

立法會
Legislative Council

LC Paper No. CB(1)970/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/09

Bills Committee on Communications Authority Bill

**Minutes of the fourth meeting
held on Friday, 26 November 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
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
- Members absent** : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Cyd HO Sau-lan
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 Chaucer LEUNG
Head, Regulatory 1 and Head of Special Duty
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. Confirmation of minutes of meeting**
(LC Paper No. CB(1)556/10-11 -- Minutes of meeting held on
4 November 2010)

The minutes of the meeting held on 4 November 2010 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)572/10-11(01) -- List of follow-up actions
arising from the discussion at
the meeting on 4 November
2010)

LC Paper No. CB(1)572/10-11(02) -- Administration's response to issues raised at the meeting on 4 November 2010

LC Paper No. LS6/10-11 -- Paper on examples of statutory provisions relating to the functions, meetings and composition of statutory bodies or authorities prepared by the Legal Service Division

Other relevant papers

LC Paper No. CB(3)815/09-10 -- The Bill

LC Paper No. CB(1)333/10-11(01) -- Marked-up copies of the relevant Ordinances and Regulations

File Ref: CTB(CR)9/19/13 (10) -- Legislative Council Brief on Communications Authority Bill issued by the Commerce and Economic Development Bureau)

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

Admin 3. The Administration was requested to provide:

- (a) a list of agenda items (indicating whether the items were confidential or open) for meetings of the Broadcasting Authority (BA) in the past two years;
- (b) information on the broadcasting-related matters and issues which the BA had discussed and advised on in the past years;
- (c) detailed information on the workload of the BA including the estimated hours of work committed by its members in the conduct of the BA's business;
- (d) information on the current honorarium/remuneration received by members of the BA and other statutory bodies/advisory

committees;

- (e) views and concerns raised by BA on the proposed establishment of the Communications Authority (CA), the draft CA Bill and related matters as well as the Administration's response;
- (f) information on the transitional arrangements in respect of legal and complaints handling;
- (g) information on the transitional personnel arrangement for the transfer of staff of the Office of the Telecommunications Authority and the Television and Entertainment Licensing Authority to the Office of the Communications Authority (OFCA) for the provision of secretariat support (in terms of manpower, clerical, technical and legal support, etc) for the CA, and to advise whether LegCo approval would be sought on the organization structure of the future OFCA and the creation of posts; and
- (h) information on the enforcement of the relevant provisions under the future competition law in the broadcasting and telecommunications sectors to ensure fair competition in the communications market, and the relevant practice in the United Kingdom.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)670/10-11(02) on 7 December 2010.)

Admin 4. The Administration was also requested to consider:

- (a) amending the relevant clauses of the Bill, with reference to relevant provisions in the legislation of overseas jurisdictions, to include the public mission and/or the objects of the CA, in particular its mission of upholding the freedom of expression;
- (b) giving a greater role to the CA in making policies for the electronic communications industry;
- (c) proposing amendments to the Bill to open the meetings (except when involving sensitive information) of the CA and its committees to the public; and

- (d) amending Clause 8 of the Bill to spell out clearly the criteria for appointing members (such as requisite professional knowledge and expertise) to the CA.

Secretariat 5. The Bills Committee agreed to invite representatives of the BA to exchange views on the proposed establishment of the CA, the draft CA Bill and related matters at a future meeting.

III. Any other business

6. The Chairman reminded members that the fifth meeting would be held on 7 December 2010 at 4:30 pm in Conference Room B of the Legislative Council Building. Members noted that the sixth meeting originally scheduled for 23 December 2010 was cancelled.

7. Members also endorsed the proposed schedule of additional meetings to be held from April to June 2011 tabled at the meeting.

8. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
4 January 2011

**Proceedings of the fourth meeting of
Bills Committee on Communications Authority Bill
on Friday, 26 November 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000130 – 000312	Chairman Mr LEE Wing-tat Ms Emily LAU	(a) Opening remarks by the Chairman. (b) Confirmation of minutes of meeting on 4 November 2010 (LC Paper No. CB(1)556/10-11).	
000313 – 001250	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 4 November 2010 (LC Paper No. CB(1)572/10-11(02)).	
001251 – 001512	Chairman Assistant Legal Adviser (ALA)	Briefing by the Assistant Legal Adviser on examples of statutory provisions relating to the functions, meetings and composition of statutory bodies or authorities (LC Paper No. LS6/10-11).	
001513 – 012224	Chairman Mr LEE Wing-tat Mrs Regina IP Dr Margaret NG Ms Emily LAU Administration ALA	<p><u>The Communications Authority (CA) as an independent statutory body</u></p> <p>On members' suggestion to spell out the CA as an independent statutory body in the Bill, the Administration advised that the powers conferred on the CA through the Bill and various related legislation clearly allowed the CA to exercise its powers in its own right. There was no need to stipulate in the Bill that the CA was an independent body. It was not in line with the drafting convention to use such description in the local legislation. Neither was there such description in the legislation for other local statutory bodies or for the overseas unified regulators in Australia, Canada, the United Kingdom (UK) and the United States (US).</p> <p>In response to members' enquiry, the Administration advised that:</p> <p>(a) The CA's relationship with the Government was set out in Clause 3(3) of the Bill which stated that the CA "is not a servant or an agent of the Government nor does it enjoy any status, immunity or privilege of the Government";</p> <p>(b) Clause 3(2)(c) provided that the CA "may sue and be sued in its corporate name"; and</p> <p>(c) Clause 18 provided for immunity from civil liability for</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>CA or its members acting in good faith in connection with the performance or purported performance of functions conferred on the CA by or under the Communications Authority Ordinance or and other Ordinance.</p> <p><u>Composition and membership of the CA</u></p> <p>Mr LEE Wing-tat doubted whether the small membership of the new CA would effectively and efficiently deal with the heavy and complex workload of the Telecommunications Authority (TA) and the Broadcasting Authority (BA) after the merger. Noting that the Canadian Radio-television and Telecommunications Commission had 12 full-time members and no part-time members, and that most of the other similar unified regulators in overseas jurisdictions had more full-time members, he urged that more full-time members be appointed to the new CA.</p> <p>Dr Margaret NG doubted whether Annex C and D to the LC Paper No. CB(1)572/10-11(02) truly reflected the actual workload of the TA and BA which involved a lot of complex legal matters, and enquired about the actual hours of work committed by BA members.</p> <p>The Administration responded that:</p> <p>(a) the proposed number of non-official members of the CA had been increased from 5 to "no fewer than 5 and no more than 10" (including a non-official Chairperson);</p> <p>(b) different from some other overseas unified regulators where the Chairperson was also the Chief Executive (CE), the CA would be serviced by a civil service executive arm providing secretariat (in terms of secretarial, legal and technical) support. The performance of the CA's functions was to be implemented through the Director-General of Communications (DG Com) supported by the Office of the Communications Authority (OFCA) with more than 400 staff members transferred from the Office of the Telecommunications Authority (OFTA) and the Television and Entertainment Licensing Authority (TELA). Where necessary, the Board would consult the Department of Justice and/or seek independent legal opinion; and</p> <p>(c) the Bill (Clause 17) had provided for the delegation of powers from the CA to its committees and DG Com. The CA would suitably delegate its powers after its</p>	<p>The Administration to follow up as stated in paragraph 3(c) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>establishment to maintain the efficiency and the effectiveness of its work.</p> <p>Dr Margaret NG enquired about the views and concerns raised by the BA on the proposed establishment of the CA, the Bill and related matters. The Administration advised that the public, the trade and the BA had been consulted on the merger. The BA generally supported the establishment of the CA through the merger of the BA and the TA.</p> <p><u>Opening up of CA meetings to the public</u></p> <p>Mr LEE Wing-tat, Ms Emily LAU and Mrs Regina IP called on the Administration to consider proposing amendments to the Bill to open the meetings (except when involving sensitive information) of the CA and its committees to the public to enhance the transparency of the CA's operation and its public accountability.</p> <p>The Administration responded that there was no stipulation in the law requiring the overseas unified regulators in the US, UK, Australia and Canada to open their meetings to the public. The future CA should have the flexibility to decide whether and when meetings would be open to the public given the vast amount of commercially sensitive information it would handle. It was anticipated that the CA would consider favourably the opening up of meetings of some its committees to the public as appropriate, as was the case of the BA. The future CA would account for its work such as issuing public statements to explain its decisions, consulting the trade and public on various regulatory issues, attending meetings of the LegCo Panel on Information Technology and Broadcasting, and submitting annual reports to the LegCo (as required by Clause 6(2) of the Bill).