

立法會
Legislative Council

LC Paper No. CB(1)2285/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/09

Bills Committee on Communications Authority Bill

Minutes of the eleventh meeting
held on Tuesday, 12 April 2011, at 2:30 pm
in Conference Room B 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 CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, 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
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Hon WONG Yuk-man
- Member absent** : Hon Timothy FOK Tsun-ting, GBS, JP
- Public officers attending** : Agenda Item II
Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Ms Ida LEE
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)

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)1855/10-11 -- Minutes of meeting held on
8 March 2011)

The minutes of the meeting held on 8 March 2011 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)1725/10-11(02) -- List of follow-up actions
arising from the discussion
at the meeting on 8 March
2011

- LC Paper No. CB(1)1725/10-11(03) -- Administration's response to issues raised at the meeting on 8 March 2011
- LC Paper No. CB(1)1857/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 31 March 2011
- LC Paper No. CB(1)1857/10-11(02) -- Administration's response to issues raised at the meeting on 31 March 2011 and proposed Committee Stage amendments
- LC Paper No. CB(1)1857/10-11(03) -- Summary table on "Issues requiring follow-up action/consideration by the Administration (position as at 11 April 2011)" prepared by the Legislative Council Secretariat

Other relevant papers

- 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
- LC Paper No. CB(1)1889/10-11(01) -- Marked-up copies of the Committee Stage amendments)

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

- Admin 3. The Administration was requested to provide all revised Committee Stage Amendments (CSAs) to Clauses 9(2), 17(3) and 19A of the Bill and paragraph 138(3) of the Schedule, and any other textual and consequential amendments of the Bill for members' consideration. The Administration was also requested to provide comments on the amendments to the Long Title and Clause 4 of the Bill proposed by Dr Hon Margaret NG. (**Appendix II**).

(Post meeting note: The Administration's revised CSAs and comments were issued to members vide LC Paper No. CB(1)2380/10-11 on 3 June 2011.)

- ALA 4. ALA was requested to prepare a note to address the Administration's concerns that Dr NG's proposed CSAs to the Bill might affect the independence of other statutory bodies established under existing Ordinances, and to sort out any other textual and consequential amendments of the Bill with the Administration.

(Post-meeting note: The information note prepared by ALA was issued to members vide LC Paper No. LS57/10-11 on 16 May 2011.)

III. Any other business

- Clerk 5. The Chairman reminded members that the twelfth meeting would be held some time after 9 May 2011. The Clerk would inform members of the date of meeting in due course.

(Post meeting note: The meeting originally scheduled for 5 May 2011 was cancelled. The Bills Committee Chairman directed that no further meeting was to be held to examine the Bill. Subject to the CSAs proposed by the Administration being in order, the Bills Committee would report to the House Committee on 17 June 2011 supporting resumption of the Second Reading debate on the Bill at the Council meeting on 29 June 2011.)

6. There being no other business, the meeting ended at 4:27 pm.

**Proceedings of the eleventh meeting of
Bills Committee on Communications Authority Bill
on Tuesday, 12 April 2011, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000050	Chairman	(a) Opening remarks by the Chairman. (b) Confirmation of minutes of meeting on 8 March 2011 (LC Paper No. CB(1)1855/10-11)	
000050 - 000803	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 8 March 2011 (LC Paper No. CB(1)1725/10-11(03)). <u>Conjunction at the end of Clause 21(2)(g)(i)</u> Members raised no query. <u>Safeguards for Clause 13(7)</u> Members raised no query. <u>Chinese version of Clause 19</u> Members raised no query. <u>Conjunction at the end of Clause 21(5)(b)</u> Discussion on the conjunction at the end of Clause 21(5)(b). ALA3 referred to section 2(1) of the Unsolicited Electronic Messages Ordinance (Cap. 593) (UEMO) and Clause 122 of the Competition Bill which used the conjunction "or" to define "commercial electronic message" and "confidential information" respectively. The Administration accepted that either "and" or "or" could be used for definition purposes. Members considered that "and" was appropriate in this context. <u>Disclosure of information under Clause 21</u> Members raised no query. <u>Clause 22: Amendment to the Telecommunications Ordinance (TO) (Cap.106)</u> Members raised no query.	

