

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 21 January 2013, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Emily LAU Wai-hing, 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-ye, 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

**Members
attending**

Hon WONG Kwok-hing, MH
Hon Claudia MO
Dr Hon KWOK Ka-ki
Hon TANG Ka-piu

**Members
absent**

: Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon IP Kwok-him, GBS, JP
Hon Steven HO Chun-yin

**Public Officers : Item III
attending**

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

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

Mr LAU Kong-wah
Under Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland Affairs 1

Miss Charmaine LEE Pui-sze
Deputy Secretary for Constitutional and Mainland Affairs 2

Item IV

Office of the Privacy Commissioner for Personal Data

Mr Allan CHIANG
Privacy Commissioner for Personal Data

Ms Lavinia CHANG
Deputy Privacy Commissioner for Personal Data

Ms Brenda KWOK
Chief Legal Counsel

The Administration

Mr LAU Kong-wah
Under Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland Affairs 1

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (2)3

Staff in attendance : 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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I. Information papers issued since the last meeting

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

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)274/12-13(01), 493/12-13(01) and (02)]

2. Members agreed to discuss the "Outline of the Report of the Hong Kong Special Administrative Region ("HKSAR") for the United Nations Human Rights Council Universal Periodic Review" as proposed by the Administration at the next meeting on 18 February 2013 at 2:30 pm, and to

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Clerk

discuss the "Second Report of HKSAR under the Convention on the Rights of the Child" at the meeting on 18 March 2013. As proposed by Ms Emily LAU, the "Third Report of HKSAR in the light of the International Covenant on Civil and Political Rights" would also be discussed at the next meeting. The Panel agreed to receive public views on the two discussion items of the next meeting.

Functions of the Central Policy Unit ("CPU")

Clerk

3. Referring to his letter dated 12 December 2012 [LC Paper No. CB(2)367/12-13(01)] to the Chairman, Mr LEE Cheuk-yan reiterated his request for discussion of the functions of CPU, which had also been raised at the previous meeting on 17 December 2012. The Chairman said that he had relayed the request to the Chief Secretary for Administration ("CS"), who had advised that there were no changes to CPU's role and functions and, as CS had already given an explanation of the matter at the special meeting of the House Committee on 23 November 2012 and at the Council meeting of 28 November 2012, she had no further information to provide. Mr LEE, however, pointed out that contrary to what CS had said, CPU had stated in its paper submitted to the Panel on Public Service that "the role and functions of CPU have to be expanded" and it would include new areas of work such as nurturing talents and research in relation to public opinion. Mr LEE considered that before the relevant staffing proposal of CPU was to be discussed by the Establishment Subcommittee, the Panel should hold a special meeting to discuss the role and functions of CPU and invite CS to the meeting. Ms Emily LAU expressed support for Mr LEE's proposal. Mr WONG Kwok-kin said that he did not see the need for discussion of the subject, and suggested requesting the Administration to provide a written response first. After discussion, the Chairman directed that a written response be sought from the Administration to facilitate members' consideration.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)569/12-13 on 28 January 2013.)

III. Briefing on the Chief Executive ("CE")'s 2013 Policy Address

[LC Paper Nos. CB(2)493/12-13(03) to (05) and CB(2)544/12-13(01)]

4. The Secretary for Constitutional and Mainland Affairs ("SCMA") briefed members on the policy initiatives of the Constitutional and Mainland

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Affairs Bureau ("CMAB") as set out in the 2013 Policy Address. Members noted that the Administration had also provided a paper on its proposal to abolish the appointment system of District Councils ("DCs") with effect from the fifth-term DCs commencing on 1 January 2016 to seek members' comments.

5. Members noted the updated background brief on "Abolition of DC appointment system" prepared by the Legislative Council ("LegCo") Secretariat.

(Post-meeting note: The speaking note of SCMA was issued to members vide LC Paper No. CB(2)544/12-13(01) on 22 January 2013.)

Discussion

Constitutional development

6. Referring to paragraph 7 of the Administration's paper where stated that the Government would launch a comprehensive consultation and initiate the constitutional procedures at an appropriate juncture, Dr Kenneth CHAN considered that it was high time to do so and requested SCMA to provide a roadmap and timetable for implementing universal suffrage. SCMA responded that the Decision adopted by the Standing Committee of the National People's Congress in December 2007 had made clear the timetable for implementing universal suffrage in Hong Kong. The Administration would allow sufficient time for the relevant consultation and legislative processes in relation to the 2016 LegCo Election and the 2017 CE Election.

