

立法會
Legislative Council

LC Paper No. CB(1)476/13-14
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by the Administration)

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Panel on Economic Development

Minutes of meeting
held on Monday, 22 July 2013, at 8:30 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Paul TSE Wai-chun, JP
Hon Albert CHAN Wai-yip
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Hon TANG Ka-piu

Members absent: Hon CHUNG Kwok-pan (Deputy Chairman)
Dr Hon LEUNG Ka-lau
Hon CHAN Han-pan
Dr Hon Elizabeth QUAT, JP

Member attending: Hon WONG Kwok-hing, MH
Hon Steven HO Chun-yin
Hon Charles Peter MOK

Dr Hon Kenneth CHAN Ka-lok
Dr Hon Helena WONG Pik-wan

**Public officers
attending** :

Agenda Item III

Ms Julina CHAN Woon-yee
Deputy Secretary for Transport and Housing
(Transport) 5
Transport and Housing Bureau

Mr Francis LIU Hon-por
Director of Marine
Marine Department

Mr TUNG Hon-ming
Deputy Director of Marine
Marine Department

Ms Shirley LAM Shuet-lai
Deputy Director of Marine (Special Duties)
Marine Department

Agenda Item IV

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

Mr Philip YUNG, JP
Commissioner for Tourism

Miss Rosanna LAW, JP
Deputy Commissioner for Tourism

Agenda Item V

Mr Philip YUNG, JP
Commissioner for Tourism

Miss Rosanna LAW, JP
Deputy Commissioner for Tourism

Ms Winnie CHAN
Assistant Commissioner for Tourism (4) (Acting)

Agenda Item VI

Mr Andrew WONG Ho-yuen, JP
Permanent Secretary for Commerce and Economic
Development
(Commerce, Industry and Tourism)

Mrs Alice CHEUNG CHIU Hoi-yue, JP
Deputy Secretary for Commerce and Economic
Development
(Commerce & Industry) 3

Mrs Jessie TING YIP Yin-mei, JP
Postmaster General

Ms Estella CHOW
Assistant Postmaster General
(Business Development) (Acting)

Agenda Item VII

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

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

Ms Manda CHAN
Principal Assistant Secretary for Commerce and
Economic Development
(Commerce & Industry) Special Duties

Mr Danny LAU
Deputy Director-General of Communications
(Telecommunications)

Mr Sanda CHEUK
Assistant Director (Market & Competition)
Office of the Communications Authority

Mr Sidney TSAN
Head, Regulatory 4
Office of the Communications Authority

Attendance by invitation : Agenda item VII
Communications Association of Hong Kong
Mr Stephen HO
Chairman

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Mr Noel SUNG
Senior Council Secretary (1)5
Ms Michelle NIEN
Legislative Assistant (1)5

Action

I Confirmation of minutes of meeting
(LC Paper No. CB(1)1523/12-13 —Minutes of meeting held on
22 April 2013)

As both the Chairman and Deputy Chairman were absent, members agreed that Hon Ronny TONG Ka-wah took over the chair for the meeting. The minutes of the meeting held on 22 April 2013 were confirmed.

II Information papers issued since last meeting
(LC Paper No. CB(1)1427/12-13(01) —Administration's paper on
tables and graphs showing the
import and retail prices of
major oil products from June
2011 to May 2013

- LC Paper No. CB(1)1554/12-13(01) —Letter dated 3 July 2013 from Hon TANG Ka-piu concerning the increase in the admission fee of the Ocean Park
- LC Paper No. CB(1)1554/12-13(02) —Administration's response to the letter from Hon TANG Ka-piu concerning the increase in the admission fee of the Ocean Park as set out in LC Paper No. CB(1)1554/12-13(01)
- LC Paper No. CB(1)1549/12-13(01) —Submission from Friends of the Earth (HK) and Clean Air Network
- LC Paper Nos. CB(1)1592/12-13(01) and CB(1)1592/12-13(02) —Letters dated 9 July 2013 and 10 July 2013 from Hon Gary FAN and Hon TANG Ka-piu respectively concerning the replacement of the Air Traffic Control System of the Civil Aviation Department)
(*tabled at the meeting and issued via email on 22 July 2013*)

2. Members noted the above papers issued since the last regular meeting. Mr TANG Ka-piu proposed that the Panel discuss the recent increase of admission fee by the Ocean Park. Members agreed that it be included in the Panel list of items for discussion in the next session.

3. Mr Ronny TONG said that Mr Gary FAN and Mr TANG Ka-piu had requested the Panel to discuss at the meeting the replacement of the Air Traffic Control System of the Civil Aviation Department. Mr TONG said that the matter had not been included in the agenda in view of the heavy agenda for the meeting, but the Legislative Council ("LegCo") Secretariat had written to the Administration for response, which would be issued to members once available.

(*Post-meeting note: The Administration's responses to Mr Gary FAN and Mr TANG Ka-piu were issued to members on 24 July 2012 vide LC Paper Nos. CB(1)1601/12-13(01) and CB(1)1601/12-13(02) respectively.*)

III Update on follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012

(LC Paper No. CB(1)1522/12-13(01) —Administration's paper on update on follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012

LC Paper No. CB(1)1522/12-13(02) —Paper on follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 prepared by the Legislative Council Secretariat (updated background brief)

LC Paper No. CB(1)1592/12-13(03) Submission from the Marine Joint Conference and the local ferry trade (Chinese version only)
(*tabled at the meeting and issued via email on 22 July 2013*)

4. The Deputy Secretary for Transport and Housing (Transport) 5 (DSTH) and the Director of Marine ("D of Marine") briefed members on the follow-up actions arising from the Report of the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 ("CoI") undertaken by the Marine Department ("MD") since the Administration last updated the Panel on 27 May 2013. In gist, apart from follow-up actions taken immediately after the vessel collision incident, MD had drawn up medium and long-term measures to enhance safety of local passenger carrying vessels; engaged a classification society and a maritime consultancy firm respectively to carry out an independent audit review and a benchmark survey, and the Steering Committee on Systemic Reform of the Marine Department ("Steering Committee") had been set up to steer and drive MD to undertake a comprehensive systemic review and reform.

Internal investigation

5. Mr WONG Kwok-hing expressed his thanks to the Secretary for Transport and Housing for having met with the families of the victims of the vessel collision incident. Mr WONG said that it was a strong demand of the victims' families that those who were responsible for causing the incident should be identified and held accountable. Mr WONG asked whether and

when the Administration would make known to the victims' families and the public the outcome of the internal investigation on MD's staff being carried out by the Transport and Housing Bureau ("THB") at present.

6. DSTH said that the internal investigation on the MD's staff would be conducted by THB with a view to ensuring objectivity and procedural fairness of the process. The Investigation Team, led by the Permanent Secretary for Transport and Housing (Transport), had commenced work, such as analyzing the CoI report and relevant information, and would interview individual MD officers. DSTH stressed that the Investigation Team would remain vigilant and thorough in carrying out the investigation. It would consider facts comprehensively and conduct the investigation fairly and impartially. In case the investigation uncovered any violations of rules and regulations or issues relating to management responsibilities, the Administration would handle the cases impartially according to established procedures and disciplinary action would be taken against the officers concerned, irrespective of their ranks.

