

Telecommunications Ordinance

(Cap. 106)

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Telecommunications Ordinance

Part 1

1-2

Section 1

Cap. 106

To make better provision for the licensing and control of telecommunications, telecommunications services and telecommunications apparatus and equipment.

(Amended 36 of 2000 s. 28)

[1 January 1963]

*(*Format changes—E.R. 2 of 2012)*

Editorial Note:

* The format of the Ordinance has been updated to the current legislative styles.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Telecommunications Ordinance.

(Replaced 36 of 2000 s. 2)

2. Interpretation

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

air transshipment cargo (航空轉運貨物) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60); *(Added 33 of 2003 s. 3)*

air transit cargo (航空過境貨物) means any article in transit that is both imported and consigned for export in an aircraft; *(Added 33 of 2003 s. 3)*

article in transit (過境物品) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60); (*Added 33 of 2003 s. 3*)

assign (指配) includes specify;

Authority (管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616); (*Added 17 of 2011 s. 28*)

basic service (基本服務) means—

- (a) a public switched telephone service including the service connection, continued provision of connectivity, provision of a dedicated telephone number, an appropriate directory listing (except where the customer otherwise directs), a standard telephone handset without switching capacity (except where the customer elects to provide the handset), standard billing and collection services and relevant ancillary services and facilities necessarily utilized by the licensee;
- (b) a reasonable number of public payphones including payphones located within publicly or privately owned facilities to which the public have access (including intermittent access);
- (c) a reasonable number of public payphones, designed for ease of effective use by the hearing impaired;
- (d) a reasonable number of public payphones, designed for access by the physically disabled, including but not limited to those persons using wheelchairs;
- (e) operator provided directory enquiries, fault reporting, service difficulty and connection services;
- (f) a tropical cyclone warning service;
- (g) a thunderstorm and heavy rain warning service;
- (h) a flood warning service;

- (i) access to a number or numbers for emergency services; and
- (j) such other service, as the Authority may include, under regulations made under section 37;

cargo transshipment area of Hong Kong International Airport (機場貨物轉運區) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60); (*Added 33 of 2003 s. 3*)

carrier licence (傳送者牌照) means a licence issued for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between fixed locations, between moving locations or between fixed locations and moving locations, within Hong Kong, or between Hong Kong and places outside Hong Kong, on a point-to-point, point-to-multipoint or broadcasting basis, such locations within Hong Kong being separated by unleased Government land, but does not include the licences listed in Schedule 1; (*Amended 30 of 2003 s. 2*)

carrier licensee (傳送者牌照持牌人) means the holder of a carrier licence;

class licence (類別牌照) means a licence gazetted by the Authority under section 7B;

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 other form or combination of forms;

customer equipment (顧客設備) means equipment acquired by a customer of a carrier licensee intended to be connected to the network of that licensee;

dominant position (優勢) means dominant position construed in accordance with the provisions of section 7Q and the words ***dominance*** and ***dominant*** shall also be construed accordingly; (Amended 14 of 2012 s. 176)

exclusive licence (專利牌照) means any licence issued on an exclusive basis for operation or provision of telecommunications networks, systems, installations or services;

external services (對外服務) means telecommunications services between—

- (a) Hong Kong and one or more places outside Hong Kong; or
- (b) two or more places outside Hong Kong where the services are routed through Hong Kong;

fixed carrier licence (固定傳送者牌照) means a carrier licence issued for communication between fixed locations;

fixed carrier licensee (固定傳送者牌照持牌人) means the holder of a fixed carrier licence;

harmful interference (有害干擾) means interference which endangers the safety of life or property or seriously degrades, obstructs, or repeatedly interrupts a telecommunications service lawfully carried on within or outside Hong Kong;

interconnection agreement (互連協議) means an agreement of a type mentioned in section 36A whether made by mutual agreement or pursuant to a determination under that section;

interference (干擾) means the effect of unwanted energy due to any, or a combination of, emission, radiation or induction upon reception in a telecommunications network, system or installation manifested by any performance degradation, misinterpretation or loss of information which could be extracted from that telecommunications network, system or installation in the absence of such unwanted energy;

issue (發出) includes grant;

licensee (持牌人)—

- (a) means the holder of a licence under this Ordinance;
- (b) includes the holder of a licence (other than a programme service licence)—
 - (i) granted under the Ordinance repealed by section 44(1) of the Broadcasting Ordinance (Cap. 562);
 - (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 (Cap. 562); (*Replaced 48 of 2000 s. 44*)

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

network (網絡) means a telecommunications network;

number portability (號碼可攜性) means the ability for a customer of a telecommunications service to retain the number or code assigned to him when he changes the location of use or the provider of that service;

numbering plan (號碼計劃) means the Hong Kong telecommunications numbering plan which sets out the plan of numbers and codes used or designed for use for or in connection with the establishment, operation and maintenance of any means of telecommunications under—

- (a) a licence; or
- (b) an order made by the Chief Executive in Council under section 39;

payphone (收費電話機) means a telephone connected to a public telecommunications system which cannot be used to make a

call (other than specified free calls) unless payment can be collected, or authorized, at the time a call is made;

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 not, but does not include a vessel, aircraft, vehicle or other means of transport;

public telecommunications service (公共電訊服務) means a telecommunications service which is offered for use to the general public;

radiated interference (輻射干擾) means any interference transmitted other than through a guided medium;

radio spectrum (無線電頻譜) means the range of frequencies within which radiocommunications are capable of being carried out;

radio transmitter (無線電發射器) means any radiocommunications apparatus designed or intended to transmit or emit radio waves;

radio waves (無線電波) means electromagnetic waves of frequency lower than 3000 GHz propagated in space without an artificial guide;

radiocommunications (無線電通訊) means telecommunications by means of radio waves;

radiocommunications installation (無線電通訊裝置) means a radio transmitter, receiver, aerial, support structure, ancillary equipment or apparatus used or intended for use in connection with radiocommunications;

radiocommunications transmitting apparatus (無線電通訊發送器具) means any apparatus or any component part of any apparatus for transmission by radio waves; (*Added 33 of 2003 s. 3*)

Secretary (政策局局長) means the Secretary of a policy bureau in the Government Secretariat appointed by the Chief Executive for the purposes of the administration of this Ordinance;

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 radiocommunications or by wire for reception by the general public;

space object (空間物體) has the meaning assigned to it in section 2 of the Outer Space Ordinance (Cap. 523);

telecommunications (電訊) means any transmission, emission or reception of communication by means of guided or unguided electromagnetic energy or both, other than any transmission or emission intended to be received or perceived directly by the human eye;

telecommunications industry (電訊業) means the industry comprising the persons who provide or supply telecommunications networks, systems, installations, customer equipment or services;

telecommunications installation (電訊裝置) means apparatus or equipment maintained for or in connection with a telecommunications network, telecommunications system or telecommunications service;

telecommunications line (電訊線路) means any wire, cable, duct, optical fibre, filament, line, pipe, pole, post, tube, conduit, support structure, ancillary equipment or apparatus or other physical medium used or intended for use as a continuous artificial guide for or in connection with telecommunications;

telecommunications market (電訊市場) means any market for the provision or acquisition of telecommunications networks, telecommunications systems, telecommunications installations, telecommunications services, or customer equipment; (*Amended 14 of 2012 s. 176*)

telecommunications network (電訊網絡) means a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both;

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

telecommunications service (電訊服務) means a service for the carrying of communication by means of guided or unguided electromagnetic energy or both;

telecommunications system (電訊系統) means any telecommunications installation, or series of installations, for the carrying of communication by means of guided or unguided electromagnetic energy or both;

transshipment cargo (轉運貨物) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60); (*Added 33 of 2003 s. 3*)

universal service obligation (全面服務責任) means the provision of a good, efficient and continuous basic service by a carrier licensee subject to a universal service obligation to all persons within the areas of Hong Kong covered by that obligation;

vehicle (車輛) has the meaning assigned to it in section 2 of the Import and Export Ordinance (Cap. 60); (*Added 33 of 2003 s. 3*)

vessel (船隻) has the same meaning as defined in the Shipping and Port Control Ordinance (Cap. 313).

(*Amended 17 of 2011 s. 28; 14 of 2012 s. 176*)

- (2) For the avoidance of doubt, it is hereby declared that—
- (a) a notice under section 7C(1) and an order under section 32J(4) are not subsidiary legislation;
 - (b) an order under section 32I(1) or 32K(6) is subsidiary legislation.

(Replaced 36 of 2000 s. 2)

3. Application to Crown

Save as otherwise expressly provided, this Ordinance does not bind the Crown or apply to any means of telecommunications established or maintained by the Crown or to any apparatus for telecommunications possessed or used by the Crown for the purpose of or in connection with any such means of telecommunications.

(Amended 36 of 2000 s. 28)

4. Saving of Crown rights

Nothing in this Ordinance shall prevent the Crown from establishing and maintaining any means of telecommunications to the exclusion of all other persons.

(Amended 36 of 2000 s. 28)

Part 2

Powers of Authority*

Editorial Note:

* *(Amended 17 of 2011 s. 28)*

5-6. *(Repealed 17 of 2011 s. 28)*

6A. Powers of Authority

- (1) The Authority may do all things necessary to be done to perform its functions under this Ordinance.
- (2) The Secretary may issue written policy directions to the Authority pursuant to which the Authority is to carry out its functions and exercise its powers.
- (3) In exercising its powers under this Ordinance, the Authority when— *(Amended 17 of 2011 s. 28)*
 - (a) forming an opinion or making a determination, direction or decision under this Ordinance shall only do so on reasonable grounds and having regard to relevant considerations;
 - (b) forming an opinion or making a determination, direction or decision under this Ordinance—
 - (i) shall provide reasons in writing for it;
 - (ii) shall not depart from guidelines issued under section 6D which are applicable to the subject matter of the opinion, determination, direction or decision, as the case may be, unless it has provided reasons in writing for the departure.
- (4) A policy direction issued under subsection (2) may include a direction not to issue, before a date specified in the direction,

any new licence of a type which may be issued under section 7(5).

- (5) A policy direction issued under subsection (2) shall be published in the Gazette as soon as practicable after its issue.

(Added 36 of 2000 s. 3. Amended 17 of 2011 s. 28)

6B. *(Repealed 14 of 2012 s. 176)*

6C. Consultation

Before performing any function or exercising any power under this Ordinance, the Authority may consult with—

- (a) the persons who may be directly affected by the performance of that function or the exercise of that power, as the case may be; or
- (b) members of the public.

(Added 36 of 2000 s. 3)

6D. Guidelines

- (1) Subject to subsection (4), the Authority may, for the purpose of providing practical guidance in respect of any provisions of this Ordinance, issue such guidelines as in its opinion are suitable for that purpose. *(Amended 17 of 2011 s. 28)*
- (2) Without prejudice to the generality of subsection (1), the Authority shall, as soon as is practicable, issue guidelines—
 - (a) indicating the manner in which it proposes to perform its function of determining applications for licences which may be issued by it, including the licensing criteria and other relevant matters it proposes to consider;
 - (aa) *(Repealed 14 of 2012 s. 176)*

- (b) subject to subsection (3), on the application of the principle referred to in section 14(6)(a) in any arbitration proceedings. *(Amended 17 of 2011 s. 28)*
- (2A) *(Repealed 14 of 2012 s. 176)*
- (3) Without prejudice to the generality of section 6C, the Authority shall, before issuing guidelines under subsection (2)(b), carry out such consultation—
- (a) with the persons who may be affected by the operation of section 14(1A); and
- (b) on the factors to be taken into account for the purposes of subsection (2)(b),
- as is reasonable in all the circumstances of the case.
- (4) Without prejudice to the generality of section 6C, the Authority shall, before issuing any guidelines—
- (a) for the purposes of the test of dominance prescribed in section 7Q(2), carry out such consultation with the licensees in the relevant telecommunications market as is reasonable in all the circumstances of the case; *(Amended 14 of 2012 s. 176)*
- (b) setting out principles governing the criteria for any determination under section 36A(1) and the matters to be considered for the purposes of section 36A(3) and (3B) in the application of section 36A(3) and (3B) to any such determination, carry out such consultation with the telecommunications industry as is reasonable in all the circumstances of the case;
- (c) setting out principles governing the criteria for making a determination under section 36AA(6), carry out such consultation with—
- (i) the telecommunications industry; and

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Part 2

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- (ii) such other persons who may be directly affected by such a determination,
as is reasonable in all the circumstances of the case.

(Added 36 of 2000 s. 3)

Part 3

Control of Telecommunications

7. Issue of licences

- (1) Subject to Part 3A, the Chief Executive in Council may, for an exclusive licence under this Ordinance—
 - (a) determine the conditions of the licence including (but not limited to)—
 - (i) the period of validity;
 - (ii) the payment of fees and royalty;
 - (iii) the frequency of any payments;
 - (b) grant the licence; and
 - (c) publish notice of the grant of the licence as he sees fit.
- (2) The Secretary may by regulations prescribe—
 - (a) the general conditions, including the period of validity, for a carrier licence other than an exclusive licence; and
 - (b) the fees payable including for the grant and renewal of a carrier licence other than an exclusive licence and by way of annual fees.
- (3) Before making a regulation under subsection (2), the Secretary shall—
 - (a) by notice in the Gazette invite members of the public who are interested to make representations by a date not less than 21 days after the notice is published and as specified in the notice; and
 - (b) consider the representations received by the date.

-
- (4) The Secretary may by order published in the Gazette amend Schedule 1. (*Amended 30 of 2003 s. 4*)
 - (5) The Authority may issue a licence other than an exclusive licence.
 - (6) For licences other than exclusive licences and carrier licences, the Authority may determine—
 - (a) the form of licences;
 - (b) the conditions of licences;
 - (c) the period for which a licence is valid;
 - (d) the types of licences, including class licences, to be issued;
 - (e) the fees payable including for the grant and renewal of licences and by way of annual fees.
 - (7) Without limiting the general nature of the conditions that may be prescribed for or attached to a licence, the conditions may relate to—
 - (a) the manner of service provision;
 - (b) interconnection;
 - (c) interference;
 - (d) adherence to technical standards;
 - (e) compliance with directions, guidelines, codes of practice, regulations, this Ordinance and international obligations;
 - (f) universal service obligations;
 - (g) accounting practices;
 - (h) the provision of information;
 - (i) tariffs;
 - (j) network coordination;

- (k) protecting customer information;
 - (l) prohibiting unfair market practice;
 - (m) the regulation of a dominant licensee;
 - (n) the provision of performance bonds.
- (8) The Authority shall publish in the Gazette the form of a licence it issues together with the general conditions to be imposed under the licence. *(Amended 17 of 2011 s. 28)*
- (9) The Authority shall maintain a register of licences and general conditions it publishes in the Gazette. *(Amended 17 of 2011 s. 28)*
- (10) The Authority may authorize the provision of ancillary and associated services under a licence and, where such services are so authorized, the licence shall be deemed to be granted in respect of those services.
- (11) Where the Authority refuses to issue a licence to a person, it shall provide to the person its reasons in writing for the refusal. *(Amended 17 of 2011 s. 28)*
- (12) Where a licence which may be issued under subsection (5) relates to the use of spectrum which under section 32I is subject to the payment of spectrum utilization fee—

- (a) by the user of the spectrum; and
- (b) the method for determining which is prescribed under section 32I(2)(b),

then the Authority may, in determining applications for the licence, regard the fees, if any, arising or resulting from that method as a determining factor in relation to those applications. *(Added 12 of 2001 s. 2)*

(Replaced 36 of 2000 s. 4. Amended E.R. 2 of 2012)

7A. Special licence conditions

The Authority may attach special conditions, consistent with this Ordinance and not inconsistent with the prescribed general conditions, to a licence it is empowered to issue, including special conditions on a carrier licence in addition to the prescribed general conditions and which special conditions are to be interpreted subject to the prescribed general conditions.

(Added 36 of 2000 s. 4. Amended 17 of 2011 s. 28)

7B. Class licences

- (1) A class licence gives a person the right to carry on the activities specified in the class licence that are prohibited under section 8(1) except under a licence subject to the conditions of the class licence.
- (2) The Authority may create a class licence for telecommunications networks, systems, installations or services.
- (3) Before creating a class licence, the Authority shall—
 - (a) by notice in the Gazette invite members of the public who are interested to make representations by a date not less than 21 days after the notice is published and as specified in the notice; and
 - (b) consider the representations received by the date.
- (4) The Authority shall not create a class licence—
 - (a) for a telecommunications network, system, installation or service that is subject to an exclusive licence; or
 - (b) for a telecommunications network, system, installation or service subject to the requirement for a carrier licence.
- (5) The Authority shall ensure that a class licence is consistent with any general policy directions issued by the Secretary and any regulations made under this Ordinance.

-
- (6) The Authority shall publish a class licence in the Gazette specifying—
- (a) the telecommunications networks, systems, installations or services that eligible persons may supply or use;
 - (b) the conditions of the class licence; and
 - (c) the qualification that a person is required to possess before he is eligible to be licensed under the class licence.
- (7) Without limiting the general nature of the conditions that may be prescribed for or attached to a licence, the Authority may include in the conditions for a class licence—
- (a) the scope of the telecommunications network, system, installation or service;
 - (b) technical and operational standards for the supply of the telecommunications network, system, installation or service;
 - (c) the manner in which the person is to supply the telecommunications network, system, installation or service;
 - (d) the location in which the person is to supply the telecommunications network, system, installation or service;
 - (e) the rights of consumers in the supply of the telecommunications network, system, installation or service;
 - (f) interconnection requirements for the telecommunications network, system, installation or service;
 - (g) a requirement for the person to supply information including technical, financial and accounting information for the telecommunications network, system, installation or service;

- (h) a requirement for the person to publish tariffs for the service or the different classes of service provided under the class licence;
- (i) requirements to ensure fairness and quality of the services supplied;
- (j) requirements to ensure the person complies with fair market conduct;
- (k) a requirement for the person to register with the Authority before the supply of the telecommunications network, system, installation or service can commence;
- (l) a requirement to adhere to the numbering plan;
- (m) a prohibition on the illegal use of the telecommunications network, system, installation or service;
- (n) any safety requirements; and
- (o) any other provision that the Authority considers necessary for the control of activities under a class licence.

