

附件 IX

《人類生殖科技條例草案》

全體委員會審議階段

由衛生福利局局長動議的修正案

條次

建議修正案

詳題

在“的；”之後加入“規定除守則有相反的明文規定的情況外，生殖科技程序只可對不育夫婦提供；”。

2

(a) 在第(1)款中 —

(i) 在“code”的定義中，刪去“the”而代以“a”；

(ii) 在“notice”的定義中，刪去“告)”而代以“知)”；

(iii) 在“付款”的定義的(c)段中，刪去在“由代母”之後的所有字句而代以 —

“ —

(i) 為生殖科技程序而招致的任何開支；或

(ii) 依據該項安排而懷孕和產下孩子而真誠地招致的真正醫療開支；”；

(iv) 在“生殖科技程序”的定義中 —

條次建議修正案

- (A) 刪去自“旨在”起至“供的)”為止的所有字句而代以“藉人工方法協助，或藉人工方法在其他方面促成人類生殖的內科、外科或產科程序，或其他程序，而不論上述程序是否向公眾人士或某部分公眾人士提供的”；
- (B) 加入 —
- “ (ba) 取得配子； ” ；
- (v) 刪去“代母”的定義而代以 —
- “ “代母” (surrogate mother)指符合以下情況的女性 —
- (a) 依據一項安排而懷有孩子，而 —
- (i) 該項安排是在開始懷有該孩子前作出的；及
- (ii) 該項安排的出發點是將依據該項安排而懷有的孩子交予其他人士，並由該等人士在切實可行的範圍

條次

建議修正案

內行使作
為父母的
權利；及

(b) 懷有的孩子是藉生殖科技程序而成胎的；”；

(vi) 加入 —

“ “商議” (negotiate)就某項代母安排而言，包括就該項安排而出價或作出要約；”。

(b) 在第(4)款中 —

(i) 在(a)段中 —

(A) 刪去“(b)”而代以“(a)(ii)”；

(B) 刪去兩度出現的“共識”而代以“理解”；

(ii) 在(b)段中，刪去“交託”而代以“交予”；

(iii) 在(c)段中，刪去自“(a)”起至“時或”為止的所有字句而代以“(a)(i)段而言，一名懷有孩子的女性須被視為”。

(c) 加入 —

“(11) 為免生疑問，現宣布《僱傭條例》(第 57 章)的條文就以下兩類女性而言，須具同等效力：因代母安排（不論該代母安排是否合法）而懷孕或分娩的女性，和並非因代母安排而懷孕或分娩的女性。”。

條次建議修正案

新條文 在第 II 部之前，加入 —

“2A. 適用範圍

本條例對政府具約束力。”。

3 (a) 在第(2)(a)及(b)款中，刪去“不屬註冊醫生的”。

(b) 刪去第(3)(a)(ii)款。

4 (a) 在第(1)(c)(ii)款中，刪去“being”。

(b) 在第(3)款中，刪去“持有牌照的”而代以“牌照的持有”。

7 (a) 在第(1)款中，刪去“(包括有關活動所關乎的任何代母安排)”。

(b) 刪去第(2)款。

8(b) 刪去“可”而代以“須”。

新條文 在第 III 部之前，加入 —

“10A. 管理局成員等的保障

(1) 本款所適用的人，如以真誠行事，即無須為他在執行（或看來是執行）根據本條例委予管理局的職能時，或在行使（或看來是行使）根據本條例賦予該局的權力時所作出的作為或所犯有的錯失，承擔損害賠償的個人法律責任。

條次

建議修正案

(2) 第(1)款就某作為或錯失而賦予的保障，在各方面均不影響管理局就該作為或錯失而須承擔的法律責任。

(3) 第(1)款適用於 —

(a) 管理局成員或委員會成員；

(b) 指定公職人員。”。

12 刪去該條而代以 —

“12. 禁制就代母安排使用捐贈的配子

在不損害《父母與子女條例》（第 429 章）的施行的情況下，就某項代母安排而言，任何人只可使用符合以下規定的兩名人士的配子 —

(a) 屬一段婚姻的雙方；及

(b) 就該項安排而言，屬“代母”的定義中(a)(ii)段所提述的人士。”。

13 (a) 在第(3)款中 —

(i) 在“使”之前加入“（包括將某一性別的胚胎植入一名女性的體內）而直接或間接”；

(ii) 在(a)段中，刪去“嚴重”而代以“在附表 1A 指明的”；

(iii) 在(b)段中，在“行的”之後加入“，而對該疾病的患者而言，該疾病的嚴重程度足以支持進行性別選擇”。

條次建議修正案

(b) 在第(5)款中 —

(i) 在“任”之前加入“除第(6)、(7)或(8)款另有規定外，”；

(ii) 刪去在“序”之後的所有字句而代以句號。

(c) 加入 —

“(6) 在不損害第 12 條的施行的情況下，如生殖科技程序是依據某項代母安排而向在該項安排下將會成為代母的人提供的，則第(5)款的規定並不適用於該個案。

(7) 現宣布如在一段婚姻結束之前，已依據向該段婚姻的雙方提供的生殖科技程序將配子或胚胎放置於一名女性的體內，則 —

(a) 在不抵觸(b)段的情況下，第(5)款的實施並不禁止在該段婚姻結束後繼續進行該程序；

(b) (a)段的施行並不准許依據該程序而另將配子或胚胎放置於該名女性的體內。

(8) 就第 2(1)條中“生殖科技程序”的定義中(ba)段所提述的程序而言，第(5)款並不適用。”。

14(1)(a) (a) 刪去“為在或要約”。

(b) 在“提供”之前加入“為提供或為要約”。

條次

建議修正案

15(1)(a) 在“為以下”之前加入“在香港或其他地方”。

21 (a) 在第(2)款中 —

(i) 在(a)段中，在“有關申請”之前加入“除第(2A)款另有規定外，”；

(ii) 在(b)段中，刪去“士”而代以“選”；

(iii) 刪去(c)段而代以 —

“(c) (a)(i)段所提述的個人具備訂明的資格，其品格及經驗亦符合監管該活動所要求者，而該名個人會履行第 22(1) 條所述的責任；”；

(iv) 在(f)段中，刪去“該名”而代以“(a)(i)段所提述的”。

(b) 加入 —

“(2A) 如申請人屬個人，而管理局信納在有關個案的所有情況下，持牌人亦為負責人是不會影響其按照第 22(1)條的規定履行負責人的責任的，則儘管該申請人將會成為負責人，該局仍可向該申請人發給牌照。

(2B) 凡第(2A)款適用於某牌照，則本條例中對持牌人的提述，須在經顧及持牌人亦為負責人此事實而作出所有必要的變通的情況下解釋。”。

條次建議修正案

- 22(1) (a) 在(a)段中，刪去在第一次出現的“合人”之後的所有字句而代以“選，而他們的經驗及所受訓練令他們有資格成為參與該活動的適合人選；”。
- (b) 刪去(d)段而代以 —
- “(d) 在整體情況下，於該活動過程中採用恰當的做法；及”。
- 25 (a) 在第(2)(a)款中 —
- (i) 在第(i)節中，刪去“為監管該牌照所授權進行的有關活動所要求者”而代以“符合監管該牌照所授權進行的有關活動所要求者”；
- (ii) 在第(ii)節中，刪去“士”而代以“選”。
- (b) 在第(5)(a)款中，刪去“的品格、資歷及經驗為”而代以“具備訂明的資格，亦信納該名個人的品格及經驗符合”。
- (c) 加入 —
- “(7) 為免生疑問，現宣布：牌照的撤銷可受管理局認為合適並於撤銷牌照的通知指明的條件（如有的話）規限。”。
- 27 (a) 在第(3)款中，刪去“根據本條暫時吊銷的”而代以“除非規限根據本條對某牌照施加的暫時吊銷的條件指明，否則該”。
- (b) 在第(4)款中，刪去“根據本條發出”而代以“本條所指”。

條次

建議修正案

(c) 加入 —

“(5) 為免生疑問，現宣布如下 —

- (a) 本條所指的通知受管理局認為合適並於該通知指明的條件（如有的話）規限；
- (b) 不論是否有人違反該通知指明的條件，該通知仍可被另一項本條所指的通知撤銷和取代；
- (c) 不論是否有人違反本條所指的通知指明的條件，屬該通知的標的的牌照仍可根據第 25 條撤銷。”。

新條文

在第 V 部之前，加入 —

“29A. 自願交還牌照

(1) 在不損害第 25(4)條的一般性的原則下，並在符合本條的規定下，持牌人可藉將牌照送交管理局的辦事處的方式，交還其牌照。

(2) 凡持牌人根據第(1)款交還牌照，管理局可向該人送達通知，述明該局在其認為合適的並於該通知指明的條件（如有的話）的規限下，接納交還該牌照；在該通知送達該人之前，該項交還不生效。

(3) 如持牌人已獲送達第 26(2)條所指並關乎撤銷其牌照的通知，或管理局有合理理由懷疑有理由根據第 25 條撤銷該牌照，則除非有以下情況並在以下情況出現前 —

- (a) 管理局撤銷該牌照；或

條次建議修正案

- (b) 該局通知持牌人該局不會撤銷該牌照，

管理局可拒絕接納持牌人根據第(1)款交還牌照。

(4) 持牌人如根據第(1)款交還牌照，則在該項交還按照第(2)款的規定生效時，他即失去持牌人身分，但仍須對以下事項承擔法律責任 —

- (a) 在交還牌照之前，他所作出、不作出、導致作出、導致不作出、准許作出或准許不作出的作為；及
- (b) 在交還牌照之前根據本條例他須承擔的法律責任。”。

- 30 (a) 刪去第(2)款而代以 —

“(2)如 —

- (a) 資料關乎提供生殖科技程序，而經由或擬經由該程序而誕生的孩子，是不會只藉擬成為該孩子的父母的某段婚姻的雙方的配子而成胎的；而
- (b) 該孩子、該段婚姻的任何一方或在該程序中使用的配子所取自的個人，或上述三類人士的任何組合的身分，可從該等資料辨別出來，

則該等資料屬本款所指的資料。”。

條次

建議修正案

- (b) 在第(6)款中，刪去“50”而代以“80”。

31 刪去該條而代以 —

“31. 保密

(1) 是或曾是 —

(a) 獲授權人士的人；或

(b) 牌照適用的人或牌照的持有人的，

不得披露甲登記冊內所載的，或規定須載於該冊內的資料。

(2) 第(1)款不適用於在以下情況下披露資料 —

(a) 向作為獲授權人士的人披露；

(b) 為牌照適用的人或牌照的持有人的職能的目的，而向該等人士披露；

(c) 披露情況不會使有關資料所關乎的個人的身分被辨別；

(d) 按照第 30 條披露；

(e) 依據根據第 32(1)條作出的命令披露；

(f) 依據根據第 33 條提出的要求而向該條所指的登記官披露；或

(g) 在關於要求根據《父母與子女條例》(第 429 章)第 12(1)條作出命令的申請的法律程序中，為證實該條(a)及(b)段所指明的條件是否已符合而披露。

條次建議修正案

(3) 除第(4)款另有規定外，如資料關乎為某名身分可被辨別的個人提供生殖科技程序，則 —

(a) 第(1)款不適用於按照該名個人在獲提供該程序之前所作的書面同意而作出的披露；或

(b) 在以下情況下（並僅在以下情況下），第(1)款不適用於在按照該名個人在獲提供該程序之後所作的書面同意而作出的披露 —

(i) 該項同意是按照該名個人在獲提供該程序之前給予的書面准許而取得的；而

(ii) 該項准許容許在一般情況或該項准許指明的情況下，於該名個人獲提供該程序之後與他聯絡，以確定他會否同意披露關乎向他提供該程序的資料。

(4) 如根據第(3)款作出某項披露必然會同時披露關乎向另一名身分可被辨別的個人提供生殖科技程序的資料，則除非同樣可根據該款披露關乎向該另一名個人提供該程序的資料，否則不得作出首述的披露。

