

立法會
Legislative Council

LC Paper No. LS56/13-14

**Paper for the House Committee Meeting
on 23 May 2014**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 May 2014**

Tabling in LegCo : Council meeting of 21 May 2014

Amendment to be made by : Council meeting of 18 June 2014 (or that of 9 July 2014 if extended by resolution)

Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1.9-2.2 GHz Band) Regulation (L.N. 58)

Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2014 (L.N. 59)

Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2014 (L.N. 60)

Background

On 22 October 2001, the Administration assigned to four mobile network operators (the Existing Assignees) certain Third Generation spectrum (Relevant 3G Spectrum) for a term of 15 years, which will expire on 21 October 2016 (the Existing Term). In view of the forthcoming expiry of the Existing Term and having conducted public consultations and consulted the Panel on Information Technology and Broadcasting (the Panel), the Communications Authority announced that a hybrid administratively-assigned cum market-based approach will be adopted to re-assign the Relevant 3G Spectrum for the next assignment term of 15 years from 22 October 2016 to 21 October 2031 (the New Assignment Term). The Existing Assignees will be offered a right of first refusal

to be re-assigned with two-thirds of the Relevant 3G Spectrum that they currently hold. The remaining one-third, together with any spectrum in respect of which the Existing Assignees do not exercise the right of first refusal will be re-assigned by way of auction (the Re-auctioned Spectrum).

L.N. 58 to L.N. 60

2. L.N. 58 to L.N. 60 are made by the Acting Secretary for Commerce and Economic Development under section 32I of the Telecommunications Ordinance (Cap. 106) to put in place the method for determining the spectrum utilization fee (SUF) of the Relevant 3G Spectrum for the New Assignment Term. L.N. 58 specifies that the SUF for every 1kHz of the spectrum assigned to an Existing Assignee for the New Assignment Term is the higher of \$66,000 or the average SUF obtained for 1kHz of the spectrum auctioned, which is capped at \$86,000.

3. L.N. 59 amends the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106AC) by specifying that the SUF of Re-auctioned Spectrum for the New Assignment Term must be determined by way of an auction or a series of auctions to be held in accordance with Cap. 106AC.

4. L.N. 60 amends the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap. 106X), a bespoke regulation designed to specify the method for determining the SUF to be paid by the Existing Assignees of the Relevant 3G Spectrum during the Existing Term, by specifying that Cap. 106X only applies in relation to the use of the Relevant 3G Spectrum during the Existing Term so that the SUF for the New Assignment Term will be governed by L.N. 58 and L.N. 59.

Consultation with LegCo

5. According to the Clerk to the Panel, the Administration briefed the Panel at its meeting on 4 February 2013 on the consultation launched by the Commerce and Economic Development Bureau and the Office of the Communications Authority (OFCA) on 28 December 2012 concerning the proposed arrangements for re-assignment of the Relevant 3G Spectrum upon expiry of the Existing Term in October 2016. The Panel further held a meeting on 27 March 2013 to receive views from representatives of relevant stakeholders on the proposed assignment of the Relevant 3G Spectrum.

6. The Administration and the OFCA subsequently briefed the Panel on 13 January 2014 on the OFCA's decision to adopt the proposed hybrid administrative-assigned cum market-based approach to re-assign the Relevant 3G Spectrum upon expiry of the Existing Term and the considerations of the Secretary for Commerce and Economic Development on the setting of the SUF for the Relevant 3G Spectrum for the New Assignment Term announced on 15 November 2013. While some Panel members expressed support for the proposed re-assignment arrangement which would have the effect of introducing more competition in the telecommunications market, some other members expressed concern about possible impact on service degradation and pressure on service fee increase that might ensue from a reduction in the 3G Spectrum held by Existing Assignees.

7. Members may refer to the LegCo Brief (File Ref: CTB(CR)7/23/10) issued by the Commerce and Economic Development Bureau on 15 May 2014 for further information.

8. L.N. 58 to L.N. 60 come into operation on 11 July 2014.

**Public Health and Municipal Services Ordinance (Civic Centres)
(Amendment of Thirteenth Schedule) Order 2014 (L.N. 61)**

9. L.N. 61 is made by the Director of Leisure and Cultural Services (the Director) under section 105M the Public Health and Municipal Services Ordinance (Cap. 132), which empowers the Director, by order published in the Gazette, to add to or to delete from the Thirteenth Schedule to the Ordinance any premises and the grounds appurtenant thereto for use as a civic centre.

10. Schedule 1 to L.N. 61 specifies that the Ko Shan Theatre New Wing (the New Wing) at the Ko Shan Road Park, Hung Hom be set aside for use as a civic centre, which will be open for public use with effect from 16 June 2014. Schedule 2 to L.N. 61 sets out the amendments to the Thirteenth Schedule to the Ordinance to give effect to Schedule 1 of L.N. 61 by replacing "The Ko Shan Theatre at the Ko Shan Road Park" with "The Ko Shan Theatre and the Ko Shan Theatre New Wing at the Ko Shan Road Park".

11. The effect of L.N. 61 is to enable the Director as the Authority under Cap. 132 to enforce the relevant regulations relating to civic centres for the proper management of the New Wing.

12. According to the Clerk to the Panel on Home Affairs, the Panel has not been consulted on L.N. 61.

13. Members may refer to the LegCo Brief (with no reference number) issued by Leisure and Cultural Services Department on 12 May 2014 for further information.

14. L.N. 61 comes into operation on 16 June 2014.

LEGAL NOTICE NOT REQUIRED TO BE TABLED AND NOT SUBJECT TO AMENDMENT

United Nations Sanctions (Yemen) Regulation

(L.N. 62)

15. L.N. 62 is made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (UNSO) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council.

16. On 26 February 2014, the United Nations Security Council (UNSC) adopted Resolution 2140, expressing its concern at the ongoing political, security, economic and humanitarian challenges in Yemen, including the ongoing violence, and condemning terrorist activities and attacks against civilians in Yemen. UNSC also decided in the same Resolution to impose against Yemen certain sanctions for the initial period of one year from the date of adopting the Resolution.

17. L.N. 62 is made to implement UNSC Resolution 2140 by providing for prohibitions against –

- (a) making available to, or for the benefit of, certain persons or entities any funds or other financial assets or economic resources;
- (b) dealing with funds or other financial assets or economic resources owned by or otherwise belonging to, or held by, certain persons or entities; and
- (c) the entry into or transit through Hong Kong by certain persons.

18. Members may refer to the LegCo Brief (File Ref: CITB CR 75/53/9) issued by the Commerce and Economic Development Bureau in May 2014 for further information.

19. Under section 3(5) of the UNSO, sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to regulations made under UNSO. Therefore, L.N. 62 is not subject to amendment by the Legislative Council. However, since it comes within the terms of reference of the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions, Members may consider referring it to the Subcommittee for further consideration.

20. L.N. 62 expires at midnight on 25 February 2015.

Concluding Observations

21. No difficulties have been identified in relation to the legal or drafting aspects of the above items of subsidiary legislation.

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