

**立法會**  
**Legislative Council**

LC Paper No. CMI/60/12-13

Ref: CB(3)/C/2(12-16)

**Committee on Members' Interests**

**Minutes of the Third Open Meeting  
held on Tuesday, 30 April 2013, at 4:30 pm  
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Frankie YICK Chi-ming  
Hon Gary FAN Kwok-wai  
Hon CHAN Yuen-han, SBS, JP  
Hon Dennis KWOK
- Member absent** : Hon Emily LAU Wai-hing, JP (Deputy Chairman)
- Clerk in attendance** : Mr Arthur LEUNG  
Chief Council Secretary (3)3
- Staff in attendance** : Mr Kenneth CHEN  
Secretary General
- Mr Jimmy MA, JP  
Legal Adviser
- Mrs Justina LAM  
Deputy Secretary General
- Miss Odelia LEUNG  
Assistant Secretary General 3
- Mr KAU Kin-wah  
Senior Assistant Legal Adviser 3
- Miss Wylie HO  
Senior Council Secretary (3)6
- Mr Ambrose LEUNG  
Research Officer (3)

Action

**I. Confirmation of minutes of the last meeting**  
(LC Paper No. CMI/48/12-13)

The minutes of the last meeting held on 28 January 2013 were confirmed.

**II. Outcome of consultation with Members on whether an independent person should be appointed as a Commissioner to receive and investigate complaints against Members**  
(LC Paper No. CMI/49/12-13)

2. The Chairman recapitulated that at the last meeting, members decided that all Members be consulted by way of a questionnaire on the proposal, which was made by the Committee on Members' Interests ("CMI") of the Fourth Legislative Council ("LegCo"), of appointing an independent person as a Commissioner to receive and investigate complaints against Members.

3. At the invitation of the Chairman, the Clerk reported on the outcome of the consultation, as set out in paragraph 5 of LC Paper No. CMI/49/12-13. The Clerk said that except the President, all other 69 Members responded to the questionnaire. Among them, 23 Members (or 33.3%) agreed to the proposal, 34 Members (or 49.3%) disagreed, while the remaining 12 Members (or 17.4%) had no view on the matter.

4. Mr Frankie YICK drew members' attention to the advice, as set out in paragraph 43 of the minutes of the last meeting, given by Sir Malcolm Jack, a retired Clerk of the House of Commons of the United Kingdom ("UK"), that the absence of a code of conduct would make the job of the Commissioner very difficult. Mr YICK said that this issue should be resolved first should CMI re-visit the matter in the future.

5. Concurring with Mr YICK, the Chairman pointed out that the outcome of the consultation clearly showed that a majority of Members did not support the proposal.

6. Members agreed that no further action on the proposal should be taken.

### **III. Disclosure of pecuniary interests by Members under Rule 83A of the Rules of Procedure**

(LC Paper No. CMI/50/12-13)

#### Concerns raised by Bills Committee on Stamp Duty (Amendment) Bill 2012

7. The Chairman highlighted the background to the discussion of this agenda item. He said that under Rule 83A<sup>1</sup> of the Rules of Procedure ("RoP"), Members were required to disclose their pecuniary interests on the matter under consideration at meetings of the Council and its committees. When the Bills Committee on Stamp Duty (Amendment) Bill 2012 commenced its scrutiny work earlier this year, some members were concerned that should they be required to disclose the same pecuniary interests at each and every meeting of the Bills Committee, the proceedings might be impeded. The House Committee referred the matter to CMI for consideration.

8. At the invitation of the Chairman, the Clerk briefed members on the salient points in the discussion paper (LC Paper No. CMI/50/12-13). He said that members of the aforesaid Bills Committee sought clarification of the following two issues:

- (a) whether a Member was required to disclose a pecuniary interest which was in common with the rest or a sector of the population in Hong Kong; and
- (b) whether a Member was required to disclose the same pecuniary interest at each and every meeting of the Bills Committee.

9. The Clerk invited members to consider the following issues:

- (a) whether the practice of disclosing pecuniary interests on a matter before a Member first spoke on the matter at a meeting of the Council or its committees should be formalized;
- (b) whether pecuniary interests to be disclosed under Rule 83A of RoP should exclude those interests which were in common with the rest or a sector of the population; and
- (c) whether the UK House of Commons' practice of declaring relevant interests when initiating a proceeding should be examined further with a view to adopting similar practice in LegCo.