(5) 如資料顯示一名身分可被辨別的個人是或可能是經由生殖科技程序而誕生的，則第(1)款不適用於根據第(3)款作出的披露所必要附帶的披露。

(6) 本條不適用於向一名個人披露只與該名個人有關的資料，而在該名個人與另一人共同接受治療的情況下，本條不適用於向該名個人及該另一人披露只與他們有關的資料。

條次

建議修正案

(7) 以下規定須當作為每一牌照的條件：不得為一名身分可被辨別的個人提供本可依據牌照提供的生殖科技程序，除非該名個人獲提供該程序之前已作出或拒絕作出 —

(a) 第(3)(a)款所提述的同意；或

(b) 第(3)(b)款所提述的准許。”。

32(1) 刪去“屬第 30(2)(i)或(ii)”而代以“可能辨別出某名個人的資料，而該等資料為憑藉該名個人的配子而屬第 30(2)”。

36(1) 在“條”之後加入“，或違反第 25(7)條所述的通知指明的任何條件，或違反第 27 或 29A(2)條所指的通知指明的任何條件，或違反第 31(7)條指明的條件”。

41(5) 刪去“特區”。

42 (a) 在第(1)款中，刪去(e)段而代以 —

“(e) 就披露符合以下說明的資料方面施加限制：該等資料不屬第 31(1)條所指的資料，但屬獲授權人士、牌照適用的人或持牌人所取得的資料，而他是按規定將該等資料作為機密持有的條款而取得該等資料的，或是在要求將該等資料作為機密持有的情況下取得該等資料的。”。

條次建議修正案

(b) 在第(2)款中 —

(i) 加入 —

“(aa) 在某項牌照的申請中指定為監管人(所申領的牌照授權的有關活動須是在該人監管下進行的)的個人須符合的資格；”；

(ii) (A) 在(b)(i)及(c)(i)(A)段中，刪去“持牌”而代以“牌照的持有”；

(B) 在(b)(ii)及(c)(i)(B)段中，刪去“持牌”而代以“持有”；

(iii) 刪去(e)段而代以 —

“(e) 指明儲存為或將會為有關活動而使用的胚胎、配子或其他生物物料的最長限期(該限期可為一段或多於一段時間)，包括指明處置該等胚胎、配子或物料的方式；

(ea) 規管(包括完全或局部禁制)輸入或輸出為或將會為有關活動而使用的精子或其他生物物料；”。

43

(a) 在標題中，刪去“1”而代以“1或1A”。

(b) 在“表1”之後加入“或1A”。

條次

建議修正案

新條文 加入 —

“附表 1A [第 13(3)(a)
及 43 條]

伴性遺傳疾病

口 — 面 — 指（趾）綜合症（第 I 類型）（與 X 染色體有關連的顯性，對男性而言可致死）(Orofaciodigital syndrome (type I) (X-linked dominant, male lethal))

小眼症（並有多種畸型）(Lenz 綜合症) (Microphthalmia with multiple anomalies (Lenz syndrome))

小腦共濟失調 (Cerebellar ataxia)

外胚層發育不全（無汗型）(Ectodermal dysplasia, anhidrotic)

甲狀腺素 — 結合球蛋白缺乏或變種 (Thyroxine-binding globulin, absence or variants of)

白化病 — 耳聾綜合症 (Albinism-deafness syndrome)

先天性白內障 (Cataract, congenital)

先天性角化不良 (Dyskeratosis congenita)

先天性靜止性夜盲症 (Night blindness, congenital stationary)

智力遲緩（FMRI 型）(Mental retardation, FMRI type)

智力遲緩（FRAXE 型）(Mental retardation, FRAXE type)

智力遲緩（MRXI 型）(Mental retardation, MRXI type)

條次建議修正案

肌小管肌病 (Myotubular myopathy)

肌營養不良 (Becker 型) (Muscular dystrophy, Becker type)

肌營養不良 (Duchenne 型) (Muscular dystrophy, Duchenne type)

肌營養不良 (Emery-Dreifuss 型) (Muscular dystrophy, Emery-Dreifuss type)

色盲 (紅色系列型) (Colour blindness, Protan type)

色盲 (綠色系列型) (Colour blindness, Deutan type)

色素失節症 (與 X 染色體有關連的顯性，對男性而言可致死) (Incontinentia pigmenti (X-linked dominant, male lethal))

血友病 A (Haemophilia A)

血友病 B (Haemophilia B)

血球蛋白血病 (Bruton 型) (Agammaglobulinaemia, Bruton type)

血球蛋白血病 (瑞士型) (Agammaglobulinaemia, Swiss type)

血管角質瘤 (Fabry 病) (Angiokeratoma (Fabry's disease))

低磷酸血性佝僂病 (Hypophosphataemic rickets)

局灶性皮膚發育不良 (與 X 染色體有關連的顯性，對男性而言可致死) (Focal dermal hypoplasia (X-linked dominant, male lethal))

尿崩症 (神經垂體型) (Diabetes insipidus, neurohypophyseal)

條次

建議修正案

性腺發育不全 (XY 女性類型) (Gonadal dysgenesis (XY female type))

面生殖發育不全 (Aarskog 綜合症) (Faciogenital dysplasia (Aarskog syndrome))

脈絡膜視網膜變質 (Choroidoretinal degeneration)

脊椎肌萎縮 (Spinal muscular atrophy)

眼球震顫 (眼球運動的或抽動的) (Nystagmus, oculomotor or 'jerky')

眼部白化病 (Albinism, ocular)

魚鱗癬 (steriod sulphatase 缺乏) (Ichthyosis (steriod sulphatase deficiency))

鳥氨酸胺甲酰轉移酶缺陷症 (高氨血症第 I 類型) (Ornithine transcarbonylase deficiency (type I hyperammonaemia))

無脈絡膜症 (Choroideraemia)

痙攣性麻痺 (Spastic paraplegia)

腎上腺白質營養不良 (Adrenoleucodystrophy)

腎上腺發育不良 (Adrenal hypoplasia)

腎原性尿崩症 (Diabetes insipidus, nephrogenic)

視網膜色素變性 (Retinitis pigmentosa)

視網膜裂 (Retinoschisis)

條次建議修正案

- 視網膜黃斑營養不良 (Macular dystrophy of the retina)
- 感覺性聾症 (並有共濟失調和喪失視力) (Perceptive deafness, with ataxia and loss of vision)
- 感覺性聾症 (DNFZ 型) (Perceptive deafness, DNFZ type)
- 睪丸女性化綜合症 (Testicular feminization syndrome)
- 腦積水 (中腦水管狹窄) (Hydrocephalus (aqueduct stenosis))
- 葡萄糖 6 磷酸脫氫酶缺乏 (Glucose 6-phosphate dehydrogenase deficiency)
- 釉質生長不全 (成熟低下型) (Amelogenesis imperfecta, hypomaturational type)
- 釉質生長不全 (發育不良型) (Amelogenesis imperfecta, hypoplastic type)
- 慢性肉芽腫病 (Granulomatous disease (chronic))
- 糖原貯積症 (第 VIII 類型) (Glycogen storage disease, type VIII)
- 遲發性脊椎骨骺發育不全 (Spondyloepiphyseal dysplasia tarda)
- 遺傳性血小板減少症 (Thrombocytopenia, hereditary)
- 遺傳性低色數性貧血 (Anaemia, hereditary hypochromic)
- 磷酸甘油酸激酶缺乏 (Phosphoglycerate kinase deficiency)
- 磷酸核糖焦磷酸合成酶缺乏 (Phosphoribosylpyrophosphate (PRPP) synthetase deficiency)

條次

建議修正案

黏多糖貯積病 II (Hunter 綜合症) (Mucopolysaccharidosis II (Hunter syndrome))

擴散性腦硬化 (Cerebral sclerosis, diffuse)

Addison 病 (並有腦硬化) (Addison's disease with cerebral sclerosis)

Aldrich 綜合症 (Aldrich syndrome)

Alport 綜合症 (Alport syndrome)

Charcot-Marie-Tooth 腓骨肌萎縮症 (Charcot-Marie-Tooth personaeal muscular atrophy)

Coffin-Lowry 綜合症 (Coffin-Lowry syndrome)

Ehlers-Danlos 綜合病 (第 V 類型) (Ehlers-Danlos syndrome, type V)

Kallmann 綜合症 (Kallmann syndrome)

Lesch-Nyhan 綜合症 (次黃嘌呤 — 鳥嘌呤 — 磷酸核糖轉移酶缺乏) (Lesch-Nyhan syndrome (hypoxanthine-guanine-phosphoribosyl transferase deficiency))

Lowe (眼腦腎) 綜合症 (Lowe (oculocerebrorenal) syndrome)

Menkes 綜合症 (Menkes syndrome)

Norrie's 病 (假性神經膠質瘤) (Norrie's disease (pseudoglioma))

Reifenstein 綜合症 (Reifenstein syndrome)

Spinulosa 毛囊角化病 (Keratosis follicularis spinulosa)

Xg 血型系統 (Xg blood group system)”。

條次建議修正案

- 附表 2 (a) 在緊接 “《行政上訴委員會條例》” 的副標題之前，加入 —

“《侵害人身罪條例》

1A. 由醫生終止妊娠的情況

《侵害人身罪條例》（第 212 章）第 47A(8) 條現予廢除，代以 —

“(8) 就第 46 及 47 條而言，一切意圖促致一名女子流產（如該名女子懷有多於一個胎兒，則指其任何胎兒流產）的行為，均屬非法，但如該行為是憑藉本條規定而獲授權作出的，則屬例外；而在一名女子懷有多於一個胎兒的情況下，如符合以下任何規定，一切促致該女子的任何胎兒流產的行為，均屬獲該等規定授權作出的行為 —

- (a) 第(1)(b)款指明的終止懷孕的理由，適用於該女子懷有的任何胎兒，而該行為是為促致該胎兒流產而作出的；或
- (b) 本條指明的任何其他終止懷孕的理由適用。”。

- (b) 在緊接 “《性別歧視條例》” 的副標題之後，加入 —

“2A. 生殖科技

《性別歧視條例》（第 480 章）第 56B(2) 條現予廢除，代以 —

條次

建議修正案

“(2) 在本條中，“生殖科技程序”(reproductive technology procedure)具有《人類生殖科技條例》(2000 年第 號)第 2(1)條給予該詞的涵義。”。

- (c) 在第 2 條中，刪去“《性別歧視條例》(第 480 章)”。

《人類生殖科技條例草案》

全體委員會審議階段

由陳婉嫻議員動議的修正案條次建議修正案

- 2 (a) 在第(1)款中 —
- (i) 在“付款”的定義中，刪去(c)段；
 - (ii) 刪去“代母安排”及“代母”的定義。
- (b) 刪去第(4)款。
- 4(1) (a) 在(a)段中，刪去第(ii)及(iii)節而代以 —
- “(ii) 有關活動的資料，”。
- (b) 在(c)段中 —
- (i) 在第(i)節中，在未處加入“或”；
 - (ii) 在第(ii)節中，刪去“或”；
 - (iii) 刪去第(iii)節。
- (c) (i) 在(d)段中，刪去“及代母安排”。
- (ii) 在(e)(ii)段中 —
- (A) 刪去“及代母安排”；
 - (B) 刪去“或安排”。

