

立法會
Legislative Council

LC Paper No. CMI/25/11-12

Ref: CB(3)/C/2(08-12)

Committee on Members' Interests

**Minutes of the seventh meeting
held on Monday, 9 January 2012 at 8:30 am
in Conference Room 4 of the Legislative Council Complex**

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 WONG Sing-chi

Members absent : Hon WONG Yung-kan, SBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Paul CHAN Mo-po, MH, 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

Miss Wylie HO
Senior Council Secretary (3)2

Mr Ambrose LEUNG
Research Officer (3)

Action

I. Review of registration and disclosure of Members' interests
(LC Paper No. CMI/19/11-12)

The Chairman said that at the last meeting of the Committee on Members' Interests ("CMI") held on 20 May 2011, members agreed that CMI would consider whether and if so how the existing registration and disclosure of Members' interests could be improved after the Secretariat had conducted a review on the matter. Accordingly, the Secretariat had prepared the paper entitled "Review of registration and disclosure of Members' Interests" (LC Paper No. CMI/19/11-12).

Registration of Members' interests

2. At the invitation of the Chairman, Assistant Secretary General 3 ("ASG3") said that under the existing Rules of Procedure ("RoP"), Members were required to register their interests in eight categories of registrable interests (Rule 83 of RoP). The requirements for registration of interests as well as the compilation and maintenance of the Register of Members' Interests were first introduced by the former Legislative Council ("LegCo") in 1991. They were modelled on those in use by the House of Commons of the Parliament of the United Kingdom ("UK") at that time. Various changes had since been made to the requirements for registration of Members' interests, details of which were set out in Appendix I of the paper.

3. ASG3 further said that since 1991, a number of amendments had also been made to the Registration Form on Members' Interests ("the Registration Form") and the Guidelines on Registration of Interests ("the Guidelines"). It was the practice of the former CMI to consult all Members of any proposed changes to the Registration Form before seeking the approval of the President for implementation. The former CMI, however, did not consult all Members if the changes to the Registration Form were necessary as a result of amendments made to the relevant Standing Orders or Rules of the RoP or were consequential changes to amendments or new provisions to relevant legislation.

4. ASG3 pointed out that as the registration system of LegCo was

modelled on that of the UK House of Commons, the Secretariat had conducted a study on whether, and if so, what major changes had been made by the UK House of Commons with regard to its registration system. Recent changes in the requirements for registration of Members' financial interests in the UK House of Commons were set out in paragraph 10 of the paper. Notably, Members of the Parliament ("MPs") were required to register (i) family members who worked as their staff and (ii) full details of earned outside income in "directorships", "employment" and "clients", such as the precise amount of remuneration received, the nature of the work carried out in return for that remuneration, and the number of hours worked during the period to which the remuneration related. MPs were however not required to register such details if the disclosure of the information would infringe any legal or established professional duty of privacy or confidentiality. The rule for the registration of earned outside income was set at 0.1% of a Member's salary for individual payments and 1% of a Member's salary for the cumulative total of payments from the same source in the same year.

5. ASG3 referred members to Appendix II of the paper which provided a comparison of the requirements of registrable interests of LegCo, UK House of Commons as well as the Executive Council of Hong Kong ("ExCo").

Disclosure of Members' interests

6. ASG3 said that under Rule 83A of RoP, a Member should not move any motion or amendment, in the Council or in any committee or subcommittee, relating to a matter in which he or she had a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he or she disclosed the nature of that interest. The Secretariat had studied the relevant practices in ExCo and the UK House of Commons, details of which were set out in paragraph 14 and paragraphs 15 to 16 of the paper respectively. In respect of the UK House of Commons, ASG3 pointed out that MPs must disclose relevant current and past interests as well as relevant interests which they expected to have. Interests must also be declared when tabling parliamentary questions and early day motions and when introducing private members' bills. When such an interest was declared, the symbol [R] appeared on the Order Paper beside the name of the Member concerned.

