

**立法會**  
**Legislative Council**

LC Paper No. CB(1)918/09-10  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/09

**Bills Committee on  
Telecommunications (Amendment) Bill 2009**

**Minutes of the fourth meeting  
held on Tuesday, 22 December 2009, at 9:00 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Andrew LEUNG Kwan-yuen, SBS, JP (Chairman)  
Hon LAU Kong-wah, JP  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon LEE Wing-tat  
Hon WONG Ting-kwong, BBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Members absent** : Hon Abraham SHEK Lai-him, SBS, JP  
Hon Cyd HO Sau-lan  
Dr Hon Samson TAM Wai-ho, JP

**Public Officers attending** : Agenda Item II  
  
Mr Alan SIU, JP  
Deputy Secretary for Commerce and Economic  
Development (Communications and Technology)  
  
Mr Aaron LIU  
Principal Assistant Secretary for Commerce and  
Economic Development (Communications and  
Technology)A  
  
Ms Maisie CHENG, JP  
Commissioner for Television and Entertainment  
Licensing

Mr PO Pui-leong  
Assistant Commissioner for Television and Entertainment  
Licensing (Broadcasting)

Mr Gilbert MO  
Deputy Law Draftsman (Bilingual Drafting &  
Administration)  
Department of Justice

**Clerk in attendance :** Ms YUE Tin-po  
Chief Council Secretary (1)3

**Staff in attendance :** Miss Winnie LO  
Assistant Legal Adviser 7

Ms Annette LAM  
Senior Council Secretary (1)3

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Action

- I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)720/09-10 -- Minutes of meeting held on  
30 November 2009)

The minutes of the meeting held on 30 November 2009 were confirmed.

- II. Meeting with the Administration**  
(LC Paper No. CB(1)716/09-10(01) -- List of follow-up actions arising  
from the discussion at the meeting  
on 8 December 2009

LC Paper No. CB(1)716/09-10(02) -- Administration's response to issues  
raised at meeting on 8 December  
2009

LC Paper No. CB(1)748/09-10(01) -- Submission on Committee Stage  
*(tabled at the meeting and* amendments to the Bill proposed  
*subsequently issued on* by Hon Emily LAU and Hon LEE  
*22 December 2009)* Wing-tat

Clause-by-clause examination of the Bill

LC Paper No. CB(3)813/08-09 -- The Bill

LC Paper No. CB(1)187/09-10(01) -- Marked-up copy of the Bill prepared by the Legal Service Division

File Ref: CTB(CR)9/19/15 (09) Pt. 3 -- Legislative Council Brief on Telecommunications (Amendment) Bill 2009 issued by the Commerce and Economic Development Bureau

LC Paper No. LS2/09-10 -- Legal Service Division Report)

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

### Scrutiny of the Bill

3. The Bills Committee completed scrutiny of the Chinese version of the Bill. The Chairman requested the Legal Service Division of the Secretariat to examine the legal and drafting aspects of the English version of the Bill and to report irregularity, if any, to the Bills Committee.

### Committee Stage amendments (CSAs) proposed to the Bill

- Admin 4. The Administration undertook to:
- (a) provide a detailed response to the CSAs proposed by Ms Emily LAU and Mr LEE Wing-tat tabled at the meeting;
  - (b) convey to the Broadcasting Authority (BA) for its consideration members' view that the BA should hold public hearings to solicit public views in connection with the licensing for sound broadcasting services; and
  - (c) provide information on the appeal mechanism in overseas jurisdictions.

*(Post-meeting note: The information in respect of paragraph 4(a) and (c) were issued to members vide LC Paper Nos. CB(1)778/09-10(01) and CB(1)826/09-10(01) on 29 December 2009 and 6 January 2010 respectively.)*

### Legislative timetable

5. The Chairman informed the meeting that the Bills Committee would submit a written report to the House Committee on 8 January 2010 supporting resumption of the Second Reading debate on the Bill at the Council meeting on 20 January

