

立法會
Legislative Council

LC Paper No. CB(1)1644/06-07
(These minutes have been seen
by the Administration)

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Panel on Commerce and Industry

Minutes of meeting
held on Tuesday, 17 April 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Vincent FANG Kang, JP (Chairman)
Hon WONG Ting-kwong, BBS (Deputy Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
- Member attending** : Hon Emily LAU Wai-hing, JP
- Public officers attending** : Agenda Item IV

Mr Francis HO Suen-wai, JP
Permanent Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mr Gordon LEUNG Chung-tai
Acting Commissioner for Innovation and Technology

Mr David WONG Fuk Loi
Assistant Commissioner for Innovation and Technology
(Infrastructure)

Agenda Item V

Mr KWOK Kwok-chuen
Government Economist,
Economic Analysis and Business Facilitation Unit
Financial Secretary's Office

Mr David HOOI
Head, Business Facilitation Division,
Economic Analysis and Business Facilitation Unit
Financial Secretary's Office

Mr Howard LEE
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)1

Agenda Item VI

Mr Christopher K B WONG
Deputy Secretary for Commerce, Industry and
Technology (Commerce and Industry)

Mr Stephen SELBY
Director of Intellectual Property

Clerk in attendance : Miss Erin TSANG
Chief Council Secretary (1)3

Staff in attendance : Ms YUE Tin-po
Senior Council Secretary (1)5

Ms Guy YIP
Council Secretary (1)1

Ms May LEUNG
Legislative Assistant (1)6

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)1295/06-07 -- Minutes of meeting held on 13 March 2007)

The minutes of the meeting held on 13 March 2007 were confirmed.

II. Information paper issued since last meeting

(LC Paper No. CB(1)1278/06-07(01) -- Information on the financial position of the Applied Research Fund for the period of 1 December 2006 to 28 February 2007)

2. Members noted that the above paper had been issued for members' information since the last meeting held on 13 March 2007.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)1319/06-07(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1319/06-07(02) -- List of follow-up actions)

3. Members agreed that the item of "Review of Small and Medium Enterprise (SME) Funding Schemes" would be discussed at the next meeting scheduled for 15 May 2007. As for the item of "Progress and impact of the Mainland and Hong Kong Closer Economic Partnership Arrangement", which had originally been scheduled for discussion at the next meeting, the Chairman informed members that as requested by the Administration, the discussion on this item would be deferred to the July meeting to allow more time for the Administration to compile the relevant report. In this connection, he said that if members would like to propose other items for discussion at the next meeting, they could notify the Clerk after the meeting.

(Post-meeting note: With the concurrence of the Chairman, the meeting scheduled for 15 May 2007 would not be held.)

4. With reference to the item of "Consultation on the Review of Copyright Protection in the Digital Environment" which had been discussed at the meeting on 16 January 2007, the Chairman said that as advised by the Administration, it would carefully consider the views received during the consultation exercise with a view to reporting to the Panel, by the end of 2007, the proposals formulated if any. As such, the Chairman suggested and members agreed that the Panel would revisit the subject by the end of 2007.

IV. Support for the Hong Kong Design Centre

(LC Paper No. CB(1)1319/06-07(03) -- Paper provided by the Administration)

Briefing by the Administration

5. At the invitation of the Chairman, the Acting Commissioner for Innovation and Technology (CIT(Atg)) briefed members on the proposed funding requirement of \$100 million to support the operation of Hong Kong Design Centre over five years to promote the importance of design and innovation as detailed in the Administration's paper (LC Paper No. CB(1)1319/06-07(03)). In gist, he stressed that the Government had all along attached importance to promoting design and innovation in enhancing the competitiveness of Hong Kong products and services, in particular that it was increasingly difficult for enterprises to compete on price in a globalized world economy. He then highlighted the work of the Hong Kong Design Centre, the Government's initiatives taken to strengthen the support for design and innovation, the funding proposal, as well as the control and review mechanism to be put in place as follows:

(a) Hong Kong Design Centre

CIT (Atg) advised that the Hong Kong Design Centre (HKDC) was a non-profit making infrastructure organization established in 2001 for furtherance of the development of design. It comprised a number of major local design organizations with the objectives of, inter alia, promoting design as a value-added activity and the integration of design into mainstream business processes. Those objectives were in line with the Government's policy on the promotion of design and innovation. Since its inception, HKDC had been the Government's main partner in promoting design. It had also made significant headways in positioning Hong Kong as the region's prime design hub, promoting design excellence and awareness, showcasing Hong Kong's design talent, educating designers, students and the business/industry community, incubating design start-ups, as well as establishing international networking in respect of the business/industrial and design communities on the Mainland and other parts of the world. After five years of operation, HKDC conducted a major strategic review in 2006 to map its way forward. A three-year business plan for 2007-10 had been drawn up, which aimed to cultivate a wider and more strategic use of design whereby design would go beyond form and aesthetics to function, process, communications and strategy. It was also noted from the review that HKDC should not only work closely with designers and the business sector but also the public sector and the general public in order to raise the profile of Hong Kong as a design hub.

