

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1388/10-11  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/10/09

**Bills Committee on Communications Authority Bill**

**Minutes of the seventh meeting  
held on Thursday, 27 January 2011, at 2:30 pm  
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 Andrew LEUNG Kwan-yuen, GBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan  
Hon Paul TSE Wai-chun

**Members absent** : Dr Hon Philip WONG Yu-hong, GBS  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon LEE Wing-tat  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon WONG Yuk-man

**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 Vincent LIU, JP  
Commissioner for Television and Entertainment  
Licensing

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

Mr Joey LO  
Senior Council Secretary (1)3

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Action

- I. Meeting with the Administration**  
(LC Paper No. CB(1)1026/10-11(01) -- List of follow-up actions  
arising from the discussion  
at the meeting on  
7 December 2010

- LC Paper No. CB(1)1026/10-11(02) -- Administration's response to issues raised at the meeting on 7 December 2010
- LC Paper No. CB(1)1158/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 11 January 2011
- LC Paper No. CB(1)1158/10-11(02) -- Administration's response to issues raised at the meeting on 11 January 2011

Clause-by-clause examination of the Bill

*Starting from clause 13*

- 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 information on the following:
- (a) mechanism for disclosure of members' interests in matters discussed at a meeting of the Broadcasting Authority (BA) or its committees (including guidelines and registration form(s), if any) and how "immediate family members" of a BA member were defined in the event that he had to declare the interests of such persons at the meeting; and
  - (b) the future funding for litigation costs, if any, to be incurred by

the proposed Communications Authority (CA) and measures to be taken to ensure that the trading fund under CA would not be depleted by such costs.

*(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1301/10-11(02) on 15 February 2011.)*

- Admin 3. The Administration was also requested to consider:
- (a) amending Clause 11 of the Bill to the effect that, other than administrative matters, CA might not transact any business by the circulation of papers among its members;
  - (b) spelling out clearly in Clause 16 of the Bill the statutory committees to be appointed by CA, their respective terms of reference and membership;
  - (c) amending Clause 16 of the Bill to the effect that CA might not appoint any person, who was not its member, to be the chairperson of a committee appointed under Clause 16(1); and
  - (d) amending Clause 17 of the Bill to spell out clearly all the powers/functions which CA must not delegate under Clause 17(3) rather than merely referring to the section numbers of relevant Ordinances.

## **II. Any other business**

4. The Chairman reminded members that the eighth meeting would be held on 17 February 2011 at 2:30 pm in the Chamber of the Legislative Council Building.

5. There being no other business, the meeting ended at 4:30 pm.

**Proceedings of the seventh meeting of  
Bills Committee on Communications Authority Bill  
on Thursday, 27 January 2011, at 2:30 pm  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000630 – 001026	Chairman	Opening remarks by the Chairman.	
001027 - 001829	Chairman Administration	<p>Briefing by the Administration on its response to issues raised at the meeting on 7 December 2010 (paragraphs 8 to 18 of LC Paper No. CB(1)1026/10-11(02)).</p> <p>Discussion on the definition of "public officer" in Clause 2 of the Bill.</p> <p>Discussion on examples of statutory provisions in which public officers were mentioned without further definition of the posts.</p>	
001830 - 003550	Chairman Dr Margaret NG Administration	<p>Briefing by the Administration on its response to issues raised at the meeting on 11 January 2011 (LC Paper No. CB(1)1158/10-11(02)).</p> <p>Discussion on the staff costs for the provision of services under the trading fund and non-trading fund divisions.</p> <p>Ms Margaret NG opined that the proposed Communications Authority (CA) seemed to be an advisory body without real administrative powers. CA would have neither control over the work of the Director-General of Communications (DG Com) nor the power to dismiss DG Com who was a civil servant.</p> <p>The Administration advised that CA would be established as a body corporate and implement its decisions through DG Com. As CA would consist of no more than 12 members, it would not be practicable for the CA <i>per se</i> to perform administrative responsibilities. As such, CA required the administrative support provided by the Office of the Communications Authority (OFCA). The arrangement would be similar to that under which the Television and Entertainment Licensing Authority (TELA) served as the executive arm of the Broadcasting Authority (BA) and other statutory bodies with a two-tier structure.</p>	
003551 - 004330	Chairman Ms Cyd HO	Ms Cyd HO expressed reservation over the separate funding arrangement for OFCA under the OFCA Trading Fund and the new General Revenue Head as such an arrangement would be too complicated to execute. She	

