

立法會

Legislative Council

LC Paper No. CB(2)379/02-03
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Legislative Council Panel on Constitutional Affairs

Minutes of special meeting held on Monday, 7 October 2002 at 10:45 am in Conference Room A of the Legislative Council Building

- Members present** : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon HUI Cheung-ching, JP
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon SZETO Wah
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
- Members attending** : Hon Albert HO Chun-yan
Hon Albert CHAN Wai-yip
- Members absent** : Dr Hon YEUNG Sum
Hon TAM Yiu-chung, GBS, JP
- Public Officers attending** : Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs
- Mr Clement MAK Ching-hung
Acting Permanent Secretary for Constitutional Affairs
- Mrs Philomena LEUNG HO Ye-man
Principal Assistant Secretary for Constitutional Affairs

Clerk in attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Watson CHAN
Head, Research and Library Services Division

Mr CHAU Pak-kwan
Research Officer 5

Mr Paul WOO
Senior Assistant Secretary (2)3

Action

The Chairman informed members that four new Members had joined the Panel for the 2002-03 session. In accordance with Rule 22(c) of the House Rules, the new membership took effect at noon on 5 October 2002, i.e. the deadline for submission of return. In accordance with Rule 22(f) of the House Rules, the incumbent chairman and deputy chairman of the Panel should hold office until the election of the chairman and deputy chairman of the Panel in the session next following that for which they were elected, i.e. 10 October 2002.

I. Confirmation of minutes of meetings
(LC Paper No. CB(2)2845/01-02)

2. The minutes of the meeting held on 9 July 2002 were confirmed.

**II. Accountability system for principal officials and related issues -
Declaration and handling of investments/interests**

Briefing by Head, Research and Library Services Division on "Information Note on Selected Issues Relating to Declaration of Interests and Avoidance of Conflicts of Interests by Senior Members of Government" (Information Note) (IN35/01-02 issued vide LC Paper No. CB(2)2868/01-02)

3. At the invitation of the Chairman, Head, Research and Library Services Division (H/RL) gave a presentation on the Information Note (IN35/01-02). The Information Note contained information on the system of declaration of interests applicable to Cabinet Secretaries in the United States (US) and Cabinet Ministers in the United Kingdom (UK). It covered the following aspects -

Action

- (a) declaration of interests;
- (b) procedures to avoid conflict of interest;
- (c) operation of blind trusts; and
- (d) operation of British Virgin Islands (BVI) companies.

Issues raised by members

Declaration of interests

4. Mr NG Leung-sing noted that in the UK, a Minister was required to provide a full list of all interests which might give rise to a conflict, including interests of a spouse or partner, children who were minors, and closely associated persons. He requested Research and Library Services Division (RLSD) to collect supplementary information to clarify the meaning of "spouse, partner, and closely associated persons" for members' reference.

5. Mr Albert HO also requested RLSD to find out if Ministers in the UK were required to declare liabilities. In his view, information relating to liabilities of principal officials, apart from information relating to assets, should also be disclosed to enhance transparency.

6. Mr Albert HO further opined that the need for principal officials to declare the interests of their dependent adult children should also be considered.

7. Mr YEUNG Yiu-chung asked whether Ministers in the UK could remain in office even though they failed to conduct themselves in accordance with the Ministerial Code. Research Officer 5 (RO5) replied that Ministers remained in office for so long as they retained the confidence of the Prime Minister, who ultimately decided on the standards of behaviour expected of Ministers and the consequences of and penalty for a breach of the standards. Ms Emily LAU requested RLSD to provide supplementary information on penalties imposed on senior members of government for violation of the declaration requirements in the US.

8. Mr James TIEN said that Members of the Executive Council (ExCo) were required to declare interests/investments as they offered advice to CE on policy issues and were involved in policy decisions. However, the same declaration system applied to the 14 principal officials and the five unofficio ExCo Members without policy portfolio appointed by the Chief Executive (CE). He asked about the application of the system of declaration of interests in the US and the UK. H/RL agreed to provide relevant information, if any,

Action

RLSD for members' reference.

9. Ms Emily LAU pointed out that the regulatory framework in relation to declaration of interests of Ministers in the UK was not by law as in the case of the US, but by way of the Ministerial Code. Moreover, the interests declared were treated in confidence and would not be disclosed without the Ministers' consent. She requested RLSD to find out whether there were differences between the declaration system for Ministers vis-a-vis that for Members of Parliament.

