

**立法會**  
**Legislative Council**

Ref : CB2/PL/CA

LC Paper No. CB(2)837/19-20  
(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 20 January 2020, at 2:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon CHEUNG Kwok-kwan, JP(Chairman)  
Hon Kenneth LAU Ip-keung, BBS, MH, JP (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Abraham SHEK Lai-him, GBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon Starry LEE Wai-king, SBS, 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-yea, GBS, JP  
Hon Claudia MO  
Hon WU Chi-wai, MH  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon CHAN Han-pan, BBS, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP  
Hon Dennis KWOK Wing-hang  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Hon Martin LIAO Cheung-kong, GBS, 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, BBS, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon Tanya CHAN  
Hon LUK Chung-hung, JP  
Hon LAU Kwok-fan, MH  
Dr Hon CHENG Chung-tai  
Hon KWONG Chun-yu  
Hon Jeremy TAM Man-ho

**Member Attending** : Hon Elizabeth QUAT, BBS, JP

**Members absent** : Hon Paul TSE Wai-chun, JP  
Hon Steven HO Chun-yin, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon LEUNG Che-cheung, SBS, MH, JP  
Hon HUI Chi-fung

**Public Officers attending** : Item III

The Administration

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

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

Mr Jacky LUM Kwok-keung  
Principal Assistant Secretary for Constitutional and Mainland Affairs

Office of the Privacy Commissioner for Personal Data

Mr Stephen WONG Kai-yi  
Privacy Commissioner for Personal Data

Ms Clara WONG Kar-wing  
Assistant Legal Counsel

Item IV

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

Ms Eiphie CHAN Pik-ki  
Principal Assistant Secretary for Constitutional and Mainland  
Affairs

Mr Alan YUNG Ying-fai  
Chief Electoral Officer  
Registration and Electoral Office

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

Ms Hanny TANG Lai-han  
Deputy Chief Electoral Officer (Voter Registration)  
Registration and Electoral Office

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

**Staff in attendance** : Mr Bonny LOO  
Senior Assistant Legal Adviser 3(Acting)

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 No. CB(2)462/19-20]

The Panel noted that the geographical constituency ("GC")

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boundary maps in respect of the 2020 Legislative Council General Election [LC Paper No. CB(2)462/19-20] had been issued to members after the last meeting.

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

[LC Paper Nos. CB(2)512/19-20(01) and (02)]

2. Members agreed to discuss the following items proposed by the Administration at the next meeting on 17 February 2020 at 2:30 pm:

- (a) Administrative Guidelines on Promotion of Racial Equality; and
- (b) briefing by the Privacy Commissioner for Personal Data.

*(Post-meeting note: Members were informed vide LC Paper No. CB(2)615/19-20 on 12 February 2020 that on consideration of the latest situation of the novel coronavirus infection, the Chairman had directed that the meeting originally scheduled for 17 February 2020 would be rescheduled to a later date. As agreed by the Panel at the regular meeting on 16 March 2020, the above two items would be discussed on 20 April 2020. )*

**III. Review of the Personal Data (Privacy) Ordinance**

[LC Paper Nos. CB(2)512/19-20(03) and (04)]

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)512/19-20(03)].

Discussion

*Proposed amendments to the Personal Data (Privacy) Ordinance*

4. Mr Charles MOK expressed concern that the proposed amendments to the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") outlined in the Administration's paper failed to address important issues discussed in the last review of PDPO in 2009, including granting criminal investigation and prosecution powers to the Privacy Commissioner for Personal Data ("the Privacy Commissioner"), and enhancing protection of sensitive personal data. With reference to the two submissions provided by Human Rights Watch and

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Keyboard Frontline respectively [LC Paper No. CB(2)548/19-20(01)-(02)], Mr MOK and Dr Fernando CHEUNG considered it necessary to bring Hong Kong's data protection regime on a par with international standards and urged that more comprehensive data privacy protections be introduced in PDPO by making reference to the General Data Protection Regulation of the European Union. They urged the Administration to address data privacy challenges brought about by the development and application of various disruptive technologies (e.g. facial recognition and other biometric technologies, big data analytics, artificial intelligence and profiling). They also considered that the Administration should look into the collection and use of sensitive personal data (including biometrics) and the provision of personal data by government departments to the Police as raised in the aforementioned submissions. Mr MOK questioned whether the Administration was selective in proposing amendments to PDPO as the proposed amendment directions appeared to mainly tackle the issue of doxxing.

