

立法會
Legislative Council

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From : Clerk to Committee on Rules of Procedure
To : All Members of the Legislative Council

Committee on Rules of Procedure

**Consultation on a proposal to prohibit the holding of directorship
in a listed company by the President of the Legislative Council**

The Committee on Rules of Procedure ("CRoP") would like to invite Members' views on Hon Kenneth LEUNG's proposal to amend the Rules of Procedure ("RoP") to specify that the President of the Legislative Council ("the President") shall not be a director of any listed company in Hong Kong,¹ whether or not the position is remunerated.

Background

2. At its meeting on 8 January 2019, CRoP considered the aforesaid proposal of Hon Kenneth LEUNG. His letter to the CRoP Chairman setting out the proposal is in **Appendix I**. Specifically, he proposes adding a new rule to RoP to prohibit the President "from acting as director of any listed company in Hong Kong, whether the directorship is paid or unpaid". After deliberations, CRoP agreed that all Members should be consulted on his proposal.

¹ "[L]isted company in Hong Kong" means a company that has any of its shares listed on a stock market operated by an exchange company recognized by the Securities and Futures Commission under section 19(2) of the Securities and Futures Ordinance (Cap. 571).

Present position

3. There is at present no provision in the Basic Law, any legislation or RoP which prohibits the President from holding directorship in a company. In recognition of his or her additional responsibilities, the President receives a monthly remuneration twice of that received by a Member.

Requirements for the registration and disclosure of interests

4. The President, as a Member of the Legislative Council ("LegCo"), is required under RoP 83 to register any registrable interests he or she has in eight categories, including remunerated directorships of companies.² RoP 83 also requires Members to furnish the particulars of their registrable interests to the Clerk to LegCo, which are then placed in a Register of Members' Interests ("the Register") for public inspection. The main purpose of the Register is to provide information on any pecuniary interest or other material benefit received by a Member which might reasonably be thought by others to influence his or her actions, speeches or votes in LegCo, or actions taken in his or her capacity as a LegCo Member.

5. While the registration requirements recognize no distinction between directorships which are executive, non-executive or independent in nature as long as a fee, honorarium, allowance or other material benefit is payable, Members are not required to register any unremunerated directorship they hold.

6. RoP 83A provides that in the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he or she has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he or she discloses the nature of that interest. The main purpose of such disclosure is to ensure that other Members and the public are made aware, when a Member is participating in the proceedings of the Council or its committees or subcommittees, of any pecuniary interest which might reasonably be

² The eight categories of registrable interests are: (a) remunerated directorships of companies; (b) remunerated employments, offices, trades, professions or vocations; (c) names of clients to whom Members provide personal services which arise out of or are related in any manner to their membership of the Council; (d) donations to meet a Member's election expenses and financial sponsorships; (e) overseas visits; (f) payments, material benefits and advantages received from Government or organization of a place outside Hong Kong or from any person who is not a Hong Kong permanent resident; (g) land and property; and (h) shareholdings held by the Member or with or on behalf of his or her spouse or infant children.

thought to be relevant to, or to influence the Member's actions, speeches or votes in, those proceedings.

7. Any Member, including the President, who fails to comply with the relevant registration or disclosure rules may be subject to investigation by the Committee on Members' Interests ("CMI") under RoP 73.³ Under RoP 85, the Council may by resolution impose sanctions (including admonition, reprimand or suspension) against a Member for failing to comply with these rules. Furthermore, the President is subject to the prohibition under RoP 82 against any Member appearing before the Council or any committee or subcommittee in a professional capacity for or on behalf of a party or in a capacity for which the Member is to receive a fee or award.

Impartiality of the President

8. The President is expected to be fair and impartial, and independent of any political influences.⁴ The President is guided by RoP and conventions in presiding over meetings of the Council. While there is no restriction on the President having political affiliation, it is noted that in practice the President does not take part in debates or vote in the Council in order to maintain his or her neutrality. Although RoP does not disallow the President to cast his or her original vote at the same time when other Members cast their votes, neither the incumbent President nor his predecessors has ever exercised the voting right.

