

22. General requirements as to television programme services

(1) A licensee shall be responsible at all times for ensuring that its licensed service does not include a subliminal message.

(2) Subject to subsection (3), a licensee shall---

- (a) comply with its licence conditions;
- (b) comply with any requirements under this Ordinance which are applicable to it;
- (c) comply with any directions, orders, or determinations, under this Ordinance which are applicable to it;
- (d) comply with all provisions in a Code of Practice which are applicable to it; and
- (e) without prejudice to the operation of any Code of Practice which relates to this section, to any regulations under section 41(1)(e) or to the Broadcasting Authority's functions under section 9 of the Broadcasting Authority Ordinance (Cap. 391), secure proper standards for its licensed service with regard to television programme content and technical performance.

(3) Subsection (2) shall not apply in the case of material supplied by the Government.

(4) For the avoidance of doubt, it is hereby declared that the fact that any material included or to be included in a licensee's licensed service is material exempted or approved for the purposes of exhibition or publication under the Film Censorship Ordinance (Cap. 392) does not by itself relieve the licensee of any obligation under this Ordinance.

(5) In this section---

"standards" (標準), in relation to television programme content, includes restrictions on the time of day when content of a particular class may be provided; "subliminal message" (潛送訊息) means the transmission of material the duration of which is so brief that it does not enable a person to obtain a conscious picture of the material.

PART VI

Enforcement of Licences

23. Directions of Broadcasting Authority and Telecommunications Authority

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

(2) The Telecommunications Authority may issue directions in writing to a

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

24. Investigation of licensee's business

(1) Where the Broadcasting Authority is satisfied that it is necessary for the proper performance of its functions under this Ordinance, the Broadcasting Authority Ordinance (Cap. 391) or any other Ordinance, it may authorize in writing any person to do all or any of the following at such times as are specified by it in the authorization---

(a) require a licensee or a person whom such authorized person reasonably believes to be employed or engaged in connection with the relevant business of a person to whom this section applies to produce for examination any data, book, document or record which relates to such business and which is in the possession or under the control of the licensee or person, as the case may be;

(b) examine and, if he thinks fit, to take copies of any data, book, document or record produced under paragraph (a) or any entry therein;

(c) remove the data, book, document or record referred to in paragraph (a) or the copies referred to in paragraph (b) for examination by him and the Broadcasting Authority; and

(d) require a licensee or a person whom such authorized person reasonably believes to be employed or engaged in connection with the relevant business of a person to which this section applies to give the authorized person and the Broadcasting Authority any explanation or further particulars as specified by the authorized person in respect of any data, book, document or record produced under paragraph (a).

(2) Where any information or matter relevant to an investigation under this section is recorded otherwise than in a readily legible or comprehensible form, the powers conferred by subsection (1) to require the production of any data, book, document or record shall include power to require the production or reproduction of the data, book, document or record of a relevant part of it in a readily legible and comprehensible form.

(3) A magistrate may, if satisfied by information on oath laid by the chairman or vice chairman of the Broadcasting Authority or by the principal executive officer within the meaning of the Broadcasting Authority Ordinance (Cap. 391)---

(a) that it is necessary for the proper performance of the functions of the Broadcasting Authority that entry be obtained to any premises which the chairman, vice chairman or principal executive officer has reasonable grounds for believing is used or occupied by a person to whom this section applies for the purposes of keeping,

storing or using any data, book, document or record which relates to the relevant business of the person to whom this section applies; and

(b) that permission to enter such premises has been refused or that entry is likely to be refused,

issue a warrant authorizing a person authorized under subsection (1) to enter such premises, and such person---

(i) may exercise therein the powers specified in subsection (1); and

(ii) copy, seize, remove and detain any data, book, document or record therein or any copy thereof which the authorized person has reasonable grounds for believing will afford evidence likely to assist the Broadcasting Authority in the proper performance of its functions under this Ordinance.

(4) A person who is an employee, director, principal officer or agent of a person to whom this section applies shall assist and shall not obstruct a person exercising a power under this section.

(5) Any data, book, document or record removed under this section may be retained for any period not exceeding 6 months beginning on the day of its removal or, where the data, book, document or record is required in connection with any criminal proceedings, for such longer period as may be necessary for the purposes of those proceedings.

