

立法會
Legislative Council

LC Paper No. CMI/53/11-12

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

Committee on Members' Interests

**Minutes of the eighth meeting
held on Friday, 16 March 2012 at 4:30 pm
in Conference Room 2B 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 Paul CHAN Mo-po, MH, JP

Members absent : Hon WONG Yung-kan, SBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon WONG Sing-chi

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 Wylie HO
Senior Council Secretary (3)2

Mr Ambrose LEUNG
Research Officer (3)

Action

**I. Confirmation of minutes of meeting held on 9 January 2012
(LC Paper No. CMI/25/11-12)**

The minutes of the meeting held on 9 January 2012 were confirmed.

II. Review of registration of Members' interests (LC Paper No. CMI/27/11-12)

2. The Chairman said that at the meeting of the Committee on Members' Interests ("CMI") held on 9 January 2012, members requested the Secretariat to provide further information on the comparison between the registrable interests of Members of the Legislative Council ("LegCo"), the Executive Council of Hong Kong ("ExCo") and the House of Commons of the Parliament of the United Kingdom ("UK") to facilitate members' consideration of whether, and if so, how the existing system of registration of Members' interests in LegCo should be changed to enhance transparency and accountability. Accordingly, the Secretariat had prepared the paper entitled "Review of registration of Members' interests" (LC Paper No. CMI/27/11-12), with further information on the comparison in Appendices I and II to the paper.

Proposed changes to the registration of Members' interests in LegCo

3. At the invitation of the Chairman, Assistant Secretary General 3 ("ASG3") said that having regard to the views expressed by members at the last meeting and in previous meetings and the relevant practices of the UK House of Commons and ExCo, the Secretariat had proposed changes to the registration of Members' interests which were set out in paragraphs 4 to 5 of the paper for members' consideration. The proposed changes included requiring Members to provide more details of their particulars of registrable interests under the categories of "directorships", "remunerated employment, offices, etc.", "clients", "overseas visits", "land and property" and "shareholdings"; adding a new category of registrable interests named "remunerated membership of boards, committees or other organizations"; and making the Registration Form on Members' Interests ("Registration Form") a part of the Rules of Procedure ("RoP") for endorsement by the Council. ASG3 added that a proposed revised Registration Form and proposed amendments to Rule 83 of RoP were in Appendices III and IV respectively for members' comments.

Discussion

4. Ms Emily LAU expressed support for the proposed changes to the registration of Members' interests set out in the paper. In view of recent controversy over the hospitality received by the Chief Executive, Ms LAU asked whether a new category of "hospitality" should be added to the categories of registrable interests to be registered by Members.

5. The Secretary General ("SG") advised that hospitality received by Members or their spouses was considered to be material benefits¹ and were registrable.

6. The Legal Adviser ("LA") pointed out that the fact that Members who registered any material benefits received with the Clerk to LegCo would not make them immune from prosecution for accepting benefits in contravention of the Prevention of Bribery Ordinance (Cap. 201), as the Ordinance applied to public servants and LegCo Members fell within the definition of "public servant" under the Ordinance.

7. Dr Margaret NG asked whether "prescribed officers" referred to in section 3 of the Ordinance also covered LegCo Members. LA replied in the negative, as "prescribed officers" mainly referred to persons employed by the Government.

8. The Chairman noted that the proposed revised Registration Form required Members to report certain changes in registrable interests by using a separate page. The Chairman asked whether this new format would render it difficult for members of the public to obtain a full picture of a Member's interests.

9. ASG3 explained that after receiving a relevant page of the Registration Form filed by a Member for reporting changes in his/her registrable interests, the Secretariat would keep a copy of the original form filed by the Member in the Register of Members' Interests ("Register") placed in the LegCo Library for public inspection, and at the same time upload the soft-copy of that form to the online Register on LegCo's website. All pages of the Registration Form filed by a Member at the beginning and during the current term were kept on the Register to enable the public to obtain a full picture of the interests registered by that Member.

10. Ms Emily LAU said that the Secretariat should ensure that members of the public could obtain the most updated information on the interests registered by Members. ASG3 said that so far the Secretariat had not received any complaint from the public regarding the current arrangements of the Register, but it would regularly review if there was any room for improvement.

The Clerk

¹ The term "material benefit" refers to (i) interests received from a single source in the course of one year where the total value of such interests exceeds 5% of the annual remuneration* of a Member of the Council (*excluding the operating expenses reimbursement); or (ii) one-off material benefits exceeding \$10,000 in value (Note (b) under the category of "Directorships" in the Registration on Members' Interests).

