

**The Administration's Response to the Issues Raised at
the Bills Committee meeting of the Communications Authority Bill
held on 12 April 2011 and Other Issues**

Purpose

This paper –

- (a) sets out our response to the committee stage amendments (CSAs) proposed by Hon Margaret Ng and the proposals raised by Hon Emily Lau at the meeting of the Bills Committee of the Competition Bill held on 12 May 2011 in respect of the Communications Authority (CA) Bill;
- (b) explains the consequential amendment to the Ombudsman Ordinance (Cap. 397); and
- (c) submits the full set of CSAs we propose to introduce for the CA Bill for the Bills Committee's consideration.

Response to the CSAs proposed by Hon Margaret Ng

2. To stipulate in the CA Bill the independent status of the CA, Hon Margaret Ng has made a submission setting out her proposed CSAs –

- (a) amend the long title of the Bill to read –
“Establish ~~the~~ ***an independent*** Communications Authority; to transfer the functions of the Broadcasting Authority and the Telecommunications Authority to the Communications Authority; to dissolve the Broadcasting Authority; and to provide for incidental and connected matters.” and
- (b) add a sub-clause to Clause 4 of the Bill as –
“(1A) The Authority shall carry out its functions under this Ordinance without interference from the Government.”

3. We have sought legal advice on the proposal of adding into the CA Bill such references as “independent” and “without interference from the Government”. While it is the policy intention for the CA to act as an independent statutory body, we are not aware of any establishing ordinance in respect of any existing local statutory body being formulated to include the word “independent”. We have conducted research and identified relevant provisions set out in **Annex A** in respect of various legislation which serve to reflect the status of statutory bodies that act independently, namely, the Independent Police Complaints Council, the West Kowloon Cultural District Authority, the Financial Reporting Council, the Electoral Affairs Commission, the Equal Opportunities Commission, and the Urban Renewal Authority. All these legislation have used similar wording as in the CA Bill to describe the status of the body concerned, i.e. it is neither a servant nor an agent of Government and does not enjoy any status, immunity or privilege of Government. Moreover, the CA would depend on the Office of the Communications Authority (OFCA) Trading Fund for its finance, and it would also rely on the Director-General of Communications as well as the OFCA to implement its decisions. Including such references in the Bill to signify CA’s independent position will also call into questions like whether the CA would rely on Government funding or it has its own funding source, or whether the CA would rely on the future OFCA to implement its decisions.

4. As such, we could not accept the CSAs set out in paragraph 2 above.

Proposals Raised by Hon Emily Lau on the CA Bill at the meeting of the Bills Committee of the Competition Bill held on 12 May 2011

5. At the meeting of the Bills Committee of the Competition Bill held on 12 May 2011, Hon Emily Lau proposed that CSAs be adopted for the CA Bill to ensure that the approach in respect of the following matters would be consistent for both bills, as set out below -

- (a) mandate that the CA must establish and maintain a register for recording the interest of its members or members of its

committees, and members would be required to register his or her interests as appropriate;

(b) require that meeting documents would not be passed to a member of the CA who has a conflict of interest in the matter under consideration; and

(c) introduce arrangements similar to section 5(1)(d) of Schedule 5 to the Competition Bill, i.e. the Chief Executive may declare the vacancy of a member should he fail to comply with a disclosure of interest requirement under the CA Bill.

6. Having thoroughly examined the above proposals, we propose to make CSAs in response as set out in ensuing paragraphs.

7. We first propose to add a new clause 12A to the CA Bill to mandate the registration of interest of the CA members and members of its committees. We also propose a CSA to amend clause 8(4) of the CA Bill to the effect that the Chief Executive may declare the office of a member to be vacant if the member fails to comply with the disclosure of interest requirement set out under proposed clause 12A and clause 13.

8. As regards paragraph 5(b) above, it is our view that there may be different scenarios which may warrant the withholding of documents from a member or otherwise, even if the member has disclosed an interest in respect of a matter under discussion. Therefore, we consider it best to allow the CA the flexibility to determine the circumstances under which meeting documents could be passed to or be withheld from a member who has disclosed interest in a matter under consideration. We consider that such matters should most appropriately be addressed in the Standing Orders to be made by the CA. We therefore propose to amend clause 10(5) of the CA Bill to the effect that the Standing Orders to be made by the CA also cover the supply of documents or information relating to any matter to a member who has or may have an interest in the matter.

