

立法會
Legislative Council

LC Paper No. CB(4)651/14-15
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by the Administration)

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Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 9 February 2015, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Dr Hon Elizabeth QUAT, JP (Chairman)
Ir Dr Hon LO Wai-kwok, BBS, MH, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

**Public officers
attending**

: Agenda item IV

Commerce and Economic Development
Bureau

Miss Susie HO, JP
Permanent Secretary for Commerce and
Economic Development (Communications
and Technology)

Mr Joe WONG, JP
Deputy Secretary for Commerce and
Economic Development (Communications
and Technology)

Mr Ivanhoe CHANG
Principal Assistant Secretary for Commerce
and Economic Development
(Communications and Technology) B

Create Hong Kong

Mr Jerry LIU
Head

Mr Wellington FUNG
Assistant Head

Hong Kong Design Centre

Dr Edmund LEE
Executive Director

Agenda item V

Commerce and Economic Development
Bureau

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

Miss Susie HO, JP
Permanent Secretary for Commerce and
Economic Development (Communications
and Technology)

Mr Joe WONG, JP
Deputy Secretary for Commerce and
Economic Development (Communications
and Technology)

Mr Edward TO
Principal Assistant Secretary for Commerce
and Economic Development
(Communications and Technology) A

Communications Authority

Mr Ambrose HO
Chairman

Office of the Communications Authority

Miss Eliza LEE, JP
Director-General of Communications

Ms Elizabeth TAI
Deputy Director-General (Broadcasting)

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Mr Joey LO
Senior Council Secretary (4)3

Ms Anki NG
Council Secretary (4)3

I. Confirmation of minutes of meeting

(LC Paper No. CB(4)405/14-15) -- Minutes of meeting held on 8 December 2014)

The minutes of the meeting held on 8 December 2014 were confirmed.

II. Information papers issued since the last meeting

2. Members noted that no paper had been issued since the last meeting held on 19 January 2015.

III. Date of next meeting and items for discussion

(LC Paper No. CB(4)408/14-15(01) -- List of outstanding items for discussion

LC Paper No. CB(4)408/14-15(02) -- List of follow-up actions)

3. Members noted that the next regular Panel meeting would be held on Monday, 9 March 2015 at 2:30 pm to discuss the item: "Funding support for the Film Development Fund".

(Post-meeting note: At the request of the Administration and with the concurrence of the Panel Chairman, the item "Review of the Control of Obscene and Indecent Articles Ordinance" was subsequently included in the agenda for the next meeting.)

IV. Update on the work of Create Hong Kong and funding support for the Hong Kong Design Centre

(LC Paper No. CB(4)408/14-15(03) -- Administration's paper on update on the work of Create Hong Kong and funding support for the Hong Kong Design Centre

LC Paper No. CB(4)408/14-15(04) -- Paper on update on the work of Create Hong Kong in promoting the development of creative industries prepared by the Legislative Council Secretariat (Updated background brief)

LC Paper No. CB(4)201/14-15(06) -- Paper on Hong Kong Design Centre prepared by the Legislative Council Secretariat (Updated background brief)

4. The Chairman reminded members on the requirements of Rule 83A and Rule 84 of the Rules of Procedure of the Legislative Council on disclosure of direct or indirect pecuniary interests relating to the funding proposals under discussion at the meeting before they spoke on the item.

5. At the invitation of the Chairman, Permanent Secretary for Commerce and Economic Development (Communications and Technology) ("PSCT") briefed members on the work of Create Hong Kong ("CreateHK") in 2014 and the proposal to continue providing funding support of \$80 million to the Hong Kong Design Centre ("HKDC") to support its basic operation from July 2015 to March 2019. Head of Create Hong Kong then gave a powerpoint presentation on the work of CreateHK in 2014. Details of the briefing and presentation were set out in the papers provided by the Administration (LC Paper Nos. CB(4)408/14-15(03) and CB(4)466/14-15(01)).

Discussion

Funding support for Hong Kong Design Centre and development strategy for creative industries

6. Mr WONG Ting-kwong expressed support for the funding proposal for the HKDC. He opined that CreateHK should determine whether its goal was to develop Hong Kong's art or to help the art sector develop its market, and formulate appropriate facilitation measures to fulfill its goal. Sharing the view of Mr WONG, Dr Priscilla LEUNG also expressed support for the funding proposal. She opined that Hong Kong should learn from the experience of South Korea in developing its creative industries which had gained international acclaim.