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<sup>1</sup> Rule 83A: 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.

10. The Chairman said that the purpose of Rule 83A was to enable members of the public to monitor if a Member had any pecuniary interests which might be relevant to the proceedings of the Council or its committees he was participating in. The Chairman stressed that the review of Rule 83A should focus on how the declaration of interest arrangements could be streamlined without compromising their transparency. He invited members' views on the matter.

#### Whether interests already registered should be disclosed at meetings

11. Mr Jeffrey LAM said that since Members had already registered their interests in detail at the beginning of each LegCo term, he considered it unnecessary to declare the same interests at meetings. Given that the registration of an interest by a Member reflected that he had no intention to conceal that interest, that Member should not be regarded as having breached Rule 83A in the event that he forgot to disclose that same interest in a matter before speaking on the matter at a meeting.

12. Mr Frankie YICK shared the view of Mr Jeffrey LAM. Mr YICK queried whether the registration of interests would serve any useful purpose if Members were required to disclose afresh such interests at each meeting. He enquired whether a Member would be regarded as having breached Rule 83A if he failed to disclose at meetings an interest which had already been registered.

13. In reply, the Legal Adviser ("LA") referred members to paragraph III (3) of the "Guidelines on Registration of Interests" (issued to Members on 19 September 2012), which stated that "[t]he registering of interests is additional to, and in no way a replacement of, the requirement on Members to disclose pecuniary interests under Rule 83A". LA added that CMI of the Fourth LegCo had reiterated such a view in its reports on complaints against Members.

14. LA further advised that the system for registration of interests had been put in place by the former LegCo in 1991 after considering the system adopted by the UK House of Commons at that time. After considering the need for enabling members of the public to have knowledge of Members' interests and respecting the privacy of Members, the former LegCo had specified eight categories of registrable interests by adding Standing Order No. 64A to the Standing Orders (corresponding to Rule 83(5) of the current RoP). The registration system provided a general profile of the interests held by Members and its purpose was to allow members of the public to judge if the interests might affect the discharge of duties by Members in their capacity as such. LA pointed out that registration of interests was

different from disclosure of pecuniary interests at meetings as interests to be registered were not specifically related to the matter under discussion at meetings.

15. Mr Frankie YICK further enquired whether the registration of an interest by a Member would be considered as a mitigating factor should there be a complaint against the Member for failure to disclose that interest before speaking at a meeting.

16. At the invitation of the Chairman, the Deputy Secretary General said that in handling a complaint about failure to register an interest, CMI of the Third LegCo considered that the Member under complaint did not deliberately conceal that interest as he had registered it with the District Council of which he was a member. In another complaint about non-disclosure of a pecuniary interest at committee meetings, CMI of the Fourth LegCo had accepted the explanation by the Member under complaint that it was an oversight on his part for the non-disclosure and that he had no intention of concealing the interest, as he had disclosed the interest at previous meetings of the committee.

#### Interests to be disclosed

17. Mr Jeffrey LAM pointed out that there might be cases in which Members inadvertently breached Rule 83A by failing to disclose an indirect pecuniary interest which they were not aware of. For instance, a Member might not know that a client of the accountancy or solicitors firm to which the Member was associated had a direct interest in the matter being considered at a meeting, as the Member would not know the entire clientele of the firm. Also, a Member would not necessarily be aware that a subsidiary company of a conglomerate of which the Member was a director had a direct interest in the matter being considered at a meeting as the Member could not be expected to know all the business activities of the various subsidiaries of the conglomerate. Mr LAM considered it important to delineate clearly the interests required to be disclosed.

18. Mr Frankie YICK said that with rising public expectation of the standards of behaviour of LegCo Members, it might not pose any problem to a full-time legislator to comply with the disclosure rule. However, there were practical difficulties for a Member who was a partner of an accounting/solicitors firm or a director of a conglomerate with a diversified portfolio of businesses in complying with the rule.

