

立法會
Legislative Council

LC Paper No. CMI/4/02-03

Ref : CB(3)/C/1 (IV)

Tel : 2869 9270

Date : 5 December 2002

From : Clerk to Committee on Members' Interests

To : Hon SIN Chung-kai (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon NG Leung-sing, JP
Hon Bernard CHAN, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon YEUNG Yiu-chung, BBS

Committee on Members' Interests

Disclosure of indirect pecuniary interests

When members of the Panel on Information Technology and Broadcasting discussed the proposed acquisition of the shares of Asia Television Limited by Tom.com Limited at the special meeting held on 29 July 2002, a member raised the question of whether donations received by a Member's political party would constitute an "indirect pecuniary interest" which should be disclosed under Rule 83A of the Rules of Procedure of the Legislative Council. The Panel considered that the issue would require further study and agreed that the Committee on Members' Interests ("Committee") should be invited to examine the issue further. An extract of the minutes of the special meeting of the Panel is at **Appendix I**.

2. At the request of Hon David CHU, Chairman of the Committee, Senior Assistant Legal Adviser 1, legal adviser to the Committee, has studied the issue and prepared a note on the meaning of indirect pecuniary interest in Rule 83A, which is attached as **Appendix II**.

3. On the instruction of Hon David CHU, Chairman of the Committee, this is to seek your opinion on whether a meeting of the Committee

should be held to discuss the issue and if you so indicate, the possible dates of such a meeting. If you consider that a meeting is not necessary, then the undersigned will arrange for SALA1's note to be circulated to all Members for reference. Will members please fill in the reply slip at **Appendix III** and return it to the Secretariat on or before Wednesday, 11 December 2002? You will be informed of the decision in due course.

(Mrs Betty LEUNG)
Clerk to Committee on Members' Interests

Encl.

c.c. Dr Hon David CHU Yu-lin, JP (Chairman)
ASG3
SALA1

*Extract of the Minutes of the special meeting of the Panel on
Information Technology and Broadcasting held on Monday, 29 July 2002*

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Declaration of pecuniary interests

2. In response to Mr Albert CHAN's enquiry on whether members should declare any donations received by them or by their political parties when discussing the present agenda item, the Chairman was of the view that generally speaking, members should declare any direct or indirect pecuniary interests on their own accord as the principle was that a member's pecuniary interest in a matter should be declared if it might reasonably be thought by others that such interest might influence the member's speeches on the matter.

3. Ms Emily LAU further enquired about the relevant provisions in the Council's Rules of Procedures. Referring to Rule 83A of the Rules of Procedure which stipulated 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, except where he discloses the nature of that interest", the Assistant Legal Adviser 3 advised that the key issue to be considered was the nature of "direct" and "indirect" pecuniary interests covered by the Rule. The Clerk added that the disclosure obligation under Rule 83A was applicable to individual Members. However, on Mr Albert CHAN's question on whether donations received by a Member's political party would constitute an "indirect" pecuniary interest which should be disclosed under Rule 83A, members acknowledged that the matter would warrant further study. Ms Emily LAU suggested and members agreed that the Committee on Members' Interests should be invited to examine the issue further.

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LC Paper No. LS12/02-03

Committee on Members' Interests

**A Note on the Meaning of "Indirect Pecuniary Interest"
in Rule 83A of the Rules of Procedure of the Legislative Council**

The Committee on Members' Interests (CMI) has been invited to consider whether donations received by a Member's political party would constitute an indirect pecuniary interest which should be disclosed under Rule 83A of the Rules of Procedure. The Chairman of the CMI has instructed the Legal Service Division to advise on the matter.

2. The specific requirement relating to declaration of direct or indirect pecuniary interest is contained in Rule 83A of the Rules of Procedure. The Rule 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, except where he discloses the nature of that interest."

3. The basic principle in determining if an interest should be disclosed is whether the interest might reasonably be thought by others to influence the Member's actions or speech in the matter being considered. As to "direct pecuniary interest", Members may recall that in April 2002, the Legal Service Division prepared a note on the meaning of "direct pecuniary interest" for the House Committee (LC Paper No. LS 77/01-02). In the note, we advised that the term "direct pecuniary interest" was intended to carry its natural meaning, and that in Hong Kong it has been generally accepted that for a pecuniary interest to be direct, it should be immediate and not merely of a remote or general character. In addition, the interest must be personal to the Member and not merely one which is shared with the general public.

4. Whether a certain pecuniary interest is an "indirect pecuniary interest" should only arise after it has been established by facts that there is some relationship between the Member and the interest concerned. It is only after a Member has judged that the interest concerned is not a direct pecuniary interest that he has to go further to consider whether the interest is an indirect one. It is here where the Member is again required to exercise judgment, having regard to the rationale behind the relevant Rules. It would be another judgment call in the question whether a relationship is too remote for disclosure. Based on the principles stated in the preceding paragraph, it could be said that an "indirect pecuniary interest" is an interest not immediate and personal to a Member, but does have a certain relationship with the Member which would make a reasonable person to consider as might influence the action or speech of the Member.

