

立法會
Legislative Council

LC Paper No. CB(1)1322/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/CI/1

Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 16 December 2008, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Vincent FANG Kang, SBS, JP (Chairman)
Hon WONG Ting-kwong, BBS (Deputy Chairman)
Hon Fred LI Wah-ming, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
Dr Hon LAM Tai-fai, BBS, JP
Hon Tanya CHAN
Dr Hon Samson TAM Wai-ho, JP
- Member attending** : Hon Paul TSE Wai-chun
- Members absent** : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public officers attending** : Agenda Item IV
Mr James CHAN Yum-min
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)

Miss Vivian LAU Lee-kwan
Deputy Director-General of Trade and Industry
(Commercial Relations, Controls & Support)

Agenda Item V

Mr Christopher WONG Kwok-bun, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)

Ms Bonnie YAU Man
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)

Ms Ada LEUNG Ka-lai
Assistant Director of Intellectual Property

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

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Annette LAM
Senior Council Secretary (1)3

Ms Debbie SIU
Legislative Assistant (1)6

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)332/08-09 -- Minutes of meeting held on
21 October 2008)

The minutes of the meeting held on 21 October 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 18 November 2008.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)383/08-09(01) -- List of outstanding items for discussion)

LC Paper No. CB(1)383/08-09(02) -- List of follow-up actions)

3. Members noted that the next regular Panel meeting would be held on 13 January 2009 to discuss the following items proposed by the Administration:

- (a) Progress of the World Trade Organizations (WTO) Doha Development Agenda Negotiations;
- (b) Consultancy study on investment promotion; and
- (c) Enhancement of economic and trade co-operation between Hong Kong and Taiwan.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, item (a) would be deferred to a future meeting, and item (b) would be replaced by "Annual report on investment promotion".)

4. In respect of item (c), Ms Emily LAU suggested that the Panel should conduct a duty visit to Taiwan in view of the recent agreements between the Mainland and Taiwan on direct air, maritime and postal links across the Taiwan Straits (Three Direct Links). The Chairman said that Ms LAU's suggestion could be considered at a future meeting.

5. Members noted that the Administration would provide an information paper to the Panel on the award of contracts for Government Electronic Trading Services post 2009.

IV. Progress update on the support measures for small and medium enterprises arising from the global financial turmoil

(LC Paper No. CB(1)383/08-09(03) -- Administration's paper on progress update on the support measures for small and medium enterprises arising from the global financial turmoil)

LC Paper No. CB(1)403/08-09(01) -- Paper on summary of deputations' views received at the special meetings on 27 October and 1 December 2008 prepared by the Legislative Council Secretariat)

Presentation by the Administration

6. The Deputy Director-General of Trade and Industry (Commercial Relations, Controls & Support) (DDG/TID) briefed members on the latest progress on the implementation of the SME Loan Guarantee Scheme (SGS) and the Special Loan Guarantee Scheme (SpGS), as set out in the Administration's paper No. CB(1)383/08-09(03).

Discussion

Progress on the implementation of SME Loan Guarantee Scheme and the Special Loan Guarantee Scheme

7. Ms Emily LAU said that on the Administration's paper did not provide the number of applications received and rejected by PLIs under the enhanced SGS and the SpGS. She considered such information essential to enable members to have a full picture of the implementation and effectiveness of the schemes. DDG/TID advised that statistics in respect of the enhanced SGS had been provided to members at the special meeting on 10 December 2008. She recapitulated that as at 25 November 2008, 461 applications had been received, of which 46 applications were submitted to TID for processing, 2 applications were withdrawn by applicants, 35 cases were rejected, and 378 cases were being processed by the PLIs. DDG/TID further advised that between 26 November to 7 December 2008, about 600 more applications had been received, of which 64 applications were referred to TID for processing, 28 applications were subsequently withdrawn by applicants, 48 applications were rejected, and 461 cases were being processed by PLIs.

8. Noting that so far only about 10% of the applications received had been referred to TID for further processing, Ms Emily LAU expressed concern about the slow progress of the implementation. She doubted whether the enhanced SGS could effectively help address SMEs' pressing liquidity problem. DDG/TID explained that the statistics as at 25 November and 7 December 2008 were based on information provided by 16 and 21 PLIs respectively and were therefore only part of the total number of applications received and processed by all PLIs. She further pointed out that as at 12 December 2008, TID had received 224 applications under the enhanced SGS, of which 149 applications had been approved, involving a total loan amount of about \$545 million. The average loan size for each application was about \$3.7 million which was not a small sum.