Guidelines and practices relevant to the avoidance of conflicts of interest

9. CMI has issued "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such" ("the Advisory Guidelines") which are reproduced in **Appendix II**. Under the Advisory Guidelines, a Member should ensure that his or her conduct must not be such as to bring discredit upon LegCo,⁵ and he or she should not, in

³ CMI has considered a complaint against Hon Andrew LEUNG Kwan-yuen, in his capacity as a LegCo Member rather than President, in the 2016-2017 session. Following its investigation, CMI determined that Mr LEUNG had breached RoP 83(1) for failing to register his shareholding interest in a company. As there was no information showing that the breach was a deliberate act or it involved any conflict of interests with Mr LEUNG's role as a LegCo Member, CMI decided not to recommend any sanction.

⁴ For detailed discussions on the office of the President, see paragraphs 2.68 to 2.78 of "A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region".

⁵ Paragraph 1 of the Advisory Guidelines.

his or her capacity as such, seek to influence another person to further the Member's private interest,⁶ nor should a Member seek information for private or personal interest.⁷

10. Under RoP 3(3), the President may request the President's deputy or any other Member to preside at or chair a meeting (or part thereof) of the Council or a committee of the whole Council, and to exercise the powers of the President or Chairman for the whole or part of the meeting. This rule was invoked by the President most recently for the Council meeting of 11 July 2018, at which proceedings on a no-confidence motion against the President took place. As the President was the subject of the motion, to avoid any possible or apparent conflict of interest, he requested the President's deputy to rule on the admissibility of the motion and to preside at the relevant part of the Council meeting.

Relevant rules and practices of other legislatures

11. The Secretariat has studied the rules and practices of selected Westminster-style parliaments including the House of Commons and House of Lords of the United Kingdom ("UK") Parliament, the House of Commons of the Parliament of Canada, and the House of Representatives of the Parliament of Australia regarding the holding of directorship applicable to the Speaker of the legislature. In gist, except in the House of Lords of the UK Parliament, none of the legislatures studied have imposed any special requirements against the holding of directorships in companies by their respective Speakers that are different from those applicable to all other Members. Details of the findings are summarized in **Appendix III**.

Deliberations by members of the Committee on Rules of Procedure

12. There are divergent views amongst CRoP members on Hon Kenneth LEUNG's proposal. Some CRoP members consider that allowing the President to act as a director of a listed company might give rise to questions over his or her impartiality and abuse of his or her power, thus tarnishing the public image of the office of the President. Due to the constitutional importance of the President as head of the legislature in Hong Kong's political structure, measures against a conflict of interest applicable to the President should be comparable to those applicable to the Chief Executive and the Chief Justice, who respectively head the Government and the Judiciary and who should not hold directorship in a

⁶ Paragraph 4 of the Advisory Guidelines.

⁷ Paragraph 6 of the Advisory Guidelines.

company.⁸

13. On the other hand, other CRoP members have pointed out that Members representing Functional Constituencies ("FCs") are required to maintain certain levels of affiliation with their constituents. Any requirement for the President who represents an FC to lay aside his or her interest as a director of a listed company might undermine his or her affiliation with his or her constituents, or otherwise prejudice his or her eligibility to be re-elected in that constituency in the next election. Furthermore, as it is not a norm in other legislatures to have formal rules forbidding their Speakers to hold directorships in companies, and there is no evidence indicating a "clear and present danger" of the President having a conflict of interest arising from his or her directorship in a company, there is no compelling reason for LegCo to impose such a requirement in RoP.

