

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

TELECOMMUNICATIONS (AMENDMENT) BILL 2002

INTRODUCTION

At the meeting of the Executive Council on 30 April 2002, the Council ADVISED and the Chief Executive ORDERED that the Telecommunications (Amendment) Bill 2002 at Annex A should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. It is the existing policy of the Government to promote fair and effective competition in the telecommunications market. Consumers benefit from this policy and it is important that we safeguard the level of competition in the market.

3. The Government's current policy is to take sector-specific measures to promote competition. Regulation of acquisitions and mergers in the telecommunications market is performed by the Telecommunication Authority (TA) through license conditions. However, under current licence conditions, the TA only has the power to regulate if the transfer of licence, or under some licences, transfer of shares in the licensee, is involved. Mergers and acquisitions nowadays often do not involve such transfer as the activities may take place at the

holding company level. The legislative framework for regulation of merger and acquisition activities in the telecommunications market is therefore unclear.

4. Our experience also shows that some licensees decide to approach the TA for advice before undergoing a merger and acquisition, regardless of the size of transaction for prudence. Indeed, merchant banks, accountants or lawyers would advise investors and licensees to seek comfort from the regulator to ensure that the transactions will comply with any legal and licensing requirement. The lack of clarity of the present regulatory regime therefore increases the uncertainty for normal merger and acquisition activities.

5. We recognise that many of the mergers and acquisitions do not raise regulatory concerns. Indeed, mergers and acquisitions are part of normal business activities and are economically beneficial to the society. Our aim is to give the TA an effective regulatory tool to intervene where he has regulatory concern, that is, the relevant transaction may substantially lessen competition in the telecommunications market (see matters to be considered in paragraph 6(e)). We also aim to provide a comprehensive and clear regulatory framework on mergers and acquisitions for the telecommunications business sector. We therefore propose to introduce a set of specific regulatory provisions for the telecommunications industry, with the following policy objectives :

- (a) to promote fair and effective competition and protect consumers' interests;
- (b) to provide a transparent and efficient regulatory regime governing merger and acquisition activities; and
- (c) to assist the industry in making informed decisions concerning such transactions which are of regulatory concern, as well as to speed up the processes for regulatory

approval, without compromising the other policy objectives.

The Proposal

6. The major features of our proposal are :-
- (a) Where the TA is of the opinion that a change in ownership or control over a carrier licensee has, or is likely to have, the effect of substantially lessening competition in a telecommunications market, the carrier licensee shall take such action as the TA considers necessary to eliminate any such anti-competitive effect.
 - (b) The action that the TA may direct the carrier licensee to take may include the carrier licensee procuring modifications to its ownership or control.
 - (c) Failure to take such action would constitute a breach of the relevant provisions of the Telecommunications Ordinance. Administrative sanctions available under the Telecommunications Ordinance (including directions, financial penalty, suspension or cancellation of licences) may be imposed upon the carrier licensee.
 - (d) Alternatively, prior to a proposed change in ownership or control, a carrier licensee may on a voluntary basis seek the consent of the TA to the proposed change. This will give a choice to the carrier licensees whether to seek prior consent or not, taking into account the risk of being penalised subsequently if the activity is found to be anti-competitive. The TA may give consent, refuse to give consent, or give consent subject to the direction that the carrier licensee takes such action that the TA considers necessary to eliminate any anti-competitive effect.

- (e) After commencement of the Bill and before processing future cases, the TA is required to formulate a set of criteria on the matters he will consider in determining whether a change or proposed change has, or is likely to have, an anti-competitive effect and issue guidelines in this respect. Before issuing the guidelines, he must conduct such consultation as appropriate. Such matters may include, for example, the availability of substitutes in the telecommunications market, entry barriers, market concentration, the degree of countervailing power in the telecommunications market, the dynamic characteristics of the telecommunications market (including growth, innovation and product differentiation), the likelihood that the merger and acquisition would result in the removal from the market of a vigorous and effective competitor and the nature and extent of vertical integration in the market.
- (f) The proposal will only apply to carrier licensees ^{Note}. We are not aware of any current market factors such as high entry barriers which may cause regulatory concerns in respect of non-carrier licensees (e.g. internet service providers holding Public Non-Exclusive Telecommunications Service licences). This will demonstrate the Government's intention to regulate merger and acquisition activities in specific areas only when necessary.
- (g) A decision made or direction issued by the TA under our proposal will be subject to appeal to the Telecommunications (Competition Provisions) Appeal Board, whose current jurisdiction is to handle appeals on competition matters in the Telecommunications Ordinance.

