

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2850/07-08  
(These minutes have been seen  
by the Administration and cleared  
with the Chairman)

Ref : CB2/PL/HA

**Panel on Home Affairs**

**Minutes of special meeting  
held on Friday, 4 July 2008, at 10:00 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon CHOY So-yuk, JP (Chairman)  
Hon James TO Kun-sun  
Hon CHEUNG Man-kwong  
Hon LAU Wong-fat, GBM, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Albert CHAN Wai-yip  
Hon LI Kwok-ying, MH, JP  
Hon Daniel LAM Wai-keung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon CHEUNG Hok-ming, SBS, JP  
Hon WONG Ting-kwong, BBS  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon TAM Heung-man
- Members absent** : Hon Albert HO Chun-yan (Deputy Chairman)  
Hon James TIEN Pei-chun, GBS, JP  
Hon CHAN Yuen-han, SBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon WONG Yung-kan, SBS, JP  
Hon Andrew CHENG Kar-foo  
Hon Timothy FOK Tsun-ting, GBS, JP
- Public Officers attending** : Agenda item I  
Constitutional and Mainland Affairs Bureau

Mr Raymond TAM  
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO  
Deputy Secretary for Constitutional and Mainland  
Affairs (1)

Miss Joanna CHOI  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs (4)

Office of the Government Chief Information Officer

Miss Donna CHAN  
Chief Systems Manager (Infrastructure & Security)(E)2

Office of the Privacy Commissioner for Personal Data

Mr Roderick WOO  
Privacy Commissioner for Personal Data

Mrs Bonnie Y L Smith  
Deputy Privacy Commissioner for Personal Data

Miss Brenda KWOK  
Chief Legal Counsel

Agenda item II

Home Affairs Department

Miss Linda SO  
Assistant Director for Home Affairs (4)

Miss Lily LEE  
Administrative Officer (4)

Agenda item III

Home Affairs Department

Miss Linda SO  
Assistant Director for Home Affairs (4)

Miss Lily LEE  
Administrative Officer (4)

Buildings Department

Mr Paul PANG Tat-choi  
Assistant Director/Existing Buildings (1)

Mr Winston LEUNG Shun-kai  
Chief Building Surveyor/A

**Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)2

**Staff in attendance** : Ms Joanne MAK  
Senior Council Secretary (2)2

Ms Anna CHEUNG  
Legislative Assistant (2)2

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**I. Review of the Personal Data (Privacy) Ordinance (Cap. 486)**

[LC Paper Nos. CB(2)1679/07-08(03) and (04), CB(2)2454/07-08(01), CB(2)2488/07-08(01) and IN21/07-08]

Under Secretary for Constitutional and Mainland Affairs (USCMA) briefed members on the salient points of the Administration's paper [LC Paper No.CB(2)2488/07-08(01)] on the progress of the review of the Personal Data (Privacy) Ordinance (PDPO) conducted by the Administration in conjunction with the Office of the Privacy Commissioner for Personal Data (PCPD).

2. Privacy Commissioner for Personal Data (PC) made a few remarks on the current situation and resource constraints that faced PCPD. He also drew members' attention to a paper on the amendment proposals put forward by PCPD [Annex to LC Paper No.CB(2)2488/07-08(01)] and a list of the follow-up actions taken by PCPD in response to the recent spate of personal data leakage cases [Annex to LC Paper No.CB(2)2454/07-08(01)] submitted to the Panel.

*(Post-meeting note: PC's speaking note was issued vide LC Paper No.CB(2)2528/07-08 dated 7 July 2008.)*

3. Members noted that the Research and Library Services Division (RLSD) of the Legislative Council (LegCo) Secretariat had prepared an information note entitled "Implementation problems of PDPO" (IN21/07-08) for members' reference.

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Discussion

*Inadequacies of PDPO and the PCPD's amendment proposals*

4. Dr Fernando CHEUNG was of the view that the remarks made by PC demonstrated clearly the Administration's failure to attach importance to the protection of personal data privacy. He considered that the protection afforded by PDPO was inadequate and the following issues needed to be reviewed -

- (a) PC was not vested with direct prosecution power; and
- (b) an offence would be constituted under the Ordinance only upon the breach of an enforcement notice issued after the completion of an investigation by PCPD, not upon the contravention of a data protection principle (DPP).

