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附表 4 —— 第 1 部
第 1 條

Schedule 4—Part 1
Section 1

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附表 4

[第 2 條]

關於移除危害國家安全的訊息及要求協助的細則

第 1 部

導言

1. 釋義

(1) 在本附表中 ——

中介服務 (intermediary service) —— 參閱本附表第 2 條；

主機服務 (hosting service) —— 參閱本附表第 3 條；

主機服務商 (hosting service provider) —— 參閱本附表第 3 條；

平台服務商 (platform service provider) —— 參閱本附表第 2 條；

服務商 (service provider) 指 ——

- (a) 平台服務商；
- (b) 主機服務商；或
- (c) 網絡服務商；

指定人員 (designated officer) 指根據本附表第 13 條委任的人員；

指明警務人員 (specified police officer) 指職級不低於警務處助理處長的警務人員；

接達 (access) 包括 ——

- (a) 有先決條件 (包括使用密碼) 的接達；
- (b) 藉推播技術接達；及

Schedule 4

[r. 2]

Rules on Removing Messages Endangering National Security and on Requiring Assistance

Part 1

Preliminary

1. Interpretation

(1) In this Schedule—

access (接達) includes—

- (a) access that is subject to a pre-condition (including the use of a password);
- (b) access by way of push technology; and
- (c) access by way of a standing request;

carriage service (傳輸服務) means a service for carrying communications by means of guided or unguided electromagnetic energy or both;

designated officer (指定人員) means an officer appointed under section 13 of this Schedule;

disabling action (禁制行動)—see section 5 of this Schedule;

electronic message (電子訊息) includes—

- (a) a text, voice, sound, image or video message; and
- (b) a message combining text, voice, sound, images or video;

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(c) 藉常設要求接達；

傳輸服務 (carriage service) 指藉着有指引的電磁能量、無指引的電磁能量或以上兩種電磁能量而傳輸溝通的服務；

禁制行動 (disabling action) —— 參閱本附表第 5 條；

電子平台 (electronic platform) —— 參閱本附表第 2 條；

電子訊息 (electronic message) 包括 ——

(a) 文字訊息、聲音訊息、圖像訊息或影片訊息；及

(b) 由文字、聲音、圖像或影片組合而成的訊息；

網絡服務商 (network service provider) —— 參閱本附表第 4 條。

(2) 就本附表而言，電子訊息發布的對象是公眾抑或是某部分公眾，無關重要。

(3) 在本附表中，凡提述公眾或某部分公眾，即提述香港的公眾或某部分公眾。

2. **電子平台、中介服務及平台服務商的涵義**

在本附表中 ——

中介服務 (intermediary service) 的涵義如下 ——

(a) 某項服務如容許終端用戶透過傳輸服務，接達源自第三方的材料，即屬**中介服務**；

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electronic platform (電子平台) — see section 2 of this Schedule;

hosting service (主機服務) — see section 3 of this Schedule;

hosting service provider (主機服務商) — see section 3 of this Schedule;

intermediary service (中介服務) — see section 2 of this Schedule;

network service provider (網絡服務商) — see section 4 of this Schedule;

platform service provider (平台服務商) — see section 2 of this Schedule;

service provider (服務商) means—

(a) a platform service provider;

(b) a hosting service provider; or

(c) a network service provider;

specified police officer (指明警務人員) means a police officer at or above the rank of Assistant Commissioner of Police.

(2) For the purposes of this Schedule, an electronic message is published regardless of whether or not the message is published to the public or a section of the public.

(3) In this Schedule, a reference to the public or a section of the public is a reference to the public or a section of the public in Hong Kong.

