

**立法會**  
**Legislative Council**

Ref : CB2/PL/CA

LC Paper No. CB(2)1853/13-14  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 17 March 2014, 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 Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Hon Emily LAU Wai-hing, JP  
Hon Frederick FUNG Kin-kee, SBS, 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  
Dr Hon LAM Tai-fai, SBS, JP  
Hon CHAN Kin-por, BBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Kwok-kin, BBS  
Hon IP Kwok-him, GBS, JP  
Hon Mrs Regina IP LAU Suk-yea, GBS, JP  
Hon LEUNG Kwok-hung  
Hon WONG Yuk-man  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon James TIEN Pei-chun, GBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin  
Hon YIU Si-wing  
Hon Gary FAN Kwok-wai  
Hon MA Fung-kwok, SBS, JP  
Hon CHAN Chi-chuen  
Dr Hon Kenneth CHAN Ka-lok  
Hon CHAN Yuen-han, SBS, JP  
Hon Alice MAK Mei-kuen, JP

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  
absent** : Dr Hon LAU Wong-fat, GBM, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Charles Peter MOK  
Hon Dennis KWOK  
Hon CHUNG Kwok-pan

**Public Officers  
attending** : Item III

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

Mr Freely CHENG Kei  
Principal Assistant Secretary for Constitutional and Mainland  
Affairs

Mr LI Pak-hong  
Chief Electoral Officer  
Registration and Electoral Office

Mr SHUM Nam-lung  
Deputy Chief Electoral Officer  
Registration and Electoral Office

Item IV

Mr Allan CHIANG  
Privacy Commissioner for Personal Data

Ms Brenda KWOK  
Chief Legal Counsel  
Office of the Privacy Commissioner for Personal Data

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

**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

Mrs Fonny TSANG  
Legislative Assistant (2) 3

---

Action

**I. Information papers issued since the last meeting**  
[LC Paper No. CB(2)1057/13-14(01)]

Members noted that a letter dated 12 March 2014 from Dr Kenneth CHAN to the Chairman [LC Paper No. CB(2)1057/13-14(01)] had been issued to members after the last meeting.

**II. Items for discussion at the next meeting**  
[LC Paper Nos. CB(2)1028/13-14(01) and (02)]

2. Members agreed to discuss "Conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO")" and to receive a briefing by the Chairperson of the Equal Opportunities Commission on his work at the next regular meeting scheduled for 23 April 2014 at 2:30 pm. Referring to Dr Priscilla LEUNG's letter dated 13 March 2014 [LC Paper No. CB(2)1098/13-14(01)] to the Panel proposing to discuss review of ECICO and related issues, the Chairman said that the issues raised by Dr LEUNG could be covered at the next meeting under the relevant item.

Other issues raised by members

3. Dr Helena WONG expressed concern about the press reports on that day on the Administration's plans to develop Nansha and Hengqin and enquired whether policy research had been conducted in this area. Under Secretary for Constitutional and Mainland Affairs ("USCMA") advised that the Constitutional and Mainland Affairs Bureau ("CMAB") had no such plan, and the Administration's position was already set out in its press release issued earlier on that day.

Action

4. Dr Kenneth CHAN referred to his letter to the Panel Chairman [LC Paper No. CB(2)1057/13-14(01)] and proposed inviting Mr SHIU Sin-por, Head of Central Policy Unit ("CPU"), to attend a meeting to further explain his comments recently made on the implementation of "One Country, Two Systems" and the role of the Liaison Office of the Central People's Government in Hong Kong, etc. He considered that the comments made by Mr SHIU touched on important issues relating to the Basic Law ("BL") and Mr SHIU was obliged to further explain his comments and to answer members' questions. USCMA said that he would relay Dr CHAN's views to Head of CPU. Ms Emily LAU expressed support for Dr CHAN's proposal. She requested USCMA to suggest to Head of CPU that he might, alternatively, consider attending a meeting of the House Committee to explain his comments recently made to the media on the above issues.

5. Mr LEE Cheuk-yan, Mr Albert HO and Mr SIN Chung-kai considered that Mr SHIU Sin-por's comments touched on the implementation of BL 22 and relevant constitutional issues, which were under the purview of the Panel. They agreed that Mr SHIU should attend a meeting of the Panel to explain his views.

