

## 7K. 反競爭行為

(1) 持牌人不得作出局長認為目的是在於防止或大幅限制電訊市場的競爭的行為，亦不得作出局長認為會有如此效果的行為。

(2) 局長在考慮某行為是否具有第(1)款所訂明的目的或效果時，須顧及有關事宜，包括(但不限於)——

- (a) 電訊市場內釐定價格的協議；
- (b) 防止或限制向競爭者提供貨品或服務的行動；
- (c) 持牌人之間按議定的地域或顧客界限分享電訊市場的協議；
- (d) 有關牌照的條件。

(3) 在不局限第(1)款的一般性質的原則下，如任何持牌人——

- (a) 訂立具有該款所訂明的目的或效果的協議、安排或協定；
- (b) 在沒有局長的事先書面授權下，規定獲取電訊網絡、電訊系統、電訊裝置、顧客設備或服務的人亦須從該持牌人或任何其他人士處獲取指明的電訊網絡、電訊系統、電訊裝置、顧客設備或服務，或規定該人不得從該持牌人或任何其他人士處獲取指明的電訊網絡、電訊系統、電訊裝置、顧客設備或服務，作為提供或接駁至該等電訊網絡、電訊系統、電訊裝置、顧客設備或服務的條件；
- (c) 給予相聯人士不當的優惠，或從相聯人士處收取不公平的利益，而局長認為因此會能夠將任何競爭者置於重大不利位置或會防止或大幅限制競爭，

則該持牌人即屬作出第(1)款所訂明的行為。

(由 2000 年第 36 號第 4 條增補)

LN 21/2001

## 7K. Anti-competitive practices

(1) A licensee shall not engage in conduct which, in the opinion of the Authority, has the purpose or effect of preventing or substantially restricting competition in a telecommunications market.

(2) The Authority in considering whether conduct has the purpose or effect prescribed under subsection (1) is to have regard to relevant matters including, but not limited to—

- (a) agreements to fix the price in a telecommunications market;
- (b) an action preventing or restricting the supply of goods or services to competitors;
- (c) agreements between licensees to share any telecommunications market between them on agreed geographic or customer lines;
- (d) the conditions of relevant licences.

(3) Without limiting the general nature of subsection (1), a licensee engages in conduct prescribed under that subsection if he—

- (a) enters into an agreement, arrangement or understanding that has the purpose or effect prescribed by that subsection;
- (b) without the prior written authorization of the Authority, makes the provision of or connection to a telecommunications network, system, installation, customer equipment or service conditional upon the person acquiring it also acquiring or not acquiring a specified telecommunications network, system, installation, customer equipment or service, either from the licensee or from another person;
- (c) gives an undue preference to, or receives an unfair advantage from, an associated person if, in the opinion of the Authority, a competitor could be placed at a significant disadvantage, or competition would be prevented or substantially restricted.

(Added 36 of 2000 s. 4)

LN 21/2001

## 7L. 濫用優勢

- (1) 在電訊市場處於優勢的持牌人，不得濫用其優勢。
- (2) 如局長認為某持牌人能夠在不受其競爭者及顧客的重大競爭性限制下行事，則該持牌人即屬處於優勢。
- (3) 局長在考慮某持牌人是否處於優勢時，須顧及有關事宜，包括(但不限於)——
  - (a) 持牌人的市場佔有率；
  - (b) 持牌人作出定價及其他決定的權力；
  - (c) 競爭者進入有關電訊市場的任何障礙；
  - (d) 產品差異及促銷的程度；
  - (e) 局長在第 6D(4)(a) 條所提述的指引內規定的其他有關事宜。
- (4) 如局長認為某名處於優勢的持牌人已作出目的是在於防止或大幅限制電訊市場的競爭的行為，或已作出有如此效果的行為，則該名持牌人即當作已濫用其優勢。
- (5) 局長可認為以下行為(但不限於以下行為)屬於第(4)款所提述的行為——
  - (a) 掠奪式定價；
  - (b) 在價格上的歧視，除非該歧視只是為合理地顧及提供電訊網絡、電訊系統、電訊裝置、顧客設備或服務的成本或可能成本的差別而作出的；
  - (c) 規定合約的其他各方須接納苛刻或與合約標的無關的條款或條件，方與其訂立合約；
  - (d) 有關持牌人作出安排(第 7K(3)(b) 條提述的授權所針對的安排除外)，規定獲取電訊網絡、電訊系統、電訊裝置、顧客設備或服務的人亦須從該持牌人或另一人處獲取指明的電訊網絡、電訊系統、電訊裝置、顧客設備或服務，或規定該人不得從該持牌人或另一人處獲取指明的電訊網絡、電訊系統、電訊裝置、顧客設備或服務，作為該持牌人提供或接駁至該等電訊網絡、電訊系統、電訊裝置、顧客設備或服務的條件；
  - (e) 在向競爭者提供服務方面存有歧視。

(由 2000 年第 36 號第 4 條增補)

L 21/2001

## 7L. Abuse of position

- (1) A licensee in a dominant position in a telecommunications market shall not abuse its position.
- (2) A licensee is in a dominant position when, in the opinion of the Authority, it is able to act without significant competitive restraint from its competitors and customers.
- (3) In considering whether a licensee is dominant, the Authority shall take into account relevant matters including, but not limited to—
  - (a) the market share of the licensee;
  - (b) the licensee's power to make pricing and other decisions;
  - (c) any barriers to entry to competitors into the relevant telecommunications market;
  - (d) the degree of product differentiation and sales promotion;
  - (e) such other relevant matters as may be stipulated in guidelines referred to in section 6D(4)(a).
- (4) A licensee who is in a dominant position is deemed to have abused its position if, in the opinion of the Authority, the licensee has engaged in conduct which has the purpose or effect of preventing or substantially restricting competition in a telecommunications market.
- (5) The Authority may consider conduct to fall within the conduct referred to in subsection (4) as including, but not limited to—
  - (a) predatory pricing;
  - (b) price discrimination, except to the extent that the discrimination only makes reasonable allowance for differences in the costs or likely costs of supplying telecommunications networks, systems, installations, customer equipment or services;
  - (c) making conclusion of contracts subject to acceptance by other parties of terms or conditions which are harsh or unrelated to the subject of the contract;
  - (d) arrangements (other than arrangements the subject of an authorization referred to in section 7K(3)(b)) requiring a person seeking the provision of or connection to a telecommunications network, system, installation, customer equipment or service conditional upon the person acquiring it also acquiring or not acquiring a specified telecommunications network, system, installation, customer equipment or service either from the licensee providing the service or from another person;
  - (e) discrimination in supply of services to competitors.

(Added 36 of 2000 s. 4)

L 21/2001

~~7M. 具誤導性或欺騙性的行為~~

~~持牌人在提供或獲取電訊網絡、電訊系統、電訊裝置、顧客設備或服務時（包括（但不限於）促銷、推廣或宣傳該等網絡、系統、裝置、顧客設備或服務），不得作出局長認為屬具誤導性或欺騙性的行為。~~

~~(由 2000 年第 36 號第 4 條增補)~~

## 7N. 不得歧視

(1) 在符合第 (4) 款的規定並在不損害第 7K 條的實施的原則下，在電訊市場處於優勢的持牌人，不得在收費或提供服務條件方面對在市場獲取服務的人之間存有歧視。

(2) 在符合第 (4) 款的規定下，專利牌照持牌人或傳送者牌照持牌人，不得對合法地獲取和使用電訊網絡、電訊系統、電訊裝置、顧客設備或服務以向公眾提供服務的人，及其他沒有向公眾提供服務的人之間存有歧視。

(3) 歧視包括——

(a) 收費方面的歧視，除非該歧視只是為合理地顧及提供服務的成本或可能成本的差別而作出的；

(b) 在功能特性方面的歧視；及

(c) 在其他提供服務條款或條件方面的歧視。

(4) 只有在局長認為有關歧視具有防止或大幅限制電訊市場的競爭的目的或效果時，第 (1) 及 (2) 款的禁止規定才適用。

~~(由 2000 年第 36 號第 4 條增補)~~

~~7O. 適用於被廢除的第 7 條的過渡性條文~~

~~凡在緊接《2000 年電訊（修訂）條例》（2000 年第 36 號）第 4 條的生效日期前、有根據第 7 條批給或當作根據第 7 條批給而有效期仍未屆滿的牌照，則在該生效日期當日及之後，該等牌照在尚餘的有效期（以在緊接該生效日期前尚餘的有效期為準）內須~~

~~7M. Misleading or deceptive conduct~~

~~A licensee shall not engage in conduct which, in the opinion of the Authority, is misleading or deceptive in providing or acquiring telecommunications networks, systems, installations, customer equipment or services including (but not limited to) promoting, marketing or advertising the network, system, installation, customer equipment or service.~~

~~(Added 36 of 2000 s. 4)~~

## 7N. Non-discrimination

(1) Subject to subsection (4) and without prejudice to the operation of section 7K, a licensee who is in a dominant position in a telecommunications market shall not discriminate between persons who acquire the services in the market on charges or the conditions of supply.

(2) Subject to subsection (4), an exclusive licensee or a carrier licensee shall not discriminate between a person who lawfully acquires and uses telecommunications networks, systems, installations, customer equipment or services to provide services to the public and any other person who is not providing a service to the public.

(3) Discrimination includes discrimination relating to—

(a) charges, except to the extent that the discrimination only makes reasonable allowance for difference in the cost or likely cost of supplying the service;

(b) performance characteristics; and

(c) other terms or conditions of supply.

(4) The prohibitions in subsections (1) and (2) apply only where in the opinion of the Authority such discrimination has the purpose or effect of preventing or substantially restricting competition in a telecommunications market.