7. Mr WONG Yuk-man criticized the Government for failing to provide any detailed information on constitutional development in the Policy Address or make any progress in this area of work. Mr SIN Chung-kai recalled that in the last legislative exercise regarding the methods for selecting CE and for forming LegCo in 2012, the relevant motions put forward by the Government were passed by LegCo on 24 and 25 June 2010, followed by the introduction of the relevant bills in December 2010 to prescribe the arrangements. The bills were passed by LegCo in March 2011. He said that it could be seen that even though the consultation process had commenced as early as in 2008, the legislative process still needed to take some time to complete. In anticipation that the local legislative process of the CE Election by universal suffrage would entail

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more complicated issues, Mr SIN said that a lot more time would be required to facilitate a more thorough discussion on such a contentious issue. Ms Emily LAU criticized the Administration for being irresponsible in handling the work and urged it to provide a time frame for the legislative process for the electoral methods for the LegCo Election in 2016 and the CE Election in 2017.

8. SCMA explained that prior to the CE Election in 2017, a nominating committee should be formed by the end of 2016. Using the experience of the Election Committee as reference, the provisional and final registers of the voters for members of the Nominating Committee election (if an election was required to form the Nominating Committee) would have to be published in May and July 2016 respectively, and relevant subsidiary legislation would have to be made by the Electoral Affairs Commission ("EAC") beforehand. SCMA further said that while the length of time required for the political process for reaching a consensus by the community/LegCo on the method for selecting CE in accordance with Annex I of the Basic Law was uncertain, he noted that about nine months were needed for the process based on the past experience of the discussion.

9. Dr Helena WONG asked whether the Administration would introduce legislation in one go to amend the methods for selecting CE in 2017 and for forming LegCo in 2016. She also asked when the Administration would commence the "five-step mechanism".

10. SCMA said that, technically, two motions would need to be introduced by the Administration in order to amend the methods for selecting CE in 2017 and for forming LegCo in 2016. However, he expected that in the future consultation process, the public might give views on both of the two electoral methods given that the two elections were only one year apart. As for the universal suffrage model for LegCo in 2020, it would be for the fifth-term CE to deal with it as the current-term Government had only been authorized to deal with the arrangements for the LegCo Election in 2016 and the CE Election in 2017. Nevertheless, the current-term Government would also consolidate any views received during the future public consultation on the electoral methods for forming LegCo in 2020, and would recommend the next-term Government to follow up the views.

11. Mr WONG Kwok-hing asked whether the Administration would consider introducing a political party law which, in his view, would be

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conducive to constitutional development. SCMA said that the issue of political party law was already on the list of outstanding items for discussion of the Panel and, as explained before, the Administration considered that a premature introduction of a political party law would hinder the development of political parties. As one of the means to facilitate the development of political party and political talent, the Administration had increased the rate of financial assistance subsidies to candidates in the 2008 and the 2012 LegCo Elections. SCMA said that the Administration did not have any plan to embark on a study on the issue of political party law at the present stage.

Issues relating to DCs

12. Dr Kenneth CHAN called on the Administration to review the roles and functions of DCs as there had been a lapse of several years since the last review in 2006. Referring to the new initiative of providing a one-off grant of \$1.8 billion in total to 18 DCs to carry out signature projects, Dr CHAN asked whether DCs would also be given more powers to enhance their role and functions. With regard to the legislative proposal on abolition of the system of appointing DC members by CE, Dr CHAN considered that the proposal should also address the issue of the way forward of the ex officio seats in DC.

13. SCMA advised that the functions of DCs were within the policy portfolios of Home Affairs Bureau ("HAB"), not CMAB. Regarding the ex officio seats in DCs, SCMA said that the public had not reached a general consensus over the issue during the last round of public consultation in 2012 and it would not be dealt with by the bill to be introduced concerning the abolition of the DC appointment system.

