

立法會
Legislative Council

LC Paper No. CB(1)1855/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/09

Bills Committee on Communications Authority Bill

**Minutes of the ninth meeting
held on Tuesday, 8 March 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon LAU Kong-wah, JP (Chairman)
Dr Hon Samson TAM Wai-ho, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Hon WONG Yuk-man

Members absent : Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LEE Wing-tat
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan

Public officers attending : Agenda Item II
Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Kevin LAI
Acting Principal Assistant Secretary for Commerce
and Economic Development (Communications and
Technology)B

Mr SUEN Wai-chung
Senior Assistant Law Draftsman (Professional
Development)
Department of Justice

Ms Carmen CHU
Senior Government Counsel
Department of Justice

Mr Paul CHENG
Assistant Commissioner for Television and
Entertainment Licensing (Broadcasting)

Mr Chaucer LEUNG
Head, Regulatory 1 and Head of Special Duty
Office of the Telecommunications Authority

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Joey LO
Senior Council Secretary (1)3

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1388/10-11 -- Minutes of meeting held on
27 January 2011)

The minutes of the meeting held on 27 January 2011 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)1491/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 17 February 2011

LC Paper No. CB(1)1491/10-11(02) -- Administration's response to issues raised at the meeting on 17 February 2011

Clause-by-clause examination of the Bill

Starting from Clause 21(5)

LC Paper No. CB(3)815/09-10 -- The Bill

LC Paper No. CB(1)333/10-11(01) -- Marked-up copies of the relevant Ordinances and Regulations

File Ref: CTB(CR)9/19/13 (10) -- Legislative Council Brief on Communications Authority Bill issued by the Commerce and Economic Development Bureau)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Admin 3. The Administration was requested to consider:

- (a) amending the conjunction at the end of Clause 21(2)(g)(i) of the Bill from "or" to "and" to enhance the clarity of Clause 21(2)(g);
- (b) reflecting in the Bill that Clause 13(7) would not prevent the Communications Authority (CA) and its committees from reviewing their own decisions or taking any necessary remedial actions in the event of the failure by a CA member to comply with the disclosure of interest requirements under Clause 13;
- (c) refining the Chinese version of Clause 19(1) of the Bill to avoid semantic inconsistency between the expressions "一經收取"

and "已繳付";

- (d) amending the conjunction at the end of Clause 21(5)(b) of the Bill from "and" to "or" to reflect the seemingly disjunctive relationship among subclauses (5)(a), (5)(b) and (5)(c);
- (e) explaining why Clause 21 did not provide a procedure similar to relevant provisions in section 36D of the Telecommunications Ordinance (TO) (Cap. 106) and section 27 of the Broadcasting Ordinance (Cap. 562) requiring the authorities concerned to seek representations from persons who might be affected by any proposed disclosure of confidential information under Clause 21(2); and
- (f) seeking the views of industry organizations on Clause 22 of the Bill to address members' concern about section 33 of the Telecommunications Ordinance (Cap. 106) in respect of the execution of prescribed authorizations for telecommunications interception.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1725/10-11(03) on 30 March 2011.)

III. Any other business

4. The Chairman reminded members that the tenth meeting would be held on 31 March 2011 at 2:30 pm.

Admin 5. The Administration informed members that representatives of the Broadcasting Authority (BA) would attend the next meeting of the Bills Committee to exchange views with members on the establishment of the CA, the draft CA Bill and related matters. BA's submission would be provided to members in due course.