6. Dr CHIANG Lai-wan suggested that the Chairman might consider writing to Mr SHIU Sin-por to enquire if he would like to provide further information in writing regarding members' concerns. Mr IP Kwok-him said that the Administration should be requested to advise which committee was the appropriate forum to follow up the issue, as he noted that CPU fell outside the scope of responsibilities of CMAB.

7. In the light of members' concerns, the Chairman said that he would liaise with the Administration and reflect members' views to Mr SHIU Sin-por.

*(Post-meeting note: CPU provided a written response on 22 April 2014, advising that the Head of CPU had nothing to supplement on what were said and reported in the media.)*

8. Referring to the items 11 ("Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests") and 13 ("Guidelines for the Chief Executive in handling potential cases of conflict of interest and acceptance of advantages and entertainment concerning politically appointed officials") on the list of outstanding items for discussion, Ms Emily LAU asked whether the two items could be

Action

Admin discussed at the regular meeting in May 2014. USCMA agreed to advise the Panel at the next meeting.

9. Dr Helena WONG considered that the Panel should discuss "Press freedom" (item 10 on the list of outstanding items for discussion) as early as possible in the light of the recent spate of incidents which had aroused wide public concern about freedom of the press and the personal safety of journalists. The Chairman requested USCMA to relay Dr WONG's view to the Administration for consideration.

Admin

**III. Voter Registration ("VR") in 2014**

[LC Paper Nos. CB(2)1025/13-14(01) and CB(2)1028/13-14(03)]

10. At the invitation of the Chairman, USCMA and Chief Electoral Officer ("CEO") of the Registration and Electoral Office ("REO") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1025/13-14(01)]. Members noted the updated background brief prepared by the Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)1028/13-14(03)].

Discussion

*VR publicity measures*

11. Mr IP Kwok-him expressed support for adopting the publicity measures which sought to encourage registration of young people for the 2014 VR campaign as set out in paragraph 6 of the Administration's paper. He asked about the effectiveness of the relevant measures, such as the setting up of VR counters at the venue of a large-scale civil service recruitment examination in late 2013.

12. CEO said that young people had all along been the target group in VR publicity measures. He advised that despite an increase from about 46% in 2009 to nearly 60% in 2013, the registration rate of the age group of 18 to 25 still fell short of the overall registration rate of 73%. To boost the registration rate of young people, CEO said that REO would reach out and disseminate VR information to young people through various media in addition to the traditional ones and look for other suitable channels to launch focused publicity campaign. He envisaged that the effectiveness of the relevant new measures adopted by REO to reach out to young people would be seen over time.

Action

13. Mr NG Leung-sing asked what accounted for an increase of 14% in funding sought for the 2014 VR cycle as compared with last year. CEO advised that for the 2014 VR cycle, publicity measures including placing advertisements in popular websites and mobile applications to appeal to young people for registration would be enhanced. Mr CHAN Chi-chuen suggested that souvenirs should be given out and that REO might enlist the assistance of student unions of tertiary institutions in encouraging and facilitating eligible tertiary students to register as electors. CEO agreed to give thought to the suggestions.

14. Noting that only about 3.4 million people had registered as electors, Ms Emily LAU asked what measures would be taken to encourage the rest of the eligible persons who were estimated to be about one million to register. CEO said that REO had stepped up publicity efforts to encourage new registrations and also timely updating of registered particulars by electors, and these publicity efforts would continue. He said that some 8 000 to 9 000 electors included in the 2013 final registers ("FR") for geographical constituencies ("GCs") were those who had been deleted in the 2012 VR cycle but had subsequently applied for registration again.

*Checking measures implemented by REO*

15. Mr SIN Chung-kai enquired how REO would follow up with the relevant electors whose registered addresses were situated in buildings already demolished or to be demolished. CEO advised that for electors with registered addresses in public housing estates, their particulars would be updated through the existing data matching exercise with the Housing Department. For demolished buildings in private development, information obtained from the Buildings Department would be followed up by REO through written inquiries and telephone contact with the electors concerned. Where electors failed to provide REO with their up-to-date addresses, their names would be removed from the electoral registers.

16. Mr IP Kwok-him said that some elderly people had lost their voting rights inadvertently because they did not know that they needed to respond to the inquiry letters sent to them. He suggested that the Administration should step up publicity through the electronic media. CEO said that the publicity efforts for the 2014 VR campaign would include broadcasting of Announcement of Public Interest on television and radio and advertisements published on the internet.