Note

Carrier licensees include the local fixed telecommunications network services operators (including TV broadcasters who own or operate transmission facilities), external fixed telecommunications network services operators, mobile operators and satellite operators.

7. We believe that our proposal would clarify the legal framework on the regulation of merger and acquisition activities. It would promote effective competition in the telecommunications market. Moreover, by issuing guidelines on the regulation of merger and acquisition activities, we will provide clear and practical guidance to the licensees on the matters the TA will consider in assessing the potential effect of the merger or acquisition to competition. This would assist the licensees and the relevant parties in making informed decisions in undergoing merger and acquisitions in the telecommunications market.

The Consultation

8. We consulted the public and the industry in April to June 2001 on our preliminary proposal. During the consultation, we received a total of 17 submissions. In general, the telecommunications user groups such as the HK Information Technology Federation and the Consumer Council support our proposal. They submit that the proposal would strengthen the regulatory procedures currently available so as to enable the TA to assess mergers and acquisitions which may affect competition in a telecommunications market. This will bring about benefits to consumers and businesses in Hong Kong.

9. Most submissions from the industry also support the policy objectives of our proposal. They acknowledge that it is important to promote fair competition, and to provide guidance for informed industry decision making on merger and acquisition activities. In particular, they point out the importance of minimum intervention to ensure minimal compliance burden on the licensees.

10. On the other hand, some industry submissions oppose our proposal on the grounds that, if there is to be a merger and acquisition regulation, it should be universal and not industry-specific, or that the power should be exercised by a competition authority. Moreover, there are submissions advising that any merger and acquisition regulation

should be *ex post* in nature (i.e. regulatory review should be conducted after the merger and acquisition is completed) rather than *ex ante* (i.e. licensees must seek the TA's prior approval before proceeding with the merger and acquisition) to avoid placing any undue burden on the industry.

11. We have carefully considered these views. Our conclusion is that it is government's policy not to have an over-arching competition law or competition authority in Hong Kong. Because of the structural feature of the telecommunications industry including high concentration levels, high barriers to entry through high sunk costs, scarcity of radio spectrum and high levels of vertical integration, a sector-specific merger and acquisition regulatory regime is necessary to prevent over-concentration of market power in a few operators and undesirable cross-ownership.

12. As to the nature of the regulatory regime, there is no universal rule as regards *ex ante* or *ex post* regulation adopted in overseas jurisdictions. Some countries such as Canada, the European Community, Singapore and the United States adopt an *ex ante* regulatory regime, while others like Australia and the United Kingdom adopt an *ex post* one. We therefore agree to adopt an *ex post* regime together with a channel for carrier licensees to seek the TA's consent on a voluntary basis before they proceed with the proposed merger and acquisition activity as set out in paragraph 6(d). This would meet our policy objectives and minimize the burden of compliance.

THE BILL

13. The main provisions of the Bill are summarized as follows : -
- (a) **Clause 2** seeks to amend section 6D of the Telecommunications Ordinance to require the TA to issue guidelines on matters which he must take into account before forming an opinion under Clause 3. The TA must also consult the affected parties before issuing

the guidelines (paragraph 6(e)).

(b) **Clause 3** aims to add a new section 7P to set out the proposed regulation on mergers and acquisitions. The details are :

(i) Subsection (1) - This subsection provides the TA with the power to direct a carrier licensee to take such actions as he considers necessary, if he is of the opinion that any change in the control over a carrier licensee, or change in the beneficial ownership or voting control of any of the voting shares in a carrier licensee, has, or is likely to have, the effect of substantially lessening competition in a telecommunications market (paragraph 6(a) and (b)).

