

立法會
Legislative Council

LC Paper No. CB(1)2960/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/PL/CI/1

Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 17 May 2011, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon WONG Ting-kwong, BBS, JP (Chairman)
Hon Vincent FANG Kang, SBS, JP (Deputy Chairman)
Hon Fred LI Wah-ming, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Tanya CHAN
Hon Albert CHAN Wai-yip

Member attending : Dr Hon PAN Pey-chyou

Member absent : Hon Timothy FOK Tsun-ting, GBS, JP

**Public officers
attending**

: Agenda item IV

Miss Janet WONG, JP
Commissioner for Innovation and Technology

Mr John HUNG Leung-bun
Secretary-General (Testing and Certification)
Hong Kong Council for Testing and Certification

Mr Terence CHAN Sing-sing
Executive Administrator (Accreditation)
Innovation and Technology Commission

Agenda item V

Mr Gregory SO, JP
Secretary for Commerce and Economic
Development

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

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

Ms Ada LEUNG
Acting Director of Intellectual Property

Ms Caroline CHOW
Acting Assistant Director of Intellectual Property

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

Staff in attendance : Miss Rita YUNG
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)2014/10-11 -- Minutes of meeting held on 15 March 2011)

The minutes of the meeting held on 15 March 2011 were confirmed.

II. Information paper issued since last meeting

(LC Paper No. CB(1)2091/10-11(01) -- Information on the financial position of the Applied Research Fund for the period of 1 December 2010 to 28 February 2011)

2. Members noted that the above paper had been issued since the last meeting.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)2147/10-11(01) -- List of outstanding items for discussion

LC Paper No. CB(1)2147/10-11(02) -- List of follow-up actions)

3. Members noted that the next regular Panel meeting would be held on 21 June 2011 from 2:30 pm to 5:30 pm to discuss the following items:

- (a) Rent allowance for officers posted outside Hong Kong;
- (b) Reports on the work of the Hong Kong Economic and Trade Offices and the Office of the Government of the HKSAR in Beijing;
- (c) Small and medium enterprise (SME) funding schemes; and
- (d) Annual progress report of Research and Development Centres.

Under item (c), members would discuss the impact of the earthquake and radiation leakage in Japan on Hong Kong enterprises, and the provision of support measures, including funding schemes, for SMEs in coping with the difficulties amidst the incidents.

4. Following the discussion at the Panel meeting on 19 April 2011, members decided to hold a special meeting on 14 June 2011 at 2:30 pm to receive views from deputations and interested parties on the future direction of the Hong Kong Jockey Club Institute of Chinese Medicine (HKJCICM) in developing and promoting Chinese medicine. The Chairman suggested and members agreed that Kowloon Chamber of Commerce and the Hong Kong Society of Chinese Medicines, which had previously provided their submissions on the issue, would be invited to give views at the special meeting. The Administration and the two shareholders of HKJCICM, namely the Applied Science and Technology Research Institute and the Hong Kong Jockey Club Charities Limited, would also be invited to the meeting. In addition, a general notice would be posted on the Legislative Council website to invite members of the public and interested parties to provide submissions on the subject.

IV. Progress report of the Hong Kong Council for Testing and Certification

(LC Paper No. CB(1)2147/10-11(03) -- Administration's paper on progress report of the Hong Kong Council for Testing and Certification

LC Paper No. CB(1)1893/10-11(08) -- Paper on promoting the development of the testing and certification industry in Hong Kong prepared by the Legislative Council Secretariat (updated background brief))

Presentation by the Administration

5. At the invitation of the Chairman, Commissioner for Innovation and Technology (CIT) briefed members on the work of the Hong Kong Council for Testing and Certification (HKCTC) in promoting further development of the testing and certification industry in 2010-2011, as set out in the Administration's paper (LC Paper No. CB(1)2147/10-11(03)).

Discussion

Hong Kong Accreditation Service

6. Noting that one of Hong Kong's strengths in developing its testing and certification industry was the robust accreditation services provided by the Hong Kong Accreditation Service (HKAS) under the Innovation and Technology Commission (ITC), Mrs Regina IP enquired about the work of HKAS and the international recognition arrangements of Hong Kong's assessment results.

