

立法會
Legislative Council

LC Paper No. CB(1)819/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/PL/CI

Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 17 March 2015, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon WONG Ting-kwong, SBS, JP (Chairman)
Hon Vincent FANG Kang, SBS, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon CHUNG Kwok-pan

Public officers attending : Agenda item IV

Mr Philip YUNG, JP
Permanent Secretary for Commerce and Economic
Development (Commerce, Industry and Tourism)

Mrs Alice CHEUNG, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)³

Mr Kenneth MAK, JP
Director-General of Trade and Industry

Agenda item V

Mr David WONG, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)2

Miss Fabia TAM
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)3

Miss LEE Sau-kong
Deputy Director of Intellectual Property

Ms Jasmine KUN
Senior Solicitor (Copyright)3

**Attendance by
invitation** : Agenda item IV

Hong Kong Productivity Council

Mr Tony LAM
Director, Corporate Services

Clerk in attendance : Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance : Miss Rita YUNG
Senior Council Secretary (1)8

Ms May LEUNG
Legislative Assistant (1)3

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)582/14-15 -- Minutes of meeting held on
20 January 2015)

The minutes of the meeting held on 20 January 2015 were confirmed.

II. Information papers issued since last meeting

(LC Paper No. CB(1)595/14-15(01) -- Administration's paper on Hong Kong/Shenzhen Co-operation Meeting)

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)632/14-15(01) -- List of outstanding items for discussion

LC Paper No. CB(1)632/14-15(02) -- List of follow-up actions)

3. Members noted that the next regular Panel meeting would be held on 21 April 2015 at 2:30 pm to discuss the following items proposed by the Administration:

(a) Proposed legislative changes to the Patents Ordinance; and

(b) Latest developments of the Hong Kong Science and Technology Parks Corporation.

4. Dr CHIANG Lai-wan suggested and members agreed to discuss the item "Promoting the industrialization of the beauty industry in Hong Kong" (item 9 in the List of outstanding items for discussion) at the next regular Panel meeting. The Chairman instructed the Secretariat to liaise with the Administration for appropriate arrangement.

(Post-meeting note: At the suggestion of the Administration and with the concurrence of the Chairmen of the Panel on Commerce and Industry and the Panel on Health Services, a joint meeting of the two Panels would be held on 23 June 2015 at 3:00 pm to receive views from deputations on "Regulation and development of beauty services".)

IV. Progress report on the implementation of the Dedicated Fund on Branding, Upgrading and Domestic Sales

(LC Paper No. CB(1)632/14-15(03) -- Administration's paper on progress report on the implementation of the Dedicated Fund on Branding, Upgrading and Domestic Sales

LC Paper No. CB(1)632/14-15(04) -- Paper on the Dedicated Fund on Branding, Upgrading and Domestic Sales prepared by the Legislative Council Secretariat (updated background brief)

Presentation by the Administration

5. At the invitation of the Chairman, Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) ("PSCIT") briefed members on the latest implementation progress of the Dedicated Fund on Branding, Upgrading and Domestic Sales ("the BUD Fund"), covering an overall analysis of applications for the Enterprise Support Programme ("ESP") and the Organization Support Programme ("OSP"), the monitoring, review and effectiveness of approved projects, and the related promotional and publicity activities. Details of the implementation progress were set out in the Administration's paper (LC Paper No. CB(1)632/14-15(03)).

Discussion

Vetting of applications

6. Noting that 268 ESP applications out of a total of 1 158 had been withdrawn as at the end of December 2014, Dr CHIANG Lai-wan and Dr LAM Tai-fai expressed concern over the high rate of withdrawal. Dr CHIANG enquired whether the reasons for withdrawals were mainly because the applicant enterprises considered the application procedures too cumbersome. Dr LAM questioned whether the application guidelines were sufficiently clear and whether there were adequate promotion and publicity to enhance the applicant enterprises' understanding of the application criteria and procedures. Sharing a similar concern, Ms Emily LAU enquired whether the Administration was aware of any difficulties faced by the applicant enterprises when applying for the ESP.

7. Dr LAM Tai-fai pointed out that excluding the 268 applications withdrawn by the enterprises, only 267 out of 890 ESP applications were approved, representing an approval rate of around 30%. He opined that the low percentage of approved cases indicated that the ESP could not provide the necessary support to the enterprises. Sharing a similar view, Ms Emily LAU urged the Administration to take heed of the views of the industry and be more flexible in assisting local small and medium enterprises ("SMEs") to enhance their competitiveness and further their business development in the Mainland. She added that the Government should not be too conservative in supporting the business sector for fear of attracting criticisms of transferring benefits to private companies, provided that an open and transparent vetting mechanism was in place for approval of applications.