(Added 36 of 2000 s. 4)

7C. Variation of class licence

- (1) The Authority may vary the conditions of a class licence by notice in the Gazette.
- (2) The Authority may in varying a class licence—
 - (a) specify further telecommunications networks, systems, installations or services that a person may supply under the licence;
 - (b) vary or revoke the type of telecommunications network, system, installation or service that a person may supply under the licence;
 - (c) add conditions to the licence; and

- (d) vary or revoke conditions in the licence.
- (3) The Authority shall not vary a class licence so that it is inconsistent with—
- (a) a general policy direction of the Secretary;
 - (b) the regulations made under this Ordinance; or
 - (c) the rights of an exclusive licensee or a carrier licensee.
- (4) Before varying a class licence, the Authority shall by notice in the Gazette—
- (a) state that it proposes to vary the class licence specified in the notice; (*Amended 17 of 2011 s. 28*)
 - (b) state the subject matter of the variations to the class licence;
 - (c) set out where a member of the public may purchase a copy of the class licence and the proposed variations;
 - (d) invite members of the public who are interested to make representations by a date set out in the notice; and
 - (e) give an address to which a member of the public may send representations about the proposed variation.
- (5) A person may make representations to the Authority on the proposed variation to the class licence not later than the date set out in the notice in the Gazette.
- (6) Before varying a class licence, the Authority shall consider all representations made by any person.
- (7) The Authority may vary a class licence if the requirements of this section are substantially complied with.

(Added 36 of 2000 s. 4)

7D. Register of class licences

- (1) The Authority shall keep a register of the types of class

licences it has created. *(Amended 17 of 2011 s. 28)*

- (2) For those class licences that specify that the licensee shall be registered with the Authority, the Authority shall keep a register of the registered licensees.
- (3) The Authority shall keep the registers available for public inspection during the normal business hours of the Authority.

(Added 36 of 2000 s. 4)

7E. Permits

- (1) The Authority may issue a permit to a person to carry out an activity prohibited under section 8 for a period not exceeding 6 months—
 - (a) for the purpose of a field test;
 - (b) for the purpose of a demonstration;
 - (c) in connection with an event; or
 - (d) for a purpose that the Authority determines.
- (2) The Authority may issue a permit subject to conditions necessary or desirable for the regulation of telecommunications under this Ordinance.

(Added 36 of 2000 s. 4)

7F. Tariffs

- (1) A licensee shall publish its tariffs in accordance with the requirements of its licence or directions issued in writing by the Authority.
- (2) A licensee shall include in the published tariffs the terms on which the telecommunications service is provided including—
 - (a) a description of the service;
 - (b) discounts, allowances, rebates or credits given or allowed on the supply of the service;

- (c) the supply of goods or other services related to the service;
 - (d) the payment for goods or other services related to the service; and
 - (e) any other relevant information that the Authority considers necessary as a part of the terms and conditions.
- (3) A carrier licensee shall not, without the Authority's prior written consent, combine a number of telecommunications services into a single tariff without offering to its customers the services separately at individual tariffs.
- (4) The Authority may require a carrier licensee to provide a telecommunications service, which the licensee includes in a tariff for a combination of a number of telecommunications services, separately at a specified single tariff.

(Added 36 of 2000 s. 4)

7G. Price control

The Secretary may by regulations provide—

- (a) for a fixed carrier licensee who is in a dominant position in a telecommunications market to be subject to the price control measures that the Secretary determines on the advice of the Authority; and
- (b) for a carrier licensee who is in a dominant position in a telecommunications market specified by the Authority for the purposes of tariff control not to charge more or less than its published tariffs.

(Added 36 of 2000 s. 4)

7H. Accounting practices

A licensee shall adopt the accounting practices, consistent with

accounting principles generally accepted, that the Authority specifies.

(Added 36 of 2000 s. 4)

7I. Information

- (1) A person who provides or offers a public telecommunications service shall supply the Authority in the manner and at the times the Authority requests the information relating to its business that the Authority may reasonably require to perform its functions, or exercise its powers, in order to ensure the person's compliance with the provisions of this Ordinance, licence conditions, and the determinations and directions of the Authority, applicable to the person. *(Amended 17 of 2011 s. 28)*
- (2) A person shall not refuse to supply information reasonably requested under subsection (1) on the basis that the information is the subject of a confidentiality agreement that prevents the person from releasing the information.
- (3) The Authority may disclose information supplied to it under this section subject to the requirement in subsection (4) and if the Authority considers that it is in the public interest to disclose that information. *(Amended 17 of 2011 s. 28)*
- (4) The Authority shall give the person supplying the information a reasonable opportunity to make representations on a proposed disclosure of information obtained under this section before the Authority makes a final decision to disclose the information if the 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.

- (5) For the avoidance of doubt, it is hereby declared that where a person supplies information reasonably requested under subsection (1) notwithstanding that the information is the subject of a confidentiality agreement with another person that prevents the first-mentioned person from releasing the information, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the supply of that information contrary to that agreement.
- (6) Nothing in this section shall require a person to supply information which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance.

(Added 36 of 2000 s. 4)

7J. Inspection, etc., of facilities

- (1) The Authority may, on giving reasonable prior written notice to a licensee, enter and inspect the offices, premises and places in Hong Kong where the licensee has installed a facility (including equipment associated with the facility), or used for providing services, to verify that the licensee is complying with the licence conditions.
- (2) A 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 require, any telecommunications installations, equipment (including but not limited to testing instruments), premises or places used or to be used for the installation of a telecommunications facility or the provision of a telecommunications service.
- (3) A licensee may, at its option, and shall, on the prior written request of the Authority, and subject to the Authority giving reasonable prior written notice, provide a representative to be

present at any inspection, testing, reading or measurement by the Authority.

- (4) The Authority may, on giving reasonable prior written notice to a licensee, direct the licensee to demonstrate that a telecommunications installation complies with the technical requirements imposed under this Ordinance and regulations made under this Ordinance or any other directions that the Authority issues under this Ordinance or regulations made thereunder.
- (5) A licensee shall provide adequate testing instruments and operating staff for the purposes of this section and otherwise comply with the directions of the Authority under this section.
- (6) The Authority shall not exercise its power under subsection (1) in respect of any office, premises or place in such a way as to disrupt any operations being carried on therein— (*Amended 17 of 2011 s. 28*)
 - (a) by a licensee or any other person; and
 - (b) any more than is necessary for the proper exercise of that power in all the circumstances of the case.

(Added 36 of 2000 s. 4)

7K. (*Repealed 14 of 2012 s. 176*)

7L. (*Repealed 14 of 2012 s. 176*)

7M. (*Repealed 25 of 2012 s. 37*)

7N. (*Repealed 14 of 2012 s. 176*)

7O. Transitional provisions applicable to the repealed section 7

Where, immediately before the commencement of section 4 of the Telecommunication (Amendment) Ordinance 2000 (36 of

2000), there was in existence a licence granted or deemed to be granted under section 7, then, on and after that commencement, the licence shall, for the unexpired period of validity it had left to run immediately before that commencement and subject to the same conditions to which it was subject immediately before that commencement, be deemed to be a licence granted under this Ordinance, and the other provisions of this Ordinance (including any power under this Ordinance to cancel, withdraw or suspend a licence granted under this Ordinance) shall apply accordingly.

(Added 36 of 2000 s. 4)

7P. *(Repealed 14 of 2012 s. 176)*

7Q. Exploitative conduct

- (1) A licensee in a dominant position in a telecommunications market must not engage in conduct that in the opinion of the Authority is exploitative.
- (2) A licensee is in a dominant position if, in the opinion of the Authority, it is able to act without significant competitive restraint from its competitors and customers.
- (3) In considering whether a licensee is dominant, the Authority must take into account relevant matters including, but not limited to—
 - (a) the market share of the licensee;
 - (b) the licensee's power to make pricing and other decisions;
 - (c) any barriers to entry to competitors into the relevant telecommunications market;
 - (d) the degree of product differentiation and sales promotion;

- (e) any other relevant matters specified in guidelines issued under section 6D for the purposes of this section.
- (4) Without limiting subsection (1), the Authority may consider the following conduct to be exploitative—
 - (a) fixing and maintaining prices or charges at an excessively high level; and
 - (b) setting unfair trading terms and conditions,for or in relation to the provision of interconnection of the type referred to in section 36A(3D).

(Added 14 of 2012 s. 176)

(Format changes—E.R. 1 of 2016)

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

- (1) Save under and in accordance with a licence granted by the Governor in Council or with the appropriate licence granted or created by the Authority, no person shall in Hong Kong or on board any ship, aircraft or space object that is registered or licensed in Hong Kong— *(Amended 39 of 1990 s. 3; 74 of 1990 s. 104(3); 36 of 2000 s. 5)*
 - (a) establish or maintain any means of telecommunications; or
 - (aa) offer in the course of business a telecommunications service; or *(Added 36 of 2000 s. 5)*
 - (b) possess or use any apparatus for radiocommunications or any apparatus of any kind that generates and emits radio waves notwithstanding that the apparatus is not intended for radiocommunications; or
 - (c) deal in the course of trade or business in apparatus or material for radiocommunications or in any component part of any such apparatus or in apparatus of any kind

- that generates and emits radio waves whether or not the apparatus is intended, or capable of being used, for radiocommunications; or
- (d) demonstrate, with a view to sale in the course of trade or business, any apparatus or material for radiocommunications. *(Amended 36 of 2000 s. 28)*
- (1A) For the purpose of subsection (1)(aa), a person is to be regarded as offering a telecommunications service if—
- (a) he makes an offer which, if accepted, would give rise to an agreement, arrangement or understanding for the provision of a telecommunications service by him or by another person with whom he has made an arrangement for the provision of the telecommunications service; or
- (b) he invites a person to make an offer of the kind referred to in paragraph (a). *(Added 36 of 2000 s. 5)*
- (2) For the avoidance of doubt, it is hereby declared that the fact that the person from whom any apparatus for telecommunications is loaned, leased or hired, or the person maintaining a means of telecommunications 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 telecommunications, as the case may be, from the necessity to obtain such licence or licences as may be required under this Ordinance. *(Amended 36 of 2000 s. 28)*
- (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 provided by any company licensed under the Broadcasting Ordinance (Cap. 562); or *(Added 57 of 1973 s. 2. Amended 29 of 1998 s. 105; 48 of 2000 s. 44)*
- (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)*

- (5) Notwithstanding anything contained in subsection (1)(b), no licence shall be required for possession of radiocommunications transmitting apparatus if such apparatus is an article the import or export of which is exempted under section 9A, 9B or 9C. *(Added 33 of 2003 s. 3)*

9. Control of import and export of radiocommunications transmitting apparatus

Save under and in accordance with a permit granted by the Authority, no person shall import into Hong Kong or export therefrom any radiocommunications transmitting apparatus unless he is the holder of a licence authorizing him to deal in the course of trade or business in such apparatus.

(Amended 33 of 2003 s. 3)

9A. Application of section 9 to air transit or air transshipment cargo

- (1) Section 9 does not apply in relation to radiocommunications transmitting apparatus that is air transit cargo or air transshipment cargo; but if at any time between its being brought into and taken out of Hong Kong such apparatus is removed from the cargo transshipment area of Hong Kong International Airport then, for the purposes of section 9— *(Amended 36 of 2000 s. 6)*

- (a) the apparatus is deemed to be imported at the time of such removal; and
- (b) the person who brought the apparatus, or caused it to be brought, into Hong Kong as air transit cargo or air transshipment cargo is deemed to be the person who imports the apparatus at the time of its removal,

and, except to that extent, that section has effect as if this subsection had not been enacted.

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- (2) (a) For the purpose of the issue of a permit as is mentioned in section 9 for the import of radiocommunications transmitting apparatus, the import of such apparatus that is air transit cargo or air transshipment cargo does not take place unless and until the apparatus is removed from the cargo transshipment area of Hong Kong International Airport other than for the purpose of its being taken out of Hong Kong by air.
- (b) Nothing in this section precludes the issue of a permit as is mentioned in section 9 for the export of radiocommunications transmitting apparatus that is air transit cargo or air transshipment cargo only because the apparatus has been removed from the cargo transshipment area of Hong Kong International Airport. (*Amended 36 of 2000 s. 6*)
- (3) In proceedings against a person for an offence under section 21, being proceedings—
- (a) in relation to the import or export of radiocommunications transmitting apparatus that is air transit cargo or air transshipment cargo; and (*Amended 36 of 2000 s. 6*)
- (b) in which it is necessary for the prosecution to prove that, at any time between its being brought into and taken out of Hong Kong, the apparatus was removed from the cargo transshipment area of Hong Kong International Airport,

it is a defence for the person to show that he took all reasonable steps and exercised reasonable diligence to avoid such removal occurring or that he reasonably believed that such removal had not occurred, as the case may be.

- (4) Where in any proceedings the defence provided by subsection (3) involves an allegation that the commission of the offence was due to—
- (a) the act or default of another person; or
 - (b) reliance on information given by another person, the defendant is not, without the leave of the court, entitled to rely on the defence unless, not less than 10 days before the hearing of the proceedings, he has served a notice in writing on the prosecutor giving all particulars of—
 - (i) the person who committed the act or default or gave the information; and
 - (ii) the act, default or information, of which he is aware at the time he serves the notice.
- (5) A person is not entitled to rely on the defence provided by subsection (3) by reason of his reliance on information supplied by another person, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to—
- (a) the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
 - (b) whether he had any reason to disbelieve the information.
- (6) *(Repealed 33 of 2003 s. 3)*

(Added 29 of 2000 s. 3)

9B. Application of section 9 to article in transit

Section 9 does not apply in relation to radiocommunications transmitting apparatus that is an article in transit other than air transit cargo exempted under section 9A.

(Added 33 of 2003 s. 3)

9C. Application of section 9 to transshipment cargo

- (1) Subject to subsection (2), section 9 does not apply in relation to radiocommunications transmitting apparatus that is transshipment cargo other than air transshipment cargo exempted under section 9A if—
- (a) not later than one working day before the date of arrival of the apparatus, the Authority is given—
 - (i) in respect of the apparatus a transshipment notification in such form and containing such information as may be specified by the Authority; and
 - (ii) such other documents as the Authority may reasonably require in support of the notification; and
 - (b) the apparatus remains at all times—
 - (i) in or on the vessel, aircraft or vehicle which carries it into Hong Kong (*the first carrier*);
 - (ii) in or on the vessel, aircraft or vehicle which carries it out of Hong Kong (*the second carrier*); or
 - (iii) at the place of storage as specified in the transshipment notification (*the place of storage*), except during the transfer—
 - (iv) from the first carrier to the second carrier;
 - (v) from the first carrier to the place of storage; or
 - (vi) from the place of storage to the second carrier.
- (2) Section 9 shall have effect as if subsection (1) had not been enacted if any person—

- (a) gives or causes to be given any information, which he knows or has reason to believe to be false, in a transshipment notification; or
- (b) gives incomplete information in a transshipment notification.

(Added 33 of 2003 s. 3)

10. Control of use of radiocommunications apparatus on vessel in Hong Kong waters

- (1) Save as otherwise provided in this section, no radiocommunications apparatus on board a vessel (other than a ship of war) shall be used while the vessel is in the waters of Hong Kong notwithstanding that a licence, whether granted under this Ordinance or under the law of any other territory, is in force in respect of such apparatus.
- (2) When a vessel is under way in the waters of Hong Kong, radiocommunications apparatus on board the vessel may be used to communicate on minimum power with the nearest coast station, or, if communication with the nearest coast station is impracticable and the safe navigation of the vessel so requires, with a more distant coast station or another vessel. *(Amended 69 of 1983 s. 3)*
- (3) Radiocommunications apparatus on board a vessel that is in the waters of Hong Kong may be used, for the purpose of summoning assistance on an occasion of danger to the life of any person or to the vessel, to communicate with the nearest coast station or, if communication with the nearest coast station is impracticable, with a more distant coast station or another vessel. *(Amended 36 of 2000 s. 7)*
- (4) Where a person has been granted a licence for the purposes of section 8(1) to possess or use any apparatus for radiocommunications upon any vessel he may, subject to

the terms of his licence, use such apparatus in the waters of Hong Kong for communication with the base station of the radiocommunications system of which the vessel is a mobile station or with another mobile station of that system.

- (5) Apparatus for radiocommunications upon any vessel may be used to communicate with a signal station as defined for the purposes of the Shipping and Port Control Ordinance (Cap. 313), or any other station in connection with—
- (a) the services of a pilot or the piloting of a vessel;
 - (b) the berthing and unberthing of a vessel;
 - (c) the towing or salvage of a vessel; or
 - (d) the supply of water or fuel to a vessel:

Provided that nothing in this subsection shall authorize any such apparatus to be used contrary to the provisions of the Shipping and Port Control Ordinance (Cap. 313) or other provision of law regulating the use of such apparatus.

