

立法會
Legislative Council

LC Paper No. CMI/18/13-14

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

Committee on Members' Interests

Minutes of Meeting
held on Thursday, 24 October 2013, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy 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

Other Members present by invitation : Hon YIU Si-wing
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon Kenneth LEUNG
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

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

Ms Elyssa WONG
Head (Information Services)

Mr Michael YU
Chief Research Officer (Research)

Mr YU Chun-ho
Research Officer 8

Miss Wylie HO
Senior Council Secretary (3)6

Ms Ally NG
Administrative Assistant I (3)9

Action

**I. Proposed amendments to Rule 83(5) of the Rules of Procedure
(LC Paper No. CMI/7/13-14)**

At the invitation of the Chairman, the Clerk briefed members on the proposed amendments, as set out in LC Paper No. CMI/7/13-14, to Rule 83(5) of the Rules of Procedure ("RoP") to tie in with the commencement of the new Companies Ordinance ("CO") (Cap. 622). He said that Rule 83(5)(a) and (h), which provided for the registration requirements in respect of "remunerated directorships" and "shareholdings" respectively, would become inoperable upon the commencement of the new CO. According to a Legislative Council Brief issued on the day of the meeting, the Companies Ordinance (Commencement) Notice 2013, to be gazetted on 25 October 2013, would specify 3 March 2014 as the commencement date of most provisions of the new CO.

Rule 83(5)(a): remunerated directorships

2. The Clerk further said that under Rule 83(5)(a) of the RoP, a Member was required to register the remunerated directorship of any public or private company (company A) and, where the company was a subsidiary as defined in section 2(4) of the existing CO (Cap. 32) of another company (company B), also the name of company B, i.e. the holding company of company A. As the new CO had adopted an alternative drafting approach of first defining "holding company" and then defining "subsidiary" by reference to the term "holding company", it was necessary to amend Rule 83(5)(a), as proposed in paragraph 7 of the paper. The Clerk added that the proposed amendments would not change the substance of the Rule.

Rule 83(5)(h): shareholdings

3. The Clerk explained that section 135 of the new CO provided that shares in a company had no nominal value and this section applied to shares issued before or after the commencement date of the new CO. It was therefore necessary to make amendments to Rule 83(5)(h) of the RoP as it contained reference to the term "nominal value". The Clerk added that the proposed amendments, which were set out in paragraph 9 of the paper, would not change the substance of the Rule.

4. Mr Jeffrey LAM and Mr Frankie YICK declared that they were directors of listed and private companies. The Chairman said that such declarations were unnecessary as the meeting was deliberating on a policy matter on the registration requirements.

Declaration of pecuniary interests in relation to a holding company

5. Mr Jeffrey LAM said that apart from the requirement for Members to provide the name of the holding company of a company of which they were a remunerated director, some members of the public expected Members to also declare the pecuniary interests which the holding company had in a matter being considered by a committee. However, Members might not be aware of such interests because they had no knowledge of the business operations of the holding company and its subsidiaries which generally operated independently from each other.

6. Senior Assistant Legal Adviser 3 ("SALA3") said that Members were required under Rule 83A of the RoP to disclose pecuniary interests in a matter being considered in the Council or in any committee. Members could only declare what they had knowledge of. However, whether a Member would be considered to have breached the declaration requirement for failing to disclose a pecuniary interest of which he claimed to have no knowledge would depend on the circumstances of each case, e.g. whether the Member had taken reasonable steps to ascertain if such interests existed.

7. Mr Frankie YICK cited a case in which a Member was appointed as a remunerated director of a company at the bottom of a chain of companies controlled by a conglomerate with a diversified portfolio of businesses. As the Member might truly not know all the businesses of the conglomerate, he would likely breach the requirement for failing to disclose the pecuniary interest that conglomerate had in a matter being discussed at a committee meeting.

8. Mr Jeffrey LAM commented that in making amendments to Rule 83(5) of the RoP, the opportunity should be taken to clarify how far a

Member was expected to ascertain the existence of a pecuniary interest in order to comply with the disclosure requirement under Rule 83A. Concurring with Mr LAM, Ms Emily LAU said that both the registration and disclosure requirements should be set out clearly for Members to comply with.

