 (5) 款不得解釋為禁止下述披露——

(a) 為了在香港提起或進行任何刑事法律程序或展開或進行任何與此相關的調查(不論是否根據本條例)而披露資料；

(b) 由持牌人——

(i) 向廣管局披露資料；

(ii) 向工商及科技局局長披露資料；或 (由 2002 年第 106 號法律公告修訂)

(iii) 在持牌人作為一方的民事法律程序有關連的情況下披露資料。

16. 廣管局的指示

(1) 廣管局可為施行本部而發出指示。

(2) 在不損害第 (1) 款的一般性的原則下，廣管局可根據該款——

(a) 指明持牌人分發為施行本部而須使用的文件的方式，獲分發該文件的人或代表該人的人填具及簽立該文件並將之交回持牌人的方式，以及持牌人對該文件進行評估、處理或記錄或就該文件向廣管局作出報告的方式；

(b) 指明持牌人分發為施行本部而須使用的文件的方式，以及獲分發該文件的人或代表該人的人將該文件交回持牌人的方式；

(c) 在廣管局可根據本部就某事情發出指示而沒有作出該事情的指明限期的情況下，指明限期；及

(d) 對持牌人施加任何責任或義務，以確保或協助確保持牌人遵守本部。

17. 罪行

(1) 任何人以口頭或書面方式提供在任何要項上屬虛假並且是他知道或理應知道在任何要項上屬虛假的資料，充作遵從本部所訂提供資料的責任或要求，即屬犯罪。

(2) 表決權人沒有在根據第 8(1) 條送達予他的通知所指明的限期內遵從該通知的要求，即屬犯罪。

(3) 任何人沒有在根據第 9(1) 條送達予他的通知所指明的限期內遵從該通知的要求，即屬犯罪。

(4) 任何人沒有在根據第 10(2) 條送達予他的通知所指明的限期內遵從該通知的要求，即屬犯罪。

(5) 任何人明知任何有表決權股份當其時正受第 12(3)(b) 條所訂限制規限，仍在持牌人的股東大會上的任何投票中，就該股份投票(不論親身或由代表代為投票)，或委任任何代表代為就該股份投票，即屬犯罪。

(2) Where a corporation is required to give information under section 9 or 10, the corporation may take advantage of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32), but where as a consequence of taking such advantage, any information is not given by the corporation, the fact of such omission shall be disclosed by the corporation.

(3) Subject to subsection (4), nothing in this Part shall be construed as requiring the disclosure of information by an authorized institution within the meaning of the Banking Ordinance (Cap. 155), or by a nominee of any such institution, acting as a banker or financial adviser in relation to the affairs of any of its customers.

(4) Subsection (3) shall not apply to the disclosure of the name and address of a voting controller by an authorized institution, or the nominee of such an institution, mentioned in that subsection.

(5) Subject to subsection (6), any information designated as confidential which is received by a licensee or the Broadcasting Authority under this Part shall be treated as confidential.

(6) Subsection (5) shall not be construed as prohibiting the disclosure of information—

(a) with a view to the institution of or otherwise for the purpose of any criminal proceedings or any investigation in that connection, whether under this Ordinance or otherwise, in Hong Kong;

(b) by the licensee—

(i) to the Broadcasting Authority;

(ii) to the Secretary for Commerce, Industry and Technology; or (Amended L.N. 106 of 2002)

(iii) in connection with civil proceedings to which the licensee is a party.

16. Directions of Broadcasting Authority

(1) The Broadcasting Authority may issue directions for the purposes of this Part.

(2) Without prejudice to the generality of subsection (1), the Broadcasting Authority may under that subsection—

(a) specify the manner in which any document to be used for the purposes of this Part is to be distributed by a licensee, completed and executed by or on behalf of a person to whom the document is distributed and returned to the licensee, and assessed, processed, recorded or reported on by the licensee to the Broadcasting Authority;

(b) specify the manner in which any document to be used for the purposes of this Part is to be distributed by the licensee and returned to the licensee by or on behalf of a person to whom the document is distributed;

(c) where a period is not specified for the doing of anything in respect of which the Broadcasting Authority may issue directions under this Part, specify a period; and

(d) impose any duty or obligation on the licensee for the purpose of securing, or assisting the securing of, compliance by the licensee with this Part.

17. Offences

(1) A person who, in purported compliance with any duty or requirement to give information under this Part, gives, orally or in writing, information which is false in any material particular and which he knows or ought reasonably to have known was false in a material particular, commits an offence.

(2) A voting controller who fails to comply with the requirements of a notice served on the controller under section 8(1) within the period specified in the notice for complying with it commits an offence.

(3) A person who fails to comply with the requirements of a notice served on him under section 9(1) within the period specified in the notice for complying with it commits an offence.

(4) A person who fails to comply with the requirements of a notice served on him under section 10(2) within the period specified in the notice for complying with it commits an offence.

(5) A person who votes on a poll at a general meeting of a licensee, whether in person or by proxy, in respect of a voting share which, to his knowledge, is for the time being subject to a restriction under section 12(3)(b), or appoints a proxy to vote in respect of the share, commits an offence.

(6) 任何人在持有他明知當時正受第 12(3) 條所訂限制所規限的有表決權股份的情況下，或在他有權憑首述股份而獲發另一有表決權股份的情況下，或在他有權在非清盤的情況下就首述股份收取任何付款的情況下，訂立任何根據第 12(4) 或 (5) 條屬無效的協議，即屬犯罪。

(7) 任何人犯本條所訂罪行，一經定罪，可處罰款 \$1,000,000 及監禁 2 年。

18. 對罪行的檢控及對提起檢控的限制

(1) 在不影響律政司司長在檢控刑事罪行方面的權力的原則下，廣管局可對本部所訂罪行提起檢控。

(2) 儘管有《裁判官條例》(第 227 章) 第 26 條的規定，關於本部所訂罪行的任何告發或申訴，如在罪行發生日期起計的 3 年內或在自檢控人最初發現該罪行之日起計的 12 個月內 (以首先屆滿的期間為準) 的任何時間提出或作出 (視屬何情況而定)，則仍可予以審訊。

第 3 部

對受限制表決控權人持有的表決控制權的限制 (不適用於本地收費電視節目服務牌照)

19. 對受限制表決控權人的表決控制權的百分率的限制

(1) 除第 (2) 款另有規定外，即使持牌人的組織章程大綱或章程細則載有任何規定或有本條以外的任何法律條文，凡有問題或事宜須於持牌人的股東大會上藉投票決定，下列規定即適用——

- (a) 在該次投票中，只有符合以下條件的人方可親身投票或由代表代為投票，其他人不得親身或由代表代為投票：該人在該股東大會舉行時是持牌人的有表決權股份的註冊股東，而就該股份而言，是已有第 22(1)(b) 條所述的文件按照廣管局根據第 30 條就此而發出的指示填具並交回該持牌人；
- (b) 如受限制表決控權人所行使的總計表決控制權的總數，本會超逾由一般表決控權人與受限制表決控權人兩者在該次投票中行使的總計表決控制權的 49%，則就決定該問題或事宜而言，須將受限制表決控權人在該次投票中所投的票數藉乘以按 (c) 段指明的公式釐定的百分率而予以扣減；
- (c) 為 (b) 段的目的地而釐定的公式為——

$$\frac{1}{B} \times \frac{(49 \times A)}{51} \times 100$$

在公式中 A = 在該次投票中，由一般表決控權人作為表決控權人所投的總票數所佔的百分率；

B = 在該次投票中，由受限制表決控權人作為表決控權人所投的總票數所佔的百分率。

(2) 即使持牌人的組織章程大綱或章程細則載有任何規定，本條於以下情況下不適用——

(6) A person who being the holder of a voting share which, to his knowledge, is for the time being subject to a restriction under section 12(3) or having a right to be issued with another voting share in the right of the first-mentioned share, or to receive any payment in respect of the first-mentioned share otherwise than in a liquidation, enters into an agreement which is void under section 12(4) or (5) commits an offence.

