

立法會

Legislative Council

LC Paper No. CB(2)545/02-03

(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting

**held on Monday, 21 October 2002 at 4:30 pm
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 CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon SZETO Wah
Hon TAM Yiu-chung, GBS, JP
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
- Member absent** : Hon HUI Cheung-ching, JP
- Public officers attending** : Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs
- Mr Clement C H MAK
Acting Permanent Secretary for Constitutional Affairs

Mrs Philomena LEUNG HO Ye-man
Principal Assistant Secretary for Constitutional Affairs

Miss Jennifer MAK
Deputy Secretary for the Civil Service (3)

Clerk in attendance : Mr Paul WOO
Senior Assistant Secretary (2)3

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

Mr Watson CHAN
Head of Research and Library Services Division

Mr CHAU Pak-kwan
Research Officer 5

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)106/02-03)

The minutes of the meeting held on 10 October 2002 were confirmed.

II. Items for discussion at next meeting
(LC Paper No. CB(2)110/02-03(01))

2. Members agreed that the following items would be discussed at the meeting on 18 November 2002 -

- (i) Research Report on "The Relationship between the Government and the Opposition Party in Overseas Places" prepared by the Research and Library Services Division of the Legislative Council Secretariat; and
- (ii) Responsibilities of principal officials under the accountability system (paragraph 50 below refers).

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III. Accountability system for principal officials and related issues

(a) Declaration and handling of investments/interests

(LC Paper Nos. IN03/02-03; CB(2)97/02-03(01) - (14); CB(2)114/02-03(01))

3. The Chairman said that at the meeting held on 7 October 2002 to consider the Information Note on "Selected Issues Relating to Declaration of Interests and Avoidance of Conflicts of Interests by Senior Members of Government" (IN35/01-02) prepared by the Research and Library Services Division (RLSD) of the Legislative Council (LegCo) Secretariat, members had requested RLSD to collect additional information for further consideration of the Panel. Some of the information requested was set out in the Information Note (IN03/02-03). RLSD would provide the remaining information to the Panel once available.

4. The Chairman further informed members that as requested by the Panel at its meeting on 7 October 2002, the Administration had provided updated declarations of investments/interests made by principal officials (circulated vide LC Paper Nos. CB(2)97/02-03(01) - (14)). The declarations contained information on company directorships of principal officials to which the Chief Executive (CE) had given consent as well as information on the location and usage of properties held by principal officials. The Administration had also provided its response to issues raised by the Panel (LC Paper No. CB(2)114/02-03(01)).

5. At the invitation of the Chairman, Secretary for Constitutional Affairs (SCA) and Head of RLSD briefed members on the Administration's written response and the supplementary Information Note respectively.

Issues raised by members

Secretary for Education and Manpower's (SEM) ties with the Chinese University of Hong Kong (CUHK)

6. Mr IP Kwok-him sought the Administration's clarification on reports that Dr Arthur K C LI, SEM, had retained his visiting professorship in the Medical Faculty of CUHK after taking up the office of SEM. He said that as SEM was the principal official under the accountability system responsible for the education portfolio and also a Member of the Executive Council (ExCo), the retention of his ties with CUHK could give rise to concern about conflicts of interest.

7. SCA informed members that SEM had resigned from the position of Vice-Chancellor of CUHK but retained his professorship at CUHK. SEM had been allowed to take no-pay leave by CUHK to enable him to take up the

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office of SEM. Since assuming office, SEM no longer participated in the activities of the Senate of CUHK and hence in the administration of CUHK. SCA said that the Government was satisfied that the arrangements would not involve any conflict of interest on the part of SEM.

8. The Chairman pointed out that there were precedent cases of staff of CUHK being granted temporary no-pay leave for the purpose of taking up an appointment to a public office. A staff on no-pay leave would remain under the establishment of the University and was normally permitted to resume his previous post in the University after expiry of the no-pay leave. The Chairman said that the former Chairman of the Equal Opportunities Commission (EOC), a professor of CUHK, took up his appointment after she had been granted no-pay leave by the university.

9. The Chairman further opined that SEM was unlikely to be re-appointed as Vice-Chancellor of CUHK, having resigned from that position. However, if SEM retained the professorship, which was a tenured office, during the period of no-pay leave, he could resume the post after leaving the Government.

10. SCA advised members that the retirement age adopted by CUHK was 60. As SEM was aged 57, it was expected that his no-pay leave would last for about three years.

11. Dr YEUNG Sum responded that retirement at the age of 60 was not a mandatory requirement for teaching staff of the Universities.