11. Senior Assistant Legal Adviser 1 ("SALA1") drew members' attention to Note (e) under "Directorships" in page 2 of the proposed revised Registration Form which stated that "Where you are a remunerated director of a company, all subsidiary or associated directorships which you hold within the same group, whether remunerated or not, should also be registered". Since Rule 83(5)(a) of RoP² did not require Members to register unremunerated directorships, to require Members to register all unremunerated subsidiary or associated directorships in the Registration Form would go beyond the scope of the registration requirement provided in that Rule. SALA1 suggested that members might consider amending Rule 83(5)(a) if members considered such requirement necessary. Ms Emily LAU asked why such requirement was stated in the Registration Form. The Clerk explained that it was incorporated into the Registration Form by the former CMI in 1993 when it conducted a review on registration requirements. The requirement was modelled on that in the registration form in use by the UK House of Commons at that time. Ms LAU considered that Note (e) should be amended to make it consistent with Rule 83(5)(a). Members agreed.

The Clerk

12. SALA1 also drew Members' attention to Note (f) under "directorships" in the proposed revised Registration Form which referred to the Companies Ordinance for the definition of a subsidiary company. The Companies Ordinance would be replaced by the Companies Bill (being scrutinized by a Bills Committee) following its enactment. Under the Bill, a body corporate was a subsidiary of another body corporate if that other body corporate was its holding company. Upon commencement of the new Companies Ordinance, consequential changes would need to be made to Note (f) to reflect the definition of a subsidiary company under the new Ordinance.

13. Dr Margaret NG said that the Chinese version of the explanatory notes in the proposed revised Registration Form should be improved. For instance, "須予以登記" could be simplified as "須登記". ASG3 said that the explanatory notes had been used for many years and undertook to improve the drafting of the Chinese translation.

The Clerk

14. Ms Emily LAU said that CMI should consult all Members' views on the proposed changes to the registration of Members interests set out in the paper (CMI/27/11-12). Members agreed.

The Clerk

² Rule 83(5)(a) requires Members to register "remunerated directorships of companies, public or private, and if the company concerned is a subsidiary of another company within the meaning of section 2(4) of the Companies Ordinance (Cap. 32), also the name of that other company".

III. The five principles of how directorships should be regarded for the purpose of Rule 83A of the Rules of Procedure (LC Paper No. CMI/28/11-12)

15. The Chairman said that CMI, during its consideration of a complaint against certain Members, had agreed on five principles of how directorships should be regarded for the purpose of complying with Rule 83A³ of RoP ("the five principles"). A motion⁴ was moved by the Chairman herself on behalf of CMI at the Council meeting of 13 July 2011 to enable Members to express their views on the five principles (set out in CMI's report on the complaint to the Council and extracted in **Appendix**) and other issues in relation to the procedural rules on pecuniary interests. The Chairman further said that as the motion was negatived, members suggested at the last meeting that CMI should consider whether the five principles should be revisited and requested the Secretariat to summarize Members' views expressed at the motion debate for members' consideration. Accordingly, the Secretariat had prepared LC Paper No. CMI/28/2011-12.

16. At the invitation of the Chairman, ASG3 referred members to the main concerns and reservations about the five principles expressed by Members and the suggestions made at the motion debate set out in paragraphs 7 and 8 of the paper respectively.

Discussion

17. Ms Emily LAU said that implementing Members' suggestions of facilitating Members' disclosure of interests at meetings of the Council and committees and providing a lesser form of punishment in Rule 85⁵ of RoP for minor and/or inadvertent breaches should not be controversial.

18. Dr Margaret NG said that she had no objection to the suggestion of introducing arrangements to facilitate Members' disclosure of interests at meetings of the Council and committees. Dr NG also had no objection to providing a lesser form of punishment for minor and/or inadvertent breaches

³ Rule 83A of RoP provides that: "In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest".

⁴ The motion was entitled "Issues in relation to procedural rules on pecuniary interests". The wording of the motion was: "That this Council takes note of the issues in relation to the procedural rules on pecuniary interests that are set out in the Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK".

⁵ Rule 85 of RoP (Sanctions relating to Interests, Operating Expenses or Operating Funds) provides that: "Any Member who fails to comply with Rule 83 (Registration of Interests), 83A (Personal Pecuniary Interest to be Disclosed), 83AA (Claims for Reimbursement of Operating Expenses or Applications for Advance of Operating Funds) or 84(1) or (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest) may be admonished, reprimanded or suspended by the Council on a motion to that effect".

in Rule 85 of RoP, although she considered "be admonished" currently provided in Rule 85 was already a suitable sanction for such purpose. Dr NG further said that the Chinese translation of "be admonished" (訓誡) might have given some Members the impression that it was a serious form of sanction, but to some Members, they might consider any form of sanction too heavy if they were the Members to be sanctioned.