(6) Where a person removes any data, book, document or record under this section, he shall, as soon as is practicable, give a receipt for it, and he shall permit any person who would be entitled to inspect it but for its removal to inspect the same at any reasonable time and to make copies of and take extracts from it; but any such permission shall be subject to such reasonable conditions as to security or otherwise as the Broadcasting Authority may impose.

(7) Every person exercising any power under subsection (1) or (3) shall be furnished with a copy of his authorization and shall, upon request, produce for inspection, evidence of his identity and of his authorization.

(8) The powers conferred by subsections (1)(a) or (b) and (3) include a power---

(a) to require the person mentioned in subsection (1)(a) to extract or retrieve, or cause to be extracted or retrieved, in a visual or printed or other written form or on a computer disc, or in both, any information referred to in subsection (10) and specified by the person exercising the power, and if when extracted or retrieved the information is in a printed or other written form, to require the person so described to deliver it to the person exercising the power;

(b) to extract or retrieve himself, in either of or both such forms, by means of the equipment normally used for that purpose, any information so referred to; and

(c) to examine any information so extracted or retrieved and if thought fit to remove

it.

(9) This section applies to a person who is a licensee or its associate.

(10) In this section---

"data, book, document or record" (數據、簿冊、文件或紀錄) includes any information which---

(a) relates to a relevant business; and

(b) is recorded in a form in which it can be extracted or retrieved by equipment operating automatically in response to instructions given for that purpose.

"relevant business" (有關業務) means business directly connected or associated with the provision of a television programme service.

25. Broadcasting Authority may obtain information

(1) If a magistrate is satisfied by information on oath 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 a contravention of a provision of this Ordinance, he may issue an order that the person shall, within the time specified in the order, give the information or document to the Broadcasting Authority in writing or to produce the document to the Broadcasting Authority, as the case may be.

(2) A person commits an offence if he---

(a) fails to comply with an order issued under subsection (1); or

(b) in purported compliance with the order issued under subsection (1), 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.

26. Confidential matter to be safeguarded

(1) Subject to subsection (2)---

(a) any information which is furnished, and any data, book, document or record which is produced, by a person in confidence to the Broadcasting Authority or any person authorized by it or any committee appointed by it or by that committee, the Telecommunications Authority or any person authorized by him, shall be treated as confidential; and

(b) unless the person otherwise permits in writing and except in accordance with such permission, no such information, data, book, document or record or any copy thereof shall be divulged or shown to any person other than in confidence to members of the Broadcasting Authority or any committee appointed thereby, or to a public officer acting in the performance of his duties or for the purposes of this Ordinance or the Broadcasting Authority Ordinance (Cap. 391).

(2) Subsection (1) shall not be construed as prohibiting the disclosure of information---

- (a) with a view to the institution of or otherwise for the purposes of any criminal proceedings or any investigation in connection therewith, whether under this Ordinance or otherwise, in Hong Kong;
- (b) in connection with civil proceedings to which the Broadcasting Authority is a party;
- (c) which facilitates the Broadcasting Authority or the Telecommunications Authority investigating or determining a complaint that a licensee is engaging in conduct that contravenes a provision of a prescribed Ordinance; or
- (d) subject to subsection (3), which the Broadcasting Authority considers it is in the public interest to disclose.

(3) The Broadcasting Authority shall give a person a reasonable opportunity to make representations on a proposed disclosure of information under subsection (2)(c) or (d) before the Broadcasting Authority makes a final decision to disclose the information if the Broadcasting Authority considers that the disclosure---

- (a) would result in the release of information concerning the business, commercial or financial affairs of the person supplying the information; and
- (b) could reasonably be expected to affect adversely the person's lawful business, commercial or financial affairs.

(4) A person may permit, subject to such conditions as the person may specify, the Broadcasting Authority, the Telecommunications Authority or any person authorized by the Broadcasting Authority or the Telecommunications Authority---

- (a) to divulge specified information which the person has given thereto; or
- (b) to show any specified document or any copy thereof which the person has produced thereto,

to any person or to any specified person.