~~(Added 36 of 2000 s. 4)~~

~~7O. Transitional provisions applicable to the repealed section 7~~

~~Where, immediately before the commencement of section 4 of the Telecommunication (Amendment) Ordinance 2000 (36 of 2000), there was in existence a licence granted or deemed to be granted under section 7, then, on and after that commencement, the licence shall, for the unexpired period of validity it had left to run immediately before that commencement and subject to the same conditions to which it was subject immediately before that commencement, be deemed to be a licence granted under this Ordinance, and~~

~~當作是根據本條例批給的牌照，並且須受在緊接該生效日期前附於該等牌照的相同條件所規限，而本條例的其他條文（包括在本條例下取消、撤回或暫時吊銷根據本條例批給的牌照的權力）即據此而適用。~~

~~(由 2000 年第 36 號第 4 條增補)~~

**7P. 局長可規管就傳送者牌照持牌人作出的改變**

- (1) 如在本條生效後有就某傳送者牌照持牌人作出的改變，則——
  - (a) 在第 (2) 款的規限下，局長可作出他認為為使他能就該項改變是否具有或相當可能具有大幅減少電訊市場中的競爭的效果得出意見而需要的調查；及
  - (b) (如局長在作出上述調查後，得出意見認為該項改變具有或相當可能具有大幅減少電訊市場中的競爭的效果) 局長可藉送達書面通知予該持牌人，指示該持牌人採取局長認為為消除或防止出現任何該等效果而需要、並在該通知指明的行動，但局長如信納該項改變令或相當可能令公眾得益，並信納該項得益大於任何該等效果對或相當可能對公眾造成的任何損害，則可不發出該指示。
- (2) 第 (1)(a) 款所指的調查只可於局長知道或理應知道 (以較早者為準) 有關改變出現後的 2 個星期內展開。
- (3) 局長在根據第 (1) 款得出任何意見或發出任何指示前，須——
  - (a) 給予所有傳送者牌照持牌人及任何有利害關係的人合理機會向局長作出申述；及
  - (b) 考慮根據 (a) 段作出的申述 (如有的話)。
- (4) 在不局限局長根據第 (1)(b) 款可指示有關傳送者牌照持牌人採取的行動的一般性質的原則下，該行動可包括致使就有關改變作出改動。
- (5) 獲送達第 (1)(b) 款所指的通知的傳送者牌照持牌人，須遵從該通知內的指示。
- (6) 如有就某傳送者牌照持牌人建議作出的改變，該持牌人或任何有利害關係的人可書面向局長申請同意該項建議作出的改變。

~~the other provisions of this Ordinance (including any power under this Ordinance to cancel, withdraw or suspend a licence granted under this Ordinance) shall apply accordingly.~~

~~(Added 36 of 2000 s. 4)~~

**7P. Authority may regulate changes in relation to carrier licensees**

- (1) Where, after the commencement of this section, there is a change in relation to a carrier licensee—
  - (a) subject to subsection (2), the Authority may conduct such investigation as he considers necessary to enable him to form an opinion as to whether or not the change has, or is likely to have, the effect of substantially lessening competition in a telecommunications market; and
  - (b) (where the Authority, after conducting such investigation, forms an opinion that the change has, or is likely to have, the effect of substantially lessening competition in a telecommunications market) the Authority may, by notice in writing served on the licensee, direct the licensee to take such action specified in the notice as the Authority considers necessary to eliminate or avoid any such effect, but the Authority may not issue such direction if the Authority is satisfied that the change has, or is likely to have, a benefit to the public and that the benefit outweighs any detriment to the public that is, or is likely to be, constituted by any such effect.
- (2) An investigation under subsection (1)(a) may only be commenced within 2 weeks after the Authority knows or ought reasonably to have known (whichever is the earlier) that the change has occurred.
- (3) The Authority shall, before forming any opinion or issuing any direction under subsection (1)—
  - (a) give all carrier licensees and any interested person a reasonable opportunity to make representations to the Authority; and
  - (b) consider the representations, if any, made under paragraph (a).
- (4) Without limiting the general nature of the action that the Authority may direct a carrier licensee to take under subsection (1)(b), the action may include the procuring of modifications to the change.
- (5) A carrier licensee served with a notice under subsection (1)(b) shall comply with the direction in the notice.
- (6) Where there is a proposed change in relation to a carrier licensee, the licensee or any interested person may apply in writing to the Authority for consent to the proposed change.

- (7) 如局長在接獲根據第 (6) 款提出的申請後——
- 得出意見認為有關建議作出的改變不會或並非相當可能會具有大幅減少電訊市場中的競爭的效果，則局長須決定給予同意；或
  - 得出意見認為有關建議作出的改變會或相當可能會具有大幅減少電訊市場中的競爭的效果，則局長可決定——
    - 拒絕給予同意；
    - 在內容為有關傳送者牌照持牌人須採取局長認為消除或防止出現任何該等效果而需要的行動的指示的規限下，給予同意；或
    - (如局長信納有關建議作出的改變會令或相當可能會令公眾得益，並信納該項得益會大於任何該等效果會對或相當可能會對公眾造成的任何損害) 給予同意而不發出第 (ii) 節所指的指示。
- (8) 局長在得出第 (7) 款所指的任何意見或根據該款作出任何決定或發出任何指示前，須——
- 給予所有傳送者牌照持牌人及任何有利害關係的人合理機會向局長作出申述；及
  - 考慮根據 (a) 段作出的申述 (如有的話)。
- (9) 局長須藉送達書面通知予第 (6) 款提述的傳送者牌照持牌人及 (如某有利害關係的人根據該款提出申請) 有關的有利害關係的人，告知該持牌人及 (如適用的話) 該人——
- 根據第 (7)(a) 或 (b)(i)、(ii) 或 (iii) 款作出的決定；
  - (如根據第 (7)(b)(ii) 款作出決定) 局長指示該持牌人採取的行動。
- (10) 在不局限局長根據第 (7)(b)(ii) 款可指示有關傳送者牌照持牌人採取的行動的一般性質的原則下，該行動可包括致使就有關建議作出的改變作出改動。
- (11) 如第 (6) 款提述的建議作出的改變——
- 依據局長根據第 (7)(a) 或 (b)(iii) 款給予的同意而生效；或
  - 依據局長根據第 (7)(b)(ii) 款給予的同意並在符合局長根據該款發出的指示的情況下生效，
- 局長不得根據第 (1)(b) 款就該項改變發出指示。

- (7) Where the Authority, on receiving an application made under subsection (6)—
- forms an opinion that the proposed change would not have, or not be likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority shall decide to give consent; or
  - forms an opinion that the proposed change would have, or be likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may decide to—
    - refuse to give consent;
    - give consent subject to the direction that the carrier licensee concerned takes the action that the Authority considers necessary to eliminate or avoid any such effect; or
    - give consent without issuing a direction under subparagraph (ii) if the Authority is satisfied that the proposed change would have, or be likely to have, a benefit to the public and that the benefit would outweigh any detriment to the public that would be, or would likely to be, constituted by any such effect.
- (8) The Authority shall, before forming any opinion, making any decision or issuing any direction under subsection (7)—
- give all carrier licensees and any interested person a reasonable opportunity to make representations to the Authority; and
  - consider the representations, if any, made under paragraph (a).
- (9) The Authority shall, by notice in writing served on the carrier licensee referred to in subsection (6) and (where an interested person makes an application under that subsection) the interested person, inform the licensee and (if applicable) the person of—
- the decision made under subsection (7)(a) or (b)(i), (ii) or (iii);
  - where a decision is made under subsection (7)(b)(ii), the action that the Authority directs the licensee to take.
- (10) Without limiting the general nature of the action that the Authority may direct a carrier licensee to take under subsection (7)(b)(ii), the action may include the procuring of modifications to the proposed change.
- (11) Where a proposed change referred to in subsection (6) takes effect—
- pursuant to the consent given by the Authority under subsection (7)(a) or (b)(iii); or
  - pursuant to the consent given, and in compliance with the direction issued, by the Authority under subsection (7)(b)(ii),
- the Authority shall not issue a direction under subsection (1)(b) in respect of the change.

- (12) 在第 (13) 款的規限下，局長——
- (a) 因根據第 (7)(a) 或 (b)(i)、(ii) 或 (iii) 款作出決定而招致；或
  - (b) 就處理根據第 (6) 款提出的申請而招致，
- 的任何費用或開支的款額，可作為拖欠局長的債項而向根據第 (6) 款提出申請的傳送者牌照持有人或有利害關係的人追討。
- (13) 根據第 (12) 款可予追討的款額，不得超逾附表 3 指明的款額。
- (14) 如局長——
- (a) 根據第 (1) 款得出任何意見或發出任何指示，他須以他認為適當的方式發表該意見或指示；或
  - (b) 得出第 (7) 款所指的任何意見或根據該款作出任何決定或發出任何指示，他須以他認為適當的方式發表該意見、決定或指示。
- (15) 政策局局長可藉在憲報刊登的命令，修訂附表 3。
- (16) 為施行第 (1) 及 (6) 款，如有以下情況，即屬有就某傳送者牌照持有人作出的改變——
- (a) 除第 (17) 款另有規定外，某人 (不論單獨或連同任何相聯人士) 成為該持牌人多於 15% 的有表決權股份的實益擁有人或表決控權人；
  - (b) 某人 (不論單獨或連同任何相聯人士) 成為該持牌人多於 30% 的有表決權股份的實益擁有人或表決控權人；或
  - (c) 某人 (不論單獨或連同任何相聯人士)——
    - (i) 成為該持牌人多於 50% 的有表決權股份的實益擁有人或表決控權人；或
    - (ii) 憑藉規管該持牌人或任何其他法團的組織章程大綱或組織章程細則或其他文書所賦予的權力，或憑藉在其他情況下獲賦予的權力，而取得 (包括藉收購有表決權股份而取得) 確保該持牌人的事務是按照該人意願處理的權力。
- (17) 第 (16)(a) 款在以下情況下不適用：在該款提述的人成為有關傳送者牌照持牌人多於 15% 但不多於 30% 的有表決權股份的實益擁有人或表決控權人時——