(b) DesignSmart Initiative

To strengthen the support for design and innovation, the Government set up the DesignSmart Initiative (DSI) in June 2004 with a funding commitment of \$250 million. The DSI consisted of two programmes, namely the Design Support Programme (DSP) and the InnoCentre Programme (IP). Under the DSP, \$180 million was set aside to finance projects in four categories, viz. design research, design-business collaboration, design professional continuing education, and general support activities. To date, 76 projects with a total funding of \$69 million had been approved. As for the IP, \$70 million was set aside for setting up a one-stop shop, i.e. the InnoCentre which was opened in 2006, for creating and sustaining a cluster of high value-added design activities, including the incubation of design-related start-ups.

(c) The funding proposal

Since design would remain as an integral part of Hong Kong's innovation capacity which would help the local industries move up the value chain and cope with global competition, and that HKDC would continue to play a key role as the Government's strategic partner to champion the cause, the Administration proposed that a non-recurrent allocation of \$100 million over a period of five years from 2007-08 would be earmarked to support HKDC's basic operation. This would include manpower, overhead and general administration as well as some basic activities such as programme planning and development, network activities on the Mainland and overseas, website and database development, organization of educational seminars, workshops, classes and designer-business networking events, etc.

(d) Control and review mechanism

In connection with the funding proposal, CIT(Atg) remarked that suitable safeguards would be put in place to ensure the prudent use of the public money. With respect to the Board of Directors, there would be a balanced composition comprising representatives from the relevant design-related industrial and business sectors and professions, as well as the academic sector in order to improve governance. The following funding requirements would also be set out in a Funding Agreement to be concluded between the Government and HKDC:

- (i) the Government would participate in the appointment of members of the Board of HKDC, which was responsible for steering and overseeing HKDC's operations, as well as drawing up and reviewing its Corporate Governance Manual;

- (ii) HKDC would be required to submit to the Commissioner for Innovation and Technology (CIT) annually, before the submission of the annual plan, a three-year business plan which would be rolled over every year for the purpose of effective monitoring;
- (iii) HKDC would be subject to various controls on its operation, which included the submission of budgets and audited accounts for the Government's approval, as well as value-for-money checks by the Audit Commission if required by the Government, etc;
- (iv) to encourage HKDC to build up and enhance its revenue stream with a view to achieving self-financing as soon as possible, CIT would set an income target and might revise it from time to time to be met by HKDC;
- (v) disbursement of the five-year Government funding would be subject to a review and exit mechanism. For instance, if CIT considered that HKDC was unlikely to be operationally or financially self-sustainable within a reasonable period of time, HKDC might be required to draw up a timely exit plan to take care of its operation without further public funding support; and
- (vi) HKDC would not be allowed to keep and retain any unspent Government funding as reserve.

On the review of performance, CIT(Atg) advised that HKDC would institute a system to measure and evaluate the effectiveness of its programme, such as conducting regular tracking surveys on design awareness and standard in Hong Kong, and exploring with other organizations to conduct benchmarking study on the economic/social benefits brought about by design and innovation. Other quantitative key performance indicators would include the number of participants in HKDC events, number of visitors to the HKDC website, size of HKDC's database on designers, etc.

CIT(Atg) remarked further that apart from conducting annual reviews on its performance, HKDC would be required to conduct a major review in the fourth year of the five-year funding period in order to evaluate its overall performance, strategy and financial position. The results of the review would enable the Government to assess whether HKDC could be operationally and/or financially self-sustainable at the end of the five-year funding period. HKDC was expected to operate on a self-financing basis as soon as possible. The Government did not plan to provide recurrent subvention to HKDC upon depletion of the \$100 million commitment. It was also

hoped that HKDC could, with the Government's proposed funding support for a period of five years, build up its brand name and provide innovation and design services for different sectors and industries in the community.

