

# **立法會**

## ***Legislative Council***

Ref : CB2/PL/CA

LC Paper No. CB(2)1703/18-19

(These minutes have been seen  
by the Administration)

### **Panel on Constitutional Affairs**

#### **Minutes of meeting held on Monday, 18 March 2019, 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 Jeffrey LAM Kin-fung, GBS, 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 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  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Hon Martin LIAO Cheung-kong, SBS, JP  
Dr Hon CHIANG Lai-wan, SBS, 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 Holden CHOW Ho-ding  
Hon Tanya CHAN  
Hon HUI Chi-fung  
Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Dr Hon CHENG Chung-tai  
Hon AU Nok-hin

**Members attending** : Hon WU Chi-wai, MH  
Dr Hon KWOK Ka-ki  
Dr Hon Elizabeth QUAT, BBS, JP

**Member absent** : Hon Mrs Regina IP LAU Suk-yee, GBS, JP

**Public Officers attending** : Item III

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

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

Item IV

Mr Stephen WONG Kai-yi  
Privacy Commissioner for Personal Data

Mr Tony LAM Chik-ting  
Deputy Privacy Commissioner for Personal Data

Miss Rosanna LAW Shuk-pui, JP  
Deputy 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

Ms Jasmine TAM  
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**  
[LC Paper Nos. CB(2)904/18-19 and CB(2)985/18-19(01)]

The Panel noted that the following papers had been issued to members after the last meeting:

- (a) Constituency boundary maps in respect of the 2019 District Council Ordinary Election [LC Paper No. CB(2)904/18-19]; and
- (b) Panel Clerk's reply letter on behalf of the Chairman to the letter dated 31 January 2019 from Hon Dennis KWOK [LC Paper No. CB(2)985/18-19(01)].

2. Referring to the letter dated 13 March 2019 from the Director of Administration [attachment to Panel Clerk's reply letter in paragraph 1(b)] setting out the Administration's views on the Prevention of Bribery (Amendment) Bill 2017 proposed by him ("the proposed Bill"), Mr Dennis KWOK said that he did not consider that Article 74 of the Basic Law was relevant to the Chairman's consideration of his request for consultation with the Panel on the proposed Bill. He requested that arrangements be made for him to brief the Panel on the proposed Bill as soon as possible.

3. Mr LAM Cheuk-ting, Dr Helena WONG, Mr HUI Chi-fung, Dr KWOK Ka-ki and Ms Claudia MO expressed support for Mr Dennis KWOK's request. They expressed dissatisfaction with the failure of the Administration to follow up the recommendation made by the Independent

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Review Committee for the Prevention and Handling of Potential Conflicts of Interests back in 2012 to amend the Prevention of Bribery Ordinance (Cap. 201) to extend the application of sections 3 and 8 to the Chief Executive. They considered that the Panel needed not wait for the Government to complete the relevant study and it should discuss the proposed Bill, which clearly involved matters concerning public interest, as soon as possible.

4. Mr WONG Kwok-kin and Mr Martin LIAO pointed out that according to the Rules of Procedure, the agenda of a meeting of a Panel should be determined by its Chairman. Mr WONG suggested that to facilitate the Chairman's consideration of Mr Dennis KWOK's request, all members' views should be sought by circulation of paper after the meeting. Mr Martin LIAO considered that under the constitutional framework, the Chairman of a committee of the Legislative Council should duly consider the relevant provisions of the Basic Law in discharging his/her duties.

5. The Chairman said he noted that there were different practices among Panels for handling requests for discussion of private bills proposed by individual members. The Chairman further said that in the light of the views expressed by members at this meeting and the Administration's views as set out in its letter dated 13 March 2019 that it was not appropriate for the Panel to discuss the proposed Bill at this stage before completion of the relevant study conducted by the Government, he would seek all members' views on Mr Dennis KWOK's request by circulation of paper before taking a decision.

*[Post-meeting note: members were consulted on Mr Dennis KWOK's request and informed of the Chairman's decision vide LC Paper No. CB(2)1019/18-19 and CB(2)1116/18-19 issued on 19 March and 28 March 2019 respectively.]*

**II. Items for discussion at the next meeting**

[LC Paper Nos. CB(2)958/18-19(01) and (02)]

6. Members agreed to discuss and receive public views on "The Third Review of the Hong Kong Special Administrative Region by the Working Group on the Universal Periodic Review of the United Nations Human Rights Council" proposed by the Administration at the next regular meeting on 15 April 2019 at 2:30 pm.

7. Dr Helena WONG said that as the 2019 District Council Ordinary Election would be held soon, the item "Nomination matters in public election"

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on the Panel's list of outstanding items for discussion should be discussed as early as possible, preferably at the meeting in May or June 2019. The Chairman responded that Dr WONG's request would be relayed to the Administration for consideration.