5. In the context of commercial contracts, a person would have an indirect interest in the matter if there is a relationship between him or his nominee and the body which has a direct interest in the matter or reasonably likely to be affected by the decision. Examples of such a relationship would be the person or his nominee is a substantial shareholder, director, officer, employee, partner, agent or consultant of the body or company concerned. Members may note that the matters to be considered by a legislature are different and wider in scope. Thus although the examples may shed light on the nature of an indirect pecuniary interest, they may not be applicable in the context of a legislature.

6. Apart from the specific requirement in Rule 83A, Rule 83 of the Rules of Procedure also relates to disclosure of interest. Rule 83 requires Members to furnish particulars of their registrable interests, not later than the first meeting of each term or within 14 days of any change, for the purpose of inclusion into the Register of Members' Interests. Rule 83(5) defines "registrable interests" to mean-

- (a) remunerated directorships of companies, public or private;
- (b) remunerated employments, offices, trades, professions or vocations;
- (c) the names of clients when the interests referred to above include personal services by Members which arise out of or are related in any manner to his membership of the Council;
- (d) (i) all donations, as a candidate in the Legislative Council election in which the Member was elected as a Member of the Council, received by the Member or any person on his behalf for the purpose of meeting the Member's election expenses in the election; or
(ii) financial sponsorships, as a Member of the Council, by any person or organization, stating whether any such sponsorships include any payment or any material benefit or advantage to the Member or his spouse, whether direct or indirect;
- (e)
- (f)
- (g)
- (h) the names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issued share capital.

7. Conceptually, the relationships which would be considered an indirect pecuniary interest must be distinguished from pecuniary interest conferred to a Member indirectly, such as donation given through a political party. Some of the relationships considered as indirect pecuniary interests in paragraph 5 above, such as directorships and employments, are already required to be registered as an interest under Rule 83. Similarly, donations received by a Member and any person on his behalf, or financial sponsorships to a Member or his spouse whether direct or indirect, are also interests

required to be registered under Rule 83. It should be noted that a decision not to register an interest under Rule 83 does not necessarily mean that the same interest should not be disclosed under Rule 83A, since the question in Rule 83A is to be considered in the context of the matter to which a motion or amendment relates.

8. Members may recall that in relation to registration of interests under Rule 83, the CMI has given guidance to Members that "Regarding the "financial sponsorships" received from a Member's political organization, it would suffice if a Member merely registers interests directly received from his political organization. Such registrable interests include cash subsidy of HK\$5000 or above each month" (paragraph III(7) in the "Guidelines on Members' Interests"). In our former note, we also informed Members that the CMI did not consider it necessary to elaborate on the meaning of "direct pecuniary interest", and advised Members to apply the general standard that "A Member should adhere to the spirit and the letter of any rules or regulations made by the Council".

9. The question whether donations received by a Member's political party would constitute an indirect pecuniary interest could only be answered when the purpose of and facts relevant to a donation are known. Usually, those facts are not privy to persons outside the arrangements. The purpose (if any) of the donation and whether there is any link between the donation and the financial sponsorship received from the political party by a Member would be relevant considerations. In practice it would be difficult for an outsider to judge the exact nature of the relationship between a Member and the donation received by his political party. In this light the question whether an indirect pecuniary interest exists should in the first instance be judged by the Member concerned, having regard to facts known to him, and whether a reasonable person would consider the donation might influence the decision or speech of the Member.

Prepared by

LEE Yu-sung
Senior Assistant Legal Adviser
Legislative Council Secretariat
27 November 2002

Reply Slip

(Please reply on or before Wednesday, 11 December 2002)

Ref: CB(3)/C/1 (VI)

To: Mrs Betty LEUNG
 Clerk to Committee on Members' Interests
 Legislative Council Secretariat
 Legislative Council Building
 8 Jackson Road, Central
 Hong Kong

(Fax No: 2810 1691, 2537 1204)

Committee on Members' Interests

- * I propose that a meeting of the Committee on Members' Interests be held. I shall be able to attend the meeting if it is scheduled for:

Date, Time & Venue	Please "✓" if available
1. Thursday, 19 December 2002, 10:45 am Conference Room B	
2. Thursday, 19 December 2002, 4:30 pm Conference Room B	
3. Wednesday, 8 January 2003, 10:45 am Conference Room B	
4. Thursday, 9 January 2003, 2:30 pm Conference Room B	
5. Thursday, 16 January 2003, 10:45 am Conference Room B	

- * I consider that there is no need to hold a meeting of the Committee on Members' Interests, and the Committee should circulate SALA1's note to all Members for reference.

Signature : _____

Name : _____

Date : _____

- * Note: Please "✓" in the _____ if you agree with the suggestion.