

2. Application

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

PART 2

Disqualification for Holding Licences and Restrictions on Voting Control

3. Disqualified person not to hold licence or exercise control

(1) A disqualified person shall not become the holder of a licence or exercise control of a licensee unless the disqualification was disclosed in the application for the licence.

(2) Unless the Chief Executive in Council, on application in the specified form by a licensee, is satisfied that the public interest so requires and approves otherwise---

(a) a person shall not become or remain the holder of a licence if he is a disqualified person; and

(b) a person shall not exercise control of a licensee if he is a disqualified person.

4. Disqualification of licensees

(1) Subject to subsection (2), any one of the following shall be a disqualified person in relation to a licence---

(a) a licensee in the same category of licence;

(b) a licensee in a different category of licence, including a non-domestic television programme service licence and an other television programme service licence (except that a non-domestic television programme service licensee is not a disqualified person in relation to a domestic pay television programme service licence);

(c) a person who exercises control in the licensee mentioned in paragraph (a) or (b);

(d) an associate of a person who is a disqualified person by virtue of paragraph (a), (b) or (c).

(2) A licensee mentioned in subsection (1)(a) or (b) shall not be disqualified from holding a licence by reason only of the fact that it has, under Part 4, obtained the prior approval in writing of the Chief Executive in Council to hold or acquire an interest in a company which is a disqualified person.

(3) A person shall not be a disqualified person in relation to a company which is a licensee by reason only of the fact that he is a director or a principal officer of, or holds or controls more than 15% of the voting shares in, that company.

5. Disqualification of sound broadcasting licensees

The following are disqualified persons in relation to a licence---

- (a) a sound broadcasting licensee under Part IIIA of the Telecommunications Ordinance (Cap. 106);
- (b) a person who exercises control over a licensee mentioned in paragraph (a); or
- (c) an associate of---
 - (i) a licensee mentioned in paragraph (a); or
 - (ii) a person mentioned in paragraph (b).

6. Disqualification of advertising agencies

The following are disqualified persons in relation to a licence---

- (a) an advertising agency;
- (b) a person who exercises control over an advertising agency; or
- (c) an associate of---
 - (i) an advertising agency; or
 - (ii) a person mentioned in paragraph (b).

7. Disqualification of local newspapers

The following are disqualified persons in relation to a licence---

- (a) the proprietor of a local newspaper within the meaning of the Registration of Local Newspapers Ordinance (Cap. 268);
- (b) a person who exercises control over a proprietor mentioned in paragraph (a); or
- (c) an associate of---
 - (i) a proprietor mentioned in paragraph (a); or
 - (ii) a person mentioned in paragraph (b).

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

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

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

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

- (a) where the directions are given for the purpose of subsection (1)(a), those directions;
- (b) where the directions are given for the purpose of subsection (1)(b), those directions and the restriction required to be complied with; and

(c) the period within which the directions are required to be complied with.

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

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

9. Licensee's power to investigate a disqualified person

(1) Where a licensee knows or has reasonable cause to believe a person---

(a) to be a voting controller of voting shares of the licensee;

(b) to have been such a controller at any time during the relevant period; or

(c) to have assisted in or been a party to any transaction involving, in respect of any such voting share, a change of voting controller,

then the licensee may, by notice in writing served on the person, require the person---

(i) to confirm or refute that fact; and

(ii) if he confirms it, to give such further particulars as may be required under subsection (2).

(2) A notice under subsection (1) may require the person on whom it is served---

(a) to give particulars as to his status as a disqualified person or otherwise at any time during the relevant period;

(b) to give particulars which are within his knowledge or belief relating to the address and identity of any person who is a party to any holding or acquisition mentioned in section 8(1);

(c) where he has at any time during the relevant period been a voting controller, but at the time the notice is given has ceased to be so, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller immediately upon his ceasing to be a voting controller; and

(d) where he has at any time during the relevant period assisted in or been a party to any transaction involving, in respect of any voting share, a change of voting controller, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller upon the change.

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

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

Broadcasting Authority notice in writing of the particulars.

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

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

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

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

(a) to be a voting controller of voting shares of the licensee;

(b) to have been such a controller at any time during the relevant period; or

(c) to have assisted in or been a party to any transaction involving, in respect of any such voting shares, a change of voting controller,

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

(i) to confirm or refute that fact; and

(ii) if he confirms it, to give such further particulars as may be required under subsection (3).

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

(a) to give particulars as to his status as a disqualified person or otherwise at any time during the relevant period;

(b) to give particulars which are within his knowledge or belief relating to the address and identity of any person who is a party to any holding or acquisition mentioned in section 8(1);

(c) where he has at any time during the relevant period been a voting controller, but at the time the notice is served has ceased to be so, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller immediately upon his ceasing to be a voting controller; and

(d) where he has at any time during the relevant period assisted in or been a party to any transaction involving, in respect of any voting share, a change of voting controller, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller upon the change.

(4) A notice under subsection (2) shall specify a period within which the

requirements of the notice are to be complied with.

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

(a) the licensee shall comply with it; and

(b) the following shall apply---

(i) the licensee shall, not later than 15 days after the investigation is concluded, give in writing to the Broadcasting Authority any information and particulars received by the licensee as a result of the investigation;

(ii) without prejudice to subparagraph (i), where the investigation is not concluded within 3 months beginning on the date the relevant notice under this subsection was served on the licensee, the licensee shall, not later than 15 days beginning on---

(A) the expiry of that 3 months period; and

(B) the expiry of every successive period of 3 months before the conclusion of the investigation,

give to the Broadcasting Authority an interim report relating to the information and particulars received by it during the period referred to in sub-subparagraph (A) or (B), as the case may be;

(iii) an investigation shall be regarded as concluded when the licensee has made all the inquiries necessary or expedient for the purpose of the investigation and any such inquiry shall be regarded as concluded when a response has been received by the licensee or the time given by it for a response has expired.

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

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

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

(a) the date of the notice;

(b) the name of any person on whom it is served; and

(c) the particulars received by the licensee in response to the notice.

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

12. Power of Broadcasting Authority to impose restrictions

(1) If---

(a) a disqualified person is convicted of an offence under section 17(2) or (3); or
(b) a person is convicted of an offence under section 17(1), (4), (5) or (6),
and it appears to the Broadcasting Authority that the offence was committed in
relation to any voting share of a licensee, then the Broadcasting Authority may, by
notice in writing, direct that the share, which shall be specified in the notice,
shall be subject to such of the restrictions mentioned in subsection (3) as are
specified in the notice until the Broadcasting Authority makes a further notice under
this subsection in respect of the share.

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

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

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

(b) no voting right can be exercised in respect of the voting share;

(c) no further voting share shall be issued in right of the voting share or under
any offer made to the holder of it; and

(d) except in a liquidation, no payment shall be made of any amount due from the
licensee on the voting share, whether in respect of capital or otherwise.

(4) Where a voting share is subject to a restriction mentioned in subsection
(3)(a), an agreement to transfer---

(a) the voting share; or

(b) in the case of a voting share which has not been issued, the right to be issued
with it,
is void.