(ii) Subsection (5) - This subsection provides a channel for the carrier licensee to seek the TA's consent on a voluntary basis before any proposed change in control over the licensee, or change in the beneficial ownership or voting control of any of the voting shares in a carrier licensee. Where the TA has given such consent, he is not permitted to make a direction in respect of the change under subsection (1) unless the consent is given subject to a direction and the carrier licensee fails to comply with the direction (paragraph 6(d)).

(iii) Subsection (11) - This subsection specifies that any cost or expense incurred by the TA in processing an application under subsection (5) and

making a decision under subsection (6) is recoverable as a debt due to the TA from the relevant carrier licensee.

- (c) **Clauses 5, 6 and 7** aim to amend sections 32L, 32N and 32O of the Telecommunications Ordinance to provide for an appeal channel. We propose to expand the scope of appeals that can be made to the Telecommunications (Competition Provisions) Appeal Board to include appeals on any directions issued or decisions made by TA under Clause 3.

14. An extract of the provisions of the Telecommunications Ordinance which are being amended is attached at Annex B.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be:-

Publication in the Gazette	3 May 2002
First Reading and commencement of Second Reading debate	15 May 2002
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

BASIC LAW IMPLICATIONS

16. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

17. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

18. The current binding effect of the provision of section 3 of the Telecommunications Ordinance applies to the Bill.

FINANCIAL AND STAFFING IMPLICATIONS

19. The resources required for the implementation of the Bill will be absorbed by the Office of the Telecommunications Authority Trading Fund. The Information Technology and Broadcasting Bureau will support the Telecommunications (Competition Provisions) Appeal Board to deal with the broadened scope of appeal cases with its existing resources.

ECONOMIC IMPLICATIONS

20. Our proposal will provide a transparent and efficient regulatory regime, which will not only effectively deter anti-competitive behaviours but will also facilitate the making of informed commercial decisions on merger and acquisition activities that can achieve efficiencies such as economies of scale, synergies and risk spreading. The adoption of an *ex post* regime should not place undue compliance burden on the industry. The proposal is conducive to developing the telecommunications market on a level playing field, which will bring benefits to consumers and businesses. A thriving telecommunications market enhances the status of Hong Kong as a business hub and underpins the development of other economic sectors.

ENVIRONMENTAL IMPLICATIONS

21. The Bill does not have any environmental implications.

SUSTAINABILITY IMPLICATIONS

22. Our proposal does not have major sustainability implication. It will enhance effective competition in the telecommunications market and bring benefits to the consumers and businesses.

PUBLIC CONSULTATION

23. We conducted a public consultation in April to June 2001. Details are set out in paragraphs 8 to 12.

PUBLICITY

24. A press release will be issued when the Bill is published in the gazette. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

25. For any enquiries relating to this Brief, please contact:-

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3 May 2002

Information Technology and Broadcasting Bureau

**TELECOMMUNICATIONS (AMENDMENT) BILL
2002**

Annexes

- Annex A - Telecommunications (Amendment) Bill 2002

- Annex B - Provisions of the Telecommunications Ordinance
which are being amended

Annex A

A BILL

To

Amend the Telecommunications Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Telecommunications (Amendment) Ordinance 2002.

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

2. Guidelines

Section 6D of the Telecommunications Ordinance (Cap. 106) is amended –

(a) in subsection (2), by adding –

"(aa) specifying the matters that he shall take into account before forming an opinion under section 7P(1) or (6)(a) or (b);";

(b) by adding –

"(2A) Without prejudice to the generality of section 6C, the Authority shall, before issuing guidelines under subsection (2)(aa), carry out such consultation as is reasonable in all the circumstances of the case with persons who may be affected by the operation of section 7P.".

3. Section added

The following is added –

"7P. Power of Authority to regulate changes in control exercised over carrier licensees, etc.

(1) Where the Authority is of the opinion that any change occurring after the commencement of this section in –

- (a) the control exercised over a carrier licensee;
- (b) the beneficial ownership of any of the voting shares in a carrier licensee; or
- (c) the voting control of any of the voting shares in a carrier licensee,

has, or is likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may, by notice in writing served on the licensee, direct the licensee to take such action specified in the notice as the Authority considers necessary to eliminate any such anti-competitive effect.