(5) In this section, "data, book, document or record" (數據、簿冊、文件或紀錄) means the same as it does in section 24(10).

27. Licensee to pay financial penalty

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

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

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

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

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

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

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

28. Recovery of financial penalty

(1) A financial penalty required to be paid under section 27(1) may be recovered by the Broadcasting Authority as a civil debt.

(2) Where, on an appeal under section 33, the Chief Executive in Council---

(a) remits a financial penalty, subsection (1) shall not apply; or

(b) reduces the amount of a financial penalty, subsection (1) shall apply in respect of the reduced financial penalty.

(3) A certificate in writing purporting to have been made by the Broadcasting Authority to the effect that a financial penalty is due and payable to the Broadcasting Authority shall be prima facie evidence of that fact.

(4) A licensee shall pay to the Director of Accounting Services the financial penalty imposed by a notice under section 27(1) served on it not later than 30 days after the date on which the notice is served.

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

(1) Subject to subsection (3), the Broadcasting Authority may, in a case falling within subsection (2), by notice in writing served on a licensee, direct the licensee to include in its licensed service a correction or apology, or both, in a form approved by the Broadcasting Authority, in such manner as is specified in the notice.

(2) The Broadcasting Authority may issue a direction under subsection (1) if it is satisfied that the licensee contravened---

(a) a licence condition;

(b) a requirement under this Ordinance which is applicable to it;

(c) a direction, order, or determination, under this Ordinance which is applicable to it; or

(d) a provision of a Code of Practice which is applicable to it.

(3) The Broadcasting Authority shall not issue a direction under subsection (1) unless the licensee has been given a reasonable opportunity to make representations to the Broadcasting Authority regarding the matter complained of.

(4) Where a licensee carries out a direction under this section, it may announce that it is doing so pursuant to the direction.

30. Suspension of licence

(1) Subject to the provisions of this section, the Broadcasting Authority may, by notice in writing served on a licensee, suspend its licence for a period of not more than 30 days as is specified in the notice.

(2) A licence shall only be suspended under subsection (1)---

(a) for failure by the licensee to pay---

(i) any licence fee, or any other fee or charge owing by the licensee under this Ordinance, within 30 days beginning on the date the payment is due; or

(ii) any financial penalty when it is due for payment under section 28(4);
or

(b) if, as may be applicable in the particular case, having regard to all the circumstances, including the number of occasions and the gravity in respect of which, after the issue of the licence---

(i) the licensee has contravened---

(A) a licence condition;

(B) a requirement under this Ordinance which is applicable to it;

(C) a direction, order, or determination, under this Ordinance which is applicable to it; or

(D) a provision of a Code of Practice which is applicable to it;

(ii) another person has contravened a condition, requirement, direction, order, determination or provision mentioned in subparagraph (i) and such contravention has taken place with the consent or connivance of, or has been facilitated by a neglect of, the licensee.

(3) The Broadcasting Authority shall, before making a decision whether or not to suspend a licence under subsection (1)---

(a) serve on the licensee a notice in writing stating that---

(i) the Broadcasting Authority has under consideration the suspension of the licence and the grounds upon which and any other reason why such suspension is being considered; and

(ii) representations as regards the proposed suspension may be made to the Broadcasting Authority during the period specified in the notice (being a period of not less than 28 days beginning on the date of service of the notice); and

(b) consider any representations made to it in relation to the proposed suspension.

(4) The suspension of a licence under subsection (1) shall not come into force---
(a) subject to paragraph (b), until the expiration of the period during which an appeal under section 33 against the suspension may be made; or

(b) if an appeal under section 33 against the suspension is made, until the appeal is withdrawn, abandoned or determined.

31. Revocation of licence

(1) Where the Broadcasting Authority considers that there may be cause for the Chief Executive in Council or it, as the case may require, to revoke a licence under subsection (4), it shall conduct an inquiry in accordance with section 32 and, if the licence was granted by the Chief Executive in Council, submit recommendations to the Chief Executive in Council concerning the revocation.

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

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

(a) may, notwithstanding section 26, divulge any data, book, document or record it has received in the course of the public hearing to any person it considers appropriate on terms of confidentiality or otherwise or treat the same as confidential; and
(b) shall publish in such manner as it considers fit a report of the public hearing and, if the licence was granted by the Chief Executive in Council, together with its recommendations to the Chief Executive in Council.