Action

17. Mr CHAN Chi-chuen enquired about the timing for issuing inquiry letters by REO and the deadline for the electors concerned to respond. CEO replied that an elector was normally required to respond to the inquiry letter within two weeks. To tie in with the statutory deadline (i.e. 16 May) of each VR cycle, all inquiry letters had to be issued to electors concerned by end of April. Mr CHAN further asked whether an elector who had failed to respond to the inquiry letter and had been removed from FR could apply for re-registration. CEO said that any person whose entries had been removed might apply to REO for VR again.

18. Miss CHAN Yuen-han said that some electors had complained that REO failed to accurately record their reported changes of residential addresses in the electoral registers. CEO said that REO had put in place stringent procedures for handling applications for change of registration particulars reported by registered electors. When REO was notified of any such changes, REO would send a notice to the elector concerned after processing of the application to inform the elector of his updated registration particulars. CEO further said that the public could inspect the registers of electors in person during office hours at REO or the public enquiry service centres of the 18 District Offices, or ascertain their VR status through the enquiry hotline of REO. Meanwhile, an online voter information enquiry system was being developed so as to enable electors to check their latest VR particulars through the internet and, if required, take timely action to update their particulars. He said that electors were welcome to make enquiries with REO if they had questions about their applications.

*Eligibility for VR*

19. Dr Priscilla LEUNG asked whether REO's publicity efforts would also target Hong Kong permanent residents residing on the Mainland. She requested the Administration to explain the voting eligibility of these Hong Kong permanent residents who, without a residential address in Hong Kong, still commuted to Hong Kong to work or for studies, etc.

20. CEO advised that when considering VR applications from Hong Kong permanent residents who resided on the Mainland or overseas, the main considerations included whether the person concerned was able to provide a genuine address as his/her principal residential address for VR purpose, and whether there was evidence to show he had an intention to reside in Hong Kong and maintained a close connection with Hong Kong during the period of absence. Each case had to be considered on its own merits and legal advice would be sought if necessary. CEO suggested that persons who had

Action

doubt about their VR eligibility could approach REO for assistance. Mr SIN Chung-kai suggested that related information such as the eligibility of Hong Kong permanent residents on the Guangdong Scheme for VR could be presented in the format of frequently asked questions for reference by the public.

21. In response to Dr Priscilla LEUNG's enquiry, USCMA and CEO clarified that in the court case of *Chong Wing Fai Winfield v Cheung Kwok Kwan and Another (HCAL 10/2012)*, it was ruled that there was no provision to bar or disqualify an elector from voting even though he had moved to a new address without informing REO. In other words, a person would still be entitled to vote in the GC according to his entries given in the registers in force. However, REO would refer cases of electors suspected of providing false addresses in VR applications to the law enforcement agencies for investigation.

22. Mr IP Kin-yuen expressed concern that the eligibility for registration as electors of the Education FC and voters of the Higher Education Subsector of the Election Committee ("EC") remained unclear. He recalled that in the VR exercise for the 2011 EC Subsector Elections, some teaching staff members of associate degree programs were unable to get registered in the relevant subsector. With the setting up of more community colleges offering associate degree programs, Mr IP enquired about the progress made by REO in tackling the relevant problems.

23. CEO advised that the eligibility of registration for the Education FC was clearly set out in Section 20E of the Legislative Council Ordinance (Cap. 542) ("LCO"). He said that in the run-up to the 2011 EC Subsector Elections, CMAB had published a press statement explaining that the full-time academic staff engaged in teaching or research and administrative staff of equivalent rank in those continuing education institutes or community colleges should, for the purpose of VR, be regarded as the staff of the respective institutions, and were eligible for registration as voters in the Higher Education Subsector. As regards the community colleges, CEO advised that it would depend on whether the staff members concerned were able to fulfil the eligibility criteria as stipulated under LCO. Principal Assistant Secretary for Constitutional and Mainland Affairs ("PAS(CMA))" said that according to the established practice, legislative amendments would be made prior to each election cycle to update the names of constituents in the relevant FCs/EC subsectors. He explained that due to time constraint, such updating exercise was not completed in time before the CE election



Action

held in March 2012. He said that prior to the 2016 LegCo Election, an updating exercise would be conducted in the 2015 VR cycle to review the names of constituents and/or make other technical amendments as necessary.