Discussion

Measures to promote design and innovation

6. Highlighting that the business and manufacturing sectors had been placing more emphasis on brand building and innovation in recent years and were expecting the Government to provide more resources in those areas, Mr Jeffrey LAM expressed his support for the funding proposal. In this connection, he noted that HKDC would work through InnoCentre to further collaborate with Mainland and international partners for business sharing and co-operation. He then sought information on the promotional activities conducted overseas by HKDC to showcase Hong Kong's design talent with a view to soliciting more co-operation and hence business opportunities. In this regard, he noted that a series of large-scale exhibitions organized by the Hong Kong Trade Development Council (TDC) would be held in April, including the Hong Kong Gift & Premium Fair in which there would be a dedicated corner for Hong Kong designers and design companies to showcase their innovative design, and the feedback on such arrangement was positive. As such, he also enquired whether similar arrangement would be made for events held overseas to showcase Hong Kong's design talent and their works.

7. In reply, CIT(Atg) stressed that since its establishment, HKDC had been pursuing vigorously the establishment of overseas partnership. For instance, since 2002, HKDC had been holding an annual flagship project, the Business of Design Week (BODW), in November each year in conjunction with the SME Expo organized by HKTDC to provide maximum business matching business opportunities. Moreover, partnership had also been formed with countries renowned for design. In this regard, HKDC had since 2004 been working with the respective Consulate Generals and adopted national themes at BODW to develop longer-term collaboration relationships. So far, Scandinavian countries and the United Kingdom had been featured in previous BODWs while Italy was the national theme for BODW 2007. Consideration was being made to featuring France and the Netherlands in 2008 and 2009 respectively. He stressed that through the organization of these mega events, the local design talents could be showcased to the world. On effort to further showcase Hong Kong's design talents and their works in overseas events, CIT(Atg) advised that discussion was underway for Hong Kong designers to partner with world-renowned international manufacturers to produce limited-edition signature products and for HKDC to showcase such products outside Hong Kong, e.g. in a mega event "China Now" to be staged in the United Kingdom in 2008. He stressed that such arrangement would help raising the profile and reputation of Hong Kong's design talents in the international arena. He added that apart from holding design events locally or assisting in the co-ordination of such events overseas, HKDC had also been active

in collaborating with other parties which were involved in the promotion of Hong Kong design such as HKTDC. For instance, HKDC had been working and would continue to work with HKTDC for organization of "Lifestyle Hong Kong" events in the Mainland for promotion of Hong Kong design in relation to life style.

8. In this connection, Mr Jeffrey LAM remarked that in addition to promoting design, safeguards should also be put in place by HKDC to protect the intellectual property (IP) of designers and their products. As such, he sought information on the work of HKDC in this regard. In response, CIT(Atg) assured members that HKDC had all along attached importance to raising industries' awareness of IP protection. For instance, HKDC had compiled a business manual for local designers. The areas covered included IP protection such as how to apply for registration for their IP and related legal issues, etc. HKDC would continue to provide assistance to the design industries on this front.

Proposed funding support for HKDC and assistance to SMEs

9. The Chairman said that as he understood, HKDC was set up to assist in particular SMEs which had insufficient financial means to, say, integrate design and innovation into their business and industrial processes with a view to enhancing their competitiveness and development. However, he noted that the proposed non-recurrent allocation of \$100 million would be used for supporting the basic operation of HKDC including the administration of HKDC, but not providing direct financial support to SMEs in need. As such, he sought clarification on whether those SMEs could solicit direct financial support from, say, the Design Support Programme (DSP) under the DSI.

10. In reply, CIT(Atg) affirmed that under the DSP, there was the Design-Business Collaboration Scheme which aimed to encourage SMEs to utilize design to add value to their products or services. Local design companies and local SMEs wishing to collaborate with each other could apply for funding support under the Scheme, which was normally given as a grant up to 50% of the approved project cost, up to \$100 000. He pointed out further that SMEs in the past might not recognize the importance of design nor might they know how to collaborate with designers for integration of design into their business or industrial processes. The purpose of the Scheme was to promote among SMEs the importance of utilizing design to enhance their competitiveness. Many had shown interest in participating in the Scheme. So far, over 50 projects had been approved and there was a rising trend in the number of applications made under the Scheme. On the proposed funding support to be made to HKDC, he explained that some of the funding would actually be used for infrastructural development including the setting up of a comprehensive database about Hong Kong designers which could facilitate SMEs to access designers' services.

11. On the projects approved under the DSP, the Chairman noted that 76 projects with a total funding support of \$69 million had been approved. However, nine projects out of the 76 projects had already taken up \$44 million. As such, apart from the criteria to be met for obtaining funding support under the DSP, he

also enquired whether the remaining 67 projects were small-scale ones and hence required lesser funding support.

