

LEGISLATIVE COUNCIL BRIEF

BROADCASTING BILL

INTRODUCTION

At the meeting of the Executive Council on 25 January 2000, the Council ADVISED and the Chief Executive ORDERED that the Broadcasting Bill (the Bill), at Annex, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

Background

2. On 3 September 1998, we published a consultation paper entitled “1998 Review of Television Policy” (the Review) for public consultation. On 8 December 1998, the Executive Council ADVISED and the Chief Executive ORDERED that the policy recommendations arising from the Review should be approved. Among others, the Chief Executive in Council (CE in C) made the policy decision that the statutory law governing the “transmission” and “provision” of television programme services should be separated and that the licensing and regulatory framework for the latter should be provided for in a technology-neutral Bill.

Policy Objectives

3. The Bill seeks to further advance our broadcasting policy objectives, which are to :

- (a) widen programming choice to cater for the diversified tastes and interests of the community;

- (b) encourage investment, innovation and technology transfer in the broadcasting industry;
- (c) ensure fair and effective competition in the provision of broadcasting services;
- (d) ensure that broadcasting services provided are up to the expectations and do not offend the tastes and decency of the community; and
- (e) promote the development of Hong Kong as a regional broadcasting and communications hub.

THE BILL

Structure

4. The Bill consists of 8 parts in the main body and 9 Schedules. To allow flexibility in the regulatory framework to cater for the fast-changing broadcasting and multi-media environment, the finer details of the regulatory provisions, e.g., those relating to voting control, programming requirements and advertising time restrictions, are set out in Schedules so that they can be amended by subsidiary legislation without having to go through the lengthy process of an amendment bill. This structure will also make the Bill more user-friendly.

Scope of Television Programme Service

5. The Bill seeks to regulate television programme services originating from, or being provided for viewers in, Hong Kong. Under Clause 2, “television programme service” is defined as the provision of a service that includes television programmes (i.e. moving visual representational images or a combination of these images and sounds that are intended to inform, enlighten or entertain) for transmission by telecommunications that are readily accessible to, or made available to, the general public in or outside Hong Kong; or to persons in two or more specified premises (which means domestic households and hotel rooms), simultaneously or on demand, whether on a point-to-point or a point-to-multipoint basis or any combination of them. There will be four categories of

television programme services, collectively defined as “broadcasting service”, as follows -

- (a) domestic free television programme (Domestic Free) service;
- (b) domestic pay television programme (Domestic Pay) service;
- (c) non-domestic television programme (Non-domestic) service; and
- (d) other licensable television programme (Other Licensable) service.

6. Of the four categories of broadcasting services, two are domestic services (services primarily targeting Hong Kong), one is non-domestic (services not primarily targeting Hong Kong) and the other, the remaining otherwise licensable services. The first two domestic services categories are to cover services intended or available for reception by over 5,000 specified premises. They will come under either the Domestic Free service (if it is intended or available for reception by the public free of charge) or the Domestic Pay service (if it is intended or available for reception by the public on payment of a subscription). Other licensable services intended or available for reception by not more than 5,000 specified premises in Hong Kong would come under the category of Other Licensable service. While a company may hold more than one Other Licensable service licences for different services, we have built in a safeguard to the effect that the licensee and those exercising control of it and their associates shall not, without the prior approval of the CE in C, hold such number of Other Licensable service licence or exercise control of such licensees, the combined services of which are intended or available for reception by an audience of more than 200,000 specified premises (Section 1 of Schedule 7 to the Bill).

Services excluded

7. For the sake of clarity, it is made clear under the definition of “television programme service” that such service will not include the provision of a service consisting only of a programme that is made solely for the performance or display in a public place (e.g. a shopping mall) or is intended wholly or mainly for the purposes of the trade, business, employment or profession of the recipient.

8. Apart from the above clarifications, the Bill also specifies that certain services which may involve the transmission of visual images by telecommunications will not be regarded as television programme services for

the purposes of the Bill and will therefore be exempted from its application. To allow flexibility in the regulatory framework to cater for the fast-changing broadcasting and multi-media environment, the exemptions are specified in a list in Schedule 3 of the Bill so that it can be amended by subsidiary legislation. Schedule 3 covers, among others, the following services –

- (a) telecommunications services that are currently exempted from the application of the Television Ordinance (Cap. 52). These include, for example, transactional services and video conferencing;
- (b) services provided on the Internet. While video and audio services are now available on the Internet, we consider that their existing mode of operation is different from broadcasting and their pervasiveness is not yet comparable to television programme services currently operating in Hong Kong. Our policy intent is that this type of service should be exempted from the application of the Bill for the time being unless and until its pervasiveness and mode of operation draw much closer to broadcasting and the question of effective enforcement can be resolved; and
- (c) free-to-air satellite television services uplinked from places outside but receivable in Hong Kong. At present, these services are allowed to be received and distributed by satellite master antenna television (SMATV) systems without a licence. In line with our open-sky policy on broadcasting, this type of service should continue to be exempted from the application of the Bill.

Codes of Practice and Guidelines

9. Clauses 3 and 4 empower the Broadcasting Authority (BA) to approve and issue codes of practice and to issue guidelines respectively. Codes of practice may be approved for the purpose of providing practical guidance to licensees in respect of requirements under the Bill imposed on licensees or in respect of licence conditions. Guidelines may be published for the benefit of licensees (or companies seeking to be licensees) to help them understand the considerations the BA intends to adopt in performing functions conferred on it by the Bill.

Regulation of Broadcasting Services

10. 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 import, manufacture, sell, offer for sale or let for hire etc. an unauthorized decoder for viewing encrypted television programmes without payment of a subscription where a subscription is required to be paid. Clause 7 makes it an offence to import, manufacture, sell, offer for sale or let for hire etc. a decoder for use by a “Television Receive Only System” to receive an unlicensed subscription satellite television service. The sanctions for contravention are standardised at a maximum level of \$1,000,000 and imprisonment for 5 years.

Licensing Provisions

11. Clause 8 specifies to whom a licence may be granted. Clause 8(4)(a) provides that in the case of a Domestic Free or a Domestic Pay service licence, except with the approval of the BA, the majority of the directors and the majority of the principal officers, including the principal officer in charge of the selection, production or scheduling of television programmes, must meet the residence requirement (“the Residence Requirement”) (i.e. for the time being ordinarily resident in Hong Kong and has been so resident for at least one continuous period of not less than seven years). Clause 8(4)(b) provides that in the case of Non-domestic or Other Licensable service licence, not less than one director or principal officer of the licensee must meet the Residence Requirement.

12. Clause 9 provides that the BA shall make recommendations to the CE in C in relation to applications for Domestic Free or Domestic Pay service licences. Clause 10 provides that a Domestic Free or Domestic Pay service licence may be granted by the CE in C and that a Non-domestic or Other Licensable service licence may be granted by the BA, subject to such conditions as it thinks fit. Clause 11 relates to the renewal or extension of licences.

Determination of services primarily targeting Hong Kong

13. Clause 12 provides that a licensee (including a person seeking to be a licensee) shall, before providing a television programme service, make an application to the BA for a determination on whether or not the service would be

considered as primarily targeting Hong Kong. This power enables the BA to ascertain which category of licence such a service would fall into.

Requirements Relating to Licensed Services

(A) Competition provisions

14. The Bill includes a general provision prohibiting 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 13), and a specific provision prohibiting a licensee in a dominant position in a television programme service market from abusing its position (Clause 14). The BA will be given general and specific powers to enable it to enforce the competition provisions, including the powers to require a licensee and other persons to supply information (Clauses 24 and 25); to determine dominance¹ in a television programme service market (Clause 14(2)); to investigate (Clause 24) and make determinations of anti-competitive practices (Clause 13(1)); to require a licensee to cease and desist from a practice determined by the BA to be in breach of the competition provisions (Clause 15); and to impose financial penalties (Clause 27). All complaints about contravention of the competition provisions will be handled by the BA direct.

Exclusions

15. Certain trade practices are currently exempted from the application of the free competition clause in the existing broadcasting licences. These include (a) restrictions on any programme acquired or produced by the licensee; (b) restrictions on supplying any proprietary decoder; and (c) restrictions on any person using or exploiting his artistic talent or ability. We had previously proposed that these trade practices should continue to be exempted from the application of the competition provisions in the Bill.

¹ Clause 14(2) provides that a licensee is in a dominant position when, in the opinion of the BA, it is able to act without significant competitive restraint from its competitors and customers. Clause 14(3) provides that in considering whether a licensee is dominant, the BA shall have regard to relevant matters including, but not limited to: the market share of the licensees; the licensee's power to make pricing and other decisions; any barriers to entry into the relevant television programme service market and such other matters as may be stipulated in guidelines concerning the test of dominance issued under clause 4 by the BA in consultation with the licensees in the relevant television programme service market.

16. In the light of the advice of our consultant with experience in competition laws in other jurisdictions, we have made some modifications to these exemptions. The exemption in paragraph 15(a) above has been narrowed down to “restrictions on the inclusion in a television programme service of a programme produced by the licensee” (Clause 13(5)(a)). This is because the original exemption will in effect be a blanket exclusion of all behaviour in relation to “content” from the application of the competition provisions. As for the exemption in paragraph 15(b) above, we consider that decoders, which are likely to give rise to potential competition issues in a multi-channel environment, should not be categorically exempted. They should instead be dealt with by the Telecommunications Authority in accordance with the “interconnection” as well as sharing and access provisions in the Telecommunication Ordinance (Cap. 106) where applicable. As for the exemption referred to in paragraph 15(c) above, while exclusive contracts with artistes are generally acceptable, the circumstances under which they may give rise to competition concerns should be spelt out more clearly in guidelines to be issued by the BA. Separately, the BA should also be empowered, on application by a licensee and on a ground prescribed by regulation, to exempt conduct from the competition provisions (Clause 13(4)). This will enable the BA to take action if and only if a genuine distortion of the competition the law seeks to promote is occurring without depriving it of powers to look at such complaints categorically.

Enforcement

17. The competition provisions may affect existing contracts that a licensee has already entered into. Section 4(2) and (3) of Schedule 8 to the Bill provides a transitional arrangement whereby agreements lawfully entered into before the gazettal date of the Bill will be exempted from the prohibition on anti-competitive conduct (Clause 13) for two years from that date.

18. The enforcement of competition provisions will require detailed guidelines covering, among others, the BA’s enforcement procedures, elaboration on the competition provisions and competition analysis framework. The guidelines will be important as they set out how and in what circumstances the BA will enforce the competition provisions. The BA will conduct consultation on the draft guidelines with a view to finalising them by the time the Bill is passed.

(B) Television programme service locking device

19. Clause 19 provides that, except for a service provided to hotel rooms, a licensee shall provide a television programme service locking device to the satisfaction of the BA where its licensed service is a Domestic Pay, Non-domestic (only where a subscription is required to be paid for the service provided in Hong Kong) or Other Licensable service. Given the mandatory requirement to provide a locking device, the BA has agreed to consider suitably relaxing the relevant programme and advertising standards in the generic codes of practice.

Enforcement of Licences and Sanctions

20. The current maximum levels of financial penalty that the BA may impose on a licensee (i.e. \$50,000 for the first occasion, \$100,000 for the second occasion and \$250,000 for any subsequent occasion) were set in 1988. The BA has proposed that these levels should be increased by four times to \$200,000, \$400,000 and \$1,000,000 respectively having regard to, among others, the need to catch up with inflation. The revised levels are reflected in Clause 27. In addition, Clause 29 empowers the BA to require a licensee to include a correction and/or apology in its licensed service if the BA finds the licensee to have contravened a provision in a code of practice, a requirement under the Bill, a licence condition or a direction, etc. of the BA.

21. Clauses 30 and 31 provide for the suspension and revocation respectively of licences. Clause 33 provides for an appeal channel to the CE in C for a licensee (including a person seeking to be a licensee) against any decision of the BA in the exercise of a discretion conferred on the BA under the Bill or the Broadcasting Authority Ordinance. These provisions are modelled on the Television Ordinance.

Schedules

22. Schedule 1 provides for the control of cross-media ownership, ownership by non-residents and restriction on licensees to exercise control on disqualified persons.

(A) Disqualified persons

23. The provisions on disqualified persons are set out in Part 2 of Schedule 1. These provisions largely replicate those in the Television Ordinance (Cap. 52) except where CE in C has decided otherwise, e.g. the deletion of certain categories from the list of disqualified persons and the removal of restrictions on investment by the licensees except in disqualified persons. Pursuant to the policy decisions, “companies which transmit sound outside Hong Kong or television material whether within or without Hong Kong” will be deleted from the list of disqualified persons. Disqualified persons are persons prohibited from exercising control² of Domestic Free and Domestic Pay service licensees except with the prior approval of the CE in C.

24. During the 1998 Review of Television Policy, we proposed that in a diversified and liberalised broadcasting market, “companies which supply programmes for broadcasting by a licensee” (“programme suppliers”) should be removed from the list of disqualified persons. This proposal was subsequently qualified to the effect that “programme suppliers” would remain as a disqualified person in relation to the dominant television programme service licensee. This was to address the concern that such a programme supplier, if allowed to exercise control in a dominant licensee, might manipulate the association and deny the programme supplier’s competitors the dominant licensee’s air-time they might need. We also proposed that the dominant fixed telecommunication network services (FTNS) licensees should require the CE in C’s approval to exercise control in a Domestic Free service licensee or a Domestic Pay service licensee which is dominant in the pay television market. This proposal was to address the concern that the dominant FTNS licensee might seek to abuse its dominant position in both the telecommunications and broadcasting markets.

25. Our competition consultant has advised that we should not define dominance in legislation although the principles for determining dominance should be provided. The consultant has also advised against publicly identifying a licensee as holding a dominant position until a competition analysis including defining the relevant market and assessing the market power has been conducted.

² A person “exercises control of a company” if he is a director or principal officer of the company, the beneficial owner or voting controller of more than 15% of the voting shares of that company or 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.

Given that the competition provisions now proposed in the Bill are much more comprehensive and strengthened than our original proposal, they would be able to address the concerns mentioned in paragraph 24 above. We have therefore removed “dominant FTNS licensee” and “programme suppliers” from the list of disqualified persons.

(B) Unqualified voting controllers

26. The policy decisions on the restrictions on non-residents (unqualified voting controllers) exercising control of licensees are reflected in Part 3 of Schedule 1. In brief, the restrictions are applicable only to Domestic Free service licensees and the incremental steps requiring the BA’s approval are relaxed from 2%, 4%, 6%, 8% and 10% to 2%, 6% and 10% (Section 20(1) of Schedule 1).

(C) Investment by a licensee

27. CE in C had made the policy decision in December 1998 that while the current restrictions on investment by a licensee should be removed, investment by a Domestic Free or Domestic Pay service licensee in a disqualified person should continue to be restricted. This policy decision is reflected in Section 33 of Part 4 of Schedule 1.

28. Schedule 2 is a list of items which are not regarded as newspapers for the purpose of the cross-media ownership restriction on newspaper proprietors. Schedule 3 sets out the services which may involve the transmission of visual representational images by telecommunications but will not be regarded as television programme services for the purposes of the Bill (please see paragraph 8 above). Schedules 4 to 7 set out the supplementary provisions applicable to each of the four types of television programme service licences.

Transitional and savings provisions

29. Schedules 8 and 9 contain transitional and savings provisions and consequential amendments respectively.

(A) Existing licences

30. On transitional arrangements, we propose that each existing licence issued under the Television Ordinance or Telecommunication Ordinance should be expressly deemed to be a certain category of licence issued under the Bill.

31. Accordingly, each of the existing commercial television broadcasting licensees (i.e. Television Broadcasts Limited and Asia Television Limited) shall be deemed to be a Domestic Free service licensee and the holder of a licence granted under the Telecommunication Ordinance; the existing subscription television broadcasting licensee (i.e. Hong Kong Cable Television Limited) shall be deemed to be a Domestic Pay service licensee and the holder of a licence granted under the Telecommunication Ordinance; the existing programme service licensee (i.e. Cable & Wireless HKT VOD Limited) shall be deemed to be a Domestic Pay service licensee; the existing satellite television uplink and downlink licensees (i.e. Hutchvision Hong Kong Limited, Galaxy Satellite Broadcasting Limited, APT Satellite Glory Limited and Starbucks (HK) Limited) shall be deemed to be Non-domestic service licensees; and the existing hotel television service licensees shall be deemed to be Other Licensable service licensees. Subscription satellite television services provided in Hong Kong under a satellite television uplink and downlink licence, if approved by the CE in C before the enactment of the Bill, may come under the categories of Domestic Pay, Non-domestic or Other Licensable service, as determined by the BA, having regard to the nature, languages and coverage, etc. of such services. For such licences, we will have to decide on a case-by-case basis the deeming arrangements.

(B) Item K broadcasters

32. Under the existing regulatory regime, “item K broadcasters” (i.e. those satellite broadcasters who uplink their programmes by hiring the facilities of Cable and Wireless HKT International Limited (HKTI)) are not required to be licensed under the Telecommunication Ordinance and are not subject to the regulation of the BA. As one of the conditions imposed on HKTI’s permission to transmit the signals, these broadcasters are required to comply with the programmes and advertising standards issued by the Secretary for Information Technology and Broadcasting, which mirror those issued by the BA for the satellite television uplink and downlink licensees. This anomaly will be rectified in the Bill whereby all television programme services originated from Hong

Kong will be subject to licensing. We recommend that “item K broadcasters” should be given a transitional period of 2 years to apply for an appropriate licence under the Bill when enacted and hence the requirement for a licence under the Bill should not apply to them during the transitional period (Section 4(1) and (3) of Schedule 8).

(C) Fit and proper persons

33. At present, there is no “fit and proper person” requirement on television broadcasting licensees under the Television Ordinance (i.e. commercial television broadcasting, subscription television broadcasting and programme service licensees). As for satellite television uplink and downlink licensees, such a requirement is stipulated as a licence condition. Clause 20 of the Bill requires that a licensee and any person exercising control of it shall be and remain a fit and proper person. There may be commercial or operational difficulties on the existing licensees if they are required to comply with this new requirement. We propose that this new requirement should not apply to a person who is lawfully exercising control of a television broadcasting licensee granted under the Television Ordinance on the gazettal date of the Bill. However, he may not subsequent to this date increase his control of the licensee (Section 4(4) of Schedule 8).

(D) Royalty and licence fees

34. The charging of advertising and subscription royalties will be abolished with the repeal of the Television Ordinance. Under the Bill, the annual licence fee, calculated on a full cost recovery basis, is specified in the licence conditions instead of by subsidiary legislation (Part 4 of Schedule 4, which is applicable to all licensees). This is to streamline the administrative procedure. To give effect to the policy decision that licensees should be required to pay the full cost licence fee as a quid pro quo for the abolition of royalties, Section 5 of Schedule 8 provides for a transitional arrangement whereby the Financial Secretary may, by notice in writing served on an existing licensee, specify the annual licence fee payable immediately after the repeal of the Television Ordinance.

