

**For discussion
on 9 November 2015**

**Legislative Council
Panel on Information Technology and Broadcasting**

**Proposed creation of two supernumerary directorate posts
in the Communications and Technology Branch
of the Commerce and Economic Development Bureau**

PURPOSE

This paper seeks Members' support of the proposal of creating one supernumerary post of Administrative Officer Staff Grade B (D3) ("AOSGB") and one supernumerary post of Administrative Officer Staff Grade C (D2) ("AOSGC") in the Communications and Technology Branch ("CTB")¹ of the Commerce and Economic Development Bureau ("CEDB") for three years with immediate effect upon the approval by the Finance Committee ("FC").

BACKGROUND

2. Rapid advancement in technology is blurring the traditional boundaries between telecommunications and broadcasting. To keep pace with the advancement in technology in the two sectors, the Government has adopted a two-stage approach to restructure the regulatory institutional arrangements and review the overall regulatory regime and legislation in respect of telecommunications and broadcasting.

¹ Upon the proposed establishment of the Innovation and Technology Bureau ("ITB"), CTB will be renamed as the Communications and Creative Industries Branch ("CCIB") and remain under CEDB. The structure of the future CCIB will be the same as that of the existing CTB, except that the Innovation and Technology Commission and the Office of the Government Chief Information Officer will come under the ITB. References to "Communications and Technology" in the post titles of CTB officers will be changed to "Communications and Creative Industries".

3. We first established the independent statutory Communications Authority (“CA”) on 1 April 2012 as the unified regulator for the two sectors. Upon its establishment, the CA has taken over the functions and powers of the former Telecommunications Authority and the Broadcasting Authority under the Telecommunications Ordinance (Cap. 106) (“TO”), Broadcasting Ordinance (Cap. 562) (“BO”), and other relevant ordinances applicable to the two sectors.

4. The Administration also undertook to formulate a detailed plan on the review of the TO and the BO and relevant timetable together with the CA, and conduct the review upon the CA’s establishment, so as to ensure that the legislative regime is capable of responding to technological development and keeping pace with new trends.

JUSTIFICATIONS

The Telecommunications Ordinance and the Broadcasting Ordinance

5. The TO and the BO (and its predecessor – the Television Ordinance) were separately enacted under different policy contexts, and have been reviewed and amended separately for many times over the years. The amendments to the two Ordinances in the past had mostly been made to address specific matters, for example, amendments were made to the TO in 2000 to, amongst others, consolidate and incorporate the powers for the promotion of fair competition provided in the then telecommunications licences into the TO. While some of the regulatory provisions in the two Ordinances shared some common underlying philosophies, there are marked differences in some areas, for example in respect of cross media and foreign ownership restrictions, disparities in the arrangements in respect of appeal mechanisms etc.. Furthermore, the regulatory regime in respect of television programme services is set out under the BO whereas that in respect of sound broadcasting is set out under the TO. Whether these two types of broadcasting services should be brought under one ordinance with the alignment of the licensing and other regulatory requirements need to be considered.

6. In addition, the technological settings and market practices of the telecommunications and broadcasting sectors, as well as the underlying policy considerations at present are also vastly different from those when the Ordinances were first enacted. For example, with the emergence of new technologies such as the Next Generation Network, the demand for telecommunications services has been surging and there are suggestions that the provisions of TO governing access rights to buildings should be enhanced such that operators can expand their networks more easily. Furthermore, the existing requirement imposed on telecommunications licensees to publish tariffs may be considered outdated as this does not provide licensees with the flexibility to respond to the fast-changing environment of the market.

7. Having established the single regulator and given the evolution of technology and market practices and noting the comments we have received in respect of the operation of some of the provisions in the two Ordinances, it is timely to conduct a comprehensive review. Taking into account the complexity and scale of work involved, we propose to set up a dedicated team (hereafter referred to as “the review team”) to conduct the review. The review team will also formulate a detailed plan on the review and the relevant timetable.

