

立法會
Legislative Council

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LC Paper No. CB(2)519/11-12
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 15 November 2010, 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)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
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 Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, 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
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon PAN Pey-chyou
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
Hon WONG Yuk-man

**Members
absent** : Hon LAU Wong-fat, GBM, GBS, JP
Hon CHIM Pui-chung
Dr Hon Priscilla LEUNG Mei-fun

**Public Officers : Item IV
attending**

Office of the Privacy Commissioner for Personal Data

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

The Administration

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

Item V

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

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

Ms Anne TENG Yu-yan
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Mrs Vivian TING TSUI Wai-ming
Chief Electoral Officer
Registration and Electoral Office

Item VI

Mr Stephen LAM Sui-lung
Secretary for Constitutional and Mainland Affairs

Mr Kenneth MAK Ching-yu
Permanent Secretary
Chief Executive's Office

Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary for 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

Ms Clara TAM
Assistant Legal Adviser 9

Ms Wendy LO
Senior Council Secretary (2)4

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting
[LC Paper No. CB(2)136/10-11]

The minutes of the meeting held on 14 October 2010 were confirmed.

II. Information papers issued since the last meeting

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

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III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)239/10-11(01) to (02)]

3. Members agreed to discuss at the next regular meeting to be held on 20 December 2010 the following items proposed by the Chairman and the Secretary for Constitutional and Mainland Affairs ("SCMA") respectively -

- (a) The review of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") and related matters; and
- (b) The third report of the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights.

4. Referring to the list of outstanding items for discussion, Ms Emily LAU asked when the Administration would put forth its proposal on the abolition of the District Council ("DC") appointment system. She was also concerned that the Administration had not proposed a clear timetable on the discussion of the items in the list. SCMA replied that the Administration would put forward separately its proposal on the abolition of the DC appointment system for members' consideration in due course after dealing with the local legislation regarding the Methods for Selecting the Chief Executive ("CE") and for Forming the Legislative Council ("LegCo") in 2012.

IV. Briefing by the New Privacy Commissioner for Personal Data

[LC Paper Nos. CB(2)239/10-11(03) to (05)]

Briefing by the Privacy Commissioner for Personal Data

5. Mr Allan CHIANG Yam-wang, Privacy Commissioner for Personal Data ("PCPD") gave a power-point presentation to members on the progress of implementation of the work plan of the Office of PCPD for 2010-2014 and his strategies and future work plans as set out in his paper [LC Paper No. CB(2)239/10-11(03)]. Members also noted the Administration's letter dated 3 August 2010 on "Appointment of the New PCPD" [LC Paper No. CB(2)239/10-11(04)] and the background brief on the subject matter prepared by LegCo Secretariat [LC Paper No. CB(2)239/10-11(05)].

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Discussion

Appointment of PCPD

6. Ms Emily LAU expressed dissatisfaction that the incumbent PCPD was not appointed according to the Paris Principles under which the head of a human rights institution should possess the expertise in that area. She was concerned that the new PCPD might not possess the requisite knowledge and experience on privacy protection given that the selection board for the appointment was mainly comprised of members of the business sector who lacked the expertise in human rights protection and there was no monitoring mechanism over the work of PCPD. She added that it was highly undesirable that the Administration had appointed former civil servants to head three separate statutory bodies i.e. the Equal Opportunities Commission ("EOC"), the Office of The Ombudsman and the Office of PCPD to undertake human rights protection work. Ms LAU considered that an independent human rights institution overseeing human rights protection recommended by the United Nations should be set up instead.

7. PCPD replied that he was confident that he possessed the requisite knowledge in legal matters and experience in public administration, the commitment as well as a clear vision about the Office of PCPD to perform competently the roles of PCPD. He would strive to promote the protection of personal data privacy in the community and work closely with the Personal Data (Privacy) Advisory Committee, which comprised members with extensive experience and knowledge in a wide spectrum of professional fields, in discharging his duties.

8. Mr LEUNG Kwok-hung expressed strong dissatisfaction at the Government's decision to appoint the incumbent PCPD. He considered that it was unacceptable to appoint a person who had acted in contravention of the privacy laws to oversee the protection of personal data privacy. Mr LEUNG further queried whether the incumbent PCPD had any vision for his work as it seemed that he had not made his best effort to fight for sanctioning powers for PCPD.

9. The Deputy Chairman, however, said that she believed that the incumbent PCPD possessed the devotion and sense of responsibility to discharge his duties diligently. She considered that more time should be allowed for him to demonstrate his dedication to and effort for the protection of personal data privacy.

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Powers and work of PCPD

10. Mr WONG Kwok-hing indicated strong support for the five proposals put forward by PCPD, namely, adopting an "opt-in" mechanism for the collection and use of personal data for direct marketing purpose; granting criminal investigation and prosecution powers to PCPD; empowering PCPD to award compensation to aggrieved data subjects and to impose monetary penalty on data users for serious contravention of Data Protection Principles ("DPPs"); exercising direct regulation of data processors and sub-contracting activities; as well as strengthening regulation on sensitive personal data. He urged PCPD to continue to persuade the Administration to confer on PCPD the above sanctioning powers, particularly the criminal investigation power, and to step up protection of personal data privacy. Mr Jeffrey LAM also expressed concern over the insufficient sanctioning powers of PCPD and enquired about the plan of PCPD in this regard.