Consequential and other amendments

35. The Bill when enacted will replace the Television Ordinance to cover all types of television programme services, including terrestrial and satellite television services which are now separately licensed under the Television Ordinance and the Telecommunication Ordinance respectively. The provisions relating to the regulation of sound broadcasting services currently provided under Part IIIA of the Telecommunication Ordinance and Part IV of the Broadcasting Authority Ordinance will be left intact for the time being pending formulation of the policy on digital audio broadcasting.

36. When considering the new scale of financial penalties to be imposed on television licensees in March 1999, the BA also proposed to increase the levels of maximum financial penalty applicable to sound broadcasting licensees (i.e. \$80,000 for the first occasion, \$200,000 for the second occasion and \$400,000 for subsequent occasions). On grounds of equity, the revised scales for television and sound broadcasting licensees should take effect at the same time. The Broadcasting Authority Ordinance will be amended by way of consequential amendments in the Bill (Section 17 of Schedule 9). The equivalent powers of the BA to demand apology and correction by sound broadcasting licensees will also be incorporated in these provisions (Section 18 of Schedule 9).

LEGISLATIVE TIMETABLE

37. The legislative timetable will be :

Publication in the Gazette	28 January 2000
First Reading and commencement of Second Reading debate	16 February 2000
Resumption of Second Reading debate, Committee Stage and Third Reading	to be notified

BASIC LAW IMPLICATIONS

38. The D of J advises that the Bill is consistent with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

39. The D of J advises that the Bill is consistent with the human rights provision of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

40. The economic benefits that will accrue to Hong Kong from a thriving and more competitive television industry are likely to outweigh the loss in royalty revenue. Upon the abolition of the royalty schemes, licence fees at full cost levels will become payable and the additional revenue is estimated to be \$28 million in the first year based on the 1999-2000 estimates.

41. Initially, the Television and Entertainment Licensing Authority (TELA) will absorb the additional workload arising from the BA's taking on the additional licensing functions for Non-domestic and Other Licensable services and the enforcement of the competition provisions. In the light of experience and in the interest of building up its own expertise in enforcing competition provisions, TELA will review the situation in both areas of work and may need to bid for additional resources.

ECONOMIC IMPLICATIONS

42. The technology-neutral Bill seeks to provide a fair, predictable and business-friendly regulatory regime flexible enough to embrace new services made possible by convergence in technologies. This will help to speed up technology transfer, attract investment, stimulate the growth of related industries like programme production, and create new employment opportunities. A vibrant television industry in Hong Kong would not only widen viewers'

programme choice, but also enhance our position as the regional broadcasting hub.

PUBLIC CONSULTATION

43. The Bill seeks to implement the policy decisions arising from the 1998 Review of Television Policy, which were made after two rounds of thorough consultation with the industry and the community.

44. The BA has been consulted and is supportive of the Bill.

PUBLICITY

45. A press release will be issued on 28 January 2000. Briefings for the existing licensees will be arranged on the same day.

28 January 2000

Information Technology and Broadcasting Bureau
Government Secretariat

BROADCASTING BILL

CONTENTS

Clause		Page
	PART I	
	PRELIMINARY	
1.	Short title and commencement	1
2.	Interpretation	1
	PART II	
	CODES OF PRACTICE AND GUIDELINES	
3.	Approval of codes of practice by Broadcasting Authority	16
4.	Guidelines	19
	PART III	
	REGULATION OF BROADCASTING SERVICES	
5.	Offence of providing broadcasting service without licence	19
6.	Unauthorized decoders	20
7.	Offence of providing decoders and reception equipment for television programme service on subscription basis without licence	22
	PART IV	
	LICENCES - GENERAL PROVISIONS	
8.	To whom licence may be granted	24

Clause		Page
9.	Recommendations by the Broadcasting Authority on applications for licences	27
10.	Grant of licence	27
11.	Extension or renewal of licence	28
12.	Determination of whether television programme service primarily targets Hong Kong	30

PART V

REQUIREMENTS RELATING TO LICENSED SERVICES

13.	Prohibition on anti-competitive conduct	32
14.	Prohibition on abuse of dominance	34
15.	Notice to licensee to cease certain conduct	35
16.	Separate accounting	36
17.	Service provision requirements	37
18.	Television programmes for schools	37
19.	Television programme service locking device	38
20.	Restrictions on persons not regarded as fit and proper	38
21.	Limitations on agreements by licensee	39
22.	General requirements as to television programme services	39

PART VI

ENFORCEMENT OF LICENCES

23.	Directions of Broadcasting Authority and Telecommunications Authority	41
24.	Investigation of licensee's business	42

Clause		Page
25.	Broadcasting Authority may obtain information	46
26.	Confidential matter to be safeguarded	47
27.	Licensee to pay financial penalty	49
28.	Recovery of financial penalty	50
29.	Licensee to include correction or apology in television programme service	51
30.	Suspension of licence	52
31.	Revocation of licence	54
32.	Inquiry by Broadcasting Authority	57
33.	Appeal to Chief Executive in Council	58
34.	Determination of appeal	59

PART VII

PROHIBITION AND PROSCRIPTION BY COURT

35.	Court may prohibit certain television programmes, etc.	60
-----	--	----

PART VIII MISCELLANEOUS

36.	Contests	62
37.	Inspection and testing of technical equipment	62
38.	Licensee to submit returns	64
39.	Service of documents	65
40.	Power of Broadcasting Authority to specify forms	65
41.	Regulations	67
42.	Amendment of Schedules 1 to 8, etc.	69

Clause		Page
43.	Repeal, transitional and savings provisions and consequential amendments	69
Schedule 1	Disqualification for holding licences and restriction on voting control of voting controllers	70
Schedule 2	Items which are not to be regarded as newspapers for the purpose of paragraph (c) of definition of “newspaper” in section 2(1)	119
Schedule 3	Services not to be regarded as television programme services	120
Schedule 4	Domestic free television programme service supplementary provisions	123
Schedule 5	Domestic pay television programme service supplementary provisions	133
Schedule 6	Non-domestic television programme service supplementary provisions	133
Schedule 7	Other licensable television programme service supplementary provisions	134
Schedule 8	Transitional and savings provisions	134
Schedule 9	Consequential amendments	145

A BILL

To

License companies to provide broadcasting services, to regulate the provision of broadcasting services by licensees, and to provide for matters incidental thereto or connected therewith.

Enacted by the Legislative Council.

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Broadcasting Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires -
“associate” (相聯者) -

(a) subject to paragraph (b), in relation to -

(i) a voting controller holding voting control, means the same as it does in
the

definition of “associate” in Part 1 of Schedule 1;

- (ii) a disqualified person, means the same as it does in relation to a voting controller holding voting control, with the modification that any reference in the definition mentioned in subparagraph (i) to a voting controller shall be construed as a reference to a disqualified person;
- (iii) a licensee, means the same as it does in relation to a voting controller which is a corporation holding voting control, with the modification that any reference in the definition mentioned in subparagraph (i) to a voting controller which is a corporation shall be construed as a reference to a licensee;
- (iv) a person who exercises control of a licensee, means the same as it does in relation to a voting controller holding voting control, with the modification that any reference in the definition mentioned in subparagraph (i) to a voting controller shall be construed as a reference to a person who exercises control of a licensee;

(b) does not include a person who is not an associate in accordance with the provisions of a notice under subsection (2);

“Broadcasting Authority” (廣管局) means the Broadcasting Authority established under section 3 of the Broadcasting Authority Ordinance (Cap. 391);

“broadcasting service” (廣播服務) means -

- (a) a domestic free television programme service;
- (b) a domestic pay television programme service;
- (c) a non-domestic television programme service; or
- (d) an other licensable television programme service;

“Chief Secretary” (司長) means the Chief Secretary for Administration;

“Code of Practice” (業務守則) means a Code of Practice approved under section 3;

“company” (公司) means the same as it does in the definition of “company” in section 2(1) of the Companies Ordinance (Cap. 32);

“conditions” (條件) , in relation to a licence, means the conditions specified in the licence, the conditions specified in this Ordinance which are applicable to the licence and the conditions specified in a notice under section 10(3) which are applicable to the licence;

“corporation” (法團) means a company or other body corporate;

“decoder”（解碼器）means an apparatus, component part of an apparatus, or other component in electronic or tangible form, which is designed or adapted to enable (whether of its own or with any other apparatus) an encrypted television programme service to be decoded;

“disqualified person”（不符合持牌資格人士）means the same as it does in the definition of “disqualified person” in Part 1 of Schedule 1;

“domestic free television programme service”（本地免費電視節目服務）means a television programme service which -

- (a) is intended or available for reception by the public free of charge in Hong Kong;
- (b) is intended or available for reception by an audience of more than 5 000 specified premises; and
- (c) primarily targets Hong Kong;

“domestic household”（住戶）means -

- (a) a person who lives alone;
- (b) 2 or more persons who -
 - (i) live together (whether or not they are related); and
 - (ii) make common provision for the essentials for living; or
- (c) a person who -
 - (i) lives with 1 or more other persons (whether or not they are related); and

(ii) does not make common provision for the essentials for living;

“domestic pay television programme service” (本地收費電節目服務) means a television programme service which -

(a) is intended or available for reception by the public, on payment, whether periodically or otherwise, of a subscription in Hong Kong;

(b) is intended or available for reception by an audience of more than 5 000 specified premises; and

(c) primarily targets Hong Kong;

“domestic premises” (住宅) means any premises which are constructed or intended to be used for habitation;

“dominant position” (優勢) means dominant position construed in accordance with section 14;

“exercise control” (行使控制) means the same as it does in Part 1 of Schedule 1;

“function” (職能) includes a power and a duty;

“hotel room” (酒店房間) means accommodation within the meaning of section 2(1) of the Hotel Accommodation Tax Ordinance (Cap. 348);

“influence” (影響、影響力) means the same as it does in the definition of “influence” in Part 1 of Schedule 1;

“let for hire” (出租) includes invite to let for hire;

“licence” (牌照) means a licence -

(a) granted under section 8(1) to provide a domestic free television programme service or domestic pay television programme service; or

(b) granted under section 8(2) to provide a non-domestic television programme service or an other licensable television programme service;

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

“licensed service” (領牌服務) means a broadcasting service the subject of a licence;

“material” (材料) includes pictures (whether moving or not), words, music and other sounds, whether produced, spoken or made simultaneously or otherwise;

“newspaper” (報刊) means a paper or other publication or a supplement thereto available to the public which -

(a) contains news, intelligence, occurrences or any remarks, observations or comments in relation to such news, intelligence or occurrences or to any other matter of public interest;

(b) is published for sale or free distribution and periodically (whether half-yearly, quarterly, monthly, fortnightly, weekly, daily or otherwise), or in parts or numbers at intervals not exceeding 6 months; and

(c) does not comprise exclusively any item or items specified in Schedule 2;

“non-domestic television programme service”（非本地電視節目服務）means a television programme service which -

(a) is -

(i) intended or available for reception by the public -

(A) free of charge in Hong Kong; or

(B) on payment, whether periodically or otherwise, of a subscription in Hong Kong; or

(ii) neither intended nor available for reception by the public -

(A) free of charge in Hong Kong; or

(B) on payment, whether periodically or otherwise, of a subscription in Hong Kong; and

(b) does not primarily target Hong Kong;

“offer for sale”（要約出售）includes invite to offer for sale;

“ordinarily resident in Hong Kong”（通常居於香港）-

(a) in relation to an individual, means -

(i) residence in Hong Kong for not less than 180 days in any calendar year; or

(ii) residence in Hong Kong for not less than 300 days in any 2 consecutive calendar years;

(b) in relation to a corporation, means a corporation which satisfies the following -

- (i) if the number of directors who actively participate in its direction -
 - (A) is 2, each is an individual;
 - (B) is more than 2, each of a majority of them is an individual, for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than 7 years; and
- (ii) the control and management of the corporation is bona fide exercised in Hong Kong;

“other licensable television programme service” (其他須領牌的電視節目服務)

means a television programme service which is intended or available for reception -

- (a) free of charge in Hong Kong or on payment, whether periodically or otherwise, of a subscription in Hong Kong; and
- (b) by an audience of not more than 5 000 specified premises;

“performance bond” (履約保證), in relation to a licensee, means a first demand performance bond or bank guarantee -

- (a) issued by a bank within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);
- (b) in favour of the Government; and

- (c) which complies with the provisions of the notice under subsection (3) applicable to the licensee, to secure compliance by the licensee with any of its licence conditions;

“practicable” (切實可行) means reasonably practicable;

“prescribed Ordinance” (訂明條例) means -

- (a) this Ordinance;
- (b) the Telecommunications Ordinance (Cap. 106); or
- (c) the Broadcasting Authority Ordinance (Cap. 391);

“principal officer” (主要人員) means the same as it does in the definition of “principal officer” in Part 1 of Schedule 1;

“provide” (提供), in relation to a broadcasting service, includes establish and operate;

“public place” (公眾地方) means a place to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or otherwise;

“representations” (申述) means representations in writing;

“restriction” (限制) includes restraint;

“specified” (指明), in relation to a form, means specified under section 40;

“specified premises”(指明處所) means any domestic household, or hotel room, in Hong Kong;

“subscription”(收看費) means a fee payable by or on behalf of any person for the right to view a television programme service in Hong Kong;

“subsidiary” (附屬公司) has the same meaning as in the Companies Ordinance (Cap. 32);

“telecommunications” (電訊) means the same as it does in the definition of “telecommunications” in section 2(1) of the Telecommunications Ordinance (Cap. 106);

“Telecommunications Authority” (局長) means the Telecommunications Authority appointed under section 5 of the Telecommunications Ordinance (Cap. 106);

“television programme” (電視節目) means moving visual representational images (that is, images comprised within sequences of visual images capable of being seen as moving images), or a combination of sounds and such images, that are intended to inform, enlighten or entertain, but does not include visual images that consist predominantly of alphanumeric text, data, graphs, charts, diagrams or video games;

“television programme service” (電視節目服務) -

(a) subject to paragraph (b) -

(i) means the provision of a service that includes television programmes for transmission by telecommunications -

(A) that are readily accessible to, or made available to, the general public in or outside Hong Kong; or

(B) to persons, in 2 or more specified premises, simultaneously or on

demand, whether on a point-to-point or a point-to-multipoint basis, or any combination thereof, having equipment appropriate for receiving that service; and

(ii) includes a service, or a service belonging to a class of services, which is a television programme service in accordance with the provisions of a notice under subsection (5) (a);

(b) does not include the provision of a service that -

(i) consists only of a television programme that is made solely for performance or display in a public place;

(ii) consists only of a television programme that is intended wholly or mainly for the purposes of the trade, business, employment or profession of the recipient (but excluding a television programme delivered to hotel rooms);

(iii) consists only of a service that is specified in Schedule 3; or

(iv) is a service, or a service belonging to a class of services, which is not a television programme service in accordance with the provisions of a notice under subsection (5) (b));

“television programme service locking device”(鎖碼裝置) means a device which enables a person to whom a television programme service is or is to be provided to control access to the service;

“voting control”(表決控制權) and “voting controller”(表決控權人) mean the same as they do in the definitions of “voting control” and “voting controller” respectively in Part 1 of Schedule 1;

“voting share”(有表決權股份), in relation to a corporation, means a share which entitles the registered owner of the share to vote at meetings of the shareholders of the corporation.

(2) The Broadcasting Authority may, by notice in the Gazette, declare that persons specified in the notice are not associates if the Broadcasting Authority specifies in the notice that it is satisfied that -

- (a) the persons do not act together in any relevant dealing relating to a licensee or disqualified person; and
- (b) each person is not in a position to exert influence over the business dealings of the other person in relation to that licensee or disqualified person.

(3) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, by notice in writing, specify the form and the amount of a first performance bond or bank guarantee mentioned in the definition of “performance bond” in subsection (1).

(4) For the purposes of this Ordinance -

- (a) transmission on a point-to-point basis means that each transmission (of which there may be more than one at the same time, but independent of and separate from one another) is between one point and only one other point;
- (b) transmission on a point-to-multipoint basis means that a transmission is between one point and 2 or more other points;
- (c) a television programme does not cease to be so merely because it is an interactive programme, that is, a programme which is designed so that the viewer can participate in or influence its contents and method of presentation (if it is otherwise a television programme).

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

- (a) declare a service, or a class of services, specified in the notice to be a television programme service, or a class of television programme services, as the case may be;
- (b) declare a service, or a class of services, specified in the notice not to be a television programme service, or a class of television programme services, as the case may be.

- (6) Any reference in this Ordinance to the performance of a function shall be construed as including the exercise of a power or the performance of a duty, as the case may require.
- (7) Where, in relation to a corporation, 2 or more persons have a joint interest, then for the purposes of this Ordinance each of those persons shall be regarded as having the entire interest to the exclusion of the other persons.
- (8) For the purposes of this Ordinance -
 - (a) Schedules 1 and 4, unless otherwise stated, shall have effect to and in relation to a domestic free television programme service, domestic free television programme service licence and domestic free television programme service licensee;
 - (b) Schedules 1 and 5, unless otherwise stated, shall have effect to and in relation to a domestic pay television programme service, domestic pay television programme service licence and domestic pay television programme service licensee;
 - (c) Schedule 6, unless otherwise stated, shall have effect to and in relation to a non-domestic television programme service, non-domestic television programme service licence and non-domestic television programme service licensee;
 - (d) Schedule 7, unless otherwise stated, shall have effect to and in relation to an other licensable television programme service, other licensable

television programme service licence and other licensable television programme service licensee.

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

- (a) a television programme service includes any advertisements comprised within the service;
- (b) a notice under subsection (2) or (3) is not subsidiary legislation;
- (c) a notice under subsection (5) is subsidiary legislation;
- (d) where a condition specified in a licence makes any reference to an approval by or of the Broadcasting Authority or the Telecommunications Authority (or words to the like effect), then that approval may be given subject to such conditions as the Broadcasting Authority or the Telecommunications Authority, as the case may be, thinks fit;
- (e) a provision of this Ordinance which requires information or a document to be disclosed or otherwise given to the Broadcasting Authority or any other person does not operate to require information or a document to be so disclosed or otherwise given to the extent that a claim to legal professional privilege could be maintained in law in respect of the information or document.

(10) Subsection (9)(e) shall not apply to the disclosure by a solicitor of the name and address of a client of the solicitor.

(11) In exercising their powers under this Ordinance, the Broadcasting Authority and the Telecommunications Authority shall -

- (a) when forming an opinion or making a determination, direction or decision, only do so on reasonable grounds and having regard to relevant considerations;
- (b) when making a determination, direction or decision, provide reasons in writing for it.

(12) In this Ordinance -

- (a) a reference to “telecommunications” includes “telecommunication”;
- (b) a reference to “Telecommunications” includes “Telecommunication”.