2. **Meaning of *electronic platform*, *intermediary service* and *platform service provider***

In this Schedule—

electronic platform (電子平台) means a platform for intermediary service that is provided in an electronic system;

Example—

- (b) 某項服務如屬透過傳輸服務而將源自第三方的材料傳送至終端用戶的服務，即屬**中介服務**；或
- (c) 凡某項服務屬顯示搜尋結果索引的服務（**搜索服務**），而該索引是向透過傳輸服務而使用該項搜索服務的終端用戶顯示的，且每個相關搜尋結果，將該用戶連結至託管或存儲位置與該索引所處位置有所不同的內容，該項搜索服務即屬**中介服務**；

平台服務商 (platform service provider) 就某電子平台而言，指就該平台提供中介服務的人；

電子平台 (electronic platform) 指在電子系統中提供的中介服務平台。

例子 ——

- (a) 網站；及
- (b) 網上程式。

3. **主機服務及主機服務商的涵義**

- (1) 就本附表而言，如 ——
- (a) 某人（**甲方**）託管任何存儲材料，而該材料曾在電子平台上寄發；及
- (b) 甲方或另一人就該平台提供中介服務，則甲方託管該存儲材料，視為甲方就該平台提供主機服務。
- (2) 在本附表中 ——

主機服務商 (hosting service provider) 就某電子平台而言，指就該平台提供主機服務的人。

- (a) a website; and
- (b) an online application.

intermediary service (中介服務) means—

- (a) a service that allows end-users to access materials originating from third parties through a carriage service;
- (b) a service of transmitting such materials to end-users through a carriage service; or
- (c) a service of displaying, to an end-user who uses the service to make a search through a carriage service, an index of search results, each of which links that end-user to content hosted or stored at a location that is separate from the location of the index of search results;

platform service provider (平台服務商), in relation to an electronic platform, means a person that supplies an intermediary service for the platform.

3. **Meaning of hosting service and hosting service provider**

- (1) For the purposes of this Schedule, if—
- (a) a person (**first person**) hosts stored material that has been posted on an electronic platform; and
- (b) the first person or another person provides an intermediary service for the platform,
- the hosting of the stored material by the first person is taken to be the provision by the first person of a hosting service for the platform.
- (2) In this Schedule—

hosting service provider (主機服務商), in relation to an electronic platform, means a person that supplies a hosting service for the platform.

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4. 網絡服務商的涵義

(1) 在本附表中 ——

網絡服務商 (network service provider) 指向公眾或某部分公眾提供互聯網服務或指明網絡服務的人。

(2) 在本條中 ——

互聯網服務 (internet service) 指使終端用戶能夠接達互聯網的傳輸服務；

指明網絡服務 (specified network service) 的涵義如下：凡某項傳輸服務，使終端用戶能夠透過連接，接達電子平台，而該項連接是以一個或多於一個電子溝通網絡作為加密隧道而傳輸的，該項服務即屬**指明網絡服務**。

5. 禁制行動的涵義

(1) 就本附表而言，凡某電子訊息是在某電子平台上發布的，而任何平台服務商 ——

- (a) 將該訊息從該平台之上移除；或
- (b) 限制或停止任何人士透過該平台接達該訊息，該服務商即就該訊息作出禁制行動。

(2) 就本附表而言，凡某電子訊息是在某電子平台上發布的，而任何主機服務商 ——

- (a) 將該訊息從該平台之上移除；
- (b) 限制或停止任何人士透過該平台接達該訊息；
- (c) 在以下範圍內，中止為該平台提供主機服務 ——
 - (i) 該平台之上發布該訊息的部分；或
 - (ii) 整個該平台；或
- (d) 限制或停止任何人士接達 ——

4. Meaning of *network service provider*

(1) In this Schedule—

network service provider (網絡服務商) means a person that supplies an internet service, or a specified network service, to the public or a section of the public.

(2) In this section—

internet service (互聯網服務) means a carriage service that enables end-users to access the Internet;

specified network service (指明網絡服務) means a carriage service that enables end-users to access an electronic platform via a connection tunnelled through one or more electronic communication networks.

5. Meaning of *disabling action*

(1) For the purposes of this Schedule, a platform service provider takes a disabling action on an electronic message published on an electronic platform if the service provider—

- (a) removes the message from the platform; or
- (b) restricts or ceases access by any person, via the platform, to the message.

