

立法會
Legislative Council

LC Paper No. CB(1)1791/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Tuesday, 7 April 2009, at 4:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon Andrew LEUNG Kwan-yuen, SBS, JP (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon WONG Yuk-man
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP

Member attending : Hon Alan LEONG Kah-kit, SC

Members absent : Hon LEE Wing-tat (Deputy Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP

Public officers attending : Agenda Item IV
Mr Gregory SO, JP
Under Secretary for Commerce and Economic
Development

Mr Duncan PESCOD, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Kevin CHOI
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Ms Maisie CHENG, JP
Commissioner for Television and Entertainment
Licensing

Mr Wellington FUNG
Secretary-General of the Film Development Council

Agenda Item V

Mr Gregory SO, JP
Under Secretary for Commerce and Economic
Development

Mr Duncan PESCOD, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Stephen MAK, JP
Acting Government Chief Information Officer

Mr Jason PUN
Senior Manager (Digital Economy Facilitation)
Office of the Government Chief Information Officer

**Attendance by
invitation**

: Agenda Item IV

Hong Kong Chamber of Films Ltd

Mr John CHONG
Representative

Movie Producers & Distributors Association of Hong Kong Ltd

Mr Tony SHU Tat-ming
Executive Secretary

The Lion Rock Institute

Ms Nicole ALPERT
Research Associate

Bliss Concepts Ltd

Mr CHOY Chung-leung
General Manager

Gold Harbour International Films Ltd

Ms Casey CHAN
Independent Producer

Diva Productions Ltd

Ms Barbara WONG
Film Director

Hong Kong Movie Production Executives Association

Mr Sunny CHENG
Chairman

Hong Kong, Kowloon and New Territories Motion Picture Industry Association

Mr Peter LAM
Vice Chairman

Mr Brian CHUNG
Chief Executive

Association of Motion Picture Post Production Professionals (Hong Kong) Limited

Mr FUNG Tze-cheong
Director

Hong Kong Film Directors' Guild

Mr CHEUNG Tung-joe
Honorary Permanent President

Samson Pictures

Mr Samson CHIU
Director

Federation of Hong Kong Filmmakers

Ms Licko CHAN
Administration Manager

Individual

Mr Gordon CHAN
Director

Agenda Item V

Hong Kong Internet Registration Corporation Limited

Mr John STRICKLAND
Chairman

Mr Jonathan SHEA
Chief Executive Officer

The Hong Kong Institution of Engineers

Ir Dr CHAN Fuk-cheung
Vice President

Internet Professional Association

Mr Kenny CHIEN
Vice Chairman - Policy Committee

Mr Gary CHAO
Chief Executive

Hong Kong Computer Society

Mr Allan George DYER
Vice-President of the Information Security Specialist
Interest Division

Civic Party

Mr Leo YAU Lut-pong
Representative

Hong Kong Internet Forum

Mr Christopher TO
Chairman

Mr Davis CHAU
Director

Hong Kong Linux Industry Association

Mr Alan KAN
Chairman

Hong Kong & Mainland Software Industry Cooperation
Association Limited

Mr Duncan CHIU
Chairman

Mr Johnny IP
C.E.O.

Hong Kong Productivity Council

Mr YUNG Kai-Tai
General Manager (IT Industry Development)

Tiglion Consultancy Company Limited

Mr HUNG Yun-yuen
Chief Technology Officer

Information Systems Audit and Control Association
(HK) Chapter

Mr Vincent CHAN
President

Mr Simon CHAN
Secretary

IT Voice

Mr Chester SOONG Tak-kar
Representative

Hong Kong Internet Service Providers Association

Mr Lento YIP
Vice Chairman

Internet Society Hong Kong

Mr Edmon CHUNG
Vice Chairman

Individual

Mr Martin OEI
IT Columnist

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

Staff in attendance : Ms Annette LAM
Senior Council Secretary (1)3

Mr Joey LO
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)6

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)999/08-09 -- Minutes of special meeting held on 11 December 2008)

The minutes of the special meeting held on 11 December 2008 were confirmed.

II. Information paper issued since last meeting

(LC Paper No. CB(1)1142/08-09(01) -- Guide to Filming in Hong Kong 2009-2010)

2. Members noted that the above paper had been issued for the Panel's information.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)1191/08-09(01) -- List of outstanding items for discussion)

LC Paper No. CB(1)1191/08-09(02) -- List of follow-up actions)

3. Members noted that the next meeting would be held on 11 May 2009 to discuss the following items proposed by the Administration:

- (a) Digital terrestrial television update; and
- (b) Progress update on E-Government development.

(Post-meeting note: At the request of the Administration and with the concurrence of the Panel Chairman, an additional item "Retention of the non-civil service position of Secretary-General of the Film Development Council" was included in the agenda for the next meeting.)

