

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)2013/16-17
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 19 June 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 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 LAM Cheuk-ting
Hon CHAN Chun-ying
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon Nathan LAW Kwun-chung

Members attending : Hon WU Chi-wai, MH
Dr Hon Elizabeth QUAT, JP

Members absent : Hon Dennis KWOK Wing-hang
Dr Hon Helena WONG Pik-wan
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon Tanya CHAN
Hon Kenneth LAU Ip-keung, MH, JP
Hon KWONG Chun-yu
Dr Hon LAU Siu-lai

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public Officers attending : Item IV

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

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

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

Mr Jason PUN
Assistant Government Chief Information Officer (Cyber
Security and Standards)
Office of the Government Chief Information Officer

Office of the Privacy Commissioner for Personal Data

Mr Stephen WONG Kai-yi
Privacy Commissioner for Personal Data

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)1646/16-17]

The minutes of the meeting held on 19 April 2017 were confirmed.

II. Information paper(s) issued since the last meeting
[LC Paper No. CB(2)1542/16-17(01), CB(2)1631/16-17(01) to (02) and
CB(2)1660/16-17(01)]

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

- (a) letter dated 29 May 2017 from Mr LUK Chung-hung;
- (b) joint letter dated 12 May 2017 from Mr Charles Peter MOK, Mr Dennis KWOK and Ms Tanya CHAN and the Clerk's reply letter; and

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- (c) Equal Opportunities Commission's response to the letter dated 29 May 2017 from Mr LUK Chung-hung.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1655/16-17(01) and (02)]

3. Members agreed to discuss the following items proposed by the Administration at the next meeting on 17 July 2017 at 2:30 pm:

- (a) review of operation of polling and counting stations of District Council ("DC") and Legislative Council ("LegCo") elections; and
- (b) review of the number of elected seats for the sixth-term DCs.

4. Mr LAM Cheuk-ting said that at a previous meeting, he had expressed concern about the lack of progress of the current-term Government in amending sections 3 and 8 of the Prevention of Bribery Ordinance (Cap. 201) ("POBO") to cover the office of the Chief Executive ("CE"), and had requested for discussion of the subject no later than June 2017. He expressed disappointment that the Panel was not able to discuss the subject before the expiry of the incumbent CE's term of office.

5. The Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") said that as the issue fell within the purview of the Administration Wing, Mr LAM's request had been relayed to the Administration Wing. With reference to item 6 on the list of outstanding items for discussion, the Chairman said that the Administration Wing had written to the Panel on 8 May 2017 advising that as the proposed amendments to POBO might have implications on the provisions about the political structure of the Hong Kong Special Administrative Region and the constitutional status of CE as prescribed in the Basic Law, the Administration had been studying comprehensively the relevant constitutional and legal requirements as well as operational issues concerned. Upon completion of the study, the Administration would report to LegCo and initiate legislative procedure at the appropriate juncture. Mr LAM Cheuk-ting considered it unacceptable that the study conducted by the Administration Wing had continued for five years and was still ongoing. The Chairman said that he would seek a reply from the Administration Wing on the timetable for the study.

(Post-meeting note: The Administration's reply letter dated 7 July 2017 was issued to members vide LC Paper No. CB(2)1847/16-17(01).)

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IV. Design of ballot papers for Legislative Council elections

[LC Paper Nos. CB(2)1619/16-17(01) and CB(2)1655/16-17(03)]

Discussion

6. Mr LAU Kwok-fan and Dr CHIANG Lai-wan opposed deleting photos of candidates and the registered emblems of prescribed bodies from the ballot paper, as they considered that many electors recognized candidates by their photos and their political party emblems when casting their votes. Mr LAU said that in case two candidates of the same names appeared on a ballot paper, electors might have difficulties to differentiate the two candidates if only their names and assigned numbers were shown on the ballot paper. Ms Alice MAK believed that proposals to delete photos and registered emblems would not be supported by members. She considered that these particulars were important to enable electors to recognize candidates and decide which candidate to vote for on the polling day. She proposed that the Administration should tackle the problem by application of information technology ("IT") instead of reducing the particulars of candidates currently printed on a ballot paper. Mr CHEUNG Kwok-kwan shared the above views and opined that in facilitating the work of the Electoral Affairs Commission ("EAC"), the interests of electors must not be compromised.