19. At the invitation of the Chairman, LA said that CMI of the Fourth LegCo had studied the meaning of direct and indirect pecuniary interests and took the view that: "[f]or a pecuniary interest to be direct, it should be

immediate and not merely of a remote or general character. As regards 'indirect pecuniary interest', it is an interest not immediate and personal to a Member, but does have a certain relationship with the Member which would make a reasonable person to consider that such interest might have certain influence on the action or speech of the Member".

20. LA added that whether a Member had an indirect pecuniary interest in relation to a matter being considered at meetings would depend on the particular circumstances of each case. The concept of direct or indirect pecuniary interests was not the same as that of conflict of interests. In dealing with a complaint, CMI of the Fourth LegCo had deliberated on the principles that should be applicable to company directorships in the context of Rule 83A.

21. Mr Jeffrey LAM said that it was exactly his concern that there was no categorical answer to the question of under what circumstances a Member was required to disclose a particular interest. He further said that "uncertainty" was the crux of his concern and he considered that such a situation was highly undesirable and that clear guidelines were needed for Members' reference.

22. Mr Dennis KWOK said that it was impossible to make a comprehensive disclosure rule that would cover all the situations under which Members were required to disclose interests in any matter. He considered that it was for Members to judge by themselves whether they had a relevant interest to disclose, and Members would need to take responsibility for their judgement in the end.

23. Mr Jeffrey LAM responded that while it was the responsibility of Members to judge whether they had any pecuniary interests to disclose, they should be given proper advice on the interpretation of Rule 83A to help them comply with the rule. Mr LAM considered it high time to clarify issues about the proper interpretation of Rule 83A.

24. LA confirmed that it was the view of CMI of the previous LegCo that it was ultimately Members' responsibility to judge whether they had any pecuniary interests required to be disclosed under Rule 83A. He considered that this view was reasonable as only Members themselves would know their own circumstances. LA said that CMI of the Fourth LegCo was aware that there had been concerns and practical difficulties experienced in seeking to comply with the disclosure rule, as set out in paragraph 5 of the discussion paper. The issues raised by the aforesaid Bills Committee had also reflected the practical difficulties experienced by some Members who were trying to comply with Rule 83A. Judging from the interests disclosed by Members at the Bills Committee meetings, it appeared that some Members might have been over cautious when deciding

to disclose certain interests. LA pointed out that as it would take time to agree on proposals to address the various issues concerning Rule 83A, in the meantime CMI might consider setting out how it would handle complaints against Members about disclosure of interests which fell within its remit.

25. Ms CHAN Yuen-han said that as a member of the aforesaid Bills Committee, she noted the disclosure of pecuniary interests by many members of the committee. Yet, she noted from her own experience that disclosure of interests under Rule 83A in general did not take up much time and would not impede proceedings. Ms CHAN further said that as the work of Members was closely monitored by the public, it would be prudent for Members to adopt a high standard for disclosure of interests. However, she was undecided on how to take the matter forward, and considered that Members' views should be sought.

26. The Chairman considered that the practical difficulties as mentioned by Mr Jeffrey LAM and Mr Frankie YICK might have existed for a long time. LA responded that this was the first time that such issues were formally brought to the attention of the House Committee, which in turn formally requested CMI to study these issues.

27. The Chairman said that a Member who was a director of a conglomerate might not have sufficient knowledge of the business activities of the subsidiaries of the conglomerate to enable the Member to decide whether to make disclosure of the relevant interests. While it might not be feasible for CMI to provide a categorical answer to each and every situation envisaged by Members, he considered that CMI had a duty to provide as much guidance as possible to Members on compliance with Rule 83A, but not at the expense of lowering the level of transparency of the disclosure system.

28. The Secretary General ("SG") said that under Rule 84 of RoP, a Member was not allowed to vote and might even have to withdraw from the meeting if he had a direct pecuniary interest in the question being voted on, but direct pecuniary interest which was in common with the rest or a sector of the public was excluded from the rule. He drew members' attention to paragraph 17(b) of the discussion paper, which invited members to consider whether the pecuniary interests to be disclosed under Rule 83A should also exclude such common interests, as in Rule 84. SG said that the exclusion of common interests from the disclosure requirement under Rule 83A could resolve the concerns of the aforesaid Bills Committee to a large extent.

29. Mr Frankie YICK considered that the interests required to be disclosed under Rule 83A should exclude common interests.

