

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance (Chapter 106)

TELECOMMUNICATIONS (AMENDMENT) BILL 2009

INTRODUCTION

At the meeting of the Executive Council on 7 July 2009, the Council ADVISED and the Chief Executive ORDERED that:

- A
- (a) a set of criteria for the granting of licences for sound broadcasting services, at **Annex A**, should be promulgated; and
- B
- (b) the Telecommunications (Amendment) Bill 2009, at **Annex B**, should be introduced into the Legislative Council to prescribe the licensing criteria for the grant of sound broadcasting licences and to enable the Broadcasting Authority to issue guidelines indicating how it proposes to perform its function of making recommendations on sound broadcasting licence applications to the Chief Executive in Council.

JUSTIFICATIONS

Sound Broadcasting Licensing Regime under the Telecommunications Ordinance

2. Under section 13C of the Telecommunications Ordinance (the Ordinance) (Cap. 106), after considering recommendations made by the Broadcasting Authority (BA), the Chief Executive (CE) in Council may grant a licence for the maintenance and operation of sound broadcasting services.

3. In order to enhance the transparency of the existing licensing regime, the Administration has promulgated a set of licensing criteria (**Annex A**) adopted by the CE in Council for the grant of sound broadcasting licences. This set of licensing criteria is based on the local experience in considering broadcasting licence applications as well as overseas best practices. At the same time, the Administration is seeking to prescribe this set of licensing criteria by law, 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, through the Telecommunications (Amendment) Bill 2009 (**Annex B**).

Availability of Suitable Spectrum and Licensing Criteria

4. The availability of suitable frequency spectrum is an overriding factor or condition precedent before a sound broadcasting licence application could be considered. 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 as in Part B of Annex A, which can be summed up as follows:

- (a) applicant's financial soundness and commitment to investment;
- (b) applicant's managerial and technical expertise;
- (c) variety, quantity and quality of programmes to be provided;
- (d) technical soundness and quality of the proposed broadcasting service;
- (e) speed of service roll-out;
- (f) where construction work is to be carried out, the extent of inconvenience that may be caused to the public;
- (g) benefits to the local broadcasting industry, the audience and the community as a whole;
- (h) applicant's quality control and compliance capability; and
- (i) whether the applicant and all persons exercising control of the applicant are fit and proper persons.

5. The BA will submit its recommendations on the sound broadcasting licence application to the CE in Council pursuant to section 13C of the Ordinance. The CE in Council as the licensing authority will apply the same set of licensing criteria in the consideration of the sound broadcasting licence application.

THE BILL

6. The main provisions of the Bill are set out below -

- (a) **Clause 2** provides that an application for a sound broadcasting licence may be entertained only if the frequency proposed by the applicant is available and is suitable for use for the provision

of the proposed broadcasting service.

- (b) **Clause 3** sets out the matters to which the CE in Council, as the licensing authority, is to have regard when deciding whether or not to grant a sound broadcasting licence.
- (c) **Clause 4** enables 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.

LEGISLATIVE TIMETABLE

7. The legislative timetable will be as follows -

Publication in the Gazette	17 July 2009
First Reading and commencement of Second Reading Debate	October 2009
Resumption of Second Reading Debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

8. The proposal has no economic, financial, civil service, productivity, environmental or sustainability implications. This Bill does not affect the binding effect of the Ordinance, and is in conformity with the Basic Law, including the provisions concerning human rights.

PUBLIC CONSULTATION

9. The proposal aims to enhance the transparency of the existing sound broadcasting licensing regime and is in line with public expectation. The proposed licensing criteria are objective and are based on established cases and in line with international best practices. We have consulted the BA on the proposed licensing criteria.

PUBLICITY

10. We have promulgated the licensing criteria through the website of the Commerce and Economic Development Bureau (www.cedb.gov.hk) and will issue a press release today. The BA will also publicise the set of criteria on its official website (www.hkba.hk). A spokesman will be made available to answer media and public enquiries.

ENQUIRIES

11. Enquiries about this brief can be directed to Mr Kevin Choi, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) A, on 2189 2236 or at kevinchoi@cedb.gov.hk.

Communications and Technology Branch
Commerce and Economic Development Bureau

7 July 2009

**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 on 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.

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.