

PART 12

MISCELLANEOUS

**Division 5 – Consequential, Related, Transitional
and Savings Provisions****175. Consequential and related amendments**

Schedule 8 contains consequential and related amendments to other enactments.

**176. Transitional and savings provisions in
relation to amendments made by this
Ordinance**

(1) Schedule 9 contains transitional and savings provisions in relation to amendments made by this Ordinance to the Telecommunications Ordinance (Cap. 106), the Broadcasting ~~Authority~~ (Miscellaneous Provisions) Ordinance (Cap. 391) and the Broadcasting Ordinance (Cap. 562).

(2) The Chief Executive may make regulations containing transitional provisions and savings that are necessary or convenient for the transition to the provisions of this Ordinance from the provisions of the Telecommunications Ordinance (Cap. 106), the Broadcasting ~~Authority~~ (Miscellaneous Provisions) Ordinance (Cap. 391) or the Broadcasting Ordinance (Cap. 562) as amended by this Ordinance.

(3) Without limiting subsection (2), regulations made under this section may, in particular, provide for –

- (a) the application of provisions of this Ordinance to telecommunications services or broadcasting services; or

(b) the continued application of provisions of the Telecommunications Ordinance (Cap. 106), the Broadcasting ~~Authority~~—(Miscellaneous Provisions) Ordinance (Cap. 391) or the Broadcasting Ordinance (Cap. 562) in force immediately before the commencement of any provision of this Ordinance to telecommunications services or broadcasting services.

(4) Regulations made under this section may, if they so provide, be deemed to have come into operation on a date earlier than the date on which they are published in the Gazette but not earlier than the date on which this Ordinance is published in the Gazette.

(5) To the extent that any regulations made under this section come into operation on a date earlier than the date on which they are published in the Gazette, those regulations are to be construed so as not to –

- (a) affect, in a manner prejudicial to any person, the rights of that person existing before the date on which the regulations are published in the Gazette; or
- (b) impose liabilities on any person in respect of anything done, or omitted to be done, before that date.

(6) If there is any inconsistency between any regulations made under this section and the provisions of Schedule 9, Schedule 9 prevails to the extent of the inconsistency.

SCHEDULE 8

[s. 175]

CONSEQUENTIAL AND RELATED AMENDMENTS

PART 1

AMENDMENTS TO COMPANIES ORDINANCE

1. Register of disqualification orders

(1) Section 168R(5) of the Companies Ordinance (Cap. 32) is amended, in the definition of “court” –

- (a) in paragraph (b), by repealing “and”;
- (b) in paragraph (c), by adding “and” at the end;
- (c) by adding –
 - “(d) the Competition Tribunal established by section 133 of the Competition Ordinance (of 2010);”.

(2) Section 168R(5) is amended, in the definition of “disqualification order” –

- (a) in paragraph (b), by repealing “or” at the end;
- (b) in paragraph (c), by adding “or” at the end;
- (c) by adding –
 - “(d) section 99 of the Competition Ordinance (of 2010);”.

PART 2

AMENDMENTS TO COMPANIES (DISQUALIFICATION ORDERS) REGULATION

2. **Officers of court to furnish particulars to Registrar**

Section 3(1) of the Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. I) is amended by adding –

“(ab) if a disqualification order is made by the Competition Tribunal established by section 133 of the Competition Ordinance (of 2010), the Registrar of the Tribunal;”.

3. **Schedule 1 amended**

Schedule 1 is amended, in Form D.O. 1, by repealing item (1) and substituting –

“(1) Section of the Companies Ordinance (“CO”), the repealed Securities (Insider Dealing) Ordinance (“SIDO”), the Securities and Futures Ordinance (“SFO”) or the Competition Ordinance (“ComO”) under which the order was made† –

Section 168E of CO	
Section 168F of CO	
Section 168G of CO	
Section 168H of CO	
Section 168J of CO	
Section 168L of CO	
Section 23(1)(a) of SIDO	
Section 24(1) of SIDO	
Section 214(2)(d) of SFO	
Section 257(1)(a) of SFO	
Section 258(1) of SFO	
Section 303(2)(a) of SFO	
Section 99 of ComO	”.

4. **Schedule 3 amended**

Schedule 3 is amended, in Form D.O. 3, by repealing “or the Securities and Futures Ordinance (Cap. 571)” and substituting “, the Securities and Futures Ordinance (Cap. 571) or the Competition Ordinance (of 2010)”.

