

立法會
Legislative Council

Urgent by multi-fax
LC Paper No. FC27/09-10

Ref : CB1/F/1
Tel : 2869 9220
Date : 17 December 2009
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To : Members of the Finance Committee

Finance Committee

**Procedural implications of pecuniary interest on
Speaking and Voting on a matter before the Committee**

This circular provides information on issues relating to the disclosure of a pecuniary interest by members and voting in case of a member having a direct pecuniary interest in a proposal being considered at meetings of the Finance Committee.

Disclosure of pecuniary interest by members

2. As reflected by paragraph 40 of the Finance Committee Procedure, Rule 83A and Rule 84 of the Rules of Procedure (RoP) apply to the proceedings of the Committee. RoP 83A provides that 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.

Timing of disclosure of pecuniary interest

3. The disclosure of the nature of the direct or indirect pecuniary interest in the matter before a committee is a condition to a Member's speaking on the matter. Based on the principle that it is a Member's responsibility to disclose his pecuniary interest in a matter being considered to enable other people to

judge if his views on the matter have been influenced by his interest, a Member should disclose his pecuniary interest at the beginning of his speech on the matter.

4. For Finance Committee meetings, it has been the practice for a member to disclose his interest at the beginning of his speech on a proposal being considered by the Committee.

Voting in case of a member having direct pecuniary interest

5. RoP 84(1), 84(4), 84(5) and 84(6) apply to Finance Committee proceedings. RoP 84(1) provides that 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. Also, under RoP 84(4), any Member may move without notice a motion to disallow the vote of a Member before the result of the voting is declared. If the motion to disallow a vote is agreed to, the result will be altered accordingly. The procedure on the moving of a motion for the disallowance of vote on grounds of *direct* pecuniary interest is set out in RoP 84(5) and RoP 84(6) and further supplemented by House Rule 3 and Appendix II of the House Rules.

Executive and non-executive directorships

6. Regarding the concerns whether non-executive directorship should be regarded as a pecuniary interest required to be disclosed and/or affect a Member's eligibility to vote¹, members may wish to note that there is no distinction between executive and non-executive directors in law. Both are members of the board of directors of a company and have the same responsibilities. Non-executive directors are different from executive directors in that the latter also serve as executive managers of the company.

7. Whether a Member should disclose his non-executive directorship as a pecuniary interest at a meeting of the Council or its committees depends on what the matter being considered by the meeting is. It is the responsibility of individual Members to judge whether they have a direct or indirect pecuniary

¹ There is also no such distinction made between executive and non-executive directorship as far as registration of Members' interests on "remunerated directorship" is concerned, as set out in Rule 83(5)(a) of the RoP:

"(5) In this Rule, "registrable interests" means –

- (a) remunerated directorships of companies, public or private, and if the company concerned is a subsidiary of another company within the meaning of section 2(4) of the Companies Ordinance (Cap. 32), also the name of that other company;"

interest in the matter under consideration at the relevant meeting. The basic principle in determining whether a pecuniary 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, and the disclosure should be made when he starts speaking on the matter at the relevant meeting. The fact that a Member has registered the interest of a directorship does not obviate his obligation to disclose at the relevant meeting a pecuniary interest arising from the directorship². In this connection, Members are invited to refer to the requirement to update their registrable interests as stipulated in RoP 83(3).

8. Similarly, whether a Member's non-executive directorship would affect a Member's eligibility to vote at a meeting of the Council or its committees depends on what the matter being considered by the meeting is. It is the responsibility for individual Members to judge whether they have a *direct* pecuniary interest in the matter under consideration at the relevant meeting.

9. The RoP has no provision on how to determine whether a Member has a direct or indirect pecuniary interest in a matter before a committee. It may be useful for Members to have reference to some statutory definitions found in some common law jurisdictions outside Hong Kong. These definitions are referred to in Paper No. CMI 17/09-10, and the one that covers the situation of directors of a company provides along the line that "a member has an indirect pecuniary interest in any matter in which the council is concerned if the member is a director of a company that has a direct pecuniary interest in the matter".

10. Members who are uncertain whether they should declare a particular interest or vote on a proposal at a Finance Committee meeting may seek advice from the clerk of the Finance Committee who would consult the Legal Adviser on the legal issues involved, if necessary.

Chairing of meetings

11. At present, there is no rule in RoP which prohibits the chairman of a committee from chairing a meeting on grounds that he has a pecuniary interest or role conflict in the matter under consideration by the meeting. There is also no provision on this matter in the Finance Committee Procedure. In the past, Members had on their own volition chosen not to chair a meeting when they felt that there was a conflict in role or interests in the matter being considered by the meeting, or when they considered they might be perceived that way by others. It has been provided in the Procedures of the Finance Committee and its subcommittees that if the Chairman decides that he is unable to act for a particular item, or if so decided by the Committee (or the Subcommittee), the

² Paragraph III(3) of the Guidelines on Registration of Interests states that "The registering of interests is additional to, and in no way a replacement of, the requirement on Members to disclose pecuniary interest under Rule 83A."