Questionnaire

14. Members are invited to give their views on Hon Kenneth LEUNG's proposal by completing and returning the questionnaire in **Appendix V by Thursday, 4 April 2019.**

(Colin CHUI)
Clerk to
Committee on Rules of Procedure

Encls.

c.c. Hon Andrew LEUNG Kwan-yuen, GBS, JP (President of the
Legislative Council)
Hon Paul TSE Wai-chun, JP (Chairman)
SG, LA, DSG, ASG1, ASG2, ASG3, ASG4, SALA2, H(PI), ALA4

⁸ See paragraph 5.5 of the *Code for Officials under the Political Appointment System* and paragraph 87 of the *Guide to Judicial Conduct*. In the case of the Chief Executive, the restrictions cover directorship in any trade, business, occupation, firm, company (private or public), chamber of commerce or similar bodies, public body or private professional practice, whereas in the case of the Chief Justice, the restrictions apply to both public and private companies (except family companies owned and controlled by the judge and his or her family), whether the directorship is executive or non-executive, and whether it is remunerated or not. Information on the holding of directorship in listed companies by the Chief Executive and the Chief Justice of the Court of Final Appeal is set out in **Appendix IV**.



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立法會
議事規則委員會
主席
謝偉俊議員, JP

謝主席：

修訂《議事規則》以限制立法會主席擔任上市公司董事

我特此來函就《議事規則》提出修訂建議(請見附件)，以限制立法會主席擔任上市公司董事，當中主要的理據如下：

- (一) 立法會主席在《基本法》下有多項重要職能，包括主持立法會會議和確保立法會的事務根據《議事規則》運作。立法會主席必須保持完全的獨立和中立，以及避免直接、間接、實質或觀感上的利益衝突，才可有效、恰當地履行職務和獲得公眾、議員的信任。
- (二) 立法會主席是立法會的議長，所獲得的酬金為一般議員的兩倍，這一差別反映了立法會主席一職在憲制上的重要地位，並須肩負較一般議員更多的工作。故此，立法會主席應為一個全職的職位，並不應從事其他有薪工作。
- (三) 立法會主席作為立法會會議的主持人，他不能與議程上的事宜有任何直接、間接、實質或觀感上的利益衝突，才能獨立、中立、公正地主持會議，並令公眾及議員信任他能依據這些原則主持會議。然而，上市公司的營運一般涉及多間附屬公司及廣泛業務，現時《議事規則》及「議員個人利益登記冊」的申報要求並不能充分反映立法會主席是否與立法會會議議程上的事宜有任何直接、間接、實質或觀感上的利益衝突。



(四) 由首屆立法會至今，未有一位立法會主席在就任主席期間曾擔任上市公司董事的職位。而參考外國議會的經驗，議長一般是以全職的方式履行職務，以確保議長保持獨立和中立的角色。例如，英國上議院的議事常規及程序指引(Companion to the Standing Orders and Guide to the Proceedings of the House of Lords)的 1.59 段便指出，議長是一個受薪職位，不可從事有酬的董事職位和接受薪酬工作。

請議事規則委員會盡快就我的建議進行討論。

梁繼昌
立法會議員
二零一八年七月十八日

修訂《香港特別行政區立法會議事規則》

1. 加入第 83B 條

在第 83A 條之後 —

加入

“83B 禁止立法會主席擔任香港上市公司的董事

立法會主席不得擔任任何香港上市公司的董事職位，不論該職位有否提供報酬。”

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

1. Rule 83B added

After Rule 83A —

Add

**“83B Prohibition on President acting as Director of Listed
Company in Hong Kong**

The President is prohibited from acting as director of any listed company in Hong Kong, whether the directorship is paid or unpaid.”

**Advisory Guidelines on Matters of Ethics
in relation to the Conduct of Members of the Legislative Council
of the Hong Kong Special Administrative Region
in their capacity as such**

*(Issued by the Committee on Members' Interests under
Rule 73(1)(d) of the Rules of Procedure of the Legislative Council)*

1. A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council ("the Council").
2. A Member should conduct himself in such a way as not to place himself in a position which may be contrary to the generally assumed standard of conduct expected of a Member of the Council. When deciding whether to engage in activities of a commercial nature such as advertisement activities, Members should accord due consideration as to whether the nature and contents of such activities might be regarded as not in keeping with the position or prestige of a Member of the Council and thereby bringing discredit upon the Council.
3. A Member should adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or subcommittees, or the President for the regulation of the practice and procedure of the Council, its committees and subcommittees, or Members' behaviour in their conduct of the business of the Council.
4. A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest.
5. A Member should not take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public.
6. A Member should ask for information only about matters of public interest and should not seek information for private or personal interest.
7. A Member should ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true.