PART II

CODES OF PRACTICE AND GUIDELINES

3. Approval of codes of practice by

Broadcasting Authority

(1) Subject to subsection (8), for the purpose of providing practical guidance for licensees in respect of any requirements under this Ordinance imposed on licensees or in respect of licence conditions, the Broadcasting Authority may -

- (a) approve and issue such codes of practice (whether prepared by it or not) as in its opinion are suitable for that purpose; and

- (b) approve such codes of practice issued or proposed to be issued otherwise than by it as in its opinion are suitable for that purpose.

(2) Where a code of practice is approved under subsection (1), the Broadcasting Authority shall, by notice in the Gazette -

- (a) identify the code concerned and specify the date on which its approval is to take effect; and
- (b) specify for which of the requirements under this Ordinance or licence conditions the code is so approved.

(3) The Broadcasting Authority may -

- (a) from time to time revise the whole or any part of any code of practice prepared by it under this section; and
- (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section,

and the provisions of subsection (2) shall, with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1).

(4) The Broadcasting Authority may at any time withdraw its approval from any code of practice approved under this section.

(5) Where under subsection (4) the Broadcasting Authority withdraws its approval from a code of practice approved under this section, it shall, by notice in the Gazette, identify the code

concerned and specify the date on which its approval of it is to cease to have effect.

(6) References in this Ordinance to a “Code of Practice” are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(7) The power of the Broadcasting Authority under subsection (1) (b) to approve a code of practice issued or proposed to be issued otherwise than by it shall include power to approve a part of such a code and, accordingly, in this Ordinance “Code of Practice” may be read as including a part of such a code.

(8) The Broadcasting Authority shall, before approving a code of practice under subsection (1) or any revision or proposed revision of the code under subsection (3), consult with -

- (a) such bodies representative of licensees to which the code or the code as so revised, as the case may be, will apply (whether in whole or in part); and
- (b) in so far as the code or the code as so revised, as the case may be, relates to the technical standards of a broadcasting service, the Telecommunications Authority,

as it thinks fit.

(9) For the avoidance of doubt, it is hereby declared that different codes of practice may be approved under subsection (1) for different classes of licensees, and may be so approved for the same or different requirements mentioned in that subsection or licence conditions.

4. Guidelines

The Broadcasting Authority may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of licensees or companies seeking to be licensees, guidelines not inconsistent with this Ordinance -

- (a) indicating the manner in which the Broadcasting Authority proposes to perform functions conferred by this Ordinance upon the Broadcasting Authority;
- (b) on such other matters relevant to this Ordinance as the Broadcasting Authority thinks fit.

PART III

REGULATION OF BROADCASTING SERVICES

5. Offence of providing broadcasting service without licence

(1) A person shall not provide a broadcasting service except under and in accordance with a licence.

(2) A person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction, to a fine at level 6 and to imprisonment for 2 years;
- (b) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years.

6. Unauthorized decoders

(1) A person shall not, in the course of trade or business, import, manufacture, sell, offer for sale or let for hire an unauthorized decoder.

(2) A person who contravenes subsection (1) commits an offence and is liable -

(a) on summary conviction, to a fine at level 6 and to imprisonment for 2 years;

(b) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years.

(3) Where it is proved that a person has, in the course of trade or business, imported, manufactured, sold, offered for sale or let for hire an unauthorized decoder, then, unless there is evidence to the contrary, it shall be presumed that the person knew that the decoder was an unauthorized decoder.

(4) Where the Telecommunications Authority or any public officer authorized in writing in that behalf by the Telecommunications Authority has reasonable grounds for believing that a person, in the course of trade or business, imports, manufactures, sells, offers for sale or lets for hire unauthorized decoders, then he may -

(a) require the person to produce for his inspection, at any place specified by him, any decoder imported, manufactured, sold, offered for sale or let for hire by the person in the course of trade or business;

- (b) enter and inspect any premises at, to or from which he reasonably believes that the person imports, manufactures, sells, offers for sale or lets for hire in the course of trade or business unauthorized decoders, and require the production to him of any books or documents relating to the decoders;
- (c) seize, remove and detain any unauthorized decoders.

(5) Domestic premises shall not be entered or searched under subsection (4) except pursuant to a warrant under subsection (6).

(6) Where a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is an unauthorized decoder in any domestic premises used by a person whom he has reasonable grounds for believing has committed an offence under this section, then he may issue a warrant authorizing the Telecommunications Authority or any other public officer to enter and search the premises.

(7) The Telecommunications Authority or any public officer authorized in writing in that behalf, in the exercise of the powers under subsection (4) or pursuant to a warrant issued under subsection (6), may-

- (a) break open any outer or inner door of any place that he is empowered or authorized to enter and search;
- (b) remove by force any person or thing obstructing him or resisting any arrest, detention, search,

inspection, seizure or removal that he is empowered to make or carry out;

- (c) detain any person found in any place that he is empowered or authorized to search until such place has been searched.

(8) A magistrate or court may, upon application by or on behalf of the Telecommunications Authority or by any public officer authorized in writing in that behalf by the Telecommunications Authority, order that any unauthorized decoder in respect of which there has been a contravention or attempted contravention of this section shall be forfeited to the Government, whether or not proceedings have been taken against any person in respect of the contravention or attempted contravention.

(9) In this section, “unauthorized decoder”(未經批准的解碼器) means a decoder by means of which encrypted television programmes provided under a licence can be viewed in decoded form without payment of a subscription where a subscription is required to be paid.

7. Offence of providing decoders and reception equipment for television programme service on subscription basis without licence

(1) Subject to subsection (2), a person shall not, in the course of trade or business, import, manufacture, sell, offer for sale or let for hire any decoder for use by a Television Receive Only System to receive a broadcasting service which is not licensed on a subscription basis.

(2) Subsection (1) shall not apply in relation to -

- (a) an encrypted broadcasting service which is licensed other than on a subscription basis; or
- (b) a decoder, or a decoder belonging to a class of decoders, which is not a decoder for the purposes of subsection (1) in accordance with the provisions of a notice under subsection (4).

(3) A person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction, to a fine at level 6 and to imprisonment for 2 years;
- (b) on conviction on indictment, to a fine of \$1,000,000 and to imprisonment for 5 years.

(4) The Telecommunications Authority may, by notice in the Gazette, declare a decoder, or a class of decoders, specified in the notice not to be a decoder, or a class of decoders, as the case may be, for the purposes of subsection (1).

(5) In this section, “Television Receive Only System” (電視單一接收系統) means a system for receiving satellite television signals for use by a single specified premises and the received signals are not distributed to others.

(6) For the avoidance of doubt, it is hereby declared that a notice under subsection (4) is subsidiary legislation.

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) 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).

9. Recommendations by the Broadcasting Authority on applications for licences

(1) An application for the purposes of section 8(1) or (2) shall be submitted to the Broadcasting Authority in the specified form.

(2) The Broadcasting Authority shall consider applications for a domestic free television programme service licence or a domestic pay television programme service licence and make recommendations thereon to the Chief Executive in Council.

10. Grant of licence

(1) The Chief Executive in Council may, after considering recommendations made pursuant to section 9(2), grant a licence under section 8(1) subject to such conditions as he thinks fit specified in the licence.

(2) Subject to subsection (3), the Broadcasting Authority may grant a licence under section 8(2) subject to such conditions as it thinks fit specified in the licence.

(3) The Chief Executive in Council, in the case of licences, or a class of licences, that may be granted under section 8(1) and the Broadcasting Authority, in the case of licences, or a class of licences, that may be granted under section 8(2), may by notice in writing specify conditions to which the licences shall be subject.

(4) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, where he or it considers it is in the public interest to do so, vary a licence at any time during its period of validity after affording the licensee a

reasonable opportunity to make representations under subsection (6).

(5) Without prejudice to the generality of subsection (4), the Chief Executive in Council or the Broadcasting Authority, as the case may require, may, by notice in writing served on a licensee, vary its licence -

(a) in the case of a variation of the period of validity of the licence, if the licensee consents;

(b) in any other case, after the licensee has been given a reasonable opportunity to make representations under subsection (6).

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

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

(8) A licence or an interest in a licence shall not be transferred in whole or in part.

11. Extension or renewal of licence

(1) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, during the period of

validity of a licence, extend or renew the licence, in accordance with the provisions of this Ordinance, to take effect upon expiry of the validity of the licence.

(2) A licensee shall submit to the Broadcasting Authority an application in the specified form -

(a) for the extension or renewal of its licence; and

(b) not less than 24 months, or such shorter period as the Broadcasting Authority may specify in a particular case, before the date on which the period of validity of the licence expires.

(3) The Broadcasting Authority shall, in respect of a domestic free television programme service licence or domestic pay television programme service licence, as soon as is practicable after the receipt of an application under subsection (2) and, in any case, not later than 12 months before the expiry of the period of validity of the licence, submit recommendations to the Chief Executive in Council in relation to the extension or non-extension or renewal or non-renewal of the licence, and where appropriate, the conditions subject to which the licence may be extended or renewed.

(4) Where recommendations are made under subsection (3), the Chief Executive in Council shall consider them and -

(a) extend or renew the licence to which they relate subject to such conditions as he thinks fit specified in the licence; or

(b) decide not to extend or renew the licence.

(5) In the case of a non-domestic television programme service licence or an other licensable television programme service licence, the Broadcasting Authority shall -

- (a) extend or renew the licence subject to such conditions as it thinks fit specified in the licence; or
- (b) decide not to extend or renew the licence.

**12. Determination of whether television
programme service primarily targets
Hong Kong**

(1) A licensee (including a person seeking to be a licensee) shall, before providing a television programme service in or from Hong Kong, make an application in the specified form to the Broadcasting Authority for a determination on whether or not the service would, if provided, primarily target Hong Kong.

(2) The Broadcasting Authority shall, as soon as is practicable after the receipt of an application under subsection (1), make a determination in writing that the Broadcasting Authority is of the opinion that the television programme service the subject of the application, if provided -

- (a) would primarily target Hong Kong; or
- (b) would not primarily target Hong Kong.

(3) Where the Broadcasting Authority has made a determination under subsection (2), it shall as soon as is practicable after making the determination, serve a copy of the determination on the licensee (or person seeking to be a licensee)

concerned together with a statement of its reasons in support of the determination.

(4) Where the Broadcasting Authority ceases to be of the opinion that gave rise to a determination under subsection (2) (“old determination”), then -

- (a) it shall make a further determination in writing (“new determination”) that the Broadcasting Authority is of the opinion that the television programme service the subject of the old determination -
 - (i) primarily targets Hong Kong; or
 - (ii) does not primarily target Hong Kong;
- (b) it shall as soon as is practicable after making the new determination, serve a copy of the new determination on the licensee (or person seeking to be a licensee) concerned together with a statement of its reasons in support of the determination;
- (c) upon the date the licensee (or person seeking to be a licensee) is served with a copy of the new determination, the old determination shall thereupon be deemed to be repealed unless the new determination provides for the repeal of the old determination at a later date; and
- (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) 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 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) 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 operate to prevent any restriction imposed on -

- (a) the inclusion in a television programme service of a television programme produced by the licensee of the service; or
- (b) any person from using or exploiting his artistic talent or ability.

(6) The Broadcasting Authority may, by notice in the Gazette, amend subsection (5).

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) 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 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. Notice to licensee to cease certain conduct

The Broadcasting Authority may, by notice in writing served on a licensee -

- (a) require the licensee to cease and desist on and after a date specified in the notice from conduct specified in the notice as conduct which the Broadcasting Authority states in the notice that it is of the opinion that it contravenes section 13(1) or 14(1);

- (b) direct the licensee to take such steps as are specified in the notice, and within the period specified in the notice, as the Broadcasting Authority considers appropriate for the purpose of securing, or assisting the securing of, the licensee's compliance with that section.

16. Separate accounting

- (1) Where a licensee holds a licence under the Telecommunications Ordinance (Cap. 106), it shall adopt accounting practices which ensure that -
 - (a) its activities in relation to its licence under this Ordinance can be readily understood without reference to its activities in relation to its licence under that Ordinance; and
 - (b) its activities in relation to its licence under the Telecommunications Ordinance (Cap. 106) can be readily understood without reference to its activities in relation to its licence under this Ordinance.
- (2) The Broadcasting Authority may, by notice in writing served on a licensee to which subsection (1) applies, direct the licensee to adopt an accounting practice -
 - (a) specified in the direction;
 - (b) for the purpose of securing, or assisting the securing of, compliance with that subsection; and

- (c) which is consistent with generally accepted accounting practices in Hong Kong.

17. Service provision requirements

(1) Subject to subsection (2), a licensee the licensed service of which is a domestic free television programme service or domestic pay television programme service shall, within such period as is specified in the licence or such other period as may be determined in writing by the Broadcasting Authority, provide the service in such manner as to enable the service to be received throughout Hong Kong to the satisfaction of the Broadcasting Authority or, in the case of a domestic pay television programme service, such parts of Hong Kong as are specified for the purposes in the licence.

(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.

18. 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 television programme for schools supplied by the Government.

**19. 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.

**20. 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) A licensee shall, at all reasonable times when directed in writing to do so by the Broadcasting Authority, 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) 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) 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).

21. Limitations on agreements by licensee

(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.

22. General requirements as to television programme services

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

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

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

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

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

(5) In this section -

“standards” (標準) , in relation to television programme content, includes restrictions on the time of day when content of a particular class may be provided;

“subliminal message” (潛送訊息) means the transmission of material the duration of which is so brief that it does not enable a person to obtain a conscious picture of the material.

PART VI

ENFORCEMENT OF LICENCES

23. Directions of Broadcasting Authority and Telecommunications Authority

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

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

24. Investigation of licensee's business

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

- (a) require a licensee or a person whom such authorized person reasonably believes to be employed or engaged in connection with the relevant business of a person to whom this section applies to produce for examination any data, book, document or record which relates to such business and which is in the possession or under the control of the licensee or person, as the case may be;
- (b) examine and, if he thinks fit, to take copies of any data, book, document or record produced under paragraph (a) or any entry therein;
- (c) remove the data, book, document or record referred to in paragraph (a) or the copies referred to in paragraph (b) for examination by him and the Broadcasting Authority; and
- (d) require a licensee or a person whom such authorized person reasonably believes to be employed or engaged in connection with the relevant business of a person to which this section applies to give the authorized person and the Broadcasting Authority

any explanation or further particulars as specified by the authorized person in respect of any data, book, document or record produced under paragraph (a).

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

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

- (a) that it is necessary for the proper performance of the functions of the Broadcasting Authority that entry be obtained to any premises which the chairman, vice chairman or principal executive officer has reasonable grounds for believing is used or occupied by a person to whom this section applies for the purposes of keeping, storing or using any data, book, document or record which relates to the relevant business of the person to whom this section applies; and
- (b) that permission to enter such premises has been refused or that entry is likely to be refused,

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

- (i) may exercise therein the powers specified in subsection (1); and
- (ii) copy, seize, remove and detain any data, book, document or record therein or any copy thereof which the authorized person has reasonable grounds for believing will afford evidence likely to assist the Broadcasting Authority in the proper performance of its functions under this Ordinance.

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

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

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

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

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

- (a) to require the person mentioned in subsection (1)(a) to extract or retrieve, or cause to be extracted or retrieved, in a visual or printed or other written form or on a computer disc, or in both, any information referred to in subsection (10) and specified by the person exercising the power, and if when extracted or retrieved the information is in a printed or other written form, to require the person so described to deliver it to the person exercising the power;
- (b) to extract or retrieve himself, in either of or both such forms, by means of the equipment normally used for that purpose, any information so referred to; and
- (c) to examine any information so extracted or retrieved and if thought fit to remove it.

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

(10) In this section -

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

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

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

25. Broadcasting Authority may obtain information

(1) If a magistrate is satisfied by information on oath that there are reasonable grounds for believing that a person, other than a licensee, is, or is likely to be, in possession of information or a document that is relevant to a contravention of a provision of this Ordinance, he may issue an order that the person shall, within the time specified in the order, give the information or document to the Broadcasting Authority in writing or to produce the document to the Broadcasting Authority, as the case may be.

(2) A person commits an offence if he -

- (a) fails to comply with an order issued under subsection (1); or
- (b) in purported compliance with the order issued under subsection (1), knowingly gives information that is false or misleading,

and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

26. Confidential matter to be safeguarded

(1) Subject to subsection (2) -

- (a) any information which is furnished, and any data, book, document or record which is produced, by a person in confidence to the Broadcasting Authority or any person authorized by it or any committee appointed by it or by that committee, the Telecommunications Authority or any person authorized by him, shall be treated as confidential; and
- (b) unless the person otherwise permits in writing and except in accordance with such permission, no such information, data, book, document or record or any copy thereof shall be divulged or shown to any person other than in confidence to members of the Broadcasting Authority or any committee appointed thereby, or to a public officer acting in the performance of his duties or for the purposes of this Ordinance or the Broadcasting Authority Ordinance (Cap. 391).

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

-

- (a) with a view to the institution of or otherwise for the purposes of any criminal proceedings or any

investigation in connection therewith, whether under this Ordinance or otherwise, in Hong Kong;

(b) in connection with civil proceedings to which the Broadcasting Authority is a party;

(c) which facilities the Broadcasting Authority or the Telecommunications Authority investigating or determining a complaint that a licensee is engaging in conduct that contravenes a provision of a prescribed Ordinance; or

(d) subject to subsection (3), which the Broadcasting Authority considers it is in the public interest to disclose.

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

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

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

(4) A person may permit, subject to such conditions as the person may specify, the Broadcasting Authority, the

Telecommunications Authority or any person authorized by the Broadcasting Authority or the Telecommunications Authority -

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

to any person or to any specified person.

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

27. Licensee to pay financial penalty

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

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

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

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

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

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

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

28. Recovery of financial penalty

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

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

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

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

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

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

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

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

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

- (a) a licence condition;
- (b) a requirement under this Ordinance which is applicable to it;
- (c) a direction, order, or determination, under this Ordinance which is applicable to it; or

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

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

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

30. Suspension of licence

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

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

(a) for failure by the licensee to pay -

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

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

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

- (i) the licensee has contravened -
 - (A) a licence condition;
 - (B) a requirement under this Ordinance which is applicable to it;
 - (C) a direction, order, or determination, under this Ordinance which is applicable to it; or
 - (D) a provision of a Code of Practice which is applicable to it;
- (ii) another person has contravened a condition, requirement, direction, order, determination or provision mentioned in subparagraph (i) and such contravention has taken place with the consent or connivance of, or has been facilitated by a neglect of, the licensee.

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

- (a) serve on the licensee a notice in writing stating that -
 - (i) the Broadcasting Authority has under consideration the suspension of the licence and the grounds upon which and any other reason why such suspension is being considered; and

- (ii) representations as regards the proposed suspension may be made to the Broadcasting Authority during the period specified in the notice (being a period of not less than 28 days beginning on the date of service of the notice); and
 - (b) consider any representations made to it in relation to the proposed suspension.
- (4) The suspension of a licence under subsection (1) shall not come into force -
 - (a) subject to paragraph (b), until the expiration of the period during which an appeal under section 33 against the suspension may be made; or
 - (b) if an appeal under section 33 against the suspension is made, until the appeal is withdrawn, abandoned or determined.

