

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)1893/16-17

(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 15 May 2017, 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 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
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
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
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon LAM Cheuk-ting
Hon CHAN Chun-ying
Hon Tanya CHAN

Hon HUI Chi-fung
Hon LUK Chung-hung
Hon Kenneth LAU Ip-keung, MH, JP
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Nathan LAW Kwun-chung
Dr Hon LAU Siu-lai

**Members
absent** : Dr Hon Helena WONG Pik-wan
Hon CHEUNG Kwok-kwan, JP
Hon LAU Kwok-fan, MH

Public Officers : Item IV
attending

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

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

Ms Phidias TAM Kwok-ching
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Office of the Privacy Commissioner for Personal Data

Ms Brenda KWOK
Chief Legal Counsel

Deloitte China

Mr Karon WAN
Public Sector Managing Partner

Ms Grace SONMEZSOY
Consulting Manager

Item V

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

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

Ms Phidias TAM Kwok-ching
Principal Assistant Secretary for Constitutional and
Mainland Affairs

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

Staff in attendance : Mr Kelvin LEE
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)1384/16-17]

The minutes of the meeting held on 20 March 2017 were confirmed.

II. Information paper(s) issued since the last meeting
[LC Paper Nos. CB(2)1389/16-17(01) to (02), CB(2)1407/16-17(01) to (03) and CB(2)1408/16-17(01) to (02)]

2. Members noted that the following papers had been issued after the last meeting:

- (a) letter dated 20 April 2017 from Mr Jeremy TAM and the Administration's response;
- (b) letter dated 21 April 2017 from Dr Fernando CHEUNG;
- (c) joint letter dated 2 May 2017 from 22 Members;

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- (d) paper provided by the Equal Opportunities Commission ("EOC") setting out its response to the issues raised in Dr Fernando CHEUNG's letter of 21 April 2017; and
- (e) joint letter dated 27 April 2017 from Mr Charles MOK, Ms Tanya CHAN and Mr Dennis KWOK and the Administration's preliminary comments.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1368/16-17(01) and (02)]

3. Members agreed to discuss the following items proposed by the Administration at the next meeting on 19 June 2017 at 2:30 pm:

- (a) design of ballot papers for Legislative Council elections; and
- (b) Report of the Task Force on Computer Theft Incident of the Registration and Electoral Office.

IV. Section 33 of the Personal Data (Privacy) Ordinance

[LC Paper Nos. CB(2)1368/16-17(03) and (04)]

4. At the invitation of the Chairman, the Under Secretary for Constitutional and Mainland Affairs ("USCMA") briefed members on the salient points of the paper [LC Paper No. CB(2)1368/16-17(03)]. With the aid of PowerPoint [LC Paper No. CB(2)1417/16-17(01)], Mr Karon WAN of Deloitte China briefed members on the key findings of the consultancy study.

Discussion

5. Mr CHAN Chun-ying and Mr Jimmy NG enquired whether the Administration would consider making adaptive amendments to section 33 of the Personal Data (Privacy) Ordinance ("the Ordinance"), which was drawn up in 1996, in the light of the latest changes in the business environment and technological developments. Mr Charles MOK also considered that the prevalent use of the Internet had posed challenges to the existing regulatory regime. He suggested that the Administration might need to first conduct a review of section 33 or even the Ordinance in the light of the present day circumstances. USCMA said that after the completion of the consultancy study and the further study by the Office of the Privacy Commissioner for

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Personal Data ("PCPD"), the Administration would consider the feasibility of implementing section 33 and assess the need for amending the relevant provisions.

