

立法會
Legislative Council

LC Paper No. CB(1)1863/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/PL/CI/1

Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 20 May 2008, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon Vincent FANG Kang, JP (Chairman)
Hon WONG Ting-kwong, BBS (Deputy Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
- Member attending** : Hon CHOY So-yuk, JP
- Member absent** : Hon Timothy FOK Tsun-ting, GBS, JP
- Public officers attending** : Agenda Item IV
Ms Annie CHOI, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)³
Mr Hubert LAW
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)⁵

Ms Joyce TAM
Assistant Director-General (Mainland)
Trade and Industry Department

**Attendance by
invitation**

: Agenda Item IV

Hong Kong Metal Merchants Association

Mr LAI Hin-fai
Vice-Chairman

Federation of Hong Kong Machinery and Metal
Industries

Mr TING Siu-kwan
Vice Chairman

Hong Kong Chinese Prepared Medicine Traders
Association

Mr TING Wing-Fai
President

Mr TAM Kwok-leung
Chairman

Hong Kong Economic and Trade Association Ltd

Mr LUN Wing-yuen
Treasurer

Hong Kong Small and Medium Enterprises Association

Mr Danny LAU
Chairman

Hong Kong Plastics Manufacturers Association Ltd

Mr LUK Pak-shing
Vice President

Hong Kong Plastics Recycling Association Co. Ltd

Mr MAK Yuen-hoi
Secretary

Mr Alfred CHAN
Treasurer

The Hong Kong Chinese Importers' & Exporters'
Association

Mr Sterry CHONG Shing-nam
Vice President

Hong Kong and Kowloon Electrical Appliances
Merchants Association

Mr Peter CHU Ka-lok
Chairman

Hong Kong General Chamber of Commerce

Ms Mayee LANG
Business Analyst

The Democratic Party

Mr Andrew FUNG Wai-kwong
Deputy Spokesman, Economic Affairs

Democratic Alliance for the Betterment and Progress of
Hong Kong

Mr Bruce LAU Lung-fei
Commerce and Industry Policy Deputy Spokesperson

Labour Action China

Ms Monina WONG
Director

Ms Merina FUNG
Program Officer

Worker Empowerment

Ms CHOI Yuk-yuk
Coordinator

Ms WU Shui-sun
China Officer

Students and Scholars Against Corporate Misbehaviour

Mr LEUNG Pak-nang
President

Ms CHAN Kwai-ying
Project Coordinator

The Chinese General Chamber of Commerce

Mr LEUNG Wai-ho
Standing Committee Member

Individuals

Mr YU Fung-chuen

Ms CHENG Suk-ling

Ms CHOI Mei-ying

Mr WONG Yik-kam

Mr LAM Wai-wun

Mr SIT Po-yan

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

Staff in attendance : Ms Guy YIP
Senior Council Secretary (1)5

Ms May LEUNG
Legislative Assistant (1)6

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1534/07-08 -- Minutes of meeting held on
15 April 2008)

The minutes of the meeting held on 15 April 2008 were confirmed.

II. Information paper issued since last meeting

2. Members noted that no paper had been issued since the last meeting held on 15 April 2008.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)1536/07-08(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1536/07-08(02) -- List of follow-up actions)

3. Members agreed that the Panel would discuss the following items at the next regular meeting to be held on 17 June 2008 –

- (a) Progress report on Hong Kong Special Administrative Region (HKSAR)'s participation in the World Exposition 2010 Shanghai China;
- (b) Progress report on Research and Development Centres; and
- (c) Report on the work of the Hong Kong Economic and Trade Offices and Beijing Office.

4. The Chairman informed members that the Secretary for Commerce and Economic Development (SCED) would take part in the discussion of the last agenda item. While SCED would return from a duty trip in the Mainland on the same day, the meeting would be deferred to be held from 3:30 pm to 5:30 pm (instead of 2:30 pm to 4:30 pm as previously scheduled) to facilitate SCED's participation. Members agreed.

