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(These minutes have been seen by
the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 16 May 2011, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Miriam LAU Kin-yea, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Tanya CHAN

Members absent : Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Timothy FOK Tsun-ting, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon WONG Yuk-man

Public Officers attending : Item III

Mr Allan CHIANG Yam-wang
Privacy Commissioner for Personal Data

Ms Brenda KWOK Mei-ling
Acting Deputy Privacy Commissioner for Personal Data/Chief
Legal Counsel

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Item IV

Mr Stephen LAM
Secretary for Constitutional and Mainland Affairs

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary
(Constitutional and Mainland Affairs)

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Watson CHAN
Head (Research)

Ms Wendy KAN
Assistant Legal Adviser 6

Miss Ivy LEONG
Senior Council Secretary (2)3

Ms Shirley TAM
Council Secretary (Research)2

Ms Wendy Lo
Council Secretary (2)3

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I. Information papers issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1741/10-11(01) and (02)]

2. Members agreed to discuss at the next regular meeting to be held on 20 June 2011 the following items proposed by the Secretary for Constitutional and Mainland Affairs ("SCMA") –

- (a) Practical arrangements for the 2011 District Council ("DC") Election;
- (b) Proposed Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the DC Election; and
- (c) Publicity for the 2011 DC Election.

3. Referring to her letter dated 16 May 2011 to the Chairman of the Panel which was tabled at the meeting and subsequently issued to members vide LC Paper No. CB(2)1804/10-11(01) on 19 May 2011, Ms Emily LAU proposed that the issue relating to the application of the "equal time" principle in election-related programmes on television and radio as stated in paragraph 11.3 of the "Guidelines on Election-related Activities in respect of the Legislative Council Election" ("Guidelines") should be discussed at a future meeting. She requested the Research Division of the Legislative Council ("LegCo") Secretariat to conduct a research on overseas practices in this regard. On the introduction of legislative amendments to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) to implement a special arrangement for handling election returns with minor errors, Ms LAU urged the Administration to expedite its process in submitting the proposal to the Panel for discussion.

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4. SCMA responded that the "equal time" principle as stated in the Guidelines sought to remind the media to provide equal treatment to candidates contesting in an election. The Electoral Affairs Commission would conduct public consultation on the proposed Guidelines before the 2012 LegCo election. The Administration would seek the Panel's views on the proposed Guidelines at an appropriate time. SCMA said that members could also give their views on the Guidelines when the Panel discussed the proposed guidelines in respect of the DC election at the next regular meeting. He further said that the Administration would report to the Panel its proposal on the implementation of a special arrangement for handling election returns with minor errors when it had formulated its views on this matter.

III. Work briefing by the Privacy Commissioner for Personal Data
[LC Paper Nos. CB(2)1727/10-11(01) and CB(2)1741/10-11(03)]

5. Mr Allan CHIANG Yam-wang, Privacy Commissioner for Personal Data ("PCPD") gave a Power-point presentation to update members on the work of the Office of the Privacy Commissioner for Personal Data as set out in his paper [LC Paper No. CB(2)1727/10-11(01)]. Members also noted the updated background brief on the subject matter prepared by the LegCo Secretariat [LC Paper No. CB(2)1741/10-11(03)].

Powers and work of PCPD

6. Noting that the number of cases referred by PCPD to the Police for criminal investigation and the number of convictions in 2010-2011 (i.e. 13 referrals and two convictions) had increased in proportion compared with the overall figures from January 1998 to April 2011 (i.e. 59 referrals and 11 convictions), Mr WONG Kwok-hing enquired whether PCPD considered it effective for PCPD to investigate into complaints and refer cases to the Police for criminal investigation. PCPD replied that as his staff had the first-hand knowledge of the case and the required expertise to conduct investigations into contraventions of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"), he maintained the view that his Office should be provided with the power to carry out criminal investigations and prosecutions, while the discretion of whether or not to prosecute still vested with the Secretary for Justice.