Rules and practices relevant to interests held by the Speaker/President in selected Westminster-style parliaments and the Legislative Council

	House of Commons, United Kingdom	House of Lords, United Kingdom	House of Commons, Canada	House of Representatives, Australia	Legislative Council, Hong Kong
Prohibition from acting as remunerated/unpaid directors	Not prohibited. No additional restriction applicable to the Speaker. ¹	The Lord Speaker is required to lay aside outside financial interests falling into specific categories, including remunerated directorships and other employment. ^{2 3}	Not prohibited. No additional restriction applicable to the Speaker. ⁴	Not prohibited. No additional restriction applicable to the Speaker.	Not prohibited. No additional restriction applicable to the President.
General characteristics of Speakership	The chief characteristics attaching to the office of Speaker are authority and	The primary role of the Lord Speaker is to preside over	When in the Chair, the Speaker embodies the power and authority of	One of the hallmarks of good Speakership is the requirement for a high	The President is expected to be fair and impartial, and

¹ Registration for unremunerated directorships (unless associated with, or a subsidiary of, a company or group of which the Member is a remunerated director) is not required.

² The Lord Speaker will be expected to lay aside financial interests in the following categories, in accordance with the Fourth Report of the Procedure Committee in the 2005-06 session: (a) Any consultancy agreement to provide parliamentary advice or services; (b) employment or any other financial interest in businesses involved in parliamentary lobbying on behalf of clients, including public relations and law firms; (c) any remunerated service provided by virtue of his or her position as a member of Parliament; (d) employment as a non-parliamentary consultant; (e) remunerated directorships; (f) remunerated employment (including occasional income from speeches, lecturing, broadcasting and journalism); (g) provision by an outside body of secretarial and research assistance; (h) visits with costs paid in the United Kingdom and overseas, made as a member of Parliament, except any visits paid for from public funds, and except for minor hospitality.

³ According to the Registrar of Lords' Interests, the main reasons for such requirement include: (a) since the post is newly-created arising from the transfer of the judicial power of the House of Lords to the Supreme Court, the House wants to ensure a favourable reaction amongst the public and media by showing that the post-holder is genuinely impartial and whiter-than-white; (b) the House does not want the Speakership to be seen as open to abuse, for example as a privileged access or through lobbying; and (c) the new role came with a fairly lavish remuneration, so it is thought fair to say that the House should have the first call on the Lord Speaker's time.

⁴ The Speaker is subject to the same general requirements applicable to a Member. According to these requirements, a Member shall not have an interest in a partnership or in a private corporation that is a partly, directly or through a subcontract, to a contract with the Government of Canada under which the partnership or corporation receives a benefit unless cleared by the Commissioner of Ethics.

	House of Commons, United Kingdom	House of Lords, United Kingdom	House of Commons, Canada	House of Representatives, Australia	Legislative Council, Hong Kong
	<p>impartiality.</p> <p>The Speaker takes no part in debate and votes only when the voices are equal.⁵</p>	<p>proceedings in the House of Lords. He has no power to act in the House without the consent of the House. He observes the same formalities as any other member of the House. The Lord Speaker's function is to assist, and not to rule. The House of Lords does not recognize points of order.⁶</p>	<p>the office, strengthened by rules and precedents. He or she must at all times show, and be seen to show, the impartiality required to sustain the trust and goodwill of the House.</p> <p>The Speaker does not participate in debate and votes only in cases of an equality of voices, in such an eventuality, the Speaker is responsible for breaking the tie by casting a vote.⁷</p>	<p>degree of impartiality in the execution of the duties of the office. The Speakership has long been regarded as a political appointment. It is a practice to change the Speaker with a change of government.</p> <p>The Speaker supervises rather than participates in proceedings. He or she does not normally take part in a debate and does not vote in the House except in the event of numbers being equal, in which case the Speaker has a casting vote.⁸</p>	<p>independent of any political influence. It is a practice that the President does not vote in order to maintain his neutrality.⁹</p>
Restrictions on political party affiliation	The Speaker by convention resigns from the party following election as Speaker, and remains separate from	The Lord Speaker is expected to lay aside any party or group affiliation on appointment, and to	In order to protect the impartiality of the office, the Speaker abstains from all partisan political	There is no restriction on the political party affiliation of the Speaker. Speakers have attended party meetings and have	There is no restriction on the political affiliation of the President.