7. In response, Executive Administrator (Accreditation) of ITC (EA(Accreditation)) advised that HKAS provided accreditation for laboratories, certification bodies and inspection bodies located in Hong Kong through the Hong Kong Laboratory Accreditation Scheme (HOKLAS), Hong Kong Certification Body Accreditation Scheme (HKCAS) and Hong Kong Inspection Body Accreditation Scheme (HKIAS) respectively. For tests included in the Test Category of Construction Materials under HOKLAS, applications from laboratories located within the Pearl River Delta Region were also accepted. HKAS ensured that the accredited organizations, including testing laboratories, inspection bodies and certification bodies, were competent in providing the service in accordance with international standards of practice as the service to be provided had been rigorously assessed by independent specialists in the area. Lists of the accredited organizations and their scope of accreditation were uploaded to the website of HKAS. Secretary-General (Testing and Certification) of HKCTC (SGHKCTC) added that the total number of accredited organizations increased from 204 in April 2010 to 216 in April 2011 (+6%). He said that during the period, there were 22 newly accredited organizations while the accreditation status of 10 organizations was discontinued.

8. EA(Accreditation) further advised that HKAS was a member of the International Accreditation Forum, International Laboratory Accreditation Cooperation, Pacific Accreditation Cooperation and Asia Pacific Laboratory Accreditation Cooperation. Through its active participation in international organizations for accreditation, HKAS had so far concluded multilateral mutual recognition arrangements (MMRAs) with over 75 accreditation bodies in about 60 economies. It was now seeking extension of its MMRAs to cover environmental management system certification and product certification.

9. SGHKCTC supplemented that under the Supplement VII to the Mainland and Hong Kong Closer Economic Partnership Agreement (CEPA) signed in May 2010, testing laboratories in Hong Kong were allowed for the

first time to co-operate with designated Mainland organizations in testing products for the China Compulsory Certification (CCC) System on a pilot basis, for four types of products processed in Hong Kong. These products included toy, switches, protective devices and connection devices for electrical installations, information technology equipment, and lighting apparatus. These testing laboratories had to be accredited by HKAS as capable of performing tests for the relevant products. The new measures under CEPA were a good start and had responded to the demand of the industry. These measures would provide Hong Kong's testing laboratories with more opportunities to provide testing services in the Mainland, thus promoting trade between the two places.

10. In response to Mrs Regina IP's further enquiry, Commissioner for Innovation and Technology (CIT) and EA (Accreditation) advised that after accreditation had been granted, accredited laboratories were reassessed the following year and thereafter at intervals not exceeding two years. Surveillance visits would also be conducted. The purpose was to ensure that the standards required for continued accreditation were being maintained. Accredited certification bodies were reassessed on their activities every three years. For inspection bodies, reassessment were conducted two years after the granting of accreditation and thereafter at every two year intervals. Surveillance visit to accredited certification bodies and inspection bodies were conducted routinely at every six month intervals. HKAS might suspend or terminate the accreditation if the accredited organizations failed to conform with HKAS requirements. EA(Accreditation) supplemented that HKAS had over 400 assessors and technical experts for carrying out assessments.

Testing and certification

11. In response to Mrs Regina IP's enquiry about the impact of testing services on Hong Kong enterprises operating in the Mainland, SGHKCTC replied that these enterprises would not encounter difficulty in arranging the samples or products from the Mainland to Hong Kong for testing.

12. Mr Albert CHAN expressed concern about the long term strategic development of the testing and certification industry in Hong Kong. He opined that the Administration should strive to develop Hong Kong into a testing and certification hub in the region and promote the use of testing and certification services by the consumers at large. Sharing a similar concern, Mr Vincent FANG opined that the Administration should focus its effort to the testing and certification services in the trades of Chinese medicines and food, in particular testing services on nutrition labels of pre-packaged food products. Ms Emily LAU also expressed concern whether the

Administration's proposal of disbanding the Hong Kong Jockey Club Institute of Chinese Medicine (HKJCICM) would affect the development of testing and services in Chinese medicines.

13. In response, SGHKCTC advised that the testing and certification services for the textile and garment and the toys and electronics industries were well-established in Hong Kong. HKCTC had identified good opportunities to promote the use of testing and certification services in four selected trades, namely Chinese medicines, construction materials, food and jewellery, where there were potential strong demand for the services.

14. SGHKCTC further advised that HKCTC's Panel on Promoting Testing and Certification Services in Chinese Medicines Trade agreed that there would be potential demand for authentication of Chinese medicines. HKCTC would coordinate inter-laboratory comparison studies for microscopic examination and physicochemical methods for identification of Chinese herbal medicines. These studies were essential for testing laboratories to demonstrate their technical capabilities when applying for accreditation from HKAS. HKCTC would also liaise with local universities on the feasibility of arranging short courses for practitioners working in testing laboratories to equip them with the necessary technical skills.

15. CIT added that since the coordination of work on promoting Chinese medicine development in Hong Kong had become increasingly complex, the Administration considered that HKJCICM should be disbanded and that a new Government-led committee would be more effective in coordinating the collaboration of all parties in promoting the research and development (R&D) and testing and certification of Chinese medicines.