- (6) Subject to the terms of any licence relating thereto granted in or outside Hong Kong, a ship earth station may be used to communicate with any coast earth station by means of the maritime mobile satellite service provided by Inmarsat subject to the following conditions— (*Amended 36 of 2000 s. 7*)
- (a) the ship earth station shall operate in the maritime mobile satellite frequency band authorized by Inmarsat; (*Amended 36 of 2000 s. 7*)
 - (b) transmissions shall cease if so required by the Authority by written notice to the master or agent of the vessel;
 - (c) the ship earth station shall not be used—
 - (i) in a dangerous goods anchorage as defined for the purposes of the Shipping and Port Control Regulations (Cap. 313 sub. leg. A);

- (ii) when any person is within a 4 metre radius of its antenna.
- (7) With the permission in writing of the Authority, radiocommunications apparatus on board a vessel in the waters of Hong Kong may be used for such period and for such purposes as the Authority may permit and, without derogation from the generality of the foregoing, such purposes may include the demonstration of any apparatus, tests in connection with the commissioning of any vessel and use in connection with any event.
- (8) Nothing in this section shall apply to the proper operation of—
- (a) any sound broadcast receiving apparatus; or
- (b) any television receiver.
- (9) For the purposes of this section—
- (a) **earth station** (地球站) means an earth station approved by Inmarsat;
- (b) **Inmarsat** (國際移動衛星組織) means the International Mobile Satellite Organization established under the Convention on the International Mobile Satellite Organization (Inmarsat) (London 3 September 1976);
- (c) **master** (船長) and **agent** (代理人) shall have the same meaning as in the Shipping and Port Control Ordinance (Cap. 313);
- (d) a vessel is under way when it is not at anchor, or made fast to the shore, or aground;
- (e) a certificate purporting to be signed by the Authority shall be evidence of the relevant maritime mobile frequency band authorized by Inmarsat on the day specified in the certificate. (*Amended 36 of 2000 s. 7*)

(*Amended 69 of 1983 s. 3; 36 of 2000 s. 28*)

11. Control of use of radiocommunications apparatus on aircraft in Hong Kong

- (1) Save as otherwise provided in this section, no radiocommunications apparatus on board an aircraft shall be used while the aircraft is at any aerodrome in Hong Kong, except for the purposes of air traffic control and air navigation or for testing prior to flight of the apparatus used for air traffic control and air navigation purposes, notwithstanding that a licence, whether granted under this Ordinance or the law of any other territory, is in force in respect of such apparatus.
- (2) With the permission in writing of the Authority, radiocommunications apparatus on board an aircraft that is at an aerodrome in Hong Kong may be used in the carrying out of experimental tests.
- (3) The Authority may permit the use, on such occasions or for such period as it specifies, of radiocommunications apparatus on board an aircraft that is at an aerodrome in Hong Kong.
(Amended 17 of 2011 s. 28)

(Amended 36 of 2000 s. 28)

12. No interference to telecommunications when apparatus on board vessel or aircraft is used

Except where life or the safety of any vessel or aircraft is at risk, nothing in section 10 or 11 shall authorize the use of any radiocommunications apparatus in such a manner as to cause interference with any other means of telecommunications within Hong Kong.

(Replaced 69 of 1983 s. 4. Amended 36 of 2000 s. 28)

13. Possession of telecommunications stations taken by Government in emergencies

- (1) Where, in the opinion of the Governor, an emergency has arisen in which it is expedient for the public service that the Government should have control over telecommunications stations, the Governor, by warrant under his hand, may direct or cause such telecommunications stations as are specified in the warrant to be taken possession of and to be used for the service of the Government, and, subject thereto, for such ordinary service as may seem fit; or may direct and authorize such persons as he thinks fit to assume control of such telecommunications stations as he may specify and in such manner as he may direct.
- (2) Any such warrant shall not have effect for a longer time than one week from the issuing thereof, but the Governor may issue successive warrants from week to week as long as, in his opinion, such emergency continues.
- (3) The Government shall pay to the owner of any telecommunications station taken possession of under this section, as compensation for any loss of profit sustained by the company by reason of the exercise of the powers conferred by this section such sum as may be agreed between the Government and the owner by agreement or in case of difference, by arbitration.

(Amended 36 of 2000 s. 28)

Part 3A

Sound Broadcasting Licences

(Part 3A added 51 of 1989 s. 3)

13A. Interpretation

(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;

company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622); *(Amended 28 of 2012 ss. 912 & 920)*

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

disqualified person (喪失資格的人) means—

- (a) an advertising agent;
- (b) a person who in the course of business supplies material for broadcasting by a licensee;
- (c) a licensee;
- (d) a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong;
- (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 (Cap. 562); or

- (ii) an associate, within the meaning of that section, of a licensee referred to in subparagraph (i); (*Added 48 of 2000 s. 44*)
- (e) a person who exercises control of a corporation that is a person referred to in paragraph (a), (b), (c), (d) or (da)(i); (*Amended 48 of 2000 s. 44*)

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)—

- (a) in relation to a person who is 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; and
- (b) in relation to a company, means a company—
 - (i) that is formed and registered in Hong Kong under the Companies Ordinance (Cap. 622) or under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622); and (*Amended 28 of 2012 ss. 912 & 920*)
 - (ii) in the case of which—
 - (A) if not more than 2 of its directors take an active part in the management of the company, each of those directors is; or
 - (B) 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

- (iii) the control and management of which is bona fide exercised in Hong Kong;

subsidiary (附屬公司) has the meaning given by section 15 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance; (*Amended 28 of 2012 ss. 912 & 920*)

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.

(Amended 17 of 2011 s. 28)

- (2) For the purposes of this Part a person exercises control of a company or corporation if he—
 - (a) 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)

13B. Application for licence

- (1) Any corporation complying with section 13F may apply to the Authority in such form as the Authority may determine,

for a licence to establish and maintain a broadcasting service.
(Amended 3 of 2010 s. 2)

- (2) An application made under subsection (1) may be entertained only if the Authority is satisfied that— *(Amended 17 of 2011 s. 28)*
- (a) the frequency in the radio spectrum that the applicant proposes to use is available as at the date of the application; and
 - (b) that frequency is suitable for use in providing the proposed broadcasting service. *(Added 3 of 2010 s. 2)*
- (3) If the Authority is not satisfied as to any of the matters specified in subsection (2)(a) and (b), it must inform the applicant in writing of this fact. *(Added 3 of 2010 s. 2)*

(Added 51 of 1989 s. 3. Amended 17 of 2011 s. 28)

Editorial Note:

This section was amended by section 2 of the Telecommunications (Amendment) Ordinance 2010 (3 of 2010). The transitional provision contained in section 5 of that Amendment Ordinance reads as follows—

“5. Transitional

The Telecommunications Ordinance (Cap. 106) (“principal Ordinance”) as amended by this Ordinance applies to an application made under section 13B of the principal Ordinance that is pending immediately before the commencement* of this Ordinance.”.

*
2010.

Commencement date: 29 January

13C. Grant of licence

- (1) If, in relation to an applications made under section 13B, the Authority is satisfied as to the matters specified in section 13B(2), it must consider the application and make recommendations thereon to the Governor in Council. *(Amended 3 of 2010 s. 3; 17 of 2011 s. 28)*
- (2) Having considered the recommendations made under subsection (1) in respect of an application for a licence to establish and maintain a broadcasting service, the Governor in Council may grant a licence to the applicant and such licence shall, without prejudice to this Ordinance or the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391), be subject to the payment of such fee, royalty or other charge whatsoever, whether annual or otherwise, and to such terms and conditions as the Governor in Council may specify in the licence. *(Amended 17 of 2011 s. 28)*
- (3) Without prejudice to the generality of subsection (2), a licence may include—
 - (a) *(Repealed 62 of 1996 s. 2)*
 - (b) a condition that the Authority may suspend the licence. *(Amended 17 of 2011 s. 28)*
- (4) In exercising the discretion whether to grant a licence under subsection (2), the Chief Executive in Council must have regard to the following matters—
 - (a) whether the applicant and all persons exercising control of the applicant are fit and proper persons;
 - (b) the opinion of the public;
 - (c) the applicant's financial soundness and ability to maintain, throughout the period for which the licence would be in force, the proposed broadcasting service;

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- (d) whether the applicant has the necessary technical expertise and the relevant managerial skill to operate the proposed broadcasting service;
 - (e) the variety, quantity and quality of programmes to be provided;
 - (f) the quality and technical viability of the proposed broadcasting service;
 - (g) the speed of service roll-out;
 - (h) where any construction work is to be carried out, the extent of any inconvenience that may be caused to the public by the work;
 - (i) the benefits to the local broadcasting industry, the audience and the community as a whole;
 - (j) the applicant's proposed arrangements to ensure compliance with the provisions of this Ordinance, any other applicable law and the terms and conditions that may be specified in the licence;
 - (k) any other matter prescribed under subsection (6). (*Added 3 of 2010 s. 3*)
- (5) In determining whether a person is a fit and proper person for the purposes of subsection (4)(a), account must be taken of—
- (a) the business record of the person;
 - (b) the record of the person in situations requiring trust and candour;
 - (c) the criminal record in Hong Kong of the 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 person in respect of conduct that, if done in Hong Kong,

would constitute or form part of the criminal record in Hong Kong of the person as mentioned in paragraph (c).
(Added 3 of 2010 s. 3)

- (6) The Chief Executive in Council may, by order published in the Gazette, prescribe additional matters to which the Chief Executive in Council must have regard in exercising the discretion whether to grant a licence under subsection (2).
(Added 3 of 2010 s. 3)

(Added 51 of 1989 s. 3)

13CA. Authority may issue guidelines*

- (1) The Authority may issue and publish by notice in the Gazette, for the guidance of corporations seeking to become licensees, guidelines not inconsistent with this Part, indicating the manner in which it proposes to perform its functions under sections 13B(2) and 13C(1), including the criteria for making recommendations and other relevant matters it proposes to consider. *(Amended 17 of 2011 s. 28)*
- (2) *(Repealed 17 of 2011 s. 28)*

(Added 3 of 2010 s. 4)

Editorial Note:

* *(Amended 17 of 2011 s. 28)*

13D. Period of validity of licence

- (1) A licence shall be—
- (a) valid for such period as may be specified in the licence or, where a period is not specified in the licence, such period as may be determined by the Governor in Council by order; and
- (b) subject to renewal within that period of validity on such dates as may be specified in the licence, or where such

dates are not specified in the licence, on such dates as may be determined by the Governor in Council by order.

- (2) An order made by the Governor in Council under subsection (1)(a) or (b) shall be published in the Gazette.

(Added 51 of 1989 s. 3)

13E. Renewal of licence

- (1) Not less than 15 months before the date for any renewal of a licence under section 13D(1)(b) or such shorter period as the Governor in Council may permit, the Authority shall submit recommendations to the Governor in Council concerning the renewal of the licence and the terms and conditions to be imposed. *(Amended 17 of 2011 s. 28)*
- (2) Having considered the recommendations submitted under subsection (1), the Governor in Council may—
- (a) renew the licence subject to such terms and conditions as he may specify; or
 - (b) renew the licence by granting a new licence in substitution therefor, and in doing so, may impose such terms and conditions as he may specify; or
 - (c) refuse to renew the licence.
- (3) Notice of a decision to refuse to renew a licence shall be given to the licensee concerned at least 12 months prior to the relevant date for renewal of the licence.
- (4) Where it is necessary for the due compliance with this section the Governor in Council may extend the term of any licence.

(Added 51 of 1989 s. 3)

13F. Competence of licensees

A licence may be granted to or held only by a corporation that is—

- (a) a company formed and registered in Hong Kong under the Companies Ordinance (Cap. 622) or under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622);
- (b) not a subsidiary; and (*Amended 17 of 2018 s. 45*)
- (c) empowered under its articles of association to comply fully with the provisions of this Ordinance and the terms and conditions of its licence. (*Amended 28 of 2012 ss. 912 & 920*)

(Added 51 of 1989 s. 3)

13G. Disqualified persons

- (1) Subject to subsection (2) and section 13H(2)(b), no disqualified person, other than a person in respect of whom the reason for his being a disqualified person was disclosed in the application for a licence, shall exercise control of a corporation that is a licensee.
- (2) Notwithstanding subsection (1), the Governor in Council may grant a licence to a corporation—
 - (a) that is a disqualified person;
 - (b) in respect of which a disqualified person exercises control; or
 - (c) that is a disqualified person and in respect of which a disqualified person exercises control,

and the licence may contain such conditions relating to the disqualified person and to the control exercised by him as the Governor in Council may impose under section 13C.

(Added 51 of 1989 s. 3)

13H. Increase of control by disqualified persons

- (1) Subject to subsection (2), no disqualified person who

- exercises control of a corporation that is a licensee shall augment the basis of such control—
- (a) by augmenting the percentage of voting shares in the corporation which he holds as the beneficial owner thereof; or
 - (b) by a change of the office held by him in the corporation.
- (2) On the application of a licensee that is a corporation the Governor in Council may, if he is satisfied that the public interest so requires, permit—
- (a) the licensee to augment the basis of the control of the corporation exercised by a disqualified person; or
 - (b) the licensee to enable a disqualified person to exercise control of the corporation.

(Added 51 of 1989 s. 3)

13I. Unqualified persons

- (1) The aggregate of the voting shares in a licensee to or in which unqualified persons have, directly or indirectly, any right, title or interest, shall not at any time exceed 49% of the total number of voting shares in the licensee.
- (2) Subsection (1) applies to voting shares in a licensee where the voting rights carried by such shares are for the time being exercisable as regards any question or other matter whatsoever which may be determined by a poll at general meetings of the licensee.
- (3) For the purposes of this section a person shall be an ***unqualified person*** (不合資格的人) unless—
 - (a) he is a person who is for the time being ordinarily resident in Hong Kong and has at any time been resident for a continuous period of not less than 7 years; or

- (b) that person is a company that is ordinarily resident in Hong Kong.
- (4) For the purposes of this section, a corporation established or incorporated by Ordinance shall be regarded as being a company that is ordinarily resident in Hong Kong if (but only if) for the time being—
- (a) every person who takes an active part in the management of the corporation, or if there are more than 2 such persons each of a majority of those persons, is for the time being ordinarily resident in Hong Kong and has at any time been resident for a continuous period of not less than 7 years; and
- (b) the management of the corporation is bona fide exercised in Hong Kong.
- (5) For the purposes of this section, where any one or more of 2 or more persons having a joint right, title or interest to or in voting shares is or are unqualified persons, then the unqualified person or persons shall be regarded as having the entire right, title or interest to the exclusion of any other person.

(Added 51 of 1989 s. 3)

13J. Temporary restriction on disposal or acquisition

- (1) Except with the consent of the Authority, any right, title or interest to or in shares exceeding in the aggregate 15% of the total number of voting shares in a licensee as at the date of the grant of the licence to the licensee may not be transferred or acquired, directly or indirectly, within the period of 3 years following the date of the grant of the licence to the licensee.
(Amended 17 of 2011 s. 28)

- (2) Any transaction, settlement, agreement or understanding the effect of which would but for this subsection, constitute a contravention of subsection (1) is void.
- (3) Any person exercising or purporting to exercise any right to dispose of or acquire any right, title or interest to or in voting shares referred to in subsection (1) where the result of such disposition or acquisition would to his knowledge, but for subsection (2), constitute a contravention of subsection (1) commits an offence and is liable to a fine at level 6.
- (4) Nothing in this section shall apply to—
- (a) a transfer or acquisition by any person pursuant to the bona fide exercise by him of his functions as a personal representative, liquidator, receiver or trustee in bankruptcy;
 - (b) a transfer to a person who is—
 - (i) an authorized financial institution;
 - (ii) an insurer who is authorized within the meaning of the Insurance Ordinance (Cap. 41); or (*Amended 12 of 2015 s. 102*)
 - (iii) an exchange participant as defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571), or a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in dealing in securities or securities margin financing under Part V of that Ordinance, (*Replaced 5 of 2002 s. 407*)

by way of security only for the purposes of a transaction entered into in the ordinary course of his business as such a person.

- (5) In subsection (4)(b) *authorized financial institution* (認可財務機構) means an *authorized institution* within the meaning of the Banking Ordinance (Cap. 155).

(Added 51 of 1989 s. 3. Amended E.R. 2 of 2012)

13K. Directions by Authority*

- (1) Where any transaction, settlement, agreement or understanding (whether having legal effect or not) has been entered into, the effect of which is to constitute a contravention of section 13G, 13H, or 13I, the Authority may with respect to the voting shares which are the subject of the transaction, settlement, agreement or understanding in question— *(Amended 17 of 2011 s. 28)*
- (a) direct, by notice in writing served on the licensee, that the voting rights which those voting shares carry, notwithstanding anything contained in the articles of association of the licensee or any provision of the laws of Hong Kong apart from this subsection, shall not be exercised in relation to any matter at general meetings of the licensee for such period as may be specified in the notice;
- (b) serve on any person having any right, title or interest to or in such voting shares a notice in writing directing that person, within a period specified in the notice and beginning on the date of receipt by him of the notice (being a period of not less than 60 days), to transfer or otherwise to dispose of such right, title or interest in favour of a person who is not an unqualified or disqualified person (as the case may require) or to so transfer or dispose of so much thereof as is necessary to effect a cesser of the contravention.
- (2) Where a notice under subsection (1)(b) is served on a person, the person may apply to the Authority for an extension, or a

further extension, of the period within which the requirements of the notice are to be complied with. (*Amended 17 of 2011 s. 28*)

- (3) Where an application is made under subsection (2) the Authority shall only grant an extension or further extension if it is satisfied that, having regard to the circumstances of the case, the application is reasonable. (*Amended 17 of 2011 s. 28*)
- (4) Where a notice under subsection (1) is served on a person, but subject to subsections (2) and (3), the person shall comply with the requirements of the notice.
- (5) Subject to subsections (2) and (3), any person who fails to comply with requirements of a notice served on him under subsection (1)(b) within the time specified in the notice (or such extended time as may be allowed under subsection (2)) commits an offence and is liable to a fine at level 6, and for every day during which such offence continues after conviction therefor to a fine of \$2,000.
- (6) A licensee who knowingly allows voting rights to be exercised at any general meeting in the case of shares which are the subject of a notice served on him under subsection (1)(a) commits an offence and is liable to a fine at level 6.
- (7) A resolution passed at a general meeting of the licensee shall not be invalid by reason only that voting rights in respect of which a notice served under subsection (1)(a) is still in force have been exercised.

(Added 51 of 1989 s. 3. Amended E.R. 2 of 2012)

Editorial Note:

* (*Amended 17 of 2011 s. 28*)

13L. Recovery of royalty

- (1) Any royalty payable by a licensee pursuant to any licence and owing to the Government shall be recoverable by the Government as a civil debt in any court of competent jurisdiction.
- (2) A certificate in writing purporting to be made under the hand of the Financial Secretary to the effect that any royalty payable under a licence is owing to the Government shall be prima facie evidence of that fact.

