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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Disclosure of pecuniary interest by Members

In response to enquiries from some Members regarding Members' participation in the debate and voting on the motion on "Assisting the victims of the Lehman Brothers incident" at the Council meeting on 22 October 2008, this circular details the rules in the Rules of Procedure (RoP) and the House Rules (HR) which relate to the disclosure of pecuniary interest by Members in the Council.

2. 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. A Member's pecuniary interest ought to be declared if it might reasonably be thought by others to influence the Member's actions, speeches or votes in the Council.

3. 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. As the mere presence of a Member may affect the voting result, RoP 84(1A) further provides that a Member shall withdraw when a vote is taken on a question in which he has such a direct pecuniary interest. If a Member has failed to withdraw, under RoP 84(3A), any Member may move without notice a motion for the withdrawal of the Member after the President has put the question on the original motion but before the vote is taken. If the withdrawal motion is passed, the Member shall withdraw when the original motion is voted on. 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 withdrawal of a member or disallowance of vote on grounds of direct pecuniary interest is set out in HR 3 and Appendix II of HR.

4. Regarding the interpretation of “a sector thereof” in RoP 84(1), the subject was studied by the Committee on Members’ Interests in the 2000-2001 session. After deliberation, the Committee concluded that it was technically impossible to give a clear and clean definition of the phrase “a sector thereof”, and individual Members should decide whether their pecuniary interests were common to “a sector of the population of Hong Kong”, in the light of their own particular circumstances. For the motion on “Assisting the victims of the Lehman Brothers incident”, individual Members are advised to decide whether they have any direct pecuniary interest and, if yes, whether the interests are within any of the excepted situations provided in RoP 84(1).

5. For Members’ ease of reference, RoP 83A and 84 and HR 3 relating to disclosure of pecuniary interest by Members, as well as the procedure in Appendix II of HR for moving a withdrawal motion or disallowance motion referred to above, are reproduced in the **Appendix**.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

**Extract from the Rules of 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)*

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.

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

Moving of motion for the withdrawal of Member

1. A Member who wishes to move a motion under Rule 84(3A) of the Rules of Procedure for the withdrawal of another Member on grounds of the latter's direct pecuniary interest may pass a note to the President or Chairman of a committee of the whole Council indicating his intention to do so during the debate but before the question on the original motion is put. He should give the name of the Member whose withdrawal is proposed in the motion and the reasons for moving the motion.
2. The Member wishing to move the withdrawal motion may also notify the Member concerned at the same time, giving the reasons for moving the motion. This gives the latter the opportunity, if he so wishes, to clarify matters. Should the Member intending to move the motion decide not to proceed with the motion in the light of the clarification given, he should inform the President or Chairman of a committee of the whole Council of his decision.
3. If the withdrawal motion is to be moved, the Member wishing to move the motion should indicate his intention to speak immediately after the President or Chairman of a committee of the whole Council has put the question on the original motion.
4. The President or Chairman of a committee of the whole Council shall then call upon the Member to move the motion for the withdrawal of the other Member.
5. The President or Chairman of a committee of the whole Council shall decide whether or not to propose the question upon the withdrawal motion having regard to Rule 84(5) of the Rules of Procedure.
6. If the question for the withdrawal of a Member is proposed, the Member concerned may, in accordance with Rule 84(5A) of the Rules of Procedure, be heard in his place but he shall then withdraw from the Council or the committee of the whole Council for the duration of any vote on the question.
7. If the withdrawal motion is negatived, the Member may return to the meeting.

8. If the withdrawal motion is agreed to, the Member concerned shall withdraw from the Council or a committee of the whole Council when the original question is put and voted upon.

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.