9. At the invitation of the Chairman, the Secretary General ("SG") said that the proposed amendments to Rule 83(5)(a) and (h) aimed to tie in with the commencement of the new CO without changing the registration requirements. The matter raised by Mr Jeffrey LAM concerned disclosure requirement under Rule 83A, which was distinct from the registration requirements.

Whether it is the holding company or the subsidiary that is registrable

10. Noting that a company would have no control over the business operations of its holding company, the Chairman sought clarifications on whether a Member was required to register the holding company or the subsidiary of a company of which he was a remunerated director under Rule 83(5)(a). Drawing members' attention to the page on "Directorships" of the existing Registration Form on Members' Interests ("Registration Form"), the Clerk clarified that it was the holding company that a Member was required to register.

11. SG said that the requirement for Members to register the holding company, rather than the subsidiary of a company of which a Member was a remunerated director, was reasonable as the holding company could exercise control over its subsidiary.

12. The Clerk further explained that the requirement for registration of a holding company was the same under the existing and the proposed Rule 83(5)(a). Where a Member was a remunerated director of a company (company A), under the existing Rule 83(5)(a), the Member was required to register company B if company A was company B's subsidiary. Under the proposed Rule 83(5)(a), the same requirement applied under which the Member was required to register company B if company A's holding company was company B. In other words, the Member was required to register company B as long as a subsidiary-holding company relationship existed between companies A and B.

Whether Members are required to register all holding companies in a company chain

13. Mr Jeffrey LAM said that it was most important that the registration requirements were clear for Members to follow. He sought clarifications

on whether a Member was required to register all the holding companies in a company chain should the Member be a remunerated director of a company at the bottom of the chain.

14. Mr Frankie YICK noted that as stated in paragraph 4(iv) of the paper, company A would be deemed under the CO to be a subsidiary of another company B if company A was a subsidiary of company C which in turn was a subsidiary of company B. Hence, based on this principle, a Member would be required under the proposed Rule 83(5)(a) of the RoP to register not only a company of which he was a remunerated director, but also all holding companies in the company chain.

15. The Clerk responded that "subsidiary" and "holding company" have the same meanings under the existing and new CO. Members were required to register all holding companies in a company chain under the existing and the proposed Rule 83(5)(a) of the RoP.

16. Mr Jeffrey LAM remarked that Members might have difficulties in registering all holding companies in a company chain as they probably had no knowledge of their business operations. SALA3 clarified that Members were required under Rule 83(5)(a) of the RoP to register the names, but not the business operations, of such holding companies.

17. Mr Frankie YICK pointed out that it was unlikely that Members would study the definition of "subsidiary" in CO before completing the Registration Form. As a result, Members might mistakenly believe that the requirement was to register only the holding company of a company of which they were a remunerated director, but not all holding companies upstream in the company chain.

18. The Legal Adviser ("LA") pointed out that in reality the relationship between companies could be quite complex and actual control might be exercised by means other than voting rights or shareholdings. Individual Members would need to decide if a company was registrable, having regard to their own circumstances. He said that the registration requirement would allow members of the public to be made aware of any company that might exercise control over a company of which a Member was a remunerated director.

19. Members agreed to the proposed amendments to Rule 83(5) of the RoP and the proposed consequential amendments to the relevant pages of the Registration Form. Members also agreed that the Committee on Members' Interests ("CMI") should consult the Committee on Rules of Procedure ("CRoP") and then the House Committee on the proposed amendments. Subject to the views of the CRoP and the House Committee, the Chairman of CMI would move a motion at a Council meeting to amend Rule 83(5)(a) and (h) before the commencement date of the new CO.