條次

建議修正案

- 12 刪去該條。
- 14(1)(a) 刪去“、胚胎研究或代母安排”而代以“或胚胎研究”。
- 15 及 16 刪去該兩條。
- 17 刪去“12、13、14 或 15”而代以“13 或 14”。
- 36(1) 刪去“12、13(1)、(2)、(3)或(5)、14(1)或(2)或 15(1)或(2)”而代以“13(1)、(2)、(3)或(5)或 14(1)或(2)”。

Annex IX

HUMAN REPRODUCTIVE TECHNOLOGY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By adding "to confine the provision of reproductive technology procedures to infertile couples subject to any express provision to the contrary in any code;" after "gametes;".
2	<p>(a) In subclause (1) -</p> <p>(i) in the definition of "code", by deleting "the" and substituting "a";</p> <p>(ii) in the definition of "notice", by deleting "告)" and substituting "知)";</p> <p>(iii) in the definition of "payment", in paragraph (c)(ii), by adding "bona fide medical expenses arising from" before "pregnancy";</p> <p>(iv) in the definition of "reproductive technology procedure" -</p> <p>(A) by deleting "or obstetric procedure (whether or not it is provided to the public or a section of the public) for the purpose of" and substituting ", obstetric or other procedure (whether or not it is provided to the public or a section of the public)";</p>

Clause

Amendment Proposed

(B) by adding -

"(ba) the obtaining of gametes;"

(v) by deleting the definition of "surrogate mother" and substituting -

"surrogate mother" (代母) means a woman who carries a child -

(a) pursuant to an arrangement -

(i) made before she began to carry the child; and

(ii) made with a view to any child carried pursuant to the arrangement being handed over to, and the parental rights being exercised (so far as practicable) by, another person or persons; and

(b) conceived by a reproductive technology procedure.";

ClauseAmendment Proposed

(vi) by adding -

"negotiate" (商議), in relation to a surrogacy arrangement, includes any bid or offer in relation to the arrangement;"

(b) In subclause (4) -

(i) in paragraph (a) -

(A) by deleting "paragraph (b)" and substituting "paragraph (a)(ii)";

(B) by deleting "共識" where it twice appears and substituting "理解";

(ii) in paragraph (b), by deleting "交託" and substituting "交予";

(iii) in paragraph (c), by deleting "(a) of that definition as beginning to carry it at the time of the insemination or" and substituting "(a)(i) of that definition as beginning to carry it at the time".

(c) By adding -

"(11) For the avoidance of doubt, it is hereby declared that the provisions of the Employment Ordinance (Cap. 57) shall not operate differently between a woman who is pregnant or confined as a result of a surrogacy arrangement (and whether or not the surrogacy arrangement is lawful) and a woman who is pregnant or confined otherwise than as the result of a surrogacy arrangement."

<u>Clause</u>	<u>Amendment Proposed</u>
New	By adding before Part II - "2A. Application This Ordinance binds the Government."
3	(a) In subclause (2)(a) and (b), by deleting "who is not a registered medical practitioner". (b) By deleting subclause (3)(a)(ii).
4	(a) In subclause (1)(c)(ii), by deleting "being". (b) In subclause (3), by deleting "持有牌照的" and substituting "牌照的持有".
7	(a) In subclause (1), by deleting "(including any surrogacy arrangement to which a relevant activity relates)". (b) By deleting subclause (2).
8(b)	By deleting "may" and substituting "shall".
New	By adding before Part III - "10A. Protection of members of Council, etc. (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

ClauseAmendment Proposed

performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Council under this Ordinance.

(2) The protection conferred under subsection (1) on any person to whom that subsection applies in respect of any act or default shall not in any way affect the liability of the Council for that act or default.

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

(a) any member of the Council or a committee;

(b) a designated public officer."

12

By deleting the clause and substituting -

"12. Prohibition against using donated gametes in surrogacy arrangement

Without prejudice to the operation of the Parent and Child Ordinance (Cap. 429), no person shall, for the purposes of a surrogacy arrangement, use gametes other than the gametes of 2 persons who are -

(a) the parties to a marriage; and

(b) the persons referred to in paragraph (a)(ii) of the definition of "surrogate mother" in so far as that arrangement is concerned."

Clause

Amendment Proposed

13

(a) In subclause (3) -

- (i) by adding ", whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman)," after "selected";
- (ii) in paragraph (a), by deleting "severe sex-linked genetic disease" and substituting "sex-linked genetic disease specified in Schedule 1A";
- (iii) in paragraph (b), by adding "and such disease would be sufficiently severe to a person suffering it to justify such selection" after "purpose".

(b) In subclause (5) -

- (i) by deleting "No" and substituting "Subject to subsections (6), (7) and (8), no";
- (ii) by deleting "except in the circumstances specified in regulations made under section 42(2)(e)".

(c) By adding -

"(6) Without prejudice to the operation of section 12, subsection (5) shall not apply in the case of a reproductive technology procedure provided to a person who is to be a surrogate mother where the procedure is provided pursuant to the surrogacy arrangement under which she is to be the surrogate mother.

ClauseAmendment Proposed

(7) It is hereby declared that -

(a) subject to paragraph (b), subsection (5) shall not operate to prohibit the continuation of a reproductive technology procedure provided to persons who were the parties to a marriage when gametes were, or an embryo was, placed in the body of a woman pursuant to the procedure;

(b) paragraph (a) shall not operate to permit any further gametes or further embryo to be placed in the body of that woman pursuant to that procedure.

(8) Subsection (5) shall not apply in the case of the reproductive technology procedure referred to in paragraph (ba) of the definition of "reproductive technology procedure" in section 2(1)."

14(1)(a) (a) By adding "whether in Hong Kong or elsewhere," before "make".

(b) By deleting ", whether in Hong Kong or elsewhere".

15(1)(a) By adding "whether in Hong Kong or elsewhere," before "make".

21 (a) In subclause (2) -

(i) in paragraph (a), by adding "subject to subsection (2A)," before "the application";

Clause

Amendment Proposed

(ii) in paragraph (b), by deleting "士" and substituting "選";

(iii) by deleting paragraph (c) and substituting -

"(c) the individual referred to in paragraph (a)(i) has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of that activity and the individual will discharge the duty under section 22(1);";

(iv) in paragraph (f), by adding "referred to in paragraph (a)(i)" after "individual".

(b) By adding -

"(2A) The Council may grant a licence to an applicant notwithstanding that the applicant is an individual who is to be the person responsible if the Council is satisfied that, in all the circumstances of the case, the fact that the licensee and the person responsible are the same person will not prejudice the discharge of the duty under section 22(1) by the person responsible.

(2B) Where subsection (2A) is applicable to a licence, references in this Ordinance to a licensee shall be construed with all necessary modifications to take account of the fact that the licensee and the person responsible are the same person."

<u>Clause</u>	<u>Amendment Proposed</u>
22(1)	<p>(a) In paragraph (a), by deleting everything after "合人" where it first appears and substituting "選，而他們的經驗及所受訓練令他們有資格成為參與該活動的適合人選；".</p> <p>(b) By deleting paragraph (d) and substituting -</p> <p style="padding-left: 40px;">"(d) that, in all the circumstances, proper practices are used in the course of that activity; and".</p>
25	<p>(a) In subclause (2)(a) -</p> <p style="padding-left: 40px;">(i) in subparagraph (i), by deleting "為監管該牌照所授權進行的有關活動所要求者" and substituting "符合監管該牌照所授權進行的有關活動所要求者";</p> <p style="padding-left: 40px;">(ii) in subparagraph (ii), by deleting "士" and substituting "選".</p> <p>(b) In subclause (5)(a), by deleting "character, qualifications and experience of the other individual are such as are required for the supervision of the relevant activity authorized by the licence and that" and substituting "other individual has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of the relevant activity authorized by the licence and".</p> <p>(c) By adding -</p> <p style="padding-left: 40px;">"(7) For the avoidance of doubt, it is hereby declared that the revocation of a licence may be subject to such conditions, if any, as the Council thinks fit specified in the notice effecting the revocation.".</p>

Clause

Amendment Proposed

- 27
- (a) In subclause (3), by adding "except as specified in any conditions to which the suspension is subject" after "effect".
 - (b) In subclause (4), by deleting "根據本條發出" and substituting "本條所指".
 - (c) By adding -

"(5) For the avoidance of doubt, it is hereby declared that -

- (a) a notice under this section may be subject to such conditions, if any, as the Council thinks fit specified in the notice;
- (b) a notice under this section may be revoked and replaced by another notice under this section whether or not any conditions specified in the first-mentioned notice have been contravened;
- (c) a licence the subject of a notice under this section may be revoked under section 25 whether or not any conditions specified in the notice have been contravened."

New By adding before Part V -

"29A. Voluntary surrender of licence

(1) Without prejudice to the generality of section 25(4) but subject to this section, a licensee may

ClauseAmendment Proposed

surrender his licence by lodging it at the office of the Council.

(2) The surrender of a licence under subsection (1) shall not have effect until the licensee is served with a notice by the Council stating that the Council accepts the surrender of the licence subject to such conditions, if any, as the Council thinks fit specified in the notice.

(3) The Council may refuse to accept the surrender of a licence under subsection (1) where the licensee has been served a notice under section 26(2) in relation to the revocation of the licence, or the Council has reasonable grounds to suspect that there are grounds for revoking the licence under section 25, unless and until the Council -

- (a) revokes the licence; or
- (b) gives notice to the licensee that it will not revoke the licence.

(4) Immediately upon the surrender of a licence under subsection (1) having effect in accordance with subsection (2), the licensee shall cease to be licensed but shall remain liable for -

- (a) any act or omission done, caused, permitted or made by him prior to the surrender; and
- (b) any liability incurred by him under this Ordinance prior to the surrender."

Clause

Amendment Proposed

- 30 (a) By deleting subclause (2) and substituting -
- "(2) Information falls within this subsection if -
- (a) it relates to the provision of a reproductive technology procedure where a child born or intended to be born in consequence of the procedure would not be created from the gametes solely of the parties to a marriage who it is proposed will be the parents of the child; and
- (b) the child, any of the parties to the marriage, or any individual whose gametes have been used, or any combination thereof, can be identified from the information."
- (b) In subclause (6), by deleting "50" and substituting "80".
- 31 By deleting the clause and substituting -
- "31. Secrecy**
- (1) No person who is or has been -
- (a) an authorized person; or
- (b) a person to whom a licence applies or the holder of a licence,

ClauseAmendment Proposed

shall disclose any information contained or required to be contained in Register A.

(2) Subsection (1) shall not apply to any disclosure of information made -

- (a) to a person as an authorized person;
- (b) to a person to whom a licence applies, or a licensee, for the purposes of his functions as such;
- (c) so that no individual to whom the information relates can be identified;
- (d) in accordance with section 30;
- (e) pursuant to an order under section 32(1);
- (f) to the Registrar within the meaning of section 33 pursuant to a request under that section; or
- (g) for the purposes of establishing, in any proceedings relating to an application for an order under section 12(1) of the Parent and Child Ordinance (Cap. 429), whether the condition specified in paragraph (a) or (b) of that section is met.