(2) For the purposes of this Schedule, a hosting service provider takes a disabling action on an electronic message published on an electronic platform if the service provider—

- (a) removes the message from the platform;
- (b) restricts or ceases access by any person, via the platform, to the message;
- (c) discontinues the hosting service for—

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- (i) 該平台之上發布該訊息的部分；或
 - (ii) 整個該平台，
該服務商即就該訊息作出禁制行動。
- (3) 就本附表而言，凡某電子訊息是在某電子平台上發布的，
而任何網絡服務商——
- (a) 限制或停止任何人士透過該平台接達該訊息；或
 - (b) 限制或停止任何人士接達——
 - (i) 該平台之上發布該訊息的部分；或
 - (ii) 整個該平台，
該服務商即就該訊息作出禁制行動。

第 2 部

要求就電子訊息作禁制行動

6. 警務處處長可授權指定人員行使權力
警務處處長如有合理理由懷疑——
- (a) 某人曾在電子平台上，發布某電子訊息；及
 - (b) 該項發布相當可能構成危害國家安全罪行或相當可能導致危害國家安全罪行的發生，

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- (i) the part of the platform on which the message is published; or
 - (ii) the whole of the platform; or
- (d) restricts or ceases access by any person to—
- (i) the part of the platform on which the message is published; or
 - (ii) the whole of the platform.
- (3) For the purposes of this Schedule, a network service provider takes a disabling action on an electronic message published on an electronic platform if the service provider—
- (a) restricts or ceases access by any person, via the platform, to the message; or
 - (b) restricts or ceases access by any person to—
 - (i) the part of the platform on which the message is published; or
 - (ii) the whole of the platform.

Part 2

Requirements to Take Disabling Action on Electronic Message

6. Commissioner of Police may authorize designated officer to exercise powers
- The Commissioner of Police may, with the approval of the Secretary for Security, authorize a designated officer to exercise one or more of the powers specified in section 7 of this Schedule if the Commissioner has reasonable ground for suspecting that—

則可在保安局局長批准下，授權指定人員，行使一項或多於一項本附表第 7 條所指明的權力。

7. 作出要求的權力

- (1) 第 (2)、(3)、(4) 及 (5) 款下的權力，是為本附表第 6 條的施行而指明的。
- (2) 如任何人曾在電子平台上，發布某電子訊息，則指定人員可要求該人在該人員所指明的期限前，將該訊息從該平台之上移除。
- (3) 指定人員可要求有關電子平台的平台服務商，在該人員所指明的期限前，就有關電子訊息作出禁制行動。
- (4) 指定人員 ——
 - (a) 可將根據第 (3) 款向平台服務商發出要求一事，知會有關電子平台的主機服務商；及
 - (b) 如根據第 (3) 款向平台服務商發出要求並不合理地切實可行，或該平台服務商沒有遵從根據該款發出的要求 —— 可要求該主機服務商在該人員所指明的期限前，就有關電子訊息作出禁制行動。
- (5) 指定人員 ——
 - (a) 可 ——
 - (i) 將根據第 (3) 款向平台服務商發出要求一事，知會任何網絡服務商；及
 - (ii) 將根據第 (4) 款向主機服務商發出要求一事，知會任何網絡服務商；及
 - (b) 如 ——

- (a) a person has published an electronic message on an electronic platform; and
- (b) the publication is likely to constitute an offence endangering national security or is likely to cause the occurrence of an offence endangering national security.

7. Power to make requirements

- (1) The powers under subsections (2), (3), (4) and (5) are specified for the purposes of section 6 of this Schedule.
- (2) The designated officer may require the person who has published the electronic message on the electronic platform to remove the message from the platform before the deadline specified by the officer.
- (3) The designated officer may require the platform service provider for the electronic platform to take a disabling action on the electronic message before the deadline specified by the officer.
- (4) The designated officer—
 - (a) may notify a hosting service provider for the electronic platform of any requirement issued under subsection (3) to the platform service provider; and
 - (b) if it is not reasonably practicable to issue a requirement to the platform service provider under subsection (3), or the platform service provider fails to comply with a requirement issued under that subsection—may require the hosting service provider to take a disabling action on the electronic message before the deadline specified by the officer.
- (5) The designated officer—
 - (a) may notify a network service provider of—

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- (i) 該平台服務商沒有遵從根據第 (3) 款發出的要求，而根據第 (4) 款向主機服務商發出要求並不合理地切實可行；
- (ii) 任何主機服務商沒有遵從根據第 (4) 款發出的要求；或
- (iii) 根據第 (3) 款向平台服務商及第 (4) 款向主機服務商發出要求並不合理地切實可行，
可要求該網絡服務商在該人員所指明的期限前，就有關電子訊息作出禁制行動。

