

TELECOMMUNICATION (AMENDMENT) BILL 1999

Amendments to be moved by the Secretary for
Information Technology and Broadcasting

Clause

Amendment Proposed

1(2)

By deleting the clause and substituting -

“(2) Subject to subsection (3), this Ordinance shall come into operation on the day it is published in the Gazette.

(3) Section 3 (to the extent that it relates to section 6D(2) (a) of the principal Ordinance as amended by this Ordinance), section 4 (to the extent that it relates to the repeal of section 7 of the principal Ordinance and to sections 7(1) and (4) to (11) inclusive and 7A of the principal Ordinance as amended by this Ordinance), section 5(a) (ii) and (b)

and section 17(a), (ab) and (ac) shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette.”.

In the proposed section 2 -

(a) in subsection (1) -

(i) by deleting the definition of

“external services” and substituting -

““external services” () means

telecommunications services between -

(a) Hong Kong and one or more places outside Hong Kong; or

(b) two or more places outside Hong Kong where the services are routed through Hong Kong;”;

(ii) in the definition of “numbering plan” (),

by adding “for” after “use”;

(iii) in the definition of “public place” (), by

adding “to” after “permitted”;

(b) by deleting subsection (2) and substituting -

“(2) For the avoidance of doubt, it is hereby declared that -

- (a) a notice under section 7C(1) and an order under section 32J(4) are not subsidiary legislation;
- (b) an order under section 32I(1) or 32K(6) is subsidiary legislation.”.

3

(a) In the proposed section 6A(3) -

(i) in paragraph (a), by adding “under this Ordinance” after “decision”;

(ii) by deleting paragraph (b) and substituting -

“(b) forming an opinion or making a determination, direction or decision under this Ordinance -

- (i) shall provide reasons in writing for it;
- (ii) shall not depart from guidelines issued under section 6D which are applicable to the subject matter of the opinion, determination,

direction or decision, as the case may be, unless he has provided reasons in writing for the departure.”.

(b) In the proposed section 6B, by deleting subsection (3).

(c) By adding -

“6C. Consultation

Before performing any function or exercising any power under this Ordinance, the Authority may consult with -

- (a) the persons who may be directly affected by the performance of that function or the exercise of that power, as the case may be; or
- (b) members of the public.

6D. Guidelines

(1) Subject to subsection (4), the Authority may, for the purpose of providing practical guidance in respect of any provisions of this Ordinance, issue such guidelines as in his opinion are suitable for that purpose.

(2) Without prejudice to the generality of subsection (1), the Authority shall, as soon as

is practicable, issue guidelines -

- (a) indicating the manner in which he proposes to perform his function of determining applications for licences which may be issued by him, including the licensing criteria and other relevant matters he proposes to consider;
- (b) subject to subsection (3), on the application of the principle referred to in section 14(5A) (a) in any arbitration proceedings.

(3) Without prejudice to the generality of section 6C, the Authority shall, before issuing guidelines under subsection (2) (b), carry out such consultation -

- (a) with the persons who may be affected by the operation of section 14(1A); and
- (b) on the factors to be taken into account for the purposes of subsection (2) (b),

as is reasonable in all the circumstances of the case.

(4) Without prejudice to the generality of section 6C, the Authority shall, before issuing any guidelines -

- (a) for the purposes of the test of dominance prescribed in section 7L(2), carry out such consultation with the licensees in the relevant telecommunications market as is reasonable in all the circumstances of the case;
- (b) setting out principles governing the criteria for any determination under section 36A(1) and the matters to be considered for the purposes of section 36A(3) and (3B) in the application of section 36A(3) and (3B) to any such determination, carry out such consultation with the telecommunications industry as is reasonable in all the circumstances of the case;
- (c) setting out principles governing the criteria for making a determination under section 36AA(6), carry out such consultation with -
 - (i) the telecommunications industry; and

(ii) such other persons who may be directly affected by such a determination,

as is reasonable in all the circumstances of the case.”.