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

13. Relaxation and removal of restrictions under section 12

(1) Where a voting share of a licensee is the subject of a notice under section

12(1) or (2), the licensee or any person aggrieved by the notice may apply to the Court of First Instance for an order directing that the share---

(a) shall cease to be subject to the restrictions specified in the notice; or

(b) be sold, subject to the Court of First Instance's approval for the sale.

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

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

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

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

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

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

15. Privilege relating to non-disclosure and confidentiality

(1) A person is not obliged to comply with the requirements of a notice under section 9 if he is for the time being exempted by the Financial Secretary by notice in the Gazette from the operation of section 18 of the Securities (Disclosure of Interests) Ordinance (Cap. 396).

(2) Where a corporation is required to give information under section 9 or 10, the corporation may take advantage of the benefit conferred by section 128(3) or 129(3)

of the Companies Ordinance (Cap. 32), but where as a consequence of taking such advantage, any information is not given by the corporation, the fact of such omission shall be disclosed by the corporation.

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

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

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

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

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

(b) by the licensee---

(i) to the Broadcasting Authority;

(ii) to the Secretary for Information Technology and Broadcasting; or

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

(c) by the Broadcasting Authority---

(i) to the Secretary for Information Technology and Broadcasting; or

(ii) in connection with civil proceedings to which the Broadcasting Authority is a party.

16. Directions of Broadcasting Authority

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

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

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

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

of a person to whom the document is distributed;

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

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

17. Offences

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

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

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

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

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

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

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

18. Prosecution of offences and limitation on institution of proceedings

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

(2) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), any information or complaint relating to an offence under this Part may be tried if it

is laid or made, as the case may be, at any time within 3 years beginning on the date of the commission of the offence or within 12 months beginning on the first discovery of the offence by the prosecutor, whichever period expires first.

PART 3

Restrictions on Voting Control Held by Unqualified Voting Controllers

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

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

(a) no vote shall be cast on the poll, whether in person or by proxy, other than by or by proxy on behalf of any person who, at the time of the general meeting, is a registered shareholder of voting shares of the licensee in respect of which a document mentioned in section 22(1)(b) has, in accordance with any direction in that behalf issued by the Broadcasting Authority under section 30, been completed and returned to the licensee;

(b) where the total voting control exercised by unqualified voting controllers would otherwise exceed, in the aggregate, 49% of the total voting control exercised on the poll by both qualified and unqualified voting controllers, the votes cast on the poll by unqualified voting controllers shall, for the purpose of determining the question or matter, be reduced by multiplying those votes by the percentage determined by the formula specified in paragraph (c);

(c) the formula for the purposes of paragraph (b) is---

$$* * 100$$

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

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

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

(a) where the question or matter which is to be determined by a poll at any general meeting of the licensee is the creation of different classes of shares in the licensee; or

(b) where the share capital of the licensee is for the time being divided into different classes of shares, to the variation, including abrogation, of any special rights attaching to any such classes of shares.

(3) The Broadcasting Authority may at any time before, at or during a general meeting of a licensee, direct the licensee orally or by notice in writing to conduct

a poll upon any resolution and, where such a direction is given, the licensee shall comply with it.

20. 2% to 10% control limits by unqualified voting controller subject to approval of Broadcasting Authority

(1) An unqualified voting controller shall not, without the prior approval in writing of the Broadcasting Authority---

(a) hold;

(b) acquire; or

(c) exercise or cause or permit to be exercised,

2% or more but less than 6%, or 6% or more but not more than 10%, or more than 10%, in the aggregate, of the total voting control of a licensee.

(2) If an unqualified voting controller holds more than 10%, in the aggregate, of the total voting control of a licensee in contravention of subsection (1)(a), notwithstanding anything contained in the memorandum or articles of association of the licensee or any provision of the laws of Hong Kong apart from this section, he shall not exercise or cause or permit to be exercised, in relation to any question or matter arising at a general meeting of the licensee, voting rights exceeding, in the aggregate, 10% of the total voting control of the licensee.

(3) The Broadcasting Authority may, in respect of any unqualified voting controller who is in contravention of subsection (1), by notice in writing served on him, give such directions as appear to it to be required to effect a cesser of the contravention.

(4) A notice under subsection (3) shall specify---

(a) the directions given under subsection (3); and

(b) a period within which the directions are to be complied with.

(5) Nothing in this section shall be construed as restricting or otherwise affecting the power of a person to transfer a voting share.

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

(1) Where a person being---

(a) a qualified voting controller; or

(b) an unqualified voting controller,

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

to the Broadcasting Authority to be necessary to---

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

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

(a) where the directions are given for the purpose of subsection (1)(i), those directions;

(b) where the directions are given for the purpose of subsection (1)(ii), those directions and the restriction required to be complied with; and

(c) the period within which the directions are required to be complied with.

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

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

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

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

(a) give the Broadcasting Authority notice in writing of any general meeting and a copy of all the documents relevant to the general meeting sent by it to its registered shareholders;

(b) distribute to each person whose name appeared in the licensee's register immediately before the distribution, a document relating to the voting control attaching to the voting shares registered in that person's name, to be completed and returned to the licensee;

(c) on receiving a request in writing from a registered shareholder, in that behalf, by reference to the document mentioned in paragraph (b), notify in writing the registered shareholder of the number and identity of the voting shares of the licensee in respect of which that registered shareholder is a person described in section 19(1)(a);

(d) by reference to the document mentioned in paragraph (b), notify in writing the Broadcasting Authority of the total number of voting shares held by any person mentioned in section 19(1)(a) and controlled by unqualified voting controllers and by qualified voting controllers and the proportion, expressed as a percentage, that the former bears to the whole;

(e) notify in writing the Broadcasting Authority of the name, address, and such further particulars as the Broadcasting Authority may require of all unqualified voting controllers who, by reference to the document mentioned in paragraph (b), hold 2% or more of the total voting control of the licensee; and

(f) notify in writing the Broadcasting Authority as to the details of the conduct of any poll held at the general meeting, including particulars of any calculation of voting control under section 19(1)(b), and such further particulars as the Broadcasting Authority may require.

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

23. Licensee's power to investigate voting controllers

(1) Where a licensee knows or has reasonable cause to believe a person---

(a) to be a voting controller of voting shares of the licensee;

(b) to have been such a controller at any time during the relevant period; or

(c) to have assisted in or been a party to any transaction involving, in respect of any such voting shares, a change of voting controller,

then the licensee may, by notice in writing served on the person, require the person---

(i) to confirm or refute that fact; and

(ii) if he confirms it, to give such further particulars as may be required under subsection (2).

(2) A notice under subsection (1) may require the person on whom it is served---

(a) to give particulars as to his status as an unqualified voting controller or otherwise at any time during the relevant period;

(b) to give particulars which are within his knowledge or belief relating to the address and identity of any person who is a party to any holding or acquisition mentioned in section 21(1);

(c) where he has at any time during the relevant period been a voting controller, but at the time the notice is served has ceased to be so, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller immediately upon his ceasing to be a voting controller; and

(d) where he has at any time during the relevant period assisted in or been a party to any transaction involving, in respect of any voting share, a change of voting controller, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller upon the

change.