8. 要求失效

凡指定人員已根據本附表第 7 條向某人或服務商發出要求，而該人員知會該人或服務商另一人已將有關電子訊息從有關電子平台之上移除，又或知會該人或服務商另一人已就該訊息作出禁制行動，該項要求即告無效。

- (i) a requirement issued under subsection (3) to the platform service provider; and
- (ii) a requirement issued under subsection (4) to a hosting service provider; and
- (b) if—
 - (i) the platform service provider fails to comply with a requirement issued under subsection (3), and it is not reasonably practicable to issue a requirement to a hosting service provider under subsection (4);
 - (ii) a hosting service provider fails to comply with a requirement issued under subsection (4); or
 - (iii) it is not reasonably practicable to issue a requirement to the platform service provider under subsection (3) or to a hosting service provider under subsection (4),
may require the network service provider to take a disabling action on the electronic message before the deadline specified by the officer.

8. Requirement ceasing to have effect

A requirement issued by a designated officer to a person or service provider under section 7 of this Schedule ceases to have effect if the designated officer notifies the person or service provider that another person has removed the electronic message from the electronic platform, or has taken a disabling action on the message.

第 3 部

要求就電子訊息提供身分紀錄或解密協助

9. 作出要求的權力

- (1) 裁判官如因經宣誓而作的告發信納 ——
 - (a) 有合理理由懷疑 ——
 - (i) 某人在電子平台上發布電子訊息；
 - (ii) 該項發布相當可能構成危害國家安全罪行或相當可能會導致危害國家安全罪行的發生；及
 - (iii) 任何服務商就該訊息，管有、保管或掌控身分紀錄，或可提供解密協助；及
 - (b) 為調查、遏止或預防該罪行，有必要從該服務商取得該紀錄或協助，
則可發出手令，授權警務人員，行使第 (3) 款所指明的權力。
- (2) 然而，指明警務人員如信納 ——
 - (a) 有合理理由懷疑 ——
 - (i) 某人在電子平台上發布電子訊息；
 - (ii) 該項發布相當可能構成危害國家安全罪行或相當可能會導致危害國家安全罪行的發生；及
 - (iii) 任何服務商就該訊息，管有、保管或掌控身分紀錄，或可提供解密協助；
 - (b) 為調查、遏止或預防該罪行，有必要從該服務商取得該紀錄或協助；及

Part 3

Requirements to Provide Identification Record or Decryption Assistance for Electronic Message

9. Power to make requirements

- (1) A magistrate may issue a warrant authorizing a police officer to exercise the power specified in subsection (3) if the magistrate is satisfied by information on oath that—
 - (a) there is reasonable ground for suspecting that—
 - (i) a person has published an electronic message on an electronic platform;
 - (ii) the publication is likely to constitute an offence endangering national security or is likely to cause the occurrence of an offence endangering national security; and
 - (iii) a service provider has in its possession, custody or control an identification record for the message, or may provide decryption assistance in respect of the message; and
 - (b) it is necessary to obtain the record or assistance from the service provider for the investigation, containment or prevention of the offence.
- (2) However, a specified police officer or a police officer authorized by the specified police officer may exercise the power specified in subsection (3) without warrant if the specified police officer is satisfied that—

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- (c) 申請第 (1) 款所述手令所造成的延擱，相當可能會使取得該紀錄或協助的目的，不能達成，或者由於其他原因，作出有關申請，並不合理地切實可行，則該指明警務人員或其授權的警務人員可在無手令的情況下，行使第 (3) 款所指明的權力。
- (3) 為施行第 (1) 或 (2) 款，有關警務人員，可要求有關服務商提供有關身分紀錄或解密協助（視情況所需而定）。
- (4) 就本條而言，如任何人在某電子平台上發布某電子訊息，而有任何紀錄載有關於該人身分的資料，則就該平台上發布的該訊息而言，該紀錄屬身分紀錄。

