

立法會
Legislative Council

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LC Paper No. CB(2)345/12-13
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 19 November 2012, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Paul TSE Wai-chun, JP
(Deputy Chairman and Chair of the meeting)
Hon LEE Cheuk-yan
Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon WONG Kwok-kin, BBS
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan

Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, JP
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen

**Member
attending**

Hon Claudia MO

**Members
absent**

: Hon TAM Yiu-chung, GBS, JP (Chairman)
Dr Hon LAM Tai-fai, SBS, JP
Hon IP Kwok-him, GBS, JP
Hon Steven HO Chun-yin

**Public Officers : Item IV
attending**

Mr Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

Ms CHANG King-yiu
Permanent Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland Affairs

Miss Charmaine LEE Pui-sze
Deputy Secretary for Constitutional and Mainland Affairs

Item V

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland Affairs

Mrs Philomena LEUNG HO Ye-man
Principal Assistant Secretary
(Constitutional and Mainland Affairs)

Mr Ronald CHAN Ngok-pang
Political Assistant to Secretary for Constitutional and
Mainland Affairs

**Clerk in
attendance**

: Ms Joanne MAK
Chief Council Secretary (2)3

Staff in attendance : Miss Flora TAI
Assistant Secretary General 2
(Items I – III)

Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Cindy HO
Senior Council Secretary (2)3

Ms Wendy LO
Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

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The Deputy Chairman said that, as the Chairman was out of town, he would take over to chair the meeting.

I. Confirmation of minutes of meeting

[LC Paper No. CB(2)151/12-13]

2. The minutes of the meeting held on 16 October 2012 were confirmed.

II. Information papers issued since the last meeting

[LC Paper Nos. CB(2)73/12-13(01) to (02), CB(2)75/12-13(01), CB(2)112/12-13(01) and CB(2)119/12-13(01)]

3. Members noted that the following papers had been issued since the last meeting –

- (a) letter from Hong Kong Human Rights Monitor ("HKHRM") to the Administration regarding the Flag Raising Ceremony on 1 October 2012 [LC Paper No. CB(2)73/12-13(01)];
- (b) letter from HKHRM to the Administration regarding moral and national education [LC Paper No. CB(2)73/12-13(02)];
- (c) submission on the electorate of the transport functional constituency from Taxi & Public Light Bus Concern Group and

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the Administration's reply letter [LC Paper Nos. CB(2)75/12-13(01) and 112/12-13(01)]; and

- (d) concluding observations issued by the United Nations Committee on the Rights of Persons with Disabilities ("UNCRPD") in respect of the initial report of China (including the report of the Hong Kong Special Administrative Region) ("HKSAR") [LC Paper No. CB(2)119/12-13(01)].

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)196/12-13(01) and (02)]

Regular meeting on 17 December 2012

4. Members agreed to discuss the following items proposed by the Administration at the next regular meeting to be held on 17 December 2012 at 2:30 pm –

- (a) Electoral Affairs Commission ("EAC") Report on the 2012 Legislative Council ("LegCo") Election; and
- (b) concluding observations by UNCRPD on the initial report of HKSAR of the People's Republic of China under the Convention on the Rights of Persons with Disabilities.

5. Regarding the item referred to in paragraph 4(b) above, the Panel noted Ms Emily LAU's letter dated 15 November 2012 to the Chairman [LC Paper No. CB(2)219/12-13(01)], and agreed to invite the public to give views on the item at the next regular meeting. To allow more time for discussion of the item, the Chairman proposed and members agreed to extend the next regular meeting by one hour.

Clerk

Other issues proposed for discussion

Prevention and handling of potential conflicts of interests of the Chief Executive ("CE")

6. Dr Kenneth CHAN and Mr Alan LEONG expressed concern about the press reports on that day about CE's wife's setting up of a company to promote the reduction of food waste and whether it would give rise to perceived or real conflict of interests. Dr CHAN said that he was also concerned about the mechanism governing the declarations of interests by CE and his spouse,

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Members of the Executive Council ("ExCo"), and Officials under the Political Appointment System. In this connection, Dr CHAN urged the Administration to expedite the implementation of the recommendations of the Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests ("the Review Committee's Report").