31. Revocation of licence

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

(2) The Broadcasting Authority may as part of its inquiry, and shall where its inquiry concerns the provisions of subsection

(4) (c), conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority.

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

(a) may, notwithstanding section 26, divulge any data, book, document or record it has received in the course of the public hearing to any person it considers appropriate on terms of confidentiality or otherwise or treat the same as confidential; and

(b) shall publish in such manner as it considers fit a report of the public hearing and, if the licence was granted by the Chief Executive in Council, together with its recommendations to the Chief Executive in Council.

(4) The Chief Executive in Council, after considering the recommendations of the Broadcasting Authority and such other information, matter and advice as he thinks fit, or the Broadcasting Authority, as the case may require, after complying with section 32 and considering such other information, matter and advice as it thinks fit, may, by notice in writing served on the licensee, revoke a licence -

(a) for failure by the licensee to pay -

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

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

(b) if the licensee -

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

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

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

- (i) the licensee has contravened -

- (A) a licence condition;

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

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

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

- (ii) another person has contravened a condition, requirement, direction, order, determination or provision mentioned in subparagraph (i) and such contravention has taken place with the consent or

connivance of, or has been facilitated by a neglect of, the licensee.

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

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

- (a) subject to paragraph (b), until the expiration of the period during which an appeal under section 33 against the revocation may be made; or
- (b) if an appeal under section 33 against the revocation is made, until the appeal is withdrawn, abandoned or determined.

32. Inquiry by Broadcasting Authority

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

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

-

- (a) the Broadcasting Authority shall serve on the licensee a notice in writing stating -
 - (i) that the revocation of its licence is under consideration;

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

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

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

(3) The Broadcasting Authority shall consider any representations submitted by the licensee and such further information and matter as it may consider necessary by reason of such representations.

33. Appeal to Chief Executive in Council

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

(a) a decision of -

(i) the Broadcasting Authority in the exercise of a discretion conferred on it under this Ordinance or the Broadcasting Authority Ordinance (Cap. 391) (including

a decision to specify a condition in a licence); or

(ii) the Telecommunications Authority in the exercise of a discretion

conferred on him under this Ordinance;

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

Ordinance; or

(c) anything contained in a Code of Practice,

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

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

34. Determination of appeal

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

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

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

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

PART VII

PROHIBITION AND PROSCRIPTION BY COURT

35. Court may prohibit certain television programmes, etc.

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

- (a) incite hatred against any group of persons, being a group defined by reference to colour, race, sex, religion, nationality or ethnic or national origins;
- (b) result in a general breakdown in law and order; or
- (c) gravely damage public health or morals.

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

(3) In a case of urgency, the Chief Secretary may, under subsection (2), make an application for an interim order, ex parte

and on affidavit, but otherwise the application shall be made by motion or summons.

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

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

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

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

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

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

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

PART VIII

MISCELLANEOUS

36. Contests

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

37. Inspection and testing of technical equipment

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

prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it.

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

- (a) make available on request to the Telecommunications Authority or any person authorized by him for the purpose of the inspection or test and permit to be inspected and tested any equipment or part thereof used, or intended to be used, for the provision of any television programme service;
- (b) if so required by the Telecommunications Authority or such authorized person, give any explanation or particulars which the Telecommunications Authority or person considers necessary for the purposes of exercising his powers under this section; and
- (c) assist the Telecommunications Authority or such authorized person in carrying out the inspection or test in any manner specified by the Telecommunications Authority or such person.

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

38. Licensee to submit returns

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

(2) A domestic free television programme service licensee or domestic pay television programme service licensee shall submit, at the same time as the return submitted under subsection (1), a statutory declaration made by the company secretary of, or a director of, the licensee showing whether or not any disqualified person has exercised any control in the licensee during the year immediately preceding the year to which the return relates.

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

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

39. Service of documents

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

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

40. Power of Broadcasting Authority to specify forms

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

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

opinion of the Broadcasting Authority, its exercise of that power in respect of that form does not contravene that requirement.

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

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

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

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

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

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

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

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

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

(i) the Broadcasting Authority;

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

(iii) any other person,

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

41. Regulations

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

- (a) in relation to a licence, specify requirements with respect to the control, whether direct or indirect, to be exercised over the provision of television programme services, the board of directors, or property used or kept by the licensee in connection with its licensed service by any other person;
- (b) empower the Broadcasting Authority to waive or dispense with the requirements mentioned in paragraph (a) generally or in a particular case;
- (c) in relation to a domestic free television programme service licence or domestic pay television programme service licence, specify requirements with respect to the beneficial ownership or control, whether direct or indirect, of any of the voting shares in the licensee;
- (d) for the purposes of securing compliance with Parts 3 and 4 of Schedule 1 by a domestic free television programme service licensee, make provision for -
 - (i) matters relating to voting controllers under that Schedule; and

- (ii) the holding, acquisition or disposal of rights, titles and interests to or in voting shares in a licensee;
- (e) specify television programme and advertising standards, including, without limitation, restrictions on the time of day when television programme and advertisements may be provided, and may do so for different licensees and different broadcasting services;
- (f) prescribe anything that may be prescribed under this Ordinance;
- (g) provide for any matter incidental or ancillary to or necessary to give effect to any matter referred to in paragraph (a), (b), (c), (d), (e) or (f).

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

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

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

(4) Regulations under subsection (1) (d) may provide that a contravention of a specified provision made thereunder shall be an

offence punishable with a fine not exceeding \$1,000,000 and a term of imprisonment not exceeding 2 years.

42. Amendment of Schedules 1 to 8, etc.

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

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

43. Repeal, transitional and savings provisions and consequential amendments

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

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

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

SCHEDULE 1

[ss. 2, 8, 41 &
42 & Schs. 4
& 8]

DISQUALIFICATION FOR HOLDING LICENCES AND
RESTRICTION ON VOTING CONTROL OF
VOTING CONTROLLERS

PART 1

INTERPRETATION AND APPLICATION

1. Interpretation

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

“advertising agency” (廣告代理商) 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 subparagraph (A) applies, and if the partner is an individual, a relative of the partner;
 - (iii) a director or principal officer of the corporation or of an associated corporation and a relative of the director or officer;
 - (iv) a partner of the corporation and, if the partner is an individual, a relative of the partner; or

(c) where the voting controller holding the voting control is a partnership -

(i) a member of the partnership and, if the partner is an individual, a relative of the member;

(ii) a partner of the partnership and, where the partner -

(A) is an individual, a relative of the partner; or

(B) is itself a partnership, a relative of a member of the partnership who is an individual;

(iii) a corporation influenced by -

(A) the partnership;

(B) a partner of it; or

(C) where the partner is an individual, a relative of the partner;

(iv) a corporation of which a partner of the partnership is a director or principal officer;

(v) a director or principal officer of a corporation mentioned in subparagraph (iii);

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

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

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

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

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

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

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

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

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

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

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

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

- (a) a voting controller who -
 - (i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of this Ordinance and has been so resident for at least one continuous period of not less than 7 years;
 - (ii) in the case of a corporation, is ordinarily resident in Hong Kong;or
- (b) a voting controller who is -

- (i) the trustee or manager of any unit trust or mutual fund corporation authorized under section 15 of the Securities Ordinance (Cap. 333);
- (ii) the trustee of a charitable scheme made by order of a court of competent jurisdiction;
- (iii) a judicial officer in whom the estate of a deceased is vested between the time of death and the grant of letters of administration;
- (iv) the Registrar of the High Court; or
- (v) such other person as may be prescribed;

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

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

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

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

- (a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;
- (b) by an entitlement to exercise such a right to vote;
- (c) under a duty or obligation;
- (d) through a nominee;
- (e) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights; or
- (f) as a chargor of voting shares of a licensee unless the chargee of the voting shares or the nominee of the chargee has given notice in writing to the chargor under the charge of an intention to exercise the right to vote attaching to such voting shares;

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

(2) Where -

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

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

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

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

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

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

(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.

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 -

$$\frac{1}{B} \times \frac{(49 \times A)}{51} \times 100$$

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
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) 2 ½ hours in any period of 24 hours commencing at 6 a.m.;

(ii) 2 ½ 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 subsection, “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”(當作已批給的牌照) 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 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 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.

Extracts of Existing Provisions

Chapter:	106	Title:	TELECOMMUNICATION ORDINANCE	Gazette Number:	
Section:	2	Heading:	Interpretation	Version Date:	30/06/1997

In this Ordinance, unless the context otherwise requires-

“Authority” (局長) means the Telecommunications Authority appointed under section 5;

“licensee” (持牌人) -

- means the holder of a licence under this Ordinance;
- includes the holder of a licence granted under section 8 of the Television Ordinance (Cap 52) which, by virtue of subsection (3) of that section, is deemed to be a licence granted by the Governor in Council under this Ordinance; (Replaced 38 of 1993 s. 2)

“message” (訊息) means any communication sent or received or made by telecommunication or given to a telecommunications officer to be sent by telecommunication or to be delivered;

“radiocommunication” (無線電通訊) means communication by radio waves;

“sound broadcast receiving apparatus” (聲音廣播接收器具) means an apparatus which is capable of receiving sound only, transmitted by means of radiocommunication or by wire for reception by the general public; (Added 2 of 1968 s. 2)

“space object” (空間物體) has the meaning assigned to it in the Outer Space Ordinance (Cap 523); (Added 39 of 1990 s. 2. Amended 65 of 1997 s. 16)

“telecommunication” (電訊) means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by visual means or by wire or radio waves or any other electromagnetic system;

“telecommunication installation” (電訊裝置) means any apparatus or equipment maintained for or in connection with a telecommunication service;

“telecommunication line” (電訊線路) includes any apparatus or equipment maintained for or in connection with any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire; (Added 38 of 1993 s. 2)

“telecommunication officer” (電訊人員) means any person employed in connection with a telecommunication service;

“telecommunication service” (電訊服務) means the provision of facilities for use by members of the public or by any person for the transmission or reception of messages or the provision on loan, lease or hire to members of the public or to any person of apparatus for telecommunication either within Hong Kong or with any place outside Hong Kong;

“vessel”(船隻) has the same meaning as in the Shipping and Port Control Ordinance (Cap 313); (Added 69 of 1983 s. 2)

“wire”(導線) means, in relation to telecommunication, any cable, conduit, duct, fibre, filament, line, pipe or tube maintained for or in connection with telecommunication. (Added 38 of 1993 s. 2)

Chapter:	106	Title:	TELECOMMUNICATION ORDINANCE	Gazette Number:	29 of 1998 s. 105
Section:	8	Heading:	Prohibition of establishment and maintenance of means of telecommunication, etc., except under licence	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 29 of 1998 s. 105

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

- (a) establish or maintain any means of telecommunication; or
- (b) possess or use any apparatus for radiocommunication or any apparatus of any kind that generates and emits radio waves notwithstanding that the apparatus is not intended for radiocommunication; or
- (c) deal in the course of trade or business in apparatus or material for radiocommunication 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 radiocommunication; or
- (d) demonstrate, with a view to sale in the course of trade or business, any apparatus or material for radiocommunication.

(2) For the avoidance of doubt, it is hereby declared that the fact that the person from whom any apparatus for telecommunication is loaned, leased or hired, or the person maintaining a means of telecommunication of which other apparatus forms part or with which other apparatus is connected, is the holder of a licence granted under this Ordinance, does not exempt the person to whom the apparatus is loaned, leased or hired, or the person maintaining, possessing or using the apparatus forming part of, or connected with, such means of telecommunication, as the case may be, from the necessity to obtain such licence or licences as may be required under this Ordinance.

(3) (Repealed 40 of 1995 s. 7)

(4) Notwithstanding anything contained in subsection (1), no licence shall be required under that subsection in respect of-

- (a) any sound broadcast receiving apparatus;
 - (b) any material or component part of such sound broadcast receiving apparatus;
 - (c) any television receiver;
 - (d) any material or component part of a television receiver; (Added 2 of 1968 s. 3. Amended 17 of 1972 s. 2)
 - (e) any system which, without a change of frequency, carries from a single aerial, by wire or other material substance which does not cross a public street or unleased Government land, to outlet points in one building or in more than one building if such buildings are owned by the same person television programmes broadcast by any company licensed under the Television Ordinance (Cap 52); or (Added 57 of 1973 s. 2. Amended 29 of 1998 s. 105)
 - (f) any closed circuit television system consisting of 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, if- (Amended 29 of 1998 s. 105)
 - (i) the system is operated solely for internal information or security communication purposes solely within premises occupied by the person operating the system or for private entertainment purposes in domestic premises occupied by such person; and
 - (ii) no advertising material is transmitted by means of the system, other than such material advertising only the goods or services sold or provided by the person operating the system or which is transmitted free of charge by such person. (Added 57 of 1973 s. 2. Amended 62 of 1973 s. 2)
-

Chapter:	106	Title:	TELECOMMUNICATION ORDINANCE	Gazette Number:	
Section:	13A	Heading:	Interpretation	Version Date:	30/06/1997

PART IIIA

SOUND BROADCASTING LICENCES

- (1) For the purposes of this Part-
- “broadcasting”(廣播) means transmitting sound (otherwise than as part of a television broadcast) for general reception by means of radio waves;
- “Broadcasting Authority”(廣播事務管理局) means the Broadcasting Authority established by section 3 of the Broadcasting Authority Ordinance (Cap 391);
- “company”(公司) has the meaning assigned to it in section 2(1) of the Companies Ordinance (Cap 32);
- “corporation”(法團) means a company or other body corporate;
- “disqualified person”(喪失資格的人) means-
- an advertising agent;
 - a person who in the course of business supplies material for broadcasting by a licensee;
 - a licensee;
 - a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong;
 - a person who exercises control of a corporation that is a person referred to in paragraph (a), (b), (c), or (d);
- “licence”(牌照) means a licence granted under section 13C;
- “licensee”(持牌人) means the holder of a licence granted under section 13C;
- “ordinarily resident in Hong Kong”(通常居於香港) -
- in relation to a person who is an individual, means-
 - residence in Hong Kong for not less than 180 days in any calendar year; or
 - residence in Hong Kong for not less than 300 days in any 2 consecutive calendar years; and
 - in relation to a company, means a company-
 - that is formed and registered in Hong Kong under the Companies Ordinance (Cap 32); and
 - in the case of which-
 - if not more than 2 of its directors take an active part in the management of the company, each of those directors is; or
 - if more than 2 of its directors take an active part in the management of the company, a majority of those directors are each of them, for the time being ordinarily resident in Hong Kong and each of them has at any time been resident for a continuous period of not less than 7 years; and
 - the control and management of which is bona fide exercised in Hong Kong;
- “subsidiary”(附屬公司) means a company that is a subsidiary within the meaning of section 2 of the Companies Ordinance (Cap 32);
- “voting shares”(有表決權股份) means shares in the company which entitle the shareholder to vote at meetings of shareholders of the company.
- (2) For the purposes of this Part a person exercises control of a company or corporation if he-
- holds office in that company or corporation; or

- (b) subject to paragraph (c), is the beneficial owner of more than 35% of the voting shares in that company or corporation; or
- (c) in the case of a corporation that is a licensee, is the beneficial owner of more than 15% of the voting shares in that corporation.

(3) A person shall not be a disqualified person in relation to a corporation that is a licensee by reason only that he holds office in, or is the beneficial owner of more than 15% of the voting shares in, that corporation.

(Added 51 of 1989 s. 3)

Chapter:	106	Title:	TELECOMMUNICATION	Gazette Number:	
			ORDINANCE		
Section:	34	Heading:	General provisions as to licences, etc.	Version Date:	30/06/1997

(1) A licence granted under this Ordinance by the Governor in Council shall be valid for such period, and shall be subject to the payment of such fee, royalty or other charge whatsoever, annually or otherwise, as is specified therein, and shall be subject to such conditions as the Governor in Council may specify and, where the Governor in Council considers it desirable in the public interest, may confer on the person to whom it is granted an exclusive right to maintain any service to the public in connection with which the licence is granted.

(1A) A licence granted under this Ordinance by the Governor in Council may, with the consent in writing of the person to whom it was granted, be amended by order of the Governor in Council. (Added 92 of 1970 s. 2)

(1B) Without affecting the generality of subsection (1) or (3), a licence granted under this Ordinance may include a condition that the licensee shall procure, in favour of the Government, a first demand performance bond or bank guarantee, in such sum and in such form as the authority by whom the licence is granted may require, to secure the compliance by the licensee with any condition imposed under subsection (1) or (3). (Added 38 of 1993 s. 6)

(2) Every licence granted under this Ordinance by the Authority shall be valid for the period or until the day prescribed by the regulations, but, save as otherwise provided by the regulations, may be renewed for a period of one year at a time.

(3) Any licence, permit, permission or consent granted under this Ordinance by the Authority shall be subject to the conditions (if any) prescribed by or under the regulations and to such other conditions as the Authority specifies on the grant or renewal thereof, being conditions that the Authority considers necessary for the purpose of carrying out the objects of this Ordinance.

(4) Any licence, permit, permission or consent granted under this Ordinance may at any time be cancelled or withdrawn by the authority by whom it was granted, or suspended by such authority for such period, not exceeding twelve months, as the authority specifies, in the event of any contravention by the licensee or the person to whom the permit, permission or consent was granted, as the case may be, of this Ordinance or of any condition to which the licence, permit, permission or consent is subject, and any such licence may be cancelled or suspended at any time by the Governor in Council if he considers that the public interest so requires.

(5) Where any licence, permit, permission or consent granted under this Ordinance is cancelled, withdrawn or suspended, no part of any fee or other sum paid in respect thereof or thereunder shall be refunded.

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

- (a) Part IIIA; or

- (b) section 8 of the Television Ordinance (Cap 52) which, by virtue of subsection (3) of that section, is deemed to be a licence granted by the Governor in Council under this Ordinance. (Replaced 38 of 1993 s. 6)

Chapter:	106	Title:	TELECOMMUNICATION	Gazette Number:	
			ORDINANCE		
Section:	36A	Heading:	Authority may determine terms of interconnection	Version Date:	30/06/1997

(1) The Authority may, in relation to any interconnection of the type mentioned in subsection (3), determine what the terms and conditions of any agreement for that interconnection shall be.

(2) The terms and conditions as manifested in a determination made under subsection (1) shall, unless the Authority in relation to any particular term or condition otherwise directs, be deemed to be of the essence of any agreement for the interconnection in relation to which the determination is made whether or not a different intention appears from the provisions of the agreement.