7. Mr POON Siu-ping enquired about the Administration's position on the three proposed options set out in its paper. DSCMA said that the Administration had an open position on the matter and would carefully consider members' views and comments before exploring with EAC whether it was necessary to revise the existing legislation. In reply to Mr CHAN Chun-ying's enquiry, DSCMA said that the Administration was unable to identify computer devices which could cater for the ballot papers for geographical constituency ("GC") at its current size of 440 mm (in width) x 458 mm (in length) at maximum. She pointed out that without any change to candidates' particulars that might be printed on a ballot paper, it could only contain the information of no more than 24 candidate lists for GCs. If the number of candidate lists for a GC election increased to more than 24 in the future, further reducing the font size of the content of a ballot paper would make it extremely difficult to read.

8. Mr CHAN Chun-ying requested the Administration to elaborate its suggestion mentioned in the paper of displaying information of candidates at the polling stations for electors' reference when they cast the votes. DSCMA said that if any of the options set out in the Administration's paper was accepted by the Panel, the Administration would explore displaying prominently information of candidates, including their photos and/or

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particulars other than photos, at an appropriate place inside the voting compartment for electors' reference when they cast the votes, so as to ensure that electors could identify candidates clearly. Ms Alice MAK expressed concern whether electors would need to take some time to read the information of candidates, thus prolonging the voting process.

9. Mr Alvin YEUNG considered that the Administration should study the rationale for the design of a ballot paper as well as overseas experience in exploring changes to be made to the existing design of ballot papers. He noted that in Florida, the font size of the content of a ballot paper was prescribed by law to be 10; and in Victoria in Australia, the maximum size of a ballot paper was one metre long to cater for the large number of candidates. Ms Claudia MO opposed the option of deleting the photos of candidates as candidates' photos could facilitate easy identification by electors. She added that it might be necessary to disallow the use of heavy make-up by candidates.

10. Mr LAM Cheuk-ting opined that the nomination threshold for the GC elections was too low, which had given rise to the large numbers of candidates/lists of candidates. He pointed out that in the 2016 LegCo General Election, there were 24 candidates who had obtained less than 3 000 votes. Some candidates might make use of the election campaigning to actually promote himself/herself or to promote his/her businesses. In this connection, he considered that the nomination threshold should be raised and the "equal time principle" should be abolished. DSCMA said that ensuring the right to take part in elections was an important principle to be safeguarded.

11. Dr CHENG Chung-tai recalled that in the last LegCo election, the photos of some candidates printed on the ballot papers contained the word "self-determination", which was shown on the clothing of the candidate(s) concerned. He opposed the options put forward by the Administration and queried whether there was any political motive behind. Mr CHAN Chi-chuen asked what the Administration would do in case members were of the unanimous view that the photos and other particulars of candidates currently printed on the ballot papers were not to be deleted. He said that consideration might be given to allowing the photos of only the first two or three candidates on a candidate list to be printed on the ballot papers.

12. DSCMA dismissed that there was any political motive behind the Administration's proposals. She said that the Administration had come up with the three options in a bid to follow up on the EAC's recommendation that the possibility of reducing the particulars of candidates currently printed on a ballot paper for LegCo elections should be considered, e.g. by deleting the

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photos of candidates. The background to the recommendation was set out in paragraphs 5 to 9 of the Administration's paper.

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13. The Deputy Chairman said he noted that in the United Kingdom ("UK") and the United States, at least the candidates' names and political party emblems were printed on the ballot papers. He said that in Hong Kong since the 2004 LegCo Election, ballot papers had contained photos of candidates and the registered emblems of prescribed bodies and electors had got used to this, he did not support any of the three options put forward by the Administration. He suggested that the Administration should discuss with EAC on the feasibility of introducing electronic vote counting. Dr CHIANG Lai-wan also requested the Administration to explore the suggestion to enhance efficiency. The Chairman and Mr POON Siu-ping considered that introducing electronic voting might help resolve most of the problems, and requested the Administration to explore the feasibility. DSCMA said that the Administration had studied the relevant experience in overseas jurisdictions, e.g. Australia, New Zealand, Canada, Singapore and UK, and none of these countries adopted electronic voting or counting. In view of members' suggestions, DSCMA undertook to provide preliminary views of the Administration at the next meeting.

