

立法會
Legislative Council

LC Paper No. CB(2) 428/10-11

Ref : CB2/H/5/10

House Committee of the Legislative Council

**Minutes of the 6th meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 26 November 2010**

Members present :

Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP

Mrs Constance LI	Assistant Secretary General 1
Mrs Percy MA	Assistant Secretary General (Special Duties)
Ms Connie FUNG	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Sharon TONG	Principal Council Secretary (Complaints)
Mr Simon WONG	Chief Public Information Officer
Mr Stephen LAM	Chief Council Secretary (1)4
Miss Odelia LEUNG	Chief Council Secretary (2)6
Mr Kelvin LEE	Assistant Legal Adviser 1
Mr YICK Wing-kin	Assistant Legal Adviser 8
Ms Amy YU	Senior Council Secretary (2)3
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)8

Action

I. Confirmation of the minutes of the 5th meeting held on 19 November 2010

(LC Paper No. CB(2) 368/10-11)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration ("CS")

Special House Committee meeting

2. The Chairman said that she had followed up with CS Members' requests for him to provide more information on the Community Care Fund and to attend meetings of the Subcommittee to Study Issues Relating to Mainland-HKSAR Families ("the Subcommittee"). CS had indicated that as issues relating to Mainland-HKSAR families were only part of the population policy, he considered it more appropriate to exchange views with Members on the subject of population policy review at the special House Committee meeting, and Members were welcome to raise questions on issues relating to Mainland-HKSAR families at the meeting. As regards the request of some Members to also discuss the Community Care Fund at the special meeting, CS had indicated that he would brief Members on the topic later when more details were available, but he would be pleased to take questions on the Fund at the meeting.

3. Mr LEUNG Yiu-chung requested the Chairman to reiterate to CS the Subcommittee's request for him to attend its meetings to discuss issues relating to population policy. He said that should CS attend meetings of the Subcommittee, relevant deputations could be invited to attend the meetings to give views on the issues, but such arrangement could not be made for the special House Committee meeting.

4. The Chairman said that she had already conveyed the Subcommittee's request to CS, and CS had made a response. She suggested that Mr LEUNG Yiu-chung could further follow up the matter at the special House Committee meeting.

III. Business arising from previous Council meetings

(a) Legal Service Division report on bills referred to the House Committee in accordance with Rule 54(4)

University of Hong Kong (Amendment) Bill 2010 *(LC Paper No. LS 10/10-11)*

5. The Chairman said that the Bill introduced by Dr David LI sought to amend the University of Hong Kong Ordinance to rectify the role descriptions of the Court and the Council and to give effect to the adoption of new academic titles. The Panel on Education had been consulted on the legislative proposals at its meetings in June 2008 and June 2009, and members had raised various concerns.

6. Mr James TO said that Mr CHEUNG Man-kwong considered it necessary to form a Bills Committee to study the Bill.

7. The Chairman proposed that a Bills Committee be formed to study the Bill in detail. Members agreed. The following Members agreed to join: Ir Dr Raymond HO, Dr David LI, Mr James TO, Mr CHEUNG Man-kwong (as advised by Mr James TO), Ms Audrey EU, Dr PAN Pey-chyou and Miss Tanya CHAN.

8. The Chairman said that as there were vacant slots, the Bills Committee could commence work immediately.

9. Dr Margaret NG sought clarification on whether Dr David LI could join the Bills Committee as he was the Member in charge of the Bill.

Action

10. Mr James TO said that in his view, Dr David LI could not join the Bills Committee. He elaborated that for bills introduced by the Administration, the Administration was responsible for explaining the bill to the relevant Bills Committee and assisting its scrutiny by the Bills Committee. As the Member in charge of the Bill, Dr David LI's role was similar to that of the Administration in respect of a Government's Bill. According to his recollection, when he himself introduced a Members' Bill in 1996, his role was to explain the bill to the relevant Bills Committee.

11. The Chairman said that the question of Dr David LI's capacity in the scrutiny of the Bill could be tackled by the Bills Committee.

12. Mr James TO said that as a matter of principle, Dr David LI, as the Member in charge of the Bill, should be responsible for explaining the bill to the Bills Committee. He was of the view that Dr LI should not be allowed to join the Bills Committee, and sought confirmation from the Legal Adviser ("LA") on whether his understanding was correct.