16. On the construction materials front, SGHKCTC advised that the major work focus of HKCTC's Panel on Promoting Testing and Certification Services in Construction Materials Trade (the Construction Panel) was on product certification services for construction materials. The Construction Panel had set up a Task Force to work with concerned Government departments and the construction industry to promote wider use of product certification of construction materials in both public and private construction projects.

17. On the food front, SGHKCTC advised that HKCTC's Panel on Promoting Testing and Certification Services in Food Trade had initially identified potential needs for new testing and certification services for food safety management system and authentication of high-valued food. Currently, authentication of high-valued food was primarily based on examination by experienced persons. There was a growing demand for

more objective and scientifically-based tests to increase the confidence in authentication. Advanced analytical methodologies that might be used included DNA sequences analysis, chemical finger-printing, etc. As most of these authentication methods were either not yet available or had not been fully validated for high-valued food, there was a lot of room for further research and development in this area. Recently, a university had successfully applied for funding under the Innovation and Technology Fund to develop testing methods for authentication of selected high-valued food, e.g. abalone and dried scallop. As regards the nutrition labels of pre-packaged food products, HKAS had accredited ten local laboratories for nutrition labeling testing.

18. On the jewellery front, SGHKCTC advised that the local jewellery trade developed standard testing methods for jadeite jade in 2004. The availability of standard testing methods had resulted in improvements to the business of jadeite jade. HKCTC's Panel on Promoting Testing and Certification Services in Jewellery Trade (the Jewellery Panel) had identified a demand for the development of standard testing methods for the other two types of Fei Cui, namely, kosmochlor and omphacite. The Jewellery Panel had formulated a plan to step up the promotion of Hong Kong's existing accredited testing services for jadeite jade and diamond, including the production of pamphlets and stickers for distribution to retail shops through trade associations and entry points in Hong Kong for visitors. The stickers were for retail shops to indicate that they could arrange for the issue of testing reports from accredited laboratories. These initiatives would be launched in a few months' time. Mr Albert CHAN suggested that the Administration should promote Hong Kong's testing and certification services via the website of the Hong Kong Tourism Board.

19. In view of the incident of radiation leakage at the Fukushima nuclear plant in Japan, Mr Vincent FANG enquired about the radiation detection and measurement service in Hong Kong. SGHKCTC responded that HKCTC had conducted a survey to collect information from private testing laboratories in Hong Kong on the radiation detection and measurement service they were providing to the public. The information collected was uploaded on HKCTC's website in April 2011.

Attracting talents

20. Mr Jeffrey LAM declared that he was a director of a testing and certification company. Noting that manpower was one of the factors to enhance the competitiveness of the testing and certification industry, he enquired about the Administration's effort in attracting talents and enhancing the skills and professionalism of practitioners in the industry.

21. In response, CIT advised that to increase the students' awareness and understanding of the testing and certification industry, HKCTC had coordinated industry representatives to give eight career talks in six universities. The Vocational Training Council (VTC) was also organizing seven career talks in the second semester of 2010-2011 Academic Year for graduating students from full time applied science and engineering courses. HKCTC also wrote to all accredited organizations to invite offers for internship for the university and VTC students for summer 2011, and around 90 places had been offered so far. Moreover, some companies already had long-established internship arrangements with universities and VTC. Separately, VTC had organized internship program for its students to gain hands-on experience in the industry.

22. CIT added that for practitioners in the industry, HKCTC, HKAS, VTC and the Government Laboratory had organized more than 60 technical seminars/workshops/short courses since April 2010. Local and overseas experts were invited to share latest technical knowledge on a wide range of topics including testing in specific field (e.g. food, electrical products, toys and radiation), accreditation requirements, measurement uncertainty, chemistry metrology, product certification, etc.

V. Review of the patent registration system in Hong Kong

(LC Paper No. CB(1)2147/10-11(04) -- Administration's paper on review of the patent registration system in Hong Kong

LC Paper No. CB(1)2147/10-11(05) -- Paper on the patent registration system in Hong Kong prepared by the Legislative Council Secretariat (background brief))

Presentation by the Administration

23. At the invitation of the Chairman, Secretary for Commerce and Economic Development (SCED) briefed members on the Administration's plan on how to take forward a review of the patent registration system in Hong Kong, including the scope of the review and the related work plan, as set out in the Administration's paper (LC Paper No. CB(1)2147/10-11(04)).