9. DDG/TID advised that to ensure prudent credit assessment, banks might need to conduct factory visits to manufacturing companies for applications involving a larger loan size, while some applications had been held up pending provision of supporting documents from the applicants. To facilitate loan application, a set of standard guidelines had been worked out with the Hong Kong Association of Banks (HKAB) and posted on the TID website to help SMEs better understand the operation, procedures and documentation requirements of the enhanced SGS. Discussion was being held with the HKAB and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies to also

upload the guidelines onto their websites in order to widely publicize the scheme. She said that PLIs were well aware of SMEs' need for urgent liquidity relief and would make their best efforts to expedite the processing of loan applications.

10. As regards the SpGS approved by the Finance Committee on 12 December 2008 and launched on 15 December 2008, DDG/TID advised the meeting that as at 16 December 2008, about 10 PLIs had joined the SpGS. It was expected that some applications would soon be referred to TID for processing. She said that upon receipt of all necessary documentation, TID would complete the assessment of an application within 3 working days.

11. As PLIs had already completed the preliminary vetting of the loan applications, the Chairman questioned why TID would still need three working days to assess the applications. He urged the Administration to shorten the processing time in order to provide timely relief to SMEs. In response, DDG/TID said that the Administration appreciated the difficulties faced by SMEs and would process the applications expeditiously. Additional manpower had been deployed internally for the implementation of SpGS, and non-civil service contract staff would be employed as needed to process the applications.

12. Ms Emily LAU expressed regret that not all PLIs had provided statistical breakdown to TID for compilation. She considered that the Administration should request PLIs to provide on a regular basis progress update and detailed information on the number of applications received, applications approved and being processed, applications rejected and reasons for rejection as well as the loan amount approved by PLIs and the TID under the enhanced SGS and the SpGS. Mr Paul TSE expressed a similar view. He opined that PLIs should be required, as a condition under the schemes, to provide detailed breakdown by industries/business sectors, to enable the Legislative Council (LegCo) Members to keep track of the progress of implementation. In view of the tourism industry's concern that the industry had not been able to benefit from the loan schemes in the past, Mr TSE requested the Administration to provide the breakdown showing also the applications from the tourism industry.

Admin 13. DDG/TID undertook to liaise with PLIs on the provision of detailed breakdown and comprehensive information. She advised that at present, PLIs had been requested to provide the requisite information every two weeks. The Administration would regularly update the Panel on the statistics by industries/business sectors.

14. Mr WONG Ting-kwong expressed concern that so far only 10 out of the 31 lending institutions participating in the enhanced SGS had joined the SpGS. He asked whether or not the remaining 21 PLIs were interested in the scheme, and the timeframe for all interested PLIs to complete the necessary legal procedures and start receiving applications. The Chairman urged the Administration to expedite the completion of legal procedures with all PLIs so as to provide more choices for SME applicants.

15. DDG/TID responded that the draft legal document had been issued to all lending institutions and the response was positive. As individual banks had their own internal procedures, some might take a longer time to examine the legal document. Based on past experience in implementing the enhanced SGS, it was anticipated that more PLIs would complete the necessary legal procedures in the following two weeks. She said that TID would make the best efforts to finalize the arrangements with PLIs so as to provide SMEs with more choices. The list of PLIs on the TID website would be updated twice a day to provide the most update information.

Safeguard measures under the SpGS

16. Mr Jeffrey LAM said that he was given to understand that under the SpGS, a same group of shareholders owning more than one company could apply for loan in respect of only one company. He suggested that some flexibility should be allowed as the companies, though owned by the same group of shareholders, might engage in different business. In response, DDG/TID explained that under the SpGS, all companies (except listed companies) registered and with substantive business in Hong Kong and had been operated for one year as at 15 December 2008 were eligible to apply. However, in view of the guarantee ceiling set for each enterprise under the SpGS, it was considered appropriate to ascertain whether associated companies of an applicant were engaged in businesses of the same nature, and determine whether the associated companies should come under the same guarantee ceiling for that applicant to prevent abuse. She undertook to explore whether more flexibility could be introduced in this respect.

17. Mr WONG Ting-kwong said that it had been brought to his attention that guarantee by a third party, other than the company owner or the shareholder(s) of the company, was required by some PLIs for loan applications. He considered such a requirement unreasonable and sought clarification from the Administration. In reply, DDG/TID said that third party guarantee was not a condition of the scheme. To safeguard against abuse of the scheme, personal guarantee was required from the company owner or, in the case of a limited company, from shareholders together holding more than 50% of the equity interest of the company. She pointed out that the terms and conditions of a loan was a commercial decision of an individual PLI, and SME borrowers who found a particular condition disagreeable could consider applying to another PLI.