(Added 51 of 1989 s. 3)

13M. Court may prohibit certain programmes etc.

- (1) A licensee shall not broadcast any programme, advertisement, announcement or other material, or any part thereof, that is likely 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 for Administration reasonably believes that the broadcasting of any programme, advertisement, announcement or other material, or any part thereof, would contravene the provisions of subsection (1), he may apply to the Court of First Instance for an order under this section. *(Amended L.N. 362 of 1997)*
- (3) An application under subsection (2) in the case of urgency may be made for an interim order ex parte on affidavit but otherwise such application shall be made by motion or summons.
- (4) On an application under subsection (2), the Court of First Instance may, by order, where it is satisfied that the

broadcasting of any programme, advertisement, announcement or other material, or any part thereof, would contravene the provisions of subsection (1), prohibit the broadcasting of the whole or any part of that programme, advertisement, announcement or other material and require any person who in the opinion of the Court would be knowingly involved in such contravention to take such steps as the Court may direct in order to give effect to the prohibition.

- (5) On 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 the Court such material within their possession or control as relates to the programme, advertisement or announcement.
- (6) Any material produced under subsection (5) shall not be admissible in any criminal proceedings against the licensee, or person, producing it.
- (7) A person shall not under this section be required to furnish any material relating to items subject to legal privilege.
- (8) Subject to subsection (9), rules of court shall provide for—
 - (a) the discharge and variation of orders under this section;
 - (b) proceedings relating to such orders; and
 - (c) costs.
- (9) 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.
- (10) The jurisdiction of the Court of First Instance under this section may not be exercised by the Registrar or a master of that Court.

(Replaced 22 of 1993 s. 49. Amended 25 of 1998 s. 2)

13N. Regulations

- (1) The Governor in Council may, for the purpose of securing compliance with this Part, make regulations—
 - (a) regulating the ownership or control, whether direct or indirect, of licensees; and
 - (b) regulating the holding, acquisition or disposal of rights, titles and interests to or in voting shares in licensees.
- (2) Without prejudice to the generality of subsection (1) regulations made under this section may—
 - (a) authorize the Authority to investigate the ownership or control of voting shares in a licensee and for the purpose of such investigation may authorize the Authority to require any person to give particulars concerning any right, title or interest to or in any such voting shares that he may have and also particulars concerning the right, title or interest to or in those voting shares which to his knowledge any other person may have;
 - (b) authorize the Authority to require a licensee to supply such particulars as may be specified in the regulations concerning any right, title or interest of persons to or in its shares, including particulars of transfers of any such right, title or interest;
 - (c) authorize the Authority to require a licensee to obtain the particulars referred to in paragraph (b) from any person and require such person to supply such particulars (by way of declaration or otherwise);
 - (d) empower the Authority, where any person fails or refuses to supply particulars concerning any right, title or interest he may have to or in any such voting shares in accordance with the regulations, to suspend the voting rights attached to such shares;
 - (e) authorize the Authority to require a licensee to establish and maintain a register of shares to contain details of

rights, titles and interests to or in such voting shares and particulars of transfers of the same;

- (f) prescribe the procedures to be followed in giving directions under section 13K(1);
 - (g) regulate matters relating to transfers of rights, titles and interests to or in such voting shares. (*Amended 17 of 2011 s. 28*)
- (3) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence punishable by a fine not exceeding level 6.

(Added 51 of 1989 s. 3. Amended E.R. 2 of 2012)

13O. Regulations relating to standards and technical requirements

The Governor in Council may make regulations for the purpose of—

- (a) establishing standards for the programmes and advertising material to be broadcast by licensees; and
 - (b) providing for the technical requirements with which a licensee shall comply in broadcasting.
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Part 4

Use of Land for Telecommunications Lines, Etc.

- 14. Power to place and maintain telecommunications lines, etc., on land, etc.**
- (1) The Authority, and any licensee authorized by the Authority either generally or for any particular occasion, may place and maintain a telecommunications line, and such posts as may be necessary, in, over or upon any land or seabed and may enter upon the land or seabed for the purpose of site inspection, or other activities for or incidental to placement and maintenance of a telecommunications line, subject— (*Amended 36 of 2000 ss. 8 & 28*)
- (a) in the case of unleased Government land or seabed, to the consent in writing of the Director of Lands or an officer of the Lands Department appointed by him for the purposes of this section; and (*Amended L.N. 291 of 1993; 29 of 1998 s. 105; 36 of 2000 s. 8*)
- (b) in the case of land vested in or occupied by the Hong Kong Garrison, to the consent in writing of the Commander of the Hong Kong Garrison, or such officer as he appoints to be his representative for the purposes of this section. (*Amended 2 of 2012 s. 3*)
- (1A) Notwithstanding any other law, but subject to subsections (1B) and (2), any licensee authorized by the Authority for any particular occasion may—
- (a) place and maintain a radiocommunications installation in, over or upon any land for the purpose of providing a radio communications service to a public place;
- (b) enter any such land for the purpose of—

- (i) inspecting it; or
 - (ii) other activities which are for the purpose of or incidental to the maintenance and placement of the installation. (*Added 36 of 2000 s. 8*)
- (1B) The Authority shall not grant an authorization referred to in subsection (1A)—
 - (a) unless it is satisfied that the authorization is in the public interest; (*Amended 17 of 2011 s. 28*)
 - (b) except after taking into account—
 - (i) whether an alternative location can be reasonably utilized for placing the radiocommunications installation to which the authorization, if granted, will relate;
 - (ii) whether or not there are technical alternatives to the installation;
 - (iii) whether or not the utilization of the land to which the authorization, if granted, will relate is critical for the supply of the service by the licensee seeking the authorization;
 - (iv) whether or not that land has available capacity to be so utilized having regard to the current and reasonable future needs of the occupants of that land; and
 - (v) the costs, time, penalties and inconvenience to the licensee and the public of the alternatives, if any, referred to in subparagraph (ii);
 - (c) unless it has given a reasonable opportunity to the persons having a lawful interest in the land concerned and to the licensees concerned to make representations and has considered all representations made before it

- decides whether or not to grant the authorization; and
(Amended 17 of 2011 s. 28)
- (d) unless it— *(Amended 17 of 2011 s. 28)*
- (i) gives reasons in writing for the grant of the authorization; and
 - (ii) specifies in writing the technical requirements, if any, of the right of access arising from the authorization. *(Added 36 of 2000 s. 8)*
- (1C) Paragraph (a) of subsection (1) shall apply to land referred to in subsection (1A) as it applies to land referred to in subsection (1). *(Added 36 of 2000 s. 8)*
- (1D) Where subsection (1A) is applicable—
- (a) the Authority shall, upon application made to it by the licensee or the person having a lawful interest in the land concerned, specify in writing an interim fee (including the terms and conditions in accordance with which it shall be payable) to be paid by the licensee to the person; and *(Amended 17 of 2011 s. 28)*
 - (b) the licensee shall not exercise any rights conferred by the authorization referred to in that subsection on the licensee—
 - (i) until—
 - (A) the licensee and the person having a lawful interest in the land concerned come to an agreement referred to in subsection (5)(a);
 - (B) the determination of the fee referred to in subsection (5)(a) in the arbitration proceedings concerned for the purposes of subsection (5)(b);
 - (C) the payment of the interim fee concerned to the person or, if the interim fee is to be paid

- in instalments, upon the payment of the first instalment of the interim fee to the person; or
- (D) such time as is agreed between the licensee and the person; and
- (ii) except in compliance with any other conditions to which the authorization is subject. (*Added 36 of 2000 s. 8*)
- (2) In exercising the powers conferred by subsection (1) or (1A), as the case may be, the Authority or the licensee, as the case may be, shall—
- (a) give reasonable notice to the owner of any land or seabed or to the person in control of any land or seabed of the Authority's or licensee's intention to enter upon that land or seabed; (*Amended 17 of 2011 s. 28*)
- (b) do as little damage as possible, and—
- (i) full compensation shall be paid by the Authority, or the licensee, as the case may be, to any person having a lawful interest in the land or seabed, or being lawfully thereon, who suffers physical damage to any fixture or chattels found on the land or seabed as a result of the exercise of those powers;
- (ii) where subsection (1A) is applicable, a fee (which may be a once only fee or a monthly or annual fee) shall be paid—
- (A) which is fair and reasonable in all the circumstances of the case; and
- (B) by the licensee to any person having a lawful interest in the land. (*Replaced 36 of 2000 s. 8*)
- (3) So far as may be necessary for the due exercise of the powers conferred by subsection (1) or (1A), as the case may be,

the Authority or the licensee, as the case may be, may alter the position of any pipe or wire, other than a water, gas or electric main, if— (*Amended 36 of 2000 s. 8*)

- (a) reasonable notice has been given to the owner of the pipe or wire or the person in control thereof; and
 - (b) in the case of a pipe or wire in or over or upon unleased Government land or upon the seabed, the consent in writing of the Director of Lands or an officer of the Lands Department appointed by him for the purposes of this section has been obtained; and (*Amended L.N. 291 of 1993; 29 of 1998 s. 105; 36 of 2000 s. 8*)
 - (c) in the case of a pipe or wire in, over or upon land vested in or occupied by the Hong Kong Garrison, the consent in writing of the Commander of the Hong Kong Garrison, or such officer as he appoints to be his representative for the purposes of this section has been obtained. (*Amended 2 of 2012 s. 3*)
- (4) The Authority, or a licensee authorized by the Authority under subsection (1) or (1A), as the case may be, may apply to a magistrate for an order that a person shall not prevent or obstruct the Authority or the licensee, as the case may be, from exercising the powers conferred by that subsection. (*Added 36 of 2000 s. 8*)
- (5) Where subsection (1A) is applicable—
- (a) the licensee and the person having a lawful interest in the land concerned shall endeavour to come to an agreement as to the fee to be paid under subsection (2)(ii) by the licensee to that person;
 - (b) in the absence of any such agreement within a reasonable time, then—
 - (i) the fee, and the terms and conditions in accordance with which it shall be payable, shall be determined

- by arbitration under the Arbitration Ordinance (Cap. 609); and (*Amended 17 of 2010 s. 112*)
- (ii) for the purpose of subparagraph (i), the licensee and the person having a lawful interest in the land concerned shall be regarded as having made an arbitration agreement within the meaning of that Ordinance the provisions of which agreement shall be deemed to include—
 - (A) a provision that the fee, and the terms and conditions in accordance with which it shall be paid, shall, in the absence of agreement, be determined by a single arbitrator; and
 - (B) a provision equivalent to subsection (7). (*Added 36 of 2000 s. 8*)
- (6) In any arbitration proceedings for the purposes of subsection (5)(b)—
- (a) regard shall be given to—
 - (i) the principle that the fee to be paid shall be fair and reasonable in all the circumstances of the case, including, but not limited to, factors relating to cost, property-value and the benefits to be derived from the authorization concerned referred to in subsection (1A);
 - (ii) the guidelines issued by the Authority under section 6D(2)(b) on the application of the principle referred to in subparagraph (i) in any such proceedings; and
 - (iii) the reasons and technical requirements concerned, if any, referred to in subsection (1B)(d);

- (b) regard shall not be given to the amount of any interim fee specified by virtue of the operation of subsection (1D). *(Added 36 of 2000 s. 8)*
- (7) Where in any arbitration proceedings for the purposes of subsection (5)(b)—
- (a) there is a dispute on a matter other than the technical requirements concerned, if any, referred to in subsection (1B)(d); and
- (b) the arbitrator is of the opinion that, without determining that matter—
- (i) the licensee and the person concerned will not reach an agreement to give effect to the authorization concerned referred to in subsection (1A); or
- (ii) the determination referred to in subsection (5)(b) cannot be made,
- then the arbitrator may determine that matter in any manner fair and reasonable in all the circumstances of the case and not inconsistent with the authorization concerned referred to in subsection (1A). *(Added 36 of 2000 s. 8)*
- (8) In a determination referred to in subsection (5)(b), the arbitrator shall—
- (a) in specifying the fee to which the determination relates, include provisions for set-off in view of any interim fee paid by virtue of the operation of subsection (1D); and
- (b) specify that the fee to which it relates is payable for the period commencing on the first exercise of a right—
- (i) conferred by the authorization concerned referred to in subsection (1A); and
- (ii) by the licensee concerned in relation to the land concerned. *(Added 36 of 2000 s. 8)*

- (9) (a) The Authority may issue a certificate certifying that a licensee has the right of access under subsection (1) or (1A) to the land or seabed specified in the certificate to place and maintain telecommunications lines, or a radiocommunications installation, as the case may be, in, over or upon the land or seabed.
- (b) Where a person having an interest in the land or seabed specified in a certificate referred to in paragraph (a) does not allow the licensee concerned to gain access to the land or seabed for the purpose of placing and maintaining telecommunications lines, or a radiocommunications installation, as the case may be, in, over or upon the land or seabed, the licensee may apply to the court for an injunction. (*Added 36 of 2000 s. 8*)
- (10) In subsections (1) and (1A), **land** (土地) does not include land for the exclusive occupation or use of any person whilst the land is being so occupied or used. (*Added 36 of 2000 s. 8*)
- (11) For the avoidance of doubt, it is hereby declared that—
- (a) where there is an inconsistency between any provision of a technical requirement referred to in subsection (1B)(d) and any provision, relating to public safety, of any other Ordinance, then the second-mentioned provision shall prevail over the first-mentioned provision to the extent of the inconsistency;
- (b) compensation is not payable under subsection (2) in relation to any physical damage referred to in that subsection for which full compensation has been paid or is payable under any other provision of this Ordinance or under any other law. (*Added 36 of 2000 s. 8*)

(*Amended L.N. 76 of 1982; L.N. 94 of 1986*)

15. Disputes as to compensation

- (1) Where any dispute arises as to—
 - (a) whether compensation is payable under section 14(2);
 - (b) the amount of any such compensation; or
 - (c) the person to whom it is payable,the dispute shall be referred to and determined by the District Court.
- (2) For the purposes of this section, a dispute shall be deemed to have arisen where a claimant or the Authority or the licensee, as the case may be, has served notice of intention to refer the dispute to the District Court upon all other parties to the dispute, and the party who has served notice as aforesaid shall, within 2 months thereafter, refer the dispute to the District Court by notice served upon a deputy registrar of the Court giving particulars of the matter in dispute between the parties, and a copy of the last-mentioned notice shall, within the said period, be served upon all other parties.
- (3) The District Court may order that the costs incurred by any party in proceedings before it under this section shall be paid by any other party, and may tax or settle the amount of any costs to be paid under any such order, or may direct the manner in which they are to be taxed.
- (4) The Chief Justice may, subject to this Ordinance, make rules for regulating proceedings before the District Court under this section.

16. Removal, etc., of line, post or installation where necessary by reason of use of land, etc.

- (1) Where any person desires to use land or seabed in a way that makes it necessary to remove to another part

of the land or seabed a telecommunications line, post or radiocommunications installation maintained by the Authority or a licensee in, over or upon the land or seabed under section 14 or to alter such telecommunications line, post or radiocommunications installation in any way, he may by written notice served upon the Authority or licensee, as the case may be, require the removal or alteration of the telecommunications line, post or radiocommunications installation and such requirement shall not be unreasonably refused by the Authority or licensee, as the case may be. *(Replaced 36 of 2000 s. 9)*

- (2) Any expenses incurred by the Authority or the licensee in complying with a requirement under subsection (1) may be recovered from the person who made the requirement.

17. Trees interrupting telecommunications

- (1) If a tree standing or lying near a telecommunications line or radiocommunications installation interrupts, or is likely to interrupt telecommunications, a magistrate may, upon application by the Authority or the licensee concerned, as the case may be, order the tree to be removed or otherwise dealt with in such a way as to prevent the interruption, or the likelihood of the interruption, of telecommunications and, if the tree was in existence at the time the telecommunications line or radiocommunications installation was placed in, over or upon the land, may order the Authority or the licensee, as the case may be, to pay to the owner of the tree such sum by way of compensation as he thinks reasonable. *(Amended 36 of 2000 ss. 10 & 28)*
- (2) Any order of a magistrate in proceedings under subsection (1) shall be final.

18. Work affecting telecommunications lines, etc.

- (1) Any person who proposes to carry out on any land or seabed work that may affect a telecommunications line or radiocommunications installation maintained by the Authority or a licensee in, over, upon or near the land or seabed shall give to the Authority or the licensee, as the case may be, notice in writing of his intention to carry out the work.
- (2) All reasonable precautions shall be taken in the carrying out of such work to prevent damage to any telecommunications line or radiocommunications installation in, over, upon or near the land or seabed, and the Authority or the licensee, as the case may be, may recover from the person on whose behalf the work is carried out any expenses incurred in making good any damage to a telecommunications line or radiocommunications installation caused by a failure to take such precautions.
- (3) In any proceedings under subsection (2) for the recovery of the expenses incurred by the Authority or the licensee, it shall be presumed, until the contrary is proved, that the work was carried out on behalf of the owner of the land or seabed.

(Amended 36 of 2000 ss. 11 & 28)

19. Power to enter on land, etc., to inspect, repair, etc., telecommunications lines, etc.

The Authority and a licensee may at such times as may be necessary enter upon any land or seabed in, over or upon which the Authority or licensee maintains a telecommunications line, post or radiocommunications installation for the purpose of inspecting, repairing, removing or altering the telecommunications line, post or radiocommunications installation.

(Replaced 36 of 2000 s. 12. Amended 17 of 2011 s. 28)

19A. Interpretation

- (1) In this Part and in section 29, *land* (土地) includes *common parts* as defined in section 2 of the Building Management Ordinance (Cap. 344). (*Added 38 of 1993 s. 5. Amended 36 of 2000 s. 13*)
- (2) In this Part *seabed* (海床) includes an estuary or arm of the sea or the shore or bed of any tidal waters within the boundaries of Hong Kong. (*Added 36 of 2000 s. 13*)

19B. Right of access to public telecommunications services

- (1) A term in a lease agreement, deed of mutual covenant or commercial contract that, in all the circumstances of the case, unreasonably restricts the right of a resident or occupier, or deprives a resident or occupier of the right, to have access to the public telecommunications services of his choice is void on and after the day on which this section comes into operation to the extent only that it imposes such restriction.
- (2) Subsection (1) shall apply to any agreement, deed or contract entered into before, on or after the day on which this section comes into operation.

