

立法會

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Committee on Members' Interests Paper for the fourth meeting on 16 December 2009

Disclosure of pecuniary interests under Rule 83A of the Rules of Procedure

Purpose

This paper provides information on issues relating to compliance with Rule 83A of the Rules of Procedure ("RoP") on disclosure of pecuniary interests by Members of the Legislative Council.

Background

2. Rule 83A of the RoP provides that in the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter which he has a pecuniary interest, whether direct or indirect, or speak on such matter, except where he discloses the nature of that interest. The main purpose of such disclosure is to ensure that other Members and the public are made aware, when a Member is participating in the proceedings of the Council or its committees, of any pecuniary interest which might reasonably be thought to be relevant to those proceedings.

3. As concerns have been raised recently by some Members at a committee meeting¹ on whether the committee chairman should preside over the deliberation of the funding applications for a project, given that he is an independent non-executive director of a company which has indicated intention to bid for contracts under the project, some members of the Committee on Members' Interests ("CMI") consider that CMI should discuss the following issues regarding the disclosure of pecuniary interests under Rule 83A of the RoP:

- (a) whether a Member should be regarded to be having a pecuniary interest in a matter being considered by a committee when he is a non-executive director of a body whose interest might be affected by the committee's decision on the matter ;

¹ Public Works Subcommittee meeting on 2 December 2009

- (b) whether a Member who speaks on a matter in which he has a pecuniary interest should disclose such interest at the beginning of his speech; and
- (c) whether the chairman of a committee who has a pecuniary interest in a matter being considered by the committee should preside over the deliberation of that matter.

Direct and indirect pecuniary interests to be disclosed under Rule 83A of the RoP

Direct and indirect pecuniary interests

4. In a previous paper prepared by the Legal Service Division for CMI², members have been advised that the term "direct pecuniary interest" is 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. As regards "indirect pecuniary interest", it 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 that such interest might have certain influence on the action or speech of the Member.

5. To assist members in understanding the meaning of "pecuniary interest" and "indirect pecuniary interest", it may be useful to refer to the definitions of these terms in statutes in some common law jurisdictions which have in place a declaration of interest scheme similar to that in Hong Kong. Examples of such statutes which may be relevant to the issues under consideration by CMI are those which require councillors of local authorities to disclose pecuniary interest at meetings of local councils or boards ("the relevant statutes").

6. In some of these statutes, "pecuniary interest" is defined to mean an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person³. As regards "indirect pecuniary interest", there are statutory provisions providing to the effect that a member of the council or local board has an indirect pecuniary interest in any matter in which the council or local board is concerned, if the member or his nominee is a shareholder in, or a director or officer of, a company that has a direct pecuniary interest in the matter; or the member is a partner, or is in the employment, of a person or body that has a direct pecuniary interest in the matter⁴. In some jurisdictions, guidelines relating to pecuniary interests of local authority members have been issued on the relevant statutes⁵.

² 'A Note on the Meaning of "Indirect Pecuniary Interest" in Rule 83A of the Rules of Procedure of the Legislative Council' (LC Paper No. LS12/02-03) issued for the CMI meeting on 8 April 2003

³ See, for example, section 442 of the Local Government Act 1993 of New South Wales, Australia.

⁴ See, for example, section 2 of the Municipal Conflict of Interest Act of Ontario, Canada, R.S.O. 1990, c. M.50

⁵ See, for example, "Guidance for members of local authorities about the law on conflicts of interest" on the Local Authorities (Members' Interests) Act 1968 of New Zealand issued in June 2007.

Non-executive directorship

7. Regarding the concern whether non-executive directorship should be regarded as a pecuniary interest required to be disclosed⁶, 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.

8. 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 a matter for individual Members to judge whether they have a direct or indirect pecuniary 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. 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 directorship⁷.

9. Members may wish to note that Members of the United Kingdom ("UK") Parliament are similarly required to declare any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have⁸. It is the responsibility of the Member to judge whether a pecuniary interest is sufficiently relevant to require declaration. A pecuniary interest should be declared if it might reasonably be thought by others to influence the Member's speech. A declaration should be brief, but should make specific reference to the nature of the Members' interest. Any declaration should be sufficiently informative to enable a listener to understand the nature of the Member's pecuniary interest without recourse to the Register or other publications⁹.

⁶ 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;"

⁷ 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."

⁸ Erskine May (2004), page 487

⁹ ditto, page 488

Timing of disclosure of pecuniary interest

10. Regarding the timing of disclosure of pecuniary interest, Rule 83A of the RoP does not specify at which juncture of a Member's speech should the Member disclose the pecuniary interest he has in the matter. It is the responsibility of a Member to decide the most appropriate time in his speech to disclose his interest in a matter being considered, which will enable other people to judge if his views on the matter has been influenced by his interest.

11. In the UK Parliament, their Members have been advised to declare their pecuniary interest when it is most relevant to do so, normally at the beginning of his or her remarks¹⁰.

Chairing of meetings

12. 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. However, there is consensus among Members that a Member who is the chairman or deputy chairman of a government advisory body in respect of matters related to the terms of reference of a Panel should not be the chairman or deputy chairman of the Panel. This is provided in rule 22(h) of the House Rules.

13. 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. If members consider that Members should be given more guidance in this respect, CMI may consider issuing advisory guidelines to Members or recommending that the arrangements be stipulated in the relevant rules and procedure of the Council.

Advice sought

14. Members are invited to note the information above.

Council Business Division 3
Legislative Council Secretariat
14 December 2009

¹⁰ ditto