12. CIT(Atg) advised that under the DSP, four categories of projects would be financed, which included design research, design-business collaboration, design professional continuing education, and general support activities. He explained further that so far, two design research projects had been approved, which included a study conducted among the design and other industries on how to improve the match between the demand for and supply of design professionals, as well as to help identify the areas in which it was necessary for design professionals and the industry to build the capability to compete internationally. As for the other research project entitled "Perfect Fit China", it was an anthropometric research project aiming at developing a digital database of Chinese head and face measurements in order to capture vital statistics for designing products for the Chinese population. On projects under the category of design-business collaboration, 50 projects had been approved which aimed to promote the interest and investment of SMEs in relation to utilizing design and transforming design activity into tradable deliverables. Regarding professional continuing education projects, these included training courses on the design of watches and clocks, as well as jewellery, etc. As for projects approved under the category of general support activities, projects like BODW 2007 had been supported. On the funding support rendered to individual projects, he affirmed that it varied according to their scale. For instance, BODW which was one of the leading design events in the region would require more funding support. As for professional continuing education projects, since those projects were usually of smaller scale with small training classes organized on a trial basis to see if they suited users' needs, the funding support required was relatively smaller.

The way forward

13. Summing up the discussion, the Chairman said that the Panel supported in principle the Administration's funding proposal to provide \$100 million to support the operation of HKDC as it would be conducive to the development of local enterprises as well as the long-term economic development of Hong Kong. At the Chairman's request, the Administration undertook to report to the Panel on a regular basis the progress of the work of HKDC and the relevant initiatives taken to promote design and innovation.

V. Improving the business environment – Enhancing the business licensing system

(LC Paper No. CB(1)1319/06-07(04) -- Paper provided by the Administration

LC Paper No. IN11/06-07 -- Information note on "Government strategies to enhance competitiveness in Switzerland and Singapore" prepared by Research and Library Services Division of the Legislative Council Secretariat)

14. At the invitation of the Chairman, the Government Economist, Economic Analysis and Business Facilitation Unit of the Financial Secretary's Office (G Econ) said that Hong Kong had all along been upholding the free market economy policy. Under the "big market, small government" principle, the Government had endeavoured to provide an environment which facilitated business, and hence Hong Kong was one of the freest economies in the world. Nevertheless, in the face of keen competition in the global economy, the Government recognized that it had to strive for continuous improvement and to provide an optimal environment for local business to flourish. As such, one of the major tasks of the Economic Analysis and Business Facilitation Unit (EABFU) was to improve the regulatory and business licensing regimes. In January 2006, the Business Facilitation Advisory Committee (BFAC) was appointed, under which five dedicated task forces with representatives from the business sectors and the Government had so far been set up to steer and oversee sector-specific regulatory reviews, as well as taking forward the business facilitation efforts. He added that apart from providing support to BFAC and its task forces, EABFU also handled views, enquiries and complaints from the business sector.

15. On the work progress and broad achievements of the various task forces in the past two years, Head, Business Facilitation Division, Economic Analysis and Business Facilitation Unit of the Financial Secretary's Office (H, BFD) briefed members as follows:

(a) Pre-construction Task Force (PCTF)

PCTF was tasked to review and improve, inter alia, the procedures for lease modification and land exchange applications. The recommendations made were generally welcomed by the industry. In this connection, the Lands Department (Lands D) would consider setting up dedicated teams to take forward PCTF's recommendations. It was anticipated that the processing time of Lands D would be shortened by some 20% upon implementation of all recommendations.

(b) Town Planning Task Force (TPTF)

TPTF was tasked to review the town planning issues encountered by the real estate sector in the main planning processes and to recommend measures to improve the operational efficiency of the processes. TPTF had completed a review of the main planning processes with most recommendations taken on board by the Planning Department. One of the notable improvement measures implemented was the holding of regular District Planning Conference meetings to help resolve issues between applicants and the concerned government departments within a shorter and more definite timeframe. Moreover, another review relating to the processing of town planning appeals had also been completed. The Town Planning Appeal Board Secretariat was now implementing a number of measures, including the increase in the number of Board members, etc, to shorten the waiting time for town planning appeal cases. It was estimated that the waiting time could be reduced almost by half, i.e. from 11 months to about six to seven months. TPTF would hold another meeting in around September 2007 to review the work progress.

(c) Retail Task Force (RTF)

RTF had initiated/completed various reviews with feasible recommendations to simplify and improve the regulatory and licensing regimes. These included, for instance, reviews of non-restaurant food licences, the Mandatory Energy Efficiency Labelling Scheme, as well as the regulatory system of proprietary Chinese medicine. On the regulatory proposal regarding Volatile Organic Compound (VOC), H. BFD highlighted that the RTF had facilitated discussions between the trade and the concerned bureau. As a result, the number of consumer product categories to be regulated was reduced substantially from 40 to six.