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

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

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

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

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

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

(a) to be a voting controller of voting shares of the licensee;

(b) to have been such a controller at any time during the relevant period; or

(c) to have assisted in or been a party to any transaction involving, in respect of any such voting shares, a change of voting controller,

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

(i) to confirm or refute that fact; and

(ii) if he confirms it, to give such further particulars as may be required under subsection (3).

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

(a) to give particulars as to his status as an unqualified voting controller or otherwise at any time during the relevant period;

(b) to give particulars which are within his knowledge or belief relating to the address and identity of any person who is a party to any holding or acquisition mentioned in section 21(1);

(c) where he has at any time during the relevant period been a voting controller, but at the time the notice is served has ceased to be so, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller immediately upon his ceasing to be a voting controller; and

(d) where he has at any time during the relevant period assisted in or been a party

to any transaction involving, in respect of any voting share, a change of voting controller, to give particulars which are within his knowledge or belief relating to the address and identity of any person who became a voting controller upon the change.

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

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

(a) the licensee shall comply with it; and

(b) the following shall apply---

(i) the licensee shall, not later than 15 days after the investigation is concluded, give in writing to the Broadcasting Authority any information and particulars received by the licensee as a result of the investigation;

(ii) without prejudice to subparagraph (i), where the investigation is not concluded within 3 months beginning on the date the relevant notice under this subsection was served on the licensee, the licensee shall, not later than 15 days beginning on---

(A) the expiry of that 3 months period; and

(B) the expiry of every successive period of 3 months before the conclusion of the investigation,

give to the Broadcasting Authority an interim report relating to the information and particulars received by it during the period referred to in sub-subparagraph (A) or (B), as the case may be;

(iii) an investigation shall be regarded as concluded when the licensee has made all the inquiries necessary or expedient for the purpose of the investigation and any such inquiry shall be regarded as concluded when a response has been received by the licensee or the time given by the licensee for a response has expired.

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

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

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

(a) the date of the notice;

(b) the name of any person on whom it is served; and

(c) the particulars received by the licensee in response to the notice.

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

26. Power of Broadcasting Authority to impose restrictions

(1) If---

(a) an unqualified voting controller is convicted of an offence under section 31(2) or (3); or

(b) a person is convicted of an offence under section 31(1), (5), (6), (7) or (8), and it appears to the Broadcasting Authority that the offence was committed in relation to any voting share of a licensee, then the Broadcasting Authority may, by notice in writing, direct that the share, which shall be specified in the notice, shall be subject to such of the restrictions mentioned in subsection (3) as are specified in the notice until the Broadcasting Authority makes a further notice under this subsection in respect of the share.

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

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

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

(b) no voting right can be exercised in respect of the voting share;

(c) no further voting share shall be issued in right of the voting share or under any offer made to the holder of it; and

(d) except in a liquidation, no payment shall be made of any amount due from the licensee on the voting share, whether in respect of capital or otherwise.

(4) Where a voting share is subject to a restriction mentioned in subsection (3)(a), an agreement to transfer---

(a) the voting share; or

(b) in the case of a share which has not been issued, the right to be issued with it,
is void.

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

27. Relaxation and removal of restriction under section 26

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

(a) shall cease to be subject to the restrictions specified in the notice; or

(b) be sold, subject to the Court of First Instance's approval for the sale.

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

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

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

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

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

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

29. Privilege relating to non-disclosure and confidentiality

(1) A person is not obliged to comply with the requirements of a notice under section 23 if he is for the time being exempted by the Financial Secretary by notice in the Gazette from the operation of section 18 of the Securities (Disclosure of Interests) Ordinance (Cap. 396).

(2) Where a corporation is required to give information under section 23 or 24, the corporation may take advantage of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32), but where as a consequence of taking such advantage, any information is not given, the fact of such omission shall be disclosed by the corporation.

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

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

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

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

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

(b) by the licensee---

(i) to the Broadcasting Authority;

(ii) to the Secretary for Information Technology and Broadcasting; or

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

(c) by the Broadcasting Authority---

(i) to the Secretary for Information Technology and Broadcasting; or

(ii) in connection with civil proceedings to which the Broadcasting Authority is a party.

30. Directions of Broadcasting Authority

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

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

(a) specify the manner in which any document to be used for the purposes of this Part

is to be distributed by a licensee, completed and executed by or on behalf of a person to whom the document is distributed and returned to the licensee, and assessed, processed, recorded or reported on by the licensee to the Broadcasting Authority;

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

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

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

31. Offences

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

(2) An unqualified voting controller who fails to comply with the requirements of a notice served on the controller under section 20 within the period specified in the notice for complying with it commits an offence.

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

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

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

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

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

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

a liquidation, enters into an agreement which is void under section 26(4) or (5) commits an offence.

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

32. Prosecution of offences and limitation on institution of proceedings

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

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

PART 4

Restriction on Licensees Exercising Control on Disqualified Persons

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

A licensee shall not exercise control on a disqualified person without the prior approval in writing of the Chief Executive in Council.

SCHEDULE 2 [ss. 2 & 42]

Items Which are not to be Regarded as Newspapers for the Purpose of Paragraph (c) of Definition of "Newspaper" in section 2(1)

Item	Description
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1. Academic journals.
2. Almanacs.
3. Cartoons and comic strips.
4. Collections of photographic images (with or without captions).
5. Commercial advertisements and commercial advertising circulars and brochures.
6. Commercial circulars.
7. Company and partnership reports and company prospectuses.
8. Consumer information and reports.
9. Election pamphlets and posters.
10. Financial, economic and statistical reports.
11. Information sheets and newsletters relating to clubs, educational institutions, professional associations, societies, trade unions and other organizations.
12. Maps, charts and tables.

13. Price lists.
14. Public speeches and statements.
15. Racing tips, racing form reports and other related materials.
16. Religious materials.
17. Sales catalogues.
18. Sheet music.
19. Trade catalogues and journals.
20. Travel brochures.
21. Technical or technology journals and catalogues.
22. Television programme guides.

SCHEDULE 3 [ss. 2 & 42]

Services not to be Regarded as Television Programme Services

1. A service consisting of the conveyance, without variation or alteration of contents, of a licensed service---
 - (a) by means of a telecommunications network; and
 - (b) under an interconnection agreement (within the meaning of the Telecommunications Ordinance (Cap. 106)) between the licensee of the licensed service and the owner or operator of the telecommunications network.
2. A service---
 - (a) consisting of the conveyance of a programme service exclusively between points specified by the person transmitting the programme service and the person receiving it; and
 - (b) which is not made available to any other person.
3. The provision of a transactional service, that is, a service which affords facilities to conduct from the place of reception of the service, using the same means of telecommunications by which the service is provided, transactions for the receipt of goods or services, or both, other than a transaction which consists of ordering and receiving a service that includes television programmes by the same means of telecommunications.
4. Any service (such as the services commonly known as video conferencing and video telephony) in which material is transmitted by means of telecommunications, and an essential feature of the service is that while the material is being transmitted there will or can be sent from the place of reception of the service, by the same means of telecommunications, material (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving it.
5. Any service provided on the service commonly known as the INTERNET.