7. Ms Emily LAU enquired about the progress in enhancing the success rates of prosecution after PCPD's meeting with the Assistant Commissioner of Police and the Director of Public Prosecutions in March 2011. PCPD

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advised that training courses on evidence gathering in investigation and experience-sharing session on decision to prosecute would be provided to his staff by the Police and the Department of Justice ("DoJ") respectively. In the light of the views expressed at that meeting, PCPD had also proposed to the Constitutional and Mainland Affairs Bureau ("CMAB") that a data user who engaged offshore data processors or sub-contractors to conduct direct marketing should have criminal liability for contraventions of PDPO committed by the offshore agents in order to mend the loophole under the current legislation.

8. Dr Philip WONG enquired why some cases referred to the Police (i.e. 44 cases from January 1998 to April 2011) were not prosecuted and heard in courts. He also asked about the status of the 11 outstanding referral cases in 2010-2011. PCPD explained that DoJ as a usual practice would not disclose the details of individual cases but had advised in most cases that charges were not laid mainly due to insufficiency of evidence. He affirmed that there were four acquittals from January 1998 to April 2011 and two convictions in 2010-2011. Those other cases referred to the Police in 2010-2011 (i.e. 11 cases) were either being investigated or had been dismissed.

9. Mr IP Kwok-him enquired about the government department(s) that received the most complaints in 2010-2011 and details of the self-initiated investigations conducted by PCPD. PCPD advised that unless investigations reports were released, the names of government departments that were complained against and enterprises/organizations to which PCPD had conducted self-initiated investigations would not be disclosed on confidentiality ground. The public, however, would learn from media reporting that investigations had been conducted by PCPD against a spate of personal data leakage incidents and excessive collection of personal data involving the Hospital Authority and other government departments. PCPD undertook to provide the Panel with information on the nature of contraventions of PDPO among the complaint cases received in 2010-2011. Acting Deputy Privacy Commissioner for Personal Data briefly mentioned that many of the complaints received against government departments in 2010-2011 involved use of personal data without the consent of the complainants, personal data leakages and denial of the data subjects' requests to access to personal data.

PCPD

10. Pointing out that some popular social networking websites, such as Facebook and Google, had revised some terms and regulations without consulting the users who had uploaded their personal data onto the websites,

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Mr Jeffrey LAM enquired how PCPD could regulate such activities of the overseas enterprises. PCPD replied that while he was not empowered under PDPO to regulate the collection and use of personal data by overseas data users, a number of promotion initiatives were carried out to educate the public on privacy protection. For instance, seminars on the theme "Protection of Personal Data Privacy – Proper Use of Technology in Daily Life" had been conducted once every month starting from March 2011 to educate the public on data protection in the use of Internet, including social networking. A leaflet on privacy protection on the Internet for secondary school students and a leaflet on protecting privacy online and smart use of social networking sites would be issued in May and within 2011 respectively.

11. In response to Mrs Regina IP's enquiries on the number of complaints lodged against TransUnion Limited ("TU"), a major credit reference agency in Hong Kong, and the details of the inspection conducted by the Office of PCPD, PCPD replied that while only a few complaints against TU were received in the past, his Office had conducted an inspection covering the entire data processing cycle of the personal data system of the company to ascertain its compliance with the six Data Protection Principles under PDPO and the Code of Practice on Consumer Credit Data. While TU in general complied with the requirements on privacy protection, his Office had noticed an obvious drawback in its sub-contracting activities and made 20 recommendations for TU to enhance privacy protection in a wide range of areas. TU undertook to provide a follow-up report to PCPD by the end of May in 2011. Mrs IP considered that a copy of the report should be provided to LegCo Members for information.

12. Mrs Regina IP also enquired whether any complaints was received by PCPD regarding the amendment of the Code of Practice on Consumer Credit Data to provide for the additional sharing of positive mortgage data for residential properties as well as both positive and negative mortgage data for non-residential properties with effect from 1 April 2011. PCPD responded in the negative.

13. Mr IP Kwok-him asked about the theme of the education programmes arranged for the university and secondary students. PCPD advised that while tailor-made courses on specific subjects such as data protection in marketing activities and human resources management were arranged for university undergraduates, secondary students were educated on the basic knowledge and application of PDPO through teaching materials designed for them.

