

**The Administration's Response to the Issues Raised at  
the Bills Committee meeting of the Communications Authority Bill  
held on 27 January 2011**

**Mechanism for disclosure of members' interests in matters discussed  
at a meeting of the Broadcasting Authority (BA) or its committees**

Members requested information on the existing mechanism for members of the BA or of its committees to disclose their interests. Section 7 of the Broadcasting Authority Ordinance (BAO) (Cap. 391) provides that –

**“7. Disclosure of member's interest**

If a member of the Authority, or of any committee of the Authority, has –

- (a) a pecuniary interest, whether direct or indirect;
- (b) or a personal interest greater than that which he has as a member of the general public,

in any matter under discussion at a meeting of the Authority or committee, the following provisions shall apply –

- (i) the member shall disclose the nature of his interest at the meeting;
- (ii) the disclosure shall be recorded in the minutes;
- (iii) where the disclosure is made by the member presiding, he shall vacate the chair during the discussion;
- (iv) the member (including one who has vacated the chair under paragraph (iii)), shall, if so required by the member presiding, withdraw from the meeting during the discussion and shall not in any case, except as otherwise determined by the member presiding, vote on any resolution concerning the matter or be counted for the purpose of establishing the existence of a quorum.”

2. The requirements in the provision are reflected in the Standing Orders of the BA and its committees, an extract of which is at **Annex A**.

3. In this connection, interests held by the family members or close relatives of members of the BA or its committees which may give rise to a conflict of interest might need to be disclosed under section 7 of the BAO. We have drawn the attention of members of the BA or members of its committees from time to time to the relevant sections of BAO and a

set of guidelines recommended by the Independent Commission Against Corruption, titled “Declaration of Interests by Members of Public Sector Advisory and Statutory Bodies : Guidelines for a One-tier Reporting System”(“the Guidelines”) (at **Annex B**). The Guidelines cover the handling of pecuniary interests held either by the member or by any close relative of the member as well as other potential conflict of interest scenarios.

### **Litigation costs of the Communications Authority (CA)**

4. At the last Bills Committee meeting, Members enquired how the litigation costs of the future CA would be met. Under Clause 14 of the Bill, the Director-General of Communications (DG Com) must do all acts and things necessary for implementing the decisions made for the performance of the CA’s functions. Under Clause 15, the Office of the Communications Authority (OFCA) must support and assist the DG Com in the performance of DG Com’s functions. Under Clause 23 which serves to amend the LegCo Resolution for the Office of the Telecommunications Authority Trading Fund, the services covered by the future OFCA Trading Fund would include those supporting the CA in administering and enforcing the various Ordinances under its purview. In this respect, the future OFCA could employ legal services for the CA and meet the litigation costs associated with CA’s performance of functions from the OFCA Trading Fund.

5. Members were also concerned with whether the financial position of the OFCA Trading Fund would be significantly affected by litigation or legal costs incurred by the CA. In this connection, we have taken stock of the total legal costs<sup>1</sup> incurred by the Office of the Telecommunications Authority (OFTA) and the Television and Entertainment Licensing Authority (TELA) in relation to the performance of functions of the Telecommunications Authority and BA respectively over the past three financial years, i.e. from 2008/09 to 2010/11 (up to January 2011). The figures are shown in the following table –

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<sup>1</sup> “Legal costs” include litigations costs, costs of engaging legal professionals for external legal opinion and for handling appeal cases against the TA or BA’s decisions, as the case may be. They do not include in-house staff costs involved in handling relevant matters.

