

**The Administration's Response to the Issues Raised at  
the Bills Committee of the Communications Authority Bill  
on 7 December 2010**

**Job description of the Director-General of Communications  
(DG Com)**

Under our proposal, DG Com is a civil service (D6) post and it will be the head of the future Office of the Communications Authority (OFCA). A tentative job description of DG Com is attached at **Annex A**.

2. One of the key roles of DG Com is to serve as the head of the executive arm of the Communications Authority (CA) covering the telecommunications and broadcasting portfolios. On telecommunications matters, it should be noted that unlike the Director General of Telecommunications, DG Com would no longer assume the statutory role as the Telecommunications Authority (TA) since CA would be taking over that role. Instead, DG Com would provide support for CA. On broadcasting matters, DG Com would also offer suitable advice and executive support to CA.

3. Meanwhile, some functions of the Television and Entertainment Licensing Authority (TELA) not related to broadcasting would be transferred to OFCA<sup>1</sup> as well. These functions include enforcing the Control of Obscene and Indecent Articles Ordinance (Cap. 390), the Film Censorship Ordinance (Cap. 392) as well as the Registration of Local Newspapers Ordinance (Cap. 268). The post-holder of DG Com<sup>2</sup> would also need to take over these functions from the Commissioner for Television and Entertainment Licensing.

4. OFCA will operate as a trading fund department. As head of the department, DG Com will report to the Permanent Secretary for

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<sup>1</sup> Although such functions would be transferred to OFCA, the Administration is considering giving divisions responsible for such functions a distinct identity so as to avoid giving an impression that these functions are related to the work of the CA.

<sup>2</sup> Same as the reasons mentioned in footnote 1, we are in contemplation of giving a distinct identity to the post-holder of DG Com when he or she performs the non-broadcasting functions of the existing TELA.

Commerce and Economic Development (Communications and Technology).

5. With the enactment of the CA Bill, we will seek the approval of the Establishment Sub-committee / Finance Committee of the Legislative Council to formally create the post.

#### **Examples of statutory provisions relating to the appointment of a public officer holding a civil service post to a statutory/advisory body**

6. We have set out at **Annex B** examples of statutory provisions with references to public officers holding a civil service post in an advisory/statutory body (ASB). It is common in legislation to provide for the appointment of an officer holding a specified civil service post to an ASB.

#### **Examples of statutory provisions in relation to a member's participation in meeting of ASBs by telephone, video conferencing or other electronic means**

7. We have set out at **Annex C** examples of statutory provisions covering the participation in meetings by telephone, video conferencing or other electronic means in respect of other ASBs in Hong Kong.

#### **Tabling the annual report of the CA in the Legislative Council (LegCo)**

8. According to section 21 of the Rules of Procedures of the Legislative Council ("the Rules"), the designated public officer presenting a paper to LegCo may address the Council with the permission of the President of LegCo. This allows for the Secretary for Commerce and Economic Development to address LegCo when tabling the Annual Report of the CA ("the Annual Report") as the case so requires.

9. In addition, under the Rules and existing mechanism, there are different channels for LegCo Members to discuss and clarify issues in respect of the Annual Report or the operation of the CA, for example, through discussion at the Information Technology and Broadcasting

Panel of LegCo, raising LegCo questions and moving motion debates on the subject. We stand ready to respond to issues raised by Members accordingly.

### **Defining “public officer” in Clause 2 of the CA Bill**

10. Members enquired that in case non-official members of the CA are appointed to work on a full-time basis pursuant to clause 8(1)(a) of the Bill, whether they would become “public officers” as defined in section 3 of the Interpretations and General Clauses Ordinance (IGCO) (Cap. 1), which provides that –

““public officer” (公職人員) means any person holding an office of emolument under the Government, whether such office be permanent or temporary.”

If so, “public officer” should be properly defined in the Bill so as to provide for certainty.

11. Indeed, non-official members of the CA so appointed are **not** public officers holding an office of emolument under the Government, irrespective of whether they work on a full-time or part-time basis. As such, the term “public officer” should follow the definition in IGCO without the need of being further defined in the CA Bill and does not cover non-official members of the CA.

### **Using the term “Director-General of Communications” in the provisions instead of defining it in Clause 2 of the Bill**

12. There was a suggestion to use “Director-General of Communications” in each of the provisions concerned in the Bill instead of defining it in Clause 2 of the Bill. We maintain that the present approach of providing definition under clause 2 is appropriate and consistent with that adopted in various other ordinances in Hong Kong.

13. There were also calls to set out in the Bill the status of “Director-General of Communications”. Otherwise there may be questions about the status of the post. Having studied the approach

adopted in various other ordinances in Hong Kong, we note that it is very common in various ordinances to refer to public officers with their titles without further defining them. We have cited some examples at **Annex D**.

**Amending clause 8 of the Bill to the effect that the appointment of a member appointed under Clause 8(1)(a) would lapse when he/she becomes a public officer**

14. We note Members' views that when a member of the CA becomes a public officer, the appointment of that member to the CA as a non-official should lapse immediately. There is no need to add a resignation process. We are actively considering Members' views and would work out a proposal to improve the Bill after discussion with the Law Draftsman.