(Added 36 of 2000 s. 14)

Part 5

Offences, Enforcement and Penalties*

Editorial Note:

* *(Amended 36 of 2000 s. 15)*

20. Contravention of section 8 an offence

Any person who contravenes section 8(1) shall be guilty of an offence and shall be liable—

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

(Amended 17 of 1972 s. 3; 18 of 1994 s. 2; E.R. 2 of 2012)

21. Contravention of section 9 an offence

Any person who contravenes section 9 shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4 and to imprisonment for 12 months.

(Amended 18 of 1994 s. 3; E.R. 2 of 2012)

22. Penalty in event of contravention of section 10, 11 or 12

In the event of a contravention of section 10(1), 11(1) or 12, the master of the vessel or the captain of the aircraft, as the case may be, or the person at whose direction the radiocommunications apparatus was used, shall be guilty of an offence and shall be liable on summary conviction to a fine at level 5.

(Amended 18 of 1994 s. 4; 36 of 2000 s. 28; E.R. 2 of 2012)

23. Transmitting or receiving messages, etc., by unlicensed means

of telecommunications

Any person who, knowing or having reason to believe that a means of telecommunications is being maintained in contravention of this Ordinance, transmits or receives any message by such means of telecommunications or performs any service incidental to the transmission or reception of any such message or delivers any message for transmission by such means of telecommunications or takes delivery of any message sent thereby shall be guilty of an offence and shall be liable on summary conviction to a fine at level 5.

(Amended 18 of 1994 s. 5; 36 of 2000 s. 28; E.R. 2 of 2012)

23A. Penalty for selling message received on sound broadcast receiving apparatus television receiver

Any person who, without the consent of the Authority,—

- (a) sells; or
- (b) offers for sale; or
- (c) publishes or reproduces for reward,

any message or information, or the sense or meaning of any message or information received by him or by any other person by means of a sound broadcast receiving apparatus or a television receiver shall be guilty of an offence and shall be liable on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(Added 2 of 1968 s. 4. Amended 17 of 1972 s. 4; 18 of 1994 s. 6; E.R. 2 of 2012)

24. Offences by telecommunications officer, etc.

- (1) A telecommunications officer, or any person who, though not a telecommunications officer, has official duties in connection

with a telecommunications service, who— (*Amended 36 of 2000 s. 28; 9 of 2007 s. 63*)

- (a) wilfully destroys, secretes or alters any message that he has received for transmission or delivery;
- (b) forges any message or utters any message that he knows to be forged or altered;
- (c) wilfully abstains from transmitting any message or wilfully intercepts or detains or delays any message;
- (d) otherwise than in pursuance of his duty or as directed by a court, copies any message or discloses any message or the purport of any message to any person other than the person to whom the message is addressed,

shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4 and to imprisonment for 2 years.

- (2) This section does not apply to any act done by a telecommunications officer, or any person who, though not a telecommunications officer, has official duties in connection with a telecommunications service, for the purpose of—
 - (a) facilitating compliance with this Ordinance or the Unsolicited Electronic Messages Ordinance (Cap. 593);
 - (b) implementing the terms or conditions of a licence of a licensee or any contract made between a licensee and a customer of the licensee; or
 - (c) facilitating compliance with a lawful request of a customer of a licensee in connection with a service supplied by the licensee to the customer. (*Added 9 of 2007 s. 63*)

(Amended 18 of 1994 s. 7; E.R. 2 of 2012)

25. Secretion, etc., of messages by persons other than

telecommunications officers

Any person, not being a telecommunications officer, or a person who, though not a telecommunications officer, has official duties in connection with a telecommunications service, who— (*Amended 36 of 2000 s. 28*)

- (a) wilfully secretes, detains or delays a message intended for delivery to some other person; or (*Amended 48 of 1972 s. 4*)
- (b) having been required by a telecommunications officer to deliver up to him a message in the possession of that person and intended for delivery to some other person, refuses or neglects to do so, (*Amended 36 of 2000 s. 28*)

shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4 and to imprisonment for 12 months.

(Amended 18 of 1994 s. 8; E.R. 2 of 2012)

26. Transmission by telecommunications officer of message not paid for

A telecommunications officer who, with intent to defraud, transmits by telecommunications a message in respect of which the charge prescribed by or under this Ordinance has not been paid shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4 and to imprisonment for 2 years.

(Amended 18 of 1994 s. 9; 36 of 2000 s. 28; E.R. 2 of 2012)

27. Damaging telecommunications installation with intent

Any person who damages, removes or interferes in any way whatsoever with a telecommunications installation with intent to— (*Amended 36 of 2000 s. 28*)

- (a) prevent or obstruct the transmission or delivery of a message; or

(b) intercept or discover the contents of a message, shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4 and to imprisonment for 2 years.

(Amended 18 of 1994 s. 10; E.R. 2 of 2012)

27A. Unauthorized access to computer by telecommunications

(1) Any person who, by telecommunications, knowingly causes a computer to perform any function to obtain unauthorized access to any program or data held in a computer commits an offence and is liable on conviction to a fine at level 4.
(Amended 36 of 2000 s. 28)

(2) For the purposes of subsection (1)—

(a) the intent of the person need not be directed at—

- (i) any particular program or data;
- (ii) a program or data of a particular kind; or
- (iii) a program or data held in a particular computer;

(b) access of any kind by a person to any program or data held in a computer is unauthorized if he is not entitled to control access of the kind in question to the program or data held in the computer and—

- (i) he has not been authorized to obtain access of the kind in question to the program or data held in the computer by any person who is so entitled;
- (ii) he does not believe that he has been so authorized; and
- (iii) he does not believe that he would have been so authorized if he had applied for the appropriate authority.

(3) Subsection (1) has effect without prejudice to any law relating to powers of inspection, search or seizure.

- (4) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings for an offence under this section may be brought at any time within 3 years of the commission of the offence or within 6 months of the discovery of the offence by the prosecutor, whichever period expires first.

(Added 23 of 1993 s. 2. Amended E.R. 2 of 2012)

28. False or deceptive distress, etc., messages

A person who transmits, or causes to be transmitted, by telecommunications a false distress, urgency, safety or identification signal— *(Amended 36 of 2000 s. 28)*

- (a) knowing or believing it to be false; or
- (b) with intent to deceive,

commits an offence and is liable on summary conviction to a fine at level 3 and to imprisonment for 2 years.

(Replaced 62 of 1996 s. 3)

29. Entry on certain land without permission

Any person who, without lawful authority or excuse, enters or remains on any land in the occupation of a person who provides a telecommunications service shall be guilty of an offence and shall be liable on summary conviction to a fine at level 2.

(Amended 18 of 1994 s. 12; 36 of 2000 s. 28; E.R. 2 of 2012)

30. Penalty for contravention of order under section 33

Any person who fails to comply with an order under section 33 shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4 and to imprisonment for 12 months.

(Amended 18 of 1994 s. 13; E.R. 2 of 2012)

31. Obstruction of Authority, etc.

Any person who wilfully obstructs the Authority or any public officer in the exercise of any power conferred upon the Authority or public officer by this Ordinance shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4 and to imprisonment for 6 months.

(Amended 18 of 1994 s. 14; 17 of 2011 s. 28; E.R. 2 of 2012)

32. Liability of directors, etc., where offence committed by corporation

Where a person by whom an offence under this Ordinance is committed is a corporation and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the corporation, the director or other officer shall be guilty of the like offence.

32A. Use of unauthorized frequencies

A licensee who possesses or uses a radio transmitter operating on a frequency, or installed at a location, not authorized under its licence commits an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(Added 36 of 2000 s. 16)

32B. Unauthorized dealing in radio transmitters

A licensee authorized to deal in radio transmitters in the course of trade or business—

- (a) who sells or offers to sell or delivers a radio transmitter to a person who is not licensed, or issued with a permit, or exempt from licensing, to possess or use that transmitter;

- (b) who sells or offers to sell or delivers a radio transmitter the sale or delivery of which is prohibited under a condition of the licence; or
- (c) where the licence conditions provide that the sale or delivery of a particular class of radio transmitters shall be recorded in a transaction register in accordance with the licence conditions, who fails to make the record upon sale or delivery,

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

(Added 36 of 2000 s. 16)

32C. Unauthorized modification of radio transmitters

A person who knowingly, and without lawful excuse, modifies, or causes to be modified, a radio transmitter that is licensed or authorized under a permit under this Ordinance so that the possession or use of the modified radio transmitter contravenes the licence or permit commits an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(Added 36 of 2000 s. 16)

Part 5A

Technical Regulation

(Part 5A added 36 of 2000 s. 17)

32D. Standards

- (1) The Authority may prescribe standards and specifications of—
 - (a) telecommunications networks, systems, installations, customer equipment and services;
 - (b) other non-telecommunications equipment generating, deliberately or incidentally, radio frequency energy that may cause interference to telecommunications networks, systems, installations, customer equipment and services; and
 - (c) other non-telecommunications equipment that may suffer interference from telecommunications networks, systems, installations, customer equipment and services, in pursuit of the following objectives—
 - (i) to prevent or reduce radio interference or the risk of interference to telecommunications networks, systems, installations, customer equipment and services;
 - (ii) to facilitate correct, efficient or reliable operation of telecommunications;
 - (iii) to ensure safety and health of users and personnel affected by electrical voltages or non-ionising electromagnetic radiation from telecommunications apparatus;
 - (iv) to ensure that equipment complies with international or recognized industrial standards;

- (v) to ensure the compatibility of the interfacing equipment between 2 or more interconnecting telecommunications networks, systems, installations, customer equipment or services;
 - (vi) to ensure the interoperability of customer equipment with the telecommunications system to which it is connected;
 - (vii) to ensure an acceptable quality of reception of telecommunications services;
 - (viii) as a means to achieve the objectives of this Ordinance.
- (2) Without prejudice to the generality of section 6C, before prescribing the standards and specifications under subsection (1), the Authority shall carry out such consultation with the telecommunications industry as is reasonable in all the circumstances of the case.

32E. Certification requirements

The Authority may—

- (a) test or require the testing of equipment or installations against prescribed specifications;
- (b) determine the measuring apparatus to be used, the method by which and the conditions under which tests are to be made;
- (c) issue certificates to certify that the equipment or installation complies with prescribed specifications if the Authority is satisfied that the equipment or installation complies with the specifications;
- (d) prescribe the labels to be affixed to the equipment or installation to show that the equipment or installation complies with the prescribed specifications and to impose requirements for securing information to

be marked on, to be given in advertisements or to accompany specified telecommunications equipment or a specified installation;

- (e) by order prescribe that equipment or an installation shall not be offered for sale unless the equipment or installation complies with the prescribed specifications or bears the prescribed label;
- (f) recover the actual costs incurred plus overhead from persons submitting equipment or installations for testing against the prescribed specifications;
- (g) accredit other organizations or institutions for the purpose of carrying out the responsibilities set out in paragraphs (a) and (c).

32F. Power of Authority in relation to numbering plan

- (1) All powers and privileges relating to or connected with the numbering plan, including its ownership and control, are vested in the Authority.
- (2) The Authority shall promote the efficient and equitable allocation and use of numbers and codes in the numbering plan.
- (3) The Authority may—
 - (a) prepare, specify, approve, publish, administer (including, in particular, allocate, assign, lease or sell the right to use a number or a code, a block or blocks of numbers or a block or blocks of codes), enforce and amend the numbering plan;
 - (b) issue codes of practice relating to the use of numbers and codes in the numbering plan, and any code so issued may include provisions relating to number portability;

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- (c) designate, or approve on request by any person, a number or a code, a block or blocks of numbers or a block or blocks of codes in the numbering plan to be the subject of special allocation, assignment, lease or sale as provided for under regulations made by the Secretary under subsection (5);
 - (d) recover the cost of administration of the numbering plan from the allocation, assignment, lease or sale of right to use numbers and codes in the numbering plan;
 - (e) delegate the administration of the numbering plan or a part of the numbering plan to any person.
- (4) The Authority may issue directions in writing to require a licensee or a person who is exempted from licensing under section 39 to—
- (a) submit information on the utilization of numbers and codes to which it has been allocated or assigned;
 - (b) adhere to the numbering plan; and
 - (c) observe the codes of practice issued by the Authority under subsection (3)(b).
- (5) The Secretary may by regulation—
- (a) provide for—
 - (i) the allocation, assignment, lease or sale, whether by auction, tender or for consideration, or otherwise of;
 - (ii) the amount of fees to be levied for,
- the right to use a number, a code, a block or blocks of numbers or a block or blocks of codes designated, or approved on request by any person, by the Authority under subsection (3)(c);

- (b) require any proceeds arising out of any allocation, assignment, lease or sale referred to in paragraph (a), less the administrative costs of carrying out the allocation, assignment, lease or sale, to be—
 - (i) either—
 - (A) paid to a charitable institution or an institution carrying out education, or research and development, activities connected with telecommunications; or
 - (B) applied towards promoting education, or research and development, connected with telecommunications; or
 - (ii) paid into a fund established by the Authority for the purpose of holding such proceeds prior to the payment or application of the funds referred to in subparagraph (i);
 - (c) impose requirements on the Authority in relation to the establishment and management of any such fund.
- (6) The amount of any fees prescribed under subsection (5) need not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in relation to the allocation, assignment, lease or sale of a number or code.

Part 5B

Management of Radio Spectrum and Prevention of Interference

(Part 5B added 36 of 2000 s. 17)

32G. Spectrum management

- (1) The Authority shall promote the efficient allocation and use of the radio spectrum as a public resource of Hong Kong.
- (2) Without prejudice to the generality of section 6C, before exercising its powers under sections 32H(2)(a) and (b) and 32I(1), the Authority shall carry out such consultation with— *(Amended 17 of 2011 s. 28)*
 - (a) the telecommunications industry; and
 - (b) such other persons who may be directly affected by the exercise of such powers,as is reasonable in all the circumstances of the case.

32H. Power to allocate frequency

- (1) The Authority may assign—
 - (a) frequencies and bands of frequencies in all parts of the radio spectrum used in Hong Kong or on board a ship, aircraft or space object that is registered or licensed in Hong Kong; and
 - (b) satellite orbital positions and parameters for satellites registered or licensed in Hong Kong,and shall keep a central register of the frequencies, bands of frequencies and satellite orbital positions and parameters assigned.

- (2) The Authority may—
- (a) subject to the consultation requirement under section 32G(2), divide any part of the radio spectrum into the number of bands of frequencies it thinks appropriate and specify the general purpose for which each band may be used; (*Amended 17 of 2011 s. 28*)
 - (b) subject to the consultation requirement under section 32G(2), divide a frequency band into the channels it considers appropriate and specify the general purpose for which each channel may be used; (*Amended 17 of 2011 s. 28*)
 - (c) assign the frequencies or bands of frequencies to users of radiocommunications apparatus and specify the purpose for which and the conditions under which the frequencies or bands of frequencies are to be used.
- (3) Subject to subsection (4), the Authority may vary or withdraw frequencies, bands of frequencies or satellite orbital positions or parameters assigned, or vary the purposes for which and the conditions under which the frequencies, bands of frequencies or satellite orbital positions or parameters are to be used.
- (4) The Authority may only exercise its authority under subsection (3) if the Authority has given reasonable notice of the intended variation or withdrawal to the licensee which has been assigned the relevant frequency, band of frequency or satellite orbital position or parameter.
- (5) A person shall not, in Hong Kong or on board any ship, aircraft or space object that is registered or licensed in Hong Kong, use a frequency in any part of the radio spectrum unless the frequency is assigned, or located within a band of frequencies assigned, by the Authority or the use is for the

purpose and in compliance with the conditions specified by the Authority.

- (6) Where an assignment which may be made under subsection (1) relates to the use of spectrum which under section 32I is subject to the payment of spectrum utilization fee—
 - (a) by the user of the spectrum; and
 - (b) the method for determining which is prescribed under section 32I(2)(b),

then the Authority may, in determining applications for the assignment, regard the fees, if any, arising or resulting from that method as a determining factor in relation to those applications. *(Added 12 of 2001 s. 3)*

32I. Spectrum utilization fee

- (1) Subject to the consultation requirement under section 32G(2), the Authority may by order designate the frequency bands in which the use of spectrum is subject to the payment of spectrum utilization fee by the users of the spectrum.
- (2) The Secretary may by regulation prescribe—
 - (a) the level of spectrum utilization fees; or
 - (b) the method for determining the spectrum utilization fees, which may be by—
 - (i) auction or tender or a combination of auction and tender; or
 - (ii) such method as the Secretary thinks fit, including any method combined with a method mentioned in subparagraph (i). *(Replaced 12 of 2001 s. 4)*
- (3) A spectrum utilization fee may be calculated on the basis of a royalty or any other basis that includes an element in excess of the simple recovery of the cost of providing a service by the Authority.