6. There being no other business, the meeting ended at 6:10 pm.

**Proceedings of the ninth meeting of
Bills Committee on Communications Authority Bill
on Tuesday, 8 March 2011, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000541 – 000558	Chairman	<p>(a) Opening remarks by the Chairman.</p> <p>(b) Confirmation of minutes of meeting on 27 January 2011 (LC Paper No. CB(1)1388/10-11)</p>	
000559 – 004824	Chairman Mr Paul TSE Assistant Legal Adviser (ALA) Administration	<p>Briefing by the Administration on its response to issues raised at the meeting on 17 February 2011 (LC Paper No. CB(1)1491/10-11(02)).</p> <p>Discussion on the enforceability of the provisions under Clause 21 of the Bill relating to the proposed offence to give or disclose information obtained or received officially.</p> <p>Mr Paul TSE suggested that the conjunction at the end of Clause 21(2)(g)(i) of the Bill should be amended from "or" to "and" to enhance clarity of the provisions for determining what constituted an unlawful disclosure.</p> <p>In response, the Administration explained that under Clause 21(2)(g), an unlawful disclosure would be deemed committed if the particulars of <u>either</u> the persons who had produced the information <u>or</u> the persons to whom the information related could be ascertained from the summary compiled as stipulated in Clause 21(2)(g) (i) and (ii).</p> <p>Mr Paul TSE was not convinced of the Administration's explanation. He opined that the drafting of the English version of Clause 21(2)(g) was so complicated that it could be subject to contradictory interpretations.</p> <p>Discussion on the validity of the Communications Authority (CA)'s proceedings under Clause 13(7) of the Bill.</p> <p>In response to the Chairman's enquiry about the counter-productive effect of Clause 13(7), the Administration explained that such a provision was intended to avoid the chaos which could be caused by rendering invalid a decision taken in contravention of the disclosure of interest requirements. Clause 13(7) would not prevent CA and its committees from reviewing the decision in question and taking remedial actions as</p>	The Administration to follow up as stated in paragraph 3(a) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<p>necessary.</p> <p>The Chairman considered it necessary to reflect in the Bill that Clause 13(7) would not prevent CA and its committees from reviewing their own decisions or taking remedial actions in the event of the failure by a CA member to comply with the disclosure of interest requirements under Clause 13.</p> <p>Discussion on the Chinese version of Clause 19(1) of the Bill.</p> <p>Mr WONG Yuk-man was unconvinced of the Administration's explanation on the Chinese version of Clause 19(1) of the Bill as provided in LC Paper No. CB(1)1491/10-11(02). He maintained that the meaning of the expression "一經收取" was inconsistent with that of "已繳付" in the main clause of the sentence, and considered that the structure of the Chinese version of Clause 19(1) should be simplified and rationalized to avoid semantic inconsistency and facilitate understanding.</p>	<p>The Administration to follow up as stated in paragraph 3(b) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(c) of the minutes.</p>
004825 – 005135	Chairman ALA Administration	<p>Clause by clause examination</p> <p><u>Clause 21 – Offence to give or disclose information obtained or received officially</u></p> <p>ALA considered that the conjunction at the end of Clause 21(5)(b) of the Bill should be amended from "and" to "or" to reflect the seemingly disjunctive relationship among subclauses (5)(a), (5)(b) and (5)(c) if the legislative intent was for each of the materials described under those subclauses to constitute a different type of "confidential information".</p> <p>The Administration advised that subclauses (5)(a) to (5)(c) provided an exhaustive definition of "confidential information" in a conjunctive rather than disjunctive sense, hence the conjunction "and" should be used.</p> <p>Discussion on the definition of "business secret" in subclause (5)(a).</p> <p>Referring to relevant provisions in section 36D of the Telecommunications Ordinance (TO) (Cap. 106) and section 27 of the Broadcasting Ordinance (Cap. 562), ALA suggested that the Administration should explain why Clause 21 did not provide a similar procedure</p>	<p>The Administration to follow up as stated in paragraph 3(d) of the minutes.</p> <p>The Administration to follow up as stated in paragraph 3(e) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>requiring the authorities concerned to seek representations from persons who might be affected by any proposed disclosure of confidential information under Clause 21(2).</p>	<p>of the minutes.</p>
