

立法會
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**Paper for the Committee on Members' Interests meeting
on 6 February 2001**

Rule 84(1) of the Rules of Procedure of the Legislative Council

Purpose

This paper provides the Committee on Members' Interests (the Committee) with information concerning the process in which Rule 84(1) of the Rules of Procedure was formulated.

Background

2. At its meeting on 12 December 2000, the Committee deliberated on the requirements set out in Rule 84(1) of the Rules of Procedure quoted in the "*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*" as follows:

A Member shall not vote upon any question, whether in the Council or in any committee or subcommittee, in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy. Where there is such a direct pecuniary interest on a question to be voted on in the Council or a committee of the whole Council, the Member concerned shall withdraw therefrom when the vote is taken.

3. A member raised at the meeting that the phrase "**a sector thereof**" in the exception for "a direct pecuniary interest" stated in the rule ("**except where his interest is in common with ... a sector thereof**") might be interpreted as allowing a Member to vote on questions for which he had a direct pecuniary interest so long as he could find at least one member of the public who had the same direct pecuniary interest as he did.

4. The member also pointed out that there might be inconsistency in the first and the second sentences of the rule. The latter stipulates that a Member who has a direct pecuniary interest on a question to be voted on shall withdraw when the vote is taken, which means that the Member will not be able to participate in the voting after his withdrawal, whereas the first sentence of the rule allows a Member to vote on questions which he has a direct pecuniary interest so long as the interest meets the above exception. The Committee requested that a paper be prepared on the two issues mentioned above for consideration in the next meeting.

Deliberations of the Committee on Rules of Procedure and Decisions of the Legislative Council

5. The Committee on Rules of Procedure (CRoP) deliberated on the amendments to the rule at its meetings on 3 November 1998, 24 November 1998, 19 January 1999 and 9 February 1999. CRoP noted that the then Rules of Procedure did not provide for the withdrawal of a Member with a direct pecuniary interest on a question to be voted on when the vote was taken, and according to the provision on voting under the Rules of Procedure, even if the Member concerned had not voted, his mere presence would have the same effect as if he had voted against the question. Besides, as he had not voted on the question, the established mechanism which disallowed the vote of a Member with direct pecuniary interests could not be triggered. After deliberation, CRoP agreed to propose amendments to Rule 84(1) of the Rules of Procedure to provide for the withdrawal of a Member with a direct pecuniary interest on a question to be voted on when the vote was taken.

6. As some direct pecuniary interests might only apply to a spectrum of people, such as solicitors, accountants or engineers, rather than the inhabitants of Hong Kong as a whole, CRoP agreed to add the words “or a sector thereof” after “inhabitants” in the rule.

7. At the Legislative Council meeting on 28 April 1999, the motion moved by Hon Mrs Selina Chow, Chairman of the Committee on Rules of Procedure, to amend Rule 84(1) of the Rules of Procedure was carried. The amendment effected by the motion was in bold print as follows:

A Member shall not vote upon any question, whether in the Council or in any committee or subcommittee, in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy. Where there is such a direct pecuniary interest on a question to be voted on in the Council or a committee of the whole Council, the Member concerned shall withdraw therefrom when the vote is taken.

Discussions and recommendations

8. On the appropriateness of the phrase “a sector thereof” in the above exception, members may consider the following points of view:

Should the phrase be included?

- Normally, the participation of a Member in the voting on a question in which only the Member himself and members of his sector or profession, rather than the rest of the population of Hong Kong, have a direct pecuniary interest should not be considered as inappropriate by the public. If the phrase is deleted, a Member elected by the functional groups of the sector concerned would not be able to vote on the question on behalf of his sector, which in turn might be regarded as a violation of the principle of representation.
- As can be imagined, in most circumstances, no matter how many people a direct pecuniary interest is common to, one can always identify at least some inhabitants of Hong Kong who do not have that interest. Therefore, strictly speaking, when the above exception is applied, the interest concerned would normally only involve “a sector thereof” rather than “the rest of the population of Hong Kong”.

Is it possible to define the phrase?

- Generally speaking, the larger the number of people with whom a Member has a direct pecuniary interest in common is, the slimmer the chance will be for the voting of the Member on the question concerned to be regarded by the public as inappropriate. However, it is very difficult and impracticable to set a “minimum number of people” which is regarded appropriate by most people in all authentic cases. Hence it is undesirable to define “a sector thereof” by the number of beneficiaries.
- Members may consider whether it is necessary to define “a sector thereof” as “publicly recognized trades, professions, social strata or groups”. However, disputes cannot be totally ruled out as different interpretations for the definition may still arise in its actual application.

Is there any remedy for situations in which a Member does not withdraw or has voted when the vote is taken on the question concerned due to his misinterpretation of the phrase?

- Motions can be moved under Rule 84(4) of the Rules of Procedure to disallow a Member's vote, or under Rule 84(3A) on the withdrawal of a Member on grounds of his direct pecuniary interest.

9. On the consistency of the first and the second sentences of the rule, Members may consider the following:

- The scopes of application of the first and the second sentences are not the same. The first sentence applies to the Council and all its committees, while the second applies to the Council and committees of the whole Council only.
- In the light of the drafting style of the rule as a whole, an exception which is "in common with the rest of the population of Hong Kong or a sector thereof" should also apply to "a direct pecuniary interest" in that sentence; otherwise, the following absurd situation may occur: a Member shall withdraw when the vote is taken on any question in which he has a direct pecuniary interest, even though the interest concerned is common to the rest of the population of Hong Kong (e.g. proposals on tax reduction which benefit everyone).

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