

# 立法會

## *Legislative Council*

LC Paper No. CMI/24/02-03

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

### **Committee on Members' Interests**

**Minutes of the ninth meeting  
held on Tuesday 15 July 2003 at 10:45 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Dr Hon David CHU Yu-lin, JP (Chairman)  
Hon SIN Chung-kai (Deputy Chairman)  
Hon Cyd HO Sau-lan  
Hon NG Leung-sing, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon YEUNG Yiu-chung, BBS
- Non-Committee Members attending** : Hon Margaret NG  
Dr Hon LO Wing-lok, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Bernard CHAN, JP
- Clerk in attendance** : Mrs Betty LEUNG  
Chief Assistant Secretary (3)1
- Staff in attendance** : Mr Ray CHAN  
Assistant Secretary General 3
- Mr LEE Yu-sung  
Senior Assistant Legal Adviser 1
- Mr Watson CHAN  
Head, Research and Library Services Division
- Mr CHAU Pak-kwan  
Research Officer 5
- Mr Arthur LEUNG  
Senior Assistant Secretary (3)1
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Action

**I. Matters of ethics in relation to the conduct of Legislative Council Members in their capacity as such**

(LC Papers No. CMI/15/02-03, CMI/20/02-03 and LS147/02-03)

The Chairman stated that the YUA Current Affairs Society had written to the Chairman of the House Committee on 29 May 2003 enquiring whether some Members' conduct outside the Legislative Council (LegCo) meeting had breached the LegCo Oath they had taken when assuming office or was up to the ethical standard in their capacity as such. The Chairman of the House Committee had referred the letter to the Committee on Members' Interests (CMI) for consideration. Besides, Mr YEUNG Sum had also written to the CMI on 11 July 2003 requesting it to discuss Hon Philip WONG Yu-hong's conduct outside the LegCo meeting. Senior Assistant Legal Adviser 1 (SALA1) had prepared a paper on the subject (LC Paper No. LS147/02-03 issued vide LC Paper No. CMI/22/02-03) for members' reference. The Chairman invited SALA1 to brief members on the paper.

2. SALA1 briefed members on the salient points of the paper as follows:

- One of the functions of the CMI is "to consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters". According to this provision, the CMI has not been given the function or power to determine whether the conduct of a particular Member is appropriate or up to the ethical standard. This viewpoint was also supported by the incidents in which motions on empowering the then Committee on Members Interests to initiate investigations into complaints against Members' misconduct had twice been rejected by the former Legislative Council in 1995 and 1996 respectively.
- Under Article 79(7) of the Basic Law, when a Member is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members present, the President of the Council shall declare that the Member is no longer qualified for the office. Rules 49B and 73A of the Rules of Procedure set out the procedure for implementing the Article. Where a Member considers that the conduct of a fellow Member is a misbehaviour or has breached the oath, he may move a motion of censure under Rule 49B. The matter stated in the motion shall be referred to an investigation committee unless the Council orders otherwise. The constitution and procedure of an investigation committee are provided in Rule 73A. An investigation committee is responsible for establishing the facts stated in the motion of censure, and giving its views on whether the facts as established constitute grounds for the censure. It is required to report to the LegCo. Under Rule 49B(3), the passage of such a motion requires a two-thirds majority of the Members present.

Action

3. Mr YEUNG Yiu-chung said that based on the explanation of SALA1, the CMI should not specifically handle the complaints contained in the above two letters. He enquired whether there was any mechanism to prevent Members' abusing such procedure, which could lead to the disqualification of a Member from office, by moving of motions of censure indiscriminately. In response, SALA1 advised that Rule 49B(2A) of the Rules of Procedure stipulates that upon the moving of a motion under Rule 49B(1A), the debate shall be adjourned and the matter stated in the motion shall be referred to an investigation committee. However, the Council could, by a motion which may be moved without notice by any Member, order otherwise.

4. Mr NG Leung-sing pointed out that as Rule 49B(1A) of the Rules of Procedure neither provides for the definition of "misbehaviour" or "breach of oath" nor specifies the person to determine whether a particular Member's conduct is an instance of such, if the decision rested solely with the Member(s) who moved the motion of censure, abuses mentioned by Mr LEUNG Yiu-chung might occur. He further pointed out that regardless of the conclusion of the investigation committee, the investigation process would definitely have unfavourable effects on the Member being accused. In response, SALA1 said that the existing mechanism provided for in the Rules of Procedure could be regarded as a safeguard for the Member concerned. In the first place, it required a Member who considered the conduct of a fellow Member to be an act of misconduct or a breach of the oath, and decided to move a motion of censure. Upon the moving of such motion, if a motion on ordering such motion otherwise was moved, the Council could determine at this stage whether it would further follow up on the conduct concerned. No investigation committee would be formed if the Council ordered otherwise by passage of such a motion. On the other hand, even if an investigation committee was established, its function was confined to forming views on the facts of the conduct. Whether the conduct was an act of misconduct or had breached the oath would ultimately be decided by the Council by voting.

