

**The Administration's Response to the Issues Raised at  
the Bills Committee meeting of the Communications Authority Bill  
held on 31 March 2011**

**and**

**Proposed Committee Stage Amendments**

**Purpose**

This paper –

- (a) sets out the Committee Stage Amendments (CSAs) to the Communications Authority (CA) Bill to be proposed by the Administration; and
- (b) sets out the Administration's responses to the remaining issues raised at the meeting of the Bills Committee (BC) held on 31 March 2011 and any other outstanding matters discussed at previous BC meetings.

**CSAs**

- 2. The CSAs proposed by the Administration are set out at **Annex A**.

***Clause 8: criteria for appointing CA Members***

3. At the BC meeting held on 26 November 2010, Members asked for stipulating in the Bill the criteria based on which the Chief Executive (CE) would appoint members of the CA. Having carefully examined Members' suggestion, we propose adding the following criteria for appointment, in addition to that the person should not be a public officer and should have been ordinarily resident in Hong Kong for at least seven years: i.e. the person is, in the opinion of the CE, having –

- (a) extensive knowledge of, experience in or exposure to, communications services; or

- (b) knowledge of or experience in management, accounting, finance, education, law or community service, or such professional or other experience as would render the person suitable for the appointment.

4. In line with the above, we propose making the following amendments –

Clause 8(1)(a)

Amendments as follows –

“(1) The Authority consists of –

- (a) no fewer than 5 and no more than 10 persons appointed by the Chief Executive ~~who are not public officers and who are ordinarily resident in Hong Kong and have been so resident for at least 7 year;~~”

Clause 8

Adding a sub-clause as follows –

“(1A) **The Chief Executive may appoint a person under subsection (1)(a) only if the person –**

- (a) is not a public officer;**
- (b) is ordinarily resident in Hong Kong and has been so resident for at least 7 years; and**
- (c) is, in the opinion of the Chief Executive, a person having –**
  - (i) extensive knowledge of, experience in or exposure to, communications services; or**
  - (ii) knowledge of or experience in management, accounting, finance, education, law or community service, or such professional or other experience as would render the person suitable for the appointment.”**

*Clause 8(5): a CA member becoming a public officer*

5. At the BC meeting held on 7 December 2010, Members raised the issue as to why a CA member who had become a public officer would need to resign from the CA rather than to lose his membership of the CA automatically. Having examined Members' suggestion, we propose the following amendment to clause 8(5) –

Clause 8(5)

Amendments as follows –

~~“(5) If a member appointed under subsection (1)(a) becomes a public officer, the member must resign from the Authority~~  
**office of a member of the Authority appointed under subsection (1)(a) becomes vacant if the member becomes a public officer.”**

*Clause 8: Determining the remuneration and terms and conditions of CA members*

6. Clause 8 (Membership) provides that members of the CA are to be appointed by the CE. It is the Administration's intention to allow flexibility for full-time members to be appointed to the CA. For clarity's sake and the avoidance of doubt, we propose adding a sub-clause to provide for the CE's power to determine the remuneration and the terms and conditions of appointment to the CA. As such, a provision is proposed to be added to Clause 8 as follows –

After Clause 8(8)

Adding a sub-clause as follows –

**“(9) The Chief Executive may determine the remuneration and the terms and conditions of any appointment under this section.”**

***Clause 9: Criteria for revoking chairpersonship and vice-chairpersonship***

7. At the BC meeting held on 7 December 2010, Members requested the stipulation in the Bill criteria to provide for the revocation of appointment of chairperson and vice-chairperson, similar to the criteria set out in Clause 8 (Membership) on declaring the vacancy of CA members. Having examined Members' view, we propose adopting the following amendments –

*Clause 9(2)*

Amendments as follows –

~~“(2) The Chief Executive may at any time revoke any appointment made under subsection (1)~~**The Chief Executive may revoke any appointment made under subsection (1) if the Chief Executive is of the opinion that the chairperson or vice-chairperson is unfit to perform the functions of chairperson or vice-chairperson due to any reason referred to in section 8(4) or other sufficient cause.”**

***Clause 10: meetings by electronic means***

8. At the BC meeting held on 7 December 2010, Members expressed concerned about whether precautionary measures would be taken by the CA when allowing its members to participate in meetings through electronic means in order to ensure the confidentiality of the proceedings. We agree that the CA should make standing order to ensure the confidentiality of the meetings if participation through electronic means would be allowed. We therefore propose amendments as follows -.