IV. Furthering of trade relations between the Mainland and Hong Kong

(LC Paper No. CB(1)1536/07-08(03) -- Paper provided by the Administration

LC Paper No. CB(1)1536/07-08(04) -- Background brief prepared by the Legislative Council Secretariat)

5. The Chairman welcomed representatives of the Administration and deputations to the meeting. He requested the deputations to provide their written submissions, if they had not done so, or supplementary submissions, if any, to the Panel after the meeting. He also reminded the deputations that when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). Their written submissions were also not covered by the said Ordinance. He said that the purpose of the meeting was to discuss the difficulties encountered by Hong Kong businessmen operating in the Mainland as well as the implications of the

Mainland's laws and regulations and its policies on them instead of dealing with particular cases.

6. Members noted that written submissions had been provided by five other deputations not attending the meeting, namely, the Federation of Hong Kong Industries, Hong Kong Footwear Association, Hong Kong Association for Promotion & Development of SMEs, Hong Kong Plastic Material Suppliers Association and the Chinese Manufacturers' Association of Hong Kong (LC Paper Nos. CB(1)1536/07-08(08), CB(1)1550/07-08(03), CB(1)1583/07-08(01), CB(1)1583/07-08(03) and CB(1)1583/07-08(07)).

Briefing by the Administration

7. At the invitation of the Chairman, the Deputy Secretary for Commerce and Economic Development (Commerce and Industry)³ (DSCED(CI)3) briefed members on recent developments in the trade relations between the Mainland and Hong Kong, changes in the business environment for Hong Kong-owned enterprises in Guangdong and the measures undertaken by the HKSAR Government to assist the trade. She highlighted the salient points as follows:

(a) Recent developments in the trade relations between the Mainland and Hong Kong

In 2007, the total merchandise trade between the Mainland and Hong Kong was over HK\$2,600 billion, which represented almost half of the total trade value of Hong Kong during the period. Hong Kong ranked third among the trading partners of the Mainland, accounting for almost one-tenth of Mainland's total external trade in 2007. Hong Kong was also the most important entrepot for trade between the Mainland and the rest of the world.

Since the implementation of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) on 1 January 2004, four supplements to CEPA were signed, with the latest one coming into effect on 1 January 2008. Under CEPA, over 1,500 types of Hong Kong-made products enjoyed zero tariff when they were imported into the Mainland and service suppliers in 38 service areas could enjoy preferential access to the Mainland market.

(b) Changes in the business environment for Hong Kong-owned enterprises in Guangdong

Hong Kong-owned enterprises had invested in a large number of manufacturing operations in the Mainland. Recent changes in several policy areas in the Mainland, such as the adjustments to policies related to the processing trade, the implementation of the Labour Contract Law and Enterprise Income Tax Law, as well as the tightening of environmental standards, would all have an impact on

these enterprises.

(c) Measures undertaken by the HKSAR Government to assist the trade

The HKSAR Government had been staying in close communication with the trade, reflecting the trade's concerns and conveying recommendations to the Mainland authorities. In gist, it had adopted the following multi-pronged approach to assist enterprises –

- using various channels to reflect the trade's views and to make recommendations to the Mainland authorities;
- exploring with the trade measures to cope with the adjustments in the Mainland's processing trade policy through the "Task Force to Support the Processing Trade" established in 2007;
- cooperating with the Guangdong Province to assist enterprises to restructure and/or upgrade through the "Hong Kong/Guangdong Expert Group on the Restructuring and Upgrading of the Processing Trade";
- organizing seminars to enhance the understanding of the trade on new legislation and measures;
- encouraging Hong Kong enterprises to relocate their operations to the central and western regions of the Mainland, including organizing trade delegations to visit these sites;
- assisting SMEs to upgrade and restructure through the "SME Funding Schemes"; and
- assisting enterprises to upgrade their technological knowhow and develop new markets, etc. through industry support bodies such as the Hong Kong Productivity Council (HKPC) and the Hong Kong Trade Development Council (HKTDC).

8. DSCED(CI)3 said that the efforts of the Government and the trade had yielded some success. For instance, in respect of processing trade, after reflecting the trade's concerns on cashflow arising from the Mainland's new measures in July 2007 on the standing book deposit requirement, the Mainland authorities promulgated an announcement in September 2007 allowing the trade to fulfill the requirement by a number of means. She assured members that the Administration would continue its efforts to provide assistance to Hong Kong businessmen operating in the Mainland.