The Review Team

8. The review will entail heavy policy and legislative work. We envisage that the review team will need to conduct extensive policy and legal researches into the existing provisions of the TO and the BO, and the corresponding developments and legislations in other comparable jurisdictions. In formulating the detailed plan on the review, the review team will need to identify and analyse issues associated with the provisions of the two Ordinances, evaluate the options to tackle such issues and prepare amendment legislation in conjunction with the Department of Justice (“DoJ”) as required.

9. The review and the resulting proposed changes to the regulatory regime may have significant impact on the long-term development of the telecommunications and the broadcasting sectors.

The review team will need to devote much effort in engaging various stakeholders, including the industry players and the community-at-large, during the review process. We may also need to engage the services of external consultants and seek their advice on selected matters.

10. The review team will also engage the CA, the independent statutory body overseeing the telecommunications and broadcasting sectors in the process. The latter would play a role in the review by tendering advice to the Secretary for Commerce and Economic Development on policies under its regulatory purview.

11. Given the complexity of the review above identified and the workload resulting, and having critically assessed the existing staffing resources, we consider that there is a genuine need to dedicate additional manpower on a full-time basis to take forward the review so that other operation and business of the bureau would not be affected. We see the need to set up a dedicated team for a period of three years in the CTB of the CEDB as soon as practicable. The organisation chart of the CTB with the proposed review team is at Enclosure 1.

12. As mentioned above, the task may have significant impact on the long-term development of both the telecommunications and broadcasting sectors, and will entail a considerable amount of high level policy research and analysis. The team would also need to formulate policy options, liaise with relevant government departments and various stakeholders and prepare discussion papers, including public consultation papers, in the process. We also expect the team to see through the ultimate legislative updating exercise. We consider it essential for the review team to be led by a directorate officer at AOSGB level, who should be sufficiently senior to provide policy steer and strategic input, co-ordinate among bureaux/departments concerned and engage stakeholders independently to ensure timely and successful implementation. He/she should be underpinned by a directorate officer at AOSGC level, who will be required to deputise the head of the review team and be responsible for supervising the non-directorate officers in the team to liaise and engage with all relevant parties within and outside the Administration, provide policy input into the research, analyse and formulate policy options, draft papers/documents for purposes such as

internal deliberations or public consultations, prepare drafting instructions, etc.. The proposed job descriptions of the posts concerned are at Enclosure 2.

13. The two supernumerary directorate officers will be supported by four additional time-limited non-directorate staff, viz. one Senior Executive Officer, two Personal Secretaries I and one Assistant Clerical Officer.

Urgency

14. Given the rapid development of the telecommunications and broadcasting sectors, and the phenomenal technology advancement, there is a need to commence the review and update the regulatory regime as soon as possible to keep up with market needs and developments lest Hong Kong would lag behind our competitors in terms of regulatory framework with negative impact on the development of the two sectors. We envisage that the review team will have to conduct more than one round of public consultation exercises, engage the services of external consultants, formulate recommendations and legislative proposals, and assist the LegCo in scrutinising the legislative proposals. While it is difficult to give a realistic estimate of how much time is required to complete the review, we consider that the proposed creation of the review team to last for a period of three years is necessary and appropriate.

ALTERNATIVES CONSIDERED

15. We have critically examined the possibility of redeployment within the CTB to absorb the duties of the proposed posts. The CTB, excluding the Innovation and Technology Commission, the Office of the Government Chief Information Officer and CreateHK, currently has a small directorate set-up. There are only four directorate officers, including the Permanent Secretary for Commerce and Economic Development (Communications and Technology) (“PSCT”).

16. The Deputy Secretary for Commerce and Economic Development (Communications and Technology) (“DSCT”), pitched at Administrative Officer Staff Grade B1 (D4), is the only Deputy Secretary in CTB and oversees a number of portfolios encompassing broadcasting, telecommunications, obscene and indecent articles, film censorship and branch administration. He also supports PSCT on matters encompassing different offices within the CTB family, and through supervising the work of Principal Assistant Secretary (Communications and Technology)B (“PAS(CT)B”), on matters related to the development of creative industries.