14. Mr WONG Kwok-hing said that while he supported the Administration's proposal to abolish all DC appointed seats, it should be considered in the context of the future role and functions of DCs in the light of the constitutional development in Hong Kong. He therefore considered that CMAB should also play a role in the review of the functions of DCs. Miss CHAN Yuen-han pointed out that during the resumption of the Second Reading debate on the Provision of Municipal Services (Reorganization) Bill in 1999, the Administration had undertaken to transfer part of the functions and powers of the two former Municipal Councils to DCs. However, the Administration still had not yet fulfilled its undertaking. She said that many DCs had also expressed concern about the lack of concrete measures

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in the 2013 Policy Address to enhance the functions of DCs in district administration. In response, SCMA pointed out that details of the Administration's plan to enhance the functions of DCs were set out in paragraph 191 of the 2013 Policy Address. Acknowledging that DCs had a specific role in the constitutional development in Hong Kong, SCMA undertook that CMAB would provide input from the perspective of constitutional development to HAB for consideration when HAB reviewed the functions of DCs.

15. Miss CHAN Yuen-han considered that the review of the number of elected seats and adjustments to DC constituency areas should be expedited as the next DC election was scheduled to take place in November 2015. Dr CHIANG Lai-wan also said that an early conduct of relevant exercises would facilitate the preparation work of political parties and prospective candidates who planned to participate in the next DC election. SCMA said that the Planning Department would provide CMAB with the latest population distribution projections for review of the number of DC elected seats. Based on the review outcome, EAC would make recommendation on the DC constituency boundaries on the basis of the latest population distribution projections before the next DC election.

16. Referring to paragraph 5 of the Administration's paper, Ms Starry LEE asked about the relevant factors to be considered in the review of the number of elected seats for the fifth-term DCs. She pointed out that in the previous exercise, there were anomalies whereby a housing estate consisting of several blocks had been divided into different DC constituency areas which, in her view, was not conducive to the overall planning and provision of services to residents within the locality.

17. SCMA said that on the basis of the population distribution projections, the Administration would work out the number of elected seats for each DC taking into account the population quota for a district constituency area which at present stood at 17 282 and other relevant considerations. EAC would then proceed with recommending the boundaries of DC constituency for the 2015 DC Election within the number of elected seats for each DC specified in the DC Ordinance (Cap. 547). EAC would ensure that the population size in each DC constituency area was as near the population quota as practicable, and the deviation should be within 25%. EAC would have regard to the community identities and the preservation of local ties and physical features of the relevant areas if it considered departure for the deviation was necessary in making the provisional recommendations on the

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DC constituency areas. He said that the concerns raised by Ms LEE would be taken into account by EAC in the future exercise. Regarding the relevant timeframe, SCMA said that a bill to amend the DC Ordinance to implement the abolition of the DC appointment system would be introduced into LegCo in the first quarter of 2013, and the Administration aimed to revert to the Panel on a review of the number of elected seats for the fifth-term DCs in the second quarter of 2013.

Public elections

18. Mr YIU Si-wing expressed concern about the removal of some 200 000 electors' names from the final registers of electors for the 2012 LegCo Election and asked about the measures to be taken to rectify the situation.

19. SCMA said that following the 2011 DCs Election, there were complaints and media reports about suspected false registered addresses of electors. The Registration and Electoral Office ("REO") had therefore implemented various measures in the 2012 Voters Registration cycle with a view to improving the accuracy of the registration particulars in the registers of electors. As regards the removal of some 200 000 registered electors from the final registers, the investigation results revealed that in most cases, the registered addresses were the residential addresses where the electors had previously resided but had since moved away and had not updated their particulars with REO. In this connection, the Administration would issue Announcements of Public Interest ("API") shortly to encourage registered electors to update their registration particulars in a timely manner, as well as information leaflets, riding on the water bills, to around 2.4 million households between February and May 2013 to appeal to eligible persons to register as electors and to registered electors to update their residential addresses. It was expected that with these efforts made, those eligible electors who had their names removed would approach REO to seek to register again.

20. Dr Priscilla LEUNG urged the Administration to clearly define the eligibility for voting by Hong Kong permanent residents residing on the Mainland as she was concerned whether any eligible electors had been removed from the final registers because they resided on the Mainland. She requested the Administration to address the issue.

21. Dr CHIANG Lai-wan asked about the measures to be taken to promote greater participation of women in DC and LegCo elections as the

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percentage of female DC members or LegCo Members remained low. SCMA said that the promotion of women's participation would also depend on the availability of interested persons who were willing to participate in public affairs. Dr CHIANG suggested that enhancing child care support services in the community would practically help release more women to participate in public affairs.

