

立法會

Legislative Council

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Report of the Committee on Members' Interests of the Third Legislative Council

Purpose

This report gives an account of the work of the Committee on Members' Interests (CMI) of the Third Legislative Council.

The Committee

Terms of Reference

2. CMI is a standing committee of the Legislative Council. Its terms of reference are set out in Rule 73(1) of the Rules of Procedure (RoP).

Membership

3. On the recommendation of the House Committee and in accordance with Rule 73(2) of RoP, the President of the Council appointed Hon Mrs Sophie LEUNG as the Chairman, Hon SIN Chung-kai as the Deputy Chairman and five Members as members of CMI with effect from 19 October 2004. The membership list is in the **Appendix**.

Major Work

Cases of Hon James TO's failure to register interests with the Clerk to the Council pursuant to Rule 83 of RoP

The case of Target Link Limited

4. On 23 August 2004, a local newspaper reported that Hon James TO had not declared with the Clerk to the Council his shareholdings in Target Link Limited (TLL) in accordance with RoP, and that he rented a property owned by TLL for use as his Legislative Council Member's District Office from June 1998 to July 2001 and claimed reimbursements from the public coffers of rental expenses at a level above the market rate.

5. The Legislative Council Secretariat wrote to Hon James TO on the same day requesting for his clarification. In his written response dated 26 August 2004, Mr TO admitted that he had shares in TLL since 1 July 1998, and that he had not registered the interests with the Clerk to the Council because he had all along mistakenly believed that TLL had issued two shares only, each of which held respectively by he himself and another Democratic Party (DP) member (i.e. each had 50% shareholding), and he had donated his one share to DP by way of trust. He therefore believed that under such circumstances, he was not obliged to register such interests with the Council. He realized only afterwards that TLL had issued 100 shares and he held 50 out of them. Discounting the one share which he had already donated to DP, he still held 49 shares, which accounted for more than one-hundredth of the issued shares of a company, and hence were registrable interests according to RoP. He then submitted out of time the relevant page of the Registration Form to register the interests.

6. The Legislative Council Secretariat also received five related complaints from 24 August to 15 September 2004. In accordance with "The Procedure of the Committee on Members' Interests for Handling Complaints Received in relation to the Registration and Declaration of Members' Interests" (Procedure for Handling Complaints), all the above cases were referred to CMI for consideration in October 2004 upon the appointment of its Chairman, Deputy Chairman and members.

7. CMI noted that the above five complaints were either not made in writing, not related to the registration and declaration of Members' interests, or made by an anonymous or unidentifiable person or by a person who could not be contacted. Since the complaints did not meet the criteria provided in the Procedure for Handling Complaints, CMI considered that none of these complaints required follow-up.

8. As regards Hon James TO's admission of his late registration of interests, after considering the further information provided by him, the relevant rules of RoP, the provisions in the Procedure for Handling Complaints and the practice of CMI of the previous terms, CMI concluded that Hon James TO had failed to furnish to the Clerk to the Council the particular of a registrable interest, namely the name of TLL, during the period from 1 July 1998 to 25 August 2004, contrary to Rule 83 of RoP, but there was no evidence to indicate that Hon James TO had deliberately omitted to register his interests

9. CMI also concluded that the interest registered out of time by Hon James TO involved claims from the public coffers, i.e. he rented the property owned by TLL, in which he was holding shares, for use as his Member's District Office, and claimed reimbursements from the public coffers for the rental expenses concerned. As a Council Member and in order to comply with Rule 83 of RoP, he had a duty to clarify and ascertain the number of shares of TLL held by him and the capacity in which he was holding such shares, especially because he had made claims from the public coffers for renting the property owned by TLL. CMI considered that Hon James TO had failed to prudently discharge such a duty, which fell short of the standards which were expected of a Member in handling such matters. Hence, there was a need to recommend sanction in this case. In accordance with Rules 73(1)(e) and 85 of RoP, CMI recommended that Hon James TO be sanctioned by admonishment on a motion to that effect.

10. The motion moved by the Chairman of CMI to admonish Hon James TO was passed by the Council on 7 April 2005.

The case of Union Pace Development Limited

11. On 2 November 2004, Hon James TO of his own volition reported to CMI that during his term of office as Member of the Second Legislative Council, he was negligent in omitting to register his shareholding interests in Union Pace Development Limited (UPDL). He held about 7% of the shares of UPDL. He explained that the only asset the company held was a village house and it did not actively participate in commercial activities.

12. Noting that Hon James TO had registered such interests with the Yau Tsim Mong District Council and the Clerk to the Council in the current term, and that this omission did not involve any claims from the public coffers or conflict of interests, CMI decided that there was no need to take further action.

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

13. 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) have been issued to Council Members for reference at the beginning of each term since 1996. At its meeting on 3 November 2004, CMI agreed to examine the question of whether, and if so, how the Advisory Guidelines should be developed to provide specific guidelines to Members.

14. In its deliberation, CMI had made reference to the Guide to Judicial Conduct published by the Judiciary of the Hong Kong Special Administrative Region in October 2004, the relevant codes and rules issued by other legislatures,

the deliberations at the time when the Advisory Guidelines were drawn up, and the views of all CMI members who had consulted Members of their respective political groupings. CMI agreed that the Advisory Guidelines should be amended by adding a new paragraph II(8), which read “a Member should ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true”. The revised Advisory Guidelines were issued to all Members on 17 October 2005.