6. A service consisting of television programmes---

- (a) which do not primarily target Hong Kong;
- (b) uplinked from a place outside Hong Kong;
- (c) transmitted from a satellite; and
- (d) intended for general reception in that---

(i) the programmes are not encrypted or, where encrypted---

(A) the originator of the programmes has published a notice in a Chinese language newspaper circulating generally in Hong Kong, and in an English language newspaper circulating generally in Hong Kong, stating that the programmes are intended for general reception and that no fee will be charged for the right to view or listen to any such programmes in Hong Kong; and

(B) the Broadcasting Authority or the Telecommunications Authority states in writing that it or he is satisfied that the programmes are intended for general reception and that no fee will be charged for the right to view or listen to any such programmes in Hong Kong; and

(ii) no fee is in fact charged for the right to view or listen to any such programme in Hong Kong.

7. A service consisting of a closed circuit television system comprising a television transmitter unit, with or without an associated audio system, connected to reception units by wire or other material substance which does not cross a public street or unleased Government land, where the service is operated solely for internal information or security information purposes solely for users of the reception units.

SCHEDULE 4 [ss. 2, 8 & 42 &
Schs. 5, 6 & 7]

Domestic Free Television Programme Service Supplementary Provisions

PART 1

General

1. Interpretation

In this Schedule---

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

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

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

2. Application for licence

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

3. Television programmes supplied by Government

(1) Where a requirement is made on a licensee pursuant to a condition to include

in its service, without charge, a television programme supplied by the Government or the Broadcasting Authority---

(a) the requirement may include the inclusion in its service, of television programmes supplied by the Government, during the 3 hours commencing at 7 p.m., on any day from Monday to Friday inclusive;

(b) unless the licensee consents otherwise, the number of such hours of television programmes supplied by the Government for inclusion in its service during the hours mentioned in paragraph (a) shall not be required to exceed, in any one day, 30 minutes in duration, in aggregate or otherwise;

(c) without prejudice to the operation of paragraphs (a) and (b), if the licensee's service is not provided on demand, the duration of the television programmes supplied by the Government shall not be required to exceed, in aggregate or otherwise, any of the following---

(i) 21--2 hours in any period of 24 hours commencing at 6 a.m.;

(ii) 21--2 hours in the 15 hours between the hours of 7 p.m. and 10 p.m. in any period from Monday to Friday inclusive in any one week;

(iii) in the case of a service in the Chinese language, 12 hours in any week; and

(iv) in the case of a service in the English language, 6 hours in any week.

(2) Nothing in subsection (1) shall be construed to prejudice the operation of section 18 of this Ordinance.

4. Duration of licence

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

(a) specify the period of validity of a licence;

(b) order a licence to be reviewed within such period as is specified in the notice.

(2) A licence shall---

(a) subject to paragraph (b), be valid for such period as is specified in a notice under subsection (1)(a) applicable to the licence, and shall, unless otherwise provided under this Ordinance, cease to have effect on the expiration of that period; and

(b) be subject to review---

(i) within that period on such dates as are specified in the licence for the purpose; or

(ii) within such period as is specified in a notice under subsection (1)(b) applicable to the licence.

5. Disqualified persons not to increase control of licensee

(1) Subject to section 6, no disqualified person who exercises control of a licensee shall increase such control---

(a) by increasing the percentage of voting shares of the licensee which he holds as the beneficial owner; or

(b) as the result of any change of office held by him in the licensee.

(2) A disqualified person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$1,000,000 and to imprisonment for 2 years.

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

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

(a) an increase in the control exercised by a disqualified person in the licensee; or

(b) the introduction of a disqualified person to exercise control of the licensee.

7. Licensee to include certain statement in prospectus

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

PART 2

Effect of Non-Renewal or Revocation of Licence

8. Notice of non-renewal or revocation of licence

(1) Where the Chief Executive in Council decides under---

(a) section 11(4) of this Ordinance not to extend or renew a licence, he shall cause notice in writing of the decision to be served on the licensee at least 12 months before the expiry of the validity of the licence under section 4(2)(a); or

(b) section 31 of this Ordinance to revoke a licence, he shall cause notice in writing of the decision to be served on the licensee as soon as is practicable after the decision to revoke the licence.

(2) Where it is necessary for the purpose of complying with the requirement as to length of notice in subsection (1)(a), the Chief Executive in Council may extend the term of a licence (but no such extension shall continue in force any exclusive right to provide the licensed service).

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

(1) Where a notice is served under section 8(1)(a) or (b) in respect of a licence, or notice of a decision to revoke a licence is served under section 31(4) of this Ordinance, the Chief Executive in Council may direct The Financial Secretary Incorporated to purchase any property (including land) belonging to and used or kept by the licensee---

(a) for the purpose of the licence; and

(b) during the period of validity of the licence.

(2) Where a notice is served under section 31(4) of this Ordinance or section 8, then, not later than 12 months beginning on the date the notice is served, The Financial Secretary Incorporated shall do the following---

(a) where the property is land, purchase the entirety of the land or acquire a lease or a licence over the land for a period not exceeding 2 years;

(b) in the case of any other property, purchase the entirety of the property or acquire a licence to use the property for a period not exceeding 2 years.

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

(a) loss of profit;

(b) goodwill;

(c) the right of pre-emption;

(d) the cost of related capital; and

(e) all the property being placed on the market at the same time.

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

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

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

(a) in the case of a decision not to extend or renew the licence concerned, upon the expiry of the licence after notice is served under section 8;

(b) in the case of a decision to revoke the licence concerned under section 31 of this Ordinance, when the revocation takes effect or when an offer for the purchase is made by The Financial Secretary Incorporated, whichever is the later, and upon such vesting all the rights of the licensee in that property shall cease and determine.

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

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

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

PART 3

Television Programmes

10. Minimum duration of television programme service

The Chief Executive in Council may specify in writing, for each day, the minimum duration of a television programme service.

11. Advertising

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

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

12. Certain advertisements prohibited

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

PART 4

Fees and Charges

13. Annual Payment of fees

A licensee shall pay annually to the Director of Accounting Services a licence fee and such other fees as may be specified in its licence.

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

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

(2) A declaration in writing purporting to be made under subsection (1) shall

be prima facie evidence of the debt specified in the declaration.

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

SCHEDULE 5 [ss. 2, 8 & 42]

Domestic Pay Television Programme Service Supplementary Provisions

1. Application of Schedule 4

The provisions of Schedule 4, except sections 2, 3 and 11 of that Schedule, shall apply to and in relation to a domestic pay television programme service licensee and its licensed service as they apply to and in relation to a domestic free television programme service licensee and its licensed service.

SCHEDULE 6 [ss. 2, 8 & 42]

Non-Domestic Television Programme Service Supplementary Provisions

1. Application of Schedule 4

The provisions of section 12, and of Part 4, of Schedule 4 shall apply to and in relation to a non-domestic television programme service and its licensed service as it applies to and in relation to a domestic free television programme service licensee and its licensed service.