- (12) Subject to subsection (13), the amount of any costs or expenses incurred by the Authority—
- (a) in making a decision under subsection (7)(a) or (b)(i), (ii) or (iii); or
  - (b) in relation to the processing of an application made under subsection (6),
- is recoverable as a debt due to the Authority from the carrier licensee, or the interested person, who makes the application under subsection (6).
- (13) The amount recoverable under subsection (12) shall not exceed the amount specified in Schedule 3.
- (14) The Authority shall publish—
- (a) where he forms any opinion or issues any direction under subsection (1), the opinion or direction; or
  - (b) where he forms any opinion, makes any decision or issues any direction under subsection (7), the opinion, decision or direction,
- in such manner as he considers appropriate.
- (15) The Secretary may by order published in the Gazette amend Schedule 3.
- (16) For the purposes of subsections (1) and (6), there is a change in relation to a carrier licensee if—
- (a) subject to subsection (17), a person, either alone or with any associated person, becomes the beneficial owner or voting controller of more than 15% of the voting shares in the licensee;
  - (b) a person, either alone or with any associated person, becomes the beneficial owner or voting controller of more than 30% of the voting shares in the licensee; or
  - (c) a person, either alone or with any associated person—
    - (i) becomes the beneficial owner or voting controller of more than 50% of the voting shares in the licensee; or
    - (ii) acquires the power (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation or otherwise, to ensure that the affairs of the licensee are conducted in accordance with the wishes of that person.
- (17) Subsection (16)(a) does not apply if the person referred to in that subsection, when becoming the beneficial owner or voting controller of more than 15%, but not more than 30%, of the voting shares in the carrier licensee concerned—

- (a) 該人(不論單獨或連同任何相聯人士)並非或並不同時成為任何其他傳送者牌照持牌人多於 5% 的有表決權股份的實益擁有人或表決控權人；及
- (b) 該人(不論單獨或連同任何相聯人士)沒有憑藉規管任何其他傳送者牌照持牌人或任何其他法團的組織章程大綱或組織章程細則或其他文書所賦予的權力，或憑藉在其他情況下獲賦予的權力，而具有(包括藉持有有表決權股份而具有)或同時取得(包括藉收購有表決權股份而取得)確保該其他持牌人的事務是按照該人的意願處理的權力。

(18) 在本條中——

“有利害關係的人”(interested person)——

- (a) 就第 (1) 款提述的改變而言，指就有關傳送者牌照持牌人作出第 (16)(a)、(b) 或 (c) 款提述的任何作為的人；
- (b) 就第 (6) 款提述的建議作出的改變而言，指擬就有關傳送者牌照持牌人作出第 (16)(a)、(b) 或 (c) 款提述的任何作為的人；

“有表決權股份”(voting shares)指傳送者牌照持牌人的股份，而該等股份是使其註冊擁有人有權在該持牌人的股東會議上投票的；

“表決控制權”(voting control)指控制(不論直接或間接)附於一股或多於一股傳送者牌照持牌人的有表決權股份的表決權的行使的控制權，亦指控制(不論直接或間接)該等表決權的行使的能力，而該項控制是——

- (a) 藉行使一項權利(此項權利的行使是賦予行使表決權的能力或控制行使表決權的能力的)而進行的；
- (b) 藉一項行使上述表決權的權利而進行的；
- (c) 根據任何責任或義務而進行的；
- (d) 透過代名人而進行的；
- (e) 透過或藉着一項信託、協議、安排、諒解或常規而進行的，不論該項信託、協議、安排、諒解或常規是否具有法律上或衡平法上的效力，亦不論其是否基於法律上或衡平法上的權利；或

- (a) either alone or with any associated person, is not, or does not concurrently become, the beneficial owner or voting controller of more than 5% of the voting shares in any other carrier licensee; and
- (b) either alone or with any associated person, does not have the power (including by the holding of voting shares), or does not concurrently acquire the power (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating any other carrier licensee or any other corporation or otherwise, to ensure that the affairs of such other carrier licensee are conducted in accordance with the wishes of that person.

(18) In this section—

“associated person”(相聯人士), in relation to a person, has the meaning assigned in the definition of “associated person” in section 2(1), but—

- (a) the references to “the licensee” in that definition shall be construed as references to the person; and
- (b) where the person is a corporation, the references to “associated corporation” in that definition shall be construed as references to a corporation over which the person has control, a corporation which has control over the person or a corporation which is under the same control as is the person;

“interested person”(有利害關係的人) means—

- (a) in relation to a change referred to in subsection (1), a person who does any of the acts referred to in subsection (16)(a), (b) or (c) in relation to the carrier licensee concerned;
- (b) in relation to a proposed change referred to in subsection (6), a person who proposes to do any of the acts referred to in subsection (16)(a), (b) or (c) in relation to the carrier licensee concerned;

“voting control”(表決控制權) means the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to one or more voting shares in a carrier licensee—

- (a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;
- (b) by an entitlement to exercise such a right to vote;
- (c) under a duty or obligation;
- (d) through a nominee;
- (e) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights; or

(f) 作為傳送者牌照持牌人的有表決權股份的押記人而進行的，但如該等股份的承押記人(或承押記人的代名人)已根據有關押記向押記人發出書面通知，表示有意行使附於該等股份的表決權，則作別論；

“表決控權人”(voting controller)指單獨或連同一名或多於一名其他人持有表決控制權的人；

“相聯人士”(associated person)就某人而言，具有第 2(1) 條中“相聯人士”的定義所給予的涵義，但——

(a) 在該定義中對“該持牌人”的提述，須解釋為對該人的提述；及

(b) 在該人屬法團的情況下，在該定義中對“相聯法團”的提述，須解釋為對由該人控制的法團、控制該人的法團或如該人般受同樣控制的法團的提述。

(19) 就本條而言，不能識別以某人作為表決控權人的有表決權股份並不具關鍵性。

(由 2003 年第 30 號第 5 條增補)

#### ~~8. 除根據牌照進行外，禁止設置 與維持電訊設施等~~

~~(1) 除根據與按照總督會同行政局批給的牌照或以局長批給或設立的適當牌照行事外，任何人不得在香港或在於香港註冊或領牌的任何船舶、航空器或空間物體上—— (由 1990 年第 39 號第 3 條修訂；由 1990 年第 74 號第 104(3) 條修訂；由 2000 年第 36 號第 5 條修訂)~~

~~(a) 設置或維持任何電訊設施；或~~

~~\*[(aa) 在業務運作中，要約提供電訊服務；或] (由 2000 年第 36 號第 5 條增補)~~

~~(b) 管有或使用任何作無線電通訊之用的器具或產生並發射無線電波的任何種類器具，即使這些器具並非預定作無線電通訊之用；或~~

~~(c) 在營商過程或業務運作中，經營作無線電通訊之用的器具或材料，或該等器具的元件，或經營產生並發射無線電波的任何種類器具，不論該等器具是否預定作或是否能夠作無線電通訊之用的；或~~

~~(d) 為在營商過程或業務運作中予以售賣而示範任何作無線電通訊之用的器具或材料。~~

\* 尚未實施。

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

“voting controller”(表決控權人) means a person who either alone or with one or more other persons holds voting control;

“voting shares”(有表決權股份) means shares in the carrier licensee which entitle the registered owner of such shares to vote at meetings of shareholders of the licensee.

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

(Added 30 of 2003 s. 5)

#### ~~8. Prohibition of establishment and maintenance of means of telecommunications, etc., except under licence~~

~~(1) Save under and in accordance with a licence granted by the Governor in Council or with the appropriate licence granted or created by the Authority, no person shall in Hong Kong or on board any ship, aircraft or space object that is registered or licensed in Hong Kong— (Amended 39 of 1990 s. 3; 74 of 1990 s. 104(3); 36 of 2000 s. 5)~~

~~(a) establish or maintain any means of telecommunications; or~~

~~\*[(aa) offer in the course of business a telecommunications service; or] (Added 36 of 2000 s. 5)~~

~~(b) possess or use any apparatus for radiocommunications or any apparatus of any kind that generates and emits radio waves notwithstanding that the apparatus is not intended for radiocommunications; or~~

~~(c) deal in the course of trade or business in apparatus or material for radiocommunications or in any component part of any such apparatus or in apparatus of any kind that generates and emits radio waves whether or not the apparatus is intended, or capable of being used, for radiocommunications; or~~

~~(d) demonstrate, with a view to sale in the course of trade or business, any apparatus or material for radiocommunications. (Amended 36 of 2000 s. 28)~~

\* Not yet in operation.



~~(3) 如任何人管有或使用任何未經批准的解碼器以收看任何擬供或可供公眾在定期或以其他方式繳付收看費的情況下在香港接收的電視節目服務，或授權另一人如此行事，持牌人可針對該人提起訴訟而申索損害賠償或申請發出強制令或申索其他適當的補救、命令或濟助。~~

~~(由 2004 年第 8 號第 5 條增補)~~

#### 第 IV 部

##### 牌照——一般條文

#### 8. 可獲批給牌照的人

(1) 行政長官會同行政會議可應任何公司以指明格式向其提出的申請，按照本條例批給牌照，以准許提供本地免費電視節目服務或本地收費電視節目服務。

(2) 廣管局可應任何公司以指明格式向該局提出的申請，按照本條例批給牌照，以准許提供非本地電視節目服務或其他須領牌電視節目服務。

(b)

~~(3) A licensee may bring an action for damages, an injunction or other appropriate remedy, order or relief against any person who possesses or uses, or authorizes another person to possess or use an unauthorized decoder to view any television programme service which is intended or available for reception by the public, on payment, whether periodically or otherwise, of a subscription in Hong Kong.~~

~~(Added 8 of 2004 s. 5)~~

#### PART IV

##### LICENCES—GENERAL PROVISIONS

#### 8. To whom licence may be granted

(1) The Chief Executive in Council may in accordance with this Ordinance grant a licence to provide a domestic free television programme service or domestic pay television programme service on application made to him in the specified form by a company.

(2) The Broadcasting Authority may in accordance with this Ordinance grant a licence to provide a non-domestic television programme service or an other licensable television programme service on application made to it in the specified form by a company.