Concerns about the proposed improvement measures

7. Mr Steven HO Chun-yin pointed out the concern of the trade about implementing the measures proposed by the Administration for improving marine safety and the safety of passenger vessels, particularly the shortage of manpower in the trade for implementing the measures. Mr HO asked about the extent to which these measures were accepted by the trade and whether the Administration had assessed the impact of implementing those measures on the operators of passenger vessels and in turn on ferry services and passengers.

8. D of Marine said that MD had been discussing with the trade about the immediate follow-up actions as well as the medium- and long-term measures for improving marine safety and the safety of passenger vessels. The trade in general recognized the need to improve the safety of passenger vessels. The Administration was fully aware of the trade's concern about the possible implications arising from implementation of these measures such as manpower supply. Both sides would continue discussions with a view to identifying practicable and feasible implementation proposals as early as possible.

9. Echoing the views of Mr Steven HO, Mr Frankie YICK Chi-ming relayed the dissatisfaction of the trade with the Administration. Mr YICK questioned whether the Administration had listened to the views of the trade when formulating the measures. He also questioned the applicability to local circumstances of the recommendations made by foreign experts. Mr YICK said that whilst the trade supported the cause of enhancing maritime safety, the trade had great concern with the proposed measures. For example, regarding the proposed requirement of a look-out for each vessel carrying more than 100

passengers, the responsibilities of the look-out, the division of work between the post and the captain, and the type of training required for the post had not been clearly spelt out. The trade faced difficulty in recruiting sufficient staff to implement the proposed measures.

10. D of Marine said that since the collision incident, through the Local Vessels Advisory Committee and its Subcommittees, MD and the trade had held discussions on the various improvement measures and the plan to implement these measures. The discussion with the trade on details of implementing the five improvement measures in the first phase as mentioned in the paper would hopefully be concluded by the end of September 2013. D of Marine said that for implementing the improvement measures, the trade would require about 70 additional seamen who had received basic sailor training. The Administration had taken note of the trade's concern about manpower shortage and had been liaising with the trade, training institutions, such as the Vocational Training Council and the Maritime Services Training Institute as well as unions in exploring ways to improve the effectiveness of recruitment. The Government had established a Maritime and Aviation Training Fund to support training for the local shipping and aviation industry. Pointing out that the Fund was not targeted at training frontline staff in the marine industry, Mr Frankie YICK reiterated the great difficulty in recruiting people that the trade faced at present. In addition, Mr YICK expressed concern about the proposed requirement for a look-out on each vessel. Given its responsibility and in order to be effective, the job of the look-out required training which was more demanding than that of an ordinary sailor. D of Marine undertook to discuss and clarify with the trade the various issues.

11. Mr YIU Si-wing asked how the passenger safety on small vessels for hire was regulated. D of Marine said that all pleasure vessels were required to be surveyed by MD and to comply with the requirement for third-party risks insurance. Vessels belonging to class IV had to comply with the Code of Practice ("CoP") on vessel safety. D of Marine said that MD would strengthen the communication with the trade and vessels operators regarding the requirements of vessel safety.

Automatic Identification System

12. Mr Frankie YICK said that the trade had doubt about the practical effectiveness of the Automatic Identification System ("AIS") proposed by the Administration in helping vessels to avoid collision. Mr SIN Chung-kai noted the view expressed by the trade that when visibility at sea was poor, the look-out on board would not be of much help to navigation and that technology should be used to solve the problem. Referring to the recommendation on vessel monitoring systems made by the maritime consultant in the benchmark

survey, Mr SIN asked for the reason for the MD's view that the Harbour Craft Transponder System ("HARTS") was not suitable to be implemented in Hong Kong and the trade's opposition to requirement for the installation AIS on vessels.

13. D of Marine said that vessels equipped with AIS would allow the detection of their navigation status by other vessels (including ocean going vessels) which enabled early collision avoidance actions as necessary. He said that HARTS was now only used by Singapore for internal security in Singapore's port waters. It enabled the automatic identification of Singaporean vessels. AIS provided a wider range of vessel information than HARTS. AIS was installed on ocean going vessels and was a requirement adopted for local vessels by many ports in the world, such as Sydney and ports in the United Kingdom.

Independent Audit Review and Benchmark Survey

14. Members noted from the Administration's paper that the independent audit review of MD's procedures for plan approval and ship inspection conducted by Lloyd's Register had revealed "four less serious non-conformities and 19 opportunities for improvements". Mr TANG Ka-piu asked whether such small non-conformities in MD's procedures had contributed over time to the major error that had led to the marine disaster. Mr WU Chi-wai questioned the determination and capability of MD to ensure compliance with the procedures in the Department.

15. Deputy Director of Marine (DD of Marine) said that MD had already taken action to rectify the non-conformities and to follow up on the suggestions for improvements. MD had newly introduced an internal audit mechanism to ensure that staff had carried out their duties and strictly adhered to the procedures.

16. In respect of the recommendations to enhance marine safety put forward by the maritime consultant engaged by MD to conduct the benchmark survey on local passenger vessels as set out in Annex II of the Administration's paper, Mr WU Chi-wai asked about how and when the Administration would take forward those recommendations. He opined that those related to marine safety should be accorded top priority. DD of Marine said that the said recommendations were largely in line with those made in the CoI report. MD would consult the trade on these recommendations and their implementation.

17. Mr TANG Ka-piu enquired about the progress of the Administration's work in respect of the measures other than those related to marine safety. D of Marine said that the Administration held no fixed views regarding the proposed

measures such as increasing third party risks insurance coverage and introducing a Marine Accident Victims Assistance Fund, and would continue its consultation with the trade to gauge its views and would take into account views of the public if necessary.

Plan and manpower for implementing the measures

18. In response to the enquiries of Mr WONG Kwok-hing and Mr TANG Ka-piu's about the Administration's plan for implementing the improvement measures, D of Marine and DSTH said that the five proposed improvement measures in the first phase as set out in the paper did not require legislative amendments and could be implemented by administrative actions and amendments to the CoP. MD had been discussing with the trade about the difficulties it faced. DSTH said that MD planned to conclude the discussion with the trade on the implementation details within the third quarter of 2013, and would amend the relevant CoP thereafter in around September 2013. The majority of the improvement measures, i.e. those regarding muster list, lifejackets signages and directives, and watertight doors, would take effect 6 months after the gazettal of the amended CoP. Those measures which involved employment of additional crew and training, and introduction of eye sight tests would be implemented one year after the gazettal of the amended CoP so as to allow sufficient time for the operators to make the necessary preparations.

19. The Chairman resumed the chair. Mr Frankie YICK Chi-ming declared that he was a director of the "Star" Ferry Company, Limited. Mr YICK reiterated the concerns of the trade about supply of trained manpower for implementing the measures particularly the requirements for the minimum safe number of crew for a ferry or launch and for a look-out on each vessel carrying more than 100 passengers during the hours of darkness and in reduced visibility.