4

(a) In the proposed section 7, by adding -

“(11) Where the Authority refuses to issue a licence to a person, he shall provide to the person his reasons in writing for the refusal.”.

(b) In the proposed section 7H, by deleting “practices generally” and substituting “principles generally”.

(c) In the proposed section 7I -

(i) in subsection (1), by adding”, or exercise his powers, in order to ensure the person’s compliance with the provisions of this Ordinance, licence conditions, and the determinations and directions of the Authority, applicable to the person” after “functions”;

(ii) in subsection (4), by deleting “a person” and substituting “the person supplying the information”;

(iii) by adding -

“(5) For the avoidance of doubt, it is hereby declared that where a

person (“the first-mentioned person”) supplies information reasonably requested under subsection (1) notwithstanding that the information is the subject of a confidentiality agreement with another person (“the second-mentioned person”) that prevents the first-mentioned person from releasing the information, the first-mentioned person shall not be liable in an action for damages at the suit of the second-mentioned person in respect of the supply of that information contrary to that agreement.

(6) Nothing in this section shall require a person to supply information which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance.”.

(d) In the proposed section 7J, by adding -

“(6) The Authority shall not exercise his power under subsection (1) in respect of any office, premises or place in such a way as to disrupt any operations being carried on therein -

(a) by a licensee or any other person;

and

(b) any more than is necessary for the proper exercise of that power in all the circumstances of the case.”.

(e) By deleting the proposed section 7K(4).

(f) In the proposed section 7L(3) (e), by deleting everything after “guidelines” and substituting “referred to in section 6D(4) (a).”.

(g) By deleting the proposed section 7M(2).

5 By deleting paragraph (a) (i) and substituting -

“(i) by adding “or created” after “appropriate licence granted”;

(ia) by adding “or licensed” after “registered”;

7 (a) In paragraph (b) -

(i) in the proposed section 14(1B) -

(A) in paragraph (a), by deleting “and”;

(B) in paragraph (b) (iii) and (iv), by deleting “public place” and substituting “land”;

(C) in paragraph (b) (v), by deleting “subparagraph (ii).” and substituting “subparagraph (ii)”;

(D) by adding -

“(c) unless he has given a reasonable opportunity to the persons having a lawful interest in the land concerned and to the licensees concerned to make representations and has considered all representations made before he decides whether or not to grant the authorization; and

(d) unless he -

(i) gives reasons in writing for the grant of the authorization; and

(ii) specifies in writing the technical requirements, if any, of the right of access arising from the authorization.”;

(ii) by adding after the proposed section 14(1C) -

“(1D) Where subsection (1A) is

applicable -

(a) the Authority shall, upon application made to him for the purpose by the licensee or the person having a lawful interest in the land concerned, specify in writing an interim fee (including the terms and conditions in accordance with which it shall be payable) to be paid by the licensee to the person; and

(b) the licensee shall not exercise any rights conferred by the authorization referred to in that subsection on the licensee -

(i) until -

(A) the licensee and the person having a lawful interest in the land concerned

come to an agreement

referred to in

subsection (5) (a):

(B) the determination of

the fee referred to in

subsection (5) (a) in the

arbitration proceedings

concerned for the

purposes of subsection

(5) (b):

(C) the payment of the

interim fee concerned

to the person or, if the

interim fee is to be paid

in instalments.

upon the payment of
the first instalment of
the interim fee to the
person; or

(D) such time as is agreed
between the licensee or
the person; and

(ii) except in compliance with
any other conditions to
which the authorization is
subject.”.

(b) In paragraph (c), in the proposed section 14(2) -

(i) in paragraph (i), by adding “to any fixture or chattels
found on the land or seabed” after “damage”;

(ii) in paragraph (ii) (A), by deleting “, in the opinion of the
Authority,”.