Presentation by deputations

Hong Kong Metal Merchants Association

9. Mr LAI Hin-fai, Vice-chairman of the Hong Kong Metal Merchants Association said that the metal industry was suffering from increasing operating cost due to the implementation of the Labour Contract Law and appreciation of Renminbi. Moreover, some metal factories were not granted renewal of licence due to the adjustments to policies related to the processing trade. He said that although it was national policy to upgrade or relocate, there were genuine difficulties for the metal industry to cope with the change. As a result, some of these metal factories would have to trim their operations, close down or relocate back to Hong Kong.

Federation of Hong Kong Machinery and Metal Industries

10. Mr TING Siu-kwan, Vice Chairman of the Federation of Hong Kong Machinery and Metal Industries echoed Mr LAI's views about the hardship of the metal industry caused by the introduction of new Mainland laws and policies. He added that the metal industry had barely benefited from the liberalization measures under CEPA. It was also suffering from the global price surge of metals as well as economic downturn in the United States resulting in decreased export. At present, the industry had to rely on the Mainland's domestic market in order to sustain its business viability. He said that this would adversely affect Hong Kong's economy and the livelihood of workers working in the metal factories owned by Hong Kong businessmen operating in the Mainland.

Hong Kong Chinese Prepared Medicine Traders Association

(LC Paper No. CB(1)1550/07-08(01) -- Submission (*Chinese version only*))

11. Mr TAM Kwok-leung, Chairman of the Hong Kong Chinese Prepared Medicine Traders Association said that medicine traders operating in the Mainland were encountering difficulties because of the Mainland's tightening control of foreign investments, environmental standards and product quality, implementation of Labour Contract Law and Enterprise Income Tax Law, price surge of raw materials and insufficient intellectual property (IP) protection. He hoped that the Government could establish a mechanism to review regularly the difficulties encountered by Hong Kong businessmen operating in the Mainland so as to help them alleviate their hardship.

Hong Kong Economic and Trade Association Ltd

12. Mr LUN Wing-yuen, Treasurer of the Hong Kong Economic and Trade Association Ltd said that the Hong Kong enterprises operating in the Mainland had been hard hit by the implementation of the Labour Contract Law. He called on the Administration to provide every possible assistance to the affected enterprises.

Hong Kong Small and Medium Enterprises Association
(LC Paper No. CB(1)1583/07-08(02) -- Submission (*Chinese version only*))

13. Mr Danny LAU, Chairman of the Hong Kong Small and Medium Enterprises Association doubted whether efforts made by the Administration in conveying the views and concerns of Hong Kong's trades and industries had been fruitful. He also commented that the assistance provided by HKPC and HKTDC was not proactive enough to tackle the problems encountered by Hong Kong enterprises. On the Labour Contract Law, he said that factories could hardly sustain the operation if the requirements for workers to work 5 days a week, 8 hours a day and a maximum of 36 hours overtime per week were fully complied with. While the new Labour Contract Law had commenced operation on 1 January 2008, it was unreasonable for the Law to take retrospective effect. Instead, a transition period of two years should be provided to allow the enterprises to cope with the change. On the processing trade, in addition to the increase in tax, there were an increasing number of products prohibited from exportation resulting in the shutting down of affected factories. He also said that with the Mainland policy to assist its small and medium-sized enterprises (SMEs), Hong Kong enterprises, which were mainly SMEs, were facing keen competition from their Mainland counterparts.

Hong Kong Plastics Manufacturers Association Ltd
(LC Paper No. CB(1)1583/07-08(04) -- Submission (*Chinese version only*))

14. Mr LUK Pak-shing, Vice President of the Hong Kong Plastics Manufacturers Association Ltd, expressed that the lack of implementation details of the Labour Contract Law had given rise to labour disputes as a result of different interpretations of the Law by the employers and employees. In addition, there were various taxes and fees charged by different local governments which could adversely affect the viability of the plastic manufacturers.

Hong Kong Plastics Recycling Association Co. Ltd
(LC Paper No. CB(1)1536/07-08(05) -- Submission (*Chinese version only*))

15. Mr Alfred CHAN, Treasurer of the Hong Kong Plastic Recycling Association Co. Ltd said that despite the transformation of factories from "processing with supplied materials" to foreign-invested enterprises, they were in face of the imposition of various taxes by the Central and local governments. For instance, although it was prescribed in the statute that enterprises would pay tax according to their profits, local governments might predetermine profit indicators for enterprises. He also expressed grave concern about the long time taken in processing applications for environmental certificates because of the restructuring of the relevant environmental authority of the Mainland as well as the high transportation cost arising from the division of the functions and duties of three different Mainland authorities responsible for customs clearance and product inspection.

