

For information

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

**Administration's comments on the Committee Stage
Amendments proposed by the Democratic Party**

At the Bills Committee meeting held on 22 December 2009, the Democratic Party (DP) has proposed some Committee Stage Amendments (CSAs) to the Telecommunications (Amendment) Bill 2009 (Amendment Bill). This paper sets out the Administration's comments on these CSAs.

DP's CSAs

2. The DP proposes four items of amendments to the Amendment Bill, as follows –

Item 1

- (a) to add a definition on community broadcasting and insert a separate set of licensing criteria in respect of community broadcasting;

Item 2

- (b) to insert a mandatory requirement for the Broadcasting Authority (BA) to hold a public hearing in connection with the issue of a licence (or a community radio licence), the suspension or revocation of a licence (or a community radio licence), and the making of a direction under section 36B of the Telecommunications Ordinance;

Item 3

- (c) to add an mechanism whereby the applicant for a licence (or community radio licence) may appeal to the Court of First Instance regarding the licensing decision of the Chief Executive (CE) in Council; and

Item 4

- (d) to transfer the powers of the CE in Council in the granting of sound broadcasting licence to the BA.

Administration's comments

3. The scope of the Amendment Bill is provided under its long title, which is stated below -

- (a) to provide that an application for a sound broadcasting licence may be entertained only if the BA 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 BA 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.

4. We have critically examined the four CSAs proposed by DP against the scope of the Amendment Bill set out in paragraph 3 above. Our comments on the individual items of the CSAs are as follows -

Item 1

- (a) The proposed additions relating to community broadcasting are outside the scope of the Amendment Bill. We also wish to point out that under the proposed licensing criteria of the Amendment Bill, there is not any prescribed threshold that would rule out community broadcasting. Any application for community broadcasting will be given a fair chance to be considered on its own merits.

Item 2

- (b) The proposed additions relating to the conduct of public hearing are outside the scope of the Amendment Bill. As undertaken at the Bills Committee meeting held on 22 December, we would relay Members' request for public hearing in processing sound broadcasting licence applications to the BA for consideration, and where justified, this can be implemented via administrative means.

Item 3

- (c) The proposed additions relating to making appeals to the Court of First Instance are outside the scope of the Amendment Bill. We also have grave reservations over this proposal, which would effectively impose an administrative function upon the court with regard to licensing matters.

Item 4

- (d) The proposed transfer of powers from CE in Council to the BA are outside the scope of the Amendment Bill. We also consider the existing arrangement for the BA to make recommendation on sound broadcasting licence applications to the CE in Council appropriate.

Commerce and Economic Development Bureau and
Departure of Justice
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