*Clause 10(5)*

Amendments as follows –

“(5) The Authority ~~may~~ **is to** make standing orders, not inconsistent with this Ordinance, for the purposes of regulating—  
    (a) the number of meetings to be held by the Authority in any year; ~~and~~  
    (b) the procedures to be followed at the meetings; **and**  
    (c) **the conduct of any meeting to which subsection (6) applies, in order to ensure that the confidentiality of the meeting, if any, is not compromised.**”

Clause 10(6)

Amendments as follows –

“(6) Subject to prior approval of the chairperson or vice-chairperson (if the chairperson is absent) and **compliance with standing orders made under** subsection (5), a member is taken to be present at a meeting if—...”

***Clause 13(2): Determining whether a member must withdraw from, not cast a vote in and not form a quorum for a meeting if that member has disclosed interests***

9. Sub-clause (2) of Clause 13 (Disclosure of interests) sets out the arrangements as regards a member’s position at a meeting of the CA if he has disclosed interest in respect of a matter under discussion. The requirement concerning whether a member must withdraw from, not vote in and not form a quorum for the meeting are as follows –

- (a) the member must withdraw from the meeting **if so required** by the member presiding; and
- (b) the member must not vote on any resolution concerning the matter or be counted for the purpose of establishing the quorum **unless determined otherwise** by the member presiding.

10. Some BC members have raised that the arrangements may arouse concern as to the large authority of the member presiding. While the current formulation is not uncommon in various local legislation, there

are also examples whereby it is the majority of the other members present who determine whether the member disclosing an interest could stay during the deliberation of the item concerned, and vote in and form a quorum for that deliberation (e.g. the Independent Police Complaints Council Ordinance (Cap. 604)). On balance, we propose that the decision should be made by the majority of the other members present instead of by the member presiding. In this regard, we propose amendments to Clause 13(2)(c) as follows -

Clause 13(2)(c)

Amendments as follows –

“(c) the member (including the one who has vacated the chair under paragraph (b)) must, if so required by ~~the member presiding~~**the majority of the other members present**, withdraw from the meeting during the discussion and must not in any case, except as otherwise determined by ~~the member presiding~~**the majority of the other members present**, vote on any resolution concerning the matter under the discussion or be counted for the purpose of establishing the exercise of a quorum.”

***Clause 13: The application of the disclosure of interest requirement***

11. In accordance with Clause 13(1), the requirement of disclosing interest applies to members of the CA only in matters under discussion at the meetings of the CA and its committees. Members of the committees who are not members of the CA would not be subject to such requirements. To address the discrepancy, we propose amendments as follows.

Clause 13(1)

Amendments as follows –

“(1) If a member of the Authority has—

- (a) a pecuniary interest, whether direct or indirect; or
- (b) a personal interest greater than that which the member has as a member of the general public,

in any matter under discussion at a meeting of the Authority, ~~the Broadcast Complaints Committee or any committee appointed under section 16~~, the member must disclose the nature of the interest at the meeting.”

After Clause 13(7)

Adding a sub-clause as follows –

**“(8) Subsections (1), (2) and (7) apply to a member of the Broadcast Complaints Committee or a committee appointed under section 16, as if any reference to the Authority in subsections (1) and (7) were a reference to the Broadcast Complaints Committee or the committee appointed under section 16, as the case may be.”.**

***Clause 16: The appointment of committees of the CA***

12. At the BC meeting held on 27 January 2011, some Members requested the Administration to consider setting out clearly the statutory committees of the CA that would be formed under Clause 16 (Committees) of the Bill, which enables the CA to appoint committees as it thinks fit. The only committee to be established by the CA on a mandatory basis would be the Broadcast Complaints Committee (BCC), which is responsible for handling complaints made to the CA in respect of broadcasting contents. The governing provisions in respect of the BCC are already comprehensively set out in the Broadcasting (Miscellaneous Provisions) Ordinance (B(MP)O) (Cap. 391). As the BCC is part and parcel of the complaint-processing mechanism enshrined in sections 10, 11 and 11A of the B(MP)O (**Annex B**), and that the B(MP)O already provides the legal basis for the BCC, it is not necessary to set out any governing provisions for the BCC in Clause 16 of the CA Bill.