The Hong Kong Chinese Importers' & Exporters' Association

(LC Paper No. CB(1)1583/07-08(05) -- Submission (*Chinese version only*))

16. Mr Sterry CHONG Shing-nam, Vice President of the Hong Kong Chinese Importers' and Exporters' Association, said that Hong Kong enterprises operating in the Mainland were suffering from a series of tightening control measures, including the cancellation of some preferential treatments to foreign-invested enterprises, appreciation of Renminbi, various tax items and inconsistent tax calculation methods by different governments, price surge of oil, different interpretations of the Labour Control Law by employers and employees and the lack of a centralized employees' social security fund. To rein in possible loss due to grey areas of these laws and policies, some of these enterprises might resort to winding up their business in the Mainland.

Hong Kong and Kowloon Electrical Appliances Merchants Association

17. Mr Peter CHU Ka-lok, Chairman of the Hong Kong and Kowloon Electrical Appliances Merchants Association called on the Administration to reflect to the relevant Mainland authorities the concerns raised by members of the Association engaging in the retail sector, such as long lead time for issuing and canceling a business registration, requirement to apply for a business registration afresh for setting up branches in other provinces, lack of an upper limit for calculating the retirement benefits of an employee in the Labour Contract Law and inadequate complaint channel to combat fake products.

Hong Kong General Chamber of Commerce

(LC Paper No. CB(1)1583/07-08(06) -- Submission (*Chinese version only*))

18. Ms Mayee LANG, Business Analyst of the Hong Kong General Chamber of Commerce attended the meeting. The views of the Hong Kong General Chamber of Commerce were given in its submission.

The Democratic Party

(LC Paper No. CB(1)1550/07-08(02) -- Submission (*Chinese version only*))

19. Mr Andrew FUNG Wai-kwong, Deputy Spokesman, Economic Affairs of the Democratic Party said that the Democratic Party supported the initiative to enhance trade relations between Hong Kong and the Mainland. However, due to the different systems practised in the two places, Hong Kong businessmen might experience various difficulties and even unjust treatment when dealing with business in the Mainland. He then referred to a survey conducted by the Democratic Party in 2006 and highlighted that while Mainland authorities handled matters in a discriminatory manner, the rights of Hong Kong citizens were not adequately protected. The difficulties faced by Hong Kong citizens in distress were further aggravated because of the language barrier and lack of understanding about the Mainland's systems. He urged the Administration to convey grievances of Hong Kong citizens to the Mainland governments and authorities. In this connection, he suggested that the three Mainland Economic and Trade Offices

(ETOs) and the Beijing Office (hereinafter referred to "Mainland Offices") and, subject to the nature of the cases, the Chief Executive, if appropriate, should take up the matters with relevant Mainland authorities.

20. In response to Mr Jeffrey LAM's enquiry, Mr FUNG clarified that the target of the survey conducted by the Democratic Party in 2006 was general Hong Kong citizens instead of Hong Kong businessmen. At the request of the Chairman, he agreed to provide addition information about the survey after the meeting.

Democratic Alliance for the Betterment and Progress of Hong Kong (DAB)
(LC Paper No. CB(1)1623/07-08(09) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued on 21 May 2008*)

21. Mr Bruce LAU Lung-fei, Commerce and Industry Policy Deputy Spokesperson of DAB said that on adjustments to policies related to the processing trade, HKSAR Government should strengthen communication with the Mainland governments for better assistance to Hong Kong enterprises operating in the Mainland in areas such as support measures for upgrading and restructuring, research and development, and financial arrangements for compliance with environmental measures. On Labour Contract Law, while the Democratic Alliance for the Betterment and Progress of Hong Kong supported the legislative intent to improve labour relations through the implementation of the Labour Contract Law, its implementation details should be improved. He said that DAB's detailed views in this regard, which had been forwarded to the relevant Central authority, would be submitted to the Administration shortly.