7. Secretary for Constitutional and Mainland Affairs ("SCMA") said that the Panel was briefed on the 36 recommendations of the Review Committee's Report at its meeting on 4 June 2012. The Administration had so far implemented 17 of the recommendations, and was following up on the remainder including preparations for the legislative exercise to apply sections 3 and 8 of the Prevention of Bribery Ordinance (Cap. 201) to CE. SCMA said that the Administration would revert to the Panel as soon as possible.

8. Referring to the Administration's reply letter dated 16 November 2012 to the Panel on CE's declaration of interests [LC Paper No. CB(2)227/12-13(01)], Ms Emily LAU said that the information available from the website of ExCo revealed that CE had instructed his solicitors to follow up on his resignation with the relevant bodies on the Directors Index Search, and that the matter had yet to be solved. She considered that an explanation should also be made by CE on the unauthorized building works at his residence on the Peak. She considered that the Panel should discuss CE's declaration of interests as soon as possible. The Chairman suggested that the matter raised by Ms LAU could be discussed in the context of the Review Committee's Report, i.e., item 13 on the list of outstanding items for discussion. Ms LAU reiterated that there was urgency to discuss CE's declaration of interests and requested to discuss it as early as possible.

Functions of the Central Policy Unit ("CPU")

9. Mr Dennis KWOK proposed that the Panel should discuss the role and functions of CPU and its criteria for selection of persons for appointment. Mrs Regina IP, Mr LEE Cheuk-yan, Ms Emily LAU, Mr Ronny TONG and Mr Alan LEONG expressed support for the suggestion. Mrs Regina IP, who was the Chairman of the Panel on Public Service ("PS Panel"), said that the PS Panel discussed a staffing proposal on the creation of a non-civil service ("NCS") position of Full-time Member in CPU in that morning. She said that during the discussion, some Panel members expressed concern about the functions of CPU and suggested that the subject should be discussed by the relevant Panel. Mrs IP considered that it should more appropriately be followed up by this Panel.

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10. Mr LEE Cheuk-yan, who was also a member of the PS Panel, said that during the discussion of the above staffing proposal at the PS Panel meeting, members were concerned that Ms Sophia KAO, who was to fill the proposed permanent NCS position of Full-time Member of CPU, would be responsible for coordinating appointments to the advisory and statutory boards and committees. Mr LEE further said that this was a new area of work of CPU, and LegCo Members had not been informed of that until discussion of the staffing proposal at the said meeting. He considered that the staffing proposal should be further examined by LegCo only after the new role and functions of CPU had been discussed by this Panel.

11. SCMA advised that the work of CPU fell outside the scope of policy responsibilities of the Constitutional and Mainland Affairs Bureau ("CMAB") and its establishment did not involve any politically appointed official. He explained that CPU was responsible for conducting policy research, drafting the annual Policy Address, providing secretariat support to the Commission on Strategic Development, analyzing important policy issues with a view to providing CE, the Chief Secretary for Administration ("CS") and the Financial Secretary with policy advice. Mr Ronny TONG, however, considered that CPU had a unique constitutional role, as it provided CE with policy advice and might impact on CE's policy decisions. He did not think that there was any other Panel which was more appropriate to discuss the issue. He added that if necessary, CS could be invited to the meeting to join the discussion. Mr Alan LEONG considered that as the additional functions of CPU amounted to institutional changes of the Government, the issue should be discussed by this Panel. SCMA said that the Panel had full discretion in deciding on its agenda items. He would convey members' concerns on the work of CPU to the CE's Office and the CS' Office.

Admin

Discrimination issues relating to sexual orientation and gender identity

12. In response to Mrs Regina IP's enquiry about the action to be taken by the Administration following the relevant motion debate on 7 November 2012, SCMA said that he would respond to this under agenda item IV.