SCHEDULE 7 [ss. 2, 8 & 42]

Other Licensable Television Programme Service Supplementary Provisions

1. Restriction on exercising control of other licensees

An other licensable television programme service licensee, the persons exercising control of the licensee, and the associates of the licensee and those persons exercising control of the licensee, shall not, without the prior approval in writing of the Chief Executive in Council, hold such number of other licensable television programme service licences, or exercise control of other licensable television programme service licensees, the combined services of which are intended or available for reception by an audience of more than 200 000 specified premises.

2. Application of Schedule 4

The provisions of sections 12, 13 and 14 of Schedule 4 shall apply to and in relation to an other licensable television programme service licensee and its licensed service as they apply to and in relation to a domestic free television programme service licensee and its licensed service.

SCHEDULE 8 [ss. 42 & 43]

Transitional and Savings Provisions

1. Interpretation

In this Schedule, unless the context otherwise requires---

"commercial television broadcasting licence" (商營電視廣播牌照) means a commercial television broadcasting licence within the meaning of section 2(1) of the repealed Ordinance and which was in force immediately before the relevant day or which was to come into force on or after that day;

"deemed licence" (當作批給的牌照) means a licence deemed under section 2(1), (2), (3), (4) or (5) to be---

(a) a licence granted under this Ordinance and a licence granted under the Telecommunications Ordinance (Cap. 106); or

(b) a licence granted under this Ordinance;

"hotel television service licence" (酒店電視服務牌照) means a hotel television service licence granted under the Telecommunications Ordinance (Cap. 106) and which was in force immediately before the relevant day or which was to come into force on or after that day;

"programme service licence" (節目服務牌照) means a programme service licence within the meaning of section 2(1) of the repealed Ordinance and which was in force immediately before the relevant day or which was to come into force on or after that day;

"relevant day" (有關日期) means the day on which section 43(1) of this Ordinance commences;

"repealed Ordinance" (已廢除條例) means the Television Ordinance (Cap. 52) repealed under section 43(1) of this Ordinance;

"subscription television broadcasting licence" (收費電視廣播牌照) means a subscription television broadcasting licence within the meaning of section 2(1) of the repealed Ordinance and which was in force immediately before the relevant day or which was to come into force on or after that day;

"telecommunications licence" (電訊牌照) means a licence entitled "Satellite Television Uplink and Downlink Licence" granted under section 7 of the Telecommunications Ordinance (Cap. 106) and which was in force immediately before the relevant day or which was to come into force on or after that day.

2. Licences under repealed Ordinance deemed to be licences under Ordinance, etc.

(1) A commercial television broadcasting licence shall be deemed to be---

(a) a domestic free television programme service licence granted under this Ordinance; and

(b) a licence granted under the Telecommunications Ordinance (Cap. 106), for---

(i) if the licence was in force immediately before the relevant day, the unexpired portion of the period of validity the licence had left to run immediately before the relevant day;

(ii) if the licence was to come into force on or after the relevant day, the period of validity of the licence commencing on the day the licence was to come into force,

and the provisions of this Ordinance and the Telecommunications Ordinance (Cap. 106), as the case may require, shall apply accordingly.

(2) A subscription television broadcasting licence shall be deemed to be---

(a) a domestic pay television programme service licence granted under this Ordinance; and

(b) a licence granted under the Telecommunications Ordinance (Cap. 106), for---

(i) if the licence was in force immediately before the relevant day, the unexpired portion of the period of validity the licence had left to run immediately before the relevant day;

(ii) if the licence was to come into force on or after the relevant day, the period of validity of the licence commencing on the day the licence was to come into force,

and the provisions of this Ordinance and the Telecommunications Ordinance (Cap. 106), as the case may require, shall apply accordingly.

(3) A programme service licence shall be deemed to be a domestic pay television programme service licence granted under this Ordinance for---

(a) if the licence was in force immediately before the relevant day, the unexpired portion of the period of validity the licence had left to run immediately before the relevant day;

(b) if the licence was to come into force on or after the relevant day, the period of validity of the licence commencing on the day the licence was to come into force, and the provisions of this Ordinance shall apply accordingly.

(4) A telecommunications licence shall be deemed to be a non-domestic television programme service licence granted under this Ordinance for---

(a) if the licence was in force immediately before the relevant day, the unexpired portion of the period of validity the licence had left to run immediately before the relevant day;

(b) if the licence was to come into force on or after the relevant day, the period of validity of the licence commencing on the day the licence was to come into force, and the provisions of this Ordinance shall apply accordingly.

(5) A hotel television service licence---

(a) shall be deemed to be an other licensable television programme service licence granted under this Ordinance for---

(i) if the licence was in force immediately before the relevant day, the unexpired

portion of the period of validity the licence had left to run immediately before the relevant day;

(ii) if the licence was to come into force on or after the relevant day, the period of validity of the licence commencing on the day the licence was to come into force,

and the provisions of this Ordinance shall apply accordingly;

(b) which is renewed under the Telecommunications Ordinance (Cap. 106) before the expiration of 12 months immediately following the relevant day shall continue to be deemed to be an other licensable television programme service licence granted under this Ordinance for the period of validity of the licence as so renewed, and the provision of this Ordinance shall apply accordingly.

3. Provisions of deemed licences deemed to be conditions specified in licences

The provisions of a deemed licence shall be deemed to be conditions specified in the licence, and, accordingly, the licensee shall comply with the deemed conditions except that, where there is any conflict between the deemed conditions and the provisions of this Ordinance or the Telecommunications Ordinance (Cap. 106), then the provisions of this Ordinance or the Telecommunications Ordinance (Cap. 106), as the case may require, shall prevail over the deemed conditions.

4. Disapplication of certain provisions of Ordinance

(1) Section 5 of this Ordinance shall not apply to a broadcasting service consisting of a television programme service lawfully provided by a person pursuant to an agreement---

(a) lawfully entered into before the specified day; and

(b) to lawfully use facilities in Hong Kong---

(i) which are not owned (including beneficially owned) by that person; and

(ii) to uplink the service to a satellite.

(2) Section 13 of this Ordinance shall not apply to an agreement lawfully entered into before the specified day if, and only if, the agreement---

(a) continues to be lawful apart from that section; and

(b) is not amended in any way whatsoever apart from any amendment made to mitigate the conduct in contravention of section 13(1) of this Ordinance provided or permitted, whether directly or indirectly, under the agreement.

(3) Subsections (1) and (2) shall expire on the 2nd anniversary of the specified day.

(4) Section 20 of this Ordinance shall not apply to a person---

(a) who was, on the specified day, lawfully exercising control of a corporation holding a licence falling within section 2(1), (2) or (3); and

(b) for so long as the person does not, on or after the specified day, increase the

interest the person has in that corporation in the person's capacity as a person who exercises control over the corporation.