(3) Subject to subsection (4), in the case of information relating to the provision of a reproductive technology procedure for an identifiable individual, subsection (1) shall not apply to a disclosure made in accordance with -

Clause

Amendment Proposed

- (a) the consent in writing of the individual given before the provision of the procedure; or
- (b) the consent in writing of the individual given after the provision of the procedure if, and only if, the consent were obtained in accordance with a permission in writing given by the individual -
 - (i) before the provision of the procedure; and
 - (ii) to the effect that the individual may be contacted after the provision of the procedure for the purpose of ascertaining whether or not the individual will consent to a disclosure of information relating to the provision of the procedure to the individual, either generally or in circumstances specified in the permission.

(4) If a disclosure cannot be made under subsection (3) in relation to an identifiable individual without a disclosure of information relating to the provision of a reproductive technology procedure to another identifiable individual, then the first-mentioned disclosure shall not be made under that subsection unless the second-mentioned disclosure can also be made under that subsection.

ClauseAmendment Proposed

(5) In the case of information which shows an identifiable individual was, or may have been, born in consequence of a reproductive technology procedure, subsection (1) shall not apply to a disclosure which is necessarily incidental to disclosure under subsection (3).

(6) This section shall not apply to a disclosure to an individual of information which relates only to that individual or, in the case of an individual treated with another, only to that individual and that other.

(7) It shall be deemed to be a condition of every licence that a reproductive technology procedure that may be provided pursuant to the licence shall not be provided for an identifiable individual unless the individual has, before the provision of the procedure, given or refused to give -

- (a) a consent referred to in subsection (3)(a); or
- (b) a permission referred to in subsection (3)(b)."

32(1) By deleting "falling within section 30(2)(i) or (ii)" and substituting "which may identify any individual by virtue of whose gametes the information falls within section 30(2)".

36(1) By adding ", or any condition specified in a notice mentioned in section 25(7) or under section 27 or 29A(2), or the condition specified in section 31(7)," after "15(1) or (2)".

<u>Clause</u>	<u>Amendment Proposed</u>
41(5)	By deleting "特區".
42	<p>(a) In subclause (1), by deleting paragraph (e) and substituting -</p> <p>"(e) imposing restrictions on the disclosure of information which is not information falling within section 31(1) but is information obtained by an authorized person, a person to whom a licence applies, or a licensee, on terms or in circumstances requiring it to be held in confidence."</p> <p>(b) In subclause (2) -</p> <p>(i) by adding -</p> <p>"(aa) the qualifications to be met by an individual designated in an application for a licence as the person under whose supervision the relevant activity to be authorized by the licence is to be carried out;"</p> <p>(ii) in paragraphs (b)(i) and (ii) and (c)(i)(A) and (B), by deleting "licensee under" and substituting "holder of";</p> <p>(iii) by deleting paragraph (e) and substituting -</p> <p>"(e) specifying the maximum period or periods of storage of embryos, gametes or other biological material used or to be used for the purposes of a relevant activity,</p>

ClauseAmendment Proposed

including specifying the means of disposal of such embryos, gametes or material;

(ea) regulating (including prohibiting in whole or in part) the importation or exportation of sperm or other biological material used or to be used for the purposes of a relevant activity;"

43 (a) In the heading, by deleting "1" and substituting "1 or 1A".

(b) By adding "or 1A" after "Schedule 1".

New By adding -

"SCHEDULE 1A [ss. 13(3)(a)
& 43]

SEX-LINKED GENETIC DISEASES

Addison's disease with cerebral sclerosis (Addison 病 (並有腦硬化))

Adrenoleucodystrophy (腎上腺白質營養不良)

Adrenal hypoplasia (腎上腺發育不良)

Agammaglobulinaemia, Bruton type (血球蛋白血病 (Bruton 型))

Clause

Amendment Proposed

Agammaglobulinaemia, Swiss type (血球蛋白血病(瑞士型))

Albinism, ocular (眼部白化病)

Albinism-deafness syndrome (白化病 — 耳聾綜合症)

Aldrich syndrome (Aldrich 綜合症)

Alport syndrome (Alport 綜合症)

Amelogenesis imperfecta, hypomaturation type (釉質生長不全(成熟低下型))

Amelogenesis imperfecta, hypoplastic type (釉質生長不全(發育不良型))

Anaemia, hereditary hypochromic (遺傳性低色數性貧血)

Angiokeratoma (Fabry's disease) (向管角質瘤(Fabry 病))

Cataract, congenital (先天性白內障)

Cerebellar ataxia (小腦共濟失調)

Cerebral sclerosis, diffuse (擴散性腦硬化)

Charcot-Marie-Tooth peroneal muscular atrophy (Charcot-Marie-Tooth 腓骨肌萎縮症)

Choroideraemia (無脈絡膜症)

Choroidoretinal degeneration (脈絡膜視網膜變質)

Coffin-Lowry syndrome (Coffin-Lowry 綜合症)

ClauseAmendment Proposed

Colour blindness, Deutan type (色盲) (綠色系列型))

Colour blindness, Protan type (色盲) (紅色系列型))

Diabetes insipidus, nephrogenic (腎原性尿崩症)

Diabetes insipidus, neurohypophyseal (尿崩症) (神經垂體型))

Dyskeratosis congenita (先天性角化不良)

Ectodermal dysplasia, anhidrotic (外胚層發育不全) (無汗型))

Ehlers-Danlos syndrome, type V (Ehlers-Danlos 綜合病) (第 V 類型))

Facio-genital dysplasia (Aarskog syndrome) (面生殖發育不全) (Aarskog 綜合症))

Focal dermal hypoplasia (X-linked dominant, male lethal) (局灶性皮膚發育不良) (與 X 染色體有關連的顯性，對男性而言可致死))

Glucose 6-phosphate dehydrogenase deficiency (葡糖 6 磷酸脫氫酶缺乏)

Glycogen storage disease, type VIII (糖原貯積症) (第 VIII 類型))

Gonadal dysgenesis (XY female type) (性腺發育不全) (XY 女性類型))

Granulomatous disease (chronic) (慢性肉芽腫病)

Clause

Amendment Proposed

Haemophilia A (血友病 A)

Haemophilia B (血友病 B)

Hydrocephalus (aqueduct stenosis) (腦積水(中腦水管狹窄))

Hypophosphataemic rickets (低磷酸血性佝僂病)

Ichthyosis (steriod sulphatase deficiency) (魚鱗癬(steriod sulphatase 缺乏))

Incontinentia pigmenti (X-linked dominant, male lethal) (色素失節症(與 X 染色體有關連的顯性，對男性而言可致死))

Kallmann syndrome (Kallmann 綜合症)

Keratosis follicularis spinulosa (Spinulosa 毛囊角化病)

Lesch-Nyhan syndrome (hypoxanthine-guanine-phosphoribosyl transferase deficiency) (Lesch-Nyhan 綜合症(次黃嘌呤 — 鳥嘌呤 — 磷酸核糖轉移酶缺乏))

Lowe (oculocerebrorenal) syndrome (Lowe (眼腦腎)綜合症)

Macular dystrophy of the retina (視網膜黃斑營養不良)

Menkes syndrome (Menkes 綜合症)

Mental retardation, FMRI type (智力遲緩(FMRI 型))

Mental retardation, FRAXE type (智力遲緩(FRAXE 型))

ClauseAmendment Proposed

Mental retardation, MRXI type (智力遲緩(MRXI 型))

Microphthalmia with multiple anomalies (Lenz syndrome)
(小眼症(並有多種畸型) (Lenz 綜合症))

Mucopolysaccharidosis II (Hunter syndrome) (黏多糖貯積
病 II (Hunter 綜合症))

Muscular dystrophy, Becker type (肌營養不良(Becker 型))

Muscular dystrophy, Duchenne type (肌營養不良
(Duchenne 型))

Muscular dystrophy, Emery-Dreifuss type (肌營養不良
(Emery-Dreifuss 型))

Myotubular myopathy (肌小管肌病)

Night blindness, congenital stationary (先天性靜止性夜盲
症)

Norrie's disease (pseudoglioma) (Norrie's 病(假性神經膠
質瘤))

Nystagmus, oculomotor or 'jerky' (眼球震顫(眼球運動的
或抽動的))

Ornithine transcarbamylase deficiency (type I
hyperammonaemia) (鳥氨酸胺甲酰轉移酶缺陷症
(高氨血症第 I 類型))

Orofaciodigital syndrome (type I) (X-linked dominant, male
lethal) (口 — 面 — 指(趾)綜合症(第 I 類型)(與 X
染色體有關連的顯性，對男性而言可致死))

Clause

Amendment Proposed

Perceptive deafness, DNFZ type (感覺性聾症(DNFZ 型))

Perceptive deafness, with ataxia and loss of vision (感覺性聾症(並有共濟失調和喪失視力))

Phosphoglycerate kinase deficiency (磷酸甘油酸激酶缺乏)

Phosphoribosylpyrophosphate (PRPP) synthetase deficiency (磷酸核糖焦磷酸合成酶缺乏)

Reifenstein syndrome (Reifenstein 綜合症)

Retinitis pigmentosa (視網膜色素變性)

Retinoschisis (視網膜裂)

Spastic paraplegia (痙攣性麻痺)

Spinal muscular atrophy (脊椎肌萎縮)

Spondyloepiphyseal dysplasia tarda (遲發性脊椎骨骺發育不全)

Testicular feminization syndrome (睪丸女性化綜合症)

Thrombocytopenia, hereditary (遺傳性血小板減少症)

Thyroxine-binding globulin, absence or variants of (甲狀腺素 — 結合球蛋白缺乏或變種)

Xg blood group system (Xg 血型系統)".

ClauseAmendment Proposed

Schedule 2 (a) By adding immediately before the subheading "**Administrative Appeals Board Ordinance**" -

"Offences against the Person Ordinance

**1A. Medical termination
of pregnancy**

Section 47A(8) of the Offences against the Person Ordinance (Cap. 212) is repealed and the following substituted -

"(8) For the purposes of sections 46 and 47, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorized by virtue of the provisions of this section and, in the case of a woman carrying more than one foetus, anything done with intent to procure the miscarriage of any foetus is authorized by those provisions if -

- (a) the ground for termination of the pregnancy specified in subsection (1)(b) applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or
- (b) any of the other grounds for termination of the pregnancy specified in those provisions applies."."

Clause

Amendment Proposed

- (b) By adding immediately after the subheading "**Sex Discrimination Ordinance**" -

"2A. Reproductive technology

Section 56B(2) of the Sex Discrimination Ordinance (Cap. 480) is repealed and the following substituted -

"(2) In this section, "reproductive technology procedure" (生殖科技程序) has the meaning assigned to it by section 2(1) of the Human Reproductive Technology Ordinance (of 2000).".".

- (c) In section 2, by deleting "to the Sex Discrimination Ordinance (Cap. 480)".

HUMAN REPRODUCTIVE TECHNOLOGY BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable CHAN Yuen-han

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1) -</p> <p>(i) in the definition of "payment", by deleting paragraph (c);</p> <p>(ii) by deleting the definitions of "surrogacy arrangement" and "surrogate mother".</p> <p>(b) By deleting subclause (4).</p>
4(1)	<p>(a) In paragraph (a), by deleting subparagraphs (ii) and (iii) and substituting -</p> <p>"(ii) relevant activities,".</p> <p>(b) In paragraph (c) -</p> <p>(i) in subparagraph (i), by adding "or" at the end;</p> <p>(ii) in subparagraph (ii), by deleting "or";</p> <p>(iii) by deleting subparagraph (iii).</p> <p>(c) In paragraphs (d) and (e)(ii), by deleting "and surrogacy arrangements".</p>
12	By deleting the clause.