24. Mr LEE Cheuk-yan asked whether an elector of traditional FC could switch to the new District Council ("DC") (second) FC in one VR cycle and then revert to the traditional FC in the following VR cycle, and vice versa. CEO confirmed that the choice to switch between FCs in accordance with his registration eligibility was allowed under the electoral law.

25. Ms Cyd HO enquired about the measures taken by the Administration to combat any possible "vote-rigging" in FC elections. In particular, she expressed concern about the accuracy of the membership information supplied by the specified bodies concerned and the measures in place to verify the eligibility of FC electors.

26. CEO said that for some FCs, eligibility for registration was tied to membership in bodies specified under LCO. In these cases, for the purposes of verifying the registration eligibility of an applicant/elector, REO would seek information from the specified bodies concerned. CEO further said that starting from the 2013 VR cycle, REO had collaborated with the Independent Commission Against Corruption ("ICAC") to initiate a targeted visit-cum-advisory service programme to promote the message of good corporate governance and transparent membership administration. Under the programme, ICAC would proactively offer advisory service to individual specified bodies to help review and improve their membership administration, ensure procedural compliance and enhance transparency. CEO pointed out that while membership administration was essentially a matter falling squarely within the internal corporate governance of the specified bodies concerned, it would be a criminal offence for the relevant specified bodies to provide false or incorrect information to REO for the purpose of VR. In response to Ms Cyd HO, CEO said that provisional registers ("PR") and FR for GC and FC electors would be published for public scrutiny by the statutory deadline. REO would follow up with the relevant law enforcement agencies if irregularities in the registers were identified and reported to REO.

*Complaints related to VR and investigation results*

27. Ms Emily LAU expressed concern that following the 2011 DC Election, while the Police and ICAC had conducted investigation into complaint cases of 3 000 electors and 8 000 electors respectively, the

Action

numbers of convictions and prosecutions were on the low side. CEO responded that following the 2011 DC Election, the Police and ICAC had conducted investigation into complaint cases of 3 000 electors and 8 000 electors respectively. The Police and ICAC had completed investigation of most of these cases, with 66 persons prosecuted resulting in convictions of 55 electors. For the rest of the complaints cases which had proven unsubstantiated, REO had also followed up by making inquiries to the electors concerned in accordance with the statutory provisions. The relevant process would be completed in the current VR cycle.

28. Ms Emily LAU considered that REO should conduct large-scale checks on suspected false address cases and verifications of electors' registered addresses at regular intervals in future. CEO said that such efforts would be strengthened in 2015 which was an election year.

*Time gap between the deadline for VR and the polling day*

29. Mr WONG Yuk-man said that a time gap of more than three months between the statutory deadline for application for VR and the polling day was undesirable, as many persons who had reached the age of 18 after the deadline had complained that they had been unable to vote on the polling day in the past. He cautioned that this had been a problem and might have even contravened Articles 25 and 26 of the Basic Law on the right to vote of Hong Kong permanent residents. He suggested that reasonable measures (e.g. advance registration by juvenile who would only exercise their voting rights upon reaching the age of 18 on the polling day) should be put in place to rectify the situation.

30. CEO explained that under the existing statutory timeframe, young people who reached 18 on or before the day of the publication of FR would be eligible to vote upon submitting VR applications. Taking the 2012 LegCo Election as an example, FR was published on 25 July 2012 and the polling day was held on 9 September 2012. The time gap was about one and a half month. A person who reached the age of 18 after the publication of FR on 25 July 2012 would be registered in the 2013 VR cycle eligible for voting in the elections/by-elections conducted subsequently. Mr WONG expressed dissatisfaction with the lack of measures to address the issue. Mr LEUNG Kwok-hung also considered that with the aid of advanced information technology, the Administration should devise appropriate measures to tackle the problem. USCMA undertook to examine the issue further.

Action

31. The Deputy Chairman enquired about the Administration's consideration of his suggestion of implementing an automatic VR system. USCMA said that the issue of automatic VR system was being studied by CMAB. He said that the existing VR applications were made on a voluntary basis and the registration rate was over 70%. On the other hand, compulsory voting would prompt the need for introduction of sanctions and therefore had to be considered carefully. PAS(CMA) added that the Administration would also need to consider issues such as the implications of the arrangement for preparing the electoral registers for public inspection (which would include particulars of all Hong Kong permanent residents), and the need to provide for an opt-out system, etc.