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- (a) there is reasonable ground for suspecting that—
- (i) a person has published an electronic message on an electronic platform;
- (ii) the publication is likely to constitute an offence endangering national security or is likely to cause the occurrence of an offence endangering national security; and
- (iii) a service provider has in its possession, custody or control an identification record for the message, or may provide decryption assistance in respect of the message;
- (b) it is necessary to obtain the record or assistance from the service provider for the investigation, containment or prevention of the offence; and
- (c) a delay caused by an application for a warrant under subsection (1) is likely to defeat the purpose of obtaining the record or assistance, or for any reason it is not reasonably practicable to make the application.
- (3) For the purposes of subsection (1) or (2), the police officer may require the service provider to provide the identification record or decryption assistance (as the case requires).
- (4) For the purposes of this section, an identification record for an electronic message published on an electronic platform is a record containing information about the identity of the person who has published the message on the platform.

第 4 部 不遵從要求

10. 發布電子訊息的人不遵從要求

- (1) 任何人如沒有遵從根據本附表第 7(2) 條發出的要求，即屬犯罪，一經循公訴程序定罪，可處罰款 \$100,000 及監禁 1 年。
- (2) 被控干犯第 (1) 款所訂罪行的人，如顯示該人對不遵從有關要求有指明辯解，即為免責辯護。
- (3) 如符合以下情況，被告人須視為已顯示自己對不遵從有關要求有指明辯解——
 - (a) 所舉出的證據，已足夠帶出被告人有該辯解的爭議點；及
 - (b) 控方沒有提出足以排除合理疑點的相反證明。
- (4) 就本條而言，如因為某人遵從某項要求所需的科技並非該人合理可得，所以期望該人遵從該項要求是不合理的，則該人對不遵從該項要求有指明辯解。

11. 將訊息從平台移除的權力

裁判官如因經宣誓而作的告發信納——

- (a) 某人沒有遵從根據本附表第 7(2) 條發出的要求，將某電子訊息從電子平台之上移除；及

Part 4 Non-compliance

10. Non-compliance of person publishing electronic message

- (1) If a person fails to comply with a requirement issued under section 7(2) of this Schedule, the person commits an offence and is liable on conviction on indictment to a fine of \$100,000 and to imprisonment for 1 year.
- (2) It is a defence for a person charged under subsection (1) to show that the person had a specified excuse for the failure to comply with the requirement.
- (3) A defendant is to be taken to have shown that the defendant had a specified excuse for the failure if—
 - (a) sufficient evidence is adduced to raise an issue that the defendant had such an excuse; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (4) For the purposes of this section, a person had a specified excuse for a failure to comply with a requirement if it was not reasonable to expect the person to comply with the requirement because the technology necessary to comply with the requirement was not reasonably available to the person.

11. Power to remove messages from platform

If a magistrate is satisfied by information on oath that—

(b) 為維護國家安全，有必要將該訊息從該平台之上移除，

則可發出手令，授權警務人員，檢取該人的電子器材，並就該器材作出合理所需的行動，以將該訊息從該平台之上移除。

12. 服務商不遵從要求

- (1) 服務商如沒有遵從根據本附表第 7 或 9(3) 條發出的要求，即屬犯罪，一經循公訴程序定罪，可處罰款 \$100,000 及監禁 6 個月。
- (2) 被控干犯第 (1) 款所訂罪行的服務商，如顯示該服務商對不遵從根據本附表第 7 條發出的要求有指明辯解，即為免責辯護。
- (3) 如符合以下情況，被告人須視為已顯示自己對不遵從根據本附表第 7 條發出的要求有指明辯解——
 - (a) 所舉出的證據，已足夠帶出被告人有該辯解的爭議點；及
 - (b) 控方沒有提出足以排除合理疑點的相反證明。
- (4) 就本條而言，如因為以下原因，期望某服務商遵從要求是不合理的，則該服務商對不遵從該項要求有指明辯解——
 - (a) 該服務商遵從該項要求所需的科技並非該服務商合理可得；或
 - (b) 有以下風險存在：對第三方招致相當程度損失，或以其他方式損害第三方的權利。

- (a) a person fails to comply with a requirement issued under section 7(2) of this Schedule to remove an electronic message from an electronic platform; and
- (b) it is necessary to remove the message from the platform to safeguard national security,

the magistrate may issue a warrant authorizing a police officer to seize an electronic device of the person, and to take any reasonably necessary action on the device, for removing the message from the platform.