<u>Clause</u>	<u>Amendment Proposed</u>
14(1)(a)	By deleting "procedure, embryo research or surrogacy arrangement" and substituting "procedure or embryo research".
15 and 16	By deleting the clauses.
17	By deleting "12, 13, 14 or 15" and substituting "13 or 14".
36(1)	By deleting "12, 13(1), (2), (3) or (5), 14(1) or (2) or 15(1) or (2)" and substituting "13(1), (2), (3) or (5) or 14(1) or (2)".

《廣播條例草案》

全體委員會審議階段

由資訊科技及廣播局局長動議的修正案條次建議修正案

1 刪去第(2)款而代以 —

“ (2) 除第(3)款另有規定外，本條例自本條例在憲報刊登當日起實施。

(3) 第 13、14、15 及 16 條自資訊科技及廣播局局長以憲報公告指定的日期起實施。”。

2 (a) 在第(1)款中 —

(i) 刪去“住戶”的定義；

(ii) 在“出租”的定義中，刪去“作出出租要約”而代以“出租”；

(iii) 在“其他須領牌電視節目服務”的定義中，刪去(b)段而代以 —

“ (b) (i) 除第(11A)款另有規定外，擬供或可供由不超過 5 000 個指明處所組成的觀眾接收；或

(ii) 擬供或可供酒店房間接收；”；

條次

建議修正案

- (iv) 在“局長”的定義中，在首次出現的“局長”之前加入“電訊”。
- (b) 在第(9)款中 —
- (i) 在(d)段中，在兩度出現的“局長”之前加入“電訊”；
 - (ii) 在(e)段中，刪去在“文，”之後的所有字句而代以“並不規定任何人披露或以其他方式提供不能在原訟法庭民事法律程序中強迫他披露或以其他方式提供作為證據的資料或文件。”。
- (c) 在第(11)款中 —
- (i) 在(a)段中，在“方可”之後加入“根據本條例”；
 - (ii) 刪去(b)段而代以 —
 - “(b) 如根據本條例得出任何意見或作出或發出任何裁定、指示或決定，必須以書面提供得出該意見或發出或作出該指示、裁定或決定（視屬何情況而定）的原因。”；
 - (iii) 在“局長”之前加入“電訊”。
- (d) 加入 —
- “(11A) 如廣管局信納某項其他須領牌電視節目服務只擬供或可供某單一屋苑接收，廣管局可藉送達有關的持牌人或尋求成為持牌人的人的書面通知，寬免在“其他須領牌電視節目服務”的定義中(b)(i)段指明的規定。”。

條次

建議修正案

3(8)(b) 在“局長”之前加入“電訊”。

4 (a) 將該條重編為第 4(1)條。

(b) 加入 —

“(2) 在不損害第(1)款的一般性的原則下，廣管局須在切實可行範圍內，盡快發出示明以下事項的指引 —

(a) 廣管局擬根據第 9(2)條執行其職能的方式，包括發牌準則以及廣管局擬考慮的其他有關事宜；

(b) 廣管局擬根據第 10(2)條執行其職能的方式，包括發牌準則以及廣管局擬考慮的其他有關事宜；

(c) 廣管局擬執行其根據第 13 或 14 條得出意見的職能的方式；

(d) 廣管局擬根據第 17(2)條執行其職能的方式，包括廣管局擬考慮的準則。

(3) 廣管局於根據第(2)(c)款發出指引前，須向可能會受該等指引影響的持牌人的代表團體進行在有關個案的整體情況下屬合理的諮詢。”。

條次

建議修正案

- 6
- (a) 在第(1)款中，在“進口、”之後加入“出口、”。
 - (b) 在第(3)款中，在“進口、”之後加入“出口、”。
 - (c) 在第(4)款中 —
 - (i) 在所有“進口、”之後加入“出口、”；
 - (ii) 在兩度出現的“局長”之前加入“電訊”。
 - (d) 在第(5)、(6)、(7)及(8)款中，在所有“局長”之前加入“電訊”。
- 7
- (a) 在第(1)款中，在“進口、”之後加入“出口、”。
 - (b) 在第(4)款中，在“局長”之前加入“電訊”。
- 9
- (a) 在第(2)款中，刪去“第8(1)條”而代以“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”。
 - (b) 加入 —
 - “ (3) 凡有申請向廣管局呈交，廣管局須 —
 - (a) 在切實可行範圍內盡快安排在憲報刊登一項公告，而該項公告須述明 —
 - (i) 申請人的姓名或名稱、申請人所申請的牌照的類別以及廣管局認為合

條次建議修正案

適的其他詳情；及

- (ii) 有興趣的公眾人士可在該項公告所指明的日期（該日期不得早於該項公告刊登後 21 天）或之前，就該項申請向廣管局作出申述；及

- (b) 考慮在上述日期或之前收到的申述（如有的話）。”。

10 刪去第(4)、(5)、(6)及(7)款而代以 —

“ (4) 行政長官會同行政會議或廣管局（視情況所需而定）可在其認為公眾利益有此需要的情況下，在持牌人獲得合理機會根據第(5)款作出申述後，在牌照有效期內隨時更改該牌照。

(5) 持牌人可就建議根據第(4)款作出的更改，向廣管局作出申述；如有關牌照是行政長官會同行政會議所批給的，則廣管局須向行政長官會同行政會議中肯地反映該等申述。

(6) 在實施建議根據第(4)款作出的更改前，行政長官會同行政會議或廣管局（視情況所需而定）須考慮根據第(5)款作出的申述（如有的話）。”。

條次

建議修正案

- 11 (a) 加入 —
- “(3A) 如第(3)款適用的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獲續期或延期 6 年或以上，廣管局須按照廣管局所決定的聆訊程序進行公開聆訊。”。
- (b) 在第(4)款中，在“，並”之後加入“在切實可行範圍內盡快”。
- (c) 在第(5)款中，在“局須”之後加入“於該牌照的有效期限屆滿前並在有關個案的整體情況下屬合理的時間內”。
- 12 (a) 在第(4)款中，在“如廣管局根”之前加入“在符合第(4A)款的規定下，”。
- (b) 加入 —
- “(4A) 廣管局在根據第(4)款作出裁定前，須 —
- (a) 給予有關的持牌人合理機會，讓其就以下事項向廣管局作出申述 —
- (i) 有關的電視節目服務是否以香港為主要目標市場；或
- (ii) 有關的電視節目服務是否並非以香港為主要目標市場；及

條次建議修正案

- (b) 考慮該等申述（如有的話）。

(4B) 在裁定任何電視節目服務是否以香港為主要目標市場時，須考慮（但不限於）以下事項 —

- (a) 該服務是否涵蓋香港；
- (b) 該服務的廣告及收看費的收入（如適用的話）是否主要來自香港；
- (c) 提供該服務的語言，以及該服務目標市場的觀眾性質及人數；及
- (d) 持牌人有否在香港積極推廣該服務或由第三方代其在香港積極推廣該服務。”。

13

- (a) 在第(1)款中，在“止”之後加入“、扭曲”。
- (b) 在第(3)款中，刪去“條文下”而代以“規定下”。
- (c) 刪去第(5)及(6)款而代以 —

“(5) 第(1)款並不適用於 —

- (a) 對任何就在電視節目服務中納入該服務的全部或主要由持牌人所製作的電視節目所施加的限制；或

條次

建議修正案

(b) 任何訂明限制。

(6) 為免生疑問，現宣布本條中的任何條文均不損害關於版權或商標的法律的施行而產生的權利的存在。”。

14(4) 在“止”之後加入“、扭曲”。

新條文 加入 —

“14A. 第 13 及 14 條的補充條文

(1) 為施行第 13 或 14 條，廣管局可考慮持牌人的相聯者的行為或該相聯者在電視節目服務市場的地位。

(2) 任何人因持牌人違反第 13(1)或 14(1)條而蒙受損失或損害，或因持牌人違反與第 13(1)或 14(1)條有關的發牌條件、裁定或指示而蒙受損失或損害，可針對該持牌人提起訴訟，申索損害賠償，或申請發出強制令或申索其他適當的補救、命令或濟助。

(3) 凡第(2)款提述的違反 —

(a) 發生已逾 3 年；或

(b) 已導致根據第 27 條施加處罰，而自施加處罰起計已逾 3 年，

則任何人不得根據該款就該項違反提起訴訟。(a)及(b)段所提述的時間，以較後者為準。

條次建議修正案

(4) 為免生疑問，現宣布：凡廣管局得出第 13(1)條所提述的意見，違反該條的行為即告發生；凡廣管局得出第 14(4)條所提述的意見，違反第 14(1)條的行為即告發生。”。

16(2)(c) 刪去“報帳方式”而代以“會計原則”。

18 在“學校”之後加入“教育”。

20 (a) 在第(2)款中，刪去在“提供”之前的所有字句而代以“除第(2A)款另有規定外，持牌人須在每年的 4 月 1 日或該日之前，以指明格式向廣管局”。

(b) 加入 —

“(2A) 第(2)款不適用於持牌不足 4 個月的持牌人。”。

21 刪去標題而代以“防止干預持牌人在節目內容方面的獨立性”。

23 (a) 在標題中，在“局長”之前加入“電訊”。

(b) 在第(2)款中，在“局長”之前加入“電訊”。

(c) 加入 —

“(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。”。

條次

建議修正案

- 24 (a) 在第(1)款中，刪去“本條例、《廣播事務管理局條例》(第 391 章)或任何其他條例具有的職能而有”而代以“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”。
- (b) 在第(3)(a)款中，在“廣管局”之前加入“第(1)款所提述的”。
- (c) 在第(10)款中，在“有關業務”的定義中，在“電視”之前加入“提供”。
- (d) 加入 —

“(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。”。

- 25 刪去該條而代以 —

“25. 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 —

條次建議修正案

- (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
 - (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。

條次

建議修正案

(3) 如根據第(1)款向任何人送達的通知(“有關通知”)沒有根據第(2)(b)(i)款被撤回，而該人亦沒有在有關日期之前或在根據第(2)款送達該人的通知所指明的日期之前(視情況所需而定)遵從有關通知，則裁判官 —

(a) 如基於經宣誓而作的告發，信納有合理理由相信該人管有或相當可能管有與有關通知有關的資料或文件，而且該資料或文件是關乎廣管局對違反或涉嫌違反本條例的牌照條件、規定或根據本條例發出或作出的指示、命令、決定或裁定的調查的；並

(b) 經考慮廣管局就有關通知而收到的第(1)(b)款所提述的申述(如有的話)後，

可作出命令，規定該人須在該命令所指明的時間內，以書面向廣管局提供該資料或文件或向廣管局交出該文件(視情況所需而定)。

(4) 任何人為遵從第(1)款所指的通知或第(3)款所指的命令而向廣管局提供或交出的資料或文件，在如此提供或交出時須以該通知送達時的資料或文件為準，但該資料或文件可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。

條次建議修正案

(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)款所指的命令或第(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。”。

- 26
- (a) 在第(1)(a)及(2)(c)款中，在所有“局長”之前加入“電訊”。
 - (b) 刪去第(3)款而代以 —

條次

建議修正案

“(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。”。

- (c) 在第(4)款中，在兩度出現的“局長”之前加入“電訊”。

27

加入 —

“(3A) 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序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