Other issues

13. Referring to the list of outstanding items for discussion (the "list"), Ms Cyd HO opposed deletion of items 1 to 3 as proposed by the Administration. She urged the Administration to revert to the Panel on these items, particularly item 3 on "Composition, functions and operation of EAC" on which the Administration should conduct a review in the light of comments

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expressed by political parties/academics and of the experience gained from conducting various public elections over the years. She added that the Panel might also consider the need to invite public views on the functions of EAC when the EAC Report on the 2012 LegCo Election was discussed. The Chairman said that the Panel could consider Ms HO's view when the said EAC Report was discussed. SCMA advised that the Administration had already expressed its position on the question of "important bill". Regarding the role and development of political parties, SCMA said that he had previously stated in public that the Administration was open as to whether it should commence a study on the need to introduce a political party law, but so far no political parties had made such a request to the Administration. He said that as a matter of fact, the three items had not been revisited by the Panel in the last legislative term. That said, SCMA had no objection to retaining these items on the list.

IV. General overview on Constitutional and Mainland Affairs Bureau's policy work priorities

[LC Paper No. CB(2)196/12-13(03)]

14. At the invitation of the Chairman, SCMA briefed members on the policy work priorities of the CMAB in 2013 as set out in the Administration's paper [LC Paper No. CB(2)196/12-13(03)].

District Council ("DC") appointment system

15. Referring to paragraph 2 of the Administration's paper, Mr WONG Yuk-man criticized that none of the seven policy work priorities of CMAB in 2013 was new, and that little progress had been made with those items of work. In particular, he expressed strong dissatisfaction with the Administration's plan to abolish all the appointed seats of DCs only in 2016, which in his view should have been implemented with effect from the fourth term DCs. He criticized the Administration for failing to take heed of the community's support for abolition of DC appointed seats over one term. Ms Emily LAU considered that the Administration should also abolish the ex-officio seats in DC in tandem with the appointed membership in one go, such that all DC members should be returned by direct election.

16. SCMA said that CMAB aimed to introduce a bill to the DC Ordinance (Cap. 547) providing for the abolition of the DC appointed seats for LegCo's scrutiny in the first quarter of 2013, and to consult the Panel on the legislative proposal at its regular meeting in January 2013. In view of the fact that

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ex-officio members in various New Territories DCs were Rural Committee ("RC") Chairmen who were elected in accordance with the respective RC election procedures to become DC ex-officio members, and that the public had not reached a general consensus on the question of DC ex-officio members during the public consultation held earlier this year, the Administration considered that DC appointed seats should be dealt with first. Responding to Ms Emily LAU on the legislative programme, SCMA advised that an amendment bill would first be introduced to implement the abolition of DC appointed seats. Pending the availability of population projections, there would be a regular review of the number of elected seats followed by an exercise conducted by the EAC on the demarcation of the DC constituency area boundaries before the 2015 DC Election. Relevant legislation would be amended accordingly if required.

Constitutional development

17. Ms Cyd HO said that in relation to the two electoral methods for 2016 LegCo Election and 2017 CE Election, the Administration should commence the relevant consultation work in the first quarter of 2013. Ms Emily LAU also urged the Administration to commence the relevant consultation work as soon as possible. Mr WONG Yuk-man considered that the Administration should undertake to dispense with the nominating committee which involved a process for screening candidates in the 2017 CE Election; and FC seats be abolished so that all LegCo members would be returned through direct election in the 2016 LegCo Election. SCMA said that while a timetable for the relevant consultation and legislative process was not yet available, sufficient time would be allowed for the consultation with LegCo and the public regarding the methods for forming LegCo in 2016 and for electing CE in 2017.