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Resources of the Office of PCPD

14. Noting that PCPD received over 18,000 enquires in 2010-2011, Mr WONG Kwok-hing enquired whether the Office of PCPD had sufficient resources to cope with the increased demand for its services. He also asked whether the setting up of the internal compliance check system could help ensure effective use of the resources. PCPD replied that albeit more resources had been allocated to the Office of PCPD by the Administration, his staff still had difficulty in coping with the increasing number of enquiries and complaints, as well as the complexity of the cases handled. He informed members that the existing 19 investigation officers engaged had to handle up to 1,200 complaints a year. Of the existing 73 staff in the Office, 21 were employed on temporary contracts mainly because a significant part of the allocated resources were non-recurrent in nature. This arrangement was not conducive to building a dedicated professional team. He added that in 2009-2010, 95% of cases could be closed within 180 days. Due to an increasing workload, his Office could barely meet the target set by the Administration of having 92% of cases closed within the timeline in 2010-2011.

15. Ms Emily LAU pointed out that when the Panel followed up on the financial provisions for the Office of PCPD in 2008, the former PCPD informed members that the level of the Office's Reserve Fund had reached a dangerously low level of some \$1.3 million. She enquired about the discussion between PCPD and the Administration on the financial provision for the Office. PCPD replied that sufficient reserves were provided for his Office in the current year. To cope with the upsurge of outstanding cases, temporary staff had been employed to alleviate the manpower shortage. He hoped that in place of this stopgap arrangement, stable recurrent financial resources could be allocated to his Office so that more permanent posts could be created to boost staff morale.

16. Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") assured members that since the transfer of policy area of personal data protection to CMAB from mid-2007, CMAB had strived to increase the annual financial provision to the Office which soared to \$52 million in 2011-2012, representing a substantial increase of 46% compared with the provision in 2007-2008. The Administration had also increased the recurrent resources to the Office in recent years. For instance, about \$11 million additional annual recurrent funding was provided to the Office since 2008-2009, representing 70% of the increase in financial provision.

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17. DSCMA further said that the Administration had also allocated funding to the Office for the creation of 12 posts in the past. In 2011-2012, \$3.8 million recurrent funding was allocated to the Office to create four permanent posts to handle complaints, compliance checks and the Data User Returns Scheme. The upper limit of the Office's Reserve Fund had also been increased from \$5 million to 20% of the total annual recurrent resources allocated to the Office (i.e. about \$10 million). The Office had sufficient reserves of nearly \$10 million at the present stage. Ms Emily LAU, however, considered that the Administration should continue to provide more resources to PCPD for creation of permanent posts to alleviate the manpower shortage.

18. Mr CHAN Kin-por enquired about the number of complaints received by PCPD in March and April 2011 and the views of PCPD on the workload of the investigators. PCPD replied that his Office received 103 and 78 complaints in March and April 2011 respectively. The number of staff and time involved for an investigation varied case by case depending on the complexity and nature of cases. For instance, it took five investigators three whole months to complete the investigation into the Octopus incident. Although enhanced productivity measures were adopted, his staff still had difficulty in handling the increasing workload. Mr CHAN suggested that PCPD should take reference to the investigation experiences of other statutory bodies in better assessing the workload trend of his Office to ensure effective use of resources.

Review of PDPO

19. Noting that PCPD and the Administration had diverse views on some legislative proposals set out in the Report on Further Public Discussions on Review of the Personal Data (Privacy) Ordinance ("Report") issued on 18 April 2011, Mr Jeffrey LAM enquired when PCPD would further submit his views on the Report to CMAB and LegCo for consideration and how the Administration would follow up the recommendations of PCPD.

20. PCPD replied that his initial response to the Report had been set out in a press statement issued on the same day of the issuance of the Report. He would further submit a detailed response to the Report to CMAB and LegCo by the end of May 2011. DSCMA advised that the Administration had always kept a close liaison with PCPD to take forward the review of PDPO. While the Administration and PCPD shared the same view on most of the legislative proposals, such as the need to introduce in PDPO additional

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specific requirements on data users for the collection and use of personal data for direct marketing, the Administration had to take account of the diverse views expressed by different sectors of the community on some proposals, such as the adoption of opt-in or opt-out mechanism. The Administration would commence drafting the legislation having regard to members' views and it was the intention of the Administration to introduce the relevant Bill into LegCo in July 2011.

21. Mr WONG Kwok-hing enquired about the progress in bringing section 33 of PDPO into operation. PCPD replied that he had submitted two research papers for the Administration's consideration on some practical implementation issues and overseas developments on restriction of cross-border transfer of personal data. His Office would continue to assist the Administration in preparing for the implementation of section 33.

