

立法會
Legislative Council

LC Paper No. CMI/18/05-06

Ref: CB(3)/C/2(04-08) III

Committee on Members' Interests

**Minutes of the fifth meeting
held on Friday, 20 January 2006 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)
Hon SIN Chung-kai, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Hon Albert Jinghan CHENG

**Member absent
with apologies** : Hon Abraham SHEK Lai-him, JP

Clerk in attendance : Mrs Betty LEUNG
Chief Council Secretary (3)1

Staff in attendance : Mr Ricky FUNG, JP
Secretary General

Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Ray CHAN
Assistant Secretary General 3

Mr Watson CHAN
Head (Research and Library Services)

Mr Thomas WONG
Research Officer 4

Mr Arthur LEUNG
Senior Council Secretary (3)1

I. Confirmation of the minutes of the last meeting held on 29 September 2005

(LC Paper No. CMI/6/05-06)

The minutes of the last meeting of the Committee on Members' Interests (the Committee) held on 29 September 2005 were confirmed.

II. Review of the registration requirements for remunerated directorships

(LC Papers No. IN4/05-06, CMI/7/05-06 and CMI/8/05-06)

2. The Chairman recapped that at the last two meetings, the Committee had deliberated Mr Albert CHENG's proposal to tighten up the registration requirement for remunerated directorships by requiring Members of the Legislative Council (LegCo) to register:

- (a) the amount of any income derived from remunerated directorships; and
- (b) the names of the parent companies of the companies in which they hold remunerated directorships.

She said that members unanimously signified support for the second point of the proposal but were divided on the first point.

3. Head (Research and Library Services) briefed members on the supplementary information provided in LC Paper No. IN4/05-06 in response to members' request at the last meeting, as summarized below:

- (a) In the House of Commons of the United Kingdom (UK) Parliament, Members are not required to disclose the amount of remuneration of a directorship he or she holds in any company, unless such remuneration arises from the provision of services in his or her capacity as a Member and the amount received or to be received exceeds 1% of a Member's current annual parliamentary salary. The 1% threshold is regarded by the Committee on Standards and Privileges as "appropriate" in that it could prevent interests in the Register of Members' Interests which are of substance from being obscured by the proliferation of relatively insignificant benefits.
- (b) In the House of Commons of the Parliament of Canada, each Member is required to file with the Ethics Commissioner a disclosure statement which includes, if any, the source, nature and amount of remuneration from directorships the Member

received during the preceding 12 months and is entitled to receive during the next 12 months. According to the Parliament of Canada, the 12-month rule is presumably based on convenience in that people are generally required to keep records and report income on an annual basis. The dollar amounts need not be made public because of privacy considerations. The thinking is that what is important is the nature of the income or benefit, not its value or actual amount.

- (c) In the House of Representatives of the United States Congress, Members are not allowed to serve as a paid board member of any association, corporation or other entity. This restriction was introduced by the Ethics Reform Act of 1989.

The proposal to require Members to register the amount of any income derived from remunerated directorships

4. Mr Albert CHENG said that he remained of the view that Members should be required to register the amount of any income derived from directorships, which would enable members of the public to judge if the interests had influenced the conduct of Members in their capacity as such. He pointed out that half of the Members of the LegCo of Hong Kong were returned by functional constituencies and a significant proportion of them were representing the interests of the business sector only. Hence, he considered that the requirement to register the income derived from directorships was particularly relevant in Hong Kong.

5. Ms Emily LAU said whilst she agreed that Members should be required to register the amount of income derived from directorships, the issue was rather complex and was related to the nature of the office of a LegCo Member. The Administration had always regarded the office as public service and took the view that restrictions should not be imposed on any Member taking up directorships or other employments since the office was not a full-time employment. As the Committee had not yet reached any consensus on the proposal, she suggested that it be shelved for the time being.

6. Mr Albert CHENG said that if the Committee agreed to his proposal, a motion could be moved by the Chairman, for debate in the Council, proposing amendments to the relevant rules, and members of the public could then know the stances of Members from various political groupings. Ms Emily LAU said that she did not consider that such a consensus could be reached by the Committee, and it was up to individual members who favoured such changes to consider moving such a motion in the Council. Other members present concurred.

