

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)693/16-17
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 19 December 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Holden CHOW Ho-ding (Deputy Chairman)
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick

Hon Jimmy NG Wing-ka, JP
Hon LAM Cheuk-ting
Hon SHIU Ka-chun
Hon YUNG Hoi-yan
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Hon KWONG Chun-yu
Dr Hon LAU Siu-lai

Members attending Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai

Members absent : Hon CHAN Kin-por, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon Frankie YICK Chi-ming, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Kenneth LAU Ip-keung, MH, JP
Dr Hon CHENG Chung-tai
Hon Jeremy TAM Man-ho
Hon Nathan LAW Kwun-chung

Public Officers attending : Item IV

Mr Ronald CHAN Ngok-pang
Under Secretary for Constitutional and Mainland Affairs

Miss Rosanna LAW Shuk-pui
Deputy Secretary for Constitutional and Mainland Affairs

Miss Helen CHUNG Chi-ching
Principal Assistant Secretary for Constitutional and Mainland Affairs

Mr WONG See-man
Chief Electoral Officer
Registration and Electoral Office

Miss Candy MA Siu-hung
Principal Electoral Officer
Registration and Electoral Office

Item V

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

Miss Rosanna LAW Shuk-pui
Deputy Secretary for Constitutional and Mainland
Affairs

Mr D C CHEUNG
Principal Assistant Secretary for Constitutional and
Mainland Affairs

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

Staff in : Mr Kelvin LEE
attendance Senior Assistant Legal Adviser 3

Miss Cindy HO
Senior Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

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I. Confirmation of minutes of meeting
[LC Paper No. CB(2)391/16-17]

The minutes of the meeting held on 21 November 2016 were confirmed.

II. Information paper(s) issued since the last meeting

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

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III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)394/16-17(01) and (02)]

3. Members agreed to discuss the following items proposed by the Administration at the next meeting on 25 January 2017:

- (a) Electoral Affairs Commission Report on the 2016 Legislative Council ("LegCo") General Election;
- (b) briefing on the Chief Executive's ("CE") 2017 Policy Address; and
- (c) establishment of the Office of the CE-Elect.

4. As several items would be discussed, the Chairman proposed that the next meeting be advanced to start at 10:30 am and extended to end at 1:15 pm. Members agreed.

IV. Regulation of the use of social media, the imposition of a cooling-off period and the conduct of election polls in public elections

[LC Paper Nos. CB(2)394/16-17(03) and (04)]

5. At the invitation of the Chairman, the Under Secretary for Constitutional and Mainland Affairs ("USCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)394/16-17(03)]. USCMA said that the Administration did not have any preconceived proposal regarding the issues set out in the Administration's paper and it was open to any views and comments from members. He invited members to give comments on the issues raised in the paper.

Discussion

Use of social media in public elections

6. Regarding the "effect test" in footnote 1 of the Administration's paper, Ms Claudia MO considered it difficult to quantify the effect or to prove how far the election of a candidate was linked to the publication of any particular comments on that candidate. She took the view that the "intention of promoting or prejudicing the election of a candidate or candidates" had to be proven. She supported providing exemption for views expressed by

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individuals and groups on the Internet as long as the publication of those views did not involve making or receiving payments.

7. Mr Charles MOK considered that regulating the use of social media in public elections would restrict the freedom of speech and subject web surfers to inadvertent breach of electoral laws. He took the view that commenting on candidates, changing profile pictures or sharing of candidates' election platforms on social media should not be regarded as publishing election advertisements ("EAs") provided that no paid-for advertisement was involved. He supported that wide exemptions should be provided as far as possible.

8. Mr CHEUNG Kwok-kwan said he believed that a web surfer sharing or forwarding comments on a candidate through social media platforms probably did so to express certain views on that candidate (e.g. like or dislike that candidate). He therefore did not agree to judge whether the publication of such comments was caught in the definition of "EA" by looking at whether it was for the purpose of promoting or prejudicing the election of a candidate (or candidates). He also supported providing exemption for the expression of views on the Internet provided that the views were published on a non-commercial basis.

9. Mr LUK Chung-hung stressed the importance of ensuring the integrity and fairness in elections and the need to regulate election expenses to ensure a level playing field for all candidates. While expressing support for providing exemption for the publication of views which did not involve making or receiving payments, Mr LUK was concerned about whether measures were in place to ensure compliance with the relevant legal requirement in cases where payments were involved or where the support was given in the name of a group/organization.