(d) Food Business Task Force (FBTF)

FBTF had completed two reviews in January 2007, viz the review of the processing of outside seating accommodation for restaurants, as well as the review of liquor licensing. It was expected that the processing time for straightforward applications in relation to outside seating accommodation for restaurants would reduce by around 30% ,whereas that for new applications for liquor licences would be shortened by about 40% upon implementation of all recommendations.

Apart from the above reviews undertaken by the task forces concerned, H, BFD remarked that EABFU had also initiated/completed several major regulatory reviews, including the review of cinema licensing, as well as the review of the processing of applications and inspections of water plumbing installations in new buildings, etc.

16. In addition, H, BFD said that the Government had recently launched the "Be the Smart Regulator" Programme which aimed to develop a model of best practices to be replicated across licences and departments. As part of the Programme, eight Business Liaison Groups (BLGs) for various businesses had been set up to facilitate their exchange of views with the concerned government departments. BLGs meetings, which were open meetings and were held on a regular basis, were well received by trade representatives as they could have direct communication with the concerned departments with respect to licensing issues.

Discussion

17. The Chairman shared with the meeting that he had been participating in the task forces to provide views on the various regulatory reviews conducted. He considered that BFAC, in general, was effective in facilitating communication between the Government and business sectors such that the former could be more aware of the concerns of, as well as difficulties faced by, the industries. He hailed in particular the work done on the regulatory proposal regarding VOC whereby the number of consumer product categories to be regulated was effectively reduced from 40 to six after active discussions were held between the Government and the trade as facilitated by RTF. He was of the view that the business community could certainly benefit from improved regulatory regimes and business facilitation measures. In this connection, however, he noted that the Administration had recently introduced another bill, i.e. the Pesticides (Amendment) Bill, and the proposed requirements thereof had aroused serious concern among the industry. He was of the view that consideration should have been given to consulting the industries as well as introducing the abovementioned regulatory proposals in parallel so as to save the industries from adapting to new requirements to be imposed upon them time and again. Since the Government's objective was to provide an optimal environment for business to flourish, he called on the Administration to strengthen inter-departmental communication and co-ordination for launching of policies or initiatives of similar nature so as to minimize the inconvenience brought to the industries.

18. G Econ took note of the Chairman's concern for reflection to the relevant parties such as the concerned BLG to see if improvement in this respect could be made in future. In this connection, he stressed that while regulatory controls had to be strengthened to meet the public demand and ever-changing needs of the society, the Government was mindful of the need to strike an appropriate balance between the introduction of necessary controls and the avoidance of unnecessary inconvenience caused to the industries. To this end, BLGs for various businesses were set up to facilitate effective communication between the Administration and the industries, in particular to allow the Administration to thoroughly gauge the

views of the industries on any proposed regulatory measures to be introduced and their implementation details. Moreover, consideration might also be given to undertaking regulatory impact assessments to ascertain the likely impact of proposed regulatory measures on the concerned sectors.

19. Mr Jeffrey LAM remarked that Hong Kong's business environment was highly acclaimed by the international community. For instance, with the abolition of estate duty, the number of foreign companies setting up their regional headquarters and offices in Hong Kong had been on the rise. Nevertheless, he added that as reflected by some companies, it still took them quite a long while for obtaining licences, in particular that approval had to be sought from various government departments. As compared with Singapore where similar licences could be obtained in a much shorter period, it seemed that Hong Kong still had room for improvement in this regard. As such, he wished that the Government could take on the concerns of those companies for further improvement with particular respect to the time taken for issue of licences.

20. In this connection, Mr Jeffrey LAM referred to recently reported incidents in which some Mainland visitors were cheated by retail shops selling counterfeit goods. Since some of these shops might change their names and try to get new licences in order to evade their legal responsibilities in those illicit dealings and to continue their operation, he was concerned whether due care would be exercised by the Government in the issue/renewal of licences, in particular whether verification would be made to ensure that the applicants (including the board of directors) had not been involved in any unscrupulous practices before licences were issued/renewed to them in order to enhance the protection of the interests of local consumers as well as overseas visitors.

21. In reply, G Econ explained that the remit of BFAC and its task forces was to look for ways to simplify the regulatory and business licensing regimes with a view to cutting red tape, removing outdated regulations and hence improving Hong Kong's business environment. As such, the concerns raised by Mr Jeffrey LAM, i.e. the policy governing issue/renewal of licences, as well as issues relating to the circumstances under which licences would/ would not be issued/renewed, etc, did not fall within the purview of BFAC and its task forces. Nevertheless, he understood that the Economic Development and Labour Bureau was keeping in close view the issues as mentioned by Mr LAM for appropriate follow-up.