(3) The type of interconnection referred to in subsection (1) is an arrangement among 2 or more than 2 parties for interconnection to-

- (a) and between telecommunication 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 by the Governor in Council under this Ordinance by virtue of section 8(3) of the Television Ordinance (Cap. 52); and
- (aa) and between programme services licensed by the Governor in Council under section 8 of the Television Ordinance (Cap. 52); and (Added 21 of 1997 s. 18)
- (b) and between systems of the description mentioned in section 8(4)(e); and
- (c) and between closed circuit television systems of the description mentioned in section 8(4)(f); and
- (d) and between telecommunication services being the subject of an order made under section 39. (Amended 40 of 1995 s. 8)
- (e) (Repealed 40 of 1995 s. 8)

(4) No determination shall be made under subsection (1) unless the Authority is satisfied that the parties to any arrangement for interconnection of the type mentioned in subsection (3) have been afforded reasonable opportunity to make representations to him as to why a determination should not be made.

(5) Notice in writing of a determination made under subsection (1) shall be served personally or by registered post on the parties to the arrangement for interconnection.

(6) The expenses incurred by the Authority in, or in relation to, a determination made under subsection (1) shall be a debt due to the Crown and, subject to subsection (7), shall, on the service of a notice under subsection (5), be recoverable in the District Court from all or any of the persons on whom notice has been served under that subsection.

(7) It shall be a defence for any person against whom an action is brought under subsection (6) to satisfy the District Court that he or it concurred with the substance of the terms and conditions as manifested in the determination and had given notice in writing of that fact to the Authority not less than 30 days before the service on him or it of a notice under subsection (5).

(8) The Authority may issue guidelines setting out principles governing the criteria for any determination under subsection (1).

(Added 38 of 1993 s. 7)

Chapter:	106A	Title:	TELECOMMUNICATION ORDINANCE	Gazette Number:	L.N. 331 of 1999
Section:	3	Heading:	FORM OF LICENCES	Version Date:	01/01/200 0

[Regulation 2(7)]

TELECOMMUNICATION ORDINANCE
(Chapter 106)

PRIVATE TELEGRAPH (RECEPTION) LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

..... of
..... (hereinafter called “the
Licensee”) having paid to the Telecommunications Authority an issue fee of \$..... is hereby
licensed, subject to the conditions herein contained-

to possess, establish and maintain a telegraph apparatus for receiving telegraph signals
from a channel between..... and.....

..... for the sole purpose of receiving
messages concerning the business of the Licensee as.....

CONDITIONS

1. The apparatus shall be operated only by persons authorized by the Licensee in that behalf.
2. The Schedule attached shall show the address from which telegraph signals may be received. This address must be covered by a valid “Private Telegraph (Transmission) Licence”.
3. Any alteration to the apparatus or channel to which it is connected, shall only be made with the prior approval in writing of the Telecommunications Authority.
4. The apparatus and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
5. This Licence shall continue in force for one year from the date of issue, and thereafter for successive periods of one year so long as the Licensee pays to the Telecommunications Authority in advance before the beginning of each successive period the renewal fee prescribed by or under the regulations for the time being in force:

Provided that the Telecommunications Authority may at any time after the date of issue revoke the Licence or vary the conditions thereof by a notice served in writing on the Licensee or by a notice published in the Gazette addressed to “All Private Telegraph (Reception) Licensees”. Any notice given under this clause may take effect either forthwith or on such subsequent dates as may be specified in the notice.
6. This Licence is not transferable. The Licensee may not change each address at which the apparatus is kept or operated without the written consent to such change of the Telecommunications Authority.

TELECOMMUNICATION ORDINANCE
(Chapter 106)

HOTEL TELEVISION SERVICES LICENCE

VALID FOR ONE YEAR FROM (date of issue)

FEE:

..... of
.....(hereinafter called
“the licensee”) is hereby licensed, subject to the conditions herein contained, to establish and maintain a closed circuit television system for hotel television services consisting of a television transmitter unit or units and/or a radio receiver or receivers, with or without an associated audio system, connected by wire and/or* radio and/or* any other electromagnetic means to reception units, which system (hereinafter referred to as “the system”) is more particularly described in the First Schedule hereto.

*Delete where appropriate.

GENERAL CONDITIONS

1. The system shall be operated only by the licensee and persons authorized by him in that behalf.
2. The licensee shall-
 - (a) furnish to the Telecommunications Authority (hereinafter called “the Authority”) his address for correspondence;
 - (b) forthwith give notice in writing to the Authority of any change of such address; and
 - (c) when giving the notice referred to in paragraph (b), return this licence to the Authority for amendment.
3. (1) The licensee shall-
 - (a) operate the system in such a manner as not to cause interference with any other means of telecommunication;
 - (b) comply with any direction given by the Authority for the purpose of avoiding any such interference; and
 - (c) on receipt of a notice in writing from the Authority, disconnect or remove any part of the system which, in the opinion of the Authority, is interfering, or is likely to interfere, with the working of any other means of telecommunication.

(2) The licensee shall not use any instrument, apparatus or material on, or connect or apply any electrical currents to, any part of the system if the same interferes, or is likely to interfere, with the working of any other means of telecommunication.
4. The licensee shall permit any public officer authorized in writing by the Authority to inspect the system, relevant records and this licence at all reasonable times, and shall forthwith furnish to the Authority any information required by the Authority in connection with the operation of the system.
5. The licensee shall not operate the system except for the purpose of providing the system specified in the Second Schedule hereto.
6. The licensee shall ensure that all advertising material transmitted by the system complies with the standards laid down in the Code of Practice relating to Advertising Standards issued under the Television Ordinance (Cap 52).

7. Advertising material may not be transmitted during the showing of a feature film.
8. There shall be no limit on the amount of advertising transmitted.
9. Where the contents of the Code of Practice for Advertising Standards and these General Conditions are in conflict, the General Conditions shall prevail.
10. The licensee shall submit detailed information on its programmes and any advertising material intended for transmission by the system to the Commissioner for Television and Entertainment Licensing ("CTEL") containing such particulars and at such time as may be required by the same.
11. The licensee shall make available to CTETL on demand a video-tape of any programme or advertising material intended for transmission by the system. An exception should be made for news, current affairs and sports programmes transmitted to the licensee by microwave or other radio waves.
12. The licensee shall retain video-tape recordings of all material transmitted by the system for 30 days and shall submit them on demand to CTETL for examination.
13. The licensee shall ensure that any programme which may contain material unsuitable for children is preceded by a notice in the following form-
"WARNING: THIS PROGRAMME CONTAINS MATERIAL WHICH MAY BE UNSUITABLE
FOR CHILDREN
警告：本節目部分內容可能不適合兒童觀看".
14. No wire forming part of the system shall cross any street or unleased Government land.
15. This licence is not transferable.
16. This licence shall be returned to the Authority when it has expired or been revoked.
17. Nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright.
18. The licensee shall ensure that any equipment which is operated from the mains supply of electricity is so designed that the mains supply cannot be applied to the wires of the system.
19. The licensee may not continue to receive signals on any microwave frequency more than 3 months after the Authority directs the licensee to terminate the reception on that microwave frequency on the ground that the premises containing the system have been passed by a cable of any cable television network licensed by the Government.

SPECIAL CONDITIONS

.....
For and on behalf of the
Telecommunications Authority.

FIRST SCHEDULE

DESCRIPTION OF SYSTEM

Location of transmitter unit or units
Location of reception units
.....
Other specifications

SECOND SCHEDULE

PURPOSE OF SYSTEM

(L.N. 301 of 1989; 29 of 1998 s. 105)

TELECOMMUNICATION ORDINANCE (Chapter 106)

PUBLIC RADIOCOMMUNICATION SERVICE LICENCE

DATE OF ISSUE:

VALIDITY PERIOD:

DATE OF EXTENSION (if applicable):

PERIOD OF EXTENSION (if applicable):

..... of
.....

(the "licensee") is licensed, subject to the conditions set out in this licence-

- (a) to provide a public radiocommunication service (the "Service") described in Schedule 1;
- (b) to establish, maintain, possess and use the radiocommunication apparatus described in Schedule 2 to provide the Service; and
- (c) to deal in and demonstrate with a view to sale in the course of trade or business, such apparatus or material for radiocommunication as may be necessary to supply customers of the Service.

GENERAL CONDITIONS

1. This licence shall not be construed as granting any exclusive rights to the licensee in the provision of the Service.
2. This licence replaces any licence, however described, which the Authority may have granted to the licensee for the Service.
3. The licensee shall at all times and from time to time during the continuance of this licence operate, maintain and provide the Service in a manner satisfactory to the Authority.
4. The licensee shall at all times perform and observe the requirements of the International Telecommunication Convention and the regulations and recommendations annexed to or made under the Convention as are applicable to Hong Kong except to the extent that the Authority may in writing expressly exempt the licensee from such compliance.
5. (1) Notwithstanding regulation 8(1) of the Telecommunication Regulations, the licensee may with the prior written consent of the Authority transfer this licence and any permission, right or benefit under this licence.

TELECOMMUNICATION ORDINANCE
(Chapter 106)

SATELLITE MASTER ANTENNA TELEVISION LICENCE

DATE OF ISSUE:

..... of
.....

(hereinafter called “the licensee”) is hereby licensed, subject to the conditions herein contained-

- (a) to establish and maintain a satellite master antenna television system or systems (hereinafter referred to as “the system”) consisting of a radio communication receiving station or stations at the location or locations specified in the Schedule connected by wire to outlet points at the premises of users of the system within the area or areas specified in the Schedule;
- (b) to receive television programmes, teletext services or other subcarrier information and sound programmes transmitted from satellites intended for general reception;
- (baa) commencing from 1 January 2000, to receive telecommunications messages transmitted from satellites intended for reception by users of the system;
- (ba) by connecting the system with a subscription television network pursuant to an agreement between the licensee and the relevant subscription television broadcasting licensee-
 - (i) to receive-
 - (A) television programmes and ancillary telecommunication services; and
 - (B) functional data signals,transmitted by the relevant subscription television broadcasting licensee; and
 - (ii) to relay to the subscription television network functional data signals from outlet points of the system referred to in paragraph (a);
- (bb) by connecting the system with a programme service pursuant to an agreement between the licensee and the relevant programme service licensee-
 - (i) to receive-
 - (A) television programmes and ancillary telecommunication services; and
 - (B) functional data signals,provided by the relevant programme service licensee; and
 - (ii) to relay to the programme service functional data signals from outlet points of the system referred to in paragraph (a);
- (bc) by connecting the system with subscription satellite television services pursuant to an agreement between the licensee and the relevant Satellite Television Uplink and Downlink Licensee-
 - (i) to receive-
 - (A) television programmes and ancillary telecommunication services; and
 - (B) functional data signals,transmitted by the relevant Satellite Television Uplink and Downlink Licensee; and
 - (ii) to relay to the subscription satellite television services via a telecommunication system or a telecommunication service functional data signals from outlet points of the system referred to in paragraph (a);
- (bd) by connecting the system with a telecommunication system or a telecommunication service pursuant to an agreement between the licensee and the licensee, or the exempted person, of the relevant telecommunication system or telecommunication service-
 - (i) to receive telecommunications messages transmitted by the licensee, or the exempted person, of the relevant telecommunication system or telecommunication service; and
 - (ii) to relay telecommunications messages to the telecommunication system or

telecommunication service from outlet points of the system referred to in paragraph (a);

(be) to receive commercial television programmes by connecting the system with a communal aerial broadcast distribution system pursuant to an agreement between the licensee and the relevant communal aerial broadcast distribution system owner; and

(c) to distribute to outlet points of the system referred to in paragraph (a) the programmes, services and signals received in accordance with paragraphs (b), (ba), (baa), (bb), (bc), (bd) and (be).

In this Licence-

“ancillary telecommunication services” (附屬電訊服務) means-

(a) the teletext or other subcarrier information; and

(b) the sound programmes,

transmitted in accordance with a subscription television broadcasting licence, a programme service licence or a Satellite Television Uplink and Downlink Licence, as the case may be;

“commercial television broadcasting licensee” (商營電視廣播持牌人) has the same meaning as in section 2 of the Television Ordinance (Cap 52);

“commercial television programmes” (商營電視節目) is to be construed according to the meaning of commercial television broadcasting in the Television Ordinance (Cap 52);

“communal aerial broadcast distribution system” (公共天線系統) means a coaxial cable system distributing signals transmitted by commercial television broadcasting licensees;

“communication” (通訊) includes any communication-

(a) whether between persons and persons, things and things or persons and things; and

(b) whether in the form of speech, music or other sounds; or text, or visual images whether or not animated; or signals in any form or combination of forms;

“exempted person” (獲豁免人士) means, in relation to a telecommunication system or a telecommunication service, a person exempted from licensing under the Ordinance;

“functional data signals” (功能數據訊號) means data signals which are necessary for the reception, interruption or cessation of television programmes and ancillary telecommunication services or other functions incidental to the provision of such programmes and services;

“Ordinance” (《條例》) means the Telecommunication Ordinance (Cap 106);

“programme service” (節目服務) means a programme service within the meaning of the Television Ordinance (Cap 52);

“programme service licence” (節目服務牌照) and “programme service licensee” (節目服務持牌人) have the same meaning as in section 2 of the Television Ordinance (Cap 52);

“programme service programmes” (節目服務節目) is to be construed according to the meaning of programme service in the Television Ordinance (Cap 52);

“Satellite Television Uplink and Downlink Licence” (衛星電視上行及下行牌照) means a licence granted under sections 7 and 34 of the Ordinance that has the title “Satellite Television Uplink and Downlink Licence”;

“Satellite Television Uplink and Downlink Licensee” (衛星電視上行及下行持牌人) means the holder of a Satellite Television Uplink and Downlink Licence;

“subscription satellite television programmes” (收費衛星電視節目) is to be construed according to the meaning of subscription satellite television services;

“subscription satellite television services” (收費衛星電視服務) means the subscription services expressly permitted to be provided in Hong Kong under a Satellite Television Uplink and Downlink Licence;

“subscription television broadcasting licence” (收費電視廣播牌照) has the same meaning as in section 2 of the Television Ordinance (Cap 52);

“subscription television broadcasting licensee” (收費電視廣播持牌人) and “subscription television

- network” (收費電視網絡) have the same meaning as in section 2 of the Television Ordinance (Cap 52);
- “subscription television programmes” (收費電視節目) is to be construed according to the meaning of subscription television broadcasting in the Television Ordinance (Cap 52);
- “telecommunication service” (電訊服務) means a telecommunication service licensed under the Ordinance, expressed as being licensed in exercise of the powers conferred by sections 7 and 34 of the Ordinance, exempted from licensing under the Ordinance or deemed to be licensed under the Ordinance;
- “telecommunication system” (電訊系統) means a telecommunication system licensed under the Ordinance, expressed as being licensed in exercise of the powers conferred by sections 7 and 34 of the Ordinance, exempted from licensing under the Ordinance or deemed to be licensed under the Ordinance;
- “telecommunications messages” (電訊訊息) means any communication sent or received by telecommunication but does not include-
- (a) television programmes, teletext or other subcarrier information, or sound programmes; or
 - (b) other data signals incidental to the provision of such television programmes, teletext or other subcarrier information, or sound programmes,
- transmitted pursuant to a satellite broadcasting service or a terrestrial broadcasting service;
- “television programme” (電視節目) has the same meaning as in section 2 of the Television Ordinance (Cap 52).

GENERAL CONDITIONS

1. The system shall be operated only by the licensee and persons authorized by him in that behalf.
2. The licensee shall-
 - (a) furnish to the Telecommunications Authority (hereinafter called “the Authority”) his address for correspondence;
 - (b) forthwith give notice in writing to the Authority of any change of such address; and
 - (c) when giving the notice referred to in paragraph (b), return this licence to the Authority for amendment.
3. (1) The licensee shall-
 - (a) operate the system in such a manner as not to cause interference with any other means of telecommunication;
 - (b) comply with any direction given by the Authority for the purpose of avoiding any such interference; and
 - (c) on receipt of a notice in writing from the Authority, disconnect or remove any part of the system which, in the opinion of the Authority, is interfering, or is likely to interfere, with the working of any other means of telecommunication.

(2) The licensee shall not use any instrument, apparatus or material on, or connect or apply any electrical currents to, any part of the system if the same interferes, or is likely to interfere, with the working of any other means of telecommunication.
4. (1) The licensee shall at all reasonable times, when directed by the Authority, make the system available for inspection and testing by the Authority and any person authorized by the Authority in writing for that purpose.
- (2) The licensee shall permit the Authority or any person authorized by the Authority in writing to enter its premises for inspection of records, documents and accounts relating to the licensee’s business, at all reasonable times, in order for the Authority to perform his functions under this licence and the Ordinance. The licensee shall also provide copies of such records, documents and accounts to the

Authority on demand.

(3) The Authority may make such use of any information obtained under this General Condition as he considers necessary for the administration of this licence and the Ordinance.

5. (1) If any message which the licensee is not authorized to distribute in accordance with General Condition 11 is unintentionally received by means of the system, neither the licensee nor any person operating the system shall disclose the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a public officer authorized by the Authority or a competent court or tribunal, and shall not retain any copy, or make any use, of any such message, or allow it to be reproduced, copied or made use of.
(2) The licensee shall take all practicable steps to prevent such a message from being received by any person.

6. The licensee shall not originate any material or message which is distributed to users of the system.

7. Nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright which may exist in any programme or other communication received by the system.

8. This licence is not transferable and shall be returned to the Authority if it is revoked or when it has expired.

9. (1) No wire may be laid or maintained across any street or unleased Government land without the written authorization of the Authority.
(2) The licensee shall comply with any conditions imposed, or directions given, by the Authority on the giving of his authorization for the purposes of paragraph (1).

