

立法會

Legislative Council

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Committee on Members' Interests Paper for the meeting on 24 October 2013

Proposed amendments to Rule 83(5) of the Rules of Procedure

Purpose

This paper invites members to consider the proposed amendments to Rule 83(5) of the Rules of Procedure ("RoP") to tie in with the commencement of the new Companies Ordinance (Cap. 622) ("the new CO"), tentatively scheduled for the first quarter of 2014. The amendments are necessary as the new CO will effect changes that would make the existing Rule 83(5)(a) and (h) inoperable.

Rule 83

2. Rule 83 of the RoP provides for the registration of interests of Members of the Legislative Council ("LegCo"). The eight categories of interests required to be registered by Members are set out in Rule 83(5) of the RoP. These include, among others, "remunerated directorships" and "shareholdings" in Rule 83(5)(a) and (h) respectively as follows:

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

Rule 83(5)(h) "the names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issued share capital".

Enactment of the new Companies Ordinance

3. The Administration launched a comprehensive rewrite of the existing Companies Ordinance (Cap. 32) ("the existing CO") in mid-2006 and introduced into LegCo in January 2011 the Companies Bill to reform the provisions affecting the operation of live companies in Hong Kong. The Companies Bill was passed by LegCo on 12 July 2012 and gazetted on 10 August 2012. Subject to LegCo's scrutiny of the relevant subsidiary legislation, it is the Administration's plan to commence the new CO in the first quarter of 2014.

Proposed amendments to Rule 83(5)(a) and (h)

Rule 83(5)(a): Remunerated directorships

4. Under Rule 83(5)(a) of the RoP, Members are required to register their remunerated directorships of companies, and if the company concerned is a subsidiary of another company, to also provide the name of that other company. The meaning of "subsidiary" is defined in section 2(4) of the existing CO under which company A will be deemed to be a subsidiary of another company B if –

- (i) company B controls the composition of the board of directors of company A; or
- (ii) company B controls more than half of the voting power of company A; or
- (iii) company B holds more than half of the issued share capital of company A; or
- (iv) company A is a subsidiary of company C which in turn is a subsidiary of company B.

5. The meaning of "holding company" is defined in section 2(7) of the existing CO by reference to the term "subsidiary" under which company B is the holding company of its subsidiary, i.e. company A.

6. The new CO has adopted an alternative drafting approach in defining the terms "subsidiary" and "holding company"¹ without changing their meaning. Under the new CO, the meaning of "holding company" is first defined in section 13 and the meaning of "subsidiary" is then defined in

¹ The Chinese rendition for the term "holding company" in the existing and new COs are "控股公司" and "控權公司" respectively.

section 15 by reference to the term "holding company". The relevant provisions in the existing and new COs are set out in **Appendix I**.

7. With the impending commencement of the new CO, amendments to Rule 83(5)(a) are necessary, and they are proposed as follows:

"remunerated directorships of companies, public or private, and if the company concerned ~~is a subsidiary of another company~~ has a holding company within the meaning of ~~section 2(4)~~ section 13 of the Companies Ordinance (~~Cap. 32~~)(Cap. 622), also the name of that ~~other~~ holding company;"

Rule 83(5)(h): shareholdings

8. Nominal value (also commonly known as "par value") of shares of a company is a notional value calculated by dividing the nominal capital of the company by the number of shares in the capital clause of the memorandum of association of the company. It is the minimum price at which shares can generally be issued. According to the Administration, the concept of nominal value does not serve the original purpose of protecting creditors and shareholders as it does not necessarily give an indication of the real value of the shares. The new CO provides for the migration to a mandatory no-par regime for all local companies. Section 135 of the new CO provides that shares in a company have no nominal value and this section applies to shares issued before or after the commencement date of the new CO.

9. The abolition of nominal value for the shares of all Hong Kong companies will take immediate effect upon the commencement of the new CO. It is necessary to make amendments to Rule 83(5)(h) as it contains reference to the term "nominal value". The proposed amendments to Rule 83(5)(h) are as follows:

"the names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in ~~shareholdings~~ shares of a ~~nominal value~~ number greater than one-hundredth of the total number of issued ~~share capital~~ shares".

Registration Form on Members' Interests

10. The existing Registration Form on Members Interests ("Form") has been designed on the basis of Rule 83(5). Should the above proposed amendments to Rule 83(5)(a) and (h) be agreed to by LegCo, consequential amendments are required to be made to the relevant pages of the Form, as set

out in **Appendix II**, to align with the revised rule. Under Rule 83(1) of the RoP, revisions to the Form have to be approved by the President.