<p>005136 – 012404</p>	<p>Chairman Mr WONG Yuk-man Mrs Regina IP Mr Paul TSE Dr Samson TAM Administration</p>	<p><u>Clause 22 – Amendment to Telecommunications Ordinance</u></p> <p>Mr WONG Yuk-man expressed strong objection to the proposed amendment to section 33 of the TO under Clause 22 of the Bill. He considered that the amendment would be tantamount to extending the powers of the Chief Executive (CE) in respect of the execution of prescribed authorizations for telecommunications interception.</p> <p>The Administration explained that the proposed amendments sought to make clear that for orders issued by the CE under section 33(1)(b) of the TO (i.e. orders made for the purpose of providing or making available facilities reasonably required for the execution of prescribed authorizations for telecommunications interception that might from time to time be issued or renewed under the Interception of Communications and Surveillance Ordinance (Cap. 589)), investigations into the compliance or otherwise of these orders would also be initiated by the CE and in accordance with any conditions he might have imposed. The conduct of telecommunications interception by the Administration was governed by the Interception of Communications and Surveillance Ordinance (ICSO). An order made by the CE under section 33(1) of the TO enabled only any class of messages to be intercepted but did not of itself authorize the obtaining of the contents of any individual message (i.e. section 33(2) of the TO). The proposed amendments would serve to clarify the powers and responsibilities of the future CA (which would consist mainly of non-official members) and the circumstances in which it could investigate matters relating to the compliance with an order made by the CE under section 33(1)(b) of the TO. The proposed amendment would not broaden any powers which were currently vested in the Chief Executive in the issue of such order.</p> <p>Mr WONG Yuk-man was unconvinced of the Administration's explanation. He considered that although the CA consisted mainly of non-official members, CA members would be appointed by the CE and supported by public officers in its day-to-day operation. The rationale for introducing this amendment</p>	<p>The Administration to follow up as stated in paragraph 3(f) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>purportedly to clarify the powers and responsibilities of the future CA was unsound.</p> <p>In response, the Administration drew members' attention to Clause 3(3) of the Bill which provided that CA was not a servant or an agent of the Government.</p> <p>In response to Mrs Regina IP's enquiry, the Administration explained that section 33 of the TO already provided for the power of the CE to make orders for interception of any class of messages for provision of facilities under section 33(1). The Administration reiterated that clause 22 of the Bill would not extend CE's power in this respect.</p> <p>Discussion on overseas practice relating to the proposed amendment to section 33 of the TO under Clause 22 of the Bill.</p> <p>Discussion on existing procedure for handling suspected non-compliance with CE's orders made under section 33 of the TO.</p> <p>Discussion on the views of the telecommunications industry organizations on Clause 22 of the Bill.</p>	<p>The Administration to follow up as stated in paragraph 3(f) of the minutes.</p>
012608 – 012939	Chairman Administration	<p><u>Clause 23 – Provisions relating to trading fund</u></p> <p>The Administration proposed to introduce a Committee Stage Amendment to change the Chinese title of the trading fund from "通訊事務管理局營運基金" to "通訊事務管理局辦公室營運基金".</p> <p>Discussion on the use of the word "may" instead of "shall" in paragraph 4(b) of Schedule 3.</p>	
012940 – 013045	Chairman Administration	<p><u>Clause 24 – Transitional arrangements</u></p> <p>Discussion on the handling of complaints referred to the Broadcast Complaints Committee pursuant to the transitional arrangements under Clause 24 of the Bill.</p>	
013046 – 013430	Chairman Administration	<p><u>Clause 25 – Savings</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
013431 – 014103	Chairman ALA Administration	<p><u>Clause 26 – Related and Consequential Amendments</u></p> <p>Members noted that sections 39 to 41, 44 and 45 of the Schedule to the Bill in relation to the Telecommunications Regulations (Cap.106 sub leg. A) (especially the proposed repeal of Schedules 1, 2 and 3 to the Regulations) appeared to be technical amendments unrelated to the establishment of the CA. Members also noted the Administration's explanation on these amendments and consequential amendments, as set out in its response to ALA's letter issued vide LC Paper No. CB(1)2562/09-10(03) dated 21 July 2010.</p>	
014104 – 014118	Chairman	Meeting arrangement	

Council Business Division 1
Legislative Council Secretariat
 11 April 2011