The proposal to require Members to register the names of the parent companies of the companies in which they hold remunerated directorships

7. The clerk reported that pursuant to members' agreement at the last meeting that Members should be required to register the names of the parent companies of the companies in which they hold remunerated directorships, the Legislative Council Secretariat (Secretariat) had prepared, for members' consideration, draft amendments to Rule 83 of the Rules of Procedure (RoP) and Page 1 of the Registration Form on Members' Interests (Registration Form), as set out in LC Papers No. CMI/7/05-06 and CMI/8/05-06 respectively.

8. Given that the term "material benefits" was defined in note (b) on Page 1 (Directorship) of the Registration Form as interests exceeding a certain threshold value, Mr Albert CHENG enquired whether Members were required to register those remunerated directorships where the remuneration received was less than the threshold and the amount of remuneration. Senior Assistant Legal Adviser 1 (SALA1) replied that registrable remunerated directorships were set out in note (a), which included those for which material benefit, as defined by note (b), was payable. The amount of remuneration derived from directorships was not required to be registered.

9. The Chairman suggested, and members agreed, that the proposed amendments to Rule 83 of RoP and to Page 1 of the Registration Form be endorsed by the Committee. Ms Emily LAU proposed, and members agreed, clerk that all Members be consulted on the amendments.

Meaning of Rule 83(5)(c) of RoP

10. Mr Albert CHENG enquired about the meaning of Rule 83(5)(c) of RoP. SALA1 replied that the subrule required Members to register the names of clients in relation to personal services rendered by Members which arose out of or were related in any manner to his membership of the Council.

11. Mr LI Kwok-ying enquired whether a Member hosting radio programme(s) was required to register the interests. Mr Albert CHENG asked whether the radio station concerned should be regarded a "client" of the Member. SALA1 replied that the subrule only concerned personal services rendered by the Member which arose out of or were related in any manner to his membership of the Council. Mr Albert CHENG then asked whether a Member was required to register any interests was dependent on the capacity in which he was invited to host the radio programme(s). Mr LI Kwok-ying added that even if a Member had been invited to host a programme in a capacity other than as a LegCo Member, it would be prudent of him to register such an interest if he talked about any LegCo business in the programme(s).

12. Ms Emily LAU enquired whether the phrase “the interests referred to above” in Rule 83(5)(c) served to limit the personal services to remunerated services. SALA1 replied that the subrule did not distinguish free services from remunerated services.

III. Setting up of a Mechanism for Handling Complaints and Allegations Concerning Members’ Operating Expenses Reimbursement Claims

(LC Papers No. CMI/9/05-06, CMI/10/05-06 and AS150/04-05)

Proposed amendments to RoP

13. SALA1 briefed members on the proposed amendments to RoP, which were set out in LC Paper No. CMI/9/05-06, and elaborated below:

- (a) New Rule 73(1)(ca) was proposed to expand the Committee’s terms of reference so that it could handle complaints made in relation to the conduct of Members in respect of their claims for reimbursement of operating expenses (complaints relating to OER claims). The drafting of the subrule had been revised in the light of members’ deliberations at the last meeting. Also, the phrase “if it thinks fit” was included in the subrule in order to specify beyond doubt that the Committee had the discretion to decide whether or not to proceed with investigation of a complaint after considering it. For the sake of consistency in drafting, the same phrase was proposed to be added to the existing Rule 73(1)(c).
- (b) An amendment was proposed to Rule 73(1)(e), which empowered the Committee to report to the Council and recommend a sanction under Rule 85 (Sanctions relating to Interests), to provide that the Committee might also make such a report and recommendation under the proposed Rule 85A (Sanctions relating to Claims for Reimbursement of Operating Expenses).
- (c) New Rule 73(1A) was proposed to provide that in considering or investigating a complaint relating to OER claims, the Committee should have regard to the provisions of the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council (Guide). The rule would require the Committee to have regard to the provisions of the Guide in considering or investigating complaints relating to OER claims, but the Committee might also consider any other relevant matter.