20. Mr Frankie YICK conveyed the dissatisfaction of the trade that the Administration had forced the CoI's recommendations on the trade without fully listening to the latter's views whether these recommendations were applicable in practice under the circumstances of Hong Kong. For example, the trade found it difficult for coxswains of vessels to fulfill the responsibility for ensuring that children wore lifejackets at all times when they were on board. D of Marine said that the Administration would continue to discuss with the trade and work out solutions to address relevant concerns.

21. Referring to the shortfall of 70 plus trained persons in the trade for implementing the requirement for look-out, the Chairman asked whether there would be any grace period for implementing the proposed improvement

measures if ferry operators could not recruit sufficient manpower for enforcing the manning requirement and whether the Administration had any plan to recruit and train the needed personnel.

22. D of Marine considered that the problem of manpower might not be as serious as the trade expected. He said that the work of look-out did not require highly demanding training or certification. Moreover, the coxswain of a vessel was already performing the job of a look-out at present. There had already been arrangement on high-speed crafts navigating at night that one of the crew was assigned look-out duties. MD would discuss with the trade to clarify their questions regarding the look-out requirement and would facilitate the provision of sufficient trained personnel for the requirement by the various training institutes. The Chairman urged the Administration to clearly define, and explain to the trade, the duties of the look-out.

Consultation with the trade and the public

23. Mr TANG Ka-piu referred to the letter from the Marine Joint Conference and the local ferry trade of 19 July 2013 (tabled at the meeting) which expressed concerns about the Administration's proposed measures for enhancing marine safety and the difficulties in implementing these measures. Mr TANG opined that the safety of passengers on board vessels should not be compromised. In implementing the proposed measures, apart from taking into account the views of the trade, the Administration should also listen to the views of the public. DSTH said that the measures proposed by the Administration were based on the recommendations in the CoI report. The Administration was aware of the difficulties and challenges faced by the trade but marine safety was of prime concern and that MD would continue to consult the trade on implementation details.

24. Mr YIU Si-wing, Mr TANG Ka-piu and Mr Frankie YICK opined that a public hearing should be held to enable the trade and the public to express their views about the measures proposed by the Administration to enhance marine safety. The Chairman instructed the Secretariat to arrange for a special meeting for this purpose and inform members of the details when they were finalized.

(Post-meeting note: A special meeting was scheduled for 17 September 2013 to receive views of deputations on the measures proposed by the Administration for enhancing marine safety and the safety of passenger carrying vessels.)

IV Latest progress in taking forward the reform of the new regulatory regime for the tourism sector in Hong Kong

(LC Paper No. CB(1)1522/12-13(03) —Administration's paper on latest progress in taking forward the reform of the new regulatory regime for the tourism sector in Hong Kong

LC Paper No. CB(1)1522/12-13(04) —Paper on the new regulatory regime for the tourism sector in Hong Kong prepared by the Legislative Council Secretariat (background brief))

25. The Secretary for Commerce and Economic Development (SCED) briefed members on the salient points of the paper which set out the detailed arrangements under the new regulatory regime for the tourism sector, including the composition of the Travel Industry Authority ("TIA"), the threshold for setting up travel business, the new licensing system for tourist guides and tour escorts under the TIA, and the new role of the Travel Industry Council ("TIC"). SCED said that the Administration was drafting the new legislation based on the broad parameters for the new regulatory regime developed thus far and would continue to discuss further with the travel trade with a view to refining some of the detailed arrangements and addressing their concerns. The draft new legislation could be introduced into the LegCo within 2014 and the TIA could come into operation in late 2015 the earliest.

Requirement of appointing an authorized representative for each travel agent

26. Mr Michael TIEN Puk-sun noted from the paper that the Administration proposed to require each travel agent to appoint an authorized representative ("AR") who would be held responsible for all matters pertaining to the operation of the travel agent. Mr TIEN opined that the proposed eligibility criteria for AR were in general rather lax. Notwithstanding the huge responsibility that the position was supposed to shoulder, a travel agent might just assign an ordinary employee as AR.

27. SCED said that in the past it had often been unclear who was responsible for the operation of a travel agent. According to the present proposal, AR would have the statutory duties which included (a) ensuring adequate supervision of the operation, management and control of the travel agent for protecting the interest and safety of the travelling public; and (b) ensuring that the operation of the travel agent was in full compliance with all licensing conditions. If the AR of a travel agent was disqualified, he would not be allowed to be appointed as AR again. Mr Michael TIEN said that since

a disqualified AR could still be employed by the travel agent to do other jobs, the AR might not take disqualification seriously as it had no consequence to him.

28. Mr James TIEN Pei-chun said that Members of the Liberal Party supported the proposals as set out in the paper. Despite its work for the tourism sector in the past, the TIC gave the public an impression of "insiders regulating insiders". He urged the Administration to speed up the implementation of the proposals. Mr TIEN pointed out that traders engaged in arranging the Mainland tourists for shopping itineraries at designated shops in Hong Kong conducted their unscrupulous activities in a highly organized manner. They would have no difficulty in appointing a Hong Kong resident to act as AR. Disqualifying the AR would not deter their unscrupulous practices. He suggested the Administration model on the licensing system for restaurants and introduce a license disqualification system for travel agents.

29. SCED said that the Administration had been aware of the unscrupulous practices mentioned by Mr James TIEN and stressed that the Administration would adopt a multi-prong approach in tackling malpractices in the travel industry. The Administration would continue liaising closely with the authorities in the Mainland with a view to curbing at source the malpractices found in Mainland inbound tour groups.

Guarantee money for setting up travel business

30. Mr YIU Si-wing declared that he was a director of the TIC and said that the work of the TIC in the past twenty years should be recognized. Notwithstanding, it could not solve the problem of "insiders regulating insiders". Mr YIU noted the proposal that new travel agents not operating Mainland inbound tour group business would be required to pay a guarantee money of \$500,000 for setting up business under the new regulatory regime whereas the guarantee money for those operating Mainland inbound tour group business would be \$800,000. Mr YIU opined that the requirement of \$800,000 would drive off small firms and would eventually lead to the domination of the tourism sector by a few large firms. He considered it more reasonable that the higher guarantee money requirement be triggered off when the travel agent was found to have broken the rules. Mr James TIEN Pei-chun and Mr Paul TSE Wai-chun expressed a similar view.

31. SCED said that the guarantee money requirement was introduced having regard to the spate of problems arising from the operation of Mainland inbound tour groups and the relatively poor track record of many travel agents operating Mainland inbound tour group business. The Administration considered that a more stringent guarantee money requirement for these travel

agents would help ensure the effectiveness of the new regime in curbing malpractices in the operation of such business.

32. In response to the enquiry of Mr YIU Si-wing, SCED said that an inbound travel agent would not be considered as operating Mainland inbound tour group business under the new regulatory regime and not be required to deposit guarantee money of \$800,000 if it only provided to Mainland inbound travellers services such as purchase of tickets for carriages, booking of accommodation or transport arrangements for those in transit in Hong Kong.

