

**立法會**  
***Legislative Council***

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**Paper for the House Committee Meeting  
of the Legislative Council  
on 16 February 2001**

**Legal Service Division Report on  
Telecommunications (Amendment) Bill 2001**

**Object(s) of the Bill**

To amend the Telecommunications Ordinance (Cap. 106), as amended by the Telecommunication (Amendment) Ordinance 2000 (36 of 2000), to make provisions in respect of the following matters in preparation for the issue of carrier licences for the third generation ("3G") mobile services and future licensing exercises :-

- (a) the determination of the spectrum utilization fees by auction or tender or a combination of auction or tender; and
- (b) empowering the Telecommunications Authority to regard the spectrum utilization fees arising from a spectrum auction or tender as a determining factor in issuing telecommunications licences and assigning frequencies of the radio spectrum.

**LegCo Brief Reference**

- 2. ITBB CR 7/23/10(01) dated 7 February 2001 issued by the Information Technology and Broadcasting Bureau.

**Date of First Reading**

- 3. 14 February 2001.

**Background**

- 4. The Telecommunications Ordinance (Cap. 106) ("the principal Ordinance), as amended by the Telecommunication (Amendment) Ordinance 2000

(36 of 2000) ("the Amendment Ordinance") introduces a tiered licensing framework whereby the Chief Executive in Council will continue to prescribe the conditions in, and issue exclusive licences, while the Secretary for Information Technology and Broadcasting ("SITB") will prescribe, after consultation with the industry, the general conditions of carrier licences to be issued by the Telecommunications Authority ("TA"). This new licensing regime will come into operation on 1 April 2001. Other provisions of the Amendment Ordinance relating to assignment of frequencies of the radio spectrum and the determination of the spectrum utilization fees have come into operation on 16 June 2000.

5. Among the carrier licences which TA is empowered to issue are the carrier licences for 3G mobile services. Frequencies and bands of frequencies in the radio spectrum will be assigned to successful applicants for such licences. Under section 32I of the principal Ordinance, TA may by order designate the frequency bands in which the use of spectrum is subject to the payment of spectrum utilization fee by the spectrum users. The level of, or the method for determining, the spectrum utilization fees will be prescribed by SITB by regulation. However, there is no express provision in the principal Ordinance to empower TA to consider the payment of spectrum utilization fees in issuing telecommunications licences and in assigning spectrum frequencies.

## **Comments**

6. To make clear that payment of spectrum utilization fees is a relevant factor to be considered in a licensing exercise where spectrum auctioning is involved, the Bill proposes to provide expressly that TA, in issuing licences or assigning spectrum frequencies, is empowered to regard the spectrum utilization fees arising from the auction or tender as a determining factor.

7. The Bill also proposes to amend section 32I of the principal Ordinance to provide expressly that the method to be prescribed by SITB by regulation for determining the spectrum utilization fees may include auction or tender or a combination of auction or tender or any other method as SITB thinks fit. Where the spectrum utilization fees are to be determined by auction or tender, the regulation made by SITB under proposed section 32I of the Bill may empower TA to specify the terms and conditions of an auction or tender. Such terms and conditions may include the criteria for determining whether a person is qualified to participate in the auction or tender, the bidder's or the tenderer's right to participate or to withdraw and the penalties that may be imposed on a bidder or tenderer for breach of those terms and conditions. The Bill proposes that the exact terms and conditions of an auction or tender are to be specified by notice published in the Gazette and such notice is not subsidiary legislation.

8. If enacted, the Bill will come into operation on the date of publication in the Gazette.

## **Public Consultation**

9. Two rounds of consultation have been conducted in March and October 2000 on the licensing and regulatory framework of 3G. The second consultation ended in November 2000. According to the LegCo Brief, the Administration is now finalizing their proposals on the licensing and regulatory framework with a view to issuing 3G licences by mid-2001.

## **Consultation with the LegCo Panel**

10. The Administration briefed the LegCo Panel on Information Technology and Broadcasting on the Bill on 12 February 2001. At the meeting, members of the Panel considered that the Bill required detailed scrutiny by a Bills Committee having regard to the fact that legal disputes have arisen from the European experience of spectrum auctioning.

## **Conclusion**

11. We are seeking clarification from the Administration on the legal and drafting aspects of the Bill. In light of the views of members of the Panel on Information Technology and Broadcasting, it is recommended that a Bills Committee be set up to study the Bill in detail.

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