(2) The Authority shall, before forming an opinion and issuing a direction under subsection (1) –

- (a) give the carrier licensee concerned a reasonable opportunity to make representations to the Authority; and
- (b) consider the representations, if any, made by the licensee under paragraph (a).

(3) Without limiting the general nature of the action that the Authority may direct a carrier licensee to take under subsection (1), the action may include the procuring of modifications to –

- (a) the control exercised over the licensee;
- (b) the beneficial ownership of any of the voting shares in the licensee; or
- (c) the voting control of any of the voting shares in the licensee.

(4) A carrier licensee served with a notice under subsection (1) shall comply with the direction in the notice.

(5) Where there is a proposed change in –

- (a) the control exercised over a carrier licensee;
- (b) the beneficial ownership of any of the voting shares in a carrier licensee; or
- (c) the voting control of any of the voting shares in a carrier licensee,

the licensee may apply in writing to the Authority for consent to the proposed change.

(6) Where the Authority, on receiving an application under subsection (5) –

- (a) is of the opinion that the proposed change would not have, or not be likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may decide to give consent; or
- (b) is of the opinion that the proposed change would have, or be likely to have, the effect of substantially lessening competition in a telecommunications market, the Authority may decide to –
 - (i) refuse to give consent; or
 - (ii) give consent subject to the direction that the carrier licensee concerned takes the action that the Authority considers necessary to eliminate any such anti-competitive effect.

(7) The Authority shall, before forming an opinion under subsection (6)(b) and (if applicable) issuing a direction under subsection (6)(b)(ii) –

- (a) give the carrier licensee concerned a reasonable opportunity to make representations to the Authority; and
- (b) consider the representations, if any, made by the licensee under paragraph (a).

(8) The Authority shall, by notice in writing served on the carrier licensee concerned, inform the licensee of –

- (a) the decision made under subsection (6)(a) or (b)(i) or (ii);
- (b) in the case of subsection (6)(b)(ii), the action that the Authority directs the licensee to take.

(9) Without limiting the general nature of the action that the Authority may direct a carrier licensee to take under subsection (6)(b)(ii), the action may include the procuring of modifications to –

- (a) the control exercised over the licensee;
- (b) the beneficial ownership of any of the voting shares in the licensee; or
- (c) the voting control of any of the voting shares in the licensee.

(10) Where a proposed change referred to in subsection (5) takes effect –

- (a) pursuant to the consent given by the Authority under subsection (6)(a); or
- (b) pursuant to the consent given, and in compliance with the direction issued, by the Authority under subsection (6)(b)(ii),

the Authority shall not issue a direction in respect of the change under subsection (1).

- (11) The amount of any costs or expenses incurred by the Authority –
- (a) in making a decision under subsection (6)(a) or (b)(i) or (ii); or
 - (b) in relation to the processing of an application made under subsection (5),

is recoverable as a debt due to the Authority from the carrier licensee concerned.

(12) For the purposes of subsections (1)(a) and (5)(a), there is a change in the control exercised over a carrier licensee if –

- (a) a person becomes a director or principal officer of the licensee;
- (b) a person becomes the beneficial owner of more than 15% of the voting shares in the licensee;
- (c) a person becomes a voting controller of more than 15% of the voting shares in the licensee; or
- (d) a person otherwise acquires the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation, to ensure that the affairs of the licensee are conducted in accordance with the wishes of that person.

(13) In this section –

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

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

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

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

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

4. Part heading amended

The heading to Part VC is amended by repealing "AND 7N" and substituting "7N AND 7P".

5. Interpretation

Section 32L is amended –

- (a) in the definition of "appeal", by adding "or (1A)" after "32N(1)";
- (b) by repealing the definition of "appeal subject matter" and substituting –

""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 7K, 7L, 7M or 7N or any licence condition relating to any such section; and
 - (ii) which is the subject of the appeal;
- (b) in relation to an appeal under section 32N(1A), means a direction of the Authority issued under section 7P(1) or a decision of the Authority made

under section 7P(6)(a) or (b)(i) or (ii);".

