

# 立法會

## *Legislative Council*

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.

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