5. SCMA explained the background to the current review of PDPO. He said that the spate of major personal data breach incidents in recent years had aroused public concerns about the adequacy of PDPO in protecting personal data privacy. In the light of this, the Administration had been reviewing and studying possible amendments to PDPO jointly with the Office of the Privacy Commissioner for Personal Data ("PCPD") with a view to strengthening protection of personal data privacy. On the other hand, the large number of doxxing incidents that took place over the last seven months had become a major concern for privacy protection. The Administration therefore considered it necessary to also examine how PDPO should be amended in order to curb doxxing behaviour more effectively. SCMA said that the Administration would take into consideration all the views and suggestions received in formulating concrete legislative proposals to amend PDPO in conjunction with PCPD.

6. Mr Charles MOK expressed disappointment that the Administration did not mention any plan to conduct public consultation on the current review of PDPO. He considered that the Administration should, as with the last review of PDPO in 2009, issue a public consultation document to gauge public views on the proposals arising from the current review. SCMA explained that there were different ways to collect views on proposals to amend PDPO and public consultation might not be the most effective means against the background of this amendment exercise, in which the legislative amendments arose out of the need to tackle the spate of major data breach incidents in recent years. He said that the Administration would carefully

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examine members' views on the proposed amendment directions as well as any other amendment suggestions. Taking members' views into account, the Administration would work with PCPD to conduct further in-depth study on concrete legislative amendment proposals and consult relevant stakeholders in due course.

7. With reference to the proposal of establishing a mandatory data breach notification mechanism set out in paragraph 5 of the Administration's paper, Mr Charles MOK considered it unclear as to what it meant by "a real risk of significant harm" referred to in paragraph 5(b). Mr Martin LIAO enquired whether guidelines would be provided to data users in respect of the notification threshold and notification timeframe to facilitate compliance with the relevant requirements. Mr LIAO also asked whether consideration would be given to allowing notification to be made to PCPD via instant message applications, apart from by email, fax or post.

8. SCMA explained that details of the notification mechanism were proposed with reference to relevant legislation and experience of other jurisdictions. SCMA said that in respect of the notification timeframe, the Administration was considering whether it was necessary to allow a specified period for the data user to investigate and verify the suspected data breach incident before making notification to PCPD within a specified timeframe (e.g. as soon as practicable and, under all circumstances, in not more than five business days). As regards the mode of notification, SCMA said that while he agreed that notification could be made more promptly and conveniently by phone or via other instant message applications, the Administration considered it more appropriate to require data users to make formal written notification providing relevant details of the data breach by email, fax or post.

9. Dr KWOK Ka-ki expressed worry that a data breach incident might not be made known to the Privacy Commissioner until a very late stage. He asked whether the proposed mandatory notification mechanism could address this problem. SCMA said that under the proposed mechanism, the data user would be required to notify PCPD within a specified timeframe upon having become aware of a data breach, failing which the data user would be subject to penalties. The Administration considered that the proposal would help reduce the damage caused to the affected data subjects.

10. With regard to the proposal of empowering PCPD to impose administrative fines under PDPO, Mr Holden CHOW asked whether such fines could be imposed on organizations (e.g. social media platforms and

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website operators) which failed to prevent or stop/assisted in the publication and dissemination of leaked personal data, and if so, whether this would help combat doxxing and cyberbullying more effectively.

11. The Privacy Commissioner said that the proposal would facilitate PCPD's tackling of non-criminal doxxing cases, which mainly involved contravention of the Data Protection Principles ("DPPs") under PDPO. As for criminal doxxing cases involving intimidation or incitement which might cause psychological harm to the victims concerned, the Privacy Commissioner said that PCPD had encountered difficulties in tracking the doxers and following up with the online platforms involved. That said, PCPD had so far written to 17 operators of relevant websites, online social networking platforms or discussion forums urging them to remove over 2 500 web links, of which close to 70% had been removed. PCPD had also reminded the operators of the platforms concerned in writing of the relevant interim injunction orders granted recently by the High Court (HCA 1957/2019 and HCA 2007/2019) and of their legal and social responsibilities of not assisting or promoting any illegal acts of doxxing. The Privacy Commissioner added that the Government and PCPD were studying how PDPO should be amended in order to bring not only doxers but also the platforms concerned under regulation, such that doxxing behaviour could be curbed more effectively.