(7) A person who commits an offence under this section is liable on conviction to a fine of \$1,000,000 and to imprisonment for 2 years.

13. Prosecution of offences and limitation on institution of proceedings

(1) Without affecting the powers of the Secretary for Justice in relation to the prosecution of criminal offences, prosecution for an offence under this Part may be instituted by the Broadcasting Authority.

(2) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), any information or complaint relating to an offence under this Part may be tried if it is laid or made, as the case may be, at any time within 3 years beginning on the date of the commission of the offence or within 12 months beginning on the first discovery of the offence by the prosecutor, whichever period expires first.

PART 3

RESTRICTIONS ON VOTING CONTROL HELD BY UNQUALIFIED VOTING CONTROLLERS (NOT APPLICABLE IN RELATION TO DOMESTIC PAY TELEVISION PROGRAMME SERVICE LICENCE)

19. Restrictions on percentage of voting control of unqualified voting controllers

(1) Subject to subsection (2), notwithstanding anything contained in the memorandum or articles of association of a licensee or any provision of any law apart from this section, where any question or matter is to be determined by a poll at any general meeting of the licensee, the following shall apply—

- (a) no vote shall be cast on the poll, whether in person or by proxy, other than by or by proxy on behalf of any person who, at the time of the general meeting, is a registered shareholder of voting shares of the licensee in respect of which a document mentioned in section 22(1)(b) has, in accordance with any direction in that behalf issued by the Broadcasting Authority under section 30, been completed and returned to the licensee;
- (b) where the total voting control exercised by unqualified voting controllers would otherwise exceed, in the aggregate, 49% of the total voting control exercised on the poll by both qualified and unqualified voting controllers, the votes cast on the poll by unqualified voting controllers shall, for the purpose of determining the question or matter, be reduced by multiplying those votes by the percentage determined by the formula specified in paragraph (c);
- (c) the formula for the purposes of paragraph (b) is—

$$\frac{1}{B} \times \frac{(49 \times A)}{51} \times 100$$

where A = the percentage of the total votes cast on the poll, the voting controllers of which are qualified voting controllers;

B = the percentage of the total votes cast on the poll, the voting controllers of which are unqualified voting controllers.

(2) Notwithstanding anything contained in the memorandum or articles of association of the licensee, this section shall not apply—

- (a) 在持牌人的股東大會上藉投票決定的問題或事宜是就持牌人設立不同類別的股份；或
- (b) (如持牌人的股本當其時正分為不同類別的股份) 對任何附於該等不同類別的股份的特別權利的更改，包括廢止在內。

(3) 廣管局可在持牌人的任何股東大會舉行之前、之時或期間的任何時間，以口頭方式或藉書面通知指示持牌人就任何決議進行投票，而如有該項指示作出，持牌人即須遵從。

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

(1) 如事先未經廣管局書面批准，受限制表決控權人不得——

- (a) 持有；
- (b) 獲取；或
- (c) 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) 廣管局可就違反第 (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達致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——

- (a) 根據該款作出的指示；及
- (b) 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。

21. 對與其他表決控權人相聯行事的受限制表決控權人的限制

(1) 如任何人是——

- (a) 一般表決控權人；或
- (b) 受限制表決控權人，

並且作為某受限制表決控權人的相聯者而持有或獲取持牌人的有表決權股份的表決控制權，而廣管局覺得該項持有或獲取的目的是逃避本部施加於受限制表決控權人的限制，則廣管局可藉送達該局相信是該項持有或獲取的其中一方的表決控權人的書面通知，向該表決控權人作出該局覺得是達致以下兩者所需的指示——

- (i) 終止該項持有或獲取；及
- (ii) 確保該項限制獲得遵從。

(2) 根據第 (1) 款送達的通知——

- (a) 在有關指示是為第 (1)(i) 款的目的而作出的情況下，須指明該等指示；
- (b) 在有關指示是為第 (1)(ii) 款的目的而作出的情況下，須指明該等指示及須予遵從的限制；及
- (c) 須遵從該等指示的限期。

(3) 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。

- (a) where the question or matter which is to be determined by a poll at any general meeting of the licensee is the creation of different classes of shares in the licensee; or
- (b) where the share capital of the licensee is for the time being divided into different classes of shares, to the variation, including abrogation, of any special rights attaching to any such classes of shares.

(3) The Broadcasting Authority may at any time before, at or during a general meeting of a licensee, direct the licensee orally or by notice in writing to conduct a poll upon any resolution and, where such a direction is given, the licensee shall comply with it.

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—

- (a) hold;
- (b) acquire; or
- (c) 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—

- (a) the directions given under subsection (3); and
- (b) 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.

21. Restriction on unqualified voting controllers acting in association with other voting controllers

(1) Where a person being—

- (a) a qualified voting controller; or
- (b) an unqualified voting controller,

holds or acquires voting control of the voting shares of a licensee as an associate of an unqualified voting controller and it appears to the Broadcasting Authority that a purpose of the holding or acquisition is to avoid a restriction imposed on an unqualified voting controller under this Part, then the Broadcasting Authority may, by notice in writing served on any voting controller whom it believes to be a party to the holding or acquisition, give directions to the voting controller which appear to the Broadcasting Authority to be necessary to—

- (i) effect a cesser of the holding or acquisition; and
- (ii) ensure compliance with the restriction.

(2) A notice under subsection (1) shall specify—

- (a) where the directions are given for the purpose of subsection (1)(i), those directions;
- (b) where the directions are given for the purpose of subsection (1)(ii), those directions and the restriction required to be complied with; and
- (c) the period within which the directions are required to be complied with.

(3) Nothing in this section shall be construed as restricting or otherwise affecting a person's power to transfer a voting share.

(4) 如有多於一人共同行事，以持有或獲取持牌人有表決權股份的表決控制權，則為施行本部，就持牌人的有表決權股份而言，該等人士中的每一人，均須視為其餘的人的相聯者，並須視為按照他們之中任何一人的指示行事以持有或獲取該等有表決權股份的表決控制權的任何其他人的相聯者。

22. 持牌人就股東大會而知會 廣管局等的責任

(1) 為施行本部，持牌人就任何股東大會而言，須按照廣管局根據第 30 條發出的有關指示——

- (a) 就任何股東大會向廣管局發出書面通知，並將持牌人已送交其註冊股東的與該股東大會有關的所有文件的副本一份送交廣管局；
- (b) 向在緊接分發文件前名列於持牌人的登記冊上的每一人，分發一份關乎附於以該人名義註冊的有表決權股份的表決控制權的文件，以供該人填具並交回持牌人；
- (c) 在接獲註冊股東為此提出的書面要求時，以書面方式並藉參照 (b) 段所述文件，將持牌人的有表決權股份（而就該等股份而言，該股東屬第 19(1)(a) 條所描述的人）的數目及識別資料知會該股東；
- (d) 以書面方式並藉參照 (b) 段所述文件，將第 19(1)(a) 條所描述的人所持有的有表決權股份（該等股份由受限制表決控權人及一般表決控權人所控制）的總數，以及由受限制表決控權人控制的股份在該總數所佔的百分率，知會廣管局；
- (e) 在有受限制表決控權人藉參照 (b) 段所述文件而屬持有持牌人的總計表決控制權的 2% 或以上的情況下將該等受限制表決控權人的姓名或名稱、地址及該局所規定的進一步詳情，以書面方式知會廣管局；及
- (f) 將該股東大會上進行的任何投票的進行細節，包括根據第 19(1)(b) 條對表決控制權所作任何計算的詳情，以及廣管局規定的進一步詳情，以書面方式知會廣管局。

(2) 根據第 (1)(b) 款獲分發的文件的人，如不能據其本人所知或所信填具該文件，或並無如此行事的權限，而他理由相信另一人可能可以填具或協助填具該文件或有此權限，並且知道該人的姓名或名稱及地址，則他須將該文件送交該人。

23. 持牌人調查表決控權人的權力

- (1) 如持牌人知道或有合理理由相信任何人——
 - (a) 是持牌人的有表決權股份的表決控權人；
 - (b) 在有關期間內的任何時間曾是持牌人的有表決權股份的表決控權人；或
 - (c) 在有任何交易就任何該等有表決權股份而言涉及表決控權人的更改的情況下，曾在該宗交易中提供協助或作為該宗交易的一方，
 則持牌人可藉送達該人的書面通知，要求該人——
 - (i) 確認或否認該項事實；及
 - (ii) 在確認該項事實的情況下，提供可根據第 (2) 款要求他提供的進一步詳情。
- (2) 凡持牌人根據第 (1) 款向某人送達通知——

(4) Where 2 or more persons act together to hold or acquire the voting control of the voting shares of a licensee, then, for the purposes of this Part, each of those persons shall be regarded in relation to the voting shares of the licensee as being an associate of the other and of any other person acting on the directions of any of them to hold or to acquire voting control over those voting shares.