12. Dr YEUNG Sum and Mr CHEUNG Man-kwong said that the retention of his professorship at CUHK by SEM implied that SEM could resume the post of professor at CUHK in the future. Mr CHEUNG said that as reported by the media and confirmed by SEM's Press Secretary, SEM continued to receive documents and papers from the Senate of CUHK. This would give rise to public concern that as SEM was still involved in the affairs of CUHK, SEM might show favouritism towards CUHK in making important policy decisions such as in relation to the review of tertiary and higher education, resources allocation for tertiary institutions and the proposed merger of CUHK with the Hong Kong University of Science and Technology etc. Mr CHEUNG pointed out that SEM was a supporter of a merger of the two Universities.

13. SCA replied that he could not confirm whether SEM was still receiving papers and documents from CUHK. He reiterated that SEM was on no-pay leave and no longer took part in the work of the Senate of CUHK.

14. SCA further said that the operation of the Universities was highly transparent. Different interested parties were represented on their governing bodies including, inter alia, Members of LegCo. Regarding the proposed merger of

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the two Universities, SCA said that it was a matter which had to be ultimately decided by the Universities concerned.

15. Mr CHEUNG Man-kwong opined that whether or not SEM was still a member of the Senate of CUHK should be clarified. He said that if SEM wanted to continue to receive papers from the Senate of CUHK, he must first seek the approval from CE. Mr CHEUNG added that as principal officials under the accountability system were the highest-ranking officials in Government, they should be subject to the strictest standards of conduct. He considered that to dispel doubts about any potential conflict of interest, SEM should sever all his ties with CUHK while he remained in office.

16. Dr YEUNG Sum said that fairness in the making of policies should not only be done but had to be seen to be done. Principal officials should avoid engaging in any conduct which would give rise to concern about impropriety. He added that in the case of SEM, any unnecessary perception of conflicts of interest arising from his ties with CUHK was undesirable, both to himself and to CUHK.

17. Ms Emily LAU and Mr James TIEN added that any form of ties between SEM and CUHK would lead to concern that the personal interests of SEM might influence how he discharged his duties and responsibilities.

18. SCA said that he would convey the views and concerns expressed by members to SEM.

19. Mr James TIEN requested RLSD to provide supplementary information on the following issues for the Panel's reference -

- (i) appointment of US Cabinet Secretaries recruited from the private sector by way of arrangements under which they took no-pay leave from their previous employers or organizations during the period of office;
- (ii) restrictions against US Cabinet Secretaries reverting to their former professions after stepping down from office; and
- (iii) a comparison of the requirements applicable to Members of the US Congress and senior members of Government in respect of declaration of interests.

RLSD

20. The Chairman said that if a senior member of Government wished to take up an appointment in the private sector after leaving the Government a sanitisation period would be required. He added that whether it was proper for a former member of Government to take up an appointment after leaving the Government would depend on the particular circumstances of the case.

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He said that if, for instance, SEM were to become Vice-Chancellor of CUHK when he ceased to hold the office of SEM, there would likely be criticisms from the public.

21. SCA pointed out that under the accountability system for principal officials, a special committee appointed by CE would monitor activities of principal officials after leaving the Government. The committee would advise on matters including the taking up of employment by a former principal official which took place within 12 months after the principal official stepped down from office. The advice of the committee would be made public.

22. Mr CHEUNG Man-kwong said that he did not object to allowing a principal official to take up employment after leaving office. The important point was that a principal official should no longer have any connection with his previous employer while holding office so as to avoid any unnecessary suspicion about a conflict of interest.

23. Dr Philip WONG expressed the view that it would be to the benefit of Hong Kong if there were opportunities for people to contribute their knowledge and expertise to the society at large. He opined that it was not desirable to impose over-stringent restrictions on principal officials which had the effect of deterring persons of ability from joining the Government and serving the people of Hong Kong. He further said that whether there was a conflict of interest would in the end be judged by the conduct of the principal officials, which would be under the close scrutiny of the public and the media.

Declaration of liabilities

24. Ms Emily LAU reiterated the point made at previous discussions that principal officials should be required to declare their liabilities. She said that as principal officials were the most senior members of the Government, any indebtedness on their part would give rise to public concern about possible conflicts of interest in discharging their duties and responsibilities. She added that police officers were required to declare their indebtedness and the same requirement should also apply to principal officials.

