

立法會
Legislative Council

LC Paper No. CMI/9/11-12

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Committee on Members' Interests

**Minutes of the sixth meeting
held on Friday, 20 May 2011 at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
(Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon Abraham SHEK Lai-him, SBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon WONG Sing-chi

Member absent : Hon WONG Yung-kan, SBS, JP

Clerk in attendance : Miss Mary SO
Chief Council Secretary (3)3

Staff in attendance : Ms Pauline NG
Secretary General

Mr Jimmy MA, JP
Legal Adviser

Mrs Justina LAM
Assistant Secretary General 3

Ms Connie FUNG
Senior Assistant Legal Adviser 1

Miss Carrie WONG
Assistant Legal Adviser 4

Miss Kitty CHENG
Assistant Legal Adviser 5

Dr. Yuki HUEN
Research Officer 8

Miss Lolita SHEK
Senior Council Secretary (3)1

Mr. Ambrose LEUNG
Research Officer (3)

Action

I. Matters arising

Requirements and related arrangements for the registration and disclosure of Members' interests: Declaration of interest requirements by Members of Parliament in the United Kingdom in relation to the category of "clients"

(LC Paper Nos. CMI/92/10-11 and RP02/10-11)

The Chairman said that when the Committee on Members' Interests ("CMI") considered the research report on requirements and related arrangements for the registration and disclosure of Members' interests (LC Paper No. RP02/10-11) at its meeting on 7 January 2011, members requested the Secretariat to provide further information on whether Members of the House of Commons of the Parliament of the United Kingdom ("UK") were required to register the names of the clients to whom they provided legal services or business services as well as the amount of payment they received, regardless of whether these services arose out of or related in any manner to their being Members.

2. At the invitation of the Chairman, Assistant Secretary General 3 ("ASG3") briefed members on the interests required to be registered by Members of the UK Parliament under the Category of "clients" as set out in LC Paper No. CMI 92/10-11. ASG3 said that the Members were required to declare "Directorship" (Category 1), i.e. remunerated directorships in public and private companies, and "Remunerated employment, office, profession, etc." (Category 2), i.e. employment, office, trade, profession or vocation (apart from membership of the House or ministerial office) which

was remunerated or in which the Member had any financial interest. In respect of any paid employment a Member had registered under Categories 1 and 2, any provision to clients of services by a Member should be registered under the Category of "Clients" (Category 3).

3. ASG3 further said that according to the Guide to the Rules relating to the conduct of Members, Members of the UK Parliament must register under Category 2 the amount of each individual payment received by them, the nature of the work carried on in return for that payment, the number of hours worked and, except where disclosure of the information would be contrary to any legal or established professional duty of privacy or confidentiality, the name and address of the person, organization or company making that payment. ASG3 pointed out that in the examples in Appendices I and II to LC Paper No. CMI 92/10-11, information on clients was not provided by Members who were practising barristers while such information was provided by Members engaged in other profession, as shown in the examples in Appendices III to V.

4. Research Officer 8 added that Members who were practising solicitors were required to register their employer law firms under Category 2. Similar to the cases of Members who were practising barristers, they were not required to register the names and addresses of their clients because of legal professional privilege.

5. Ms Emily LAU said that CMI might make reference to the requirements and arrangements for the registration and disclosure of interests by Members in other legislatures relating to their clients and consult all Members on whether similar requirements and arrangements should be adopted in Hong Kong.

6. Mr Abraham SHEK said that there should be greater transparency in the registration and disclosure of Members' interests. He considered that as the names of the persons involved in court cases were public information, the requirement for Members to register the names of the clients to whom they provided business services should also be applicable to Members who provided legal services to their clients so as to facilitate the public to judge whether there was conflict of interests. Mr SHEK added that the practices in other legislatures should serve as reference only. CMI should draw up requirements and arrangements suitable for the Legislative Council ("LegCo").

7. Mr Paul CHAN pointed out that the objective of registration and

declaration of Members' interests was to enable members of the public to judge whether the speech of a Member or his stance on an issue had been affected by his business interests or remunerated work. As such, the same requirement and standard should be imposed on all Members, irrespective of their professions. However, Members' work might not always be related to public policies. Mr CHAN noted from paragraph 4 of LC Paper No. CMI 92/10-11 that in UK, where a Member received remuneration from a company or partnership engaged in a consultancy business which itself had clients, the Member was required to list any of those clients to whom personal services and advice were provided, either directly or indirectly. Mr CHAN expressed concern how such direct services could be differentiated from the indirect ones, and how such a requirement could be implemented. He considered that there should be thorough deliberations before such a requirement was adopted.