10. Ir Dr LO Wai-kwok took the view that the expression of views on candidates in elections on social media platform was similar to face-to-face discussion and the Administration's regulatory control for normal Internet activity should not be over-stringent. Having said that, a different approach should be taken if it involved the deployment of resources to promote or prejudice the election of candidate(s). He considered that the Administration should conduct an in-depth study and strike a right balance between upholding the fairness of elections and refraining from causing disturbance to the public.

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11. Mr CHAN Chi-chuen opposed regulating the use of social media in public elections, including acts such as changing profile pictures or sharing comments on candidates, as he believed that the relevant law enforcement work would be very difficult. He supported that views published on a non-commercial basis should not be regarded as EAs and suggested that the Administration should further explore in this direction. Mr KWONG Chun-yu expressed the same opposing views and he did not see the need to impose restrictions on the use of social media in public elections. He criticized that relevant expenses associated with the social media posts (e.g. Internet service fees) were only minimal but the relevant expense declaration work was annoying to candidates. He stressed that the freedom of speech had to be upheld.

12. Mr Alvin YEUNG expressed support for providing exemption to the expression of personal views by individuals on the Internet. He considered that only paid-for advertisements should be subject to regulatory control. Mr LEUNG Kwok-hung considered that only comments on candidates which were published under instruction and in return for a payment should be subject to regulatory control. Dr LAU Siu-lai shared the view that it would be very difficult, if not impossible, to regulate the expression of personal views by individuals on the Internet. She supported that wide exemption should be given as far as possible to avoid causing annoyance to the public and restricting the freedom of speech.

Cooling-off period for elections

13. Ms Claudia MO and Mr LAM Cheuk-ting expressed objection to the imposition of a cooling-off period in public elections in Hong Kong as they believed that this measure, if introduced, would affect the atmosphere for the election and lower the voter turnout rate. Mr LAM expressed worry that even if a cooling-off period were imposed on the polling day, it still could not prevent the conduct of canvassing activities by some political parties and/or clansman associations. Dr LAU Siu-lai also considered that there was no need to change the established arrangement and impose a cooling-off period on the polling day. She believed that electors were mature and they would not be swayed easily by canvassing.

14. Ir Dr LO Wai-kwok considered that ensuring fairness of an election, avoiding undue annoyance to the public and recognizing candidates' need to undertake appropriate level of promotion were all relevant considerations in deciding whether certain canvassing activity should be prohibited on the polling day. He took the view that there was no need to prohibit canvassing

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of votes via phone calls or on the Internet on the polling day. Ms Starry LEE considered that the proposal of imposing a cooling-off period required careful consideration as it might affect the voting desire of electors.

15. Mr CHAN Chi-chuen said that the imposition of a cooling-off period on the polling day had the merit that public order might be better maintained on that day. He suggested that to facilitate consideration of the proposal in future, the Administration should conduct a study to provide information on electors' behavior, e.g. the percentage of electors who had decided which candidate they would vote for before the polling day and the percentage of those who decided that only on the polling day.

Regulation of election surveys

16. Mr Holden CHOW, Mr LUK Chung-hung and Ms Starry LEE criticized that the "ThunderGo" campaign during the 2016 LegCo General Election was aimed to influence electors' choice by disseminating to electors on the polling day the data collected from opinion polls ("poll data") and recommended lists of candidates, thereby causing unfairness to certain candidates. They asked whether the Administration had studied if the "ThunderGo" campaign had published EAs and involved election expenses incurred without the authorization of the candidates concerned. They called on the Administration to review the relevant legislation to plug the loophole. They also expressed support for introducing measures to regulate the publication of such poll data on or before the polling day so as to ensure fairness in elections. Ms Starry LEE suggested that the publication of such poll data should be disallowed within three to seven days before the polling day.

17. USCMA said that he would not comment on individual cases. He explained that according to the provisions on election expenses stipulated in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), for EAs published by a candidate through online platforms, the production and operating costs should also be counted towards the candidate's election expenses and be clearly declared in his/her election return. As provided in the Electoral Affairs Commission's ("EAC") election guidelines, whether a particular item of expenditure should be regarded as an election expense was a question of fact to be answered in the circumstances of each case. He added that upon receipt of any complaint that someone might have engaged in corrupt or illegal conduct in elections, the Registration and Electoral Office would refer such complaint to law enforcement agencies for investigation and follow-up action.