**Amending clause 9(2) of the Bill to specify reasons for which the Chief Executive (CE) may at any time revoke the appointment of the chairperson and the vice-chairperson of the CA**

15. At the last Bills Committee meeting, Members raised the issue as to whether the reasons for which the CE might at any time revoke the appointment of the chairperson, the vice-chairperson and members of the CA be specified in the CA Bill.

16. The reasons for which the CE may declare the office of a CA member to be vacant are clearly stipulated in clause 8(4) of the Bill, i.e. the member –

- (a) has been absent from the meetings of the CA without its permission for a continuous period longer than three months;
- (b) becomes bankrupt and enters into a voluntary arrangement with his or her creditors, within the meaning of the Bankruptcy Ordinance (Cap. 6);
- (c) becomes incapacitated by physical or mental illness;
- (d) ceases to be ordinarily resident in Hong Kong; or
- (e) is otherwise unable or unfit to perform the functions of a member of the CA.

17. We will further consider Members' views as to whether the reasons for which the CE may revoke the appointment of the chairperson and the vice-chairperson should be stipulated in the Bill.

**Including specific rules in the Bill or for the CA to set specific rules/standing orders governing the participation in meetings by electronic means**

18. We note Members' views in safeguarding confidentiality and security of CA meetings when members of the CA are to participate in such meetings through electronic means. We are actively considering Members' views and will consider improvements in consultation with the Law Draftsman.

**Communications and Technology Branch,  
Commerce and Economic Development Bureau  
January 2011**

**Proposed Job Description of the Director-General of  
Communications  
(Draft)**

Post-title : Director General of Communications

Rank : A civil service post at D6 rank

**Main Duties and Responsibilities:**

1. To head the Office of the Communications Authority (OFCA), the executive arm of the Communications Authority (CA), and to manage the OFCA Trading Fund.
2. To serve as the ex officio member of the CA.
3. To support the CA by making recommendations for and execution of statutory functions/regulatory decisions which primarily cover areas including –
  - (a) licensing telecommunications and broadcasting services;
  - (b) ensuring compliance by telecommunications and broadcasting service providers with relevant ordinances and licence conditions;
  - (c) conducting mid-term reviews for television and sound broadcasting licensees;

- (d) handling requests for determinations and mediations to resolve industry disputes related to interconnection and sharing of facilities on telecommunications services;
- (e) dealing with issues concerning access to land and provision of physical facilities for the installation of networks;
- (f) regulating the use of radio spectrum to ensure its efficient and effective use for telecommunications and broadcasting services;
- (g) promoting fair and effective competition in the telecommunications and broadcasting sectors, investigating industry complaints against anti-competitive practices and responding to appeals and legal actions arising from the CA's determinations on anti-competitive complaints;
- (h) enforcing the Unsolicited Electronic Messages Ordinance, promulgating codes of practice for compliance by the telecommunications and broadcasting sectors; working with operators on formulating service performance pledges and industry codes, handling consumer complaints and acting against deceptive practices or misleading conduct in the provision of communications services, etc.; and
- (i) tendering advice to the Secretary for Commerce and Economic Development on telecommunications and broadcasting matters.

4. To liaise and coordinate with the Mainland and overseas regulatory agencies, representing Hong Kong in the International Telecommunication Union and other international/regional telecommunications and broadcasting fora for ensuring compliance with relevant international agreements.

Note: The post-holder of the Director-General of Communications would also need to take over the non-broadcasting functions of the existing Commissioner for Television and Entertainment Licensing, which include –

1. To enforce the Control of Obscene and Indecent Articles Ordinance (COIAO) and oversee the public education work on COIAO.
2. To act as the Film Censorship Authority for all films exhibited in Hong Kong and enforce the Film Censorship Ordinance and act as the registrar of newspapers under the Registration of Local Newspapers Ordinance.

**Examples of statutory provisions with references public officers holding civil service posts in advisory/statutory bodies**

<b>Body</b>	<b>Ordinance</b>	<b>Provision</b>
Broadcasting Authority	Broadcasting Authority Ordinance (Cap. 391)	<p><b>Section 13</b></p> <p>(1) The Authority shall discharge its functions through a principal executive officer who shall be the Commissioner for Television and Entertainment Licensing.</p> <p>[Note 1]</p>
Hong Kong Arts Development Council	Hong Kong Arts Development Council Ordinance (Cap. 472)	<p><b>Section 3</b></p> <p>(3) The Council shall consist of-</p> <p>...</p> <p>(e) the Permanent Secretary for Education or his representative; and</p> <p>(f) the Director of Leisure and Cultural Services or his representative.</p>
Financial Reporting Council	Financial Reporting Council Ordinance (Cap. 588)	<p><b>Section 7</b></p> <p>(1) The Council is to consist of—</p> <p>(a) the Registrar of Companies, or a person appointed by the</p>

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Note 1 The Commissioner for Television and Entertainment Licensing is not a member of the Broadcasting Authority.