Dr CHEUNG requested the Administration to provide a timetable for completing its assessment of the implications of the amendment proposals. Mr WONG Ting-kwong also expressed support for speeding up the review of PDPO in order to tackle problems arising from advancement in technology and afford better protection to personal data.

5. USCMA responded that the Administration was studying the various amendment proposals and, after assessment of their implications, the Administration would consult LegCo and the public. The Administration aimed at coming up with concrete proposals to amend PDPO for consultation with the Fourth Term LegCo as early as possible.

6. Mr James TO made the following comments on the amendment proposals put forward by PCPD -

- (a) the proposals of providing a higher degree of protection towards sensitive personal data should be supported;
- (b) while the proposal of conferring PC with direct prosecution power should be supported, the fundamental principle that the control of criminal prosecutions must vest in the Department of Justice should be upheld and this prerogative should not be delegated on a permanent basis;
- (c) making a contravention of any DPP a criminal offence would be too harsh as suggested by PCPD;
- (d) it was necessary to provide concrete details of the PCPD's proposal that particular acts should be singled out as criminal offence (paragraph 11 of LC Paper No. CB(2)2488/07-08(01)),

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but raising the penalty level should be able to achieve better deterrent effect;

- (e) the proposals of introducing a mandatory privacy breach notification requirement in case of breaches where there was a high risk of significant harm and of expanding the definition of "personal data" to deem Internet Protocol addresses as "personal data" (as suggested in paragraphs(A)I(c) and II(a) of the Annex to LC Paper No. CB(2)2488/07-08(01)) should be supported;
- (f) the proposal of handling personal data in time of crisis as suggested in paragraph III of the same Annex should be supported; and
- (g) the Administration should study the issue raised by PCPD in paragraph 10 of the same Annex as it was doubtful whether the "Data User Registration Scheme" was able to tackle problems arising from the growing trend of transfer of personal data to places outside Hong Kong for business operations.

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7. Mr James TO also said that he could not find examples of "sensitive personal data" referred to in LC Paper No.CB(2)2488/07-08(01) and requested that the full set of the amendment proposals submitted by PC should be provided to facilitate members' consideration. USCMA said that the full set of PCPD's amendment proposals still required further detailed deliberation within the Administration. However, the Administration would see how Mr TO's request might be addressed.

8. Mr WONG Ting-kwong expressed concern about the serious nuisances caused by person-to-person (PTP) telemarketing calls which were not regulated under the existing legislative framework. He asked whether amendments could be made to PDPO to address the problem. USCMA responded that the Commerce and Economic Development Bureau was monitoring the problem of PTP interactive telemarketing calls to assess if they warranted regulation.

9. Mr Albert CHAN said that he had received many complaints about alleged unauthorized use of customers' personal data by telecommunications companies for the purpose of selling the data to debt collection agents for profits. He asked about the legal protection available to the victims under such circumstances.

10. Chief Legal Counsel of PCPD said that the circumstances described by Mr CHAN might constitute a breach of DPP3 which provided that personal data should only be used for the purposes for which they were collected or a directly related purpose. Mr Albert CHAN further asked whether PC was empowered under PDPO to collect evidence from the debt collection agents under similar circumstances. Chief Legal Counsel confirmed that PC had

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summonsed staff or responsible personnel of debt collection agents to give evidence in the past.

*Resource requirements of PCPD and follow-up actions to the recent spate of personal data leakage cases*

11. Dr Fernando CHEUNG and Ms Emily LAU requested that, as PC had stated clearly at the opening of the meeting that PCPD had not been given adequate resources for handling its heavy caseload, the Administration should strive to resolve this problem promptly.