PART 3

AMENDMENTS TO JUDICIAL OFFICERS RECOMMENDATION COMMISSION ORDINANCE

5. **Judicial office**

Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) is amended by adding –

“President, Competition Tribunal
Deputy President, Competition Tribunal
Member, Competition Tribunal”

after –

“Recorder of the Court of First Instance”.

PART 4

AMENDMENTS TO TELECOMMUNICATIONS ORDINANCE

6. Interpretation

(1) Section 2(1) of the Telecommunications Ordinance (Cap. 106) is amended by repealing the definitions of “associated corporation”, “associated person”, “control” and “relative”.

(2) Section 2(1) is amended, in the definition of “dominant position”, by repealing “section 7L” and substituting “section 7Q”.

(3) Section 2(1) is amended, in the definition of “telecommunications market”, by repealing “or customer equipment or services” and substituting “telecommunications services, or customer equipment”.

~~7.—Delegation of powers~~

~~(1) Section 6 is amended by renumbering it as section 6(1).~~

~~(2) Section 6(1) is amended, in the proviso, by repealing paragraph (a).~~

~~(3) Section 6(1) is amended, in the proviso, in paragraph (b), by repealing “this section” and substituting “this subsection”.~~

~~(4) Section 6 is amended by adding—~~

~~“(2) The Authority may, in writing, delegate to any public officer, either generally or for any particular occasion and either by name or by reference to a public office, any of the functions of the Commission under the Competition Ordinance (— of 2010) that the Authority may, under Part 11 of that Ordinance, perform concurrently with the Commission.~~

~~(3) — In this section —~~

~~“Commission” (競委會) means the Competition Commission established by section 128 of the Competition Ordinance (—— of 2010).”~~

8. Powers of Authority in relation to services with places outside Hong Kong

Section 6B is repealed.

9. Guidelines

(1) Section 6D(2)(aa) and (2A) is repealed.

(2) Section 6D(4)(a) is amended by repealing “section 7L(2)” and substituting “section 7Q(2)”.

10. Anti-competitive practices

Section 7K is repealed.

11. Abuse of position

Section 7L is repealed.

12. Non-discrimination

Section 7N is repealed.

13. Authority may regulate changes in relation to carrier licensees

Section 7P is repealed.

14. Section 7Q added

The following is added –

“7Q. Exploitative conduct

(1) A licensee in a dominant position in a telecommunications market must not engage in conduct that in the opinion of the Authority is exploitative.

(2) A licensee is in a dominant position if, in the opinion of the Authority, it is able to act without significant competitive restraint from its competitors and customers.

(3) In considering whether a licensee is dominant, the Authority must take into account relevant matters including, but not limited to –

- (a) the market share of the licensee;
- (b) the licensee’s power to make pricing and other decisions;
- (c) any barriers to entry to competitors into the relevant telecommunications market;
- (d) the degree of product differentiation and sales promotion;
- (e) any other relevant matters specified in guidelines issued under section 6D for the purposes of this section.

(4) Without limiting subsection (1), the Authority may consider the following conduct to be exploitative –

- (a) fixing and maintaining prices or charges at an excessively high level; and
- (b) setting unfair trading terms and conditions,

for or in relation to the provision of interconnection of the type referred to in section 36A(3D).”.

15. Part VC heading amended

The heading of Part VC is amended by repealing “7K, 7L, 7M, 7N AND 7P” and substituting “7M AND 7Q”.

16. Interpretation

(1) Section 32L is amended, in the definition of “appeal”, by repealing “, (1A), (1B) or (1C)”.

(2) Section 32L is amended, in the definition of “appeal subject matter”, in paragraph (a)(i), by repealing “7K, 7L, 7M or 7N” and substituting “7M or 7Q”.

(3) Section 32L is amended, in the definition of “appeal subject matter”, by repealing paragraph (b).

17. Appeals to Appeal Board

(1) Section 32N(1)(a)(i) is amended by repealing “7K, 7L, 7M or 7N” and substituting “7M or 7Q”.

(2) Section 32N(1A), (1B) and (1C) is repealed.

(3) Section 32N(3) is amended by repealing “subsection (1A), (1B) or (1C) or”.

18. Procedure and powers of Appeal Board, etc.

Section 32O(2) is amended by repealing “, or before the opinion, direction or decision referred to in section 32N(1A), (1B) or (1C) was formed, issued or made, as the case may be”.

19. Remedies

Section 39A(1) is amended by repealing “7K, 7L, 7M or 7N” and substituting “7M or 7Q”.