22. The Chairman thanked the Administration for taking members through the various business facilitation measures as detailed in the Administration's paper to improve Hong Kong's business environment. He also thanked the Secretariat for preparing an information note on "Government strategies to enhance competitiveness in Switzerland and Singapore" for members' reference.

VI. Issues relating to online data leakage by the Intellectual Property Department

(LC Paper No. CB(1)1352/06-07(01) -- Paper provided by the Administration

LC Paper No. CB(1)1319/06-07(05) -- Relevant newspaper cuttings)

23. The Chairman welcomed representatives from the Administration to attend the meeting. The Director of Intellectual Property (DIP) apologized for a typographical error in paragraph 17 of the Administration's paper (LC Paper No. CB(1)1352/06-07(01)) in which the phrase "the affected individuals' rights *to refuse to give consent* to the disclosure of their personal data" should read "the affected individuals' rights *to give consent* to the disclosure of their personal data". He then took members through the paper which set out the existing system through which information relating to oppositions to applications for trade mark registration was uploaded onto the Internet; the current incident relating to the uploading of unsolicited personal data onto the Internet, as well as measures to be taken to limit publication of unsolicited personal data on the Internet in future.

Discussion

The incident

24. Ms Emily LAU expressed her grave concern on the current incident in which the Intellectual Property Department (IPD) was found to have, due to human errors, published on the Internet personal data and business information so supplied to it by members of the public which should have been kept in confidence. She considered that such a mistake made by IPD would seriously undermine the public's confidence in the Government as well as the local business environment, in particular that the Government had failed to exercise due care to protect information such as personal data as well as business information entrusted to it. In this connection, she noted that according to the information stated in the Administration's paper, there were 45 documents including Hong Kong Identity Card (HKID)/passport numbers affecting 49 individuals and 18 documents including foreign identity (ID)/passport numbers affecting 29 individuals had been uploaded onto the Internet. As for the business data leaked on the Internet, these included 173 cases involving sales figures and invoices, and 125 cases involving other business information. She enquired whether the above figures were the latest ones as the Panel needed to have a precise picture on the extent of the problem and the actual number of individuals being affected by the incident.

25. In reply, DIP said that IPD had already conducted a thorough study of documents filed under the Trade Marks Ordinance (TMO) (Cap. 559) and its subsidiary legislation which could be viewed by the public under Rule 69 of the Trade Marks Rule (Cap. 559A) (TM Rule 69). There were one or two cases in which IPD could not identify whether the information was personal data or not as it was written in foreign languages. Nevertheless, those unidentified cases had already been included in the figures provided in the paper. As such, he confirmed

that the figures as set out in the paper were the latest ones.

26. Ms Emily LAU asked why those individuals had provided the unsolicited information including their personal data and sensitive business information to IPD. DIP replied that he could only speculate. The reason might be that since the trade marks opposition process was recognized in law as a quasi-judicial process, opponents and original applicants, when filing the respective notices of opposition (i.e. Form T6) and the counter-statements (i.e. Form T7), might wish to provide as much information as possible (such as copies of their ID cards appended to their statutory declarations or contracts), without carefully considering whether or not these were required. They might not have appreciated the consequences of providing unsolicited personal information.

27. DIP pointed out that under TM Rule 69, the Registrar of Trade Marks was obliged to make any of the information so submitted available to any person for inspection. Due consideration would be given as to how best to balance the need to protect personal data with the legal obligation to make the relevant information available to the public in trademark proceedings. Nevertheless, DIP accepted that uploading of data such as personal identity document numbers would normally serve no useful purpose to the general public. In future, therefore, all incoming information filed with the Registrar, be it solicited or not, would be screened, and personal data such as ID card or passport numbers would be obscured before the documents were uploaded onto the Internet for public inspection in accordance with TM Rule 69.

Compensation

28. Ms Emily LAU asked whether compensation would be offered to the individuals affected by the current leakage as in the case of the Independent Police Complaints Council (IPCC) where personal data held by IPCC were also leaked on the Internet. DIP said that compensation would not be offered. Nevertheless, IPD would inform the affected individuals of their right to seek advice on whether they might be entitled to any civil remedy from the Government. Expressing disappointment at the response made by DIP, Ms LAU remarked that it had been due to staff negligence that the personal data of the affected individuals were disclosed on the Internet. Instead of receiving compensation from the Government, those individuals had to spend time, money and effort to take up their cases in court. She considered such an arrangement unfair to the affected individuals. DIP responded that the question of staff negligence was a matter of law, which had not been determined. Nevertheless, the Government would consider claims for compensation made by the affected individuals if they could establish their legal rights under the Personal Data (Privacy) Ordinance (Cap. 486).