Discrimination issues relating to sexual orientation

22. Mr WONG Yuk-man and Mr CHAN Chi-chuen expressed strong dissatisfaction with the Administration's decision not to commence a public consultation on enacting legislation to prohibit discrimination against people of different sexual orientations. Ms Cyd HO urged the Administration to conduct such a public consultation to promote discussion on the issue in the community. Ms Emily LAU echoed Ms HO's view, adding that the incumbent Chairperson of the Equal Opportunities Commission ("EOC") had also expressed support on the issue. SCMA explained that while the Administration had no plan to conduct a public consultation at the present stage, it would not preclude the possibility of doing so within the current term of Government. Meanwhile, to better understand the discrimination faced by people of different sexual orientations, the Administration would undertake relevant study and research to provide an updated, comprehensive and objective basis on which to plan the future anti-discrimination work. The Administration would also strengthen liaison with stakeholders to understand the problems faced by them and listen to their views on the Administration's future work in this area, so as to map out related measures. Consideration might be given to engaging local academics or institutions such as EOC to conduct the study and research. SCMA undertook to revert to the Panel on the findings of the study and research work at a future meeting.

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23. Dr Priscilla LEUNG expressed doubt on whether it was appropriate to engage EOC to conduct the study and research given that the incumbent Chairperson of EOC, who had expressed his support for enacting such legislation, might be considered to have a pre-determined stance which might affect the objectivity of the findings. Ms Starry LEE suggested that the study and research should cover overseas experiences in enacting legislation to prohibit discrimination against people of different sexual orientations or enacting legislation to legalize same-sex marriage, and such information should be provided in the report. SCMA said that CMAB had already commenced study on the relevant overseas legislation and

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administrative measures. In addition, the Administration was planning to undertake local study and research to better understand the discrimination faced by people of different sexual orientations.

24. Mr CHAN Chi-chuen criticized that the Administration's efforts regarding its publicity and educational work were grossly inadequate and ineffective. Ms Cyd HO considered that the relevant APIs should seek to clarify general misconception of the public about the impact of legislation to prohibit discrimination against people of different sexual orientations. Dr Priscilla LEUNG said that given the divided views in the society on this highly controversial issue, the APIs should also emphasize that differences in views should be respected to facilitate an open discussion in the community on the issue.

25. SCMA said that the Administration would put in more resources in publicity and educational work and sponsor interested organizations and groups to organize community projects which aimed at promoting equal opportunities for sexual minorities or providing support services for them. The Government would also promote equal opportunities for people of different sexual orientations through various channels, and was committed to promoting the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation. The Administration would strengthen publicity and promote the Code to public and private sector organizations so as to further eliminate discrimination against people of different sexual orientations in the workplace. In response to Mr CHAN Chi-chuen's enquiry, SCMA said that details of the increase in funding resources for strengthening publicity and public education to eliminate discrimination against people of different sexual orientations would be provided in the financial estimates of CMAB in 2013-2014.

26. Ms Starry LEE said that some organizations had reflected to her that the forum set up under CMAB on promotion of equal opportunities for people of different sexual orientations and transgendered persons had failed to function effectively. SCMA said that the Sexual Minorities Forum was formed to provide a channel for non-governmental organizations and the Administration to exchange views on issues concerning sexual minorities and transgendered persons in Hong Kong, whereas the Gender Identity and Sexual Orientation Unit was mainly responsible for managing and monitoring the relevant funding scheme to promote equal opportunities. SCMA undertook to examine if there was room for improvements to the operation of these forum/unit.

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Promotion of racial equality

27. Regarding the rights of ethnic minorities, Dr Kenneth CHAN said that the policy of the Administration was a subject of criticism in a newspaper commentary. As issues relating to ethnic minorities straddled across various policy bureaux, including education, constitutional and mainland affairs, and home affairs, etc., Dr CHAN asked whether the Administration would adopt a holistic strategy to deal with the rights and issues relating to ethnic minorities. He further asked whether the Administration would consider inclusion of representatives of ethnic minorities in the consultative and advisory bodies to enhance their participation in public affairs.