13. However, to make a cross-reference in the CA Bill to facilitate understanding of the operation of the Bill, we propose to make an amendment to Clause 16(1) as follows -

Clause 16(1)

Amendments as follows –

**“(1) Without prejudice to the appointment of the Broadcast Complaints Committee, the Authority may appoint any committees it thinks fit to – ...”**

14. By doing so, readers of the CA Bill would have a clear and comprehensive picture of what committees the CA would set up to support its operation.

***Clause 16: Chairpersonship of committees***

15. Members of the BC suggested that the chairperson of a committee appointed by the CA should be a member of the CA. We agree with the suggestion. We therefore propose the following amendments to Clause 16 (Committees) –

Clause 16(2)

Amendments as follows –

**“(2) The Authority may appoint a person to be a member of a committee appointed under subsection (1), whether or not the person is a member of the Authority, and may appoint a member of the Authority who is also a member of the committee to be the chairperson of the committee.”**

***Clause 17: Description of sections of various Ordinances***

16. Members have suggested that sub-clause (3) of Clause 17

(Delegation of functions to committees, Director-General and public officers) should be amended to describe also the sections of various Ordinances cited to enhance understanding of the Bill. We propose to amend the clause as follows to address Members' suggestions –

Clause 17(3)

Amendments as follows –

- “(3) The Authority must not delegate—
- (a) the power to delegate under this section;
  - (b) any function under section 6 (submit annual reports) or section 16 (appoint committees);
  - (c) any function under section ~~13C, 13CA or 13E~~**13C (grant licence), 13CA (issue guidelines) or 13E (renew licence)** of the Telecommunications Ordinance (Cap. 106);
  - (d) any power conferred on it by regulations made under section ~~37~~ **(make regulations)** of the Telecommunications Ordinance (Cap. 106) to fix the limits of any electrical or radiated interference in respect of any class or classes of apparatus;
  - (e) any function under section ~~10(1), 19, 21 or 24~~**10(1) (appoint Broadcast Complaints Committee), 19 (issue Codes of Practice), 21 (conduct inquiry) or 24 (impose financial penalties)** of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391); or
  - (f) any function under section ~~3, 4, 8, 9, 10, 11, 28, 31, 32 or 33~~ **3 (approve codes of practice), 4 (publish guidelines), 8 (to whom licence may be granted), 9 (Authority to recommend on licence applications), 10 (grant licence), 11 (extend or renew licence), 28 (impose financial penalty), 31 (suspend licence), 32 (revoke licence) or 33 (conduct inquiry)** of the Broadcasting Ordinance (Cap. 562).”

*Clause 19A: Liability of the CA*

17. At various BC meetings, there was discussion as to whether the

Government would render full support to the CA while the latter performs its functions, especially in meeting costs arising out of litigation in which the CA would be a party. Clause 14 (Director-General) of the CA Bill has provided that the Director-General of Communications (DG Com) would do all things necessary for implementing the decisions made by the CA in relation to CA's performance of functions, and that the DG Com would be supported by the Office of the Communications Authority (OFCA) Trading Fund. Clause 18 (Immunity) also provides that no civil liability would be incurred by the CA and individual members of the CA should they act in good faith in performing their functions.

18. However, to put beyond doubt the question of who would meet CA's liabilities, e.g. third-party costs arising out of litigation, we propose to add an additional clause to provide for the OFCA Trading Fund to meet the liabilities of the CA properly incurred in connection with its performance of functions, after Clause 19 (Payments). The clause would also ensure that the remuneration of CA members could be met by the OFCA Trading Fund.

After Clause 19

Adding a clause as follows –

**“19A. Payment out from trading fund**

**Despite any provisions in the Trading Funds Ordinance (Cap. 430), any liabilities properly incurred by the Authority in connection with the performance or purported performance of functions conferred on the Authority are to be paid out of the trading fund.”**

***Clause 21(2)(g): The conjunction at the end of 21(2)(g)(i) and (ii)***

19. At the BC meeting held on 8 March 2011, Members raised the question as to whether the conjunction at the end of sub-clause (2)(g)(i) of Clause 21 (Offence to give or disclose information obtained or received officially) should be “or” or “and”. To enhance clarity, we propose to amend clause 21(2)(g) as follows -

