

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 16 July 2021**

**Legal Service Division Report on
Telecommunications (Amendment) Bill 2021**

I. SUMMARY

1. The Bill

The Bill mainly seeks to amend the Telecommunications Ordinance (Cap. 106) to:

- (a) provide for non-carrier licences, requirements relating to work near underground telecommunications lines and related offences;
- (b) confine certain objectives of technical regulation to telecommunications matters;
- (c) cover new appeal subject matters;
- (d) make minor textual amendments; and
- (e) provide for related matters.

2. Public Consultation

The Commerce and Economic Development Bureau completed a three-month public consultation from November 2018 to February 2019. Stakeholders were generally supportive of the direction of the proposed measures which would update the legislation in a timely manner.

**3. Consultation with
LegCo Panel**

The Panel on Information Technology and Broadcasting at its meeting on 19 April 2021 considered the Administration's legislative proposal to amend the relevant provisions of Cap. 106 to implement the measures proposed in the Review of Telecommunications Regulatory Framework. Members supported the proposal.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill, and will report further, if necessary. As the Bill seeks to introduce new offences and a new regime for non-carrier licences, Members may wish to consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 14 July 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: CCIB/SD 605-10/1) issued by the Commerce and Economic Development Bureau ("CEDB") on 9 July 2021 for further details.

Object of the Bill

2. The Bill mainly seeks to amend the Telecommunications Ordinance (Cap. 106) to:
- (a) provide for non-carrier licences, requirements relating to work near underground telecommunications lines ("UTLs") and related offences;
 - (b) confine certain objectives of technical regulation to telecommunications matters;
 - (c) cover new appeal subject matters;
 - (d) make minor textual amendments; and
 - (e) provide for related matters.

Background

3. Cap. 106 mainly provides for the licensing and control of telecommunications, telecommunications services and telecommunications apparatus and equipment. In February 2019, CEDB completed the public consultation on the Review of Telecommunications Regulatory Framework ("Review") which has, among others, proposed the implementation of measures that would encourage the adoption of innovative services (such as the fifth-generation mobile communications ("5G") and Internet of Things ("IoT")¹ technologies) and promote trade facilitation. The Bill seeks, among others, to amend Cap. 106 to facilitate the development of 5G services and keep the regulatory framework in pace with the latest technological developments. Key proposed amendments are summarized in the ensuing paragraphs.

¹ IoT is the network of physical objects that are embedded with sensors, software, and other technologies for the purpose of connecting and exchanging data with other devices and systems over the internet: see <https://www.oracle.com/hk/internet-of-things/what-is-iot/> accessed on 10 July 2021.

Provisions of the Bill

Simplifying the issuance of non-carrier licences

4. According to section 2 of Cap. 106, a "carrier-licence" is, in gist, a licence issued for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between certain locations within Hong Kong or between Hong Kong and places outside Hong Kong. Further, Schedule 1 to Cap. 106 specifies the licences which do not fall within the meaning of a carrier licence. Under section 7(4) of Cap. 106, the Schedule may be amended by order published in the Gazette made by the Secretary of a policy bureau in the Government Secretariat appointed by the Chief Executive for the purposes of the administration of Cap. 106 ("Secretary")², and the order is a piece of subsidiary legislation subject to negative vetting by LegCo.

5. Clause 4 of the Bill seeks to amend Cap. 106 by, among others, empowering the Secretary to specify, by notice published in the Gazette (which would not be subsidiary legislation), any "non-carrier licence". Such licence is proposed to be defined to mean, in essence, a licence issued for the establishment or maintenance of a telecommunications network or system for carrying communications between locations within Hong Kong to provide a telecommunications service that is more restrictive in terms of geographical coverage, scope, scale or customer base of the service than one authorized to be provided under a carrier licence. According to paragraph 10 of the LegCo Brief, the proposed arrangement aims to facilitate the implementation and application of innovative telecommunications services in the 5G era.