(c) In paragraph (e) -

(i) in the proposed section 14(5) -

(A) in paragraph (a), by deleting “that subsection” and substituting “subsection (2) (ii)”;

(B) by deleting paragraph (b) and substituting -

“(b) in the absence of any such agreement

within a reasonable time, then -

(i) the fee, and the terms and conditions in accordance with which it shall be payable, shall be determined by arbitration under the Arbitration Ordinance (Cap. 341); and

(ii) for the purpose of subparagraph (i), the licensee and the person having a lawful interest in the land concerned shall be

regarded as having made an arbitration agreement within the meaning of that Ordinance the provisions of which agreement shall be deemed to include -

(A) a provision that the fee, and the terms and conditions in accordance with which it shall be paid, shall, in the absence of agreement, be determined by a single arbitrator; and

(B) a provision equivalent to

subsection (5B).”;

(ii) by adding after the proposed section 14 (5) -

“(5A) In any arbitration proceedings for the purposes of subsection (5) (b), regard shall be given to -

- (a) the principle that the fee to be paid shall be fair and reasonable in all the circumstances of the case, including, but not limited to, factors relating to cost, property-value and the benefits to be derived from the authorization concerned referred to in subsection (1A);
- (b) the guidelines issued by the Authority under section 6D(2) (b) on the application of the principle referred to in paragraph (a) in any

such proceedings; and

- (c) the reasons and technical requirements concerned, if any, referred to in subsection (1B) (d).

(5B) Where in any arbitration proceedings for the purposes of subsection (5) (b) -

- (a) there is a dispute on a matter other than the technical requirements concerned, if any, referred to in subsection (1B) (d); and
- (b) the arbitrator is of the opinion that, without determining that matter -
 - (i) the licensee and the person concerned will not reach an agreement to give effect

to the authorization
concerned referred to in
subsection (1A); or

(ii) the determination referred
to in subsection (5) (b)
cannot be made,

then the arbitrator may determine that matter in any
manner fair and reasonable in all the circumstances
of the case and not inconsistent with the
authorization concerned referred to in subsection
(1A).

(5C) In a determination referred to in
subsection (5) (b), the arbitrator shall -

(a) in specifying the fee to which the
determination relates, include
provisions for set-off in view of any
interim fee paid by

virtue of the operation of subsection

(1D); and

(b) specify that the fee to which it relates

is payable for the period commencing

on the first exercise of a right -

(i) conferred by the

authorization concerned

referred to in subsection

(1A); and

(ii) by the licensee concerned in

relation to the land

concerned.”;

(iii) by deleting the proposed section 14(6) (c);

(iv) by adding after the proposed section 14(7) -

“(8) For the avoidance of doubt, it is hereby

declared that -

(a) where there is an inconsistency

between

any provision of a technical requirement referred to in subsection (1B) (d) and any provision, relating to public safety, of any other Ordinance, then the second-mentioned provision shall prevail over the first-mentioned provision to the extent of the inconsistency;

- (b) compensation is not payable under subsection (2) in relation to any physical damage referred to in that subsection for which full compensation has been paid or is payable under any other provision of this Ordinance or under any other law.”.

In the proposed section 16(1), by adding “and such requirement shall not be unreasonably refused by the Authority or licensee, as the case may be” after “of the telecommunications line, post or radiocommunications installation”.

13 In the proposed section 19B(1) -

- (a) by adding”, in all the circumstances of the case, unreasonably” after “contract that”;
- (b) by adding “to the extent only that it imposes such restriction” after “operation”.

16 (a) By deleting the proposed section 32D(2) and substituting -

“(2) Without prejudice to the generality of section 6C, before prescribing the standards and specifications under subsection (1), the Authority shall carry out such consultation with the telecommunications industry as is reasonable in all the circumstances of the case.”.