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*[Post-meeting note: members were informed vide LC Paper No. CB(2)1195/18-19 issued on 10 April 2019 that on the instruction of the Panel Chairman, the item "Loss of a Register of Electors of the Registration and Electoral Office and follow-up measures" was added to the agenda of the meeting on 15 April 2019 and the starting time of the meeting was advanced to 2:00 pm.]*

### **III. Publicity for the 2019 District Council Ordinary Election**

[LC Paper Nos. CB(2)958/18-19(03) and (04)]

8. With the aid of PowerPoint, the Under Secretary for Constitutional and Mainland Affairs ("USCMA") and the Principal Assistant Secretary for Constitutional and Mainland Affairs briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)958/18-19(03)].

*[Post-meeting note: the PowerPoint presentation materials were issued to members vide LC Paper No. CB(2)1046/18-19(01) on 20 March 2019.]*

### Discussion

#### *Effectiveness of the publicity programme*

9. Mr WU Chi-wai and Dr KWOK Ka-ki expressed concern that the budget of about \$7.5 million for the proposed publicity programme was rather tight and might not be adequate to achieve effective publicity purpose. Dr KWOK further questioned if the Administration had deliberately played down the publicity of District Council ("DC") elections for political reasons. Mr MA Fung-kwok sought details of the Administration's measures to boost the turnout rates in public elections. The Deputy Chairman enquired about the estimated costs for publicity measures involving the use of online channels such as the social media.

10. USCMA said that the proposed expenditure for the proposed publicity programme had been increased from \$6.9 million in 2015 to about \$7.5 million taking into account inflation. He further said that in devising the proposed publicity programme, the Administration had made reference to

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the experience of the 2015 DC Ordinary Election. The Chief Electoral Officer ("CEO") said that the Administration planned to step up publicity efforts through various online channels, e.g. mobile applications ("apps"). He added that for the 2015 DC Ordinary Election, advertisements were also placed on online platforms such as Yahoo and OpenRice.

11. Dr KWOK Ka-ki and Dr Helena WONG criticized that little publicity efforts had been made in relation to the Yau Tsim Mong DC Tai Nan Constituency by-election to be held on 24 March 2019. CEO explained that the publicity programme would depend on the scale of the election/by-election concerned. In response to members' enquiries, CEO said that poll cards and the Introduction to Candidates would be mailed to all registered electors in the constituencies concerned in all elections and by-elections, informing registered electors of contested constituencies of the date, time and place of the poll, and promoting candidates' election platform and candidature respectively.

*Promotion of clean elections*

12. Dr KWOK Ka-ki expressed grave concern that some elderly electors were reportedly given instructions to vote for certain candidates during previous elections, and urged the Administration to step up enforcement actions as well as publicity efforts to publicize the importance of honest and clean elections. Mr WU Chi-wai also sought details of the Administration's measures to combat vote-rigging. Dr Helena WONG said that violence was reportedly involved in previous Rural Representative Elections and enquired whether targeted efforts would be made to promote clean and violence-free elections in certain districts.

13. USCMA said that the first phase of the publicity programme would focus on the promotion of the importance of honest and clean elections. To this end, the Registration and Electoral Office ("REO") would collaborate with relevant departments and law enforcement agencies including the Home Affairs Department, the Information Services Department and the Independent Commission Against Corruption. Any reported violence cases relating to elections would be referred to the Police for follow-up investigation. CEO said that before the commencement of the proposed publicity programme in August 2019, the Administration would launch the 2019 Voter Registration ("VR") Campaign in April 2019. In the light of public concern on the timeliness of residential addresses recorded in the electoral registers, REO would step up publicity during the 2019 VR Campaign to promote the importance of providing true and accurate information for registration and remind registered electors to update their

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residential addresses. In reply to Mr WU Chi-wai's further enquiry, CEO advised that the budget for the 2019 VR Campaign was about \$21 million.

14. Ms Starry LEE welcomed the proposed publicity programme. The Deputy Chairman suggested that the publicity programme should include the promotion of role and functions of DCs so as to encourage electors' participation. USCMA undertook to consider the Deputy Chairman's suggestion.

*Other issues*

15. Noting that the Administration planned to encourage people to stand for the 2019 DC Ordinary Election in phase two of the proposed publicity programme, Ms Tanya CHAN urged the Administration to set out clearly the eligibility criteria of persons who intended to stand for election, and the impact of signing/not signing the Confirmation Form in determining the validity of nominations. Ms Claudia MO and Mr CHU Hoi-dick expressed similar concerns.