(3) 在不抵觸第(4)款的條文下，如任何公司屬某法團的附屬公司，則本地免費電視節目服務牌照不得批給該公司。

(4) 在不損害附表 1、4、5、6 及 7 的實施的原則下，除非本條例另有規定，否則不符合以下說明的公司不得獲批給及持有牌照——

- (a) 就本地免費電視節目服務牌照或本地收費電視節目服務牌照而言——
  - (i) 該公司符合第 2(1) 條“通常居於香港”定義中 (b) 段的說明；
  - (ii) 第 (iv) 節所規定的過半數董事積極參與該公司的督導；
  - (iii) 該公司每次董事會議的法定人數中，過半數董事均是在當其時屬通常居於香港，並最少曾於一段不少於 7 年的連續期間通常居於香港的個人；
  - (iv) 該公司過半數董事及該公司過半數主要人員 (包括負責挑選或製作電視節目或安排電視節目播放時間的主要人員) 均是在當其時屬通常居於香港，並最少曾於一段不少於 7 年的連續期間通常居於香港的個人，但經廣管局事先以書面批准者除外；及
  - (v) 並無任何不符合持牌資格人士對該公司行使控制，但如在申請牌照時已披露某人不符合資格一事，則屬例外；
- (b) 就非本地電視節目服務牌照或其他須領牌電視節目服務牌照而言，不少於一位該公司的董事或主要人員是在當其時屬通常居於香港，並最少曾於一段不少於 7 年的連續期間通常居於香港的個人；及
- (c) 就任何牌照而言，該公司根據其組織章程大綱及組織章程細則獲賦權全面遵從本條例條文及其牌照條件 (不論是實際上有的或所建議有的條件)。

(3) Subject to subsection (4), a domestic free television programme service licence shall not be granted to a company which is a subsidiary of a corporation.

(4) Without prejudice to the operation of Schedules 1, 4, 5, 6 and 7, unless otherwise provided in this Ordinance, a licence shall not be granted to and held by a company unless—

- (a) in the case of a domestic free television programme service licence or domestic pay television programme service licence—
  - (i) the company complies with paragraph (b) of the definition of “ordinarily resident in Hong Kong” in section 2(1);
  - (ii) the majority of the directors required under subparagraph (iv) actively participate in the direction of the company;
  - (iii) a quorum of every meeting of the directors of the company has a majority of directors who is each for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) and has been so resident for at least one continuous period of not less than 7 years;
  - (iv) except with the prior approval in writing of the Broadcasting Authority, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officer of the company in charge of the selection, production or scheduling of television programmes, is each an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) and has been so resident for at least one continuous period of not less than 7 years; and
  - (v) no disqualified person, other than a person whose disqualification is disclosed in the application for the licence, exercises control in the company;
- (b) in the case of a non-domestic television programme service licence or an other licensable television programme service licence, not less than one director or principal officer of the company is an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) and has been so resident for at least one continuous period of not less than 7 years; and
- (c) in the case of any licence, the company is empowered under its memorandum and articles of association to comply fully with the provisions of this Ordinance and its licence conditions (whether actual or proposed).

- ~~(d) 如廣管局日後不再認同作出新裁定所持理由，則本款在經必要的變通後適用於新裁定，一如其適用於舊裁定一樣。~~
- (5) 廣管局在根據第(4)款作出裁定前，須——
- (a) 給予有關的持牌人合理機會，讓其就以下事項向廣管局作出申述——
- (i) 有關的電視節目服務是否以香港為主要目標市場；或
- (ii) 有關的電視節目服務是否並非以香港為主要目標市場；及
- (b) 考慮該等申述(如有的話)。
- (6) 在裁定任何電視節目服務是否以香港為主要目標市場時，須考慮(但不限於)以下事項——
- (a) 該服務是否涵蓋香港；
- (b) 該服務的廣告及收看費的收入(如適用的話)是否主要來自香港；
- (c) 提供該服務的語言，以及該服務目標市場的觀眾性質及人數；及
- (d) 持牌人有否在香港積極推廣該服務或由第三方代其在香港積極推廣該服務。
- (7) 在本條中，“電視節目服務”(television programme service)包括電視節目服務的任何部分。

## 第 V 部

### 關於領牌服務的規定

#### 13. 禁止反競爭行為

- (1) 除第(4)及(5)款另有規定外，持牌人不得從事廣管局認為目的在於防止、扭曲或在相當程度上限制電視節目服務市場競爭的行為，亦不得從事該局認為會有如此效果的行為。
- (2) 廣管局可認為第(1)款所述的行為包括(但不限於)以下行為——
- (a) 直接或間接議定電視節目服務市場內價格的釐定；

- ~~(d) this subsection shall, with all necessary modifications, apply to the new determination as it applies to the old determination should the Broadcasting Authority subsequently cease to be of the opinion that gave rise to the new determination.~~
- (5) The Broadcasting Authority shall, before making a determination under subsection (4)—
- (a) give the licensee concerned a reasonable opportunity to make representations to the Broadcasting Authority in relation to whether or not the television programme service concerned—
- (i) primarily targets Hong Kong; or
- (ii) does not primarily target Hong Kong; and
- (b) consider the representations, if any, made.
- (6) In determining whether or not a television programme service primarily targets Hong Kong, account shall be taken of, but not limited to, the following matters—
- (a) whether the service covers Hong Kong;
- (b) whether the sources of advertising and subscription revenues, where applicable, of the service are derived principally from Hong Kong;
- (c) the language of the service and the nature and size of the audiences targeted by the service; and
- (d) whether the service is actively marketed in Hong Kong by the licensee or by a third party on its behalf.
- (7) In this section, “television programme service” (電視節目服務) includes any part of a television programme service.

## PART V

### REQUIREMENTS RELATING TO LICENSED SERVICES

#### 13. Prohibition on anti-competitive conduct

- (1) Subject to subsections (4) and (5), a licensee shall not engage in conduct which, in the opinion of the Broadcasting Authority, has the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market.
- (2) The Broadcasting Authority may consider conduct to fall within subsection (1) as including, but not limited to—
- (a) direct or indirect agreements to fix the price in a television programme service market;

- (b) 防止或限制向競爭者提供貨品或服務的行為；
  - (c) 直接或間接議定持牌人之間按議定的地域或顧客界限分享電視節目服務市場；
  - (d) 對製作、市場、技術發展或投資的限制或控制；
  - (e) 對交易上的其他各方所訂立的相等協議施加不同的條件，以致他們處於競爭劣勢；
  - (f) 規定協議的其他各方須接受附加的義務方與其訂立協議，而該等附加的義務，就其性質或商業慣例而言，是與協議的標的事項無關的。
- (3) 在不抵觸第(4)款的規定下，在任何協議中的條文訂定或直接或間接容許第(1)款所禁止的行為的範圍內，該條文屬無效。
- (4) 廣管局可——
- (a) 就持牌人向其提出的符合指明格式的申請；
  - (b) 以指明的理由；及
  - (c) 藉向持牌人送達書面通告，
- 豁免該申請指明的行為使其不受第(1)款的規限。該項豁免須受廣管局在該通知指明的該局認為合適的條件所規限。
- (5) 第(1)款並不適用於——
- (a) 對任何就在電視節目服務中納入該服務的全部或主要由持牌人所製作的電視節目所施加的限制；或
  - (b) 任何訂明限制。
- (6) 為免生疑問，現宣布本條中的任何條文均不損害關於版權或商標的法律的施行而產生的權利的存在。

#### 14. 禁止濫用支配優勢

- (1) 在電視節目服務市場處於支配優勢的持牌人，不得濫用其支配優勢。
- (2) 如廣管局認為某持牌人能夠在不受其競爭者及顧客的在競爭方面的相當程度約制下行事，則該持牌人即屬處於支配優勢。
- (3) 廣管局在考慮某持牌人是否處於支配優勢時，須顧及包括(但不限於)以下事宜的有關事宜——

  - (a) 持牌人的市場佔有率；
  - (b) 持牌人作出定價及其他決定的能力；

- (b) conduct preventing or restricting the supply of goods or services to competitors;
  - (c) direct or indirect agreements between licensees to share any television programme service market between them on agreed geographic or customer lines;
  - (d) limiting or controlling production, markets, technical development or investment;
  - (e) applying dissimilar conditions to equivalent agreements with other trading parties, thereby placing them at a competitive disadvantage;
  - (f) making the conclusion of agreements subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such agreements.
- (3) Subject to subsection (4), a provision in an agreement is void in so far as it provides for or permits, whether directly or indirectly, conduct which contravenes subsection (1).
- (4) The Broadcasting Authority may—
- (a) on an application made to it in the specified form by a licensee;
  - (b) on a prescribed ground; and
  - (c) by notice in writing served on the licensee,
- exempt conduct specified in the application from subsection (1) subject to such conditions as the Broadcasting Authority thinks fit specified in the notice.
- (5) Subsection (1) shall not apply to—
- (a) any restriction imposed on the inclusion in a television programme service of a television programme produced wholly or substantially by the licensee of the service; or
  - (b) any prescribed restriction.
- (6) For the avoidance of doubt, it is hereby declared that nothing in this section shall prejudice the existence of any rights arising from the operation of the law relating to copyright or trademarks.