6. Mr CHAN Chun-ying, Mr Jimmy NG, Mr Christopher CHEUNG and Mr Jeffrey LAM expressed the view that the industrial and commercial sectors were very concerned about the potential impacts brought about by the implementation of section 33, especially for the small and medium-sized enterprises ("SMEs"), which would face great difficulties in complying with section 33 as they lacked resources to engage legal advisors for a professional assessment of the privacy protection laws of the destinations of intended data transfers. Mr Jeffrey LAM pointed out that some of the major trading partners of Hong Kong, such as the United States, had no such requirement similar to that of section 33. Besides, according to the information collected by the consultant on the implementation of relevant requirements in the United Kingdom, New Zealand, Singapore and Macao, data protection authorities in these jurisdictions had not encountered any case of enforcement regarding cross-border transfers of personal data. Mr Jeffrey LAM considered that the Administration should collect information as to why those jurisdictions had no enforcement cases. He expressed reservations about the implementation of section 33 as he considered that it would have significant and profound impacts on the trades. He asked whether the Administration had assessed the business impacts on multinational corporations and whether it would affect the interest of overseas companies coming to Hong Kong for investment after implementing section 33.

7. Mr CHAN Chun-ying also enquired whether there would be a transitional period for large corporations in implementing section 33, and whether there would be any support measures implemented by the Government to assist SMEs in fulfilling the requirements under section 33. Mr Jimmy NG expressed the same concern, adding that 90% of the companies in Hong Kong were SMEs.

8. USCMA said that the trades had expressed their concerns about implementing section 33 back in 1996 prior to the commencement of the Ordinance. In view of the trends of digitalization in the handling of personal data and globalization of business operations in recent years, the Administration understood that the impact of implementing section 33 on different sectors would be even more significant. On the way forward, USCMA said that the consultant would first consolidate the final business impact assessment report. PCPD would further study a number of issues relating to section 33, such as PCPD's mechanism for reviewing and updating

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the "white list", whether the industries already subject to stringent regulations could be regarded as having met the requirements of section 33 by means of compliance with the data protection requirements of their regulatory authorities, and the support measures required by SMEs to comply with the relevant requirements. The Administration would then formulate the steps forward in the light of the results of both studies, taking into account the feasibility of implementing section 33 and the need for any legislative amendment. Before section 33 would come into effect, a public consultation might be conducted.

9. Mr Christopher CHEUNG expressed grave concerns about the potential business impacts on the trades especially SMEs. Mr Karon WAN of Deloitte China said that the responses received from various businesses through the online survey indicated that most of them had business operations which involved cross-border transfers of personal data. These businesses had raised various concerns over the implementation of section 33, such as the high compliance cost that might be involved as a result of adopting measures to fulfil the requirements under section 33, as well as impacts on their operations and their online business.

10. Ms Claudia MO considered it necessary to regulate cross-border transfers of personal data in order to protect personal data privacy of individuals. She said that it was highly unsatisfactory that section 33 of the Ordinance was still inoperative after it had been enacted for 21 years. The Deputy Chairman asked whether the Administration would consider implementing section 33 in phases. USCMA explained that the feasibility of this suggestion needed to be considered as there would likely be technical difficulties.

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11. Mr Charles MOK asked about the possibility of Hong Kong being isolated for its exclusion from the "white list" of other jurisdictions (e.g. the European Union ("EU")) if section 33 remained inoperative. USCMA advised that under the EU framework, data users were permitted to transfer personal data outside EU to other places through the use of binding corporate rules or contractual terms which imposed control on the receiving end of the data. This approach was commonly adopted in different jurisdictions.

12. Mr KWONG Chun-yu pointed out that some mobile apps which collected Hong Kong people's personal data had their servers located in the Mainland. He expressed concern as to whether the personal data of Hong Kong people would thus be accessible by the Mainland authorities. USCMA said that he did not have information on whether and how other governments

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obtained personal data from companies operating in their territories, but emphasized that for personal data collected in Hong Kong, the current provisions of the Ordinance required that any transfers of the data must be for the same or directly related purpose as the stated purpose of collection, or had been consented to by the data subject.

