

立法會
Legislative Council

LC Paper No. CMI/33/13-14

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

Committee on Members' Interests

Minutes of Meeting
held on Tuesday, 29 April 2014, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon Frankie YICK Chi-ming
Hon Gary FAN Kwok-wai
Hon CHAN Yuen-han, SBS, JP
Hon Dennis KWOK
- Member absent** : Hon Jeffrey LAM Kin-fung, GBS, 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
- Mr Kelvin LEE
Assistant Legal Adviser 1
- Miss Wylie HO
Senior Council Secretary (3)6
- Ms Ally NG
Administrative Assistant I (3)9

Action

I. Proposed revision of the procedure for handling complaints (LC Paper No. CMI/29/13-14)

The Chairman informed the meeting that based on the directions and principles for revising the existing procedure of the Committee on Members' Interests ("CMI") for handling complaints ("Procedure") as agreed by CMI at the last meeting held on 29 January 2014, the Secretariat had prepared a proposed revised Procedure for members' consideration, as set out in LC Paper No. CMI/29/13-14.

2. At the invitation of the Chairman, the Clerk briefed members on the paper and the proposed revised Procedure in Appendix I of the paper. The Clerk also highlighted the major differences between the existing and the proposed revised Procedures as set out in Appendix II of the paper.

Considerations for making recommendation on sanction

3. Mr Gary FAN noted that the existing Procedure (Paragraph (19)) provided that in considering whether or not to recommend a sanction on the Member under complaint, CMI might take into account: "*whether the failure of the Member under complaint to comply with the relevant rule(s) of the Rules of Procedure was due to an honest mistake on his part*". He enquired if this consideration was the same as that set out in Paragraph 18(a) of the proposed revised Procedure, namely "*whether there is evidence that the breach of the relevant rule(s) of the RoP [Rules of Procedure] by the Member under complaint was a deliberate act*".

4. The Clerk replied that the two considerations concerned were the same in substance. Paragraph 18(a) of the proposed revised Procedure was based on the wording used in the reports on several complaints made by CMI of the previous and current terms.

5. Mr Gary FAN noted that the proposed revised Procedure (Paragraph 18(b)) also contained a new consideration that CMI might take into account in considering whether or not to recommend a sanction under Rule 85 of the Rules of Procedure ("RoP") (i.e. whether there is evidence that the breach by the Member under complaint involved any conflict of interests with the Member's role as a Legislative Council Member). He enquired whether Paragraph 18 of the revised Procedure would have the effect of confining the considerations of recommending a sanction by the CMI to those two set out in the paragraph.

6. The Chairman replied in the negative and said that the two considerations were not meant to be exhaustive. He pointed out that the consideration in Paragraph 18(b) of the revised procedure was not new as

CMI of the previous and current terms had taken that into account in the handling of several previous complaints. Ms Emily LAU said that in considering whether to recommend a sanction, CMI might take into account any relevant consideration in addition to those set out in the Procedure.

Report to the Council

7. Noting Paragraph (20) of the existing Procedure which provided that if a complaint was found to be unsubstantiated, CMI had the discretion to decide whether it should submit a report on the complaint to the Council, Mr Gary FAN enquired if this had been changed in the proposed revised Procedure. The Chairman pointed out that all the complaints considered by CMI of the previous and current terms had not reached the investigation stage and consideration of the complaints during the preliminary consideration stage was in essence an investigation. The Clerk said that for most of the complaints found to be unsubstantiated by CMI of the previous or current terms, CMI had submitted reports on them to the Council. Under the proposed revised Procedure, CMI was required to submit to the Council a report on any complaint it investigated, irrespective of the outcome of the complaint.

Confidentiality undertaking

8. At the invitation of the Chairman, the Clerk explained the difference between the existing and the proposed revised Procedures on confidentiality undertaking. The Clerk elaborated that under Paragraphs (21) and (22) of the existing Procedure, persons attending meetings of CMI held in camera and the Member under complaint were required to sign a confidentiality undertaking that they would not publish confidential information in relation to the complaint before the Committee presented its report to the Council. These paragraphs might be construed to mean that the persons would no longer be bound by the confidentiality undertaking once CMI submitted its report to the Council. Under the proposed revised Procedure (Paragraphs 21 and 23), a person's obligation under a confidentiality undertaking not to publish confidential information would subsist after the publication of CMI's report.

Consultation with Members

9. The Chairman said that under Rule 73(7) of the RoP, CMI might determine, subject to the RoP, its practice and procedure on its own. He proposed that the views of all Legislative Council Members be sought, by way of a questionnaire, on the proposed revised Procedure. Subject to Members' view, the proposed revised Procedure would be adopted. Members agreed.

Clerk

II. Disclosure of personal pecuniary interests under Rule 83A of the Rules of Procedure

(LC Paper No. CMI/30/13-14)

10. The Chairman recapitulated that at the meeting on 30 April 2013, CMI discussed, at the request of the House Committee, issues about Members' disclosure of pecuniary interests under Rule 83A of the RoP, which were raised by the Bills Committee on the Stamp Duty (Amendment) Bill 2012 during its scrutiny of the Bill.