12. USCMA informed members that, in 2008-2009, the Administration had provided PCPD with a subvention of \$39.1 million, representing an increase of \$2.8 million (or 7.7%) over the revised estimates for 2007-2008. He said that of the extra provision of \$2.8 million, \$1.8 million was for the creation of three posts to strengthen the enforcement team of PCPD. The remaining \$1 million was for the purpose of stepping up the promotion and educational work to promote public awareness of the protection of personal data. He further said that, having regard to the recent spate of personal data leakage cases, the Constitutional and Mainland Affairs Bureau (CMAB) would explore allocating additional funding to PCPD from the financial provision allocated to CMAB upon receipt of such requests from PCPD. In addition, PCPD was suggested to submit proposals under the established mechanism of the Resource Allocation Exercise, and the Administration would consider actively such proposals.

13. Mr CHEUNG Man-kwong considered it necessary to provide the adequate manpower and expertise for PCPD to strengthen its work given the seriousness of the recent spate of personal data leakage cases. It was far from adequate for the Administration to provide only \$1.8 million to strengthen the enforcement team of PCPD given the anticipated high inflation rate. Miss TAM Heung-man shared his view.

14. USCMA reiterated that CMAB would consider resource needs of PCPD to cope with its heavy caseload as well as its funding request in the context of the Resource Allocation Exercise. He added that the Office of the Government Chief Information Officer was also pursuing enhancement programmes to reduce the risk of re-occurrence of personal data leakage in government departments.

15. Miss TAM Heung-man asked PC about the timeframe for completing investigations of the recent data leakage cases and whether PCPD required additional manpower for handling the 12 cases set out in the Annex to LC Paper No. CB(2)2454/07-08(01). Deputy Privacy Commissioner for Personal Data (DPC) said that PCPD had completed draft reports on some of these 12 cases and aimed at completing investigations into the rest in the next few weeks.

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16. Professor Patrick LAU commented that there seemed to be inadequate communication between the Administration and PCPD over the latter's resource constraints. He requested PC to provide more information for the Administration to follow up.

17. DPC said that the annual subvention granted to PCPD had not been increased for the past six years and PCPD had coped with the problem of inadequate funding by setting priorities to its investigation work. She pointed out that, although an extra provision of \$1.8 million was given in 2008-2009 for the creation of three new posts, the required expertise was not readily available in the market and, so far, only one of the three posts had been filled. PC further pointed out that the extra provision only allowed PCPD to recruit an information technology (IT) assistant officer. Given the increasing invasion of personal data privacy posed by technological advancements, there was a practical need for PCPD to recruit an IT expert to provide necessary technical advice. Unfortunately, there was no such provision under the annual funding allocation to PCPD.

18. Mr CHEUNG Man-kwong expressed grave concern that there was an acute manpower shortage within PCPD hindering severely its investigation work. He asked whether any immediate action would be taken by the Administration to address the problem faced by PCPD.

19. USCMA responded that the Administration would discuss with PCPD its funding request upon receipt of relevant specific information to be submitted by PCPD. Mr CHEUNG urged PC to make the funding request promptly and requested the Administration to inform members of the outcome of the discussion as soon as possible. USCMA agreed to provide further information before the end of the current term.

*(Post-meeting note: letter dated 18 July 2008 from Secretary for Constitutional and Mainland Affairs to the Panel was issued vide LC Paper No. CB(2)2657/07-08.)*

20. Ms Emily LAU expressed strong dissatisfaction with the Administration's failure to make adequate efforts in the protection of personal data privacy and also failed to render adequate resources support for PCPD. Referring to the information note prepared by RLSD, Ms LAU asked about the follow-up actions taken by PCPD with regard to the 20 odd cases listed therein. She also expressed dissatisfaction with the Hongkong and Shanghai Banking Corporation within which personal data leakage cases had occurred a number of times recently. She urged PCPD to investigate the relevant cases and suggested that Hong Kong Monetary Authority should also look into these cases. PC said that PCPD had commenced investigations into all those 20 odd cases but, given manpower constraint, PCPD had to set priorities in handling the cases. At the request of the Chairman, PC agreed to provide information on the progress of the relevant investigations.