7. Head of CreateHK advised that it was the major objective of CreateHK to nurture a pool of creative human capital, facilitate start-ups and development of creative establishments and develop local and overseas markets for Hong Kong's creative industries, thereby promoting Hong Kong as Asia's creative capital. Promoting the development of art in Hong Kong was not a major objective of CreateHK.

8. Mr LEUNG Kwok-hung cited the findings of the Audit Commission's review of the administration of the CreateSmart Initiative administered by CreateHK in 2014, and expressed objection to the funding proposal for HKDC.

9. Dr CHIANG Lai-wan enquired about the breakdown of the additional non-recurrent funding support for the basic operation of the HKDC for the next four years, and the assistance provided to local creative industries in exploring markets outside Hong Kong.

10. Head of CreateHK advised that an average annual funding support of about \$20 million would be allocated to cover administration cost, office accommodation, staff remuneration and promotion cost of the HKDC. As to exploring markets outside Hong Kong, an example in 2014 would be CreateHK's sponsorship of the Hong Kong Trade Development Council for staging promotional campaigns in the Mainland, including the "SmartHK" trade fair in Nanjing, which attracted some 10 000 trade visitors, provided product showcase for 76 creative establishments from Hong Kong, of which 51 were small and medium enterprises which benefitted from Government subsidies for participation in the event. As a result, negotiations on some 160 business agreements had been initiated arising from these campaigns.

Job opportunities and nurturing talents

11. Noting that over 2 900 job opportunities had been created through the promotional and internship programmes funded by CreateHK, and over 9 700 other job opportunities had been indirectly created as a result of the implementation of these programmes, Ms Cyd HO opined that encouraging more local film production was vital for the creation of local job opportunities. At the request of Ms HO, Head of CreateHK agreed to provide the number of full-time job opportunities created by the work of CreateHK through the programmes funded by CreateHK vis-à-vis the number created by the creative industries in Hong Kong as a whole, as well as the benchmarks for assessing the performance of CreateHK in different aspects of its work.

Admin

12. Ir Dr LO Wai-kwok opined that while nurturing talents was important for the long term development of the creative industries, there should be coordination of effort amongst various organizations and institutions in this

Admin regard. At Ir Dr LO's request, Head of CreateHK agreed to provide information on the division of labour in talent grooming for the design industry among HKDC, Vocational Training Council and the universities in Hong Kong.

Support for the film sector

13. Mr Christopher CHUNG opined that Hong Kong's status as the "Hollywood of the East" had long lost its lustre, and the only way forward for Hong Kong's film industry was to produce Hong Kong-Mainland co-production titles which would have a huge market in the Mainland and the Greater China. He enquired about CreateHK's strategy for reinvigorating Hong Kong's film industry.

14. PSCT advised that the Administration attached great importance to the development of the film industry. In the past year, CreateHK continued to promote the development of the film sector in consultation with the Film Development Council in accordance with the four-pronged strategy, i.e. encouraging more local film production, nurturing production talent, promoting film appreciation among students and young people to build up audiences, and showcasing and promoting the brand of "Hong Kong Films".

Admin 15. Mr CHAN Chi-chuen opined that despite the increasing number of Hong Kong-Mainland co-production titles in recent years, the Government should continue to provide funding support under the Film Development Fund ("FDF") for local film makers to produce more films of new genres catering to the taste of the local audience. At the request of Mr CHAN, Head of CreateHK agreed to provide a breakdown of the 544 requests for assistance provided to local vis-à-vis overseas production crews for location shooting in Hong Kong, including the number of cases involving different matters such as location scouting, obtaining permission for location filming in public or private premises, land closures, etc.

Admin 16. In response to Mr YIU Si-wing's enquiry about the result of the Hong Kong – Asia Film Financing Forum ("HAF") funded by FDF, Head of CreateHK advised that in 2014, 25 film projects from 11 different countries/districts, of which six were Hong Kong production or co-production projects, were selected for showcasing in the HAF. Some 1 200 visitors from 35 countries joined the HAF. 780 business matching meetings between film production talents and filmmakers/financiers were arranged. At Mr YIU's request, Head of CreateHK agreed to provide more information showing the benefits brought by the HAF for the Hong Kong film industry in the past.

17. Mr WONG Yuk-man enquired about the findings of the review of the FDF. Head of CreateHK advised that the review of the FDF was completed in January 2015. The Administration would brief the Panel on the findings and recommendations of the review on the FDF and the Film Guarantee Fund at the next regular meeting on 9 March 2015. The proposal to provide additional funding for the FDF would also be covered in the briefing.