20. Matters to be taken into account by Authority

Schedule 2 is repealed.

21. Specified amount

Schedule 3 is repealed.

PART 5

AMENDMENTS TO TELECOMMUNICATIONS REGULATIONS

~~22. Form of Licences~~

~~Schedule 3 to the Telecommunications Regulations (Cap. 106 sub. leg. A) is amended, in the form for the Fixed Telecommunications Network Services Licence—~~

- ~~(a) — in General Condition 4(2), by repealing “described in General Condition 16(2)” and substituting “of section 7Q(2) of the Telecommunications Ordinance (Cap. 106)”;~~
- ~~(b) — in General Condition 18(1), by repealing “including but not limited to his functions under General Conditions 15, 16 and 20(4)”;~~
- ~~(c) — by repealing General Condition 20(4) and (6);~~
- ~~(d) — by repealing the subheading “Tariffs revisions” before General Condition 21;~~
- ~~(e) — by repealing General Condition 21;~~
- ~~(f) — by repealing the subheading “Tariffs for new services” before General Condition 22;~~
- ~~(g) — by repealing General Condition 22;~~
- ~~(h) — by repealing the subheading “Trials” before General Condition 23;~~
- ~~(i) — by repealing General Condition 23;~~
- ~~(j) — in General Condition 41(1)(a), by repealing “described in General Condition 16(2)” and substituting “of section 7Q(2) of the Telecommunications Ordinance (Cap. 106)”;~~
- ~~(k) — in General Condition 44, by repealing “General Condition 16(2)” and substituting “section 7Q(2) of the Telecommunications Ordinance (Cap. 106)”;~~

~~(d) in General Condition 44, by repealing “either one or any combination of General Conditions 17, 20, 21, 22 and 23” and substituting “General Condition 17”.~~

PART 6

AMENDMENTS TO PREVENTION OF BRIBERY ORDINANCE

23. Public bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding –

~~“115~~123. Competition Commission.”.

PART 7

AMENDMENTS TO BROADCASTING AUTHORITY (MISCELLANEOUS PROVISIONS) ORDINANCE

24. Interpretation

~~(1) Section 2 of the Broadcasting Authority Ordinance (Cap. 391) is amended, in the Chinese text, in the definition of “廣播”, in paragraph (b), by repealing the full stop and substitution a semicolon.~~

~~(2) Section 2 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) is amended by adding –~~

““Commission” (競委會) means the Competition Commission established by section 128 of the Competition Ordinance (of 2010);”.

25. Consideration of complaints by the Complaints Committee

Section 11(2)(a) is repealed and the following substituted –

- “(a) any matter in respect of which the Authority may, under Part 11 of the Competition Ordinance (of 2010), perform concurrently with the Commission the functions of the Commission under that Ordinance; or”.

26. Consideration of complaint that a licensee has contravened section 13(1) or 14(1) of Broadcasting Ordinance

Section 11A is repealed.

PART 8

AMENDMENTS TO THE OMBUDSMAN ORDINANCE

27. Organizations to which this Ordinance applies

Part I of Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended by adding –

- “Competition Commission.”.

PART 9

AMENDMENTS TO BROADCASTING ORDINANCE

28. Interpretation

Section 2(1) of the Broadcasting Ordinance (Cap. 562) is amended by repealing the definition of “dominant position”.

29. **Guidelines**

Section 4(2)(c) and (3) is repealed.

30. **Prohibition on anti-competitive conduct**

Section 13 is repealed.

31. **Prohibition on abuse of dominance**

Section 14 is repealed.

32. **Provisions supplementary to sections 13 and 14**

Section 15 is repealed.

33. **Notice to licensee to cease certain conduct**

Section 16 is repealed.

34. **Confidential matter to be safeguarded**

(1) Section 27(1) is amended by repealing “subsection (2)” and substituting “subsections (1A) and (2)”.

(2) Section 27 is amended by adding –

“(1A) Subsection (1) does not apply to any information that is furnished, or any data, book, document or record that is produced, to the ~~Broadcasting~~ Authority under the Competition Ordinance (of 2010).”.

35. **Licensee to pay financial penalty**

Section 28(4) is repealed.

36. **Suspension of licence**

Section 31(2)(a)(ii)(A) is repealed.

37. **Revocation of licence**

Section 32(4)(a)(ii)(A) is repealed.

38. Regulations

Section 42(4) is repealed.