(4) The Chief Executive in Council, after considering the recommendations of the Broadcasting Authority and such other information, matter and advice as he thinks fit, or the Broadcasting Authority, as the case may require, after complying with section 32 and considering such other information, matter and advice as it thinks fit, 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 30 days beginning on the date the payment is due; or

(ii) any financial penalty when it is due for payment under section 28(4);
or

(b) if the licensee---

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

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

(c) if, as may be applicable in the particular case, having regard to all the

circumstances, including the number of occasions and the gravity in respect of which, after the issue of the licence---

(i) the licensee has contravened---

(A) a licence condition;

(B) a requirement under this Ordinance which is applicable to it;

(C) a direction, order, or determination, under this Ordinance which is applicable to it; or

(D) a provision of a Code of Practice which is applicable to it;

(ii) another person has contravened a condition, requirement, direction, order, determination or provision mentioned in subparagraph (i) and such contravention has taken place with the consent or connivance of, or has been facilitated by a neglect of, the licensee.

(5) The revocation by the Chief Executive in Council under subsection (4) of a licence shall take effect on the date the notice of the revocation is served on the licensee or on such later date as is specified in the notice.

(6) The revocation by the Broadcasting Authority under subsection (4) of a licence shall not take effect---

(a) subject to paragraph (b), until the expiration of the period during which an appeal under section 33 against the revocation may be made; or

(b) if an appeal under section 33 against the revocation is made, until the appeal is withdrawn, abandoned or determined.

32. Inquiry by Broadcasting Authority

(1) Where the Broadcasting Authority conducts an inquiry under section 31(1), it may consider information and matter received from any source.

(2) The following provisions shall apply in relation to an inquiry under section 31(1)---

(a) the Broadcasting Authority shall serve on the licensee a notice in writing stating---

(i) that the revocation of its licence is under consideration;

(ii) the grounds upon which and any other reason why the revocation of its licence is being considered; and

(iii) that representations as regards the proposed revocation may be made to the Broadcasting Authority during such period as shall be specified in the notice (being a period of not less than 28 days beginning on the date of service of the notice);

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

(3) The Broadcasting Authority shall consider any representations submitted by

the licensee and such further information and matter as it may consider necessary by reason of such representations.

33. Appeal to Chief Executive in Council

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

(a) a decision of---

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

(ii) the Telecommunications Authority in the exercise of a discretion conferred on him under this Ordinance;

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

(c) anything contained in a Code of Practice,

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

(2) Subject to sections 30(4) and 31(6), pending the determination of an appeal under subsection (1), the licensee shall comply with the matter mentioned in that subsection being appealed against.

34. Determination of appeal

(1) In determining an appeal under section 33, the Chief Executive in Council---

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

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

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

PART VII

Prohibition and Proscription by Court

35. Court may prohibit certain television programmes, etc.

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

(a) incite hatred against any group of persons, being a group defined by reference to colour, race, sex, religion, nationality or ethnic or national origins;

- (b) result in a general breakdown in law and order; or
- (c) gravely damage public health or morals.

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

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

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

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

(6) Any material produced under subsection (5) shall not be admissible in any criminal proceedings against the licensee, or person, producing it.

(7) Subject to subsection (8), rules of court may provide for---

- (a) the discharge and variation of orders under this section;
- (b) proceedings relating to such orders; and
- (c) costs.

(8) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) shall include the power to make rules of court for the purposes of this section.

(9) The jurisdiction of the Court of First Instance under this section shall not be exercised by the Registrar of the High Court or a Master of that Court.

PART VIII

Miscellaneous

36. Contests

Notwithstanding the provisions of the Gambling Ordinance (Cap. 148), contests which comply with the standards set out in a Code of Practice applicable to contests may be organized in connection with television programmes included in a licensed

service and may form part of those programmes.