33. Mr Frankie YICK Chi-ming considered that the guarantee money requirement was a stringent threshold for setting up travel business as the vast majority of travel agents were small and medium enterprises ("SMEs"). Mr YICK asked about the view of the travel industry regarding the raising of the threshold and whether the Administration had assessment about the number of travel agents which would go out of business because they could not afford the guarantee money.

34. SCED and the Commissioner for Tourism (C for Tourism) said that a prevailing comment that the Administration received during the public consultation exercise and subsequent consultation with the travel trade had been that the threshold for setting up travel business which had been in place since 1994 was too low. The different requirements for new travel agents, i.e. \$500,000 those not operating Mainland inbound tour group business and \$800,000 those operating such business were set having taken into account the incidents of malpractices of many travel agents receiving Mainland inbound tour groups in recent years. SCED said that the Administration was aware of the concern expressed by the trade and welcomed any concrete and practicable counter-proposals from the trade which could balance the interests of various stakeholders. C for Tourism said that raising the threshold would help weed out inferior elements and raise the overall service standards of the travel industry. He stressed that guarantee money was not the only measure for improvement. Other measures included inspections, enforcement of guidelines by the TIA, etc.

Travel Industry Development Fund

35. Members noted the proposal to set up a Travel Industry Development Fund ("TIDF") and to redeploy a specified amount from the balance of the Travel Industry Compensation Fund ("TICF") on a one-off basis to the proposed TIDF. Mr SIN Chung-kai expressed concern that the shift of resources from the TICF to the TIDF would weaken the protection to outbound travellers. Mr WU Chi-wai and Mr WONG Ting-kwong opined that the TICF was set up for compensation to travellers and contributions to the TICF were

derived from levy from tour fare paid by consumers and not from the trade. Both Mr WU and Mr WONG questioned whether it was proper to transfer its balance to the new TIDF.

36. SCED explained that under the new regulatory regime, the TIA would take over the management of the TICF from the TICF Management Board. To support the continuous development of the travel trade, it was reasonable to redeploy a specified amount from the balance of the TICF on a one-off basis to set up the TIDF upon commencement of the new regulatory regime. Since the TICF was contributed by the travel industry and provided that the original purposes of the TICF and the possible pay-out of the related ex gratia payments would not be affected by the establishment of the TIDF through a one-off redeployment of funds, there was a justifiable case to redeploy part of the balance of the TICF to the TIDF to support the long-term development of the travel industry.

37. SCED said that the actuarial consultant's calculation indicated that the TICF would still have a buffer of more than \$170 million even under the worst-case scenario of possible pay-out of ex gratia payments from the TICF. To set up the TIDF, a specified amount from the balance of the TICF would be redeployed to the TIDF on a one-off basis. The redeployment of fund would require amendment of Travel Agents Ordinance (Cap. 218) and its subsidiary legislation to expand the scope of the TICF to cover the establishment of TIDF in support of the development of the travel industry.

38. Mr James TIEN Pei-chun said that the TIDF should be used for raising the standard of the travel trade which in turn would benefit the consumers. Mr TIEN noted that as at 30 June 2012, the balance of the TICF was \$578 million and that since its inception, the total pay-out from the TICF up to March 2013 was about \$22.43 million. He urged the Administration to make good use of the fund.

39. At the request of Mr Paul TSE, the Administration undertook to provide a supplementary paper on the TICF setting out details in respect of its nature, ambit, operation, etc. in order to address members' queries about the TICF and the proposal to redeploy part of its balance to the new TIDF.

(Post-meeting note: The information provided by the Administration on the TICF and the proposed establishment of the TIDF was issued to members on 1 August 2013 vide LC Paper No. CB(1)1656/12-13(01).)

Composition of TIA

40. Mr Paul TSE declared that he was a proprietor of a travel agent.

Mr TSE noted the proposal that three members of the TIA Board would be nominated by the TIC notwithstanding the drop of the membership and representativeness of TIC. He suggested that the Administration should consider letting the trade nominate representatives for the TIA Board. Mr James TIEN shared the view of Mr TSE that the eight Association Members of TIC be considered for the membership of the TIA Board.

Funding arrangement for TIA

41. Members noted that the major sources of funding of the TIA would include the levy charged on outbound tours, licence fees of travel agents, tourist guides and tour escorts, and registration fees for inbound tours from the Mainland. Mr WONG Ting-kwong asked whether the Administration would raise the levy charged on outbound tours which was at present 0.15% of every outbound fare received by such travel agent.

42. SCED said that he did not envisage any need at present to substantially increase the existing fees and levy during the initial operation of the TIA, except for the registration fee for Mainland inbound tours. In response to Mr WU Chi-wai's enquiry for the reason for only raising the registration fee for Mainland inbound tours, SCED said that if the registration fee for Mainland inbound tour groups was increased by the same scale as that for the levy charged on outbound tours to \$200 per tour as proposed, the registration fee would be \$5 per person for a group of 40 travellers. The Administration considered it appropriate.

43. In response to Mr WU's enquiry, C for Tourism said that the Administration would work out the financial budget for TIA after studying the resources the TIA required for its work in inspection, enforcement etc. It was expected that the size of the TIA establishment would be slightly larger than that of TIC and Travel Agents Registry combined. The Administration would provide sufficient financial resources needed. The TIA would operate on a self-financing basis in the long run. To achieve this, full cost would have to be recovered from the travel industry. Therefore, the fee(s) charged would have to be raised. To reduce the impact on the industry, the Administration would not propose any increase to the existing licensing fees and levy immediately upon the establishment of the TIA when the new regulatory regime commenced. To bridge the remaining funding gap at the initial stage of operation of the TIA, the Government would provide a one-off capital grant to the TIA as seed money for meeting the set-up cost and part of the operating expenses at its initial stage of operation, and as contingency reserve in events of extremely poor market conditions which would reduce its annual income. The provision of the seed money would require the approval of the Financial Committee.

44. The Chairman declared that he was a director and shareholder of a travel agent. He sought clarification about the role each played by the TIC and the TIA in resolving consumers' disputes. SCED said that the TIC would be entrusted with the power to conciliate disputes of a non-disciplinary nature whereas the TIA would deal with complaints suspected to be disciplinary in nature. The Chairman asked the Administration to explain in greater detail to the trade so as to remove any uncertainties about the roles of the TIC and the TIA.

Tour escorts for outbound tour groups

45. Mr TANG Ka-piu said that Members of the Hong Kong Federation of Trade Unions supported the proposals as set out in the paper. Mr TANG pointed out the increasing trend in recent years among outbound tour groups that they did not have a tour escort from Hong Kong. He opined that such a situation was unsatisfactory as far as the care rendered to tour participants and the professional development of practitioners in the trade are concerned. Mr TANG questioned whether the Administration would specify the requirement of tour escort for out bound tours.

46. SCED said that the Administration attached great importance in the professional development of the practitioners in travel trade. The present proposed licensing mechanism of tourist guides and tour escorts under the new regulatory regime would help strengthen the training and development of tourist guides and tour escorts. Representatives of tourist guides and tour escorts would also be appointed to the TIA Board to reflect the interests and concerns of these practitioners.