<b>Body</b>	<b>Ordinance</b>	<b>Provision</b>
		Registrar, in writing, as his representative, as an ex officio member; ...
Chinese Medicine Council	Chinese Medicine Ordinance (Cap. 549)	<b>Section 4</b> The Council shall consist of- (a) the Director who shall be an ex officio member; and ... [Note 2]

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Note 2 “The Director” in subsection (a) means the Director of Health or a Deputy Director of Health.

**Examples of statutory provisions in respect of the participation in meetings of advisory/statutory bodies through electronic means**

<b>Body</b>	<b>Ordinance</b>	<b>Provision</b>
Securities and Futures Commission	Securities and Futures Ordinance (Cap. 571)	<p><b>Paragraph 17, Schedule 2</b></p> <p>17. A member of the Commission shall be regarded as being present at a meeting of the Commission if he participates in the meeting by telephone, video conferencing or other electronic means, provided he is able to hear the other members present at the meeting and they are able to hear him.</p>
Hong Kong Deposit Protection Board	Deposit Protection Scheme Ordinance (Cap. 581)	<p><b>Paragraph 5, Schedule 2</b></p> <p>(5) A member of the Board is to be regarded as being present at a meeting of the Board, even though the member does not attend the meeting in person, if—</p> <ul style="list-style-type: none"> <li>(a) the member participates in the meeting by telephone, video conferencing or other electronic means; and</li> <li>(b) the member is able to communicate with the other members attending or participating in the meeting and they are able to communicate with that member.</li> </ul> <p>(6) A member who participates in a meeting of the Board by</p>

<b>Body</b>	<b>Ordinance</b>	<b>Provision</b>
		<p>telephone, video conferencing or other electronic means may cast a vote by the same electronic means.</p> <p>(7) Subsection (4)(a) and (c) applies even though the Chairman of the Board participates in the meeting by telephone, video conferencing or other electronic means.</p>
Financial Reporting Council	Financial Reporting Council Ordinance (Cap. 588)	<p><b>Paragraph 6, Schedule 2</b></p> <p>(5) A member of the Council is regarded as being present at a meeting of the Council if—</p> <ul style="list-style-type: none"> <li>(a) he participates in the meeting by telephone, video conferencing or other electronic means; and</li> <li>(b) he is able to communicate with the other members present at the meeting and they are able to communicate with him.</li> </ul>

**Examples of statutory provisions in which public officers are mentioned without further definition of the posts**

<b>Post</b>	<b>Ordinance</b>	<b>Provision</b>
<p>Commissioner for Television and Entertainment Licensing</p>	<p>Broadcasting Authority Ordinance (Cap. 391)</p>	<p><b>Section 13</b></p> <p>(1) The Authority shall discharge its functions through a principal executive officer who shall be the Commissioner for Television and Entertainment Licensing.</p> <p><b>Section 27</b></p> <p>(1) Any Code of Practice relating to radio advertising standards or radio programme standards issued by the Commissioner for Television and Entertainment Licensing prior to the commencement of this section-</p> <p>(a) shall be deemed for all purposes to have been issued by the Authority under section 19; and</p> <p>(b) may be amended or withdrawn by the Authority.</p> <p>(2) Any reference to the Commissioner for Television and Entertainment Licensing, the Television and Entertainment Licensing Authority or the Authority in any Code of Practice referred to in subsection (1) shall be construed as a reference to the Authority.</p>

<b>Post</b>	<b>Ordinance</b>	<b>Provision</b>
Commissioner for Transport	Road Traffic Ordinance (Cap. 374)	<b>Section 2</b> "Commissioner" (署長) means the Commissioner for Transport
	Ferry Services Ordinance (Cap. 104)	<b>Section 2</b> "Commissioner" (署長) means the Commissioner for Transport
Commissioner of Police	Crimes Ordinance (Cap. 200)	No definition of "Commissioner of Police" in various provisions
	Independent Police Complaints Council Ordinance (Cap. 604)	<b>Section 3</b> "Commissioner" (處長) means the Commissioner of Police
Director of Agriculture, Fisheries and Conservation	Forests and Countryside Ordinance (Cap. 96)	<b>Section 2</b> "Director" (署長) means the Director of Agriculture, Fisheries and Conservation
Director of Health	Public Health and Municipal Services Ordinance (Cap. 132)	<b>Section 2</b> "health officer" (衛生主任) means- (a) the Director of Health, a Deputy Director of Health or an Assistant Director of Health; or

<b>Post</b>	<b>Ordinance</b>	<b>Provision</b>
		(b) the Director of Food and Environmental Hygiene, a Deputy Director of Food and Environmental Hygiene or an Assistant Director of Food and Environmental Hygiene, and includes a person authorized by the Director of Health or the Director of Food and Environmental Hygiene to perform the functions of a health officer
	Medical Registration Ordinance (Cap. 161)	Section 2 Director" (署長) means the Director of Health