#### 14. Prohibition on abuse of dominance

- (1) A licensee in a dominant position in a television programme service market shall not abuse its position.
- (2) A licensee is in a dominant position when, in the opinion of the Broadcasting Authority, it is able to act without significant competitive restraint from its competitors and customers.
- (3) In considering whether a licensee is dominant, the Broadcasting Authority shall have regard to relevant matters including, but not limited to—

  - (a) the market share of the licensee;
  - (b) the licensee's power to make pricing and other decisions;

- (c) 競爭者進入有關電視節目服務市場的任何障礙；
  - (d) 廣管局在徵詢有關電視節目服務市場的持牌人的意見後，在根據第 4 條發出的關於市場支配優勢評估的指引內規定的其他有關事宜。
- (4) 如廣管局認為某名處於支配優勢的持牌人作出目的在於防止、扭曲或在相當程度上限制有關電視節目服務市場競爭的行為，或作出有如此效果的行為，則該名持牌人即須當作濫用其支配優勢。
- (5) 廣管局可認為第 (4) 款所述的行為包括 (但不限於) 以下行為——
- (a) 掠奪式定價；
  - (b) 在價格上的歧視，但在該歧視只是為提供有關服務或其他事項的成本或可能成本的差別而作合理調整的範圍內，則屬例外；
  - (c) 規定協議的其他各方須接受苛刻或與協議的標的事項無關的條款或條件，方與其訂立協議；
  - (d) 在向競爭者提供服務方面存有歧視。

#### 15. 第 13 及 14 條的補充條文

- (1) 為施行第 13 或 14 條，廣管局可考慮持牌人的相聯者的行為或該相聯者在電視節目服務市場的地位。
- (2) 任何人因持牌人違反第 13(1) 或 14(1) 條而蒙受損失或損害，或因持牌人違反第 13(1) 或 14(1) 條有關的發牌條件、裁定或指示而蒙受損失或損害，可針對該持牌人提起訴訟，申索損害賠償，或申請發出強制令或申索其他適當的補救、命令或濟助。
- (3) 凡第 (2) 款提述的違反——
- (a) 發生已逾 3 年；或
  - (b) 已導致根據第 28 條施加處罰，而自施加處罰起計已逾 3 年，
- 則任何人不得根據該款就該項違反提起訴訟。(a) 及 (b) 段所提述的時間，以較後者為準。
- (4) 為免生疑問，現宣布：凡廣管局得出第 13(1) 條所提述的意見，違反該條的行為即告發生；凡廣管局得出第 14(4) 條所提述的意見，違反第 14(1) 條的行為即告發生。

- (c) any barriers to entry to competitors into the relevant television programme service market;
  - (d) such other relevant matters as may be stipulated in guidelines concerning the test of dominance issued under section 4 by the Broadcasting Authority in consultation with the licensees in the relevant television programme service market.
- (4) A licensee who is in a dominant position is deemed to have abused its position if, in the opinion of the Broadcasting Authority, the licensee has engaged in conduct which has the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market.
- (5) The Broadcasting Authority may consider conduct to fall within the conduct mentioned in subsection (4) as including, but not limited to—
- (a) predatory pricing;
  - (b) price discrimination, except to the extent that the discrimination only makes reasonable allowance for differences in the costs or likely costs of supplying the service or other matter;
  - (c) making the conclusion of agreements subject to acceptance by other parties of terms or conditions which are harsh or unrelated to the subject of the agreement;
  - (d) discrimination in the supply of services to competitors.

#### 15. Provisions supplementary to sections 13 and 14

- (1) The conduct of an associate of a licensee, or the position of the associate in a television programme service market, may be considered for the purposes of section 13 or 14.
- (2) A person sustaining loss or damage from a breach of section 13(1) or 14(1), or a breach of a licence condition, determination or direction relating to that section, may bring an action for damages, an injunction or other appropriate remedy, order or relief against the licensee who is in breach.
- (3) No action may be brought under subsection (2) more than 3 years after—
- (a) the commission of the breach concerned referred to in that subsection; or
  - (b) the imposition under section 28 of a penalty in relation to the breach,
- whichever is the later.
- (4) For the avoidance of doubt, it is hereby declared that a breach of section 13(1) or 14(1) occurs when the Broadcasting Authority forms the opinion referred to in section 13(1) or 14(4) respectively.

~~(2) 廣管局可藉送達持牌人的書面通知，豁免持牌人使其無需於該通知指明的期間內就該通知指明的香港任何區域遵守第(1)款。~~

### 19. 學校的電視節目

廣管局可藉送達本地免費電視節目服務持牌人的書面通知，規定該持牌人將政府所提供的學校教育電視節目免費納入其領牌服務內。

### 20. 電視節目服務鎖碼裝置

持牌人(本地免費電視節目服務持牌人除外)的領牌服務如屬——

- (a) 本地收費電視節目服務；
- (b) 在香港提供的非本地電視節目服務，而使用在香港提供的該服務是須繳付收看費的；或
- (c) 任何其他須領牌電視節目服務，

則須提供令廣管局滿意的鎖碼裝置，但如該服務是提供予酒店房間者，則屬例外。

### 21. 對不被視為適當人選的人的限制

(1) 持牌人及任何對持牌人行使控制的人，須為適當人選，並須保持為適當人選。

(2) 除第(3)款另有規定外，持牌人須在每年的4月1日或該日之前，以指明格式向廣管局提供資料，使該局能確定並核實該持牌人或對該持牌人行使控制的人是否適當人選。

(3) 第(2)款不適用於持牌不足4個月的持牌人。

(4) 在決定持牌人或對持牌人行使控制的人是否適當人選時，須考慮——

- (a) 持牌人或該人的業務紀錄；
- (b) 持牌人或該人在其必須具誠信公正品格的情況下的紀錄；
- (c) 持牌人或該人在香港的刑事紀錄，而該等紀錄是關於香港法律所訂的涉及賄賂、偽造帳目、貪污或不誠實的罪行的；及

~~(2) The Broadcasting Authority may, by notice in writing served on a licensee, exempt the licensee from complying with subsection (1) in relation to any parts of Hong Kong specified in the notice and during any period specified in the notice.~~

### 19. Television programmes for schools

The Broadcasting Authority may, by notice in writing served on a domestic free television programme service licensee, require the licensee to include in its licensed service, without charge, any educational television programme for schools supplied by the Government.

### 20. Television programme service locking device

A licensee (except a domestic free television programme service licensee) shall provide a television programme service locking device to the satisfaction of the Broadcasting Authority where its licensed service is—

- (a) a domestic pay television programme service;
- (b) a non-domestic television programme service provided in Hong Kong where a subscription is required to be paid for the service provided in Hong Kong; or
- (c) an other licensable television service,

~~but excluding such a service provided to hotel rooms.~~

### 21. Restrictions on persons not regarded as fit and proper

(1) A licensee and any person exercising control of the licensee shall be and remain a fit and proper person.

(2) Subject to subsection (3), a licensee shall, on or before the 1st of April of each year, provide information in the specified form to the Broadcasting Authority to enable the Broadcasting Authority to establish and verify whether the licensee or a person exercising control of the licensee is a fit and proper person.

(3) Subsection (2) shall not apply to a licensee which has been a licensee for less than 4 months.

(4) In determining whether a licensee or person exercising control over the licensee is a fit and proper person, account shall be taken of—

- (a) the business record of the licensee or person;
- (b) the record of the licensee or person in situations requiring trust and candour;
- (c) the criminal record in Hong Kong of the licensee or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and

- (d) 持牌人或該人在香港以外地方的刑事紀錄，而該等紀錄所關乎的行為，假若是在香港作出的即會構成或組成(c)段所述的持牌人或該人的香港刑事紀錄部分內容者。

## ~~22. 防止干預持牌人在節目內容方面的獨立性~~

(1) 持牌人不得協議在其領牌服務內包括或不包括任何材料，但持牌人正在訂約以求獲得供應給其領牌服務的材料則不在此限。

(2) 任何協議中如有任何規定持牌人在其領牌服務內包括或不包括任何材料的條文，不得針對該持牌人強制執行該條文，但如該材料屬根據該協議將會供應的材料，則不在此限。

## 23. 關於電視節目服務的一般規定

(1) 持牌人在任何時間均須負責確保其領牌服務不包括潛送訊息。

(2) 除第(3)款另有規定外，持牌人須——

- (a) 遵守其牌照條件；
- (b) 遵守本條例所訂並適用於該持牌人的規定；
- (c) 遵從根據本條例發出或作出並適用於該持牌人的任何指示、命令、決定或裁定；
- (d) 遵守適用於該持牌人的業務守則的所有條文；及
- (e) 在不影響任何與本條有關的業務守則的實施、根據第42(1)(e)條訂立的規例或廣管局根據《廣播事務管理局條例》(第391章)第9條而有的職能的原則下，確保其領牌服務在電視節目內容及廣播技術方面均維持達到適當標準。

(3) 第(2)款不適用於政府所提供的材料。

(4) 為免生疑問，現宣布：如持牌人的領牌服務包括或會包括根據《電影檢查條例》(第392章)獲豁免或核准上映或公布的材料，持牌人亦不因此而獲免履行根據本條例他須履行的任何責任。

- (d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in paragraph (c).

## ~~22. Prevention of interference with programming independence of licensees~~

(1) A licensee shall not, except in respect of material the supply of which it is contracting for its licensed service, agree to include or to refrain from including in its licensed service any material.

(2) Any provision in an agreement which requires a licensee to include or to refrain from including in its licensed service any material, other than material to be supplied under the agreement, shall not be enforceable against the licensee.

## 23. General requirements as to television programme services

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

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

- (a) comply with its licence conditions;
- (b) comply with any requirements under this Ordinance which are applicable to it;
- (c) comply with any directions, orders, or determinations, under this Ordinance which are applicable to it;
- (d) comply with all provisions in a Code of Practice which are applicable to it; and
- (e) without prejudice to the operation of any Code of Practice which relates to this section, to any regulations under section 42(1)(e) or to the Broadcasting Authority's functions under section 9 of the Broadcasting Authority Ordinance (Cap. 391), secure proper standards for its licensed service with regard to television programme content and technical performance.