22. Duty of licensee to notify Broadcasting Authority in relation to general meetings, etc.

(1) For the purposes of this Part, a licensee shall, in relation to any general meeting and in accordance with any relevant directions given by the Broadcasting Authority under section 30—

- (a) give the Broadcasting Authority notice in writing of any general meeting and a copy of all the documents relevant to the general meeting sent by it to its registered shareholders;
- (b) distribute to each person whose name appeared in the licensee's register immediately before the distribution, a document relating to the voting control attaching to the voting shares registered in that person's name, to be completed and returned to the licensee;
- (c) on receiving a request in writing from a registered shareholder, in that behalf, by reference to the document mentioned in paragraph (b), notify in writing the registered shareholder of the number and identity of the voting shares of the licensee in respect of which that registered shareholder is a person described in section 19(1)(a);
- (d) by reference to the document mentioned in paragraph (b), notify in writing the Broadcasting Authority of the total number of voting shares held by any person mentioned in section 19(1)(a) and controlled by unqualified voting controllers and by qualified voting controllers and the proportion, expressed as a percentage, that the former bears to the whole;
- (e) notify in writing the Broadcasting Authority of the name, address, and such further particulars as the Broadcasting Authority may require of all unqualified voting controllers who, by reference to the document mentioned in paragraph (b), hold 2% or more of the total voting control of the licensee; and
- (f) notify in writing the Broadcasting Authority as to the details of the conduct of any poll held at the general meeting, including particulars of any calculation of voting control under section 19(1)(b), and such further particulars as the Broadcasting Authority may require.

(2) Where a person to whom a document is distributed under subsection (1)(b) is unable, from his own knowledge or belief, to complete the document or has no authority to do so, he shall, where he knows the name and address of any other person whom he has reason to believe may be able to complete or to assist in the completion of the document or who has authority to do so, send the document to that person.

23. Licensee's power to investigate voting controllers

- (1) Where a licensee knows or has reasonable cause to believe a person—
 - (a) to be a voting controller of voting shares of the licensee;
 - (b) to have been such a controller at any time during the relevant period; or
 - (c) to have assisted in or been a party to any transaction involving, in respect of any such voting shares, a change of voting controller,
 then the licensee may, by notice in writing served on the person, require the person—
 - (i) to confirm or refute that fact; and
 - (ii) if he confirms it, to give such further particulars as may be required under subsection (2).
- (2) A notice under subsection (1) may require the person on whom it is served—

- (a) 該通知可要求該人提供關乎他在有關期間內的任何時間屬受限制表決控權人或其他人士的身分的詳情；
- (b) 該通知可要求該人提供關乎身為第 21(1) 條所述的持有或獲取的一方的人的地址及身分，並且是在他所知或所信的範圍內的詳情；
- (c) 而該人在有關期間內的任何時間曾是表決控權人，但在獲送達通知時已不再是表決控權人，該通知可要求該人提供關乎緊接他不再是表決控權人之後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情；及
- (d) 而該人在有關期間內的任何時間，在有任何交易就任何有表決權股份而言涉及表決控權人的更改的情況下，曾在該交易中提供協助或作為該宗交易的一方，該通知可要求該人提供關乎在該項更改後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情。

(3) 根據第 (1) 款送達的通知，須指明遵從該通知的要求的限期。

(4) 如有任何詳情根據本條向持牌人提供，持牌人須於自收到該等詳情之日起計 15 天內，就該等詳情向廣管局發出書面通知。

(5) 在本條中，“有關期間”(relevant period) 就某通知而言，指緊接該通知的送達日期前的 3 年期間。

24. 廣管局取得關於表決控權人的資料的權力

(1) 如廣管局覺得有理由調查持有持牌人的有表決權股份的表決控權人，而該局有合理理由相信某人管有關於任何現任或前任表決控權人的姓名或名稱及地址，以及關於代表該等控權人行事或曾代表他們行事的人的資料，或該人能夠提供或取得該等資料，則廣管局可要求該人向該局提供該等資料。

(2) 在不損害第 (1) 款的一般性原則下，如廣管局有合理理由相信任何人——

- (a) 是持牌人有表決權股份的表決控權人；
- (b) 在有關期間內的任何時間曾是持牌人的有表決權股份的表決控權人；或
- (c) 在有任何交易就任何該等有表決權股份而言，涉及表決控權人的更改的情況下，曾在該宗交易中提供協助或作為該宗交易的一方，

則廣管局可藉送達該人的書面通知，要求該人——

- (i) 確認或否認該項事實；及
- (ii) 在確認該項事實的情況下，提供可根據第 (3) 款要求他提供的進一步詳情。

(3) 凡廣管局根據第 (2) 款向某人送達通知——

- (a) 該通知可要求該人提供關乎他在有關期間內的任何時間屬受限制表決控權人或其他人士的身分的詳情；
- (b) 該通知可要求該人提供關乎身為第 21(1) 條所述的持有或獲取的一方的人的地址及身分，並且是在他所知或所信的範圍內的詳情；
- (c) 而該人在有關期間內的任何時間曾是表決控權人，但在獲發通知時已不再是表決控權人，該通知可要求該人提供關乎緊接他不再是表決控權人之後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情；及
- (d) 而該人在有關期間內的任何時間，在有任何交易就任何有表決權股份而言涉及表決控權人的更改的情況下，曾在該交易中提供協助或作為該宗交易的一方，該通知可要求該人提供關乎在該項更改後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情。

(4) 根據第 (2) 款送達的通知，須指明遵從該通知的要求的限期。

- (a) to give particulars as to his status as an unqualified voting controller or otherwise at any time during the relevant period;
- (b) to give particulars which are within his knowledge or belief relating to the address and identity of any person who is a party to any holding or acquisition mentioned in section 21(1);
- (c) where he has at any time during the relevant period been a voting controller, but at the time the notice is served has ceased to be so, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller immediately upon his ceasing to be a voting controller; and
- (d) where he has at any time during the relevant period assisted in or been a party to any transaction involving, in respect of any voting share, a change of voting controller, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller upon the change.

(3) A notice under subsection (1) shall specify a period within which the requirements of the notice are to be complied with.

(4) Where any particulars are given to a licensee under this section, it shall, not later than 15 days beginning on the date it receives the particulars, give the Broadcasting Authority notice in writing of the particulars.

(5) In this section, “relevant period” (有關期間), in relation to a particular notice, means the period of 3 years immediately preceding the date on which the licensee serves the notice.

24. Broadcasting Authority's power to obtain information as to voting controllers

(1) If it appears to the Broadcasting Authority that there is reason to investigate the voting controllers of any voting shares of a licensee, it may require any person whom it has reasonable cause to believe to have, or to be able to provide or obtain, any information as to any present or past voting controllers and their names and addresses and of those persons who act or have acted on their behalf, to give that information to the Broadcasting Authority.