6. Appeals to Appeal Board

Section 32N is amended by adding–

"(1A) Any carrier licensee aggrieved by a direction of the Authority issued under section 7P(1) or a decision of the Authority made under section 7P(6)(a) or (b)(i) or (ii) may appeal to the Appeal Board against the direction or decision (and whether or not the direction or decision was issued or made in respect of the licensee).".

7. Procedure and powers of Appeal Board, etc.

Section 32O(2) is amended by repealing the full stop and substituting ", or before the direction or decision referred to in section 32N(1A) was issued or made.".

Explanatory Memorandum

This Bill amends the Telecommunications Ordinance (Cap. 106) ("the Ordinance") –

- (a) to empower the Telecommunications Authority ("the Authority") to regulate any change or proposed change in the control exercised over, or in the beneficial ownership or control of the voting shares, in a carrier licensee which, in the opinion of the Authority, has, or is likely to have, the effect of substantially lessening competition in a telecommunications market (clause 3, new section 7P);
- (b) to enable a carrier licensee who is aggrieved by a direction issued or decision made by the Authority in the exercise of such power to appeal to the Telecommunications (Competition

Provisions) Appeal Board against the direction or decision (clause 6, new section 32N(1A));

- (c) to require the Authority to –
 - (i) issue guidelines on the matters that he must take into account before he forms the opinion mentioned in subparagraph (a) above (clause 2(a), new section 6D(2)(aa));
 - (ii) carry out consultation before such guidelines are issued (clause 2(b), new section 6D(2A)); and
- (d) to make consequential and related amendments to the heading to Part VC and sections 32L and 32O(2) of the Ordinance (clauses 4, 5 and 7).

**Provisions of the Telecommunications Ordinance
Which are Being Amended**

Section of Enactment

Chapter: 106 Title: Telecommunications Ordinance Gazette Number: L.N. 21 of 2001

Section: 6D Heading: Guidelines Version Date: 01/04/2001

- (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 his opinion are suitable for that purpose.
- (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 he proposes to perform his function of determining applications for licences which may be issued by him, including the licensing criteria and other relevant matters he proposes to consider;
 - (b) subject to subsection (3), on the application of the principle referred to in section 14(6)(a) in any arbitration proceedings.
- (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 7L(2), carry out such consultation with the licensees in the relevant telecommunications market as is reasonable in all the circumstances of the case;
 - (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
- (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)

Chapter:	106	Title:	Telecommunications Ordinance	Gazette Number:	36 of 2000
Section:	32L	Heading:	Interpretation	Version Date:	16/06/2000

PART VC

APPEALS RELATING TO SECTIONS 7K, 7L, 7M and 7N

In this Part-

"appeal" (上訴) means an appeal under section 32N(1);

"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), in relation to an appeal, means the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1)-
(a) to the extent to which it relates to section 7K, 7L, 7M or 7N or any licence condition relating to any such section; and

(b) which is the subject of the appeal;

"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).

(Part VC added 36 of 2000 s. 17)

**Chapter: 106 Title: Telecommunications Gazette 36 of 2000
Ordinance Number:**

**Section: 32N Heading: Appeals to Appeal Board Version 16/06/2000
Date:**

(1) Any person aggrieved by-

(a) an opinion, determination, direction or decision of the Authority relating to-

(i) section 7K, 7L, 7M or 7N; or

(ii) any licence condition relating to any such section; or

(b) any sanction or remedy imposed or to be imposed under this Ordinance by the Authority in consequence of a breach of any such 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 any such section or any such licence condition, as the case may be.

(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.

(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.

(Part VC added 36 of 2000 s. 17)

Chapter: 106	Title: Telecommunications Ordinance	Gazette Number: 36 of 2000
Section: 320	Heading: Procedure and powers of Appeal Board, etc.	Version Date: 16/06/2000

- (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.

(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.

(Part VC added 36 of 2000 s. 17)