IV. Update on Film Development Fund

(LC Paper No. CB(1)1191/08-09(03) -- Administration's paper on progress report on the implementation of the Film Development Fund Scheme)

LC Paper No. CB(1)1191/08-09(04) -- Paper on the update on Film Development Fund prepared by the Legislative Council Secretariat (background brief)

LC Paper No. CB(1)1191/08-09(05) -- Hon Paul CHAN Mo-po's question on Film Development Fund at the Council meeting on 11 March 2009 and the Administration's reply)

Briefing by the Administration

4. At the invitation of the Chairman, the Under Secretary for Commerce and Economic Development (USCED) updated members on the progress of the implementation of the Film Development Fund (FDF) Scheme following the Finance Committee (FC)'s injection of \$300 million on 6 July 2007 to provide financial support for the production of small-to-medium budget films, and to finance projects that would benefit the long-term development of the film industry. Members noted that from October 2007 when the FDF started to receive funding applications for film productions till 29 March 2009, a total of 18 applications had been received. Of these, 11 had been approved with a combined funding of \$30.44 million. On top of this, 24 other film-related projects amounting to \$38.22 million had been approved, including mega promotional events for films, funding support for local industry players to attend overseas film festivals, and the production of an industry handbook. In response to requests from the film industry and as committed to the FC, a review of the FDF had commenced in March 2009 with a view to improving the operation of the FDF to better meet the needs of the Hong Kong film industry.

Presentation by deputations

5. The Chairman welcomed representatives of the deputations to the meeting. He said that written submissions from deputations received before the meeting had been circulated to members and uploaded onto the Legislative Council (LegCo)'s website for public perusal. 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), and their written submissions were also not covered by the said Ordinance.

Hong Kong Chamber of Films Ltd

6. Representative of Hong Kong Chamber of Films Ltd, Mr John CHONG said that the distribution and promotion costs of a small-to-medium budget film usually amounted to 20 to 30% of the production budget. As such, the current funding arrangement whereby the Government contributed 30% of the production budget was insufficient. He urged the Administration to raise the level of the Government contribution to 40% of the production budget. He also criticized the cumbersome application procedures for the FDF and the Government's

over-emphasis on the business viability of the application in the vetting process at the expense of creativity. Mr CHONG opined that a good script was essential for quality film production. He suggested that, when assessing an application, instead of focusing mainly on the sales forecasts, the Panel of Examiners should put more emphasis on the quality of the script submitted.

Movie Producers & Distributors Association of Hong Kong Ltd
(LC Paper No. CB(1)1224/08-09(01) -- Submission (*Chinese version only*))

7. Executive Secretary, Movie Producers & Distributors Association of Hong Kong Ltd, Mr Tony SHU Tat-ming shared the concerns of Hong Kong Chamber of Films Ltd over the cumbersome application procedures, and the limited funding support for small-to-medium budget film productions on the conditions of cost recoupment and profit sharing. He urged the Administration to increase the ceiling of the funding support to small-to-medium film producers. To shorten the assessment time of the funding applications, he suggested that the Fund Vetting Committee (FVC) should consider inviting the applicants to an interview to answer any questions that the FVC might have to raise regarding their applications.

The Lion Rock Institute
(LC Paper No. CB(1)1224/08-09(02) -- Submission (*English version only*))

8. Research Associate, the Lion Rock Institute (LRI), Ms Nicole ALPERT said that LRI was against Government intervention in the film industry which would stifle competition and creativity as well as encourage a culture of dependency and create unnatural incentives for creative talents in Hong Kong to be trained in a field of diminishing attractiveness in the Internet age. She opined that capital should be allocated to the most productive uses and taxpayers' money should not be used to subsidize the film industry which had been in a decline for years in the new media era. She said that if taxpayers chose to support the film industry, they should do so by paying to watch the movies in the theatre or buying DVDs. She urged the Government to abolish the FDF and help the industry by alternative means, including opening up the market in other jurisdictions, easing current restrictions to release the creative people from excessive administrative work.

Bliss Concepts Ltd

9. General Manager, Bliss Concepts Ltd, Mr CHOY Chung-leung said that the current ceiling of \$12 million per film production was insufficient for animated film, given the long lead time (one to two years) for production. He urged the Administration to raise the ceiling of the funding support to small-to-medium film productions, animated films in particular, to cater to the specific needs of the animated film industry. Regarding the Government's requirement for a collection agency to act on behalf of the film producers, he expressed concern over the risk of a third-party participation in the funding arrangements, and urged the Government

to reconsider the need for such an intermediary.

Gold Harbour International Films Ltd

(LC Paper No. CB(1)1191/08-09(06) -- Submission (*Chinese version only*))

10. Independent Producer, Gold Harbour International Films Ltd, Ms Casey CHAN suggested that instead of submitting a full script of the film for assessment, applicants should be allowed to provide an outline of the story to protect their copyrights. She suggested that both the FDF and the successful applicant should be required to contribute 5% of the production budget to cover the start-up costs including the cost for the development of the script, whilst the Government's 5% contribution would be deducted from its 30% contribution.