- (4) Without prejudice to the generality of subsections (2) and (3), the power of the Secretary under subsection (2)(b) to make a regulation prescribing a method for determining spectrum utilization fee shall also include the power to make a regulation to provide for all or any of the following—
- (a) empowering the Secretary to specify the minimum fee of the spectrum utilization fee—
- (i) by notice published in the Gazette or otherwise; and
 - (ii) by means of—
 - (A) a minimum fixed fee;
 - (B) a minimum fee determined by reference to a formula or percentage or the occurrence of an event or series of events;
 - (C) a series of 2 or more minimum fees in relation to the same spectrum utilization fee where the relevant minimum fee is determined by reference to the occurrence of an event or series of events;
 - (D) a minimum fee the determination of which varies upon the occurrence of an event or series of events;
 - (E) a minimum fee determined by reference to another minimum fee, or by reference to the means of determining another minimum fee, whether or not the other minimum fee is or will become payable;
 - (F) a minimum fee the determination of which varies, or is calculated by reference to, the period of validity of a licence or any part thereof; or

- (G) any combination of 2 or more of any of the means specified in sub-subparagraph (A), (B), (C), (D), (E) or (F), whether in whole or in part;
- (b) empowering the Authority to—
- (i) promote, hold, conduct, suspend, cancel or conclude an auction or tender to which the method relates;
 - (ii) specify the terms and conditions of an auction or tender to which the method relates by notice published in the Gazette (including terms and conditions relating to the payment of the fee).
(Added 12 of 2001 s. 4)
- (5) Without prejudice to the generality of subsection (4)(b)(ii), the terms and conditions of an auction or tender which may be specified in a notice under that subsection may include terms and conditions relating to all or any of the following—
- (a) subject to paragraph (c), the criteria by which the Authority shall determine whether a person is qualified to participate in the auction or tender;
 - (b) subject to paragraph (c), the criteria by which the Authority shall determine whether 2 or more persons who are qualified by the criteria mentioned in paragraph (a) to participate in the auction or tender are connected, in whatever manner specified in the first-mentioned criteria, for the purposes of the auction or tender;
 - (c) the criteria by which, or the procedure to be followed by which, the Authority shall determine which of the persons connected as mentioned in paragraph (b) is qualified to participate in the auction or tender;
 - (d) a bidder or tenderer (including a prospective bidder or tenderer, or a person acting on behalf of a bidder or

- tenderer or prospective bidder or tenderer) shall lodge with, or otherwise provide to, the Authority security of such type and value as the Authority specifies, whether by notice published in the Gazette or otherwise (which value may be calculated by reference to a percentage of the minimum fee mentioned in subsection (4)(a));
- (e) that a bid or tender may not be withdrawn by the bidder or tenderer except with the consent in writing of the Authority and for a reason specified in the notice;
 - (f) that the Authority may disqualify a bid or tender, or a bidder or tenderer, for a reason specified in the notice;
 - (g) that the Authority—
 - (i) may forfeit to the Government, or otherwise enforce, a security mentioned in paragraph (d) (including any interest earned thereon), whether in whole or in part, for a reason specified in the notice;
 - (ii) subject to subsection (6), may cancel, withdraw or suspend a licence—
 - (A) where section 7(12) applied to the issue of the licence or section 32H(6) applied to the assignment under section 32H(1) of the spectrum to which the licence relates; and
 - (B) for a reason specified in the notice;
 - (iii) may specify requirements which have the purpose or effect of promoting or ensuring that the auction or tender is conducted in a fair, efficient and orderly manner. (*Added 12 of 2001 s. 4*)
- (6) Without prejudice to the generality of any other ground on which the Authority may exercise the power mentioned in subsection (5)(g)(ii), the Authority shall not exercise that

- power pursuant to a complaint alleging that there is a ground for the exercise of the power except such a complaint made—
- (a) by a bidder or tenderer at the auction or tender to which the complaint relates; and
 - (b) to the Authority not later than 3 months after the date on which the outcome of that auction or tender was publicly declared. *(Added 12 of 2001 s. 4)*
- (7) Notwithstanding any other provision of this Ordinance, the Authority shall have all necessary powers to enforce the terms and conditions of an auction or tender which may be specified in a notice under subsection (4)(b)(ii). *(Added 12 of 2001 s. 4)*
- (8) Any spectrum utilization fee paid pursuant to this section shall be paid into the general revenue. *(Added 12 of 2001 s. 4)*
- (9) It is declared that—
- (a) a spectrum utilization fee payable pursuant to this section is a fee payable in addition to any fee prescribed under section 7(2) or 37(1)(g);
 - (b) a complaint which would fall within subsection (6) but for the fact that it is made before the issue of the licence concerned, or before the assignment of the spectrum concerned, shall not of itself prevent the Authority from issuing the licence under section 7(5), or assigning the spectrum under section 32H(1), to the bidder or tenderer against which the complaint is made;
 - (c) a notice mentioned in subsection (4)(a)(i) or (b)(ii) or (5)(d) is not subsidiary legislation. *(Added 12 of 2001 s. 4)*
- (10) A spectrum utilization fee (including any part thereof) owing to the Government shall be recoverable by the Government as a civil debt. *(Added 12 of 2001 s. 4)*

- (11) Without prejudice to the generality of subsection (4)(a), in this section (including subsection (3))—

event (事件) includes a date;

spectrum utilization fee (頻譜使用費) includes a fixed fee, a fee calculated by a formula or a fee ascertained by another method, or any combination thereof. (*Added 12 of 2001 s. 4*)

32J. Interference

- (1) A person shall not knowingly, and without lawful excuse, use an apparatus, whether or not it is an apparatus for telecommunications, in a manner that causes direct or indirect harmful interference with any telecommunications service lawfully carried on, or other apparatus for telecommunications lawfully operated, in or outside Hong Kong.
- (2) The Authority may, by notice in writing, direct a person possessing an apparatus, whether or not it is an apparatus for telecommunications, to take such measures as the Authority specifies and within the time directed to prevent the interference specified in the notice.
- (3) A person who contravenes subsection (1) or fails to comply with the direction in subsection (2) commits an offence and shall be liable on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (4) The Authority may, by order, specify the limits of conducted or radiated interference from any apparatus which is not subject to the licensing requirement under section 8, to prevent harmful interference with telecommunications networks, systems, installations or services.
- (5) The powers of the Authority under Part 5A extend to the apparatus mentioned in subsection (4).
- (6) The Authority may require an apparatus mentioned in subsection (4) to be submitted to the Authority for testing

to verify whether the apparatus complies with the limits specified by the Authority under that subsection.

- (7) A magistrate may, if he is satisfied by information on oath that—
- (a) access to premises, vessel, aircraft or vehicle has been requested; or
 - (b) permission to examine or test any apparatus has been requested,

and in either case has been unreasonably refused, issue a warrant empowering the Authority, or an authorized officer, to enter and search the premises, vehicle, aircraft or vessel specified in the warrant and to examine, test and confiscate any apparatus found on or in the premises, vehicle, aircraft or vessel.

(Amended E.R. 2 of 2012)

32K. Examination, certification and authorization of operating personnel

- (1) The Authority may conduct an examination of the competence of a person in the operation of a particular class of apparatus for radiocommunications.
- (2) The Authority may issue a certificate of competency to a person whom it considers suitably qualified to certify that the person is competent in the operation of a particular class of apparatus for radiocommunications and may revoke the certificate issued if it considers that the person holding the certificate is no longer competent in the operation. *(Amended 17 of 2011 s. 28)*
- (3) A condition of a licence under this Ordinance may require that a particular radiocommunications station or a class of radiocommunications stations must be operated only by

persons with the appropriate authority to operate issued by the Authority.

- (4) The Authority may issue an authority to operate to a person whom it considers fit to authorize that person to hold the position in a particular radiocommunications station or a class of radiocommunications stations. *(Amended 17 of 2011 s. 28)*
- (5) The Authority may suspend or revoke such an authority to operate issued if it considers the person holding the authority to operate is no longer fit to hold the position in the radiocommunications station or class of radiocommunications stations concerned. *(Amended 17 of 2011 s. 28)*
- (6) The Authority may by order provide for the examination of persons in connection with the operation of apparatus for radiocommunications, the issue and revocation of certificates of competency in the operation of apparatus for radiocommunications and the issue, suspension and revocation of authority to operate to hold positions in radiocommunications stations and the fees payable in respect of such examination, certification and authorization.

Part 5C

Appeals Relating to Section 7Q*

(Part 5C added 36 of 2000 s. 17)

Editorial Note:

* *(Amended 30 of 2003 s. 6; 14 of 2012 s. 176 and 18 of 2014 s. 175; 25 of 2012 s. 38)*

32L. Interpretation

In this Part—

appeal (上訴) means an appeal under section 32N(1); *(Amended 30 of 2003 s. 7; 14 of 2012 s. 176)*

Appeal Board (上訴委員會) means the Telecommunications (Competition Provisions) Appeal Board established under section 32M(1);

appeal subject matter (標的事項)—

(a) in relation to an appeal under section 32N(1), means the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1)—

(i) to the extent to which it relates to section 7Q or any licence condition relating to section 7Q; and *(Amended 14 of 2012 s. 176 and 18 of 2014 s. 175; 25 of 2012 s. 39)*

(ii) which is the subject of the appeal;

(b) *(Repealed 14 of 2012 s. 176)*

Chairman (主席) means the Chairman of the Appeal Board appointed under section 32M(2);

Deputy Chairman (副主席) means a Deputy Chairman of the Appeal Board appointed under section 32M(2);

panel member (備選委員) means a member of the panel of persons appointed under section 32M(5).

32M. Establishment and membership of Appeal Board

- (1) There is hereby established an appeal board called in English the “Telecommunications (Competition Provisions) Appeal Board” and in Chinese the “電訊(競爭條文)上訴委員會”.
- (2) Subject to subsections (3) and (4), the Chief Executive shall appoint a person to be the Chairman of the Appeal Board and such other persons as he thinks fit to be Deputy Chairmen of the Appeal Board.
- (3) A person shall not be appointed under subsection (2) unless the person is eligible to be appointed a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4).
- (4) Subject to subsections (7) and (8), the Chairman and a Deputy Chairman shall each be appointed for a term of not more than 2 years but may be reappointed.
- (5) The Chief Executive shall appoint a panel of persons not being public officers whom he considers suitable for appointment under section 32O(1)(a)(ii) as members of the Appeal Board.
- (6) An appointment under subsection (2) or (5) shall be notified in the Gazette.
- (7) The Chairman, a Deputy Chairman or a panel member may at any time resign by notice in writing to the Chief Executive.
- (8) The Chief Executive may revoke the appointment of the Chairman, a Deputy Chairman or a panel member on the ground of incapacity, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Chief Executive.

- (9) The remuneration, if any, of the Chairman, a Deputy Chairman and a panel member shall be paid at a rate that the Financial Secretary determines.

32N. Appeals to Appeal Board

- (1) Any person aggrieved by—
- (a) an opinion, determination, direction or decision of the Authority relating to—
 - (i) section 7Q; or (*Amended 25 of 2012 s. 40*)
 - (ii) any licence condition relating to that section; or
 - (b) any sanction or remedy imposed or to be imposed under this Ordinance by the Authority in consequence of a breach of that section or any such licence condition,
- may appeal to the Appeal Board against the opinion, determination, direction, decision, sanction or remedy, as the case may be, to the extent to which it relates to that section or any such licence condition, as the case may be. (*Amended 14 of 2012 s. 176 and 18 of 2014 s. 175*)
- (1A)-(1C) (*Repealed 14 of 2012 s. 176*)
- (2) Subject to subsection (3), an appeal shall not suspend the operation of the appeal subject matter.
- (3) Where an appeal is made and the appeal subject matter falls within section 36C, then the appeal subject matter shall be suspended in its operation from the day on which the appeal is made until the appeal is determined, withdrawn or abandoned. (*Amended 30 of 2003 s. 8; 14 of 2012 s. 176*)
- (4) A person who wishes to make an appeal shall, not later than 14 days after he knows, or ought reasonably to have known, of the proposed appeal subject matter, lodge a notice of appeal with the Appeal Board.

32O. Procedure and powers of Appeal Board, etc.

- (1) In the hearing of an appeal—
 - (a) the Appeal Board shall consist of—
 - (i) the Chairman or a Deputy Chairman who shall preside at the hearing; and
 - (ii) 2 panel members appointed by the Chairman or Deputy Chairman;
 - (b) every question before the Appeal Board shall be determined by the opinion of the majority of the members hearing the appeal except a question of law which shall be determined by the Chairman or Deputy Chairman and in the case of an equality of votes the Chairman or Deputy Chairman shall have a casting vote;
 - (c) any party shall be entitled to be heard either in person or through a counsel or solicitor, and if any party is a company, through any of its directors or other officers, or if a partnership, through any of its partners;
 - (d) subject to section 32P, the Appeal Board may—
 - (i) subject to subsection (2), receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law;
 - (ii) by notice in writing signed by the Chairman or Deputy Chairman, summon any person—
 - (A) to produce to it any document that is relevant to the appeal and is in his custody or under his control;
 - (B) to appear before it and to give evidence relevant to the appeal;

- (iii) administer oaths and affirmations;
 - (iv) require evidence to be given on oath or affirmation;
 - (v) make an award of such sum, if any, in respect of the costs involved in the appeal as is just and equitable in all the circumstances of the case;
 - (vi) where the Appeal Board is satisfied that it is just and equitable in all the circumstances of the case to do so, require a party to the appeal to pay the costs of the Appeal Board in hearing the appeal;
 - (vii) make an order prohibiting a person from publishing or otherwise disclosing any material the Appeal Board receives;
 - (viii) make an order prohibiting the publication or other disclosure of any material the Appeal Board receives at a sitting, or part of a sitting, which is held in private;
- (e) if the term of appointment of—
- (i) the Chairman or Deputy Chairman; or
 - (ii) any panel member appointed under paragraph (a)(ii),
- expires during the hearing, the Chairman, Deputy Chairman or panel member, as the case may be, may continue to hear the appeal until the appeal is determined.
- (2) Subsection (1)(d)(i) shall not entitle a person to require the Appeal Board to receive and consider any material which had not been submitted to or made available to the Authority at any time before the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1) was formed, made, imposed or to be imposed, as the case may be. (*Amended 30 of 2003 s. 9; 14 of 2012 s. 176*)

- (3) Costs referred to in subsection (1)(d)(vi) are recoverable as a civil debt.
- (4) After hearing an appeal, the Appeal Board shall determine the appeal by upholding, varying or quashing the appeal subject matter and may make such consequential orders as may be necessary.
- (5) Every decision of the Appeal Board under subsection (4) shall be in writing and contain a statement of the reasons for its decision.
- (6) Every sitting of the Appeal Board shall be held in public unless the Appeal Board considers that in the interests of justice a sitting or part of a sitting should not be held in public in which case it may hold the sitting or part of the sitting in private.
- (7) The Chairman may determine any matter of practice or procedure relating to the hearing of appeals where no provision governing such matter is made in this Ordinance or in regulations made thereunder.

32P. Privilege against disclosure

The person making an appeal and the Authority and, if different, any other person summoned under section 32O(1)(d)(ii) shall, for the purposes of the appeal, each have the same privileges in respect of the disclosure of any material as if the proceedings were proceedings before a court of law.

32Q. Appeal Board's decision is final

Subject to section 32R, the determination of an appeal by the Appeal Board or any order as to costs made by the Appeal Board shall be final.

32R. Case may be stated for Court of Appeal

- (1) The Appeal Board may refer any question of law arising in an appeal to the Court of Appeal for determination by way of case stated.
- (2) On the hearing of the case, the Court of Appeal may—
 - (a) determine the question stated; or
 - (b) remit the case to the Appeal Board, in whole or in part, for reconsideration in the light of the Court's determination.
- (3) Where a case is stated under subsection (1), the Appeal Board shall not determine the relevant appeal before the Court of Appeal determines the relevant point of law.

32S. Offences relating to appeals, etc.

- (1) In relation to an appeal, any person who, without reasonable excuse, refuses or fails—
 - (a) to attend and give evidence when required to do so by the Appeal Board;
 - (b) to answer truthfully and completely questions put to him by the Appeal Board; or
 - (c) to produce any document which he is required by the Appeal Board to produce,commits an offence and is liable on summary conviction to a fine at level 4.
- (2) Any person who publishes or otherwise discloses any material in contravention of—
 - (a) an order under section 32O(1)(d)(vii); or
 - (b) subject to subsection (3), an order under section 32O(1)(d)(viii),commits an offence and is liable on summary conviction to a fine at level 4.

- (3) It shall be a defence for a person charged with an offence under subsection (2)(b) to prove that he did not know and had no reason for knowing that the Appeal Board had made an order under section 32O(1)(d)(viii) prohibiting the publication or other disclosure of the material concerned.

32T. Immunity

- (1) The Chairman, a Deputy Chairman and a panel member have, in the performance of their duties under this Part, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.
- (2) A witness before the Appeal Board shall be entitled to the same privileges and immunities as if he were a witness in civil proceedings in the Court of First Instance.

32U. Rules

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

The Secretary for Commerce and Economic Development may make rules— (*Amended L.N. 106 of 2002; L.N. 130 of 2007*)

- (a) to provide for the lodging of appeals;
- (b) relating to the practice and procedure of the Appeal Board.
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Part 6

Supplementary and Miscellaneous

33. Orders for interception of messages for provision of facilities

- (1) For the purpose of providing or making available facilities reasonably required for—
 - (a) the detection or discovery of any telecommunications service provided in contravention of any provision of this Ordinance or any regulation made under this Ordinance or any of the terms or conditions of a licence granted under this Ordinance; or
 - (b) the execution of prescribed authorizations for telecommunications interception that may from time to time be issued or renewed under the Interception of Communications and Surveillance Ordinance (Cap. 589),
the Chief Executive may order that any class of messages shall be intercepted.
- (2) An order under subsection (1) shall not of itself authorize the obtaining of the contents of any individual message.
- (2A) If an order has been made under subsection (1)(b), no investigation may be initiated in relation to any matter relating to the compliance with the order otherwise than pursuant to a request by the Chief Executive and in accordance with any conditions the Chief Executive may have imposed in the request. (*Added 17 of 2011 s. 24*)
- (3) In this section—
contents (内容), in relation to any message, has the meaning assigned to it in section 2(6) of the Interception of

Communications and Surveillance Ordinance (Cap. 589) in relation to a communication referred to in that section;

prescribed authorization (訂明授權) has the meaning assigned to it in section 2(1) of the Interception of Communications and Surveillance Ordinance (Cap. 589);

telecommunications interception (電訊截取) has the meaning assigned to it in section 2(1) of the Interception of Communications and Surveillance Ordinance (Cap. 589).

(Replaced 20 of 2006 s. 68)

34. General provisions as to licences, etc.

- (1) *(Repealed 36 of 2000 s. 18)*
- (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 section 7(8) or 7A, 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 section 7(8) or 7A. *(Added 38 of 1993 s. 6. Amended 36 of 2000 s. 18)*
- (2)-(3) *(Repealed 36 of 2000 s. 18)*
- (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.