8. Dr Margaret NG said that it was not appropriate to require Members who were practising barristers to disclose information about their clients as confidentiality of such information was protected by law. She also had reservations on requiring Members who were practising solicitors to disclose the identity of clients of law firms which paid for their legal services. Dr NG envisaged that legal issues might arise if LegCo Members were required to register the names of the clients to whom they provided legal services. She also considered that it was not meaningful to require Members to register the amounts of individual payments received for their legal services, as different levels of fees were charged by different lawyers. Mr Abraham SHEK and Mr Paul CHAN agreed with Dr NG that Members should not be required to register the amounts of payments received for their legal services.

9. Dr NG further said that the requirements on the registration and disclosure of Members' interests need not be too broad. Members were generally cautious and would usually choose to disclose interests at Council or committee meetings which were related to the issues being discussed even though they were not required to do so.

10. Ms Emily LAU said that when there were specific proposals on the related requirements and arrangements for the registration and disclosure of Members' interests, CMI should request members to consult their political parties and groups on such proposals.

11. Secretary General ("SG") said that there was the view that the existing Registration Form on Members' Interests might need to be modified

to require Members to provide more information. A comprehensive consultation with Members would be conducted in due course.

12. Mr Paul CHAN said that CMI should formulate its own view on whether a revised set of requirements and arrangements on the registration and disclosure of Members' interests should be adopted before it proceeded to consult all LegCo Members on the matter.

13. The Chairman said that CMI would first consider how the Registration Form could be improved and it was not necessary to consult all Members at the present stage.

LegCo Secretariat 14. ASG3 said that the Secretariat was collating information on the matter and would provide a detailed analysis in due course.

15. Dr Margaret NG said that the requirement on registration and disclosure of Members' interests varied significantly among legislatures of different jurisdictions. CMI should carefully study the rationale and background of the requirements and arrangements in different jurisdictions before it consulted all Members on whether the requirements or arrangements adopted in a particular jurisdiction should be introduced in Hong Kong.

16. Senior Assistant Legal Adviser 1 explained that the existing Registration Form was designed according to the categories of registrable interests stipulated in Rule 83(5) of the Rules of Procedure ("RoP"). In respect of registrable interests relating to clients, Members were required under Rule 83(5)(c) of the RoP to register only the names of clients to whom they had provided services which arose out of or were related to their membership of the Council.

17. Dr Margaret NG said that if the services provided to the clients did not arise out of or were not related to Council membership, Members should not be required to register the information on such clients.

18. Legal Adviser ("LA") said that examples were provided in the existing Guidelines on Registration of Interests (April 2006) as illustrations of the interests under the category of "clients" which were required to be registered by a solicitor Member and an accountant Member. Although RoP did not provide an exhaustive list of registrable interests, it was the responsibility of Members to provide the required information in the Register. In fact, in recent years, Members very often disclosed interests at

committee meetings voluntarily which were related to the issues being discussed. LA further said that Article 35 of the Basic Law stipulated that Hong Kong residents shall have the right to confidential legal advice. Rule 82 of the RoP prohibited Members from appearing before the Council or any committee or subcommittee in a professional capacity for or on behalf of a party or in a capacity for which he was to receive a fee or award. The guidelines provided by CMI on disclosure of interests by Members sought to strike a balance between protecting the interests of Members relating to their professions and preventing conflicts of interests.

19. The Chairman concluded that CMI would consider the matter further when it reviewed the Registration Form in future.

II. Mechanism for investigating complaints relating to registration and disclosure of Members' interests and use of Members' allowance in the United Kingdom
(LC Paper No. CMI/93/10-11)

20. The Chairman said that at the CMI meeting on 7 January 2011, members were briefed on the research report on the requirements and related arrangements for the registration and disclosure of interests of Members of the Parliaments of UK, Canada, New Zealand and Singapore and how complaints on such matters were dealt with. Members noted that in UK and Canada, complaints against the registration and disclosure of Members' interests were handled by an independent officer, i.e. the Parliamentary Commissioner for Standards ("the Commissioner") and the Conflict of Interest and Ethics Commissioner ("CIEC") respectively. Members requested the Secretariat to provide further information about the work of UK's Commissioner and Canada's CIEC. The Chairman added that information about the work of UK's Commissioner was set out in LC Paper No. CMI/93/10-11 while that of Canada's CIEC was set out in LC Paper No. CMI/94/10-11.

