

立法會
Legislative Council

LC Paper No. CB(1)971/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/09

Bills Committee on Communications Authority Bill

**Minutes of the fifth meeting
held on Tuesday, 7 December 2010, at 4:30 pm
in Conference Room B 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 Ronny TONG Ka-wah, SC
Hon Paul TSE Wai-chun
Hon WONG Yuk-man

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Public officers attending : Agenda Item I
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

Ms Carmen CHU
Senior Government Counsel
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. Meeting with the Administration**
(LC Paper No. CB(1)670/10-11(01) -- List of follow-up actions
arising from the discussion at
the meeting on 26 November
2010
- LC Paper No. CB(1)670/10-11(02) -- Administration's response to
issues raised at the meeting on
26 November 2010

Clause-by-clause examination of the Bill

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)

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

- Admin 2. The Administration was requested to provide:
- (a) a detailed job description of the Director-General of Communications (DG Com) (including its rank, to whom it would be responsible, and its main duties and responsibilities, etc);
 - (b) examples of statutory provisions relating to the appointment of a public officer holding a civil service post to a statutory/advisory body similar to the Communications Authority (CA); and
 - (c) examples of statutory provisions in relation to member participation in meeting of statutory/advisory bodies by telephone, video conferencing or other electronic means.
- Admin 3. The Administration was also requested to consider:
- (a) the suggestion for the Secretary for Commerce and Economic Development to address the Legislative Council (LegCo) when tabling the annual report of the CA;
 - (b) defining "public officer" in Clause 2 of the Bill if the definition of the term under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) was not intended to apply to the Bill;
 - (c) using the term "Director-General of Communications" in the

provisions instead of defining it in Clause 2 of the Bill;

- (d) amending Clause 8(5) to the effect that the appointment of a member appointed under Clause 8(1)(a) would lapse immediately upon the member becoming a public officer, or adding a new paragraph under Clause 8(4) to provide for the Chief Executive to declare the office of the concerned member vacant if that member became a public officer;
- (e) amending Clause 9(2) so as to specify the reasons for which the Chief Executive might at any time revoke the appointment of the chairperson, the vice-chairperson and members of the CA; and
- (f) including specific rules in the Bill or for the CA to set specific rules/standing orders under Clause 10(5) governing member participation in CA meetings by telephone, video conferencing or other electronic means to safeguard against possible abuse and to ensure security.

4. The Bills Committee suggested that the LegCo Panel on Information Technology and Broadcasting should be informed in future of the rules/standing orders made by the CA for the purpose of regulating the number of meetings to be held by CA in any year, and the meeting procedures (such as the duration of advance notice of meeting, form and format of notice of meeting, the casting of votes, rules governing member participation in meeting by telephone, video conferencing or other electronic means) to address the concerns raised by the Bills Committee.

II. Any other business

5. The Chairman reminded members that the sixth meeting would be held on 11 January 2011 at 4:30 pm in Conference Room A of the Legislative Council Building.

Admin 6. The Administration was requested to liaise with the Broadcasting Authority (BA) and LegCo Secretariat regarding BA's attendance at a future Committee meeting to exchange views on the proposed establishment of the CA, the draft CA Bill and related matters.