(5) Where---

(a) immediately before the commencement of this subsection, a person was not a disqualified person---

(i) in relation to a licensee; and

(ii) by virtue of falling within paragraph (ii) of the proviso to the definition of "disqualified person" in section 2(1) of the repealed Ordinance ("the proviso"); and

(b) the licence, within the meaning of section 2(1) of the repealed Ordinance, of which the licensee referred to in paragraph (a)(i) was the holder immediately before the commencement of this subsection is a deemed licence,

then the person is not a disqualified person for the purposes of sections 3 and 7 of Schedule 1---

(i) in relation to the deemed licence and the licensee;

(ii) to the extent only that the person was not a disqualified person by virtue of falling within paragraph (ii) of the proviso; and

(iii) until such time, if any, as the person ceases to fall within paragraph (ii) of the proviso.

(6) For the purposes of subsection (5)(iii), the proviso referred to in that subsection shall be deemed never to have been repealed.

(7) In this section, "specified day" (指明日期) means 28 January 2000.

5. Payment of annual fees

(1) The Financial Secretary may, by notice in writing served on a licensee which is the holder of a deemed licence, specify the annual fee to be paid to the Government by the licensee---

(a) in the case of the first such fee, not later than 30 days after the relevant day; and

(b) thereafter, not later than each anniversary of the relevant day.

(2) The Financial Secretary may, by any subsequent notice in writing served on a licensee falling within subsection (1), amend the annual fee specified in the last notice served on the licensee under that subsection or this subsection, as the case may require, insofar as the fee relates to any anniversary referred to in subsection (1)(b) which is subsequent to the date of service of the notice.

(3) A notice under subsection (1) or (2) 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 annual fee specified in the last such notice served on the licensee.

(4) Where---

(a) a licensee has before the relevant day paid an annual fee for a deemed licence;
(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
(c) the licensee has paid the annual 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.

6. Suspended licences

Where any licence falling within section 2(1), (2) or (3) was, immediately before the relevant day, suspended under the repealed Ordinance, then that licence shall, in the like manner, be deemed to be suspended under this Ordinance for the unexpired portion of the period of suspension left to run on that day, and the provisions of this Ordinance shall apply accordingly.

7. Actions, etc. under repealed Ordinance deemed to be done under Ordinance

Where an act, matter or thing has been done under the repealed Ordinance to or in relation to a licensee within the meaning of section 2(1) of that Ordinance and the licence within the meaning of that Ordinance held by the licensee falls within section 2(1), (2) or (3), then to the extent that but for the enactment of this Ordinance that act, matter or thing would on or after the relevant day have had any force or effect or been in operation, that act, matter or thing shall, in the like manner, be deemed to have been done under this Ordinance to or in relation to the licensee as if, on the relevant day, that act, matter or thing were, to that extent, done under this Ordinance to or in relation to the licensee, and the provisions of this Ordinance shall apply accordingly.

8. Section 23 of Interpretation and General Clauses Ordinance

Subject to sections 2 to 7 inclusive, section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) shall apply to the repeal effected by section 43(1) of this Ordinance.

9. Deemed licence may be surrendered

Nothing in this Schedule shall operate to prevent a licensee which is the holder of a deemed licence from surrendering the deemed licence to the Chief Executive in Council or the Broadcasting Authority, as the case may require, in return for a licence granted under this Ordinance which, in the opinion of the Chief Executive in Council or the Broadcasting Authority, as the case may require, is equivalent to the deemed licence.

SCHEDULE 9 [s. 43]

Consequential Amendments

Telecommunications Ordinance

1. Interpretation

Section 2 of the Telecommunications Ordinance (Cap. 106) is amended, in the definition of "licensee", by repealing paragraph (b) and substituting---

"(b) includes the holder of a licence (other than a programme service licence)---

(i) granted under the Ordinance repealed by section 43(1) of the Broadcasting Ordinance (of 2000);

(ii) in force immediately before that repeal; and

(iii) deemed to be a licence granted under this Ordinance by virtue of Schedule 8 to the Broadcasting Ordinance (of 2000);".

2. Prohibition of establishment and maintenance of means of telecommunications, etc., except under licence

Section 8(4)(e) is amended by repealing "broadcast by any company licensed under the Television Ordinance (Cap. 52)" and substituting "provided by any company licensed under the Broadcasting Ordinance (of 2000)".

3. Interpretation

Section 13A(1) is amended, in the definition of "disqualified person"---

(a) by adding---

"(da) a person who is---

(i) a domestic free television programme service licensee, or a domestic pay television programme service licensee, within the meaning of section 2(1) of the Broadcasting Ordinance (of 2000); or

(ii) an associate, within the meaning of that section, of a licensee referred to in subparagraph (i);";

(b) in paragraph (e), by repealing "or (d)" and substituting ", (d) or (da)(i)".

4. General provisions as to licences, etc.

Section 34(6) is repealed and the following substituted---

"(6) Nothing in this section applies in respect of a licence---

(a) granted under Part IIIA; or

(b) deemed to be granted under this Ordinance by virtue of Schedule 8 to the Broadcasting Ordinance (of 2000).".

5. Authority may determine terms of interconnection

Section 36A(3)(a) and (aa) is repealed and the following substituted---

"(a) and between telecommunications systems or services licensed under section 7 or expressed as being licensed in exercise of the powers conferred by sections 7

and 34 or deemed to be licensed under this Ordinance by virtue of Schedule 8 to the Broadcasting Ordinance (of 2000); and

(aa) and between services the subject of a licence the subject of section 2(3) of Schedule 8 to the Broadcasting Ordinance (of 2000); and".

Telecommunications Regulations

6. Form of Licences

Schedule 3 to the Telecommunications Regulations (Cap. 106 sub. leg.) is amended---

(a) by repealing the Hotel Television Services Licence;

(b) in the form for the Satellite Master Antenna Television Licence, by adding at the end---

"NOTE: Any reference in this form to the Television Ordinance (Cap. 52) shall, with all necessary modifications, be construed to be a reference to the Broadcasting Ordinance (of 2000), and the provisions of this licence shall apply accordingly.";

(c) in the form for the Fixed Telecommunication Network Services Licence, in the General Conditions, in General Condition 29(3)(e), by repealing "Television Ordinance (Cap. 52)" and substituting "Broadcasting Ordinance (of 2000)".

Gambling Ordinance

7. Gambling is unlawful

Section 3(8) of the Gambling Ordinance (Cap. 148) is amended by repealing "Television Ordinance (Cap. 52)" and substituting "Broadcasting Ordinance (of 2000)".

Road Traffic (Construction and Maintenance of Vehicles) Regulations

8. Visual display units

Regulation 37(3)(a) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg.) as amended by the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2000 (L.N. 1 of 2000) is repealed and the following substituted---

"(a) any television programme within the meaning of section 2(1) of the Broadcasting Ordinance (of 2000); or".

Control of Obscene and Indecent Articles Ordinance

9. Ordinance not to apply in case of certain films, etc.

Section 3(c) of the Control of Obscene and Indecent Articles Ordinance (Cap. 390) is repealed and the following substituted---

"(c) material within the meaning of section 2(1) of the Broadcasting Ordinance (of 2000) permitted to be provided under that Ordinance.".