(b) By deleting the proposed section 32G(2) and substituting -

“(2) Without prejudice to the generality of section 6C, before exercising his powers under sections 32H(2) (a) and (b) and 32I(1), the Authority shall carry out such consultation with -

- (a) the telecommunications industry; and
- (b) such other persons who may be directly affected by the exercise of such powers,

as is reasonable in all the circumstances of the case.”-

- (c) By adding -

“PART VC

APPEALS RELATING TO SECTIONS 7K,

7L, 7M AND 7N

32L.Interpretation

In this Part -

“appeal” () means an appeal under section 32N(1);

“Appeal Board” () means the Telecommunications (Competition Provisions) Appeal Board established under section 32M(1);

“appeal subject matter” (), in relation to an appeal, means the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1) -

- (a) to the extent to which it relates to section 7K, 7L, 7M or 7N or

any licence condition relating to any such section; and

(b) which is the subject of the appeal;

“Chairman” () means the Chairman of the Appeal Board appointed under section 32M(2);

“Deputy Chairman” () means a Deputy Chairman of the Appeal Board appointed under section 32M(2);

“panel member” () means a member of the panel of persons appointed under section 32M(5).

32M. Establishment and membership of Appeal Board

(1) There is hereby established an appeal board called in English the “Telecommunications (Competition Provisions) Appeal Board” and in Chinese the “[]”.

(2) Subject to subsections (3) and (4), the Chief Executive shall appoint a person to be the Chairman of the Appeal Board and such other persons as he thinks fit to be Deputy Chairmen of the Appeal Board.

(3) A person shall not be appointed under subsection (2) unless the person is eligible to

be appointed a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4).

(4) Subject to subsections (7) and (8), the Chairman and a Deputy Chairman shall each be appointed for a term of not more than 2 years but may be reappointed.

(5) The Chief Executive shall appoint a panel of persons not being public officers whom he considers suitable for appointment under section 320(1)(a)(ii) as members of the Appeal Board.

(6) An appointment under subsection (2) or (5) shall be notified in the Gazette.

(7) The Chairman, a Deputy Chairman or a panel member may at any time resign by notice in writing to the Chief Executive.

(8) The Chief Executive may revoke the appointment of the Chairman, a Deputy Chairman or a panel member on the ground of incapacity, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Chief Executive.

(9) The remuneration, if any, of the Chairman, a Deputy Chairman and a panel member shall be paid at a rate that the Financial Secretary determines.

32N. Appeals to Appeal Board

(1) Any person aggrieved by -

(a) an opinion, determination, direction or decision
of the Authority relating to -

(i) section 7K, 7L, 7M or 7N; or

(ii) any licence condition relating to any
such section; or

(b) any sanction or remedy imposed or to be
imposed under this Ordinance by the Authority
in consequence of a breach of any such section
or any such licence condition,

may appeal to the Appeal Board against the opinion,
determination, direction, decision, sanction or remedy, as the
case may be, to the extent to which it relates to any such
section or any such licence condition, as the case may be.

(2) Subject to subsection (3), an appeal shall not
suspend the operation of the appeal subject matter.

(3) Where an appeal is made and the appeal subject
matter falls within section 36C, then

the appeal subject matter shall be suspended in its operation from the day on which the appeal is made until the appeal is determined, withdrawn or abandoned.

(4) A person who wishes to make an appeal shall, not later than 14 days after he knows, or ought reasonably to have known, of the proposed appeal subject matter, lodge a notice of appeal with the Appeal Board.

32O. Procedure and powers of Appeal Board, etc.

(1) In the hearing of an appeal -

(a) the Appeal Board shall consist of -

- (i) the Chairman or a Deputy Chairman who shall preside at the hearing; and
- (ii) 2 panel members appointed by the Chairman or Deputy Chairman;

(b) every question before the Appeal Board shall be determined by the opinion of the majority of the members hearing the appeal except

a question of law which shall be determined by the Chairman or Deputy Chairman and in the case of an equality of votes the Chairman or Deputy Chairman shall have a casting vote;

- (c) any party shall be entitled to be heard either in person or through a counsel or solicitor, and if any party is a company, through any of its directors or other officers, or if a partnership, through any of its partners;
- (d) subject to section 32P, the Appeal Board may -
 - (i) subject to subsection (2), receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law;
 - (ii) by notice in writing signed by the Chairman

or Deputy Chairman, summon any person -

(A) to produce to it any document that is relevant to the appeal and is in his custody or under his control;

(B) to appear before it and to give evidence relevant to the appeal;

