

資訊科技及廣播局的信頭

Letterhead of INFORMATION TECHNOLOGY AND BROADCASTING BUREAU

本局檔號 OUR REF : ITBB(CR)9/19/1 (00) Pt.10
來函檔號 YOUR REF :
電 話 TEL. NO. : 2189 2236
傳 真 FAXLINE : 2511 1458/2136 8983
電子郵件 E-mail Address: eddiemak@itbb.gcn.gov.hk

16 May 2000

Connie Fung
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Connie,

Broadcasting Bill

Thank you for your letters of 28 March 2000 and 14 April 2000 on the Broadcasting Bill (the Bill). Our responses to your observations are set out below.

Observations raised in your letter of 28 March 2000

Clause 2(11)

Yes, we will consider proposing a similar Committee Stage Amendment (CSA) to specify that the Broadcasting Authority (BA) has a duty to give reasons for forming an opinion, similar to the CSA for the Telecommunication (Amendment) Bill 1999.

Clause 3, 4 and section 4(1) of Schedule 4

A notice under clause 3(2) or (5) or 4 or under section 4(1) of Schedule 4 is

not subsidiary legislation. The law draftsman has advised that it is sufficiently clear from the wording of the provisions that each of the notices concerned has no legislative effect and therefore there is no need to make express provision similar to clause 2(9) of the Bill to specify the nature of such notices.

Clause 16(2) (c)

We will consider introducing CSA to the Bill to replace “generally accepted accounting practices” with “generally accepted accounting principles”, in line with a similar CSA to an equivalent term in the Telecommunication (Amendment) Bill 1999.

Clause 24(1) and (3)

We will consider specifying the scope of BA’s functions as follows: “where the Broadcasting Authority is satisfied that it is necessary for the proper performance of its functions under *the prescribed Ordinance in order to ensure the licensee’s compliance with a licence condition, a requirement under the Ordinances which is applicable to it, a direction, order, or determination, under the Ordinances which is applicable to it, or a provision in a Code of Practice which is applicable to it*” (changes highlighted).

Clause 26

- (a) We will consider introducing a CSA to make it clear that the BA shall give the person supplying the information in confidence a reasonable opportunity to make representations on a proposed disclosure of information in all circumstances before making a decision to disclose the information.
- (b) We will consider similar CSA to provide that a person who is required to supply information to the BA shall not be compelled to produce any documents which he could not have been compelled to produce in civil proceedings before the Court of First Instance.

- (c) Yes, the provisions of Personal Data (Privacy) Ordinance (Cap. 486) applies to personal data that may be supplied to the BA.

Clause 27 and section 19 of Schedule 9

We will consider introducing a similar CSA to provide that any financial penalty imposed must be proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty, as for the Telecommunication (Amendment) Bill.

Section 13 of Schedule 4 and section 5 of Schedule 8

Under the Bill, the annual licence fee, calculated on a full cost recovery basis, is specified in the licence conditions instead of by subsidiary legislation (Part 4 of Schedule 4, which is applicable to all licensees). We will explain why licence fees are proposed to be set out in the licences and the principles on the calculation of licence fees in a separate Bills Committee paper.

Observations raised in your letter of 14 April 2000

Clauses 8(4) (iii), (iv), 8(4) (b) and the definition of “qualified voting controller” in section 1 of Schedule 1

According to the Law Draftsman, “ordinarily resident in Hong Kong” has already been defined in Clause 2(1) of the Bill. A word-by-word translation will render the Chinese text clumsy and unreadable. The Law Draftsman is of the view that the wording for the English version is in order and there is no need to delete the references to tally with the Chinese text.

Clauses 22(2) (c), 27(2) (c), 29(2) (c), 30(2) (b) (i) (C) and (ii), 31(4) (c) (i) (C) and (ii) and 33(1) (b)

The Law Draftsman has advised that “determination” carries meanings of both “決定” and “裁定” in certain contexts and these are reflected in the Chinese text where appropriate. The English term “determination”, however, is self-sufficient and is required due to the expanded scope of the Bill (please see our comments on *Section 20 of Schedule 9* below).

Clause 40

Our policy intent is that a form is not necessarily a “表格” and that the Broadcasting Authority may specify the form of any document required under the Bill to be in the specified form (Clause 40(1)). Therefore the Chinese text “有指明格式的文件” is more preferable to “表格” .

Section 9(2) (a), 10(3) (a), 23(2) (a) and 24(3) (a) of Schedule 1

We think it suffices to insert “他” between “關乎” and “在” to clarify the requirement.

Sections 16(2) (a), 22(1) (b) and (2) and 30(2) (a) of Schedule 1

The Law Draftsman has advised that “填具” is now the common usage instead of “填妥” which is used for “*duly completed*”. “填妥” in Clause 40(4)(c) and section 19(1)(a) of Schedule 1 thus needs to be amended to “填具” , in accordance with this rule.

Section 29(5) of Schedule 1

We will consider introducing a CSA to the effect that “...any information which is *furnished by a person in confidence* to received by a licensee or the Broadcasting Authority under this Part shall be treated as confidential” (changes highlighted), consistent with Clause 26(1)(a) of the Bill.

Section 3(1) of Schedule 4

Your proposal is accepted.

Section 13 of Schedule 4

We will consider introducing CSA to make it clear that “licence fee and such other fees”

will be specified in the licence.

Section 20 of Schedule 9

The existing wording tallies with that for financial penalty (Clause 27(2) (c)) etc. Under the Television Ordinance, reference is only made to “direction” or “order”. The Bill has expanded the scope to cover also “determination” as the BA is empowered under the Bill to make certain determinations, e.g. whether a television programme service primarily targets Hong Kong. There is no need to include decisions as, where applicable to the licensees, they will be conveyed through the vehicles of “direction” or “order”, to avoid the ambiguity whether they need to be complied with by the licensee.

Section 21 and 22 of Schedule 9

The references to the “Telecommunication Ordinance” are correct as transmission networks are licensed under that Ordinance.

Our comments on your other marked-ups are attached. Please do not hesitate to let me know if you have any queries.

Yours sincerely,

(Eddie Mak)

for Secretary for Information Technology and Broadcasting

c.c. D of J

(Attn: Mr Geoffrey Fox and Miss Cynthia Lee, Law Drafting Division; Ms Amy So, Commercial Unit)