10. Prohibition on publishing obscene articles

Section 21(2)(c)(ii) is repealed and the following substituted---

"(ii) by a person licensed under the Broadcasting Ordinance (of 2000) for the purpose of submitting it under that Ordinance for provision under that Ordinance;"

11. Prohibition on display of indecent matter

Section 23(2)(a) is repealed and the following substituted---

"(a) included in a television programme service provided by a company licensed under the Broadcasting Ordinance (of 2000); or"

12. Prohibition on possession of indecent article for the purpose of publication

Section 27A(2)(b)(ii) is repealed and the following substituted---

"(ii) as a person licensed under the Broadcasting Ordinance (of 2000) for the purpose of submitting it under that Ordinance for provision under that Ordinance;"

Broadcasting Authority Ordinance

13. Interpretation

Section 2 of the Broadcasting Authority Ordinance (Cap. 391) is amended---

(a) in the definition of "broadcasting", by repealing paragraphs (b) and (c) and substituting---

"(b) in relation to television broadcasting services, the provision of a television programme service within the meaning of section 2(1) of the Broadcasting Ordinance (of 2000);";

(b) in the definition of "Code of Practice", by repealing paragraphs (b) and (c) and substituting---

"(b) in relation to television broadcasting, a Code of Practice approved and issued under section 3 of the Broadcasting Ordinance (of 2000);";

(c) in the definition of "licence", by repealing paragraphs (b) and (c) and substituting---

"(b) in relation to television broadcasting services, a licence granted (or deemed to be granted) under section 8 of the Broadcasting Ordinance (of 2000);".

14. Section substituted

Sections 9 to 9D inclusive are repealed and the following substituted---

"9. Functions and powers of the Authority

(1) The Authority shall have the following functions---

(a) the functions imposed on it under the Broadcasting Ordinance (of 2000);

(b) the functions imposed on it under Part IIIA of the Telecommunication Ordinance (Cap. 106);

(c) to administer the provisions of licences and any other provisions of such licences that confer a function on the Authority;

(d) to secure proper standards of television and sound broadcasting with regard to both programme content (including advertisements) and technical performance of broadcasts;

(e) to submit proposals and recommendations to the Chief Executive in Council with respect to technical, programme and advertising standards of television and sound broadcasting in order to assist the Chief Executive in Council in the making and amendment of regulations under the Broadcasting Ordinance (of 2000) or under Part IIIA of the Telecommunications Ordinance (Cap. 106) governing such standards;

(f) to conduct inquiries into such matters as may be referred to it by the Chief Executive in Council and to report the conclusions of such inquiries to the Chief Executive in Council;

(g) such other functions as are assigned to it under this or any other Ordinance.

(2) The Authority shall have, in addition to the powers expressly or impliedly conferred on it by or pursuant to this Ordinance, the Broadcasting Ordinance (of 2000) or Part IIIA of the Telecommunication Ordinance (Cap. 106) or any other Ordinance, such incidental powers as are reasonably necessary for the performance of its functions."

15. Consideration of complaints by the Complaints Committee

Section 11 is amended---

(a) in subsection (1)(a), by repealing "Television Ordinance (Cap. 52)" and substituting "Broadcasting Ordinance (of 2000)";

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

"(2) Subsection (1) shall not apply to a complaint concerning---

(a) any matter referred to in section 13(1) or 14(1) of the Broadcasting Ordinance (of 2000); or

(b) any matter referred to in section 18 of the Broadcasting Ordinance (of 2000) or any script or material supplied for broadcasting by the Government and broadcast by a licensee.

(2A) The Authority shall refer to the Government a complaint which falls within subsection (2)(b).";

(c) in subsection (5), by repealing "21 of the Television Ordinance (Cap. 52)" and substituting "37 of the Broadcasting Ordinance (of 2000)";

(d) in subsection (7), by repealing "45 of the Television Ordinance (Cap. 52)" and substituting "24 of the Broadcasting Ordinance (of 2000)".

16. Section added

The following is added---

"11A. Consideration of complaint that a licensee has contravened section 13(1) or 14(1) of Broadcasting Ordinance

(1) A person may make a complaint in writing to the Authority that a licensee has contravened section 13(1) or 14(1) of the Broadcasting Ordinance (of 2000).

(2) Subject to subsection (3), the Authority, upon receipt of a complaint under subsection (1), shall---

(a) give the licensee the subject of the complaint a reasonable opportunity to make representations in writing;

(b) consider any representations in writing made by or on behalf of the complainant and the licensee; and

(c) consider any evidence received by it, whether tendered on behalf of the complainant or otherwise, which it considers relevant to the complaint.

(3) The Authority may receive such evidence as it thinks fit and neither the provisions of the Evidence Ordinance (Cap. 8) nor any other rule of law relating to the admissibility of evidence shall apply in proceedings before the Authority."

17. Delegation of powers, etc. to principal executive officer

Section 14(2)(b) is repealed and the following substituted---

"(b) section 3, 4, 8, 9, 10, 11, 27, 30, 31 or 32 of the Broadcasting Ordinance (of 2000).".

18. Indemnity

Section 16 is amended by repealing "Television Ordinance (Cap. 52)" and substituting "Broadcasting Ordinance (of 2000)".

19. Authority may impose financial penalties

Section 24(3) is amended---

(a) in paragraph (a), by repealing "\$20,000" and substituting "\$80,000";

(b) in paragraph (b), by repealing "\$50,000" and substituting "\$200,000";

(c) in paragraph (c), by repealing "\$100,000" and substituting "\$400,000".

20. Section added

The following is added---

"25A. Licensee to include correction or apology in sound broadcasting service

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

(2) The Authority may issue a direction under subsection (1) if it is satisfied that the licensee did not comply with---

(a) a licence condition;

(b) a requirement under this Ordinance applicable to the licensee;

(c) a direction or order issued, or determination made, under this Ordinance

applicable to it; or

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

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

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

Copyright Ordinance

21. Reception and re-transmission of broadcast in cable programme service

Section 82(1)(b) and (2)(b) of the Copyright Ordinance (Cap. 528) is amended by repealing "under the Television Ordinance (Cap. 52)" and substituting ", or deemed to be licensed, under the Telecommunication Ordinance (Cap. 106)".

22. Reception and re-transmission of broadcast in cable programme service

Section 259(1)(b) and (2)(b) is amended by repealing "under the Television Ordinance (Cap. 52)" and substituting ", or deemed to be licensed, under the Telecommunication Ordinance (Cap. 106)".

Explanatory Memorandum

The principal object of this Bill is to repeal and replace the Television Ordinance (Cap. 52) in order to separate the statutory law governing the technological aspects attendant upon the provision of television programme services (for example, transmission facilities) from the statutory law governing the provision of those services (for example, who may provide them). The Bill deals with the latter, in particular in relation to the licensing of persons to provide television programme services.

2. Part I (clauses 1 and 2) is preliminary. Clause 2(1) defines the terms used in the Bill. The 4 types of television programme services which cannot be provided except pursuant to a licence issued under the Bill are defined in clause 2(1). They are "domestic free television programme service", "domestic pay television programme service", "non-domestic television programme service" and "other licensable television programme service". The 4 types are collectively defined in clause 2(1) as "broadcasting service". Clause 2(8) specifies the provisions of Schedules 1, 4, 5, 6 and 7 which are applicable to the 4 types of licence.