Clause 21(2)(g)

Amendments as follows –

In the English text,

- “(g) the giving or disclosure of information by the Authority, a person authorized by the Authority or OFCA in the form of a summary compiled from any information in the possession of the Authority or OFCA, if the summary is so compiled as to ~~prevent~~**ensure that no** particulars relating to the business or identity, or the trading particulars, of –
- (i) any of those persons who have produced or furnished the information; or
  - (ii) any persons to whom the information relates,  
~~from being ascertained~~**may be** ascertained from it;”

In the Chinese text,

- “(g) 管理局、管理局授權的人或通訊辦授權的人以撮要形式提供或披露資料，而該撮要是以管理局或通訊辦管有的任何資料編纂而成，且編纂手法使人無法**須確保不能**從該撮要中確定關乎以下的人的業務或身分或其交易的詳情 —
- (i) 任何已交出或提供該等資料的人；或
  - (ii) 該等資料所關乎的任何人；”

***Amendments to the Chinese renditions***

20. In the Administration’s reply made to the Assistant Legal Adviser on 22 July 2010, we proposed to amend the term “通訊事務管理局營運基金” to read as “通訊事務管理局**辦公室**營運基金”. We propose to make amendment to the following clauses –

Clause 2

Amendments as follows –

““營運基金” (trading fund) 指藉第 23 條重新命名的通訊事務管理局辦公室營運基金；”

Clause 23(1)

Amendments as follows –

“現將立法局在 1995 年 5 月 10 日提出及通過的設立電訊管理局營運基金的決議( 第 430 章, 附屬法例 D) 所設立的電訊管理局營運基金，重新命名為“通訊事務管理局辦公室營運基金”。”

Clause 23(2)

Amendments to section 2 of the proposed Schedule 3 as follows –

“2. 現將根據決議的(a) 段設立的營運基金重新命名為“通訊事務管理局辦公室營運基金”。”

21. At the BC meeting held on 17 February 2011 and 8 March 2011, Members requested the Administration to look into whether there would a semantic inconsistency in using “已繳付” and “一經收取” concurrently in Clauses 19(1), 19(2) and 19(3). Having examined the clauses, we propose the following amendment -

Clause 19(1)

Amendments as follows –

“所有在生效日期或該日期後須繳付或已繳付繳付或須繳付予管理局或拖欠管理局的款項，一經收取，即須記入營運基金的貸方帳目，...”

Clause 19(2)

Amendments as follows –

“...且有任何款項就該牌照或許可證須繳付或已繳付繳付或須繳付予政府(包括庫務署署長)或拖欠政府(包括庫務署署長)，則關乎該段在生效日期或該日期後的期間的部分款項一經收取，即須記入營運基金的貸方帳目，...”

Clause 19(3)

Amendments as follows –

“...且有任何款項就該牌照或許可證須繳付或已繳付繳付或須繳付予管理局或拖欠管理局，則關乎該段期間的部分款項一經收取，即須記入政府一般收入的貸方帳目。”

***Public Mission of the CA***

22. At various BC meetings, Members stressed the importance of incorporating the public mission of the CA into the Bill. After careful examination, we propose that a sub-clause be added to Clause 4 (Functions of the Authority) to set out the public mission which will guide the CA in performing its functions as follows -

- (a) to foster an environment that supports a vibrant communications sector to enhance Hong Kong’s position as a communications hub in the region;
- (b) to encourage innovation and investment in the communications market;
- (c) to promote competition and the adoption of best practices in the communications market for the benefit of the industry and consumers; and
- (d) to act in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance (Cap. 383).

We will propose to make amendment as follows –

Clause 4

Adding a sub-clause as follows –

**“(4) Without limiting any other matters that the Authority may have regard to, in performing its functions, the Authority must have regard to such of the following as appear to it to be relevant in the circumstances—**

- (a) to foster an environment that supports a vibrant communications sector to enhance Hong Kong’s position as a communications hub in the region;**
- (b) to encourage innovation and investment in the communications market;**
- (c) to promote competition and the adoption of best practices in the communications market for the benefit of the industry and consumers; and**
- (d) to act in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance (Cap. 383).”**