Labour Action China
(LC Paper No. CB(1)1623/07-08(01) -- Submission)
(*tabled at the meeting and subsequently issued on 21 May 2008*)

22. Ms Monina WONG, Director of Labour Action China said that her organization was dedicated for the study of labour issues in the Mainland. She pointed out that some Hong Kong enterprises operating in the Mainland did not comply fully with the statutes and hence competed unfairly with those adhering to statutory requirements. Moreover, workers working for the non-compliant enterprises were exposed to exploitation, risks of occupational diseases and even lethal threats. In view that financial assistance was provided by the HKSAR Government to enterprises, she suggested that the Administration should assess whether applicant companies had taken effort on the issues of environmental and labour protection when scrutinizing their funding applications in a bid to promote best employer practices.

Worker Empowerment
(LC Paper No. CB(1)1536/07-08(06) -- Submission (*Chinese version only*))

23. Ms CHOI Yuk-yuk, Coordinator of Worker Empowerment said that Worker Empowerment was a labour union servicing non-local workers in the Pearl River Delta. She pointed out that the economic success of Hong Kong enterprises

operating in the Mainland in the past two decades was very much the result of workers' contribution. In a survey conducted by Worker Empowerment, it was found that about 20% Hong Kong enterprises operating in Shenzhen had not signed labour contracts with their workers. Among those who signed, malpractices were identified, such as the use of English in labour contracts for workers who did not understand the language and ambiguous contract terms, etc. She stressed that enterprises should not evade their responsibilities as it was international trend to enhance labour and environmental protection.

24. Ms WU Shui-sun, China Officer of Worker Empowerment supplemented that the provisions of the Labour Contract Law purported to enhance conscientious investment behaviour. She called on Hong Kong enterprises to comply with the Mainland's Labour Contract Law for creating a harmonious labour relationship.

Students and Scholars Against Corporate Misbehaviour

(LC Paper No. CB(1)1536/07-08(07) -- Submission (*Chinese version only*))

25. Mr LEUNG Pak-nang, President of Students and Scholars Against Corporate Misbehaviour said that workers deserved to share the fruit of economic success. However, despite the implementation of the Labour Contract Law, they still fared worse than their counterparts in other places in terms of labour rights. While the Administration was assisting Hong Kong enterprises to convey their views on the Labour Contract Law to the relevant Mainland authorities, he urged the Administration to strike a careful balance between the interests of employers and employees.

26. Ms CHAN Kwai-ying, Project Coordinator of Students and Scholars Against Corporate Misbehaviour cited a number of cases to illustrate that although Hong Kong enterprises might fully comply with the laws of Hong Kong, their operation in the Mainland had been reported breaching laws of the Mainland. While enterprises might seek financial assistance from the Government's SME Loan Guarantee Scheme (SGS), she called on the Administration to increase transparency of the operation of the SGS for public inspection. Consideration should also be given to adding corporate social responsibility as one of the vetting criteria and enacting legislation on corporate social responsibility in the long run.

The Chinese General Chamber of Commerce

(LC Paper No. CB(1)1623/07-08(02) -- Submission (*Chinese version only*))

(*tabled at the meeting and subsequently issued on 21 May 2008*)

27. Mr LEUNG Wai-ho, Standing Committee Member of the Chinese General Chamber of Commerce said that Hong Kong enterprises operating in the Mainland were adversely affected by a host of factors. These included adjustments to policies related to the processing trade, appreciation of Renminbi, surge of labour cost, implementation of the Labour Contract Law, insufficient supply of electricity and stringent environmental control, price increase of raw materials, cancellation of concessionary tax for export products, introduction of a uniform tax regime for all enterprises and advance payment of profit tax, recalls of Chinese products,

increasing land premium, and ante-natal leave for female employees and parental leave for male employees to be implemented in the Guangdong Province. As a result, about 4,500 Hong Kong enterprises had already shut down their operation in the Mainland and more would be closed in the near future. On Labour Contract Law, he called on the Administration to urge the relevant Mainland authority for a longer consultation period and play an active role in facilitating discussion among employers, employees and the regulatory body. He also shared with the meeting efforts made by the Guangdong ETO and other Mainland authorities in alleviating enterprises' hardship.