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18. Ms Claudia MO considered that even if the "ThunderGo" campaign was aimed to facilitate the matching of votes, this was not in breach of the law. She said that after all, electors were free to choose which candidate they wanted to vote for. She considered that the "ThunderGo" campaign might have even helped boost the voter turnout rate. Mr LAM Cheuk-ting said that he did not see how election surveys conducted on the Internet or smartphone mobile app would affect the electors. He and Dr LAU Siu-lai considered that the Administration should, rather, tighten up regulation of exit poll to prevent the use of the results by any political party to canvass or allocate votes for candidates. Mr CHAN Chi-chuen enquired about the definition of exit poll and its regulation. He considered that it would be difficult and impracticable to regulate the conduct of various types of election surveys.

19. USCMA assured members that all public elections were conducted in strict accordance with the law. Any case of possible breaches reported to EAC would be followed up and referred to the law enforcement authorities as appropriate. He further said that there were guidelines to be observed on regulating the conduct of exit polls. Chief Electoral Officer supplemented that according to the EAC Regulations, a person who obtained or attempted to obtain in any manner within a polling station or a No Staying Zone, or within a No Canvassing Zone ("NCZ") without the express permission of the Presiding Officer or EAC, information as to the candidate for whom an elector in the polling station was about to vote or had voted, committed an offence. Since the 2015 District Council Ordinary Election, EAC had updated the administrative procedures in approving applications for the conduct of exit polls and required persons or organizations intending to conduct exit polls within NCZs to make a statutory declaration as detailed in paragraphs 21 to 23 of the Administration's paper.

20. Ms Starry LEE expressed concern that some candidates had declared "abandonment of election" after the close of nomination for the 2016 LegCo General Election and whether such acts were subject to any regulation to prevent prejudicing the fairness of elections. USCMA said that in accordance with section 42 of the Legislative Council Ordinance (Cap. 542), a candidate could only withdraw his/her nomination before the close of the nomination period. There was no such mechanism for the so-called "abandonment of election" after the close of nomination. Therefore, candidates who publicly declared their "abandonment of election" were still required to observe the provisions regarding election expenses, EAs and all other requirements under the electoral legislation. Mr LEUNG Kwok-hung

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considered that there was no unfairness because after the declaration of "abandonment of election" by some candidates, electors could still vote for those candidates if the electors wished to.

Way forward

21. USCMA said that the Administration would take into account members' views and comments on the relevant issues in considering whether there was a need to draw up any proposal. In reply to Ms Claudia MO, USCMA said that at present, the Administration did not have any timetable or plan for submission of any proposal in this regard.

V. Remuneration package for Politically-Appointed Officials serving in the fifth-term Hong Kong Special Administrative Region Government

[LC Paper Nos. CB(2)394/16-17(05) and (06)]

22. The Secretary for Constitutional and Mainland Affairs ("SCMA") briefed members on the proposals regarding the remuneration package for politically-appointed officials ("PAOs") serving in the fifth-term Government as detailed in the Administration's paper [LC Paper No. CB(2)394/16-17(05)], including the proposal to introduce an annual adjustment mechanism for the cash remuneration for PAOs, and the proposal to increase the cash remuneration for PAOs by 12.4% with effect from 1 July 2017.

Discussion

Cash remuneration level and annual adjustment mechanism

23. Dr CHIANG Lai-wan said that she was supportive of the current proposal though the public might consider the proposed one-off 12.4% adjustment quite high. She pointed out that as there had been no increase in PAOs' remuneration for the past 14 years since 2002, this was only a less than 1% increase on a yearly average. Noting that the remuneration of LegCo Members was adjusted in line with the movement of Consumer Price Index (C) ("CPI(C)") on an annual basis, she considered it reasonable to introduce an annual adjustment mechanism for PAOs similar to that for LegCo Members.

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24. In response to Dr CHIANG's question as to why there had been no adjustment to the remuneration level for the past 14 years, SCMA explained that there was no built-in mechanism for annual adjustment of PAOs' remuneration when the Political Appointment System ("PAS") was first introduced in 2002. He said that while the remuneration for Directors of Bureaux ("DoBs") was equivalent to the annual weighted average cost to the taxpayer of the remuneration package for civil servants at the D8 level, the pay levels of PAOs' remuneration had remained at the same level as approved in 2002 and this would mean that the real value of the remuneration for PAOs had declined substantially over the years due to inflation. On the other hand, the honorarium of Non-Official Members of the Executive Council ("ExCo") and the remuneration of LegCo Members were adjusted in line with the movement of CPI(C) on an annual basis as part of the adjustment mechanism. The Independent Commission on Remuneration for Members of ExCo and the Legislature, and Officials under PAS of the Hong Kong Special Administrative Region ("HKSAR") ("the Independent Commission") now recommended that the remuneration for PAOs should be adjusted annually in line with the movement of CPI(C) as well.