Diva Productions Ltd

11. Film Director, Diva Productions Ltd, Ms Barbara WONG welcomed the Government's involvement in the film production process which would provide a strong boost to the investors' confidence in the film project concerned. Nevertheless, she urged the Administration to streamline the cumbersome procedures and documentation required.

Hong Kong Movie Production Executives Association

12. Chairman, Hong Kong Movie Production Executives Association, Mr Sunny CHENG called on the Administration to streamline the cumbersome application procedures and simplify the documentation requirement to avoid bogging down filmmakers with excessive administrative red tapes. As film professionals might not have the expertise and necessary resources to handle the the complicated legal documents, seminars should be organized to help them understand the contracts involved. He shared other deputations' view that the \$12 million cap on Government subsidy was too low. Referring to the production costs of big budget films, he urged that the cap be raised to \$15 to 16 million per film production.

Hong Kong, Kowloon and New Territories Motion Picture Industry Association

(LC Paper No. CB(1)1200/08-09(01) -- Submission (*Chinese version only*))

13. Vice Chairman, Hong Kong, Kowloon and New Territories Motion Picture Industry Association, Mr Peter LAM highlighted the following points:

- (a) the amount of paperwork and input that the Government required from film producers was not in proportion to the Government's contribution (30%) of the production budget;
- (b) the requirement for an intermediary collection agency would hinder the cash flow of the small-to-medium film producers;

- (c) in addition to the financial support for production costs, the Government should also assist in the costs of film distribution and promotion; and
- (d) instead of playing a dominant role, the Government should make reference to overseas experience, such as the Korean model, and encourage more private sector participation in the FDF.

Association of Motion Picture Post Production Professionals (Hong Kong) Limited
(LC Paper No. CB(1)1200/08-09(02) -- Submission (*English version only*))

14. Director, Association of Motion Picture Post Production Professionals (Hong Kong) Limited, Mr FUNG Tze-cheong urged that, apart from funding support to the film production industry, the Government should also provide financial support for the local post-production industry and training for advanced studies in post-production services.

Hong Kong Film Directors' Guild
(LC Paper No. CB(1)1200/08-09(03) -- Submission (*Chinese version only*))

15. Honorary Permanent President, Hong Kong Film Director's Guild (Guild), Mr CHEUNG Tung-joe said that the Guild objected to the eligibility criteria that the producer or director of the film project in question should normally have produced or directed at least two films over the past 10 years. The requirement would prevent talented but inexperienced producers/directors, as well as experienced producers/directors who had not made any films over the past 10 years from making use of the FDF and contributing to the development of the local film industry. The Guild also suggested that, with rising production cost, the ceiling of the film production cost currently set at \$12 million per film should be increased to \$15 million. In his view, Mr CHEUNG said that the Government should clarify that the FDF was a Government investment rather than a subsidy to the film industry, and that more emphasis should be put on producing quality films that were internationally competitive, rather than on the number of films produced.

Samson Pictures

16. Director, Samson Pictures, Mr Samson CHIU remarked that the Government should focus on how best to utilize the resources to foster the overall development of the film industry and to strengthen effort to help bring the local film industry to the international arena.

Federation of Hong Kong Filmmakers
(LC Paper No. CB(1)1255/08-09(01) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued via email on 8 April 2009*)

17. Administration Manager, Federation of Hong Kong Filmmakers, Ms Licko CHAN expressed similar concerns about the low level of Government contribution, the cumbersome application and assessment procedures, as well as the undue emphasis on the profitability of the film project to the detriment of creativity. To make the FDF attractive to the film industry, she suggested that the Government should raise the ceiling of the film production cost to \$15 million and the proportion of its contribution to 50% of the production budget, and change the form of its contribution from direct investment to a low-interest loan.

Mr Gordon CHAN Ka-seung

18. Director, Mr Gordon CHAN Ka-seung opined that the effectiveness of the FDF had yet to be known. Given that 11 applications had been approved out of an annual average of 50 local films released, the industry's response to the FDF financing scheme was considered satisfactory. He urged the Government to consider providing funding support for film distribution and promotion of quality films. He opined that the film industry should eventually become self-reliant and the Government contribution should be in the form of an investment rather than a long-term subsidy.

Discussion

Operation of the Film Development Fund

19. Referring to some deputations' criticism against the FDF's rigid eligibility criteria and cumbersome application and vetting procedures, Mr CHAN Kam-lam invited deputations to give specific suggestions on how to streamline the procedures and improve the operation of the FDF. In response, Mr CHEUNG Tung-joe cited as an example the requirement that the film production company applying for the FDF or the producer or director of the film project in question should have normally produced at least two films in the past 10 years for commercial theatrical release in Hong Kong. As the Government contributed only 30% of the production costs while the film production company had to shoulder the remaining risk, Mr CHEUNG considered such a requirement unreasonable and called on the Administration to relax it. Agreeing with Mr CHEUNG that the requirement was an unreasonable barrier for talented but inexperienced producers/directors, as well as experienced producers/directors who had not made any films over the past 10 years, Ms Cyd HO said that the Administration should relax the requirement as soon as possible.