II. Proposed amendments to the requirements for registration of Members' interests

(LC Paper No. CMI/8/13-14)

20. The Chairman said that CMI of the Fourth Legislative Council ("LegCo") had drawn up proposals to amend the requirements for Members to register their interests under Rule 83 of the RoP. After consultation with all Members of the Fourth LegCo and CROp on the proposals, CMI further consulted the House Committee on 22 June 2012, which decided by voting that the Chairman of CMI should move a motion to amend the relevant rules of the RoP to implement the proposals. The motion had been put on the Agenda of the last Council meeting of the Fourth LegCo but it was not reached before the Fourth LegCo stood prorogued.

21. At the invitation of the Chairman, the Clerk briefed members on the proposed changes to the registration requirements put forward by CMI of the Fourth LegCo as set out in the paper. Noting members' concern about registration of remunerated directorships, LA added that as set out in paragraphs 4(a) and 5 of the paper, the only new registration requirements for remunerated directorships, as proposed by CMI of the Fourth LegCo, were to register the nature of work to which the remuneration related and the dates of change in the directorships.

22. The Chairman said that CMI of the Fourth LegCo had consulted all Members on its proposals to amend the registration requirements. As Members of the current LegCo term had not been consulted, he proposed that all Members be consulted on the proposals by way of a questionnaire. Upon receipt of the outcome of consultation, CMI could then deliberate further on how to proceed with the proposals.

23. Ms Emily LAU said that a majority of the Members of the Fourth LegCo had agreed to the proposals. Nonetheless, she agreed that all Members of the current LegCo term should be consulted on the proposals.

24. The Chairman said that according to the outcome of the consultation with Members of the Fourth LegCo, only a slight majority of Members agreed to the proposals. He considered that such information should be provided to all Members of the current LegCo term when seeking their views on the proposals.

the clerk

25. The meeting agreed that to facilitate Members to complete the questionnaire, a briefing session on the proposed amendments to the registration requirements should be held for Members.

III. Sponsored overseas visits made by Members (LC Paper No. CMI/9/13-14, CMI/10/13-14 and IN01/13-14)

26. The Chairman said that in August this year, eight Members accepted the invitations by a local airline to attend as special guests a programme in Toulouse, France for receipt of a new aircraft. They had registered the overseas visit in accordance with the existing registration requirements. However, there were public concerns about the propriety of the Members accepting the invitation and that the hospitality might give rise to a conflict of interests when matters concerning the airline were discussed by the LegCo in future.

Mechanisms governing sponsored travel in Hong Kong and selected overseas places

27. At the invitation of the Chairman, Head (Information Services) ("H(IS)") briefed Members on the salient points in an information note on the mechanisms governing sponsored visits/travel in Hong Kong and selected overseas places (LC Paper No. IN01/13-14).

28. H(IS) said that both LegCo and Members of the Executive Council ("ExCo") were required to register all sponsored overseas visits within 14 days after the trip, by providing basic trip information. Politically appointed officials ("PAOs") were required to seek permission from the Chief Executive ("CE") before accepting any sponsored visits outside Hong Kong. Non-compliant LegCo and ExCo Members as well as PAOs might be sanctioned.

29. H(IS) further said that, among the overseas places studied, the legislatures in the Commonwealth countries, namely the United Kingdom ("UK"), Canada, Australia and New Zealand, regarded sponsored travel as a registrable interest subject to the relevant provisions governing the registration of Members' interests. They all required their Members to register basic trip information for the sponsored travel undertaken, which was made available for public inspection. On the other hand, the House of Representatives in the United States ("US") had put in place in 2007 the Travel Regulations to govern Members' acceptance of sponsored travel, under which Members were required to seek pre-approval for undertaking sponsored travel from the Committee on Ethics and they were required to furnish basic trip information and explain why the trip was connected to their official or representational duties. After such trips, they were required to complete and submit post-travel disclosure forms, on the basis of which the Clerk of the House would prepare an annual disclosure summary for public inspection. Members who had participated in trips without pre-approval from the Committee on Ethics would be required to repay the

sponsors all expenses incurred due to their participation in the trips. There were also other procedures governing investigations of Members' non-compliance with the reporting requirements and non-compliant Members might be sanctioned.