Sanctions relating to interests

7. ASG3 said that Rule 85 of RoP stipulated that any Member who failed to comply with the registration and disclosure of interests requirements under Rule 83 and Rule 83A of RoP might be admonished, reprimanded or suspended by the Council on a motion to that effect. The relevant practices

in the UK House of Commons were set out in paragraphs 18 to 19 of the paper. ASG3 pointed out that in the UK House of Commons, if the Member under complaint admitted to failing to register or declare an interest or where the interest was minor or the failure to register or declare was inadvertent, the Member might be allowed to rectify the matter using the rectification procedure provided in Standing Order 150. In the case of non-registration of interests, rectification required a belated entry in the Register on Members' Financial Interests and with an appropriate explanatory note; in the case of non-disclosure, it required an apology to the House, either by means of a point of order or of an intervention in a relevant debate.

Issues for consideration

8. ASG3 said that in the light of the views and concerns expressed by CMI members and other Members on registration and disclosure of Members' interests in the past as set out in paragraphs 20 to 31 of the paper, the Secretariat had drawn up the following issues for members' consideration:

- (a) whether the scope of the registration of interests should be widened and the information to be registered made more detailed to ensure that the registration system continued to secure public trust and confidence in the integrity of the Council (e.g. in registering their interests under "directorships", "remunerated employment, offices, etc." and "clients", whether Members should be required to provide the precise amount of remuneration received, the nature of the work carried out in return for that remuneration and the number of hours worked during the period to which the remuneration relates);
- (b) whether CMI's views on the principles of how it would regard directorships for the purpose of making the required disclosures under Rule 83A (in Appendix III of the paper) should be re-visited;
- (c) whether Rule 83A should be amended to require that a Member must disclose his or her pecuniary interests if he or she had a reasonable expectation of pecuniary interests in a matter under consideration by a committee of the Council;
- (d) whether a set of more detailed guidelines should be drawn up to replace the existing Guidelines on Members' Interests to better assist Members in complying with Rule 83 and that such new guidelines should be approved by the Council. In the UK

House of Commons, detailed guidance on completing the Registration Form on Members' Financial Interests was set out in the Guide to the Rules relating to the Conduct of Members and the Guide was approved by the House;

- (e) whether the practice of the UK House of Commons on declaration of interests on the Order Paper as referred to in paragraph 6 above should be adopted in LegCo; and
- (f) whether Rule 85 on sanctions relating to interests, operating expenses or operating funds should be amended to include lesser forms of punishment, including whether a "rectification procedure" referred to in paragraph 7 above should be introduced to dispose of cases of admitted failure to register or disclose interests where the interest involved was minor, or the failure to register or disclose was inadvertent.

Discussion

9. Ms Emily LAU said that she supported in principle the suggestions of widening the scope of the registration of registrable interests and requiring more details about the registrable interests be disclosed. Ms LAU however envisaged that some Members might have concern about registering the amount of payments received under "directorships", "remunerated employment, offices, etc." and "clients". Ms LAU further said that CMI's views on the principles of how directorships should be regarded for the purpose of making the required disclosure under Rule 83A of RoP should be re-visited, having regard to the different views expressed by Members during the motion debate on "Issues in relation to procedural rules on pecuniary interests" at the Council meeting of 13 July 2011. She considered it reasonable to require Members to disclose interests if they had a reasonable expectation of pecuniary interests in a matter under consideration by the Council or in any committee or subcommittee of the Council. Ms LAU added that the issues referred to in paragraph 8(d) to (f) above were worth pursuing.

10. Dr Margaret NG said that she was not optimistic about the proposal of requiring Members to provide more details about their registrable interests, having regard to the fact that both the motion to admonish a Member for failing to comply with Rule 83A of RoP and the motion debate on "Issues in relation to procedural rules on pecuniary interests" were negatived at the Council meeting of 13 July 2011. Dr NG noted that the proposal was modelled on the practice of the UK House of Commons. Dr NG considered

that to simply copy the UK practice would only give rise to disputes, as the situation in the UK House of Commons and that in LegCo were not the same.