22. DSCMA replied that under section 33, data users could not transfer personal data to a place outside Hong Kong unless in certain specified circumstances. One circumstance was that the place had legislation which was substantially similar to, or served the same purposes as PDPO. PCPD would need to specify such places before the section could come into operation. The Administration also needed to consult stakeholders to assess the impact on the industries concerned and the assistance required by the business sectors, such as practical guidelines to be issued by PCPD. A data user who transferred personal data to data processors or sub-contractors offshore for processing had to comply with relevant requirements under the existing PDPO and it would be a contravention of the Ordinance if the personal data collected was transferred to places outside Hong Kong other than for the intended purpose of collection. The Administration would consult the Panel and the public after it had formulated its views and recommendations regarding the implementation of section 33. Mr WONG Kwok-hing called on the Administration to provide a timetable on the progress of implementing section 33 and report to the Panel on its follow-up actions by the end of the current term of LegCo.

IV. Medical conditions of Principal Officials and arrangements made during the temporary absence of Principal Officials

[LC Paper Nos. CB(2)1727/10-11(02), CB(2)1741/10-11(04) and IN12/10-11]

Briefing by the Administration

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23. SCMA briefed members on the medical conditions of Principal Officials ("POs") and arrangements made during temporary absence of POs as set out in the Administration's paper [LC Paper No. CB(2) 1727/10-11(02)].

24. At the invitation of the Chairman, Head of the Research Division of the LegCo Secretariat briefed members on the information note on mechanism in handling disclosure of medical information of senior government officials in the United Kingdom ("UK"), Australia, Canada, the United States, Taiwan and the Republic of Ireland prepared by the Research Division of the LegCo Secretariat [IN12/10-11].

25. Members noted the background brief prepared by the LegCo Secretariat on the subject under discussion [LC Paper No. CB(2) 1741/10-11(04)].

Discussion

26. Mr WONG Kwok-hing said that the recent hospitalization of some senior officials of the Hong Kong Special Administrative Region ("HKSAR") Government had aroused public concern. To avoid unnecessary speculation and to maintain the stability of the society, Mr WONG enquired whether the Administration would conduct a study on the disclosure of medical conditions of POs with a view to establishing a mechanism which would strike a balance between maintaining public confidence in the HKSAR Government and protecting the officials' privacy. He also enquired whether the Administration would consult PCPD on the issue.

27. SCMA thanked members for their concern about the health conditions of POs. He said that the Administration appreciated the public's concern on whether the operation of the HKSAR Government would be affected during the absence of POs. He advised that it was the established practice of the HKSAR Government to give an account to the public of its policy position in respect of various policy portfolios and other important matters, including occasions where POs were unable to perform their duties due to duty visits or taking leave, and the acting arrangements made during their absence. The acting appointments were published in the Gazette for the public's information. The Administration considered such practice transparent and appropriate. However, the medical conditions of individual officials involved privacy considerations, and should be dealt with having regard to the circumstances of each case. He noted from the media coverage that PCPD had expressed his views on the subject. PCPD considered that the medical conditions of POs was a matter of privacy and should be respected.

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28. Mr WONG Kwok-hing hoped that the Administration would be open-minded in conducting a study to put in place a mechanism to strike a balance between protection of privacy and the public's right to know. He was of the view that such a mechanism would enable PCPD to follow up the cases should there be an infringement of privacy. SCMA noted Mr WONG's view.

29. Mr Ronny TONG said that while the medical conditions of individual officials was a matter of privacy, the issue could not be dealt with simply from the perspective of privacy if public interest was at stake. He, however, appreciated that it would be difficult to draw a line as to when a disclosure should be made. By way of illustration, Mr TONG considered that it would not be incumbent upon SCMA to disclose his undergoing of a coronary artery bypass surgery to the public which, in his view, was a common prevention treatment. However, for POs who suffered from chronic illness, as in the case of Mr Michael SUEN, Secretary for Education ("SED"), the Administration should disclose their medical conditions as such illness might affect their discharge of public duties. In such circumstances, public interest should take precedence over privacy. Mr TONG expressed concern that although SED considered himself fit for performing his public duties despite his illness and the Chief Executive ("CE") also subscribed to his view, there could be a conflict of interest if the decision was made because SED might wish to retain his position and CE might have political considerations. He considered that as POs were accountable to the public, they should make known of their illness to the public if the illness might affect their discharge of public duties. Mr TONG suggested that it should be clearly stipulated in the Code for POs under the Accountability System that POs who suffered from serious chronic illness should disclose their medical conditions to the public at an opportune time.

