

For information

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

**Information provided in response to the follow-up actions
arising from the discussion at the meeting on 8 December 2009**

At the Bills Committee meeting held on 8 December 2009, Members requested the Administration to:

- (a) provide information on previous cases in which the Chief Executive in Council (CE in Council), in exercising the discretion whether to grant a licence in respect of an application for a licence to establish and maintain a broadcasting service, had made a decision contrary to the recommendations of the Broadcasting Authority (BA); and
- (b) explain why section 13C of the Telecommunications Ordinance was not amended by repealing “Governor” and substituting “Chief Executive” under Clause 3 of the Telecommunications (Amendment) Bill 2009.

2. This note sets out the response of the Administration to the above-mentioned issues.

**Processing of sound broadcasting licence applications under the
Telecommunications Ordinance**

3. Under section 13C of the Telecommunications Ordinance (Cap. 106) (TO), after considering recommendations made by the BA, the CE in Council may grant a licence for the maintenance and operation of sound broadcasting services. There have been no occasions on which the advice of the BA has not been taken fully into account when considering applications for sound broadcasting licenses.

4. The Commerce and Economic Development Bureau (CEDB) is responsible for submitting the application together with the BA's recommendations to the CE in Council. To ensure a transparent and fair licensing process, in the event that the BA makes an unfavourable recommendation and/or the Administration has a negative assessment in respect of the application, the CEDB would inform the applicant of such recommendation and/or assessment and invite the applicant to make representations. The applicant's representations, together with the BA's advice and the Administration's assessment, form the submission to the Executive Council which would be made in confidence according to established practices. The Administration is not in a position to disclose information relevant to the deliberation of the Executive Council.

5. The Government would inform the licence applicant of the licensing decision with reasons for rejection in case the application is rejected. The Government would also publicly announce the licensing decisions by way of press release and Legislative Council Brief.

6. We believe that the above arrangement has struck an appropriate balance between maintaining transparency while preserving the confidentiality of the deliberations in the Executive Council.

References to “Governor-in-Council” in the Telecommunications Ordinance

7. The Amendment Bill is a short Bill and its only objective is 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 in Hong Kong. Given the narrow scope of the Amendment Bill and the fact that only two existing sections are amended in this exercise, it would be out of proportion to make the Amendment Bill a platform for making adaptation changes to all references to “Governor-in-Council” in the TO. Such changes should more appropriately be dealt with under a separate adaptation exercise or when the next suitable opportunity to amend the TO

arises. We shall keep this in view and take appropriate action in due course. Meanwhile, there is no legal issue because of the application of paragraph 11 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), which stipulates that -

“Any reference to the Governor of Hong Kong or to the Governor in Council shall be construed as a reference to the Chief Executive of the Hong Kong Special Administrative Region or the Chief Executive in Council respectively.”

Commerce and Economic Development Bureau
Department of Justice

December 2009