Facilitating start-ups

18. Mr MAK Fung-kwok enquired about the support for the non-film creative sectors through the CreateSmart Initiative, in particular, the assistance provided to independent television production houses and the publication sectors.

19. PSCT advised that the demand for the service of independent production houses was low as free TV and pay TV stations with in-house production teams tended to use their own manpower to produce programmes instead of hiring the service of independent production houses. Therefore, the number of applications from independent TV production houses was limited. Head of CreateHK added that assistance had been provided to publishers to participate in book fairs staged in the Mainland and several overseas cities such as Frankfurt in Germany and Bologna in Italy.

Summing up

20. The Chairman concluded that the majority of Panel members supported in principle the proposal to continue to provide time-limited funding to the HKDC in support of its basic operation.

V. Issues relating to the operation and latest developments of Asia Television Limited

(LC Paper No. CB(4)408/14-15(05) -- Administration's paper on issues relating to the operation and latest developments of Asia Television Limited

- LC Paper No. CB(4)408/14-15(06) -- Paper on issues relating to the operation and latest developments of Asia Television Limited prepared by the Legislative Council Secretariat (Background brief)
- LC Paper No. CB(4)416/14-15(01) -- Motion proposed by Hon Claudia MO (Chinese version only)
- LC Paper No. CB(4)316/14-15(01) -- Letter from Hon Christopher CHUNG Shu-kun dated 31 December 2014 on issues relating to the operation of Asia Television Limited (Chinese version only)
- LC Paper No. CB(4)316/14-15(02) -- Letter from Hon WONG Yuk-man dated 2 January 2015 on issues relating to the operation of Asia Television Limited (Chinese version only)
- LC Paper No. CB(4)328/14-15(01) -- Letter from Hon Claudia MO dated 2 January 2015 on issues relating to the operation of Asia Television Limited (Chinese version only)
- LC Paper No. CB(4)345/14-15(01) -- Administration's response to the letters from Hon Christopher CHUNG dated 31 December 2014, Hon WONG Yuk-man and Hon Claudia MO dated 2 January 2015 respectively on issues relating to the latest developments surrounding Asia Television Limited)

Presentation by the Administration

21. At the invitation of the Chairman, Secretary for Commerce and Economic Development ("SCED") briefed members on the Administration's views on and concerns over Asia Television Limited ("ATV")'s repeated failures to pay wages to its staff on time as well as ATV's ability to comply with the relevant statutory and licence requirements under the Broadcasting Ordinance (Cap. 562) ("BO") and the Employment Ordinance (Cap. 57) ("EO"). SCED advised that the Labour Department ("LD") had given ATV due advice and stern warnings. LD repeatedly appealed to the ATV's management to resolve the wage payment issue promptly, and reminded it of its liability for wage payment under the EO as well as the criminal consequences for any breaches thereof.

22. As regards the suspected offences committed by ATV under the EO for its default on payment of employees' wages for July to September 2014, SCED advised that LD had earlier laid a total of 34 summonses against ATV and the director concerned. In respect of ATV's late payment of wages for November 2014, LD also laid 42 summonses against ATV and the director concerned on 27 January 2015. ATV's failure to effect wage payment for December 2014 to employees within the statutory time limit was currently under LD's investigation. LD would strictly enforce the law and initiate further prosecution action if there was sufficient evidence.

23. SCED further advised that ATV had an ongoing obligation to observe the BO, the licence conditions and the codes of practice issued by the Communications Authority ("CA") during the validity of its licence. These included, inter alia, the need to provide free television ("TV") service to the viewing public in accordance with all the requirements in the BO and its domestic free TV programme service ("free TV") licence, to pay the licence fees by the deadlines stipulated in the relevant legislation, and to comply with various commitments and representations, including its capital and programming investment and shareholding structure, made in its Licensee's Proposal.

24. Regarding ATV's application for renewal of its free TV licence in November 2013, SCED advised that the CA had discharged its statutory duty under the BO by submitting to the Chief Executive ("CE") in Council its recommendations on 4 November 2014. In processing the said application in accordance with the established procedures, the CE in Council would consider all relevant factors, including the licensees' operational capability, financial condition, etc., before making a decision.