RLSD

10. Referring to the practice in the US, Ms Emily LAU said that declaration on real estate covered detailed information on the nature, value and location of the properties concerned. She asked RLSD to gather information on the declaration requirements in the UK for members' reference.

RLSD

11. Ms Emily LAU also requested RLSD to include an additional item on company directorship in the "Table of Comparison of Various Attributes of Selected Issues" in the Report, and to add an additional column to the Table setting out the attributes of the Hong Kong system for purpose of comparison with the US and the UK systems.

RLSD

12. Miss Margaret NG asked whether RLSD, in its research, had come across information which confirmed that the adoption of the declaration of interest system in the US and the UK was for the purpose of maintaining confidence of the public in the government. RO5 replied that the declaration systems in the US and the UK were for the purpose of strengthening public trust and confidence in the government. He pointed out that the UK Ministerial Code, for instance, was promulgated following a series of major blunders which hit the government.

Blind trusts

13. In response to the Chairman, H/RL said that in the US and the UK, setting up of blind trusts was a legitimate way, among other measures, for senior members of government to avoid potential conflict of interest. A blind trust was a trust of which the beneficiaries did not have knowledge of the trust's assets, and a fiduciary third party had complete management discretion. In the US, a Cabinet Secretary who chose to set up a blind trust had to follow the legal provisions stipulated in the Ethics in Government Act 1978. On the other hand, there was no specific legislation in the UK on the setting up and operation of a ministerial blind trust.

14. Ms Emily LAU asked how the operation of blind trusts in the US compared to that in the UK. H/RL replied that in the US, a qualified blind trust must have an approved trustee independent from any interested party, and be certified by the Office of Government Ethics (OGE). "Interested party"

Action

referred to the Cabinet Secretary, his spouse, any minor or dependent child, and their representatives in any case in which the Cabinet Secretary, his spouse, or child had a beneficial interest in the principal or income of the blind trust. There should be no direct or indirect communication between the trustee and any interested party unless with the approval of OGE.

15. The Chairman added that the system in the US described in the Information Note applied to all presidential appointees, including Cabinet Secretaries.

16. H/RL said that under the UK Ministerial Code, a blind trust was one in which the Minister was not informed of changes in investments or of the state of the portfolio, but was still fully entitled to both the capital and income generated. The Code stated that a blind trust "is only blind in the case of a widely-spread portfolio of interests, managed by external advisers. Once a blind trust has been established, the Minister should not be involved or advised of decisions on acquisition or disposal relating to the portfolio".

17. Mr Howard YOUNG, Mr NG Leung-sing and Mr James TIEN expressed the view that there were major differences between the US system and the UK system. They considered that it would not be desirable for Hong Kong to adopt either of the two systems. Mr YOUNG also pointed out that in both the US and the UK, the setting up of blind trusts was only one of the acceptable methods for avoiding conflict of interest.

British Virgin Islands (BVI) companies

18. The Chairman sought clarification on paragraph 5.2 of the Information Note which stated that "...it is likely that any Minister using BVI companies to hold assets would be reminded by their departmental Permanent Secretary of the potential allegations or criticism on the grounds of tax avoidance".

19. RO5 said that as explained in the Information Note, the major advantages attached to BVI companies included exemption from all BVI taxes and stamp duty. In the UK, Ministers were permitted to use BVI companies to hold assets as long as they complied with the relevant requirements laid down in UK laws. He explained that because of the perception of the public that BVI companies could be used as an improper means to evade tax, the Permanent Secretary found it necessary to remind a Minister of such potential criticism.

20. The Chairman pointed out that as set out in the Information Note, if a BVI company engaged in business activities in Hong Kong and the profits were sourced in Hong Kong, it would be subject to Hong Kong taxation at the same rate as companies incorporated in Hong Kong.

Action

21. Mr Albert HO said that a major feature of a BVI company was confidentiality of the identity of shareholders and directors. He opined that to achieve maximum transparency of the declaration system, in addition to declaration of ownership of BVI or foreign companies holding financial interests/assets, principal officials should also disclose information on the other partners and shareholders of the companies. Mr HO requested RLSD to provide supplementary information on whether there were similar requirements in the system in the US and the UK.