30. SCMA responded that according to the Basic Law ("BL"), CE of HKSAR should nominate and report to the Central People's Government ("CPG") for appointment of the Secretaries of Departments and Directors of Bureaux, and recommend to CPG the removal of them. It was the constitutional responsibility of CE and no conflict of interest would arise. CE had to consider the overall interest of HKSAR in exercising his powers and functions. SCMA further pointed out that there were no specific guidelines in Canada or the UK which required senior government officials to disclose their medical conditions in the event of serious illness. However, he would relay Mr TONG's views accordingly.

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31. Mr IP Kwok-him was of the view that the public was concerned about whether the officials were able to perform their duties due to the illness rather than the details of their illness. He enquired how the Administration would strike a balance between the public's right to know and protection of privacy in deciding on the circumstances under which individual officials should disclose their illness and the details of such disclosures to be made. Mr IP further asked who would decide on whether the individual officials were fit for work when they reported their illness to their supervisors.

32. SCMA responded that since HKSAR was a transparent society, cases relating to the health conditions of Secretaries of Departments and Directors of Bureaux would be reported promptly by the media. The role and responsibility of POs included setting policy objectives and goals, taking part as a member of the Executive Council ("ExCo") in all of the deliberations and decision making at ExCo, securing the support of the community and LegCo for their policy and legislative initiatives as well as proposals relating to fees and charges and public expenditure, and attending full sessions of LegCo to initiate bills or motions, responding to motions and answering questions from LegCo members etc. POs should be able to fulfil the above duties in order to be considered fit for work. POs had to report their illness to CE who would decide on whether individual officials were unable to fulfil their work duties due to illness and appropriate acting arrangements would be made during their temporary absence.

33. Noting from paragraph 3 of the Administration's paper that the Administration would deal with the disclosure of medical conditions of senior officials depending on the circumstances of each case, Ms Emily LAU said that it was undesirable that different POs had handled the disclosure of their illness differently in recent cases. For instance, the Administration had not disclosed the reasons for the hospitalization of Mrs Rita LAU, former Secretary for Commerce and Economic Development ("SCED"), until Mrs LAU had tendered her resignation to CE. SCMA had, however, responded to media enquiries about his undergoing of an operation while in the hospital ward. Ms LAU considered it necessary to enhance the transparency in disclosing the medical conditions of POs in order to avoid unnecessary public speculation. She suggested that the Administration should establish a simple and direct mechanism to inform the public of the health conditions of POs if they were unable to perform fully their public duties due to illness.

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34. SCMA responded that given that the medical conditions of individual officials and the development of their illness varied from case to case, the Administration would have to disclose their medical conditions having regard to the circumstances of each case. In the case of the former SCED, SCMA advised that it took time for the doctor to make diagnosis and recommendations for treatment after she had been admitted to the hospital. The Administration had informed immediately the public of her medical conditions once CE had accepted her resignation. SCMA further advised that SED had chosen an opportune occasion to disclose his chronic illness to the public. As for his own case, SCMA said that he had originally prepared a press release for issuance after his surgery. To address the public's concern, he had explained his medical condition over the phone to the media in the hospital ward. He added that the Administration considered the existing arrangements appropriate and had ensured transparency.

35. The Chairman said that while some members of the public considered that it was not necessary for SCMA to disclose his illness in detail, some other members of the public were concerned that some senior officials had not disclosed promptly their medical conditions and the details of their illness. He requested the Administration to consider whether the existing arrangement should be enhanced taking into account the views of members and the public. SCMA undertook to reflect members' views accordingly.