18. Dr Helena WONG said that given the need to go through the "five-step mechanism" for amending the two aforementioned electoral methods for 2016 and 2017, and having regard to the experience that the Government's motions concerning the legislative amendments to the two electoral methods for 2012 were passed in 2010, the legislative amendments to the 2016 LegCo Election should be passed by LegCo in 2014. She considered that it was high time to commence the relevant public consultation and requested SCMA to provide a roadmap and timetable for implementing constitutional reform at the next meeting. Mr IP Kin-yuen echoed Dr WONG's views. SCMA reiterated that the Administration would initiate, at an appropriate time, the legislative process regarding the methods for forming LegCo in 2016 and for electing CE in 2017, and consult various sectors of the community, including LegCo.

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Public elections and voter registration ("VR")

19. Mr WONG Yuk-man said that he was seeking a judicial review of the electoral laws which allowed lists of candidates of different constituencies and candidates of functional constituency ("FC") to send their promotional letters to the same elector, which in his view would give an undue advantage to candidates of large political parties and those contesting in both geographical constituency and FC elections. He asked what remedial action would be taken if the Government lost the case. SCMA said that, as on previous occasions, the Administration would, in the light of the judgment handed down by the court, consider introducing amendments to the relevant legislation where appropriate. He cited the example that, following the court's ruling in late 2008 in relation to the voting rights of prisoners, the law had been amended to the effect that arrangements would be made to facilitate voting by prisoners.

20. Ms Cyd HO and Dr Priscilla LEUNG expressed concern about the removal of some 200 000 electors' names from the final registers of electors for 2012. Ms HO said that two members of her electioneering team had such experience, and their requests for reinstating their voting rights were rejected by the Registration and Electoral Office ("REO") simply because they lived with their parents and were not property owners themselves. Therefore, they could not provide any utility bill as proof of address. Ms HO suggested that the Administration should conduct a review of the VR system in the first quarter of 2013 in the light of problems encountered. Dr Priscilla LEUNG urged the Administration to ascertain whether or not some 200 000 electors concerned had lost their voting rights inadvertently and the reasons for their failure to lodge a claim or update their registered residential addresses by the deadline. She noted that in some cases, the electors concerned were university students, and they had been removed from the final registers of electors because they did not report changes in their registered addresses to REO timely after moving from one student quarter to another.

21. SCMA said that after consultation with LegCo in the previous legislative session, REO had implemented a number of improvement measures to the VR system starting from January 2012. To enhance the accuracy of the information contained in the registers of electors, REO had issued inquiry letters to electors according to the relevant regulation, requesting them to confirm whether their addresses in the 2011 final register of electors were still their principal residential addresses. In the first half of 2012, REO had received the replies from a few tens of thousands of electors

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and their names had been retained in the final register. SCMA said that the Administration would step up publicity on the requirement that registered electors should report any changes in their registered residential addresses or other registration particulars, e.g., after they had moved home, to REO as soon as possible to update their electoral records. He added that some 200 000 electors concerned who had their names removed could be re-registered by filling out the relevant updating form and returning it to REO.

22. On the provision of address proofs, SCMA further said that REO would accept address proof commonly used by the general public, including electricity, water and gas bills, etc. For a person who did not have address proof to provide, REO would also accept the address proof of another inhabitant who resided at the same address. However, that inhabitant should furnish a signed declaration to prove that they resided in the same residential address. An alternative was for the person to make a statutory declaration before a Commissioner of Oath, a solicitor or a Justice of Peace that he resided at the residential address he provided. SCMA suggested that Ms HO could provide further details of the cases which she had referred to for follow-up by REO.

23. Ms Emily LAU considered that the progress of the Independent Commission Against Corruption's investigation into the reported cases on suspected false addresses of electors was too slow, which might undermine the confidence of the public in the Administration's determination to maintain the integrity of the VR system. SCMA advised that following investigation into the relevant cases by the enforcement agencies, prosecution had been instituted in some cases and imprisonment had been handed down in some convicted cases. SCMA said that deterrent effect had been achieved, and that the Administration would continue to monitor developments.

