

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

**The Administration's responses to the issues arising from the discussion
at the meeting on 22 January 2013**

Specific officers of various ranks in the Office of the Communications Authority ("OFCA") are authorized to lay before a magistrate information in respect of any offence under the Telecommunications Ordinance (Cap. 106) ("TO") cognizable by a magistrate, and to act as a public prosecutor and conduct generally on behalf of the Secretary for Justice any prosecution before a magistrate for any offence alleged to have been committed contrary to the TO.

2. Given the primacy of article 63 of the Basic Law which states that the Department of Justice shall control criminal prosecutions, free from any interference, OFCA would consult the Prosecutions Division and obtain legal advice on a need basis in relation to the institution and conduct of prosecutions.

3. Members attention are drawn to the Statement of Prosecution Policy and Practice¹ issued by the Department of Justice. According to the Statement, in general, the prosecutor must consider two issues in deciding whether to prosecute: (i) whether or not the evidence is sufficient to justify the institution or continuation of proceedings; and (ii) if it is, does the public interest require a prosecution to be pursued. Such policy is consistent with the policies applied by prosecution agencies throughout the common law world.

¹ <http://www.doj.gov.hk/eng/public/pubsoppapcon.html>

4. The decision to prosecute will only be made when the evidence permits and when it is in the public interest to do so. Members may also wish to note that it is spelt out in section 9.2(m) of the Statement that if the offence was committed as a result of a genuine mistake or misunderstanding, it may be an indication that proceedings are not required, subject to the particular circumstances of the case.

**Commerce and Economic Development Bureau
(Communications and Technology Branch) and
Office of the Communications Authority
January 2013**