28. SCMA said that CMAB had been providing financial resources to EOC, which was responsible for the implementation of the four anti-discrimination ordinances and promoting elimination of discrimination. The Administration would further strengthen funding support for EOC and additional subvention to be provided to EOC would be made available in the financial estimates of CMAB in 2013-2014. On the implementation of the Administrative Guidelines on Promotion of Racial Equality ("Administrative Guidelines"), SCMA said that 13 bureaux and departments and public authorities were currently covered by the Guidelines, and the Administrative Guidelines would be extended to eight additional Government departments in 2013, including the Housing Department, the Hong Kong Observatory, the Hong Kong Post, the Legal Aid Department, the Police Force, the Correctional Services Department, the Customs and Excise Department, and the Immigration Department.

Recommendations of the Law Reform Commission ("LRC") on stalking

29. Ms Claudia MO expressed concern about the recommendations of LRC on stalking and urged the Administration to take into account the views and concerns expressed by the Hong Kong Journalists Association and the media sector in taking forward the LRC's recommendations. She pointed out that some of the offensive behaviour associated with stalking could be dealt with under the existing laws. Noting that the Administration had undertaken to listen further to the views of the stakeholders in considering the way forward, Ms MO asked whether the Administration would further solicit the views of the Hong Kong Journalists Association and the media organizations.

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30. SCMA said that the views of the Hong Kong Journalists Association had been included in the Administration's paper on the views received on the Consultation Paper on Stalking, which was last discussed at the Panel meeting on 19 November 2012. The Administration had advised that it would study the anti-stalking legislation of overseas jurisdictions and consider how the objective of the proposed legislation might be fulfilled to afford better protection to victims of stalking. SCMA undertook to revert to the Panel when ready.

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Promotion of Basic Law ("BL")

31. Mr YIU Si-wing emphasized the importance of enhancing public awareness and understanding of BL and, in particular, the principle of "one country, two systems". Referring to paragraphs 18 and 19 of the Administration's paper, Mr YIU said that the publicity measures on BL were not new and enquired whether the Administration would undertake research and study in order to come up with more effective measures to promote BL. Deputy Secretary for Constitutional and Mainland Affairs 2 said that the Administration had set aside resources for organising promotional activities to facilitate the public's awareness and understanding of BL through the use of both traditional electronic media (e.g. TV and radio programmes) and new electronic media (e.g. internet and smart-phone applications) as the main promotional channels. Recent surveys had shown that the new electronic media had proven to be effective in enhancing public awareness.

32. Mr Paul TSE considered that the relevant APIs contained only superficial information about BL and the Administration should step up its publicity and educational efforts with a view to promoting BL in a more in-depth manner. He called on the Administration to take further measures to enhance the quality of government publicity campaigns and promotional programmes to educate the public on the fundamental principles enshrined in BL including the principle of "one country, two systems". Besides, students should be encouraged to develop analytical thinking in this area. To this end, Mr TSE suggested that interested organizations and groups might be sponsored to organize relevant community projects which aimed at promoting BL in an in-depth manner. Responding to Mr TSE on the financial resources provided for the promotion of BL, SCMA said that the Administration had provided \$16 million for each of the two financial years of 2011-2012 and 2012-2013. He said that the resources to be provided in future would be made available in the financial estimates of CMAB in 2013-2014.

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IV. Update on the work of the Office of the Privacy Commissioner for Personal Data

[LC Paper Nos. CB(2)483/12-13(01) to (03)]

33. Privacy Commissioner for Personal Data ("PCPD") gave a PowerPoint presentation on the work of the Office of the PCPD in 2012. He also briefed members on the promotional and public educational work to promote understanding of the new provisions in the Personal Data (Privacy) (Amendment) Ordinance 2012 (the "Amendment Ordinance") which was passed by LegCo on 27 June 2012 [LC Paper No. CB(2)483/12-13(01)].

34. Regarding the Amendment Ordinance, the Under Secretary for Constitutional and Mainland Affairs ("USCMA") said that the majority of its provisions had come into force on 1 October 2012, save for the provisions relating to direct marketing and legal assistance scheme in order to allow time to undertake the necessary preparatory work. The Administration planned that the provisions under sections 20, 21, 38(2), 39 and 43 in the Amendment Ordinance would come into operation on 1 April 2013. Details of the Administration's preparatory work were set out in the Administration's Paper [LC Paper No. CB(2)483/12-13(02)].