條次建議修正案

營業額的 10%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。

(3B) 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。”。

29(1) 在“方式”之後加入“（包括指明限期及指明於一天內的哪個時間）”。

30 (a) 在第(2)款中 —

(i) 刪去(a)(ii)段而代以 —

“(ii) 支付 —

(A) 按原訟法庭根據第 27(3A)(b)條所指明的到期須付的罰款；或

(B) 根據第 28(4)條到期須付的罰款；或”；

(ii) 在(b)(ii)段中，刪去“，或是持牌人的疏忽所助長的”。

(b) 在第(3)款中 —

(i) 在(a)(i)段中，刪去末處的“及”；

(ii) 在(b)段中，刪去句號而代以“；及”；

條次

建議修正案

(iii) 加入 —

“(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。”。

31 刪去第(4)款而代以 —

“(4) 如在符合第(4A)款的規定下，在第 32 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 27(3A)(b)條所指明的到期須付的罰款；或

(B) 根據第 28(4)條到期須付的罰款，

條次建議修正案

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

(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

條次

建議修正案

(D) 適用於該持牌人的業務守則條文，

並且沒有遵守根據第 23(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。

(4A) (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。”。

33(1)(a)(ii) 在“局長”之前加入“電訊”。

35 加入 —

“(5A) 凡第(3)款適用於根據第(2)款作出的申請，原訟法庭在信納個案屬緊急的情況下，方可根據第(4)或(5)款作出臨時命令。”。

條次建議修正案

37(1)及(2) 在所有“局長”之前加入“電訊”。
(a)、(b)及(c)

40(4)(c) 刪去“妥”而代以“具”。

41 (a) 在第(1)款中 —

(i) 在(a)段中，刪去第二次出現的“作出”而代以“，作出本條例其他條文指明的規定以外的”；

(ii) 在(b)段中，在“寬免”之前加入“以規例所指明的理由”；

(iii) 在(c)段中，刪去“作出”而代以“，作出本條例其他條文指明的規定以外的”。

(b) 刪去第(2)款而代以 —

“(2) 除第(2A)款另有規定外，根據第(1)款訂立的規例須經立法會批准。

(2A) 除第(2B)款另有規定外，第(2)款不適用於根據第(1)(f)款訂立的規例，而在根據第(1)(g)款訂立的規例關乎第(1)(f)款的範圍內，第(2)款亦不適用於該等規例。

(2B) 第(2A)款不適用於關乎第13(4)(b)或(5)(b)條的規例。”。

42(1) 在“對附表 1”之後加入“或 3”。

條次

建議修正案

- 附表 1
- (a) 在緊接第 1 部之前的標題中，刪去“無持牌資格”而代以“不符合本地免費或收費電視節目服務的持牌資格以”。
 - (b) 在第 2 部的標題中，刪去“不符合持牌資格”而代以“不符合本地免費或收費電視節目服務的持牌資格以”。
 - (c) 在第 3 條中，加入 —
 - “ (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。”。
 - (d) 在第 7(a)條中，刪去“《本地報刊註冊條例》（第 268 章）所指的本地”而代以“指在香港印刷或製作的”。
 - (e) 在第 8(2)條中，刪去“書”。
 - (f) 在第 9(2)(a)條中，在“關乎”之後加入“他”。
 - (g) 在第 10 條中 —
 - (i) 在第(2)款中，刪去“則持牌人”而代以“則廣管局”；

條次建議修正案

- (ii) 在第(3)款中 —
 - (A) 刪去“凡持牌人”而代以“凡廣管局”；
 - (B) 在(a)段中，在“關乎”之後加入“他”；
 - (iii) 在第(6)款中，刪去“書”。
- (h) 在第 15(6)條中 —
- (i) 在(b)(iii)段中，刪去分號而代以句號；
 - (ii) 刪去(c)段。
- (i) 在第 3 部的標題中，在“的限制”之後加入“（不適用於本地收費電視節目服務牌照）”。
- (j) 在第 19(1)(a)條中，刪去“妥”而代以“具”。
- (k) 在第 21(2)條中，刪去“書”。
- (l) 在第 23(2)(a)條中，在“關乎”之後加入“他”。
- (m) 在第 24 條中 —
- (i) 在第(2)款中，刪去“則持牌人”而代以“則廣管局”；
 - (ii) 在第(3)款中 —
 - (A) 刪去“凡持牌人”而代以“凡廣管局”；
 - (B) 在(a)段中，在“關乎”之後加入“他”；

條次

建議修正案

- (iii) 在第(6)款中，刪去“書”。
- (n) 在第 29 條中 —
 - (i) 刪去第(5)款而代以 —

“ (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。 ” ；
 - (ii) 在第(6)款中 —
 - (A) 在(b)(iii)段中，刪去分號而代以句號；
 - (B) 刪去(c)段。
- (o) 在第 30(2)(a)條中，刪去“附表”而代以“部”。
- (p) 在第 31(1)條中 —
 - (i) 刪去“如在看來是，”；
 - (ii) 在“充”之前加入“，”。
- (q) 在第 4 部的標題中，在“持牌人”之前加入“持有本地免費或收費電視節目服務牌照的”。
- (r) 刪去第 33 條而代以 —

**“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 —

條次建議修正案

- (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。”。

附表 2 在標題中，在“施行”之後加入“第 2(1)條中”。

附表 3 在第 6 條中 —

- (a) 在(c)段中，刪去“服務”而代以“節目”；
- (b) 在(d)(i)(B)段中，在“局長”之前加入“電訊”。

附表 4 (a) 在方括號內，刪去“及 7”而代以“、7 及 8”。

(b) 在第 3(1)(a)、(b)及(c)條中，在“政府”之後加入“或廣管局”。

條次

建議修正案

(c) 在第 4(2)(b)(i)條中，刪去“予以覆核”。

(d) 刪去第 10 條而代以 —

“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。”。

(e) 在第 11(2)條中，在“會對”之後加入“或本會對”。

(f) 刪去第 13 條而代以 —

“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。”。

附表 5 在第 1 條中，在“3”之後加入“、10”。

附表 7 在第 1 條中 —

(a) 刪去“如事先未經行政長官會同行政會議書面批准，”；

(b) 在“牌照”之前加入“其他須領牌電視節目服務”。

附表 8 (a) 在方括號內，在“條”之後加入“及附表 4”。

(b) 在第 4(4)(b)條中，刪去末處的“的人”。

條次建議修正案

- (c) 刪去第 5 條而代以 —

“5. 年費的繳付

(1) 就第 2(1)、(2)或(3)條所指當作批給的牌照而言 —

- (a) 財政司司長可藉送達持牌人的書面通知，指明 —

(i) 該持牌人須為自有關日期起計的一年向政府繳付費用；及

(ii) 該持牌人須在有關日期的 30 天內繳付該費用；及

- (b) 在該年屆滿前，本條例附表 4 第 13 條不適用於該持牌人。

(2) 就第 2(4)條所指的當作批給的牌照而言 —

- (a) 持牌人須繼續遵從該牌照上與牌照費有關的條文，直至下述時間（兩者中以較早者為準）為止 —

(i) 該牌照的有效期屆滿之時；或

(ii) 交回該牌照以獲取另一牌照之時；及

條次

建議修正案

- (b) 在(a)(i)或(ii)段所述的事件發生之前，本條例附表 4 第 13 條不適用於該持牌人。
- (3) 就第 2(5)條所指的當作批給的牌照而言 —
- (a) 持牌人須繼續遵從該牌照上與牌照費有關的條文，直至下述時間（兩者中以較早者為準）為止 —
- (i) 該牌照的有效期屆滿之時；或
- (ii) 交回該牌照以獲取另一牌照之時；及
- (b) 在以下情況出現之前，本條例附表 4 第 13 條不適用於該持牌人 —
- (i) (a)(i)或(ii)段所述的事件發生；及
- (ii) 持牌人所持有的牌照並無指明持牌人須向政府繳付牌照費的規定。
- (4) 根據第(1)(a)款送達持牌人的通知，須當作是持牌人所持有的當作批給的牌照上指明並規定持牌人向政府繳付該通知所指明的費用的條件。

條次建議修正案

(5) 如 —

- (a) 持牌人在有關日期之前已就第 2(1)、(2)或(3)條所指的當作批給的牌照繳付年費；
- (b) 若非本條例第 43(1)條生效，上述已繳年費所關乎的期間會在有關日期當日或之後屆滿；及
- (c) 持牌人已繳付第(1)(a)款所規定的費用，

則財政司司長須向持牌人發還(c)段所提述年費中的部分年費，數額相當於按比例計算屬(a)段所提述年費中關乎(b)段所提述期間（即若非本條例第 43(1)條生效即會在有關日期當日或之後繼續的期間）的部分年費。”。

(d) 在第 7 條中，刪去“，而該持牌人持有的該條例所指的牌照屬第 2(1)、(2)或(3)條所指的牌照”。

(e) 在第 8 條中 —

(i) 將該條重編為第 8(1)條；

(ii) 加入 —

“(2) 現宣布：已廢除條例所指的持牌人（或前持牌人）所須繳付的該條例所指的專營權費，須就該人的會計年度中在有關日期之前已屆滿的一段期間按比例繳付，而第(1)款據此適用。”。

條次

建議修正案

(f) 加入 —

“10. 在過渡期間適用於持有當作批給的
牌照的持牌人的某些業務守則

凡 —

- (a) 在緊接有關日期之前，有屬已廢除條例第 2 條所指的業務守則生效（“舊守則”）；及
- (b) 持有當作批給的牌照的持牌人，在緊接有關日期之前須遵守舊守則，

則 —

- (i) 就該持牌人而言，舊守則須當作是本條例第 2 條所指的業務守則，直至一項根據本條例第 3 條批准且有明文規定取代舊守則的業務守則生效之日為止；及
- (ii) 在符合第(iii)段的規定下，持牌人須在該生效日期前遵守舊守則；及
- (iii) 舊守則須在顧及本條例的條文而作出必要的變通後予以理解及具有效力，

而本條例的條文（包括本條例第 22(2)(d)、23、27(2)(d)、29(2)(d)、30(2)(b)(i)(D)及 31(4)(c)(i)(D)條）據此適用。”。

條次建議修正案

附表 9 (a) 在緊接第 6 條之前加入 —

“5A. 修訂附表 1

《電訊規例》（第 106 章，附屬法例）附表
1 現予修訂 —

(a) 在第 I 部中，在第 28 項中，廢除
“酒店電視服務牌照”而代以
“酒店電視（發送）牌照”；

(b) 在第 II 部中 —

(i) 廢除“酒店電視服
務牌照”而代以
“酒店電視（發送）
牌照”；

(ii) 在“酒店電視（發
送）牌照”的第 1 段
中，廢除“酒店電視
服務牌照”而代以
“酒店電視（發送）
牌照”。

(b) 在第 6 條中 —

(i) 刪去“《電訊規例》（第 106 章，附屬法
例）”；

(ii) 刪去(a)段而代以 —

“(a) 廢除“酒店電視服務牌照”而
代以“酒店電視（發送）牌
照”；”；

條次

建議修正案

- (iii) 在(b)段中 —
 - (A) 在“的任何提述”之前加入“所訂的服務、牌照或持牌人”；
 - (B) 在“的提述”之前加入“所訂的服務、牌照或持牌人”。
- (c) 在第 14 條中，在建議的第 9(1)(d)條中，在“標準”之後加入“，包括（但不限於）對一天內可以廣播節目及廣告的時間的限制，不論是針對同一或不同的持牌人或廣播”。
- (d) 刪去第 19 條而代以 —

“19. 管理局可施加罰款

第 24 條現予修訂 —

(a) 在第(3)款中 —

- (i) 在(a)段中，廢除“\$20,000”而代以“\$80,000”；
- (ii) 在(b)段中，廢除“\$50,000”而代以“\$200,000”；
- (iii) 在(c)段中，廢除“\$100,000”而代以“\$400,000”；

(b) 加入 —

條次建議修正案

“(3A) 除非在有
關個案的整體情況下，根
據本條施加罰款就引致罰
款的一項或一連串不遵從
事項而言屬適當及合理，
否則管理局不得施加該項
罰款。”。

- (e) 在第 20 條中，在建議的第 25A(1)條中，在“方式”之後加入“(包括指明限期及指明於一天內的哪個時間)”。

Annex X

BROADCASTING BILL

COMMITTEE STAGE

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

Clause

Amendment Proposed

1 By deleting subclause (2) and substituting -

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

(3) Sections 13, 14, 15 and 16 shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette."