8. PSCIT responded that the Administration was committed to creating a business-friendly environment to promote the development of commerce and industry sectors while striking a balance between ensuring prudent use of public money and providing adequate support to the enterprises. Director, Corporate Services, Hong Kong Productivity Council ("Director, HKPC") advised that HKPC, as the secretariat of the ESP, would provide a preliminary assessment on each ESP application. On the withdrawal reasons, he explained that there were cases where the business plans of some applicant enterprises did not fully meet the objectives and requirements of the BUD Fund. HKPC had explained the vetting criteria to the enterprises concerned, and some of these enterprises had subsequently withdrawn their applications in order to revise them before re-applying with a better chance of success. There were other cases where the enterprises were unable to provide the supplementary information requested by HKPC and hence decided not to proceed with their applications. In response to the Chairman's enquiry, Director, HKPC advised that all these enterprises withdrew their applications of their own accord.

9. PSCIT further advised that HKPC had implemented various initiatives to assist enterprises, in particular SMEs, in applying for the ESP. For example, HKPC had uploaded onto the ESP website important points to note in making applications, and improved the application form by incorporating clearer guidelines to application. Seminars and symposia were organized to introduce the ESP application criteria and procedures, explain matters requiring attention in making applications, and present cases of successful and unsuccessful applications to interested enterprises. The ESP secretariat also held consultation sessions with interested enterprises to provide advice on applications. In addition, unsuccessful applicants would be informed of the reasons of rejection to help them revise and re-submit their applications if they so wished. To further help enterprises understand more about the effective means of pursuing branding, upgrading and domestic sales with real-life examples, HKPC was preparing a guidebook on the experiences of enterprises from various industries in implementing the funded projects. PSCIT said that the Administration would review the withdrawn cases to consider how promotion and publicity might be enhanced to further help enterprises better understand the requirements for and the key to making successful applications. He undertook to relay Dr LAM Tai-fai's concern about the low percentage of approved cases to the Programme Management Committee of the ESP to consider whether the vetting criteria in assessing the applications might be adjusted.

10. Citing information from some SMEs, Mr Charles MOK expressed concern that some companies that assisted SMEs in applying for the ESP had charged a considerable sum for their services provided. He enquired whether the Administration was aware of the situation, and urged the Administration to provide more assistance to the applicant enterprises in the application process, so

that they would not have to seek the assistance of intermediaries, and could dedicate the approved funding to effectively implement the projects.

11. In response, PSCIT and Director, HKPC advised that under the ESP, enterprises might apply for funding to engage a qualified service provider to help them develop a holistic business plan. Yet, the number of applications of this category was relatively small. Director, HKPC further explained that the enterprises could also engage consultants or other service providers to help implement the project measures, and for this purpose the applicants were required to provide a reasonable and clear budget with itemized cost breakdown and details of the services provided. In addition, except for the initial upfront payment to assist enterprises in starting the project, subsequent payment(s) would only be effected on a reimbursement basis upon submission of progress or final report(s) and audited accounts with supporting documents by the enterprises concerned. Director-General of Trade and Industry ("DGTI") supplemented that particular attention had been paid to expenses related to engagement of consultants when vetting the applications to ensure that they would not make up an unreasonably high proportion of the approved funding for a project.

12. Noting that HKPC had all along been providing support services to enterprises on branding, upgrading and restructuring of business operations and promotion of domestic sales in the Mainland market, Ir Dr LO Wai-kwok invited HKPC's views on the various factors underlying the successful upgrading and restructuring of Hong Kong business operations and business development in the Mainland market. Director, HKPC advised that first of all, to avoid any possible conflict of interest, HKPC had not provided consultancy service to any ESP project approved after the end of January 2013. On factors underlying the successful upgrading and restructuring of Hong Kong business operations, generally speaking, an enterprise with a holistic business plan and good knowledge about the Mainland market would have a better business prospect in the Mainland. Director, HKPC cited an ESP application which was rejected because the applicant, being a fruit and vegetable wholesaler who would like to develop the domestic sales market, failed to consider Mainland rules and regulations concerning food safety and testing of imported fruits and vegetables.

13. Ir Dr LO Wai-kwok supported HKPC's initiative to explain the reasons of rejection to unsuccessful applicants, thereby assisting them in improving their applications for future re-submission. Ir Dr LO called on the Administration to maintain close contact and collaborate with trade and industry associations in promoting the BUD Fund since they had good networking among the enterprises and also had a comprehensive understanding of the operations of the relevant industries. PSCIT took note of Ir Dr LO's views.