30. The Chairman said that the regulatory regimes for sponsored travel among the legislatures in the selected overseas places could be categorized into two distinct types: "the pre-approval" regime in the US and "the disclosure-based" regime in the Commonwealth countries. The propriety of undertaking sponsored travel by Members of legislatures was scrutinized by a parliamentary committee in the former regime and monitored by the public in the latter.

31. The Chairman enquired about the composition and operation of the Committee on Ethics of the US House of Representatives. H(IS) replied that the Committee comprised 10 members, divided equally between the two major political parties. The Chairman of the Committee came from the ruling party, with the Ranking Member (i.e. the second-most senior member of the Committee) from the minority party. Applications for pre-approval of sponsored visits were first processed by the staff servicing the Committee, and the applicants/sponsors might be asked to submit additional information and clarify where necessary. Applications with the required information would then be submitted to the Chairman and the Ranking Member for approval.

32. The Chairman further enquired how the case would be handled should the Chairman and the Ranking Member of the Committee hold different views. H(IS) replied that according to the available information, applications would generally be approved if all the relevant rules were complied with. Over the past four years, 88% to 90% of the applications were approved. The main reasons given for rejecting some applications were that the applications had not been submitted 30 days before departure as required or that lobbyists might be related to the sponsors of the trips.

Whether extravagant sponsored visits should be regulated

33. Ms Emily LAU said that for many years Members had accepted invitations by airlines to undertake overseas visits without controversies. But times had changed and members of the public now had higher expectation on the standard of behaviour of Members. One of the main concerns raised by members of the public about the overseas visit made by the eight Members was that the hospitality offered by the airline was extravagant. She informed Members that the Democratic Party had formulated party rules prohibiting their members from being accompanied by spouses in sponsored overseas visits and from accepting invitations for

visits which were considered to be extravagant or too frequent. She suggested that Members might consider setting a ceiling on the amount/value of a sponsored visit above which the invitation should be declined. Ms LAU said that the Democratic Party was open on the question of whether LegCo should adopt a pre-approval regime.

34. At the invitation of the Chairman, H(IS) said that the three selected Commonwealth legislatures did not have express rule prohibiting the undertaking of extravagant sponsored travel by their Members. On the other hand, there were detailed rules on sponsored trips which might be made by Members of the US House of Representatives. In general, only basic transport arrangements would be allowed and flying on first-class or chartered flights was generally not allowed, save for security reasons.

35. The Chairman opined that whether a particular trip was considered to be expensive or extravagant was a personal judgment. While an approval system could be implemented for PAOs undertaking overseas visits as CE was the approving authority, there was no approving authority in LegCo to approve the overseas visits to be made by Members.

36. Mr Kenneth LEUNG said that he had carefully assessed before accepting the invitation for the overseas visit and had taken the initiative to make a detailed registration of the visit before departure. Notwithstanding his assessment that there was no conflict of interests, he was inundated with hundreds of emails from his electors and members of the public expressing concern about the visit. While some of them did not see any problem as long as he had registered the interest, some others considered it entirely inappropriate for him to have accepted the invitation as it was extended to Members but not the general public. Mr LEUNG said that he had contemplated whether a system should be put in place whereby approval by a committee had to be sought for a Member to undertake an overseas visit exceeding a certain amount in value. However, he could envisage that such a system might give rise to political disputes. To address public concern, he considered that the Secretariat might assist in vetting the pre-departure information registered by Members and give advice or guidelines to the Members on whether the visit was considered to be extravagant.

37. Ms CHAN Yuen-han said that she had discussed the matter with a number of Members who were of the view that the standard of behaviour expected of public officers had risen in recent years, following a spate of incidents involving high-ranking government officials being criticized of accepting hospitality offered by tycoons. She considered that LegCo should avoid giving the public the impression that Members were applying a double standard, i.e. being stringent on government officials but lax on

themselves. In her view, Members should be cautious in accepting the hospitality of overseas visits, especially if the sponsors were commercial undertakings.

