

立法會
Legislative Council

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Committee on Members' Interests

**Minutes of the first meeting
held on Tuesday 7 November 2000 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 Jimmy MA, JP
Legal Adviser

Mr LAW Kam-sang, JP
Deputy Secretary General

Mr Ray CHAN
Assistant Secretary General 3

Mr Stephen LAM
Senior Assistant Legal Adviser (Acting)

Ms Eva LIU
Head (Research & Library Services)

Mr Arthur LEUNG
Senior Assistant Secretary (3)1

I. Adoption 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" made by the former Committee on Members' Interests
(Appendix 1 of the Agenda)

clerk At the suggestion of the Deputy Chairman, members agreed that 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", made by the former Committee on Members' Interests, should continue to apply and be issued to all Members for reference.

II. Adoption of "The Procedure of the Committee on Members' Interests for handling complaints received in relation to the registration and declaration of Members' interests" made by the former Committee on Members' Interests
(Appendix 2 of the Agenda)

clerk 2. At the suggestion of the Chairman, members agreed that "The Procedure of the Committee on Members' Interests for handling complaints received in relation to the registration and declaration of Members' interests", made by former Committee on Members' Interests, should continue to apply and be issued to all Members for information.

III. Review of the registration system for declaration of interests by Members
(Appendices 3-7 of the Agenda)

Scope of registrable interests

3. The Chairman invited members to give views on and suggestions for amendments to the present registration system in respect of Members' pecuniary interests (registration system). Mrs Sophie LEUNG suggested and members agreed to examine first the scope of the registrable interests as well as the monitoring mechanism of the registration system.

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4. Noting that Members were required, as stipulated in the notes to the Registration Form on Members' Interests (Registration Form), to register one-off material benefits of a value exceeding \$10,000, under the categories of (a) directorship; (b) remunerated employment offices, etc; (c) financial sponsorships; and (d) benefits received from outside Hong Kong, the Deputy Chairman enquired about the highest value of the gifts that public servants were allowed to accept under the Prevention of Bribery Ordinance (PBO) (Cap. 201). The Legal Adviser informed the meeting that under section 3 of PBO, the Chief Executive might give general or special permissions for public servants to solicit or accept advantages. Under the Acceptance of Advantages (Governor's Permission) Notice 1992, a public servant might accept a gift from a close personal friend so long as the value of the gift did not exceed \$2,000 on any one occasion. While reference might be made to such an upper limit, the system for registering Members' interests was not designed and implemented for the prevention of bribery. The main purpose of establishing the Register was to provide information of any pecuniary interests or other material benefits received by a Member which might reasonably be conceived by others as having an influence on his or her actions, speeches or votes in the Legislative Council (LegCo), or actions taken in his or her capacity as a Member. Given that the term "material benefits" had not been defined in the Rules of Procedure (RoP) and the value of \$10,000 for registrable material benefits set out in the notes to the Registration Form was only a guide, the registration system relied on the personal judgement of Members to decide whether or not to register a particular pecuniary interest received; it did not stop a Member from registering a benefit of a value less than \$10,000.

5. The Deputy Chairman asked if information was available on the minimum values set for registrable gifts by other legislatures. The clerk informed the meeting that in respect of the House of Commons of the United Kingdom (UK) Parliament, gifts with a value less than £125 were exempt from registration and other benefits were exempt if they had a value of less than £225.

6. Mr YEUNG Yiu-chung wished to clarify if gifts were classified as one type of material benefits. The Legal Adviser replied that this was the case. The Deputy Chairman said he was in favour of reviewing the existing value of \$10,000 set for registrable gifts. The Chairman proposed and the meeting agreed to examine it at the next meeting.

7. Mr NG Leung-sing enquired whether financial transactions between a Member and his/her political party were regarded as material benefits, and whether a Member was required to register benefits which were returned to him after he had contributed them to his political party. The Legal Adviser advised

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that the registration system did not make distinctions by the source of benefits and the Registration Form had been designed to provide flexibility for a Member to register the relevant details. The Member concerned should determine whether such interests were registrable himself.

Monitoring Mechanism

8. Ms Cyd HO said that as no mechanism had been set up to verify the interests registered by Members, she proposed that Members be required to submit copies of their annual tax returns submitted to the Inland Revenue Department (IRD).

9. The Chairman was of the view that Ms Cyd HO's proposal, if effected, would significantly change the existing system, which was essentially an honour system. As it stood, the system did not require Members to disclose other sources of income which were unrelated to LegCo business. Ms HO's proposal might encroach on the privacy of Members and would not be in line with the purpose of the registration system. The Deputy Chairman agreed with the Chairman and added that any improvement proposals should be in line with the principles of an honour system.

