

立法會
Legislative Council

LC Paper No. CB(1)2925/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/BC/10/09

Bills Committee on Communications Authority Bill

Minutes of the first meeting
held on Thursday, 22 July 2010, at 10:45 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Samson TAM Wai-ho, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon WONG Yuk-man
- Public officers attending** : Agenda Item II

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Ms Ida LEE
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)B

Mr SUEN Wai-chung
Senior Assistant Law Draftsman (Professional
Development)
Department of Justice

Mr PO Pui-leong
Assistant Commissioner for Television and Entertainment
Licensing (Broadcasting)

Mr Eric LAM
Assistant Director (Support)
Office of the Telecommunications Authority

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Ms Annette LAM
Senior Council Secretary (1)3

Action

I. Election of Chairman

Hon LAU Kong-wah and Dr Hon Samson TAM Wai-ho were elected
Chairman and Deputy Chairman of the Bills Committee respectively.

II. Meeting with the Administration

- (LC Paper No. CB(3)815 /09-10 -- The Bill
- File Ref: CTB(CR)9/19/13 (10) -- Legislative Council Brief on
Communications Authority Bill
issued by the Commerce and
Economic Development Bureau
- LC Paper No. LS80/09-10 -- Legal Service Division Report
- LC Paper No. CB(1)2562/09-10(01) -- Background brief prepared by the
Legislative Council Secretariat
- LC Paper No. CB(1)2562/09-10(02) -- Letter from Assistant Legal
Adviser to the Administration
dated 25 June 2010

LC Paper No. CB(1)2562/09-10(03) -- Administration's paper dated 19 July 2010 in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)2562/09-10(02))

2. Mr Andrew LEUNG declared that he was a director of a telecommunications company.

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Admin 4. The Administration was requested to provide information on:

(a) the appointment mechanism and practice in making nominations/appointments to unified regulators for telecommunications and broadcasting sectors in overseas jurisdictions, such as the United States, Canada, the United Kingdom and Australia;

(b) the current membership of the Broadcasting Authority (BA) and to advise whether it was in compliance with the six-year and six-board Rules (the six-six Rules) and the principle of gender mainstreaming; and

(c) the current consultative mechanism and committee structure under the BA and the Telecommunications Authority (TA).

Invitation of views for the next meeting

5. Members agreed to invite relevant stakeholders and the public to give views on the Bill at the next meeting scheduled for 7 October 2010 at 2:30 pm in the Chamber of the Legislative Council Building. The Chairman instructed the Clerk to circulate a proposed list of organizations to the Bills Committee for consideration. He invited members to notify the Clerk if they wished to invite any organizations to the meeting. A general notice would be posted on the Legislative Council website to invite submissions from the public and interested parties.

III. Any other business

6. There being no other business, the meeting ended at 11:28 am.

**Proceedings of the first meeting of
Bills Committee on Communications Authority Bill
on Thursday, 22 July 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000347	Dr Margaret NG Mrs Regina IP Mr LAU Kong-wah Mr Andrew LEUNG Dr Samson TAM Mr CHAN Kam-lam	Election of Chairman and Deputy Chairman	
000348 – 000624	Chairman	Meeting arrangement	
000625 – 000910	Chairman Administration	Briefing by the Administration (Legislative Council Brief on Communications Authority Bill (File Ref: CTB(CR)9/19/13 (10))	
000911 – 001358	Chairman Mrs Regina IP Administration	<p>Given the expanded remit of the Communications Authority (CA) with jurisdiction over the broadcasting and telecommunications sectors, Mrs Regina IP expressed concern about the wide powers of the proposed CA, and enquired about the overseas practice in appointing/nominating members to similar regulatory bodies, in particular, whether such appointment/nomination had to be endorsed by the legislature. She said that the appointment mechanism and the membership of the CA as well as the arrangement in respect of the disclosure of interests by members should be carefully examined to ensure transparency, impartiality and accountability to the public.</p> <p>The Administration responded that:</p> <p>(a) the proposed CA would comprise five to ten non-official members (including a non-official Chairperson) and a public officer, all of them to be appointed by the Chief Executive (CE), and the Director-General of Communications (DG Com) as an ex-officio member;</p> <p>(b) there were express provisions in the Bill governing the disclosure of interests (clause 13), and disclosure of confidential information (clause 21) by members of the CA to ensure that the CA would have good governance;</p>	The Administration to follow up as stated in paragraph 4(a) of the minutes.