Promotion of the Basic Law ("BL")

24. Mr Jeffrey LAM asked about the effectiveness of the Administration's work in promoting general awareness of BL and whether it would consider new initiatives (e.g. organizing academic seminars) for the work. SCMA said that since the Reunification, the Administration had organized a wide range of activities through various channels to enhance public awareness and understanding of BL. The BL Promotion Steering Committee, under the chairmanship of CS, provided the necessary steer on the overall programme and strategy for promoting BL and facilitated the coordination and co-operation between governmental and non-governmental bodies in their promotion efforts. Various activities had been organized to promote BL

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amongst the local community, teachers and students, as well as civil servants. SCMA further said that in recent years, the Administration had strengthened its promotion work through the electronic media and new media. Besides, a seminar on BL was held in early November. SCMA said that over the years, public opinion surveys showed that there had been an increase in public awareness of BL. He undertook that the Administration would make continuous efforts in the promotion of BL.

25. Considering that the recent controversy on the issue of "doubly non-permanent resident pregnant women" was related to the original drafting intent of certain BL provisions, Mr Jeffrey LAM asked whether the Administration would step up its promotion work to enable people to have a more comprehensive understanding of BL including the original legislative intent. SCMA advised that the speech given by Mr JI Pengfei on 4 April 1990 in the National People's Congress provided a good reference for understanding the legislative intent of BL provisions. He also noted that abundant reference books in this regard were available in the community, such as books written by former members of the BL Drafting Committee explaining the relevant considerations and issues.

Promotion of human rights

Discrimination issues relating to sexual orientation and gender identity

26. Referring to paragraph 8 of the Administration's paper, Mr CHAN Chi-chuen criticized the Administration for lacking new initiatives in eliminating discrimination against people of different sexual orientations. He urged the Administration to adopt a more proactive approach for the work and offer training to civil service new recruits on eliminating practices in workplaces which were discriminatory to people of different sexual orientations. He opined that such training should also be offered by other large employer such as the Hospital Authority. He further enquired about the amount of funds earmarked for the Equal Opportunities (Sexual Orientation) Funding Scheme and suggested that it should be increased to a level comparable with that for the funding scheme for promotion of the rights of ethnic minorities and racial equality.

27. SCMA responded that the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation ("the Code of Practice") was issued in 1998 to facilitate self-regulation on the part of employers and employees in eliminating discriminatory practices in employment and to promote equal employment opportunities among all persons, irrespective of

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their sexual orientations. The Administration would step up efforts in ensuring compliance with the Code of Practice by the Government. SCMA said that the Administration was also considering increasing allocation of funding for the Equal Opportunities (Sexual Orientation) Funding Scheme and more details would be worked out in due course.

28. SCMA said that following the motion debate on "Equal rights for people of different sexual orientations" at the Council meeting of 7 November 2012, the Administration had conducted internal discussions and was open-minded as to whether a public consultation should be conducted on legislation against discrimination on grounds of sexual orientations. He said that more details might be provided in the CE's Policy Address to be delivered in January 2013.

29. Ms Cyd HO said that in the last legislative session, she had suggested that the Administration should conduct opinion polls on a regular basis to track the changes in the public's attitude towards the issue of safeguarding equal opportunities for people of different sexual orientations, but the Administration did not adopt her suggestion. Hence, she had sponsored a survey by the Public Opinion Programme of The University of Hong Kong in November 2012 with a view to gauging information on the current position. Other than promoting compliance with the Code of Practice, Ms HO considered that the Administration was obliged to step up publicity and public education to address misunderstanding and worries of some people in the community about the impact on their rights arising from legislation to prohibit discrimination against people on the ground of sexual orientation. Ms Emily LAU requested the Administration to note the findings of the survey sponsored by Ms Cyd HO which had shown that 63.8% of the respondents supported enacting legislation to eliminate discrimination on the ground of sexual orientation, whereas only about 14% of the respondents were against it. Ms LAU considered that the Administration should act accordingly and commence the relevant consultation and legislative process.

30. Dr Priscilla LEUNG, however, considered that public views were still divided on whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation, and the Administration had to be prudent in handling the issue which was very controversial. She said that she had also received submissions made by members of the public expressing strong views against enacting such legislation. She considered that the differences in view on this issue should be respected.

