

立法會
Legislative Council

LC Paper No. LS80/09-10

**Paper for the House Committee Meeting
on 2 July 2010**

**Legal Service Division Report on
Communications Authority Bill**

I. SUMMARY

- 1. Objects of the Bill** To establish the Communications Authority (CA), transfer the functions of the Broadcasting Authority (BA) and the Telecommunications Authority (TA) to CA, dissolve BA and provide for incidental and connected matters.
- 2. Comments**

 - (a) The Bill is intended to be enabling legislation to establish CA as a single unified regulator to take over the existing functions of BA and TA in regulating the broadcasting and telecommunications sectors.
 - (b) Membership of the new CA is to include five to 10 non-officials and one public officer appointed by the Chief Executive, and the Director-General of Communications (DGC).
 - (c) The Office of the Telecommunications Authority and the Broadcasting Division of the Television and Entertainment Licensing Authority will be merged to form the Office of the Communications Authority (OFCA) as the executive arm of the new CA.
 - (d) OFCA will operate as a trading fund headed by DGC.
 - (e) Disclosure of confidential information obtained or received in the performance of CA's functions is proposed to be an offence.
- 3. Public Consultation** In 2006, the Administration conducted a three-month public consultation exercise on the proposed merger of BA and TA into CA. The public and the industry supported the proposal.
- 4. Consultation with LegCo Panel** The proposals were most recently discussed by the Panel on Information Technology and Broadcasting on 11 January 2010 when members raised various concerns.
- 5. Conclusion** Our scrutiny of the Bill is continuing. Members may decide whether to study the policy aspects of the Bill in detail.

II. REPORT

Objects of the Bill

The Bill seeks to:

- (a) establish the Communications Authority;
- (b) transfer the functions of the Broadcasting Authority and the Telecommunications Authority to the Communications Authority;
- (c) dissolve the Broadcasting Authority; and
- (d) provide for incidental and connected matters.

LegCo Brief Reference

2. File Ref.: CTB(CR)9/19/13 (10) issued by the Commerce and Economic Development Bureau (CEDB) in June 2010.

Date of First Reading

3. 30 June 2010.

Background

The existing regulatory regime

4. In Hong Kong, while the policy responsibility for both broadcasting and telecommunications is vested in one single policy bureau (i.e. CEDB), the regulatory responsibility for these two sectors rests with two different authorities, namely the Broadcasting Authority (BA) and Telecommunications Authority (TA) respectively.

Broadcasting Authority

5. BA, a body corporate established under the Broadcasting Authority Ordinance (Cap. 391) (BAO), currently regulates television and sound broadcasting services in accordance with the Broadcasting Ordinance (Cap. 562) (BO) and Part IIIA of the Telecommunications Ordinance (Cap. 106) (TO) respectively. BA comprises six to nine non-official members and three official members appointed by the Chief Executive (CE). Its executive arm, the Broadcasting Division of the Television and Entertainment Licensing Authority (TELA), is a government department funded from the general revenue. TELA is headed by the Commissioner for Television and Entertainment Licensing, a public officer, who serves as the principal executive officer of BA.

6. BA's major functions and responsibilities are to-
- (a) secure proper broadcasting content and technical standards and handle complaints about breach of such standards;
 - (b) issue non-domestic and other licensable television programme service licences and make recommendations on applications for licences of sound broadcasting, domestic free and domestic pay television programme services for which CE in Council is the licensing authority;
 - (c) administer all broadcasting licences and enforce licensing conditions;
 - (d) approve acquiring, holding and exercising of 2% or above foreign voting control of domestic free television programme service licensees; and
 - (e) enforce the competition provisions in the BO.

Telecommunications Authority

7. TA is a public officer appointed by CE pursuant to section 5 of the TO to regulate the telecommunications sector and the technical standards for broadcasting services. Since the Office of the Telecommunications Authority (OFTA) was established in 1993, the Director-General of Telecommunications, who heads OFTA, has been appointed as TA. Operating under the Trading Funds Ordinance (Cap. 430), OFTA does not rely on the general revenue for its expenses.