13. Mr Christopher CHEUNG asked about the regulatory control in the situation that personal data were transferred to a place outside Hong Kong and involved storage of such data at a data centre in another jurisdiction. Chief Legal Counsel of PCPD advised that if the data user engaged a data processor to process the personal data at a data centre outside Hong Kong, the data user still had to observe the requirements under the Ordinance. The data user would still be held responsible under section 65 of the Ordinance.

14. Mr CHAN Chi-chuen and Dr Fernando CHEUNG asked whether the Government was required to adopt the practices recommended in the Guidance on Personal Data Protection in Cross-border Data Transfer ("the Guidance") promulgated by PCPD in handling personal data transfers. USCMA said that the Government was bound by the Ordinance. Bureaux and departments acted in accordance with the law in any transfers of personal data, but he did not have information on what actions that other bureaux/departments had taken to comply with the Guidance. Dr Fernando CHEUNG considered that as section 33 was still inoperative, it was pointless for the Administration to say that the Government was bound by the Ordinance in handling personal data transfers. He considered that the Administration should give an undertaking that it would adopt the practices recommended in the Guidance before section 33 of the Ordinance came into operation. At the request of the Chairman, Senior Assistant Legal Adviser 3 briefed members on the data protection principles ("DPPs") under the Ordinance. He highlighted that DPPs provided that personal data could not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data was to be used at the time of the collection of the data or a directly related purpose. "Use" included transfer of personal data.

15. Mr POON Siu-ping asked about the timetable for completion of the business impact assessment report and PCPD's study. USCMA said that the business impact assessment report was expected to be completed before the end of 2017. Chief Legal Counsel of PCPD said that upon receipt of the business impact assessment report, PCPD would commence its study, which would take at least one year's time to complete.

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V. Progress of work in tackling discrimination on the grounds of sexual orientation and gender identity

[LC Paper Nos. CB(2)1363/16-17(01) and CB(2)1368/16-17(05)]

16. USCMA briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1363/16-17(01)].

Discussion

17. Dr Priscilla LEUNG said that she was a member of the former Advisory Group on Eliminating Discrimination against Sexual Minorities ("Advisory Group"). She expressed support for drawing up a charter of non-discrimination of sexual minorities for voluntary adoption by organizations concerned as recommended by the Advisory Group. She considered that it was important to safeguard the freedom of expression of people who did not support enacting legislation to prohibit discrimination on grounds of sexual orientation and gender identity. She said that according to overseas experience, such legislation might result in "reverse discrimination". Besides, she expressed concern that the Announcement of Public Interest promoting the message of equal opportunities for sexual minorities seemed to suggest that discrimination on the ground of sexual orientation was prevalent in Hong Kong. USCMA said that the Administration's publicity campaign had emphasized the messages of non-discrimination and inclusion; Dr LEUNG's comments in this regard were noted and the Administration would take into account members' views in formulating future publicity measures.

18. Mr Nathan LAW and Dr LAU Siu-lai criticized the Administration for making little progress in following up on the recommendations of the Advisory Group published in December 2015. They urged the Administration to introduce legislation against discrimination on the grounds of sexual orientation and gender identity taking into account the findings of the relevant EOC's study, which showed that there had been a significant increase of public support for legislating against discrimination on such grounds in the past 10 years from 28.7% to 55.7%. Moreover, about 50% of the respondents with religious beliefs agreed that there should be legal protection against such discrimination. Dr LAU Siu-lai said that Taiwan had enacted such legislation and Macau had also included relevant provisions in the employment law.

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19. Mr CHAN Chi-chuen said that he was also a member of the Advisory Group. He considered that there was an imminent need to outlaw discrimination on the grounds of sexual orientation and gender identity in order to protect the rights of sexual minorities. He noted that this was also the stance of EOC as stated in the relevant EOC's study report. He disagreed that the problem could be tackled by administrative measures. On the suggestion of providing training to enhance people's sensitivity towards sexual minorities, Mr CHAN Chi-chuen queried how many civil servants had received such training. He also queried whether the Government abided by the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation ("Code of Practice"). Referring to paragraph 15 of the Administration's paper, Mr CHAN asked about the direction of the public consultation when it was launched, e.g., whether the Administration would introduce specific legislation to outlaw discrimination on the grounds of sexual orientation or outlaw such discrimination in specific contexts (such as education and employment).