11. Dr NG further said that she was particularly puzzled by the proposal to also require Members to register the amount of remuneration received, the nature of the work carried out in return for that remuneration and the number of hours worked during the period to which the remuneration related under "clients". Dr NG pointed out that at present, LegCo Members were required to register the names of the persons or bodies to whom they provided services and the nature of business of the persons or bodies in each case under "clients" only if their provision of services to clients arose out of or related to their positions as Members of the Council. If the UK practice was to be adopted in LegCo, it would mean that Members would be required to provide the same types of information under "clients" as in the UK House of Commons regardless of whether their provision of services to clients arose out of or related to their positions as Members of the Council. Dr NG further said that while she could understand the purpose of requiring Members to register under "clients" if, for example the Member concerned was providing services to a consultancy firm of which one of its clients was a tobacco company and the Council was scrutinizing a government bill on anti-smoking, she could not see the point for applying such new requirement in all other cases where there was no conflict of interests.

12. Dr NG further pointed out that to rely on legal or established professional duty of privacy or confidentiality for not disclosing the names and addresses and the payments received under "clients" as practised in the UK House of Commons would not work in LegCo. In the UK, for instance, there was no dispute in the minds of the general public that lawyers should not disclose the names of their clients unless it was necessary to do so. However, in Hong Kong, according to the Department of Justice, the names and addresses of clients of legal services were not protected by legal professional privilege. Dr NG suggested that the Secretariat should come up with more concrete proposals setting out the types and scope of additional information required. ASG3 advised that the aim of the paper was to seek members' views on how the existing registration as well as disclosure of Members' interests should be improved. Having regard to the views expressed by members at the meeting, the Secretariat would draw up more detailed proposals for members' consideration.

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13. Ms Emily LAU suggested the Secretariat to explain the reasons why the UK House of Commons required its Members to provide so detailed information under "directorships", "paid employment" and "clients" and also give some examples of the interests registered under them. Referring to the

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comparison table on the registration requirements of Members' interests in LegCo, ExCo and the UK House of Commons (Appendix II of the paper), Ms LAU said that MPs were required to register donations received to support their candidacy in "other elections" referred to in Item (4) on "Election Donations/Financial Sponsorships/Gifts, etc.". Ms LAU sought clarification on what "other elections" referred to.

14. The Clerk explained that in the UK House of Commons, MPs standing for election to non-parliamentary office, for instance, election to a devolved institution, elected mayoralty or party office, were required to register donations received to support such candidacy.

15. Ms LAU further asked why it was stated in Item (4) of the comparison table that LegCo did not have the category of "gifts, benefits and hospitality".

16. The Clerk explained that LegCo did not have a separate category for "gifts, benefits and hospitality", but LegCo Members were required to register material benefits received under "directorships", "remunerated employment, offices, etc.", "financial sponsorships" and "payments, benefits and advantages received from any Government or organization of a place outside Hong Kong or from any person who does not qualify as a Hong Kong permanent resident". The Clerk added that under Note (b) for "directorships" in the Registration Form on Members' Interests, the term "material benefits" referred to (i) "interests received from a single source in the course of one year where the total value of such interests exceeded 5% of the annual salary of a Member of the Council; or (ii) one-off material benefits exceeding \$10,000 in value.

17. Ms LAU also asked what "Loans/credit arrangements" in the UK House of Commons in Item (9) on "Miscellaneous and Other Categories" of the comparison table referred to.

18. The Clerk explained that in the UK House of Commons, MPs were subject to the scrutiny of the Electoral Commission in respect of accepting donations and loans in connection with the Members' political activities. If the value of the loan or credit arrangements was over £1,000 in value, an MP had 30 days in which to report this to the Register of Members' Financial Interests (for permissible loans).