11. Mr WONG Yuk-man expressed strong disappointment at the briefing given by PCPD whom, he considered, had failed to address in the work plan the long-standing issue of insufficient sanctioning powers and the inadequacies in the administration of the Office of PCPD as identified by the Director of Audit and the Public Accounts Committee.

12. In response, PCPD said that he would continue to advocate to the community his proposals of strengthening the sanctioning powers of PCPD through intensive public engagement, media briefing and consultation with interests groups during the further public discussions on the Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance. Upon further consultation with the community, he would submit a final set of comments for the Administration's consideration. He would also submit a paper to the Panel on the justifications for strengthening his sanctioning powers for the special meeting on the review of PDPO to be held on 20 November 2010. In the meantime, the Office of PCPD would discuss with the Police and the Department of Justice ("DoJ") on the formulation of policies and guidelines for referral of suspected cases of offences under PDPO to them for investigation and prosecution with a view to stepping up enforcement of PDPO.

13. PCPD referred to paragraph (h) in the Annex to his paper [LC Paper No. CB(2)239/10-11(03)] and said that the administrative and financial irregularities identified by the Director of Audit had been remedied. The Office of PCPD would follow up on the recommendations of the Director of

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Audit and the Public Accounts Committee on corporate governance as detailed in his paper.

14. Mr Ronny TONG enquired about the views of PCPD on the proposals put forward by the former PCPD and on how the proposals would be taken forward. He also enquired which of the five proposals mentioned in paragraph 10 above was considered of utmost importance in affording protection on personal data privacy and whether PCPD would institute civil claims on behalf of aggrieved data subjects who suffered damage arising from contravention of PDPO by data users.

15. PCPD responded that he was in full support of the proposals put forward by the former PCPD. He welcomed the Administration's decision to pursue the proposal of empowering PCPD to provide legal assistance to an aggrieved data subject to institute legal proceedings to seek compensation under section 66 of PDPO. Regarding the sanctioning powers of PCPD, he considered that the strong public sentiment on the Octopus incident was that PCPD should be granted the power to award compensation to aggrieved data subjects and impose monetary penalty on data users for serious contravention of PDPO in order to increase deterrent effect.

16. Ms Audrey EU said that she appreciated that from the viewpoint of the general public, it would be best for PCPD to have all the powers including criminal investigation, prosecution and awarding compensation so that his Office could provide "one-stop" services if they felt aggrieved. However, it was important to have criminal investigation and prosecution powers vested separately in the Police and DoJ to ensure checks and balances. In her view, the Office of PCPD should, based on the models of EOC and the Consumer Council, step up its role as an advocate and regulator in the protection of personal data privacy and strengthen its educational work to enhance the community's knowledge of privacy protection. Ms EU expressed support for empowering PCPD to provide legal assistance to an aggrieved data subject to institute legal proceedings to seek compensation. She considered PCPD should also provide mediation services to complainant as appropriate.

17. The Deputy Chairman concurred with the view that it was not appropriate to grant a single body too much power as there should be checks and balances. She further suggested that PCPD should adopt a forward-looking approach in ensuring personal data privacy protection having regard to social development, advancement of information technology and overseas experiences in personal data privacy protection.

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18. While considering that the work of Office of PCPD and EOC were not directly comparable, Mr Paul TSE was of the view that the Office of PCPD should, based on the model of EOC, undertake the role of an advocate by stepping up preventive measures on personal data privacy protection instead of focusing merely on case handling. The Deputy Chairman also shared a similar view.

19. PCPD explained that the recent cases of contravention of PDPO and unauthorized sale of personal data had reflected the inadequacy of the enforcement power of PCPD. The proposal of granting PCPD criminal investigation and prosecution powers could meet the public expectation for enhancing deterrence against serious contravention of PDPO. His team had the knowledge and experience to perform these roles efficiently and effectively, while the discretion of whether or not to prosecute still vested with the Secretary for Justice. PCPD assured members that his Office would conduct direct investigation into suspected contravention of PDPO if necessary, even without a complaint. He added that the Office of PCPD had all along been proactively organizing data protection promotional activities as an advocate of privacy protection. For instance, the Office of PCPD had sought to instil the importance of personal data privacy among the young generation through incorporating the subject matter into the Liberal Studies curriculum of secondary schools and "Other Learning Experience" of the New Senior Secondary Curriculum.