20. While appreciating the civil service mind-set of rule compliance, Mrs Regina IP and Ms Cyd HO urged the Administration to streamline the cumbersome application procedures and expedite the processing of the applications. Ms Cyd HO supported some deputations' call to cut down on the amount of paper work and shorten the processing time by directly engaging the applicants in an interview/group discussion to answer any questions that the FVC and the Panel of

Examiners would want to raise regarding the applications. She also called on the Administration to take note of the deputations' suggestion to subsidize post-production costs, such as those for distribution and marketing, as part of the production budget.

21. Mr Ronny TONG expressed disappointment that the Administration had not done much to streamline the cumbersome procedures and simplify the complicated Production Finance Agreement in response to the industry's requests. He said that the Administration's undue emphasis on the commercial consideration of whether the film production would be profitable had created many unnecessary red tapes for the FDF. Instead of focusing on cost recoupment and profit sharing from the perspective of the FDF's contribution as a Government investment, he urged the Administration to seriously consider the suggestion made by the Federation of Hong Kong Filmmakers to remove the cumbersome procedures and change the nature of Government's involvement from direct investment to a low-interest loan.

22. In response, the USCED said that the "two films in 10 years" requirement was reasonable when measured against the total release of more than 1 000 local films in Hong Kong over the past 10 years. He highlighted the parameters approved by the FC in July 2007 in accordance with which, the Film Development Council (FDC) secretariat had, in consultation with the industry, drawn up detailed terms and conditions, and related contractual arrangements for execution of the contract documentation. The contractual arrangements sought to strike a balance between the protection of public money and allowing an appropriate degree of flexibility for the industry to produce films in line with market practices. Provisions were introduced to encourage small-to-medium budget filmmakers to adopt better management and accounting measures in line with the international best practices, which in turn would enhance the industry's chances of securing commercial financing in the long run. He assured members that the FDC would take into account the views expressed by Panel members and the film industry when reviewing the operation of the FDF. The review would cover areas including the user-friendliness of the applications forms, terms and conditions of Government's funding for film productions, and the effectiveness of the FDF in promoting the long-term and sustainable development of the industry. Consultation sessions would be conducted to seek the views of the stakeholders including the Panel of Examiners, the applicants and various film associations and trade organizations. The Administration would continue to monitor the implementation of the FDF and maintain close liaison with the industry to fine-tune the operation. In this connection, Ms Cyd HO invited the deputations to propose quantifiable indicators for assessing the effectiveness of the FDF. She opined that it was important that the film industry would become self reliant in a free and open market without having to rely on Government resources and support.

23. On the processing of applications, the Commissioner for Television and Entertainment Licensing (CTEL) said that every effort had been made to process

the applications as soon as practicable. The FDC had pledged that the processing of a duly submitted funding application would be completed within one month from the date of receipt. With the support of the Panel of Examiners, this timeframe had been achieved during the past 12 months. To provide flexibility and to tie in with the pace of film production in Hong Kong, successful applicants could start filming as soon as they had been notified of the FDC's determination.

24. On the suggestion of a loan scheme for the film industry, the Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology)A (PAS(CT)A) advised that a Film Guarantee Fund (FGF) was currently in place to facilitate the film industry in obtaining loans from lending institutions to finance film productions through the provision of a 50% guarantee for a maximum loan amount of \$5.25 million per film. However, in view of the prevailing economic climate and the relatively high risk involved, the lending institutions remained cautious in granting loans for filmmaking, and the utilization of the FGF had been low.

25. Citing the experience of some film professionals, Mr Tony SHU Tat-ming said that despite the availability of the FGF guarantee, it was still difficult for filmmakers to obtain loans from the lending institutions. Assets were often required for loan security. To effectively facilitate the film industry's access to film financing, Ms Licko CHAN suggested that the Government should consider providing low-interest loans direct to eligible film production companies and producers instead of acting as a guarantor.

26. Mr Paul TSE agreed with Ms Nicole ALPERT of the LRI that under normal circumstances, public money should not be used for film investment. He however opined that the film industry, being the flagship of the creative industries in Hong Kong, would contribute significantly to the development of service industries as well as tourism, and help enhance the international and cultural image of Hong Kong. As such, he supported the Government initiative to help revitalize the film industry and nurture film professionals at this critical period when the movie industry was facing a difficult time. Mr TSE said that the deputations had raised a number of issues that ought to be looked at carefully during the review. These included whether the Government's contribution should be in the form of a commercial investment or a loan, whether the costs of film distribution and marketing should be regarded as part of the production cost and be subsidized, and whether the FDF should place more emphasis on the nurturing of a new generation of directors, the training of new entrants and the overall development of the film industry. On the form of Government contribution, he suggested the option of a convertible bond whereby the Government funding would initially be a loan but with the option for the Government to change it into an investment. Instead of pure commercial consideration on business viability of the film productions, he said that funding support should be provided to productions with a good script and film projects that would help promote the Hong Kong culture. Noting that a major portion of the production costs usually went to the movie stars, Mr TSE suggested

that a requirement should be set for script writing and back-stage work to have a greater share of the production outlay.

