

立法會
Legislative Council

LC Paper No. CB(4)162/18-19(08)

Ref. : CB4/PL/ITB

Panel on Information Technology and Broadcasting

Meeting on 12 November 2018

**Updated background brief on retention of two supernumerary
director posts in the Commerce and Economic Development Bureau
for review of Broadcasting Ordinance (Cap.562) and
Telecommunications Ordinance (Cap. 106)**

Purpose

This paper summarizes previous discussions by Members on the creation of director posts in the Commerce and Economic Development Bureau to conduct the review of Broadcasting Ordinance (Cap. 562) and Telecommunications Ordinance (Cap. 106) ("the Review").

Background

Review of Broadcasting Ordinance and Telecommunications Ordinance

2. The Government has embarked on an exercise to review and update Cap. 562 and Cap. 106. The objective is to provide a balanced competitive environment for the broadcasting market and to modernize the regulatory framework so as to ensure that the regulatory regime is capable of responding to technological development and keeping pace with new trends.

3. The Review is undertaken in two phases: Phase One, which has completed focus on the regulation of the television ("TV") and sound broadcasting regulatory framework in response to the changes and challenges brought about by the evolution of infotainment ("Phase One

Review"); while Phase Two focuses on the telecommunications regulatory framework in response to the advancement of telecommunications technologies, in particular the advent of the fifth generation mobile communications ("5G") services and Internet of Things ("IoT") technologies ("Phase Two Review").

Review team

4. To conduct the Review, with the support of the Panel on Information Technology and Broadcasting ("the Panel") and the Establishment Subcommittee ("ESC"), and with the approval of the Finance Committee ("FC"), the Administration set up a dedicated team comprising an Administrative Officer Staff Grade B ("AOSGB") and an Administrative Officer Staff Grade C ("AOSGC") in the Commerce and Economic Development Bureau ("CEDB"). They are supported by one Senior Executive Officer, two Personal Secretaries I and one Assistant Clerical Officer. The two directorate posts were created on a supernumerary basis for three years, and the non-directorate posts are also time-limited.

5. The review team is tasked to formulate a detailed plan on the Review, and draw up the relevant timetable. In particular, the Administration informed the Panel that the review team would conduct extensive policy and legal researches into the existing provisions of Cap. 562 and Cap. 106, and the corresponding developments and legislation in other comparable jurisdictions.

6. In formulating the detailed plan on the Review, the review team would identify and analyze issues associated with the provisions of Cap. 562 and Cap. 106, evaluate the options to tackle such issues and prepare amendment legislation in conjunction with the Department of Justice. In the process, the review team would engage various stakeholders, including the industry players and the community-at-large, and would engage the Communications Authority ("CA") and consultants on selected matters.

7. The Administration also informed the Panel that the review team would formulate policy options, liaise with relevant government departments and various stakeholders and prepare discussion papers, including public consultation papers, and see through the ultimate legislative updating exercise. Against these considerations, the Administration decided that the review team should be led by a directorate officer at AOSGB level to provide policy steer and strategic input, co-ordinate among bureaux and departments concerned and engage stakeholders independently to ensure timely implementation. The head of the review team should be underpinned by a directorate officer at AOSGC level, who would deputize the head and be responsible for supervising the non-directorate officers in the team to liaise with and engage all relevant parties within and outside the Administration, provide policy input into the research, analyze and formulate policy options, draft papers/documents for purposes such as internal deliberations or public consultations, prepare drafting instructions.

Phase One Review

8. The Administration launched a three-month public consultation in February 2018 to gauge public views as well as comments from the broadcasting industry and other stakeholders on the proposals put forward under Cap. 562 and Part 3A of Cap. 106. The public consultation had completed in May 2018. The direction of the legislative proposals were supported in general. In the light of the views and comments received, the Administration puts forward the following proposals:

- (a) **Cross-media ownership restrictions** – the Administration proposes to remove some of the obsolete categories from the definition of "disqualified persons" under Cap. 562 and Part 3A of Cap. 106, and to narrow the scope of "disqualified persons" ("DPs") and "relative" under the definition of "associate" of DPs who are restricted from holding/exercising control of domestic free television programme service (free TV), domestic pay television programme service (pay TV) and sound broadcasting licences/licensees;

- (b) **Foreign control restrictions** – the Administration proposes to retain the existing foreign control restrictions, but to adjust the threshold shareholdings in free TV licensees by non-Hong Kong residents that require the CA's prior approval from "2%, 6%, 10% and above", to "5%, 10%, 15% and above";
- (c) **Requirement of a licensee being a non-subsidiary company** – the Administration proposes to remove the requirement under Cap. 562 and Part 3A of Cap. 106 that free TV or sound broadcasting licensees must be non-subsidiary companies; and
- (d) **Licensing authority** – the Administration proposes to maintain the existing regime with the Chief Executive in Council ("CE in C") being the licensing authority for free TV, pay TV and sound broadcasting services, and CA being the licensing authority for non-domestic TV licences and other TV licences.