35. Members also noted the updated background brief on this item prepared by the LegCo Secretariat [LC Paper No. CB(2)483/12-13(03)].

Discussion

Powers and functions of PCPD

36. Noting that the number of enforcement notices issued by PCPD had increased from one in 2011 to 11 in 2012, Mr Charles Peter MOK asked whether this indicated a deterioration of the protection of personal data privacy in Hong Kong. PCPD explained that the increase in the number of enforcement notices issued was largely due to the implementation of the relevant provisions of the Amendment Ordinance on 1 October 2012, which had provided PCPD with enhanced power to serve enforcement notices. Under the relevant new provisions, an enforcement notice could be issued in situations where the data user had contravened a requirement under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"), irrespective of whether there was evidence to show that the contravention would likely be repeated. PCPD said that in the past, enforcement notices could be issued

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only if PCPD was in the opinion that the contravention would continue or be repeated.

37. Referring to the recent spate of personal data leakage incidents involving classified Police documents through the "FOXY" file-sharing software, Mr Charles Peter MOK asked whether PCPD would initiate investigations into the incidents. PCPD advised that an investigation into the incidents had commenced. A report would be released upon completion of the investigation.

38. Referring to paragraph 25 of PCPD's paper, Mr Charles Peter MOK asked how PCPD would determine whether or not it would follow up with an overseas Internet service provider/platform (e.g. Facebook, instagram, etc.) to regulate the data protection of overseas data users. PCPD said that in respect of these service providers which were based in overseas places where his Office had no enforcement power, he would partner with overseas privacy authorities to carry out data protection enforcement. He said that a notable achievement in 2012 related to Google's new privacy policy. Through the Technology Working Group of the Asia Pacific Privacy Authorities, PCPD had initiated dialogue and exchange of correspondence with Google and was able to secure their clarifications and improvements to their new privacy policy as a result. As regards Facebook which was a US-based enterprise, PCPD had relied on its overseas counterparts in following up investigations into the enterprise's privacy practices. As a result, the enterprise had to pay a substantial financial penalty and to implement a comprehensive privacy programme which included regular independent privacy audits.

Financial provisions for the Office of PCPD

39. Mr Charles Peter MOK said that with the introduction of new offences and the enhanced power to serve enforcement notices for contraventions under the Amendment Ordinance, the number and complexity of complaints on personal data protection were expected to increase. He asked whether the Office of PCPD had sufficient resources to cope with the anticipated increases in service demand, and whether it had plans to increase its manpower in the coming year. PCPD said that details of the amount of subvention for his Office for the next financial year would be made available in the financial estimates in 2013-2014. He said that at present, his Office faced inadequate resources such as that, of the existing 79 staff members of his Office, only 64 posts were provided with recurrent

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funding by the Administration whereas the remaining 15 posts had to be funded through redeployment of other resources within the Office. This arrangement had adversely affected complaint investigation and other areas of work such as promotional activities, education and research. PCPD further said that due to resource constraint, his Office had not conducted public opinion surveys for a long time although he wished to. PCPD added that the Administration should allocate additional recurrent resources to his Office so that it could cope with the increase in volume and complexity of its work.

40. Ms Emily LAU recalled that the previous PCPD had informed the Panel that the Office of PCPD had insufficient resources to cope with its work including the promotional and educational work. Noting that the Office of PCPD was still short of 15 posts in its recurrent provision, Ms LAU asked how PCPD was able to fund these posts and whether there were outstanding cases at hand. She also enquired about the difficulties faced by PCPD and whether the Office had plans to increase manpower in the financial year 2013-2014.

41. In response, PCPD said that the aforementioned redeployment arrangement had inevitably affected the balanced development of his Office and prevented him from attending to less urgent policy issues research. He informed members that there was case backlog which had led to lengthening of the processing time of cases. The number of cases closed within the timeline of 180 days had dropped from 94% in 2010 to 88% in 2011 and 2012.

42. USCMA informed members that an additional provision of about \$10 million was given to the Office of PCPD in 2012-2013. This was substantial compared with the additional provision of about \$3.8 million in the previous year. He undertook to monitor the situation and maintain close liaison with the Office of PCPD in this regard. Ms Emily LAU urged the Administration to provide more resources to the Office of PCPD so as to strengthen protection of personal data privacy.