Time marker	Speaker	Subject(s)	Action required
000803 - 001542	Chairman Administration Ms Emily LAU Mr CHAN Kam-lam Dr Margaret NG	Briefing by the Administration on the proposed draft CSAs to the Bill and remaining issues raised at the meeting on 31 March 2011 and other outstanding issues discussed at previous meetings (LC Paper Nos. CB(1)1857/10-11(02)).	
001543 - 003440	Chairman Administration Assistant Legal Adviser (ALA) Ms Emily LAU Dr Margaret NG Mr CHAN Kam-lam	<p><u>Clause 8 – criteria for appointing CA members</u></p> <p>Discussion on the definition on "communication services" in Clause 8(1A)(c)(i).</p> <p><u>Clause 8(5) – a CA member becoming a public officer</u></p> <p>Members raised no query.</p> <p><u>Clause 8 – determining the remuneration and terms and conditions of CA members</u></p> <p>Discussion on remuneration and terms and conditions of service of members and Chairman of CA.</p> <p>The Administration agreed to report to the Panel on Information Technology and Broadcasting (the Panel) if a decision was made for the appointment of a full time Chairperson.</p>	
003441 - 004409	Chairman Administration Ms Emily LAU Dr Philip WONG Dr Margaret NG Mr Paul TSE ALA	<p><u>Clause 9 – criteria for revoking chairpersonship and vice-chairpersonship</u></p> <p>Members raised no query.</p> <p>ALA suggested that "unable or" should be added before "unfit" in the revised Clause 9(2) to achieve consistency with Clause 8(4)(e). The Administration raised no objection.</p> <p><u>Clause 10 – meetings by electronic means</u></p> <p>Discussion on the appropriate number of CA members participating in a meeting by electronic means.</p> <p>Ms Emily LAU considered it unacceptable for the CA to hold a meeting by electronic means if there were several CA members who needed to participate in a meeting by electronic means.</p> <p>The Administration advised that if there were several CA members who needed to participate in a meeting by electronic means, it would be natural and advisable for the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>CA to reschedule the meeting to a date available to most members rather than resorting to holding the meeting by electronic means. CA would ensure the confidentiality of the proceedings before deciding to hold a meeting by electronic means. Under the Bill, the CA had to set standing orders governing the procedures to be followed at meetings and the manner for conduct of meetings with members' participation through electronic means to safeguard against possible abuse and to ensure security.</p> <p>The Chairman requested the Administration to report to the Panel on the Standing Orders of the CA governing related matters to address the concerns raised by the Bills Committee.</p>	
004410 - 011449	<p>Chairman Administration Dr Philip WONG Dr Margaret NG Mr Andrew LEUNG Mr Paul TSE ALA</p>	<p><u>Clause 13(2) – determining whether a member must withdraw from, not cast a vote in and not form a quorum for a meeting if that member has disclosed interests</u></p> <p>Members raised no query.</p> <p>ALA raised for members' consideration whether Clause 13(3) to (6) should also be amended so that the signature of a member of CA who had made a disclosure should not be counted for the purpose of a written resolution under Clause 11(2) unless the majority of other members of CA directed otherwise. Members considered that no such amendment was necessary.</p> <p><u>Clause 13 – application of the disclosure of interest requirement</u></p> <p>Discussion on the validity of the proceeding of the CA in the event of failure by a member to comply with the disclosure of interest requirement.</p> <p>Members expressed concerns about possible impact on third parties who might have acted to their detriment in reliance on CA's initial decisions.</p> <p>The Administration advised that Clause 13(7) would not preclude the CA from reviewing the proceeding concerned if the proceeding or decision had not been made public.</p>	
011450 - 011600	<p>Chairman Administration</p>	<p><u>Clause 16 – appointment of committees of the CA</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
011601 - 011901	Chairman Dr Margaret NG Administration ALA	<p><u>Clause 17 – description of sections of various Ordinances</u></p> <p>Dr Margaret NG considered the drafting of the CSA on Clause 17(3) should be refined by substituting the verb phrases in brackets, namely "grant licence", "issue guidelines" and "renew licence" with noun phrases such as "grant of licence", "issuance of guidelines" and "renewal of licence" respectively to create an appropriate tone.</p> <p>ALA queried whether it was necessary to add a clause similar to section 2(6) of UEMO to clarify the legal status of the text in brackets. Members decided that such a clause was unnecessary.</p>	The Administration to follow up as stated in paragraph 3 of the minutes.
011902 - 012242	Chairman Administration ALA	<p><u>Clause 19A – liability of CA</u></p> <p>Discussion on the compatibility of the phrases "properly incurred" and "purported performance"</p>	The Administration to follow up as stated in paragraph 3 of the minutes.
012243 - 012525	Chairman ALA Administration	<p><u>Clause 21(2)(g) – conjunction at the end of 21(2)(g)(i) and (ii)</u></p> <p>Members raised no query.</p>	
012526 - 012458	Chairman Administration	<p><u>Clause 2, 23(1) and 23(2) – amendments to Chinese renditions</u></p> <p>The Administration advised that consequential amendments would also be made to the Unsolicited Electronic Messages Ordinance (Cap. 593) (section 43(4)) and the Telecommunications Ordinance (Cap. 106) (section 36A(6)).</p>	The Administration to follow up as stated in paragraph 3 of the minutes.
012459 - 012630	Chairman Administration	<p><u>Clause 19(1), 19(2) and 19(3) – semantic inconsistency in Chinese renditions</u></p> <p>Members raised no query.</p>	
012631 - 015340	Chairman Administration Dr Margaret NG Mr WONG Yuk-man Mr Paul TSE Ms Emily LAU	<p><u>Clause 4(4) – Public mission of CA</u></p> <p>Discussion on the public mission of CA.</p> <p>Dr Margaret NG requested the Legal Services Division to provide a paper on whether spelling out the independent status of CA in the Long Title and Clause 4 of the Bill would have a legal bearing on existing laws governing other statutory organizations.</p>	The Administration to follow up as stated in paragraph 3 of the minutes.