**Remaining issues raised at the meeting of the BC on 31 March 2011 and any other outstanding issues**

***Reviewing the Telecommunications Ordinance (TO) and the Broadcasting Ordinance (BO)***

23. Members requested the Administration to set out the directions on which the Administration would review the TO and the BO. In view of the convergence that exists in the telecommunications and broadcasting sectors, the inconsistencies between the TO and the BO need to be addressed. The Administration is fully and firmly committed to reviewing the TO and the BO as a priority together with the CA immediately upon the latter’s establishment. The Secretary for Commerce and Economic Development will be able to make clear this policy intention and commitment when the CA Bill resumes second reading debate in the Legislative Council. The review will cover issues

including cross media ownership and foreign ownership restrictions, licensing authorities and appeal mechanisms. We also see the need to review the regulatory regimes for telecommunications and broadcasting to keep pace with technological development. As regards competition matters, it will be addressed under the comprehensive Competition Bill now being examined by the Legislative Council.

24. The Administration will devise a more detailed plan together with the CA upon its establishment with respect to the exact areas to be reviewed and the relevant timetable.

### ***Independence of the CA***

25. At the BC meeting held on 31 March, some Members questioned whether the CA would be truly independent. As we have previously explained, the status of the CA and its relationship with the Government are set out in Clause 3(3) of the CA Bill, which states 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”. The powers conferred on the CA through the CA Bill and various related legislation clearly allow the CA to exercise its powers in its own right. The fact that CA would be served by OFCA would in no way affect this position.

### ***The Policy Role of the CA***

26. At various BC meetings, some Members had asked if the CA should be given a greater role in making policies for the electronic communications sector. The formulation of policies remains principally the role of the Government but the CA as a statutory regulatory body would offer advice in the policy formulation. This is the relationship between the Government and most statutory bodies in Hong Kong as well as in the case of overseas unified regulators in the UK, Australia and Canada. Indeed, as set out in Clause 4(3) of the CA Bill, it is the function of the CA to tender advice to the Secretary for Commerce and Economic Development on any legislation, legislative proposals and regulatory policies relating to telecommunications, broadcasting, anti-spamming, etc. The current Broadcasting Authority, for example,

has been greatly involved as a convention in and providing useful advice, which was given considerable weight and subsequently taken on board by the Administration, to the development of Government policies such as digital audio broadcasting and digital terrestrial television. In the case of the CA, the role has now been further stipulated in the Bill.

27. The Administration has also made clear its commitments on several occasions about reviewing the TO and the BO **together with the CA** after its establishment. From our point of view, it is both essential and practical to involve the CA in this and other forthcoming policy-making exercises. As such, the CA will play an important role in the formulation of Government policies in respect of the electronic communications sectors.

### ***Clause 11 of the Bill***

28. At the BC meeting held on 27 January 2011, some Members suggested that Clause 11 of the Bill should be amended to the effect that the CA should not be allowed to transact business by circulation of papers except for administrative matters. We have reservation in imposing this restriction in the legislation since it would unreasonably constrain the operation of the CA. Moreover, it would be difficult to define what constitutes “administrative matters”. We consider that the CA as an independent statutory authority should be give such flexibility so that it could carry out its operation effectively and efficiently. We note that similar practices are also adopted by other statutory bodies as set out in **Annex C**.

29. We expect that the CA would exercise its power reasonably under the law. Moreover, there is already safeguarded under Clause 12 of the Bill whereby any member of the CA may request any business which is being transacted by the circulation of papers to be transacted at a meeting of the CA. There should be sufficient check and balance.

**Communications and Technology Branch  
Commerce and Economic Development Bureau  
April 2011**

COMMUNICATIONS AUTHORITY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
2	In the Chinese text, in the definition of “營運基金”, by adding “辦公室” after “管理局”.
4	By adding – <p>“(4) Without limiting any other matters that the Authority may have regard to, in performing its functions, the Authority must have regard to such of the following as appear to it to be relevant in the circumstances—</p> <ul style="list-style-type: none"><li>(a) to foster an environment that supports a vibrant communications sector to enhance Hong Kong’s position as a communications hub in the region;</li><li>(b) to encourage innovation and investment in the communications market;</li><li>(c) to promote competition and the adoption of best practices in the communications market for the benefit of the industry and consumers; and</li><li>(d) to act in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance (Cap. 383).”.</li></ul>

8(1)(a) By deleting “who are not public officers and who are ordinarily resident in Hong Kong and have been so resident for at least 7 years”.