## Timing of disclosure of pecuniary interests

30. Mr Jeffrey LAM drew members' attention to the view of CMI of the Fourth LegCo, as set out in paragraph 7 of the discussion paper, that a Member should disclose his pecuniary interest in a matter at the beginning of his speech on the matter. He said that it was not uncommon for a Member to disclose pecuniary interests after the Member had spoken on a matter, and technically the Member could be regarded as having breached Rule 83A. He sought clarification on whether his understanding was correct and, if so, how the matter could be addressed, as otherwise CMI might be inundated with complaints.

31. At the invitation of the Chairman, LA said that Mr LAM's understanding of Rule 83A of RoP was correct. It was the view of CMI of the Fourth LegCo that a Member should disclose his pecuniary interest at the beginning of his speech. Members might consider how the Rule should be implemented in such a way as not to unduly impede the proceedings of the Council or committees but at the same time achieving the purpose of disclosure.

32. The Chairman said that a Member disclosing his interests immediately after his speech could still meet the purpose of disclosure of interests, which was to enable other persons to monitor if the Member had been affected by his interests in the discharge of duties in such capacity. The Chairman enquired whether a Member could be regarded as complying with Rule 83A as long as he had disclosed his interest, irrespective of whether he made the disclosure before or after he had spoken on a matter.

33. In response, LA said that according to the present wording of the Rule, Members should disclose pecuniary interests in a matter before he spoke on it. However, a lot of people might not regard a Member as having breached Rule 83A if he disclosed his pecuniary interest after speaking for a few seconds. Yet, if the Member disclosed his interest only after several rounds of speeches by other Members, an opposite view might be held.

34. SG said that a literal interpretation of Rule 83A, as presently worded, was that a Member having a direct or indirect pecuniary interest in a matter should not speak on that matter. If the Member wished to speak, he could only do so on the condition that he disclosed the interest. It therefore followed that the Member should disclose the interest before he spoke and a Member disclosing his interest after he had spoken would have breached Rule 83A.

35. The Chairman said that if such an interpretation was adopted, a Member having a pecuniary interest in a matter should not join the relevant



committee in the first place. He doubted if this was the original intent of Rule 83A as he did not consider a Member should be disallowed from speaking on a matter by virtue of his having a pecuniary interest in the matter given that the Member might be representing the interests of his constituency and had an obligation to speak on the matter. The Chairman considered that the intent of disclosure of interests should be that a Member was required to disclose his interest on a matter if he spoke on the matter.

36. SG said that it was for Members to agree on what and how interests should be disclosed and the Secretariat would then draft the proposed amendments to Rule 83A accordingly for Members' consideration.

Whether Members should declare their interests at each of a series of meetings

37. Mr Jeffrey LAM considered that if Members were required to declare the same interests at each and every meeting of a Bills Committee, the proceedings of the meetings might be unduly protracted. In his view, Members should only be required to declare their interests at the first meeting of a Bills Committee.

38. Mr Gary FAN considered it necessary for Members to declare interests in a matter before they first spoke at each of the meetings held to discuss the matter as each meeting should be considered to stand alone and was so regarded by members of the public. He suggested that to avoid inadvertent breach of Rule 83A, reference could be made to the practice of Sai Kung District Council of tabling members' written declaration of interests at each meeting to remind them to disclose their interests before they spoke on the matter for the first time. Mr FAN said that such an arrangement would strike a proper balance between administrative convenience for Members and transparency of Members' interests, and the administrative cost for its implementation would be minimal.

39. Ms CHAN Yuen-han enquired whether CMI had received any request for making amendments to Rule 83A. In reply, Senior Assistant Legal Adviser 3 ("SALA3") said that so far the Secretariat had not received any request from other committees for amending Rule 83A. He added that apart from considering the need for making amendment to Rule 83A, members might also consider setting out how it would handle complaints about non-disclosure of interest.

40. Ms CHAN said that while she noted the concern of some members of the aforesaid Bills Committee that disclosure of pecuniary interests at each meeting would unduly impede the proceedings of the committee, the current arrangement had its merits as Members might forget to update their

registrable interests in writing and the requirement for disclosure of interests at meetings would serve as a reminder.