**IV. Briefing by the Privacy Commissioner for Personal Data**

[LC Paper Nos. CB(2)790/13-14(01) and CB(2)1028/13-14(04)]

32. At the invitation of the Chairman, the Privacy Commissioner for Personal Data ("the Commissioner") gave a PowerPoint presentation on the accomplishment of his Office ("PCPD") in 2013 [LC Paper No. CB(2)790/13-14(01)]. Members noted the updated background brief [LC Paper No. CB(2)1028/13-14(04)] prepared by the LegCo Secretariat.

*(Due to other urgent commitments, the Chairman left the meeting at this juncture. The Deputy Chairman took the chair.)*

Discussion

33. Referring to paragraph 11 of PCPD's paper, Mr WONG Yuk-man noted that complaints in relation to "unwanted disclosure of individuals' personal data on social networking sites" (40 cases) and "receipt of unsolicited direct marketing messages through WhatsApp" (12 cases) could not be pursued meaningfully. He enquired what practical measures PCPD would adopt to tackle the problem. The Commissioner explained that in those cases, either the person responsible for the data could not be traced or the calls were made to randomly selected telephone numbers without the use of personal data, hence making it difficult to follow up. That said, PCPD would continue to step up publicity and public education through organizing free seminars and the use of other channels such as YouTube and Facebook so as to educate internet users to avoid unnecessary disclosure their of personal data on the internet. Where appropriate, PCPD would also advise the complainant to seek assistance from the social networking site to delete the data concerned.

Action

34. Referring to paragraph 12 of PCPD's paper where mentioned that there were 61 reported data breach incidents in 2013, Mr WONG Yuk-man expressed concern as to how many of them involved leakage of personal data by public hospitals. He considered that there was a need to enhance hospital staff's awareness of the preventive measures in this area following a spate of incidents involving loss of USB thumb drives containing patients' particulars by hospital staff. Also, referring to paragraph 14 of the same paper where stated that a survey of 60 smartphone apps developed by Hong Kong entities revealed that only 60% of the apps provided Privacy Policy Statements and that most of them did not explain what smartphone data they would access and the purposes for the access, Mr WONG Yuk-man considered that there was a need to impose legal responsibility on developers concerned to explain what smartphone data would be accessed by their apps so as to enhance personal data protection.

35. Mr WONG Yuk-man requested the Administration to advise on the timetable for implementing section 33 on "Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances" of the Personal Data (Privacy) Ordinance (Cap. 486) ("the Ordinance") which was enacted in 1995. Mr Albert HO also expressed concern that many banks, insurance companies and telecommunication organizations in Hong Kong had transferred their clients' personal data to their back offices and agencies in places outside Hong Kong for storage and processing. Mr HO pointed out that these places either had no data protection law in force or had a national security law which had an overriding effect. He considered that section 33 should be brought into operation as soon as practicable.

36. The Commissioner said that at present, the transfer of personal data to places outside Hong Kong was regulated in some respects under the relevant Data Protection Principles ("DPPs") of the Ordinance. However, breaches of DPPs were not criminal offences. Hence the current protection for personal data transferred overseas was weak and far from comprehensive. He agreed that section 33 should be implemented as early as possible. He said that PCPD stood ready to assist the Administration to prepare for the implementation of section 33. He had compiled a "white list" of places with privacy laws comparable to Hong Kong and would draw up a sample contract to assist organizations to ensure a comparable standard of protection would be accorded by the overseas data user to the personal data so transferred.

Action

*(To allow sufficient time for discussion, the Deputy Chairman directed that the meeting be extended by 15 minutes.)*

37. Ms Emily LAU said that the Ordinance was not binding on the Mainland organs in Hong Kong which might also collect personal data. She sought the Commissioner's view as to whether this was a loophole which should be plugged. The Commissioner advised that his functions and powers were clearly spelt out in section 8 of the Ordinance. Organizations not meeting the definition of "data user" in the Ordinance were outside the scope of his jurisdiction.

38. Ms Emily LAU noted that PCPD had published six investigation reports in 2013 and suggested that more should be published. She asked the Commissioner whether his Office had adequate manpower for the work. The Commissioner explained that due to manpower and resource constraints, investigation reports would be published only on selected topics which were of wide public concern or would serve useful educational and promotional purposes. He advised that the number of published investigation reports had increased drastically since 2010. He added that the workload of PCPD had also increased considerably as seen from the record high number of complaints received in 2013. He further said that while he was thankful to the Government for the provision of additional resources in the past few years, the amount provided still fell short of PCPD's needs to cope with increasing workload.