37. Inspection and testing of technical equipment

(1) The Telecommunications Authority or any person authorized in writing by him in that behalf may, at any reasonable time, inspect and test any equipment or part thereof used, or intended to be used, by a licensee for the provision of any television programme service for the purpose of ascertaining whether or not the licensee is complying with such technical standards as the Telecommunications Authority considers necessary in order for the licensee to comply with any requirement under a prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it.

(2) The directors, principal officers and other employees of a licensee shall, for the purpose of any inspection or test under subsection (1)---

(a) make available on request to the Telecommunications Authority or any person authorized by him for the purpose of the inspection or test and permit to be inspected and tested any equipment or part thereof used, or intended to be used, for the provision of any television programme service;

(b) if so required by the Telecommunications Authority or such authorized person, give any explanation or particulars which the Telecommunications Authority or person considers necessary for the purposes of exercising his powers under this section; and

(c) assist the Telecommunications Authority or such authorized person in carrying out the inspection or test in any manner specified by the Telecommunications Authority or such person.

(3) Nothing in subsection (2) shall oblige any person to answer any question which incriminates or might incriminate him or which relates to matters not within his knowledge or to give information which cannot reasonably be expected to be in his possession or under his control.

38. Licensee to submit returns

(1) A licensee shall submit to the Broadcasting Authority on or before the 1st of April of each year a return in the specified form showing the names and places of residence of the directors and principal officers of the licensee and indicating whether or not those directors and principal officers are for the time being ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than 7 years.

(2) A domestic free television programme service licensee or domestic pay television programme service licensee shall submit, at the same time as the return submitted under subsection (1), a statutory declaration made by the company secretary of, or a director of, the licensee showing whether or not any disqualified person

has exercised any control in the licensee during the year immediately preceding the year to which the return relates.

(3) Without prejudice to the operation of subsection (1), where there is any change of directors or principal officers in a licensee, the licensee shall submit to the Broadcasting Authority a return in the specified form showing particulars of the change, within 7 days beginning on the date the change takes place.

(4) A licensee shall submit to the Broadcasting Authority, within a reasonable time after being required to do so, such other information as the Broadcasting Authority considers necessary for the purpose of performing its functions under this Ordinance.

39. Service of documents

(1) A document (howsoever described) required to be served under this Ordinance may be served by prepaying (where requisite), registering and posting an envelope addressed to the person on or to whom the document is to be served at his usual or last known place of abode or business and containing the document; and, unless there is evidence to the contrary, the document shall be deemed to have been served and received at the time at which such envelope would have been delivered in the ordinary course of post.

(2) For the purposes of this section, a company shall be deemed to have its usual place of business at its registered office, and any other body corporate shall be deemed to have a usual place of business at its principal office or any other place at which it carries on business.

40. Power of Broadcasting Authority to specify forms

(1) Subject to subsection (2), the Broadcasting Authority may specify the form of any document (howsoever described) required under this Ordinance to be in the specified form and the form of such other documents (howsoever described) required for the purposes of this Ordinance as it thinks fit.

(2) The Broadcasting Authority's power under subsection (1) shall be subject to any express requirement under this Ordinance for a form, whether specified or otherwise, to comply with that requirement, but that requirement shall not restrict the exercise of that power in respect of that form to the extent that, in the opinion of the Broadcasting Authority, its exercise of that power in respect of that form does not contravene that requirement.

(3) The Broadcasting Authority's power under subsection (1) may be exercised in such a way as to---

(a) include in the specified form of any document referred to in that subsection a statutory declaration---

(i) to be made by the person completing the form; and

(ii) as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief;

(b) specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the Broadcasting Authority thinks fit.

(4) A form specified under this section shall be---

(a) completed in accordance with such directions and instructions as are specified in the form;

(b) accompanied by such documents as are specified in the form; and

(c) if the completed form is required to be provided to---

(i) the Broadcasting Authority;

(ii) another person on behalf of the Broadcasting Authority; or

(iii) any other person,

so provided in the manner, if any, specified in the form.