(iii) administer oaths and affirmations;

(iv) require evidence to be given on oath or affirmation;

(v) make an award of such sum, if any, in respect of the costs involved in the appeal as is just and equitable in all the circumstances of the case;

(vi) where the Appeal Board is satisfied that it is just and equitable in

all the circumstances of the case to do so, require a party to the appeal to pay the costs of the Appeal Board in hearing the appeal;

(vii) make an order prohibiting a person from publishing or otherwise disclosing any material the Appeal Board receives;

(viii) make an order prohibiting the publication or other disclosure of any material the Appeal Board receives at a sitting, or part of a sitting, which is held in private;

(e) if the term of appointment of -

(i) the Chairman or Deputy Chairman; or

(ii) any panel member appointed under paragraph (a) (ii).

expires during the hearing, the Chairman, Deputy Chairman or panel member, as the case may be, may continue to hear the appeal until the appeal is determined.

(2) Subsection (1) (d) (i) shall not entitle a person to require the Appeal Board to receive and consider any material which had not been submitted to or made available to the Authority at any time before the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1) was formed, made, imposed or to be imposed, as the case may be.

(3) Costs referred to in subsection (1) (d) (vi) are recoverable as a civil debt.

(4) After hearing an appeal the Appeal Board shall determine the appeal by upholding, varying or quashing the appeal subject matter and may make such consequential orders as may be necessary.

(5) Every decision of the Appeal Board under subsection (4) shall be in writing and contain a statement of the reasons for its decision.

(6) Every sitting of the Appeal Board shall be held in public unless the Appeal Board considers that in the interests of justice a

sitting or part of a sitting should not be held in public in which case it may hold the sitting or part of the sitting in private.

(7) The Chairman may determine any matter of practice or procedure relating to the hearing of appeals where no provision governing such matter is made in this Ordinance or in regulations made thereunder.

32P.Privilege against disclosure

The person making an appeal and the Authority and, if different, any other person summoned under section 32O(d) (ii) shall, for the purposes of the appeal, each have the same privileges in respect of the disclosure of any material as if the proceedings were proceedings before a court of law.

**32Q.Appeal Board’s decision
is final**

Subject to section 32B, the determination of an appeal by the Appeal Board or any order as to costs made by the Appeal Board shall be final.

**32R. Case may be stated for
Court of Appeal**

(1) The Appeal Board may refer any question of law arising in an appeal to the

Court of Appeal for determination by way of case stated.

(2) On the hearing of the case, the Court of Appeal may

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(a) determine the question stated; or

(b) remit the case to the Appeal Board, in whole or in part, for reconsideration in the light of the Court's determination.

(3) Where a case is stated under subsection (1), the Appeal Board shall not determine the relevant appeal before the Court of Appeal determines the relevant point of law.

**32S. Offences relating to appeals,
etc.**

(1) In relation to an appeal, any person who, without reasonable excuse, refuses or fails -

(a) to attend and give evidence when required to do so by the Appeal Board;

(b) to answer truthfully and completely questions put to him by the Appeal Board; or

(c) to produce any document which he is required by the Appeal Board

to produce,

commits an offence and is liable on summary conviction to a fine at level 4.

(2) Any person who publishes or otherwise discloses any material in contravention of -

(a) an order under section 32O(1) (d) (vii); or

(b) subject to subsection (3), an order under section 32O(1) (d) (viii),

commits an offence and is liable on summary conviction to a fine at level 4.

(3) It shall be a defence for a person charged with an offence under subsection (2) (b) to prove that he did not know and had no reason for knowing that the Appeal Board had made an order under section 32O(1) (d) (viii) prohibiting the publication or other disclosure of the material concerned.

32T. Immunity

(1) The Chairman, a Deputy Chairman and a panel member have, in the performance of their duties under this Part, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.

(2) A witness before the Appeal Board

shall be entitled to the same privileges and immunities as if he were a witness in civil proceedings in the Court of First Instance.

