

立法會

Legislative Council

LC Paper No. CMI/16/13-14

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Paper for the House Committee Meeting on 13 December 2013

Amendments to Rule 83(5) of the Rules of Procedure proposed by the Committee on Members' Interests

Purpose

This paper invites the House Committee to consider the proposal of the Committee on Members' Interests ("CMI") to amend 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") on 3 March 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. The Companies Ordinance (Commencement) Notice 2013 has specified 3 March 2014 as the commencement date of most provisions (inclusive of sections 13, 15 and 135 mentioned respectively in paragraphs 6 and 8 below) of the new CO.

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

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.

defined in section 13 and the meaning of "subsidiary" is then defined in 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 amend Rule 83(5)(h) as it contains a 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.

Consultation with the Committee on Rules of Procedure

11. On 12 November 2013, CMI consulted the views of the Committee on Rules of Procedure, which supported the proposed amendments to Rule 83(5) of the RoP.

Advice sought

12. Members are invited to consider CMI's proposal to amend 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 the views of the House Committee, a motion will be moved by Hon IP Kwok-him, Chairman of CMI, at the Council meeting of 8 January 2014 to amend Rule 83(5) of the RoP which will take effect upon the commencement of the new CO on 3 March 2014. The wording of the motion is in **Appendix III**.

Council Business Division 3
Legislative Council Secretariat
5 December 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: _____

Registrable Interest

Directorships Remunerated directorships

1. Do you have any remunerated directorships in any public or private company?

YES/NO (*Please delete as appropriate*)

If so, please list below. If the company concerned is ~~a subsidiary of another~~ has a holding company within the meaning of ~~section 2(4)~~ section 13 of the Companies Ordinance (~~Cap. 32~~)(Cap. 622), please also provide the name of that ~~other~~ holding company.

- 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: _____

Registrable Interest

Shareholdings

8. Do you have (either yourself or with or on behalf of your spouse or ~~dependent~~ infant children) beneficial interests in shareholdings shares in any ~~public or private~~ company or body ~~which have a nominal value in~~ of a number greater than 1 per cent of the total number of issued ~~share capital~~ shares of the company or body?

YES/NO

If so, please list each company, indicating in each case the nature of its business.

- Notes:**
- (a) There is no need to register the size, or value of the shareholdings.
 - (b) "Shareholdings" is defined as personal shareholdings and do not include shareholdings held by a Member in the capacity of a nominee shareholder.
 - (c) It is the obligation of a Member to register interests under this category within his knowledge.
 - (d) Shareholdings held by a Member's spouse are not registrable unless such holdings are within the knowledge of the Member, and are held by the Member "with or on behalf of" his spouse. This guideline is equally applicable to shareholdings in respect of a Member's infant children.

Signature: _____

Date: _____

**Basic Law of the Hong Kong Special Administrative
Region of the People's Republic of China**

Resolution

(Under Article 75 of the Basic Law of the Hong Kong Special
Administrative Region of the People's Republic of China)

**Rules of Procedure of the Legislative Council of the
Hong Kong Special Administrative Region**

Resolved that the Rules of Procedure of the Legislative Council of the
Hong Kong Special Administrative Region be amended as set out in the
Schedule with effect from the day on which Part 4 of the Companies
Ordinance (Cap. 622) comes into operation.

Schedule

Amendments to Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region

1. Rule 83 amended (registration of interests)

(1) Rule 83(5)(a)—

Repeal

everything after “the company concerned” and before
“company;”

Substitute

“has a holding company within the meaning of section 13 of
the Companies Ordinance (Cap. 622), also the name of that
holding”.

(2) Rule 83(5)(h)—

Repeal

everything after “a beneficial interest in”

Substitute

“shares of a number greater than one-hundredth of the total
number of issued shares.”.