25. The Chairman of the Communications Authority ("C of CA") assured members that the CA would continue to closely monitor ATV's compliance with the various regulatory requirements. The CA had repeatedly requested ATV to exercise due care and to take prompt and positive actions with respect to payment of wages to its staff and ensure its compliance with all the relevant statutory and licence requirements. Regarding the payment of the fixed fee of its free TV licence and the annual fee of its fixed carrier licence ("FCL") under the relevant legislation, C of CA advised Members that no payment was made by ATV by the respective deadlines in December 2014. Having considered the representations of ATV, the CA had decided to sanction ATV for the contravention of the relevant statutory/licence provisions by imposing a financial penalty of \$200,000 on ATV in accordance with established procedures. The CA had also decided to reject ATV's application for settling the licence fees in arrears in five instalments, and to direct ATV to settle the outstanding licence fees and interests in two instalments, by 18 February and 18 March 2015, respectively.

26. C of CA supplemented that the CA had put ATV on clear notice that if it failed to comply with the said direction to pay the outstanding licence fees and interests according to the specified timeframe, the CA would consider imposing on it a more serious sanction, including invoking the licence revocation procedures in accordance with the BO.

Discussion

Licence renewal application of Asia Television Limited

27. In response to Mr Ronny TONG's enquiry as to whether ATV was a "fit and proper person" for renewal of its free TV licence under the BO given the recent developments of ATV, C of CA advised that Section 11 of the BO stipulated the regime for extension or renewal of licences granted under the BO. Since the submission of its recommendations on ATV's licence renewal application to the CE in Council on 4 November 2014, the CA had provided supplementary information to update the CE in Council on its imposition of a financial penalty on ATV pertaining to ATV's failure to pay the licence fees in accordance with the statutory/licence provisions.

28. Mr WONG Yuk-man urged the CE in Council to consider the recent developments of ATV and the recommendations made by the CA when deciding on ATV's licence renewal application. He also expressed disappointment that the CE in Council had yet to make a decision on ATV's application. Mr CHAN Chi-chuen shared a similar view. He queried that the purpose of not making a decision by the CE in Council was to allow ATV to

have more time to look for new investors to facilitate the subsequent approval for the renewal of its licence. Since the issue of the court order to sell 10.75% or more of ATV's shares to an independent third party, investors were concerned about the decision for the licence renewal application of ATV as this would have a determining effect on the future operation of ATV.

29. In response to Ms Claudia MO's enquiry as to whether the change in shareholding structure of ATV would have any effect on ATV's licence renewal application, C of CA advised that all broadcasting licensees including ATV were required under their licences to comply with the statements and representations, including those relating to their shareholding structure, made in its Licensee's Proposal unless otherwise approved by the CA. ATV would therefore need to obtain the CA's approval for any change in its shareholding structure.

30. Noting the default in wage payments by ATV and non-renewal of its free TV licence would affect the livelihood of its employees, Mr YIU Si-wing enquired whether the CE in Council would consider renewing the free TV licence of ATV for the interests of its employees. SCED advised that ATV was fully aware of the statutory requirements for renewal of the free TV licence and the CA had already submitted its recommendation to the CE in Council for consideration on 4 November 2014.

31. In response to Ms Cyd HO's enquiry as to whether the CE in Council would follow the recommendations made by the CA on the licence renewal application of ATV, SCED advised that in processing the said application in accordance with the established procedures, the CE in Council would consider all relevant factors, including the licensees' operational capability, financial condition and the recommendations made by the CA, etc., before making a decision.

Penalties on Asia Television Limited

32. Noting that the CA had imposed a financial penalty of \$200,000 on ATV for its failure to pay the licence fees in accordance with the statutory/licence provisions, Mr Charles Peter MOK enquired whether further penalties, including the revocation of licence, could be imposed by the CA for ATV's failure to comply with the CA's direction to pay the outstanding licence fees according to the specified timeframe. C of CA advised that the CA was empowered under the BO to suspend the free TV licence of ATV should it contravene the CA's direction but the revocation of its licence would require the approval of the CE in Council with the recommendation of the CA.

33. Mr SIN Chung-kai enquired whether the CA could initiate winding up procedures against ATV for default in payment of the fixed fee of its free TV licence and the annual fee of its FCL under the relevant statutory/licence provisions. C of CA advised that, being a statutory regulator of the broadcasting sector, the CA considered it more appropriate to impose statutory penalties under the BO, such as financial penalty, suspension or recommendation on revocation of licence, on ATV for breaching the statutory/licence provisions on payment of the said licence fees, leaving the winding up option to ATV's creditors and staff. Nevertheless, the BO stipulated that the CA could recover the outstanding licence fees as a civil debt.

