

立法會
Legislative Council

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LC Paper No. CB(2)517/18-19
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

**Minutes of policy briefing cum meeting
held on Monday, 15 October 2018, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon CHEUNG Kwok-kwan, JP(Chairman)
Hon LUK Chung-hung, JP (Deputy Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
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
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, SBS, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon Tanya CHAN
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai

Hon AU Nok-hin

Members attending : Dr Hon KWOK Ka-ki
Dr Hon Elizabeth QUAT, BBS, JP
Hon CHAN Chun-ying, JP

Members absent : Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Han-pan, BBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Ir Dr Hon LO Wai-ki, SBS, MH, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HUI Chi-fung
Hon Kenneth LAU Ip-keung, BBS, MH, JP

Public Officers attending : Item III

Mr Patrick NIP Tak-kuen, JP
Secretary for Constitutional and Mainland Affairs

Mr Roy TANG Yun-kwong, JP
Permanent Secretary for Constitutional and Mainland Affairs

Mr Andy CHAN Shui-fu, JP
Under Secretary for Constitutional and Mainland Affairs

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

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

Item IV

Mr Andy CHAN Shui-fu, JP
Under Secretary for Constitutional and Mainland Affairs

Ms Cherie YEUNG Lok-sze
Principal Assistant Secretary for Constitutional and
Mainland Affairs

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

Mr Raymond WANG Man-chiu
Principal Electoral Officer
Registration and Electoral Office

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

Mr Dennis HO
Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

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

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

II. Items for discussion at the next meeting

[Appendices II and III to LC Paper No. CB(2)5/18-19]

2. Members agreed to discuss and receive public views on "Outcome of the hearing of the Report of the Hong Kong Special Administrative Region ("HKSAR") by the United Nations Committee on the Elimination of Racial

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Discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination" proposed by the Administration at the next meeting on 19 November 2018 at 2:30 pm.

III. Briefing on the Chief Executive's 2018 Policy Address

[LC Paper No. CB(2)25/18-19(01)]

3. The Secretary for Constitutional and Mainland Affairs ("SCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)25/18-19(01)].

(Post-meeting note: the speaking note of SCMA was issued to members vide LC Paper No. CB(2)89/18-19(01) on 16 October 2018.)

Discussion

Nomination in Legislative Council elections

4. Dr KWOK Ka-ki expressed concern about the power of the Returning Officers ("RO") in determining whether a candidate's nomination was valid. He criticized that the Administration had blatantly contravened Article 39 of the Basic Law ("BL 39") and Article 25 of the International Covenant on Civil and Political Rights in disqualifying Ms LAU Siu-lai's candidacy in the 2018 Legislative Council ("LegCo") Kowloon West ("KW") Geographical Constituency ("GC") By-election, and that the RO's decision had raised questions about whether a person was to be barred from standing for election for life because of the political beliefs he or she once held. Ms Claudia MO opined that a decision should not be made by RO until a candidate had been given a reasonable chance to respond to any evidence RO was relying on. She asked whether Ms LAU Siu-lai would no longer be eligible to seek candidature in all future public elections.

5. SCMA said that in accordance with sections 38(5) and 42A of the Legislative Council Ordinance (Cap. 542) ("LCO") and section 16 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) ("EAC(EP)(LC) Regulation"), whether a candidate's nomination was valid or not was determined by RO according to the legal requirements and relevant procedures. All public officers responsible for electoral affairs, including RO, had all along strictly adhered to the Basic Law, relevant legislation and legal advice, as well as the principles of political neutrality and impartiality, in the due execution of their public duties.

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They would adopt the same principles in handling matters relating to the upcoming LegCo KW GC By-election, in order to ensure that the By-election would be conducted in an open, fair and honest manner in strict accordance with the law. Depending on the actual circumstances of each case, RO might seek legal advice and might, where necessary, require the candidate to furnish additional information that he/she considered appropriate according to section 10(10) of the EAC(EP)(LC) Regulation, so as to satisfy himself/herself as to the eligibility of the candidate or the validity of the nomination. Any person seeking candidature who did not agree with the RO's decision might lodge an election petition in accordance with LCO.