10. (1) The licensee shall not charge or receive the benefit of, directly or indirectly, any fee for the right to receive programmes or other communication distributed by means of the system.
(1A) The licensee shall not, except for subscription television programmes, programme service programmes, subscription satellite television programmes, their ancillary telecommunication services and telecommunications messages, facilitate the charging of a fee for the right to receive programmes or other communication received by means of the system.
(2) The licensee shall, except in so far as the Authority may otherwise in writing permit, publish in the manner specified in paragraph (3) a notice specifying, or specifying the method that is to be adopted for determining, the charges and other terms and conditions on which he offers his services.
(3) Publication of the notice referred to in paragraph (2) shall be effected by-
(a) sending a copy to the Authority not later than 7 days prior to the charges becoming effective;
(b) sending a copy to each user of the system 7 days prior to the charges becoming effective;
(c) sending a copy to each new user of the system on connection to the system; and
(d) sending a copy to any other person who may request such a copy.
(4) The licensee shall not levy charges exceeding or in addition to the charges specified in the notice referred to in paragraph (2).
(5) The licensee shall ensure a copy of an agreement-
(a) between the licensee and a subscription television broadcasting licensee for the connection of the system with a subscription television network;
(b) between the licensee and a programme service licensee for the connection of the system with a programme service;
(c) between the licensee and a Satellite Television Uplink and Downlink Licensee for the connection of the system with subscription satellite television services;
(d) between the licensee and the licensee, or the exempted person, of a telecommunication

- system or telecommunication service for the connection of the system with a telecommunication system or a telecommunication service; or
- (e) between the licensee and a communal aerial broadcast distribution system owner for the connection of the system with a communal aerial broadcast distribution system, is filed with the Authority within 14 days of the agreement being made.
- (6) The obligation under paragraph (5) may be waived by the Authority in relation to a particular agreement or agreements of a certain kind.
11. (1) Subject to paragraph (3), the licensee shall distribute only signals intended for general reception. For the purpose of this condition a signal is intended for general reception if-
- (a) the programme (or other communication) carried by the signal is not encrypted-or where the programme (or other communication) carried by the signal is encrypted, the signal originator has declared publicly and notified the Authority and the Authority is satisfied that (i) the programme (or other communication) is intended for general reception and (ii) he will not charge any fee for the right to view or listen to the programme (or other communication) in Hong Kong; and
 - (b) neither the licensee nor the users of the system are required to pay a fee to the signal originator or his authorized agent.
- (2) For the purpose of paragraph (1)(a), it will be regarded as a public declaration if the signal originator declares publicly by publication in-
- (a) 1 Chinese language newspaper circulating in Hong Kong; and
 - (b) 1 English language newspaper circulating in Hong Kong.
- (3) The licensee may distribute signals carrying subscription television programmes, programme service programmes, subscription satellite television programmes, their ancillary telecommunication services and telecommunications messages.
12. (1) Subject to paragraph (2), the licensee shall not distribute programmes or other communication carried by signals in an encrypted form to outlet points.
- (2) For the purposes of paragraph (1), “programmes or other communication”(節目或其他通訊) does not include subscription television programmes, programme service programmes, subscription satellite television programmes, their ancillary telecommunication services and telecommunications messages.
- 12A. Without the Authority’s consent in writing, the licensee shall not transmit any telecommunications messages received from satellites to any location outside the premises of users of the system.
13. The transmission plan employed in the system shall be approved by the Authority. The licensee shall distribute programmes, services, telecommunications messages and signals permitted under this licence in accordance with such approved plan and such approved plan may be modified by the Authority from time to time. The Performance Specification for Communal Aerial Distribution System (HKTA 1104) shall be observed unless otherwise directed by the Authority.
14. (1) The licensee shall submit written confirmation to the Authority that-
- (a) any aerial and supporting framework used in the system is capable of sustaining and transmitting to the supporting structure wind loads specified in the Hong Kong Code of Practice on Wind Effects, and that the stability of the supporting building is not affected by any aerial and supporting framework used in the system;
 - (b) any aerial and supporting framework used in the system is not erected in, over or upon any portion of any street whether or not on land held under lease from the Government, and no part of it is fixed to, or overhangs, the side wall of a building; and
 - (c) any aerial and supporting framework used in the system is not erected at a level which contravenes height limit provisions of the Hong Kong Airport (Control of Obstructions)

Ordinance (Cap 301).

(2) The licensee shall ensure that the state of matters referred to in paragraph (1) shall be maintained throughout the duration of the licence.

(3) The confirmation referred to in paragraph (1) shall be made by a structural engineer registered under section 3 of the Buildings Ordinance (Cap 123).

15. The licensee shall at all times perform and observe the requirements of the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to or made under the Constitution and Convention as are applicable to Hong Kong except to the extent that the Authority may in writing expressly exempt the licensee from such compliance.
16. The Authority may at his discretion make the terms and conditions of this licence (including any specific conditions, transmission plan and Schedules to this licence) publicly available in any manner he thinks fit.

SPECIAL CONDITIONS

SCHEDULE

Location of radio communication receiving station

Area of distribution

Number of outlet points within each area of distribution

.....
For the Telecommunications
Authority.

(L.N. 182 of 1991; L.N. 362 of 1993; 29 of 1998 s. 105; L.N. 180 of 1999)

TELECOMMUNICATION ORDINANCE (Chapter 106)

FIXED TELECOMMUNICATION NETWORK SERVICES LICENCE

DATE OF ISSUE:

..... of

.....
(the "licensee") is licensed, subject to the following conditions set out in this licence-

- (a) to provide a public fixed telecommunication network service (the "Service"), the scope of which is described in Schedule 1;
- (b) to establish and maintain a telecommunication network (the "Network") described in Schedule 2 to provide the Service;
- (c) to possess and use the telecommunication installations for radiocommunication described in Schedule 3 to provide the Service; and
- (d) to deal in, import and demonstrate, with a view to sale in the course of trade or business, such apparatus or material for radiocommunication as may be necessary to supply customers of the Service.

GENERAL CONDITIONS

1. This licence shall not be construed as granting an exclusive right to the licensee to provide the

Service.

2. This licence replaces any licence or any exemption from licensing, however described, which the Authority may have granted to the licensee for providing the Service.
3. The grant of this licence does not authorize the licensee to do anything which infringes any exclusive right to provide telecommunication circuits or services granted under any Ordinance. In particular, this licence does not confer any right on the licensee to provide public telephonic communications prior to 30 June 1995.

Transfer

4. (1) The licensee may only with the prior written consent of the Authority and subject to such reasonable conditions as the Authority thinks fit transfer this licence or any permission, right or benefit under this licence. In giving his consent the Authority will have regard to such matters as he thinks fit including but not limited to the effect which the transfer will have on market structure and the financial and technical competence and viability of the transferee.
- (2) Where a licensee is in a dominant position in a market for the provision of a public basic telephonic service over fixed telecommunication networks within the meaning described in General Condition 16(2), it may not without the prior written consent of the Authority, which can be withheld for the purposes of General Condition 10(1), assign, transfer or otherwise dispose of more than 15% of the licensee's assets constituting the Network, other than where the transfer or disposal of those assets is in the ordinary course of the licensee's maintenance, replacement or upgrading of the Network.

Compliance

5. If the licensee employs any person under contract for the purpose of the Service, or for the installation, operation or maintenance of the Network (a "Contractor"), the licensee shall continue to be responsible for compliance with the conditions of this licence, and the performance thereof, by any Contractor.

International conventions

6. (1) The licensee shall at all times perform and observe the requirements of the International Telecommunication Convention and the regulations and recommendations annexed to it, and without limiting the generality of the foregoing, the recommendations made by the Radiocommunication Sector and Standardisation Sector established under the Convention, as are stated to be applicable to Hong Kong, and any other international convention, agreement, protocol, understanding or the like to the extent that the instruments described in this paragraph impose obligations on Hong Kong of which the Authority gives notice to the licensee, except to the extent that the Authority may in writing exempt the licensee from such compliance.
- (2) Where the Government has been consulted about or is involved in the preparation or negotiation of an international convention, agreement, protocol or understanding or the like or amendments thereto which are on the subject-matter of telecommunications or which relate to another subject-matter but which the Government anticipates could have a material impact on the provision of services under this licence, the Government will, where practicable, provide the licensee with a reasonable opportunity to make a submission stating its views on the matter.

Compliance generally

7. The licensee shall comply with the Ordinance, Regulations made under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance.

Control of interference and obstruction

8. (1) The licensee shall take reasonable measures to install, maintain and operate the Service and the Network in such a manner as not to cause any harmful radio interference or physical obstruction to any lawful telecommunication service, or cause any physical obstruction to the installation, maintenance, operation, adjustment, repair, alteration, removal or replacement of the facilities of any lawful telecommunication or utility service provider.
- (2) The licensee shall take reasonable measures to ensure that the customers of the Service do not cause harmful radio interference to lawful telecommunication services or utility services through use of the Service.
- (3) The Authority may give such reasonable directions as he thinks fit to avoid harmful radio interference or physical obstruction referred to in paragraph (1). The licensee shall comply with the directions.

Inspection and testing of installations

9. (1) On receiving reasonable prior written notice from the Authority, the licensee shall allow the Authority and any person authorized in writing by the Authority for the Authority's own purposes to enter and inspect the offices, places and premises in Hong Kong where the licensee has installed the Network or any equipment associated with the Network, or the provision of the Service, to verify that the licensee is in compliance with the licence conditions.
- (2) The licensee shall provide and maintain, up to the reasonable technical standards set by the Authority, facilities to enable the Authority to inspect, test, read or measure, as the case may be, any telecommunication installations, equipment (including, but not limited to testing instruments) or premises used or to be used for the provision of the Service, and may at its option, and shall on the written request of the Authority, and subject to the provision by the Authority of reasonable prior written notice, provide a representative to be present at any such inspection, testing, reading or measurement.
- (3) On giving reasonable prior written notice, the Authority may direct the licensee to demonstrate that the Service complies with the technical requirements imposed by the Ordinance and Regulations or any other instruments which may be issued by the Authority under the Ordinance and the licensee shall comply with such directions.
- (4) For the purpose of paragraph (2) or (3), the licensee shall provide adequate testing instruments and operating staff.

Provision of Service

10. (1) The licensee shall, subject to Schedule 1 and any Special Conditions of this licence relating to the provision of the Service, at all times during the validity period of this licence operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority. The Authority may, on application in writing by the licensee, exempt a part or parts of the Service from the requirement of continuous provision.
- (2) The licensee shall, subject to Schedule 1 and any Special Conditions of this licence relating to the provision of the Service, provide the Service on its published terms and conditions and at the tariff published in accordance with General Condition 20 (as applicable) on request of a customer whether or not the customer intends the Service to be available for its own use or intends to utilize the Service to provide a lawful telecommunication service to third parties.
- (3) Subject to Schedule 1 and any Special Conditions relating to the provision of the Service, the

licensee shall comply with a customer request for the Service as tariffed by the licensee in accordance with General Condition 20 where the Service reasonably could be provided by the licensee to the customer at the location at which the Service is requested utilizing the licensee's Network in place at the time of the request.

Customer charter

11. The licensee shall prepare a customer charter which sets out the minimum standards of service to the licensee's customers and gives guidance to the employees of the licensee in their relations and dealings with customers.

Confidentiality of customer information

12. (1) The licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law.
- (2) The licensee shall not use information provided by its customers or obtained in the course of provision of service to its customers other than for and in relation to the provision by the licensee of the Service.

Requirements for interconnection

13. (1) The licensee shall interconnect the Service and the Network with the external public telecommunication network and services operated by Hong Kong Telecom International Limited under its licence granted under the Ordinance and other fixed telecommunication networks and services licensed under the Ordinance and, where directed by the Authority, other telecommunication networks and services licensed, or deemed to be licensed, or exempt from licensing under the Ordinance.
- (2) The licensee shall also interconnect the Service and the Network with the fixed telecommunication network and services provided by the Hong Kong Telephone Company Limited under the Telephone Ordinance (Cap 269) prior to 30 June 1995 or licensed under the Telecommunication Ordinance (Cap 106), as the case may be.
- (3) The licensee shall use all reasonable endeavours to ensure that interconnection is done promptly, efficiently and at charges which are based on reasonable relevant costs incurred so as to fairly compensate the licensee for those costs.
- (4) The licensee shall provide facilities and services reasonably necessary for the prompt and efficient interconnection of the Service and the Network with the telecommunication networks or services of the other entities referred to in paragraphs (1) and (2). Such facilities and services include-
 - (a) carriage services for codes, messages or signals across and between the interconnected networks;
 - (b) those necessary to establish, operate and maintain points of interconnection between the licensee's Network and the networks of the other entities, including the provision of transmission capacity to connect between the licensee's Network and networks of the other entities;
 - (c) billing information reasonably required to enable the other entities to bill their customers;
 - (d) facilities specified by the Authority pursuant to General Condition 31; and
 - (e) ancillary facilities and services required to support the above types of interconnection facilities and services.

Numbering plan

14. (1) The licensee shall conform to a numbering plan made or approved by the Authority and any directions given by the Authority in respect of the numbering plan.
- (2) The licensee shall at the request of the Authority or otherwise consult the Authority about the arrangements for the allocation and reallocation of numbers and codes within the numbering plan.
- (3) Where requested by the Authority, the licensee shall prepare and furnish to the Authority proposals for developing, adding to or replacing the numbering plan relating to the Service.
- (4) The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of any fixed telecommunication network service licensee, or the Hong Kong Telephone Company Limited, so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any other fixed telecommunication network service licensee or the Hong Kong Telephone Company Limited, as the case may be.
- (5) Directions by the Authority under paragraph (4) include reasonable directions concerning the equitable sharing of all relevant costs associated with providing portability of numbers as between the licensee, any other fixed telecommunication network services licensee, the Hong Kong Telephone Company Limited, and any other person.

Anti-competitive conduct

15. (1) (a) A licensee shall not engage in any conduct which, in the opinion of the Authority, has the purpose or effect of preventing or substantially restricting competition in the operation of the Service or in any market for the provision or acquisition of a telecommunication installation, service or apparatus.
- (b) Conduct which the Authority may consider has the relevant purpose or effect referred to in subparagraph (a) includes, but is not limited to-
 - (i) collusive agreements to fix the price for any apparatus or service;
 - (ii) boycotting the supply of goods or services to competitors;
 - (iii) entering into exclusive arrangements which prevent competitors from having access to supplies or outlets;
 - (iv) agreements between licensees to share the available market between them along agreed geographic or customer lines.
- (2) In particular, but without limiting the generality of the conduct referred to in paragraph (1), a licensee shall not-
 - (a) enter into any agreement, arrangement or understanding, whether legally enforceable or not, which has or is likely to have the purpose or effect of preventing or substantially restricting competition in any market for the provision or acquisition of any telecommunication installations, services or apparatus;
 - (b) without the authorization of the Authority, make it a condition of the provision or connection of telecommunication installations, services or apparatus that the person acquiring such telecommunication installations, services or apparatus also acquire or not acquire any other service or apparatus either from itself or of any kind from another person; or
 - (c) give an undue preference to, or receive an unfair advantage from, a business carried on by it or an associated or affiliated company, service or person if, in the opinion of the Authority, competitors could be placed at a significant competitive disadvantage or competition would be prevented or substantially restricted within the meaning of paragraph (1).

Abuse of position

16. (1) Where the licensee is, in the opinion of the Authority, in a dominant position with respect to a market for the relevant telecommunications services, it 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. In considering whether a licensee is dominant, the Authority will take into account the market share of the licensee, its power to make pricing and other decisions, the height of barriers to entry, the degree of product differentiation and sales promotion and such other relevant matters which are or may be contained in guidelines to be issued by the Authority.
- (3) (a) A licensee which is in a dominant position within the meaning in paragraph (1) shall be taken to have abused its position if, in the opinion of the Authority, it has engaged in conduct which has the purpose of preventing or substantially restricting competition in a market for the provision or acquisition of telecommunication installations, services or apparatus.
- (b) Conduct which the Authority may consider to fall within the conduct referred to in subparagraph (a) includes, but is not limited to-
- (i) predatory pricing;
 - (ii) price discrimination;
 - (iii) the imposition of contractual terms which are harsh or unrelated to the subject of the contract;
 - (iv) tying arrangements;
 - (v) discrimination in supply of services to competitors.

Accounting practices

17. Where directed by the Authority in writing, the licensee shall implement such accounting practices as specified by the Authority. Such accounting practices are to be consistent with generally accepted accounting practices, where applicable, and may include (but are not limited to) accounting practices which allow for the identification of the costs and charges for different services or types or kinds of services.

Requirement to furnish information to the Authority

18. (1) The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information related to the business run by the licensee under this licence, including financial information, accounts and other records as the Authority may reasonably require in order to perform his functions under the Ordinance and this licence including but not limited to his functions under General Conditions 15, 16 and 20(4).
- (2) Subject to paragraph (3), the Authority may use and disclose information to such person as the Authority thinks fit.
- (3) Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

Inspection of records, documents and accounts

19. The licensee shall permit the Authority or any person authorized by him in writing for the

Authority's own purpose to inspect and if required to make copies of records, documents and accounts relating to the licensee's business for the purpose of enabling the Authority to perform his functions under the Ordinance and this licence.

Tariffs

20. (1) The licensee shall publish and charge no more than the tariffs for the Service operated under this licence. The tariffs shall include the relevant terms and conditions for the provision of the Service.
- (2) Publication shall be effected by-
- (a) submission for publication in the Hong Kong Government Gazette and by sending a copy to the Authority on or before the date on which the licensed service is to be introduced;
 - (b) placing a copy in a publicly accessible part of the principal business place and other business premises of the licensee as advised by the Authority; and
 - (c) sending a copy to any person who may request it. The licensee shall not levy a charge greater than that is necessary to cover reasonable costs involved.
- (3) Where the licensee provides customer equipment integral to the provision of a telecommunication service to its customers, the tariff shall clearly state the price of the customer equipment separately from the charges for the telecommunication service.
- (4) The licensee shall not offer any discount to its published tariffs for a particular telecommunication service provided under this licence or customer equipment subject to paragraph (3) (other than a discount calculated in accordance with a formula or methodology approved by the Authority and published together with its tariffs) if, in the opinion of the Authority, the licensee is in a dominant position in any market for or which includes that telecommunication service.
- (5) The licensee shall not, without the approval of the Authority, bundle a number of services into a single tariff without also offering each of the constituent services under separate tariffs.
- (6) In this General Condition, "a dominant position" (優勢) has the meaning described by General Condition 16(2).

Tariffs revisions

21. (1) The licensee may propose any revision to the tariffs that it has published by submitting details of the proposed revision to the Authority in writing in a form approved by the Authority.
- (2) Subject to paragraph (5), the licensee may only proceed to publish the revised tariffs after the Authority has given his approval in writing.
- (3) The Authority will not approve the revision where-
- (a) he considers that the proposed revision is in contravention of General Condition 15, 16 or 20(4) or any applicable price control arrangements;
 - (b) he has notified the licensee within 30 days of the date of receipt of the licensee's proposed revision that he does not intend to give his approval.
- (4) The Authority will endeavour to consider proposed revisions within 5 business days after the date of receipt of the proposed revision by the Authority and will give written notice by that date whether the Authority requires more time to complete his review of the proposed revision.
- (5) Where the Authority has not notified the licensee within 30 days after receiving the licensee's proposed revision, the tariff revision will be deemed to be approved.

Tariffs for new services

22. (1) If the licensee proposes to introduce any new service and charge which is not contained in its published tariffs and conditions of service, it shall notify the Authority of such a proposal. The

notification shall be in a written form approved by the Authority. The Authority shall give his approval of the proposed service and charge unless he considers that such service and charge would lead to a contravention of General Condition 15, 16 or 20(4) or any applicable price control arrangements.

- (2) The Authority will endeavour to consider a proposal referred to in paragraph (1) within 15 business days of the date of receipt and will give written notice by that date whether the Authority requires more time to complete his review of the proposed service and charge.
- (3) Where the Authority has not notified the licensee within 45 days after receiving the licensee's notice that he does not propose to give his approval, the new service and charge will be deemed to be approved.