Other issues

34. Mr WONG Ting-kwong enquired about the arrangements to be made by the Administration on the spectrum vacated by ATV if its licence renewal application was rejected by the CE in Council. C of CA advised that the assignment of any available spectrum would be determined in accordance with applicable laws and procedures and the Radio Spectrum Policy Framework promulgated by the Government in April 2007.

35. Dr Priscilla LEUNG expressed support for the creative new TV programmes produced by ATV and appreciated the efforts made by the employees of ATV in carrying out their duties at times when wage payments were still outstanding. According to her understanding, the management of ATV was still trying to settle the outstanding wage payments with its employees. Mr LEUNG Kwok-hung did not consider that ATV had produced creative new TV programmes but simply rebroadcast old programmes.

Motions

36. Ms Claudia MO proposed the following motion:

"本事務委員會強烈譴責自稱『香港良心』的亞視，不但故意拖延發糧予員工，更以『借糧』為名，挾迫員工留職。本事務委員會促請行政長官會同行政會議立即否決亞視續牌申請，嚴懲漠視法紀的電視台負責人。"

(Translation)

"That this Panel strongly condemns ATV, the self-proclaimed 'Hong Kong's Conscience', for not only defaulting on employees' wages deliberately, but also coercing its employees into staying on their jobs by 'making wage payments in the name of money lending', and this Panel urges the Chief

Executive in Council to reject ATV's application for licence renewal at once and punish the person-in-charge of the television company severely for acting in defiance of the law."

37. The Chairman considered that the proposed motion was directly related to the agenda item under discussion. As no members disagreed to deal with the motion, the Chairman informed the meeting that the motion would be proceeded with. The Chairman put the motion to vote. Ms Claudia MO claimed a division. The Chairman announced that nine members voted for the motion, namely Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr LEUNG Kwok-hung, Mr WONG Yuk-man, Ms Claudia MO, Mr Charles Peter MOK, Mr CHAN Chi-chuen and Mr SIN Chung-kai, 12 members voted against the motion, namely Ir Dr LO Wai-kwok, Mr TAM Yiu-chung, Mr WONG Ting-kwong, Dr Priscilla LEUNG, Mrs Regina IP, Mr NG Leung-sing, Mr Steven HO, Mr YIU Si-wing, Mr MA Fung-kwok, Mr Christopher CHEUNG, Dr CHIANG Lai-wan and Mr Christopher CHUNG, and no members abstained from voting. The Chairman declared that the motion was negatived.

38. Mr WONG Ting-kwong proposed the following motion:

"本事務委員會對亞洲電視有限公司拖欠員工薪金表示遺憾，並促請行政長官會同行政會議在處理免費電視節目服務牌照的續期申請時，必須考慮申請機構的以往表現。"

(Translation)

"That this Panel expresses regret at Asia Television Limited's default on payments of employees' wages and urges that the Chief Executive in Council must consider the past performance of applicants when processing the applications for renewal of free television programme service licences".

39. The Chairman considered that the proposed motion was directly related to the agenda item under discussion. As no members disagreed to deal with the motion, the Chairman informed the meeting that the motion would be proceeded with.

40. Mr SIN Chung-kai proposed the following amendments to Mr WONG Ting-kwong's motion:

"本事務委員會對亞洲電視有限公司拖欠員工薪金表示遺憾，並促請行政長官會同行政會議在處理盡快拒絕免費電視節目服務牌照的續期申請時，必須考慮申請機構的以往表現。"

(Translation)

"That this Panel expresses regret at Asia Television Limited's default on payments of employees' wages and urges ~~that~~ the Chief Executive in Council ~~must consider the past performance of applicants when processing the applications~~ to reject as soon as possible its application for renewal of free television programme service licences".

41. The Chairman considered that the motion as amended would have the same meaning as the motion proposed by Ms Claudia MO and there was no need to vote on the motion as amended.

42. The Chairman put the motion proposed by Mr WONG Ting-kwong to vote. The Chairman announced that 14 members voted for the motion, no member voted against the motion and one member abstained from voting. The Chairman declared that the motion was passed.

(Post-meeting note: The wording of the motion moved by Mr WONG Ting-kwong was circulated to members vide LC Paper No. CB(4)489/14-15 on 10 February 2015.)

VI. Any other business

43. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 4
Legislative Council Secretariat
17 March 2015