16. USCMA stressed that the right to stand for election was a fundamental right enshrined in the Basic Law. He said that the Confirmation Form was prepared by the Electoral Affairs Commission to facilitate the Returning Officers' ("ROs") discharge of their duties under the nomination procedure to ensure that all candidates fully understood the legal requirements, and on such basis, were bona fide when signing the declaration in the nomination form. ROs would exercise their statutory power to process all nominations in accordance with the legal requirements and relevant procedures. Depending on the actual circumstances of each case, ROs might seek legal advice and according to the law request the candidate to provide additional information that they considered necessary. Any person seeking candidature who did not agree with RO's decision might lodge an election petition in accordance with the law.

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

[LC Paper Nos. CB(2)958/18-19(05) and (06)]

17. At the invitation of the Chairman, the Privacy Commissioner for Personal Data ("the Privacy Commissioner") briefed members on the salient points of the paper on the work of his Office ("PCPD") in 2018 [LC Paper No. CB(2)958/18-19(05)].

## Discussion

### *Follow-up on major personal data leakage incidents*

18. In response to Dr Helena WONG's enquiry, the Privacy Commissioner said that PCPD had published an investigation report on the REO incident and served an enforcement notice on REO in view of the investigation's findings that REO had contravened the relevant data protection principle under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). REO had implemented improvement measures as directed to remedy and prevent recurrence of similar incidents.

19. Referring to the three major incidents of personal data leakage respectively by Cathay Pacific Airways Limited ("the Cathay Pacific incident"), TransUnion Limited ("the TransUnion incident") and the Marriott International hotel group ("the Marriott incident") all of which occurred in late 2018, Ms Tanya CHAN enquired about the assistance rendered by PCPD to Marriott's affected customers worldwide and the progress of PCPD's follow-up work on the TransUnion incident. Dr Helena WONG also enquired about the role of and actions taken by PCPD in following up the Cathay Pacific incident.

20. The Privacy Commissioner said that PCPD was obliged by law to follow up data breach incidents involving organizations whose principal place of business was in Hong Kong. Even if the organizations involved were not based in Hong Kong, PCPD would make enquiries with them to ascertain the relevant facts of the breach if the data subjects affected included Hong Kong people. Since some Hong Kong people were affected in the Marriott incident, PCPD had initiated and would maintain communication with Marriott on relevant issues. The Privacy Commissioner further said that PCPD had taken extra care and effort in following up the Cathay Pacific incident and the TransUnion incident given the complexity of the issues involved and the large number of data subjects affected. The relevant compliance investigations were near completion. The Privacy Commissioner assured members that subject to the findings of the investigations, PCPD would take enforcement actions in accordance with PDPO if warranted.

### *Privacy risks associated with the use of information and communications technology*

21. Noting that the number of complaints relating to the use of information and communications technology ("ICT") received by PCPD in 2018 was more



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than double of that in 2017, Ms Tanya CHAN enquired about the reasons for the large increase and ways to enhance public awareness of the importance of personal data protection in using ICT. The Privacy Commissioner responded that the large increase was mainly attributable to the increasing popularity of mobile devices (e.g. smartphones and tablets) and the prevalent use of the Internet in people's lives, which had brought about not only convenience but also growing concerns over the privacy risks involved. PCPD would step up promotion and public education on the protection of personal data privacy in connection with the use of ICT especially amongst children and the youth.

22. Mr Kenneth LAU said that as the Hong Kong Monetary Authority ("HKMA") had announced its plan to grant virtual banking licences in the first quarter of 2019 at the earliest, it was expected that online banking and financial services would become more popular in future. He called on PCPD to explain more fully to the public what could be done to prevent leakage of personal data in the online environment.

23. The Privacy Commissioner stressed that PCPD would continue to strengthen its roles as an enforcer, educator and facilitator. PCPD would take proactive steps to strike a proper balance between privacy protection and other public interests including free flow of information and facilitation of business operation and service provision. PCPD would also look closely into the use of ethical framework as an innovation solution to tackle the privacy challenges brought about by ICT developments, complementing fair enforcement under the legal framework. Apart from educating the public on the privacy risks associated with the use of ICT and the possible serious consequences that could be caused to them, PCPD would engage and incentivize the business sector by assisting businesses to address privacy issues that might arise from their operations and providing guidance to them to cultivate a culture of respect for personal data privacy within their organizations.