38. Dr Kenneth CHAN said that the issue of parliamentarians and government officials accepting invitations from tycoons, companies etc. for overseas visits had been of public concern in the western society for more than two decades. When the propriety of a Member's act was called into question, not only the reputation of that Member but also the prestige of LegCo would be at stake. He pointed out that apart from overseas visits sponsored by commercial organizations, those visits sponsored by quasi-government or government organizations might also draw public criticisms. Dr CHAN considered that one of the factors which a Member should consider in deciding whether or not to accept an invitation for overseas visit was whether the visit was related to LegCo duties. To shed light on the matter, a review might be conducted on the overseas visits registered by Members in the past. He considered that if a sponsored overseas visit was related to a certain subject, the relevant LegCo Panel might be consulted before deciding whether the invitation should be accepted.

39. Dr LO Wai-kwok considered it impractical to set an amount/value of a visit above which the visit would be considered to be extravagant, as the costs of a visit would depend on various factors such as the distances of the destinations from Hong Kong. In his view, the current registration system served its purpose. As Members were accountable to their electors and the general public, it was for Members to decide if they should accept invitations for overseas visits and account for their actions. Concurring with Dr LO, Mr Frankie YICK said that the pre-approval regime was not suitable for Hong Kong as it might give rise to controversies over the standard of behaviour to be adopted.

40. Mr Jeffrey LAM said that it was neither practical nor fair to set an amount/value for an overseas visit above which the visit would be considered to be extravagant. He had occasionally participated in overseas duty visits but such visits could hardly be regarded as extravagant as the accommodation was modest and the itineraries were packed. Mr LAM considered that the propriety of an overseas visit should be judged by the nature and activities of the visit, and not its costs. In his view, it should be left to individual Members to decide if it was appropriate to accept an invitation for a sponsored overseas visit.

Whether more particulars of sponsored overseas visits should be provided

41. Ms CHAN Yuen-han said that as some members of the public

considered that Members were applying double standard, it was necessary to remedy the situation. She opined that to enhance transparency of Members' interests, LegCo might consider compiling a monthly report on the sponsored overseas visits undertaken by Members for public scrutiny, and Members should be required to give more particulars in registering sponsored overseas visits. The Chairman responded that all interests registered by Members had already been made available to members of the public online.

42. Ms Emily LAU pointed out that the UK House of Commons required its Members to register more details for sponsored visits. Mr YIU Si-wing said that as a Member returned by the Tourism Functional Constituency, he often had to take part in expeditions of travel routes organized by travel agents. He opined that the Members who participated in the visit to France might have good reasons for doing so. It was important that the interests registered by Members should provide sufficient particulars for members of the public to judge if an overseas visit was related to the official duties of Members. To achieve this purpose and noting that PAOs had to give reasons for undertaking sponsored visits, Mr YIU considered that the reasons for participation in the visit should be provided.

43. Referring to page 5 of the information note, H(IS) responded that at present, LegCo Members were already required to state the purpose of overseas visits on the Registration Form. Mr YIU Si-wing said that the purpose of the visit and the reasons for a Member to participate in the visit might not be the same. Besides, the current Registration Form had room for improvement as the purpose of the visits and the names of sponsors were put in the same box.

44. Concurring with Mr YIU Si-wing, Dr Kenneth CHAN said that drawing reference from the requirements for PAOs, a Member should be required to explain how the visit was connected with his LegCo duties. Mr Frankie YICK said that even employees in the private sector were required to state the reasons for travel if the cost of which was borne by employers.

45. Mr Kenneth LEUNG said that the current registration requirement for overseas visits was too lax as Members were only required to register "within 14 days of the conclusion of the visit". He proposed that the time for registration of overseas visits should be advanced from "within 14 days of the conclusion of the visit" to "before departure for the visit". He also proposed that Members should be required to give more particulars, including the itineraries of overseas visits when registering their interests, which would prompt Members to think carefully if they should accept the

invitations for the visits. Mr YIU Si-wing said that the requirement for Members to make pre-departure registration of the overseas visits would not pose a problem as such visits were generally arranged well in advance.

