

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 180 – TELEVISION AND ENTERTAINMENT LICENSING AUTHORITY

Subhead 000 Operational expenses

Members are invited to recommend to Finance Committee the creation of a non-civil service position in the Broadcasting Division of the Television and Entertainment Licensing Authority for three years at the equivalent rank of D2 (\$110,000 - \$116,800)

PROBLEM

In view of rapid technological and market developments in the broadcasting industry, the level of technical expertise required of the Broadcasting Division of the Television and Entertainment Licensing Authority (TELA) in supporting the Broadcasting Authority (BA), the regulator for the broadcasting industry, to discharge its functions calls for the engagement of an external expert.

PROPOSAL

2. We propose to create a non-civil service position at the equivalent rank of D2, in the Broadcasting Division of TELA, for an initial period of three years, subject to review in the light of operational needs and experience.

JUSTIFICATION

3. There are currently two Divisions in TELA, under the direct supervision of the Commissioner for Television and Entertainment Licensing (CTEL), namely, the Broadcasting Division and the Entertainment Division, each

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Encls. 1 & 2 headed by an AC, ranked at Administrative Officer Staff Grade C (AOSGC) (D2) level. An organisation chart showing their latest division of work is at Enclosure 1 and 2 respectively.

Encl. 3 4. The primary duty of Assistant Commissioner (Broadcasting) (AC (Broadcasting)) is to serve as Secretary to the BA and head the Division which acts as the executive arm of the BA. This post was created in 1987 and its latest job description is at Enclosure 3.

Recent developments

5. The broadcasting industry in Hong Kong has undergone momentous changes in the past few years, mainly brought about by liberalisation of the television(TV) market and technological convergence. As the industry regulator, the BA has to reposition its regulatory approach to ensure that it is in line with the best practices adopted by comparable regulators overseas.

6. The opening up of the local TV market has brought in a few new pay TV operators, making the TV market more competitive. The BA is responsible for enforcing the competition provisions in the Broadcasting Ordinance (Cap. 562). Since the competition provisions in the Ordinance came into operation in 2001, the BA has investigated five such complaints, mostly on sports broadcasting rights. Given the high stakes involved in these rights, pay TV operators compete intensely for these premium contents. With the newcomers becoming more established in the pay TV market, competition is likely to intensify. To ensure that these cases are fairly and properly investigated, reference to competition rulings in comparable overseas jurisdictions will have to be made. The heightened competition in the TV market has created unprecedented demand on the BA as a broadcasting industry regulator and the BA's role as both an impartial regulator and a guardian of public interest will be under close scrutiny. In order to provide the BA with effective support for competition regulation, expert legal input and professional economic analysis are required, and this has rendered the duties of AC (Broadcasting) more demanding.

7. Apart from competition regulation, technological advancement has also exerted new pressures on the BA as a regulator. Worldwide, including Hong Kong, telecommunications and broadcasting are converging at the technological and business levels. More telecommunications networks are capable of carrying broadcasting services and they are therefore increasingly substitutable, giving rise to proliferation of new media outlets, innovative services and new business models.

Rapid convergence has brought challenges to regulators worldwide as they need to update the regulatory regime constantly in response to emerging services and new cross-sector business models. In response to this development, some jurisdictions, such as the UK and Australia, have merged or are merging the broadcasting regulator and telecommunications regulator into a unified body to ensure that the regulator has the necessary horizon in discharging its functions in a converging and increasingly complex environment. With advanced telecommunications infrastructure and a high broadband penetration rate, Hong Kong is recognised as a world leader in the development of TV services through broadband networks. The advent of digital terrestrial TV broadcasting will further facilitate convergence. The Government has already proposed the establishment of a unified regulator by merging the Telecommunications Authority and the BA. We need to recruit someone with exposure to a unified regulatory set-up to prepare the Broadcasting Division for the transition to a unified regulator.

Need to create a non-civil service position in the Broadcasting Division of TELA

8. TELA has made strenuous efforts to fill knowledge gaps in the legal, technological and economics arena arising from the changing operating environment described above, including recruitment of non-civil service contract staff with legal, accounting and economics qualifications, engagement of external competition consultants to undertake competition investigation and analysis, and staff training. However, this “re-institution” process will not be complete without engaging appropriate professional input with wide overseas regulatory experience and exposure at the top level of the Broadcasting Division (i.e. equivalent to the AC level), as the challenges mentioned above have grown beyond the capabilities of a general grade officer.