8. TA's major functions and responsibilities are to –
- (a) manage the radio spectrum;
 - (b) license all telecommunications services and transmission facilities and enforce licensing conditions;
 - (c) provide economic and technical regulation of telecommunications services;
 - (d) support BA in the technical regulation of broadcasting services;
 - (e) control the import, export and use of radio-communications apparatus;
 - (f) enforce the competition provisions in the TO; and
 - (g) regulate the sending of unsolicited electronic messages under the Unsolicited Electronic Messages Ordinance (Cap. 593) (UEMO).

9. Operationally, OFTA advises and supports BA and TELA in relation to engineering and technical issues in broadcasting matters, and assists BA in economic regulation matters such as economic analysis for processing competition complaints.

Proposals for change

10. According to paragraph 2 of the LegCo Brief, rapid technological advancement is blurring the traditional boundaries between telecommunications and broadcasting, leading to the convergence of the two markets. In the United Kingdom and Australia, such convergence has in recent years resulted in the merger of their separate telecommunications and broadcasting regulators into unified regulatory bodies¹. Hong Kong needs to restructure its regulatory institutional arrangements and review the overall regulatory regime and legislation to keep pace with changes in these sectors.

11. On 3 March 2006, the Administration published a consultation paper to seek public views on its proposal to merge BA and TA into a unified regulator (i.e. CA) for the efficient, effective and coordinated regulation of a converging electronic communications sector. The Administration proposed a two-staged approach: (a) Upon its establishment, CA would continue to enforce the existing provisions of the BO and TO and administer all matters currently under the purview of BA and TA; and (b) CA would then be tasked to review and rationalize the BO and TO to ensure the consistent and effective regulation of the broadcasting and telecommunications sectors.

Comments

12. The Bill seeks to implement the first stage of the two-staged approach for setting up a unified regulator for the telecommunications and broadcasting sectors after completion of the public consultation exercise. It is intended to be enabling legislation to establish a unified regulator through the structural merger of BA and TA. The Bill does not deal with the differences in the existing regulatory regimes under the BO and TO. Following the establishment of the unified regulator after enactment of the Bill, a comprehensive review of the existing regulatory regimes under the BO and TO will be carried out. According to paragraph 4 of the LegCo Brief, legislative changes would be introduced to update and rationalize these Ordinances after the review.

13. The ensuing paragraphs summarize the key provisions of the Bill.

Establishment of CA

14. Clause 3 establishes a body corporate, CA, as the unified regulator in lieu of BA and TA to administer and enforce the existing regulatory and licensing regimes for the telecommunications and broadcasting sectors.

15. CA will consist of five to 10 non-official members (including a chairperson) appointed by CE, an official member appointed by CE and the Director-General of Communications (DGC) (Clauses 8 and 9).

¹ Office of Communications (UK) and Australian Communications and Media Authority (Australia).

Powers and functions of CA

16. The existing statutory powers and functions of TA and BA will be transferred to CA which will be supported by DGC in administering and enforcing the provisions of the Bill, TO, BO, BAO (to be renamed as the Broadcasting (Miscellaneous Provisions) Ordinance), UEMO and any other Ordinance (Clauses 4 and 14). CA will also be given the necessary incidental powers so as to perform its functions (Clause 5).

17. CA will also tender advice to the Secretary for Commerce and Economic Development (Secretary) on any legislation, legislative proposals and regulatory policies relating to telecommunications, broadcasting, anti-spamming or activities connected with the telecommunications and broadcasting sectors (Clause 4(3)).

18. CA may appoint any committee to advise or assist it, or delegate any of its functions to such committee, DGC or any public officer (Clauses 16 and 17).

Procedural matters

19. Clauses 6 and 10 to 13 deal with procedural matters pertaining to the day-to-day operations of CA and its committees, such as the submission of annual reports to CE and the Legislative Council, meetings, transaction of business by the circulation of papers, and disclosure of pecuniary and personal interests by members.

Abolition of BA and TA

20. BA will be dissolved (Clause 7) and section 5 of the TO, which provides for the appointment of TA, will be repealed (section 4 of the Schedule).

Immunity from civil liability

21. Under clause 18, no civil liability will be incurred by CA or any other person acting or omitting to act in good faith in connection with the performance or purported performance of any of CA's proposed functions under the Bill or any Ordinance.