Protection of underground telecommunications structure

6. Clause 5 of the Bill seeks to add the proposed section 18A to Cap. 106 to prescribe, among others, the requirements for carrying out work near UTLs. In gist, a person would be required, before carrying out any work below ground level near a UTL:

- (a) to take all reasonable steps to ascertain whether any UTL exists within or near the work site (and if so, the alignment and depth of the UTL); and
- (b) to ensure that all reasonable measures are taken to prevent any (i) damage to the UTL and (ii) interruption to a telecommunications service arising from the work. A person would be considered as having taken all reasonable steps/measures if the person shows that the person complied with the relevant operative guidelines issued by the Communications Authority ("CA") under section 6D of Cap. 106.

7. Under the proposed section 22A of Cap. 106 sought to be added by clause 6

² The Secretary for Commerce and Economic Development has been appointed for such purposes.

of the Bill, a person who contravenes any of the requirements mentioned in paragraph 6 above would commit an offence and be liable, upon conviction, to:

- (a) a fine at level 4 (\$25,000) and imprisonment for 6 months for contravening paragraph 6(a) or (b) above; and
- (b) a fine of \$200,000 and imprisonment for 12 months if the contravention of paragraph 6(b) above results in an interruption to a telecommunications service, and a further fine of \$10,000 for every day during which the contravention continues.

Regulation of telecommunications functions of telecommunications equipment and devices

8. At present, section 32D of Cap. 106 empowers CA to prescribe, among others, standards and specifications of telecommunications networks in pursuit of certain objectives. Clause 8 of the Bill seeks to amend section 32D by specifying, among others, that one such objective would be to ensure that equipment complies with international or recognized industrial standards "in respect of telecommunications functions". According to paragraph 5 of the LegCo Brief, by requiring CA to focus on regulating the telecommunications functions of equipment and devices and leaving other functions of such equipment and devices (e.g. electrical and other safety specifications and standards) to be regulated by other legislation, the arrangement would ensure a clearer division of work among government departments in regulating smart devices and products so as to cope with the needs of the latest development in the telecommunications industry.

Amendment to the appeal mechanism under Cap. 106

9. At present, section 32N of Cap. 106 provides, among others, for the matters that are appealable to the Telecommunications (Competition Provisions) Appeal Board ("Appeal Board"). These matters concern, among others, CA's decision relating to exploitative conduct prescribed under section 7Q of Cap. 106, such as whether a licensee is in a dominant position. Clause 12 of the Bill seeks to expand the Appeal Board's jurisdiction by adding a new list of subject matters (for example, CA's decision to revoke a certificate of competency issued to certify that a person is competent to operate a particular class of apparatus for radiocommunications) which would be appealable to the Appeal Board. Further, clause 11 of the Bill seeks to rename the Appeal Board as "Telecommunications Appeal Board" in the light of the proposed expansion of its jurisdiction.

Transitional and consequential amendments

10. With regard to the matters discussed in paragraph 9 above, clauses 16 and 17 of the Bill seek to make transitional and savings arrangements, and a consequential amendment to the Communications Authority Ordinance (Cap. 616) respectively.

Commencement

11. The Bill, if passed, would come into operation on a day to be appointed by Secretary for Commerce and Economic Development by notice published in the Gazette.

Public Consultation

12. According to paragraph 17 of the LegCo Brief, CEDB completed a three-month public consultation from November 2018 to February 2019 and stakeholders were generally supportive of the direction of the proposed measures which would update the legislation in a timely manner.

Consultation with LegCo Panel

13. As advised by the Clerk to the Panel on Information Technology and Broadcasting, the Panel was briefed on the views gathered in the three-month public consultation on the Review at its meeting held on 11 November 2019. The Panel considered at its meeting held on 19 April 2021 the Administration's legislative proposal to amend relevant provisions of Cap. 106 to implement the measures proposed in the Review. While members supported the proposal, they also expressed concerns on whether the proposed penalties would have sufficient deterrence against malicious attempts to interrupt telecommunications services. Some Panel members suggested that the scope of the proposed non-carrier licences should be flexible so as to strike a balance between regulating new applications of telecommunications services and maintaining a good business environment for innovation and technology start-up companies.

Conclusion

14. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill, and will report further, if necessary. As the Bill seeks to introduce new offences and a new regime for non-carrier licences, Members may wish to consider forming a Bills Committee to study the Bill in detail.

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