9. The proposed CSAs are set out in **Annex B**.

10. We have committed to the Bills Committee that we would submit

to the relevant panel of the Legislative Council the Standing Orders after they have been made by the CA.

Consequential Amendments in the CA Bill in respect of the Ombudsman Ordinance

11. Paragraph 97 of the Schedule to the CA Bill sets out a consequential amendment to the Ombudsman Ordinance (OO) (Cap. 397) to such effect as replacing “Office of the Telecommunications Authority” and “Television and Entertainment Licensing Authority” with “Office of the Communications Authority” on its Schedule 1. For the avoidance of doubt, the amendment would not involve any change to the scope of responsibility of The Ombudsman.

12. The Television and Entertainment Licensing Authority (TELA) and the Office of the Telecommunications Authority (OFTA) are currently the executive arms of the Broadcasting Authority (BA) and the Telecommunications Authority (TA) respectively and are responsible for carrying out the administrative functions of the BA and the TA. Under the OO, its Schedule 1 sets out the bodies which The Ombudsman can investigate under section 7 of the OO in the case of maladministration. At present, while the BA and the TA are not on the Schedule, both TELA and OFTA are and thus the administration of the functions of the BA and the TA are subject to the scrutiny of The Ombudsman.

13. With the establishment of the CA and the OFCA as the CA’s executive arm, the existing TELA will be disbanded and its broadcasting division will merge with the OFTA to form the OFCA. There will be consequential amendment (paragraph 97 of the Schedule to the CA Bill) to the OO whereby TELA and OFTA will be removed from Schedule 1 and be replaced by OFCA. This seeks to preserve the current legal position. Status quo will thus be maintained. The OFCA will be responsible for the future administrative functions of the CA and these would be subject to the scrutiny of The Ombudsman.

14. The Office of the Ombudsman now deals with complaints in respect of matters related to the maladministration of TELA and OFTA.

Since the public may not be able to differentiate clearly between the TA and the Director-General of Telecommunications being the head of OFTA (as they are the same person), The Ombudsman has been taking up complaints directed at the TA and OFTA has been responding to The Ombudsman's inquiries so far since the subject matters of such complaints were considered to be related to the administration of the TA's functions, which is an OFTA activity. Upon the establishment of the CA and OFCA, the Office of the Ombudsman will advise the public that they should continue to approach The Ombudsman if they are aggrieved by actions related to the administration of CA's functions by OFCA. The Administration will also publicise in the publicity programme about the CA and OFCA that there is no change to the scope of activities under The Ombudsman's scrutiny.

15. We have consulted the Office of The Ombudsman on the above approach and it is agreeable.

CSAs

16. The full list of the CSAs proposed by the Administration is set out in **Annex C** for the consideration of the Bills Committee.

Communications and Technology Branch
Commerce and Economic Development Bureau
June 2011

**The status of selected statutory bodies *vis-à-vis* Government
in the legislation**

Independent Police Complaints Council

*under Independent Police Complaints Council Ordinance (Cap. 604),
Section 4*

(3) The Council is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

West Kowloon Cultural District Authority

*under West Kowloon Cultural District Authority Ordinance (Cap. 601),
Section 3*

(3) The Authority is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

Financial Reporting Council

under Financial Reporting Council Ordinance (Cap. 588), Section 6

(3) The Council is not a servant or agent of the Government and does not enjoy any status, immunity or privilege of the Government.

Electoral Affairs Commission

under Electoral Affairs Commission Ordinance (Cap. 541), Section 15

The Commission shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.

Equal Opportunities Commission

under Sex Discrimination Ordinance (Cap. 480), Section 63

(7) The Commission shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.

Urban Renewal Authority

under Urban Renewal Authority (Cap. 563), Section 3

(3) The Authority shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.

**The Administration's proposed committee stage amendments (CSAs)
in response to the suggestions from
Hon Emily Lau raised at the meeting of the Bills Committee
of the Competition Bill
on 12 May 2011**

**Failure to comply with disclosure of interest requirements as a reason
to declare vacancy of member**

<u>Clause</u>	<u>Content</u>
8(4)	By adding – “(da) fails to comply with section 12A or 13; or”.

**Authority's standing order to regulate the supply of documents to a
member once he has an interest in a matter**

<u>Clause</u>	<u>Content</u>
10(5)	By adding – “(d) the supply of any documents or information relating to any matter to a member who has or may have an interest in the matter.”.