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Admin &  
PC

21. Ms Emily LAU requested the Administration to provide a detailed paper in collaboration with PC on the 20 odd cases, including the dates and details of incidents, number of persons affected, actions taken by PC, compensations offered, whether the affected parties had been notified of the data leakage and what rectification had been made by the data users concerned. Chief Systems Manager (Infrastructure & Security)(E)2 said that a summary of personal data leakage cases over the past three years (up to 22 May 2008) [LC Paper No. CB(1)1875/07-08(01)] had already been submitted to the Panel on Information Technology and Broadcasting. Members agreed that the Fourth Term LegCo should follow up on the review of PDPO and relevant issues when the new term started. The Chairman requested the Administration to follow up on members' requests raised at this meeting and provide any further information to facilitate future discussion.

Clerk

Admin

**II. Regulation of property management companies**

[LC Paper No. CB(2)2454/07-08(02)]

22. With the aid of Powerpoint, Assistant Director for Home Affairs (4) (ADHA(4)) gave a presentation on the Administration's paper [LC Paper No. CB(2)2454/07-08(02)] detailing the findings of the first phase of a consultancy study on the regulation of property management companies (PMCs).

23. Members in general expressed dissatisfaction with the slow progress made by the Administration in putting PMCs under regulatory control. Mr James TO expressed support for introducing a mandatory licensing scheme under which different levels of regulation should be imposed on PMCs according to their sizes.

24. ADHA(4) said that the Administration had made reference to the experience of the Mainland where corporate licensing was introduced to the property management market. Under this licensing framework, there were three tiers based on the company's capital, number of relevant professionals working in the company and the company's experience in property management. PMCs of all three tiers were required to maintain certain standards of service quality. However, the Administration was concerned that as PMCs would be required to meet certain requirements such as capital and number of professionals, small and medium-sized PMCs which often provided basic services for single-tenement buildings might be driven out of the market.

25. Ms Emily LAU said that she did not want to see the small- sized PMCs being driven out of the market under the regulatory framework. Mr James TO suggested that the Administration could simply modify the relevant licensing requirements to address the problem. Mr Albert CHAN suggested that a three-tiered system should be introduced so that small-sized PMCs, such as those providing services for the single-block buildings, would only be required to

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meet the minimum requirements, and reference could be made to the licensing scheme for estate agents.

26. Dr Fernando CHEUNG and Miss TAM Heung-man said that they had received numerous complaints about over-charging of management fees by PMCs set up by large property developers. They said that the Administration should impose regulatory control on the operation and financial management of PMCs. Miss TAM considered that, in the absence of a licensing regime, the Administration could not ensure transparency and accountability in the operations of PMCs.

27. ADHA(4) responded that management fees could only be maintained at a reasonable level with a competitive property management market. The Administration, therefore, was reluctant to introduce a licensing system which might drive out the existing small and medium-sized PMCs making up about 40% of the PMCs in Hong Kong. As regards financial arrangements, ADHA(4) said that the Building Management Ordinance (BMO) already required PMCs to provide financial statements, as well as the accountant's audit report, to the owners upon request. Dr Fernando CHEUNG, however, pointed out that under the existing legislative framework, non-compliance of PMCs with this requirement did not entail any penalty and, in the absence of any regulatory control of PMCs, property owners could do nothing when PMCs refused to comply.

28. Ms Emily LAU asked about the response of the public and the sector concerned to the three approaches set out in the Administration's paper. ADHA(4) said that the public had not been asked to comment on the three approaches as it was only the first-phase of the consultancy study. However, owners had divided views on these approaches. Some owners would like to see greater regulation of PMCs, but some were concerned that a licensing system would drive out small and medium-sized PMCs which at present provided the much needed basic property management services to single-tenement buildings.

29. Ms Emily LAU further asked whether there was a way to prevent PMCs from colluding with OCs, before the introduction of a regulatory framework, in matters such as elections to the management committees. ADHA(4) pointed out that the Hong Kong Association of PMCs had issued a set of code of conduct on professional standards and ethical business practices and all its 85 corporate members were required to comply. The Association would follow up on complaints lodged against its members, and non-compliance with the code might lead to suspension or termination of membership. ADHA(4) added that the Administration would also explore ways to address the issue raised by Ms LAU in the course of the consultancy study.