7. There being no other business, the meeting ended at 6:26 pm.

Council Business Division 1
Legislative Council Secretariat
4 January 2011

**Proceedings of the fifth meeting of
Bills Committee on Communications Authority Bill
on Tuesday, 7 December 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000333 – 000417	Chairman	Opening remarks by the Chairman.	
000418 – 003818	Chairman Administration Mr WONG Yuk-man Mr LEE Wing-tat Ms Emily LAU Dr Margaret NG Mr WONG Ting-kwong Mr CHAN Kam-lam Assistant Legal Adviser (ALA)	<p>Clause by clause examination</p> <p><u>Clause 4 – Functions of Authority</u></p> <p>Mr WONG Yuk-man opined that the Bill should include the Communications Authority (CA)'s public mission in promoting the long term development of the communications market and upholding the freedom of expression. Sharing a similar view, Dr Margaret NG noted the Broadcasting Authority (BA)'s view that the public mission of the CA should be succinct and balanced and should serve to safeguard public interest (Annex D to LC Paper No. CB(1)670/10-11(02)).</p> <p>The Administration advised that it was considering how members' concern in this respect raised at previous meetings should be addressed.</p> <p><u>Clause 6 – Annual report</u></p> <p>Members enquired whether the CA's annual report would contain information on major complaints that were of public concern (such as the investigation into anti-competitive conduct). Members suggested that the Secretary for Commerce and Economic Development (SCED) should address the Legislative Council (LegCo) when tabling the CA's annual report. Mr LEE Wing-tat hoped that Members might, with the permission of the President, ask short questions to seek elucidation on the report in the course of SCED's address.</p> <p>The Administration responded that the annual report would include all aspects of the work of CA relating to telecommunications, broadcasting, anti-spamming or activities connected with the telecommunications and broadcasting sectors. Similar to the existing practice of the Broadcasting Authority (BA), statistics on complaints and major regulatory decisions that were of public concern would be included in the report. Publicity arrangements including press release and press conferences would be arranged for major regulatory decisions made. Moreover,</p>	<p>The Administration to follow up as stated in paragraph 3(a) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>any questions on the annual report could be raised at LegCo Panel on Information Technology and Broadcasting (ITB Panel).</p> <p><u>Clause 8 – Membership</u></p> <p>Mr WONG Yuk-man opined that to enhance transparency and public accountability, consideration should be given for the Chairperson-designate of the CA to attend a non-binding pre-appointment hearing of LegCo similar to the relevant practice in the United Kingdom. He said that full-time members with the requisite professional expertise and experience should be appointed to deal with the complex industry-specific issues. Ms Emily LAU shared a similar view.</p> <p>The Administration replied that the two-tier structure (the CA serviced by a civil service executive arm) would help ensure good governance. The decisions of the CA in the performance of its functions were to be implemented through the Director-General of Communications (DG Com), a full-time public officer ranked at Directorate 6 level supported by the Office of the Communications Authority (OFCA). Flexibility should be allowed to accommodate the appointment of full-time members to the CA depending on future workload and need. The level of honorarium for members of the CA and its committees would be commensurate with the amount of workload and the time committed. The Administration was considering members' request raised at previous discussions to spell out clearly the criteria for appointing members (such as requisite professional knowledge and expertise) to the CA. On public accountability, it was anticipated that the CA, when established, would continue the prevailing practice of the Telecommunications Authority (TA) and the BA in submitting its annual report to LegCo and attending meetings of the ITB Panel and to brief Panel members on various aspects of the work of CA.</p> <p><u>Clause 8(1)(a)</u></p> <p>It was noted that the 7-year residency requirement of CA members appointed under Clause 8(1)(a) was in line with other legislation.</p> <p>Members enquired about the status of a member appointed under Clause 8(1)(a) upon becoming the DG Com. Members suggested that for clarity, "public officer" should be clearly defined in Clause 2 of the Bill.</p>	<p>The Administration to follow up as stated in paragraph 3(b)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that if a member appointed under Clause 8(1)(a) subsequently took up the office of the DG Com, the member concerned would have to resign under Clause 8(5) and would become a member of the CA under Clause 8(1)(c) instead. Under the Interpretation and General Clauses Ordinance (Cap. 1), "public officer" meant any person holding an office of emolument under the Government, whether such office was permanent or temporary.</p> <p><u>Clause 8(1)(c)</u></p> <p>In response to Dr Margaret NG's enquiry about the status of the DG Com and its appointment, the Administration advised that DG Com was a public officer ranked at Directorate 6 level. The Administration would seek the approval of the Establishment Subcommittee and the Finance committee of LegCo on the organization structure of the future OFCA immediately after the passage of the Bill.</p> <p>The Chairman suggested using the full term "Director-General of Communications" in the provisions instead of defining the abbreviated term "Director-General" in Clause 2 of the Bill.</p> <p><u>Clause 8(4)</u></p> <p>It was noted that the Chief Executive (CE) might by notice in writing declare the office of a member of the CA to be vacant under the circumstances specified in Clause 8(4)(a) to (e). As regards Clause 8(4)(a), the office of a member would be declared vacant if the member concerned had been absent from the meetings of the CA for a continuous period longer than 3 months without the permission of the CA.</p> <p><u>Clause 8(5)</u></p> <p>Instead of stipulating that a member appointed under Clause 8(1)(a) must resign from the CA upon becoming a public officer, Dr Margaret NG suggested amending Clause 8(5) to the effect that the appointment would lapse immediately upon the member becoming a public officer, or adding a new paragraph under Clause 8(4) to provide for the CE to declare the office of the concerned member vacant if that member became a public officer.</p> <p><u>Clause 8(7)</u></p>	<p>of the minutes.</p> <p>The Administration to follow up as stated in paragraphs 2(a) and (b) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(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>In response to members' enquiry, the Administration said that if any member of the CA was precluded by temporary absence or incapacity from performing the functions of a member of the CA for any period, it was a reasonable practice for the CE to appoint another person to hold office in place of that member during that period.</p>	
003819 – 012203	<p>Chairman Administration Mr LEE Wing-tat Ms Emily LAU Dr Margaret NG Mr WONG Yuk-man Mr WONG Ting-kwong</p>	<p><u>Clause 9 – Chairperson and vice-chairperson</u></p> <p>Members noted that while the chairperson of the CA was to be a member appointed under Clause 8(1)(a) there was no such requirement for the vice-chairperson. In response to members' enquiry about the rationale of such arrangement, the Administration explained that the proposed arrangement was similar to that of the BA where the Permanent Secretary for Commerce and Economic Development (Communications and Technology) was currently the vice-chairperson of the BA. The Administration considered such arrangement appropriate to facilitate good communication between the CA and the Administration.</p> <p>Members noted that while Clause 9(2) provided for the CE to revoke at any time the appointment of the chairperson and the vice-chairperson, there was no such provision in respect of the revocation of the appointment of other members of the CA apart from declaring the office of a member to be vacant under the circumstances stipulated under Clause 8(4)(a) to (e).</p> <p>Members enquired about the rationale for the CE to revoke appointment of the chairperson and the vice-chairperson of the CA (Clause 9(2)), and for a member to resign from office at any time by notice (Clause 9(3)) without having to give any reasons.</p> <p>The Administration advised that Clause 9(2) and (3) were standard provisions similar to the provisions in Broadcasting Authority Ordinance (Cap. 391). As a matter of the administrative law, the CE was required to exercise his power in a reasonable manner. Similar to members of other statutory/advisory bodies, a CA member should have the discretion to resign by notice in writing.</p>	<p>The Administration to follow up as stated in paragraph 3(e) of the minutes.</p>
012204 – 014746	<p>Chairman Administration Ms Emily LAU Mr WONG Ting-kwong Dr Margaret NG Mr CHAN</p>	<p><u>Clause 10 – Meetings</u></p> <p>On members' view 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, the Administration maintained that the future CA should have</p>	