Investigation and remedial follow-up actions

29. In connection with the leakage incident, Ms Emily LAU noted that IPD had sought advice from the Privacy Commissioner for Personal Data (the Privacy Commissioner). As such, she enquired about the advice rendered by the Privacy Commissioner to IPD, and whether the Privacy Commissioner had conducted an investigation with respect to the present incident. DIP replied that IPD had related to the Privacy Commissioner in writing the proposed measures for enhanced protection of personal data described in paragraph 17 of the Administration's paper. The reply from the Privacy Commissioner was still awaited. On the follow-up made by the Privacy Commissioner with respect to the present case, DIP informed that a compliance study, instead of an investigation, had been undertaken and completed by the Privacy Commissioner. The Privacy Commissioner was of the view that the measures as detailed in paragraph 17 of the Administration's paper should be undertaken. These included that a comprehensive set of guidelines for IPD staff on the collection, holding, processing and use of personal data for the administration of TMO and its subsidiary legislation should be formulated; that IPD should take all practical steps to inform all affected individuals in writing the kinds of personal data which had been published on the Internet, actions taken by IPD to remedy the situation, the affectees' right to give consent or otherwise to the disclosure of their personal data, as well as their right to seek legal advice on whether they might be entitled to civil remedy from the Government, etc. DIP advised further that as he understood it, the Privacy Commissioner would issue a press release today (i.e. 17 April 2007) regarding his compliance study into the present incident. Ms LAU then instructed the Secretariat to follow up with the Office of the Privacy Commissioner in this respect.

Secretariat

(Post-meeting note: The press release issued by the Privacy Commissioner was circulated to members on 23 April 2007 vide LC Paper No. CB(1)1428/06-07.)

30. Noting that the Privacy Commissioner had only conducted a compliance study but not an investigation into the issue, Ms Emily LAU was of the view that given the serious nature of the case, a formal investigation should be conducted by, say, IPD to find out the causes leading to the leakage and whether anyone should be held responsible for the case. In reply, DIP advised that the department was undertaking a thorough investigation into the incident. Moreover, a third-party security audit on the department's procedures would also be commissioned. On whether the investigation report could be provided to the Panel for reference as raised by Ms LAU, DIP remarked that as the investigation, including sanctions to be imposed if any, would be conducted in accordance with the Civil Service Regulations, he was not sure whether the report *per se* could be tendered to the Panel. Nevertheless, he undertook to apprise the Panel of the investigation result.

Admin

31. Echoing Ms Emily LAU's views, Mr Jeffrey LAM remarked that the business sector had also expressed concern over the current incident where personal and business data were wrongfully disclosed on the Internet. In order to enhance the protection of data supplied with the Trade Marks Registry (the Registry) and to prevent recurrence, Mr LAM opined that a thorough review on the operational procedures of the Registry should be made. Moreover, the Administration should furnish the Panel with a report on the investigation undertaken into the incident, including the remedial measures taken, so as to allay members' concerns on the issue as numerous complaints had already been received in relation to the incident. DIP took note of Mr LAMs' concern and suggestions.

32. In this connection, Ms Emily LAU sought clarification on whether the proposed course of actions as set out in paragraph 17 of the Administration's paper (such as to identify and inform all affected individuals of the kinds of personal data which had been published on the Internet, and their rights to seek civil remedy from the Government, etc) had been completed, and if so, the response of those individuals. In reply, DIP said that as soon as the response of the Privacy Commissioner on, and his agreement to, the proposed measures in paragraph 17 was received, letters would be issued to those affected individuals at their correspondence addresses or care of the agent who filed the document in question. He added, however, that contact had already been made with the person whose case was reported in the Sunday Morning Post on 1 April 2007.