32U. Rules

The Secretary for Information Technology and Broadcasting may make rules -

- (a) to provide for the lodging of appeals;
- (b) relating to the practice and procedure of the Appeal Board.”.

17

By deleting paragraph (a) and substituting -

- “(a) by repealing subsection (1);
- (ab) in subsection (1B), by repealing “subsection (1) or (3)” where it twice appears and substituting “section 7(8) or 7A”;
- (ac) by repealing subsections (2) and (3);
- (ad) by adding -

“(4A) The Authority shall not exercise a power under subsection (4) unless the exercise of the power is, in all the circumstances of the case, proportionate and reasonable in relation to the contravention concerned referred to in that subsection giving rise to the exercise of the power.

(4B) Where the Authority proposes to exercise a power under subsection (4), he shall give the licensee or other person concerned a reasonable opportunity to make representations and shall consider all representations made before he decides whether or not to exercise that power in the case of the licensee or other person, as the case may be.

(4C) Where the Authority exercises a power under subsection (4), he shall provide reasons in writing for it to the licensee or other person concerned.”.”.

18

In the proposed section 35A -

(a) in subsection (1), by adding “for the purposes of the Authority performing his functions, or exercising his powers, under this Ordinance in order to ensure the licensee’s compliance with the provisions of this Ordinance, licence conditions, and the determinations and directions of the Authority, applicable to the licensee” after “the licensee”;

(b) by adding -

“(8) The Authority shall not disclose any document or account produced under this section except subject to the requirement

in subsection (9) and if the Authority considers that it is in the public interest to disclose that document or account, as the case may be.

(9) The Authority shall give a licensee producing any document or account under this section a reasonable opportunity to make representations on a proposed disclosure of the document or account, as the case may be, and shall consider all representations made before the Authority makes a final decision to disclose the document or account, as the case may be, if the Authority considers that the disclosure -

(a) would result in the release of information concerning the business, commercial or financial affairs of the licensee; and

(b) could reasonably be expected to affect adversely the licensee's lawful business, commercial or financial affairs.

(10) For the avoidance of doubt, it is hereby declared that where a person ("the

first-mentioned person”) produces a document or account under this section notwithstanding that the document or account, as the case may be, is the subject of a confidentiality agreement with another person (“the second-mentioned person”) that prevents the first-mentioned person from releasing the document or account, as the case may be, the first-mentioned person shall not be liable in an action for damages at the suit of the second-mentioned person in respect of the production of that document or account, as the case may be, contrary to that agreement.

(11) Nothing in this section shall require a person to produce any document or account which the person could not be compelled to produce in civil proceedings before the Court of First Instance.”.

19

(a) In paragraph (a) -

- (i) in the proposed section 36A(3B), by deleting “may be” and substituting “shall be”;
- (ii) in the proposed section 36A (3D) (a), by deleting “telecommunication” and substituting “telecommunications”.

(b) By adding -

“(ab) in subsection (4) -

- (i) by repealing “subsection (3)” and substituting “subsection (3D)”;
- (ii) by adding “and the Authority has considered representations made before he decides whether or not to make such a determination” after “not be made”;

(c) In paragraph (b), in the proposed section 36A(5D), by repealing “or appeal”.

(d) By adding -

“(ba) by repealing subsection (8);”.

(e) In paragraph (c), by adding immediately after the proposed section 36A(9) -

“(10) In making a determination under subsection (1), the Authority shall give regard to -

- (a) the Government’s policy objectives for the telecommunications industry;
- (b) consumer interests;
- (c) encouraging efficient investment in telecommunications infrastructure;
- (d) the nature and extent of competition among the parties to

the interconnection concerned and their respective abilities to compete with each other fairly; and

- (e) such other matters as the Authority considers appropriate in the particular circumstances of the case.”.