17. DSCT is underpinned by two Principal Assistant Secretaries (“PASes”). Division A is headed by Principal Assistant Secretary (Communications and Technology)A (“PAS(CT)A”) who is responsible for policy and licensing matters relating to television, radio, promotion of digital terrestrial broadcasting and digital audio broadcasting, public service broadcasting, control of obscene and indecent articles, film censorship and housekeeping of Radio Television Hong Kong and Office for Film, Newspaper and Article Administration. Division B is headed by PAS(CT)B who is responsible for policy matters relating to telecommunications, spectrum management, unsolicited electronic messages and housekeeping of the Office of the Communications Authority. He also needs to provide support to PSCT on matters relating to the development of creative industries.

18. PAS(CT)A has been fully occupied with on-going responsibilities including various licensing and regulatory matters concerning the domestic free and pay television programme services and sound broadcasting services, policy matters relating to television and radio broadcasting, the review of the Control of Obscene and Indecent Articles Ordinance, the promotion of digital broadcasting services including the digital terrestrial television and digital audio broadcasting services, and switching-off of analogue television services.

19. PAS(CT)B is also fully occupied with existing duties on policy matters related to telecommunications such as the preparation of policy views and the determination of the levels of spectrum utilisation fees for the re-assignments of the frequency spectrum in the 900 MHz and 1800

MHz bands upon expiry of the current assignments in the period between November 2020 and September 2021, review of the Radio Spectrum Policy Framework, review of the adequacy of the telecommunications infrastructure capacity, and review of the self-regulatory framework on person-to-person telemarketing calls. PAS(CT)B also provides support to PSCT in providing policy inputs to the development of creative industries, including the review of the strategy for supporting the industries, implementation of initiatives to support the development of the fashion industry.

20. Under the circumstances, it is not operationally feasible for DSCT and the PAses to absorb the duties relating to the review of the TO and the BO without seriously affecting the discharge of their current duties. The existing job descriptions of DSCT, PAS(CT)A and PAS(CT)B are at Enclosure 3.

21. OFCA, being both the executive arm of the CA as well as a professional department of the Administration, has been fully occupied with the existing duties, including providing support to the CA to enable it to assume the full spectrum of its regulatory functions, facilitating infrastructure rollout and access to telecommunications and broadcasting services, managing spectrum plan, enhancing consumer protection, and handling complaints, etc. It would not be operationally possible to redeploy the existing directorate officers in OFCA to take up the additional duties of the posts proposed to be established in the CTB of the CEDB.

FINANCIAL IMPLICATIONS

22. The proposed creation of the supernumerary posts of AOSGB and AOSGC will bring about an additional notional annual mid-point salary cost of \$4,264,200.

23. As for the additional four time-limited non-directorate posts mentioned in paragraph 13 above, the notional annual salary cost at mid-point is \$1,956,900.