The need for the new regulatory regime

47. Mr Paul TSE Wai-chun opined that consumers joining outbound tours incurred losses more often than those joining inbound tours. Mr TSE queried about the differential treatment in respect of inbound and outbound travel agents as adopted by the Administration in the current proposal. Mr TSE said that given the stringent requirements of the Trade Description Ordinance ("TDO"), the Administration should consider whether it was necessary to impose such stringent control over the travel industry in the new regulatory regime. The Chairman requested the Administration to respond to the comment of some members that the tourism sector was being "doubly regulated" by the proposed new regulatory regime on the one hand and TDO on the other.

48. SCED said that the proposal for the new regime had been formulated after extensive consultation with the trade and with a view to balancing

interests of various stakeholders. The Administration had also taken note of the views of LegCo Members in the consultation exercises. SCED said that TDO could not take the place of the new regulatory regime for the travel industry. Certain issues such as shopping itineraries at designated shops were unique to the tourism sector and were not found in other sectors. The new regulatory regime was designed specifically for the travel industry aiming at helping the long-term development of the trade as well as tourist agents and tour guides. He hoped that the Administration, the travel industry and the public could join hands in exploring a regulatory regime for the healthy and sustained development of the trade.

49. The Chairman suggested that SCED communicate with other Bureau Secretaries so that the Government could adopt a consistent approach in regulating different industries and avoid being too stringent for some industries and too loose for others. In conclusion, the Chairman said that members in general supported the proposals as set out in the paper

V Operation and regulation arrangements of the Kai Tak Cruise Terminal

(LC Paper No. CB(1)1522/12-13(05) —Administration's paper on operation and regulation arrangements of the Kai Tak Cruise Terminal

LC Paper No. CB(1)1522/12-13(06) —Paper on the development of the Kai Tak Cruise Terminal prepared by the Legislative Council Secretariat (background brief)

50. C for Tourism briefed the Panel on the measures to improve the operation arrangements of the Kai Tak Cruise Terminal ("the Terminal") after the inaugural berthing in June 2013, and the legislative proposal to regulate the use of the Terminal to ensure its smooth operation. In gist, the Administration would introduce a new piece of subsidiary legislation to regulate the use of the Terminal in general, and to regulate the access to certain parts of the Terminal (e.g. the apron, the customs and immigration hall and some important plant rooms) by designating a restricted area.

Utilization during low season

51. Mr SIN Chung-kai enquired about the use of the Terminal during the typhoon season when few cruise liners would visit Hong Kong. C for Tourism

said that the design of the Terminal had taken into account the seasonal nature of cruise operations, and hence the possible low utilization of the Terminal during the typhoon season. To maximize the flexibility in the utilization of the Terminal, the terminal building had adopted a wide span layout with fewer structural columns. The design enabled the waiting halls in the Terminal to be used for conferences and exhibitions during the non-peak seasons of cruise operations. The terminal operator had already expressed interest in hosting functions in the terminal building to optimize the use of terminal and generate additional revenue. The Tourism Commission was also working with the trade to organize a Cruise Holiday Expo at the terminal building in September 2013 to promote cruise tourism and demonstrate the versatility of the Terminal.

Facilities in the terminal building

52. Mr YIU Si-wing suggested that there should be dedicated service counters outside the restricted area for hotel representatives and travel agents to receive cruise passengers. The Administration took note of Mr YIU's suggestion. In response to Mr YIU's concern about the media reports on the presence of rats in the Terminal, C for Tourism said that the Food and Environmental Hygiene Department had advised the terminal operator on rodent control measures and taken follow-up actions. The contractor for the construction works had been asked to step up inspections and take additional control measures to improve the environmental hygiene of the works areas.

53. Mr WONG Kwok-hing expressed concern about the lack of business for the shops in the Terminal during low season since unlike the Ocean Terminal, the Terminal was located far away from developed commercial districts. Mr WONG suggested that the Administration might consider offering rental concessions to tenants in the ancillary commercial area at the Terminal.

54. DC for Tourism said that it would take time for the facilities in the Kai Tak Development to be completed in phases. As the first completed facility in the development area, the Terminal needed time to develop its business. In particular, it would face various constraints during its first few years of operation. She expected that with the opening of the Kai Tak Cruise Terminal Park on the rooftop of the Terminal later in the year would bring in more visitors to the Terminal and business to its shops. C for Tourism said that the terminal operator was discussing the leasing arrangements with potential tenants in the ancillary commercial area. He would relay Mr WONG's suggestion to the terminal operator for consideration.

Promotion of cruise tourism

55. Mr Christopher CHEUNG Wah-fung enquired about the measures taken

by the Administration to promote cruise tourism particularly the interest of Mainland visitors coming to Hong Kong for cruise travel. Mr YIU Si-wing shared the view of Mr CHEUNG and said that the Administration should speed up the discussion with the Mainland authorities.

56. C for Tourism said that the Central People's Government announced in June 2012 that Mainland tour groups taking cruises from Hong Kong to Taiwan could visit Japan or Korea in the same journey before returning to the Mainland. The new policy will facilitate cruise companies to organize more diversified itineraries for Mainland tourists and attract them to join cruise journeys from Hong Kong. This was also conducive to encouraging cruise companies to deploy more ships to the Asia-Pacific region, thereby promoting the development of the cruise industry in the Mainland and Hong Kong. The Administration would continue to work with the China National Tourism Administration and cruise companies to work out the detailed arrangements of this new policy. In addition, to tap the huge potential of the market in the Mainland, the Hong Kong Tourism Board ("HKTB") would step up its promotion on cruise tourism. Apart from attracting more cruise liners to visit Hong Kong, the HKTB would step up various promotion activities in the Mainland, especially in the Southern part of the Mainland to stimulate the interest of Mainland residents in cruise travel. For example, HKTB had been discussing with travel agents in Mainland to use cruise tour as incentive travel for employees in large enterprises in the Mainland.

Legislative proposal to regulate the use of the Terminal

57. Mr YIU Si-wing expressed support for the legislative proposal to regulate the use of the Terminal as he considered that the nature of its operation was similar to that of the airport and cross-border control points. Mr YIU, Mr Paul TSE Wai-chun and Mr WONG Kwok-hing queried about the reason for not introducing the relevant legislative proposal earlier.

58. DC for Tourism said that as in the case of other designated port facilities, under the Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap. 582A), the operator of the Terminal was at present required to comply with the security requirements as stipulated in the Port Facility Security Plan, such as establishing the "restricted area" at the Terminal, identifying measures for prevention of unauthorized access to the Terminal, etc. The current legislative proposal for regulating the use, and access to certain parts, of the Terminal was similar to the arrangements for other marine control points. The Terminal was a new facility and the experience gained in the inaugural berthing at the Terminal in June 2013 had provided the Administration with useful insights on designating the restricted area in the Terminal in such a way to address the security needs without affecting the smooth operation of cruise liners and the

terminal operator.