12. Dr Priscilla LEUNG said that in the light of public concern about the series of major personal data leakage incidents in recent years, she moved a motion at the Council meeting of 22 May 2019 urging the Government to, among others things, expeditiously amend PDPO to mandate data users to notify PCPD and data subjects of any data leakage incidents within a specified timeframe and to empower Privacy Commissioner to impose administrative penalties. She sought the Privacy Commissioner's views on whether the proposed amendments to PDPO currently put forward by the Administration were adequate. She also enquired about the progress of investigation into the incidents concerning the Registration and Electoral Office's ("REO") loss of a notebook computer containing the personal data of 3.78 million GC electors ("the computer theft incident") and the loss of a register of electors relating to the 2016 LegCo General Election ("the register loss incident"), which were uncovered in 2017 and 2019 respectively.

13. In response, the Privacy Commissioner said that the proposed amendments were broadly in line with PCPD's recommended directions for amendments to PDPO. Nevertheless, he welcomed any further views and

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suggestions from members for further study and discussion with stakeholders concerned. SCMA said that the report of the task force on review of the computer theft incident had made a number of recommendations on REO's practice in the handling of personal data, information technology security and venue security. REO had implemented the recommendations of the Task Force having regard to the lessons learnt from the incident. SCMA further said that the computer theft incident had been reported to the Police. While he was given to understand that criminal investigation of the case was still ongoing, there was no evidence showing that the relevant GC electors' data had been leaked. As regards the register loss incident, SCMA said that the Electoral Affairs Commission had conducted a comprehensive review of the incident and recommended various improvement measures in relation to the electoral arrangements. REO had implemented the relevant recommendations in the 2019 District Council Ordinary Election.

14. Dr CHENG Chung-tai expressed dissatisfaction that the Administration had been slow in addressing the inadequacies of PDPO as revealed by the major personal data breach incidents in recent years but was quick at following up on the recent cases of doxxing on police officers. He considered that leakage of personal data by organizational data users and doxxing were two separate issues which should not be dealt with jointly in the context of the current review of PDPO. He also considered it wrong in principle to seek to curb doxxing behaviour through introducing amendments to PDPO. In his view, there were other pieces of existing legislation which could regulate doxxing acts.

15. SCMA said that in view of public concern about the handling of major personal data breach incidents by data users, the Administration proposed to establish a mandatory notification mechanism that required data users to notify PCPD and relevant data subjects in case of any data breach incident. SCMA further said that the victims of doxxing included not only police officers and their family members but also persons from all sorts of backgrounds and all walks of life. The Administration considered it necessary and appropriate to introduce necessary amendments to PDPO to enhance protection against doxxing acts.

16. Mr Charles MOK and Dr Fernando CHEUNG queried the lack of progress in the implementation of section 33 of PDPO and expressed disappointment that the issue was not covered in the current review of PDPO. Dr CHEUNG said that as there was wide public concern about whether Hong Kong people's personal data were transferred to the Mainland and thus accessible by Mainland authorities, section 33 of PDPO should be brought



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into operation as soon as possible in order to provide stringent and comprehensive regulation of cross-border/boundary transfer of personal data. He enquired about the Administration's timetable for the implementation of section 33 of PDPO.

17. The Privacy Commissioner said that PCPD published the "Guidance on Personal Data Protection in Cross-Border Data Transfer" ("Guidance") in December 2014 to assist organizations to prepare for the eventual implementation of section 33 of PDPO and enhance privacy protection for cross-border data transfer. The Guidance contained, among other information, recommended model clauses to be adopted in data transfer agreements for industries' reference. The Privacy Commissioner informed members that to enhance practicability and user-friendliness of the Guidance, PCPD was engaging a consultant to review the Guidance, including to update the recommended model clauses for data transfers between "data user and data user" and between "data user and data processor" respectively, and to update the recommended good practices for cross-border data transfer. The relevant review was expected to be completed in the first half of 2020. SCMA said that while the Administration did not have a timetable for the implementation of section 33 of PDPO, it would formulate the way forward in the light of the outcome of the aforesaid review being conducted by PCPD.

*Related issues*

18. Pointing out that members of the public could have access to the public registers maintained by various government departments, Mr Martin LIAO asked whether the departments concerned had examined what kinds of personal data were contained in these registers and whether these registers could be used as a channel for doxxing on public officers. SCMA said that pursuant to a recent judicial review application, the Court of Appeal had granted an interim injunction order restraining REO from making available the final register of electors for the 2019 District Council Ordinary Election for public inspection and providing relevant extracts or information to members of the public. SCMA further said that to strengthen protection against abuse and misuse of personal data contained in public registers, the Administration had requested relevant bureaux and departments ("B/Ds") to examine whether effective measures had been put in place to ensure that personal data collected from members of the public would be disclosed or used only for purposes in line with or directly related to the purpose of collecting such data. In this connection, it was noted that the Immigration Department had recently taken steps to ensure that any request for search of marriage records contained in the Marriage Register made by a

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third party would be acceded to only if it was consistent with the purpose of establishing the Register. SCMA assured members that other relevant B/Ds would follow up and take necessary improvement measures as appropriate.