24. Dr Helena WONG expressed concern that some mobile apps might capture and leak users' data stored in their smartphones (e.g. contact list and address book). She asked what measures could be taken to prevent app developers from accessing and capturing users' smartphone data without their consent. The Privacy Commissioner said that PCPD had issued guidelines on compliance with PDPO in developing mobile apps. PCPD would conduct inspections on the personal data systems of organizations and take necessary enforcement actions upon receipt of complaints. PCPD would also continue its efforts in strengthening collaboration and exchange of intelligence with data protection authorities of other jurisdictions for effective law enforcement. The Privacy Commissioner added that to complement law enforcement, PCPD

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had undertaken research projects relating to data governance and data ethics with a view to fostering a culture of respect for personal data privacy among organizations.

25. Dr Priscilla LEUNG recounted her experiences in using free Wi-fi service with her smartphone at public venues, during which she was requested to confirm that she had read the relevant personal information collection statements ("PICSs") before using the service. She was concerned that the font size of the words in these PICSs was too small and not conducive to facilitating services users to make an informed decision. She asked what could be done to address this issue apart from legislative measures.

26. The Privacy Commissioner replied that the relevant provision of PDPO did not prescribe specifically the font size to be used in PICSs. The Privacy Commissioner further said that he had met with different organizations and relayed to them concerns about the legibility of information provided in PICSs. Apart from educating the public on the importance of safeguarding and exercising control over their personal data on the Internet, PCPD would continue to engage the business sector in fostering a culture of ethical data governance in order to meet the rising expectations of customers and the general public with regard to protection of their personal data.

27. Dr Elizabeth QUAT commended PCPD for launching an array of measures including education programmes in schools in the past year to promote personal data protection. She considered it particularly important to instill the concept of personal data protection in children and hoped that more resources would be allocated for launching relevant programmes and activities in future.

*Inadequacies of the Personal Data (Privacy) Ordinance (Cap. 486)*

28. Mr CHAN Chi-chuen said that subsequent to the Cathay Pacific incident, the Chief Secretary for Administration publicly indicated that the Government would examine, with reference to overseas experience, whether amendments to PDPO would be necessary to enhance the regulation of data protection. He asked when the aforesaid examination would be concluded and whether it had to take into account the findings of the compliance investigations into the Cathay Pacific incident and the TransUnion incident being conducted by PCPD.

29. Dr Elizabeth QUAT considered that the Cathay Pacific incident reflected that the provisions of PDPO were outdated and afforded little protection to data subjects. She was particularly concerned about the current

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loophole under PDPO that there was no mandatory requirement for an organization to file data breach notifications whether to PCPD or to its affected clients. Dr QUAT further said that the TransUnion incident also revealed the current lack of regulatory control of the transfer of consumer credit data among credit reference service agencies and their collaborating organizations. She opined that HKMA should regulate relevant activities. Dr QUAT considered that as shown in the Marriott incident, there was room for improvement regarding the protection of personal data transferred to data processors overseas. Referring to paragraphs 49 and 50 of PCPD's paper, Dr QUAT questioned why PCPD's focus of work in 2019 did not include introducing amendments to PDPO. She stressed that PCPD should not and needed not commence the relevant legislative work only after the completion of its investigations into the aforementioned incidents as it could make reference to the General Data Protection Regulation enacted by the European Union in proposing necessary amendments to PDPO. In her view, PCPD should expeditiously take forward the legislative exercise first and consider making further improvements to PDPO in light of the findings of the relevant investigations upon their completion.

30. The Privacy Commissioner explained that as stated in paragraph 46 of PCPD's paper, PCPD was finalizing its review of PDPO. PCPD had drawn up initial recommendations regarding the enhancement of data breach notification arrangements, retention and disposal of personal data by data users, penalties for non-compliance with PDPO and regulation of data processing activities by data processors such as cloud service providers. Since the compliance investigations into the Cathay Pacific incident and the TransUnion incident were near completion, PCPD could take into account the investigation findings conveniently and as appropriate in finalizing its recommendations to be made to the Government shortly. Dr Elizabeth QUAT urged that protection for online privacy of children should also be introduced in PDPO.

31. Pointing out that there had been concern that PCPD was a "toothless tiger" with inadequate powers for the effective enforcement of PDPO, Mr CHAN Chi-chuen sought the Privacy Commissioner's view on the main obstacles to granting criminal investigation and prosecution powers to PCPD. The Privacy Commissioner said that the enormous impact of ICT on people's lives and the privacy risks arising from ICT developments were not envisaged when PDPO was enacted back in 1996. In view of the substantial increase in ICT-related complaints received by PCPD which often involved the collection and use of personal data without the consent of data subjects, PCPD would discuss with and make recommendations to the Government on ways to enhance personal data protection in this area having regard to the development

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of overseas data protection regimes, local circumstances and needs, as well as the views of stakeholders and the public.

**V. Any other business**

32. There being no other business, the meeting ended at 4:37 pm.

Council Business Division 2  
Legislative Council Secretariat  
20 June 2019