

立法會

Legislative Council

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Report of the Committee on Members' Interests of the Fifth Legislative Council for submission to the Legislative Council

Purpose

This report gives an account of the work of the Committee on Members' Interests ("CMI") of the Fifth Legislative Council ("LegCo") during its four-year term. It will be tabled at the Council meeting of 13 July 2016.

Background and meetings held

2. CMI is a standing committee of LegCo. Its terms of reference are set out in Rule 73(1) of the Rules of Procedure ("RoP"). The membership list is in the **Appendix**. CMI held a total of 29 meetings, including 21 closed meetings for handling complaints against Members.

Proposal to appoint a Commissioner to handle complaints against Members

3. CMI followed up on the proposal of appointing an independent person as a commissioner to receive and investigate complaints against Members, which was put forward by CMI of the last term. All Members were consulted on the proposal by way of a questionnaire. As the consultation outcome showed that a majority of Members did not support such proposal, CMI decided not to take forward the matter.

Complaints handled

4. During the term, CMI considered a total of 12 complaints against eight Members, and the respective reports were tabled in Council on 10 July 2013, 10 June 2015, 16 December 2015 and 6 July 2016.

5. The first complaint was lodged against one Member¹. CMI found the complaint partly substantiated as the Member had failed to register his shareholding interest in a company at the beginning of the Fourth LegCo in October 2008. CMI decided not to recommend any sanction against the Member.

6. Another nine complaints were lodged against five Members. CMI found the complaints against two² of the Members not substantiated. During the preliminary consideration stage of the then "Procedure for handling complaints" ("the Procedure"), as members held divergent views on the complaints against another Member³, CMI could not form an opinion on the complaints. CMI decided by voting not to proceed to the investigation stage. In respect of the complaints against the other two Members⁴, CMI proceeded to the investigation stage. After investigation, members held divergent views on the complaints and the question that CMI had sufficient evidence to substantiate the complaints was not passed.

7. The remaining two complaints were lodged against two Members. CMI found the complaints against one Member⁵ partly substantiated as he had failed to register his shareholding interest in an offshore company when he first registered his interests at the beginning of the Fifth LegCo in October 2012. CMI decided not to recommend any sanction against the Member. As regards the complaints against the other Member⁶, CMI found them not substantiated.

Amendments to the Procedure

8. In the light of the areas for improvement identified by CMI of the last term, CMI conducted a review of the Procedure and proposed the following changes to such Procedure:

- (a) to authorize the Clerk to CMI to dispose of complaints which CMI will not consider or are outside its purview;
- (b) to extend the time limits for (i) the Chairman to decide whether to hold a meeting to consider a complaint, and (ii) arranging such a meeting;

¹ Hon Albert HO Chun-yan.

² Hon Alan LEONG Kah-kit and Hon Claudia MO.

³ Hon James TO Kun-sun.

⁴ Hon LEE Cheuk-yan and Hon LEUNG Kwok-hung.

⁵ Hon Michael TIEN Puk-sun.

⁶ Dr Hon LAU Wong-fat.

- (c) to allow Members to give advance instructions on whether they would like to be informed of any complaint against them which CMI decided not to consider or investigate;
- (d) to delineate clearly between the consideration stage and investigation stage of handling complaints;
- (e) to enable CMI to consider readily available information relevant to a complaint during the consideration stage;
- (f) to provide an additional factor of consideration for CMI to decide whether or not to recommend a sanction against a Member under complaint; and
- (g) to require CMI to report to the Council upon completion of an investigation into a complaint.

9. CMI consulted all Members on the proposed amendments by way of a questionnaire. The consultation outcome indicated that a majority of Members supported those amendments. The revised Procedure was adopted by CMI with effect from 9 December 2014.

Amendments to the registration requirements

To tie in with the commencement of the new Companies Ordinance (Cap. 622) ("the new CO")

10. Paragraphs (a) and (h) of RoP 83(5) define the registrable interests under the categories of "remunerated directorships" and "shareholdings". In anticipation of the commencement of the new CO in March 2014, CMI proposed amendments⁷ to the aforesaid provisions, which were made necessary by the new CO.

11. With the support of the Committee on Rules of Procedure ("CRoP") and the House Committee ("HC"), the Chairman of CMI moved a motion at the Council meeting of 8 January 2014 to amend the aforesaid provisions of RoP. The motion was passed and the revised provisions took effect from 3 March 2014.

⁷ The proposed amendments were:

- (a) in RoP 83(5)(a), the reference to the term "subsidiary" in section 2(4) of the old Companies Ordinance (Cap. 32) be replaced by the reference to "holding company" in section 13 of the new CO; and
- (b) in RoP 83(5)(h), the reference to the term "nominal value" be removed as the new CO provides for a mandatory no-par regime for all local companies.

To align the deadlines for registration of election donations under RoP with the statutory deadline for lodging election returns

12. Subrules (1) and (2) of RoP 83 respectively provide that a Member returned through a general election shall register his interests not later than the first Council meeting of a term, whereas a new Member returned through a by-election shall register his interests within 14 days from the date of his becoming a new Member to fill a vacant seat. Registrable interests, as defined in RoP 83(5), include election donations.