(2) Without prejudice to the generality of subsection (1), where the Broadcasting Authority has reasonable cause to believe a person—

- (a) to be a voting controller of voting shares of the licensee;
- (b) to have been such a controller at any time during the relevant period; or
- (c) to have assisted in or been a party to any transaction involving, in respect of any such voting shares, a change of voting controller,

then it may, by notice in writing served on the person, require the person—

- (i) to confirm or refute that fact; and
- (ii) if he confirms it, to give such further particulars as may be required under subsection (3).

(3) A notice under subsection (2) may require the person on whom it is served—

- (a) to give particulars as to his status as an unqualified voting controller or otherwise at any time during the relevant period;
- (b) to give particulars which are within his knowledge or belief relating to the address and identity of any person who is a party to any holding or acquisition mentioned in section 21(1);
- (c) where he has at any time during the relevant period been a voting controller, but at the time the notice is served has ceased to be so, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller immediately upon his ceasing to be a voting controller; and
- (d) where he has at any time during the relevant period assisted in or been a party to any transaction involving, in respect of any voting share, a change of voting controller, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller upon the change.

(4) A notice under subsection (2) shall specify a period within which the requirements of the notice are to be complied with.

(5) 廣管局可藉送達持牌人的書面通知，指示持牌人向該通知所指名的人行使持牌人根據第 23 條具有的調查權力；凡廣管局有此指示——

- (a) 持牌人須予遵從；及
- (b) 以下條文即適用——
 - (i) 持牌人須於調查完成後 15 天內，將持牌人經調查而收到的任何資料及詳情，以書面向廣管局提供；
 - (ii) 在不損害第 (i) 節的原則下，如調查未能於自該通知送達持牌人之日起計的 3 個月內完成，持牌人須在自下述時間起計的 15 天內——
 - (A) 該 3 個月限期屆滿時；及
 - (B) 調查完成前的每段 3 個月的接續期間屆滿時，
 就其在 (A) 或 (B) 分節（視屬何情況而定）提述的期間內收到的資料及詳情，向廣管局作出中期報告；
 - (iii) 當持牌人已作出所有為進行調查而屬必要或合宜的查訊，調查須視為已完成；而當持牌人已收到回應或持牌人所定的回應限期已屆滿，則任何該等查訊須視為已完成。

(6) 在本條中，“有關期間”（relevant period）就某通知而言，指緊接該通知的送達日期前的 3 年期間。

25. 關於持牌人紀錄的格式及內容的額外規定

(1) 持牌人如根據第 23(1) 條送達通知，或由於根據第 24(5) 條作出的指示而送達該通知，則須以指明格式，備存一份載有下述事項的紀錄——

- (a) 該通知的日期；
- (b) 獲送達該通知的人的姓名或名稱；及
- (c) 持牌人所收到的回應該通知的詳情。

(2) 持牌人須按照廣管局根據第 30 條就此作出的任何指示，保留第 (1) 款所述紀錄。

26. 廣管局施加限制的權力

(1) 如——

- (a) 有受限制表決權人就第 31(2) 或 (3) 條所訂罪行而被定罪；或
- (b) 有任何人就第 31(1)、(5)、(6)、(7) 或 (8) 條所訂罪行而被定罪，

而廣管局覺得該罪行是就持牌人的有表決權股份而犯的，則廣管局可藉指明該股份的書面通知指示該股份須受第 (3) 款所述並在該通知指明的限制所規限，直至廣管局根據本款就該股份另作通知為止。

(2) 如在與根據第 23 或 24 條進行的調查有關連的情況下，廣管局覺得難以確定任何關於該局認為是或看似是持牌人的任何有表決權股份的表決權權人的人的有關事實，則廣管局可藉指明該股份的書面通知，指示該股份須受第 (3) 款所述並在該通知指明的限制所規限，直至廣管局根據本款就該股份另作通知為止。

(5) The Broadcasting Authority may, by notice in writing served on a licensee, direct the licensee to exercise its powers of investigation under section 23 in respect of a person named in the notice and, where the Broadcasting Authority gives such a direction—

- (a) the licensee shall comply with it; and
- (b) the following shall apply—
 - (i) the licensee shall, not later than 15 days after the investigation is concluded, give in writing to the Broadcasting Authority any information and particulars received by the licensee as a result of the investigation;
 - (ii) without prejudice to subparagraph (i), where the investigation is not concluded within 3 months beginning on the date the relevant notice under this subsection was served on the licensee, the licensee shall, not later than 15 days beginning on—
 - (A) the expiry of that 3 months period; and
 - (B) the expiry of every successive period of 3 months before the conclusion of the investigation,
 give to the Broadcasting Authority an interim report relating to the information and particulars received by it during the period referred to in sub-subparagraph (A) or (B), as the case may be;
 - (iii) an investigation shall be regarded as concluded when the licensee has made all the inquiries necessary or expedient for the purpose of the investigation and any such inquiry shall be regarded as concluded when a response has been received by the licensee or the time given by the licensee for a response has expired.

(6) In this section, “relevant period” (有關期間), in relation to a particular notice, means the period of 3 years immediately preceding the date on which the Broadcasting Authority serves the notice.

25. Additional requirements regarding form and content of licensee's records

(1) Where a licensee serves a notice under section 23(1), or serves such notice in consequence of a direction under section 24(5), it shall keep a record in the specified form containing—

- (a) the date of the notice;
- (b) the name of any person on whom it is served; and
- (c) the particulars received by the licensee in response to the notice.

(2) A licensee shall retain a record mentioned in subsection (1) in accordance with any direction in that behalf given by the Broadcasting Authority under section 30.

26. Power of Broadcasting Authority to impose restrictions

(1) If—

- (a) an unqualified voting controller is convicted of an offence under section 31(2) or (3); or
- (b) a person is convicted of an offence under section 31(1), (5), (6), (7) or (8),

and it appears to the Broadcasting Authority that the offence was committed in relation to any voting share of a licensee, then the Broadcasting Authority may, by notice in writing, direct that the share, which shall be specified in the notice, shall be subject to such of the restrictions mentioned in subsection (3) as are specified in the notice until the Broadcasting Authority makes a further notice under this subsection in respect of the share.

(2) If, in connection with an investigation under section 23 or 24, it appears to the Broadcasting Authority that there is difficulty in ascertaining the relevant facts regarding a person who, in the opinion of the Broadcasting Authority, is or appears to be the voting controller of any voting share of a licensee, then the Broadcasting Authority may by notice in writing direct that the share, which shall be specified in the notice, shall be subject to such of the restrictions mentioned in subsection (3), as are specified in the notice until the Broadcasting Authority makes a further notice under this subsection in respect of the share.

(3) 就第(1)及(2)款而言的限制是——

- (a) 轉讓該有表決權股份或(如屬未發行的有表決權股份)轉讓獲發該股份的權利或發行該等股份，均屬無效；
 - (b) 不能就該有表決權股份行使表決權；
 - (c) 不得依憑該有表決權股份或根據向其持有人作出的要約而再發行任何有表決權股份；及
 - (d) 除非在清盤的情況下，否則不得支付持牌人在該有表決權股份方面欠付的任何款額，不論是否就股本而支付。
- (4) 如任何有表決權股份受第(3)(a)款所述限制所規限，則——
- (a) 任何轉讓該有表決權股份的協議；或
 - (b) (如屬未發行的股份)任何轉讓獲發該股份的權利的協議，

均屬無效。

(5) 如任何有表決權股份受第(3)(c)或(d)款所述限制所規限，則任何轉讓依憑該股份而獲發任何其他有表決權股份的權利的協議，或任何轉讓在非清盤情況下就該有表決權股份收取款項的權利的協議，均屬無效。