27. Mr WONG Yuk-man opined that the cumbersome procedures and unnecessary red tapes imposed by the Administration on the FDF were a waste of public money as well as a waste of the time and resources of film workers. The undue emphasis on commercial viability and profit sharing at the expense of creativity had thwarted the development of local film talents. He remarked that it was highly unlikely that the Government would provide direct loan to the film industry, and urged the Administration to take immediate action to simplify FDF procedures and to provide greater flexibility and a favourable environment conducive to the long-term and healthy development of the Hong Kong film industry.

28. Ms Emily LAU supported deputations' call of increasing the ceiling of the film production cost to \$15 million per film. On the Production Finance Agreement, she noted that the FDC had developed a set of template legal documents and was preparing a Chinese version of the template for easy reference by the industry. Ms LAU invited deputations to provide feedback to the Government on whether the template had helped them save time and cost in preparing the necessary legal documents.

Training of film professionals

29. Mrs Regina IP invited deputations' views on whether Hong Kong should have its own film college or collaborate with relevant institutions in the Mainland to step up training for local film professionals in various aspects of film production and distribution. Mr Tony SHU Tat-ming said that the FDC had discussed the matter with the film industry for a long time and there was a pressing need for the setting up of a film college to nurture local film professionals. While the Administration was inclined to build on the relevant programmes currently offered by the tertiary institutions in Hong Kong, Mr SHU considered it more practical for the film college to be run by movie veterans to train up a new generation of professionals in various aspects of film production and post-production work. He remarked that it would also be advisable to capitalize on the opportunities for cooperation with the relevant institutions in the Mainland.

Conclusion

30. In concluding, the Chairman called on the Administration to take note of the views expressed by Panel members and the deputations to streamline the application and vetting procedures, and to further improve the operation of the FDF to meet the needs of the film industry.

- V. **Review on administration of Internet domain names in Hong Kong**
(LC Paper No. CB(1)1191/08-09(07) -- Administration's paper on progress update of the review of the administration of Internet domain names in Hong Kong

LC Paper No. CB(1)1191/08-09(08) -- Paper on review on administration of Internet domain names in Hong Kong prepared by the Legislative Council Secretariat (background brief)

Submission from deputation not attending the meeting

LC Paper No. CB(1)1191/08-09(10) -- Submission from Hong Kong Information Technology Joint Council
(English version only)

LC Paper No. CB(1)1200/08-09(07) -- Submission from PCCW Limited
(English version only)

LC Paper No. CB(1)1200/08-09(08) -- Submission from Federation of Hong Kong Industries
(English version only)

LC Paper No. CB(1)1208/08-09(01) -- Submission from Hong Kong IT Alliance Limited
(English version only)

LC Paper No. CB(1)1255/08-09(04) -- Submission from Hong Kong Information Technology Federation
(English version only)
(tabled at the meeting and subsequently issued via e-mail on 8 April 2009)

LC Paper No. CB(1)1255/08-09(05) -- Submission from Hong Kong Human Rights Monitor)
(English version only)
(tabled at the meeting and subsequently issued via e-mail on 8 April 2009)

Presentation by deputations

31. The Chairman welcomed representatives of the deputations to the meeting. He said that written submissions from deputations received before the meeting had been circulated to members and uploaded onto the Legislative Council (LegCo)'s website for public perusal. 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), and their written submissions were also not covered by the said Ordinance.

The Hong Kong Institution of Engineers

(LC Paper No. CB(1)1224/08-09(03) -- Submission (*English version only*))

32. Vice President, the Hong Kong Institution of Engineers (HKIE), Ir Dr CHAN Fuk-cheung said that Internet domain naming system was a public resource and should be administered in the public interest of Hong Kong. He said that the HKIE supported the administration of the ".hk" domain names by an independent, not-for-profit organization and a smaller Board of Directors to focus on strategic and operational governance for efficient and effective management. In addition to professional corporate governance experts with strong experience in corporate management, administration of Internet domain names and/or relevant technologies, the Board should include representatives from IT professional bodies, such as the HKIE members in the Information Discipline to provide input on behalf of the profession as well as the public. HKIE also supported the establishment of a Consultative and Advisory Panel (CAP), engaging a broad spectrum of stakeholders and professionals, to advise the Board. HKIE believed that IT professionals could make unique contributions to CAP in various aspects such as information security, data protection and compliance practice.