Time marker	Speaker	Subject(s)	Action required
		<i>(Post meeting note: The CSAs proposed by Dr Margaret NG were provided to the Secretariat on 16 April 2011 and forwarded to the Administration for comments on 18 April 2011, and subsequently issued to members vide LC Paper No. CB(1)2380/10-11(01) on 3 June 2011.)</i>	
015341 - 015639	Chairman Dr Margaret NG	Meeting arrangements	

Council Business Division 1
Legislative Council Secretariat
9 June 2011

《通訊事務管理局條例草案》

吳靄儀議員擬提出的委員會審議階段修正案擬稿

目的

本文件旨在闡釋《通訊事務管理局條例草案》委員會委員吳靄儀擬對條例草案動議的委員會審議階段修正案（「修正案」）。

提出修正案的原因

透過本條例草案，將現有的廣播事務管理局（廣管局）及電訊管理局（電管局）合併，而成立一個通訊事務管理局，執行現時由廣管局及電管局的職能。根據政府當局解釋這項法案的立法意圖，新成立的通訊事務管理局不受政府任何干預獨立運作。這一項原則，是政府當局、出席法案委員會的廣管局代表及條例草案委員會很多委員在審議草案時表達的共識。

爲了以條文明確訂立這個重要的立法目標，有需要提出這個修正案。

擬提出的修正案

吳靄儀擬就條例草案動議的修正案標明文本如下：

詳題

設立一個獨立的通訊事務管理局；將廣播事務管理局及電訊管理局局長的職能轉移給通訊事務管理局；解散廣播事務管理局；以及就附帶及相關事宜訂定條文。

Long Title

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.

第 4 條

加入—

(1A) 管理局在執行本條例之下的職能時不受政府干預。

Clause 4

Add—

(1A) The Authority shall carry out its functions under this Ordinance without interference from the Government.

正式的修正案擬稿列於附件。

COMMUNICATIONS AUTHORITY BILL

COMMITTEE STAGE

Amendments to be moved by Dr the Honourable Margaret NG.

<u>Clause</u>	<u>Amendment Proposed</u>
Long Title	By deleting “the” after “Establish” and substituting “an independent”.
4	By adding — “(1A) The Authority shall carry out its functions under this Ordinance without interference from the Government.”.