27. 放寬及解除根據第 26 條施加的限制

(1) 如持牌人的有表決權股份屬根據第 26(1)或(2)條發出的通知的標的，持牌人或任何因該通知而感到受屈的人，可向原訟法庭申請作出命令，指示——

- (a) 該股份不再受該通知指明的限制所規限；或
- (b) 在獲原訟法庭批准下將該股份出售。

(2) 如原訟法庭根據第(1)(b)款作出命令，原訟法庭亦可指示有關股份不再受根據第 26(1)或(2)條發出的有關通知指明的限制所規限。

(3) 根據本條作出以指示任何股份不再受根據第 26(1)或(2)條發出的有關通知指明的限制所規限的命令，如述明作出的目的是准許將該股份轉讓或指示將該股份出售，則可指示任何該等限制須全部或部分延續，但以該等限制是與在該項轉讓或出售前所獲取的權利或作出的要約有關者為限。

28. 關於藉原訟法庭命令進行的出售所得收益的條文

(1) 如持牌人的有表決權股份依據根據第 27(1)(b)條作出的命令出售，則出售所得收益在扣除出售費用後，須為擁有該股份的實益權益的人的利益而繳存於法院；而任何該等人士均可向原訟法庭申請將該等收益的全部或部分支付給他。

(2) 如有人根據第(1)款提出申請，原訟法庭可命令將出售所得全部收益連同利息支付給申請人；如在有關股份出售之時有另一人擁有該股份的實益權益，則原訟法庭可將該等收益及利息，按申請人及該另一人的各別實益權益所佔比例在他們之間攤分，並可指示據此付款。

(3) 如原訟法庭根據第 27(1)(b)條作出命令，原訟法庭可進一步命令從出售所得收益中，撥款支付申請人根據第 27(1)條提出申請的費用；如原訟法庭作出該進一步命令，而持牌人即該申請人，則持牌人有權在任何其他申請人獲支付該等收益的任何部分之前，先獲從該等收益中撥款支付其費用。

(3) The restrictions for the purposes of subsections (1) and (2) are that—

- (a) any transfer of the voting share or, in the case of a voting share that has not been issued, any transfer of the right to be issued with it or any issue of the share is void;
 - (b) no voting right can be exercised in respect of the voting share;
 - (c) no further voting share shall be issued in right of the voting share or under any offer made to the holder of it; and
 - (d) except in a liquidation, no payment shall be made of any amount due from the licensee on the voting share, whether in respect of capital or otherwise.
- (4) Where a voting share is subject to a restriction mentioned in subsection (3)(a), an agreement to transfer—
- (a) the voting share; or
 - (b) in the case of a share which has not been issued, the right to be issued with it,

is void.

(5) Where a voting share is subject to a restriction mentioned in subsection (3)(c) or (d), any agreement to transfer a right to be issued with any other voting share in the right of such voting share, or to receive any payment on it otherwise than on liquidation, is void.

27. Relaxation and removal of restriction under section 26

(1) Where a voting share of a licensee is the subject of a notice under section 26(1) or (2), the licensee or any person aggrieved by the notice may apply to the Court of First Instance for an order directing that the share—

- (a) shall cease to be subject to the restrictions specified in the notice; or
- (b) be sold, subject to the Court of First Instance's approval for the sale.

(2) Where the Court of First Instance makes an order under subsection (1)(b), it may also direct that the voting share shall cease to be subject to any restrictions specified in the notice concerned under section 26(1) or (2).

(3) An order under this section directing that a voting share shall cease to be subject to restrictions specified in the notice concerned under section 26(1) or (2), if it is stated to be made with a view to permitting the transfer or directing the sale of the share, may direct that any such restrictions shall continue in whole or in part, in so far as such restrictions relate to a right acquired or offer made before the transfer or sale.

28. Provision as to proceeds of sale by order of Court of First Instance

(1) Where a voting share of a licensee is sold pursuant to an order under section 27(1)(b), the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of any person who is beneficially interested in the voting share and any such person may apply to the Court of First Instance for the whole or any part of those proceeds to be paid to him.

(2) Where a person makes an application under subsection (1), the Court of First Instance may order the payment to the applicant of the whole of the proceeds of sale together with any interest thereon or, if any other person had a beneficial interest in the voting share at the time of its sale, the Court of First Instance may apportion the proceeds and interest between the applicant and such other person in proportion to their respective beneficial interests and direct that payment be made accordingly.

(3) Where the Court of First Instance makes an order under section 27(1)(b), it may further order that the costs of an applicant in relation to the application under that section be paid out of the proceeds of sale and, if it makes such an order and the licensee is such an applicant, the licensee shall be entitled to the payment of its costs out of the proceeds before any other applicant is paid any part of the proceeds.

29. 關於不披露的特權以及保密

- (1) 任何人如當其時正獲財政司司長藉憲報公告豁免而不受《證券及期貨條例》(第 571 章)第 329 條所規限，則無須遵從根據第 23 條送達的通知的要求。(由 2002 年第 5 號第 407 條修訂)
- (2) 如法團根據第 23 或 24 條被要求提供資料，法團可利用《公司條例》(第 32 章)第 128(3) 或 129(3) 條所賦予的利益，但該法團如因利用該項利益而致沒有提供任何資料，則須披露此一遺漏資料的事實。
- (3) 除第 (4) 款另有規定外，本部不得解釋為規定任何以銀行家或財務顧問身分行事的《銀行業條例》(第 155 章)所指的認可機構或任何此類機構的代名人披露關於其顧客的事務的資料。
- (4) 第 (3) 款不適用於該款所述的認可機構或代名人披露表決控權人的姓名或名稱及地址。
- (5) 除第 (6) 款另有規定外，任何人根據本部以保密方式提供的資料，須視為機密。
- (6) 第 (5) 款不得解釋為禁止下述披露——
- 為了在香港提起或進行任何刑事法律程序或展開或進行任何與此相關的調查(不論是否根據本條例)而披露資料；
 - 由持牌人——
 - 向廣管局披露資料；
 - 向工商及科技局局長披露資料；或 (由 2002 年第 106 號法律公告修訂)
 - 在持牌人作為一方的民事法律程序有關連的情況下披露資料。

30. 廣管局的指示

- (1) 廣管局可為施行本部而發出指示。
- (2) 在不損害第 (1) 款的一般性的原則下，廣管局可根據該款——
- 指明持牌人分發為施行本部而須使用的文件的方式，獲分發該文件的人或代表該人的人填具及簽立該文件並將之交回持牌人的方式，以及持牌人對該文件進行評估、處理或記錄或就該文件向廣管局作出報告的方式；
 - 指明持牌人分發為施行本部而須使用的文件的方式，以及獲分發該文件的人或代表該人的人將該文件交回持牌人的方式；
 - 在廣管局可根據本部就某事情發出指示而沒有作出該事情的指明限期的情況下，指明限期；及
 - 對持牌人施加任何責任或義務，以確保或協助確保持牌人遵守本部。

31. 罪行

- (1) 任何人以口頭或書面方式提供在任何要項上屬虛假並且是他知道或理應知道在要項上屬虛假的資料，充作遵從本部所訂提供資料的責任或要求，即屬犯罪。
- (2) 受限制表決控權人沒有在根據第 20 條送達予他的通知所指明的限期內遵從該通知的要求，即屬犯罪。

25. Privilege relating to non-disclosure and confidentiality

- (1) A person is not obliged to comply with the requirements of a notice under section 23 if he is for the time being exempted by the Financial Secretary by notice in the Gazette from the operation of section 329 of the Securities and Futures Ordinance (Cap. 571). (Amended 5 of 2002 s. 407)
- (2) Where a corporation is required to give information under section 23 or 24, the corporation may take advantage of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32), but where as a consequence of taking such advantage, any information is not given, the fact of such omission shall be disclosed by the corporation.
- (3) Subject to subsection (4), nothing in this Part shall be construed as requiring the disclosure of information by an authorized institution within the meaning of the Banking Ordinance (Cap. 155), or by a nominee of any such institution, acting as a banker or financial adviser in relation to the affairs of any of its customers.
- (4) Subsection (3) shall not apply to the disclosure of the name and address of a voting controller by an authorized institution, or the nominee of such an institution, mentioned in that subsection.
- (5) Subject to subsection (6), any information which is furnished by a person in confidence under this Part shall be treated as confidential.
- (6) Subsection (5) shall not be construed as prohibiting the disclosure of information—
- with a view to the institution of or otherwise for the purpose of any criminal proceedings or any investigation in that connection, whether under this Ordinance or otherwise, in Hong Kong;
 - by the licensee—
 - to the Broadcasting Authority;
 - to the Secretary for Commerce, Industry and Technology; or (Amended L.N. 106 of 2002)
 - in connection with civil proceedings to which the licensee is a party.

