

**For discussion
on 5 October 2009**

**Legislative Council Panel
on Information Technology and Broadcasting
Telecommunications (Amendment) Bill 2009**

Purpose

This paper briefs Members on the promulgation of the licensing criteria for the grant of sound broadcasting licences and the proposed legislative amendments to prescribe these criteria under the Telecommunications Ordinance (the Ordinance) (Cap. 106).

Background

Sound Broadcasting Licensing Regime under the Ordinance

2. The Chief Executive (CE) in Council is the licensing authority for sound broadcasting service under the Ordinance. Under section 13C of the Ordinance, after considering recommendations made by the Broadcasting Authority (BA), the CE in Council may grant a licence for the maintenance and operation of sound broadcasting services.
3. To enhance the transparency of the existing licensing regime, the licensing authority (CE in Council) and the recommending body (BA) have established a set of licensing criteria to be used in processing applications for sound broadcasting licences. The Administration promulgated the licensing criteria (**Annex A**) on 7 July 2009. These criteria are based on local experience in considering broadcasting licence applications as well as international best practices. There are similar licensing criteria for the grant of television broadcasting licences.
4. The Commerce and Economic Development Bureau and the BA have promulgated the licensing criteria online for reference by members of public and all interested parties.

Licensing Criteria

5. The availability of suitable frequency spectrum is an overriding factor or condition precedent before a sound broadcasting licence

application could be considered. If the BA, having consulted the Telecommunications Authority, is satisfied that the frequency proposed by the applicant is available and is suitable for use in providing the proposed broadcasting service, it will consider the licence application by reference to the specified licensing criteria as set out in Part B of **Annex A**, which can be summed up as follows:

- (a) applicant's financial soundness and commitment to investment;
- (b) applicant's managerial and technical expertise;
- (c) variety, quantity and quality of programmes to be provided;
- (d) technical soundness and quality of the proposed broadcasting service;
- (e) speed of service roll-out;
- (f) where construction work is to be carried out, the extent of inconvenience that may be caused to the public;
- (g) benefits to the local broadcasting industry, the audience and the community as a whole;
- (h) applicant's quality control and compliance capability; and
- (i) whether the applicant and all persons exercising control of the applicant are fit and proper persons.

6. The BA will submit its recommendations on the sound broadcasting licence application to the CE in Council pursuant to section 13C of the Ordinance. The CE in Council as the licensing authority will apply the same set of licensing criteria in the consideration of the sound broadcasting licence application.

Legislative Proposal

7. The assessment criteria proposed are not new, and have in the past years been used in processing applications for sound broadcasting licences. We consider it appropriate to set out such criteria for sound broadcasting licence applications under the Ordinance.

8. Against this background, the Administration is now seeking to prescribe the licensing criteria for the grant of sound broadcasting licences under the Ordinance, and to empower the BA to issue guidelines indicating how it proposes to perform its function of making recommendations on sound broadcasting licence applications to the CE in Council, through the Telecommunications (Amendment) Bill 2009 (**Annex B**).

9. The legislative proposal is in line with public expectation that our licensing regime in respect of sound broadcasting services should be

transparent and that the criteria used to determine licence applications should be clear and certain. This is also in line with Members' views expressed in past LegCo discussions suggesting for clear licensing criteria to be included under the law.

Way forward

10. We intend to introduce the Telecommunications (Amendment) Bill 2009 into the Legislative Council in October 2009.

Communications and Technology Branch
Commerce and Economic Development Bureau

23 September 2009

**Pre-requisite and Criteria for
grant of licences for sound broadcasting services
by the CE in Council**

(A) Pre-requisite

Availability of suitable frequency spectrum through which the proposed sound broadcasting services may be broadcast.

(B) Criteria

(a) Financial soundness and commitment to investment

The applicant must demonstrate a commitment to invest sufficiently in the proposed project and must possess sufficient financial capability to invest to the level proposed. The proposals on performance bond will be evaluated on their effectiveness as a means to bind the applicant to his commitments and obligations.

(b) Managerial and technical expertise

The applicant must possess relevant managerial and proven technical expertise to operate a satisfactory service in Hong Kong. The knowledge of the applicant or the consortium partners about the local environment and their experience in the operation of a broadcasting service will be relevant factors for consideration.

(c) The variety, quantity and quality of programmes

The proposals will be evaluated on the appeal of the programming to audience, the quantity and quality of proposed programmes and the extent to which they will broaden audience's choice.

(d) Technical soundness and a satisfactory quality of broadcasting service

The proposed service must be technically sound and is likely to give a satisfactory quality of service.

