

立法會
Legislative Council

LC Paper No. CB(1)1588/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/09

Bills Committee on Communications Authority Bill

Minutes of the eighth meeting
held on Thursday, 17 February 2011, at 2:30 pm
in the Chamber 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 Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon WONG Yuk-man

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Paul TSE Wai-chun

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

Ms Carmen CHU
Senior Government Counsel
Department of Justice

Mr Paul CHENG
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

Mr Joey LO
Senior Council Secretary (1)3

Miss Rita YUNG
Council Secretary (1)3

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1215/10-11 -- Minutes of meeting held on
11 January 2011)

The minutes of the meeting held on 11 January 2011 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)1301/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 27 January 2011

LC Paper No. CB(1)1301/10-11(02) -- Administration's response to issues raised at the meeting on 27 January 2011

Clause-by-clause examination of the Bill

Starting from clause 19

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 advise on the following:

- (a) whether the Government would be responsible for the future injection of funding into the Office of the Communications Authority (OFCA) Trading Fund in the event that it would be depleted by the litigation costs, if any, to be incurred by the future Communications Authority (CA);
- (b) the enforceability of the provisions under Clause 21 of the Bill relating to the proposed offence to give or disclose confidential information obtained or received officially; and
- (c) how to ensure that the disclosure of information authorized by

the CA or the OFCA in the form of a summary compiled under Clause 21(2)(g) of the Bill could prevent the particulars concerned from being ascertained from it, and the party to bear the legal liability if it could not.

Admin 4. The Administration was requested to consider:

- (a) deleting Clause 13(7) of the Bill to address members' concern about its counter-productive effect;
- (b) deleting the wordings "一經收取" from the Chinese version of Clause 19(1) of the Bill to avoid semantic inconsistency with "已繳付" in the main clause of the sentence;
- (c) deleting Clause 21(4)(a) of the Bill to avoid uncertainty and ensure enforceability of the provisions; and
- (d) deleting the brackets from the phrase "(但僅因非法披露才屬公眾可知的資料除外)" in the Chinese version of Clause 21(2)(a) of the Bill.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1491/10-11(02) on 7 March 2011.)

Admin 5. The Bills Committee requested that the LegCo Panel on Information Technology and Broadcasting should be informed in future of the Standing Orders made by the CA in respect of disclosure of interests by a member of the CA. The Chairman suggested that in line with Clause 13 of the Bill and by making reference to the relevant provisions of the Standing Orders of the Broadcasting Authority and the guidelines on "Declaration of Interests by Members of Public Sector Advisory and Statutory Bodies: Guidelines for a One-tier Reporting System" recommended by the Independent Commission Against Corruption, unified and prudent requirements for disclosing interests should be set out in the Standing Orders of the CA. These included circumstances under which disclosure of interest must be made, definitions of direct and indirect personal and pecuniary interests, and those held by the family members or close relatives of members of the CA, etc.

III. Any other business

6. The Chairman reminded members that the ninth meeting would be held on 8 March 2011 at 4:30 pm.

7. There being no other business, the meeting ended at 4:32 pm.

Council Business Division 1
Legislative Council Secretariat
15 March 2011

**Proceedings of the eighth meeting of
Bills Committee on Communications Authority Bill
on Thursday, 17 February 2011, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000140	Chairman	(a) Opening remarks by the Chairman. (b) Confirmation of minutes of meeting on 11 January 2011 (LC Paper No. CB(1)1215/10-11)	
000141 – 011300	Chairman Ms Emily LAU Dr Margaret NG Mr LEE Wing-tat Mr WONG Yuk-man Assistant Legal Adviser (ALA) Administration	<p>Briefing by the Administration on its response to issues raised at the meeting on 27 January 2011 (LC Paper No. CB(1)1301/10-11(02)).</p> <p>Discussion on disclosure of interests under Clause 13 of the Bill.</p> <p>In response to Dr Margaret NG's enquiry, the Administration explained that Clause 13(7) of the Bill was so drafted as not to invalidate the proceedings of CA in the event that an individual member of the CA failed to comply with Clause 13 in respect of disclosure of interests.</p> <p>Dr Margaret NG was not convinced of the Administration's explanation. She considered that Clause 13(7), which might be counter-productive, should be deleted from the Bill.</p> <p>ALA pointed out that section 7 of the existing Broadcasting Authority Ordinance (Cap. 391) relating to disclosure of member's interest contained no provision similar to clause 13(7) of the Bill.</p> <p>Discussion on litigation costs of the CA.</p> <p>Dr Margaret NG considered it unreasonable for the CA to bear the legal liabilities arising from any action of the staff of Office of the Communications Authority (OFCA) or the Director-General of Communications (DG Com) in the course of implementing CA's decisions made for the performance of its functions.</p> <p>The Administration explained that no civil liabilities would be incurred by the CA and any other person in the performance of the CA's functions acting in good faith by virtue of clause 18 of the Bill. Moreover, the CA had the</p>	<p>The Administration to follow up as stated in paragraph 5 of the minutes and to revert to the Panel on Information Technology and Broadcasting as soon as practicable after enactment of the Bill.</p> <p>The Administration to follow up as stated in paragraph 4(a) of the minutes.</p> <p>The Administration to follow up as stated in</p>