13. At the invitation of the Chairman, LA said that the Rules of Procedure ("RoP") had no provisions in this regard. There were occasions in the past where the Member introducing the bill had joined the relevant Bills Committee. One case in point was the City University of Hong Kong (Amendment) Bill 2006 introduced by Ir Dr Raymond HO.

14. Ir Dr Raymond HO said that as the former Chairman of the Council of the City University of Hong Kong ("CityU"), he had introduced the City University of Hong Kong (Amendment) Bill 2006 which sought to change the structure of the Council of CityU and the total number of Council members. He was a member of the relevant Bills Committee which was chaired by Ms Emily LAU.

15. Dr Margaret NG clarified that she had no intention of excluding any Members from joining the Bills Committee. She was only seeking clarification on the capacity of the Member introducing a bill during the scrutiny of the bill concerned. In view of the importance of the issue and given that RoP had no provisions in this regard, she suggested referring the matter to the Committee on Rules of Procedure ("CRoP") for consideration.

16. At the invitation of the Chairman, LA drew Members' attention to Rule 76(1A) of RoP which provided that the members of a Bills Committee should be those Members who signified membership in

Action

accordance with the procedural rules decided by the House Committee. LA added that the House Committee had not made any decision to forbid the Member introducing a Members' Bill to join the Bills Committee concerned.

17. Members agreed to refer the issue to CRoP for consideration.

(b) Legal Service Division report on subsidiary legislation gazetted on 19 November 2010 and tabled in Council on 24 November 2010

(LC Paper No. LS 9/10-11)

18. The Chairman said that a total of three items of subsidiary legislation, including one Commencement Notice, were gazetted on 19 November 2010 and tabled in the Council on 24 November 2010.

19. Members did not raise any queries on the three items of subsidiary legislation.

20. The Chairman reminded Members that the deadline for amending the subsidiary legislation was 15 December 2010.

IV. Further business for the Council meeting on 1 December 2010

(a) Tabling of papers

Report No. 6/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

(LC Paper No. CB(2) 370/10-11 issued vide LC Paper No. CB(3) 228/10-11 dated 24 November 2010)

21. The Chairman said that the report covered three items of subsidiary legislation the period for amendment of which would expire on 1 December 2010. No Member had requested to speak on the subsidiary legislation.

22. Members noted the report.

(b) Questions

(LC Paper No. CB(3) 227/10-11)

23. The Chairman said that Mr IP Wai-ming had replaced his oral question.

V. Business for the Council meeting on 8 December 2010

(a) Questions

(LC Paper No. CB(3) 226/10-11)

24. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the meeting.

(b) Bills - First Reading and moving of Second Reading

25. The Chairman said that no notice had been received yet.

(c) Government motion

26. The Chairman said that no notice had been received yet.

(d) Members' motions

(i) Motion to be moved by Hon KAM Nai-wai

27. The Chairman said that the subject of the motion to be moved by Mr KAM Nai-wai was "Air pollution and public health".

(ii) Motion to be moved by Hon Audrey EU Yuet-mee

28. The Chairman said that the subject of the motion to be moved by Ms Audrey EU was "Reviewing the policy on nature conservation".

29. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 1 December 2010.

Report on study of subsidiary legislation

30. The Chairman said that a list containing two items of subsidiary legislation/other instruments the period for amendment of which would expire on 8 December 2010 had been tabled at the meeting. Members who wished to speak on the subsidiary legislation/other instruments should notify the Clerk by 5:00 pm on Tuesday, 30 November 2010.

VI. Report of Bills Committees and subcommittees

(a) Report of the Bills Committee on Road Traffic (Amendment) Bill 2010

(LC Paper No. CB(1) 542/10-11)

31. The Chairman, in her capacity as the Chairman of the Bills Committee, reported that the Bills Committee had held six meetings with the Administration and had received views from stakeholders, including the transport trade. She referred Members to the Bills Committee's report for details of its deliberations.

32. The Chairman further reported that the Bills Committee generally supported the legislative intent of the Bill to introduce heavier penalties to further deter drink driving offences and other inappropriate driving behaviour. In the course of deliberations, members had raised concern about the three-tier penalty system according to drivers' alcohol concentration, the new offence of causing grievous bodily harm by dangerous driving, consecutive implementation of imprisonment and driving disqualification, and drug driving. The Administration had taken on board members' views, and would move relevant Committee Stage amendments ("CSAs"). Mr Andrew CHENG had indicated that he might move a CSA to the Bill to include a code of practice on drug impairment test with a view to empowering the Police to conduct the impairment test on drivers as soon as possible. The Chairman added that the Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting on 8 December 2010.

33. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, was Monday, 29 November 2010.

(b) Report of the Subcommittee on Waterworks (Amendment) Regulation 2010

(LC Paper No. CB(1) 544/10-11)

34. Mr Tommy CHEUNG, Chairman of the Subcommittee, reported on the deliberations of the Subcommittee as detailed in its report. He said that the Subcommittee had held two meetings with the Administration and had completed its scrutiny work.

35. Mr Tommy CHEUNG elaborated that the Amendment Regulation sought to revise 18 items of fees and charges under the principal Regulations by increasing 16 items from 9.8% to 16.2% and decreasing two items by 13.4% and 82.1% respectively. The new fees and charges would come into effect on 1 January 2011.

Action

36. Mr Tommy CHEUNG further reported that the Subcommittee had expressed concern about the fees for plumber's licence and plumber's licence examination. The Administration proposed to increase the plumber's licence fee from \$67 to \$74 per year, and the extra revenue per annum expected to be generated from the increase was about \$700. In respect of the plumber's licence examination fee, the Administration's proposal was to increase it from \$815 to \$895. According to the Administration, the revenue generated from the examination fees for a plumber's licence was minimal because no applicant had requested the conduct of plumber's licence examination by the Administration in the past few years. The Subcommittee had expressed concern that the efforts taken by the Administration in the proposed legislative exercise was disproportionate to the minimal revenue to be collected from the fee increases. In this connection, the Subcommittee had suggested that the Administration should freeze all fees at the existing level, in particular those related to plumber's licences. The Administration had responded that the proposed fee increases were not directly related to people's livelihood; the extent of increases was mild; and the increases were only intended to achieve full cost recovery and complied with the "user pays" principle.

37. Mr Tommy CHEUNG further said that the Subcommittee had also raised concern about the different fees charged for testing a meter or a private check meter and the huge range of these fees. The Administration had explained that the main reason for charging different fees for testing meters was the substantially higher cost involved in the handling of meters of larger diameters for testing work. He added that both the Administration and the Subcommittees would not move any amendments to the Amendment Regulation.

38. The Chairman reminded Members that as the deadline for amending the Amendment Regulation was 8 December 2010, the deadline for giving notice of amendments, if any, was Wednesday, 1 December 2010.

(c) **Report of the Subcommittee on Second Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences**
(LC Paper No. CB(1) 517/10-11)

39. Ms Audrey EU, Chairman of the Subcommittee, reported on the deliberations of the Subcommittee as detailed in its report. She said that the Subcommittee had held three meetings with the Administration to discuss the Second Technical Memorandum ("TM") and had completed its scrutiny work.

Action

40. Ms Audrey EU elaborated that under the Second TM, the allocation of emission allowances for each of the power plants from 2015 onwards was based on the assumption that the power plants would maximize the use of the existing gas-fired generation units and prioritize the use of coal-fired units that had been retrofitted with emission abatement equipment. Given that the emission allowances under the Second TM were higher than those under the First TM and the actual levels of emission in 2010, the Subcommittee had discussed with the Administration the factors contributing to achieving the emission reduction targets and their respective ratios with a view to further lowering the emission levels. As members did not have the relevant expertise, they had practical difficulties in proposing amendment to lower the emission allowances under the Second TM.

41. Ms Audrey EU further reported that in response to the Subcommittee's repeated requests, the Administration had agreed to amend the Second TM to change its review frequency from not less than once every three years to not less than once every two years. The Administration had also proposed a textual amendment to the Chinese text of the Second TM. The Subcommittee supported the amendments to be moved by the Administration.

42. The Chairman reminded Members that as the deadline for amending the Second TM was 8 December 2010, the deadline for giving notice of amendments, if any, was Wednesday, 1 December 2010.

(d) Report of the Subcommittee on District Councils Ordinance (Amendment of Schedule 3) Order 2010
(LC Paper No. CB(2) 371/10-11)

43. The Chairman said that Mr IP Kwok-him, Chairman of the Subcommittee, had made a verbal report at the last House Committee meeting. A written report was provided for the House Committee meeting.

44. Members did not raise any queries on the report.

VII. Position on Bills Committees and subcommittees
(LC Paper No. CB(2) 369/10-11)

45. The Chairman said that there were 12 Bills Committees, five subcommittees under the House Committee (i.e. two subcommittees on subsidiary legislation and three subcommittees on policy issues) and eight subcommittees under Panels in action.