19. SG said that at the last meeting CMI had already discussed putting in place arrangements similar to the practices in the UK House of Commons, i.e. the [R] symbol arrangements and a rectification procedure. SG explained that in the UK House of Commons, Members were required to declare relevant interests on the Order Paper (or Notice Paper) when submitting a written notice to the Table Office, the Public Bill Office or the Private Bill Office initiating a proceeding such as questions, early day motions and presentation of a bill. Whenever such an interest was declared, the symbol [R] was printed on the Order Paper after the name of the Member concerned denoting that the Member had declared a relevant interest.

20. SG further explained that in the UK House of Commons, 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 Standing Order 150 of the House. In the case of non-registration of interests, rectification required a belated entry in the Register on Members' Financial Interests 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.

21. SG said that more details on the proposed new arrangements of the [R] symbol arrangements and the rectification procedure could be worked out for consultation with all Members at a later stage. Members agreed.

The Clerk

22. Ms Emily LAU referred to Members' suggestions of providing clearer definitions for (a) the scope of "pecuniary interests" that a Member was required to disclose for the purpose of Rule 83A of RoP by virtue of the Member being an independent non-executive director ("INED") or non-executive director ("NED") or executive director ("ED") of a company; (b) the "reasonable steps" that a Member should take to find out, for the purpose of making the required disclosures under Rule 83A, whether the company of which he was a director had a pecuniary interest in the matter under consideration by the Council or its committee; and (c) the term "matter" in Rule 83A. Ms LAU said that CMI had to consult all Members in working out these definitions and in revisiting the five principles.

23. Dr Margaret NG said that since she fully agreed with the five principles, she did not consider it necessary to revisit the principles. Dr NG was of the view that the five principles had already provided a clear definition on the scope of "pecuniary interests" that a Member was required to disclose for the purpose of Rule 83A by virtue of the Member being an INED or NED or an ED of a company. Also, the term "reasonable steps" should be interpreted according to common sense and it was not possible to further define the term. Dr NG also considered that the meaning of the term "matter" in Rule 83A was already very clear. Even if CMI tried to elaborate the term, some Members might still consider the definition not clear enough.

24. Dr Margaret NG further said that according to a written statement submitted by Mr Eric Johnson (former Principal Assistant Secretary (Planning and Lands) of Planning and Lands Bureau) to the Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues, the rules on conflict of interests of the competition concerned set an even higher expectation of a director of a company when compared with the five principles. Dr NG considered that if CMI was to revisit the five principles, the standard expected of LegCo Members who were directors of companies should not be lower than that for the panel members of a concept plan competition.

25. LA said that the rules of that competition were for a very specific activity and might not be applicable to situations relating to disclosure of interests under Rule 83A of RoP.

26. Ms Emily LAU asked whether CMI should invite all Members to a meeting to seek their views on related issues. The Chairman said that it would be more effective to collect Members' views using a questionnaire, as many Members might not turn up at the meeting and the views so collected might not have the support of the majority of Members of the Council. Dr Margaret NG said that the views collected in the current term might not be supported by Members of the new term, given that there would be 10 more Members in the new term.

27. Members agreed that should a similar complaint case be received by CMI in future, it would be up to the CMI of the day to decide how it should regard directorships for the purpose of disclosing pecuniary interests under Rule 83A of RoP.

The Clerk

IV. Dates of next meetings

28. Members agreed to hold the next two meetings on 19 April 2012 and 18 May 2012.

[Post-meeting note: the meetings were re-scheduled to 23 April and 29 May 2012.]

V. Any other business

29. There being no other business, the meeting ended at 5:35 pm.

Council Business Division 3
Legislative Council Secretariat
29 August 2012

Extract of Paragraph 3.14 from the Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK tabled at the Legislative Council Meeting on 22 June 2011

CMI's views on the principles of how it would regard directorships for the purpose of Rule 83A of RoP are set out as follows:

X X X X X

- (a) a company is regarded as having a direct pecuniary interest in a project if the company has bid for a contract or has been awarded a contract under the project;
- (b) if a company is regarded as having a direct pecuniary interest in a project by virtue of (a) above, a Member who is a director of the company is regarded as having an indirect pecuniary interest in the project;
- (c) there is no distinction between executive directors, non-executive directors and independent non-executive directors as far as disclosure of pecuniary interest under Rule 83A of RoP is concerned;
- (d) a Member is expected to take reasonable steps to find out, for the purpose of making the required disclosures under Rule 83A of RoP, whether the company of which he is a director has a pecuniary interest in the matter under consideration by a committee; and
- (e) generally speaking, if a subsidiary of a company ("parent company") has bid for a contract or has been awarded a contract under a project, then, the parent company is regarded as having an indirect pecuniary interest in the project and on this basis, a Member who is a director of that parent company is regarded as having an indirect pecuniary interest in the project.

X X X X X