⁵ Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 24th Edition, P. 61.

⁶ *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords 2017*, paragraphs 1.54 to 1.59.

⁷ *House of Commons Procedure and Practice, Canada*, 3rd Edition, Chapter 7.

⁸ *House of Representatives Practice, Australia*, 7th Edition, Chapter 6.

⁹ *A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region*, paragraphs 2.71 and 2.77.

	House of Commons, United Kingdom	House of Lords, United Kingdom	House of Commons, Canada	House of Representatives, Australia	Legislative Council, Hong Kong
	political issues even in retirement.	refrain from political activity, including voting in the House.	activity (e.g. by not attending caucus meetings) but is not required to renounce party membership.	not, of necessity, refrained from election campaigning.	
Remuneration for the Speaker	GBP£154,264 per annum (GBP£76,885 + basic annual remuneration for Members of £77,379)	GBP£102,530 per annum ¹⁰	CA\$259,600 per annum (\$84,000 in addition to the sessional allowance of a Member \$175,600)	AUS\$362,425 per annum (75% more than a Member's basic remuneration of \$207,100)	\$2,364,960 per annum (twice the amount of Member's remuneration)
General requirements for registration of interests	There are 10 categories of registrable interests for Members, which are: (1) employment and earnings; ¹¹ (2) donations and other support; (3) gifts, benefits and hospitality from UK sources; (4) visits outside UK; (5) gifts and benefits from sources outside UK;	Lords are required to register the following 10 categories of interests: (1) directorships; (2) remunerated employment etc.; (3) public affairs advice and services to clients; (4) shareholdings; (5) land and property; (6) sponsorship; (7) overseas visits;	There are nine categories of registrable interests for Members, which are: (1) real property; (2) business assets; (3) investments; (4) trusts; (5) other personal assets; (6) source of income/benefits; (7) liabilities; (8) activities; ¹¹ and	Members are required to provide to the Registrar of Members' Interests a statement of the Members' registrable interests, which include the following information: (1) shareholdings in public and private companies; (2) family and business trusts and nominee companies;	Under RoP 83, Members are required to register the following eight categories of interests: (1) remunerated directorships in public or private companies; (2) remunerated employments, offices, trades, professions or vocations;

¹⁰ Unlike Members of the House of Commons, Members of the House of Lords do not have a monthly remuneration except allowance when attending meetings.

¹¹ This includes remunerated directorships, but unremunerated directorships or companies not currently trading are not required to be registered under this category.

¹² Such as employment, businesses and directorship.

	House of Commons, United Kingdom	House of Lords, United Kingdom	House of Commons, Canada	House of Representatives, Australia	Legislative Council, Hong Kong
	<p>(6) land and property in UK and elsewhere;</p> <p>(7) shareholdings;</p> <p>(8) miscellaneous;</p> <p>(9) family members employed and remunerated through parliamentary expenses; and</p> <p>(10) family members engaged in lobbying.</p>	<p>(8) gifts, benefits and hospitality;</p> <p>(9) miscellaneous financial interests; and</p> <p>(10) non-financial interests.¹³</p>	<p>(9) disclosure for dependent children.</p>	<p>(3) real estate, including the location and the purpose;</p> <p>(4) registered directorships of companies;</p> <p>(5) partnerships indicating the nature of the interests and the activities of the partnership;</p> <p>(6) liabilities indicating the nature of the liability and the creditor concerned;</p> <p>(7) the nature of any bonds, debentures and like investments;</p> <p>(8) saving or investment accounts, indicating their nature and the name of the bank;</p> <p>(9) the nature of any other assets;</p> <p>(10) the nature of any other substantial sources of income;</p>	<p>(3) the names of clients (when the interests in (1) or (2) above include a Members' personal services relating to his or her membership of the Council);</p> <p>(4) election donations and financial sponsorships;</p> <p>(5) overseas visits;</p> <p>(6) payments, benefits and advantages received from any Government or organization of a place outside Hong Kong or from any person who is not a permanent resident of Hong Kong;</p> <p>(7) land and property;</p>