Authority to establish a register of interest

<u>Clause</u>	<u>Content</u>
New	By adding – “ 12A. Register of interests (1) A member of the Authority, a member of the Broadcast Complaints Committee or a member of a committee appointed under section 16 must disclose to the

Authority any interest that the member has which is of a class or description determined by the Authority under subsection (2)—

- (a) on the member’s first appointment;
- (b) at the beginning of each calendar year after the appointment;
- (c) on becoming aware of the existence of an interest not previously disclosed under this subsection; and
- (d) after the occurrence of any change to an interest previously disclosed under this subsection.

(2) The Authority may, for the purposes of this section—

- (a) determine the class or description of the interest required to be disclosed;
- (b) determine the details of the interest required to be disclosed and the manner in which such interest is to be disclosed; and
- (c) from time to time change any matter determined under paragraph (a) or (b).

(3) The Authority is to establish and maintain a register relating to any disclosure required to be made under subsection (1) (“the register”) at the principal office of OFCA.

(4) If a person makes a disclosure as required by subsection (1), the Authority must cause the person's name and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Authority must cause particulars of the further disclosure to be recorded in the register.

(5) For the purpose of enabling any member of the public to ascertain the particulars of any disclosure required to be made under subsection (1), the Authority must, by such means as it considers appropriate, make available the register for inspection by the public at any reasonable time.”.

[Draft]

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 – “(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).”.

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(4) (a) In paragraph (d), by deleting “or”.
- (b) By adding –
- “(da) fails to comply with section 12A or 13; or”.
- 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 unable or 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 a semicolon.

- (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; and
 - (d) the supply of any documents or information relating to any matter to a member who has or may have an interest in the matter.”.

10(6) By adding “compliance with standing orders made under” before “subsection (5)”.

New By adding –

“12A. Register of interests

(1) A member of the Authority, a member of the Broadcast Complaints Committee or a member of a committee appointed under section 16 must disclose to the Authority any interest that the member has which is of a class or description determined by the Authority under subsection (2)—

- (a) on the member’s first appointment;
- (b) at the beginning of each calendar year after the appointment;
- (c) on becoming aware of the existence of an interest not previously disclosed under this subsection; and
- (d) after the occurrence of any change to an interest previously disclosed under this subsection.

(2) The Authority may, for the purposes of this section—

- (a) determine the class or description of the interest required to be disclosed;
- (b) determine the details of the interest required to be disclosed and the manner in which such interest is to be disclosed; and
- (c) from time to time change any matter determined under paragraph (a) or (b).

(3) The Authority is to establish and maintain a register relating to any disclosure required to be made under subsection (1) (“the register”) at the principal office of OFCA.

(4) If a person makes a disclosure as required by subsection (1), the Authority must cause the person’s name and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Authority must cause particulars of the further disclosure to be recorded in the register.

(5) For the purpose of enabling any member of the public to ascertain the particulars of any disclosure required to be made under subsection (1), the Authority must, by such means as it considers appropriate, make available the register for inspection by the public at any reasonable time.”.

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 (b), in the English text –
(i) by deleting “submit” and substituting “submission of”;
(ii) by deleting “section 16 (appoint” and substituting “16 (appointment of”.
- (b) In paragraph (c), by deleting “13C, 13CA or 13E” and substituting “13C (grant of licence), 13CA (issue of guidelines) or 13E (renewal of licence)”.
- (c) In paragraph (e), by deleting “10(1), 19, 21 or 24” and substituting “10(1) (appointment of Broadcast Complaints Committee), 19 (issue of Codes of Practice), 21 (inquiry by Authority) or 24 (imposition of financial penalties)”.

- (d) In paragraph (f), by deleting “3, 4, 8, 9, 10, 11, 28, 31, 32 or 33” and substituting “3 (approval of codes of practice), 4 (publication of guidelines), 8 (to whom licence may be granted), 9 (recommendations on licence applications), 10 (grant of licence), 11 (extension or renewal of licence), 28 (licensee to pay financial penalty), 31 (suspension of licence), 32 (revocation of licence) or 33 (inquiry by Authority)”.
- 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 sums payable by the Authority as a result of anything properly done or omitted to be done 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 “the trading” and substituting “trading”.
- (c) 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”.
- Schedule,
section 30(16) In the Chinese text, by deleting everything after “廢除” and substituting ““電訊管理局”而代以“通訊事務管理局辦公室”。”.
- Schedule,
section 138(3) In the Chinese text, by deleting everything after “廢除” and substituting ““電訊管理局”而代以“通訊事務管理局辦公室”。”.