14. In response to Dr CHIANG Lai-wan's enquiry, PSCIT advised that all non-listed enterprises, regardless of size, which were registered in Hong Kong

Admin

under the Business Registration Ordinance (Cap. 310) with substantive business operations in Hong Kong were eligible to apply for funding under the ESP. Around 97% of the applications processed as at the end of December 2014 (excluding withdrawn applications) came from SMEs while the remaining were from larger non-listed enterprises. The Administration was requested to include in the next progress report on the implementation of the BUD Fund the breakdown of approved projects by industries and the three specific areas of branding, upgrading and domestic sales in tabular form. The Chairman asked the Administration to provide the relevant breakdown as at the end of December 2014 after the meeting.

(Post-meeting note: The information on the relevant breakdown of approved projects by industries and scopes as at the end of December 2014 provided by the Administration was circulated to members vide LC Paper No. CB(1)728/14-15(01) on 10 April 2015.)

Implementation, monitoring and review of projects

15. Mr CHUNG Kwok-pan said that since developing brands and promoting sales in the Mainland market required long-term efforts and huge expenses, the Administration should provide continued funding support to those enterprises that had achieved positive results in the funded projects. He requested the Administration to consider increasing the ESP cumulative funding ceiling of \$500,000 per enterprise, or reducing the percentage of contribution from enterprises which was currently set at 50% of the total approved project cost. PSCIT responded that while the Administration considered the current ceiling and contribution proportion appropriate, it would take into consideration Mr CHUNG's suggestion when reviewing the operation of the BUD Fund in the future. Mr CHUNG Kwok-pan suggested the Panel to invite some funded enterprises and organizations of completed projects in the future to share their views on the BUD Fund and the benefits brought about to the development of their businesses in the Mainland.

16. Mr Martin LIAO noted that as at end of December 2014, 36 approved OSP projects had commenced, and amongst which 9 projects were completed. He enquired whether the Trade and Industry Department ("TID") had drawn up any objective standard to evaluate the effectiveness of OSP projects, and whether any on-site checking was conducted to review the progress of OSP projects as HKPC did for ESP projects.

17. DGTI responded that under the OSP, funding support was provided to non-profit-distributing organizations for undertaking projects that could assist Hong Kong enterprises in general or in specific sectors in developing their brands, upgrading and restructuring their business operations and/or promoting domestic sales in the Mainland so as to enhance their overall competitiveness in the

Mainland market. Examples of approved project activities included participating in and setting up "Hong Kong pavilions" at large-scale exhibitions to showcase Hong Kong brands, organizing roadshows and business matching activities in the Mainland, and collaborating with retail networks in the Mainland to promote the products and services of Hong Kong enterprises, etc. The organizations were required to provide information, such as the numbers of enterprises participating in their events, or cases of successful business match-ups, etc. in their applications as well as the progress and final reports to facilitate an objective evaluation of the effectiveness of the projects. Each progress/final report would be assessed by the OSP secretariat. DGTI added that staff of the OSP secretariat would also attend the relevant events organized by the funded organizations which formed part of the deliverables of the projects, in order to monitor and review the progress of the projects on-site. Each project would be graded and the record would be taken into consideration when processing future applications by the organization concerned.

Effectiveness of the BUD Fund

18. Dr CHIANG Lai-wan supported the BUD Fund and asked for examples of successfully completed ESP projects that had assisted enterprises in enhancing competitiveness and furthering business development in the Mainland through developing brands, upgrading and restructuring operations and promoting domestic sales in the Mainland. PSCIT responded that under the ESP, 24 projects had been completed as at the end of December 2014. These enterprises generally considered that the projects had helped them in various ways. For example, a food enterprise had upgraded its production facilities and technology through the funded project and successfully expanded its product distribution network from the Pearl River Delta Region to other provinces in the Mainland. Participation in Mainland trade fairs had also helped the funded enterprise promote the awareness of its products in the Mainland market. Another manufacturing enterprise had upgraded itself from original equipment manufacturing to developing its own brand through the funded project.

19. Ms Emily LAU pointed out that if the funded enterprises were successful in expanding their business development in the Mainland market, it would not only benefit their business operations in Hong Kong in the long run, but also generate demand for professional services or other services in Hong Kong, thereby creating new job opportunities and bringing about tangible benefits to Hong Kong's economy as a whole. She called on the Administration to step up its publicity efforts to enhance the awareness of the BUD Fund amongst enterprises and organizations. PSCIT responded that the Administration would continue to proactively implement various promotional and publicity activities, such as inviting funded enterprises to share with other enterprises their experiences in implementing the funded projects and the benefits brought about by the projects to the development of their own businesses.