39. In response to Ms Emily LAU's enquiry as to whether PCPD managed to meet its service pledges, the Commissioner said that all service pledges had been met in 2013 except the one on "calling back within two working days upon receipt of a telephone enquiry" due to a more than two-fold increase in the telephone enquiries received in April and May 2013 due to the implementation (with effect from 1 April 2013) of the new provisions on direct marketing under the Personal Data (Privacy) (Amendment) Ordinance 2012 ("the Amendment Ordinance"). The Commissioner added that the overall efficiency of PCPD had improved.

40. Mr YIU Si-wing noted that there were a total of 24 161 enquiries and 1 792 complaints in 2013, representing an increase of 27% and 48% respectively compared with 2012. He enquired why there was no conviction in 2013. The Commissioner said that PCPD was not vested with the authority of criminal investigation and prosecution in relation to a suspected breach of the Ordinance, and had to rely on the Police for

Action

enforcement. The number of cases referred to the Police had increased in 2013, particularly on suspected breaches of the new direct marketing provisions. He was also not satisfied that there was no conviction in 2013. In this connection, the Commissioner had met with the Secretary for Justice while his colleagues had met with the Police in order to strengthen collaboration. In response to Mr YIU Si-wing's enquiry, the Commissioner said that the number of convictions were 0, four and two in 2010, 2011 and 2012 respectively.

41. Mr WONG Ting-kwong said that telemarketing calls were still rampant. He enquired whether PCPD would recommend tightening of the relevant control measures. The Commissioner said that, before the new provisions under the Amendment Ordinance came into operation, it was already a criminal offence if an organization continued to make telemarketing call to a data subject after the data subject had indicated refusal to receiving further calls from that organization. The maximum penalties were raised to HK\$500,000 and three years' imprisonment upon the implementation of the new provisions. Mr WONG Ting-kwong further said that the number of complaints in this area handled by PCPD might be a tip of the iceberg only and could not fully reflect the extent of the problem. The Commissioner said that he had issued a leaflet providing information to assist individuals to exercise their right to opt out from unwanted direct marketing approaches and to pursue cases where their requests had not been complied with.

42. Mr CHAN Kin-por enquired whether the telemarketing calls made to randomly selected telephone numbers were subject to the new provisions governing direct marketing under the Amendment Ordinance. The Commissioner said that such telemarketing calls which did not involve the use of personal data of a data subject were not covered under the Amendment Ordinance. He advised that an individual could register his telephone number to the "do-not-call register" maintained by the Office of the Communications Authority ("OFCA") for not receiving unsolicited commercial electronic messages, but not person-to-person calls. Mr CHAN Kin-por further asked, if a bank made a second telemarketing call to a person after the person had refused in the first call to receive further calls from that bank, whether such a case could be caught by the Amendment Ordinance.

43. The Commissioner advised that it would depend on whether the bank, in making the second call, had used the personal data obtained from the

Action

person concerned in the first telemarketing call. In response to the Deputy Chairman's enquiry, the Commissioner said that PCPD was now conducting a survey of public opinion regarding person-to-person telemarketing calls. The results would be published and referred to OFCA for follow up in accordance with the Unsolicited Electronic Messages Ordinance (Cap. 593) where appropriate.

44. Referring to paragraph 21 of the PCPD's paper, Mr CHAN Kin-por enquired about the criteria for granting applications for legal assistance for civil claims under the Ordinance. The Commissioner said that the factors he would consider included whether the case raised a question of principle, whether the applicant could deal with the case unaided, and whether the case could effectively enhance and sustain public awareness on personal data privacy issues, etc.

45. In response to the Deputy Chairman's enquiry, the Commissioner said that PCPD had issued a consultation document in July 2011 outlining the operational framework and implementation plan of the Data User Returns Scheme ("DURS"), but the feedback from the relevant sectors was not favourable. He said that a similar scheme adopted in the European Union ("EU") was undergoing reform in pursuit of better regulatory systems. Amongst 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. The Commissioner further said that DURS would be put on hold and undertook to keep in view the development of the reform in EU. He said that meanwhile, PCPD had advocated to the sectors concerned the adoption of privacy management programs which were considered flexible and holistic in data protection and a good interim substitute for DURS.

**V. Any other business**

46. There being no other business, the meeting ended at 4:55 pm.