8 By adding –

“(1A) The Chief Executive may appoint a person under subsection (1)(a) only if the person –

- (a) is not a public officer;
- (b) is ordinarily resident in Hong Kong and has been so resident for at least 7 years;  
and
- (c) is, in the opinion of the Chief Executive, a person having –
  - (i) extensive knowledge of, experience in or exposure to, communications services; or
  - (ii) knowledge of or experience in management, accounting, finance, education, law or community service, or such professional or other experience as would render the person suitable for the appointment.”.

8 By deleting subclause (5) and substituting –

“(5) The office of a member of the Authority appointed under subsection (1)(a) becomes vacant if the member becomes a public officer.”.

- 8 By adding –
- “(9) The Chief Executive may determine the remuneration and the terms and conditions of any appointment under this section.”.
- 9 By deleting subclause (2) and substituting –
- “(2) The Chief Executive may revoke any appointment made under subsection (1) if the Chief Executive is of the opinion that the chairperson or vice-chairperson is unfit to perform the functions of chairperson or vice-chairperson due to any reason referred to in section 8(4) or other sufficient cause.”.
- 10(5) (a) By deleting “may” and substituting “is to”.
- (b) In paragraph (a), by deleting “and”.
- (c) In paragraph (b), by deleting the full stop and substituting “; and”.
- (d) By adding –
- “(c) the conduct of any meeting to which subsection (6) applies, in order to ensure that the confidentiality of the meeting, if any, is not compromised.”.
- 10(6) By adding “compliance with standing orders made under” before “subsection (5)”.
- 13(1) By deleting “the Broadcast Complaints Committee or any committee appointed under section 16,”.

- 13(2)(c) By deleting “member presiding” (wherever appearing) and substituting “the majority of the other members present”.
- 13 By adding –  
“(8) Subsections (1), (2) and (7) apply to a member of the Broadcast Complaints Committee or a committee appointed under section 16, as if any reference to the Authority in subsections (1) and (7) were a reference to the Broadcast Complaints Committee or the committee appointed under section 16, as the case may be.”.
- 16(1) By deleting “The” and substituting “Without prejudice to the appointment of the Broadcast Complaints Committee, the”.
- 16(2) By adding “a member of the Authority who is also” after “and may appoint”.
- 17(3) (a) In paragraph (c), by deleting “13C, 13CA or 13E” and substituting “13C (grant licence), 13CA (issue guidelines) or 13E (renew licence)”.
- (b) In paragraph (d), by adding “(make regulations)” after “37”.
- (c) In paragraph (e), by deleting “10(1), 19, 21 or 24” and substituting “10(1) (appoint Broadcast Complaints Committee), 19 (issue Codes of Practice), 21 (conduct inquiry) or 24 (impose financial penalties)”.
- (d) In paragraph (f), by deleting “3, 4, 8, 9, 10, 11, 28, 31, 32 or 33” and substituting “3 (approve codes of practice), 4 (publish guidelines), 8 (to whom licence may be granted), 9 (Authority

to recommend on licence applications), 10 (grant licence), 11 (extend or renew licence), 28 (impose financial penalty), 31 (suspend licence), 32 (revoke licence) or 33 (conduct inquiry)”.

19(1) In the Chinese text, by deleting “須繳付或已繳付” and substituting “繳付或須繳付”.

19(2) In the Chinese text, by deleting “須繳付或已繳付” and substituting “繳付或須繳付”.

19(3) In the Chinese text, by deleting “須繳付或已繳付” and substituting “繳付或須繳付”.

New By adding –

**“19A. Payment out from trading fund**

Despite any provisions in the Trading Funds Ordinance (Cap. 430), any liabilities properly incurred by the Authority in connection with the performance or purported performance of functions conferred on the Authority are to be paid out of the trading fund.”.

21(2)(g) (a) By deleting “prevent” and substituting “ensure that no”.

(b) By deleting “from being” and substituting “may be”.

23(1) In the Chinese text, by adding “辦公室” after “通訊事務管理局”.

23(2) In section 2 of the proposed Schedule 3, in the Chinese text, by adding “辦公室” after “管理局”.