<b>Financial Year</b>	<b>Department</b>	<b>Total legal costs incurred</b>	<b>Total operating expenses of the Department in respect of broadcasting or telecommunications regulatory functions</b>
2008/09	TELA	\$2.2 million	\$32.8 million
	OFTA	\$15.6 million	\$271.7 million
2009/10	TELA	\$0.3 million	\$53.2 million
	OFTA	\$2.4 million	\$242.6 million
2010/11	TELA	\$0.2 million <sup>2</sup>	\$32 million <sup>3</sup>
	OFTA	\$0.8 million <sup>2</sup>	\$257.9 million <sup>4</sup>
Per year average	TELA	\$0.9 million (2.3%)	\$39.3 million
	OFTA	\$6.3 million (2.4%)	\$257.4 million

6. The legal costs incurred by OFTA and TELA over the past few years respectively stand at less than 3% of their total annual operating expenses. Judging from past experience, we may conclude that the impact of the CA's engagement in litigation in the future on the financial situation of the OFCA Trading Fund would not be significant.

### **Amendments to Specific Clauses of the Bill**

7. We note Members' proposals to amend Clauses 11, 16 and 17 of the Bill. We are actively considering Members' views and will consider improvements to the said clauses in consultation with the Law Draftsman.

### **Communications and Technology Branch, Commerce and Economic Development Bureau February 2011**

<sup>2</sup> Up to January 2011.

<sup>3</sup> According to Estimates in the Budget 2010-11 and applicable to the whole of financial year 2010/11.

<sup>4</sup> According to OFTA's internal estimates and applicable to the whole of financial year 2010/11.

## Extract of Standing Orders of the Broadcasting Authority on the Disclosure of Interest

**10. Declaration of Interest**

- (1) A member of the Authority or any of its committees shall not speak or vote at the Authority or its committee meetings on any matter in which he has a direct personal or pecuniary interest without first disclosing the nature of that interest.
- (2) In the absence of any objection from other members, the Chairman shall decide whether a member who has disclosed an interest may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting. If any member objects, then the members (other than the member disclosing an interest) shall decide by voting whether the member disclosing an interest may speak or vote, may remain in the meeting as an observer, or should withdraw from the meeting.

**Declaration of Interests by  
Members of Public Sector Advisory and Statutory Bodies**

**Guidelines for a One-tier Reporting System**

**General Principles**

When a member (including the chairman) of a public council, board or committee has a potential conflict of interest in a matter placed before the committee, he should make full disclosure of his interest. The basic principle to be observed is that members' advice should be disinterested and impartial and it is the responsibility of each member to judge and decide if the situation warrants a declaration, and to seek a ruling from the chairman in case of doubt.

It is impossible to define or describe all the situations that would call for such a declaration, because each individual case differs, and because of the difficulty of catering for unusual and unforeseen circumstances. On the other hand, it is not intended that a member should make a declaration of interest simply because the committee is considering a matter in which he has knowledge or experience.

**Potential Conflict of Interest Situations**

The following are potential conflict of interest situations :

- (1) Pecuniary interests in a matter under consideration by the committee, held either by the member or by any close relative of his. Members are themselves the best judge of who, in the particular circumstances, is a "close relative".
- (2) A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organisation which is connected with, or the subject of, a matter under consideration by the committee.
- (3) Some friendships which might be so close as to warrant declaration in order to avoid situations where an objective observer might believe a member's advice to have been influenced by the closeness of the association.

- (4) A member who, as a barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter under consideration by the committee.
- (5) Any interest likely to lead an objective observer to believe that the member's advice might have been motivated by personal interest rather than a duty to give impartial advice.

### **Declaration of Interests at Meetings**

The following are guidelines governing declaration of interests at meetings :

- (1) If a member (including the chairman) has any direct personal or pecuniary interest in any matter under consideration by the committee, he must, as soon as practicable after he has become aware of it, disclose to the chairman (or the committee) prior to the discussion of the item.
- (2) The chairman (or committee) shall decide whether the member disclosing an interest may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting.
- (3) If the chairman declares an interest in a matter under consideration, the chairmanship may be temporarily taken over by a vice-chairman.
- (4) When a known direct pecuniary interest exists, the secretary may withhold circulation of relevant papers to the member concerned. Where a member is in receipt of a paper for discussion which he knows presents a direct conflict of interest, he should immediately inform the secretary and return the paper.
- (5) All cases of declaration of interests shall be recorded in the minutes of the meeting.