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*Amendments to the Sex Discrimination Ordinance (Cap. 480) ("SDO")
proposed by the Equal Opportunities Commission ("EOC")*

31. Referring to the above item on the list of outstanding items, and citing the work of flight attendants and "beer girls" as examples, Dr Helena WONG said that the existing legislation did not afford sufficient protection to service providers from sexual harassments by service users. She pointed out that EOC had already submitted to the Administration in August 2011 a set of proposed amendments which sought to address the issue by extending the coverage of existing legislation, but the Administration had not followed up on that. Dr WONG urged the Administration to take follow-up action as remedial measures had been long called by women's groups. SCMA responded that he would consult EOC and follow up on Dr WONG's concerns. He undertook to examine the relevant issues and revert to the Panel in due course.

Admin

Publicity on human rights

32. Mr IP Kin-yuen enquired about the funding resources devoted to public education and publicity to promote human rights, and whether the Administration would consider sponsoring visits by young people to observe the hearings conducted by UN Committees to which HKSAR had been submitting reports in the light of the relevant UN human rights treaties applicable to Hong Kong.

33. SCMA said that the total resources devoted to human rights under CMAB also included subventions to the EOC and the Privacy Commissioner for Personal Data ("PCPD") to implement the relevant ordinances under their respective purview. The amount of subvention provided to the EOC in 2012-2013 was some \$90 million and that provided to PCPD was some \$60 million. CMAB also provided funding to sponsor non-governmental organizations to provide support services to ethnic minorities through support service centres. Starting from April 2011, the provision of support services had been taken over by the Home Affairs Department, which had extended its services to cover new arrivals as well. Details of the resources to be provided would be made available in the financial estimates of CMAB in 2013-2014.

Relationship between the Mainland and HKSAR

34. Noting CMAB's function of coordinating and promoting closer ties and cooperation with the Mainland, Mr IP Kin-yuen asked whether CMAB would

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address the recent spate of conflicts between the Mainland and the Hong Kong society arising from the issues of "doubly non-permanent resident pregnant women" and "parallel trading activities". SCMA explained the function of CMAB in respect of Mainland affairs, and advised that the Mainland Affairs Liaison Office of CMAB was tasked to coordinate liaison between the HKSAR Government and relevant Mainland authorities, as well as to promote various regional cooperation initiatives between Hong Kong and the Mainland. However, specific policy work which fell within the policy responsibilities of other bureaux would be overseen by the Directors of the Bureaux concerned, e.g. the implementation of the "Mainland and Hong Kong Closer Economic Partnership Arrangement" was under the policy portfolio of the Secretary for Commerce and Economic Development.

V. Consultation on stalking – summary of views received

[LC Paper Nos. CB(2)196/12-13(04) and (05)]

35. At the invitation of the Chairman, Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") briefed members on the views received on the Consultation Paper on Stalking as set out in paragraphs 3 to 24 of the Administration's paper [LC Paper No. CB(2)196/12-13(04)]. Members noted that of the 506 written submissions received during the consultation period, about 46% supported the introduction of an anti-stalking legislation and about 35% opposed, while the remaining did not indicate any general support/objection.

36. Members noted the updated background brief prepared by the LegCo Secretariat on this item [LC Paper No. CB(2)196/12-13(05)].

Discussion

37. Mr WONG Yuk-man said that the Report on Stalking was published by the Law Reform Commission ("LRC") 12 years ago but still the community had yet to reach a consensus on the need for anti-stalking legislation. He considered that this was due to the lack of trust of the general public in the HKSAR Government. He said that with the deterioration of human rights protection in Hong Kong since the Reunification, there were strong views that freedom of the press had to be upheld in order to monitor the Government effectively. Mr WONG further said that he was opposed to the proposed anti-stalking legislation which sought to cover different types of stalking behaviour, albeit he and his family members had the experiences of being stalked. He considered that freedom of the press must not be restricted so

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that the press would be able to seek out important information on matters of public interest. He suggested that as existing criminal laws also covered some aspects of stalking behaviour, the relevant provisions should be suitably amended with a view to affording better protection to artistes and tackling non-criminal debt collection-related harassments.