(e) **Service roll-out**

The speed of service roll-out will be a relevant factor for consideration.

(f) **Minimum inconvenience to members of the public**

The proposals which involve construction works will be assessed against their impact on members of the public.

(g) **Benefits to the local broadcasting industry, the audience and the community as a whole**

Any benefits the proposals will bring to the broadcasting industry and the community as a whole will be considered favourably. The installation fees and equipment cost to be charged to audience, if applicable, must be set at levels which are affordable and accessible to the general public.

(h) **Quality control and compliance**

The applicant must propose an effective internal monitoring mechanism to ensure that the terms of the licence and the applicable laws are complied with.

(i) **Fit and proper persons**

In determining whether the applicant or person exercising control of the applicant is a fit and proper person, account shall be taken of –

- (i) the business record of the applicant or person;
- (ii) the record of the applicant or person in situations requiring trust and candour;
- (iii) the criminal record in Hong Kong of the applicant or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
- (iv) the criminal record in places outside Hong Kong of the applicant or person in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the applicant or person as mentioned in paragraph (iii) above.

A BILL

To

Amend the Telecommunications Ordinance –

- (a) to provide that an application for a sound broadcasting licence may be entertained only if the Broadcasting Authority is satisfied as to certain matters;
- (b) to specify the matters to which the Chief Executive in Council must have regard in exercising the discretion whether to grant sound broadcasting licences;
- (c) to enable the Broadcasting Authority to issue guidelines indicating the manner in which it proposes to perform certain specified functions; and
- (d) to provide for matters connected with these purposes.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Telecommunications (Amendment) Ordinance 2009.

2. Application for licence

(1) Section 13B of the Telecommunications Ordinance (Cap. 106) is amended by renumbering it as section 13B(1).

(2) Section 13B is amended by adding –

“(2) An application made under subsection (1) may be entertained only if the Broadcasting Authority, after consulting the Telecommunications Authority, is satisfied that –

- (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.

(3) If the Broadcasting 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.”.

3. Grant of licence

(1) Section 13C(1) is amended by repealing “The Broadcasting Authority shall consider applications made under section 13B” and substituting “If, in relation to an application made under section 13B, the Broadcasting Authority is satisfied as to the matters specified in section 13B(2), it must consider the application”.

(2) Section 13C is amended by adding –

“(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 applicant’s financial soundness and ability to maintain, throughout the period for which the licence would be in force, the proposed broadcasting service;
- (c) whether the applicant has the necessary technical expertise and the relevant managerial skill to operate the proposed broadcasting service;
- (d) the variety, quantity and quality of programmes to be provided;

- (e) the quality and technical viability of the proposed broadcasting service;
- (f) the speed of service roll-out;
- (g) where any construction work is to be carried out, the extent of any inconvenience that may be caused to the public by the work;
- (h) the benefits to the local broadcasting industry, the audience and the community as a whole;
- (i) 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;
- (j) any other matter prescribed under subsection (6).

(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).

(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).”.

4. Section added

The following is added –

“13CA. Broadcasting Authority may issue guidelines

(1) The Broadcasting 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.

(2) The Broadcasting Authority must consult the Telecommunications Authority before issuing a guideline under this section relating to technical standards that corporations seeking to become licensees should meet.”.

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.

Explanatory Memorandum

The object of this Bill is to amend the Telecommunications Ordinance (Cap. 106) (“the Ordinance”) to improve certain aspects of the sound broadcasting licensing regime.

2. Clause 1 sets out the short title of the Bill when enacted.
3. Clause 2 amends section 13B of the Ordinance to provide that an application for a sound broadcasting licence will be entertained only if the Broadcasting Authority is satisfied as to two matters. First, the frequency that the applicant proposes to use is available as at the date of the application. Secondly, that frequency is suitable for use in providing the proposed broadcasting service. The Broadcasting Authority must notify the applicant if it is not satisfied as to any of these matters.
4. Clause 3 amends section 13C of the Ordinance to set out the matters to which the Chief Executive in Council must have regard in exercising the discretion whether to grant sound broadcasting licences. The Chief Executive in Council may by order supplement those criteria.
5. Clause 4 adds a new section 13CA to the Ordinance to empower the Broadcasting Authority to issue guidelines indicating how it proposes to perform the function mentioned in paragraph 3 above and its function of making recommendations on applications for sound broadcasting licences to the Chief Executive in Council.
6. Clause 5 provides that the Ordinance as amended by the Bill after its enactment applies to pending applications for sound broadcasting licences.