RLSD

Meeting with the Administration
(LC Paper No. CB(2)2868/01-02(02))

22. The Secretary for Constitutional Affairs (SCA) introduced the Administration's paper which was submitted in response to issues raised by members at previous discussions on declarations of interests made by CE, Members of ExCo and principal officials under the accountability system. He also drew members' attention to Annex A and Annex B of the paper which set out the interests which were required to be declared by ExCo Members and principal officials.

23. SCA further informed members that updated declarations made by principal officials on company directorships, and the usage and location of properties held by them would be made available in about a week's time for members' information.

Declaration of interests

24. Mr Albert HO said that transparency in declaring financial interests held by principal officials was a prerequisite of an effective mechanism for prevention of conflict of interest. He opined that financial interests should include financial obligations. Therefore, principal officials should be required not only to declare their assets but also their liabilities, if any.

25. Mr Albert CHAN echoed Mr Albert HO's views. He pointed out that police officers were required to report indebtedness. There were precedent cases in which police officers with serious indebtedness had been subject to disciplinary procedures, and in extreme cases, had been dismissed from service. He opined that he saw no reason why principal officials, being the most senior officials in the Government, should not be subject to the requirement to disclose debts and liabilities.

26. SCA responded that in deciding what information should be made available for public inspection, it was necessary to strike a balance between transparency on the one hand, and the need to protect the privacy of the principal officials on the other. He further explained that prior to their appointment, principal officials were subject to comprehensive integrity checks

Action

which included an assessment of their financial positions. Principal officials were also required to abide by the same provisions in the Prevention of Bribery Ordinance applicable to civil servants. He said that the Administration was satisfied that the existing monitoring arrangements were effective and there was no need to require principal officials to declare their liabilities.

27. Mr NG Leung-sing agreed that a high degree of transparency of the system of declaration to facilitate public monitoring of the conduct of principal officials and thorough pre-appointment integrity checks were essential to prevention of conflict of interest.

28. Referring to paragraph 5.7 of the Code for Principal Officials under the Accountability System (the Code), Ms Emily LAU asked whether CE's decision to require a principal official to take certain specified measures would be made public.

29. SCA replied that the decision of CE would not be made public. Nevertheless, if a principal official was required to place his investments or interests in a blind trust, the principal official would need to make public the relevant arrangements.

Family trusts and blind trusts

30. Mr Albert CHAN said that paragraph 5.7(d) of the Code only stated that CE might, where it appeared that there was or might be a conflict of interest, require a principal official to place investments or interests in a blind trust. However, the Administration had not explained in detail the requirements regarding the setting up of a blind trust and how the trust should operate and be managed to ensure that it would be free from any possible interference or influence of the principal official concerned. He said that without knowledge of such details, the public would hardly be in a position to judge whether a trust set up by a principal official could work as an effective measure for guarding against conflict of interest.

31. Some members sought clarification on the arrangements made by the Secretary for Commerce, Industry and Technology (SCIT) and the Secretary for Financial Services and the Treasury (SFST) in setting up family trusts to which their financial interests had been transferred.

32. SCA replied that SCIT had declared that he had transferred all of his shares in his family companies to a trust of which his father was the trustee. According to the declaration made by SCIT, he had no right to give instructions to the trust or its trustee. Moreover, SCIT was not involved in the management and operation of the companies in which he had shares.

33. In the case of SFST, SCA informed members that SFST had issued a

Action

press release on 5 August 2002, which stated that he had set up a family trust of which an international trust corporation, a subsidiary of a major international bank, was appointed as the trustee. SFST and his family members were not involved in any decision making and management of the trust assets. Moreover, the trust would not invest in Hong Kong equities.

34. The Chairman said that the terms of the trust in the case of SCIT had not been disclosed. For example, it was not clear whether the trustee could include other family members and whether the trustee could act in complete independence in disposing of the shares in the family companies. He pointed out that in the US, the trustee of a blind trust had to be an independent third party not having any close relationship with the settlor.

35. Mr CHEUNG Man-kwong said that as principal officials were the highest-ranking officials responsible for policy formulation, it was necessary for the Administration to introduce effective measures to avoid actual or perceived conflict of interest and abuse of power. He opined that as family trusts were set up for the benefit of the settlor and/or his spouse, children and other family members, the public might suspect that the principal officials concerned could give instruction to the trustee on the management of the trust assets, or influence investment decisions through their family members. In his view, in order to ensure total independence of the trustee in the operation of the trust and avoid public perception of a potential conflict of interest, the family trusts set up by SCIT and SFST should be replaced by blind trusts.