Advice sought

11. Members are invited to consider the proposed amendments to Rule 83(5)(a) and (h) of the RoP and the Form as set out in paragraphs 7 and 9 above and Appendix II respectively. Subject to members' views, the Committee on Rules of Procedure ("CRoP") will be consulted on the proposed amendments. Subject to CRoP's views, CMI will seek the views of the House Committee on the proposed amendments. Should the House Committee agree, a motion will be moved by the Chairman of CMI at a Council meeting to amend the relevant rules of the RoP which will take effect upon the commencement of the new CO.

Council Business Division 3
Legislative Council Secretariat
21 October 2013

Section 2(4) and (7) of the existing Companies Ordinance (Cap. 32)

2. Interpretation

(4) For the purposes of this Ordinance, a company shall, subject to the provisions of subsection (6), be deemed to be a subsidiary of another company, if—

- (a) that other company—
 - (i) controls the composition of the board of directors of the first-mentioned company; or (*Amended 6 of 1984 s. 2*)
 - (ii) controls more than half of the voting power of the first-mentioned company; or
 - (iii) holds more than half of the issued share capital of the first-mentioned company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary. (*Added 80 of 1974 s. 2*)

(7) A reference in this Ordinance to the holding company of a company shall be read as a reference to a company of which that last-mentioned company is a subsidiary. (*Added 80 of 1974 s. 2*)

Sections 13 and 15 of the new Companies Ordinance (Cap. 622)

13. Holding company

- (1) For the purposes of this Ordinance, a body corporate is a holding company of another body corporate if—
 - (a) it controls the composition of that other body corporate's board of directors;
 - (b) it controls more than half of the voting rights in that other body corporate; or
 - (c) it holds more than half of that other body corporate's issued share capital.
- (2) For the purposes of this Ordinance, a body corporate is also a holding company of another body corporate if it is a holding company of a body corporate that is that other body corporate's holding company.
- (3) For the purposes of subsection (1)(a), a body corporate controls the composition of another body corporate's board of directors if it has power to appoint or remove all, or a majority, of that other body corporate's directors without any other person's consent.
- (4) For the purposes of subsection (3), a body corporate has the power to make such an appointment if—
 - (a) without the exercise of the power in a person's favour by the body corporate, the person cannot be appointed as a director of that other body corporate; or
 - (b) it necessarily follows from a person being a director or other officer of the body corporate that the person is appointed as a director of that other body corporate.
- (5) In subsection (1)(c), a reference to a body corporate's issued share capital excludes any part of it that carries no right to participate beyond a specified amount in a distribution of profits or capital.

15. Subsidiary

For the purposes of this Ordinance, a body corporate is a subsidiary of another body corporate if that other body corporate is a holding company of it.

Name of Member: _____

<i>Registrable Interest</i>
<p><i><u>Directorships Remunerated directorships</u></i></p> <p>1. Do you have any remunerated directorships in any public or private company?</p> <p>YES/NO (<i>Please delete as appropriate</i>)</p> <p>If so, please list below. If the company concerned is a subsidiary of another <u>has a holding company</u> within the meaning of section 2(4) <u>section 13</u> of the Companies Ordinance (Cap. 32)(<u>Cap. 622</u>), please <u>also provide the name of that other holding company</u>.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

- Notes:** (a) "Remunerated directorships" include all directorships for which a fee, honorarium, allowance or other material benefit is payable.
- (b) The term "material benefit" refers to (i) interests received from a single source in the course of one year where the total value of such interests exceeds 5% of the annual salary* of a Member of the Council (* excluding the general expenses allowance which covers expenses incurred by a Member in his work); or (ii) one-off material benefits exceeding \$10,000 in value. (This definition also applies to the term "material benefit" in categories 2, 4 and 6.)
- (c) Remunerated directorships of both local and overseas companies are registrable.
- (d) Remunerated directorships through corporate directors are also registrable. However, particulars of remunerated directorships through corporate directors need only be updated on an annual basis, at the beginning of each legislative session.
- (e) Where you are a remunerated director of a company, all subsidiary or associated directorships which you hold within the same group, whether remunerated or not, should also be registered.
- (f) You should give the name of the company, briefly stating the nature of the business of the company in each case.
- (g) ~~Subsidiary of another~~ Holding company has the same meaning as in ~~section 2(4)~~ section 13 of the Companies Ordinance (~~Cap. 32~~) (Cap. 622).

Signature: _____

Date: _____