13. CMI noted that in the current and past three terms of LegCo, there were 30 days or less between the dates of publication of the LegCo election results and the dates of the respective first Council meetings. CMI proposed that RoP 83 be amended so as to align the registration deadlines for election donations under RoP with the 60 days' deadline⁸ for lodging election returns with the Chief Electoral Officer under section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

14. After consultation with all Members by way of a questionnaire, CMI noted that a clear majority of Members supported the above proposal as well as the amendment proposed to RoP 83 to give effect to such proposal. CRoP and HC also supported the proposed amendment to this provision. The motion to amend RoP 83 to be moved by the Chairman of CMI has been placed on the Agenda for the Council meeting of 6 July 2016.

Amendments to the Registration Form on Members' Interests

To require additional particulars to be furnished when registering interests

15. CMI of the last term proposed that RoP 83 be amended to tighten the registration requirements, and also the Registration Form on Members' Interests ("the Form") be amended to require Members to furnish more particulars in registering certain categories of interests. However, these proposals were not implemented as the motion to amend RoP 83 for this purpose was not dealt with by the Council before the Fourth LegCo stood prorogued on 18 July 2012.

16. After studying the aforesaid proposals, CMI consulted all Members by way of a questionnaire on: (a) those amendments to RoP 83 and to the Form proposed by CMI of the last term; and (b) the amendments to the Form proposed by CMI of the current term in relation to registrable interests under the category

⁸ With effect from 10 June 2016, the deadlines under section 37 of Cap. 554 for all candidates in the same election for lodging their election returns with the Chief Electoral Officer have been aligned to: 60 days after the election results of all constituencies are published in the Gazette.

of "overseas visits". A majority of Members agreed to make the following amendments to the Form:

- (a) Members be required to furnish the following additional particulars:
 - (i) the start dates of having and the dates of ceasing to have, during the term, the registrable interests under the categories of "remunerated directorships", "remunerated employment, offices, etc." and "clients";
 - (ii) the date of ceasing, during the term, to own/hold shares of each company which has been registered; and
 - (iii) the reasons for participation in sponsored overseas visits; and
- (b) the layout of the Form be revised.

17. HC supported the above amendments to the Form. The revised Form, incorporating the above amendments and the necessary amendments upon the enactment of the new CO (as detailed in paragraph 10 above), was approved by the President pursuant to RoP 83, and took effect from 3 March 2014.

To explicitly state the shareholding interests which are registrable

18. As defined in RoP 83(5)(h), registrable interests include beneficial interests in shares of any company or other body held by a Member ("shareholding interests"). CMI noted that while the relevant page of the Form, which is based on RoP 83(5)(h), provided that a Member had to register his shareholding interests in "any company or body", neither that Rule nor the Form contained express reference to or provision on whether shareholding interests in, among other things, overseas companies or bodies were registrable. CMI proposed that for the sake of clarity, the Form should be amended to explicitly state that shareholding interests in both local and overseas companies or bodies (including shell companies or bodies which do not (i) own any assets or (ii) carry on any business or (iii) conduct any commercial activities) are registrable.

19. CMI sought the views of all Members on the above proposed amendments by way of a questionnaire. The consultation outcome showed that a clear majority of Members supported the proposed amendments. HC also supported those amendments. The revised Form incorporating such amendments was approved by the President pursuant to RoP 83, and took effect from 7 July 2016.

Review of the requirements for disclosure of pecuniary interests under RoP 83A

20. RoP 83A provides for the requirement for Members to disclose their pecuniary interests at meetings of the Council, its committees or subcommittees. CMI deliberated on the following issues raised by the Bills Committee on the Stamp Duty (Amendment) Bill 2012:

- (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").

21. CMI proposed that: (a) common pecuniary interests be excluded from the requirement of RoP 83A; and (b) repeated disclosures be made unnecessary for committees or subcommittees scrutinizing legislative proposals. To implement these proposals, CMI proposed amendments to RoP 83A. A majority of Members, consulted by way of a questionnaire, as well as CRoP and HC, supported the proposals and the proposed amendments to RoP. Nonetheless, the motion moved by the Chairman of CMI to amend RoP 83A was negatived at the Council meeting of 18 March 2015.

Legislative Council Secretariat
Council Business Division 3
6 July 2016

**Committee on Members' Interests
of the Fifth Legislative Council**

Chairman	Hon IP Kwok-him, GBS, JP
Deputy Chairman	Hon Emily LAU Wai-hing, JP
Members	Hon Jeffrey LAM Kin-fung, GBS, JP Hon Frankie YICK Chi-ming, JP Hon Gary FAN Kwok-wai Hon CHAN Yuen-han, SBS, JP Hon Dennis KWOK (Total : 7 members)
Clerk	Mr Arthur LEUNG
Legal Adviser	Mr KAU Kin-wah (up to 3 July 2015) Mr Kelvin LEE (since 4 July 2015)