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		<p>(c) the appointment mechanism (i.e. CE to make appointments) was consistent with those of most statutory bodies in Hong Kong;</p> <p>(d) reference had been made to the appointment mechanism of similar regulatory bodies in overseas jurisdictions, such as the United States, Canada, United Kingdom and Australia; and</p> <p>(e) as a matter of administrative law, the CE was required to exercise his power of appointment in a reasonable manner and to appoint only suitable candidates.</p>	
001359 – 002700	Chairman Mr LEE Wing-tat Administration	<p>Mr LEE Wing-tat expressed his views as follows:</p> <p>(a) given the wide powers of the proposed CA, and to guard against the danger of the CA becoming a "super power" and an "independent kingdom", a check and balance mechanism should be in place to oversee its operation and ensure transparency;</p> <p>(b) similar to the provisions in the Urban Renewal Authority Ordinance (Cap. 563), express provisions should be included in the Bill requiring the CA to submit an annual report to the Legislative Council (LegCo), attend LegCo meetings, answer Members' questions, and publish the results of its investigations into complaints, etc;</p> <p>(c) the appointment mechanism should be institutionalized to prevent appointing people of the same view to the CA; and</p> <p>(d) appointments to the CA should not be made by the CE. Instead, consideration should be given for a certain number of non-official members of the CA to be nominated/elected by industry bodies and community groups, such as human rights organizations/ethnic minorities, the Hong Kong Journalist Association, etc.</p> <p>Citing the practice in the United States and Taiwan as examples, Mr LEE Wing-tat and Ms Emily LAU urged the Administration to consider the role of the LegCo in endorsing the appointment of CA members.</p> <p>The Administration responded that:</p>	

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		<p>(a) to address the concern of the Panel on Information Technology and Broadcasting on the CA's small membership, the proposed number of non-official members of the CA had been increased from five to "no fewer than five and no more than ten";</p> <p>(b) there are provisions in the Bill covering the accountability and governance of the CA. For example, clause 6 of the Bill required the CA to submit an annual report to the CE and to table it in the LegCo;</p> <p>(c) though not as a requirement in the legislation, the chairperson of the CA and the DG Com would stand ready to attend LegCo meetings to report on the work of CA, as the current BA Chairman and the heads of the Office of the Telecommunications Authority (OFTA) and the Television and Entertainment Licensing Authority (TELA) were;</p> <p>(d) the executive arm of the CA (i.e. the Office of the Communications Authority), as a government department, would be accountable to LegCo in the same way as any other government departments;</p> <p>(e) the CA would be an industry regulator. Allowing industry bodies to nominate or elect CA Members would give rise to potential conflict of interests; and</p> <p>(f) the prevailing appointments by the CE to statutory bodies had been well-established and functioning smoothly. The Administration would adopt the same mechanism for appointing CA members.</p>	
002701 – 003812	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU suggested that provisions should be stipulated in the Bill to:</p> <p>(a) enhance the CA's accountability to the public;</p> <p>(b) enhance transparency in the CA's operation and the conduct of its business such as opening its meetings to the public and posting minutes of meetings on its website;</p> <p>(c) ensure that the appointments to the CA would comply with the six-six Rules and the principle of gender mainstreaming; and</p> <p>(d) include the mission statement of promoting the long term development of the communications market</p>	

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		<p>and upholding the freedom of speech which was guaranteed under the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383).</p> <p>The Administration responded that:</p> <p>(a) following the practices of the BA, the CA would continue to conduct public hearings on various topics (such as mid-term review of free TV licences) for the public to express their views on the CA's work;</p> <p>(b) the future CA should have the flexibility to decide whether and when meetings would be open to the public;</p> <p>(c) the six-six Rules and the principle of gender mainstreaming were established Government policies and need not be specifically provided in the Bill. The Administration would adhere to these policies while appointing CA members, similar to that for appointing BA Members;</p> <p>(d) upholding the freedom of speech was a core value of Hong Kong which statutory bodies in Hong Kong including the CA would adhere to; and</p> <p>(e) the CA should be allowed the flexibility to determine what its exact public missions should be, having regard to its own state of development, the fast changing telecommunications and broadcasting landscape, and the overriding commitment for the CA to further the development of the communications market in Hong Kong.</p>	<p>The Administration to follow up as stated in paragraph 4(b) of the minutes.</p>
003813 – 004033	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong enquired about the current consultative mechanism and committee structure under the BA and the TA, and whether changes would be made to the consultative committees under the future CA.</p> <p>The Administration responded that pending the rationalization of the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) after the establishment of the CA, the Administration had no plan to change the structure of consultative committees currently under the BA and the TA.</p>	<p>The Administration to follow up as stated in paragraph 4(c) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
004034 – 004429	Chairman Mrs Regina IP Administration	<p>Given the wide powers of the proposed CA, Mrs Regina IP reiterated her concern about the membership of the Board of CA, the potential conflict of interests of members (especially those who were related to the electronic communications sector) appointed to the Board, the need for a check and balance and monitoring mechanism to ensure transparency, impartiality and safeguard public interests.</p> <p>The Administration responded that provisions governing the disclosure of interests by CA members were stipulated in the Bill. The official members (DG Com and a public officer) appointed to the Board would help ensure the impartiality of the CA and safeguard public interests.</p>	
004430 – 004441	Chairman Administration	Invitation of views for the next meeting	