Trials

23. (1) The Authority may, at the written request of the licensee, approve the introduction on a trial basis of-
 - (a) any service for which there is no published tariff and in such case the licensee may charge its customers for the provision of such service such amount as it considers reasonable; and
 - (b) any new charging options or billing schemes for existing services.The Authority shall determine any request for approval within 30 days after the date of receipt of the request.
- (2) Any trial service for which the licensee seeks approval pursuant to paragraph (1) shall be-
 - (a) for the purpose of establishing the technical or commercial feasibility of the trial service;
 - (b) of a limited duration, not exceeding 6 months; and
 - (c) offered during the trial period only in a defined geographic area of Hong Kong or to a defined class of customers reasonably suitable for the purposes of conducting a trial of the service.
- (3) The Authority may request additional information from the licensee reasonably required by the Authority for the purposes of considering a request from the licensee to approve a trial service.
- (4) The Authority may reject a request from the licensee to conduct a trial service where the Authority reasonably concludes that were the tariffs of the requested trial service proposed under General Condition 20, 21 or 22 they would be disallowed under those General Conditions.

Metering accuracy

24. (1) The licensee shall take all reasonable steps to ensure that any metering equipment used in connection with the Service is accurate and reliable.
- (2) Upon the written request of the Authority, the licensee shall conduct tests on metering equipment to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the test or such other longer period as the Authority may determine.
- (3) The licensee shall keep such records of any metering equipment in such form as may be specified by the Authority and shall supply such records to the Authority on the written request of the Authority.

Directory information and directory information service

25. (1) For the purposes of this General Condition-

- (a) “directory information” (電話號碼索引資料) means information obtained by the licensee in the course of the provision of services under this licence concerning or relating to the name, address, business and telephone numbers of each of its customers;
 - (b) “raw directory information” (原始電話號碼索引資料) means the licensee’s directory information held in a basic format relating to all of its customers other than its customers who request that directory information about them not be disclosed.
- (2) This General Condition applies only in respect of standard printed directories and other directory databases and services which include all of the names of a licensee’s customers listed in alphabetical order and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.
- (3) The licensee shall-
 - (a) unless otherwise agreed by the Authority, publish or arrange at least biennially for the publication of directory information in a printed or other form approved by the Authority, relating to all its customers, other than its customers who request not to be included in a directory to be published (“the printed directory”); and
 - (b) establish, maintain and operate, or arrange for the establishment, maintenance or operation of a telecommunication service whereby customers may, upon request, be provided with directory information other than that of its customers who request the information not to be disclosed (“the telephonic directory service”).
- (4) The printed directory and the telephonic directory service provided under paragraph (3) shall be made available free of charge to all of the licensee’s customers and shall be provided in a manner satisfactory to the Authority.
- (5) The licensee is permitted to make commercial arrangements with one or more of the other fixed telecommunication network service licensees and the Hong Kong Telephone Company Limited to co-operate in the provision jointly by them of either or both of the printed directory and the telephonic directory service which the licensee is required to provide under paragraph (3).
- (6) The licensee’s printed directory shall be a unified printed directory and the licensee’s telephonic directory service shall be a unified telephonic directory service and shall utilise a unified directory database, containing directory information on all customers of all fixed telecommunication network service licensees and the Hong Kong Telephone Company Limited, except for those customers who request that directory information about them not be disclosed. The licensee shall provide, and regularly update, raw directory information about its customers to each other fixed telecommunication network service licensee and the Hong Kong Telephone Company Limited, for which the licensee will be able to impose a charge to fairly compensate it for providing the raw directory information. The licensee shall endeavour to agree with each of the other licensees and the Hong Kong Telephone Company Limited on a reasonable mode of exchange and transmission format for the raw directory information.
- (7) Where the licensee is unable to agree with another licensee pursuant to paragraph (6) on what amounts to fair compensation for provision of, or the reasonable mode of exchange and transmission format of, raw directory information, the matter at issue may be referred by either licensee or the Hong Kong Telephone Company Limited to the Authority for determination.
- (8) Except with the prior written approval of the Authority, the licensee shall not make use of raw directory information provided by another licensee or the Hong Kong Telephone Company Limited other than for discharging its obligations under this General Condition.

Emergency call service

- 26. The licensee shall provide a public emergency call service by means of which any member of the public may, at any time and without incurring any charge, by means of compatible apparatus

connected to the Network, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entity as directed by the Authority to report an emergency.

Records and plans of the Network

27. (1) The licensee shall keep records and plans (including overall network plans and cable route maps) of the telecommunication installations, installations for radiocommunication and telecommunication nodes and exchanges provided under this license and any other details concerning the Network as may be reasonably required by the Authority, including but not limited to information from operational support systems, traffic flow information, and database information relating to the manner in which the Network treats calls of a particular kind ("Network Information").
- (2) As required by the Authority, the licensee shall make the Network Information available, within reasonable time, to the Authority or to a person authorized in writing by the Authority for inspection for the Authority's own purposes.
- (3) The Authority may disclose the Network Information in accordance with General Condition 18(2).
- (4) The licensee shall, at the reasonable request of any other licensee under the Ordinance or the Hong Kong Telephone Company Limited if so authorized by the Authority, give reasonable access to its Network Information for the facilitation of network planning, maintenance and reconfiguration required for the purposes of General Conditions 13 and 31. The licensee shall be permitted to charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of such Network Information.
- (5) Where the licensee and any other licensee or the Hong Kong Telephone Company Limited that has requested access to the Network Information in accordance with paragraph (4) are unable to agree what amounts to reasonable access (including confidentiality requirements and fair compensation for the reasonable relevant costs incurred) or a reasonable request, the matter at issue may be referred by either the licensee, the other licensee, or the Hong Kong Telephone Company Limited to the Authority for determination.

Network location

28. (1) The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its Network under, in, over or upon any unleased Government land.
- (2) The licensee shall keep accurate records of the location of the Network installed under, in, over or upon any land.
- (3) The licensee shall record the information referred to under paragraph (2) on route plans drawn on an Ordinance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- (4) The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the Network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the Network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the Network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.
- (5) The licensee shall mark or otherwise identify every wire laid or telecommunication installation installed by the licensee or any Contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any other wire or telecommunication installation laid or installed in Hong Kong.

- (6) The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the Network.

Changes to the Network

29. (1) For the purposes of this licence, a change in the Network is a material change where the implementation of the change would result in the Network no longer being in compliance with any relevant technical standard which the Authority has power to issue.
- (2) The licensee shall notify the Authority of any proposals for material changes to the Network and provide him with such information as the Authority reasonably requires.
- (3) The licensee shall not, without the prior consent in writing of the Authority, make any material changes which might reasonably be anticipated by the licensee to affect-
- (a) any telecommunication service or installation connected to the Network;
 - (b) a person producing or supplying telecommunication apparatus for connection to the Network;
 - (c) a licensee under the Ordinance;
 - (d) the Hong Kong Telephone Company Limited;
 - (e) a licensee under the Television Ordinance (Cap 52); or
 - (f) a customer or a consumer of goods and services provided by any person or entity,
- if the change is in the opinion of the Authority likely to require modifications or replacements to, or cessation in the production or supply of any of the telecommunication apparatus involved, or if the proposed alteration would require substantial Network reconfiguration or rerouting.
- (4) The licensee shall prepare and publish, after consultation with the Authority, its procedures for consulting with and giving notice to persons likely to be affected materially by changes to its Network which are required to be notified in accordance with paragraph (2) and any other changes required to be notified pursuant to any technical standard which the Authority has power to issue. Subject to approval of the Authority, the notification procedures to each of the classes of persons likely to be affected under paragraph (3) may differ having regard to the practicality and costs of notifying them.

Requirements for road opening

30. The licensee shall co-ordinate and co-operate with any other fixed telecommunication network services licensee under the Ordinance, the Hong Kong Telephone Company Limited and any other authorized person in respect of road openings and shall, after being consulted by the Authority, comply with any guidelines issued by the Authority.

Provision, use and sharing of certain facilities

31. (1) Where the Authority reasonably forms the opinion that it is in the public interest that certain types of facilities ought to be provided, used or shared by more than one licensee or the Hong Kong Telephone Company Limited, he may issue directions requiring the licensee to co-ordinate and co-operate with any other licensee, the Hong Kong Telephone Company Limited or any other authorized person in respect of such provision, use or sharing of any such facility. The licensee shall comply with such directions. Prior to forming any opinion and issuing any direction under this paragraph, the Authority will provide a reasonable opportunity for the licensee, the Hong Kong Telephone Company Limited and any other interested parties to make representations on the matter to the Authority.
- (2) In considering the public interest pursuant to paragraph (1), the Authority will take into account-
- (a) whether the facility is a bottleneck;

Chapter:	148	Title:	GAMBLING ORDINANCE	Gazette Number:	
Section:	3	Heading:	Gambling is unlawful	Version Date:	30/06/1997

PART II

GAMBLING AND LOTTERIES UNLAWFUL

- (1) Save as provided in subsections (2), (3), (4), (5), (6), (7) and (8), gambling is unlawful.
- (2) Gaming is lawful if the game is played on a social occasion in private premises and is not promoted or conducted by way of trade or business or for the private gain of any person otherwise than to the extent of a person's winnings as a player of or at the game.
- (3) Gaming is lawful if the game is one in which dice, dominoes, mahjong or tin kau tiles, or playing cards are used and-
 - (a) the game is played on a social occasion in-
 - (i) premises licensed as a restaurant under the Public Health and Municipal Services Ordinance (Cap 132); (Amended 10 of 1986 s. 32(1))
 - (ii) premises where intoxicating liquor is sold pursuant to a licence or other authorization granted under any Ordinance; or
 - (iii) a club-house in respect of which either of the conditions indicated in section 4(2) of the Clubs (Safety of Premises) Ordinance (Cap 376) has been satisfied; (Replaced 38 of 1994 s. 3)
 - (b) a fee is not charged for admission to such premises;
 - (ba) the game is not played by any person in charge of, managing or involved in the operation of the premises or the club-house or employed at the premises or the club-house; (Added 38 of 1994 s. 3)
 - (c) the game does not involve playing against a bank kept by one or more of the players exclusively of the others; and
 - (d) the game is not promoted or conducted by way of trade or business, or for the private gain of any person otherwise than to the extent of a person's winnings as a player of or at the game.
- (4) Gaming is lawful if the game is one in which mahjong or tin kau tiles are used and-
 - (a) it is played in-
 - (i) premises licensed as a restaurant under the Public Health and Municipal Services Ordinance (Cap 132); or
 - (ii) a club-house in respect of which either of the conditions indicated in section 4(2) of the Clubs (Safety of Premises) Ordinance (Cap 376) has been satisfied; (Replaced 38 of 1994 s. 3)
 - (b) a fee is not charged for admission to the premises;
 - (ba) the game is not played by any person in charge of, managing or involved in the operation of the premises or the club-house or employed at the premises or the club-house; (Added 38 of 1994 s. 3)
 - (c) the game does not involve playing against a bank kept by one or more of the players exclusively of the others; and (Amended 38 of 1994 s. 3)
 - (d) the game is not promoted or conducted by way of trade or business in the premises, otherwise than to the extent of the charging of a fee not exceeding the prescribed amount for the hire of any set of tiles, or for the private gain of any person otherwise than to the extent of a person's winnings as a player of or at the game.
- (5) Gaming is lawful if the game is-
 - (a) a game of amusement with prizes;
 - (b) a game of tombola; or
 - (c) a trade promotion competition,

the organization and conduct of which is authorized by licence under section 22.

(6) Gaming is lawful if-

(a) the game is one in which mahjong or tin kau tiles are used; and

(b) it is played in premises licensed for the purpose under section 22.

(7) Betting is lawful if the bet is made between persons none of whom is thereby committing an offence under section 7.

(8) Gambling is lawful to the extent that it is authorized by or under the Television Ordinance (Cap 52) or the Betting Duty Ordinance (Cap 108).

L.N. 1 of 2000

**ROAD TRAFFIC (CONSTRUCTION AND MAINTENANCE OF VEHICLES)
(AMENDMENT) REGULATION 2000**

(Made under section 9 of the Road Traffic
Ordinance (Cap. 374))

1. Commencement

Sections 2 and 3 shall come into operation on 1 April 2000.

2. Visual display units

Regulation 37 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg.) is amended—

- (a) by renumbering it as regulation 37(1);
- (b) in paragraph (1), by repealing “television receiving apparatus other than an apparatus designed to give the driver a closed circuit view of any part of the vehicle or the surrounding area” and substituting “visual display unit other than a visual display unit that may be installed under paragraph (2)”;
- (c) by adding—

“(2) Subject to paragraph (3), a visual display unit that is designed to give the driver—

- (a) information about the current state of the vehicle or its equipment;
- (b) the current closed-circuit view of any part of the vehicle or the area surrounding the vehicle;
- (c) information about the current location of the vehicle; or
- (d) any other information which is only for the purpose of navigating the vehicle,

may be installed in or on a motor vehicle.

(3) A visual display unit which enables the display of—

- (a) any broadcast within the meaning of section 2 of the Television Ordinance (Cap. 52); or
- (b) any stored visual images except for the purposes of paragraph (2)(d),

may not be installed under paragraph (2) at a point forward of the driver’s seat as referred to in paragraph (1)(a) or in the manner referred to in paragraph (1)(b) or (c).”.

Chapter:	390	Title:	CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE	Gazette Number:	
Section:	3	Heading:	Ordinance not to apply in case of certain films, etc.	Version Date:	30/06/1997

This Ordinance shall not apply in relation to any-

- (a) film within the meaning of section 2(1) of the Film Censorship Ordinance (Cap 392) as regards its exhibition within the meaning of section 2 of that Ordinance- (Amended 63 of 1993 s. 22)
 - (i) in respect of which there is in force a certificate of exemption issued under section 9, or a certificate of approval issued under section 13, of that Ordinance; or
 - (ii) subject to section 32(2A) of that Ordinance, which is approved for exhibition under regulation 5 of the revoked regulations within the meaning of section 32(3) of that Ordinance; (Amended 63 of 1993 s. 22)
- (aa) videotape or laserdisc in respect of which there is approval under section 15A of the Film Censorship Ordinance (Cap 392) for publication within the meaning of section 2 of that Ordinance; (Added 63 of 1993 s. 22)
- (ab) packaging in respect of which a certificate has been issued under section 15B of the Film Censorship Ordinance (Cap 392); (Added 63 of 1993 s. 22)
- (ac) advertising material-
 - (i) in respect of which a certificate has been issued under section 15K(5) of the Film Censorship Ordinance (Cap 392); or
 - (ii) which the Film Censorship Authority has refused to approve under section 15K(5)(b) of that Ordinance; (Added 74 of 1995 s. 30)
- (b) subject to section 32(2A) of the Film Censorship Ordinance (Cap 392), matter referred to in section 32(1) of that Ordinance which is approved for publication or exhibition under regulation 8 of the revoked regulations within the meaning of section 32(3) of that Ordinance; or (Amended 63 of 1993 s. 22)
- (c) material within the meaning of section 2 of the Television Ordinance (Cap 52) permitted to be broadcast under that Ordinance.

(Replaced 25 of 1988 s. 33)

Chapter:	390	Title:	CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE	Gazette Number:	
Section:	21	Heading:	Prohibition on publishing obscene articles	Version Date:	30/06/1997

PART IV

OFFENCES

- (1) Subject to subsection (2) any person who-
- publishes;
 - possesses for the purpose of publication; or
 - imports for the purpose of publication,
- any obscene article, whether or not he knows that it is an obscene article, commits an offence and is liable to a fine of \$1000000 and to imprisonment for 3 years.
- (2) It shall be a defence to a charge-
- under subsection (1) for a defendant to prove that, at the time the offence is alleged to have been committed, the article the subject of the charge was classified as a Class III article; but he may be convicted of any other offence under this Part established by the evidence as if he had been charged with that other offence;
 - under subsection (1) for a defendant to prove that the article the subject of the charge is, or was at the time the offence is alleged to have been committed, classified as a Class I or a Class II article;
 - under subsection (1) (b) or (c) for a defendant to prove that, at the time the offence is alleged to have been committed, the article the subject of the charge was possessed or imported- (Amended 80 of 1997 s. 102)
 - by him for the purpose of submitting it, a copy thereof or a print therefrom to the Registrar under section 13; or (Amended 80 of 1997 s. 102)
 - by a person licensed to broadcast under section 8 of the Television Ordinance (Cap 52) for the purpose of submitting it under that Ordinance for broadcast under that Ordinance; (Amended 25 of 1988 s. 33)
 - under subsection (1)(b) for a defendant to prove that, at the time that offence is alleged to have been committed, he-
 - had had no reasonable opportunity to inspect the article the subject of the charge; and
 - had reasonable grounds for believing that article was not obscene; and
 - under subsection (1) (c) for a defendant to prove that, at the time that offence is alleged to have been committed, he had reasonable grounds for believing that the article the subject of the charge was not obscene.

(Enacted 1987)

Chapter:	390	Title:	CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE	Gazette Number:	
Section:	23	Heading:	Prohibition on display of indecent matter	Version Date:	30/06/1997

(1) If any indecent matter is publicly displayed the person making the display and any person causing or permitting the display to be made, whether or not he knows that the matter is indecent, commits an offence and is liable to a fine of \$400000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800000 and to imprisonment for 12 months on a second or subsequent conviction. (Amended 73 of 1995 s. 7)

(2) Nothing in this section shall apply in relation to any matter-

- (a) included in a television broadcast by a company licensed to broadcast under the Television Ordinance (Cap 52); or
- (b) included in the display of an article in a bona fide art gallery or museum and visible only from within that gallery or museum.

[cf. 1981 c. 42 s. 1 U.K.]
(Enacted 1987)

Chapter:	390	Title:	CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE
Section:	27A	Heading:	Prohibition on possession of indecent article for the purpose of publication
		Version Date:	30/06/1997

(1) Subject to subsection (2), any person who possesses for the purpose of publication any indecent article in respect of which any requirement of section 24 or any condition imposed under section 8(2)(c) is contravened, whether or not he knows that it is an indecent article, or that the indecent article contravenes any requirement of section 24 or that any condition imposed under section 8(2)(c) is contravened, commits an offence and is liable to a fine of \$400000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800000 and to imprisonment for 12 months on a second or subsequent conviction.

(2) It shall be a defence to a charge under this section for the defendant to prove that-

- (a) the article the subject of the charge is, or was at the time the offence is alleged to have been committed, classified as a Class I article;
- (b) at the time the offence is alleged to have been committed, the article the subject of the charge was possessed by him-
 - (i) for the purpose of submitting it, a copy thereof or a print therefrom to the Registrar under section 13; or
 - (ii) as a person licensed to broadcast under section 8 of the Television Ordinance (Cap 52) for the purpose of submitting it under that Ordinance for broadcast under that Ordinance;
- (c) at the time the offence is alleged to have been committed, he-
 - (i) had had no reasonable opportunity to inspect the article the subject of the charge; and
 - (ii) had reasonable grounds for believing that the article was not indecent; or
- (d) at the time the offence is alleged to have been committed, he had good and sufficient reasons to believe that the requirements of section 24 and the conditions imposed under section 8(2)(c) had been complied with.