36. Mr CHEUNG Man-kwong was of the view that the health condition of officials which involved privacy issue and public interest should be disclosed to the public in the event that the illness of the officials might affect their discharge of public duties. To strike a balance between protection of privacy and the public's right to know, Mr CHEUNG suggested that a mechanism could be established for the disclosure of the medical conditions of senior government officials. For example, the Administration could use the period of annual leave of POs, i.e. 22 working days, as the cut-off line. For those officials whose accumulative sick leave did not exceed 22 working days, they could decide on whether to make public their sickness. For those who had taken more than 22 working days of sick leave, the Administration should disclose the illness of the PO concerned to the public.

37. SCMA explained that the calculation of sick leave for POs was not based on the number of annual leave days they were entitled to. While the Administration would have given an account to the public if a PO was unable to perform his or her public duties in less than 22 working days and

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the acting arrangement would also be made known to the public as soon as practicable, SCMA said that the Administration would consider Mr CHEUNG Man-kwong's suggestion.

38. Mr LEUNG Kwok-hung expressed dissatisfaction that there was no established mechanism on whether or how to disclose the medical conditions of POs and senior government officials had handled the disclosure or otherwise in a different manner making it a political issue. He considered that if CE was elected by universal suffrage and his governing team was accountable to the public, they would have informed the public of their illness promptly.

39. SCMA responded that since the situations of individual officials varied from case to case depending on the nature of their illness, the Administration should adopt the most appropriate arrangements having regard to the circumstances of each case. SCMA disagreed with the view that the absence of an established mechanism to disclose the medical conditions of POs was attributable to the issue of universal suffrage. He said that universal suffrage for electing CE would take place in 2017, and in an open, fair and just society like HKSAR, the Government was always accountable to the public.

40. Mr LEE Wing-tat was of the view that given the important role of POs in setting policy objectives and formulating and shaping policies, the public had a right to know whether they were healthy to perform fully their public duties. He considered the existing arrangement in disclosing the medical conditions of POs not satisfactory. He suggested that the Administration could consider making public the results of the annual medical examinations of POs.

41. SCMA responded that when POs were on duty visits or taking leave, acting arrangements would be made during their absence and made known to the public. There had been a number of occasions recently where senior officials of the HKSAR Government had informed the public of their health conditions or that they were unable to perform their public duties due to illness. SCMA said that he would report to CE and relay to his fellow POs members' views on how to enhance the existing arrangements in disclosing the health conditions of senior government officials.

42. Mr Abraham SHEK considered that it was not necessary for POs to disclose their health conditions to Members or the general public.

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According to BL, the HKSAR Government must be accountable to LegCo. The powers and functions of the HKSAR Government were clearly stipulated in BL. CE, being the head of the HKSAR Government, was accountable for the success and failure of all matters of the Government. There was no requirement under BL for POs to report their illness to LegCo. He opined that the illness of POs was a personal matter. Members should consider whether they would disclose their illness to the public if they requested POs to do so.

43. SCMA advised that Article 64 of BL stipulated that the HKSAR Government must abide by the law and be accountable to LegCo of the Region: it shall implement laws passed by the Council and already in force; it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council; and it shall obtain approval from the Council for taxation and public expenditure. The HKSAR Government had all along observed these principles and was accountable to LegCo. The Administration was aware that the health conditions of POs were of public concern, however, such concern should be dealt with under the prevailing legislation and administrative requirements.

44. Ms Emily LAU said that POs should have annual medical examinations and the results of which should be reported to CE. She asked whether the Administration had made such arrangements. SCMA responded that POs and directorate civil servants at D3 or above were required to undergo annual medical examinations. In the event that individual officials were diagnosed to have a health problem, they would report their conditions to CE and the Secretaries of Departments.

45. Ms Emily LAU said that there was a consensus among members that POs should disclose their health conditions if they were unable to perform their public duties due to illness. She hoped that the Administration would consolidate members' views with a view to establishing a mechanism to inform the public of the medical conditions of senior government officials.

46. SCMA responded that under the existing arrangement, the Administration would give an account to the public of any acting arrangements made during the temporary absence of POs. POs would have the responsibility to report to their supervisors any conditions requiring follow-up upon their annual medical examinations. SCMA said that the Administration would carefully analyse members' views on the subject. In the meantime, the Administration would maintain the existing arrangement

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of informing the public of the acting arrangements if a PO was unable to perform his or her duties for a certain period of time.

V. Any other business

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

Council Business Division 2
Legislative Council Secretariat
10 February 2012