

**立法會**  
**Legislative Council**

LC Paper No. CB(4)403/12-13  
(These minutes have been seen  
by the Administration)

Ref : CB4/SS/5/12

**Subcommittee on Telecommunications (Telecommunications Apparatus)  
(Exemption from Licensing) (Amendment) Order 2012**

**Minutes of the second meeting  
held on Tuesday, 22 January 2013, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

**Members present** : Hon Charles Peter MOK (Chairman)  
Hon James TO Kun-sun  
Hon Ronny TONG Ka-wah, SC  
Hon WU Chi-wai, MH

**Members absent** : Hon WONG Ting-kwong, SBS, JP  
Hon SIN Chung-kai, SBS, JP  
Dr Hon Elizabeth QUAT, JP

**Public officers  
attending** : Agenda item I

Mr T F SO  
Assistant Director (Operations)  
Office of the Communications Authority

Mr Ivanhoe CHANG  
Principal Assistant Secretary for Commerce and  
Economic Development (Communications &  
Technology) B

Mr L H TING  
Senior Telecommunications Engineer (Spectrum  
Planning)1, Office of the Communications  
Authority

Ms Karmen KWOK  
Senior Government Counsel, Department of Justice

**Clerk in attendance** : Ms YUE Tin-po  
Chief Council Secretary (4)3

**Staff in attendance** : Mr Stephen LAM  
Assistant Legal Adviser 11

Mr Joey LO  
Senior Council Secretary (4)3

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Action

**I. Meeting with the Administration**

(LC Paper No. CB(4)342/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 16 January 2013

LC Paper No. CB(4)342/12-13(02) -- Administration's response to issues raised at the meeting on 16 January 2013

L.N. 190 of 2012 -- Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) (Amendment) Order 2012

Ref: CTB(CR)7/5/11/3 -- Legislative Council Brief on Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) (Amendment) Order 2012 issued by the Commerce and Economic Development Bureau in December 2012

- LC Paper No. CB(4)309/12-13(01) -- Administration's paper on Telecommunications (Chinese version only) (Telecommunications Apparatus) (Exemption from Licensing) (Amendment) Order 2012 (power-point presentation material)
- LC Paper No. LS15/12-13 -- Legal Service Division Report
- LC Paper No. CB(4)309/12-13(02) -- Marked-up copy of the Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) (Amendment) Order 2012 prepared by the Legal Service Division)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).
3. The Administration was requested to provide information on the prosecution policy in relation to the illegal possession or use of telecommunications apparatus for domestic purpose under the Telecommunications Ordinance (Cap. 106), including the legal basis for determining whether to institute prosecution.

*(Post-meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(4)371/12-13(02) on 30 January 2013.)*

#### Legislative timetable

4. The Subcommittee completed its scrutiny work. Members generally supported the subsidiary legislation. Members noted that the Chairman would move a motion to extend the scrutiny period of the subsidiary legislation to 27 February 2013 at the Council meeting on 23 January 2013. The Subcommittee would provide a written report to the House Committee at its meeting on 8 February 2013. Members also noted that the deadline for giving notice to amend the subsidiary legislation and the date of moving a motion to amend the subsidiary legislation at the Council meeting were 20 and 27 February 2013 respectively.

**II. Any other business**

5. There being no other business, the meeting ended at 11:25 am.

Council Business Division 4  
Legislative Council Secretariat  
6 February 2013

**Proceedings of the second meeting of  
Subcommittee on Telecommunications (Telecommunications Apparatus)  
(Exemption from Licensing) (Amendment) Order 2012  
on Tuesday, 22 January 2013, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000151 – 000316	Chairman	Opening remarks by the Chairman	
000317 – 000733	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 16 January 2013 (LC paper No. CB(4)342/12-13(02)).	
000734 – 001110	Chairman Administration	Discussion on the duration of the transitional period allowed for the possession or use of PHS apparatus after the commencement of the Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) (Amendment) Order 2012 ("the Amendment Order").  Discussion on the nature of the cases in which prosecutions had been instituted.	
001111 – 001520	Chairman Mr WU Chi-wai Administration	Mr Wu Chi-wai enquired about the Administration's plan to release the returned spectrum within the 1895 - 1906.1 MHz band to the market as a result of the implementation of the Amendment Order.  The Administration advised that the industry was very concerned about the schedule and amount of spectrum release. The Communications Authority would make public every year a spectrum release plan, which covered those relating to mobile telecommunications in the coming three years, to inform the industry about the potential supply of spectrum. If the 4.9 MHz spectrum within the 1895 - 1906.1 MHz band might be made available for mobile telecommunications, the spectrum release plan would be updated accordingly. The industry and the public would also be consulted on the possible use of the spectrum concerned. After considering the outcome of the consultation and having regard to international developments, if the spectrum was finally determined to be used for the provision of mobile telecommunications, in general, the spectrum concerned would be released to the market by a market mechanism, for example, by auction. The whole process from consultation to announcement of the auction would typically take	

Time marker	Speaker	Subject(s)	Action required
		about one year.	
001521 – 002432	Chairman Mr Ronny TONG Administration	<p>Discussion on the nature of the cases in which prosecution had not been instituted.</p> <p>Mr Ronny TONG expressed concern that the seemingly wide discretionary power of the enforcement agency in determining whether to initiate prosecution might lead to abuse.</p> <p>The Administration explained the prosecution policy in relation to the illegal possession or use of telecommunications apparatus for domestic purpose under the Telecommunications Ordinance ("TO") (Cap. 106).</p> <p>In response to Mr Ronny TONG's enquiry, the Administration advised that the power to forfeit the illegal telecommunications apparatus was provided for under section 36 of the TO. The magistrate or the court might, upon application by or on behalf of the Communications Authority or by any public officer, order that any apparatus in respect of which there had been a contravention of the TO should be forfeited.</p>	The Administration to follow up as stated in paragraph 3 of the minutes.
002433 – 003137	Chairman Mr James TO Administration	<p>Discussion on the methodology used in the estimation of the existing number of Personal Handy Phone System ("PHS") cordless telephones in use in Hong Kong and their lifespan.</p> <p>Mr James TO and the Chairman expressed satisfaction with the estimation given by the Administration, as detailed in Annex 3 to Enclosure 2 of the Administration's paper (LC paper No. CB(4)342/12-13(02)). They also expressed support for the withdrawal of the licensing exemptions granted in respect of PHS apparatus operating within the 1895-1906.1 MHz band so as to make available the spectrum concerned for other communications applications.</p>	
003138 – 003157	Chairman Administration	<p>Invitation of views</p> <p>Members agreed that there was no need to invite public views on the subsidiary legislation.</p>	
003158 – 003719	Chairman Administration	Scrutiny of the Amendment Order	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
003720 – 004132	Chairman Administration	Legislative timetable  In response to the Chairman's enquiry, the Administration advised that the Amendment Order would likely commence in mid-May 2013.	

Council Business Division 4  
Legislative Council Secretariat  
6 February 2013