6. SCMA further explained that "self-determination" or advocating "independence could be an option for Hong Kong" was inconsistent with the constitutional and legal status of HKSAR as stipulated in the Basic Law, as well as the established policies of the People's Republic of China ("PRC") regarding Hong Kong. He stressed that upholding the Basic Law was a basic legal duty of a legislator. If a person advocated or promoted "self-determination" or "independence could be an option for Hong Kong", he or she could not possibly uphold the Basic Law or fulfil his or her duties as a legislator, and could not possibly comply with the requirement of LCO that required a candidate to make a declaration to uphold the Basic Law and pledge allegiance to HKSAR.

7. Mr IP Kin-yuen expressed concern about whether the principle of procedural fairness was compromised in the case of Ms LAU Siu-lai as she had not been given the chance to defend herself. Pointing out that BL 26 clearly stated that permanent residents of HKSAR had the right to vote and the right to stand for election in accordance with the law, and that Article 34 of the Constitution of the People's Republic of China ("the Constitution") also contained a similar provision, he stressed that such constitutional rights should not be taken away easily. He considered that the relevant ruling should be made by a judge instead of an Administrative Officer. He requested the Administration to review the relevant nomination procedures.

8. SCMA said that he would not comment on individual cases. Referring to the Court of First Instance's recent judgment in respect of an election petition lodged against the results of the 2016 LegCo General Election, SCMA reiterated that in accordance with LCO, ROs were empowered to determine whether the declaration made by a candidate in the nomination form that he/she would uphold the Basic Law and pledge allegiance to HKSAR was genuine, thereby deciding whether the relevant nomination was valid.

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Electoral arrangements and voter registration

9. In response to Ms Alice MAK's enquiry, SCMA said that the Administration was studying the feasibility of introducing electronic counting of votes in the 2020 LegCo General Election and would report the outcome to the Panel in due course. Ms MAK further requested the Administration to clarify the voting eligibility of Hong Kong permanent residents who had moved to reside in the Mainland but commuted to Hong Kong to work. SCMA said that the Administration was conducting a study on the eligibility of voter registration ("VR") for permanent residents residing outside Hong Kong, and would revert to the Panel in due course.

10. Dr CHIANG Lai-wan expressed concern about the slow growth in VR rate in recent years. She requested the Administration to take further measures to boost the VR rate. SCMA said that efforts were made to promote VR in both election and non-election years. The Administration would tailor-make its publicity measures targeting different age groups to appeal to eligible persons to register as electors. Deputy Secretary for Constitutional and Mainland Affairs added that as a new round of smart Identity Card replacement exercise would soon be commissioned, the opportunity would be taken to encourage members of the public to register as electors when they visited the Registration of Persons Offices to change their identity cards.

Constitutional development

11. Dr Helena WONG and Mr LAM Cheuk-ting asked what specific measures the Administration would take to create a social climate conducive to taking forward political reform. SCMA said that the selection of the Chief Executive ("CE") by universal suffrage was the ultimate aim under the Basic Law and he hoped that it could be achieved as soon as practicable. However, the Government had to evaluate the prevailing situation responsibly and could not ignore the reality that the political reform package had been voted down in the last-term Government. Therefore, for the time being, the Administration would work towards creating a favourable social atmosphere for taking forward political reform. To promote exchange between LegCo Members and the Mainland officials, arrangement had been made for LegCo Members to visit the Greater Bay Area in April 2018. In response to Mr LAM's enquiry, SCMA said that there was currently no timetable for the legislative work on BL 23.

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Promotion of the Constitution and the Basic Law

12. The Deputy Chairman considered that the Government should step up promotion of the Constitution and the Basic Law, including the relationship between Central authorities and the HKSAR Government. He asked what specific measures the Basic Law Promotion Steering Committee would take and whether there were performance indicators. Mr AU Nok-hin asked whether the inclusion of the Constitution as part of the promotional work of the Basic Law in this year's Policy Address indicated a change in policy.

13. SCMA replied that the Constitution and the Basic Law together formed the constitutional basis of HKSAR and provided strong safeguard for the long-term prosperity and stability of Hong Kong. The HKSAR Government had the responsibility to let the general public have a comprehensive understanding of the Constitution and the Basic Law. SCMA further said that while the Administration attached great importance to the promotion and education on the Constitution and the Basic Law, it would be difficult to set performance indicators in this regard. He pointed out that the Administration had been actively promoting the Constitution and the Basic Law via different channels in order to enable the public to have a comprehensive and thorough understanding of the Constitution, the Basic Law, and the "one country, two systems" principle.