20. Referring to the motion on "Improving personal data privacy protection" passed at the Council meeting of 20 October 2010, which urged the Administration to, among others, increase the criminal sanction under PDPO, Mr LEE Wing-tat expressed concern that PCPD did not have sufficient sanctioning powers to protect the general public's personal data privacy. Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") responded that to afford better protection of personal data privacy, the Administration had proposed to introduce in PDPO additional specific requirements on data users for the collection and use of personal data for direct marketing, to make unauthorized sale of personal data an offence, and to increase the penalty level for repeated non-compliance with enforcement notice etc. On granting additional sanctioning powers to PCPD, the Administration had proposed to empower PCPD to provide legal assistance to an aggrieved data subject to institute legal proceedings to seek compensation under section 66 of PDPO. In order to maintain checks and balances, the Administration, however, maintained its view that PCPD should not be provided with the power to carry out criminal investigations

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and prosecutions as it was important to retain checks and balances in the existing arrangement under which criminal investigation and prosecution powers were vested respectively in the Police and DoJ. The Administration considered that the Office of PCPD should put more emphasis on the educational and promotion fronts to enhance awareness of personal data privacy among the general public.

21. Referring to Part VII of PDPO on functions and powers of PCPD, Mr Paul TSE enquired about the work of PCPD in providing advice to other law enforcement agencies on proposed legislation in relation to personal data and in carrying out inspections of personal data systems used by government departments and statutory bodies. Acting Deputy Privacy Commissioner for Personal Data/Chief Legal Counsel explained that it was the current practice of PCPD to examine any proposed legislation published in the Gazette and provide advice to the policy bureau concerned if necessary. For instance, PCPD had recently advised on proposed legislation relating to Anti-Money Laundering and the Competition Bill. Mr TSE also enquired whether PCPD had accepted gifts and donations from the public in the past. PCPD replied that to his understanding, the Office of PCPD had not accepted any gift or donation from the public in the past.

22. Mr WONG Kwok-hing expressed concern about the heavy caseload of the Office of PCPD. Mr Albert HO enquired whether the number of long outstanding cases (i.e. those aged beyond 180 days) had surged and whether the quality of services provided by the Office of PCPD had been compromised due to increasing workload.

23. PCPD assured members that he would continue to streamline work procedures and redeploy internal manpower to cope with the increasing workload of the Office of PCPD. Through enhanced working procedures such as the adoption of simplified template for daily correspondence and better division of work, cases were handled within a reasonable timeline with the number of long outstanding cases reduced as a result. The number of cases in which the Administrative Appeals Board had dismissed appeals against the decisions of PCPD was maintained at around 90% which could demonstrate that the quality of work of his Office had not been compromised.

24. In response to Mr CHAN Kin-por's query about the basis for PCPD to draw the conclusion that his Office had a high standing in the regional and international privacy arena, PCPD explained that the high standing of his

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Office was attributable to the contributions of former PCPDs to the protection of personal data privacy in Hong Kong, their active participation in global personal data protection activities, and the independent status of PCPD as compared with some other overseas privacy enforcement institutions which were still part of their governments. He believed that the operation of the Office of PCPD could serve as a good reference for other overseas privacy enforcement bodies.

Resources of the Office of PCPD

25. Noting that the Administration had turned down PCPD's non-recurrent bid for permanent office accommodation, Ms Emily LAU and Mr Jeffrey LAM expressed concern that the Office of PCPD did not have sufficient financial and manpower resources and asked how PCPD would cope with the problem. In response to Ms Emily LAU, PCPD said that the existing one and a half storeyed office in Wanchai would not be adequate to accommodate all the additional staff if the bid for all 52 additional posts was approved by the Administration. Nevertheless, he assured members that the Office of PCPD had sufficient reserves to tide over 2011-2012. Mr WONG Yuk-man considered that PCPD should have acted proactively to address the manpower shortage problem.

26. PCPD said that the Office of PCPD currently employed about 60 staff members with relevant experience and expertise. Apart from recruiting staff to strengthen the manpower resources, he was reviewing the staffing structure, remuneration system, end-of-agreement gratuity and staff relations issues with a view to effecting a cultural change and building a loyal and dedicated staff force. He envisaged that with more financial resources to be allocated to his Office, privacy protection work would be further strengthened.

27. Mr IP Kwok-him expressed concern that the Office of PCPD seemed to have a high staff turnover rate and difficulties in staff recruitment. He enquired about the policy on retaining existing staff and the ranks of those staff members who had resigned. PCPD replied that most of the staff leaving his Office were investigation officers who might have left for similar jobs with better remuneration package in large organizations which looked for staff with relevant experience and expertise to enhance their personal data privacy protection measures. The relatively small number of people with relevant experience in personal data privacy protection work available in the market also made staff recruitment more difficult. To retain

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dedicated staff, apart from the measures mentioned above, he had recently decided that an internal recruitment exercise should be conducted prior to open recruitment to provide more promotion opportunities to existing staff. Two existing colleagues had been promoted recently through internal recruitment. He assured members that he would continue to motivate staff to provide the public with an efficient and effective service.

28. Prof Patrick LAU enquired about the justification of the Administration for turning down PCPD's non-current bid for permanent office accommodation. He also enquired whether an extra office should be set up instead of purchasing a permanent office accommodation. PCPD replied that the purchase of a permanent office could ease the rental pressure and afford financial stability to the Office of PCPD as well as provide a better working environment to the staff. Housing the office under one roof would facilitate daily operation and hence service to the public. DSCMA explained that the Administration had considered the PCPD's bid for the purchase of a permanent office and concluded that it would be more cost-effective for the Office of PCPD to rent the existing office.