21. At the invitation of the Chairman, ASG3 briefed members on the key responsibilities and the complaints investigation process of the Commissioner as well as the role of the Committee on Standards and Privileges as set out in LC Paper No. CMI/93/10-11. ASG3 also thanked Dr Margaret NG for providing additional information about the Commissioner which was tabled at the meeting for members' reference.

22. Dr Margaret NG said that a major difference between UK and Hong Kong was that senior government officials in UK were also required to abide by the Code of Conduct for Members of the Parliament ("Code of Conduct"), as the ministers and even the Prime Minister in UK were Members of Parliament. However, this was not the case in Hong Kong. Dr NG further said that should LegCo decide to adopt the UK system and to establish a committee similar to the UK Committee on Standards and Privileges ("the Committee") and appoint an independent person to perform the function of the Commissioner under the UK system, such a system might become a tool used by the Government to suppress Members of the opposition, unless the principle that no party should hold a majority membership of the Committee was also adopted.

23. Dr NG referred to paragraphs 33 to 35 of LC Paper No. CMI/93/10-11 and pointed out that following allegations that some Members had used the allowance system for their own benefits in UK in 2009, UK had introduced very strict measures to deal with breaches of the Code of Conduct. However, some of the requirements and measures had later been relaxed as Parliament realized that they were not practicable. Dr NG said that members should take into account all these factors when considering whether the UK system should be adopted in Hong Kong.

24. Ms Emily LAU said that the workload of CMI in handling complaints against individual Members had become increasingly heavy. There was also concern about the appropriateness of CMI conducting investigation on complaints against Members. Ms LAU suggested that the Secretariat should study the UK system and recommend for members' consideration whether any related arrangements should be adopted in Hong Kong.

25. Mr Paul CHAN shared Dr Margaret NG's views on the differences between the UK and Hong Kong systems. He agreed that any complaint handling system should not be used as a political tool. He also agreed with Ms Emily LAU that it might be more appropriate for complaints against individual Members to be handled by a group of professionals with legal qualifications who would be perceived by the public to be more efficient and impartial than CMI. Mr CHAN considered the composition of the Investigatory Panel and the requirement for the Commissioner to report the findings of his investigations to the Committee which in turn reported to the House of Commons as set out in paragraph 13 and 22 of the paper most appropriate. He supported that CMI should make reference to the UK system in reviewing the existing mechanism for handling complaints against

individual Members. Mr CHAN, however, expressed concerns about the optimum use of resources in appointing a Commissioner in Hong Kong as there were fewer Members and fewer complaints against Members in Hong Kong.

26. Dr Margaret NG said that to address Mr Paul CHAN's concern, LegCo could appoint a part-time Commissioner, as in the case of UK. She considered that the appointment of a Commissioner would enhance LegCo's credibility in handling complaints against individual Members. Dr NG noted that the types of complaints which would not be handled by UK's Commissioner were laid down clearly in paragraphs 4 and 5 of Procedural Note 1. She considered that such an arrangement would prevent cases where LegCo had to follow up frivolous or groundless complaints for the sake of demonstrating its impartiality to the public.

27. Ms Emily LAU said that the number of complaints against individual LegCo Members was likely to increase in the next LegCo term if the replacement mechanism proposed by the Government for filling vacancies in LegCo membership arising during the term of office of LegCo was adopted. Ms LAU further said that LegCo should adopt a system similar to that of UK in the next term to handle complaints against individual Members. She considered that more in-depth discussion on the matter should be held and consultation with all Members should be conducted.

28. The Chairman said that the adoption of a mechanism similar to the UK system should enhance LegCo's credibility in handling complaints against Members. SG said that the Secretariat would study the matter, set out the issues which needed to be considered and draw up recommendations for members' consideration.

29. Ms Emily LAU suggested that CMI should aim at discussing the matter in the following session and introduce the new mechanism at the beginning of the next term.

III. Mechanism for investigating complaints relating to registration and disclosure of Members' interests and use of Members' allowance in Canada
(LC Paper No. CMI/94/10-11)

30. Members noted the paper. Members considered that the

mechanism in Canada was much more complicated than that in the UK and need not be studied further.

IV. Any other business

31. There being no other business, the meeting ended at 12:02 pm.

Council Business Division 3
Legislative Council Secretariat
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