10. Ms Cyd HO responded that since the LegCo did not have the resources itself to investigate the pecuniary interests registered by Members, it could make use of the efforts of IRD in examining the tax returns. However, she agreed that it was important to protect Members' privacy, and that such arrangements should be made if and after the principle of her proposal was adopted.

11. Mr Bernard CHAN said that it was always possible to outwit any monitoring system, but on balance, he preferred a system similar to that of the US Congress, which required Members to register detailed pecuniary interests.

12. The Deputy Chairman said that one of the functions of the registration system was to protect Members from allegations that they conducted LegCo business for personal gains. He noted that the US Congress required its Members to register more details than the LegCo. He therefore suggested that reference should be made to the registration form adopted by the US Congress before the Committee recommended any changes to its Registration Form. The Chairman requested the Secretariat to prepare a paper to compare the registration particulars under the LegCo system to those of the US Congress and the United Kingdom Parliament, for discussion at the next meeting.

H(RL)

13. Mrs Sophie LEUNG was of the opinion that Members should take the initiatives to register their pecuniary interests, especially when in doubt. She cautioned that changes to the registration system should not be made in a piecemeal fashion, by taking bits and pieces from systems of other legislatures.

Powers of the Committee to investigate complaints

14. Mr NG Leung-sing enquired if the powers and responsibilities of the Committee in handling complaints had been laid down clearly in the Rules of Procedure. The Legal Adviser advised that the Committee on Members' Interests was one of the three standing committees of LegCo and was empowered by the Rules of Procedure to consider and investigate any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so (Rule 73(1)(c)); to summon persons concerned to testify or give evidence (Rule 80); and to report to the Council and make recommendations, including a recommendation as to a sanction under Rule 85 (Rule 73(1)(e)). He also advised that the Committee on Members' Interests had established a procedure for handling complaints in the last term, which the Committee had agreed not to amend in the earlier part of the meeting.

ICAC's proposal to adopt the definition of "advantage" in the Prevention of Bribery Ordinance

15. The Chairman sought members' views on the suggestion made by the Corruption Prevention Department of the Independent Commission Against Corruption (ICAC), as set out in its letter dated 26 October 2000, to adopt in the Registration Form the definition of the term "advantage" used in the Prevention of Bribery Ordinance. The Legal Adviser explained that the ICAC had made the suggestion apparently because there was a definition of the term "material benefits" in the Registration Form, but not for the term "advantage". He believed that there should have been a reason for the previous Committees on Members' Interests not adopting a definition of "advantage". He pointed out that the definition of "advantage" in PBO was intended to catch all bribery acts. He suggested that members should consider whether the lack of a definition of "advantage" in the Registration Form had given rise to problems, and if that was the case, address such problems directly, instead of adopting a definition from other sources.

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Legal Adviser

16. Ms Cyd HO enquired whether the same definitions of "advantage" and "entertainment" in PBO had been used in the Election (Corrupt and Illegal Conduct) Ordinance (Cap.554)(ECICO) and other ordinances. The Legal Adviser undertook to provide such information at the next meeting. He advised that it was not unusual that different definitions for the same term were used in different ordinances.

17. The Deputy Chairman enquired whether any practical difficulties might arise if the definition of "advantage" in PBO was adopted. The Legal Adviser replied that Members would then need to register any interests which were classified as advantages in PBO, irrespective of how small the value was. On the other hand, Members were required to declare only material benefits under the current registration system.

18. In response to Mr YEUNG Yiu-chung's enquiries, the Legal Adviser replied that since Members were regarded as public servants under the PBO, they were already subject to the provisions of PBO. Ms Cyd HO enquired how item (e) of the definition of "advantage" in PBO, which dealt with the exercise of or forbearance from exercising any right or any power or duty, would apply to Members. The Legal Adviser replied that the exercise of or forbearance from exercising any right or any power or duty by a person on a Member would constitute an advantage offered to the Member, and such advantage would be registrable if the Member concerned considered that was material advantage.

19. Mr NG Leung-sing invited the meeting to consider if there was any merit in making a reference to the definition of "advantage" in PBO in the form of footnote in the Registration Form. Since notes entered in the Registration Form served as guides only, the meeting decided that there was no need to enter such a note.