20

In the proposed section 36AA -

- (a) in subsection (1) -

- (i) by deleting “or a person”;

- (ii) by deleting “or another person”;

- (b) by deleting subsection (2) and substituting -

“(2) Prior to issuing a direction in the public interest under subsection (1), the Authority shall provide a reasonable opportunity for the licensee, and any other interested party, to make representations on the matter and shall give consideration to all representations made before he decides whether or not to issue the direction.”;

- (c) in subsection (3) (d), by deleting “and persons”;

- (d) in subsection (4) -

- (i) by deleting “, or another person authorized by the Authority,”;

(ii) by deleting “or person” where it twice appears;

(e) by deleting subsection (6) and substituting -

“(6) If the parties do not reach an agreement within a reasonable time, and the Authority requires shared use of the facility, then -

(a) the Authority may determine the terms and conditions for the shared use of the facility;

(b) the determination under paragraph (a) shall include terms and conditions providing for fair and reasonable compensation payable in all the circumstances of the case for the shared use of the facility;

(c) the compensation referred to in paragraph (b) shall include the relevant reasonable costs attributable to the provision, use or sharing of the facility;

(d) to calculate the costs referred to in paragraph (c), the Authority may select from alternative costing methods what he considers to be a fair and reasonable costing method.”;

(f) in subsection (7) (a), by deleting “人孔” and substituting “沙井” .

22

(a) In paragraph (b), by deleting subparagraphs (i) and (iii).

(b) In paragraph (d), in the proposed section 36C(3B), by deleting “a financial penalty under subsection (3) is not” and substituting “if he were to impose a financial penalty under subsection (3) it would not be”.

(c) By deleting paragraphs (e) and (f) and substituting -

“(e) by repealing subsections (4) and (5) and substituting -

“(4) The 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.

(5) Subsection (1), (2) or (3A) shall not apply in the case of the licensee or person concerned unless the Authority is satisfied that the licensee or person, as the case may be, has been afforded a reasonable opportunity of complying with the requirement of any licence condition, provision of this Ordinance or regulation made thereunder, or direction, in respect of which that subsection is sought to be applied.

(5A) A financial penalty imposed under this section shall be recoverable as a civil debt due and payable to the Government.”;

(f) by adding -

“(7) The Authority shall, before imposing a sanction under this section on a licensee or person concerned, afford the licensee or person concerned, as the case may be, a reasonable opportunity to make representations and shall consider all representations made before the

Authority decides whether or not to impose such sanction.”.”.

23

In the proposed section 36D -

- (a) in subsection (1), by deleting “the performance of any of the Authority’s functions or the exercise of any of the Authority’s powers” and substituting “the Authority’s investigation of a breach or suspected breach of a provision of this Ordinance, or of a determination or direction of the Authority or a licence condition”;
- (b) in subsection (2), by adding “, without reasonable excuse” after “he”;
- (c) by adding -

“(3) The Authority shall not disclose any information or document given or produced to him under this section except subject to the requirement in subsection (4) and if the Authority considers that it is in the public interest to disclose that information or document, as the case may be.

(4) The 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 Authority makes a final decision to disclose the information or document, as the case may be.

(5) For the avoidance of doubt, it is hereby declared that where a person (“the first-mentioned person”) gives or produces any information or document under this section notwithstanding that the information or document, as the case may be, is the subject of a confidentiality agreement with another person (“the second-mentioned person”) that prevents the first-mentioned person from releasing the information or document, as the case may be, the first-mentioned person shall not be liable in an action for damages at the suit of the second-mentioned person in respect of the giving or production of that information or document, as the case may be, contrary to that agreement.

(6) Nothing in this section shall require a person to give any information or document, or to produce any document, which the person could not be compelled to give in evidence, or produce, in civil

proceedings before the Court of First Instance.”.

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(a) In the proposed section 39A(1), by deleting “who is aggrieved by” and substituting “sustaining loss or damage from”.

(b) By adding after the proposed section 39A -

“39B.Immunity

(1) No person to whom this subsection applies, acting in good faith, shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.

(2) The persons to whom subsection (1) applies are -

(a) the Authority;

(b) any public officer who is a delegate of the Authority under section 6; and

(c) any other public officer assisting the Authority in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this

Ordinance.”.

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In the proposed Schedule, by adding -

“8. Hotel Television Services Licence.”.