9. The Administration aims to introduce an amendment bill to the Legislative Council in 2019 to effect the above proposals.

10. In July 2018, after reviewing the relevant codes of practice and having considered the views collected from the industry and the public in a public consultation conducted by CA in March and April 2018, the Administration has decided to relax the regulation of indirect advertising in TV programme services and to lift the prohibition on the broadcast of advertisements for undertakers and associated services. Upon the relaxation, indirect advertising is permitted in TV programmes except for news programmes, current affairs programmes, children's programmes, educational programmes, religious services and other devotional programmes. In addition, broadcast of advertisements for undertakers or others associated with death or burial in licensed TV programme services and sound broadcasting services is allowed. The new measures have taken effect since 27 July 2018.

Phase Two Review

11. The Administration will launch a three-month public consultation later in 2018 to seek the views of stakeholders and the general public on the review of Cap. 106. A number of proposals seeking to update the statutory requirements under Cap. 106 to prepare for the arrival of 5G and IoT technologies and facilitate the operation of the telecommunications industry, would be put forward for consultation. The Administration aims to introduce an amendment bill into the Legislative Council in 2019.

Previous discussions

12. The Administration sought the Panel's support on the proposal of creating the directorate posts for the review team at the Panel meeting held on 9 November 2015. ESC agreed to recommend the item to FC for approval at its meeting held on 23 May 2016. The staffing proposal was approved by FC at the meeting held on 17 June 2016. At the meeting of the Panel held on 13 March 2018, the Administration briefed the Panel on the progress of the review. The major discussions and concerns raised by Members and the Administration's response are summarized in the ensuing paragraphs.

Creation of directorate posts

13. While supporting the staffing proposals, Panel members queried the justification for creating the directorate posts as the human resources situation in CEDB should have become less stringent following the transfer of the technology-related policy portfolio to the Innovation and Technology Bureau. Some members commented that the workload arising from the review of Cap. 106 and Cap. 562 should be redistributed among the existing staff in CEDB instead of being undertaken by a new review team. The Administration responded that the Bureau had been fully engaged in meeting the workload with respect to creative industries and communications policy issues, and that the staffing resources in CEDB were not sufficient to undertake the workload associated with the Review and to conduct the consultation exercised within the desired timeframe.

14. During discussion at ESC and FC, members queried the justifications for setting the duration of the supernumerary directorate posts for three years. They questioned whether such a comprehensive review could be completed within such a timeframe. The Administration advised

that, with reference to past experience in creating supernumerary posts, it would be proper and prudent to create the proposed directorate posts for three years initially, and a relevant proposal to retain supernumerary posts for a further period might be submitted in accordance with the established mechanism if necessary.

Restrictions on foreign ownership and control of Hong Kong's TV services

15. Some Panel members expressed concerns on whether the proposed refinement of the threshold percentages of foreign investments that were subject to prior approval of the CA would turn out facilitating and encouraging more Mainland corporations to increase their ownership and control over Hong Kong's TV services. Members also asked whether the Administration could ensure that local TV services would be controlled by local people.

16. The Administration responded that the proposed minor refinements pertained only to the threshold percentages of foreign investments that were subject to CA's prior approval. The proposed minor adjustments aimed to reduce the compliance cost to facilitate foreign investment into our free TV market. The overall foreign control restrictions regime of the domestic broadcasting licensees would remain intact. Foreign investors intending to acquire more than 15% of the shareholding of free TV licensees would be subject to close scrutiny by CA as to their compliance with the disqualified person and "fit and proper" person requirements respectively under Cap. 562. The Administration assured Panel members that the overall framework of the existing foreign control restrictions on domestic broadcasters, which was working well to ensure that the control of the relevant licensees was vested in the hands of local people, would remain intact.

Licensing authority

17. Panel members queried whether the two-tier process (i.e. consideration of application by CA and the approval of the application by the CE in C upon consideration of CA's recommendations) for licence application on free TV was necessary. Some members commented that the current process of approving a free TV licence through CE in C was not transparent and this would affect investor's confidence in the free TV market in Hong Kong.