33. Noting the Administration's response, both Ms LAU and the Chairman expressed disappointment at the slowness of IPD in taking up remedial follow-up actions. The Chairman highlighted in particular that some of the employers might not even know that their staff had provided unsolicited business information about their companies to the Registry. Acknowledging members' concern, DIP explained, however, that the Registry had difficulty in contacting some affected individuals. By way of illustration, he quoted a case in which a contract showing foreign ID numbers of the concerned signing parties was enclosed. As such, he remarked that it would take a longer time for the department to contact and hence serve those individuals with the notification letters. Notwithstanding DIP's explanation, Ms LAU and the Chairman reiterated their concern and urged IPD to take immediate follow-up action as to notify all affected individuals and companies the disclosure of their personal data/business information on the Internet so as to facilitate those parties to take remedial actions they deemed necessary. Ms LAU also opined that IPD should not present the information as it did in paragraph 17 of the Administration paper since it would give a wrong impression that IPD had already obtained the advice from the Privacy Commissioner and had taken the follow-up actions as set out in that paragraph. DIP took note of members' concerns, and undertook to take follow-up actions within days. Nevertheless, regarding the business data provided to the Registry as mentioned in paragraph 14 of the Administration's paper, DIP stressed that it was not possible for IPD to assess whether those data were sensitive information or not as it varied from case to case, and hence it should be up to the data providers to make a decision. As such, IPD would take into consideration the legal implication in deciding whether and if so how follow-up actions would be taken with respect to those cases where business

information was provided.

34. While acknowledging that some of IPD's work was praiseworthy such as the running of a transparent Internet-based online search system where information received was efficiently uploaded onto the website for inspection by the public, Ms Emily LAU wished that IPD would not, because of the current incident, resort to a retrogressive approach as not to allow the public to view the necessary information via the Internet. Mr Jeffrey LAM echoed Ms LAU's views. In this connection, Ms LAU noted with concern that IPD had, subsequent to the report made the Sunday Morning Post on the current incident, blocked the access to all documents available for inspection including opposition and counter-statement documents on 1 April 2007. She sought explanation on the rationale behind.

35. In reply, DIP explained that when a member of the public searched for a trade mark, the display relating to a mark which had been opposed to would include an option to click on a special link, i.e. "View document available for inspection". A click on that special link would take the person to the scanned copies of documents, which in the present case would allow that person to view the unsolicited personal and business data provided by the affected individuals. He stressed that while all other information could still be viewed on the Internet, it was only that special link that IPD had blocked. Members of the public who had a legitimate reason to obtain the concerned information could still contact the Business Centre of IPD for enquiry. In this connection, the Chairman enquired as to why members of the public wished and hence IPD allowed them to view those documents. DIP explained that as the trade marks opposition process was a quasi-judicial process, all documents submitted with the notice of opposition (i.e. Form T6) and the counter-statement (i.e. Form T7) constituted part of the pleadings. As such, to maintain transparency of the trade mark system, any of the documents listed under TM Rule 69(1) would be made available for public inspection.

36. While agreeing that the leakage might be due to oversight on the part of IPD as to upload all information received onto the Internet without screening, the Chairman opined that those individuals who had provided IPD with the unsolicited personal/business data should also be held partially responsible in the present case. In this connection, he noted that when filing opposition to an application for registration of a trade mark under TMO, an opponent had to fill in Form T6 (the notice of opposition). In response to the opposition, the original applicant could serve a counter-statement to IPD, i.e. Form T7. The Chairman opined that as the two statutory forms were not simple enough for easy understanding, it might be the reason as to why the affected individuals had provided unsolicited information including their personal data when they submitted those forms to the Registry. As such, he called on IPD to simplify those two forms so that members of the public could easily ascertain the information required when filling in those forms to avoid providing unsolicited information to the Registry in future. DIP took note of the Chairman's suggestion for follow-up. Concurring that the statutory forms should be revised for easy understanding, Ms Emily LAU was of the view that consideration should also be given to

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Admin consulting, say, the relevant stakeholders on how best those forms could be simplified. She also requested the Administration to provide the Panel with copies of the duly revised forms for reference.

Way forward

Admin 37. To conclude, the Chairman remarked that IPD should learn the lesson arising from the incident and to prevent further disclosure of personal data, etc on the Internet in future. Nevertheless, he took the opportunity to credit IPD for its business facilitation work, such as the handling of trademark proceedings electronically, which was conducive to providing an enabling environment for the business sector. Concurring with the Chairman, Mr Jeffrey LAM also considered the work of IPD such as in the areas of intellectual property protection and trademark registration commendable. He hoped that the department would continue to improve its operational framework such as by introducing more measures to facilitate the provision of its services to the business sector with a view to enhancing further the business environment of Hong Kong. With regard to the present incident, Ms Emily LAU also requested the Administration to apprise the Panel of the result after IPD had contacted and notified all the affected individuals of the disclosure of their data and their rights, etc, such as the responses of those individuals, to see if the Panel would need to re-visit the matter.

VII. Any other business

38. There being no other business, the meeting ended at 4:20 pm.

Council Business Division 1
Legislative Council Secretariat
18 May 2007