2010. He also reminded members that the deadline for giving notice to move CSAs would be 11 January 2010.

**III. Any other business**

6. There being no other business, the meeting ended at 10:25 am.

Council Business Division 1  
Legislative Council Secretariat  
19 January 2010

**Proceedings of the fourth meeting of  
Bills Committee on Telecommunications (Amendment) Bill 2009  
on Tuesday, 22 December 2009, at 9:00 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000150 – 000303	Chairman	(a) Opening remarks by the Chairman  (b) Confirmation of minutes of meeting held on 30 November 2009 (LC Paper No. CB(1)720/09-10)	
000304 – 001208	Chairman Administration Ms Emily LAU Mr LEE Wing-tat	<p>Briefing by the Administration on concerns raised by members at the meeting held on 8 December 2009 (LC Paper No. CB(1)716/09-10(02)).</p> <p>Ms Emily LAU and Mr LEE Wing-tat expressed concern about the lack of transparency in the licensing process and the unfettered discretionary power of the Chief Executive (CE)-in-Council. Mr LEE Wing-tat suggested publishing the Broadcasting Authority (BA)'s recommendations to the CE-in-Council on licensing applications.</p> <p>The Administration explained that the existing application processing procedures had already provided for a transparent and fair licensing process. In the event that the BA made an unfavourable recommendation and/or the Administration had a negative assessment in respect of the application, the applicant would be informed of such recommendation and/or assessment and be invited to make representations. The applicant's representations, together with the BA's advice and the Administration's assessment would be submitted to the CE-in-Council for consideration. The submission to the CE-in-Council would be made in confidence in accordance with the established mechanism. The Administration was not in a position to disclose information relevant to the deliberation of the Executive Council. For transparency, the applicant would be informed of the licensing decision with reasons for refusal in case the application was rejected. The Government would also publicly announce the final licensing decision on an application by way of press release and Legislative Council Brief.</p>	
001209 – 001343	Chairman Administration	<p><b>Briefing by the Administration</b></p> <p><b>Clause-by-clause examination of the Bill (Chinese version)</b></p> <p><u>Clause 1 – Short title</u></p>	

Time marker	Speaker	Subject(s)	Action required
		Members raised no query.	
001344 – 001507	Chairman Administration	<p><u>Clause 2 – Application for licence</u></p> <p>Members raised no query.</p>	
001508 – 003929	<p>Chairman Administration</p> <p>Mr Ronny TONG</p> <p>Ms Emily LAU</p> <p>Mr LAU Kong-wah</p> <p>Mrs Regina IP</p> <p>Assistant Legal Adviser (ALA)</p>	<p><u>Clause 3 – Grant of licence</u></p> <p><u>Section 13C subsection (4)(j)</u></p> <p>Mr Ronny TONG's concern that section 13C subsection (4)(j) would give too wide a power to the CE-in-Council. Given that section 13C subsection (4)(a)-(i) had already specified the licensing criteria, Mr Ronny TONG questioned whether section 13C subsection (4)(j) to provide the CE-in-Council with the flexibility to prescribe additional matters under subsection (6) was necessary.</p> <p>The Administration explained that the specification of additional matters to which the CE in Council must have regard in exercising the discretion whether to grant a licence must be published by way of an order in the Gazette which would be tabled at the Legislative Council and subject to the negative vetting procedures.</p> <p>Ms Emily LAU's concern whether the application of the licensing criteria would preclude community groups and smaller scale operators from being granted a licence to operate their own community or locality specific radio channels.</p> <p>The Administration highlighted that the licensing criteria did not in any way specify any threshold whereby an applicant must meet before it could be granted a licence, and would not discriminate against applicants with a smaller scale of operation. The adoption of the criteria would not rule out any licence applications (such as those catering for the needs of specific social/ethnic/religious groups) from receiving a fair chance to be considered on its individual merits as in the case of other licence applications, including those providing for territory-wide radio broadcasting services. The financial requirement and related consideration would depend on the applicant's proposal in respect of the scale, nature and programme content of the services to be provided.</p> <p><u>Section 13C subsection (5)</u></p> <p>Mr LAU Kong-wah enquired why offences such as drug trafficking or involvement in triad society activities, other</p>	