19. Ms Emily LAU noted that under "Overseas visits" in Item (5) of the comparison table, MPs were required to register the amount of sponsorship involved, whereas this was not required of LegCo Members. Ms LAU was of the view that LegCo Members should also be required to provide

information on the amount of sponsorship for their overseas visits relating to or arose out of their membership of the Council, in addition to providing dates of visit and countries visited, purpose of visit and name(s) of sponsor(s) and nature of interest received (e.g. whether the interest was the provision of passage, accommodation and/or subsistence allowance).

20. Ms LAU further noted that under Item (9) of the comparison table on "Miscellaneous and Other Categories", MPs were allowed to hire and remunerate their family members through parliamentary allowances, whereas LegCo Members were not allowed to employ their relatives as staff. Also, their relatives should not have any interests in the consultants employed. Further, only ExCo Members were required to register their membership of boards, committees and other organizations which might be construed by members of the public as a declaratory interest. Ms LAU requested the Secretariat to find out why MPs in the UK were allowed to hire and remunerate their family members through parliamentary allowances and why ExCo Members were required to register their membership of boards, committees and other organizations which might be construed by members of the public as a declaratory interest.

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21. The Chairman noted from Item (1) on "Directorships" and Item (8) on "Shareholdings" of the comparison table that the UK House of Commons did not require MPs to register directorship and shareholding interests in companies which were "not trading". The Clerk advised that LegCo Members were required to register their directorship and shareholding interests in companies in accordance with Rule 83(5)(a) and (h) of RoP regardless of whether these companies had ceased operation so long as these companies were still registered with the Companies Registry.

22. The Chairman further noted that MPs were required to register their shareholding interests if they owned greater than 15% of the issued share capital of the company or 15% or less of the issued share capital of the company but greater in value than the current annual parliamentary salary, whereas both LegCo and ExCo Members were required to register their shareholding interests if they owned greater than 1% of the issued share capital of the company. The Clerk advised that the threshold for registration of shareholding interest in the UK House of Commons was previously set at more than 1% of the issued share capital of the company. The Chairman requested the Secretariat to find out the reason for such changes to the registration of shareholding interest in the UK House of Commons.

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23. The Secretary General ("SG") advised that the Secretariat had engaged Sir Malcolm Jack, the retired Clerk to the UK House of Commons, to provide

advice to the Secretariat on the registration and disclosure of Members' interests, among other issues. Sir Malcolm would visit Hong Kong in mid-April 2012. In the meantime, CMI could seek Sir Malcolm's advice through correspondence.

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24. Dr Margaret NG said that the Secretariat should seek Sir Malcolm's advice not just on the requirements for registration and declaration of Members' interests in the UK House of Commons, but also on other aspects such as how the House of Commons dealt with complaints against MPs regarding conflict of interests and why the code of conduct for MPs were not written into the Standing Orders but were effected through the passage of resolutions.

II. Review of the existing mechanisms of the Legislative Council for dealing with complaints against Members in their capacity as such (LC Paper No. CMI/20/11-12)

25. The Chairman said that at the CMI meeting held on 7 January 2011, members considered the research report on requirements and related arrangements for the registration and disclosure of Members' interests in selected overseas Parliaments (LC Paper No. RP02 /10-11). The Chairman further said that at the last CMI meeting held on 20 May 2011, members considered that the idea of putting in place a mechanism similar to that in use by the UK House of Commons, i.e. an independent commissioner, for investigating complaints relating to registration and disclosure of Members' interests and use of Members' allowance was worth pursuing. As the mechanism in Canada was much more complicated than that in the UK, members also considered that the Canadian system needed not be studied further. The Chairman added that the Secretariat had prepared the paper entitled "Review of the existing mechanisms of the Legislative Council for dealing with complaints against Members in their capacity as such" (LC Paper No. CMI/20/11-12).

Existing rules governing Members' conduct in their capacity as such

26. At the invitation of the Chairman, ASG3 said that Members' conduct in their capacity as such was governed by various Rules in RoP as set out in paragraphs 5 to 11 of the paper. ASG3 added that these Rules did not seek to regulate what Members did in their purely private and personal lives.