Deputy Chairman shall chair the meeting for that particular item. If both of them decide that they are unable to act, or if so decided by the Committee (or the Subcommittee), the members present shall elect one from among themselves to chair the meeting for that item.

Relevant rules

12. For Members' ease of reference, RoP 83A and 84, paragraph 40 of the Finance Committee Procedure and House Rule 3 relating to disclosure of pecuniary interest by Members and disallowance of vote on grounds of direct pecuniary interest, as well as the relevant procedure in Appendix II of House Rule for moving a disallowance motion referred to above, are reproduced in the **Annex**.

(Mrs Constance LI)
Assistant Secretary General 1

Encl.

Extract from the Rules of Procedure, Finance Committee Procedure and House Rules of the Legislative Council

Rules of Procedure

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.

84. Voting or Withdrawal in case of Direct Pecuniary Interest

(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.
(*L.N. 126 of 2002*)

(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. (*L.N. 126 of 2002*)

(2) (*Repealed L.N. 126 of 2002*)

(3) (*Repealed L.N. 126 of 2002*)

(3A) A motion for the withdrawal of a Member on the ground of his 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. (*L.N. 107 of 1999; L.N. 126 of 2002*)

(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)*

Note: RoP 83A, 84(1), 84(4), 84(5) and 84(6) apply to Finance Committee proceedings.

Finance Committee Procedure

Pecuniary Interest to be Disclosed

40. Rule 83A and Rule 84 of the Rules of Procedure shall apply to the proceedings of the Committee.
41. There are situations in which the usual rules regarding pecuniary interests do not apply, such as when an item proposes changes to Members' salaries and allowances as Members of the Council. In these cases, there is no need for members to declare their individual interests. The Chairman shall declare that all members have the same pecuniary interest in the question and the Clerk records the statement. Members may then speak and vote.

House Rules

3. Withdrawal of Member or Disallowance of Vote on Grounds of Direct Pecuniary Interest

- (a) A motion for the withdrawal of a Member on grounds of his direct pecuniary interest may be moved without notice by any Member after the President or Chairman of a committee of the whole Council has put the question on the original motion but before the vote is taken. The procedure on the moving of a motion for the withdrawal of a Member is in Appendix II.

- (b) A motion to disallow a Member's vote on grounds of his direct pecuniary interest 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. The procedure on the moving of a motion to disallow a Member's vote is also in Appendix II.

(Extract from Appendix II of House Rules)

**Procedure on the Moving of Motion
for the Withdrawal of Member or Disallowance of Vote
on Grounds of Direct Pecuniary Interest**

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Moving of motion for the disallowance of vote

9. A Member may move a motion without notice under Rule 84(4) of the Rules of Procedure to disallow a Member's vote on grounds of the latter's direct pecuniary interest after a vote on the original motion has been taken but before the result of the voting is declared. The Member should as early as practicable pass a note to the President, Chairman of a committee of the whole Council or chairman indicating his intention to do so, and notify the Member concerned as far as possible.
10. (a) *Where a division has not been ordered on the original motion*, the Member who wishes to move the disallowance motion should indicate his intention to speak immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgement on whether there is a required majority in the original question.

(b) *Where a division has been ordered on the original motion*, the Member who wishes to move the disallowance motion should indicate his intention to speak immediately upon the statement by the President, Chairman of the committee of the whole Council or chairman of the numbers of Members recorded in the division.
11. The President, Chairman of a committee of the whole Council or chairman shall then call upon the Member to move the motion for the disallowance of the other Member's vote.
12. The President, Chairman of a committee of the whole Council or chairman shall decide whether or not to propose the question upon the disallowance motion having regard to Rule 84(5) of the Rules of Procedure.
13. If the question for the disallowance of a Member's vote is proposed, the Member concerned may, in accordance with Rule 84(6) of the Rules of Procedure, 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.

14. If the disallowance motion is negatived, the Member may return to the meeting. The President, Chairman of the committee of the whole Council or chairman shall then declare the decision on the original motion.
15. If the disallowance motion is agreed to,
 - (a) *where a division has not been ordered on the original motion*, the President, Chairman of a committee of the whole Council or chairman shall state anew his judgement on whether there is a required majority in the original question; or
 - (b) *where a division has been ordered on the original motion*, the President, Chairman of a committee of the whole Council or chairman shall 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.