25. Deputy Secretary for the Civil Service (3) said that civil servants did not normally have to report their debts or liabilities except in certain specified circumstances such as in the case of new appointees, applications for salary advances, insolvency or bankruptcy. In the case of the Police Force, owing to the nature of duties of police officers, applicants who might be offered employment and serving police officers seeking re-employment/further employment would be asked to declare their financial obligations.

26. SCA said that principal officials were required to go through comprehensive integrity checks before appointment. The checks included an

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assessment of their financial positions. The full report of integrity checking would be considered in detail by CE. Moreover, principal officials were bound by their employment contract not to borrow money at interest other than from licensed money-lenders, banks or deposit-taking companies. They were also required to abide by the same provisions in the Prevention of Bribery Ordinance applicable to civil servants. He said that the Administration remained of the view that it was not necessary to require principal officials to declare their liabilities.

Family trust and blind trust

27. Ms Emily LAU said that the purpose of family trusts was explained clearly in paragraph 5.1 of RLSD's supplementary Information Note, which stated that "a family trust is a legal way to protect and hold assets for a person's family. ...Family trusts are usually set up for the benefits of protecting one's assets for the future and against creditors, and for the purpose of reducing tax liability". She opined that because of the nature of family trusts, it was doubtful whether the family trusts set up by the principal officials concerned were a satisfactory safeguard against possible abuse of power by the principal officials. She reiterated that blind trusts were preferred to family trusts as a measure for preventing any possible conflict of interest.

28. SCA said that whether or not the trusts set up by the principal officials concerned were a satisfactory mechanism for preventing conflicts of interest should be judged on how the trusts were operated and managed. He pointed out that the Secretary for Commerce, Industry and Technology (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. SCIT was one of the eligible beneficiaries. However, SCIT did not have the right to give instructions to the trust or its trustee. He was also not involved in the management of his family companies. The Secretary for Financial Services and Treasury (SFST) had set up a family trust of which HSBC International Trustee Limited was appointed as the trustee. SFST was not involved in the administration of the trust and had no control over investment decisions. The trust set up by SEM held no assets other than the estate of his family.

29. SCA further informed members that in the case of CE, according to the declaration made on 1 July 2002, CE had declared that he had no interest in shareholdings in any companies other than a beneficial interest in some 80,000,000 ordinary shares of Orient Overseas (International) Limited, which were owned by a Tung family trust and managed by a professional trustee. CE did not have any right to vote on such shares (LC Paper No. CB(2)2679/01-02(01) issued to the Panel on 6 August 2002 refers). SCA added that the arrangements had worked satisfactorily and had not given rise to any concern about conflicts of interest on the part of CE.

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30. Ms Emily LAU said that she was particularly concerned about the family trust set up by SCIT as the nature of the business carried out by his family companies fell within the purview of his policy portfolios. She said that to avoid public perception of a potential conflict of interest, the financial interests of SCIT should be transferred to a blind trust or a trust similar in nature to that set up by CE or SFST. Mr CHEUNG Man-kwong shared her views.

31. SCA replied that the trust set up by SCIT was not of the nature of a family trust as described in RLSD's Information Note. He said that as SCIT's family companies were actually managed by his family members, SCIT considered it necessary to place his shares in his family companies in a trust of which his father was the trustee. The Administration was satisfied that the arrangement would not result in any conflict of interest, as SCIT had declared that he was not involved in the management of his family companies and he had no right to instruct the trust or its trustee.

32. Mr James TIEN considered that the arrangements made by SCIT for handling the shares in his family companies were acceptable. In Mr TIEN's view, a person who actually ran the business of the family companies was in a better position than a third party to manage the trust.

33. Mr James TIEN referred to the case of the former President of the United States (US) Mr Jimmy Carter and asked RLSD to collect information on the arrangements made by Mr Carter in managing his family business during his presidency to avoid any perception of a conflict of interest.

RLSD

34. The Chairman opined that in the absence of detailed information on how the trusts set up by the principal officials concerned were managed, it was difficult to judge whether the trusts would be free from any malpractices. He said that the fundamental principle was that the Administration should put in place a system with the best possible safeguards capable of upholding public confidence in the ability of the system to prevent any conflict of interest.

Company directorships

35. Referring to the system in the US and United Kingdom (UK), Ms Emily LAU pointed out that all Cabinet Secretaries and Presidential appointees in US were required to resign from any position they held as a director or officer of a company. In UK, Ministers must resign any directorships, regardless of whether the directorship was in a public or private company and whether it was remunerated or honorary. Ms LAU said that the practice adopted in Hong Kong deviated vastly from that in US and UK. She opined that principal officials in Hong Kong should not be allowed to hold company directorships.