2 (a) In subclause (1) -

(i) by deleting the definition of "domestic household";

(ii) in the definition of "出租", by deleting "作出出租要約" and substituting "出租";

(iii) in the definition of "other licensable television programme service", by deleting paragraph (b) and substituting -

"(b) either -

ClauseAmendment Proposed

- (i) subject to subsection (11A), by an audience of not more than 5 000 specified premises; or
 - (ii) in hotel rooms;"
 - (iv) in the definition of "Telecommunications Authority", by adding "電訊" before "局長)".
- (b) In subclause (9) -
 - (i) in paragraph (d), by adding "電訊" before "局長" where it twice appears;
 - (ii) in paragraph (e), by deleting everything after "require" and substituting "a person to disclose or otherwise give any information or document which the person could not be compelled to disclose or otherwise give in evidence in civil proceedings before the Court of First Instance."
- (c) In subclause (11) -
 - (i) in paragraph (a), by adding "under this Ordinance" after "decision";
 - (ii) by deleting paragraph (b) and substituting -
 - "(b) when forming an opinion or making a determination, direction or decision under this Ordinance, provide reasons in writing for it.";

Clause

Amendment Proposed

(iii) by adding "電訊" before "局長".

(d) By adding -

"(11A) The Broadcasting Authority may, by notice in writing served on the licensee, or the person seeking to be a licensee, concerned, waive the requirement specified in paragraph (b)(i) of the definition of "other licensable television programme service" if the Broadcasting Authority is satisfied that the other licensable television programme service concerned is only intended or available for reception by a single housing estate."

3(8)(b) By adding "電訊" before "局長".

4 (a) By renumbering it as clause 4(1).

(b) By adding -

"(2) Without prejudice to the generality of subsection (1), the Broadcasting Authority shall, as soon as is practicable, issue guidelines indicating the manner in which it proposes to -

(a) perform its function under section 9(2), including the licensing criteria and other relevant matters it proposes to consider;

(b) perform its function under section 10(2), including the licensing criteria and other relevant matters it proposes to consider;

ClauseAmendment Proposed

(c) perform its function in forming an opinion under section 13 or 14;

(d) perform its function under section 17(2), including the criteria it proposes to consider.

(3) The Broadcasting Authority shall, before issuing guidelines under subsection (2)(c), carry out such consultation with such bodies representative of licensees who may be affected by the guidelines as is reasonable in all the circumstances of the case."

- 6
- (a) In subclause (1), by adding "export," after "import,".
 - (b) In subclause (3), by adding "exported," after "imported,".
 - (c) In subclause (4) -
 - (i) (A) by adding "exports," after "imports,";
 - (B) in paragraph (a), by adding "exported," after "imported,";
 - (C) in paragraph (b), by adding "exports," after "imports,";
 - (ii) by adding "電訊" before "局長" where it twice appears.
 - (d) In subclauses (5), (6), (7) and (8), by adding "電訊" before "局長" wherever it appears.

<u>Clause</u>	<u>Amendment Proposed</u>
7	<p>(a) In subclause (1), by adding "export," after "import,".</p> <p>(b) In subclause (4), by adding "電訊" before "局長".</p>
9	<p>(a) In subclause (2), by deleting "第 8(1)條" and substituting "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".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(3) Where an application is submitted to the Broadcasting Authority, it shall -</p> <p style="padding-left: 80px;">(a) cause a notice to be published in the Gazette as soon as is practicable -</p> <p style="padding-left: 120px;">(i) stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the Broadcasting Authority thinks fit; and</p> <p style="padding-left: 120px;">(ii) stating that members of the public who are interested may make representations on the application to the Broadcasting Authority by a date specified in the</p>

ClauseAmendment Proposed

notice, being a date not less than 21 days after the notice is published; and

- (b) consider the representations, if any, received by the date."

10 By deleting subclauses (4), (5), (6) and (7) and substituting -

"(4) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, where he or it considers it is in the public interest to do so, vary a licence at any time during its period of validity after the licensee has been given a reasonable opportunity to make representations under subsection (5).

(5) A licensee may make representations to the Broadcasting Authority in relation to any proposed variation under subsection (4) and, in the case of a licence granted by the Chief Executive in Council, the Broadcasting Authority shall fairly reflect the representations to the Chief Executive in Council.

(6) The Chief Executive in Council or the Broadcasting Authority, as the case may require, shall consider the representations, if any, made under subsection (5) before implementing any proposed variation under subsection (4)."

11 (a) By adding -

"(3A) Where subsection (3) applies to a domestic free television programme service licence,

Clause

Amendment Proposed

or a domestic pay television programme service licence, which may be extended or renewed for a period of 6 years or more, the Broadcasting Authority shall conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority."

- (b) In subclause (4), by adding "as soon as is practicable" after "them and".
- (c) In subclause (5), by adding ", at a time reasonable in all the circumstances of the case before the expiry of the licence" after "shall".

12

- (a) In subclause (4), by deleting "Where" and substituting "Subject to subsection (4A), where".
- (b) By adding -

"(4A) The Broadcasting Authority shall, before making a determination under subsection (4) -

- (a) give the licensee concerned a reasonable opportunity to make representations to the Broadcasting Authority in relation to whether or not the television programme service concerned -
 - (i) primarily targets Hong Kong; or
 - (ii) does not primarily target Hong Kong; and

ClauseAmendment Proposed

- (b) consider the representations, if any, made.

(4B) In determining whether or not a television programme service primarily targets Hong Kong, account shall be taken of, but not limited to, the following matters -

- (a) whether the service covers Hong Kong;
- (b) whether the sources of advertising and subscription revenues, where applicable, of the service are derived principally from Hong Kong;
- (c) the language of the service and the nature and size of the audiences targeted by the service; and
- (d) whether the service is actively marketed in Hong Kong by the licensee or by a third party on its behalf."

- 13 (a) In subclause (1), by adding ", distorting" after "preventing".
- (b) In subclause (3), by deleting "條文下" and substituting "規定下".
- (c) By deleting subclauses (5) and (6) and substituting -

Clause

Amendment Proposed

"(5) Subsection (1) shall not apply to -

(a) any restriction imposed on the inclusion in a television programme service of a television programme produced wholly or substantially by the licensee of the service; or

(b) any prescribed restriction.

(6) For the avoidance of doubt, it is hereby declared that nothing in this section shall prejudice the existence of any rights arising from the operation of the law relating to copyright or trademarks."

14(4) By adding ", distorting" after "preventing".

New By adding -

**"14A. Provisions supplementary
to sections 13 and 14**

(1) The conduct of an associate of a licensee, or the position of the associate in a television programme service market, may be considered for the purposes of section 13 or 14.

(2) A person sustaining loss or damage from a breach of section 13(1) or 14(1), or a breach of a licence condition, determination or direction relating to that section, may bring an action for damages, an injunction or other appropriate remedy, order or relief against the licensee who is in breach.

ClauseAmendment Proposed

(3) No action may be brought under subsection (2) more than 3 years after -

(a) the commission of the breach concerned referred to in that subsection; or

(b) the imposition under section 27 of a penalty in relation to the breach,

whichever is the later.

(4) For the avoidance of doubt, it is hereby declared that a breach of section 13(1) or 14(1) occurs when the Broadcasting Authority forms the opinion referred to in section 13(1) or 14(4) respectively."

16(2)(c) By deleting "practices" and substituting "principles".

18 By adding "educational" after "any".

20 (a) In subclause (2) -

(i) by deleting "A" and substituting "Subject to subsection (2A), a";

(ii) by deleting "at all reasonable times when directed in writing to do so by the Broadcasting Authority" and substituting "on or before the 1st of April of each year".

<u>Clause</u>	<u>Amendment Proposed</u>
	(b) By adding - "(2A) Subsection (2) shall not apply to a licensee which has been a licensee for less than 4 months."
21	By deleting the heading and substituting " Prevention of interference with programming independence of licensees ".
23	(a) In the heading, by adding "電訊" before "局長". (b) In subclause (2), by adding "電訊" before "局長". (c) By adding - "(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."
24	(a) In subclause (1), by deleting "this Ordinance, the Broadcasting Authority Ordinance (Cap. 391) or any other Ordinance" and substituting "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". (b) In subclause (3)(a), by adding "as referred to in subsection (1)" after "Authority". (c) In subclause (10), in the definition of "有關業務", by adding "提供" before "電視".

ClauseAmendment Proposed

(d) By adding -

"(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."

25

By deleting the clause and substituting -

**"25. 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;

Clause

Amendment Proposed

- (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) 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

ClauseAmendment Proposed

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.

Clause

Amendment Proposed

(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) 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

ClauseAmendment Proposed

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."

26

- (a) In subclauses (1)(a) and (2)(c), by adding "電訊" before "局長" wherever it appears.
- (b) By deleting subclause (3) and substituting -

"(3) The Broadcasting Authority shall give the person supplying the information in confidence a reasonable opportunity to make representations on a

Clause

Amendment Proposed

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."

- (c) In subclause (4), by adding "電訊" before "局長" where it twice appears.

27

By adding -

"(3A) 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,

ClauseAmendment Proposed

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.

(3B) 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."

29(1)

By adding "(including within such period and within such time of day)" after "manner".

Clause

Amendment Proposed

30

(a) In subclause (2) -

(i) by deleting paragraph (a)(ii) and substituting -

"(ii) any financial penalty when it is due for payment -

(A) as specified by the Court of First Instance under section 27(3A)(b); or

(B) under section 28(4); or";

(ii) in paragraph (b)(ii), by deleting ", or has been facilitated by a neglect of,".

(b) In subclause (3) -

(i) in paragraph (a)(i), by deleting "and" at the end;

(ii) in paragraph (b), by deleting the full stop and substituting "; and";

(iii) by adding -

"(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.".

ClauseAmendment Proposed

31 By deleting subclause (4) and substituting -

"(4) After section 32 has been complied with but subject to subsection (4A), 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 27(3A)(b); or

(B) under section 28(4);

(b) if the licensee -

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

Clause

Amendment Proposed

- (ii) enters into a composition or arrangement with its creditors; or
- (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 23(1) relating to that contravention;
 - (ii) another person has contravened a condition, requirement, direction,

ClauseAmendment Proposed

order, determination or provision mentioned in subparagraph (i) and such contravention has taken place with the consent or connivance of the licensee.

(4A) 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."

33(1)(a)(ii) By adding "電訊" before "局長".

35 By adding -

"(5A) Where subsection (3) applies to an application under subsection (2), the Court of First Instance shall not make an interim order under subsection (4) or (5) unless it is satisfied that it is a case of urgency."

37(1) and (2) By adding "電訊" before "局長" wherever it appears.