Mr YU Fung-chuen

(LC Paper No. CB(1)1623/07-08(03) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued on 21 May 2008*)

28. Mr YU Fung-chuen pointed out that Hong Kong businessmen were the major investors of the Mainland, in particular in the early years when the Mainland started to adopt the open door policy. In September 2004, the total investment made by Hong Kong businessmen in the Mainland was US\$238.5 billion. However, with the rapid development of the Mainland's economy, preferential treatment previously offered to attract Hong Kong investments had been reducing progressively. The difficulties faced by Hong Kong businessmen were further aggravated by the problem of corruption in the Mainland. He said that in many commercial disputes, although the Mainland courts had ruled in favour of the concerned Hong Kong businessmen, they were not compensated of their losses due to the local governments' reluctance to execute the rulings. He called on the Hong Kong deputies to the National People's Congress (NPC) to help protect rights of Hong Kong citizens and the Administration to set up a mechanism with the Mainland authorities to resolve unsettled cases.

Ms CHENG Suk-ling

(LC Paper No. CB(1)1623/07-08(04) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued on 21 May 2008*)

29. Ms CHENG Suk-ling said that Hong Kong businessmen operating in the Mainland were suffering from financial abuse, corruption of local governments and perjury in courts causing them huge economic losses.

Ms CHOI Mei-ying

(LC Paper No. CB(1)1623/07-08(05) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued on 21 May 2008*)

30. Ms CHOI Mei-ying said that many Hong Kong businessmen were treated unfairly in the Mainland. She cited a number of cases to illustrate that although the aggrieved Hong Kong businessmen had pursued their cases through the Mainland's complaint handling mechanism, most of their efforts were in vain because of the ineffectiveness of the mechanism. She called on the HKSAR Government, in particular the Beijing Office, to render assistance to Hong Kong businessmen in distress.

Mr WONG Yik-kam

(LC Paper No. CB(1)1623/07-08(06) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued on 21 May 2008*)

31. Mr WONG Yik-kam said that according to the Constitution of the People's Republic of China, the judiciary was under the leadership of the Communist Party. In other words, there was no judicial independence in the Mainland to ensure justice. While Hong Kong deputies to the NPC were conferred with the power under Article 21 of the Basic Law to participate in the work of the highest organ of state power, he considered that in their handling of grievances raised by Hong Kong businessmen operating in the Mainland, they should not only get the message across but also ensure referred cases were duly followed up by the Mainland authorities. He also urged the HKSAR Government to enhance its role in protecting the interests of Hong Kong investors.

Mr LAM Wai-wun

(LC Paper No. CB(1)1623/07-08(07) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued on 21 May 2008*)

32. Mr LAM Wai-wun thanked Mr SIN Chung-kai for requesting the Panel to conduct the public hearing to provide a forum for Hong Kong businessmen to share their mishaps. He also called on Members, the HKSAR Government, the media and the society as a whole to give more concern about the unfair treatment of Hong Kong businessmen operating in the Mainland.

Mr SIT Po-yan

(LC Paper No. CB(1)1623/07-08(08) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued on 21 May 2008*)

33. Mr SIT Po-yan thanked Mr SIN Chung-kai, Mr CHAN Kam-lam, Miss CHOY So-yuk and Mr Ronny TONG for their concern about the rights of Hong Kong businessmen operating in the Mainland. He urged the Constitutional and Mainland Affairs Bureau to make public information relating to the complaints about the unfair treatments of Hong Kong citizens in the Mainland. He also urged the Hong Kong deputies to the NPC to increase their transparency of their work in handling citizens' complaints. In this connection, he called on other attending deputations to unveil the unfair treatments they received in the Mainland thereby raising public awareness of the matter.

Discussion

Measures to help Hong Kong enterprises operating in the Mainland

34. Mr CHAN Kam-lam expressed concern about the intensified business environment faced by Hong Kong enterprises operating in the Mainland. He was also concerned that a noticeable number of these enterprises might close down or had already closed down their businesses because of the lack of implementation

details of the Labour Contract Law, the appreciation of Renminbi and barriers of entry to the Mainland market, etc. Pointing out that their closure would have an adverse effect on the labour sector in the Mainland, he considered it incumbent for the Administration to take up the issues with the relevant Mainland authorities.

35. Mr Andrew LEUNG said that due to changes in policies, implementation of new laws and the appreciation of Renminbi, Hong Kong enterprises operating in the Mainland were enduring unprecedented difficulties they had ever encountered in the past 30 years. According to a survey conducted by some major local chambers of commerce, about 10,000 enterprises concerned might close down their operation in 2008 as a result of the intensified business environment in the Mainland. He doubted if the Administration had estimated the implication of the closure of these enterprises on Hong Kong in respect of the labour market and its economy, and whether suitable measures had been/would be devised.