**Section 10, 11 and 11A of  
the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391)  
(now the Broadcasting Authority Ordinance)**

**Section 10 Broadcast Complaints Committee**

(1) The Authority shall appoint a Broadcast Complaints Committee consisting of not less than 3 members of the Authority.

(2) The Committee may appoint such other persons to be members of the Committee as it deems fit.

(3) A member of the Committee appointed under subsection (2)-

(a) may be appointed to advise generally or on any particular matter; and

(b) shall not have a vote on matters before the Committee.

(4) The Committee shall appoint one of its members appointed under subsection (1) to be its chairperson.

(5) A member of the Committee-

(a) shall, subject to paragraph (b) and to subsection (6), hold office for such period as the Authority or, in the case of a member appointed under subsection (2), the Committee, may determine; and

(b) may resign from the Committee at any time by notice in writing addressed to the Authority or, in the case of a member appointed under subsection (2), to the chairperson of the Committee.

(6) A member of the Committee appointed under subsection (1) shall cease to hold office if he ceases to be a member of the Authority.

(7) Subject to this section and to section 11, the Committee shall determine its own procedures.

## **Section 11 Consideration of complaints by the Broadcast Complaints Committee**

(1) Subject to subsections (2) and (3), where a person makes a complaint to the Authority that a licensee or any other person has contravened-

- (a) this Ordinance, the Broadcasting Ordinance (Cap 562) or Part IIIA of the Telecommunications Ordinance (Cap 106);
- (b) the terms or conditions of a licence; or
- (c) a Code of Practice,

the Authority shall refer the complaint to the Broadcast complaints Committee.

(2) Subsection (1) shall not apply to a complaint concerning-

- (a) any matter referred to in section 13(1) or 14(1) of the Broadcasting Ordinance (Cap 562); or
- (b) any matter referred to in section 19 of the Broadcasting Ordinance (Cap 562) or any script or material supplied for broadcasting by the Government and broadcast by a licensee.

(2A) The Authority shall refer to the Government a complaint which falls within subsection (2)(b).

(3) The Authority may refuse to refer to the Committee a complaint that-

- (a) is, in the opinion of the Authority, trivial or frivolous; or
- (b) is not made in writing.

(4) The Committee, upon receipt of a complaint referred to it under subsection (1), shall-

- (a) give the licensee or other person the subject of the complaint a reasonable opportunity to make representations both orally and in writing;
- (b) consider any representations made, whether orally or in writing, by or on behalf of the complainant and the licensee or other person the subject of the complaint;
- (c) consider any evidence received by it, whether tendered on behalf

of the complainant or otherwise, which it considers relevant to the complaint; and

(d) make recommendations concerning the complaint to the Authority.

(6) The Committee may receive such evidence as it thinks fit and neither the provisions of the Evidence Ordinance (Cap 8) nor any other rule of law relating to the admissibility of evidence shall apply in proceedings before the Committee.

(7) For the purposes of this section the Committee shall have and may exercise any of the powers vested in the Authority by section 25 of the Broadcasting Ordinance (Cap 562), by section 22 of this Ordinance, by any term or condition of a licence for satellite television services or satellite sound services or by any term or condition of a licence granted under section 13C of the Telecommunications Ordinance (Cap 106) requiring a licensee to supply to the Authority on demand any material, including the script thereof.

**Section 11A      Consideration of complaint that a licensee has  
contravened section 13(1) or 14(1) of Broadcasting  
Ordinance**

(1) A person may make a complaint in writing to the Authority that a licensee has contravened section 13(1) or 14(1) of the Broadcasting Ordinance (Cap 562).

(2) Subject to subsection (3), the Authority, upon receipt of a complaint under subsection (1), shall-

(a) give the licensee the subject of the complaint a reasonable opportunity to make representations in writing;

(b) consider any representations in writing made by or on behalf of the complainant and the licensee; and

(c) consider any evidence received by it, whether tendered on behalf of the complainant or otherwise, which it considers relevant to the complaint.

(3) The Authority may receive such evidence as it thinks fit and neither the provisions of the Evidence Ordinance (Cap 8) nor any other rule of law relating to the admissibility of evidence shall apply in proceedings before the Authority.