Time marker	Speaker	Subject(s)	Action required
		<p>authority to decide how its functions were to be performed. OFCA, which supported and assisted the DG Com in the performance of his or her functions, served only as the executive arm of the CA in implementing its decisions.</p> <p>In response to Ms Emily LAU's enquiry, the Administration advised that under Clause 23 of the Bill, the OFCA Trading Fund would support and assist the CA in the performance of any functions that CA might perform under or by virtue of any Ordinance. As such, any litigation costs associated with the CA in the course of performing its statutory functions would be met under the Trading Fund in accordance with the Trading Funds Ordinance (Cap. 430).</p> <p>In response to Mr LEE Wing-tat's enquiry, the Administration advised that the legal costs incurred by the Office of the Telecommunications Authority and the Television and Entertainment Licensing Authority over the past three years stood at less than 3% of their total annual operating expenses. However, it would not be used as a yardstick to restrain the litigation costs to be incurred under the OFCA Trading Fund. The CA's decision to undertake enforcement actions or legal proceedings would be backed fully by the OFCA Trading Fund as necessary and would not be affected by the potential costs to be involved.</p>	<p>paragraph 3(a) of the minutes.</p>
<p>011301 – 012012</p>	<p>Chairman Mr WONG Yuk-man Administration</p>	<p>Clause by clause examination</p> <p><u>Clause 19 – Payments</u></p> <p>Mr WONG Yuk-man considered the wordings "一經收取" in the Chinese version of Clause 19(1) redundant and should be deleted to avoid semantic inconsistency with "已繳付" in the main clause of the sentence.</p> <p>Discussion on the arrangement for crediting of payments to the OFCA Trading Fund and the General Revenue Account.</p>	<p>The Administration to follow up as stated in paragraph 4(b) of the minutes.</p>
<p>012013 – 013817</p>	<p>Chairman Mr WONG Yuk-man Ms Cyd HO Ms Emily LAU Administration</p>	<p><u>Clause 20 – Exemption in relation to transfer of custody of records etc. and their use</u></p> <p>Discussion on the arrangement for the transfer of custody of records etc. and their use.</p> <p>In response to Ms Emily LAU's and Ms Cyd HO's enquiry about protection of personal data involved in the transfer of data and records to the CA and the OFCA, the Administration advised that the Office of the Privacy Commissioner for Personal Data (PCPD) had been</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>consulted on the drafting of Clause 20 and its views and suggestions had been incorporated. The telecommunications and broadcasting licensees concerned would be notified of the transfer of the data, records or documents upon the establishment of the CA and the OFCA.</p>	
<p>013818 - 020008</p>	<p>Chairman Administration Ms Cyd HO Ms Emily LAU ALA</p>	<p><u>Clause 21 – Offence to give or disclose information obtained or received officially</u></p> <p>In response to the Chairman's and Ms Cyd HO's concern about the safeguards against disclosure of confidential information as stated in Clause 21(2)(g) of the Bill, the Administration advised that the power to disclose information in the form of a summary was limited to the CA, or a person authorized by the CA or the OFCA. The summary should be so compiled as to prevent particulars relating to the business or identity or the trading particulars of any of those persons who had produced or furnished the information, or any person to whom the information related from being ascertained from it.</p> <p>Discussion on the enforceability of Clause 21 of the Bill in view of possible complex interrelationships between members of the CA and different industry organizations and practitioners.</p> <p>Ms Cyd HO considered the defence against the offence of disclosure of confidential information provided under Clause 21(4)(a) too arbitrary as it only required a subjective belief on the part of the defendant that there was lawful authority for him to disclose the information.</p> <p>The Administration advised that the belief would be subject to an objective test that the defendant had no other reasonable grounds to believe that he did not have lawful authority to disclose the information. It would be up to the Court to decide whether the belief was a bona fide one and whether the defendant had any intention to commit the offence.</p>	<p>The Administration to follow up as stated in paragraphs 3(c), 4(c) and 4(d) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p>
<p>020009 - 020049</p>	<p>Chairman Ms Emily LAU</p>	<p>Meeting arrangement</p>	