VIII. Priority allocation of a debate slot to the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man

(LC Paper No. CB(2) 360/10-11)

46. Ms LI Fung-ying, Chairman of the Select Committee, said that the Select Committee had reached the final stage of its inquiry work and would table its Report at the Council meeting of 8 December 2010. Given that the matters inquired by the Select Committee were of wide public concern, the Select Committee had decided that a motion on the Subcommittee's Report should be moved for debate at the Council meeting of 15 December 2010 to enable Members and public officers to express views on the findings and observations of the Select Committee.

47. Ms LI Fung-ying further said that the Select Committee requested the House Committee to consider the priority allocation of a debate slot to her, as Chairman of the Select Committee, to move a motion for debate on its Report at the Council meeting of 15 December 2010. Should the House Committee accede to the request, the Select Committee proposed that -

- (a) in addition to the debate on its Report, there should only be one other motion debate without legislative effect at that Council meeting; and
- (b) the speaking time limit for the debate on its Report should be 15 minutes for each Member.

48. Members agreed to the Select Committee's requests and proposals.

49. In response to Mr James TO's enquiry on when the Report would be made available to non-members of the Select Committee, the Chairman said that the Report would be tabled at the Council meeting of 8 December 2010, and the relevant debate would be held at the Council meeting of 15 December 2010.

50. Mr James TO further enquired whether the Report could be made available to Members earlier than 8 December 2010 to facilitate their preparation for the debate.

51. Ms LI Fung-ying said that according to the Clerk to the Select Committee, it was an established practice for a select committee to table its report in the Council one week before the relevant motion debate was held. The select committees set up to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak, the building problems of

Action

public housing units and the problems surrounding the commencement of the new airport at Chek Lap Kok had followed such a practice. She further said that according to the relevant practice and procedure, apart from tabling the Select Committee's report in the Council, arrangement had to be made for issuing the report to the parties concerned. Having regard to the timetable for the publication of the report, it was expected that the report would be tabled at the Council meeting of 8 December 2010 at the earliest.

52. In response to Ms Emily LAU's enquiry, the Chairman said that other than the motion debate on the report of the Select Committee, there would only be one other motion debate without legislative effect at the Council meeting of 15 December 2010.

IX. Proposal of Hon James TO Kun-sun concerning the appointment of a select committee to inquire into issues relating to the transfer of customers' personal data in various sectors

(Letter dated 18 November 2010 from Hon James TO Kun-sun to the Chairman of the House Committee (LC Paper No. CB(2) 372/10-11(01)))

[Previous papers:

Letter dated 19 October 2010 from Hon James TO Kun-sun to the Chairman of the House Committee (LC Paper No. CB(2) 88/10-11(02) issued vide LC Paper No. CB(2) 88/10-11 dated 20 October 2010); and paragraphs 79 to 108 of the minutes of the 2nd meeting held on 22 October 2010 (LC Paper No. CB(2) 191/10-11 issued vide LC Paper No. CB(2) 194/10-11 dated 3 November 2010]

53. At the invitation of the Chairman, Mr James TO said that at the House Committee meeting on 22 October 2010, Members had discussed his proposal for appointing a select committee to inquire into issues relating to the transfer of customers' personal data by commercial organizations in various sectors. Having carefully considered the views expressed by Members at the meeting, he had decided to submit two proposals for the consideration of the House Committee as set out in his letter dated 18 November 2010 to the Chairman of the House Committee.

54. Mr James TO then elaborated on the details of his proposals. He explained that the first proposal was to appoint a select committee to inquire into issues relating to the transfer and sale of customers' personal data in the banking sector, the telecommunications sector, the insurance sector and large-scale chain stores which had induced members of the public to provide them with personal data through various reward programmes ("Proposal A"). The second was to appoint a select committee to inquire specifically into the incident concerning the sale of

Action

the personal data of members of the public by the Octopus Holdings Limited ("OHL") under the MTR Corporation Limited ("MTRC") and its subsidiary companies ("the Octopus incident") ("Proposal B"). Should Proposal A be supported, the scope of the proposed inquiry to be conducted by the select committee would be wider. If it was not supported, he was willing to narrow down the scope of the proposed inquiry to focus only on the Octopus incident as in Proposal B, for which some Members had expressed support. He had sought the views of LA, who had advised that it was procedurally in order for him to revise the wording of the motion under Proposal A in the event that it was not supported. He suggested that a joint discussion be held on his two proposals after which they would be put to separate votes. Should the House Committee support either one of his proposals, he proposed that a subcommittee be appointed under the House Committee to undertake the preparation work. On the other hand, if neither of his proposals was supported by the House Committee, he would move under his name a motion in the Council for the appointment of a select committee.

