

立法會
Legislative Council

LC Paper No. CMI/36/00-01

Ref: CB(3)/C/2 (00-04)

Committee on Members' Interests

**Minutes of the third meeting
held on Tuesday 6 February 2001 at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon David CHU Yu-lin (Chairman)
Hon SIN Chung-kai (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon NG Leung-sing
Hon Bernard CHAN
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon YEUNG Yiu-chung
- Clerk in attendance** : Mrs Betty LEUNG
Chief Assistant Secretary (3)1
- Staff in attendance** : Mr LAW Kam-sang, JP
Deputy Secretary General
- Mr Ray CHAN
Assistant Secretary General 3
- Mr LEE Yu-sung
Senior Assistant Legal Adviser
- Ms Eva LIU
Head (Research & Library Services)
- Mr Arthur LEUNG
Senior Assistant Secretary (3)1
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**I. Confirmation of the Minutes of the last meeting held on
12 December 2000**
(LC Paper No. CMI/20/00-01)

The minutes of the last meeting were confirmed subject to amending a typographical error on page 1 of the English version as follows: Hon Cyd HO Sau-lan should have been shown as "Member absent" instead of "Member present".

II. Matters arising

Paras. 7 to 10 of minutes of the last meeting:

Rule 84(1) of the Rules of Procedure of the Legislative Council
(LC Paper No. CMI/21/00-01)

2. At the last meeting, Mr NG Leung-sing pointed out that the phrase “**except where his interest is in common with ... a sector thereof**” in Rule 84(1) of the Rules of Procedure might be interpreted as allowing a Legislative Council (LegCo) Member to vote on questions in which he had a direct pecuniary interest so long as he could find at least one member of the public having the same direct pecuniary interest.

3. Deputy Secretary General (DSG) pointed out that the Chinese and English versions of the phrase "a sector thereof" ("部份市民") were not entirely equivalent in that while the Chinese version simply meant "part of the inhabitants", the English version also connoted that these inhabitants should belong to some recognized groups, classes, trades, professions, etc.. He also informed the Committee that in the legislatures of other jurisdictions, such as that of the United States of America, where legislation affected a class as distinct from individuals, a Member might vote; the disqualifying interest had to be such as affecting the Member directly, and not as one of a class. It was also held that nothing was more sacred to the democratic process than each person casting his vote. Assistant Secretary General 3 (ASG3) added that the present declaration system was an honour system; its primary aim was to enhance the transparency of the work of Members; and experience had shown that cases in which a motion affecting a Member as an individual and in which he had a direct pecuniary interest were rare.

4. Senior Assistant Legal Adviser (SALA) informed the meeting that the Chinese term "界別" was used as the Chinese equivalent for the term "sector"

Action

in the Electoral Affairs Commission Ordinance (Cap 541), and the term "sector" therein related closely to functional constituencies.

DSG

5. Mrs Sophie LEUNG enquired whether detailed briefings on the Rules of Procedure had been given to new LegCo Members. DSG replied that it was not feasible to explain every rule in detail in orientation seminars for new Members, but he undertook to arrange for the provision of more information on matters concerning voting in Council and its committees for new Members in future.

clerk

6. Ms Cyd HO proposed that, in order to provide guidance to Members, especially committee chairmen, the Committee should issue a paper to Members setting out its understanding of the phrase "a sector thereof". Mr NG Leung-sing supported the proposal and added that the paper should be re-circulated annually. The meeting agreed to the proposal.

7. The meeting then discussed Mr NG Leung-sing's other concern about possible contradictions between the first and the second sentences of Rule 84(1), in that when a Member who had a direct pecuniary interest on a question had withdrawn before a vote was taken, as required by the second sentence, he was no longer in a position to participate in the voting even if his such interest was in common with the rest of the population, or a sector thereof. However, according to the first sentence, he had the right to vote on the question in which he had such a pecuniary interest.

8. The clerk reported that, after studying the Rule, the Secretariat was of the view that the same criteria should apply when determining whether a Member might participate in a vote or whether he should withdraw from the meeting of a Council or a committee of the whole Council. DSG added that this view was based on the fact that the phrase "a direct pecuniary interest" in the second sentence of the English version was preceded by the word "such"; unfortunately the word "such" was not in the Chinese version of the Rule.