41. Regulations

(1) The Chief Executive in Council may by regulation---

(a) in relation to a licence, specify requirements with respect to the control, whether direct or indirect, to be exercised over the provision of television programme services, the board of directors, or property used or kept by the licensee in connection with its licensed service by any other person;

(b) empower the Broadcasting Authority to waive or dispense with the requirements mentioned in paragraph (a) generally or in a particular case;

(c) in relation to a domestic free television programme service licence or domestic pay television programme service licence, specify requirements with respect to the beneficial ownership or control, whether direct or indirect, of any of the voting shares in the licensee;

(d) for the purposes of securing compliance with Parts 3 and 4 of Schedule 1 by a domestic free television programme service licensee, make provision for---

(i) matters relating to voting controllers under that Schedule; and

(ii) the holding, acquisition or disposal of rights, titles and interests to or in voting shares in a licensee;

(e) specify television programme and advertising standards, including, without limitation, restrictions on the time of day when television programme and advertisements may be provided, and may do so for different licensees and different broadcasting services;

(f) prescribe anything that may be prescribed under this Ordinance;

(g) provide for any matter incidental or ancillary to or necessary to give effect to any matter referred to in paragraph (a), (b), (c), (d), (e) or (f).

(2) Regulations under subsection (1)(a) or (b) shall be subject to the approval of the Legislative Council.

(3) Subject to subsection (4), any regulation under this section may provide that a contravention of a specified provision of any regulation under any provision of this section shall be an offence punishable---

(a) on summary conviction to a fine at level 5 and to imprisonment for 6 months; and
(b) on conviction on indictment to a fine at level 6 and to imprisonment for 12 months.

(4) Regulations under subsection (1)(d) may provide that a contravention of a specified provision made thereunder shall be an offence punishable with a fine not exceeding \$1,000,000 and a term of imprisonment not exceeding 2 years.

42. Amendment of Schedules 1 to 8, etc.

(1) The Chief Executive in Council may, by notice in the Gazette, amend any of Schedules 1 to 8 and amendments to Schedule 1 shall be subject to the approval of the Legislative Council.

(2) Any provision in Schedule 4, 5, 6 or 7 relating to any matter as regards an applicant for a licence, licensee or a licensed service shall be in addition to and not in substitution of any other provision in this Ordinance relating to that matter.

43. Repeal, transitional and savings provisions and consequential amendments

(1) The Television Ordinance (Cap. 52) is repealed.

(2) Schedule 8 sets out the transitional and savings provisions applicable upon subsection (1) coming into operation.

(3) The enactments specified in Schedule 9 are amended as set out in that Schedule.

SCHEDULE 1 [ss. 2, 8, 41 & 42

& Schs. 4 & 8]

Disqualification for Holding Licences and Restriction on Voting Control of Voting Controllers

PART 1

Interpretation and Application

1. Interpretation

(1) In this Schedule, unless the context otherwise requires---

"advertising agency" (廣告宣傳代理商) means a person who---

(a) carries on business as an advertising agent; or

(b) exercises control of a person who carries on business as an advertising agent;

"associate" (相聯者), in relation to a voting controller holding voting control (whether the controller is qualified or unqualified), means---

(a) where the voting controller holding the voting control is an individual---

(i) a relative of the voting controller;

- (ii) a partner of the voting controller or a relative of the partner;
 - (iii) a partnership in which the voting controller is a partner;
 - (iv) a corporation influenced by---
 - (A) the voting controller;
 - (B) a partner of the voting controller; or
 - (C) a partnership in which the voting controller is a partner; or
 - (v) a director or principal officer of a corporation mentioned in paragraph (iv);
 - (b) where the voting controller holding the voting control is a corporation---
 - (i) an associated corporation;
 - (ii) a voting controller who---
 - (A) influences the corporation and, if the voting controller is an individual, a relative of the voting controller; or
 - (B) is a partner of the voting controller to whom or which sub-subparagraph (A) applies, and if the partner is an individual, a relative of the partner;
 - (iii) a director or principal officer of the corporation or of an associated corporation and a relative of the director or officer;
 - (iv) a partner of the corporation and, if the partner is an individual, a relative of the partner; or
 - (c) where the voting controller holding the voting control is a partnership---
 - (i) a member of the partnership and, if the partner is an individual, a relative of the member;
 - (ii) a partner of the partnership and, where the partner---
 - (A) is an individual, a relative of the partner; or
 - (B) is itself a partnership, a relative of a member of the partnership who is an individual;
 - (iii) a corporation influenced by---
 - (A) the partnership;
 - (B) a partner of it; or
 - (C) where the partner is an individual, a relative of the partner;
 - (iv) a corporation of which a partner of the partnership is a director or principal officer;
 - (v) a director or principal officer of a corporation mentioned in subparagraph (iii);
- "associated corporation" (相聯法團), in relation to a voting controller holding voting control (whether qualified or unqualified), means---
- (a) a corporation over which the voting controller has influence;
 - (b) a corporation which has influence over the voting controller being itself a corporation ("the second corporation");