36. Expressing similar concern, Mr Jeffrey LAM said that the new laws and regulations in respect of labour and environmental protection, regulation of the processing trade and global economic downturn had resulted in the most difficult operating environment for Hong Kong enterprises, forcing a considerable number of them to close down their businesses in the near future. While expressing concern that this would adversely affect Hong Kong's economy and the livelihood of Hong Kong citizens working in the Mainland, he was keen to ensure that suitable measures would be taken by the Administration to alleviate the trade's hardship.

37. Mr WONG Ting-kwong expressed grave concern about the new Labour Contract Law which took retrospective effect from its commencement on 1 January 2008. He opined that with a lack of implementation details, it might be subject to different interpretations by different local governments. He urged the Administration as well as Hong Kong deputies to the NPC and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC) to enhance efforts in conveying Hong Kong businessmen's concerns to the Mainland authorities.

38. DSCED(CI)3 acknowledged the difficulties encountered by Hong Kong enterprises operating in the Mainland. In this connection, she highlighted the measures adopted by the Administration to assist the trades and industries, as follows:

(a) Labour Contract Law

The Administration had spared no efforts in relaying the views and concerns of Hong Kong enterprises to the Mainland authorities. It had canvassed views of the trade on the two consultations conducted on the implementation of the Labour Contract Law in 2006 and 2007 and reflected them to the relevant authorities. In fact, it had also just conveyed the views of the trade on the draft Implementation Regulations of the Labour Contract Law to the Mainland.

(b) Other Mainland policy adjustments

The Administration had on many occasions brought up to various levels of the Mainland governments, including the Central authorities and the Guangdong Provincial Government, the views and suggestions raised by the trade. These included their concerns on the implementation details of new rules and regulations, possible support or mitigation measures (such as the provision of centralized facilities in environmental parks in Guangdong, one-stop services for restructuring, and preferential treatment for relocated enterprises) and the provision of transition periods for the introduction of new policies. The Mainland authorities had accepted some of the suggestions. The acceptance of cash and bank guarantees as a means to fulfill the standing book deposit requirement was a case in point.

The Guangdong ETO had organized various seminars to enhance understanding of the trade on new legislation and policies. Relevant information was also disseminated through the ETO's newsletters. In addition, HKTDC had been assisting Hong Kong enterprises to develop new markets. Funding had also been provided for HKPC to join hands with the trade associations to launch a new initiative to proactively assist the trade to upgrade, transform and relocate, including about 40 industry-specific/cross-sector seminars, provision of on-site technical assessment and advice to factories, etc.

It was national policy to restructure, upgrade and relocate industries, to enhance labour protection and to step up environmental protection. The policy adjustments were also in line with international trend. While the adjustments to policies would inevitably bring impact on the operation of Hong Kong-owned enterprises, some of them might take the opportunity to upgrade their business.

39. Mr Andrew LEUNG doubted whether the views expressed by Hong Kong trades and industries on the implementation of the Labour Contract Law were fully considered by the Mainland authorities upon consultations. In this connection, Mr WONG Ting-kwong opined that the Mainland authorities had failed to address fully the views and concerns expressed by Hong Kong businessmen because of the lack of enough time for conducting the consultations and compiling collected views.

40. On the provision of industry-specific/cross-sector seminars by HKPC, Mrs Sophie LEUNG said that as not all Hong Kong enterprises had joined trade associations, relevant information should be disseminated by the Trade and Industry Department and Guangdong ETO.

Measures to help aggrieved Hong Kong businessmen operating in the Mainland

41. Mr CHAN Kam-lam said that he had handled many aggrieved cases involving victims of Hong Kong businessmen operating in the Mainland. He enquired about the role of HKSAR Government in protecting their investments outside Hong Kong.

42. Miss CHOY So-yuk said that she was a Hong Kong deputy to the NPC. During its meeting in March 2008, she had raised to the NPC that many Hong Kong citizens were treated unfairly in the Mainland and Hong Kong businessmen were victims of commercial disputes in many cases. Nevertheless, there had been no reply from the relevant Mainland authorities so far. She had also brought up the issue to the Chief Executive. As she was aware, despite the Mainland courts had ruled in favour of the concerned Hong Kong businessmen, remedial actions were not duly taken by the relevant Mainland authorities. As such, she urged the HKSAR Government to play a more active role in resolving such cases. If situation warranted, the Administration should consider joining forces with the Mainland authorities to ensure full settlement of the cases.