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36. SCA replied that company directorships held by principal officials had to be approved by CE. As far as the private companies were concerned, the financial interests/assets held were limited to the family estates of the principal officials concerned, land and buildings for leasing and self-use, cars and club memberships etc. Some companies were public companies to which the principal officials were appointed as directors in their official capacity. The Administration considered that no conflict of interest was involved in the arrangements.

Prevention of conflict of interest in participating in ExCo business

37. Ms Emily LAU asked how the ExCo Secretariat could ensure that an ExCo Member having an interest in relation to a discussion item in ExCo would not take part in the discussion of the item.

38. Mr NG Leung-sing said that an ExCo Member might have substantial experiences in different fields and businesses. In view of the wide personal exposures of the Member, he could have difficulties in deciding whether his participation in the discussion of certain items in ExCo would involve an actual or potential conflict of interest.

39. SCA replied that the Clerk to ExCo kept a Register of Members' Interests. The ExCo Secretariat would check the registered interests against the discussion items of an ExCo meeting in ascertaining the possibility of a conflict of interest in respect of particular ExCo Members. If considered necessary, a Member would be requested not to participate in the discussion, or the Secretariat would withhold relevant ExCo papers and minutes from the Member. Moreover, it was the personal responsibility of individual ExCo Members to decide whether or not participating in the discussion of an item would give rise to a conflict of interest and if so, they should declare it to CE and other ExCo colleagues prior to discussion of the relevant item. Whether or not an ExCo Member was required to declare personal interest depended on the particular circumstances of the case. The basic principle to adhere to was that ExCo Members were required to give impartial and disinterested advice to CE.

40. SCA further said that the final decision on whether an ExCo Member should withdraw from the discussion of a particular item or be withheld from access to the relevant ExCo papers vested in CE.

41. Referring to the Government's stated intention to introduce measures to stabilize the property market, Ms Emily LAU asked how CE would decide which ExCo Members might have a personal interest in the subject matter and therefore should not participate in the discussion when the proposed measures were put to ExCo.

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42. SCA responded that the Government was still considering the matter and had yet to finalize the proposals to be submitted to ExCo. He said that CE would adhere to the same principles in arriving at a fair decision as he did in the past in relation to other issues.

43. The Chairman said that given the wide public interest in the matter, it would be very difficult to draw any hard and fast rules in deciding who would have a significant personal interest. He opined that where a major policy had widespread impact on the community, all ExCo Members should be allowed to take part in the discussion.

44. The Chairman added that as far as prevention of conflicts of interest in ExCo business was concerned, it would be for individual ExCo Members to decide whether or not they had a personal interest in an item and if so make a declaration to that effect. An ExCo Member would risk facing serious public criticisms for failure to make honest declarations.

Updated declarations of interests by ExCo Members

45. Referring to the updated declarations made by principal officials (paragraph 4 above refers), Ms Emily LAU asked the Administration to provide updated declarations of interests by ExCo Members for the Panel's information. SCA agreed to supply the information.

(Post-meeting note - Updated Registers of Interests of Members of Executive Council provided by the Administration were circulated to the Panel vide LC Paper No. CB(2)272/02-03(01) - (19) on 5 November 2002)

The way forward

46. SCA said that the accountability system for principal officials was only implemented on 1 July 2002. The Administration had previously undertaken to review the system at different stages. The Administration would make an interim report to LegCo six months after the implementation of the system, followed by a report on a comprehensive review in 12 months. He added that the Administration would take into consideration views expressed on the accountability system to improve the system.

47. Mr YEUNG Yiu-chung said that he appreciated the difficulties in devising a foolproof system to prevent conflicts of interest. He considered that the existing system could be improved and its effectiveness tried out in the course of time and in the light of operational experience.

48. The Chairman said that as matters relating to declaration of investments/interests by principal officials had already been discussed by the

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Panel at a number of meetings, the item could be adjourned pending the progress reports to be made by the Administration on the implementation of the accountability system.

Clerk

49. Ms Emily LAU asked the Secretariat to prepare a paper to summarise the deliberations on the relevant issues for the consideration of the Panel and the Administration. The Chairman said that the paper should be circulated for the Panel's consideration in November or December 2002.

(b) Responsibilities of principal officials under the accountability system

50. As discussion on agenda item on "Declaration of investments/interests" had overrun, the Chairman suggested and members agreed that the item on "Responsibility of principal officials under the accountability system" should be deferred to the next meeting on 18 November 2002.

IV. Any other business

51. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 2
Legislative Council Secretariat
5 December 2002