

立法會
Legislative Council

LC Paper No. LS165/00-01

**Paper for the meeting of the Committee on Members' Interest
on 4 October 2001**

At the last meeting, members instructed the Legal Service Division to consider the following:-

- (1) whether there is a more appropriate term to replace the term "material benefits" in the definitions of "remunerated directorship" and "remunerated employment" on pages 1 and 2 of the Registration Form; and
- (2) whether Rule 84 of the Rules of Procedure can be refined textually.

Replacement of the term "material benefits"

2. Pages 1 and 2 of the Registration Form on Members' Interests are the forms for the registration of "Directorships" and "Remunerated Employment, Offices, etc.". At the last meeting of the Committee, members considered whether the term "material benefits" in the definitions of "remunerated directorships" and "remunerated employment" on pages 1 and 2 should be replaced by another term, such as "other rewards". Members also decided that the minimum value of registrable one-off material benefits should be maintained at \$10,000.

Meaning of Remunerated Directorship

3. The ordinary meaning of remuneration embraces a broad concept of any reward an employee receives for the work that he has done. Accordingly, a remunerated directorship could mean the position of director in a corporation for which the holder of that office is given a reward for the work he does. That reward may or may not be paid in cash, and may be of any value. However, this approach of interpretation may not be appropriate in all cases. In fact, there have been cases where the courts had to determine whether certain payments made to an employee, either in cash or in kind, were remuneration within the context of a particular piece of legislation. The courts in these cases had to interpret the meaning of remuneration in the particular context of the legislation concerned and had to decide whether a certain payment was remuneration in the particular circumstances of the case.

4. In Rule 83 of the Rules of Procedure, "remunerated" is used to qualify directorships in subrule (5)(a), and employments, offices, trades, professions and vocations in subrule (5)(b). On the face of it, the broad concept of remuneration may be intended for application by the Legislative Council. However, the correctness of such an interpretation is

put into doubt when the intended effect of the notes on pages 1 and 2 are taken into consideration. In note (a) on page 1 of the Registration Form, "material benefit" appears last following "fee, honorarium, allowance" as a group of kinds of payment which may be made to a director. In note (a) on page 2 of the Registration Form, "material benefit" is likewise the last of a group of kinds of payments made to a Member in employment, office, trade or profession. "Material benefit" is the only kind of payment specified which has its meaning pegged to a dollar value. Although it is not apparent from records available as to why "material benefit" as defined was included in the definition of "remunerated directorship", it is reasonable to infer that the notes reflected the will of the Legislative Council to include a requirement to register in respect of directorships, employments, offices, trades and professions, on account of which any material benefits of a value above a certain level is payable where no other kinds of payment is paid to the Member concerned. It would seem illogical to infer that the Legislative Council was intending to prescribe a cash value of remuneration for triggering off the registration requirement or to modify the meaning of "remunerated" in the context of Rule 83(5)(a) and (b) so that if the remuneration was not paid as fee, salary, honorarium or allowance, then directorship or employments etc. need only be registered if payments above a certain value is payable.

How "material benefit" should be read and understood in the different contexts in the Registration Form

5. The definition of "material benefit" in note (b) on page 1 ("note (b)") should be read in the following context:-

- (a) "Remunerated directorship" on page 1 is defined to include all directorships for which a fee, honorarium, allowance or other material benefit is payable;
- (b) Note (b) provides a definition for what is "material benefit";
- (c) Note (a) on page 2 defines "remunerated" employment is where a salary, honorarium, allowance or other material benefit is payable, and adopts the definition of "material benefit" in note (b);
- (d) In item 4(2) on page 4, Members are required to register any payment, or any material benefit or advantage from any person or organization, and adopts the definition of "material benefit" in note (b);
- (e) Page 6 concerns with registration of payments, or material benefits or advantages from any Governments etc. outside Hong Kong, or from any person who does not qualify as a "Hong Kong permanent resident". Again the definition of "material benefit" in note (b) is adopted.

Is there a more appropriate term to replace "material benefit" on pages 1 and 2 of the Registration Form?

6. Before considering whether there is a more appropriate term, members may wish to consider the advantages of using "material benefit" and whether the continued use of it has any drawbacks.

Advantages

7. "Material benefit(s)" appear both in Rule 83 (5)(d)(ii) and (5)(f). These are words of the Rules of Procedure and have to be used in the Registration Form. Since the word "material" is a word which imports an element of judgement, Members are being guided in the Registration Form as to what kind of benefits would be of such materiality that they should register. This guidance is given in the form of note (b) on page 1 of the Registration Form. It reflects clearly Members' wish that only benefits of some substance need be registered in order to strike a balance between transparency and individual members' and their spouses' privacy. That balance is struck at the dollar values as set out in that note which applies equally to remunerated directorships and remunerated employment, office, trade and profession.

8. The structural layout of the Registration Form on this aspect of guidance to Members is such that at the first place where "material benefit" appears relevant for the filling of the Registration Form, detailed guidance is given in the form of notes. A cross-reference is then made to these first notes at subsequent places in the Registration Form where "material benefit" is relevant.

9. Since the level of cash value which triggers off the registration requirement under subrules (5)(d)(ii) and (5)(f) (i.e. financial sponsorships and payments etc. from Government outside Hong Kong) is the same as that under subrules (5)(a) and (5)(b) (i.e. remunerated directorships and remunerated employments etc.) where the only form of payment to the Member is benefits other than fees, salaries etc., their structural relationship as described above would ensure uniformity of treatment in any future adjustment exercise.