Registration requirements for remunerated directorships

15. At the meeting of CMI held on 19 April 2005, a member proposed that CMI should review and tighten up the registration requirement on remunerated directorships of companies, public or private, as set out in Rule 83(5) of RoP. CMI deliberated the two proposals put forward by the member in this regard, and agreed to one of them, which was to stipulate that Members should register the names of the parent companies of the companies in which they held remunerated directorships. To this end, CMI recommended that Rule 83(5)(a) of RoP and Page 1 of the Registration Form on Members’ Interests (Registration Form) should be amended.

16. CMI subsequently sought the views of all Members on the proposal and the related draft amendments. The majority view it received from the Members was in support of the proposal. The amendments to RoP were approved by the Council on 26 April 2006 through a resolution moved by the Chairman of CMI. Upon approval by the President on the same day, the revised Page 1 of the Registration Form, which took immediate effect, was forwarded to all Members on that day.

Mechanism for handling complaints concerning Members’ operating expenses reimbursement claims and applications for advance of operating expenses

17. On 17 June 2005, the House Committee decided that in order to uphold the reputation of the Council and its Members, a mechanism should be put in place to handle complaints and allegations concerning Members’ operating expenses reimbursement (OER) claims. It also requested CMI to consider expanding its terms of reference provided in Rule 73 of RoP so that CMI might also handle such complaints and allegations.

18. After deliberations, CMI agreed to take up the additional responsibility to handle complaints relating to Members’ OER claims. It also noted that as Members were also allowed to apply for advance of operating funds, complaints relating to such applications should be brought into the ambit of the mechanism for handling complaints about OER claims. CMI recommended that RoP should be amended accordingly as follows:

- (a) a new Rule 83AA be made to specify that Members were required to ensure that any information he provided or any declaration or

certification he made was true, accurate and complete, and to act according to any undertaking he had given;

- (b) Rule 73 be amended to empower CMI to consider and investigate any complaint made in relation to Members' conduct in making OER claims or applications for advance of operating funds and to require that, in handling such complaints, CMI should have regard to the provisions of the Guide for OER claims, in addition to any other matter that it might consider relevant; and
- (c) Rule 85 be expanded to provide that a Member who failed to comply with new Rule 83AA might be admonished, reprimanded or suspended by the Council on a motion to that effect.

19. The amendments to RoP were approved by the Council on 5 July 2006 through a resolution moved by the Chairman of CMI.

20. During the deliberations of the matter, CMI members had raised various issues of concern. These include –

- (a) fairness to the Member under complaint;
- (b) complaints or allegations made against former Members;
- (c) the right of the Member under complaint to remain silent;
- (d) the right of the Member under complaint to legal representation; and
- (e) confidentiality of the investigation.

21. To address these issues of concern, CMI had revised the Procedure for Handling Complaints to include the following features or requirements:

- (a) CMI would not handle any complaint which was made against a former Member, or was about the acts or omissions of a Member which allegedly took place seven years or more prior to the date of the complaint. CMI accepted that it was difficult to impose sanction on a former Member, and unreasonable to expect a serving Member to keep his accounts, records and papers for more than seven years;
- (b) the Chairman of CMI might decide whether or not to hold a meeting to consider a complaint if it involved substantially repeated allegations which had already been dealt with, except where fresh evidence had been produced;

- (c) CMI should inform the Member under complaint, when inviting him to its meetings, that CMI might invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order him to attend before it, and to give evidence or to produce documents, and may cause him to be examined on oath. The aim was to remove any misunderstanding on the part of the Member under complaint about his right of silence when appearing before CMI;
- (d) CMI might suspend its investigation if, during the course of doing so, it learned that the complaint or related matters were being investigated by a law enforcement agency, or related to a case pending in a court of law;
- (e) the Member under complaint might be accompanied by a maximum of three persons, including his legal advisor, for the purpose of giving him assistance or advice, but the Member must answer questions, give explanations or provide information himself;
- (f) members and other persons attending meetings of CMI held in camera were required to sign a confidentiality undertaking that they would not publish evidence taken before CMI, documents produced to it, or its deliberations and decisions before it had presented its report to the Council and before CMI informed the Member under complaint of its decision on whether or not the complaint was substantiated;
- (g) the Member under complaint was also required to sign a confidentiality undertaking that he would not publish any document marked as confidential by CMI before it had presented its report to the Council; and
- (h) in considering whether or not to recommend a sanction or what sanction to recommend, CMI was required to take into account whether the failure of the Member under complaint to comply with the relevant rules of RoP was due to an honest mistake on his part. The rationale for the requirement was that as the number of OER claims was large, it was always possible for a Member to commit honest mistakes in making the claims.

22. The Procedure for Handling Complaints with the above revisions was issued to all Members on 6 July 2006.

Committee Meetings

23. During its term of office, CMI held a total of 28 meetings.

24. In addition, a meeting-cum-luncheon was held with members of the Select Committee on Members' Interests of the Dáil Éireann, Lower House of the Parliament of Ireland, during their visit to Hong Kong, for sharing experiences and exchanging views.

Council Business Division 3

30 June 2008

**Committee on Members' Interests
of the Third Legislative Council**

Chairman Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

Deputy Chairman Hon SIN Chung-kai , SBS, JP

Members Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Kwok-ying, MH, JP
Hon Alan LEONG Kah-kit, SC
Hon Albert Jinghan CHENG, JP

(Total : 7 members)

Clerk Mr Colin CHUI

Legal Adviser Mr LEE Yu-sung