55. The Chairman recapped the two proposals put forward by Mr James TO and suggested that a joint discussion be held before they were put to separate votes. Members agreed.

56. In response to Mr Paul TSE's enquiry on the scope of Proposal A, Mr James TO clarified that it was to inquire into issues relating to the transfer and sale of personal data in respect of the four specific sectors/type of organizations only, namely, the banking sector, the telecommunications sector, the insurance sector as well as large-scale chain stores which had induced members of the public to provide them with personal data through various reward programmes.

57. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") neither supported Proposal A nor Proposal B. As there had been thorough discussions on the matter in the community, and given that the Privacy Commissioner for Personal Data ("PCPD") had conducted an investigation into the Octopus incident and the Administration had undertaken a review on the Personal Data (Privacy) Ordinance ("PDPO") (Cap. 486), Members belonging to DAB did not support the appointment of a select committee at the present stage to inquire into the matter.

58. Mr James TO said that the banking sector, the telecommunications sector and the insurance sector were subject to regulation. He had written to the regulatory bodies concerned requesting the provision of information on the extent and approaches of the transfer and sale of customers' personal data in these sectors, but so far he had not received

Action

the requisite information. He was concerned that even for sectors which were subject to regulation, the regulatory bodies did not have a comprehensive grasp of the magnitude of the existing problem of transfer and sale of customers' personal data. For the sake of public interest, he had proposed that authorization be sought from the Legislative Council ("LegCo") for exercising the powers conferred under the Legislative Council (Powers and Privileges) Ordinance ("P&P Ordinance") (Cap. 382) to compel the organizations concerned to produce all relevant information. He stressed that the objective of Proposal A was not to inquire into individual cases, but to facilitate Members in obtaining a good grasp of the extent and approaches of the transfer and sale of customers' personal data in the sectors concerned which would provide factual bases for their consideration of the Administration's proposals for amending PDPO.

59. Ms Audrey EU said that Members belonging to the Civic Party considered that the truth about the Octopus incident had yet to be fully unveiled. In their view, OHL was different from other commercial organizations in that it was a subsidiary company of MTRC which was owned mainly by the Government. Members belonging to the Civic Party considered it necessary to inquire into the truth of the Octopus incident and therefore supported Proposal B. In respect of Proposal A, while appreciating the importance of protection of personal privacy and recognizing the possible contravention of the data protection requirements by organizations in those sectors, Members belonging to the Civic Party considered that there would be practical difficulties for LegCo to conduct an inquiry of such a wide scope, given that LegCo was currently also conducting other inquiries and had many other matters to deal with. She noted that the Panel on Constitutional Affairs was following up the review of PDPO and had held a meeting on 20 November 2010 to receive public views on the matter. It had also been suggested that a subcommittee be set up to study the review of PDPO. Members belonging to the Civic Party considered that these forward-looking approaches, which aimed to strengthen the regulation of the collection, transfer and sale of customers' personal data by commercial organizations, were preferable to Proposal A.

60. Mr James TO said that the proposed subcommittee to study the review of PDPO referred to by Ms Audrey EU would not have the powers under the P&P Ordinance to compel the organizations concerned to produce the relevant information. Although the banking, telecommunications and insurance sectors were subject to regulation, he queried how, without such powers, Members could obtain the relevant information in respect of such sectors, not to mention those commercial organizations such as large-scale chain stores which were not subject to regulation.

Action

61. Mr LEUNG Kwok-hung said that Members had many matters to deal with and would not wish to invoke the powers under the P&P Ordinance lightly. He considered that a reasonable and logical solution was to request the Administration to provide the relevant information and for it to explain to Members if it could not provide the information. Even if Members could only obtain some of the information, they could follow up on the matter. He had also written to the relevant organizations to request the provision of information but to no avail. He reiterated that the Administration should be requested to provide the relevant information to Members.