20. Mr SIN Chung-kai and Ir Dr LO Wai-kwok opined that concrete measurable yardsticks should be drawn up to evaluate the effectiveness of the ESP with reference to the information collected from the funded enterprises, such as the increase in sales amount, business enquiries received, etc. before and after implementation of the ESP projects. PSCIT responded that the Administration would take into consideration members' suggestion. He pointed out that whether the Mainland business of the funded enterprises could develop successfully after the implementation of the project would depend on a variety of factors. Nevertheless, even if the BUD Fund might not have immediate effect on sales and business development of the funded enterprises, the funding under the BUD Fund could enhance the overall competitiveness of the funded enterprises and lay the foundation for their further development in the Mainland market.

V. Consultation on a new set of Copyright Tribunal Rules

(LC Paper No. CB(1)632/14-15(05) -- Administration's paper on consultation on a new set of Copyright Tribunal Rules: Summary of views

LC Paper No. CB(1)340/14-15(01) -- Administration's paper on consultation on a new set of Copyright Tribunal Rules

LC Paper No. CB(1)632/14-15(06) -- Paper on Copyright Tribunal and the updating of Copyright Tribunal Rules prepared by the Legislative Council Secretariat (information note)

Presentation by the Administration

21. At the invitation of the Chairman, Deputy Secretary for Commerce and Economic Development (Commerce and Industry)² ("DSCED(CI)²") briefed members on the background of the consultation on a new set of Copyright Tribunal Rules ("the Draft Rules") to modernize the practice and procedures of the Copyright Tribunal ("the Tribunal"), the views received during the two-month consultation exercise and the way forward to finalize the Draft Rules. Details were set out in the Administration's papers (LC Paper Nos. CB(1)340/14-15(01) and CB(1)632/14-15(05)).

Discussion

22. Mr Dennis KWOK enquired whether the Administration had addressed all

the comments made by The Law Society of Hong Kong ("Law Society") on the Draft Rules during the consultation exercise, and whether the Law Society's suggestions would be incorporated in the final Draft Rules. He also asked whether the Administration had consulted the Hong Kong Bar Association on the Draft Rules.

23. In response, DSCED(CI)2 and Deputy Director of Intellectual Property ("DDIP") advised that the Administration had received a total of six written submissions from various stakeholders, including professional bodies (such as the Law Society), copyright licensing bodies and other entities. Comments were also received from individual members of the Tribunal. So far, no comments from the Hong Kong Bar Association had been received. The Administration would carefully study the comments and views received during the consultation and revise the Draft Rules as necessary. In general, the respondents supported having a new set of rules which seek to modernize the practice and procedures of the Tribunal. The respondents also welcomed the provision of a set of self-contained rules that embodied the underlying objectives of the Civil Justice Reform. There was a general consensus that the Draft Rules should provide the basis for an effective and efficient mechanism to facilitate the settlement of disputes. The Law Society and some respondents had made suggestions and requested clarifications on the drafting of individual provisions in the Draft Rules in relation to the operational procedures of the Tribunal. The Administration was considering the views received in refining the Draft Rules, and would continue to engage the Law Society and relevant stakeholders to clarify their comments as appropriate before finalizing the Draft Rules for submission to the Chief Justice for consideration. Subject to the making of the new Copyright Tribunal Rules by the Chief Justice, the Administration would introduce the subsidiary legislation for negative vetting by the Legislative Council ("LegCo") in the 2015-2016 legislative session.

24. In response to Mr Dennis KWOK's enquiry, DSCED(CI)2 said that the Administration would keep the Panel posted as appropriate after the Draft Rules were revised.

25. Mr MA Fung-kwok noted with concern that none of the six written submissions received during the consultation exercise was from copyright users. He pointed out that many copyright users, which were non-profit making organizations, did not have professional knowledge in handling copyright matters, nor were they familiar with the functions and procedures of the Tribunal. The high legal costs involved in the proceedings of the Tribunal also deterred copyright users from using the Tribunal for dispute resolution. Mr MA recalled that there had not been a case heard by the Tribunal during his appointment as a member of the Tribunal, and enquired about the number of cases heard and determined by the Tribunal since its establishment. He urged the Administration to step up publicity in promoting the functions of the Tribunal to the community.