9. We therefore propose to engage an external expert through open recruitment to fill the proposed non-civil service position to achieve two main strategic objectives: (a) to assist the BA in developing core competencies in discharging its regulatory role under the converging, digital environment; and (b) to develop best regulatory practices for the BA by making reference to overseas broadcasting regulators. The incumbent will also act as Secretary to the BA and will assume the post title of AC (Broadcasting) for operational purposes.

10. We propose that the incumbent of the proposed non-civil service position will be remunerated at the equivalent rank of D2. Having considered the magnitude of challenges mentioned in paragraphs 5 to 7, we further propose that the non-civil service position should be created for an initial period of three years, subject to review. If this proposal is approved and subject to successful recruitment, we expect the new appointee to assume duties in late 2005. The proposed job description of the non-civil service position is at Enclosure 4.

ALTERNATIVES CONSIDERED

11. The manpower at the directorate level of TELA is already fully committed. Also, having considered the professional expertise and exposure now required to take on the challenges facing the Broadcasting Division, we consider that hiring an outside expert as proposed is the only viable alternative.

FINANCIAL IMPLICATIONS

12. The total remuneration package for the proposed non-civil service position will not exceed the full annual average staff cost of \$2,058,000 (including salaries and staff on-cost) for an AOSGC (D2). We will freeze one existing permanent AOSGC (D2) post in the Broadcasting Division. The proposal will therefore incur no additional expenditure.

ESTABLISHMENT CHANGES

13. The establishment changes in TELA for the last two years are as follows –

Establishment (Note)	Number of posts		
	Existing (as at 1 April 2005)	As at 1 April 2004	As at 1 April 2003
A	3	3	3
B	63	65	66
C	93	98	102
Total	159	166	171

Note :

A - ranks in the directorate pay scale or equivalent

B - non-directorate ranks the maximum pay point of which is above MPS Point 33 or equivalent

C - non-directorate ranks the maximum pay point of which is at or below MPS Point 33 or equivalent

CONSULTATION WITH LEGISLATIVE COUNCIL PANEL

14. We consulted the Legislative Council Panel on Information Technology and Broadcasting on this proposal on 9 May 2005. Members of the Panel supported the proposal.

15. Members asked about the recruitment process for the proposed post, if approved, and were assured that a fair and open exercise would be conducted. Members also asked about the capability of the Department to discharge its duties with the freezing of the existing AC (Broadcasting) post. Members were advised that the incumbent of the non-civil service position will act as Secretary to the BA with added professional input to achieve the strategic objectives as mentioned in paragraph 9 above.

CIVIL SERVICE BUREAU COMMENTS

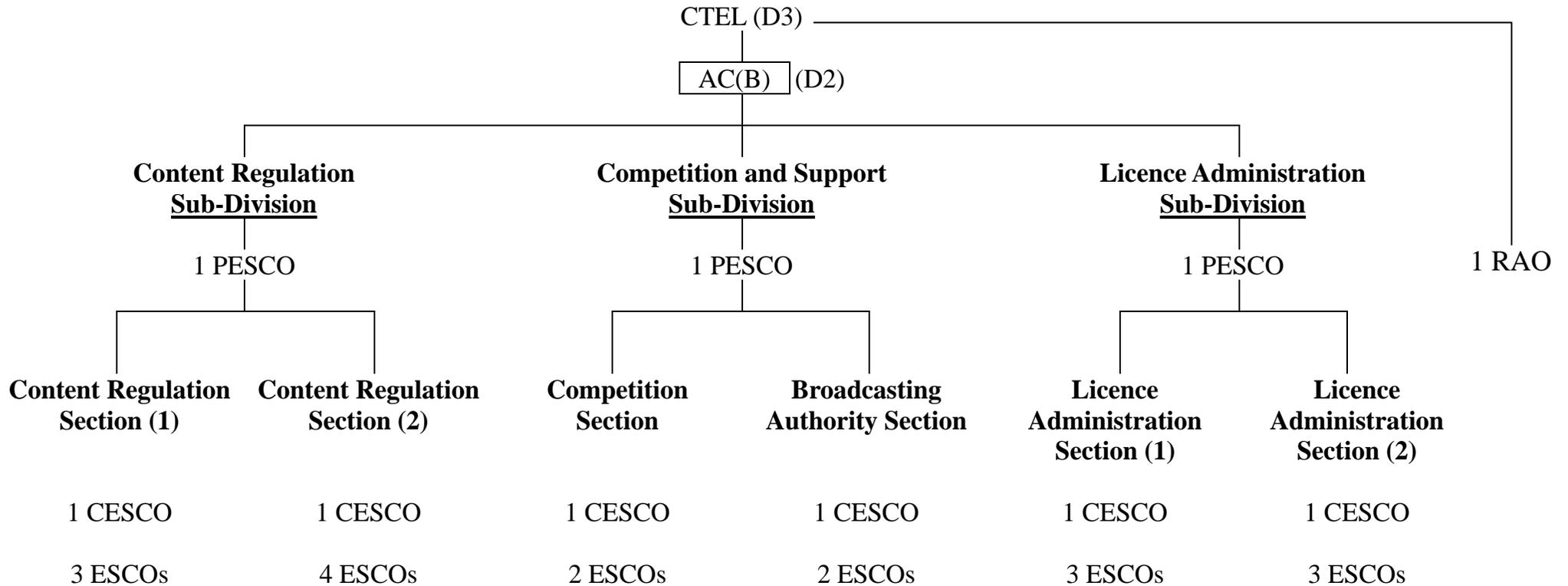
16. The Civil Service Bureau considers that the proposed creation of a non-civil service position set out in this paper is functionally justified and supports the proposal.

ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE

17. As we propose to create a non-civil service position in the Broadcasting Division of TELA, advice from the Standing Committee on Directorate Salaries and Conditions of Service is not required.

Commerce, Industry and Technology Bureau
June 2005

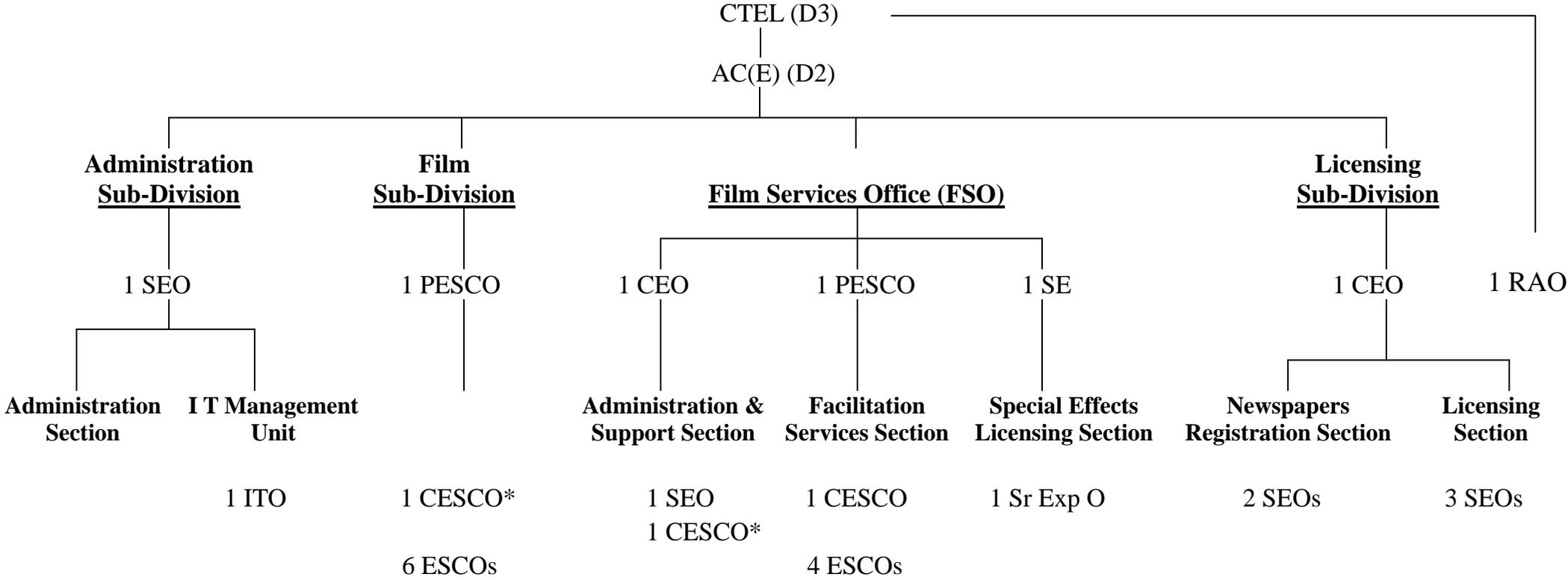
Organisation Chart of the Broadcasting Division