25. Mr Jimmy NG expressed concern that if no adjustment was made to the cash remuneration for DoBs, it might fall behind that of Permanent Secretaries or Heads of Departments in the civil service soon. SCMA said that while the cash remuneration for DoBs in 2002 was based on the total remuneration package for Permanent Secretaries, it was envisaged that in 2020, the salary of Permanent Secretaries, which was subject to annual civil service pay adjustments, might exceed that for DoBs. SCMA further said that since DoBs were ultimately responsible for the designated policy portfolios and accountable for the performance of the underpinning executive departments, as a matter of principle, the remuneration of DoBs should not lag behind that of the senior civil servants whom DoBs were working with. Besides, it would be increasingly difficult to attract those senior civil servants to take up politically appointed positions under PAS if the prevailing remuneration level was maintained. SCMA further said that the Independent Commission recommended that the remuneration of DoBs should be set at a reasonable level when compared with heads of statutory and other public bodies, as the latter could be seen as competing for similarly high calibre talents who wished to engage in public service.

26. Mr WONG Ting-kwong said that PAOs were not entitled to civil service retirement benefits and it was also uncertain whether the current ones would continue to serve in the next term HKSAR Government. While

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expressing support for the Administration's proposals, Mr WONG considered that PAOs should strive for even better performance and be more accountable to the public. Mr Jeffrey LAM expressed support for the proposed adjustment, adding that the Administration should explore ways to attract high calibre talents to join the Government as PAOs. Mr SHIU Ka-fai said that the Government all along adhered to the principle of paying civil servants high salaries to prevent corruption. He considered that a pay freeze for PAOs since 2002 was not conducive to recruitment and retention of talents as well as the long term development of Hong Kong. In response to the Chairman's question, SCMA said that the real value of the remuneration for PAOs had indeed declined substantially over the years due to inflation (i.e. 34.7% being the cumulative increase in CPI(C) from 2002 to 2016).

27. Mr LAM Cheuk-ting criticized that the performance of some incumbent PAOs fell short of public expectations. He considered that the proposed adjustment ran counter to the public sentiment given the general dissatisfaction with some PAOs' performance. SCMA explained that the current proposals did not involve any adjustment to the remuneration for PAOs of the current-term Government. Mr LAM, however, considered that the performance of the current-term PAOs should be taken into account as it was possible that some incumbent PAOs might continue to serve in the next-term Government. Ms Claudia MO expressed similar concerns, adding that she objected to the submission of the proposals to the Finance Committee ("FC").

28. Mr Alvin YEUNG enquired whether the Administration would subsequently propose a lower rate of increase after taking into consideration the general dissatisfaction with the performance of PAOs. SCMA reiterated that the recommendations of the Independent Commission were to adjust the remuneration for PAOs annually in line with the movement of CPI(C) with effect from 1 July 2018; and to increase the cash remuneration for DoBs by 12.4% starting from 1 July 2017, which was equivalent to the cumulative change in CPI(C) from 2012 to 2016 (the figure for 2016 was estimated to be 2.5%).

29. Ms Claudia MO said that the cash remuneration for Political Assistants ("PAs"), pitched at 35% to 55% of that for a DoB, was even higher than that for a LegCo Member. Ms MO further said that the public had called for a review to bring in a performance-based element and the popularity rate for consideration of future pay review of PAOs. Mr IP Kin-yuen considered that PAs' job specifications should be more clearly defined. SCMA said that the

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Independent Commission now recommended that the cash remuneration for each PA be capped at 35% of the remuneration for DoBs (i.e. not more than \$104,340 per month at the prevailing level). It would be for a Secretary of Department or DoB to decide on the exact level that his/her PA should be paid within 35% of the remuneration of DoBs based on the functional requirements of the job.