43. Expressing similar concern, Mr SIN Chung-kai opined that the Mainland Offices should step up their assistance provided for Hong Kong businessmen operating in the Mainland. In this connection, he suggested that the Mainland Offices should compile and analyze the complaints lodged by aggrieved Hong Kong businessmen such that loopholes of existing laws, regulations and policies could be identified for follow up with the Mainland authorities accordingly. Consideration should also be given to providing enquiry services to Hong Kong businessmen on general legal matters about the Mainland.

44. Mrs Sophie LEUNG said that she had handled many aggrieved cases involving victims who were Hong Kong businessmen, particularly from the textile and clothing sector. In her experience, it was very difficult to resolve the cases personally. She pointed out that in the past 30 years, Hong Kong businessmen had contributed to the rapid economic growth of the Mainland, in particular the Pearl River Delta region, and had tackled problems on their own. As the Mainland's future economic growth would increasingly gear the development of regional co-operation, trade relations between the Mainland and other places, including the handling of commercial disputes, should be dealt with according to international standard, i.e. government-based instead of individual-based. To strengthen assistance to Hong Kong businessmen, she also suggested that the Mainland Offices should analyze the aggrieved cases for alerting Hong Kong businessmen of the identified loopholes, provide practical assistance to the aggrieved Hong Kong businessmen and, where appropriate, bring up the issues to the top echelon of the Central Government.

45. Mr WONG Ting-kwong shared the concern expressed by some attending deputations/individuals about the unfair treatment of Hong Kong businessmen operating in the Mainland. As the terms of reference of the Panel were, inter alia, to monitor and examine the relevant issues in a policy perspective, he suggested

that deputations/individuals should seek assistance from the Complaints Division of the Legislative Council Secretariat, and Members who were also Hong Kong deputies to the NPC or representatives of Hong Kong members of the CPPCC to pursue their cases. He also reminded the HKSAR Government to strive for better communication with the Central and local governments of the Mainland so as to foster better assistance to the Hong Kong businessmen in distress.

46. DSCED(CI)3 replied that the Mainland Offices would strive to provide assistance to Hong Kong residents in distress, except for cases involving private contractual disputes, cases under judicial proceedings and those under investigation by the relevant Mainland authorities for which it would be inappropriate for the Mainland Offices to handle. For cases relating to policy issues, they would be reflected to the Central authorities or the relevant provincial or municipal governments. For other cases handled, they would be referred to the relevant authorities, such as the letters and complaints bureaux of various localities. Under the principle of "One country, Two systems", the Mainland and the HKSAR were under separate jurisdictions and for cases under the Mainland's jurisdiction, HKSAR Government's role would be confined to referral of the cases. The decision/action on such referred cases would rest entirely with the relevant Mainland authorities. DSCED(CI)3 also pointed out that the four Mainland Offices had a geographical coverage of the entire Mainland.

47. In response to the subject of funding schemes raised, DSCED(CI)3 explained that the Government's role under the SGS was a guarantor for up to 50% of the loans approved. The loans were approved by participating lending institutions (PLIs), based on merits of individual applicant enterprises, such as their financial status, management structure and business performance. Whether the enterprises were involved in breaches of regulations and thus carried higher risks should be one of the factors to be considered by the PLIs in approving the loan applications.

Conclusion

48. In concluding the discussion, the Chairman urged the Administration to enhance communication with the Mainland authorities through the existing mechanism, with a view to assisting Hong Kong businessmen in need, in particular the individual investors, to resolve the problems. He suggested that the Administration should consider assisting Hong Kong businessmen to better understand the Mainland's laws, regulations and policies. DSCED(CI)3 took note of the Chairman's comment. She also undertook to relay the Chairman's request to the Mainland Offices via the Constitutional and Mainland Affairs Bureau.

49. The Chairman thanked deputations/individuals for attending the meeting. He also suggested them to consider approaching the Complaints Division of the Legislative Council Secretariat to follow up their aggrieved cases.

V. Any other business

50. There being no other business, the meeting ended at 4:45 pm.

Council Business Division 1
Legislative Council Secretariat
16 June 2008