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

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

## 附表 1

[第 2、8、42 及  
43 條及附表  
4 及 8]

不符合本地免費或收費電視節目服務的持牌資格以及  
對表決控權人的表決控制權的限制

## 第 1 部

## 釋義及適用範圍

## 1. 釋義

(1) 在本附表中，除文意另有所指外——

“一般表決控權人”(qualified voting controller)指——

- (a) (i) 屬通常居於香港的個人，並最少曾於一段不少於 7 年的連續期間通常居於香港的表決控權人；或
- (ii) 屬通常居於香港的法團的表決控權人；或
- (b) 屬以下人士的表決控權人——
  - (i) 根據《證券及期貨條例》(第 571 章)第 104 條獲認可為集體投資計劃的任何單位信託或互惠基金的受託人或管理人；(由 2002 年第 5 號第 407 條修訂)
  - (ii) 藉任何具司法管轄權的法院所作出的命令而設立的慈善計劃的受託人；
  - (iii) 在死者去世至遺產管理書批出期間內死者遺產所歸屬的司法人員；
  - (iv) 高等法院司法常務官；或
  - (v) 訂明的其他人士；

“不符合持牌資格人士”(disqualified person)指第 4、5、6 或 7 條所指的不符合持牌資格人士的人；

“主要人員”(principal officer)就任何法團而言，指——

- (a) 該法團所僱用或聘用並在該法團的董事的直接權限下，本人或連同其他人負責處理該法團業務的人；或
- (b) 該法團所僱用或聘用並在該法團的一名董事或一名 (a) 段所適用的人的直接權限下，就該法團而執行管理職能的人；

“表決控制權”(voting control)指控制(不論直接或間接)附於 1 股或多於 1 股持牌人的有表決權的股份的表決權的行使的控制權，亦指控制(不論直接或間接)該等表決權的行使的能力，而該項控制是——

- (a) 藉行使一項權利(此項權利的行使是賦予行使表決權的能力或控制行使表決權的能力的)而進行的；
- (b) 藉一項行使上述表決權的權利而進行的；
- (c) 根據任何責任或義務而進行的；
- (d) 透過代名人而進行的；
- (e) 透過或藉着一項信託、協議、安排、諒解或常規而進行的，不論該項信託、協議、安排、諒解或常規是否具有法律上或衡平法上的效力，亦不論其是否基於法律上或衡平法上的權利；或
- (f) 作為持牌人的有表決權股份的押記人而進行的，但如該等股份的承押記人(或承押記人的代名人)已根據有關押記向押記人發出書面通知，表示有意行使附於該等股份的表決權，則作別論；

## SCHEDULE 1

[ss. 2, 8, 42 & 43  
& Schs. 4 & 8]

DISQUALIFICATION FOR HOLDING DOMESTIC FREE OR PAY  
TELEVISION PROGRAMME SERVICE LICENCES AND  
RESTRICTION ON VOTING CONTROL OF  
VOTING CONTROLLERS

## PART 1

## INTERPRETATION AND APPLICATION

## 1. Interpretation

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

“advertising agency”(廣告宣傳代理商) means a person who—

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

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

- (a) where the voting controller holding the voting control is an individual—
  - (i) a relative of the voting controller;
  - (ii) a partner of the voting controller or a relative of the partner;
  - (iii) a partnership in which the voting controller is a partner;
  - (iv) a corporation influenced by—
    - (A) the voting controller;
    - (B) a partner of the voting controller; or
    - (C) a partnership in which the voting controller is a partner; or
  - (v) a director or principal officer of a corporation mentioned in paragraph (iv);
- (b) where the voting controller holding the voting control is a corporation—
  - (i) an associated corporation;
  - (ii) a voting controller who—
    - (A) influences the corporation and, if the voting controller is an individual, a relative of the voting controller; or
    - (B) is a partner of the voting controller to whom or which sub-paragraph (A) applies, and if the partner is an individual, a relative of the partner;
  - (iii) a director or principal officer of the corporation or of an associated corporation and a relative of the director or officer;
  - (iv) a partner of the corporation and, if the partner is an individual, a relative of the partner; or
- (c) where the voting controller holding the voting control is a partnership—
  - (i) a member of the partnership and, if the partner is an individual, a relative of the member;
  - (ii) a partner of the partnership and, where the partner—
    - (A) is an individual, a relative of the partner; or
    - (B) is itself a partnership, a relative of a member of the partnership who is an individual;
  - (iii) a corporation influenced by—
    - (A) the partnership;
    - (B) a partner of it; or
    - (C) where the partner is an individual, a relative of the partner;
  - (iv) a corporation of which a partner of the partnership is a director or principal officer;
  - (v) a director or principal officer of a corporation mentioned in subparagraph (iii);



“表決控權人”(voting controller)指單獨或連同 1 名或多於 1 名其他人持有表決控制權的人；

“受限制表決控權人”(unqualified voting controller)指不屬一般表決控權人的表決控權人；

“持牌人”(licensee)指牌照持有人；

“持牌人登記冊”(licensee's register)就某持牌人而言，指根據《公司條例》(第 32 章)第 95 條規定備存的登記冊；

“相聯法團”(associated corporation)就任何持有表決控制權的表決控權人(不論符合資格與否)而言，指——

- (a) 受該表決控權人影響的法團；
- (b) 對本身是法團的表決控權人(“另一法團”)有影響力的法團；
- (c) 受另一法團影響的法團；

“相聯者”(associate)就任何持有表決控制權的表決控權人(不論符合資格與否)而言——

- (a) 如該表決控權人屬個人，指——
  - (i) 該表決控權人的親屬；
  - (ii) 該表決控權人的合夥人或該合夥人的親屬；
  - (iii) 該表決控權人擔任合夥人的合夥；
  - (iv) 受下述人士影響的法團——
    - (A) 該表決控權人；
    - (B) 該表決控權人的合夥人；或
    - (C) 該表決控權人擔任合夥人的合夥；或
  - (v) 第(iv)段所述法團的董事或主要人員；
- (b) 如該表決控權人屬法團，指——
  - (i) 相聯法團；
  - (ii) 符合以下說明的表決控權人——
    - (A) 對該法團及(如該表決控權人屬個人)該表決控權人的親屬有影響力；或
    - (B) (A)分節適用的表決控權人的合夥人及(如該合夥人屬個人)該合夥人的親屬；
  - (iii) 該法團或任何相聯法團的董事或主要人員，以及該董事或主要人員的親屬；
  - (iv) 該法團的合夥人及(如該合夥人屬個人)該合夥人的親屬；或
- (c) 如該表決控權人屬一個合夥，指——
  - (i) 該合夥的成員及(如該合夥人屬個人)該成員的親屬；
  - (ii) 該合夥的合夥人及——
    - (A) (如該合夥人屬個人)該合夥人的親屬；或
    - (B) (如該合夥人本身是一個合夥)該合夥屬個人的成員的親屬；
  - (iii) 受下述人士影響的法團——
    - (A) 該合夥；
    - (B) 該合夥的其中一名合夥人；或
    - (C) (如該合夥人屬個人)該合夥人的親屬；
  - (iv) 該合夥的其中一名合夥人擔任董事或主要人員的法團；
  - (v) 第(iii)節所述法團的董事或主要人員；

“牌照”(licence)指本地免費電視節目服務牌照或本地收費電視節目服務牌照；

“廣告宣傳代理商”(advertising agency)指——

- (a) 經營廣告宣傳代理業務的人；或
- (b) 對經營廣告宣傳代理業務的人行使控制的人；

“影響”、“影響力”(influence)就任何法團而言，指一名表決控權人——

- (a) 藉着持有該法團或任何其他法團的股份中或持有與該法團或任何其他法團有關的股份，或藉着具有該法團或任何其他法團的表決權或具有該法團或任何其他法團有關的表決權；或

“associated corporation”(相聯法團), in relation to a voting controller holding voting control (whether qualified or unqualified), means—

- (a) a corporation over which the voting controller has influence;
- (b) a corporation which has influence over the voting controller being itself a corporation (“the second corporation”);
- (c) a corporation which is under the influence of the second corporation;

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

“influence”(影響、影響力), in relation to a corporation, means the power of a voting controller to ensure—

- (a) by means of the holding of shares or possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the memorandum or articles of association regulating that or any other corporation,

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

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

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

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

“principal officer”(主要人員), in relation to a corporation, means—

- (a) a person employed or engaged by the corporation who, by himself or with 1 or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person so employed or engaged who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, performs managerial functions in respect of the corporation;

“qualified voting controller”(一般表決控權人) means—

- (a) a voting controller who—
  - (i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of this Ordinance and has been so resident for at least one continuous period of not less than 7 years;
  - (ii) in the case of a corporation, is ordinarily resident in Hong Kong; or
- (b) a voting controller who is—
  - (i) the trustee or manager of any unit trust or mutual fund authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (Cap. 571); (Amended 5 of 2002 s. 407)
  - (ii) the trustee of a charitable scheme made by order of a court of competent jurisdiction;
  - (iii) a judicial officer in whom the estate of a deceased is vested between the time of death and the grant of letters of administration;
  - (iv) the Registrar of the High Court; or
  - (v) such other person as may be prescribed;

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

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

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

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

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

(b) 憑藉規管該法團或任何其他法團的組織章程大綱或章程細則所賦予的任何權力，以確保前述法團的事務是按照該表決控權人的意願處理的權力；

“親屬”(relative)就任何個人而言，指該人的配偶、父或母、子或女、兄或弟、姊或妹、配偶之父或母、嫂或弟婦或配偶的姊或妹、姊夫或妹夫或配偶的兄或弟、媳婦、女婿、父或母的姊或妹或父或母的嫂或弟婦、父或母的兄或弟或父或母的姊夫或妹夫、表兄、表弟、表姊、表妹或堂兄、堂弟、堂姊、堂妹、姪女或甥女、姪兒或外甥、祖父或外祖父、祖母或外祖母；而為本定義的目的，被領養的子女須當作既是其親生父母的子女，亦是其領養父母的子女，而繼子女則須當作既是其親生父母的子女，亦是其任何繼父母的子女；

“總計表決控制權”(total voting control)指表決控制權的總和。

(2) 如——

(a) 多於 1 名表決控權人就同一有表決權股份而言同屬表決控權人；而

(b) 他們之中有人是不符合持牌資格人士，

則為施行本附表，就 (a) 段所述的股份而言，該段提述的表決控權人中的每一人，均須視為不符合持牌資格人士。

(3) 如有多於 1 名表決控權人就同一有表決權股份而言同屬表決控權人，而他們之中有人是受限制表決控權人，則為施行本附表，就該股份而言，該等表決控權人中的每一人，均須視為受限制表決控權人。