**Provisions in Other Legislation covering the Transaction of Business through Circulation of Paper**

<b>Ordinance</b>	<b>Statutory Body</b>	<b>Section</b>	<b>Provision</b>
Mandatory Provident Fund Schemes Ordinance (Cap. 485)	Mandatory Provident Fund Schemes Authority	Paragraph 12 of Schedule 1A: Provisions Relating to Authority	<p>12. Transaction of business otherwise than at ordinary meetings</p> <p>(1) The business of the Authority may be transacted by the circulation of papers among all of the then existing directors</p> <p>(2) Any of the directors may initiate a motion concerning Authority business by circulating a paper.</p> <p>(3) A motion under this section is to be approved by a simple majority of the directors unless within 3 working days of the date of the paper the chairperson orders, or any 2 other directors require under section 8(3) of this Schedule, that a meeting of the Authority to be convened to consider the motion.</p> <p>(4) Papers may be circulated among directors for the</p>

<b>Ordinance</b>	<b>Statutory Body</b>	<b>Section</b>	<b>Provision</b>
			purposes of this section by facsimile message or other means of transmitting the information in the papers concerned.
Securities and Futures Ordinance (Cap. 571)	Securities and Futures Commission	Paragraph 21 of Schedule 2: Securities and Futures Commission	<p>21. Where a resolution-</p> <ul style="list-style-type: none"> <li>(a) is in writing; and</li> <li>(b) is signed by such number of members of the Commission as- <ul style="list-style-type: none"> <li>(i) would include all of the members of the Commission who are, at any time when the resolution is made available for signature, present in Hong Kong and capable of signing the resolution; and</li> <li>(ii) is also not less than one third of the executive directors of the Commission and not less than one third of the non-executive directors of the Commission,</li> </ul> </li> </ul> <p>the resolution shall be as valid and effectual as if it had been passed at a meeting of the Commission convened and conducted in accordance with this Ordinance.</p>

<b>Ordinance</b>	<b>Statutory Body</b>	<b>Section</b>	<b>Provision</b>
Deposit Protection Scheme Ordinance (Cap. 581)	Hong Kong Deposit Protection Board	Paragraph 6 of Schedule 2: Provisions Relating to Board	<p>6. Transaction of business by circulation of papers</p> <p>(1) The Board may transact any of its business by circulation of papers.</p> <p>(2) A resolution in writing which is approved in writing by a majority of the members of the Board is as valid and effectual as if it had been duly passed at a meeting of the Board by the votes of the members of the Board so approving the resolution.</p> <p>(3) A facsimile or an electronically transmitted document that bears the signature of a member of the Board is to be regarded as having been approved in writing by that member.</p> <p>(4) To avoid doubt, a reference to circulation of papers in this section includes circulation of information by electronic means.</p>
Financial Reporting Council Ordinance (Cap. 588)	Financial Reporting Council	Paragraph 7 of Schedule 2: Provisions Relating to Council and its	<p>7. Transaction of business by circulation of papers</p> <p>(1) The Council may transact any of its business by circulation of papers.</p>

Ordinance	Statutory Body	Section	Provision
		Members	(2) A written resolution that is approved in writing by all the members of the Council present in Hong Kong (being not less than the number required to constitute two thirds of the members of the Council) is as valid and effectual as if it had been duly passed at a meeting of the Council by the votes of the members of the Council so approving the resolution.
Independent Police Complaints Council Ordinance (Cap. 604)	Independent Police Complaints Council	Paragraph 11 of Schedule 1: Provisions with Respect to Members, Proceedings, Committees and Finances of, and Execution of Documents by, and other Miscellaneous Matters of, Council	<p>11. Determination of matters at Council meetings</p> <p>(3) Subject to subsection (5), anything that may be done at a meeting of the Council may be done by circulation of papers to all members of the Council without a meeting.</p> <p>(4) Subject to subsection (5), a written resolution that is approved by a majority of all members of the Council is as valid and effectual as if it had been passed at a meeting of the Council by the votes of the members so approving.</p> <p>(5) If any member of the Council requests by notice in writing addressed to the Secretary-General that a matter referred to in the papers circulated under subsection (3) be determined at a meeting of the</p>

<b>Ordinance</b>	<b>Statutory Body</b>	<b>Section</b>	<b>Provision</b>
			<p>Council, the matter must be so determined.</p> <p>(6) For the avoidance of doubt, a reference to circulation of papers in this section includes circulation of information by electronic means, and a reference to the papers in this section must be construed accordingly.</p>