29. In response to Mr CHAN Kin-por's query on the cost-effectiveness of creating 52 posts, PCPD explained that some of the new posts were sought to offset about 20 non-established posts which were currently funded by deploying recurrent and non-recurrent subventions of the Office of PCPD. The net proposed increase in posts was therefore much smaller than that figure and was reasonable having regard to the increasing workload of the Office of PCPD.

30. Regarding PCPD's bid for non-recurrent expenses of IT equipment and creation of posts, Mr Albert HO asked whether the Administration would accede to PCPD's request for additional resources. DSCMA replied that the Administration would process the financial application of the Office of PCPD in the coming few months according to the established resource allocation mechanism. The Administration would strive to provide resources at an appropriate level to support the Office of PCPD to carry out its existing and new functions such as providing legal assistance to aggrieved data subjects to institute legal proceedings to seek compensation under section 66 of PDPO. He added that the Administration had already allocated funding to the Office of PCPD for the creation of 13 posts during the past three years to strengthen its manpower provision.

31. In response to the concern of Mr LEE Wing-tat on insufficient

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financial provision to the Office of PCPD, DSCMA stressed that since the Constitutional and Mainland Affairs Bureau ("CMAB") had taken over the policy portfolio of personal data privacy protection from mid-2007, the Bureau had increased the annual financial provision to the Office of PCPD from \$36 million in 2007-2008 to \$48 million in 2010-2011, representing a substantial increase of around 34%. He assured members that CMAB would strive to provide the Office of PCPD with adequate resources for the effective implementation of PDPO. Mr LEE Wing-tat, however, considered that such increase in financial provision was still far from adequate for the Office of PCPD.

32. Ms Audrey EU considered that PCPD's bid for allocation of \$3 million as a legal reserve fund was far from adequate in meeting the need. PCPD responded that the fund would be reserved for daily operation relating to legal cases, not for the proposed legal assistance to be provided to aggrieved data subjects.

Other issues

"Opt-in" and "opt-out" mechanism for collection and use of personal data

33. Noting that the direct marketing industry was concerned about the regulation for collection and use of personal data for direct marketing purpose, Mrs Regina IP enquired about the overseas experience in the regulatory regime on direct marketing activities. PCPD replied that to afford best protection on personal data privacy, explicit consent of the data subject should be obtained on the collection and transfer of personal data to third parties and the adoption of an "opt-in" mechanism was more appropriate in this regard. For instance, the French Government had adopted an "opt-in" mechanism to regulate telemarketing activities and some overseas countries had also established central do-not-call registers for regulating direct marketing activities. He undertook to provide information on overseas experience on the regulatory regime on direct marketing activities for members' reference.

PCPD

34. Pointing out that most of the overseas countries had adopted an "opt-out" mechanism for direct marketing purpose and adopting an "opt-in" mechanism would have an adverse impact on direct marketing industry, Mr CHAN Kin-por sought elaboration from PCPD on his rationale for advocating the "opt-in" mechanism. PCPD said that while he maintained the view that an "opt-in" mechanism should be the ideal for the protection on

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personal data privacy because consumers have the right of self-determination on the use of their personal data, he was well aware of the concerns of relevant industries about the adoption of an "opt-in" mechanism. He suggested that interim arrangements could be put in place as appropriate to mitigate any potential impact on commercial operations. For instance, a central "Do-not-call" register on person-to-person telemarketing could be introduced as an "opt-out" means at the initial stage to regulate unsolicited promotion calls using personal data.

Code of Practice on Consumer Credit Data

35. Mrs Regina IP enquired about the details of the proposed extension of the scope of data sharing under the Code of Practice on Consumer Credit Data ("the Code") and the considerations of PCPD in acceding to requests of consumer credit providers to join TransUnion to obtain more information on mortgage for enhanced credit assessment. Dr PAN Pey-chyou asked whether the consultation period on the revised Code could be extended. PCPD explained that Hong Kong Monetary Authority ("HKMA") recommended to include positive mortgage data such as the number of residential property mortgages for sharing by credit providers under the Code in order to provide more useful references for financial institutions to process credit applications. As HKMA and the financial services industry planned to roll out the scheme by April 2011, the Office of PCPD would consult the public on the new initiative in January 2011 accordingly.

36. In response to Mr CHAN Kin-por's remark that PCPD had taken a long time in reviewing the Code, PCPD reiterated that PCPD had to discuss the issue with HKMA and the financial services industry to come up with a suitable proposal balancing their needs and privacy rights. Further, public consultation on the revised Code before its implementation had to be undertaken in accordance with PDPO.

eHealth Record Sharing Programme

37. In response to the enquiry of Dr PAN Pey-chyou on the details of the eHealth Record Sharing Programme, PCPD advised that the Office of PCPD had regularly participated in the meetings of the eHealth Record Office's Working Group on Legal, Privacy and Security Issues and provided advice in relation to personal data privacy protection to ensure that the eHealth Record Sharing Programme would conform to the requirements under PDPO.