30. Miss Tanya CHAN said that according to the findings of the public opinion survey regarding the popularity of Principal Officials conducted under the Public Opinion Programme of the University of Hong Kong, SCMA had a "reappointment rate" of 29% and a "dismissal rate" of 20.4%, the Secretary for Innovation and Technology had a "reappointment rate" of 18.8% and a "dismissal rate" of 23%, the Secretary for Development had a "reappointment rate" of 23.9% and a "dismissal rate" of 43%, the Secretary for Home Affairs had a "reappointment rate" of 16.4% and a "dismissal rate" of 44.6% and the Secretary for Education had a "reappointment rate" of 16% and a "dismissal rate" of 54.6%. Miss CHAN said that the poor popularity of DoBs did not justify the proposed large pay increase. She added that Members belonging to the Civic Party did not support the proposed adjustment to the cash remunerations for PAOs.

31. Mr CHAN Chi-chuen said that the proposed large increase rate had come under criticism by the public. He suggested that if the cash remuneration for PAOs was to be adjusted annually in line with the movement of CPI(C), an upper limit should also be set so that their pay increases would be capped. Besides, he suggested that a performance-based element and the popularity rate of PAOs should be taken into account for their future pay review. Mr Charles MOK stressed that there was a wide gap between the performance of PAOs and the public expectations. He expressed doubt whether the proposed large pay increase was an effective measure to attract high calibre talents to serve as PAOs. SCMA explained that all along the popularity rate was not amongst the considerations of the Independent Commission in conducting the review. Nevertheless, performance targets and indicators of bureaux were set out in their respective Controlling Officer's Reports for Members' consideration when examining the annual Estimates of Expenditure prepared by the Government. SCMA said that the introduction of an annual adjustment mechanism for the remuneration for PAOs was a reasonable measure, and whether or not high calibre talents could be attracted to serve as PAOs would depend on many other factors.

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32. Dr LAU Siu-lai expressed concern about the proposed large increase in the cash remuneration for DoBs as their existing level of remuneration was already very high. She criticized that the proposal lacked justifications and the Administration, on the other hand, was very mean to have proposed only a negligible increase for social security allowances/transport subsidies for persons with disabilities and cancelling the "One-off living subsidy for low-income households not living in public housing and not receiving Comprehensive Social Security Assistance".

33. Mr IP Kin-yuen considered that a review of PAS should have been conducted alongside the review of the remuneration package for PAOs. SCMA said that PAS was last reviewed in 2008 which resulted in the creation of two additional layers of political appointment positions, namely Deputy DoBs and PAs. He said that as PAS in its current structure had only been implemented since 2008, no substantial change to PAS was proposed at this stage. He said that an overall review would be conducted in the light of operational experience. Mr Alvin YEUNG said that no PAOs of the current-term Government had stepped down to bear political accountability for failure in their work. He suggested that a review should be conducted to bring in a mechanism for PAOs to step down on account of their unsatisfactory performance. SCMA said that in the light of the recommendations of Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, the Code for PAOs had been amended in June 2012 to include applicable sanctions, such as warning, public reprimand, suspension or dismissal.

Submission of the proposals to FC

34. SCMA informed members that it was the Administration's plan to submit the proposals to FC for consideration in January 2017. The Chairman sought members' views on whether the Panel supported the submission of the proposals to FC. As requested by Mr Charles MOK, the Chairman put the matter to vote and ordered a division.

The following members voted for the submission of the proposals to FC:

Mr Martin LIAO, Mr Abraham SHEK, Mr Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Dr Priscilla LEUNG, Mrs Regina IP, Mr MA Fung-kwok, Miss Alice MAK, Mr POON Siu-ping, Dr CHIANG Lai-wan, Ir Dr LO Wai-kwok, Mr Jimmy NG, Miss YUNG Hoi-yan, Mr CHAN Chun-ying and Mr CHEUNG Kwok-kwan.

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The following members voted against the submission of the proposals to FC:

Mr James TO, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr WU Chi-wai, Mr Charles MOK, Mr CHAN Chi-chuen, Mr Dennis KWOK, Dr Fernando CHEUNG, Mr IP Kin-yuen, Mr Alvin YEUNG, Mr CHU Hoi-dick, Mr LAM Cheuk-ting, Mr SHIU Ka-chun, Miss Tanya CHAN, Mr KWONG Chun-yu and Dr LAU Siu-lai.

35. The Chairman announced that 14 members voted for and 16 members voted against the submission of the proposals to FC for consideration. He concluded that the Panel did not support the submission of the proposals to FC.

(Post-meeting note: After verification, the voting result was that 16 members voted for and 16 members voted against the submission of the proposals to FC. As the question did not have the support of a majority of the members voting, it was negated.)

VI. Any other business

36. There being no other business, the meeting ended at 4:45 pm.

Council Business Division 2
Legislative Council Secretariat
24 January 2017