Internet Professional Association

(LC Paper No. CB(1)1191/08-09(09) -- Submission (*English version only*))

33. Chief Executive, Internet Professional Association (iProA), Mr Gary CHAO called on the Government to strengthen the governance of the Hong Kong Internet Registration Corporation Limited (HKIRC), and for the Board of Directors to enhance its transparency and openness by widely engaging different stakeholders and interest groups in policy development. The iProA urged the Government to expedite the establishment of CAP, and recommended that the CAP should be independent from the Board of HKIRC and be empowered to advise HKIRC on key issues involving its governance and operation. In this way, CAP would serve a dual role of advising the Board on major issues and facilitating the Board's interaction with the stakeholders. To facilitate healthy development of the local Internet industry, Mr CHAO said that iProA supported the adoption of the registry-registrar model which it believed would facilitate open market competition and in turn provide users with more choices and better Internet services.

Hong Kong Computer Society

(LC Paper No. CB(1)1200/08-09(04) -- Submission (*English version only*))

34. Vice-President of Information Security Specialist Interest Division, Hong Kong Computer Society (HKCS), Mr Allan George DYER said that it was too

early to comment on how well the new institutional arrangements would work in practice. The HKCS was of the view that the new Memorandum of Understanding (MOU) for the Management and Administration of Internet Domain Names in Hong Kong should provide for a high degree of transparency, and domain name administration should be managed in the best interests of Hong Kong in support of Hong Kong's commerce and industries. To enhance people's trust and confidence, ".hk" domains should be subjected to Hong Kong Laws (IT and communications related ordinances). The Hong Kong Domain Name Registration Company (HKDNRC) should take effective action to shut down abused ".hk" domains in a transparent manner, so that stakeholders would be assured that there was no interference with the free flow of information. He said that the HKCS had reservation on whether the registry-registrar model would be in the best interest of Hong Kong and result in an efficient market, and urged the new HKIRC Board to take advice from CAP and engage the community in the discussion on the model.

Civic Party

(LC Paper No. CB(1)1255/08-09(02) -- Submission (*Chinese version only*))
(*tabled at the meeting and subsequently issued via email on 8 April 2009*)

35. Mr Leo YAU Lut-pong, representative of the Civic Party (CP) advised that the CP welcomed the Administration's initiative to improve the corporate governance of HKIRC and enhance the transparency of the administration of the domain name registration system. The domain name system (including top level domains) was a public resource, and it was the Administration's responsibility to ensure that the domains were administered in the best interests of the public. In this regard, HKIRC should be made publicly accountable by improving its corporate governance and transparency. To allay public concern over the Administration's control over HKIRC and possible interference with the free flow of information, the Administration should make the process of selecting appointed directors transparent to ensure the independence of the appointed directors and refrain from interfering with the daily operation of HKIRC. The CP also urged the Administration to expedite the formation of CAP to enable the Internet profession, user groups and the public to participate in the formulation of policies and strategies for domain name administration.

Hong Kong Internet Forum

(LC Paper No. CB(1)1233/08-09(01) -- Submission (*English version only*))

36. Chairman, Hong Kong Internet Forum (HKIF), Mr Christopher TO advised that HKIF supported the proposed changes in principle, and highlighted the following points:

- (a) the process of selecting appointed directors should be made transparent;

- (b) the CAP should have a more balanced composition to better represent the local community; and
- (c) while the implementation of new institutional arrangements were important, HKIRC should not lose sight of its core activities and should address key issues such as the registry-registrar model, pricing strategy review and security issues.

Hong Kong Linux Industry Association

37. Chairman, Hong Kong Linux Industry Association (HKLIA), Mr Alan KAN advised that HKLIA welcomed the changes in HKIRC's Board of Directors and the establishment of CAP. He raised the following issues:

- (a) the domain name registration fee in Hong Kong, which was three times higher than that in the United States, should be lowered to a more reasonable level;
- (b) the procedures for domain name registration in Hong Kong should be streamlined to shorten the lead time (2 to 3 days) for registration which was much longer than that in the United States (15 minutes);
- (c) the procedure for changing the Internet Protocol address of the server after domain name registration should be streamlined to shorten the lead time (2 days);
- (d) measures should be taken to stabilize HKIRC's domain name registration server system which was less stable than the less expensive Linux-based counterparts; and
- (e) HKIRC should strive to promote the international reputation of the ".hk" domain name which represented Hong Kong.

Hong Kong & Mainland Software Industry Cooperation Association Limited
(LC Paper No. CB(1)1200/08-09(05) -- Submission (*English version only*))

38. C.E.O., Hong Kong & Mainland Software Industry Cooperation Association Limited (HMSiCA) Mr Johnny IP made the following points:

- (a) the HKIRC should streamline its membership registration procedures and open up its membership so that all ".hk" registrants could be automatically registered as a HKIRC member;
- (b) The HKIRC should publish a concrete implementation plan on the registry-registrar model which was essential for Internet development of Hong Kong and would encourage Internet service providers in

Hong Kong to develop more business models;

- (c) the annual ".hk" domain name registration fees should be lowered to a level similar to ".com" in the United States;
- (d) HKIRC directors should be more prudent when acting in their capacities as HKIRC directors; and
- (e) HKIRC should take steps to enhance security in ".hk" websites such as reserving funding from the domain name registration fees to subsidize the ".hk" domain owners to perform security checking on their ".hk" websites.