14. Mr Nathan LAW also considered that the Administration should consider the application of IT to overcome the problems with ballot papers that had emerged in recent years. He did not support any of the three options put forward by the Administration. Regarding the Administration's suggestion of displaying the candidates' information at the polling stations, Mr LAW considered it difficult to monitor whether such information had been tampered with. DSCMA advised that the Administration would continue to discuss with relevant stakeholders and explore overcoming the problems by application of IT.

15. Mr Jeffrey LAM said that in the last LegCo election, there were 22 lists of candidates for the New Territories East GC. As a result, the ballot paper was already very long and large and this was not environmentally friendly. He, however, was concerned that without candidates' photos and political party emblems, it would be difficult for illiterate electors to identify the candidates when casting their votes.

16. Mr WU Chi-wai said that one of the reasons for proposing the change to the current design of ballot papers was related to the vote counting arrangement. He believed that the confusion occurred in the central counting arrangement for the DC (second) functional constituency ("FC") could be avoided if the polling-cum-counting arrangement was also adopted for the DC (second) FC, so as to obviate the need to transport the ballot boxes

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and help expedite the counting process. He requested the Administration to explore in this direction. DSCMA took note of the suggestion.

V. Report of the Task Force on the Computer Theft Incident of the Registration and Electoral Office and Investigation Report on the Loss of Registration and Electoral Office's Notebook Computers containing Personal Data of Election Committee Members and Electors published by the Privacy Commissioner for Personal Data [LC Paper Nos. CB(2)1619/16-17(02), CB(2)1650/16-17(01) and CB(2)1655/16-17(04)]

17. The Secretary for Constitutional and Mainland Affairs ("SCMA") apologized for the inconvenience and distress caused to registered electors by the computer theft incident of the Registration and Electoral Office ("REO"). He said that REO would fully implement the recommendations made by the Task Force on REO Computer Theft Incident ("the Task Force"), which covered areas including the handling of personal data, IT security, overall security arrangements for election venues, as well as the internal supervision and review system of REO. In addition, REO would duly follow up on all directions and recommendations in the investigation report of the Privacy Commissioner for Personal Data ("the Privacy Commissioner") so as to prevent recurrence of similar incidents. DSCMA briefed members on the key findings and recommendations of the Task Force [LC Paper No. CB(2)1695/16-17(01)].

18. Members noted that having considered all the information obtained from his investigation, the Privacy Commissioner found that REO failed to take all reasonably practicable steps in consideration of the actual circumstances and needs to ensure that the personal data of electors were protected from accidental loss, and hence contravened the Data Protection Principle 4(1) (Data Security Principle) of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). The Privacy Commissioner said that pursuant to section 50(1) of PDPO, an enforcement notice was served on REO on 12 June 2017 requiring REO to remedy and prevent any recurrence of the contravention. REO had been directed to prohibit the downloading or use of GC electors' personal data (except their names and addresses) for the purposes of handling enquiries in CE elections; and issue notice on this to its staff members on a regular basis. On 16 June 2017, REO had confirmed that it had issued the relevant notice as directed to its staff members accordingly. He further said that REO had also been directed to set internal guidelines in respect of the processing of personal data in all election-related activities, and his Office would render assistance to REO if necessary. He added that his

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Office had also informed complainants concerned of the investigation result on 12 June 2017.

Discussion

Findings of the Task Force

19. Some members, including Mr LAM Cheuk-ting, Ms Claudia MO, Dr Elizabeth QUAT, Mr LAU Kwok-fan, Mr Charles MOK and Mr CHAN Chi-chuen, considered it unacceptable that the Report of the Task Force failed to pinpoint responsibility in the incident or address the question of accountability. Dr QUAT said that while the Task Force had given an account of the incident, it did not reveal the causes such as why the relevant data were brought to the fallback venue, and there was also no information on the persons who held the keycards for access to the room where the two missing computers were stored. Dr QUAT and Mr CHAN Chi-chuen considered it unacceptable that REO had simply followed the practice of past elections for handling of personal data and venue security. Dr QUAT considered that the improvement measures set out in the Report of the Task Force should have been implemented by REO for the 2017 CE Election. Mr CHAN Chi-chuen said that a motion was passed by the Panel at the special meeting on 11 April 2017 urging that the relevant officials be held accountable for the incident. He urged the Administration to respond to that. Referring to his letter [LC Paper No. CB(2)1665/16-17(01)] dated 15 June 2017 which was addressed to SCMA and copied to the Panel, Mr Charles MOK said that he was dissatisfied with the Report of the Task Force for its failure to pinpoint responsibility.