59. Mr WU Chi-wai asked whether the approach of the present legislative proposal for the Terminal could model on that for the Ocean Terminal. C for Tourism said that unlike the Ocean Terminal, the Terminal was designed with a view that Hong Kong would become a home port for cruise liners and was thus equipped with regular immigration and baggage handling facilities, and could allow the berthing of the biggest cruise liners in the world.

Areas in the Terminal accessible by the public

60. Dr Helena WONG Pik-wan opined that the restriction on access to the Terminal should be based purely on genuine security needs and the public should be allowed greater flexibility in using the space of the Terminal. Dr WONG asked whether restriction on access to the apron area could be lifted during the low season so that the area could be made open to the public for activities like angling.

61. DC for Tourism said that the Administration had endeavoured to keep the use of the Terminal as flexible as possible and minimized the "restricted area" in the Terminal in the drafting of its definition in law. Notwithstanding, it was necessary to clearly define the restricted area of the Terminal and let the public know. In the present proposal, the restricted areas were limited to the apron, the customs and immigration hall and some important plant rooms. The Kai Tak Cruise Terminal Park and the ancillary commercial area, as well as the two waiting halls when there was no berthing of ships, would be accessible to the public. DC for Tourism said that for safety reason it would be difficult to make the apron area open to the public for activities like angling as no fence was installed along the edge of the apron.

Transport arrangements

62. Mr Paul TSE Wai-chun asked whether arrangements for transporting visitors to places other than Kowloon Bay MTR Station at Telford Gardens, where transportation was already very busy. Mr TSE suggested that to increase accessibility of the Terminal, the Administration should consider providing connections to other places by small passenger vessels. Dr Helena WONG Pik-wan also urged the Administration to consider giving support for ferry service to connect the Terminal with other parts of Hong Kong as the population nearby in the Kai Tak Development Area was set to increase significantly.

63. C for Tourism said that in addition to the green minibus route which ran between the Terminal and Kowloon Bay MTR Station, additional public

transport services would be arranged to cater for the demand if there were large-scale activities at the Terminal. C for Tourism said that the terminal operator had been in discussion with the Transport Department on transport arrangements for the Terminal and would consider various options. He pointed out that it would be easier to provide marine transport for cruise passengers on a need basis when cruise liners arrived at the Terminal. But in case a regular ferry service was to be provided, the operator of such ferry service would have to consider whether there would be a sufficient number of passengers to make the service financially viable.

64. Mr WONG Ting-kwong pointed out the importance of minibus service for local residents to visit the Kai Tak Cruise Terminal Park thereby bringing business to the shops in the Terminal. C for Tourism said that the Administration attached importance to transport arrangements for visitors to the Terminal. The terminal operator would discuss with the Transport Department special transport arrangements for the Terminal on weekends, holidays and particularly days when events were held at the Terminal.

On-shore power facilities

65. Dr Helena WONG Pik-wan asked whether on-shore power was available for use by cruise vessels berthing at the Terminal. C for Tourism said that space had been reserved for on-shore power facilities. The broad international standard on provision of on-shore power facilities was formulated only in 2012, and details of the standard had yet to be worked out. Notwithstanding, the Environment Bureau had commissioned the Electrical and Mechanical Services Department to conduct a feasibility study for the provision of on-shore power facilities at the Terminal which was expected to commence by the end of 2013. Upon completion of the study, the Government would present the relevant financial proposals to LegCo for approval.

Other views

66. In response to the enquiries of Mr WU Chi-wai, C for Tourism said that the terminal operator was required to pay a fixed rent, and a variable rent based on a sliding scale linked to the operators' gross receipts. C for Tourism stressed that the income from the Terminal should not be assessed purely on the basis of the rental received from the terminal operator, but should be viewed more widely from the perspective of the overall economic benefits brought by the Terminal to Hong Kong.

67. Mr WONG Ting-kwong suggested that the Administration arrange for the Panel to visit the Terminal at the time when cruise liners berthed there so that members could see the various operations in action in respect of

immigration clearance and baggage handling in practice. C for Tourism took note of Mr WONG's suggestion.

68. The Chairman expressed his hope that the Administration's discussion of with the China National Tourism Administration about the new policy on the Mainland tour groups could generate concrete results soon as the new policy would facilitate cruise companies to organize more diversified itineraries for Mainland tourists and attract them to join cruise journeys from Hong Kong. He urged the Administration to step up transport arrangements for the Terminal, both for cruise passengers arriving at Hong Kong as well as local residents who would like to visit the terminal building and the Kai Tak Cruise Terminal Park. C for Tourism took note of members' views and suggestions. In conclusion, the Chairman said that members in general supported the legislative proposal as set out in the paper.

69. At this juncture, the Chairman announced that the meeting be adjourned for a break of three minutes.

VI Revision of postage rates and miscellaneous postal fees and charges

(LC Paper No. CB(1)1506/12-13(01) —Administration's paper on revision of postage rates and miscellaneous postal fees and charges

LC Paper No. CB(1)1567/12-13(01) —Paper on the revision of postage rates and miscellaneous postal fees and charges prepared by the Legislative Council Secretariat (background brief))

70. Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) (PSCIT) briefed members on the Postmaster General (PMG)'s plan to adjust a number of principal postage rates from 1 October 2013, and certain postal fees under the Post Office Regulations (Cap. 98A) from 1 December 2013.

71. Mr WONG Kwok-hing said that percentage-wise, the increases of postage rates and postal fees ranging from 13% to 25% were high and would have an impact on people's livelihood. Mr WONG questioned the reason for the Administration's not adjusting the postage rates and postal fees for more than 10 years and as a result it had to implement the increases of such a large magnitude. Mr WONG opined that postal service was one of the essential services to the public and should be provided by the Government. Moreover,

the Government should be able to absorb the operating loss of the Post Office Trading Fund ("POTF") as the Government had a large fiscal reserve at present. Mr TANG Ka-piu expressed dissatisfaction with the postage adjustment mechanism whereby PMG might determine the postage rates subject to any direction of the Chief Executive in Council without having to consult LegCo.

72. PSCIT said that the present increases in postage rates and postal fees were essential as the POTF was facing escalating operating costs such as staff costs, air conveyance costs and terminal dues payments. Its financial performance had been deteriorating since 2007-2008 and it started to incur an operating loss in 2011-2012. The whole reserve of the POTF would be completely depleted after 2015-2016 if the POTF did not make timely adjustments to the principal postage rates and some of the postal fees under Cap. 98A.

Frequency of postage and postal fee adjustments

73. Mr YIU Si-wing said that the POTF should conduct reviews of postage rates and postal fees more frequently, say, every five years, than it had been doing in order to avoid the need for a large increase after a long interval as in the current case. This would facilitate SMEs' planning of their budgets. The Chairman said that frequent increases in postage rates and postal fees would be a hassle to the public but so was a large increase after a long interval. PSCIT said that in future the Administration would conduct review of postage rates and postal fees every two years.