26. DSCED(CI)2 and DDIP responded that the Tribunal was a quasi-judicial body whose proceedings were comparatively less complex and more cost-effective. The objectives of drawing up the Draft Rules were to maintain the fairness of the Tribunal's proceedings, and at the same time to make the proceedings as flexible, convenient and cost-effective as possible in accordance with contemporary dispute resolution practices. The major principles adopted in formulating the Draft Rules included, among other things, applying the principles of the Civil Justice Reform as the fundamental value of dispute resolution before the Tribunal, and promoting the use of alternative dispute resolution. In line with the modern practice in civil proceedings, the Tribunal would encourage and facilitate the use of mediation in appropriate cases. After the new Copyright Tribunal Rules came into operation, the Administration would step up its publicity and promotional efforts to enhance the awareness of the functions of the Tribunal amongst the relevant stakeholders.

27. DSCED(CI)2 and DDIP further advised that the Tribunal had received 19 applications since its establishment in 1997. While 4 applications were still under progress, the remaining 15 cases were either subsequently withdrawn or the cases were discontinued by the relevant parties. No case had proceeded to a stage that resulted in the final determination of the Tribunal.

28. Mr MA Fung-kwok said that there were views that the current copyright regime tended to protect the interests of copyright owners rather than that of the users. Highlighting that copyright users tended to agree to discontinue the Tribunal cases reluctantly only because of the complexity of the procedures and the high legal costs, he hoped that the new Copyright Tribunal Rules could make proceedings before the Tribunal as flexible, convenient and cost-effective as possible to facilitate dispute resolution. DSCED(CI)2 reiterated the thinking behind the current legislative exercise along the same lines and that the Civil Justice Reform advocated use of mediation as a mode of alternative dispute resolution to expedite dispute resolution. The Administration believed that mediation could be a potential means of facilitating quick and cost-effective settlement in appropriate cases.

29. Mr MA Fung-kwok pointed out that many non-profit making organizations had encountered difficulties when applying for licences for the use of copyright works in events held at hired venues in community halls/community centres of the Home Affairs Department ("HAD"), and performing arts venues of the Leisure and Cultural Services Department ("LCSD"). In response, DSCED(CI)2 advised that HAD and LCSD had entered into licence agreements with some copyright licensing bodies for the use of their copyright works at community halls/community centres and performing arts venues under the two departments' purview. As such, hirers of these venues did not need to apply for an individual licence from these licensing bodies for the use of the copyright works covered in the licence agreements.

30. The Chairman concluded that the Panel supported in principle the Administration's proposal to provide for a new set of concise and user-friendly Copyright Tribunal Rules to modernize the Tribunal's practice and procedures, and to introduce the subsidiary legislation into LegCo for negative vetting subject to the making of the new Copyright Tribunal Rules by the Chief Justice pursuant to the Copyright Ordinance.

VI. Any other business

(LC Paper No. CB(1)632/14-15(07) -- Invitation from S Rajaratnam School of International Studies ("RSIS") inviting nominations of two Legislative Council Members to join RSIS-World Trade Organization Parliamentarian Workshop on International Trade 2015 to be held in Singapore from 19 to 21 May 2015 (Restricted to Members only))
(English version only)

31. The Panel noted that the Centre for Multilateralism Studies of the S Rajaratnam School of International Studies ("RSIS") has invited the Legislative Council ("LegCo") to nominate two Members to join the RSIS and World Trade Organization ("WTO") Parliamentarian Workshop on International Trade 2015 ("the Workshop") to be held in Singapore from 19 to 21 May 2015. As the theme of the Workshop fell within the terms of reference of the Panel, President of LegCo had referred the invitation to the Panel for consideration on whether to accept the invitation. Noting that the programme of the Workshop included topics that would foster a deeper understanding of the WTO, and current and future negotiating issues in international trade, members agreed to accept the invitation and to open the invitation to all other LegCo Members. Members also agreed that subject to the House Committee's approval, the expenses incurred by Members nominated to attend the Workshop be charged to the Members' Overseas Duty Visit ("ODV") accounts. The Chairman instructed the Clerk to issue a circular inviting expression of interest from Panel members and all other Members.

(Post-meeting note: A circular was issued to Panel members and copied to all other Members on 18 March 2015 inviting them to indicate their interest in attending. As the Workshop originally scheduled for 19 to 21 May 2015 was subsequently re-scheduled to 25 to 27 May 2015, a second circular was issued on 27 March 2015 inviting expression of interest from Members. In response, one Panel member, namely Mr SIN Chung-kai,

had indicated interest in attending the Workshop. Members were informed of the result on 2 April 2015. The House Committee approved at its meeting on 17 April 2015 the nomination of Mr SIN Chung-kai to attend the Workshop and that the expenses relating to the participation in the event be charged to his ODV account.)

32. There being no other business, the meeting ended at 4:21 pm.

Council Business Division 1
Legislative Council Secretariat
5 May 2015