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		<p>than the offences involving bribery, false accounting, corruption or dishonesty prescribed under subsection (5)(c), were not included as relevant for consideration in determining whether a person was a fit and proper person. Mrs Regina IP enquired whether offences such as indecent assault, insider trading and crime of passion would also be taken into account for evaluating the applicant's fitness and properness.</p> <p>The Administration explained that the definition on "fit and proper person" under subsection (5) was based on the provision of the Broadcasting Ordinance (BO) (Cap. 562) in respect of the grant of a television programme service licence. While special importance was attached to finance-related offences, offences that had a bearing on an applicant's character and credibility, such as perjury, theft and robbery would be considered under subsection (5)(b) ("the record of the person in situation requiring trust and candour") and subsection (5)(c) relating to "dishonesty".</p> <p>The ALA advised that the "fit and proper person" provision under subsection (5) was broadly similar to that under section 21 subsection (4) of the BO.</p>	
003930 – 004127	Chairman Administration	<p><u>Clause 4 – Section added (13CA. Broadcasting Authority may issue guidelines)</u></p> <p>Members raised no query.</p>	
004128 – 004310	Chairman Administration	<p><u>Clause 5 – Transitional</u></p> <p>Members raised no query.</p>	
004311 – 012010	Chairman Administration Ms Emily LAU Mrs Regina IP Mr LEE Wing-tat Mr Ronny TONG	<p>Submission on Committee Stage amendments to the Bill proposed by Hon Emily LAU and Hon LEE Wing-tat (LC Paper No. CB(1)748/09-10(01))</p> <p><u>A separate licensing mechanism for the grant of a community radio licence</u></p> <p>Ms Emily LAU's suggestion for a separate licensing regime and assessment criteria for processing community radio licence applications.</p> <p>The Administration advised that a separate licensing mechanism for the grant of a community radio licence was not necessary. The current licensing regime together with the enhancement to be brought about by the Bill (including setting out the licensing criteria in the law) was considered appropriate and adequate in processing licence applications,</p>	The Administration to follow up as stated in paragraph 4(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>be it for territory-wide or localized sound broadcasting.</p> <p><u>Holding of public hearings</u></p> <p>To enhance transparency and accountability to the public, Mr LEE Wing-tat proposed to prescribe by law the requirement for the BA to hold public hearings to solicit public views in connection with the licensing for sound broadcasting services.</p> <p>The Administration considered Mr LEE's proposal not necessary as established procedures had been in place under the existing licensing process to consult the public. In accordance with the Guide to the Consultation Process of the Broadcasting Authority, the BA would publish a notice stating details of the application in specified form on the BA website and in one English and one Chinese language daily newspaper, and invite the public to make representations within 21 days. Public hearings had also been conducted in respect of the mid-term review of the domestic free television programme service licences. The Guide had operated effectively and could be flexibly amended in response to public expectation.</p> <p><u>An independent appeal mechanism other than judicial review</u></p> <p>Mr LEE Wing-tat proposed an amendment to provide for an appeal to the Court of First Instance against the licensing decisions of the CE-in-Council, other than judicial review which he considered costly and procedurally complicated.</p> <p>Mrs Regina IP's concern that the Judiciary might be overloaded with policy matters and political disputes.</p> <p>Mr Ronny TONG's view that given its narrow scope, judicial review should not be taken as a formal appeal channel whereby the basis and rationale of a decision would be subject to legal challenge.</p> <p>The Administration's view that judicial review was an appropriate established appeal mechanism. Aggrieved applicants could lodge an appeal by way of judicial review against licensing decision made by the CE-in-Council. This was on par with similar arrangements in many overseas jurisdictions including US, UK and Australia. To ensure that the CE-in-Council would be provided with independent advice, all sound broadcasting licence applications were processed and recommended by the BA which was an independent statutory authority. Moreover,</p>	<p>The Administration to follow up as stated in paragraph 4(b) of the minutes</p> <p>The Administration to follow up as stated in paragraph 4(c) of the minutes</p>



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>the proposed amendment had exceeded the scope of the Bill, the objective of which was to prescribe under the law the licensing criteria to be taken into account in considering an application for the grant of a sound broadcasting licence.</p> <p><u>Broadcasting Authority as the licensing authority</u></p> <p>Ms Emily LAU's suggestion for the BA to assume the responsibility of receiving, vetting and approving sound broadcasting licences.</p> <p>The Administration held the view that the issue which involved policy changes had exceeded the scope of the Bill.</p>	
012011 – 012206	Chairman Administration	Legislative timetable	