3. Part II (clauses 3 and 4) empowers the Broadcasting Authority to approve and issue codes of practice and to issue guidelines. Codes of practice may be approved for the purpose of providing practical guidance for licensees in respect of, inter alia, any requirements under the Bill imposed on licensees or in respect of licence conditions. Guidelines may be published for the guidance of licensees or companies seeking to be licensees for, inter alia, indicating the manner in which the Broadcasting

Authority proposes to perform functions conferred upon it by the Bill.

4. Part III (clauses 5, 6 and 7) relates to the regulation of broadcasting services. Clause 5 makes it an offence to provide a broadcasting service except under and in accordance with a licence. Clause 6 makes it an offence to, inter alia, import or sell a decoder by means of which an encrypted television programme provided under a licence can be viewed in decoded form without payment of a subscription where a subscription is required to be paid. Clause 7 makes it an offence to, inter alia, import or sell a decoder for use by a "Television Receive Only System" (see the definition of the term in clause 7(5)) to receive a broadcasting service which is not licensed on a subscription basis.

5. Part IV (clauses 8 to 12) contains general provisions relating to licences. Clause 8 specifies to whom a licence may be granted. It should be noted that the Chief Executive in Council grants a domestic free television programme service licence and a domestic pay television programme service licence, while the Broadcasting Authority grants a non-domestic television programme service licence and an other licensable television programme service licence. Clause 8(3) provides that a domestic free television programme service licence shall not be granted to a company which is a subsidiary. The provisions of Schedule 1 should be noted here, as they relate to disqualifications for holding licences and restrictions on the voting control of voting controllers of licences. (The definitions of "disqualified person", "qualified voting controller", "unqualified voting controller", "voting control" and "voting controller" in section 1 of Schedule 1 should also be noted.)

6. Clause 9 provides that the Broadcasting Authority shall make recommendations to the Chief Executive in Council in relation to applications for licences which are issued by the Chief Executive in Council. Clause 10 provides that a licence may be granted subject to conditions and may be subsequently be amended where the Chief Executive in Council or the Broadcasting Authority considers it is in the public interest to do so.

7. Clause 11 relates to the extension or renewal of licences while clause 12 empowers the Broadcasting Authority to determine whether or not a television programme service, if provided, would primarily target Hong Kong. This power is needed in order to ascertain which category of licence such a service would fall into.

8. Part V (clauses 13 to 22) sets out requirements applicable to licensed services. Clause 13 prohibits a licensee from engaging in conduct which has the purpose or effect of preventing or substantially restricting competition in a television programme service market. Clause 14 prohibits a licensee in a dominant position in a television programme service market from abusing that position. Clause 15 empowers the Broadcasting Authority to serve a notice on a licensee to cease and desist from conduct

contravening clause 13 or 14. Clause 16 requires a licensee which also holds a licence under the Telecommunications Ordinance (Cap. 106) to adopt accounting practices which readily enables the activities to which the licences respectively relate to be understood separately from each other.

9. Clause 17 requires certain licensees to ensure that their licensed services may be received throughout Hong Kong. Clause 18 empowers the Broadcasting Authority to require a domestic free television programme service licensee to include in its licensed service any programme for schools supplied by the Government. Clause 19 provides that licensees shall provide television programme service locking devices for certain licensed services (see the definition of "television programme service locking device" in clause 2(1)). Clause 20 requires licensees and persons exercising control over licensees to be and remain fit and proper persons. Clause 21 prohibits a licensee from agreeing to include or refrain from including in its licensed service any material. (The prohibition does not apply to material the supply of which a licensee is contracting for its licensed service). Clause 22 imposes general requirements on a licensee, including a requirement that it shall be responsible at all times for ensuring that its licensed service does not include a subliminal message.

10. Part VI (clauses 23 to 34) relates to the enforcement of licences. Clause 23 empowers the Broadcasting Authority and the Telecommunications Authority to give directions to the licensee that are considered necessary in order for the licensee to comply with, inter alia, requirements under the Bill or any licence conditions. Clause 24 empowers the Broadcasting Authority to investigate a licensee's business where the Broadcasting Authority is satisfied that it is necessary for the proper performance of the functions of the Broadcasting Authority. Clause 25 empowers a magistrate to require a person who is not a licensee to give certain information or documents to the Broadcasting Authority where the magistrate is satisfied that such information or documents are relevant to a contravention of the Bill. Clause 26 requires information and documents furnished to the Broadcasting Authority by a person on a confidential basis to be treated by the licensee as confidential. Clause 27 empowers the Broadcasting Authority to impose a financial penalty on a licensee for contravening a licence condition, a requirement under the Bill applicable to the licensee, a direction, etc. under the Bill which is applicable to the licensee or a provision of a code of practice under the Bill which is applicable to the licensee. However, no financial penalty may be imposed for any such contravention in respect of which the licensee has been convicted of an offence (clause 27(6)). Clause 28 relates to the recovery of any such financial penalty. Clause 29 empowers the Broadcasting Authority to require a licensee to include a correction or apology in

its licensed service on the same grounds on which it may impose a financial penalty on the licensee.

11. Clauses 30 and 31 provide for the suspension and revocation respectively of licences. The grounds for the suspension and revocation of a licence are respectively set out in clauses 30(2) and 31(4). Clause 31(1) requires the Broadcasting Authority to conduct an inquiry in accordance with clause 32 where the Broadcasting Authority considers that there may be cause to revoke a licence. Clause 33 provides that a licensee (including a person seeking to be a licensee) may appeal to the Chief Executive in Council against, inter alia, any decision of the Broadcasting Authority in the exercise of a discretion conferred on the Broadcasting Authority under the Bill. Clause 34 provides that the Chief Executive in Council may receive advice and information from the Broadcasting Authority or any person in determining an appeal under clause 33.

12. Part VII (clause 35) prohibits a licensee from including in its licensed service a television programme, or any part thereof, that is likely, in Hong Kong, to, inter alia, incite hatred against any group of persons by reference to colour, race, sex, religion, nationality or ethnic or national origins. The mechanism for enforcing the prohibition rests with the Court of First Instance upon application by the Chief Secretary for Administration.

13. Part VIII (clauses 36 to 43) contains miscellaneous provisions. Clause 36 provides that contests which comply with the standards set out in the relevant code of practice may be organized in connection with television programmes included in a licensed service notwithstanding the provisions of the Gambling Ordinance (Cap. 148). Clause 37 empowers the Telecommunications Authority to inspect and test equipment used by a licensee in connection with the provision of its licensed service. Clause 38 requires a licensee to submit specified annual returns to the Broadcasting Authority. Clause 39 relates to the service of documents under the Bill. Clause 40 empowers the Broadcasting Authority to specify the form of documents under the Bill and clause 41 empowers the Chief Executive in Council to make regulations for the purposes of the Bill.

14. Clause 42 empowers the Chief Executive in Council to amend any of Schedules 1 to 8. Clause 43(1) repeals the Television Ordinance (Cap. 52). Clause 43(2) and Schedule 8 specify the transitional and savings provisions necessitated by the Bill. Clause 43(3) and Schedule 9 provide for the consequential amendments necessitated by the Bill.