- (d) New Rule 85A was proposed to provide for the sanctions which the Committee might recommend to be imposed on a Member pursuant to its investigation conducted under new Rule 73(1)(ca). The available sanctions were the same as those for failure to register or declare Members' interests.

14. Mr LI Kwok-ying said that the receipt of a relevant complaint was a prerequisite for the Committee to consider or investigate a complaint relating to OER claims. He enquired if the phrase "if it thinks fit" in Rule 73(1)(ca) would have the effect of removing such a prerequisite. SALA1 responded that the phrase was added to dispel the view that the Committee was obliged to proceed with investigation of a complaint. Mr LI Kwok-ying enquired if the phrase could be placed behind the word "investigate" to address his concern. SALA1 replied that if drafted in that way, the phrase would have the effect of qualifying both the words "consider" and "investigate".

15. Mr Alan LEONG said that the subrule as presently drafted was in order. He did not envisage that the Committee would disregard a complaint without considering it first. Given the verb-object constructions of "consider...complaint" and "investigate...complaint", the prerequisite of the presence of a complaint for action to be taken was obvious.

16. Ms Emily LAU enquired whether the phrase was added because problems had been encountered when subrule (c) was invoked in the past by the Committee in dealing with complaints relating to the registration and declaration of Members' interests. SALA1 replied that this was not the case.

17. The Chairman said that the phrase would assist readers in identifying the two stages, i.e. the consideration and investigation stages, for handling a complaint. Mr Albert CHENG suggested the words "after consideration" be added before "it thinks fit" to set out the two stages more clearly. SALA1 undertook to review the drafting of the subrule.

SALA1

18. Ms Emily LAU asked if it was possible to impose a sanction of reprimand on a former Member. SALA1 replied that in theory a motion to that effect might be moved, but members might wish to note that Rule 85 and the proposed Rule 85A had been drafted in the context of imposing sanctions on present Members.

19. Secretary General (SG) reported that he had reviewed the Guide jointly with Legal Adviser. Translation of the revised version was underway and the revised Guide would be issued to all Members in due course.

SG

Procedure for handling complaints relating to OER claims

20. The clerk briefed members on the proposed amendments, as set out in LC Paper No. CMI/10/05-06, to The Procedure of the Committee on Members' Interests for Handling Complaints received in relation to the Registration and Declaration of Members' Interests (the Procedure) to expand its scope to cover the procedures for handling complaints relating to OER claims.

Title and paragraphs 1 and 2(a) of the Procedure

21. The clerk reported that the title of the Procedure and paragraphs 1 and 2(a) had been revised so that the Procedure would cover complaints relating to OER claims. Members did not raise objection to the proposal revisions.

Paragraph 2 of the Procedure

22. The clerk said that paragraph 2 had set out the reasons for which the Chairman might decide not to hold a meeting to consider a complaint. New subparagraph (d) was proposed to provide the following two reasons for not holding a meeting:

- (a) the complaint or related matter was being investigated by a law enforcement agency; and
- (b) the complaint or related matter related to a case pending in a court of law.

23. Ms Emily LAU said that since the subject of a criminal investigation would be very different from that conducted by the Committee, she doubted whether the first reason in subparagraph (d) for not holding a meeting was appropriate. SALA1 responded that criminal offences such as fraud or deception might be involved in a complaint received by the Committee. Ms Emily LAU enquired if there would be difficulties if the Committee and a law enforcement agency conducted their own investigations in parallel. SG said that the main consideration was whether the investigation conducted by the Committee would prejudice the criminal proceedings. SALA1 added that the paragraph had been drafted in the light of a case involving claims for reimbursement of rental allowance by a Member of the UK Parliament, which was set out in Appendix I to LC Paper No. IN39/04-05, issued for the fourth meeting of the Committee. In 2001, the UK Committee on Standards and Privileges (Committee on S&P) considered that the complaint against a Member of the Parliament had substance, but decided to put the matter on hold because the issues relating to the complaint were under police investigation. It was only

after the police's announcement that it would not take any further action on the case that the Committee on S&P authorized the Parliamentary Commissioner for Standards (the Commissioner) to investigate the complaint. In June 2003, the Commissioner concluded that the Member had violated the relevant provisions.