Discussion

24. Mrs Regina IP suggested that the Administration should consider expanding the current standard patent system, also referred to as a "re-registration" system, to recognize the patents granted by other jurisdictions, such as the United States and Japan. She also opined that having an "original grant" patent (OGP) system in Hong Kong would help the development of the patent industry, and create job opportunities for patent practitioners. Sharing a similar view, Mr Andrew LEUNG opined that establishing an OGP system could foster the development of innovation and technology in Hong Kong.

25. In response, SCED advised that establishing an OGP system in Hong Kong might require a huge amount of resources. If a patent office were to conduct substantive examination, the relevant authority would have to establish a sizeable databank and employ professional experts from various fields before it would be in a position to examine whether a certain invention was novel, innovative and susceptible to industrial application. During the first stage of the review of the patent registration system in Hong Kong, the Administration proposed to focus on whether it should introduce an OGP system with substantive examination outsourced to other patent office(s), and, if so, which office(s), and whether the current "re-registration" system should be maintained, and if so, whether the system should be expanded to recognize the patents granted by other jurisdictions. The Administration had no preconceived notions as to how the current system should further evolve, and would consider opinions from all fronts with a view to formulating the general direction for the further development of the system.

26. SCED supplemented that the Administration planned to issue a public consultation document in the third quarter of 2011. Moreover, to facilitate consensus building and to draw on expertise from the field, the Administration proposed to set up a Consultative Committee comprising representatives from trade organizations, research and development centres, legal professionals, academics and patent practitioners around the same time. The Committee would provide advice to the Administration on the proposed way forward and the implementation plan. For the first stage of the review, the Administration intended to publish the proposed way forward in the first half of 2012.

27. Noting that currently substantive examination did not form a prerequisite for the granting of a short-term patent in Hong Kong, Dr PAN Pey-chyou opined that the Administration should consider revamping the current short-term patent system with a view to providing better protection for the right owners, in particular the local inventors and small and medium

enterprises in the event of patent disputes.

28. In response, Acting Director of Intellectual Property (Ag DIP) advised that a short-term patent applicant might file his application direct with the Patents Registry without substantive examination by any designated patent office. The Hong Kong Patents Registry would grant the short-term patent after satisfying itself that the information required was fully furnished, including a search report prepared by either one of the "designated patent offices" or any International Searching Authority appointed pursuant to the Patent Cooperation Treaty. The search report set out the existence of any prior arts in relation to an invention. It facilitated the assessment or evaluation of the patentability of the invention by the applicant or a third party. A similar "short-term patent" regime existed in other jurisdictions, e.g. the Mainland, Japan, Australia, Ireland and most continental European countries albeit under different nomenclature. Some had chosen to name such "lesser patent" as petty patent, innovation patent or utility model patent.

29. Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) supplemented that during the first stage of the review, the Administration proposed to focus on whether it should retain the short-term patent system as a supplement to standard patents, and if so, whether it should introduce changes to the patentability criteria and/or the term of protection, whether the Administration should introduce changes enabling an applicant/a patent owner/third party to seek substantive examination of the invention before or after the grant of a short-term patent and what other measures should be introduced to provide greater certainty and avoid unnecessary litigations. SCED added that there were not more than five cases of litigation relating to patent disputes in the past three years in Hong Kong.

30. Noting that there were 11 702 applications for standard patents but only 5 353 standard patents had been granted in 2010, Ms Emily LAU expressed concern whether the low percentage of successful applications were due to the fact that sufficient resources had not been allocated for the timely processing of the patent applications. Ag DIP responded that standard patents obtained in Hong Kong were based on a patent granted by one of three "designated patent offices". These "designated patent offices", which adopted the OGP system, were the State Intellectual Property Office, the United Kingdom Patent Office and the European Patent Office. The application process involved two stages. At Stage one, the applicant had to file a "request to record" in Hong Kong within six months after the date of publication of the corresponding application in a "designated patent office". At Stage two, the applicant had to file a "request for registration and grant" in Hong Kong within six months after the date of grant of the designated patent

by the "designated patent office" or publication of the "request to record" in Hong Kong, whichever was later. The Patents Registry would normally grant the patent within a few months after receiving the relevant documents. She advised that many applications did not proceed to grant because applicants who failed to obtain the grant of a patent by the "designated patent office" would not file the "request for registration and grant" at Stage two. Some other cases involved withdrawal by the applicants.

31. Summing up, the Chairman concluded that members welcomed the proposed scope of the review of the patent registration system, and called on the Administration to take forward the review as soon as practicable.

VI. Any other business

32. There being no other business, the meeting ended at 4:12 pm.

Council Business Division 1
Legislative Council Secretariat
30 August 2011