62. Mrs Sophie LEUNG said that issues relating to privacy protection had been discussed on various occasions by LegCo and its committees. Members had conveyed a clear message to PCPD that he had the responsibility to get a good grasp of the handling of customers' personal data in the relevant sectors, particularly in the light of the Octopus incident. Members also expected PCPD to have inputs in the legislative exercise to amend PDPO. She considered that LegCo would be doing the work of PCPD if it was to appoint a select committee to inquire into the matter. She added that LegCo had much business to attend to. As the Octopus incident had already alerted the public to the importance of privacy protection, the matter should be dealt with by PCPD.

63. Mr WONG Kwok-hing said that Members belonging to the Hong Kong Federation of Trade Unions ("HKFTU") neither supported Proposal A nor Proposal B. They concurred on the views expressed by some Members for not supporting Proposal A. As regards Proposal B, he had already made clear his views on how the community should follow up on the Octopus incident during the motion debate on "Improving personal data privacy protection" at the Council meeting on 20 October 2010. In his view, the Octopus incident had already reached the third stage under which the Administration should be urged to complete its review on PDPO as soon as practicable. As the Administration was expected to complete the review by the end of the year, he considered that the way forward should be to press the Administration to submit its legislative proposals to LegCo as soon as possible in early 2011. Having regard to the above considerations, Members belonging to HKFTU also did not support Proposal B.

64. Dr PAN Pey-chyou shared Mr WONG Kwok-hing's views. He said that his Office and Mr WONG Kwok-hing's Office had worked together to uncover the truth in the Octopus incident. The matter had now progressed to the stage where a review on PDPO was underway. He pointed out that there were many issues of public concern, and Members should consider how best to use their limited time and

Action

resources. In his view, the community should put concerted efforts in amending PDPO to plug the loopholes brought into light by the Octopus incident. Given that the Administration had initiated a review of PDPO, he considered it more fruitful for Members to focus on the review and to be more vigilant in their scrutiny of the legislative proposals in future.

65. Regarding Proposal A, Ir Dr Raymond HO said that apart from the transfer and sale of customers' personal data in the banking sector, the telecommunications sector, the insurance sector and large-scale chain stores, there were many other circumstances under which personal data were collected which affected a lot of people. For instance, it was a common practice to require visitors to provide their personal information such as Identity Card number before they could gain access to a building. In his view, the proposed scope of the inquiry under Proposal A was too wide and such an inquiry would unlikely be completed in the remaining period of the current term. He further said that in respect of Proposal B, there had already been much discussion on the Octopus incident. If necessary, the Administration and PCPD could continue their inquiries to get to the truth of the matter. He shared the view that Members should focus on the current review of PDPO which provided a good opportunity to understand the situation of privacy protection. He added that the conduct of a thorough inquiry under the P&P Ordinance would require considerable time and resources. By way of illustration, he pointed out that the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products would hold its 100th meeting in the following week. As the Subcommittee's Chairman, he had attended more than 300 meetings in relation to its work. He cautioned that Members should take into account the workload involved in considering the proposals for the appointment of a select committee. He indicated that Members belonging to The Professionals Forum neither supported Proposal A nor Proposal B.

66. Mr James TO did not agree with the view that LegCo would take over the work of PCPD if a select committee was appointed to look into the matter. He pointed out that PCPD did not have the power to summon, and only LegCo had such power under the P&P Ordinance to require the production of information on the current situation in order to form the basis for legislative amendments. He said that while Members had expressed many views at the recent motion debate on the subject of improving personal data privacy protection, it was an entirely different matter to seek the Council's authorization to exercise the powers conferred under the P&P Ordinance. He reiterated that Members had requested MTRC and OHL to provide the relevant information, but some information had still not been provided. The issue in question was therefore to obtain the requisite information through the exercise of the

Action

powers under the P&P Ordinance. He dispelled the worry of some Members about the need to hold a large number of meetings for the purpose of obtaining information on the current situation. He added that what he had in mind was to conduct a mandatory questionnaire survey on the relevant commercial organizations to gauge the extent and approaches of the transfer and sale of customers' personal data. He regretted that some Members could not put their words into actions.

67. Dr Priscilla LEUNG said that during the motion debate on "Improving personal data privacy protection" at the Council meeting on 20 October 2010, she had indicated objection to the appointment of a select committee. She stressed that it was not a question of whether Members had the time to undertake an inquiry but whether there was a need to do so. In her view, the power to appoint a select committee should not be invoked lightly. In respect of Proposal A, she did not consider it necessary or appropriate to appoint a select committee to conduct an inquiry of such a wide scope for the purpose of assisting Members to understand the current situation. For suspected cases of contravention of PDPO, prosecutions could be instituted against the organizations concerned. She stressed that a select committee should only be appointed when it was absolutely necessary, and reiterated that she did not see any need for the appointment of a select committee to inquire into the matter relating to the transfer of personal data.