11. At the invitation of the Chairman, the Clerk briefed members on the outcome of the Secretariat's study on the issues about Members' disclosure of pecuniary interests, as set out in the paper (LC Paper No. CMI/30/13-14). The Clerk said that Members of the aforesaid Bills Committee were concerned that should they be required to disclose the same pecuniary interest at each and every meeting of the Bills Committee, its proceedings might be unduly impeded. The Bills Committee had raised the following concerns about Members' compliance with Rule 83A:

- (a) whether a Member is required to disclose a pecuniary interest which is in common with the rest or a sector of the population of Hong Kong ("common pecuniary interest"); and
- (b) whether a Member is required to disclose the same pecuniary interest in a matter each time he speaks on the matter in the same committee ("repeated disclosures").

12. The Clerk said that while Rule 83A of the RoP was silent on whether a Member was required to disclose common pecuniary interests, such interests were excluded in Rule 84(1) and (1A), which governed respectively the voting in and withdrawal from the Council or any committee in case of direct pecuniary interests. He said that as common pecuniary interests were of general application and not unique to individual Members, and having regard to the relevant rules of the legislatures in the United Kingdom ("UK") and Canada, as well as the express exclusion of direct common pecuniary interests in Rule 84(1) and (1A), members might consider excluding common pecuniary interests from the application of Rule 83A, in order to address the first concern of the aforesaid Bills Committee.

13. On the concern of repeated disclosures of pecuniary interests raised by the aforesaid Bills Committee, the Clerk drew members' attention to the following practice of the House of Commons of the UK that for a public bill committee: their Members were required to declare relevant interests at the first meeting of the committee or on the first occasion on which they addressed the committee, and repeated declarations at subsequent meetings

were not necessary except when a Member spoke on an amendment to which the interest was particularly relevant. Also, the interests declared by their Members would be recorded in the minutes of the first meeting which would be uploaded onto the UK House of Commons' web site for public inspection. The Clerk said that in order to address the aforesaid Bills Committee's second concern, members might consider whether it was appropriate to adopt a practice similar to that of UK for Members' disclosure of pecuniary interests in committees/subcommittees of the Legislative Council tasked to scrutinize legislative proposals.

Deliberations on the proposed practices

14. Ms Emily LAU enquired how the proposed practices would have applied in the case of the aforesaid Bills Committee had such practices been put in place during its scrutiny of the Bill. The Clerk replied that members of the Bills Committee would not be required to disclose at meetings those pecuniary interests which were in common with the rest or a sector of the population e.g. owning residential flats. However, members of the Bills Committee were required to disclose other related pecuniary interests (e.g. the interest of being a developer) when they first spoke at meetings of the Bills Committee but repeated disclosures were not necessary.

15. Ms Emily LAU said that having regard to the relevant practices of overseas legislatures, she agreed to the proposed practices. She also hoped that in future committee clerks would play a more proactive role in assisting members in determining whether an interest might be regarded as a common pecuniary interest.

16. Mr Dennis KWOK noted that the existing Rules 84 and 83A of the RoP handled matters concerning voting in case of direct pecuniary interests and disclosure of pecuniary interests by Members in the Council or committees respectively. Given that whether a Member might vote on a matter was more important than whether the Member might speak on it, Mr KWOK enquired why the exclusion of common pecuniary interest applied when Members voted on a matter (Rule 84) but not when they spoke on a matter (Rule 83A).

17. In reply, the Clerk said that as voting in the Council and committees was one of the important aspects of Members' powers and functions, the voting rights of Members should not be deprived unless there were compelling reasons for doing so. Based on this consideration, it was provided in Rule 84 of the RoP that a Member was prohibited from voting on a matter only when the Member had a direct pecuniary interest in the matter, subject to the following two exceptions:

- (a) the Member's interest was a common interest; and
- (b) the matter to be voted on was a matter of Government policy.

On the other hand, Members were required under Rule 83A to disclose their pecuniary interests in a matter before speaking or moving a motion on the matter. Once a Member had disclosed his pecuniary interest in a matter, he could speak and move any motion on the matter. Moreover, the scope of disclosure under Rule 83A covered both direct and indirect pecuniary interests.

18. Mr Gary FAN said the proposed practices, if implemented, could only save a few seconds of a Member's speaking time to disclose the pecuniary interests. On the other hand, disclosure of pecuniary interests at meetings by Members served the important function of facilitating members of the public in monitoring if Members were acting in the public interest, thereby upholding the integrity of the legislature. In his view, the benefits to be gained by adopting the proposed practices did not outweigh the reduced transparency of Members' interests. Besides, repeated disclosures of the same interests by a Member at each and every meeting of a committee would protect the Member from allegations of acting for private interests. Mr FAN considered that the status quo should be maintained.

19. The Chairman responded that the experience of the aforesaid Bills Committee showed that Members did take some time to disclose pecuniary interests repeatedly and the proposed practices, if implemented, would help save such time. In his view, the proposed practices would not diminish the public's rights to know since members of the public would have access at any time to such disclosed interests available on the web site of the Legislative Council.

20. Mr Frankie YICK considered that both the efficient conduct of meetings and the public's right to know were important. As the proposed practices would not undermine the public's right to know the interests that Members had, he agreed to the proposed practices.

Consultation with Members

21. As members had divergent views, the Chairman proposed that all Members be consulted on the proposed practices and the proposed revised Rule 83A in Appendix of the paper by way of a questionnaire. Upon receipt of Members' views, CMI could then deliberate on the proposed practices further. The Chairman added that as the adoption of the proposed practices would necessitate amendments to the RoP, the Committee on Rules of Procedure had to be consulted should CMI decide to take forward the proposed practices. Members agreed.

the Clerk

III. Any other business

22. There being no other business, the meeting ended at 5:18 pm.

Council Business Division 3
Legislative Council Secretariat
4 July 2014