18. The Administration replied that the traditional media was still highly pervasive, and hence the licensing process involved significant public interests considerations. For this reason, the review had concluded that the existing two-tier system with the statutory authority to approve domestic broadcasting licence vested in CE in C was appropriate. The Panel noted the existing licensing system had been working effectively in general, in that in granting new licences over the past few years, CE in C had taken into account a host of relevant factors including the public interest consideration.

Generic Codes of Practice for Television

19. Panel members queried whether the Administration would review the Generic Codes of Practice for Television, particularly, the restrictions under the Advertising Standards. CA had reviewed its codes of practice governing indirect advertising and had consulted the industry and the public on the relaxation proposals. The relaxation came into operation in mid-2018.

Regulatory regimes on digital media

20. Some Panel members queried the justification of maintaining foreign control restrictions on traditional media when there was no similar regulatory regimes on digital media. Members asked if the Administration would consider regulating the alternative media and whether references could be drawn from overseas jurisdictions. The Administration advised the Panel that in most advanced overseas jurisdictions no regulatory regime with licensing requirements as imposed on traditional media was made applicable to Internet TV and radio programme services; most of those jurisdictions adopted the similar regime in place in Hong Kong to restrict the publishing of obscene and indecent materials on the internet through a separate piece of legislation such as the Control of Obscene and Indecent Articles Ordinance (Cap. 390). In the regulation of internet contents, the Administration informed members that other jurisdictions also found it challenging to overcome enforcement difficulties, making tightening regulation of Internet TV and radio programme services not a practicable option. The Administration aimed at facilitating the operation and development of the traditional broadcasting sector, instead of imposing regulatory control on the Internet media.

Merging Cap. 562 and Cap. 106

21. Members asked if the Administration would still consider the earlier plan of merging Cap. 562 and Cap. 106 to remove inconsistencies in the operations and regulation of the broadcasting and telecommunication sectors under the two ordinances.

22. The Panel was informed that in the next phase of the review, the Administration would update the telecommunications regulatory regime to cope with the advancement of telecommunications technologies including the imminent arrival of the 5G mobile communications services. The longer term question on whether the Administration should devote resources to embark upon a massive exercise of merging Cap. 562 and Cap. 106 when the existing arrangements were working reasonably well could be addressed after all the more urgent measures had been implemented, and in light of the then prevailing market circumstances.

Latest position

23. The Administration will consult the Panel on 12 November 2018 on the extension of one supernumerary Administrative Officer Staff Grade B post and one supernumerary Administrative Officer Staff Grade C post to continue the Review.

Relevant papers

24. A list of the relevant papers is set out in the **Appendix**.

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Information Technology and Broadcasting	9 November 2015	<p>Proposed creation of two supernumerary directorate posts in the Communications and Technology Branch of the Commerce and Economic Development Bureau (LC Paper No. CB(4)125/15-16(06))</p> <p>Minutes of meeting (LC Paper No. CB(4)440/15-16)</p>
Establishment Subcommittee	27 April 2016 and 23 May 2016	<p>Proposed creation of two supernumerary posts of one Administrative Officer Staff Grade B (D3) and one Administrative Officer Staff Grade C (D2) in the Communications and Creative Industries Branch of the Commerce and Economic Development Bureau for three years with immediate effect upon approval of the Finance Committee to conduct a review of the Telecommunications Ordinance (Cap. 106) and the Broadcasting Ordinance (Cap. 562) and complete the associated legislative exercise (EC(2015-16)20)</p>
Finance Committee	17 June 2016	<p>HEAD 55 - GOVERNMENT SECRETARIAT: COMMERCE AND ECONOMIC DEVELOPMENT BUREAU (COMMUNICATIONS AND CREATIVE INDUSTRIES BRANCH) (FCR(2016-17)43) (EC(2015-16)20)</p>

Issued by	Meeting date/ Issue date	Paper
Panel on Information Technology and Broadcasting	12 March 2018	Administration's paper on the review of television and sound broadcasting regulatory regimes (LC Paper No. CB(4)701/17-18(04)) Background brief on the review of Broadcasting Ordinance (Cap. 562) and Telecommunications Ordinance (Cap. 106) (LC Paper No. CB(4)701/17-18(05)) Minutes of meeting (LC Paper No. CB(4)1197/17-18)
Commerce and Economic Development Bureau	10 October 2018	2018 Policy Address Policy Initiatives of Communications and Creative Industries Branch Commerce and Economic Development Bureau LC Paper No. CB(4)24/18-19(02)