38. Ms Claudia MO also expressed grave concern about the impact of the proposed anti-stalking legislation on press freedom and news-gathering activities. She pointed out that if the proposed legislation was enacted, a target interviewee who did not welcome reporters following him/her might exploit the legislation by calling the Police and claiming that the reporters' conduct had caused him/her alarm and amounted to stalking. In the situation, the news-gathering activities would be disrupted. If the case was taken to court, the reporter and press organization concerned would have to face undue pressure arising from litigation. Ms MO pointed out that the two professional legal bodies had also expressed divergent views on the proposed anti-stalking legislation. As to the suggestion of a specific defence for news-gathering activities, Ms MO expressed concern about its applicability to reporters providing news on the Internet who might not be required to be registered and, therefore, the possibility of abuse of the defence. She recalled that there had been discussion of criminalization of surreptitious recording in public places in 2000, and similar concerns on news-gathering activities had already been expressed by the Hong Kong Journalists Association then.

39. Ms Claudia MO further said that some of the offensive behaviour associated with stalking could be dealt with under the existing laws, such as the case reported in the press about a reporter's shooting at a distance of certain artistes at their home's balcony and another case involving a man harassing an ex-news presenter in the electronic media. She asked why the Administration did not resort to existing legislation to address the problem of stalking, and how the Administration would take forward the LRC's recommendations.

40. DSCMA said that the first case referred to by Ms Claudia MO was dealt with by the Office of the PCPD and was currently under appeal. The Administration would keep in view its development. DSCMA advised that the Administration would first study the views received and the issues involved carefully with a view to formulating an appropriate way forward. The Administration would also make reference to the anti-stalking legislation of overseas jurisdictions, including their latest development such as the amendments introduced to the anti-stalking legislation of the United Kingdom ("UK"). In response to Ms MO's enquiry on the Administration's timetable

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for coming up with a decision on the LRC's recommendations, DSCMA advised that the Administration did not have such a timetable as the issues involved were complex and sensitive, and more time would be needed for the study.

41. Dr Helena WONG said that many women's groups actually welcomed the LRC's recommendations when they were first put forward in 1998 in order to enhance protection of women victims. However, the recent views held by these groups were that they were also concerned whether the proposed anti-stalking law would, in effect, have adverse impacts on freedom of expression and press freedom. Referring to paragraph 23 of the Administration's paper, Dr WONG said that nine women's groups had made a joint submission expressing doubt on the motive of putting forward the offences of collective harassment and harassment to deter lawful activities, and questioning whether the Government was using protection of women victims as a pretext to curb press freedom and freedom of expression/demonstration. To strike a balance, Dr WONG asked whether consideration would be given to enacting legislation to afford protection to victims of stalking in the specific context of domestic violence and sexual violence or, alternatively, to enhance protection to women victims under the existing relevant legislation. She further said that if the Administration did not consider these options and went for enacting the proposed anti-stalking legislation, a specific defence for news-gathering activities would then have to be provided in such legislation in order to safeguard freedom of the press.

42. DSCMA stressed that the Administration had no intention to use protection of women victims as a pretext to curb press freedom and freedom of expression/demonstration. In fact, it was also the Administration's view that a suitable balance should be struck between affording better protection to victims of stalking on the one hand, and ensuring that legitimate and proper news-gathering activities, public protest/assembly, debt collection, etc., would not be adversely affected on the other. As regards the suggestion of enacting anti-stalking legislation with a narrow scope to target only stalking in the context of certain kinds of relationship, such as ex-spouses and ex-lovers, and the suggestion of providing a specific defence for news-gathering activities, DSCMA advised that such approaches had been rarely adopted for the anti-stalking legislation enacted overseas. Nevertheless, the Administration would examine overseas experience in implementing the relevant legislation, in particular, the effectiveness of the legislation and applicability to Hong Kong. In response to Dr WONG, DSCMA reiterated that the Administration did not have any inclination as to which option should be adopted. It would

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study the views received and consider the issues involved carefully. DSCMA said that at the present stage, the Administration did not have a timetable for making a further report to the Panel.