20. USCMA said that as recommended by the Advisory Group, the Administration was conducting a further study on the experience of other jurisdictions in tackling discrimination through legislative and non-legislative measures. The findings of the study would form the basis for public consultation on both legislative proposals and administrative measures to eliminate discrimination on grounds of sexual orientation and gender identity. Upon completion of the study, the Administration would examine the findings of the study and draw up a plan for conducting public consultation. He said that details of the public consultation were not yet available at the present stage.

21. Dr Fernando CHEUNG said that the Government had already been found by the Court that it did not abide by the Code of Practice in the recent court case involving a civil servant seeking judicial review of the Secretary for the Civil Service's decision. He expressed concern about the monitoring of the implementation of the Code of Practice. USCMA said that the Code of Practice was for voluntary adoption by public and private sector organizations. At present, nearly 200 such organizations had adopted the Code of Practice, and the Constitutional and Mainland Affairs Bureau would continue to encourage more organizations to adopt it through various channels. Mr LEUNG Kwok-hung asked whether any subvented organizations had adopted the Code of Practice. USCMA replied in the negative. Mr LEUNG Kwok-hung considered that the Administration should require all subvented organizations to adopt it. He stressed that the Administration had

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the responsibility to enact legislation to meet the policy objective of eliminating discrimination against sexual minorities, if the use of non-legislative measures was unable to address the problem.

22. USCMA said the Administration had been actively promoting equal opportunities for sexual minorities and following up on the recommendations of the Advisory Group with strengthened resources. He said that the Administration acknowledged that in recent years more and more people in Hong Kong had expressed support for enacting legislation to eliminate discrimination against sexual minorities. On the other hand, the Administration noted that both the Advisory Group's report and the EOC's study report acknowledged that there were divergent views on whether legislation should be introduced to prohibit discrimination on the grounds of sexual orientation and gender identity.

23. The Deputy Chairman declared that he was a member of EOC. While acknowledging the need to protect sexual minorities against discrimination, he supported tackling the problem by administrative measures and public education rather than by legislation. He said that public views on the issue were diverse, and a number of religious groups and educational organizations had expressed worry about whether the freedom of religion would be undermined and whether there might be reverse discrimination, if such legislation was enacted.

24. Mr Nathan LAW asked about the Administration's plan to provide sensitivity training for personnel in specific fields and how assessment would be made on the effectiveness of such training. Ms Tanya CHAN enquired whether resources would be provided to civil service unions and associations to enable them to provide such training to their members.

25. USCMA said that to implement the Advisory Group's recommendation on providing sensitivity training for teachers, medical practitioners, associated professionals and frontline workers in hospitals and clinics, social workers and human resources professionals, the Administration had collected information on the content, delivery modes and target recipients of existing pre-service and in-service training in the relevant professions, and gathered views from 24 training providers (including tertiary institutions, professional groups and major employers) on the content and delivery mode of the sensitivity training. The content would include both generic content applicable to all of the domains, as well as domain-specific content.

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26. USCMA further said that the Administration expected that the draft training resources would be available for trial use in the fourth quarter of 2017 and would be fine-tuned where necessary in the light of the trial. Upon the formal launch of the training resources next year, the Administration would conduct train-the-trainers sessions and upload the entire resources package onto an e-platform. The Administration would also encourage the professions concerned to include the sensitivity training as part of their regular pre-service or in-service training as appropriate. Mr Nathan LAW requested the Administration to strengthen sensitivity training for social workers and teachers, in particular, as young people who encountered discrimination problems in this area would likely turn to them to seek their professional support.

VI. Any other business

27. There being no other business, the meeting ended at 4:34 pm.

Council Business Division 2
Legislative Council Secretariat
13 July 2017