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		suggested that a unified source of funding should be adopted.	
004331 - 005148	Chairman Administration	<p><b>Clause by clause examination</b></p> <p><u>Clause 11 – Transaction of business by circulation of papers</u></p> <p>Ms Cyd HO expressed strong reservation over the transaction of any business by the circulation of papers among its members. She considered that CA should deliberate and transact its business other than administrative matters at its meetings.</p> <p>The Administration advised that Clause 12 was similar to other provisions in the legislation available for transacting business through circulation of papers. Furthermore, Clause 12(1) provided that any member of CA might request any business which was being transacted by the circulation of papers to be transacted at a meeting of CA.</p>	The Administration to follow up as stated in paragraph 3(a) of the minutes.
004157- 005300	Chairman Administration	<p><u>Clause 13 - Disclosure of interests</u></p> <p>Discussion on disclosure of interests by CA members.</p> <p>The Administration advised that the member concerned had the responsibility to disclose any interests in matters under discussion. Where possible, OFCA would alert the CA chairperson in such cases so that he or she could decide whether the member concerned should be requested to make a disclosure.</p>	The Administration to follow up as stated in paragraph 2(a) of the minutes.
005301 - 005620	Chairman Administration	<p><u>Clause 14 – Director-General</u></p> <p>Discussion on how the performance of DG Com would be appraised.</p>	
005621 - 010222	Chairman Administration Ms Cyd HO	<p><u>Clause 15 – OFCA to support Director-General</u></p> <p>Ms Cyd HO enquired whether the existing requirement for the conduct of public hearing upon extension/renewal of domestic free television programme service licences for six years or more, and the codes of practices currently adopted by BA, including the Code on Access to Information and management of public records, would continue to be adopted upon the setting up of OFCA, and whether the operation of OFCA would be subject to the scrutiny of the Director of Audit.</p> <p>The Administration advised that the existing statutory requirement under the Broadcasting Ordinance (BO) (Cap.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>562) and the regulatory arrangements under the Telecommunications Ordinance (TO) (Cap. 106) for the conduct of mid-term review public hearings would continue. As a government department, OFCA would be subject to the same codes and requirements which applied to all government departments, including the Value For Money audits. All existing good operating practices of BA would continue to be adopted by CA.</p>	
<p>010223 - 011853</p>	<p>Chairman Ms Cyd HO Mr Andrew LEUNG Mr CHAN Kam-lam Administration</p>	<p><u>Clause 16 – Committees</u></p> <p>Ms Cyd HO considered that the statutory committees to be appointed by CA and their respective terms of reference and membership should be clearly spelt out in the Bill.</p> <p>The Administration advised that Clause 16 was so drafted as to allow flexibility for CA to appoint different committees as it saw fit. The Broadcasting Authority Ordinance (Cap. 391) (BAO) required BA to appoint a Complaints Committee (section 10) and allowed BA to appoint such advisory committees (e.g. the Codes of Practice Committee) as it thought fit (section 12). The Bill already stipulated that a Broadcast Complaints Committee similar to the existing Complaints Committee would be appointed under the BAO (to be renamed the Broadcasting (Miscellaneous Provisions) Ordinance).</p> <p>Mr Andrew LEUNG and Mr CHAN Kam-lam considered it undesirable to stipulate in the Bill all the committees (except those which were strictly necessary) to be appointed by CA, as any change in future would involve legislative amendments.</p> <p>The Chairman suggested amending Clause 16 of the Bill to the effect that CA might not appoint a person, who was not its member, to be the chairperson of a committee appointed under Clause 16(1).</p>	<p>The Administration to follow up as stated in paragraph 3 (b) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3 (c) of the minutes.</p>
<p>011854 - 012944</p>	<p>Chairman Dr Margaret NG Ms Cyd HO Administration</p>	<p><u>Clause 17 – Delegation of functions to committees, Director-General and public officers</u></p> <p>Dr Margaret NG and Ms Cyd HO suggested amending Clause 17 of the Bill to spell out clearly all the powers/functions which CA must not delegate under Clause 17(3) to save time for cross-referencing.</p> <p>Discussion on the accountability of the CA as it delegated its functions.</p>	<p>The Administration to follow up as stated in paragraph 3 (d) of the minutes.</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
012945 - 015824	Chairman Dr Margaret NG Ms Cyd HO Ms Emily LAU Mr Paul TSE Administration	<p><u>Clause 18 – Immunity</u></p> <p>Discussion on the future funding for litigation costs, if any, to be incurred by CA.</p> <p>The Administration advised that the trading fund set up under CA would be responsible for the future funding for litigation costs. The OFCA, being a government department, could seek legal advice from the Department of Justice, whereas CA could seek independent legal advice or engage legal representatives funded by its own trading fund as it saw fit.</p> <p>Discussion on the party to assume legal liabilities as a result of anything done or omitted to be done by CA or any other person in connection with the performance or purported performance of functions conferred on CA.</p> <p>The Administration explained that Clause 3(2)(c) provided that CA might sue and be sued in its corporate name. As provided under Clause 18, no civil liability would be incurred by individual members of CA as a result of anything done or omitted to be done in good faith in connection with the performance or purported performance of CA's functions. Similar immunity was also provided to members of other statutory bodies.</p>	The Administration to follow up as stated in paragraph 2 (b) of the minutes.
015825 - 015835	Chairman	Meeting arrangement	