PART 10

AMENDMENTS TO COMMUNICATIONS AUTHORITY
ORDINANCE

39. Functions of Authority

Section 4 of the Communications Authority Ordinance (Cap. 616) is amended by adding –

“(1A) The Authority has all the functions conferred on it
by or under Part 11 of the Competition Ordinance (of 2012).”.

SCHEDULE 9

[s. 176]

TRANSITIONAL AND SAVINGS PROVISIONS

1. Interpretation

In this Schedule –

“commencement date” (生效日期) means the date on which Part 11 comes into operation;

“pre-amended Broadcasting ~~Authority~~ (Miscellaneous Provisions) Ordinance” (原有《廣播事務管理局(雜項條文)條例》) means the Broadcasting ~~Authority~~ (Miscellaneous Provisions) Ordinance (Cap. 391) in force immediately before the commencement date;

“pre-amended Broadcasting Ordinance” (原有《廣播條例》) means the Broadcasting Ordinance (Cap. 562) in force immediately before the commencement date;

“pre-amended Telecommunications Ordinance” (原有《電訊條例》) means the Telecommunications Ordinance (Cap. 106) in force immediately before the commencement date.

2. General provisions

Subject to sections 3 and 4 of this Schedule, anything that was done under the pre-amended Telecommunications Ordinance, the pre-amended Broadcasting ~~Authority~~ (Miscellaneous Provisions) Ordinance or the pre-amended Broadcasting Ordinance and was in effect immediately before the commencement date is, in so far as it may be done under this Ordinance, to continue to have effect as if it were done under this Ordinance.

3. **Transitional provisions relating to pre-amended Telecommunications Ordinance**

(1) In this section –

“Appeal Board” (上訴委員會) has the meaning given by section 32L of the pre-amended Telecommunications Ordinance;

“appeal subject matter” (標的事項) has the meaning given by section 32L of the pre-amended Telecommunications Ordinance;

“licensee” (持牌人) has the meaning given by section 2(1) of the pre-amended Telecommunications Ordinance.

(2) Any conduct in relation to a licensee that –

(a) has taken place, or has in part taken place, before the commencement date; and

(b) but for the enactment of this Ordinance, would be regulated by section 7K, 7L, 7N or 7P of the pre-amended Telecommunications Ordinance,

may be investigated under that Ordinance on or after the commencement date, and the provisions of that Ordinance apply in relation to that investigation, as if this Ordinance had not been enacted.

(3) Any investigation initiated under the pre-amended Telecommunications Ordinance, before the commencement date, of any conduct in relation to a licensee that –

(a) has taken place, or has in part taken place, before the commencement date; and

(b) but for the enactment of this Ordinance, would be regulated by section 7K, 7L, 7N or 7P of that Ordinance,

may be continued under that Ordinance on or after the commencement date, and the provisions of that Ordinance continue to apply in relation to that investigation, as if this Ordinance had not been enacted.

- (4) If –
- (a) but for the enactment of this Ordinance, a person may make an appeal to the Appeal Board under section 32N of the pre-amended Telecommunications Ordinance; and
 - (b) the appeal subject matter relates to section 7K, 7L, 7N or 7P(14) of that Ordinance,

the appeal may be made to and disposed of by the Appeal Board under that Ordinance on or after the commencement date, and the provisions of that Ordinance apply in relation to that appeal, as if this Ordinance had not been enacted.

- (5) If –
- (a) an appeal made to the Appeal Board under section 32N of the pre-amended Telecommunications Ordinance has not been finally determined before the commencement date; and
 - (b) the appeal subject matter relates to section 7K, 7L, 7N or 7P(14) of that Ordinance,

the appeal may be continued and disposed of by the Appeal Board under that Ordinance on or after the commencement date, and the provisions of that Ordinance continue to apply in relation to that appeal, as if this Ordinance had not been enacted.

- (6) If –
- (a) but for the enactment of this Ordinance, a person may bring an action under the pre-amended Telecommunications Ordinance; and
 - (b) the action relates to –
 - (i) a breach of section 7K, 7L or 7N of that Ordinance;

or

- (ii) a breach of a licence condition, determination or direction relating to section 7K, 7L or 7N of that Ordinance,

the action may be brought under that Ordinance on or after the commencement date, as if this Ordinance had not been enacted.

(7) If –

- (a) an action brought under the pre-amended Telecommunications Ordinance has not been finally determined before the commencement date; and
- (b) the action relates to –
 - (i) a breach of section 7K, 7L or 7N of that Ordinance; or
 - (ii) a breach of a licence condition, determination or direction relating to section 7K, 7L or 7N of that Ordinance,

the action may be continued under that Ordinance on or after the commencement date, as if this Ordinance had not been enacted.