14. Mr Jeffrey LAM and Dr Priscilla LEUNG considered that public understanding of the importance of safeguarding national security should be enhanced. SCMA said that the Administration would strengthen promotion of the Constitution and the Basic Law to help dispel misconceptions about "Hong Kong independence".

Eliminating discrimination on grounds of sexual orientation and gender identity

15. Referring to the first sentence in paragraph 251 of the 2018 Policy Address, Mr CHAN Chi-chuen questioned the need to mention that the HKSAR Government had been committed to promoting equal opportunities for people of different sexual orientations and transgender persons "*on the basis of upholding the existing institution of monogamy and heterosexual marriage*". Mrs Regina IP shared Mr CHAN's views. SCMA explained that the cited words just stated the objective facts of the marriage institution in Hong Kong. Mr CHAN further said that since the proposal of enacting legislation to outlaw discrimination on grounds of sexual orientation and gender identity had gained 70% of public support, the Administration should

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take forward the legislative exercise. Mrs Regina IP said she noted that young people in particular supported the proposal.

16. SCMA said that the study being conducted by the Administration on the experience of other jurisdictions' legislative and administrative measures to eliminate such discrimination was expected to be completed in the first half of 2019. The findings would provide more information to facilitate a more in-depth discussion in the community on the issue.

17. Dr Priscilla LEUNG declared 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 and eliminating discrimination on grounds of sexual orientation and gender identity by means of administrative measures. She said that as learnt from overseas experience, enacting the proposed legislation might result in "reverse discrimination". She considered that the current approach taken by the Government had struck the appropriate balance in upholding stakeholders' interests.

18. Noting that the Administration would provide training targeting medical and healthcare professionals to enhance their knowledge of and sensitivity towards sexual minorities, Mrs Regina IP pointed out that overseas research studies had already confirmed that homosexuality was not an illness. She suggested that the education sector should, instead, be targeted to eliminate discrimination in this regard.

19. SCMA explained that the Administration would launch training resources targeting medical and healthcare professionals to enhance their knowledge of and sensitivity towards sexual minorities as well as encouraging the concerned professional organizations to include the training resources as part of their regular pre-service or in-service training. The next phase of training would be targeting the social welfare sector, the education sector and the general public. The Administration would take into account members' views in formulating the training resources.

20. Mrs Regina IP said that Hong Kong would be the host of the 2022 Gay Games and asked whether the Government would provide assistance to the organizer. SCMA replied that the event was organized by a non-governmental organization and the relevant government departments would handle any application in accordance with the established practice.

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The Government would facilitate liaison with relevant government departments as appropriate.

Local legislation to implement the National Anthem Law

21. Dr CHIANG Lai-wan enquired about the timetable for introducing the local legislation to implement the National Anthem Law. SCMA responded that the law drafting work was underway and the Administration aimed to submit the Bill to LegCo for scrutiny by the end of 2018 or early 2019.

Prevention of Bribery Ordinance

22. Dr CHENG Chung-tai enquired about the progress of amending the Prevention of Bribery Ordinance (Cap. 201) so as to extend its sections 3 and 8 to the office of CE. He considered the amendment important in order to guard against a possible transfer of interests that might be involved in massive reclamation projects. SCMA said that there was no progress of work as the issue was complicated. Dr CHENG further asked whether the proposed amendment would be made within the tenure of the incumbent CE. SCMA said that the Administration did not have a timetable yet.

Support measures for ethnic minorities

23. Ms Alice MAK welcomed the new initiative of replacing the original flat-rate subsidy for kindergartens admitting eight or more non-Chinese speaking ("NCS") students with a five-tiered subsidy for different levels of NCS student admission. She enquired about the timetable for implementing the new initiative of extending the application of the Administrative Guidelines on Promotion of Racial Equality ("the Administrative Guidelines") to all policy bureaux and departments as well as related organizations providing services to ethnic minorities ("EMs"). SCMA advised that the plan of the Government was to improve the Administrative Guidelines by 2019 and then apply it to all government bureaux and departments as well as related organizations. A steering committee chaired by the Chief Secretary for Administration had been formed to coordinate, review and monitor work in enhancing the support for EMs. Ms MAK further enquired whether the relevant authorities would keep statistics on the ethnicities of service users for evaluation and service review. SCMA replied that the collection of relevant statistical data would be strengthened to facilitate service evaluation.