20. SCMA said that since the occurrence of the incident, he had on different occasions apologized to the public for any inconvenience caused by the incident and the inadequacies in relevant arrangements. He explained that the Task Force was tasked to find out the reasons leading to the incident and to make recommendations on improvement measures, but not to conduct investigation under the civil service disciplinary procedures. Nevertheless, as some of the factual narratives and observations in the Report of the Task Force could reflect inadequacies in compliance with government regulations and guidelines, the Task Force recommended that consideration be given as to whether relevant performance appraisal or disciplinary action procedures would be initiated in respect of the relevant officers and their supervisors. He pointed out that insofar as disciplinary actions were concerned, the Civil Service Bureau would also be involved in accordance with the established mechanism. In response to Mr Christopher CHEUNG's enquiry, the Chief Electoral Officer ("CEO") said that an internal investigation would be

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Admin conducted. Should there be any evidence of breach of internal regulations, disciplinary action would be taken in accordance with the established procedures. Mr Christopher CHEUNG requested the Administration to report the outcome to the Panel in due course.

21. Mr Charles MOK considered it unacceptable that the Report of the Task Force had put the blame entirely on the frontline staff. SCMA said that the Task Force had also pointed out in the Report that there were inadequacies in the internal monitoring and coordination amongst divisions of REO, and the Task Force had recommended that measures be taken to ensure accountability.

Handling of personal data of electors

22. Mr Jeffrey LAM said that the incident revealed that there were inadequacies in the handling of electors' personal data by REO. He questioned the need to bring the notebook computers containing the personal data of about 3.8 million GC electors to the fallback venue at the Asia World-Expo ("AWE") as only 1 194 Election Committee members were listed as electors for the 2017 CE election. Mr Christopher CHEUNG asked whether the Administration had considered the risk that might arise from bringing such a large volume of personal data out of REO office premises. Mr LAU Kwok-fan considered that it was not because of insufficient guidelines to be followed, but the lack of common sense in the handling of the relevant work.

23. Noting the result of the investigation of the Office of the Privacy Commissioner, Dr Priscilla LEUNG considered that REO should review and devise appropriate procedures in the handling of personal data of electors and related work processes. The Privacy Commissioner advised that in the incident, the claimed effectiveness of the need for storing personal data of all electors was not proportional to the associated risks. The security measures adopted by REO were not proportional to the degree of sensitivity of the data and the harm that might result from a security incident either. REO was directed to, among others, set internal guidelines in respect of the processing of personal data in all election-related activities and ensure staff's compliance with such guidelines.

24. SCMA said that the Task Force was also of the view that there were inadequacies in the observance of the relevant guidelines and regulations stipulated by the Government for REO's handling of personal data, IT security, and general security. The Task Force had recommended, among others, that the Electors Information Enquiry System ("EES") which contained the information of about 3.78 million GC electors should not be used in CE elections.

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Information technology security

25. Regarding EES, Mr CHAN Chun-ying sought information on the responsible department and the rank of officers to authorize the use and download of such information. CEO said that the system was developed by REO and in previous elections, the system was set up at dedicated polling stations in police stations to verify the identity of the detainee electors. REO would follow up on relevant approval procedures for the handling of personal data in accordance with the Report of the Task Force and the investigation report of the Privacy Commissioner. Mr CHAN expressed concern that according to the Report of the Task Force, the fact that EES was loaded with data of all GC electors was not known beforehand by the senior management of REO. CEO replied that a staff member made a "User Requirement" for the system be made available at the fallback site and the Information Technology Management Unit then handled the "User Requirement" to prepare for the relevant IT equipment. In response to Mr CHAN's enquiry on how proper authorization for use of the system would be ensured in future, DSCMA briefed members on the recommendations to further enhance the IT security as set out in paragraph 51 of the Report of the Task Force.