Participation of Members' spouses in sponsored overseas visits

46. Ms CHAN Yuen-han said that as Members should adopt a high standard of behaviour for themselves, they should decline any invitation for their spouses or family members to accompany them in sponsored overseas visits, as the latter had no LegCo duties to perform.

47. In reply to the Chairman, H(IS) said that in the US House of Representatives, pre-approval might be given for a Member to be accompanied by one family member in a sponsored travel. For any non-compliance, a Member would be required to repay to the sponsor all expenses incurred due to his participation in the trip.

48. Mr Kenneth LEUNG said that in the western society, invitations for overseas visits were often extended to the spouses of the invitees. Among the emails he received about the visit to France, the greatest concern was the participation by Members' spouses as they had no LegCo duties to perform. He considered that such concern had to be addressed in the local context.

49. The Chairman said that Members were required under the existing requirement to register sponsored overseas visits and Members could decide whether or not to accept the invitations. As Members might be invited to overseas visits not in their capacity as such, there might be operational difficulties in enforcing any rule prohibiting Members' spouses from participating in overseas visits. Mr Kenneth LEUNG said that sometimes it would be difficult for the public to distinguish the capacity in which a Member was invited to participate in an overseas visit. Members should therefore err on the safe side to register all sponsored overseas visits. Dr Kenneth CHAN said that it was impractical to expect members of the public to make a distinction among the various capacities of a Member in which a sponsored overseas visit was undertaken. Also, members of the public could hardly appreciate how a Member's spouse had anything to do with the official duties of the Member.

50. Mr YIU Si-wing said that Members were accountable to the public and the public had the right to know. As such, Members should state on the Registration Form the reasons for their spouses' participation in an overseas visit. He considered that as the propriety of the reasons given by Members would be scrutinized by the public and the media, there was no need to make any rule to disallow the participation of Members' spouses in such visits.

51. Ms CHAN Yuen-han said that a Member should at least be required to pay for the related expenses incurred as a result of the participation by a Member's spouse or other family members in a sponsored overseas visit. Dr Kenneth CHAN and Mr Kenneth LEUNG concurred with Ms CHAN.

52. The Chairman said that as LegCo was not practising the pre-approval regime, it would be difficult to require Members to shoulder the costs incurred by their family members for participation in overseas visits. However, some guidelines might be issued to Members to remind them to consider whether it was appropriate for them to be accompanied by their spouses or other family members in sponsored overseas visits and to pay for the related expenses incurred by the participation of their family members. Concurring with the Chairman, Dr Kenneth CHAN said that such guidelines would serve as a reminder to Members that they should consider the matter from the perspective of public perception. Mr Kenneth LEUNG echoed the view and said that whether Members should stay behind after the sponsored visits, etc could be covered in the guidelines.

53. SG said that some points to note about sponsored overseas visits might be added to the existing guidelines issued by CMI.

54. SG suggested that as Members had decided earlier in the meeting that all Members be consulted on proposals to amend the registration requirements, the opportunity might be taken to consult Members on –

the clerk

(a) whether the time for registration of overseas visits should be advanced from "within 14 days of the conclusion of the visit" to "before departure for the visit", and

(b) whether Members should be required to provide more particulars of sponsored visits, namely (i) the reasons for their participation and, if applicable, their spouses' participation in overseas visits and (ii) the itineraries of the visits.

the clerk

55. Members agreed to SG's suggestions.

56. In conclusion, the Chairman summarized the views expressed by Members. Members considered it not necessary and inappropriate to adopt the pre-approval regime. It was impractical to set an amount/value of sponsored overseas visits above which the visits would be considered to be extravagant. It was also not feasible to require Members to shoulder the expenses of accompanying family members in sponsored overseas visits. Members should take into account the public perception in deciding whether their family members should participate in such visits. In this regard,

advisory guidelines might be issued to Members. The Chairman said that CMI would consider the registration requirements further after consultation with all Members on the proposals.

IV. Any other business

57. There being no other business, the meeting ended at 6:37 pm.

Council Business Division 3
Legislative Council Secretariat
30 December 2013