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**Background brief on the
Telecommunications (Amendment) Bill 2009**

Purpose

This paper sets out the background to the promulgation of the licensing criteria for the grant of sound broadcasting licences and the Administration's legislative proposal to prescribe these criteria under the Telecommunications Ordinance (Cap. 106) through the Telecommunications (Amendment) Bill 2009 (the Bill). It also provides a summary of views and concerns expressed by Members in previous discussions.

Background

2. The licensing regime for sound broadcasting services is set out in Part IIIA of the Telecommunications Ordinance. Section 13B of the Telecommunications Ordinance stipulates that an eligible corporation may apply to the Broadcasting Authority (BA), in such form as the BA may determine, for a licence to establish and maintain a sound broadcasting service. Section 13C(1) requires the BA to consider applications made under section 13B and to make recommendations thereon to the Chief Executive (CE)-in-Council. Section 13C(2) provides that having considered BA's recommendations in respect of an application for the licence, the CE-in-Council may grant a licence to the applicant subject to the terms and conditions the CE-in-Council may specify. The Government issues Legislative Council Briefs and press releases to announce the decisions of CE-in-Council on applications for licences for 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. On 7 July 2009, the Administration promulgated the licensing criteria, details of which are set out in the **Appendix**.

4. According to the Administration, 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. The BA will submit its recommendations on the sound broadcasting licence application to the CE-in-Council pursuant to section 13C of the Telecommunications Ordinance. The CE-in-Council, as the licensing authority, will apply the same set of licensing criteria in considering the sound broadcasting licence application.

The Bill

5. The Bill seeks to amend the Telecommunications Ordinance to prescribe the licensing criteria for the grant of sound broadcasting licences, 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. The main provisions of the Bill are set out below:

- (a) Clause 2 amends section 13B of the Telecommunications Ordinance to provide that an application for a sound broadcasting licence will be entertained only if the BA is satisfied that the frequency proposed by the applicant is available at the date of the application and is suitable for use for the provision of the proposed broadcasting service;
- (b) Clause 3 amends section 13C of the Telecommunications Ordinance to set out the matters to which the CE-in-Council must have regard in exercising the discretion whether to grant sound broadcasting licences. The CE-in-Council may by order supplement those criteria; and
- (c) Clause 4 adds a new section 13CA to the Telecommunications Ordinance to empower the BA to issue guidelines indicating how it proposes to perform the function of determining the availability of suitable frequency proposed to be used for the sound broadcasting service pursuant to section 13C and making recommendations on applications for sound broadcasting licences to the CE-in-Council.

Discussion by the Panel on Information Technology and Broadcasting

6. At the meeting of the Panel on Information Technology and Broadcasting (the Panel) on 19 February 2008, the Administration briefed members on the prevailing policies relating to the regulation of radio broadcasting and the use of radiocommunications apparatus for the purpose of radio broadcasting. Some Panel members expressed concern that the criteria and requirements for licensing were not clearly prescribed in the Telecommunications Ordinance and that there was no provision for appeal against the decision of the CE-in-Council who had unchecked power to approve or reject applications for a TV or sound broadcasting licence. These members considered that the outdated Telecommunications Ordinance and the licensing regime were no longer effective in regulating the telecommunications industry and should be revamped in line with public expectation of the prompt opening up of airwaves for use by the community. They called for an early review of the Telecommunications Ordinance to enhance the fairness and transparency of the

licence processing procedures.

7. At the Panel meeting held on 5 October 2009, the Administration briefed 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 through the Bill. The Panel supported in principle the Administration's legislative proposal. Some Panel members expressed that despite its claim to be a pluralistic and culturally vibrant society, Hong Kong lagged behind many other advanced jurisdictions and developing economies in the opening up of airwaves for community and public access broadcasting. They opined that the Government should be more open-minded to community participation in broadcasting, providing more platforms and channels for different community organizations, social groups, religious bodies, minority groups and non-governmental organizations to express diverse views so that the public could have more programming choices. They also opined that the Administration should lift the restrictions on the grant of licence to enable public access to airwaves as digitization would release additional frequency spectrum.

8. Some Panel members expressed grave concern that the proposed licensing criteria on financial soundness and commitment to investment for the grant of sound broadcasting licences would preclude set-ups that had less financial means from being granted a licence to operate community radio service. They considered that such criteria were against the world trend whereby community channels in a number of overseas economies had received government subsidy. They were of the view that as digitization would free up additional frequency spectrum, the financial threshold should be lowered so that not only resourceful conglomerates, but also smaller community groups that were less financially capable could also have the opportunity to operate their own channels and participate in community broadcasting.

9. Some Panel members pointed out that the criteria for the grant of sound broadcasting licences regarding variety, quantity and quality of programmes, and the benefits to the local broadcasting industry, the audience and the community as a whole, if also made applicable to newspaper and magazine publications, would have a negative impact on freedom of press and greatly impede the free flow of information. They were of the view that these criteria should be scrapped.

Recent Development

10. At the House Committee meeting on 23 October 2009, a Bills Committee was formed to scrutinize the Bill.

Relevant papers

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 19 February 2008

<http://www.legco.gov.hk/yr07-08/english/panels/itb/papers/itb0219cb1-805-1-e.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 19 February 2008 (speaking note of Director General of Telecommunications on regulation of radio broadcasting)

<http://www.legco.gov.hk/yr07-08/english/panels/itb/papers/itb0219cb1-865-2-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 19 February 2008

<http://www.legco.gov.hk/yr07-08/english/panels/itb/minutes/itb080219.pdf>

Paper provided by the Administration for the Information Technology and Broadcasting Panel meeting on 5 October 2009

<http://www.legco.gov.hk/yr08-09/english/panels/itb/papers/itb1005cb1-2663-2-e.pdf>

Legislative Council Brief on Telecommunications (Amendment) Bill 2009 provided by the Administration for the Information Technology and Broadcasting Panel meeting on 5 October 2009

http://www.legco.gov.hk/yr09-10/english/bills/brief/b15_brf.pdf

Background brief prepared by the Legislative Council Secretariat for the Information Technology and Broadcasting Panel meeting on 5 October 2009

<http://www.legco.gov.hk/yr08-09/english/panels/itb/papers/itb1005cb1-2663-3-e.pdf>

Minutes of Information Technology and Broadcasting Panel meeting on 5 October 2009

<http://www.legco.gov.hk/yr08-09/english/panels/itb/minutes/itb20091005.pdf>

Council Business Division 1
Legislative Council Secretariat
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**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.