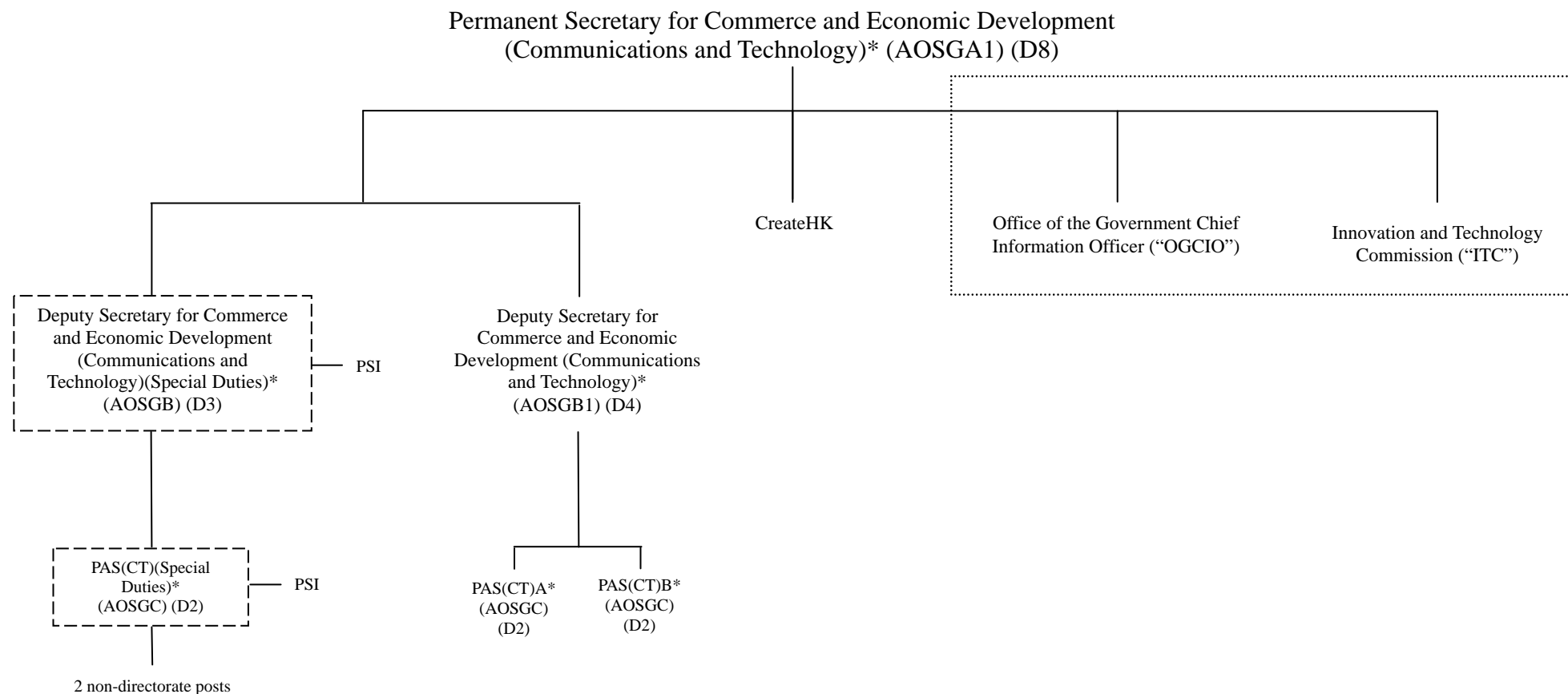
24. CTB will absorb from within its existing resources any other operating expenditure arising from the proposal.

ADVICE SOUGHT

25. Members are invited to comment on the proposal. Subject to Members' views, the Administration will seek the recommendation of the Establishment Subcommittee of the FC in December 2015 and approval from the FC afterwards.

**Communications and Technology Branch
Commerce and Economic Development Bureau
November 2015**

**Organisation Chart of the Communications and Technology Branch*
of the Commerce and Economic Development Bureau**
(after the proposed creation of two supernumerary posts)



- Legend**
- Time-limited directorate posts proposed to be created
 - OGCIO and ITC is proposed to be moved to the new Innovation and Technology Bureau ("ITB") under the proposal of establishing the ITB upon its establishment
 - * References to "Communications and Technology" and "CT" will be changed to "Communications and Creative Industries" and "CCI" respectively upon the establishment of the ITB
 - AOSGA1 : Administrative Officer Staff Grade A1
 - AOSGB1 : Administrative Officer Staff Grade B1
 - AOSGB : Administrative Officer Staff Grade B
 - AOSGC : Administrative Officer Staff Grade C
 - PAS : Principal Assistant Secretary
 - PSI : Personal Secretary I (non-directorate)

Job Description

**Deputy Secretary for Commerce and Economic Development
(Communications and Technology) (Special Duty) (DS(CT)SD)**

Rank : Administrative Officer Staff Grade B (D3)