Existing mechanisms and problems with these mechanisms for handling complaints against Members

27. ASG3 said that while a number of committees were tasked or could be appointed to deal with complaints against Members' misconduct, i.e. CMI, investigation committee ("IC") and select committee (paragraphs 12 to 21 of the paper), there were also problems with these mechanisms (paragraphs 22 to 33 of the paper).

Relevant rules and practices of selected overseas legislatures

28. ASG3 further said that in considering how the existing system to regulate Members' conduct in their capacity as such should be changed to better meet public expectations, the Secretariat had conducted a study on how the UK House of Commons, the House of Commons of the Parliament of Canada, the House of Representatives of the Parliament of Australia, the Legislative Yuan of Taiwan and the National Assembly of the Republic of Korea dealt with complaints about the conduct of their Members (paragraphs 34 to 38 of the paper).

Recommendations

29. ASG3 briefed members that in the light of the problems with the existing mechanisms and having regard to the mechanisms adopted by overseas jurisdictions for handling complaints relating to Members' conduct, members were invited to consider whether the following initiatives should be taken forward to improve the existing mechanisms:

- (a) a formal code of conduct for Members for adoption by the Council might be drawn up with principles such as those governing integrity, accountability and honesty and the general and specific rules with which Members were expected to comply to be included in the code. The code might be complemented by a set of detailed guides, as in the case of the UK House of Commons, to better assist Members in complying with the code and to better enable the general public to understand the requirements of the code for Members;
- (b) the terms of reference of CMI might be expanded to cover complaints about Members' conduct, including unauthorized disclosure of information. As there was no definition of or reference to "misconduct" of Members in the RoP, CMI should consider each case according to the seriousness involved in the breach of code of conduct (if made) and the relevant rules;

- (c) a person of independent standing might be appointed as commissioner to investigate and report on complaints about Members' conduct to address public concern about Members conducting investigation against their fellow legislators. If this proposal was accepted, members might consider whether the commissioner should also be responsible for maintaining the Register of Members' Interests, giving advice on the interpretation of the code of conduct and providing confidential advice to individual Members on matters of interests and conduct;
- (d) if a commissioner referred to in (c) was appointed, members might consider whether the making of the decision on whether or not to recommend sanctions should continue to be vested in CMI while the commissioner's report was to be attached to the CMI's report to the Council; and
- (e) the oversight of the work of the commissioner as well as the oversight of the code of conduct for Members should rest with CMI.

Discussion

30. Dr Margaret NG said that the proposal of appointing an independent commissioner to take over the existing duties of considering and investigating complaints against Members was worth pursuing, albeit she was not optimistic that this would have the support of the Council. However, expanding the terms of reference of CMI to cover Members' misconduct and drawing up of a code of conduct for Members would also be a futile exercise, as there was no consensus among Members concerning the acceptable standards of behaviour of Members as evidenced by the proposed resolution to admonish a Member for failing to comply with Rule 83A of RoP which was negated by Members at the Council meeting of 13 July 2011. Dr NG further said that although the alleged misbehaviour stated in a censure motion against a Member under Rule 49B(2A) of RoP was less serious than those made against the Member in the media at the outset, the Council still referred the alleged misbehaviour stated in the censure motion to an IC for investigation. If Members could not properly use IC as it was intended to consider complaints about misbehaviour of Members, she was not optimistic that adopting the relevant practices of the UK House of Commons would help to enhance the existing mechanisms for dealing with complaints against Members in their capacity as such in LegCo.

31. While noting that unauthorized disclosure of information by Members in the Parliaments of UK, Canada and Australia was considered a breach of parliamentary privilege and hence could only be adjudicated by a committee of the House concerned, Dr NG added that to expand the terms of reference of CMI to handle similar complaints was impractical as the crux of the problem lay not in the lack of a mechanism but in the great difficulty, if not impossibility, of gathering evidence relevant to the complaints.

32. Dr NG added that the most urgent task in hand was for CMI to re-visit its views on the principles of how directorships should be regarded for the purpose of making the required disclosures under Rule 83A of RoP.

