

立法會
Legislative Council

LC Paper No. LS2/09-10

**Paper for the House Committee Meeting
on 23 October 2009**

**Legal Service Division Report on
Telecommunications (Amendment) Bill 2009**

I. SUMMARY

- 1. Objects of the Bill** To amend the Telecommunications Ordinance (Cap. 106) to -

 - (a) provide for matters which the Broadcasting Authority must satisfy before an application for a sound broadcasting licence could be considered and to empower the Authority to issue guidelines indicating the manner in which it proposes to perform its functions of determining the availability of a suitable frequency and making recommendations on applications to the Chief Executive in Council (CE in Council); and
 - (b) specify the matters to which the CE in Council must have regard in exercising the discretion whether to grant a sound broadcasting licence.

- 2. Comments** The Bill prescribes -

 - (a) the availability of a suitable frequency as the condition precedent for an application for a sound broadcasting licence; and
 - (b) 10 licensing criteria for the grant of a sound broadcasting licence by the CE in Council.

The condition precedent and the licensing criteria referred to in (a) and (b) above are said to be based on the local experience in considering broadcasting licence applications as well as overseas best practices.

- 3. Public Consultation** No public consultation has been conducted but the Administration has consulted the Broadcasting Authority on the proposed licensing criteria included in the Bill.

- 4. Consultation with LegCo Panel** The Information Technology and Broadcasting Panel discussed the proposal in the Bill at its meeting on 5 October 2009. It supported in principle the Administration's legislative proposal but some Panel members expressed concern about the threshold of the criteria for the grant of sound broadcasting licences. They considered that a Bills Committee should be set up to consider the Bill in detail.

- 5. Conclusion** Members may wish to consider the need for a Bills Committee to consider the Bill in detail in view of Members' concerns.

II. REPORT

Objects of the Bill

To amend the Telecommunications Ordinance (Cap. 106) (the Ordinance) to -

- (a) provide for matters which the Broadcasting Authority (BA) must satisfy before an application for a sound broadcasting licence could be considered and to empower BA to issue guidelines indicating the manner in which it proposes to perform its functions of determining the availability of a suitable frequency and making recommendations on applications to the Chief Executive in Council (CE in Council); and
- (b) specify the matters to which the CE in Council must have regard in exercising the discretion whether to grant a sound broadcasting licence.

LegCo Brief Reference

2. CTB(CR) 9/19/15 (09) Pt. 3 issued by the Communications and Technology Branch of the Commerce and Economic Development Bureau on 7 July 2009.

Date of First Reading

3. 21 October 2009.

Comments

4. Clause 2 of the Bill adds a subsection to section 13B of the Ordinance to set out the condition precedent (the Condition Precedent) for an application for a sound broadcasting licence. The proposed section 13B(2) provides that an application for a sound broadcasting licence may be entertained only if BA, after consulting the Telecommunications Authority, 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.

5. Clause 3 of the Bill amends section 13C of the Ordinance to, inter alia, set out the matters (the Licensing Criteria) 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. The Licensing Criteria include whether the applicant and all persons exercising control of the applicant are fit and proper persons and the

applicant's financial soundness, commitment to investment and managerial and technical expertise. The proposed section 13C(5) specifies the matters which must be taken into account in determining whether a person is a fit and proper person, including his business record and certain criminal records in and outside Hong Kong. The proposed section 13C(6) empowers the CE in Council to prescribe additional licensing criteria by order published in the Gazette.

6. Clause 4 of the Bill adds section 13CA to the Ordinance to, inter alia, empower BA to issue guidelines indicating how it proposes to perform its function of determining the availability of suitable frequency proposed to be used for the sound broadcasting service and making recommendations to the CE in Council regarding applications for sound broadcasting licences. According to paragraph 4 of the LegCo Brief, BA will consider applications for sound broadcasting licences by reference to the Licensing Criteria before submitting its recommendations on the applications to the CE in Council pursuant to section 13C of the Ordinance.

7. According to paragraph 3 of the LegCo Brief, in order to enhance the transparency of the existing licensing regime, the Administration has promulgated a set of licensing criteria (i.e. the Condition Precedent and the Licensing Criteria) 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.

8. The Bill will commence on the date of gazettal after enactment.

Public Consultation

9. No public consultation has been conducted. According to paragraph 9 of the LegCo Brief, the Administration has consulted BA on the Licensing Criteria. Upon our enquiry, the Administration indicated that BA supported the Licensing Criteria.

Consultation with LegCo Panel

10. At the meeting of the Information Technology and Broadcasting Panel held on 5 October 2009, the Administration briefed members on the promulgation of the Condition Precedent and the Licensing Criteria and the proposed legislative amendments to the Ordinance. The Panel supported in principle the Administration's legislative proposals contained in the Bill. However, some Panel members expressed concern about the criteria being too stringent for the grant of sound broadcasting licences. They considered that a Bills Committee should be set up to consider the Bill in detail.

Conclusion

11. Members may wish to consider the need for a Bills Committee to consider the Bill in detail in view of Members' concerns.

Prepared by

LO Wing-yee, Winnie
Assistant Legal Adviser
Legislative Council Secretariat
8 October 2009