26. Referring to paragraph 18 of the investigation report of the Privacy Commissioner, Ms Claudia MO requested information in relation to the approval of the use of the computer system containing all electors' personal data for the first time in the 2007 CE Election. CEO said that such information was not available.

27. Mr Charles MOK said that it was pointless for the Administration to stress that the data had undergone multiple encryptions and was difficult to crack, as the way how REO handled the passwords of notebook computers had undermined their effectiveness. He criticized that such an important issue was not dealt with in the Report of the Task Force. He noted that the Privacy Commissioner had also covered the handling of the passwords in the investigation report.

Venue security

28. Referring to paragraph 31 of the Task Force Report, Mr LAM Cheuk-ting expressed concern that the computer containing the personal particulars of three million electors had been stored in Room 107 of AWE with no dedicated CCTV, no security staff assigned to guard the computers, and that REO had no knowledge about the persons who held the keys to the locks in relation to that room. CEO said that he only had information on the

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staff of REO who had the keycards for access to Room 107, but no information on which staff of AWE had access to the room. He added that there was a pantry connecting to Room 107 and a door in the pantry provided access to the corridor outside Room 107, and this door had a physical lock.

29. Mr Jeffrey LAM said that the Administration should examine and review relevant security arrangements, and consult the Security Bureau regarding the safe custody of electors' personal data to prevent recurrence of similar incident. He said that the Administration should implement measures to safeguard the security of such important information to restore public confidence. Mr LAU Kwok-fan asked whether the Administration had followed up with AWE regarding the missing computers.

30. SCMA said that the Task Force had pointed out that there were inadequacies for the security arrangements of the entire fallback venue (including Room 107) on 25 and 26 March 2017. DSCMA supplemented that the Task Force considered that there were shortcomings in several areas of the security arrangements. It was recommended that REO should establish formal procedures for endorsing overall venue security plans for public elections, and seek advices from relevant Police formations according to different purposes and scope of expertise. The Task Force noted that REO staff had placed their trust on AWE as venue management to ensure venue security, including prevention of unauthorized access to Room 107, especially during the time when REO staff had all left the site. In hindsight, the Task Force considered it neither desirable nor fair to place the responsibility solely on AWE. It would be advisable for REO to take the initiative to request additional security measures be put in place by the venue management in future public elections.

The institutional aspect

31. Mr LAU Kwok-fan said that he did not support any recommendations to expand the staff establishment of REO, as he did not see any purpose it could serve. Regarding the recommendation that the post of the Principal Electoral Officer ("PEO") should be made permanent, Dr Elizabeth QUAT enquired whether the position would be taken up by a professional personnel with relevant expertise.

32. DSCMA said that PEO was a supernumerary post at present. The Task Force recommended that the post of PEO should be made permanent, so that a proper hierarchy within REO could be maintained at all times and PEO could assist CEO to review the preparation and organization of public elections after an election cycle, so as to help preserving institutional memory

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in between different election cycles. As the Task Force had recommended that REO should develop a comprehensive privacy management programme to enhance accountability for personal data protection, relevant professionals would be engaged in this regard. As such, there might not be a need for the PEO post to be taken up by a professional personnel.

33. Mr CHAN Chi-chuen said that he did not subscribe to the view that the PEO post should be made permanent as a remedial measure to address the errors relating to the incident. In his view, the incumbent post-holder should be held accountable for the incident since the supernumerary post was created to take charge of relevant arrangements for the 2017 CE Election.

34. Members noted that Mr Alvin YEUNG indicated intention to move a motion under this item. The Chairman said that as he had said earlier, he would be unable to extend the meeting due to other commitments. As such, there was insufficient time to deal with the motion. In response to Mr YEUNG's request for his motion be carried forward to the next meeting, the Chairman said that he would consider it and ask the Clerk to give him a written reply.

Clerk

(Post-meeting note: On the instruction of the Chairman, a written reply was issued to Mr Alvin YEUNG on 22 June 2017.)

VI. Any other business

35. On behalf of the Panel, the Chairman thanked SCMA for his support and efforts rendered to the work of the Panel. The Chairman wished him all the best in the future.

36. There being no other business, the meeting ended at 4:26 pm.

Council Business Division 2
Legislative Council Secretariat
11 August 2017