OFCA Trading Fund

22. OFTA and the Broadcasting Division² of TELA will be amalgamated into a new department called the Office of the Communications Authority (OFCA) which will be headed by DGC, a public officer ranked at Director 6 (D6) level. The existing OFTA Trading Fund will be expanded and renamed as the OFCA Trading Fund to which all sums of money payable, owing or paid to CA must be credited. As the executive arm of CA, OFCA will support and assist CA and DGC on telecommunications, broadcasting and anti-spamming matters (Clauses 15, 19 and 23). TELA will be disbanded.

² The other division of TELA, the Entertainment Division, is responsible for, among other duties, the control of obscene and indecent articles, film censorship and newspaper registration. These non-broadcasting functions will be transferred to OFCA but will be funded by the general revenue. TELA's remaining functions relating to entertainment licences will be taken up by the Home Affairs Department.

Transfer of records and data to CA and OFCA

23. Under clause 20, all data, records or documents in the custody of TA or BA must be transferred to CA. Similarly, all data, records or documents in the custody of OFTA or TELA must be transferred to OFCA or another government department which takes up the relevant function. In relation to personal data so transferred, the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) applies as if the data had been received by the transferee rather than TA, BA, OFTA or TELA. Such transfer does not amount to a breach of any duty of confidentiality or a contravention of the PDPO.

Offence to give or disclose confidential information

24. Subject to certain specified exceptions, clause 21 prohibits the giving or disclosure of confidential information obtained or received in connection with the performance of any functions of CA. Persons who are subject to this prohibition include a member of, or a person authorized by, CA or its committees, and an employee, agent, service provider, contractor or adviser engaged by OFCA. A person who contravenes clause 21 commits an offence and is liable on conviction on indictment to a fine of \$1,000,000 and 2 years' imprisonment, and on summary conviction to a fine at level 6 (i.e. \$100,000) and 6 months' imprisonment.

25. It is a defence for the defendant to show that at the time of the disclosure:

- (a) he believed that there was lawful authority to give or disclose the information and he had no reasonable cause to believe otherwise; or
- (b) he did not know or had no reasonable cause to believe that the information given or disclosed was confidential information.

Transitional arrangements, savings and consequential amendments

26. Parts 7 and 8 of the Bill seek to make transitional and savings provisions, and consequential amendments to various Ordinances including the TO, BAO, BO and UEMO and the relevant subsidiary legislation.

Commencement

27. The Bill will come into operation on a day to be appointed by the Secretary by notice published in the Gazette, when it is enacted as an Ordinance.

Public Consultation

28. According to paragraphs 11 and 12 of the LegCo Brief, the Administration conducted a three-month public consultation exercise in 2006 on the proposed establishment of CA through the merger of BA and TA. The proposal was well received by the public and the industry. The Administration also briefed staff representatives of OFTA and TELA in January 2010 on the latest progress of the Bill.

Consultation with LegCo Panel

29. At the meeting of the Panel on Information Technology and Broadcasting (Panel) held on 11 January 2010, the Administration briefed members on the proposed setting up of a unified regulator, CA, to provide effective, efficient, and well-coordinated regulation of a converging electronic communications sector. The Panel supported in principle the Administration's proposal to establish CA. Some members, however, expressed concerns that the powers vested on the proposed CA were too wide, given its expanded remit with jurisdiction over the broadcasting and telecommunications sectors. These members urged the Administration to consider increasing the membership of CA (particularly the non-official members) to deal with the increased workload due to the consolidation of responsibilities over the entire electronic communications sector. They also opined that individuals possessing the requisite expertise to understand and deal with the complicated issues in the communications sectors should be appointed to CA and that appointments should be made in a fair, open and transparent manner, with care being taken to ensure impartiality and guard against conflict of interests so as to enhance public confidence in CA and maintain its credibility. Members may refer to the minutes of the Panel meeting held on 11 January 2010 (LC Paper No. CB(1)1312/09-10) for further details.

Conclusion

30. Our scrutiny of the Bill is continuing. Members may decide whether to study the policy aspects of the Bill in detail.

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