Hong Kong Productivity Council

(LC Paper No. CB(1)1200/08-09(06) -- Submission (*English version only*))

39. General Manager (IT Industry Development), Hong Kong Productivity Council (HKPC), Mr YUNG Kai-Tai remarked that the current business model of the HKIRC in taking up both the registry and the registrar roles, which might at times be conflicting, did not serve the best interest of Hong Kong. He said that the registry-registrar separation model which had been widely adopted in other parts of Asia (except Hong Kong, Macau and Malaysia) would provide a good check and balance between the roles of the policy gatekeeper and the market promoter and therefore, should be adopted.

Tiglion Consultancy Company Limited

(LC Paper No. CB(1)1255/08-09(03) -- Submission (*English version only*))
(*tabled at the meeting and subsequently issued via email on 8 April 2009*)

40. Chief Technology Officer, Tiglion Consultancy Company Limited, Mr HUNG Yun-yuen said that Article 27 of the Basic Law guaranteed the freedom of association, and objected strongly to the proposal that a domain name registrant would automatically become a member of HKIRC.

Information Systems Audit & Control Association (HK) Chapter

41. President, Information Systems Audit & Control Association (HK) Chapter (ISACA), Mr Vincent CHAN said that transparency was a must for HKIRC. On the governance of HKIRC, ISACA was of the view that its Board of Directors should comprise members with a broad skill set on top of technical knowledge. On information security, ISACA suggested that with the Administration's assistance, HKIRC should establish a dedicated security management position to handle security-related issues.

IT Voice

(LC Paper No. CB(1)1233/08-09(02) -- Submission (*English version only*))

42. Representative of IT Voice, Mr Chester SOONG Tak-kar said that to help enhance transparency, a clear set of criteria and the processes for nomination and selection of Board Directors and members of the CAP should be drawn up and made public. Members of the CAP should have a broad set of skills with international perspectives and expertise in information security. In reviewing the MOU with the HKIRC, the Administration should provide for community input in the strategic planning of the HKIRC, set up guidelines governing the use of surplus funds and the release of financial reports to the public. He also urged the Office of the Government Chief Information Office (OGCIO) to more actively participate in the activities of the Internet Corporation for Assigned Names and Numbers (ICANN) and international conferences and forums on domain names administration and Internet governance.

Hong Kong Internet Service Providers Association

(LC Paper No. CB(1)1200/08-09(09) -- Submission (*English version only*))

43. Vice Chairman, Hong Kong Internet Service Providers Association (HKISPA), Mr Lento YIP said that HKISPA was of the view that HKIRC should improve the transparency of its operation and financial position, and lower the fee for domain name registration. HKISPA advocated that service providers, users and the Government should have equal representation in the Board of Directors, and that the registry-registrar model should be adopted in Hong Kong.

Internet Society Hong Kong

(LC Paper No. CB(1)1233/08-09(03) -- Submission (*English version only*))

44. Vice Chairman, Internet Society Hong Kong (ISOC HK), Mr Edmon Chung expressed reservation about the lack of transparency in the appointment mechanism whereby four of the HKIRC directors and all of its CAP members would be appointed by the Government. The ISOC HK was of the view that the ".hk" domain, as a public resource, should be administered in the public interest of Hong Kong, with input from Internet users at large (not just consumers or registrants) as well as industry expertise with international experience and knowledge in domain name business and the security and stability of the Internet. To enhance transparency and public accountability, HKIRC should open up its meetings, make public its financial position and remove the confidentiality undertaking of the directors of HKIRC. Mr CHUNG also urged the Administration to actively participate in international discussions on the subject of domain names which would help deepen the Administration's knowledge in the subject matter.

Mr Martin OEI, IT Columnist

(LC Paper No. CB(1)1233/08-09(04) -- Submission (*Chinese version only*))

45. Mr Martin OEI, IT Columnist said that when appointing directors to the HKIRC Board, the Government should not simply adopt the prevailing principles and mechanisms used in making appointments to other advisory and statutory bodies. He opined that persons having no or holding different political affiliation should be appointed to the Board to ensure political neutrality and public accountability of the Board of Directors. He questioned why a director appointed to the Board had resigned shortly after the appointment in December 2008. He also called for the abolition of the requirement for HKIRC directors to sign confidentiality undertakings which might have the effect of prohibiting directors from consulting the stakeholders who elected them. From the perspective of a user, Mr OEI considered the fees charged by the HKDNRC too high and the registration procedures not user-friendly.