- (4A) The Authority shall not exercise a power under subsection (4) unless the exercise of the power is, in all the circumstances of the case, proportionate and reasonable in relation to the contravention concerned referred to in that subsection giving rise to the exercise of the power. *(Added 36 of 2000 s. 18)*
- (4B) Where the Authority proposes to exercise a power under subsection (4), it shall give the licensee or other person concerned a reasonable opportunity to make representations and shall consider all representations made before it decides whether or not to exercise that power in the case of the licensee or other person, as the case may be. *(Added 36 of 2000 s. 18. Amended 17 of 2011 s. 28)*
- (4C) Where the Authority exercises a power under subsection (4), it shall provide reasons in writing for the exercise of the power to the licensee or other person concerned. *(Added 36 of 2000 s. 18. Amended 17 of 2011 s. 28)*
- (4D) Where the Chief Executive in Council or the Authority proposes to exercise a power under subsection (4), the Chief Executive in Council or the Authority shall not consider— *(Amended 17 of 2011 s. 28)*
- (a) any fee (including any spectrum utilization fee under section 32I) or other sum paid in respect of or under or in relation to any licence, permit, permission or consent granted under this Ordinance;
 - (b) any representations mentioned in subsection (4B) to the extent to which they fall within paragraph (a);
 - (c) the operation of subsection (5) if that power is exercised,

and subsection (4A) shall be construed accordingly. (*Added 12 of 2001 s. 5*)

- (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, including any spectrum utilization fee paid pursuant to section 32I. (*Amended 12 of 2001 s. 5*)
- (6) Nothing in this section applies in respect of a licence—
 - (a) granted under Part 3A; or
 - (b) deemed to be granted under this Ordinance by virtue of Schedule 8 to the Broadcasting Ordinance (Cap. 562). (*Replaced 48 of 2000 s. 44*)
- (7) In the exercise of the power under subsection (4) by the relevant authority to cancel, withdraw or suspend a licence, permit, permission or consent granted under this Ordinance, the authority may cancel, withdraw or suspend (at such times and for such period as the authority determines) any part of the licence, permit, permission or consent without affecting the validity of the remaining part of the licence, permit, permission or consent. (*Added 36 of 2000 s. 18*)

(Amended E.R. 2 of 2012)

35. Power of Authority

- (1) The Authority, or any public officer authorized in writing in that behalf by the Authority, may—
 - (a) arrest any person whom the Authority or public officer reasonably suspects of being guilty of an offence under this Ordinance;
 - (b) subject to subsection (2), enter and search any place, or board and search any vessel (other than a ship of war)

- or any aircraft (other than a military aircraft) or search any vehicle, in which the Authority or public officer reasonably suspects that there is anything liable to seizure under paragraph (c);
- (c) seize, remove and detain—
- (i) anything in respect of which the Authority or public officer reasonably suspects that an offence under this Ordinance has been committed;
 - (ii) anything that appears to the Authority or public officer to be or to be likely to be, or to contain, evidence of an offence under this Ordinance;
- (d) enter and inspect the premises at or from which any person manufactures, sells or otherwise deals in apparatus that may be used for telecommunications and require the production to the Authority or public officer of any books or documents relating to such apparatus.
(Amended 36 of 2000 s. 28)
- (2) Where he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises used for dwelling purposes anything that is liable to seizure under subsection (1)(c), a magistrate may issue his warrant authorizing such premises to be entered and searched by the Authority or any other public officer, and no premises used for dwelling purposes shall be entered or searched under this Ordinance except pursuant to the warrant of a magistrate issued under this subsection.
- (3) The Authority or any public officer may—
- (a) break open any outer or inner door of any place that the Authority or public officer is empowered or authorized by or under this Ordinance to enter and search;

- (b) forcibly board any vessel, aircraft or vehicle that the Authority or public officer is empowered by this Ordinance to board and search;
- (c) remove by force any person or thing obstructing any arrest, detention, search, inspection, seizure or removal that the Authority or public officer is empowered by this Ordinance to make;
- (d) detain any person found in any place that the Authority or public officer is empowered or authorized by or under this Ordinance to search until such place has been searched;
- (e) detain any vessel or aircraft that the Authority or public officer is empowered by this Ordinance to board and search, and prevent any person from approaching or boarding such vessel or aircraft, until it has been searched;
- (f) detain any vehicle that the Authority or public officer is empowered by the Ordinance to search until it has been searched.

(Amended 17 of 2011 s. 28)

35A. Inspection of records, documents and accounts

- (1) The Authority or a person whom it authorizes in writing may at all reasonable times enter the premises of a licensee and inspect and make copies of, or make or take an abstract of or extract from, a document or an account relating to a telecommunications network, system, installation or service conducted by the licensee for the purposes of the Authority performing its functions, or exercising its powers, under this Ordinance in order to ensure the licensee's compliance with the provisions of this Ordinance, licence conditions, and the

determinations and directions of the Authority, applicable to the licensee. *(Amended 17 of 2011 s. 28)*

- (2) The Authority or an authorized person in exercising the powers of the Authority or authorized person under this section may require a licensee to produce to the Authority or authorized person the document or account. *(Amended 17 of 2011 s. 28)*
- (3) To enable the Authority or an authorized person to exercise the powers of the Authority or authorized person under this section, a licensee shall give the Authority or authorized person access to the documents or accounts the Authority or authorized person may reasonably require for inspection, and shall produce to the Authority or authorized person the documents or accounts as the Authority or authorized person may reasonably require. *(Amended 17 of 2011 s. 28)*
- (4) A document or account includes information recorded by electronic or other means and the licensee's requirement to provide access to documents and accounts includes a requirement to provide the appropriate system for reading and reducing the information into a written form on paper.
- (5) Where—
 - (a) a copy of a document or an account is supplied by a person under this section; or
 - (b) a copy of a document or an account is made under this section, and a facility of a person other than the Authority is used to make the copy,the Authority shall reimburse the expenses which, in the opinion of the Authority, have been reasonably incurred by the person in making the copy.
- (6) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and shall be liable on

conviction to a fine at level 6 and to imprisonment for 6 months.

- (7) A person who, without reasonable excuse, in purported compliance with a requirement made under this section, produces a document or an account, or gives information, which he knows to be false or misleading in a material particular commits an offence and shall be liable on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (8) The Authority shall not disclose any document or account produced under this section except subject to the requirement in subsection (9) and if the Authority considers that it is in the public interest to disclose that document or account, as the case may be.
- (9) The Authority shall give a licensee producing any document or account under this section a reasonable opportunity to make representations on a proposed disclosure of the document or account, as the case may be, and shall consider all representations made before the Authority makes a final decision to disclose the document or account, as the case may be, if the Authority considers that the disclosure—
 - (a) would result in the release of information concerning the business, commercial or financial affairs of the licensee; and
 - (b) could reasonably be expected to affect adversely the licensee's lawful business, commercial or financial affairs.
- (10) For the avoidance of doubt, it is hereby declared that where a person produces a document or account under this section notwithstanding that the document or account is the subject of a confidentiality agreement with another person that prevents the first-mentioned person from releasing the document or

account, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the production of that document or account, as the case may be, contrary to that agreement.

- (11) Nothing in this section shall require a person to produce any document or account which the person could not be compelled to produce in civil proceedings before the Court of First Instance.

(Added 36 of 2000 s. 19)

35B. Universal service obligation

- (1) The Authority may require that one or more fixed carrier licensees have a universal service obligation.
- (2) A universal service obligation requires a licensee to ensure that a good, efficient and continuous basic service is, in the Authority's opinion, reasonably available to all persons within the areas of Hong Kong covered by that obligation.
- (3) The Authority may establish a system for licensees prescribed by the Authority to meet a reasonable contribution to the cost of providing the universal service obligation and managing the fund established under subsection (4).
- (4) The Authority may establish and manage a fund for the purpose of holding the contributions under subsection (3) prior to payment to the carrier licensee with the obligation.
- (5) The Authority may—
 - (a) recover the cost of the management of the fund established under subsection (4);
 - (b) delegate the management of the fund to any person and prescribe the requirements for the management of the fund.

(Added 36 of 2000 s. 19)

36. Forfeiture

A magistrate or the court may, upon application by or on behalf of the Authority or by any public officer, order that any apparatus in respect of which there has been a contravention or attempted contravention of this Ordinance shall be forfeited to the Crown, whether or not proceedings have been taken against any person in respect of the contravention or attempted contravention.

36A. Authority may determine terms of interconnection

- (1) The Authority may determine the terms and conditions of interconnection of the type mentioned in subsection (3D). *(Replaced 36 of 2000 s. 20)*
- (2) The Authority may make a determination on the request of a party to the interconnection or, in the absence of a request, if it considers it is in the interest of the public to do so. *(Replaced 36 of 2000 s. 20. Amended 17 of 2011 s. 28)*
- (3) The terms and conditions in a determination may include any technical, commercial and financial terms and conditions that the Authority considers fair and reasonable. *(Replaced 36 of 2000 s. 20)*
- (3A) Without limiting the general nature of subsection (3), the terms and conditions in a determination may include—
 - (a) the level of, and the method of calculating, the charges that any party will pay to another;
 - (b) the points at which interconnection is to be made;
 - (c) the technical standards for interconnection;
 - (d) the supply by any party to another of any element of a telecommunications network, system or installation;
 - (e) the supply by any party to another of any telecommunications or ancillary service;

- (f) the supply by any party to another of any information necessary for the efficient planning and handling of services through the interconnection;
 - (g) the sharing of facilities referred to in section 36AA.
(Added 36 of 2000 s. 20)
- (3B) The charges in a determination shall be based on the relevant reasonable costs attributable to interconnection and, in determining the level, or method of calculation, of the relevant reasonable costs attributable to interconnection, the Authority may select from among alternative costing methods what it considers to be a fair and reasonable costing method.
(Added 36 of 2000 s. 20. Amended 17 of 2011 s. 28)
- (3C) The terms and conditions in a determination—
- (a) are deemed to be of the essence of any agreement for the interconnection to which the determination is made unless the Authority otherwise directs for any particular term or condition; and
 - (b) override a different intention arising from the provisions of the agreement. *(Added 36 of 2000 s. 20)*
- (3D) The type of interconnection includes an arrangement among 2 or more parties for—
- (a) interconnection to and between telecommunications systems or services including—
 - (i) those licensed under section 7, expressed as being licensed under section 7 or 34 or deemed licensed by the Chief Executive in Council under this Ordinance under section 8(3) of the Television Ordinance (Cap. 52);
 - (ii) those of a description mentioned in section 8(4)(e) and (f);

- (iii) telecommunications services that are the subject of an order made under section 39;
- (b) access to, or interconnection with, any element of a telecommunications network, system, installation or service on an unbundled basis at any point that is technically feasible;
- (c) the supply of a telecommunications service in connection with paragraph (a) or (b). (*Added 36 of 2000 s. 20*)
- (3E) In this section—
- element** (元件) means any cable, component, unit, equipment, hardware or software used to provide a telecommunications service and includes the facilities referred to in section 36AA;
- interconnection** (互連) means any connection between systems or services or elements of systems or services for the delivery of any communication, message or signal over the connection and, without limiting the generality of the foregoing, includes interconnection to a system, to a service, between systems, between services and between a system and a service;
- service** (服務) includes elements of a service;
- system** (系統) includes elements of a system. (*Added 36 of 2000 s. 20*)
- (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 (3D) have been afforded reasonable opportunity to make representations to it as to why a determination should not be made and the Authority has considered representations made before it decides whether or not to make such a determination. (*Amended 36 of 2000 s. 20; 17 of 2011 s. 28*)

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- (5) Written notice of a determination, or of the completion or adjournment of a determination process commenced, under subsection (1) shall be served personally or by registered post on the parties to the arrangement for interconnection or, in the absence of a concluded arrangement, the parties who in the Authority's opinion would have been parties to the interconnection arrangement had it been concluded. *(Replaced 36 of 2000 s. 20)*
- (5A) Subject to subsection (5B), parties to an interconnection agreement shall ensure a copy of the agreement is filed with the Authority within 14 days of it being made. *(Added 36 of 2000 s. 20)*
- (5B) The obligation to file a copy of an interconnection agreement under subsection (5A) may be waived by the Authority in relation to a particular interconnection agreement or interconnection agreements of a certain kind. *(Added 36 of 2000 s. 20)*
- (5C) The Authority may publish all or any part of an interconnection agreement if it— *(Amended 17 of 2011 s. 28)*
- (a) considers it is in the interest of the public to do so;
 - (b) has first given the parties an opportunity to make representations on which parts of the interconnection agreement should not be published; and
 - (c) has considered such representations received within the time specified by it. *(Added 36 of 2000 s. 20. Amended 17 of 2011 s. 28)*
- (5D) A determination takes effect even though it is under review unless stayed by a court of competent jurisdiction. *(Added 36 of 2000 s. 20)*
- (6) The amount of any costs or expenses incurred, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Office of the Communications

Authority Trading Fund in respect of a determination or determination process under subsection (1) is a debt due to the Government, and is on service of a notice under subsection (5), recoverable from a person on whom notice has been served. *(Replaced 36 of 2000 s. 20. Amended 17 of 2011 s. 28)*

- (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) *(Repealed 36 of 2000 s. 20)*
- (9) The Authority may, after consultation with the parties to an interconnection agreement, issue codes of practice—
- (a) relating to the efficient and reliable provision of interconnection; and
 - (b) which shall be observed by the parties. *(Added 36 of 2000 s. 20)*
- (10) In making a determination under subsection (1), the Authority shall give regard to—
- (a) the Government's policy objectives for the telecommunications industry;
 - (b) consumer interests;
 - (c) encouraging efficient investment in telecommunications infrastructure;
 - (d) the nature and extent of competition among the parties to the interconnection concerned and their respective abilities to compete with each other fairly; and

- (e) such other matters as the Authority considers appropriate in the particular circumstances of the case. *(Added 36 of 2000 s. 20)*

(Added 38 of 1993 s. 7)

36AA. Sharing of use of facilities

- (1) The Authority may direct a licensee to coordinate and cooperate with another licensee specified by the Authority in the public interest to share the use of any facility owned or used by it.
- (2) Prior to issuing a direction in the public interest under subsection (1), the Authority shall provide a reasonable opportunity for the licensee, and any other interested party, to make representations on the matter and shall give consideration to all representations made before it decides whether or not to issue the direction. *(Amended 17 of 2011 s. 28)*
- (3) In considering a direction in the public interest to share a facility, the Authority shall take into account relevant matters including, but not limited to—
- (a) whether the facility is a bottleneck facility;
 - (b) whether the facility can be reasonably duplicated or substituted;
 - (c) the existence of technical alternatives;
 - (d) whether the facility is critical to the supply of service by the licensees;
 - (e) whether the facility has available capacity having regard to the current and reasonable future needs of the licensee or person to whom the facility belongs;
 - (f) whether joint use of the facility encourages the effective and efficient use of telecommunications infrastructure;

- (g) the costs, time, penalties and inconvenience to the licensees and the public of the alternatives to shared provision and use of the facility.
- (4) Where another licensee reasonably requests to share a facility, the licensee shall endeavour to come to an agreement with the requesting party on the conditions, including but not limited to providing for fair compensation to the licensee for the provision, use or sharing of the facility.
- (5) A shared facility may include a building, place or premises that is exclusively occupied and operated by one of the parties to the sharing agreement.
- (6) If the parties do not reach an agreement within a reasonable time, and the Authority requires shared use of the facility, then—
- (a) the Authority may determine the terms and conditions for the shared use of the facility;
 - (b) the determination under paragraph (a) shall include terms and conditions providing for fair and reasonable compensation payable in all the circumstances of the case for the shared use of the facility;
 - (c) the compensation referred to in paragraph (b) shall include the relevant reasonable costs attributable to the provision, use or sharing of the facility;
 - (d) to calculate the costs referred to in paragraph (c), the Authority may select from alternative costing methods what it considers to be a fair and reasonable costing method. (*Amended 17 of 2011 s. 28*)
- (7) For the purposes of this section **facility** (設施) includes—
- (a) a cable, wire, telecommunications line, duct, pit, tunnel and manhole;
 - (b) a tower, mast, pole and antenna;

- (c) land, buildings and ancillary equipment at sites on which radiocommunications facilities have been established;
- (d) reasonable space within a carrier licensee's exchange buildings or other sites to locate equipment of another licensee required to establish interconnection between the licensee's and that other licensee's network at the exchange or sites;
- (e) other installations, including but not limited to in-building risers, cable trays and cable entry points into buildings, reasonably necessary for the efficient provision of a telecommunications network; and
- (f) services incidental to the building, place and premises in which the facility is situated that are reasonably necessary or incidental to the efficient operation by all parties to the sharing of the facility.

(Added 36 of 2000 s. 21)

36B. Directions by Authority

- (1) Subject to subsection (2), the Authority may issue directions in writing—
 - (a) to a licensee requiring it to take such action as the Authority considers necessary in order for the licensee to—
 - (i) comply with any of the terms or conditions of its licence; or
 - (ii) comply with any provision of this Ordinance or any regulation made thereunder; or
 - (iii) in relation to any interconnection of the type mentioned in section 36A(3D), secure the connection of any telecommunications service

being the subject of its licence to— (*Amended 36 of 2000 ss. 22 & 28*)

- (A) any other telecommunications service being the subject of a licence granted under this Ordinance or of an order made under section 39; or (*Amended 36 of 2000 s. 28*)
 - (B) a system of the description mentioned in section 8(4)(e); or
 - (C) a closed circuit television system of the description mentioned in section 8(4)(f); and (*Amended 40 of 1995 s. 9*)
 - (D) (*Repealed 40 of 1995 s. 9*)
- (b) to any person being the operator of—
- (i) a system of the description mentioned in section 8(4)(e); or
 - (ii) a closed circuit television system of the description mentioned in section 8(4)(f); or
 - (iii) a telecommunications service being the subject of an order under section 39, (*Amended 36 of 2000 s. 28*)

requiring that person to take such action as the Authority considers necessary in order to secure, in relation to any interconnection of the type mentioned in section 36A(3D), the connection of any such system, closed circuit television system or telecommunications service to— (*Amended 36 of 2000 ss. 22 & 28*)

- (A) any telecommunications service provided by a licensee under this Ordinance; or (*Amended 36 of 2000 s. 28*)
- (B) any other system of the description mentioned in section 8(4)(e); or

- (C) any other closed circuit television system of the description mentioned in section 8(4)(f); or
- (D) any other telecommunications service being the subject of an order made under section 39, *(Amended 40 of 1995 s. 9; 36 of 2000 s. 28)*
- (E) *(Repealed 40 of 1995 s. 9)*

and the licensee or such person shall give effect to such direction.