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30. Mr Albert CHAN tabled an article written by him some years ago about "物業管理十宗罪" ("10 sins of property management") [LC Paper No.CB(2)2613/07-08(01)]. He said that as BMO did not provide for penalties to be imposed on PMCs when they rejected owners' request to inspect invoices, bills and receipts, etc., some PMCs simply rejected all such requests from owners. He further suggested that a mandatory licensing regime prohibiting PMCs which were set up by property developers to manage their housing estates should be introduced to prevent conflict of interests. ADHA(4) said that Mr CHAN's views would be taken into consideration in working out recommendations on the future regulatory framework.

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31. The Chairman was of the view that the Administration should have acted promptly in following up on the motion passed by LegCo in November 2006 urging the Administration to implement a licensing regime for PMCs. She pointed out that many small-sized PMCs also welcomed the introduction of a licensing regime which, in their view, would boost their business because owners would have greater confidence in licenced PMCs. The Chairman considered that, in the absence of a licensing regime, there were no effective ways to ensure ethical business practices of PMCs. She also considered that the introduction of a licensing regime did not necessarily lead to increases in management fees as PMCs had to stay competitive in the market.

32. ADHA(4) responded that overseas experience had shown that a voluntary accreditation scheme could also serve the purpose by giving owners confidence in small-sized PMCs which had acquired accreditation status. She explained that an accredited firm could use its accreditation status to promote its business and, if it fell short of the standard of accreditation, it would have its accreditation status withdrawn until the deficiencies were rectified. She said that under this system, owners could take into consideration their service needs and affordability in choosing between an accredited PMC and a non-accredited one. However, under a licensing regime owners would not have such a choice as PMCs which did not meet the accredited requirements would have to close down.

33. In response to Mr Albert CHAN's enquiry, ADHA(4) said that the Administration intended to commence the second phase of the consultancy study in the latter half of 2008. Mr CHAN expressed dissatisfaction with the Administration's reply and moved the following motion which was seconded by Ms Emily LAU -

"政府應從速發牌監管物業管理公司。"

"That the Government should expeditiously introduce licensing control of PMCs." (translation)

The Chairman put the motion to vote. Four members voted in favour of the motion, and no members voted against it. The Chairman declared that the

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motion was carried.

34. The Chairman considered it not necessary for the Administration to conduct the second phase of the study. She requested the Administration to expedite the consultancy study and work out the detailed arrangements when the Fourth LegCo started. At the suggestion of Ms Emily LAU, members agreed to include this issue on the list of outstanding items for discussion and to invite the relevant Under Secretary to attend the meeting when this subject was discussed.

Clerk

**III. Measures to protect flat owners from liability arising from billboards attached to their buildings**

35. The Chairman advised the meeting that, owing to the recent accident involving the falling down of a billboard which caused the death of a pedestrian, she had requested discussion of this item urgently so that the Administration could explain the liability of owners arising from similar accidents. She, however, reminded members that issues relating to the demolition of billboards were under the purview of the Panel on Development.

36. ADHA(4) and Assistant Director/Existing Buildings (1) (AD(EB)(1)) gave a Powerpoint presentation on the measures that should be adopted by owners in relation to the safety of billboards attached to their buildings.

*(Post-meeting note: the Powerpoint presentation materials were issued vide LC Paper No.CB(2)2543/07-08.)*

37. In response to the Chairman's question about the liability of owners in respect of damages or injury caused by billboards attached to their buildings, ADHA(4) said that the court would determine the liability based on the merits of each case. Generally speaking, OCs might be liable for damages or injury in relation to the common parts of a building and the external wall of a building was usually regarded as the common parts.

38. Mr CHEUNG Man-kwong expressed concern about the possible danger posed to the public by about 220 000 billboards in the territory. He asked the Administration to explain the actions taken by the Buildings Department (BD) to ensure the safety of these billboards. He further asked about the liability in respect of abandoned billboards.