Data User Returns Scheme ("DURS")

43. Referring to paragraphs 21 to 24 of the paper provided by the Office of PCPD, Mr SIN Chung-kai expressed concern about PCPD's proposal to put on hold DURS and the proposed adoption of the privacy management program ("PMP") as an interim measure. He asked whether the views of

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the data subjects of the industries concerned had been solicited in coming up with these proposals. Noting that the European Union ("EU") data protection system was undergoing reforms in pursuit of better regulatory systems, Mr SIN queried why PCPD should drag its feet in taking forward DURS in Hong Kong.

44. PCPD said that although the classes of data subjects identified for DURS had not been consulted in coming up with the proposal to put on hold DURS, the views of relevant organizations such as the Consumer Council had been solicited previously and considered. PCPD emphasized that DURS would not be abandoned for good, but would be re-considered for adoption by Hong Kong in the light of the developments of EU in reforming DURS. PCPD further explained that while DURS operated on the basis of strict compliance with the requirement under PDPO, PMP, as explained in the paper submitted by the Office of PCPD, was flexible and holistic in data protection which was a good interim substitute for DURS.

45. Mr Paul TSE expressed the same concern and requested for further information on the reform to DURS in EU. PCPD responded that the EU data protection system was undergoing reforms. Among other things, EU was considering replacing the notification requirement with new and improved systems which emphasized accountability and transparency in the collection and use of personal data, including the mandatory designation of a data protection officer in public authorities and bodies, as well as private enterprises employing 250 persons or more. PCPD reiterated that the DURS was only put on hold until the reforms in EU had been finalized and useful lessons were learnt from the exercise. Mr LEUNG Kwok-hung subscribed to the view that the notification requirement might not be effective in enhancing personal data protection. He asked whether PCPD would consider adopting the same measure of requiring the mandatory designation of a data protection officer in an organization employing 250 persons or more in Hong Kong. PCPD said that the proposed mandatory designation of a data protection officer was one of the new measures being considered by EU. He advised that it was too early to conclude whether Hong Kong would follow suit.

Cyber-bullying

46. Mr CHAN Kin-por said that in reply to his question on combating cyber-bullying activities raised at the Council meeting of 19 December 2012, the Administration advised that, in the past five years, PCPD had only

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received four cases in which the complainees were alleged to have caused harassment to others using insulting phraseology, words or pictures on the Internet. Mr CHAN asked why only four cases had been received despite the prevalence of such activities and how to tackle cyber-bullying.

47. PCPD said that the four cases had been lodged to his Office as they were alleged to have breached PDPO. He pointed out that very often these cases were not pursuable because the complainant failed to identify the complainees. For cyber-bullying acts that might involve criminal offences, they should more appropriately be followed up by the Police rather than his Office. As the Office of PCPD was not the only authority to follow up cyber-bullying acts and some of which should more appropriately be handled by the Police, the number of such cases reported to the Office of PCPD did not fully reflect the extent of the problem.

Promotion and education activities

48. Noting that compliance actions carried out by PCPD had revealed inadvertent online exposure by 11 local educational institutions (including two tertiary institutions and nine secondary schools) of the sensitive personal information of 8 505 students (e.g. names, Student Reference Numbers, telephone numbers, email addresses, and passwords for login-in to the school IT systems), Mr CHAN Kin-por considered that the incident reflected that even the teaching staff of educational institutions did not have adequate knowledge about personal data protection. Mr CHAN requested the Office of PCPD to follow up and explore better ways to promote the awareness and understanding of personal data protection.

49. PCPD said that apart from educational institutions, similar problems were also identified in the commercial sector. He hoped that through more frequent publication of investigation reports, it would help promote awareness of personal data protection. PCPD further said that his Office spared no efforts in promoting privacy awareness among youths and encouraging them to protect their personal data while engaging online activities. He added that under the Student Ambassador Programme launched by the Office of PCPD, secondary school students were encouraged to promote the importance of protecting personal data privacy to their peers through an interactive educational programme.

Action

V. Any other business

50. There being no other business, the meeting ended at 5:00 pm.

Council Business Division 2
Legislative Council Secretariat
13 May 2013