- (2) No direction shall be so issued under subsection (1)(a)(iii) or (b), unless the Authority is satisfied that the licensee or such person has been afforded reasonable opportunity to make representations to the Authority.

(Added 38 of 1993 s. 7)

36C. Authority or court may impose financial penalties

- (1) The Authority may, by notice in writing addressed to a licensee, require the licensee to pay to the Government the financial penalty specified in such notice in any case where the licensee fails to comply with—
 - (a) any licence condition;
 - (b) any provision of this Ordinance or any regulation made thereunder; or
 - (c) any direction issued in respect of the licensee by the Authority under section 36AA(1) or 36B(1)(a). *(Amended 36 of 2000 s. 23)*
- (2) The Authority may, by notice in writing to any person of the description mentioned in section 36B(1)(b), require that person to pay to the Government the financial penalty specified in such notice in any case where that person fails to comply with the requirement of any direction issued in

respect of that person by the Authority under that section.
(*Amended 36 of 2000 s. 23*)

- (3) A financial penalty imposed under subsection (1) or (2) shall not exceed—
- (a) \$200,000 for the first occasion on which a penalty is so imposed;
 - (b) \$500,000 for the second occasion on which a penalty is so imposed; and
 - (c) \$1,000,000 for any subsequent occasion on which a penalty is so imposed. (*Amended 36 of 2000 s. 23*)
- (3A) Without prejudice to subsections (3) and (3B), the Authority may, by notice to a licensee who has committed a breach of a licence condition or provision in this Ordinance or regulation made thereunder, or a breach of a direction, require the licensee—
- (a) to disclose to the public, to a particular person or to a class of persons, in such manner as is specified in the notice, such information, or information of such a kind, as is so specified, being information that relates to the breach and is in the possession of the licensee or to which the licensee has access;
 - (b) to publish, at its own expense, in newspapers corrective advertisements in such manner, at such times and on such terms as are specified in the notice and for this purpose, the Authority may specify among other things the newspapers in which the advertisements shall be published, the languages that shall be used, the days on which the advertisements shall be published, the content of the advertisements and the size and prominence of the advertisements in the newspapers. (*Added 36 of 2000 s. 23*)

- (3B) Where the Authority considers that if it were to impose a financial penalty under subsection (3) it would not be adequate for a breach referred to in subsection (1)— (*Amended 17 of 2011 s. 28*)
- (a) the Authority may—
- (i) within 3 years of the commission of the breach; or
- (ii) if the breach comes to the notice of the Authority within 3 years of its commission, within 3 years of it so coming to the notice of the Authority,
- whichever is the later, make an application to the Court of First Instance; and
- (b) upon such application, the Court of First Instance may, without prejudice to any powers conferred on the Authority by any provision of this Ordinance or any regulation made thereunder or any licence condition, impose upon the licensee who has committed the breach a financial penalty of a sum not exceeding 10% of the turnover of the licensee in the relevant telecommunications market in the period of the breach, or \$10,000,000, whichever is the higher. (*Added 36 of 2000 s. 23*)
- (4) The Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty. (*Replaced 36 of 2000 s. 23*)
- (5) Subsection (1), (2) or (3A) shall not apply in the case of the licensee or person concerned unless the Authority is satisfied that the licensee or person, as the case may be, has been afforded a reasonable opportunity of complying with the requirement of any licence condition, provision of this Ordinance or regulation made thereunder, or direction, in

respect of which that subsection is sought to be applied.
(*Replaced 36 of 2000 s. 23*)

(5A) A financial penalty imposed under this section shall be recoverable as a civil debt due and payable to the Government. (*Added 36 of 2000 s. 23*)

(6) The imposition of a financial penalty under this section, in relation to a licence, shall not be construed as affecting the application of section 34(4).

(7) The Authority shall, before imposing a sanction under this section on a licensee or person concerned, afford the licensee or person concerned, as the case may be, a reasonable opportunity to make representations and shall consider all representations made before the Authority decides whether or not to impose such sanction. (*Added 36 of 2000 s. 23*)

(*Added 38 of 1993 s. 7*)

36D. Authority may obtain information

(1) If the Authority is satisfied that there are reasonable grounds for believing that a person, other than a licensee, is, or is likely to be, in possession of information or a document that is relevant to the Authority's investigation of a breach or suspected breach of a provision of this Ordinance, or of a determination or direction of the Authority or of a licence condition, the Authority may serve a notice in writing on the person—

(a) requesting the person to—

(i) give the information or document in writing to the Authority; or

(ii) produce the document to the Authority,

- as the case requires, before a date (*the relevant date*) specified in the notice, being a date reasonable in all the circumstances of the case;
- (b) stating that if the person is of the view that he cannot, or does not wish to, comply with the request, then he may make representations in writing to the Authority as to why he is of that view before the relevant date; and
 - (c) accompanied by a copy of this section in the Chinese and English languages.
- (2) Where the Authority receives representations referred to in subsection (1)(b) from a person, the Authority shall—
- (a) consider them; and
 - (b) serve a notice in writing on the person stating that the Authority has considered the representations and that—
 - (i) the notice under subsection (1) served on the person is withdrawn with effect from the date of service of the notice under this subsection; or
 - (ii) the notice under subsection (1) served on the person remains in force and the Authority will on a date specified in the notice under this subsection seek an order under subsection (3) unless the person has, before that date, complied with the notice under subsection (1) served on the person.
- (3) Where a notice under subsection (1) served on a person has not been withdrawn under subsection (2)(b)(i) and the person has not complied with the notice before the relevant date, or before the date specified in the notice under subsection (2) served on the person, as the case requires, then a magistrate may—
- (a) if satisfied by information on oath that there are reasonable grounds for believing that the person is, or

is likely to be, in possession of the information or a document to which the first-mentioned notice relates and that the information or document is relevant to the Authority's investigation of a breach or suspected breach of a provision of this Ordinance, or of a determination or direction of the Authority or of a licence condition; and

- (b) after considering the representations, if any, referred to in subsection (1)(b) received by the Authority in consequence of the service of the notice,

issue an order that the person shall, within the time specified in the order, give the information or document in writing to the Authority or produce the document to the Authority, as the case requires.

- (4) Any information or document to be given or produced to the Authority by a person in compliance with a notice under subsection (1) or an order under subsection (3) shall be so given or produced by reference to the information or document at the time of service of that notice except that the information or document may take account of any processing—
- (a) made between that time and the time when the information or document is so given or produced; and
- (b) that would have been made irrespective of the service of that notice.
- (5) The Authority shall not disclose any information or document given or produced to it under this section except subject to the requirement in subsection (6) and if the Authority considers that it is in the public interest to disclose that information or document, as the case may be. (*Amended 17 of 2011 s. 28*)
- (6) The Authority shall give a person giving or producing any information or document under this section a reasonable

opportunity to make representations on a proposed disclosure of the information or document, as the case may be, and shall consider all representations made before the Authority makes a final decision to disclose the information or document, as the case may be.

- (7) For the avoidance of doubt, it is hereby declared that where a person gives or produces any information or document under this section notwithstanding that the information or document is the subject of a confidentiality agreement with another person that prevents the first-mentioned person from releasing the information or document, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the giving or production of that information or document, as the case may be, contrary to that agreement.
- (8) Nothing in this section shall require a person to give any information or document, or to produce any document, which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance.
- (9) A person commits an offence if he, without reasonable excuse—
- (a) fails to comply with an order under subsection (3);
 - (b) fails to comply with subsection (4); or
 - (c) in purported compliance with a notice under subsection (1) or an order under subsection (3), knowingly gives information that is false or misleading,
- and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (10) In this section, *processing* (處理), in relation to any information or document, includes amending, augmenting, deleting or rearranging all or any part of the information or document, whether by automated means or otherwise.

(Added 36 of 2000 s. 24)

37. Regulations

- (1) The Governor in Council may by regulation provide for—
- (a) the control and conduct of means of telecommunications;
(Amended 36 of 2000 s. 28)
 - (b) the operation and use of apparatus for telecommunications or apparatus that generates and emits radio waves; *(Amended 36 of 2000 s. 28)*
 - (c) the prohibition and control of electrical or radiated interference with the working of apparatus for telecommunications; *(Amended 36 of 2000 s. 28)*
 - (d) the conditions and restrictions subject to which messages may be transmitted or received;
 - (e) the period for which, and the conditions subject to which, messages and other documents connected with a telecommunications service shall be preserved;
(Amended 36 of 2000 s. 28)
 - (f) fees for searching for messages or other documents connected with a telecommunications service; *(Amended 36 of 2000 s. 28)*
 - (g) the licences and permits that may be granted by the Authority and the fees payable on the grant or renewal of any such licences or permits;
 - (ga) in relation to a licence granted under this Ordinance by the Governor in Council—
 - (i) the control to be exercised over; or
 - (ii) the beneficial ownership or control of any of the voting shares in,
the licensee by any other person; *(Added 38 of 1993 s. 8)*

- (gb) in relation to a licence, permit, permission or consent granted under this Ordinance by the Authority—
- (i) the control to be exercised over; or
 - (ii) the beneficial ownership or control of any of the voting shares in,
the licensee by any other person; *(Added 38 of 1993 s. 8)*
- (h)-(i) *(Repealed 36 of 2000 s. 25)*
- (2) Regulations made under this section may provide that contravention of specified provisions of such regulations shall be an offence and may provide penalties therefor:
Provided that no penalty so provided shall exceed a fine at level 4 and imprisonment for 12 months. *(Amended 18 of 1994 s. 15)*
- (3) Regulations made under subsection (1)(c) may—
- (a) constitute the Authority as the sole authority for the making of tests and measurements in respect of electrical or radiated interference;
 - (b) confer upon the Authority the power to determine the measuring apparatus to be used, the method by which and the conditions under which tests are to be made and the manner to be used in computing the amount of any such interference from readings afforded by the measuring apparatus;
 - (c) in respect of any specified class or classes of apparatus confer upon the Authority, with or without restriction, the power to fix, in such manner as may be specified in the regulations, the limits of any such interference at any frequency or within any frequency range, whether in substitution for or by way of amendment of limits, frequencies or frequency ranges specified in any

regulations made under that paragraph, or otherwise; and

- (d) provide for the issue by magistrates of warrants empowering the Authority, or any public officer authorized in writing in that behalf by the Authority, to enter and search any premises, vessel, aircraft or vehicle and to examine and test any apparatus found thereon or therein in cases where access to such premises, vessel, aircraft or vehicle has been demanded, or permission to examine or test any such apparatus has been requested, but in either case has been unreasonably refused. (*Added 26 of 1966 s. 3*)
- (4) For the purposes of regulations made under subsection (1)(ga) or (gb), **voting shares** (有表決權股份) means shares in the licensee which entitle the registered owner of such shares to vote at meetings of shareholders of the licensee. (*Added 38 of 1993 s. 8*)

(*Amended E.R. 2 of 2012*)

38. (*Repealed 69 of 1983 s. 5*)

39. Exemption

- (1) The Governor in Council may by order exempt any person or any class of persons from this Ordinance or from such of the provisions thereof as he thinks fit.
- (2) Without derogation from the provisions of section 40 of the Interpretation and General Clauses Ordinance (Cap. 1) an order under this section may provide that it shall be a condition of any exemption granted thereunder that the person or class of persons to whom it is granted shall not directly or indirectly fix, levy or make payable, any charge for any service, facility or circuit in respect of which the exemption is made greater than such charge as may, from time to time, be

specified by the Authority by order in the Gazette. (*Added 69 of 1983 s. 6. Amended 36 of 2000 s. 28*)

39A. Remedies

- (1) A person sustaining loss or damage from a breach of section 7Q, or a breach of a licence condition, determination or direction relating to that section, may bring an action for damages, an injunction or other appropriate remedy, order or relief against the person who is in breach. (*Amended 14 of 2012 s. 176 and 18 of 2014 s. 175; 25 of 2012 s. 41*)
- (2) No action may be brought under subsection (1) more than 3 years after—
 - (a) the commission of the breach concerned referred to in that subsection; or
 - (b) the imposition of a penalty in relation to the breach by the Authority under section 36C, or, as the case may be, by the Court of First Instance under section 36C(3B),
whichever is the later.

(Added 36 of 2000 s. 26)

39B. (*Repealed 17 of 2011 s. 28*)

40. Transitional provisions

- (1) Any licence granted under the repealed Telecommunication Ordinance (18 of 1936) by the Governor in Council that is in force at the commencement of this Ordinance shall be deemed to have been granted by the Governor in Council under and in accordance with this Ordinance.
- (2) Any telecommunications line or post lawfully placed and maintained in, over or upon any land under the repealed Telecommunication Ordinance (18 of 1936) at the commencement of this Ordinance shall be deemed to be

placed and maintained in, over or upon the said land under and in accordance with this Ordinance. (*Amended 36 of 2000 s. 28*)

41. Validation

For the avoidance of doubt, it is declared that where at any time before the commencement of the Telecommunication (Amendment) Ordinance 1982 (57 of 1982) the Telecommunications Authority granted any licence in purported exercise of its powers under section 7 relating to a broadcast relay station or closed circuit television, such grant shall not be invalid by reason only that any such licence was not at that time a licence specified in the second column of Schedule 1 to the Telecommunications Regulations (Cap. 106 sub. leg. A).

(Added 57 of 1982 s. 2. Amended 36 of 2000 s. 28; 17 of 2011 s. 28; E.R. 2 of 2012)

42. Transitional

In a licence issued, granted or renewed under this Ordinance before the commencement date* of the Communications Authority Ordinance (Cap. 616), any condition providing for the payment of the licence fee to the Government is to be construed as a condition providing for the payment of the licence fee to the Authority.

(Added 17 of 2011 s. 28)

Editorial Note:

* Commencement date : 1 April 2012.

43. Transitional provisions—Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012

(1) In this section—

amending Ordinance (《修訂條例》) means the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (25 of 2012);

Appeal Board (上訴委員會) has the meaning given by section 32L of the pre-amended Ordinance;

appeal subject matter (標的事項) has the meaning given by section 32L of the pre-amended Ordinance;

***commencement date** (生效日期) means the date on which Division 2 of Part 5 of the amending Ordinance comes into operation;

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement date.

- (2) Any conduct of a licensee that—
- (a) was engaged in, or was in part engaged in, before the commencement date; and
 - (b) but for the enactment of the amending Ordinance would be covered by section 7M of the pre-amended Ordinance,

may be investigated under this Ordinance on or after the commencement date, and the provisions of this Ordinance apply in relation to that investigation as if the amending Ordinance had not been enacted.

- (3) Any investigation of any conduct referred to in subsection (2) initiated before the commencement date under the pre-amended Ordinance may be continued under this Ordinance on or after the commencement date, and the provisions of this Ordinance apply in relation to that investigation as if the amending Ordinance had not been enacted.
- (4) If—

- (a) but for the enactment of the amending Ordinance a person may make an appeal to the Appeal Board under section 32N(1) of the pre-amended Ordinance; and
- (b) the appeal subject matter relates to section 7M of that Ordinance,

the appeal may be made to and disposed of by the Appeal Board under this Ordinance on or after the commencement date, and the provisions of this Ordinance apply in relation to that appeal as if the amending Ordinance had not been enacted.

(5) If—

- (a) an appeal made to the Appeal Board under section 32N(1) of the pre-amended Ordinance has not been finally determined before the commencement date; and
- (b) the appeal subject matter relates to section 7M of that Ordinance,

the appeal may be continued and disposed of by the Appeal Board under this Ordinance on or after the commencement date, and the provisions of this Ordinance apply in relation to that appeal as if the amending Ordinance had not been enacted.

(6) If—

- (a) but for the enactment of the amending Ordinance a person may bring an action under section 39A(1) of the pre-amended Ordinance; and
- (b) the action relates to—
 - (i) a breach of section 7M of the pre-amended Ordinance; or
 - (ii) a breach of a licence condition, determination or direction relating to section 7M of the pre-amended Ordinance,

the action may be brought under this Ordinance on or after the commencement date as if the amending Ordinance had not been enacted.

(7) If—

(a) an action brought under section 39A(1) of the pre-amended Ordinance has not been finally determined before the commencement date; and

(b) the action relates to—

(i) a breach of section 7M of that Ordinance; or

(ii) a breach of a licence condition, determination or direction relating to section 7M of that Ordinance,

the action may be continued under this Ordinance on or after the commencement date as if the amending Ordinance had not been enacted.

(Added 25 of 2012 s. 42)

Editorial Note:

* Commencement date: 19 July 2013.

Schedule 1

[ss. 2(1) & 7(4)]

(Amended 30 of 2003 s. 10)

Licences Which are not Carrier Licences within the Meaning of Section 2

1. Public Radiocommunications Service Licence for radio paging services
2. Public Radiocommunications Service Licence for trunked radio services
3. Public Radiocommunications Service Licence for radiolocation services
4. Broadcast Relay Station Licence
5. Broadcast Radio Relay Station Licence
6. Closed Circuit Television Licence
7. Satellite Master Antenna Television Licence
8. Hotel Television Services Licence

(Schedule 1 added 36 of 2000 s. 27)

Schedule 2

(Repealed 14 of 2012 s. 176)

Schedule 3

(Repealed 14 of 2012 s. 176)