(4) 就本附表而言，不能識別以某人作為表決控權人的有表決權股份並不具關鍵性。

(5) 為施行本附表，任何對行使控制的提述——

(a) 就法團而言，須按照第 (6) 款解釋；

(b) 就並非法團的團體而言，指任何人憑藉規管該團體或任何其他團體的規則確保該團體的事務是按照該人意願處理的權力。

(6) 為施行第 (5)(a) 款，任何人如屬下述人士，即屬對某法團行使控制——

(a) 該法團的董事或主要人員；

(b) 實益擁有該法團多於 15% 的有表決權股份的實益擁有人；

(c) 該法團多於 15% 的有表決權股份的表決控權人；或

(d) 除在上述情況外憑藉規管該法團或任何其他法團的組織章程大綱或章程細則或其他文書所賦予的權力，具有確保該法團的事務是按照其意願處理的權力的人，

而在本附表中，提述對持牌人行使控制須據此解釋。

(7) 在本附表中，提述任何人處於以下狀況——

(a) 持有法團股份或有權享有法團股份實益權益；或

(b) 作為法團的有表決權股份的表決控權人，

須解釋為提述他處於該狀況，不論是他本人或聯同其他人而處於該狀況，亦不論是直接或透過 1 名或多於 1 名代名人而處於該狀況。

(8) 為施行本附表，2 個法團如有下述情況，即屬同一集團的成員——

(a) 其中一個法團為另一法團的附屬公司；或

(b) 兩個法團均為另一法團的附屬公司。

(9) 在第 (8) 款中，“附屬公司”(subsidiary)就法團而言，其涵義與附屬公司根據《公司條例》(第 32 章) 第 2(4) 及 (6) 條就公司而言所具有者相同。

## 2. 適用範圍

第 3 部不適用於本地收費電視節目服務、本地收費電視節目服務牌照或本地收費電視節目服務牌照的持牌人。

(c) under a duty or obligation;

(d) through a nominee;

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

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

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

(2) Where—

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

(b) 1 or more of them is a disqualified person,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) both are subsidiaries of another corporation.

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

## 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.

## 第 2 部

不符合本地免費或收費電視節目服務的持牌資格以  
及對表決控制權的限制

## 3. 不符合持牌資格人士不得持有牌照或行使控制

(1) 除非不符合持牌資格人士不符合該資格一事已在牌照申請中披露，否則該人不得成為牌照的持有人或對持牌人行使控制。

(2) 除非行政長官會同行政會議應持牌人以指明格式提出的申請，而信納為公眾利益而有此需要並予以批准，否則——

- (a) 不符合持牌資格人士不得成為或繼續為牌照的持有人；及
  - (b) 不符合持牌資格人士不得對持牌人行使控制。
- (3) 在為施行第 (2) 款而考慮公眾利益時，須考慮(但不限於)下述事項——
- (a) 對有關服務市場的競爭的影響；
  - (b) 觀眾獲提供更多元化電視節目的選擇的程度；
  - (c) 對廣播業的發展的影響；及
  - (d) 對經濟所帶來的整體利益。

## 4. 持牌人不符合資格的情況

(1) 除第 (2) 款另有規定外，就牌照而言，下述人士均為不符合持牌資格人士——

- (a) 同類牌照的持牌人；
- (b) 不同類牌照(包括非本地電視節目服務牌照及其他電視節目服務牌照)的持牌人(但就本地收費電視節目服務牌照而言，非本地電視節目服務持牌人並非不符合持牌資格人士)；
- (c) 對 (a) 或 (b) 段所述的持牌人行使控制的人；
- (d) 憑藉 (a)、(b) 或 (c) 段而屬不符合持牌資格人士的相聯者。

(2) 凡第 (1)(a) 或 (b) 款所述的持牌人已根據第 4 部取得行政長官會同行政會議的事先書面批准，以持有或獲取屬不符合持牌資格人士公司的權益，該持牌人並不僅因此而不符合持有牌照的資格。

(3) 就任何屬持牌人的公司而言，任何人不會僅因他是該公司的董事或主要人員或他持有或控制該公司多於 15% 的有表決權股份，而屬不符合持牌資格人士。

## 5. 聲音廣播持牌人不符合資格的情況

就牌照而言，下述人士均為不符合持牌資格人士——

- (a) 《電訊條例》(第 106 章) 第 IIIA 部所指的聲音廣播持牌人；
- (b) 對 (a) 段所述的持牌人行使控制的人；或
- (c) (i) (a) 段所述的持牌人的相聯者；或
- (ii) (b) 段所述的持牌人的相聯者。

## PART 2

DISQUALIFICATION FOR HOLDING DOMESTIC FREE OR PAY  
TELEVISION PROGRAMME SERVICE LICENCES AND  
RESTRICTIONS ON VOTING CONTROL3. 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.
- (3) In considering the public interest for the purposes of subsection (2), account shall be taken of, but not limited to, the following matters——
- (a) the effect on competition in the relevant service market;
  - (b) the extent to which viewers will be offered more diversified television programme choices;
  - (c) the impact on the development of the broadcasting industry; and
  - (d) the overall benefits to the economy.

## 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. 廣告宣傳代理商不符合資格的情況

就牌照而言，下述人士均為不符合持牌資格人士——

- (a) 廣告宣傳代理商；
- (b) 對廣告宣傳代理商行使控制的人；或
- (c) (i) 廣告宣傳代理商的相聯者；或
- (ii) (b) 段所述的人的相聯者。

## 7. 本地報刊不符合資格的情況

就牌照而言，下述人士均為不符合持牌資格人士——

- (a) 指在香港印刷或製作的報刊的東主；
- (b) 對 (a) 段所述東主行使控制的人；或
- (c) (i) (a) 段所述的東主的相聯者；或
- (ii) (b) 段所述的人的相聯者。

## 8. 對表決控權人與不符合持牌資格人士相聯行事的限制

(1) 如表決控權人作為不符合持牌資格人士的相聯者而持有或獲取持牌人有表決權股份的表決控制權，而廣管局覺得該項持有或獲取的目的是逃避本部施加於不符合持牌資格人士的限制，則廣管局可藉送達該局相信是該項持有或獲取其中一方的表決控權人的書面通知，向該表決控權人作出該局覺得是達致以下兩者所需的指示——

- (a) 終止該項持有或獲取；及
- (b) 確保該項限制獲得遵從。

(2) 根據第 (1) 款送達的通知——

- (a) 在有關指示是為第 (1)(a) 款的目的而作出的情況下，須指明該等指示；
- (b) 在有關指示是為第 (1)(b) 款的目的而作出的情況下，須指明該等指示及須予遵從的限制；及
- (c) 須指明遵從該等指示的限期。

(3) 本條不得解釋為限制或以其他方式影響任何人轉讓有表決權股份的權力。

(4) 如有多於 1 人共同行事，以持有或獲取持牌人有表決權股份的表決控制權，則為施行本部，就持牌人的有表決權股份而言，該等人士中的每一人，均須視為其餘的人的相聯者，並須視為按照他們之中任何一人的指示行事以持有或獲取該等有表決權股份的表決控制權的任何其他人的相聯者。

## 9. 持牌人調查不符合持牌資格人士的權力

(1) 如持牌人知道或有合理理由相信任何人——

- (a) 是持牌人的有表決權股份的表決控權人；
- (b) 在有關期間內的任何時間曾是持牌人的有表決權股份的表決控權人；或
- (c) 在有任何交易就任何該等有表決權股份而言涉及表決控權人的更改的情況下，曾在該宗交易中提供協助或作為該宗交易的一方，

則持牌人可藉送達該人的書面通知，要求該人——

- (i) 確認或否認該項事實；及
- (ii) 在確認該項事實的情況下，提供可根據第 (2) 款要求他提供的進一步詳情。

(2) 凡持牌人根據第 (1) 款向某人送達通知——

- (a) 該通知可要求該人提供關於他在有關期間內的任何時間屬不符合持牌資格人士或其他人士的身分的詳情；

## 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 newspaper printed or produced in Hong Kong;
- (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) 該通知可要求該人提供關乎身為第 8(1)條所述的持有或獲取的一方的人的地址及身分，並且是在他所知或所信的範圍內的詳情；
- (c) 而該人在有關期間內的任何時間曾是表決控權人，但在獲發通知時已不再是表決控權人，該通知可要求該人提供關乎緊接他不再是表決控權人之後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情；及
- (d) 而該人在有關期間內的任何時間，在有任何交易就任何有表決權股份而言涉及表決控權人的更改的情況下，曾在該交易中提供協助或作為該宗交易的一方，該通知可要求該人提供關乎在該項更改後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情。

(3) 根據第 (1) 款送達的通知，須指明遵從該通知的要求的限期。

(4) 如有任何詳情根據本條向持牌人提供，持牌人須於自收到該等詳情之日起計 15 天內，就該等詳情向廣管局發出書面通知。

(5) 在本條中，“有關期間”(relevant period) 就某通知而言，指緊接該通知的送達日期前的 3 年期間。

#### 10. 廣管局獲取不符合持牌資格人士資料的權力

(1) 如廣管局覺得有理由調查持有持牌人的有表決權股份的表決控權人，而該局有合理理由相信某人管有關於任何現任或前任表決控權人的姓名或名稱及地址，以及關於代表該等控權人行事或曾代表他們行事的人的資料，或該人能夠提供或取得該等資料，則廣管局可要求該人向該局提供該等資料。

(2) 在不損害第 (1) 款的一般性原則下，如廣管局有合理理由相信任何人——

- (a) 是持牌人有表決權股份的表決控權人；
- (b) 在有關期間內的任何時間曾是持牌人的有表決權股份的表決控權人；或
- (c) 在有任何交易就任何該等有表決權股份而言，涉及表決控權人的更改的情況下，曾在該宗交易中提供協助或作為該宗交易的一方，