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Data Users Return

38. In response to the enquiry of Mr CHAN Kin-por on the timetable for launching Data User Returns and Register of Data Users which had submitted such returns under Part IV of PDPO, PCPD advised that he had recently embarked on consultation with CMAB. A finalized timetable on the implementation of this initiative had not been formulated yet.

Investigation into the Octopus Rewards Programme and other investigation work of PCPD

39. Referring to the investigation into the Octopus incident in which the personal data of consumers were transferred for direct marketing purpose and some misled consumers subsequently bought certain insurance products, Mr WONG Kwok-hing asked whether PCPD had referred the case to the Commercial Crime Bureau of the Police for follow-up. PCPD replied that since he had not received any such complaint from aggrieved data subjects, no referral to the Police for investigation had been made. He advised that data subjects could also approach the Police direct in case of suspected fraudulent activities.

40. In response to Mr WONG Kwok-hing's enquiry on the investigation into the alleged unauthorized sale or transfer of personal data by Autotoll Limited and some other banks, PCPD said that he would follow up the case of Autotoll Limited with Mr WONG for more background information. Regarding the alleged unauthorized collection of personal data by some banks, PCPD said that the investigation of three cases was almost completed with one case still under investigation. Mr WONG asked whether the related investigation reports would be published. PCPD replied that under the existing practice, PCPD could publish an investigation report if significant public interest was involved. He would assess the final findings of the cases to decide whether the investigation reports should be made public.

Further discussion on review of PDPO and related issues

41. Ms Emily LAU considered that the Panel should form a subcommittee to study the review of PDPO and related issues. The Chairman replied that the Panel would further discuss the issues relating to privacy protection at the coming special meeting and the regular meeting to be held on 20 November and 20 December 2010 respectively. Members might wish to consider whether it was necessary to set up a subcommittee at a later stage.

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V. Proposed Creation of One Supernumerary Post of Principal Executive Officer in the Registration and Electoral Office
[LC Paper No. CB(2)239/10-11(06)]

42. SCMA said that the Administration had to hold four elections, namely, the DC election, the Election Committee ("EC") subsectors election, the CE election and the LegCo election in November and December 2011 and March and September 2012 respectively. Owing to the differences between the terms of office of CE and EC (five years) and those of the DC and the LegCo (four years), it would be the first time in 20 years that the coming election of the EC subsectors would be held in the same year of the DC ordinary election followed by the CE election and LegCo general election respectively in a span of ten months. In view of the voluminous preparation work, the Electoral Affairs Commission ("EAC") sought to create a supernumerary post of Principal Executive Officer ("PEO") in the Registration and Electoral Office ("REO") from 14 January 2011 to 31 March 2013 to oversee the preparation and conduct of the four general elections in 2011 and 2012.

43. The Chief Electoral Officer ("CEO") of REO then briefed members on the planning and preparatory work of REO for the four general elections in 2011 and 2012, the need for a supernumerary PEO post and the main duties and responsibilities of the post holder as set out in the Administration's paper [LC Paper No. CB(2)239/10-11(06)].

Discussion

44. Pointing out that the elections of the CE, LegCo and DC were always held in two consecutive years in the past, Mr Ronny TONG said that he did not see that there would be a significant increase in the workload of REO arising from the preparation work of the elections which could justify the need for the creation of the PEO post. He added that as the EC subsectors election was small in scale and the new DC functional constituency ("FC") election to return five DC FC seats would be conducted in a manner similar to the existing geographical constituency ("GC") election with the polling held on the same day at district level, he did not subscribe to the view that the two elections would add burden to the preparatory work of REO.

45. Ms Audrey EU shared a similar concern, saying that she did not see the need to create the PEO post if there was no new arrangement or initiative to be introduced in the coming elections. In her view, except for the new

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DC FC election, REO had ample experience in organising the other general elections. Mr Paul TSE echoed a similar view.

46. SCMA said that whereas the four elections were normally conducted within two years' time (e.g. the conduct of election of DC, EC subsectors, CE and LegCo in November 2007, December 2006, March 2007 and September 2008 respectively within 22 months), the current round of the four elections would have to be held within a span of ten months only. To ensure the smooth conduct of the elections, REO would be required to undertake a full range of preparatory work within a tight timeframe including the logistical arrangements for polling and counting for the four elections, reviewing the relevant guidelines on election-related activities to be issued by EAC, notifying the electors of the new electoral arrangements, etc. He further explained that since around 3.2 million electors would be entitled to vote under the "one-person-two-votes" proposal to return the new five DC FC seats, REO had to arrange for the casting of a large number of votes for the new DC FC seats in addition to the casting of votes for the GC and the traditional FC elections. REO also had to put in extra effort in producing booklets to introduce candidates of both GC and DC FC elections to electors in the 2012 LegCo election. It was anticipated that REO would face a great challenge of making extensive logistical arrangements under a hectic timetable.

