

立法會 *Legislative Council*

LC Paper No. CMI/14/01-02

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Paper for the House Committee on 22 March 2002

Textual amendments to Rule 84 proposed by the Committee on Members' Interests

Purpose

This paper seeks the views of the House Committee on the proposal of the Committee on Members' Interests (CMI) to amend Rule 84 (Personal Pecuniary Interest to be Disclosed) of the Rules of Procedure.

Background

2. Rule 84 was last amended on 28 April 1999 by resolution of the Council on a motion moved by the then Chairman of the Committee on Rules of Procedure (CRoP). The amendment consisted of two parts. The first part added a new provision to Rule 84(1) to require a Member who has a direct pecuniary interest in a question before the Council to withdraw when the vote on the question is taken in the Council or a committee of the whole Council. The addition was necessitated by the provision in Part II of Annex II of the Basic Law, which stipulates in essence that passage of bills and motions requires a simple majority vote of the Members present at meetings. Thus, the mere presence of a Member may affect the voting result even if the Member does not participate in the vote. On the other hand, when other committees of the Council take their votes, only Members who participate in a vote are counted.

3. The second part of the amendment was to replace Rule 84(3) which originally required that "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". After considering the practice in overseas legislatures, the CRoP considered that a Member need not declare any direct pecuniary interests if he was only present at a meeting and did not participate in the debate.

4. Part A of **Appendix 1** sets out Rule 84(1) and (3) before and after such amendments made in 1999.

Deliberations of the CMI

Splitting subrule (1) of Rule 84 into two subrules

5. The CMI has reviewed the existing Rule 84(1). The first part of this subrule prohibits a Member from participating in voting on a question in which he has a direct pecuniary interest which is not subject to the three exceptions stated therein. The second part stipulates a withdrawal requirement for a Member who has a direct pecuniary interest on a question to be voted on in the Council or a committee of the whole Council. The CMI notes that the withdrawal requirement as stated in the Chinese version of the second provision applies equally to all Members having a direct pecuniary interest, including those Members whose direct pecuniary interests are subject to the exceptions in the first provision. The CMI is concerned that should a literal interpretation be adopted on the second provision, a Member who has an excepted direct pecuniary interest has to withdraw when a vote is taken although, by virtue of the first provision, the Member need not withdraw and may in fact participate in the vote. The CMI therefore considers that the second provision should be amended by making a reference to the direct pecuniary interests which are excepted, as in the first provision, and by splitting these two provisions into two subrules to remove any possible doubts.

Rearranging Rule 84(2) as new Rule 83A and deleting Rule 84(3)

6. Rule 84 covers two issues. Rule 84(2) and (3) are concerned with the disclosure of pecuniary interests and the remaining subrules are concerned with the voting procedure where there is a pecuniary interest. The CMI considers that, in the interest of clarity, these two issues should be covered in two separate rules. It proposes that Rule 84(2) be re-drafted to become a new Rule 83A to cover disclosure of pecuniary interests. Furthermore, the CMI is of the view that the scope of Rule 84(2), i.e. the proposed new Rule 83A, already covers that of Rule 84(3). A comparison of Rule 84(2) and (3) is set out in **Part B of Appendix 1**. It therefore proposes that Rule 84(3) be deleted from the Rules of Procedure. The opportunity is also taken to propose textual amendments to both the English and Chinese versions of the new Rule 83A for further clarity.

Consequential amendments

7. If the proposed amendments to Rule 84(1), (2) and (3) are agreed to, consequential amendments are required to be made to Rules 84(3A) and 85.

Amendments in marked-up version

8. The proposed new Rule 83A and amendments to Rules 84 and 85 are marked-up in **Appendix 2** for members' easy reference.

Views of the CRoP

9. Hon David CHU, Chairman of the CMI, attended a meeting of the CRoP on 4 February 2002 to seek its views on the proposed amendments. Members of the CRoP were agreeable to the proposed amendments. Also, following the practice when Rule 84 was last amended by the Council, members of the CRoP suggested and Hon David CHU agreed that the Chairman of the CRoP should move a resolution to amend Rules 84 and 85 at a Council meeting.

Advice sought

10. The views of the House Committee are invited on the CMI's proposed amendments to Rules 84 and 85, (the marked-up version are set out in **Appendix 2**). Subject to House Committee's views on the proposed amendments, Hon Jasper TSANG Yok-sing, Chairman of the CRoP, will move a resolution to amend the Rules at a Council meeting. The wording of the proposed resolution is set out in **Appendix 3**.

Council Business Division 3
Legislative Council Secretariat
19 March 2002

Appendix 1

(A) Rules 84(1) and 84(3) before and after amendment on 28.4.1999

	Before	After
Rule 84(1)	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.	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.
Rule 84(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.	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.

(B) Comparison of Rule 84(2) and 84(3)

Rule 84(2)	Rule 84(3)
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.	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.

83A. *Personal Pecuniary Interest to be Disclosed*

In the Council or in any committee or subcommittee, Aa 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~~ except where he discloses the nature of that interest.

(Note: modified Rule 84(2))

84. *Personal Pecuniary Interest to be Disclosed Voting or Withdrawal in case of Direct Pecuniary Interest*

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

(Note: modified Rule 84(1) first part)

(1A) ~~Where there is such a direct pecuniary interest on a question to be voted on in~~ *In the Council or a committee of the whole Council, thea Member concerned shall withdraw ~~therefrom~~ when thea vote is taken on a question 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.*

(Note: 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)~~

(4), (5), (5A), (6) and (7) *(remain unchanged)*

Consequential Amendments

84.

(3A) A motion for the withdrawal of a Member on the ground of his ~~direct pecuniary interest under subrule (1)~~ *failure to withdraw as required by subrule (1A)* 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.

85. Sanctions relating to Interests

Any Member who fails to comply with Rules 83 (Registration of Interests), 83A (*Personal Pecuniary Interest to be Disclosed*) or 84(1), ~~(2) or (3)~~ (~~Personal Pecuniary Interest to be Disclosed~~) or (1A) (*Voting or Withdrawal in case of Direct Pecuniary Interest*) may be admonished, reprimanded or suspended by the Council on a motion to that effect.

Legend

- Texts proposed to be added are shown in *italic*
- Texts proposed to be deleted are shown with deletion lines

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 -

(1) by adding -

"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, except where he discloses
the nature of that interest.";

(2) in Rule 84 -

(a) in the heading, by repealing "**Personal Pecuniary
Interest to be Disclosed**" and substituting "**Voting
or Withdrawal in case of Direct Pecuniary
Interest**";

(b) by repealing subrule (1) and substituting -

"(1) In the Council or in any committee or subcommittee, a Member shall not vote upon any question 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.

(1A) In the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question 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.";

(c) by repealing subrules (2) and (3);

(d) in subrule (3A), by repealing "direct pecuniary interest under subrule (1)" and substituting "failure to withdraw as required by subrule (1A)";

(3) in Rule 85, by repealing "or 84(1), (2) or (3) (Personal Pecuniary Interest to be Disclosed)" and substituting ", 83A (Personal Pecuniary Interest to be Disclosed) or 84(1) or (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest)".