則廣管局可藉送達該人的書面通知，要求該人——

- (i) 確認或否認該項事實；及
- (ii) 在確認該項事實的情況下，提供可根據第 (3) 款要求他提供的進一步詳情。

(3) 凡廣管局根據第 (2) 款向某人送達通知——

- (a) 該通知可要求該人提供關乎他在有關期間內的任何時間屬不符合持牌資格人士或其他人士的身分的詳情；
- (b) 該通知可要求該人提供關乎身為第 8(1) 條所述的持有或獲取的一方的人的地址及身分，並且是在他所知或所信的範圍內的詳情；
- (c) 而該人在有關期間內的任何時間曾是表決控權人，但在獲發通知時已不再是表決控權人，該通知可要求該人提供關乎於緊接他不再是表決控權人之後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情；及
- (d) 而該人在有關期間內的任何時間，在有任何交易就任何有表決權股份而言涉及表決控權人的更改的情況下，曾在該交易中提供協助或作為該宗交易的一方，該通知可要求該人提供關乎在該項更改後成為表決控權人的人的地址及身分，並且是在他所知或所信的範圍內的詳情。

(4) 根據第 (2) 款送達的通知，須指明遵從該通知的要求的限期。

- (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) 廣管局可藉送達持牌人的書面通知，指示持牌人向該通知所指名的人行使持牌人根據第 9 條具有的調查權力；凡廣管局有此指示——

(a) 持牌人須予遵從；及

(b) 以下條文即適用——

(i) 持牌人須於調查完成後 15 天內，將他經調查而收到的任何資料及詳情，以書面向廣管局提供；

(ii) 在不損害第 (i) 節的原則下，如調查未能於自該通知送達持牌人之日起計的 3 個月內完成，持牌人須在自下述時間起計的 15 天內——

(A) 該 3 個月限期屆滿時；及

(B) 調查完成前的每段 3 個月的接續期間屆滿時，

就其在 (A) 或 (B) 分節 (視屬何情況而定) 提述的期間內收到的資料及詳情，向廣管局作出中期報告；

(iii) 當持牌人已作出所有為進行調查而屬必要或合宜的查訊，調查須視為已完成；而當持牌人已收到回應或持牌人所定的回應限期已屆滿，則任何該等查訊須視為已完成。

(6) 在本條中，“有關期間”(relevant period) 就某通知而言，指緊接該通知的送達日期前的 3 年期間。

#### 11. 關於持牌人紀錄的格式及內容的額外規定

(1) 持牌人如根據第 9(1) 條送達通知，或由於根據第 10(5) 條作出的指示而送達該通知，則須以指明格式，備存一份載有下述事項的紀錄——

(a) 該通知的日期；

(b) 獲送達該通知的人的姓名或名稱；及

(c) 持牌人所收到的回應該通知的詳情。

(2) 持牌人須按照廣管局根據第 16 條就此作出的任何指示，保留第(1)款所述的紀錄。

#### 12. 廣管局施加限制的權力

(1) 如——

(a) 有不符合持牌資格人士就第 17(2) 或 (3) 條所訂罪行而被定罪；或

(b) 有任何人就第 17(1)、(4)、(5) 或 (6) 條所訂罪行而被定罪，

而廣管局覺得該罪行是就持牌人的有表決權股份而犯的，則廣管局可藉指明該股份的書面通知，指示該股份須受第 (3) 款所述並在該通知指明的限制所規限，直至廣管局根據本款就該股份另作通知為止。

(2) 如在與根據第 9 或 10 條進行的調查有關連的情況下，廣管局覺得難以確定任何關於該局認為是或看似是持牌人的任何有表決權股份的表決控權人的人的有關事實，則廣管局可藉指明該股份的書面通知，指示該股份須受第 (3) 款所述並在該通知指明的限制所規限，直至廣管局根據本款就該股份另作通知為止。

(3) 就第 (1) 及 (2) 款而言的限制是——

(a) 轉讓該有表決權股份或 (如屬未發行的有表決權股份) 轉讓獲發該股份的權利或發行該股份，均屬無效；

(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 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.

(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;

- (a) 在持牌人的股東大會上藉投票決定的問題或事宜是就持牌人設立不同類別的股份；或
- (b) (如持牌人的股本當時正分為不同類別的股份)對任何附於該等不同類別的股份的特別權利的更改，包括廢止在內。
- (3) 廣管局可在持牌人的任何股東大會舉行之前、之時或期間的任何時間，以口頭方式或藉書面通知指示持牌人就任何決議進行投票，而如有該項指示作出，持牌人即須遵從。

20. 受限制表決控權人須經廣管局批准始可  
享有的 2% 至 10% 控制限額

- (1) 如事先未經廣管局書面批准，受限制表決控權人不得——
- 持有；
  - 獲取；或
  - 行使、或導致或准許他人行使，
- 在持牌人的總計表決控制權中合計佔 2% 或多於 2% 但不足 6%，或 6% 或多於 6% 但不多於 10%，或多於 10% 之數。
- (2) 如任何受限制表決控權人違反第 (1)(a) 款而持有持牌人的總計表決控制權合計多於 10%，則即使持牌人的組織章程大綱或章程細則載有任何規定或在本條以外的香港法例任何條文，該人仍不得就在持牌人的股東大會上出現的問題或事宜，行使或導致或准許他人行使合計超過持牌人的總計表決控制權 10% 的表決權。
- (3) 廣管局可就違反第 (1) 款的受限制表決控權人，藉送達他的書面通知作出該局覺得為達致終止該項違反所須作出的指示。
- (4) 根據第 (3) 款送達的通知，須指明——
- 根據該款作出的指示；及
  - 遵從該等指示的限期。
- (5) 本條不得解釋為限制或以其他方式影響任何人轉讓有表決權股份的權力。

21. 對與其他表決控權人相聯行事的  
受限制表決控權人的限制

- (1) 如任何人——
- 一般表決控權人；或
  - 受限制表決控權人，
- 並且作為某受限制表決控權人的相聯者而持有或獲取持牌人的有表決權股份的表決控制權，而廣管局覺得該項持有或獲取的目的是逃避本部施加於受限制表決控權人的限制，則廣管局可藉送達該局相信是該項持有或獲取的其中一方的表決控權人的書面通知，向該表決控權人作出該局覺得是達致以下兩者所需的指示——
- 終止該項持有或獲取；及
  - 確保該項限制獲得遵從。
- (2) 根據第 (1) 款送達的通知——
- 在有關指示是為第 (1)(i) 款的目的而作出的情況下，須指明該等指示；
  - 在有關指示是為第 (1)(ii) 款的目的而作出的情況下，須指明該等指示及須予遵從的限制；及
  - 須遵從該等指示的限期。
- (5) 本條不得解釋為限制或以其他方式影響任何人轉讓有表決權股份的權力。

- ~~(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—
- hold;
  - acquire; or
  - 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—
- the directions given under subsection (3); and
  - 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 qualified voting controller; or
  - 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—
- effect a cesser of the holding or acquisition; and
  - ensure compliance with the restriction.
- (2) A notice under subsection (1) shall specify—
- where the directions are given for the purpose of subsection (1)(i), those directions;
  - where the directions are given for the purpose of subsection (1)(ii), those directions and the restriction required to be complied with; and
  - 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.

(3) 表決權人沒有在根據第 21(1) 條送達予他的通知所指明的限期內遵從該通知書的要求，即屬犯罪。

(4) 任何人無合理解釋而不遵守第 22(2) 條的規定，即屬犯罪。

(5) 任何人沒有在根據第 23 條送達予他的通知所指明的限期內遵從該通知書的要求，即屬犯罪。

(6) 任何人沒有在根據第 24 條送達予他的通知所指明的限期內遵從該通知書的要求，即屬犯罪。

(7) 任何人如在持牌人的股東大會上的任何投票中，就他明知是當其時正受第 26(3)(b) 條所訂限制規限的有表決權股份作出投票（不論親身或由代表代為投票），或就該股份委任任何代表代為投票，即屬犯罪。

(8) 任何人在持有他明知當其時正受第 26(3) 條所訂限制所規限的有表決權股份的情況下，或在他有權獲發憑首述股份而獲發的另一有表決權股份的情況下，或在他有權在非清楚情況下就首述股份收取任何付款的情況下，訂立任何根據第 26(4) 或 (5) 條屬無效的協議，即屬犯罪。

(9) 任何人犯本條所訂罪行，一經定罪可處罰款 \$1,000,000 及監禁 2 年。

### 32. 對罪行的檢控及對提起檢控的限制

(1) 在不影響律政司司長在檢控刑事罪行方面的權力的原則下，廣管局可對本部所訂罪行提起檢控。

(2) 儘管有《裁判官條例》(第 227 章) 第 26 條的規定，關於本部所訂罪行的任何告發或申訴，如在罪行發生日期起計的 3 年內或在自檢控人最初發現該罪行之日起計的 12 個月內（以首先屆滿的期間為準）的任何時間提出或作出（視屬何情況而定），則仍可予以審訊。

## 第 4 部

### 對不符合持牌資格人士行使控制的持有本地免費或收費電視節目服務牌照的持牌人的限制

### 33. 限制持牌人未經行政長官會同行政會議批准對不符合持牌資格人士行使控制

(1) 除非符合以下條件，否則持牌人不得對不符合持牌人士行使控制——

- (a) 行政長官會同行政會議應持牌人以指明格式提出的申請，而信納公眾利益而有此需要予以批准；及
- (b) 該項控制是按照該項批准中所指明的條件而行使。

(2) 為施行第 (1) 款而考慮公眾利益時，行政長官會同行政會議須考慮（但不限於）以下事項——

- (a) 對有關服務市場的競爭的影響；
- (b) 觀眾獲提供更多元化電視節目的選擇的程度；
- (c) 對廣播業的發展的影響；及
- (d) 對經濟所帶來的整體利益。

(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 DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE LICENSEES EXERCISING CONTROL ON DISQUALIFIED PERSONS

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

(1) A licensee shall not exercise control on a disqualified person——

- (a) unless the Chief Executive in Council, on application in the specified form by a licensee, is satisfied that the public interest so requires and approves otherwise; and
- (b) except in accordance with such conditions as are specified in the approval.

(2) In considering public interest for the purposes of subsection (1), account shall be taken of, but not limited to, the following matters——

- (a) the effect on competition in the relevant service market;
- (b) the extent to which viewers will be offered more diversified television programme choices;
- (c) the impact on the development of the broadcasting industry; and
- (d) the overall benefits to the economy.