(c) a corporation which is under the influence of the second corporation;

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

"influence" (影響、影響力), in relation to a corporation, means the power of a voting controller to ensure---

(a) by means of the holding of shares or possession of voting power in or in relation to that or any other corporation; or

(b) by virtue of any powers conferred by the memorandum or articles of association regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of the voting controller;

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

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

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

"principal officer" (主要人員), in relation to a corporation, means---

(a) a person employed or engaged by the corporation who, by himself or with 1 or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or

(b) a person so employed or engaged who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, performs managerial functions in respect of the corporation;

"qualified voting controller" (一般表決控權人) means---

(a) a voting controller who---

(i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) of this Ordinance and has been so resident for at least one continuous period of not less than 7 years;

(ii) in the case of a corporation, is ordinarily resident in Hong Kong; or
(b) a voting controller who is---

(i) the trustee or manager of any unit trust or mutual fund corporation authorized under section 15 of the Securities Ordinance (Cap. 333);

(ii) the trustee of a charitable scheme made by order of a court of competent jurisdiction;

(iii) a judicial officer in whom the estate of a deceased is vested between the time of death and the grant of letters of administration;

(iv) the Registrar of the High Court; or

(v) such other person as may be prescribed;

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

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

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

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

(a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;

(b) by an entitlement to exercise such a right to vote;

(c) under a duty or obligation;

(d) through a nominee;

(e) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights; or

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

"voting controller" (表決控權人) means a person who either alone or with 1 or more other persons holds voting control.

(2) Where---

(a) 2 or more voting controllers together are voting controllers in relation to the same voting share; and

(b) 1 or more of them is a disqualified person, then, for the purposes of this Schedule, each of the voting controllers referred to in paragraph (a) shall, in relation to the voting share mentioned in that paragraph, be regarded as a disqualified person.

(3) When 2 or more voting controllers together are voting controllers in relation to the same voting share and 1 or more than 1 of those voting controllers is an unqualified voting controller, then for the purposes of this Schedule, each of those voting controllers shall, in relation to that voting share, be regarded as an

unqualified voting controller.

(4) For the purposes of this Schedule, the fact that the particular voting share or shares in relation to which a person is a voting controller cannot be identified is immaterial.

(5) For the purposes of this Schedule, any reference to exercise of control-

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(a) in relation to a corporation, shall be construed in accordance with subsection (6);

(b) in relation to a body other than a corporation, means the power of a person to ensure, by virtue of the rules regulating that or any other body, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person.

(6) For the purposes of subsection (5)(a), a person exercises control of a corporation if---

(a) he is a director or principal officer of the corporation;

(b) he is the beneficial owner of more than 15% of the voting shares in the corporation;

(c) he is a voting controller of more than 15% of the voting shares in the corporation; or

(d) he otherwise has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that corporation or any other corporation, to ensure that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person,

and any reference in this Schedule to exercising control of a licensee shall be construed accordingly.

(7) Any reference in this Schedule to a person---

(a) holding or being beneficially entitled to shares in a corporation; or

(b) being a voting controller of any voting shares in a corporation,

shall be construed as a reference to his being so entitled, whether by himself or jointly with other persons, and whether directly or through 1 or more nominees.

(8) For the purposes of this Schedule, 2 corporations are members of the same group if---

(a) 1 of them is a corporation of which the other is a subsidiary; or

(b) both are subsidiaries of another corporation.

(9) In subsection (8), "subsidiary" (附屬公司), in relation to a corporation, has the same meaning which a subsidiary has in relation to a company under section 2(4) and (6) of the Companies Ordinance (Cap. 32).