30. Directions of Broadcasting Authority

- (1) The Broadcasting Authority may issue directions for the purposes of this Part.
- (2) Without prejudice to the generality of subsection (1), the Broadcasting Authority may under that subsection—
- specify the manner in which any document to be used for the purposes of this Part is to be distributed by a licensee, completed and executed by or on behalf of a person to whom the document is distributed and returned to the licensee, and assessed, processed, recorded or reported on by the licensee to the Broadcasting Authority;
 - specify the manner in which any document to be used for the purposes of this Part is to be distributed by the licensee and returned to the licensee by or on behalf of a person to whom the document is distributed;
 - where a period is not specified for the doing of anything in respect of which the Broadcasting Authority may issue directions under this Part, specify a period; and
 - impose any duty or obligation on the licensee for the purpose of securing, or assisting the securing of, compliance by the licensee with this Part.

31. Offences

- (1) A person who, in purported compliance with any duty or requirement to give information under this Part, gives, orally or in writing, information which is false in any material particular and which he knows or ought reasonably to have known was false in a material particular, commits an offence.
- (2) An unqualified voting controller who fails to comply with the requirements of a notice served on the controller under section 20 within the period specified in the notice for complying with it commits an offence.

(3) 表決控權人沒有在根據第 21(1) 條送達予他的通知所指明的限期內遵從該通知書的要求，即屬犯罪。

(4) 任何人無合理辯解而不遵守第 22(2) 條的規定，即屬犯罪。

(5) 任何人沒有在根據第 23 條送達予他的通知所指明的限期內遵從該通知書的要求，即屬犯罪。

(6) 任何人沒有在根據第 24 條送達予他的通知所指明的限期內遵從該通知書的要求，即屬犯罪。

(7) 任何人如在持牌人的股東大會上的任何投票中，就他明知是當其時正受第 26(3)(b) 條所訂限制規限的有表決權股份作出投票（不論親身或由代表代為投票），或就該股份委任任何代表代為投票，即屬犯罪。

(8) 任何人在持有他明知當其時正受第 26(3) 條所訂限制所規限的有表決權股份的情況下，或在他有權獲發憑首述股份而獲發的另一有表決權股份的情況下，或在他有權在非清盤情況下就首述股份收取任何付款的情況下，訂立任何根據第 26(4) 或 (5) 條屬無效的協議，即屬犯罪。

(9) 任何人犯本條所訂罪行，一經定罪可處罰款 \$1,000,000 及監禁 2 年。

32. 對罪行的檢控及對提起檢控的限制

(1) 在不影響律政司司長在檢控刑事罪行方面的權力的原則下，廣管局可對本部所訂罪行提起檢控。

(2) 儘管有《裁判官條例》(第 227 章) 第 26 條的規定，關於本部所訂罪行的任何告發或申訴，如在罪行發生日期起計的 3 年內或在自檢控人最初發現該罪行之日起計的 12 個月內（以首先屆滿的期間為準）的任何時間提出或作出（視屬何情況而定），則仍可予以審訊。

第 4 部

對不符合持牌資格人士行使控制的持有本地免費或收費電視節目服務牌照的持牌人的限制

33. 限制持牌人未經行政長官會同行政會議批准

對不符合持牌資格人士行使控制

(1) 除非符合以下條件，否則持牌人不得對不符合持牌人士行使控制——

(a) 行政長官會同行政會議應持牌人以指明格式提出的申請，而信納公眾利益而有此需要予以批准；及

(b) 該項控制是按照該項批准中所指明的條件而行使。

(2) 為施行第 (1) 款而考慮公眾利益時，行政長官會同行政會議須考慮（但不限於）以下事項——

(a) 對有關服務市場的競爭的影響；

(b) 觀眾獲提供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。

(3) A voting controller who fails to comply with the requirements of a notice served on the controller under section 21(1) within the period specified in the notice for complying with it commits an offence.

(4) A person who, without reasonable excuse, fails to comply with section 22(2) commits an offence.

(5) A person who fails to comply with the requirements of a notice served on him under section 23 within the period specified in the notice for complying with it commits an offence.

(6) A person who fails to comply with the requirements of a notice served on him under section 24 within the period specified in the notice for complying with it commits an offence.

(7) A person who votes on a poll at a general meeting of a licensee, whether in person or by proxy, in respect of a voting share which, to his knowledge, is for the time being subject to a restriction under section 26(3)(b), or appoints a proxy to vote in respect of the share, commits an offence.

(8) A person who being the holder of a voting share which, to his knowledge, is for the time being subject to a restriction under section 26(3) or having a right to be issued with another voting share in the right of the first-mentioned share, or to receive any payment in respect of the first-mentioned share otherwise than in a liquidation, enters into an agreement which is void under section 26(4) or (5) commits an offence.

(9) A person who commits an offence under this section is liable on conviction to a fine of \$1,000,000 and to imprisonment for 2 years.

32. Prosecution of offences and limitation on institution of proceedings

(1) Without affecting the powers of the Secretary for Justice in relation to the prosecution of criminal offences, prosecution for an offence under this Part may be instituted by the Broadcasting Authority.

(2) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), any information or complaint relating to an offence under this Part may be tried if it is laid or made, as the case may be, at any time within 3 years beginning on the date of the commission of the offence or within 12 months beginning on the first discovery of the offence by the prosecutor, whichever period expires first.

PART 4

RESTRICTION ON DOMESTIC FREE OR PAY TELEVISION
PROGRAMME SERVICE LICENSEES EXERCISING
CONTROL ON DISQUALIFIED PERSONS

33. Restrictions on licensees exercising control on disqualified person without Chief Executive in Council's approval

(1) A licensee shall not exercise control on a disqualified person—

(a) 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; and

(b) except in accordance with such conditions as are specified in the approval.

(2) In considering public interest for the purposes of subsection (1), 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.

附表 4

[第 2、8 及 43 條及附表
5、6、7 及 8]本地免費電視節目服務
補充條文

第 1 部

一般條文

1. 釋義

在本附表中——

“服務”(service) 指有關牌照所針對的本地免費電視節目服務；

“持牌人”(licensee) 指牌照持有人；

“牌照”(licence) 指本地免費電視節目服務牌照。

2. 申請牌照

公司如屬某法團的附屬公司，不得獲批給或持有牌照。

3. 政府供應的電視節目

(1) 如依據某項條件而規定持牌人將政府或廣管局所供應的電視節目免費納入其服務內，則——

- (a) 該項規定可包括規定在星期一至星期五任何一天下午 7 時起計的 3 小時內，將政府或廣管局供應的電視節目納入其服務內；
- (b) 除非持牌人同意另有安排，否則在 (a) 段所述時段內納入其服務內的由政府或廣管局供應的電視節目時數，不論合計與否，所規定的時間均不可在任何一天中超過 30 分鐘；
- (c) 在不損害 (a) 及 (b) 段的實施的原則下，如持牌人的服務並不是應要求而提供的，則政府或廣管局供應的電視節目的時段，不論合計與否，所規定的時間均不可超過以下所述者——
 - (i) 就每段由上午 6 時起計的 24 小時時段而言，不可超過 2½ 小時；
 - (ii) 就每星期的星期一至星期五（首尾兩天包括在內）期間之內並屬由下午 7 時至下午 10 時的時段內共 15 小時的時段而言，不可超過 2½ 小時；
 - (iii) 如屬以中文提供的服務，則在任何一星期內不可超過 12 小時；及
 - (iv) 如屬以英語提供的服務，則在任何一星期內不可超過 6 小時。

(2) 第 (1) 款不得解釋為損害本條例第 19 條的實施。

4. 牌照的有效期限

(1) 行政長官會同行政會議可藉憲報公告——

- (a) 指明牌照的有效期限；
- (b) 命令在公告所指明的期間內對牌照作出覆核。

SCHEDULE 4

[ss. 2, 8 & 43 & Schs.
5, 6, 7 & 8]DOMESTIC FREE TELEVISION PROGRAMME SERVICE
SUPPLEMENTARY PROVISIONS

PART I

GENERAL

1. Interpretation

In this Schedule—

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

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

“service” (服務) means a domestic free television programme service the subject of a licence.