19. Ms Elizabeth QUAT said that apart from doxxing activities on the Internet, there were also many cases involving unlawful display of personal data in public places over the last few months. She expressed dissatisfaction that although numerous complaints had been lodged with relevant government departments, no action had been taken to remove the posts concerned. She urged PCPD to follow up the aforementioned cases and request the venue management bodies concerned to expeditiously remove those posts that infringed upon personal data privacy.

20. The Privacy Commissioner said that displaying personal data in public places without the consent of data subjects concerned might contravene relevant provisions of PDPO. The Privacy Commissioner explained that PCPD had been following up complaints received in relation to unlawful display of personal data on "Lennon Walls" and had liaised with the venue management bodies concerned on the removal of relevant posts. However, PCPD had encountered difficulties in identifying the persons who put up those posts and it had no statutory power to remove such posts on its own initiative. The Privacy Commissioner agreed that subject to availability of additional resources, PCPD would conduct inspections at public places to facilitate more timely identification of and follow-up on relevant cases. SCMA explained that while relevant government departments had, upon receipt of complaints, taken actions to remove posts involving unlawful display of personal data from the public places concerned, similar posts were put up soon again. That said, SCMA undertook that the departments concerned would make sustained efforts in this regard.

21. Ms Claudia MO said that despite wide public concern over the incident that took place at Prince Edward MTR station on 31 August 2019, the MTR Corporation Limited refused to make public the relevant CCTV footage on the ground that the disclosure would contravene PDPO. She sought the Privacy Commissioner's advice on whether there should be no problem with the disclosure of the relevant CCTV footage so long as the facial images of individuals appearing in the footage were masked or blurred.

22. The Privacy Commissioner explained that generally speaking, PDPO provided that a data user could only use the personal data collected for the purposes stated at the time of collection (or directly related purposes) and

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prior consent of the data subject must be sought before the data was used for new purposes. However, PDPO also provided for exemptions from the provisions of certain DPPs, such as use of data for the purpose of crime prevention and detection. The Privacy Commissioner advised that apart from relying on the exemption provisions, a data user might make every effort to prevent the identity of the data subject from being revealed when disclosing the relevant materials. As far as disclosure of CCTV footage was concerned, masking or blurring the facial images of the individuals involved in the relevant video clips was considered an acceptable means.

23. Mr LAM Cheuk-ting and Ms Tanya CHAN expressed grave concern about two recent incidents involving the display of reporters' Hong Kong Identity Cards ("HKIDs") by police officers in front of live-streaming camera. Mr LAM considered that the acts of the police officers concerned had blatantly contravened PDPO. Ms CHAN said she was particularly concerned that the second incident took place shortly after the first one and enquired about the actions taken by PCPD in respect of the first incident. She also asked what would be done to prevent the recurrence of similar incidents in future.

24. SCMA said he noted that the Police had publicly responded to and would conduct investigation into the aforesaid incidents. The Police had also stressed that any complaint relating to the conduct of police officers in performing police duties would be dealt with in accordance with the established mechanism. The Privacy Commissioner said that PCPD had initiated investigation into the first incident and would follow up on the second incident with the Police. The Privacy Commissioner further said that he was given to understand that in the second incident, the display of HKID was not done in front of live-streaming camera. Nevertheless, as the relevant investigation work was ongoing, he could not comment on the details of the two cases. The Privacy Commissioner assured members that PCPD would launch a proactive investigation and enforce the law in every case in accordance with the powers conferred by PDPO in a fair and impartial manner. Apart from law enforcement, PCPD would enhance communication with and provide guidance to both public and private organizations on matters relating to compliance with PDPO.

25. Dr Helena WONG expressed concern about recent media reports that the mobile phone of an arrestee had been unlocked and the information therein captured by the Police, although the arrestee had never been asked to provide the password for unlocking his mobile phone or been informed that the Police had obtained a warrant for doing so. She sought the

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Privacy Commissioner's confirmation on whether mobile phones were regarded to contain personal data. She also asked whether police officers were permitted under the law to access and examine the contents of arrestees' mobile phones without obtaining and producing a relevant warrant beforehand.