¹³ According to the Guide to the House of Lords' Code of Conduct, certain non-financial interests may reasonably be thought to affect the way members of the House of Lords discharge their public duties and must therefore be registered in this category. Unremunerated directorships or other regular unpaid employment are considered relevant non-financial interests and therefore must be registered.

	House of Commons, United Kingdom	House of Lords, United Kingdom	House of Commons, Canada	House of Representatives, Australia	Legislative Council, Hong Kong
				(11) gifts; (12) any sponsored travel or hospitality received; (13) membership of any organisation where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise; and (14) any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.	and (8) beneficial interests in shares of companies or other bodies.
General requirements for disclosure of interests	In any debate or proceeding of the House or its committees, Members shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have. A financial interest should be declared if it	The Code of Conduct requires that members must "declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion."	A Member who has a private interest that might be affected by a matter before the House or a committee shall, if present during consideration of the matter, make a disclosure. Members shall not participate in debate or	Verbal declaration of interest is not required. The interest concerned has been interpreted in the very narrow sense as an interest peculiar to a particular person. A Member would not be caught by registration rules if the interest in question is one held in	RoP 83A provides that in the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter,

	House of Commons, United Kingdom	House of Lords, United Kingdom	House of Commons, Canada	House of Representatives, Australia	Legislative Council, Hong Kong
	<p>might reasonably be thought by others to influence the speech, representation or communication in question.</p> <p>Members are not required to declare interests common to all Members and solely arising from that specific capacity.</p>		<p>vote on questions in which they have a private interest. Matters of general application or that affect Members as part of a broad class are not included.</p>	<p>common with many other people in the community.</p>	<p>except where he discloses the nature of that interest.</p>

Council Business Division 4
Legislative Council Secretariat
22 March 2019

**Information on the holding of directorship
in listed companies by the Chief Executive
and the Chief Justice of the Court of Final Appeal**

	Chief Executive ("CE")	Chief Justice of the Court of Final Appeal
Title of the rules/ guidelines governing the holding of directorships	<i>Code for Officials under the Political Appointment System</i> ("the Code") ¹	<i>Guide to Judicial Conduct</i> ("the Guide") ²
Restrictions on acting as directors	<p><u>Paragraph 5.5 of the Code</u></p> <p>"During the term of office, [politically appointed officials ("PAOs")] shall not, without the consent in writing of the CE, engage or be concerned either directly or indirectly as...director or shadow director...in any...firm, company (private or public)..."³</p>	<p><u>Paragraph 87 of the Guide</u></p> <p>"Judges should not hold directorships in commercial companies⁴ ...Accordingly, upon appointment, judges should resign from all such directorships."</p>

¹ According to the Chief Secretary's reply to Oral Question No. 4 at the Council meeting on 23 January 2019, at present, the CE observes the provisions in the Code. The latest version of the Code, issued by the CE's Office in July 2012, is available from https://www.cmab.gov.hk/en/issues/PAO_Code_1.7.2012.pdf.

² The Guide, issued by the Judiciary in October 2004, aims to provide practical guidance for judges in dealing with matters relating to judicial conduct. It does not attempt to define judicial misconduct. The guide is available from https://www.judiciary.hk/doc/en/publications/gjc_e.pdf.

³ Upon taking up office, CE signs a written undertaking signifying agreement to abide by restrictions to prevent conflict of interest after leaving office as CE. He or she shall be subject to post-office employment control within three years. These restrictions include, among others,

- (a) During the first year, he or she shall not undertake any employment (either on full-time or part-time basis), become a director or a partner in any business or profession; and
- (b) In the following two years, he or she shall not enter into employment with or become a director of: (i) any company with land or property development being part of its business or which was awarded with any franchise or licence approved by the Executive Council during his or her time in office; and (ii) a company which is involved in on-going litigation against the Government.