Further support measures and long-term policies on the development of commerce and industry

18. Mrs Sophie LEUNG welcomed the Administration's prompt action in increasing the maximum amount of loan under the SpGS from \$1 million to \$6 million, of which a maximum of \$3 million might be used for a revolving credit line. She said that the enterprises, particularly those of the export industry, generally found the enhanced measures helpful in improving their liquidity. She called on the Administration to consider introducing other support measures to help

reduce business operation costs and to explore with the Link Management Limited the feasibility of with-holding rental increase for shops under its management. She also urged the Administration to review and formulate long-term policies and strategies on the development of commerce and industry in order to stimulate and strengthen the economy. She opined that in the long run, instead of relying solely on the Hong Kong Export Credit Insurance Corporation, the Administration should actively examine the feasibility of the provision of insurance cover by local banks to exporters so to keep pace with the practice in overseas advanced economies. Referring to the success of Japan and Korea on developing their own brand names, Mrs LEUNG called on the Administration to introduce concrete supportive measures to promote development of "Brand Hong Kong". The Chairman requested the Administration to take note of the suggestion.

Summing up

19. The Chairman informed the meeting that approval had been given under Rule 16(4) of the Rules of Procedure for him to move an adjournment motion debate on the issue "Predicament faced by the small and medium enterprises due to tightened credit facility from banks" at the Council meeting on 17 December 2008. At the Panel's request, the Administration undertook to provide detailed breakdown on the number of applications under the enhanced SGS, as at 7 December 2008, and the latest position of the SpGS before the debate.

(Post-meeting note: The information provided by the Administration was circulated to members vide LC Paper No. CB(1)439/08-09 on 17 December 2008.)

20. Members agreed to include "Progress update on the support measures for small and medium enterprises arising from the global financial turmoil" in the agenda for the next regular meeting on 13 January 2009.

V. Follow-up to the Copyright (Amendment) Ordinance 2007: (a) refined proposals in relation to the copying and distribution offence under section 119B of the Copyright Ordinance for the Safe Harbour Regulation; and (b) Rental Rights for Comics

(LC Paper No. CB(1)383/08-09(04) -- Administration's paper on follow-up to the Copyright (Amendment) Ordinance 2007

LC Paper No. CB(1)383/08-09(05) -- Paper on follow-up to the Copyright (Amendment) Ordinance 2007 prepared by the Legislative Council Secretariat (background brief))

Presentation by the Administration

21. The Deputy Secretary for Commerce and Economic Development (Commerce and Industry) (DSCED(CI)) briefed members on the Administration's refined proposals in relation to the new business end-user copying and distribution offence under section 119B of the Copyright Ordinance (Cap. 528), and the progress of licensing in relation to the rental rights for comics, as set out in the Administration's paper No. CB(1)383/08-09(04).

22. On the new business end-user copying and distribution offence, members noted that the Administration intended to introduce an amendment bill into LegCo in early 2009 to tackle the vires issue raised by the Department of Justice on the formulation of numeric limits within which the copying and distribution offence would not apply, and to prescribe the numeric limits as a schedule to the principal legislation for consideration by LegCo in one go. On rental rights for comics, DSCED(CI) advised that the Hong Kong Comics & Animation Federation Limited (HKCAF), which represented major comics publishers in Hong Kong, had secured authorization for rental licensing from all local comics copyright owners and also owners of more than 40% of the Japanese comics titles that were available locally. As Japanese comics accounted for a substantial share of the local comics rental market, HKCAF would make continued efforts to secure authorization from a clear majority. While rental shop operators were supportive of the new rental rights for comics, they had reservation over the introduction of the proposed rental licensing scheme in the near future in view of the current economic downturn. As such, the Administration would closely monitor developments including the readiness on the part of relevant stakeholders to roll out the licensing arrangements and on-going discussions between copyright owners and prospective licensees, before appointing a date for bringing the rental rights for comics into effect.

Discussion

Business end-user copying and distribution offence

23. Dr Samson TAM noted that under sections 119B(1) and (2) of the Copyright Ordinance, a person committed an offence, if he, for the purpose of or in the course of any trade or business and on a regular or frequent basis, without the licence of the copyright owner, made for distribution or distributed an infringing copy of a copyright work in a printed form contained in a book, a magazine, a periodical or a newspaper resulting in a financial loss to the copyright owner. Dr TAM opined that appropriate licensing scheme(s) that covered the making or distribution of copies of copyright work(s) and printed work(s) should be made available and put in place prior to the commencement of the provisions. The new provisions should also be widely publicized to minimize the risk of inadvertent breaches. He sought information on the number of licences granted to licensees and users under the licensing schemes, and the publicity and public education initiatives to enhance public awareness and understanding of the new provisions.