43. Ms Emily LAU requested the Administration to relay the concerns of the media sector regarding the proposed anti-stalking legislation to the two legal professional bodies. She considered that the suggestion of enacting legislation to afford protection to women victims of stalking in the specific context of domestic violence and sexual violence should be further explored, and the Administration should accord priority to the work so as to address the demands of women's groups. Ms LAU asked whether there was consensus in the community on the need to enact legislation to regulate specifically stalking behaviour relating to debt collection practices and if so, whether the Administration would take it forward soon.

44. DSCMA responded that one of the options under consideration was to enact anti-stalking legislation with a narrow scope to target only certain kinds of stalking in the context of some activities or stalking in certain kinds of relationship. However, even if this option was adopted, many issues would still have to be carefully considered, such as defining an appropriate scope of the legislation. DSCMA explained that, in fact, many stalkers bore no relation to the victims and the kinds of stalking behaviour could not be specifically defined. In response to Ms LAU's enquiry as to when the Administration would come up with a view on the way forward and revert back to the Panel, DSCMA reiterated that more time was required for the Administration to study the overseas experience in implementing the relevant legislation and amendments that had been made over the years, and the effectiveness and applicability of such legislation to Hong Kong. That said, DSCMA agreed that the Administration would revert as soon as it was in a position to do so.

45. Ms Cyd HO said that she did not support enacting anti-stalking legislation which was comprehensive in scope and sought to cover different types of stalking behaviour. She said that as pointed out by Dr Helena WONG, women's groups were recently concerned that the proposed anti-stalking law would have adverse impacts on press freedom. Ms HO proposed that the Administration should consider introducing legislative provisions to prohibit stalking in certain kinds of relationship in the context of the Money Lenders Ordinance (Cap. 163), the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) and the Landlord and Tenant (Consolidation) Ordinance (Cap. 7). On the other hand, to tackle

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stalking problems involving stalkers who bore no relation to the victims, Ms HO said that according to the relevant legislation of UK, what constituted "stalking" in such a situation was the element of threat of violence. She suggested that the Administration should make reference to the relevant legislative provisions. DSCMA responded that the Administration was aware that the anti-stalking legislation of some overseas jurisdictions had been amended in recent years to clarify the scope of the offences concerned. The Administration would conduct a study in this area.

46. Dr Helena WONG reminded the Administration that in considering the kinds of relationship to be covered by the proposed anti-stalking law, cohabitants of the same sex should be taken into account, in addition to spouses in domestic relationships or people cohabiting in heterosexual relationships. She also suggested that stalking behaviours should cover situations where the victim and the stalker did not know each other.

47. Referring to paragraph 18 of the Administration's paper, Mr CHAN Kin-por asked about the action to be taken to address the concerns raised by the financial services sector over the possible impact on legitimate and lawful activities such as debt collection and aggressive marketing. He was concerned about whether legitimate promotional and sale activities would be affected, and whether appropriate exemptions could be provided under the proposed legislation to address the sector's concerns. He also asked when the Administration would decide whether the proposed legislation should be introduced.

48. DSCMA said that the Administration recognized the valid concerns expressed by various sectors including the financial services and the media sectors over the proposed legislation, and would consider appropriate measures to avoid rendering legitimate and lawful activities from being adversely affected by the proposed legislation. The Administration would duly consider relevant issues in the light of overseas experience and revert to the Panel as soon as possible. Mr LEUNG Kwok-hung considered that the Administration should conduct its study on overseas experience expeditiously and provide a report which should include information on the difficulties encountered, impact on the media sector, and litigations arisen from the enforcement the relevant legislation. The Chairman requested the Administration to note members' views.

VI. Any other business

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49. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 2
Legislative Council Secretariat
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