Responsible to : Permanent Secretary for Commerce and Economic
Development (Communications and Technology)
(PSCT)

Main Duties and Responsibilities

1. To lead a dedicated team in CTB to oversee the conduct of the review of the Telecommunications Ordinance (TO) and Broadcasting Ordinance (BO).
2. To oversee the review of the legislative regulatory framework governing the telecommunications and broadcasting sectors, including examining the policy and implementation consideration behind, as well as reviewing relevant international practices.
3. To provide policy steer on and oversee the preparation of the legislative proposals to the TO and BO in connection with the review.
4. To provide strategic steer and advice for liaising with and engaging various stakeholders in carrying out the review, and serve as the key player in the public engagement exercises concerned.
5. To undertake any other tasks as assigned by PSCT.

Job Description
**Principal Assistant Secretary for Commerce and Economic
Development (Communications and Technology) (Special Duty)**
(PAS(CT)SD)

Rank : Administrative Officer Staff Grade C (D2)

Responsible to : DS(CT)SD

Main Duties and Responsibilities

1. To provide policy and administrative support in the conduct of the review of the TO and BO.
2. To review the legislative regulatory framework governing the telecommunications and broadcasting sectors, including the relevant policy and implementation consideration.
3. To undertake review of relevant international practices, the conduct of which may include the engagement of consultant(s) as necessary.
4. To prepare legislative proposals to the TO and BO in connection with the review in conjunction with the Department of Justice.
5. To plan, organise and participate in various public engagement exercises in connection with the review, and co-ordinate the views and inputs of the stakeholders in the review.
6. To undertake any other tasks as assigned by DS(CT)SD.

Job Description
Deputy Secretary for Commerce and Economic Development
(Communications and Technology)
(DSCT)

Rank : Administrative Officer Staff Grade B1 (D4)

Responsible to : Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCT)

Main Duties and Responsibilities

1. To formulate and review policies on broadcasting and telecommunications matters.
2. To deal with matters relating to branch administration.
3. To assist PSCT in handling policy and housekeeping matters for the Radio Television Hong Kong and the Office of the Communications Authority (including the Office for Film, Newspaper and Article Administration).
4. To assist PSCT in handling matters relating to the development of creative industries.
5. To undertake any other tasks as assigned by PSCT.

Job Description
**Principal Assistant Secretary for Commerce and Economic
Development (Communications and Technology)A**
(PAS(CT)A)

Rank : Administrative Officer Staff Grade C (D2)

Responsible to : DSCT

Main Duties and Responsibilities

1. To formulate and review policies on broadcasting, including policy options to facilitate technology convergence and market liberalisation.
2. To formulate policies on digital broadcasting.
3. To handle broadcasting regulatory matters that require the approval of the Chief Executive in Council.
4. To promote the development of the broadcasting industry in Hong Kong.
5. To formulate and review policies on film classification and the control of obscene and indecent articles.
6. To housekeep the Radio Television Hong Kong.
7. To housekeep the broadcasting aspects of the Office of the Communications Authority and the Office for Film, Newspaper and Article Administration.
8. To undertake any other tasks as assigned by DSCT.

Job Description
**Principal Assistant Secretary for Commerce and Economic
Development (Communications and Technology)B
(PAS(CT)B)**

Rank : Administrative Officer Staff Grade C (D2)

Responsible to : DSCT

Main Duties and Responsibilities

1. To formulate policies on the development of telecommunications, including in particular policy options to promote competition, and to respond to technological changes and convergence.
2. To monitor the regulatory regime in telecommunications to develop it further in keeping with an open and competitive telecommunications market.
3. To formulate policies to tackle the problem of unsolicited electronic messages.
4. To housekeep the Office of the Communications Authority.
5. To supervise the work of Assistant Secretary for Commerce and Economic Development (Communications and Technology) B2 who functions as the staff officer of the Permanent Secretary for Commerce and Economic Development (Communications and Technology) to provide support on matters related to the development of creative industry.
6. To undertake any other tasks as assigned by DSCT.