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Other issues

24. Mr CHU Hoi-dick said that the Chinese People's Liberation Army ("PLA") were reportedly sent to Hong Kong's country parks to help clean-up after the Typhoon Mangkhut. He pointed out that section 14 of the Law of PRC on the Garrisoning of HKSAR ("Garrison Law") stipulated that PLA could only be called out to help with disaster relief if requested by the HKSAR Government. He further said that section 19 of the Garrison Law stipulated that PLA stationed in Hong Kong should abide by the laws of Hong Kong, and under the Country Parks Ordinance (Cap. 208), no one was allowed to cut, pick or uproot any plant from the country parks except in accordance with a permit in writing granted by the Authority. He expressed concern about whether PLA's participation in clearing branches of uprooted trees from country parks might have breached the law.

25. SCMA said that while the Government did not request this help, he noted that it was a voluntary community service and the organizer had liaised with the Agriculture, Fisheries and Conservation Department on the arrangements.

IV. Practical arrangements for the 2018 Legislative Council Kowloon West Geographical Constituency By-election
[LC Paper Nos. CB(2)35/18-19(01) and (02)]

26. With the aid of PowerPoint, the Under Secretary for Constitutional and Mainland Affairs ("USCMA") and the Chief Electoral Officer ("CEO") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)35/18-19(01)].

(Post-meeting note: the PowerPoint presentation materials were issued to members vide LC Paper No. CB(2)88/18-19(01) on 16 October 2018.)

Discussion

Polling arrangements

27. In response to Mr AU Lok-hin's enquiry on polling stations, USCMA said that the Registration and Electoral Office ("REO") would use the same venues as far as possible for setting up polling stations as in the 2018 LegCo By-election held in March ("the last by-election") for the registered electors in KW GC to cast their votes. Mr AU reminded the Administration that

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confusion would be caused to electors if they were assigned to a different polling station to cast their votes in each public election.

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28. Mr Paul TSE enquired about the voter turnout rates at the dedicated polling stations set up at penal institutions of the Correctional Services Department and police stations during the 2016 LegCo General Election and the last by-election as he was concerned about the cost-effectiveness of relevant arrangements. CEO undertook to follow up on Mr TSE's enquiry after the meeting. In response to Mr Paul TSE's further enquiry, USCMA said that the total expenditure for the last by-election was estimated to be about \$200 million whereas the budget for the upcoming by-election was about \$60 million.

Statistical Information Centre and Media Centre

29. Members noted that a Statistical Information Centre would be set up at the Kowloonbay International Trade and Exhibition Centre ("KITEC") to collect and consolidate voter turnout statistics and counting results, while a Media Centre would be set up at the Tiu Keng Leng Sports Centre in the upcoming by-election. In response to Mr Paul TSE's enquiry on why the two centres were not both set up in KW and at the same venue in order to facilitate manpower deployment and security arrangements, CEO explained that the Statistical Information Centre was to be set up at REO's current office in KITEC so that no additional cost would be incurred. As for the Media Centre, CEO said that it was the most suitable venue available on the day.

"Introduction to Candidates" leaflets/booklets

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30. Noting that each list of candidates in the 2012 and 2016 LegCo general elections was given two A4 pages to present the candidates' election platforms and candidatures in the "Introduction to Candidates" leaflets/booklets, Dr Helena WONG queried why each candidate was only allocated 1/4 of an A4 page in the said leaflets/booklets in the last by-election and the upcoming by-election despite the smaller number of candidates involved. CEO explained that in LegCo GC by-elections, as only one Member would be returned in the GC concerned generally, there was only one candidate in each list of candidate. Therefore, the size allocated to each list of candidate of LegCo GC by-elections in the said leaflets/booklets was suitably adjusted to provide 1/4 of an A4 page for each list of candidate to set out their information. He undertook to clarify the matter and provide more information after the meeting.