5. Ms Cyd HO enquired whether the definitions of "misconduct" and "breach of oath" had been discussed when Rule 49B of the Rules of Procedure was provided. In response, ASG3 said that Subrules (1) and (1A) of Rule 49B of the Rules of Procedure set out the procedure for implementing Articles 79(6) (Member convicted of a criminal offence) and 79(7) (misbehaviour/breach of oath) of the Basic Law respectively. Under normal circumstances, a motion of censure moved under Subrule (1A) would be referred to an investigation committee responsible for establishing the facts stated in such motion, and giving its views on whether the facts as established constituted grounds for the censure. Nevertheless, there is a provision under Subrule (2A) which allows, upon the passage of a motion for the Council to order otherwise, an investigation committee not to be established. With the permission of the Chairman, Ms Margaret NG provided members with the relevant background information. She advised that she was a member of the Committee on Rules of Procedure when Rule 49B was drafted, and she could relate to members the Committee's

Action

considerations in drafting the Rule. As a Member's conviction of a criminal offence was a straightforward fact which did not require investigation, the motion to relieve such Member of his duties as a Member could be moved directly under Subrule (1) and put to vote by the Council. On the other hand, after discussion, the Committee on Rules of Procedure considered that definitions for "misbehaviour" and "breach of oath" should not be prescribed as any definition might arouse controversy; and Members' views on whether the gravity of the misbehaviour called for the relieve of such Member of his duties as a Member would most likely be affected by the prevailing social values. The function of an investigation committee was to establish the facts of the conduct concerned and give views on its gravity to enable LegCo Members to form an informed view on the matter. However, the Committee on Rules of Procedure noted that if "misbehaviour" and "breach of oath" were not defined, various trivial acts could be regarded as a breach of the rule, giving rise to possible abuse of the procedure by political parties in an attempt to strike blows at Members of other political parties. On the other hand, as certain acts are in fact uncontroversial, there is a provision under Rule (2A) which allows the Council to decide not to establish an investigation committee, so that the motion of censure can be put to vote by the Council directly without being referred to an investigation committee. The Committee on Rules of Procedure had also considered whether "misbehaviour" and "breach of oath" should be defined by the CMI, but as the CMI had its own functions, it was ultimately decided that the investigation committee should investigate into and form views on the particular incident. ASG3 supplemented that under the Rules of Procedure, the CMI is presently not given the power to investigate whether a Member's conduct is an act of misconduct or has breached the oath.

6. Ms Cyd HO pointed out that the LegCo should be very cautious in exercising its power of relieving a Member of his duties as a Member, especially when the majority of the incumbent Members were elected by a small electorate base, so as to avoid a scenario in which the decision of Members elected through small circle elections to oust a Member overrode the decision of electors which returned him as a LegCo Member. She believed that if all Members were elected by universal suffrage, cases of Members making rude gestures would rarely happen. Besides, the requirement under the Basic Law that a motion of censure requires a two-thirds majority vote of the Members present was also closely related to the composition of the first term of the LegCo in which only one-third of the Members were elected by universal suffrage.

7. The Deputy Chairman said that while he recognized that the CMI was not empowered to investigate into the conduct of individual Members, he opined that the approaches adopted by the LegCo in handling Members' misbehaviour were in two extremes. In one extreme, the matter would not be handled, and in another extreme, the Member would be relieved of his duties as a Member. He suggested that a study should be conducted on the approaches adopted by advanced countries in Europe and America in handling cases regarding Members' misbehaviour, so that the CMI could consider subsequently whether

Action

such approaches could be applied to Hong Kong. Members present agreed to the suggestion.

8. The Chairman suggested that the CMI should send replies to the complainants who wrote the above two letters informing them that investigating into and forming views on the conduct of individual Members were outside its terms of reference. They should also be informed of the mechanism of the LegCo in handling cases regarding Members' misbehaviour/breach of oath. The Deputy Chairman suggested that replies should also be given to other letters and e-mails of complaint recently received by the Secretariat in relation to the second incident mentioned above. Members agreed to these suggestions. Ms Cyd HO was of the view that even though Members were free to express their views in different manners, they should not adopt manners which would directly offend the others. She opined that Members should be advised to note that such practice was inappropriate.