Non-civil service contract staff

74. Mr WONG Kwok-hing and Mr TANG Ka-piu said that Hongkong Post (HKP) employed over 2 000 non-civil service contract ("NCSC") staff and the proportion of those with more than five years of service was particularly high in comparison with other Government departments. All along, the NCSC staff had been employed on less favourable terms than their civil service counterparts. Mr WONG and Mr TANG opined that the Administration should review the mode of operation of the POTF.

75. PSCIT said that no matter whether the postal services were provided under a trading fund or not, given the nature of postal service, contract staff were required for meeting the operational need of HKP. It had been a long-standing practice of HKP to employ contract staff to perform work of different nature, e.g. mail sorting. There were about 1 000 part-time contract staff.

Concessionary measures

76. Mr Christopher CHEUNG Wah-fung and Mr YIU Si-wing considered that percentage-wise the present increases in postage rates and postal fees were large. Mr CHEUNG said that an increase in postage rates for bulk local mail (from \$1.25 to \$1.52) of over 20% would pose a burden to many local SMEs which relied more on postal service. Mr CHEUNG asked whether the increase could be implemented by phases.

77. PSCIT said that the adjustments in absolute terms were actually small. For businesses particularly SMEs which relied more on postal service, the Administration understood that the impact of the increase in postages on them would be larger. Therefore, the Administration would consider providing a rebate to local SMEs by way of a one-off 5% discount for the first \$3,000 of stamps purchased or postage incurred during the initial three months following the increase in the principal postage rates.

78. Mr YIU Si-wing opined that the 5% discount for SMEs was too small. He suggested that discounts should also be given to certain underprivileged groups in the society such as senior citizens. PSCIT said that giving further discounts would undermine the effectiveness of the postage adjustment exercise to improve the financial situation of the POTF. He said that according to studies conducted by the POTF, the number of individuals using mail delivery services had indeed been declining over the years.

Cost saving and revenue generation measures

79. Mr Ronny TONG Ka-wah questioned the rationale for the citizens of Hong Kong to bear the loss incurred by the postal service. Mr TONG queried the need for the increase in postage rates and postal fees when the Government was having a huge fiscal reserve. He urged the Government to consider taking up a greater responsibility in providing the postal service. Moreover, the increase in postage rates would affect the demand for postal services and ultimately affect the sustainability of the POTF.

80. PSCIT said that even if the postal services were provided by way of the service of a Government department, it was necessary for the Government to review the postage rates and postal fees according to the principle of cost recovery. The present increase in the principal postage rates and postal fees in 2013-2014 would not be sufficient to ensure the longer term financial sustainability of the POTF. In fact, it was expected that the POTF would continue to incur an operating loss. The POTF would continue efforts to reduce costs, enhance productivity and explore new sources of revenue.

81. Mr Christopher CHEUNG Wah-fung, Mr WONG Ting-kwong and Mr Andrew LEUNG Kwan-yuen opined that the competition from commercial delivery service providers would continue to put pressure on the POTF. Mr WONG and Mr LEUNG enquired about the measures taken by the POTF to increase its revenue and reduce costs.

82. PMG said that the POTF had endeavoured to partially offset the increase in operating costs by revenue generated from new and enhanced services developed in response to customer needs, e.g. providing services targeting internet traders, revitalizing the philatelic market by issuing special stamps, launching a new Make-my-card service, etc. In addition, the POTF had implemented a number of cost control and productivity improvement measures, e.g. the introduction of the Mechanized Letter Sorting System, the amalgamation of the International Mail Centre and the General Post Office Sorting Office into the new Central Mail Centre and the setting up of the Integrated Postal Services System for automating counter operations and streamlining back end support functions. In response to the Mr Andrew LEUNG's question, PSCIT said that the Government did not have any plan to privatize the postal services.

83. The Chairman declared that he used bulk delivery service of HKP and asked whether the Administration would enhance the concessionary measure for local SMEs so as to relieve their burden. PSCIT said that the Administration took note of SMEs' concern. He undertook that PMG would consider the feasibility of providing concessions in other aspects, such as bulk posting services which could provide relief to businesses.

Member's motion

84. After discussion, the Chairman invited members to consider the motion proposed by Mr TANG Ka-piu which was tabled at the meeting. Members agreed to proceed to deal with the motion. Mr TANG then moved the following motion –

"本會對郵政署在作出收費調整決定時，無須知會立法會的收費調整制度表示強烈不滿。有關制度容許郵政署在服務加費事宜上直接繞過立法會，以致在收費檢討過程中缺乏聆聽社會公眾意見的機會，忽略公眾對收費調整的承受能力。就此，本會促請政府增加郵政收費檢討制度的透明度，並盡一切能力紓減郵費調整對市民的影響。"

(Translation)

"That, this Panel expresses its strong dissatisfaction with the fees revision system whereby the Post Office does not have to notify the Legislative Council when it decides to introduce postage revisions. The system allows the Post Office to simply bypass the Legislative Council when introducing service fee increases, thereby making it impossible for the voices of the people to be heard in the fee review process and eventually the affordability of the people in the face of such increases is ignored. In this connection, this Panel urges the Government to enhance the transparency of the postage revision system and to make every possible effort to alleviate the impact brought about by postage revisions on the people."

85. The Chairman put Mr TANG's motion to vote. Two members voted for the motion, no member voted against it and five abstained. The Chairman declared that the motion was passed.

(Post-meeting Note: The Administration's response to the motion was issued to members vide LC Paper No. CB(1) 1634/12-13(01) on 30 July 2013.)

86. PSCIT explained that pursuant to the Post Office Ordinance (Cap. 98), PMG might, subject to any direction of the Chief Executive in Council, determine the rates of postage to be charged on postal articles. For postal fees under the Post Office Regulations (Cap. 98A), such as postal box/bag rental fees, etc. they were adjustable through amendment to the Regulations. The amendment regulation would be tabled at the Legislative Council in October 2013. Members raised no objection to the amendments.

VII Protection of the interest of consumers using telecommunications services

(LC Paper No. CB(1)1522/12-13(07) —Administration's paper on protection of the interest of consumers using telecommunications services

LC Paper No. CB(1)1522/12-13(08) —Paper on protection of the interest of consumers using telecommunications services prepared by the Legislative Council Secretariat

LC Paper No. CB(1)1592/12-13(04) (tabled at the meeting and issued via email on 22 July 2013) (background brief) PowerPoint presentation materials provided by the Office of the Communications Authority (Chinese version only))

87. Deputy Secretary for Commerce and Economic Development (Communications & Technology) (DSCED) gave an overview to members on the existing measures to protect the interests of consumers using telecommunications services. With the aid of PowerPoint, Head, Regulatory 4, Office of the Communications Authority (Head/OFCA) briefed members on the implementation of section 7M of the Telecommunications Ordinance on prohibition of misleading or deceptive conduct of telecommunications licensees, the new fair trading provisions under the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 ("Amendment Ordinance") and the telecommunications industry's self-regulatory scheme in relation to the conclusion of telecommunications service contracts between service providers and consumers.

88. Mr WONG Kwok-hing asked about the follow-up action undertaken by the Administration if a telecommunications service provider contravened the Industry Code of Practice for Telecommunications Service Contracts ("Industry Code").