9. DSG then stated that there might be room for improving the drafting of Rule 84(1), to put it beyond doubt that a Member who had a non-excepted direct pecuniary interest in a question should withdraw from a meeting of the Council or the Committee of the whole Council before such question was voted upon. ASG3 said that where a Member who had a direct pecuniary interest failed to withdraw when a question was put to vote, Rule 84(3) and (4) provided the remedies which were that another Member might move a motion for the withdrawal of the Member or to disallow the vote of that Member. SALA added that Rule 84(1) might be viewed from the perspective that the first sentence dealt with the "right" of Members to vote while the second dealt with the "procedure" to follow (i.e. withdraw) if a Member was not allowed to vote.

Action

SALA

10. After deliberation, members requested the Secretariat to revise Rule 84 for the Committee's consideration at the next meeting.

Para 11 of minutes of the last meeting:

Review of the "Advisory Guidelines on matters of ethics in relation to the conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such" (Advisory Guidelines)
(LC Paper No. CMI/22/00-01)

11. Members noted that pursuant to the request of the Committee at the last meeting to standardize the various Chinese terms with similar meanings in the Advisory Guidelines, and to bring the Chinese version in line with the English version, the Secretariat had prepared LC Paper No. CMI 22/00-01.

12. Noting that paragraphs 3 and 4 of the Advisory Guidelines were quoted directly from Rules 84 and 83 of the Rules of Procedure respectively, Mr YEUNG Yiu-chung suggested that Rules 84 and 83 be amended as opportunity arose in future, in order to standardize various Chinese terms used. Members agreed with his suggestion.

13. The Deputy Chairman suggested that the word "knowingly" in the following sentence "*A Member should not knowingly take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public*" was superfluous, since a Member should always properly conduct himself and since it was always difficult to prove a person's intention. Mrs Sophie LEUNG said that the phrase "take advantage of" had already conveyed the meaning that it was an act undertaken by a Member after he had made deliberation. SALA said that although the word "knowingly" was commonly used in law, it was not strictly necessary to have it written down in the Advisory Guidelines.

14. After deliberation, members agreed to delete the word "knowingly" from the Advisory Guidelines. They also agreed to the other changes to the Advisory Guidelines as set out in the paper. The revised Advisory Guidelines would be issued to all Members for reference.

clerk

III. Review of the minimum value set for registrable material benefits for LegCo Members

(LC Paper No. CMI/23/00-01 and LC Paper No. CMI/24/00-01)

Action

15. The meeting noted LC Papers No. CMI/23/00-01 and CMI/24/00-01 and in particular the value limits of the gifts the receipt of which should be disclosed by Members of the legislatures in the United Kingdom and the United States of America. The Deputy Chairman and Mrs Sophie LEUNG pointed out that a gift with a value of about \$10,000 was rarely received by Members and it was necessary to consider lowering the minimum value. The Chairman agreed and said that pitching the minimum value at \$10,000 might give the public the wrong impression that Members often received gifts with values close to \$10,000.

16. Mrs Sophie LEUNG pointed out that on ceremonial occasions, such as opening or anniversary ceremonies, speech days etc., souvenirs presented to Members of the Council and other guests of honour officiating did not normally exceed \$2,000 in value. Mrs Sophie LEUNG then proposed that the minimum value should be set at \$2,000. The Deputy Chairman said he would suggest \$3,000 in order to save Members the inconvenience of having to register frequently the receipt of such material benefits. Members present then decided by a show of five hands to one that the minimum value for registrable material benefits should be revised downwards to \$2,000, and that individual members should consult Members of their political groupings about this recommendation, and should provide the clerk with comments, if any, within one week. Subject to any views received, the House Committee should be informed of the Committee's recommendation.

**All
members,
clerk**

(Post-meeting note: no adverse comments were received by the clerk by the end of one week i.e. 13 February 2001.)

IV. Date of next meeting

17. The clerk would consult members regarding the date of the next meeting.

18. The meeting ended at 12:20 p.m.

Legislative Council Secretariat
22 February 2001