2. Application for licence

A licence shall not be granted to or held by a company which is the subsidiary of a corporation.

3. Television programmes supplied by Government

(1) Where a requirement is made on a licensee pursuant to a condition to include in its service, without charge, a television programme supplied by the Government or the Broadcasting Authority—

- (a) the requirement may include the inclusion in its service, of television programmes supplied by the Government or the Broadcasting Authority, during the 3 hours commencing at 7 p.m., on any day from Monday to Friday inclusive;
- (b) unless the licensee consents otherwise, the number of such hours of television programmes supplied by the Government or the Broadcasting Authority for inclusion in its service during the hours mentioned in paragraph (a) shall not be required to exceed, in any one day, 30 minutes in duration, in aggregate or otherwise;
- (c) without prejudice to the operation of paragraphs (a) and (b), if the licensee's service is not provided on demand, the duration of the television programmes supplied by the Government or the Broadcasting Authority shall not be required to exceed, in aggregate or otherwise, any of the following—
 - (i) 2½ hours in any period of 24 hours commencing at 6 a.m.;
 - (ii) 2½ hours in the 15 hours between the hours of 7 p.m. and 10 p.m. in any period from Monday to Friday inclusive in any one week;
 - (iii) in the case of a service in the Chinese language, 12 hours in any week; and
 - (iv) in the case of a service in the English language, 6 hours in any week.

(2) Nothing in subsection (1) shall be construed to prejudice the operation of section 19 of this Ordinance.

4. Duration of licence

(1) The Chief Executive in Council may by notice in the Gazette—

- (a) specify the period of validity of a licence;
- (b) order a licence to be reviewed within such period as is specified in the notice.

(2) 任何牌照——

- (a) 在 (b) 段的規限下，在第 (1)(a) 款所指而適用於該牌照的公告所指明的期間內有效；除非本條例另有規定，否則於該段期間屆滿時失效；及
- (b) 須——
 - (i) 在該段期間內於該牌照就該牌照的覆核而指明的日期；或
 - (ii) 在第 (1)(b) 款所指而適用於該牌照的公告所指明的期間內，予以覆核。

5. 不符合持牌資格人士不得加強對持牌人的控制

- (1) 除第 6 條另有規定外，對持牌人行使控制的不符合持牌資格人士，不得——
 - (a) 藉增加他作為實益擁有人而持有的持牌人的有表決權股份的百分率而加強該控制；或
 - (b) 因他在持牌人公司所擔任的職位的改變而致該控制加強。
- (2) 不符合持牌資格人士違反第 (1) 款的規定，即屬犯罪，一經定罪，可處罰款 \$1,000,000 及監禁 2 年。

6. 不符合持牌資格人士可加強對持牌人行使控制的情況

行政長官會同行政會議如信納為公眾利益而有此需要，可在持牌人提出申請時，批准——

- (a) 某名不符合持牌資格人士加強對持牌人行使的控制；或
- (b) 某名不符合持牌資格人士開始對持牌人行使控制。

7. 持牌人須將某些陳述包括在招股章程中

持牌人須確保在任何時候就其發出的《公司條例》(第 32 章) 所指的招股章程，均載有清楚述明本條例第 8 條、附表 1 以及本附表第 5 及 6 條的效力。

第 2 部

牌照不予續期或予以撤銷的效果

8. 牌照不予續期或予以撤銷的通知

- (1) 如行政長官會同行政會議——
 - (a) 根據本條例第 11(5) 條決定不將某牌照延期或續期，須於該牌照在本附表第 4(2)(a) 條所訂的有效期屆滿前最少 12 個月前，安排將該項決定的書面通知送達有關持牌人；或
 - (b) 根據本條例第 32 條決定將某牌照撤銷，須於其決定將該牌照撤銷後，在切實可行範圍內盡快安排將該項決定的書面通知送達持牌人。
- (2) 如為遵守第 (1)(a) 款所述關於通知期的規定而有需要，行政長官會同行政會議可延展任何牌照的期限(但該項延展不得使任何提供領牌服務的獨家權利繼續有效)。

(2) A licence shall—

- (a) subject to paragraph (b), be valid for such period as is specified in a notice under subsection (1)(a) applicable to the licence, and shall, unless otherwise provided under this Ordinance, cease to have effect on the expiration of that period; and
- (b) be subject to review—
 - (i) within that period on such dates as are specified in the licence for the purpose; or
 - (ii) within such period as is specified in a notice under subsection (1)(b) applicable to the licence.

5. Disqualified persons not to increase control of licensee

- (1) Subject to section 6, no disqualified person who exercises control of a licensee shall increase such control—
 - (a) by increasing the percentage of voting shares of the licensee which he holds as the beneficial owner; or
 - (b) as the result of any change of office held by him in the licensee.
- (2) A disqualified person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$1,000,000 and to imprisonment for 2 years.

6. Circumstances in which disqualified person may increase control of licensee

On the application of a licensee, the Chief Executive in Council may, if he is satisfied that the public interest so requires, approve—

- (a) an increase in the control exercised by a disqualified person in the licensee; or
- (b) the introduction of a disqualified person to exercise control of the licensee.

7. Licensee to include certain statement in prospectus

A licensee shall ensure that a clear statement of the effect of section 8 of this Ordinance, of Schedule 1 and of sections 5 and 6 is made in any prospectus, within the meaning of the Companies Ordinance (Cap. 32), issued at any time in respect of the licensee.

PART 2

EFFECT OF NON-RENEWAL OR REVOCATION OF LICENCE

8. Notice of non-renewal or revocation of licence

- (1) Where the Chief Executive in Council decides under—
 - (a) section 11(5) of this Ordinance not to extend or renew a licence, he shall cause notice in writing of the decision to be served on the licensee at least 12 months before the expiry of the validity of the licence under section 4(2)(a); or
 - (b) section 32 of this Ordinance to revoke a licence, he shall cause notice in writing of the decision to be served on the licensee as soon as is practicable after the decision to revoke the licence.
- (2) Where it is necessary for the purpose of complying with the requirement as to length of notice in subsection (1)(a), the Chief Executive in Council may extend the term of a licence (but no such extension shall continue in force any exclusive right to provide the licensed service).