39. AD(EB)(1) responded that, in the past three years, BD had completed inspection of about 100 000 billboards and had removed 5 700 dangerous and abandoned billboards. He stressed that billboard owners had the responsibility to maintain properly their billboards and the owners might be liable for damages or injury caused by their billboards. He said that BD had recently sent letters to each owner of shop premises requiring the owner to inspect and

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ensure safety of their billboards. Mr CHEUNG said that a lack of owner's response to the letters might indicate that the billboard concerned had not been taken care of for a long time and thus warranted urgent attention of BD. He asked whether the owner was required to reply to these letters. AD(EB)(1) said that the owners were not required to reply in order to give them time to carry out the inspection and necessary maintenance works. He said that while the "registered minor works contractors" system would be implemented in the next year to better control the carrying out of minor works and the work quality, BD had stepped up inspections to all existing billboards to protect public safety. He also hoped that the Mandatory Building Safety Inspection Scheme to be implemented next year would also strengthen owners' awareness of their responsibility to take care of their billboards.

40. As regards abandoned billboards, AD(EB)(1) said that BD had been conducting inspections to these billboards too and the BD staff would judge their safety by observing their conditions. Mr CHEUNG Man-kwong, however, considered it inadequate to judge their conditions by naked eye. He expressed concern about the safety of these billboards as the typhoon and rainy seasons were approaching. Ms Emily LAU suggested that BD should consider conducting ad hoc inspections to check the safety of billboards and alert the shop operators of the risk.

41. AD(EB)(1) said that, other than issuing letters to OCs and shop operators, the 18 district offices of BD had strengthened inspections to billboards and would arrange removal works of billboards if immediate danger was detected. Full costs of the removal works would be recovered from the owners afterwards. Ms LAU suggested that consideration should be given to using Announcement of Public Interest to arouse general awareness of the need to conduct inspections and maintenance of billboards. ADHA(4) said that pamphlets were being distributed to encourage OCs in need of assistance to seek financial and technical support from organisations such as the Hong Kong Housing Society which had implemented various loan schemes to assist owners in carrying out building maintenance works, which might include removal of billboards.

42. Dr Fernando CHEUNG asked what owners should do if they were worried that there were dangerous or abandoned billboards attached to their buildings. ADHA(4) said that the owner should bring the issue up for discussion at an OC meeting and, if considered necessary, the OC could apply for assistance under relevant loan schemes for arranging removal works of the billboards. Dr CHEUNG queried whether owners would be willing to do so as they would have to bear the burden to repay the loan.

43. Mr James TO asked whether BD would require the consent of the OC concerned in approving an application to carry out the construction of a billboard in the common parts of a building. AD(EB)(1) replied that, under the Buildings Ordinance, applications for commencement of building works were

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only required to fulfil safety and hygiene requirements but BD would also remind the applicant of the need to get the owners' approval. He said that, if the application was approved, a copy of the Building Authority's consent in writing would also be provided to the OC concerned. Mr TO, however, considered that it was a major loophole if owners' approval was not required and this was also unfair to the OC concerned. He considered that obtaining the owners' consent should be made one of the conditions for approval to be given for carrying out the construction of billboards in a building, and the applicant should be required to confirm whether the owners' consent had been obtained when he applied for the Building Authority's consent. AD(EB)(1) explained that the purpose of the Buildings Ordinance was only to ensure the safety and hygiene of buildings and reiterated that there was no such a requirement under the Ordinance.

44. The Chairman shared Mr TO's concern and asked what owners could do if they did not consent to the construction of the billboard in the common parts of their building and where the liability laid in the event of damages or injury caused by the billboard. ADHA(4) said that the owner could resort to civil litigations to order the billboard owner to demolish the billboard. As regards liability, ADHA(4) said that the court would determine on the basis of the merits of each case. She said that, in the Albert House case, the court had ruled that several parties including the OC of Albert House should be held jointly and severally liable for paying damages to the plaintiffs.

45. Mr James TO queried whether the Buildings Authority was precluded under Buildings Ordinance from considering any issue other than the safety and hygiene factors. He considered that, if that was the case, the policy bureau concerned should review the Ordinance and make amendments suitably. However, if the Buildings Ordinance did not preclude the Buildings Authority to do so, the system of BD should be reformed to include obtaining the owners' consent as a precondition for approvals to be given to the commencement of building works. He and the Chairman considered that the Administration should study the issue. The Chairman requested AD(EB)(1) to convey members' concerns to the Development Bureau and inform the Panel of the outcome of its consideration.

Admin

46. There being no other business, the meeting ended at 12:55 pm.