Legend :

- CTEL – Commissioner, Television and Entertainment Licensing
- AC(B) – Assistant Commissioner (Broadcasting), a permanent AOSGC post now proposed to be frozen for 3 years for the creation of a non-civil service position at the equivalent rank of D2
- RAO – Regulatory Affairs Officer, a non-civil service contract position serving both the Broadcasting Division and the Entertainment Division
- PESCO – Principal Entertainment Standards Control Officer
- CESCO – Chief Entertainment Standards Control Officer
- ESCO – Entertainment Standards Control Officer

Organisation Chart of the Entertainment Division



*1 CESCO performing duties in both the Film Sub-Division and the FSO

Legend :

- | | | | | | |
|-------|---|---|----------|---|---|
| CTEL | - | Commissioner, Television and Entertainment Licensing | PESCO | - | Principal Entertainment Standards Control Officer |
| AC(E) | - | Assistant Commissioner (Entertainment) | CESCO | - | Chief Entertainment Standards Control Officer |
| RAO | - | Regulatory Affairs Officer, a non-civil service contract position serving both the Broadcasting Division and the Entertainment Division | ESCO | - | Entertainment Standards Control Officer |
| CEO | - | Chief Executive Officer | SE | - | Senior Engineer |
| SEO | - | Senior Executive Officer | Sr Exp O | - | Senior Explosives Officer |
| | | | ITO | - | IT Officer (Non-civil service contract position) |

Current Job Description of Assistant Commissioner (Broadcasting)
(as at May 2005)

Responsibilities and objectives –

- 1 Act as Secretary to the Broadcasting Authority (BA) – to prepare agenda, papers, minutes and publicity arrangements for the monthly BA meetings; to prepare the BA annual reports and to oversee other housekeeping matters including BA visits and the maintenance of the BA website.
- 2 Assist in discharging the statutory functions of the BA – to process the renewal of various categories of television (TV) licences including the licence of HKCTV; to process new applications for non-domestic TV licences and other licensable TV licences; to process applications for compliance of milestone requirements and deviations from licensees' proposals.
- 3 Assist in the implementation and enforcement of the Broadcasting Ordinance – to monitor licensees' compliance with licence conditions including the firewall provisions between TVB and Galaxy Satellite Broadcasting Limited; to help process competition complaints and the engagement of competition consultants; to develop an accounting manual for broadcasting licensees; and to review the Codes of Practice and to undertake the review of licence fees, etc.
- 4 Assist in the vetting of complaint cases.
- 5 Vet the draft papers for the BA Complaints Committee and for the BA Codes of Practice Committee and in overseeing the Broadcasting Division.
- 6 Provide support on various broadcasting issues such as providing input to Bureau on the review on broadcasting regulatory regime, digital terrestrial TV, Closer Economic Partnership Arrangement and the broadcasting survey, etc.

Job Description of the proposed non-civil service position

Duties and Responsibilities –

1. Act as Secretary to the Broadcasting Authority (BA) to assist in discharging the statutory functions of the BA and the implementation and enforcement of the Broadcasting Ordinance.
2. Assist in identifying the core competencies of a broadcasting regulator and equipping the future converged regulator with such competencies.
3. Assist in designing and coordinating a structured research programme for the Broadcasting Division with the purpose of developing a research and evidenced-based approach for the BA in discharging its regulatory functions.
4. Identify knowledge gaps (e.g. legal, competition analysis, technological, etc.) in the Broadcasting Division in meeting the demands of a converged regulator and to formulate strategies to fill these gaps.
5. Propose appropriate strategies for the BA's consideration in facilitating a smooth migration from analogue to digital broadcasting.
6. Develop best practices in processing content and competition complaints and license administration with reference to other broadcasting regulators.
7. Improve the effectiveness of the content complaint system and to assist in the development of a co-regulatory mechanism for the regulation of programme content.
8. Develop meaningful performance indicators with reference to the experience of Office of Communications and other broadcasting regulators.