	Chief Executive ("CE")	Chief Justice of the Court of Final Appeal
The scope of the restrictions	The restrictions cover directorship in any trade, business, occupation, firm, company (private or public), chamber of commerce or similar bodies, public body or private professional practice.	The restrictions apply to both public and private companies, whether the directorship is executive or non-executive, and whether it is remunerated or not.
Exceptions	<p><u>Paragraph 5.5 of the Code</u></p> <p>"The consent of the CE is likely to be given where the official is appointed to the relevant board of directors in his official capacity or in connection with his private family estate. A PAO may retain or accept honorary posts in non-profit making organisations or charitable bodies."^{5 6 7}</p>	<p><u>Paragraph 88 of the Guide</u></p> <p>"Judges, however, can hold directorships in "family companies"....However, the directorship of such a company should not require the judge to devote excessive time to the company's affairs and its activities should not involve commercial trading or expose the judge to public controversy."⁸</p>

For detail, see *Restrictions on post-office work of former Chief Executives for avoidance of conflict of interest*, available from https://www.ceo.gov.hk/eng/pdf/Restrictions_CE.pdf.

⁴ Paragraph 87 of the Guide defines commercial companies as companies whose objects are profit-related.

⁵ Various provisions in the Code envisage or require approval or guidance from a higher authority, i.e. CE. In such situations, CE, in observing the Code, has to handle and make the decisions for himself. For further details, see paragraphs 4.95 to 4.99 of Report of the Independent Review Committee ("IRC") for the Prevention and Handling of Potential Conflicts of Interests (May 2012), available from <https://www.irc.gov.hk/eng/report/report.htm>. IRC has recommended that in making decisions for himself, CE should adopt standards which are at least as stringent as those he would apply in deciding similar matters for PAOs, and that he may seek the advice of the Executive Council, if and as appropriate.

⁶ Such information shall be made available on the website of the bureau/office served by the official concerned for public inspection. In all these cases, the official shall ensure that there is no actual or apparent conflict of interest between his interests in such organizations or bodies and his official duties and that his interests in such organizations or bodies would not cause embarrassment to the Government, CE or other PAOs of the Government.

Council Business Division 4
Legislative Council Secretariat
22 March 2019

⁷ Paragraph 5.8 of the Code provides that if it appears to CE at any time that there is or may be a conflict of interest between a PAO's investment or interests and his official duties, CE may require the official to take any one or more of the following measures:

- (a) to divest himself of all or any of the investments or interests;
- (b) to refrain from further acquiring or disposing of the investments or interests;
- (c) to freeze any investment transaction for a specified period;
- (d) to place the investments or interests in a "blind trust";
- (e) to refrain from handling cases with actual or potential conflict of interest; and
- (f) to take other actions as directed by CE.

⁸ According to paragraph 88 of the Guide, "family companies" is defined as companies owned and controlled by a judge and his or her family. It is common for matrimonial homes or other family assets such as investment properties to be owned and controlled by family companies. According to paragraph 89 of the Guide, where a judge owns or occupies premises in a building which has an Owners' Corporation, then he or she may serve on its management committee but should not give legal advice, which should be professionally sought.

Questionnaire
(to be returned by Thursday, 4 April 2019)

Fax No. : 2543 9197

To : Mr Colin CHUI
Clerk to Committee on Rules of Procedure
Legislative Council

Committee on Rules of Procedure

Consultation with all Members

(Please tick as appropriate. If the space for comments is insufficient, please provide your comments in separate sheets.)

- I **support** Hon Kenneth LEUNG's proposal to amend the Rules of Procedure to prohibit the President from holding directorship in any listed company (details in Appendix I to LC Paper No. CROP 32/18-19).
- I **do not support** Hon Kenneth LEUNG's proposal to amend the Rules of Procedure to prohibit the President from holding directorship in any listed company (details in Appendix I to LC Paper No. CROP 32/18-19).
- No comment.

Other views, if any:

Signature : _____

Name of Member : _____

Date : _____