68. Mr Paul TSE said that Proposal A was out of the question given its wide scope. Regarding Proposal B, he noted that the purpose of the proposed inquiry was not to find out the responsibility of individual officers of OHL or Government officials in the Octopus incident but to obtain information which would form the basis for making recommendations for enhancing protection of the privacy of the public through legislative amendments. He queried whether it had been the practice for LegCo to conduct an inquiry to obtain information before its consideration of legislative amendments, and cautioned against the setting of such a precedent. In his view, there were other means for obtaining factual bases for legislative amendments without invoking the powers under the P&P Ordinance, such as the conduct of studies by the Law Reform Commission and inquiries by the Administration or other organizations. He added that only if Members wished to obtain details of the specific transactions involved in the transfer and sale of customers' personal data would it be necessary to invoke the powers under the P&P Ordinance to inquire into the Octopus incident. In his view, if the purpose was only to acquire information on the general approaches, there was no such need at all. He appealed to Members to consider seriously the implications of the proposals.

Action

69. Mr CHAN Kin-por said that the business sector felt aggrieved in the Octopus incident. Large commercial organizations would invariably seek legal advice to ensure their acts were in compliance with the statutory requirements. However, owing to the inaction on the part of PCPD which had never issued any enforcement notices, the business sector was not aware of the statutory requirements. Even the case concerning the Wing Lung Bank had not been disclosed until after the revelation of the Octopus incident. He considered it unfair to investigate the banking and the insurance sectors in respect of their transfer of personal data. In his view, were investigations to be undertaken, it was PCPD who should be the subject of investigation as he had not rectified the systemic errors. He was strongly against Proposal A.

70. As regards Proposal B, Mr CHAN Kin-por added that the Hong Kong Monetary Authority, OHL and PCPD had already undertaken investigations and had issued their respective reports on the Octopus incident. As these organizations had spent considerable time and resources on their investigations, he did not see any merits for LegCo to further investigate into the incident. He therefore also objected to Proposal B. He added that LegCo should be forward-looking.

71. Mr WONG Kwok-hing said that he had explained to the public on 7 October 2010 the reasons for withdrawing his request for discussion at the House Committee meeting on 8 October his proposal for seeking the LegCo authorization to exercise the powers conferred under the P&P Ordinance. He elaborated on the reasons for the withdrawal. He pointed out that through negotiation by various channels, he had driven MTRC to accept responsibility and to make various undertakings for improvement. The purpose of seeking authorization of the powers under the P&P Ordinance was to make MTRC to accept responsibility for the Octopus incident and this had been achieved. He considered it a success in strategy for achieving the objectives without actually doing the work, hence his withdrawal of the proposal. He then explained the objectives achieved. These included the acceptance of responsibility for the Octopus incident; the tender of a public apology; the resignation of the incumbent non-executive Chairman of OHL who would be succeeded by Mr John Strickland; the tightening up of the company; the deletion under supervision of customers' surplus personal data which were beyond the scope of information allowed to be collected under the law; the donation of the total amount of revenue from sale of customers' personal data; and the undertaking to refocus on its core business as an electronic payment platform.

Action

72. Mr WONG Kwok-hing further said that after following up on the issue of privacy of personal data for 16 months, he had completed the first and second stages of work and proceeded to the third stage, namely, to strive for expeditious legislative amendment which, in his view, was a positive approach. He dismissed the allegation of taking such an approach as a sign of weakness. While he respected freedom of expression, he did not accept indiscriminate labelling.

73. Mr LEUNG Kwok-hung echoed Mr James TO's views about the seemingly effective strategy adopted by HKFTU. He opined that it was disrespectful to LegCo if the proposed exercise of the powers under the P&P Ordinance was merely used as a threat to compel the MTRC to accept responsibility for the Octopus incident. Indeed, it was the former Chief Executive Officer of OHL who had been made to shoulder the responsibility. Mr LEUNG dismissed the claim of HKFTU of having won the battle as no other commercial sectors, apart from the MTRC, had come forward to accept responsibility for transfer of customers' personal data. He considered that owing to time constraints, Proposal A was not viable. Under such circumstances, the reasonable choice was to support Proposal B. He acknowledged the concern about the time required for the conduct of the investigation but considered that this was necessary in order to obtain the relevant information to prevent similar recurrence. He added that taking such an approach would not set a precedent for future law amendment exercises.