(8) The Commission may not take any action under this Ordinance in respect of a proposed change referred to in section 7P(6) of the pre-amended Telecommunications Ordinance if –

- (a) the ~~Telecommunications~~ Communications Authority has given consent to the proposed change under section 7P(7)(a) or (b)(ii) or (iii) of that Ordinance, and the proposed change has not taken effect; or
- (b) the proposed change takes effect on or after the commencement date –
 - (i) pursuant to the consent given by the ~~Telecommunications~~ Communications Authority under section 7P(7)(a) or (b)(iii) of that Ordinance; or

- (ii) pursuant to the consent given, and in compliance with the direction issued, by the ~~Telecommunications~~ Communications Authority under section 7P(7)(b)(ii) of that Ordinance.

~~(9) The amendments effected by section 22 of Schedule 8 to the General Conditions in the form for the Fixed Telecommunications Network Services Licence in Schedule 3 to the Telecommunications Ordinance (Cap. 106) are deemed to have been made to the General Conditions in any fixed telecommunications network services licence that has been issued under the pre-amended Telecommunications Ordinance.~~

4. **Transitional provisions relating to pre-amended Broadcasting Authority (Miscellaneous Provisions) Ordinance and pre-amended Broadcasting Ordinance**

- (1) In this section –

“licensee” (持牌人) has the meaning given by section 2(1) of the pre-amended Broadcasting Ordinance;

“pre-amended Ordinance” (《原有條例》) means –

- (a) the pre-amended Broadcasting ~~Authority~~ (Miscellaneous Provisions) Ordinance; or
- (b) the pre-amended Broadcasting Ordinance.
- (2) Any conduct in relation to a licensee that –
- (a) has taken place, or has in part taken place, before the commencement date; and
- (b) but for the enactment of this Ordinance, would be regulated by section 13 or 14 of the pre-amended Broadcasting Ordinance,

may be investigated under the pre-amended Ordinance on or after the commencement date, and the provisions of that pre-amended Ordinance apply in relation to that investigation, as if this Ordinance had not been enacted.

(3) Any investigation initiated under the pre-amended Ordinance, before the commencement date, of any conduct in relation to a licensee that –

- (a) has taken place, or has in part taken place, before the commencement date; and
- (b) but for the enactment of this Ordinance, would be regulated by section 13 or 14 of the pre-amended Broadcasting Ordinance,

may be continued under the pre-amended Ordinance on or after the commencement date, and the provisions of that pre-amended Ordinance continue to apply in relation to that investigation, as if this Ordinance had not been enacted.

(4) If –

- (a) but for the enactment of this Ordinance, a licensee may make an appeal to the Chief Executive in Council under section 34 of the pre-amended Broadcasting Ordinance; and
- (b) the appeal relates to section 13 or 14 of that Ordinance,

the appeal may be made to and disposed of by the Chief Executive in Council under that Ordinance on or after the commencement date, and the provisions of that Ordinance apply in relation to that appeal, as if this Ordinance had not been enacted.

(5) If –

- (a) an appeal made to the Chief Executive in Council under section 34 of the pre-amended Broadcasting Ordinance has not been finally determined before the commencement date; and
- (b) the appeal relates to section 13 or 14 of that Ordinance,

the appeal may be continued and disposed of by the Chief Executive in Council under that Ordinance on or after the commencement date, and the provisions of that Ordinance continue to apply in relation to that appeal, as if this Ordinance had not been enacted.

- (6) If –
- (a) but for the enactment of this Ordinance, a person may bring an action under the pre-amended Broadcasting Ordinance; and
 - (b) the action relates to –
 - (i) a breach of section 13 or 14 of that Ordinance; or
 - (ii) a breach of a licence condition, determination or direction relating to section 13 or 14 of that Ordinance,

the action may be brought under that Ordinance on or after the commencement date, as if this Ordinance had not been enacted.

- (7) If –
- (a) an action brought under the pre-amended Broadcasting Ordinance has not been finally determined before the commencement date; and
 - (b) the action relates to –
 - (i) a breach of section 13 or 14 of that Ordinance; or
 - (ii) a breach of a licence condition, determination or direction relating to section 13 or 14 of that Ordinance,

the action may be continued under that Ordinance on or after the commencement date, as if this Ordinance had not been enacted.