47. CEO supplemented that as the electoral arrangements for the coming elections would be far more complex, a detailed review of the entire electoral process, including the polling and counting procedure, the number and venue of polling stations, the design of ballot boxes, as well as the logistical arrangements for the announcement of election results would be essential to ensure smooth conduct of the elections.

48. On the enquiry of Mr Jeffrey LAM about the division of work between CEO and PEO and the recruitment for the PEO post, SCMA replied that the Civil Service Bureau would assign a PEO to take up the proposed supernumerary post. The PEO post, to be designated as the Senior Deputy Chief Electoral Officer, would underpin the CEO and oversee three election divisions. CEO supplemented that while CEO would oversee the overall arrangements of the elections including making amendments to the relevant legislation, election guidelines and reviewing the boundaries of constituency areas, PEO would focus on the practical preparation, conduct and resources management of the elections in 2011 and 2012 as detailed in Annex A of the Administration's paper [LC Paper No. CB(2)239/10-11(06)].

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49. Ms Audrey EU further asked if the Administration could, for the sake of cost-effectiveness and environmental protection, consider sending election-related publicity materials through e-mails and compiling in the same set of publicity material the election platforms of candidates belonging to the same political party for GC and DC FC election. The Deputy Chairman and Ms Miriam LAU concurred with the view that the Administration should implement effective measures to minimize the use of paper in making electoral arrangements. Ms Miriam LAU, however, cautioned that the Administration should notify the candidates should there be any change in the existing publicity arrangement.

50. SCMA said that the Administration would be mindful of the environmental protection concerns expressed by members. CEO supplemented that REO would encourage the electors to provide e-mail addresses in the coming voter registration exercise for sending election-related publicity materials.

51. Ms Audrey EU enquired how the Administration would address the problem of non-delivery of poll cards to electors in the coming elections. Ms Miriam LAU urged the Administration to solve the long-standing issue that some electors received election mail addressed to previous flat owners/tenants who had not notified REO of their change of address. She expressed dissatisfaction that additional sets of election publicity materials addressed to previous flat owners were kept sending to her although she had notified REO to update the records. She stressed that the electoral registers should be updated in a timely manner. SCMA replied that if election mail was returned undelivered, REO would update the voter register accordingly. CEO assured members that REO would update the registration record according to the established procedure stipulated by law. She undertook to follow up the case with Ms LAU.

52. Mr Paul TSE asked whether the conduct of the by-election on 16 May 2010 triggered by the resignation of LegCo Members to launch the so-called referendum campaign had any impact on the work progress of REO in preparing the four general elections. He further asked whether the Administration would step up the promotion of voter registration among the ethnic minorities and encourage them to participate in the coming elections.

53. SCMA replied that the conduct of the by-election in May 2010 did not affect the work of REO in updating the relevant voter registers which were already released for public inspection in mid-2010. Subject to the

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completion of LegCo's scrutiny of the DC Ordinance (Amendment of Schedule 3) Order 2010 and upon gazettal of the Order, EAC would commence public consultation in December 2010 on its provisional recommendations on the delineation of DC constituency areas for the coming DC election in November 2011. He added that the Administration would step up promotion of voter registration among the ethnic minorities for the coming elections. CEO supplemented that guide on voting procedure in eight languages had been made available to ethnic minorities in the polling stations from 2008 onwards. Promotion messages in different languages would also be broadcast in radio to encourage ethnic minorities to cast their votes. REO would continue its promotion effort in the coming voter registration exercise.

54. Having regard to the tight schedule for holding the elections and the anticipated increase of workload in REO, Mr Jeffrey LAM, Ms Miriam LAU, the Deputy Chairman, and Dr Raymond HO indicated support for the staffing proposal.

55. The Chairman concluded that members in principle supported the Administration's submission of the staffing proposal to the Establishment Subcommittee for recommendation to the Finance Committee.

VI. Declaration mechanism by Executive Council Members

[LC Paper Nos. CB(2)239/10-11(07) to (09)]

Briefing by the Administration

56. SCMA briefed members on the system of declaration of interests by Executive Council ("ExCo") Members under the "Annual Declaration of Registrable Interests of Members of ExCo" ("the Register") and the Administration's responses to the issues concerning the omission by Mr LAU Wong-fat to register certain interests in his capacity as an ExCo Member raised in Ms Emily LAU's letter dated 29 October 2010 to the Panel, with details as set out in the Administration's paper [LC Paper No. CB(2)239/10-11(07)].

57. Members also noted the background brief on the subject matter prepared by LegCo Secretariat [LC Paper No. CB(2)239/10-11(09)].

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Discussion

Declaration of interests by ExCo Members

58. Ms Emily LAU pointed out that Mr LAU Wong-fat had admitted in his statement on 30 September 2010 that he did not register certain property interests such as the purchases of Yoho MidTown and Palm Springs under the company held by him to ExCo and the relevant supplementary declarations was only provided to the ExCo Secretariat on 2 and 8 October 2010 respectively. She considered that Mr LAU had seriously contravened the existing requirement under the system of declaration of interests by ExCo Members. Ms LAU expressed strong dissatisfaction that CE, in his statement issued on 30 September 2010, had jumped to the conclusion without any investigation that Mr LAU did not deliberately cover up or violate the concerned requirements. Mr LEE Wing-tat echoed similar view, saying that it was unacceptable that an ExCo Member had repeatedly omitted to declare his personal interests and contravened the requirements under the declaration system.