33. Ms Emily LAU said that irrespective of whether the terms of reference of CMI should be expanded to cover Members' misconduct, it was necessary for CMI to address public concerns about Members themselves investigating their fellow legislators. Ms LAU further said that even though expanding the terms of reference of CMI to cover Members' misconduct and drawing up of a code of conduct for Members might not have a good chance of gaining the support of the Council, CMI should still put forward these recommendations for consideration by all Members. Ms LAU asked whether the absence of a code of conduct for Members would prevent the appointment of a commissioner or whether the commissioner could rely on the existing "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members in their capacity as such" ("the Advisory Guidelines") to consider complaints against Members.

34. ASG3 advised that the absence of a code of conduct for Members would not prevent the appointment of a commissioner so long as the scope of work of the commissioner was within the current terms of reference of CMI. If a commissioner was appointed to take over the existing duties of CMI to consider and conduct investigation into complaints against Members in relation to the registration and declaration of Members' interests or claims for reimbursement of operating expenses or applications for advance of operating funds, consideration could be given to adopting the "rectification procedure" in use in the UK House of Commons referred to in paragraph 19 of LC Paper No. CMI/19/11-12, thereby obviating the need for these cases to undergo the established complaint handling procedure.

35. ASG3 explained that in the UK, if during the preliminary enquiry, the Member under complaint already admitted to failing to register or declare an interest or where the interest involved was minor or the failure to register or declare was inadvertent, the Member might be allowed to rectify the matter

using the rectification procedure provided in the Standing Orders. In the case of non-registration of interests, rectification required a belated entry in the Register on Members' Financial Interests and with an appropriate explanatory note; in the case of non-disclosure, it required an apology to the House, either by means of a point of order or of an intervention in a relevant debate.

36. ASG3 further said that members might wish to consider first taking forward those initiatives which were less controversial. SG added that members might wish to in parallel examine the complaint handling procedure of CMI to consider whether there was any room to enhance the procedure.

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37. Ms Emily LAU agreed with ASG3 and SG's suggestions mentioned in paragraph 36 above. Ms LAU requested the Secretariat to prepare a paper setting out what needed to be done if the commissioner was to be appointed to take over the present duties of CMI to consider and conduct investigation into complaints against Members in relation to the registration and declaration of Members' interests or claims for reimbursement of operating expenses or applications for advance of operating funds. While noting that the Advisory Guidelines did not have legal effect, Ms LAU considered these Guidelines could be developed for use by CMI or the commissioner, if appointed, as the basis for considering complaints against Members' misconduct or used by members of the public as the basis for lodging complaints against Members.

38. Dr Margaret NG said that to make the Advisory Guidelines as the basis for considering complaints against Members' misconduct would have unimaginable consequences. Dr NG pointed out that unlike in the UK House of Commons where it was the consensus of Members that the code of conduct for Members should be used for self and mutual regulation, the same could not be said for LegCo as the Advisory Guidelines might be abused to persecute Members for political reasons should these Guidelines be made as the basis for considering complaints against Members regardless of whether the Guidelines had legal effect or otherwise.

39. Mr WONG Sing-chi said that although the Democratic Party had disagreed to implementing a code of conduct for Members in the past, the issue should now be re-considered in view of the growing public expectation of the conduct and propriety of a LegCo Member. Mr WONG further said that he supported the appointment of an independent commissioner to investigate complaints against Members, as this would make the investigation process more professional and reduce the unnecessary embarrassment to the Member under complaint.

III. Any other business

40. Mr WONG Sing-chi said that he had earlier written a letter to the Chairman in which he requested the Chairman to consider stepping down from the chairmanship of CMI due to her failure to comply with Rule 83 of RoP. The letter had also been copied to other CMI members. Mr WONG undertook to provide a copy of the letter to the Secretariat after the meeting for formal issuance to CMI members.

41. There being no other business, the meeting ended at 10:23 am.

Council Business Division 3
Legislative Council Secretariat
22 February 2012