- (a), (b) and
- (c)

<u>Clause</u>	<u>Amendment Proposed</u>
40(4)(c)	By deleting "妥" and substituting "具".
41	<p>(a) In subclause (1) -</p> <p>(i) in paragraph (a), by adding ", additional to those specified elsewhere in this Ordinance," after "requirements";</p> <p>(ii) in paragraph (b), by adding "on the grounds specified in the regulation" after "case";</p> <p>(iii) in paragraph (c), by adding ", additional to those specified elsewhere in this Ordinance," after "requirements".</p> <p>(b) By deleting subclause (2) and substituting -</p> <p style="padding-left: 40px;">"(2) Subject to subsection (2A), regulations under subsection (1) shall be subject to the approval of the Legislative Council.</p> <p style="padding-left: 40px;">(2A) Subject to subsection (2B), subsection (2) shall not apply to regulations under subsection (1)(f) or regulations under subsection (1)(g) to the extent that they relate to subsection (1)(f).</p> <p style="padding-left: 40px;">(2B) Subsection (2A) shall not apply to regulations relating to section 13(4)(b) or (5)(b)."</p>
42(1)	By adding "or 3" after "to Schedule 1".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1	<p>(a) In the heading immediately before Part 1, by adding "DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE" after "HOLDING".</p> <p>(b) In Part 2, in the heading, by adding "DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE" after "HOLDING".</p> <p>(c) In section 3, by adding -</p> <p style="padding-left: 40px;">"(3) In considering the public interest for the purposes of subsection (2), account shall be taken of, but not limited to, the following matters -</p> <p style="padding-left: 80px;">(a) the effect on competition in the relevant service market;</p> <p style="padding-left: 80px;">(b) the extent to which viewers will be offered more diversified television programme choices;</p> <p style="padding-left: 80px;">(c) the impact on the development of the broadcasting industry; and</p> <p style="padding-left: 80px;">(d) the overall benefits to the economy."</p> <p>(d) In section 7(a), by deleting "local newspaper within the meaning of the Registration of Local Newspapers Ordinance (Cap. 268)" and substituting "newspaper printed or produced in Hong Kong".</p> <p>(e) In section 8(2), by deleting "書".</p> <p>(f) In section 9(2)(a), by adding "他" after "關乎".</p>

<u>Clause</u>	<u>Amendment Proposed</u>
(g)	In section 10 - <ul style="list-style-type: none">(i) in subsection (2), by deleting "則持牌人" and substituting "則廣管局";(ii) in subsection (3) -<ul style="list-style-type: none">(A) by deleting "凡持牌人" and substituting "凡廣管局";(B) in paragraph (a), by adding "他" after "關乎";(iii) in subsection (6), by deleting "書".
(h)	In section 15(6) - <ul style="list-style-type: none">(i) in paragraph (b)(iii), by deleting the semicolon and substituting a full stop;(ii) by deleting paragraph (c).
(i)	In Part 3, in the heading, by adding "(NOT APPLICABLE IN RELATION TO DOMESTIC PAY TELEVISION PROGRAMME SERVICE LICENCE)" after "CONTROLLERS".
(j)	In section 19(1)(a), by deleting "妥" and substituting "具".
(k)	In section 21(2), by deleting "書".
(l)	In section 23(2)(a), by adding "他" after "關乎".
(m)	In section 24 -

<u>Clause</u>	<u>Amendment Proposed</u>
	(i) in subsection (2), by deleting "則持牌人" and substituting "則廣管局";
	(ii) in subsection (3) - (A) by deleting "凡持牌人" and substituting "凡廣管局"; (B) in paragraph (a), by adding "他" after "關乎";
	(iii) in subsection (6), by deleting "書".
(n)	In section 29 - (i) by deleting subsection (5) and substituting - " (5) Subject to subsection (6), any information which is furnished by a person in confidence under this Part shall be treated as confidential. ";
	(ii) in subsection (6) - (A) in paragraph (b)(iii), by deleting the semicolon and substituting a full stop; (B) by deleting paragraph (c).
(o)	In section 30(2)(a), by deleting "附表" and substituting "部".
(p)	In section 31(1) -

Clause

Amendment Proposed

- (i) by deleting "如在看來是，";
- (ii) by adding "，" before "充".
- (q) In Part 4, in the heading, by adding "DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE" after "RESTRICTION ON".
- (r) By deleting section 33 and substituting -

**"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 -

<u>Clause</u>	<u>Amendment Proposed</u>
	(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."
Schedule 2	In the heading, by adding "第 2(1)條中" after "施行".
Schedule 3	In section (6) - (a) in paragraph (c), by deleting "服務" and substituting "節目"; (b) in paragraph (d)(i)(B), by adding "電訊" before "局長".
Schedule 4	(a) Within the square brackets, by deleting "& 7" and substituting ", 7 & 8". (b) In section 3(1)(a), (b) and (c), by adding "or the Broadcasting Authority" after "Government". (c) In section 4(2)(b)(i), by deleting "予以覆核". (d) By deleting section 10 and substituting -

Clause

Amendment Proposed

"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."

- (e) In section 11(2), by adding ", or would have adversely affected," after "affect".
- (f) By deleting section 13 and substituting -

"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."

Schedule 5 In section 1, by adding ", 10" after "3".

Schedule 7 In section 1 -

- (a) by deleting ", without the prior approval in writing of the Chief Executive in Council,";
- (b) by adding "其他須領牌電視節目服務" before "牌照".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 8	<p>(a) Within the square brackets, by adding "& Sch. 4" after "43".</p> <p>(b) In section 4(4)(b), by deleting "的人" at the end.</p> <p>(c) By deleting section 5 and substituting -</p> <p style="text-align: center;">"5. Payment of annual fees</p> <p style="text-align: center;">(1) In the case of a deemed licence falling within section 2(1), (2) or (3) -</p> <p style="text-align: center;">(a) the Financial Secretary may, by notice in writing served on the licensee, specify the fee to be paid to the Government by the licensee -</p> <p style="text-align: center;">(i) for the year commencing on the relevant day; and</p> <p style="text-align: center;">(ii) not later than 30 days after the relevant day; and</p> <p style="text-align: center;">(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until the expiration of that year.</p> <p style="text-align: center;">(2) In the case of a deemed licence falling within section 2(4) -</p>

Clause

Amendment Proposed

(a) the licensee shall continue to comply with the provisions of the licence relating to a licence fee until -

(i) the expiration of the licence; or

(ii) the surrender of the licence for another licence,

whichever is the earlier; and

(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until the occurrence of the event mentioned in paragraph (a)(i) or (ii).

(3) In the case of a deemed licence falling within section 2(5) -

(a) the licensee shall continue to comply with the provisions of the licence relating to a licence fee until -

(i) the expiration of the licence; or

(ii) the surrender of the licence for another licence,

whichever is the earlier; and

ClauseAmendment Proposed

(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until -

(i) the occurrence of the event mentioned in paragraph (a)(i) or (ii); and

(ii) the licence held by the licensee does not specify a licence fee to be paid by the licensee to the Government.

(4) A notice under subsection (1)(a) served on a licensee shall be deemed to be a condition specified in the deemed licence held by the licensee requiring the licensee to pay to the Government the fee specified in the notice.

(5) Where -

(a) a licensee has before the relevant day paid an annual fee for a deemed licence falling within section 2(1), (2) or (3);

(b) the period for which that fee has been paid would, but for the commencement of section 43(1) of this Ordinance, expire on or after the relevant day; and

Clause

Amendment Proposed

- (c) the licensee has paid the fee required by subsection (1)(a),

then the Financial Secretary shall remit to the licensee so much of the annual fee referred to in paragraph (c) as is equivalent to so much of the fee referred to in paragraph (a) which, on a pro rata basis, relates to so much of the period referred to in paragraph (b) which would, but for the commencement of section 43(1) of this Ordinance, run on and after the relevant day."

- (d) In section 7, by deleting "and the licence within the meaning of that Ordinance held by the licensee falls within section 2(1), (2) or (3)".

- (e) In section 8 -

(i) by renumbering it as section 8(1);

(ii) by adding -

"(2) It is hereby declared that a royalty within the meaning of the repealed Ordinance payable by a licensee (or former licensee) within the meaning of that Ordinance is payable on a pro rata basis in respect of that portion of the licensee's (or former licensee's) accounting year which has effluxed before the relevant day, and subsection (1) shall apply accordingly."

ClauseAmendment Proposed

(f) By adding -

**"10. Certain Codes of Practice
applicable for interim
period for licensees
that are holders of
deemed licence**

Where -

- (a) a Code of Practice ("old Code") within the meaning of section 2 of the repealed Ordinance was in force immediately before the relevant day; and
- (b) a licensee who is the holder of a deemed licence was required to comply with the old Code immediately before the relevant day,

then -

- (i) the old Code shall, in relation to the licensee, be deemed to be a Code of Practice within the meaning of section 2 of this Ordinance until the date on which a Code of Practice approved under section 3 of this Ordinance, and expressed to be in substitution for the old Code, comes into effect; and

Clause

Amendment Proposed

(ii) subject to paragraph (iii), the licensee shall comply with the old Code until that date; and

(iii) the old Code shall be read and have effect with such modifications as are necessary to take into account the provisions of this Ordinance,

and the provisions of this Ordinance (including sections 22(2)(d), 23, 27(2)(d), 29(2)(d), 30(2)(b)(i)(D) and 31(4)(c)(i)(D) of this Ordinance) shall be construed accordingly."

Schedule 9 (a) By adding immediately before section 6 -

"5A. Schedule 1 amended

Schedule 1 to the Telecommunications Regulations (Cap. 106 sub. leg.) is amended -

(a) in Part I, in item 28, by repealing "Hotel Television Services Licence" and substituting "Hotel Television (Transmission) Licence";

(b) in Part II -

(i) by repealing
"HOTEL
TELEVISION
SERVICES
LICENCE" and

ClauseAmendment Proposed

substituting "HOTEL
 TELEVISION
 (TRANSMISSION)
 LICENCE";

- (ii) in the "HOTEL
 TELEVISION
 (TRANSMISSION)
 LICENCE", in
 paragraph 1, by
 repealing "hotel
 television services
 licence" and
 substituting "hotel
 television
 (transmission)
 licence".

(b) In section 6 -

(i) by deleting "to the Telecommunications
 Regulations (Cap. 106 sub. leg.)";

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

"(a) by repealing "HOTEL
 TELEVISION SERVICES
 LICENCE" and substituting
 "HOTEL TELEVISION
 (TRANSMISSION)
 LICENCE";";

(iii) in paragraph (b) -

(A) by adding "a service, licence or licensee
 under" after "form to";

Clause

Amendment Proposed

- (B) by adding "a service, licence or licensee under" after "reference to".
- (c) In section 14, in the proposed section 9(1)(d), by adding "including, without limitation, restrictions on the time of day when programmes and advertisements may be provided, whether for the same or different licensees or broadcasts" after "broadcasts".
- (d) By deleting section 19 and substituting -
- "19. Authority may impose financial penalties**
- Section 24 is amended -
- (a) in subsection (3) -
- (i) in paragraph (a), by repealing "\$20,000" and substituting "\$80,000";
- (ii) in paragraph (b), by repealing "\$50,000" and substituting "\$200,000";
- (iii) in paragraph (c), by repealing "\$100,000" and substituting "\$400,000";
- (b) by adding -

ClauseAmendment Proposed

"(3A) 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."

- (e) In section 20, in the proposed section 25A(1), by adding "(including within such period and within such time of day)" after "manner".