74. Mr James TO similarly allayed the concern of Mr Paul TSE about setting a precedent. He said that LegCo would not each and every time resort to the exercise of the powers under the P&P Ordinance for the purpose of obtaining information to form a basis for legislative amendments. A case in point was the proposed legislative amendments for drink driving. He considered it necessary to take such an approach in considering legislative amendments concerning protection of privacy of personal data because there was no other way to obtain the information about the existing situation. He had attempted to obtain such information from the regulatory bodies but to no avail. These regulatory bodies had either refused to provide such information on the ground of confidentiality or, indeed, had not gathered such information. Even the Administration was not in possession of such information. In his view, such information was very important reference material for gauging the appropriate extent of legislative amendments.

75. Mr James TO also stressed that the purpose of his proposals was not to investigate individual banks or insurance companies but to understand the protection and transfer of personal data in the whole sectors. In his view, HKFTU should not be boastful of its achievements

Action

as the OHL had not even acceded to the modest request of implementing opt-in arrangements for their customers to receive marketing information. The OHL had merely agreed to delete the surplus data relating to their customers. He was confident that LegCo could complete the task of an inquiry within the time allowed.

76. Mr Paul TSE questioned the justifications advanced by Mr James TO for his proposals. He expressed doubt, if information in respect of a particular sector was to be gathered, on what should be the criteria for selecting the targets for investigation and whether each and every company should be covered to ensure exhaustion or whether only certain companies through random sampling should be covered. In the former case, the task would virtually be impossible, whereas the question of fairness would arise in the latter. He pointed out that not only the few sectors mentioned in the Proposals but also many other sectors such as law firms and travel companies were in possession of a large amount of personal data. He considered it senseless to contemplate a comprehensive investigation into the matter.

77. Mr WONG Kwok-hing said that while he respected freedom of expression by Members, he considered that Mr James TO had quoted out of context.

78. Mr James TO said that the question was whether one could stand firm on his own feet.

79. The Chairman put the two proposals to separate votes. Mr WONG Kwok-hing requested to claim a division.

80. The Chairman first put to vote the following proposal of Mr James TO:

"RESOLVED that this Council appoints a select committee to get a full picture of the approaches and the extent of the transfer and sale of customers' personal data in the banking sector, the telecommunications sector, the insurance sector as well as other commercial organizations such as large-scale chain stores which have induced members of the public to provide them with personal data through various reward programmes; the committee should also conduct a thorough inquiry into the incident concerning the sale of the personal data of members of the public by the Octopus Holdings Limited under the MTR Corporation Limited and its subsidiary companies, and based on the above inquiry, to pro-actively make recommendations for the purpose of

Action

enhancing protection of the privacy of members of the public through legislative amendments and improvements to the operation of the regulatory bodies; and that in the performance of its duties the committee be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance." (Translation)

The following Members voted in favour of the proposal:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Mr CHEUNG Kwok-che and Mr LEUNG Kwok-hung.
(13 Members)

The following Members voted against the proposal:

Ir Dr Raymond HO, Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG and Miss Tanya CHAN.
(27 Members)

81. The Chairman declared that 13 Members voted for and 27 Members voted against the proposal. The proposal was not supported.

82. The Chairman then put to vote the following revised proposal of Mr James TO:

"RESOLVED that this Council appoints a select committee to conduct a thorough inquiry into the incident concerning the sale of personal data of members of the public by the Octopus Holdings Limited under the MTR Corporation Limited and its subsidiary companies, and based on the above inquiry, to pro-actively make recommendations for the purpose of enhancing protection of the privacy of members of the public through legislative amendments and improvements to the operation of the regulatory bodies; and that in the performance of its duties the committee be authorized under section 9(2) of the Legislative Council

Action

(Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of that Ordinance."
(Translation)

The following Members voted for the proposal:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN.
(18 Members)

The following Members voted against the proposal:

Ir Dr Raymond HO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE.
(22 Members)

83. The Chairman declared that 18 Members voted for and 22 Members voted against the revised proposal. The revised proposal was also not supported.

84. Mr James TO indicated that he would nevertheless move a motion on the matter in the Council.

X. Any other business

85. There being no other business, the meeting ended at 3:35 pm.