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Security matters

31. In response to Dr CHENG Chung-tai's enquiry, CEO said that the Police's investigation into the computer theft incident of REO was still in progress. CEO further said that as a follow-up to the incident, REO had updated its internal guidelines on the handling of personal data. REO would strictly follow the internal physical and technical security guidelines governing the use of personal data only on a "need-to-know" and "need-to-use" basis and provide sufficient training to staff in handling personal data and security matters, etc.

Nomination matters

32. Dr Helena WONG requested the Administration to explain the criteria adopted by RO in determining whether a candidate's nomination was valid. She questioned why the RO concerned had not sought clarification or response from Ms LAU Siu-lai before making the decision of disqualification. She also asked under what circumstances that a person whose candidature had been disqualified could become eligible to seek candidature in future elections. Mr LAM Cheuk-ting said that it was not uncommon for a person to change his/her political stance. He considered it grossly unreasonable that the RO concerned had deprived the right of Ms LAU Siu-lai to stand for election without even giving her a chance to respond or defend her stance.

33. Mr CHAN Chi-chuen said that according to the Court of First Instance's recent judgment in respect of an election petition lodged against the results of the 2016 LegCo General Election, RO should make the decision of disqualification after giving the candidate an opportunity to respond as required by the principle of procedural justice. He asked whether the Department of Justice had reminded the RO concerned to have regard to this principle in handling Ms LAU Siu-lai's case.

34. USCMA made the following response to members' views and concerns :

- (a) in accordance with LCO, RO had the power to determine whether the declaration made by a candidate in the nomination form that he/she would uphold the Basic Law and pledge allegiance to HKSAR was genuine, thereby deciding whether the relevant nomination was valid. Depending on the actual circumstances of each case, RO might seek legal advice and

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might, where necessary, require the candidate to furnish additional information that he considered appropriate according to section 10(10) of EAC(EP)(LC) Regulation, so as to satisfy himself as to the eligibility of the candidate or the validity of the nomination. RO would, in accordance with the law and having considered the relevant information, decide whether or not a person was validly nominated as a candidate;

- (b) while he would not comment on individual cases, any decision of RO to invalidate a candidate's nomination and the reasons for such decision would be made available for public inspection in accordance with LCO. Any person seeking candidature who did not agree with the RO's decision might lodge an election petition; and
- (c) referring to the Court of First Instance's recent judgment cited by Mr CHAN Chi-chuen, he recapitulated that RO was empowered to determine whether the declaration made by a candidate in the nomination form that he/she would uphold the Basic Law and pledge allegiance to HKSAR was genuine, thereby deciding whether the relevant nomination was valid.

35. Mr Holden CHOW expressed support for RO's decision in the aforementioned case. He considered that a person advocating "self-determination" could not possibly fulfill the legal requirement for a candidate to uphold the Basic Law and pledge allegiance to HKSAR.

36. In reply to Mr CHAN Chi-chuen's enquiry, USCMA advised that apart from Ms LAU Siu-lai's nomination, so far two nominations had been confirmed to be valid and the remaining one, which was submitted on 12 October 2018, was still being processed. Mr CHAN expressed concern that RO seemed to have taken a much longer time than before in deciding on the validity of a nomination. USCMA responded that in accordance with section 42A(1) of LCO, RO must, as soon as practicable after receiving a nomination form, decide whether or not the candidate is validly nominated. Mr CHAN requested the Administration to provide supplementary information on the time taken by RO to decide on the validity of candidates' nominations after receipt of the candidates' nomination forms in the 2012 LegCo General Election, the 2016 LegCo General Election and the upcoming by-election for comparison.

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37. Mr AU Lok-hin questioned the purpose for the continued use of a Confirmation Form in the upcoming by-election as it was up to RO to decide whether a person was validly nominated as a candidate based on his/her own judgment regardless of whether the candidate had signed the Confirmation Form or not. USCMA explained that the Confirmation Form was prepared by the Electoral Affairs Commission to facilitate ROs' discharge of their duties under the nomination procedure to ensure that all candidates fully understood the legal requirements, including the requirement to uphold Articles 1, 12 and 159(4) of the Basic Law, and on such basis were bona fide when signing the declaration in the nomination form.

V. Any other business

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

Council Business Division 2
Legislative Council Secretariat
28 December 2018