59. Mr Ronny TONG considered that the system of declaration of interest by ExCo Members could not tackle conflict of interest issues or potential conflict of interests perceived by the public. He enquired whether there was a mechanism in place to prevent an ExCo Member who had been involved in property speculation from participating in the discussion of issues relating to land and property even if that Member had declared his interests. He also enquired whether an ExCo Member had to resign if he had participated in the related discussion without declaring his interests.

60. Noting that there were clear requirements on regular declarations and declarations in respect of individual items discussed by ExCo, Mr Albert HO sought clarification from the Administration on whether an ExCo Member who had directorships in a company but with less than 1% of shareholdings in it had to withdraw from the relevant ExCo discussions if that company was involved in large scale property investment. He expressed concerned that an ExCo Member might make use of the ExCo's confidential information for benefits of the company.

61. SCMA replied that the declaration system sought to ensure transparency on the personal interests of ExCo Members to avoid possible conflict of interests. As explained in paragraph 8(2) and 8(3) of the Administration's paper, the CE Office had examined and analysed the case

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and found that Mr LAU Wong-fat had not deliberately concealed his interests or breached the declaration requirements. Mr LAU had also provided supplementary declarations on his company shareholdings and land and property interests to the ExCo Secretariat as requested. The analysis had also indicated that the land and property interests which Mr LAU omitted to declare did not constitute direct conflict of interests in the items discussed by ExCo.

62. SCMA further explained that all official and non-official ExCo Members were required to declare their personal interests according to the established practice as detailed in paragraph 3 of the Administration's paper. Under the existing practice, the ExCo Secretariat would check the registered interests against the discussion items of an ExCo meeting in ascertaining the possibility of a conflict of interests in respect of particular ExCo Members. If a Member was considered to have significant pecuniary interest such as directorship and partnership of companies, professional positions and other close or substantial interests, CE might request a Member not to participate in the discussion, or the Secretariat would withhold relevant ExCo papers and minutes from the Member. For instance, an ExCo Member, being a board member of Mass Transit Railway Corporation, might be required to withdraw from a discussion relating to the Corporation. In short, if the personal interest declared by a Member constituted a significant real or potential conflict of interest in relation to an item discussed by ExCo, the Member might have to withdraw from the discussion of that item. If not, the Member might participate in the discussion.

63. Permanent Secretary of Chief Executive's Office ("PSCEO") supplemented that the Administration considered that Mr LAU Wong-fat had omitted to declare certain personal interests but did not deliberately do so. He said that while Mr LAU had indicated under "company held" in the Register that he held "Carofaith Investment Ltd" for investment purpose, he had not indicated in parallel under "land and property" in the Register the properties purchased by that company because his staff had misunderstood that there was no need to do so. Mr LAU had then directed his staff to declare the property interests held by Carofaith Investment Ltd on 30 September 2010, the same day he issued his statement. Upon further clarification with the CE Office that land and property owned through his companies should also be declared, Mr LAU subsequently provided other supplementary declarations on 8 October 2010 to the ExCo Secretariat. All such information had been made public on the ExCo website.

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64. PSCEO further said that the CE Office had subsequently conducted a detailed examination and analysis of the supplementary declarations by Mr LAU against all the items and related papers involving land or property discussed by ExCo since Mr LAU's appointment as an ExCo Member. The analysis indicated that the land and property interests which Mr LAU had omitted to declare did not constitute direct conflict of interests for any of those items discussed by ExCo. Therefore, there would have been no need for Mr LAU to withdraw from the relevant ExCo meetings. He added that Mr LAU had also declared his interests in companies engaged in land and property investments at those ExCo meetings in which matters on land or property were discussed.

65. On Mr Ronny TONG's further enquiry, SCMA replied that ExCo did not discuss any item such as any district outline zoning plan directly related to the land and property interests of Mr LAU Wong-fat. Mr Ronny TONG opined that as ExCo must have discussed issues relating to the overall land and housing policy of Hong Kong which had a bearing on the property price trend in all districts, it would still constitute conflict of interests if an ExCo Member who had been involved in property speculation participated in such discussion.

66. Ms Emily LAU said that it was unacceptable that the Administration refused to provide LegCo the sequence of events in the case of LAU Wong-fat for public scrutiny on the ground that it was not appropriate for individual incidents involving declaration of interests by ExCo Members to be specifically discussed at LegCo. Mr CHEUNG Man-kwong also expressed dissatisfaction that LegCo and the public were not presented with the requisite information to assess whether conflict of interests was involved. Ms Cyd HO shared a similar view, saying that the Administration should at least make public the sequence of events. If such information was not disclosed, the media might draw up its own sequence of events on the basis of incomplete information which would be unfair to the individual concerned and undermine public confidence in the operation of ExCo. In her view, the Administration should enact archival legislation so that records of meetings and deliberations of ExCo could be made available for public scrutiny after a certain period of time.