20. Mr NG Leung-sing enquired whether the donations solicited by a Member to meet certain needs, such as those solicited by Hon Emily LAU Wai-ling to meet the legal cost of a court case which she lost, would fall within the definition of election donations within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). As loans were classified as an advantage under PBO, he enquired whether undischarged legal costs would be regarded as loans and hence registrable if the definition of advantage in PBO was adopted for the registration system. Ms Cyd HO declared that since she and Hon Emily LAU Wai-hing belonged to the same political grouping, she would abstain from speaking on the matter. In respect of the first point, the Legal Adviser said that it would not be appropriate to discuss a specific case which could become a complaint at a later date.

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Regarding the second point, the Legal Adviser said that legal costs were legal obligations arising from a court order and were not loans between private parties, although the person to whom such legal costs were awarded was entitled to recover them as if he were a creditor. Hence, legal costs did not fall within the meaning of "advantage" in PBO as a loan.

21. Following further discussion, the meeting concluded that there was no need to adopt the definition of advantage in PBO in the Registration Form.

ICAC's proposal to require Members to declare both direct and indirect pecuniary interests

22. At the invitation of the Chairman, the clerk briefed members of the proposal of ICAC that Members should be required to declare both direct and indirect pecuniary interests in any matters under discussion at meetings. She added that she had already explained to the writer that there was already such a requirement under Rule 84(2) of RoP. The meeting agreed that there was no need to pursue the proposal.

ICAC's proposal to issue regular reminders to Members

23. The Chairman invited members to consider ICAC's proposal to issue regular reminders to Members to submit their returns, and to bring outstanding cases to the attention of the Committee at an appropriate time, say half-yearly. The clerk drew members' attention to Rule 83(3) of the RoP, which stipulated that Members were required to furnish to the Clerk particulars of any change in registrable interests within 14 days of any such change. Mrs Sophie LEUNG considered that it was the responsibility of Members to register their interests promptly without having to be reminded, and Members should always be vigilant in fulfilling the responsibility. As regular reminders did not really serve any useful purpose, the meeting decided that there was no need to pursue the proposal.

clerk 24. The meeting asked the clerk to send a reply to the ICAC on behalf of the Committee.

Accessibility of the Register of Members' Interests

25. The Chairman invited members to consider a proposal made by a member of the public to upload the Register of Members' Interests onto the LegCo Web-site for easy access by the public. The meeting noted that the UK

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Parliament had adopted such a practice. Concurring with the Deputy Chairman and Ms Cyd HO who expressed support for the proposal, Mrs Sohpie LEUNG said that the proposal was consistent with the current arrangement under which members of the public could have access to the Register. The meeting agreed to adopt the proposal in principle.

26. The clerk reported that it was stipulated in Rule 83(4) of the RoP that the "register shall be available for inspection by any person during office hours" and an amendment to the Rule might be necessary to implement the Committee's proposal. However, in view of the Legal Adviser's advice that the Rule set out the minimum accessible hours of the Register and did not prohibit other hours, the meeting agreed that the Register could be uploaded as soon as the technical aspects were ready. The meeting also noted Mr Bernard CHAN's suggestion that consideration should be given to the provision of facilities for individual Members to upload their registrable interests on the LegCo Website.

IV. The incident of Mr CHENG Kai-nam, Gary (Appendix 8 of the Agenda)

27. At the invitation of the Chairman, H(RL) briefed members on the respective practices adopted by the legislatures of the United Kingdom, the United States and Canada, regarding the sanctions which were available to them against their current or former Members for certain misconduct, as set out in the information note issued as Appendix 8 to the Agenda.

28. In response to Mr YEUNG Yiu-chung's enquiry, H(RL) said that the Parliamentary Standards Commissioner of the United Kingdom was not a Member of the Parliament. The Legal Adviser added that the Commissioner was appointed to assist in the work of the Parliamentary Standards Committee, similar in nature to the Committee on Members Interests of LegCo.

29. In response to the Deputy Chairman's enquiry, the Legal Adviser said that, in contrast to overseas legislatures which had inherent jurisdictions, LegCo derived its power from the Basic Law. The RoP did not prohibit the Committee on Members' Interests to handle complaints about a failure to register and/or declare interests by a former LegCo Member. However, given that LegCo was not a law enforcement body, formal sanctions in the Council could only be made against a current Member. In reply to Mr YEUNG Yiu-chung's enquiry on whether reprimand could be made against former Members, the Legal Adviser responded that the Committee might not impose sanctions against a former Member, but might, after investigation, convey its disapproval by way of moving a motion in the Council about the conduct or misconduct of a former

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Member. Since there was an established procedure for handling complaints, the Chairman suggested and the meeting agreed that any complaint received by the Committee against any person, including a former Member, should be thus handled.

V. Date of next meeting

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

31. The meeting ended at 12:15 p.m..

Legislative Council Secretariat

1 December 2000