36. Ms Emily LAU supported the view that principal officials should be required to set up blind trusts, instead of family trusts, to manage their assets.

37. Mr Albert HO and Mr Albert CHAN pointed out that the practice in the US was that the trustee appointed in a blind trust must be a financial institution and independent from any interested party.

38. SCA said that under the accountability system, principal officials were required to observe the highest standards of personal conduct and integrity. Principal officials were strictly prohibited from abusing their powers for personal ends. He said that CE had given due consideration to the trusts set up by SCIT and SFST and was satisfied that the arrangements were acceptable. The principle was that the principal officials should leave all matters concerning the investment, management and disposal of the trust assets entirely in the hands of the trustee.

39. Regarding the trust set up by SFST, SCA said that this was referred to as a family trust because the beneficiaries included family members. The operation of the trust, however, was similar to that of a blind trust.

40. Mr IP Kwok-him said that it was right for the public to demand a high

Action

degree of transparency in the system of declaration of interests to prevent conflict of interests in discharging public duties. He shared the view that public perception of a family trust gave rise to concern about lack of independence in the management of the trust. He opined that the Administration should take appropriate measures to dispel the doubt and introduce necessary remedies for improprieties.

Admin

41. The Chairman said that there was confusion over the meaning of a family trust and a blind trust. He requested the Administration to clarify in writing the differences between the two and their mode of operation.

RLSD

42. RLSD was also requested to collect information on whether the term "family trust" was defined in the US or the UK, and whether family trusts were accepted as an alternative means for prevention of conflict of interests of senior members of government in the two places.

Prevention of conflict of interest in participating in ExCo business

43. In response to the Chairman and Ms Emily LAU, SCA explained that where a Member of ExCo considered that he had an interest in a matter to be discussed by ExCo, the Member concerned should make a declaration to that effect before discussion took place. Where necessary, the ExCo Secretariat would request the Member not to participate in the discussion, or withhold relevant ExCo papers and minutes from the Member.

44. Ms Emily LAU referred to paragraph 9(a) of the Administration's paper (LC Paper No. CB(2)2868/01-02(02)), which stated that significant personal pecuniary interests of an ExCo Member which might be materially affected by the decision of ExCo would likely be considered as involving a conflict of interest. She pointed out that the criterion applicable to Legislative Council (LegCo) Members was "direct pecuniary interests". She said that it appeared that the standard applicable to ExCo Members was less stringent than that applicable to LegCo Members.

45. The Chairman and Mr James TIEN considered that the standard applicable to ExCo Members was more stringent as "significant personal pecuniary interests" covered both direct and indirect pecuniary interests. Mr James TIEN pointed out that ExCo Members were required, e.g. not only to report shareholdings in any company but also the amount and value of the shareholdings.

46. Ms Emily LAU asked whether an ExCo Member holding substantial amount of land and properties would be considered as having significant personal pecuniary interests, and therefore should withdraw from participating in ExCo's discussion of any housing or land planning issues which might have an impact on the property market.

Action

47. The Chairman opined that if the ExCo Member was, e.g. a director of a property development company, it was likely that a policy decision on such issues would significantly affect his personal interests. In such case, the Member should not participate in the ExCo discussion.

Admin

48. SCA said that whether an ExCo Member should withdraw from a meeting depended on the subject and nature of the discussion item concerned. He said that an ExCo Member had the duty to declare his interests where necessary, and it was a matter for CE to decide if there existed a genuine conflict of interest and whether the Member should participate in the discussion. The basic principle was that Members of ExCo must tender disinterested and impartial advice to CE. The Administration was requested to clarify the meaning of "significant personal pecuniary interest" which could lead to a conflict of interest. SCA agreed to consider the request.

Foreign/BVI companies

49. Mr Albert HO reiterated that principal officials using foreign companies or BVI companies to hold financial interests/assets should disclose information concerning all other partners and shareholders of the companies.

50. SCA informed members that foreign/BVI companies currently owned by principal officials had no active business activities.

The way forward

51. Members asked the Administration to consider and respond to the concerns expressed at the meeting. Members also agreed that the subject matter should be further discussed at the start of the new session.

52. There being no other business, the meeting ended at 1:05 pm.

Council Business Division 2
Legislative Council Secretariat
15 November 2002