26. The Privacy Commissioner confirmed that mobile phones contained personal data. The Privacy Commissioner said that generally speaking, police officers were vested with powers conferred by relevant legislation to search and seize various objects relating to a suspected offence, including mobile phones and other similar devices. They might decide how a device seized upon arrest should be handled having regard to the actual circumstances and needs of the case concerned. The Privacy Commissioner further said that while the objective of PDPO was to protect individuals' right to privacy with respect to personal data, the use of personal data for the purpose of crime prevention and detection might be exempted from liability under PDPO even if there was a contravention of relevant DPPs or requirements. Whether the exemption provisions of PDPO were applicable to a particular act or conduct had to be assessed based on the facts and actual circumstances of each case. The Privacy Commissioner added that since legal proceedings relating to the case mentioned by Dr WONG were in progress, he could not comment further on the case.

27. Mr CHAN Chi-chuen expressed concern about recent incidents of police officers being alleged to have leaked the health data of arrestees to the media or to other persons. He enquired whether there was any breach of the law if it was substantiated that the police officers concerned had committed the relevant acts. He also asked whether disclosure of arrestees' personal data by the Police was currently or would be subject to statutory regulation.

28. The Privacy Commissioner reiterated that according to PDPO, when any person (as data user) used (including disclosed) personal data for purposes inconsistent with or not directly related to the purpose at the time of collection of such data, he/she must first obtain the prescribed consent of the data subject, unless such use was exempted from the relevant requirements by virtue of the exemption provisions under PDPO. As explained earlier, whether the exemption provisions were applicable to a particular case had to be assessed based on the facts and actual circumstances of each case. The Privacy Commissioner stressed that PCPD all along had been enforcing PDPO in a fair and impartial manner, without fear or favour. In reply to Mr CHAN Chi-chuen's further enquiry, the Privacy Commissioner said that any person who believed that his/her personal data privacy had been infringed

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upon and could provide prima facie evidence might complain to PCPD.

29. Dr KWOK Ka-ki opined that incidents of contravention of PDPO by police officers were getting more serious. He was concerned that as the Privacy Commissioner was not vested with the powers to conduct criminal investigation and prosecution for criminal offences under PDPO, relevant suspected cases of abuse including those involving police officers as data users were referred to the Police, which in his view had lost all credibility, for further criminal investigation. He considered that acts of data privacy infringement by police officers could not be effectively regulated under the existing framework of PDPO and asked what would be done to address this problem.

30. The Privacy Commissioner said that in the light of the experience of and difficulties encountered by PCPD in handling doxxing cases in recent months, one of the proposed directions for amendments to PDPO was to confer upon the Privacy Commissioner the power to carry out criminal investigation and to make recommendation on whether prosecution should be instituted for criminal offences under PDPO. The decision on whether or not to prosecute would, however, still rest with the Secretary for Justice. The Privacy Commissioner added that the proposal would help avoid duplication of investigation effort by PCPD and the Police, thereby facilitating the curbing of serious contraventions of PDPO in a more timely manner.

Motion

*(At 4:08 pm, the Chairman ordered the ringing of the quorum bell to summon members to the meeting. Noting that the voting bell at Conference Room 2 was ringing at this juncture, the Chairman further ordered that the meeting be suspended and the quorum bell be rung after the voting bell at Conferenc Room 2 had finished ringing. The quorum bell started ringing at 4:13 pm. The meeting resumed at 4:16 pm when a quorum was present.)*

31. After the meeting resumed, the Chairman said that he would invite members to decide by voting whether the motion proposed by Mr Charles MOK (at **Annex I**) should be proceeded with. At the request of Mr Holden CHOW, the Chairman ordered a division and that the voting bell be rung for five minutes to notify members of the voting.

32. The Chairman put to vote the question as to whether the Panel agreed

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to proceed with the motion proposed by Mr Charles MOK. The result was that 15 members voted for and 15 members voted against the question, and no member abstained from voting (details of the division at **Annex II**). As the question did not have the support of a majority of the members voting, the Chairman declared that Mr MOK's proposed motion would not be proceeded with.

**IV. 2020 Voter Registration Campaign**

[LC Paper No. CB(2)512/19-20(05) and (06)]

33. The Chairman said that owing to shortage of time, the above item would not be discussed at this meeting. The Chairman further said that as the 2020 Voter Registration Campaign was expected to commence soon, he suggested that members who had questions regarding the Campaign could write to the Administration directly after this meeting to seek its written response. Ms Tanya CHAN said that while she did not object to the Chairman's suggestion, she hoped that this was only a one-off arrangement as it was important for members to be able to put questions to the Administration at a meeting.

**V. Any other business**

34. There being no other business, the meeting ended at 4:24 pm.

Council Business Division 2  
Legislative Council Secretariat  
17 April 2020