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	Kam-lam	<p>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. The future CA would account for its work such as issuing press releases to explain its decisions, consulting the trade and public on various regulatory issues, attending meetings of the ITB Panel, and submitting annual reports to LegCo, as required under Clause 6(2) of the Bill.</p> <p><u>Clause 10(4)(c) and (d) on voting</u></p> <p>It was noted that the BA seldom resorted to voting for a decision. In the majority of cases, a consensus was arrived through discussion.</p> <p><u>Clause 10(5) on the making of standing orders</u></p> <p>It was noted that the CA could make standing orders regulating the number of meetings to be held by CA in any year, and the procedures to be followed at the meetings such as the duration of advance notice of meeting, form and format of notice of meeting and the casting of votes.</p> <p><u>Clause 10(6) on participation in meeting by telephone, video conferencing or other electronic means.</u></p> <p>Members expressed concern about possible abuse of meeting arrangements (Clause 10(6)) by all or majority of members not attending the meeting in person, and confidentiality issues given the vast amount of commercially sensitive information the CA would discuss during its meetings.</p> <p>The Administration advised that in keeping with technological advancement, similar provisions were provided for newly set up statutory/advisory bodies to enable members who would not attend the meeting in person to participate in discussion.</p>	<p>The Administration to follow up as stated in paragraphs 2(c) and 3(f) of the minutes.</p>
014747 – 015435	Chairman Administration Ms Emily LAU Dr Margaret NG	<p><u>Clause 11 – Transaction of business by circulation of papers</u> <u>Clause 12 – Request for meeting</u></p> <p>It was noted that any member of the CA might request any business which was being transacted by circulation of papers to be transacted at a CA meeting by way of a notice in writing to the CA Chairman within the period specified in the papers being circulated.</p>	

Time marker	Speaker	Subject(s)	Action required
		The Chairman suggested that the LegCo Panel on Information Technology and Broadcasting should be informed in future of the rules/standing orders made by the CA to address the concerns raised by the Bills Committee.	
015436 – 015606	Chairman Administration Ms Emily LAU Dr Margaret NG	Meeting arrangements	The Administration to follow up as stated in paragraph 6 of the minutes.

Council Business Division 1
Legislative Council Secretariat
4 January 2011