</p> <p><u>Honarium/remuneration for members of statutory bodies/advisory committees</u></p> <p>Ms Emily LAU and Mrs Regina IP enquired about the current honorarium/remuneration received by members of the BA and other statutory bodies/advisory committees.</p> <p>Ms Emily LAU raised concern about possible conflict of interests particularly when members from the trade were not full-time. Noting the high remuneration for the full-time and part-time members of overseas regulatory bodies, she opined that paid full-time members would help minimize possible conflict of interests.</p>	<p>The Administration to follow up as stated in paragraph 3(e) of the minutes.</p> <p>The Administration to follow up as stated in paragraphs 3(a) and 4(c) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(d) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration replied that the two-tier structure (the CA serviced by an executive civil service set-up) would help ensure good governance. Clause 13 of the Bill had provided for the disclosure of interests by CA members. The Chairpersons and members of overseas regulators had executive functions and responsibilities and therefore received higher remuneration.</p>	
012225 – 012256	Chairman Administration	<p>Clause by clause examination</p> <p><u>Clause 1 – Short title and commencement</u></p> <p>Members raised no query.</p>	
012257 – 012348	Chairman Administration	<p><u>Clause 2 – Interpretation</u></p> <p>Members raised no query.</p>	
012349 – 012408	Chairman Administration	<p><u>Clause 3 – Establishment of Authority</u></p> <p>Members raised no query.</p>	
012409 – 013608	Chairman Administration Dr Margaret NG Ms Emily LAU	<p><u>Clause 4 – Functions of Authority</u></p> <p>Other than the advisory function provided for under Clause 4(3) of the Bill, Dr Margaret NG urged the Administration to consider giving a greater role to the CA in making policies for the electronic communications industry.</p> <p>Ms Emily LAU called on the Administration to amend the relevant clauses of the Bill, with reference to relevant provisions in the legislation of overseas jurisdictions, to include the public mission and or the objects of the CA, in particular its mission of upholding the freedom of expression.</p>	<p>The Administration to follow up as stated in paragraphs 3(b) and 4(b) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 4(a) of the minutes.</p>
013609 – 013750	Chairman Administration Ms Emily LAU Dr Margaret NG	<p><u>Clause 5 – Incidental powers</u></p> <p>It was noted that clause 5 was a standard provision relating to incidental powers. Members raised no query.</p>	
013751 – 013810	Chairman Administration	<p><u>Clause 6 – Annual report</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
013811 – 014340	Chairman Administration Dr Margaret NG Ms Emily LAU	<p><u>Clause 7 – Broadcasting Authority dissolved</u></p> <p>In response to members' enquiry about the transitional arrangement, the Administration advised that Part 7 of the Bill had provided for necessary savings and transitional arrangements when the functions of the BA and the TA were taken over by the CA upon the merger. On the transitional personnel arrangement for the transfer of staff of the OFTA and the TELA to the OFCA, the Administration advised that the staff of the OFTA and the TELA had been consulted on the merger and were satisfied with the transitional arrangement. The civil service status, salary and conditions of service of the staff transferred would not be affected. The Administration would seek the approval of the Establishment Subcommittee and the Finance Committee of the Legislative Council on the organization structure of the future OFCA immediately after the passage of the Bill.</p>	The Administration to follow up as stated in paragraphs 3(f) and (g) of the minutes.
014341 – 020151	Chairman Administration Dr Margaret NG Ms Emily LAU Mrs Regina IP ALA	<p><u>Clause 8 – Membership</u></p> <p>Dr Margaret NG expressed concern about the small membership of the CA in view of the complex and heavy workload to be undertaken, and the wide power of the CE in making appointments to the CA.</p> <p>Dr Margaret NG and Ms Emily LAU suggested amending Clause 8 of the Bill to spell out clearly the criteria for appointing members (such as requisite professional knowledge and expertise) to the CA.</p> <p>Mrs Regina IP said that given the uniqueness of the electronic communications industry, members appointed to the new CA and the DG Com should possess the requisite industry knowledge and expertise.</p> <p>ALA referred members to Annex III to LC Paper No. LS6/10-11, and the West Kowloon Cultural District Authority Ordinance (Cap. 601) for examples of statutory provisions on criteria/factors to be taken into consideration when making appointments to statutory bodies or authorities.</p> <p>The Administration responded that the CE would take into account the concerns of members and the public about the workload of the CA when appointing members to the CA. As a matter of administrative law, the CE was required to exercise his power of appointment in a reasonable manner. Appointments would be made in a fair, open and transparent manner to ensure impartiality and guard against conflict of</p>	The Administration to follow up as stated in paragraph 4(d) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>interests. Only suitable candidates with the requisite expertise and experience from different sectors would be appointed to the new CA.</p> <p>In response to Dr Margaret NG's enquiry about the enforcement of anti-competitive conduct in the telecommunications and broadcasting sectors, and Mrs Regina IP's comments about the uniqueness of the electronic communications industry in respect of mergers and acquisition and market dominance, the Administration undertook to provide information on the enforcement of the relevant provisions under the future competition law in the sectors concerned and the relevant practice in the UK.</p>	<p>The Administration to follow up as stated in paragraph 3(h) of the minutes.</p>
020152 – 020214	Chairman Administration	Meeting arrangements	