67. SCMA said that the Administration had already provided the main sequence of events in the case of LAU Wong-fat as detailed in paragraph 8(2) and 8(3) of the Administration's paper and reiterated that Mr LAU had provided supplementary declarations to the ExCo Secretariat as requested.

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He added that while there was no archival legislation in Hong Kong, access to government records was provided through the Code on Access to Information. Although the deliberations of ExCo was not to be disclosed, the Administration had consulted and sought endorsement of LegCo on the making of policies and legislation.

68. Ms Emily LAU asked when ExCo Members should notify the Administration of their property trading and whether there was a sanctioning mechanism for contravention of the declaration system. SCMA replied that ExCo Members should notify the Clerk to ExCo of any property trading within 14 days from the signing of the provisional or formal sale and purchase agreement. That practice had all along been adopted by ExCo Members. He added that according to Article 55 of the Basic Law, the appointment and removal of ExCo Members could be decided by CE. If any ExCo Member deliberately contravened the declaration system, CE could exercise his power to handle the case as appropriate.

69. Referring to a media report that one of the rural sites in Pak Nai, Yuen Long owned by Mr LAU Wong-fat had been illegally used for operating war game business, Mr LEE Wing-tat considered that it was unacceptable that an ExCo Member who had participated in the formulation of land and housing policy had violated the laws. PSCEO replied that since the case was not related to the declaration system of ExCo Members, the CE Office had not conducted an in-depth investigation. According to media reports, the related site was held through a company owned by Mr LAU. It was reported that the middleman company hired by Mr LAU's company to manage and lease the land had leased the site for operating war game business without informing the landlord and Mr LAU had been following up with the tenant. SCMA supplemented that the Lands Department had been following up the case to ascertain the legal liability.

Review of the Register

70. Ms Emily LAU and Mr CHEUNG Man-kwong expressed dissatisfaction that while the Administration had initially proposed to add to the Register the criterion that "in the case of land or property held through a company, the interest is registrable where the Member has control of the company or has more than 50% shareholding in it" (paragraph 8(4) of the Administration's paper) when the incident came into light, it sought to delay the addition by carrying out an internal assessment on the ground that the issue was complex. Ms Emily LAU said that the Administration should

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consult the views of the public and LegCo, instead of ExCo Members who were to be bound by the requirements, on any revision of the Register arising from the incident. Mr CHEUNG Man-kwong was of the view that the declaration requirements of ExCo Members should be more stringent than that of LegCo Members as the former had greater influence on policy formulation.

71. Mr Paul TSE said that as ExCo Members were appointed by CE who had the final decision on how conflicts of interests of ExCo Members should be handled, the general public might voice their discontent and suggest deterrent measures if they considered that the incident was not well handled. Noting that LegCo had more stringent declaration requirements such as land or property held through a company by a Member who had a controlling interest or more than 50% of its share was registrable, Mr TSE opined that the Administration should improve the system of declaration interests by ExCo Members to enhance its clarity, in particular, on the registrable interest concerning land and property held through a company in order to help ExCo Members declare their interests accurately. If an ExCo or LegCo Member was found in breach of the relevant declaration requirements, an investigation might also be conducted to study the case.

72. SCMA explained that the proposed revision to the Register was modelled on the corresponding requirement of LegCo. Having regard to the existing requirement for ExCo Members to declare shareholdings of a nominal value greater than 1% of the issued share capital of companies or other bodies, the Administration would further study whether the proposed criterion that "in the case of land or property held through a company, the interest is registrable where the Member has control of the company or has more than 50% shareholding in it" was adequately rigorous or a more stringent requirement should be imposed such as requiring any declaration of land or property held through a company in which the shareholding of the Member was far below 50%. As the issues involved were complex, the Administration considered that an internal assessment of the suggested addition should be carried out to examine the issue carefully. He added that ExCo Members had all along declared their personal interests including land and properties held in the name of companies. The proposed review of the Register was aimed to make the stipulation under "land and property" in the Register clearer.

73. Mr CHEUNG Man-kwong said that before introducing a more stringent requirement, the Administration should at least adopt the proposed

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criterion to strengthen the declaration system. SCMA replied that the Administration had already required ExCo Members to declare any land and property held through their companies in the meantime.

74. The Deputy Chairman declared that she was a close friend of Mr LAU Wong-fat. She said that she believed that Mr LAU was a man of integrity and would not deliberately contravene the declaration requirement. She suggested that when refining the declaration system of ExCo Members, the Administration should make reference to the declaration system of United Kingdom where an honest system was practised.

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75. At the request of the Chairman and Ms Emily LAU, the Administration undertook to inform LegCo and make public of any revision made to the Register.

VII. Any other business

76. The Chairman proposed that the duration of the meeting be extended for about 20 minutes in order to allow adequate time for the members to express their views. Members raised no objection to the proposal. The meeting subsequently ended at 6:05pm.