12. Non-compliance of service provider

- (1) If a service provider fails to comply with a requirement issued under section 7 or 9(3) of this Schedule, the service provider commits an offence and is liable on conviction on indictment to a fine of \$100,000 and to imprisonment for 6 months.
- (2) It is a defence for a service provider charged under subsection (1) for a failure to comply with a requirement issued under section 7 of this Schedule to show that the service provider had a specified excuse for the failure.
- (3) A defendant is to be taken to have shown that the defendant had a specified excuse for the failure to comply with a requirement issued under section 7 of this Schedule if—
 - (a) sufficient evidence is adduced to raise an issue that the defendant had such an excuse; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (4) For the purposes of this section, a service provider had a specified excuse for a failure to comply with a requirement if it was not reasonable to expect the service provider to comply with the requirement because—

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第 5 部 雜項

13. 指定人員

保安局局長可為施行本附表而委任公職人員為指定人員。

14. 域外適用範圍

- (1) 不論有關電子訊息是在香港境內或境外寄發於電子平台上，本附表第 7(2) 條下的權力仍可予行使。
- (2) 不論有關中介服務是在香港境內或境外提供，本附表第 7(3) 條下的權力仍可予行使。
- (3) 不論有關主機服務是在香港境內或境外提供，本附表第 7(4)(b) 條下的權力仍可予行使。
- (4) 如香港的終端用戶可取得某互聯網服務或指明網絡服務（本附表第 4 條所指者），則不論該項服務是在香港境內或境外提供，本附表第 7(5)(b) 條下的權力，仍可就該項服務的網絡服務商予以行使。
- (5) 不論有關身分紀錄或解密鑰匙處於香港境內或境外，本附表第 9(3) 條下的權力仍可予行使。

- (a) the technology necessary for complying with the requirement was not reasonably available to the service provider; or
- (b) there was a risk of incurring substantial loss to, or otherwise substantially prejudicing the right of, a third party.

Part 5 Miscellaneous

13. Designated officer

The Secretary for Security may appoint a public officer as a designated officer for the purposes of this Schedule.

14. Extra-territorial application

- (1) A power is exercisable under section 7(2) of this Schedule regardless of whether or not the electronic message is posted within or outside Hong Kong on the electronic platform.
- (2) A power is exercisable under section 7(3) of this Schedule regardless of whether or not the intermediary service is provided within or outside Hong Kong.
- (3) A power is exercisable under section 7(4)(b) of this Schedule regardless of whether or not the hosting service is provided within or outside Hong Kong.
- (4) A power is exercisable under section 7(5)(b) of this Schedule in relation to a network service provider of an internet service or specified network service (within the meaning of section 4) if the service is available to an end-user in Hong Kong,

15. 要求等須採用書面形式

- (1) 本附表所指的要求或通知，須以書面形式發出。
- (2) 就本附表而言，在以下情況下，某要求或通知即屬向某人發出——
 - (a) 該項要求或通知，經發送至該人為接收通訊而提供的地址（包括電郵地址及圖文傳真號碼）；或
 - (b) 如該人沒有提供該類地址——該項要求或通知已藉電子訊息發送予該人。

16. 豁免承擔民事法律責任

凡任何服務商遵從根據本附表第 7 條發出的要求，則不得僅因該服務商遵從該項要求，而招致任何民事法律責任，不論該法律責任是在合約法、侵權法、衡平法或是在其他法律下產生的亦然。

regardless of whether or not the service is provided within or outside Hong Kong.

- (5) A power is exercisable under section 9(3) of this Schedule regardless of whether or not the identification record or decryption key is located within or outside Hong Kong.

15. Requirement etc. in writing

- (1) A requirement or notification under this Schedule must be in writing.
- (2) For the purposes of this Schedule, a requirement or notification is issued to a person if—
 - (a) it is sent to the person at an address (including an email address and fax number) provided by the person for receiving correspondences; or
 - (b) where no such address is provided by the person, it is sent by an electronic message to the person.

16. Immunity from civil liability

A service provider who complies with a requirement issued under section 7 of this Schedule does not incur any civil liability, whether arising in contract, tort, equity or otherwise, to any person by reason only of that compliance.