Drawbacks

10. There is the argument that since each category of registrable interest should be treated separately, there is no need to create that inter-dependency in the structure of the Registration Form. Such layout would require a reader of the Registration Form to move backwards and forwards in the course of filling in.

11. On balance, it is our view that the meaning of "material benefit" in the different contexts listed above is clear and that to replace "material benefit" on pages 1 and 2 of the Registration Form is not recommended.

12. Should members agree to our recommendation, replacement for the term "material benefit" would not be necessary. For the information of members who proposed replacement by "other rewards", we have checked that the dictionary meaning of "reward" is a return or recompense, especially for service or merit. This meaning has been adopted in the court when considering the meaning of "reward". In existing legislation, the word "reward" has been defined in two Ordinances. In the Pyramid Selling Prohibition Ordinance (Cap. 355), "reward" is defined to include refund, commission, discount or allowance. In the Organized and Serious Crimes Ordinance (Cap. 455), it is provided that "reward" includes a pecuniary advantage. These statutory definitions only cater for the special circumstances of the Ordinances concerned.

Rule 84

13. The existing Rule 84 contains two groups of provisions. One concerns with disclosure of pecuniary interest (subrules (2) and (3)), the other concerns with voting where there is a pecuniary interest (all subrules other than (2) and (3)). In terms of textual refinement without changing the policy intent, the two groups could be split into two separate rules by re-arranging the provisions concern with disclosure of pecuniary interest to a new Rule 83A, and provisions concern with voting to remain as Rule 84. A marked-up version of the proposed re-arrangement is attached in Appendix A for members reference.

14. Members may note that the existing subrule (3) has not been reproduced in the proposed Rule 83A. The reason is that it seems to us that the wording of the existing subrule (2) is wide enough to cover subrule (3).

15. The existing subrules (2) and (3) read as follows:

- (2) 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, whether in the Council or in any committee or subcommittee, without disclosing the nature of that interest.
- (3) A Member speaking in any debate or proceedings of the Council or any committee or subcommittee shall declare any direct pecuniary interests which he has in the matter.

Before amended in 1999, the wording of subrule (3) was:

- (3) *In any debate or proceedings of the Council or any committee or subcommittee at which a Member is present he shall declare any direct pecuniary interests which he has in the matter.*

The amendment was the result of the concern of the then Committee on Rules of Procedure that a declaration was necessary even when a Member was only present at a meeting but not going to speak or vote. The Committee noted that overseas legislatures required Members to declare direct pecuniary interests only when they were speaking at meetings. The motion to amend was passed by the Legislative Council on 28 April 1999. For members' information, extract of the progress report of the Committee, submitted to the Legislative Council at the same meeting, is attached in Appendix B.

16. Members may wish to consider whether and how the apparent problem in the existing subrule (3) should be dealt with in this refinement exercise. Also, should members decide to refine Rule 84, a review of the Rules of Procedure and other documents would have to be conducted to ascertain if consequential amendments are necessary.

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83A. Personal Pecuniary Interest to be Disclosed

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, without disclosing the nature of that interest.

(originally Rule 84(2))

84. Voting or Withdrawal in cases of Pecuniary Interest

(1) In the Council or in any committee or subcommittee, 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.

(modified Rule 84(1) first part)

(2) In the Council or a committee of the whole Council, a Member shall withdraw from the Council or a committee of the whole council when a vote is taken on a question in which he has a direct pecuniary interest and none of the exceptions in subrule (1) applies. (L.N. 107 of 1999)

(modified Rule 84(1) second part)

(2) 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, whether in the Council or in any committee or subcommittee, without disclosing the nature of that interest.

(3) A Member speaking in any debate or proceedings of the Council or any committee or subcommittee shall declare any direct pecuniary interests which he has in the matter. (L.N. 107 of 1999)

(3A) Where a Member does not withdraw in accordance with subrule (2), a motion for his withdrawal of a Member on the ground of his direct pecuniary interest under subrule (1) may be moved without notice by any Member after the President or Chairman has put the question on the original motion but before the vote is taken. (L.N. 107 of 1999)

(4) A motion to disallow a Member's vote on the ground of his direct pecuniary interest under subrule (1) may be moved without notice by any Member immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgment on whether there is a required majority or, if a division has been ordered, upon his statement of the numbers of Members recorded in the division. (L.N. 107 of 1999)

(5) The President, Chairman of a committee of the whole Council or chairman shall have the discretion whether or not to propose the question upon a motion under subrule (3A) or (4); and in exercising such discretion he shall have regard to the nature of the question upon which the vote is taken and to the consideration whether the interest therein of the Member whose presence or vote is challenged is direct and pecuniary and not an interest in common with the rest of the population of Hong Kong or a sector thereof and whether the vote is on a matter of Government policy. *(L.N. 107 of 1999)*

(5A) If the question for the withdrawal of a Member is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council or a committee of the whole Council for the duration of any vote on the question. If the motion is agreed to, the Member shall withdraw or continue to withdraw from the Council or the committee of the whole Council when the original question is put and voted upon. *(L.N. 107 of 1999)*

(6) If the question for the disallowance of a Member's vote is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council, a committee of the whole Council, a committee or subcommittee for the duration of any vote on the question. If the motion is agreed to, the President, Chairman of a committee of the whole Council or chairman shall state anew his judgment on whether there is a required majority in the original question or, in the case of a division, direct the Clerk to the Legislative Council or the clerk to alter the numbers voting and, in the case of the Council or a committee of the whole Council, the effect of the presence of the Member in the original division accordingly. *(L.N. 107 of 1999)*

(7) *(Repealed L.N. 107 of 1999)*