9. 指示財政司司長購買屬於持牌人等的土地及財產等

(1) 行政長官會同行政會議如根據本附表第 8(1)(a) 或 (b) 條就牌照而送達通知，或根據本條例第 32(4) 條送達撤銷牌照決定的通知，可指示財政司司長法團購買任何屬於持牌人並由持牌人——

- (a) 為牌照的目的；及
- (b) 在牌照的有效期限內，

使用或保存的財產（包括土地）。

(2) 如行政長官會同行政會議根據本條例第 32(4) 條或本附表第 8 條送達通知，則財政司司長法團須於自該通知送達之日起計的 12 個月內——

- (a) （如有關財產是土地）購買整幅土地或就該土地取得為期不超過 2 年的租契或許可證；
- (b) （如屬任何其他財產）購買整項財產或取得使用該項財產為期不超過 2 年的許可證。

(3) 根據第 (2) 款購買財產的代價的款額，須相等於在決定不將有關牌照延期、續期或撤銷（視屬何情況而定）當日該財產在自願的買賣雙方之間的公開市場價值，而無須顧及——

- (a) 利潤的損失；
- (b) 商譽；
- (c) 優先購買的權利；
- (d) 相關資金的成本；及
- (e) 同一時間所有在市場上放售的財產。

(4) 如財政司司長法團與持牌人不能就第 (3) 款所述代價達成協議，該代價須根據《仲裁條例》（第 341 章）藉仲裁方式釐定，而就此而言，財政司司長法團與持牌人須視為已訂立一項該條例所指的仲裁協議，並須當作所包括的條文有規定在沒有就該代價達成協議的情況下，該代價須由單一仲裁員釐定。

(5) 如財政司司長法團根據本條購買任何土地，有關持牌人須簽立一份以該法團為受惠人的轉讓契，而該法團須於簽立該份轉讓契後 30 天內，將該份轉讓契在土地註冊處註冊。

(6) 財政司司長法團根據本條購買的任何財產（土地除外），須於下述時間歸屬該法團——

- (a) （如決定不將有關牌照延期或續期）在根據本附表第 8 條送達通知書後，牌照的有效期限屆滿時；
- (b) （如根據本條例第 32 條決定將有關牌照撤銷）在該項撤銷生效之時，或在該法團作出購買要約之時，該 2 個時間中以較遲者為準，

而在上述財產歸屬財政司司長法團後，持牌人對該財產的一切權利即告終止和終結。

(7) 本條不得解釋為賦予持牌人要求財政司司長法團購買持牌人所擁有財產的權利。

(8) 財政司司長法團如根據本條購買土地，須於自購買土地當日起計的 30 天內，藉註冊摘要在土地註冊處註冊一項該法團已購買該土地的聲明。

(9) 就本條而言，“持牌人”（licensee）包括持牌人的任何附屬公司。

9. Direction to Financial Secretary to purchase land and property belonging, etc. to licensee, etc.

(1) Where a notice is served under section 8(1)(a) or (b) in respect of a licence, or notice of a decision to revoke a licence is served under section 32(4) of this Ordinance, the Chief Executive in Council may direct The Financial Secretary Incorporated to purchase any property (including land) belonging to and used or kept by the licensee—

- (a) for the purpose of the licence; and
- (b) during the period of validity of the licence.

(2) Where a notice is served under section 32(4) of this Ordinance or section 8, then, not later than 12 months beginning on the date the notice is served, The Financial Secretary Incorporated shall do the following—

- (a) where the property is land, purchase the entirety of the land or acquire a lease or a licence over the land for a period not exceeding 2 years;
- (b) in the case of any other property, purchase the entirety of the property or acquire a licence to use the property for a period not exceeding 2 years.

(3) The consideration for the purchase of property under subsection (2) shall be an amount equal to the open market value of the property at the date of the decision not to extend or renew, or to revoke, as the case may be, the licence concerned as between a willing buyer and a willing seller but without regard to—

- (a) loss of profit;
- (b) goodwill;
- (c) the right of pre-emption;
- (d) the cost of related capital; and
- (e) all the property being placed on the market at the same time.

(4) In default of an agreement between The Financial Secretary Incorporated and a licensee as regards the consideration mentioned in subsection (3), the consideration shall be determined by arbitration under the Arbitration Ordinance (Cap. 341) and, for that purpose, The Financial Secretary Incorporated and the licensee shall be regarded as having made an arbitration agreement within the meaning of that Ordinance whose provisions shall be deemed to include a provision that that consideration shall, in the absence of agreement, be determined by a single arbitrator.

(5) Where any land is purchased under this section, the licensee concerned shall execute an assignment in favour of The Financial Secretary Incorporated and The Financial Secretary Incorporated shall register the assignment in the Land Registry within 30 days of the execution of the assignment.

(6) Any property, other than land, purchased under this section shall vest in The Financial Secretary Incorporated—

- (a) in the case of a decision not to extend or renew the licence concerned, upon the expiry of the licence after notice is served under section 8;
- (b) in the case of a decision to revoke the licence concerned under section 32 of this Ordinance, when the revocation takes effect or when an offer for the purchase is made by The Financial Secretary Incorporated, whichever is the later,

and upon such vesting all the rights of the licensee in that property shall cease and determine.

(7) Nothing in this section shall be construed as conferring on a licensee any right to require The Financial Secretary Incorporated to purchase any property owned by the licensee.

(8) Where land is purchased under this section, The Financial Secretary Incorporated shall, within 30 days beginning on the date the land is purchased, register in the Land Registry by memorial a declaration that the land has been so purchased.

(9) For the purposes of this section, “licensee” (持牌人) includes any subsidiary of the licensee.

第 3 部

電視節目

10. 電視節目服務的最低持續時間

根據本條例附表 8 第 2(1)條 (按該附表所界定) 所指的當作批給的牌照提供的每種語言電視節目服務時段不得少於每天 5 小時。

11. 廣告宣傳

(1) 除第 (2) 款另有規定外, 某項電視節目服務的廣告宣傳時間, 在每天下午 5 時至下午 11 時的時段內, 就每個時鐘小時而言合計不得超過 10 分鐘, 而在其他時間, 廣告宣傳時間佔在有關時段內提供的該項電視節目服務的總時間合計不得超過 18%。

(2) 如廣管局信納遵守第 (1) 款會對本會對某項電視節目服務內的任何電視節目, 或某項電視節目服務內的某類別電視節目中的電視節目的服務表現水平有不利的影響, 該局可藉送達有關持牌人的書面通知, 以該通知所指明的方式, 豁免該電視節目或該等電視節目(視屬何情況而定)使其無需遵守該款。

12. 禁止某些廣告

持牌人不得將任何屬宗教或政治性質或關於任何工業糾紛的廣告納入在其服務內。

第 4 部

費用及收費

13. 每年繳付費用

在不抵觸本條例附表 8 第 5 條的條文下, 持牌人須每年向庫務署署長繳付訂明的牌照費及其他訂明的費用。

14. 有關追討牌照費等的程序的條文

(1) 由財政司司長以書面方式聲明為欠政府的牌照費、其他費用或收費, 可作為民事債項而追討。

(2) 一份看來是根據第 (1) 款作出的書面聲明須為該聲明中指明的債項的表面證據。

(3) 持牌人欠付政府的牌照費、其他費用及收費, 對屬於持牌人的財產構成第一押記。

PART 3

TELEVISION PROGRAMMES

10. Minimum duration of television programme service

The duration of each language television programme service provided under a deemed licence, within the meaning of Schedule 8 to this Ordinance, falling within section 2(1) of that Schedule shall be not less than 5 hours for each day.

11. Advertising

(1) Subject to subsection (2), the aggregate advertising time of a television programme service shall not exceed 10 minutes per clock hour between the period from 5 p.m. to 11 p.m. each day and at other times the aggregate advertising time shall not exceed 18% of the total time the service is provided in that period.

(2) Where the Broadcasting Authority is satisfied that compliance with subsection (1) would adversely affect, or would have adversely affected, the standards of presentation of a television programme, or of television programmes belonging to a class of television programmes, of a television programme service, it may, by notice in writing served on the licensee concerned, exempt that television programme, or those television programmes, as the case may be, from compliance with that subsection in the manner specified in the notice.

12. Certain advertisements prohibited

A licensee shall not include in its service any advertisement of a religious or political nature or concerned with any industrial dispute.

PART 4

FEES AND CHARGES

13. Annual payment of fees

Subject to section 5 of Schedule 8 to this Ordinance, a licensee shall pay annually to the Director of Accounting Services a prescribed licence fee and such other fees as may be prescribed.

14. Procedural provisions for recovery of licence fees, etc.

(1) A licence fee or other fee or charge declared in writing by the Financial Secretary to be owing to the Government shall be recoverable as a civil debt.

(2) A declaration in writing purporting to be made under subsection (1) shall be prima facie evidence of the debt specified in the declaration.

(3) A licence fee, and other fees and charges, owing by a licensee to the Government shall constitute a first charge on the property belonging to the licensee.