24. In response, DSCED(CI) advised members that the copying and distribution offence provision and the related criminal liabilities would come into operation only at such time after a reasonable period had been allowed for stakeholders in the relevant sectors to get prepared and for suitable publicity and public education programmes to be launched. He undertook to provide information on the licensing arrangement and the number of licences granted by the collecting societies representing the book and newspaper publishing industry. On publicity, DSCED(CI) said that a series of publicity and public education activities would be organized to publicize the business end-user copying and distribution offence and the related directors/partners' liability to help users avoid inadvertent breaches. The programmes to be rolled out would be similar to those launched in the run up to the commencement of the business end-user "possession offence" provisions. They would include TV and radio Announcements to Public Interest, advertisements, posters, leaflets, seminars and presentations.

(Post-meeting note: The information provided by the Administration was issued vide LC Paper No. CB(1)672/08-09 on 22 January 2009.)

25. Dr Samson TAM noted the Administration's proposal to replace the two-tier system for calculation of the total retail value by a single tier, i.e. the retail value of a book (or an academic journal), or an article in an academic journal, would be counted towards the total retail value when the user made for distribution or distributed more than 25% of the book (or an academic journal) or a complete article in an academic journal. He said that while the industry was supportive of the proposed simplification which would make the relevant numeric limits more easily comprehensible to business end-users, there was a suggestion that the 25% threshold should be lowered to 20%. He sought the Administration's comment on the industry's request.

26. DSCED(CI) responded that the Hong Kong Copyright Licensing Association (HKCLA), representing major newspaper and magazine publishers, and the Hong Kong Reprographic Rights Licensing Society (HKRRLS), representing major book and journal publishers, had been consulted on the formulation of the numeric limits. HKCLA was supportive of the proposed numeric limits and urged for its early implementation, while HKRRLS suggested to further lower the threshold to 20%. DSCED(CI) said that after careful consideration, the Administration believed that pitching the threshold at 25% would better serve the purpose of striking a reasonable balance between the interests of copyright owners and business end-users. This would be put forward as the recommended numeric threshold. The Administration had informed HKRRLS accordingly. In response to Dr TAM's enquiry about distribution of scanned copies of printed work(s), the Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) advised that in the case of distribution of soft copy through emails, an email to each recipient would be counted as embodying one copy of the scanned printed work(s).

Rental rights for films

27. Mr WONG Ting-kwong referred to the provisions covering rental rights for films and the related rental licensing scheme that came into operation in April 2008. He said that a number of video rental shop operators were gravely concerned that the charge of licence fees by copyright owners, the high price ceiling for rental version of video discs, and the deposit requirements would increase their overhead costs and affect the operation of the rental shops, especially at times of economic downturn. Mr WONG called on the Administration to explore measures to relieve possible hardship caused to rental shop operators and minimize the adverse impact on the business of rental shops. While appreciating that the licensing scheme would enhance copyright protection and was conducive to the sustained healthy development of creative industries in Hong Kong, Mr WONG opined that it was important to maintain a right balance without jeopardizing consumer interests and the sustainability of the video rental industry. He urged the Administration to actively follow up the matter with rental shop operators and video distribution companies/copyright owners by encouraging both sides to work out a mutually acceptable licensing scheme.

28. In response, DSCED(CI) said that the Administration would continue to facilitate dialogue between the two sides and explore room for further improvements to the rental licensing scheme. He undertook to monitor the developments and report to the Panel as and when necessary.

Summing up

29. In concluding the discussion, the Chairman said that the Panel supported in principle the proposed amendments to section 119B of the Copyright Ordinance, the revised formulations of the numeric limits, and the proposal for the numeric limits to be prescribed as a schedule to the principal legislation.

VI. Any other business

Visit to Digital Entertainment Incubation-cum-Training Centre

30. The Chairman said that at the Finance Committee meeting held on 12 December 2008 when considering the funding proposal to extend the project period of the Digital Entertainment Incubation-cum-Training Centre (Centre) by 36 months, some Members suggested that a visit to the Centre be organized so to enhance their understanding of its operation. The Chairman recapitulated that a visit originally scheduled for 21 November 2008 was cancelled due to low enrolment. Another visit would be organized and non-Panel members would also be invited to join the visit.

(Post-meeting note: A visit to the Centre was held on 15 January 2009.)

31. There being no other business, the meeting ended at 3:40 pm.

Council Business Division 1
Legislative Council Secretariat
17 April 2009