(Added 73 of 1995 s. 10)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	
Section:	2	Heading:	Interpretation	Version Date:	30/06/1997

In this Ordinance, unless the context otherwise requires-

“Authority” (管理局) means the Broadcasting Authority established under section 3;

“broadcasting” (廣播) means-

- (a) in relation to sound broadcasting, transmitting sound (otherwise than as part of a television broadcast) for general reception by means of radio waves;
- (b) in relation to television broadcasting services, the same as in section 2 of the Television Ordinance (Cap 52); (Replaced 22 of 1993 s. 50)
- (c) in relation to satellite television services or satellite sound services, transmitting wireless television or sound, whether or not encrypted, to a satellite in earth orbit for re-transmission for reception with or without fee by all or part of the public in Hong Kong or elsewhere; (Added 10 of 1992 s. 2)

“Code of Practice” (業務守則) means-

- (a) in relation to sound broadcasting, a Code of Practice issued by the Authority under section 19;
- (b) in relation to television broadcasting, a Code of Practice issued by the Authority under section 20 or 28 of the Television Ordinance (Cap 52);
- (c) in relation to satellite television services or satellite sound services, a Code of Practice issued by the Authority under section 9A; (Added 10 of 1992 s. 2)

“Complaints Committee”(投訴委員會)and “Committee”(委員會)mean the Complaints Committee appointed under section 10;

“licence” (牌照) means-

- (a) in relation to sound broadcasting, a licence granted under section 13C of the Telecommunication Ordinance (Cap 106);
- (b) in relation to television broadcasting services, a licence granted under section 8 of the Television Ordinance (Cap 52); (Replaced 22 of 1993 s. 50)
- (c) in relation to satellite television services or satellite sound services, a licence granted under sections 7 and 34 of the Telecommunication Ordinance (Cap 106) that has the title “Satellite Television Uplink and Downlink Licence”; (Added 10 of 1992 s. 2)

“licensee” (持牌人) means a company granted any such licence; (Replaced 52 of 1989 s. 2)

“principal executive officer” (行政主管) means the principal executive officer of the Authority referred to in section 13.

(Enacted 1987)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	55 of 1999
Section:	9	Heading:	Functions and powers of the Authority	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 55 of 1999 s. 3

PART III

FUNCTIONS AND POWERS OF THE BROADCASTING AUTHORITY

- (1) The Authority shall have the following functions-
 - (a) to administer the provisions of the Television Ordinance (Cap 52) and in particular and without limiting the generality of the foregoing to exercise the functions assigned to it by or under that Ordinance, which include-
 - (i) the submission of recommendations to the Chief Executive in Council concerning applications for licences under section 8 of that Ordinance;
 - (ii) the submission of recommendations to the Chief Executive in Council concerning the renewal or non-renewal of licences and the terms and conditions of renewal, under section 13 of that Ordinance;
 - (iii) the conduct of inquiries and submission of recommendations to the Chief Executive in Council concerning the revocation of licences under sections 14 and 15 of that Ordinance;
 - (iv) the issue of Codes of Practice under section 20 of that Ordinance relating to technical standards;
 - (v) the issue of Codes of Practice under section 28 of that Ordinance relating to programme and advertising standards;
 - (vi) the issue of directions to licensees under sections 17R and 34 of that Ordinance; (Amended 102 of 1991 s. 9)
 - (vii)-(viii) (Repealed 22 of 1993 s. 51)
 - (ix) consultation with licensees under section 36A of that Ordinance; (Amended 22 of 1993 s. 51)
 - (x) the imposition of financial penalties on licensees in accordance with section 37 of that Ordinance;
 - (xi) requiring licensees to supply information in accordance with section 40 of that Ordinance, and to submit broadcast material under section 33 thereof;
 - (aa) to administer the provisions of Part IIIA of the Telecommunication Ordinance (Cap 106) and, in particular and without limiting the generality of the foregoing, to exercise the functions assigned to it by or under that Ordinance, which include-
 - (i) the submission under section 13C of that Ordinance of recommendations to the Chief Executive in Council concerning applications for licences under section 13B of that Ordinance;
 - (ii) the submission under section 13E of that Ordinance of recommendations to the Chief Executive in Council concerning the renewal or non-renewal of licences and the terms and conditions of renewal under that section; (Added 52 of 1989 s. 3)
 - (ab) to administer the provisions of licences for commercial television broadcasting services, subscription television broadcasting services, programme services, sound broadcasting services, satellite television services and satellite sound services that relate to programming and advertising and any other provisions of such licences that confer a function on the Authority; (Added 10 of 1992 s. 3. Amended 22 of 1993 s. 51; 21 of 1997 s. 18)
 - (ac) to secure proper standards of satellite television services and satellite sound services with regard to programme content; (Added 10 of 1992 s. 3)
 - (b) to secure proper standards of television and sound broadcasting with regard to both programme content and technical performance of broadcasts; (Amended 52 of 1989 s. 3)
 - (c) 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 Television Ordinance (Cap 52) or under Part IIIA of the

Telecommunication Ordinance (Cap 106) governing such standards; (Amended 52 of 1989 s. 3)

- (d) 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;
- (e) such other functions as are assigned to it under this or any other Ordinance. (Amended 55 of 1999 s. 3)

(2) The Authority shall have, in addition to the powers expressly or impliedly conferred on it by or pursuant to this Ordinance, the Television Ordinance (Cap 52) 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. (Amended 52 of 1989 s. 3)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	
Section:	9A	Heading:	Codes of Practice for satellite television and sound services	Version Date:	30/06/1997

The Authority may issue Codes of Practice relating to the standards of programmes and advertisements transmitted by the holder of a licence for satellite television services or satellite sound services.

(Added 10 of 1992 s. 4)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	
Section:	9B	Heading:	Directions by the Authority for satellite television and sound licensees	Version Date:	30/06/1997

The Authority may issue directions in writing to the holder of a licence for satellite television services or satellite sound services requiring the holder to take such action with regard to the standards of programmes or advertisements as the Authority considers necessary in order for the holder to comply with any Code of Practice or any provision of the licence in respect of which the Authority is conferred a function.

(Added 10 of 1992 s. 4)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	
----------	-----	--------	-------------------------------------	-----------------	--

Section:	9C	Heading:	Financial penalties for satellite television and sound licensees	Version Date:	30/06/1997
----------	-----------	----------	---	---------------	------------

(1) The Authority may, by notice in writing addressed to the holder of a licence for satellite television services or satellite sound services, require the holder to pay to the Authority the financial penalty specified in the notice for failure to comply with-

- (a) a Code of Practice;
- (b) a direction issued by the Authority under this Ordinance; or
- (c) any of the terms or conditions of the licence.

(2) The financial penalties imposed under this section in respect of satellite television services shall not exceed \$50000 for the first occasion on which a penalty is imposed, \$100000 for the second occasion on which a penalty is imposed for whatever reason and \$250000 for any subsequent occasion on which a penalty is imposed for whatever reason.

(3) The financial penalties imposed under this section in respect of satellite sound services shall not exceed \$20000 for the first occasion on which a penalty is imposed, \$50000 for the second occasion on which a penalty is imposed for whatever reason and \$100000 for any subsequent occasion on which a penalty is imposed for whatever reason.

(4) No penalty shall be imposed under this section except where the Authority is satisfied that the holder of the licence has been afforded reasonable opportunity of complying with the Code, direction, term or condition.

(Added 10 of 1992 s. 4)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	55 of 1999
Section:	9D	Heading:	Appeals by satellite television and sound licensees	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 55 of 1999 s. 3

(1) A holder of a licence for satellite television services or satellite sound services who is aggrieved by-

- (a) a provision of a Code of Practice or direction issued by the Authority; or
- (b) a decision of the Authority in the exercise of a discretion vested in it under the licence or this Ordinance,

may within 30 days after the date of issue of the Code or notification to him of the direction or decision of the Authority, as the case may be, appeal by way of petition to the Chief Executive in Council.

(2) An appeal under this section does not suspend the provision of the Code, direction or decision before the determination of the appeal.

(3) In determining an appeal the Chief Executive in Council may receive advice and information from any source including the Authority without disclosing the advice and information to the appellant who is not entitled to make any representations other than his petition.

(4) The Chief Executive in Council may determine an appeal by amending the Code or by confirming, varying or reversing the direction or decision of the Authority.

(Added 10 of 1992 s. 4. Amended 55 of 1999 s. 3)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	
Section:	11	Heading:	Consideration of complaints by the Complaints Committee	Version Date:	30/06/1997

(1) Subject to subsections (2) and (3), where a person makes a complaint to the Authority that a licensee or any other person has contravened-

- (a) this Ordinance, the Television Ordinance (Cap 52) or Part IIIA of the Telecommunication Ordinance (Cap 106); (Replaced 52 of 1989 s. 4)
- (b) the terms or conditions of a licence; or
- (c) a Code of Practice,

the Authority shall refer the complaint to the Complaints Committee.

(2) Subsection (1) shall not apply to a complaint concerning any matter referred to in section 24, 25 or 25A of the Television Ordinance (Cap 52) or to a complaint concerning any script or sound recording supplied for sound broadcasting by the Government and broadcast by a licensee but any such complaint shall be referred by the Authority to the Government. (Amended 52 of 1989 s. 4)

(3) The Authority may refuse to refer to the Committee a complaint that-

- (a) is, in the opinion of the Authority, trivial or frivolous; or
- (b) is not made in writing.

(4) The Committee, upon receipt of a complaint referred to it under subsection (1), shall-

- (a) give the licensee or other person the subject of the complaint a reasonable opportunity to make representations both orally and in writing;
- (b) consider any representations made, whether orally or in writing, by or on behalf of the complainant and the licensee or other person the subject of the complaint;
- (c) consider any evidence received by it, whether tendered on behalf of the complainant or otherwise, which it considers relevant to the complaint; and
- (d) make recommendations concerning the complaint to the Authority.

(5) If a complaint referred to the Committee under subsection (1) concerns a technical requirement referred to in section 21 of the Television Ordinance (Cap 52), under a licence for satellite television services or satellite sound services or imposed pursuant to a term or condition of a licence granted under section 13C of the Telecommunication Ordinance (Cap 106) the Committee shall, prior to making any recommendation thereon, consult the Telecommunications Authority appointed under section 5 of the Telecommunication Ordinance (Cap 106). (Amended 52 of 1989 s.4; 10 of 1992 s. 5)

(6) The Committee 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 Committee.

(7) For the purposes of this section the Committee shall have and may exercise any of the powers vested in the Authority by section 45 of the Television Ordinance (Cap 52), by section 22 of this Ordinance, by any term or condition of a licence for satellite television services or satellite sound services or by any term or condition of a licence granted under section 13C of the Telecommunication Ordinance (Cap 106) requiring a licensee to supply to the Authority on demand any material, including the script thereof. (Amended 52 of 1989 s. 4; 10 of 1992 s. 5; 22 of 1993 s. 52)

(Enacted 1987)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	
Section:	14	Heading:	Delegation of powers, etc. to principal executive officer	Version Date:	30/06/1997

(1) Subject to subsection (2), the Authority may by resolution, with or without restrictions or conditions as it sees fit, delegate in writing to the principal executive officer any of its powers and functions.

(2) The Authority shall not delegate to the principal executive officer any of its powers or functions under-

- (a) this section or section 10, 12, 15, 19, 20, or 24; (Replaced 52 of 1989 s. 5)
- (aa) section 13C or 13E of the Telecommunication Ordinance (Cap 106); or (Added 52 of 1989 s. 5)
- (b) section 8, 13, 14, 15, 20, 28, 35, 36A or 37 of the Television Ordinance (Cap 52). (Amended 22 of 1993 s. 53)

(Enacted 1987)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	
Section:	16	Heading:	Indemnity	Version Date:	30/06/1997

No liability shall be incurred by-

- (a) the Authority;
- (b) any member of the Authority;
- (c) any member of any committee of the Authority; or
- (d) any public officer,

as a result of any thing done or omitted to be done by the Authority or such member or officer in good faith in the exercise or purported exercise of powers conferred or functions imposed by or under this Ordinance, the Television Ordinance (Cap 52), Part IIIA of the Telecommunication Ordinance (Cap 106) or any other Ordinance.

(Amended 52 of 1989 s. 7)

Chapter:	391	Title:	BROADCASTING AUTHORITY ORDINANCE	Gazette Number:	
Section:	24	Heading:	Authority may impose financial penalties	Version Date:	30/06/1997

(1) The Authority may, by notice in writing addressed to a licensee, require the licensee to pay to the Authority the financial penalty specified in such notice in any case where a financial penalty is

payable under subsection (2).

- (2) A financial penalty may be imposed on a licensee by the Authority where the licensee-
 - (a) fails to comply with any of the terms or conditions of the licence;
 - (b) fails to comply with a provision of this Ordinance or Part IIIA of the Telecommunication Ordinance (Cap 106) or a regulation made thereunder;
 - (c) fails to comply with any Code of Practice; or
 - (d) fails to comply with any direction issued by the Authority under this Ordinance.
- (3) A financial penalty imposed on a licensee under subsection (2) shall not exceed-
 - (a) \$20000 for the first occasion on which a penalty is so imposed on that licensee;
 - (b) \$50000 for the second occasion on which a penalty is so imposed on that licensee; and
 - (c) \$100000 for any subsequent occasion on which a penalty is so imposed on that licensee.

(4) No financial penalty shall be imposed under subsection (2) unless the Authority is satisfied that the licensee has been afforded reasonable opportunity of complying with the requirement in respect of which the penalty is sought to be imposed.

(Added 52 of 1989 s. 8)

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	
Section:	82	Heading:	Reception and re- transmission of broadcast in cable programme service	Version Date:	30/06/1997

(1) The copyright in a television broadcast or a sound broadcast is not infringed by any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided-

- (a) by a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunication Ordinance (Cap 106);
- (b) by an interconnection between a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunication Ordinance (Cap 106) and a subscription television network licensed under the Television Ordinance (Cap 52), where the re-transmission is for the reception of the users of the communal aerial broadcast distribution system; or
- (c) by a system licensed under a broadcast relay station licence issued under the Telecommunication Regulations (Cap 106 sub. leg.).

(2) The copyright in a television broadcast which is not encrypted or in a sound broadcast which is not encrypted is not infringed by any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided-

- (a) by a system licensed under a satellite master antenna television licence issued under the Telecommunication Regulations (Cap 106 sub. leg.); or
- (b) by an interconnection between a system licensed under a satellite master antenna television licence issued under the Telecommunication Regulations (Cap 106 sub. leg.) and a subscription television network licensed under the Television Ordinance (Cap 52) and where the re-transmission is for the reception of the users of the satellite master antenna television system,

until the expiration of 6 months beginning on the day of publication of the notice in accordance with subsection (5).

(3) Where a television broadcast or sound broadcast is made or uplinked from a place in Hong Kong or elsewhere, and the broadcast is a lawful broadcast, then any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or an interconnection specified in subsection (1) or (2), being a programme comprising a literary, dramatic or musical work, or an adaptation of such a work, or an artistic work, or a sound recording or film, shall be in a like position, in any proceedings for infringement of the copyright (if any) in the work, recording or film, as if he had been the holder of a licence granted by the owner of that copyright to include the work, adaptation, recording or film in any programme so included in that service.

(4) Where a television broadcast or a sound broadcast is not encrypted, the person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or interconnection specified in subsection (2) is deemed to have been granted an implied licence by the maker of the broadcast to receive and re-transmit the broadcast using the system which is only revocable by notice given in accordance with subsection (5).

(5) The maker of a broadcast in respect of which a licence is deemed to have been granted under subsection (4) may revoke the licence by publishing a notice of revocation in-

- (a) 1 Chinese language newspaper circulating in Hong Kong; and
- (b) 1 English language newspaper circulating in Hong Kong.

Chapter:	528	Title:	COPYRIGHT ORDINANCE	Gazette Number:	
Section:	259	Heading:	Reception and re- transmission of broadcast in cable programme service	Version Date:	30/06/1997

(1) The rights conferred by this Part are not infringed by the inclusion of a performance or fixation in a television broadcast or a sound broadcast that is, by reception and immediate re-transmission without any alteration, included in a service provided by-

- (a) a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunication Ordinance (Cap 106);
- (b) an interconnection between a communal aerial broadcast distribution system within the scope of section 8(4)(e) of the Telecommunication Ordinance (Cap 106) and a subscription television network licensed under the Television Ordinance (Cap 52), where the re-transmission is for the reception of the users of the communal aerial broadcast distribution system; or
- (c) a system licensed under a broadcast relay station licence issued under the Telecommunication Regulations (Cap 106 sub. leg.).

(2) The rights conferred by this Part are not infringed by the inclusion of a performance or fixation in a television broadcast or sound broadcast that is not encrypted and that is, by reception and immediate re-transmission without any alteration, included in a service provided-

- (a) by a system licensed under a satellite master antenna television licence issued under the Telecommunication Regulations (Cap 106 sub. leg.); or
- (b) by an interconnection between a system licensed under a satellite master antenna television licence issued under the Telecommunication Regulations (Cap 106 sub. leg.) and a subscription television network licensed under the Television Ordinance (Cap 52) and where the re-transmission is for the reception of the users of the satellite master antenna television system,

until the expiration of 6 months beginning on the day of publication of the notice in accordance with subsection (6).

(3) Where a television broadcast or sound broadcast is made or uplinked from a place in Hong Kong or elsewhere, and the broadcast is a lawful broadcast, then any person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or an interconnection specified in subsection (1) or (2), being a programme comprising a performance, shall be in a like position, in any proceedings for infringement of the performer's right (if any) in the performance, as if he had been the holder of a licence granted by the performer to include the performance in any programme so included in that service.

(4) Notwithstanding subsections (1) and (2), where the making of the broadcast was in infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service is to be taken into account in assessing the damages for that infringement.

(5) Where a television broadcast or a sound broadcast is not encrypted, the person who, by the reception and immediate re-transmission of the broadcast without any alteration, includes a programme in a service provided by a system or interconnection specified in subsection (2) is deemed to have been granted an implied licence by the maker of the broadcast to receive and re-transmit the broadcast using the system which is only revocable by notice given in accordance with subsection (6).

(6) The maker of a broadcast in respect of which a licence is deemed to have been granted under subsection (5) may revoke the licence by publishing a notice of revocation in-

- (a) 1 Chinese language newspaper circulating in Hong Kong; and
- (b) 1 English language newspaper circulating in Hong Kong.

(7) Expressions used in this section have the same meaning as in section 82.

[cf. 1988 c. 48 Sch. 2 para. 19 U.K.]