Clerk

**II. System for political parties to declare donations**  
(LC Paper No. IN28/02-03)

9. The Chairman invited the Head of the Research and Library Services Division (H/RL) to brief members on the donation declaration systems for political parties in the United Kingdom (UK), New Zealand and Canada.

10. H/RL briefed on the following salient points of the information note prepared by the Library and Research Services Division (LC Paper No. IN28/02-03):

- among these three countries, only New Zealand allows for the acceptance of foreign and anonymous donations by a political party;
- none of these three countries have set an upper limit on the amount of donation/contribution which can be accepted by a political party;
- the definitions of donation/contribution adopted by these three countries are broadly comparable; and
- all the above three countries have established donation/contribution declaration requirement for political parties.

11. The Deputy Chairman enquired whether the parliaments of the above three countries were involved in the administration of the donation declaration requirement for political parties. In reply, H/RL said that in UK, Members of Parliament (MPs) were only required to register their personal interests. There was no corresponding requirement in New Zealand. In Canada, Members of the House of Commons were not entitled to vote on questions in which they had

Action

direct pecuniary interests. Research Officer 5 (RO5) supplemented that in UK, an MP was required to register any donation in excess of a certain amount received by the constituency association of his political party.

RO5

12. Ms Cyd HO enquired about the means by which the authorities concerned in these three countries monitored the political parties' compliance of the donation declaration requirement and handled complaints against political parties' failure to declare donations, as well as the penalties on the political parties for proven failure of declaration. In response, RO5 said that as the regulations concerned were rather complicated and piecemeal, they were not elaborated in the information note. In brief, the declaration systems of all these three countries were backed up by legislation, and both late declarations and omissions would incur criminal liabilities. Ms Cyd HO requested and RO5 agreed to collate more detailed information in this respect for members' reference.

13. Mr NG Leung-sing said that the development of a political party very often hinged on the availability of resources. He was particularly concerned about the possible impact of "money politics" on the election results. As the acceptance of foreign and anonymous donations by political parties were not allowed in both UK and Canada, he enquired about the measures in place in these countries to prevent the acceptance of foreign donations by political parties through local organizations acting as intermediaries, and to forestall false claims by political parties that the donations were collected on the street, which would render the prohibition on accepting foreign and anonymous donations nominal. Ms Cyd HO pointed out that the latter of the above issues had been discussed by the Bills Committee responsible for scrutinizing the Elections (Corrupt and Illegal Conduct) Bill. It was initially proposed in the Bill that candidates must, on receiving an election donation of \$500 or more, issue to the donor a receipt specifying particulars of the donor and the donation, and furnish copies of such receipts to the authorities concerned after the election. As the banknote with the highest denomination issued in Hong Kong was \$1,000, and in order to avoid inconvenience caused to the public who donate a \$1,000 banknote on the street, the Administration had agreed to the Bills Committee's suggestion of raising the election donation threshold for which a receipt was required to \$1,000 or more. In reply to Mr NG Leung-sing's enquiry above, H/RL advised that in UK, political parties' acceptance of donations of less than £200 was not subject to the Political Parties, Elections and Referendums Act 2000 (PPERA), and donations of more than £200 could only be accepted if they were from a permissible donor. Any political party receiving donations from anonymous or impermissible sources must either return them, or surrender them to the Consolidated Fund. Mr NG Leung-sing further enquired about how the £200 threshold was determined. In reply, H/RL said that political parties must report any donations received from impermissible or unidentifiable sources which had not been accepted. RO5 supplemented that the same threshold was adopted in all provisions under PERA. According to his understanding, setting the threshold at £200 was a subjective decision made for administrative efficiency.

Action

14. The Deputy Chairman said that while he did not find it essential to introduce political party legislation in Hong Kong, he considered that organizations supporting election candidates should be required to declare political donations received. Mr NG Leung-sing said that as a Member could obtain benefits from his political party in numerous ways, such as reducing the amount to be handed over to the party, he agreed to the regulation of matters in relation to the donation declarations by political parties. He however pointed out that such regulatory regime must be practicable. For example, there must be measures to prevent political parties from withholding the identity of a donor by claiming that the donation was collected in public places. In this connection, he opined that reference could be made to the practice adopted in foreign countries.

15. Ms Cyd HO suggested that the information note, information on late declarations or omissions to be collected by Research and Library Services Division and other related information should be referred to the Panel on Constitutional Affairs for the Panel members to consider the follow-up actions to be taken with the Administration and the relevant statutory bodies. Members present agreed to the suggestion.

H/RL &  
Clerk

16. The meeting ended at 11:50 a.m..

Council Business Division 3  
Legislative Council Secretariat  
16 July 2003