Discussion

Memorandum of Understanding

46. Mr Ronny TONG enquired about the legal status of the MOU and expressed concern over potential problems in enforcement as the MOU was couched in terms of broad principles. In response, the USCED and the Permanent Secretary for Commerce and Economic Development (Communications and Technology) PSCED(CT) said that the text of the MOU had yet to be finalized and the draft set out at Annex D to LC Paper No. CB(1) 1191/08-09 (07) was only an outline to facilitate consultation on the key elements of the MOU. They highlighted that after consulting the Panel, the public, and the CAP, the Government and HKIRC would consider what changes were needed to the principles set out in the draft outline and prepare a final MOU. The MOU, once finalized and signed, would govern the contractual relationship between the Government and the HKIRC in the management and administration of the ".hk" domain names.

Concerns about appointment arrangements, freedom of expression and transparency

47. Ms Emily LAU was disappointed that the Administration had not taken on board members' views as expressed at the Panel meetings in June 2007 and December 2008 about the appointment arrangements for the Board of Directors and the CAP, as well as the need to preserve the freedom of expression and to enhance transparency and public accountability. She called on the Administration and the HKIRC to take note of the Hong Kong Human Rights Monitor (HKHRM)'s concerns about the threat to the freedom of expression and the possible self-censorship in domain name registration, as well as various other suggestions for inclusion in the MOU as set out in its submission (LC paper No.

CB(1)1255/08-09(05)). She invited Mr John STRICKLAND, the Chairman of the HKIRC, to respond to the views expressed by the deputations.

48. In reply, Mr STRICKLAND said that the HKIRC was a simple company entrusted with the management function to receive applications and to tie together a name and a number. Although in theory, the HKIRC had the authority to refuse a certain domain name registration, it had hardly ever done so in practice except under special circumstances when criminal activity was involved. On deputations' concern about freedom of expression, he said that HKIRC had no control over the content of the websites, and users could essentially put whatever they like in their websites. He stressed that the HKIRC was non-political and had no political agenda. He noted the diverse views expressed by the deputations on the issues raised.

49. Noting the concerns expressed by the deputations, Mr Alan LEONG raised the following questions:

- (a) how the subscription fees and annual renewal fees collected by the Hong Kong Internet Registration Corporation Limited (HKIRC) had been applied;
- (b) whether the Administration would consider allowing user organizations, industry bodies and Internet operators to nominate/elect more representatives to the Board of HKIRC and the Consultative Advisory Panel (CAP) in line with the international practice in other jurisdictions to enhance transparency and increase the industry's representation at both the Board and the CAP level,;
- (c) whether the HKIRC would consider opening up all meetings to enhance transparency and public accountability for its management function over the administration of Internet domain names which was an important and valuable public asset;
- (d) whether the HKIRC would consider scrapping the confidentiality undertaking which might prevent the directors from reporting to or consulting the organization/industry they represented;
- (e) whether the Administration would consider separating the role of the registry from the Registrar, thereby allowing a number of accredited registrars to provide registration service to enhance market competition;

At the Chairman's request, the Administration undertook to provide written information on the legal status of the MOU, and in response to the suggestions and comments made by Members and the deputations after the meeting.

(*Post-meeting note:* The information provided by the Administration had been issued to members vide LC Paper No. CB(1)1444/08-09(01) on 28 April 2009.)

50. Ms Cyd HO expressed concern about the changes in the HKIRC Board of Directors whereby the number of directors was reduced from 13 to eight, of which four (50%) were appointed by the Government. Noting that all proposals put to the Board had to be approved by at least 75% of the directors, she was concerned that the Government-appointed directors would be able to veto any proposals which were not accepted by the Administration.

51. In response, USCED explained that the Board had been given wide discretion to formulate proposals on policy issues including the composition, terms of reference, and timing of establishment of the CAP, etc. The 75% approval requirement was meant to ensure that the proposals enjoyed wide support amongst directors, and preferably received unanimous support.

Publication of the consultancy reports

52. Cyd HO noted HKHRM's concern about the partial publication of the reports of the 2006 consultancy study on the institutional framework and corporate governance for the administration of Internet domain names in Hong Kong, and questioned why the Government did not publish the reports in full. The PSCED and the Acting Government Chief Information Officer advised that the published reports had been made available on the Office of the Government Chief Information Officer's website. However, with reference to the provisions of the Government's Code on Access to Information, some parts of the reports were not published as they contained commercially sensitive information and were related to legal proceedings, third party information and business affairs of the company. The HKIRC Board of Directors had been briefed on the report findings at Board meetings.

53. Mr Ronny TONG, Ms Emily LAU and Ms Cyd HO requested that a meeting be held with the Administration and the HKIRC to further discuss the issues of concerns raised at the meeting. The Chairman instructed that the meeting arrangements be discussed at the next regular meeting.

(*Post-meeting note:* At the Panel meeting held on 11 May 2009, members agreed to include the item "Review of administration of Internet domain names in Hong Kong" in the agenda of the regular meeting scheduled for 8 June 2009.)

VI. Any other business

54. There being no other business, the meeting ended at 6:50 pm.

Action

- 25 -

Council Business Division 1
Legislative Council Secretariat
4 June 2009