

# 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.