41. At the invitation of the Chairman, the Clerk briefed members on the practice of the UK House of Commons on declaration of interests as set out in paragraphs 10 to 11 of the discussion paper. For the Public Bill Committee (which was equivalent to LegCo's Bills Committee) in the UK House of Commons, Members of Parliament ("MPs") were required to declare relevant interests only at the first meeting of the Committee or on the first occasion on which they addressed the Committee, and it was not necessary for a declaration to be repeated at subsequent meetings except when the Member spoke on an amendment to which the interest was particularly relevant. The interests declared by Members of the Committee would then be recorded in the minutes of the first meeting which would be uploaded to the UK House of Commons' web site for public inspection. The Clerk added that this practice was adopted probably because the issues to be dealt with by a Public Bill Committee were well defined in the bill and MPs would be able to declare their interests when joining the Committee. On the other hand, MPs were still required to declare their interests at different stages of the proceedings of other committees.

42. The Chairman sought members' views on whether CMI should consider adopting the practice of UK's Public Bill Committees for the Bills Committee of LegCo.

43. Mr Dennis KWOK said that he had no objection to drawing on the relevant practices in the UK, but members should bear in mind a major difference between the legislatures in UK and Hong Kong, i.e. half of the Members of LegCo were returned by the functional constituencies while all MPs in UK were directly elected. As Members returned by functional constituencies might have various connections with the industries/trades they represented and they were more likely to have pecuniary interests to declare, more stringent declaration requirements should be adopted in Hong Kong. Ms CHAN Yuen-han concurred with Mr KWOK. She added that with rising public expectation of the standards of behaviour of LegCo Members, Members should be prudent in declaring their interests.

44. Mr Gary FAN said that the purpose of Rule 83A of RoP was to ensure that Members should act in the public interest when exercising the powers vested in them to decide on policies and matters which affected the public. He considered that the proper exercise of public powers was of overriding importance and it should not be compromised by considerations such as efficiency of meeting proceedings or inconvenience experienced by Members in the declaration of interests. Mr FAN considered that Rule 83A had been working well so far and should not be overhauled. He would prefer adopting administrative measures to remind Members to disclose their interests.

45. Mr Dennis KWOK concurred with Mr Gary FAN. Mr KWOK noted that the Secretariat staff had clearly explained the principles underlying Rule 83A, but some members still felt uneasy with the Rule. He suggested that such members should put forward concrete proposals or direction on how the Rule should be amended so that the Secretariat might work out the draft for members' consideration.

46. At the invitation of the Chairman, SALA3 said that members generally did not object to the need for declaration of pecuniary interests but there were issues identified in the implementation of the disclosure rule. The relevant practice in the UK House of Commons was set out in the discussion paper to facilitate members in finding solutions to the issues identified. While members might in the long run consider whether Rule 83A should be amended, in the meantime, members might consider implementing measures to address concerns relating to Rule 83A. He informed the meeting that in the parliament of New Zealand ("NZ"), its Members were not required to declare those financial interests which had already been registered<sup>2</sup>, or to declare any financial interests which were in common with the rest of or a sector of the public<sup>3</sup>. Subject to members' wish, the Secretariat could provide members with information relating to the relevant practices in NZ and the background information on how Rule 83A had evolved into its present form.

47. The Chairman said that he did not entirely agree to Mr Dennis KWOK's view. While he agreed with Mr Gary FAN on the purpose of Rule 83A, the Rule should not work in such a way as to hinder Members from participating in LegCo business which affected their constituencies. Moreover, CMI needed to address the concerns raised by members of the aforesaid Bills Committee and those issues relating to Rule 83A raised by Members of the Fourth LegCo, as set out in paragraph 5 of the discussion paper.

48. In conclusion, the Chairman said that members should consult fellow Members of their own political groupings on the relevant issues before CMI further discussed the matter. In his view, re-drafting Rule 83A along the line suggested by SG in paragraphs 28 and 36 above might be a viable option. He requested the Secretariat to prepare a paper for discussion, having regard to the views expressed by members at the meeting.

The  
Secretariat

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<sup>2</sup> Standing Order 162(2) of the House of Representatives of New Zealand.

<sup>3</sup> Standing Order 161(2)(b) of the House of Representatives of New Zealand.

**IV. Any other business**

49. There being no other business, the meeting ended at 6:10 pm.

Council Business Division 3  
Legislative Council Secretariat  
12 July 2013