89. Deputy Director-General of Communications (Telecommunications) (DDG of C(T)) said that the Industry Code was a self-regulatory scheme of the industry issued by the Communications Association of Hong Kong ("CAHK") for enhancing transparency in the process of contract conclusion. All the telecommunications service providers had pledged to comply with the Industry Code when it was drawn up. The Office of the Communications Authority ("OFCA") had been closely monitoring the implementation and effectiveness of the Industry Code since it was promulgated in July 2011 and had not found any case of contravening the Industry Code. If there were cases of contravention of the Industry Code, OFCA would look into them and refer to CAHK and/or the concerned operators for rectification. Separately, OFCA would also see if there was any breach of the provisions in the Amendment Ordinance and the Telecommunications Ordinance that would warrant investigation and enforcement action.

Cooling-off period

90. Mr TANG Ka-piu said that among the complaints from consumers using telecommunications services commonly received by Members' offices were

related to the cooling-off period in the contract which would automatically lapse once the consumer had started using the service or when the service contract was renewed. Mr TANG called for actions from the Administration to tackle the situation.

91. DSCED said that the Industry Code provided guidelines for a seven-day cooling-off period for unsolicited contracts, but the cooling-off period was not a policy requirement of the Administration for the service providers. DDG of C(T) said that the number of complaints related to cooling-off period represented a small proportion of complaints raised by consumers using telecommunications services. Under the mechanism, the right of agreeing to early termination of the cooling-off period rested with the consumer. Chairman of the CAHK added that the Association had impressed upon its members to strengthen their communication with customers, reminding customers that the cooling-off period would lapse once customers started using the service. The Association was open to suggestions in this regard during the review of the Industry Code.

92. Mr TANG Ka-piu asked whether the Administration would consider introducing the seven-day cooling-off period requirement to all contracts for goods and services. Principal Assistant Secretary for Commerce and Economic Development (Commerce & Industry) Special Duties (PAS/CED(C&I)SD) said that the implementation of a cooling-off period involved certain non-straightforward and controversial fundamental issues: for example, whether a cooling-off period should generally apply to all goods and services; how small-value transactions should be handled; whether consumers might consume the goods or services concerned during the cooling-off period; and whether consumers having consumed part of the goods or services concerned during the cooling-off period should be required to pay for the consumed part if they requested to cancel the transactions and how the payment should be computed. Introducing a cooling-off period would change transaction modes and have significant implications on both traders and consumers. Detailed consideration was therefore warranted. PAS/CED(C&I)SD said that the new offences under the Amendment Ordinance, such as aggressive commercial practices, wrongly accepting payment, bait-and-switch and misleading omissions, would combat unfair trade practices at source to enhance consumer protection.

Implementation of the Amendment Ordinance and the Industry Code

93. To allow sufficient time for discussion, the Chairman extended the meeting by 15 minutes to 12:45 pm.

94. Mr Charles Peter MOK said that apart from several major telecommunications service providers, there were in fact a wide range of traders in the telecommunications industry. To many of these traders, the Industry Code and the Amendment Ordinance were not consistent as some of the provisions in the Industry Code were not specified in the Amendment Ordinance. Many of the traders still found the requirements for compliance with the Amendment Ordinance as well as the division of work between the Customs and Excise Department ("C&ED") and OFCA in enforcing the Amendment Ordinance unclear. Mr MOK urged OFCA to step up its promotional work to facilitate the compliance with the Amendment Ordinance by these traders.

95. DSCED said that C&ED was the principal agency responsible for enforcing the TDO. Concurrent jurisdiction was conferred on the Communications Authority ("CA"), with OFCA as its executive arm, to enforce the fair trading sections in relation to the commercial practices of licensees under the Telecommunications Ordinance (Cap. 106) that are directly connected with the provision of a telecommunications service. To enforce the TDO effectively and to ensure that every case is taken up by the appropriate enforcement agency, the Commissioner of Customs and Excise and the CA had entered into a Memorandum of Understanding for the purpose of coordinating the performance of their functions. OFCA would continue organizing briefings on the Amendment Ordinance for the industry. DDG of C(T) said that there was no inconsistency between the Industry Code and the Amendment Ordinance which had different focuses in the protection of consumer interest. The former set out the detailed arrangement of service contracts. However, in implementing these arrangements, the industry should not deploy any unfair trade practices set against consumers, including misleading omissions, aggressive commercial practices, bait advertising, etc. as set out in the Amendment Ordinance.

Practices in attracting new customers or renewing contracts

96. Mr WONG Ting-kwong said that in order to attract new customers, telecommunications service providers often offered to them contract terms which were more favourable than those offered to existing customers. Whilst this did not constitute a contravention of the Industry Code, it somehow gave the existing customers an impression that they were being cheated. To minimize practices of a similar nature in future, Mr WONG asked whether members of the public would be invited to give their views when the Industry Code was next reviewed.

97. DDG of C(T) said that mechanism has already been in place for consulting the views of consumers through the Telecommunications Users and

Consumers Advisory Committee ("TUCAC") established by OFCA. Mr WONG Ting-kwong opined that the public's participation in the formulation of the Industry Code should be enhanced and should not be limited to consultation with OFCA's TUCAC. The Administration took note of Mr WONG's view.

98. Mr Ronny TONG Ka-wah opined that the Amendment Ordinance might not be able to deal with certain selling practices commonly adopted by telecommunications service providers, e.g. using very fine print for the texts in service contracts, which *per se* might not amount to an offence in law but in some situations might in effect mislead unwary consumers. Mr TONG urged the Administration to consider regulating selling practices of the telecommunications service providers by way of turning the Industry Code into a piece of subsidiary legislation.

99. DSCED expressed reservation about Mr TONG's proposal on the ground that the number of complaints in relation to disputes on telecommunications service contracts received by OFCA dropped by over 10% for each of the previous two years, i.e. 2011 and 2012, and that the number was substantially lower than those in the United States and the United Kingdom. Moreover, it might potentially be seen as singling out the telecommunications industry in the economy for regulation.

100. The Chairman further extended the meeting by five minutes. Members raised no objection.

101. The Chairman said that consumers were often caught unguarded when the term of their telecommunications service contract was automatically renewed with some of the concessions ceasing to apply in the new term. Consumers were compelled to accept the new contract terms even though they were inferior to those they had previously enjoyed. He asked about how the Administration would deal with cases of this nature.

102. In response, DSCED said that the Amendment Ordinance should be sufficient in tackling various common malpractices in the industry. DSCED opined that the matter raised by the Chairman appeared to be more about the consumer's understanding of their rights when concluding a service contract and said that this would be one of the areas covered in the review of the Industry Code. DDG of C(T) supplemented that the renewal of the term of a service contract required the customer's agreement and written confirmation. Automatic renewal of the term of a contract should not be effective unless the customer had given explicit consent. He undertook to look into cases in which service providers had deviated from such practice and asked members to forward them, if any, to the Administration.

VIII Any other business

103. There being no other business, the meeting was adjourned at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
5 December 2013