24. Mr Albert CHENG said that he did not consider parallel investigations a problem. He referred to the case of the Sai Wan Ho Development, in which the Public Accounts Committee decided to proceed with consideration of the case after obtaining legal advice that it was empowered to do so, despite the fact that the Chief Executive had appointed a committee of inquiry to examine issues related to the case. There was also a related judicial review pending.

25. The Deputy Chairman said that in conducting investigations, the Committee was empowered under the Legislative Council (Powers and Privileges) Ordinance to summon any person to appear before the Committee and to give evidence in public hearings. Hence, in the case where a law enforcement agency and the Committee were dealing with broadly similar subjects, criminal proceedings conducted subsequent to the Committee's investigation might be prejudiced by the evidence given before the Committee. For this reason, he had reservations about the Committee investigating a complaint, the subject of which was being investigated by a law enforcement agency.

26. Mr Alan LEONG said that the Committee could decide whether it was appropriate to conduct parallel investigations on a case by case basis, having regard to all pertinent factors. Also, paragraph 2 only set out some of the reasons for which the Chairman might decide not to hold a meeting to consider a complaint, but he was not obliged to decide it that way.

27. Ms Emily LAU said that she would expect the Secretariat to provide information to assist members in deciding whether any criminal or judicial proceedings might be prejudiced if the Committee proceed with investigation of a particular complaint. Hence, she considered it unnecessary to include subparagraph (d) in the Procedure as it might hinder the work of the Committee unnecessarily.

28. As members had reservations about the subparagraph (d), SG proposed that it be deleted from the Procedure. Members agreed.

29. Mr Albert CHENG queried why it had been stipulated in paragraph 2 that it was the Chairman, not the Committee, who would decide whether or not to hold a meeting to consider a complaint. The Deputy Chairman and Mr Alan LEONG said that the final decision on whether or not to hold a meeting to consider a complaint should rest with the Committee. SG

responded that paragraphs 4 and 5 of the Procedure had provided checks on the Chairman's decision not to hold a meeting. All members would be promptly notified of such a decision and it could be reviewed by members. Assistant Secretary General 3 (ASG3) added that the paragraph authorizing the Chairman to do the preliminary screening of complaints had been drafted for efficiency considerations, as some complaints might be frivolous. The Chairman said that as there was already a built-in check and balance mechanism, she anticipated that the incumbent Chairman would be prudent in making the decision not to hold a meeting, especially if the complaint was a marginal case. Ms Emily LAU concurred.

SALA1,
clerk

30. Mr Albert CHENG suggested that the word “決定”(decide), where it appeared for the second time in paragraph 2, be replaced by “考慮”(consider). SALA1 undertook to review the drafting of the paragraph.

31. The clerk sought members' view on new subparagraph (e), which provided that the Chairman might decide not to hold a meeting if the complaint involved substantially repeated allegations which had already been dealt by the Committee, save for fresh evidence produced. Members did not raise objection to the subparagraph.

32. The clerk sought members' view on new subparagraph 2(f), which provided that the Chairman might decide not to hold a meeting if the complaint was made against a former Member, or about a Member's act(s) or omission(s) which had allegedly taken place seven years or more prior to the date of the complaint. She said that the period of seven years was also adopted by the UK Parliament. SALA1 added that it might be difficult for an accused person or witnesses to recollect events which happened many years ago and relevant documents might have been discarded or lost after a long time. Hence, in fairness to the accused person, the court might consider discontinuing a criminal trial on acts allegedly committed a long time ago.

IV Date of next meeting

clerk

33. At the request of Mr Albert CHENG, who had to attend another meeting, members decided that the meeting be adjourned. They also agreed that the next two meetings be held on 17 February 2006 at 10:45 am and 3 March 2006 at 8:45 am to continue deliberations.

34. The meeting ended at 10:00 am.

Council Business Division 3
Legislative Council Secretariat
24 January 2006