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Committee on Members' Interests
Paper for the meeting on 30 April 2013

Disclosure of pecuniary interest by Members
under Rule 83A of the Rules of Procedure

Purpose

This paper provides information on the review conducted by the Committee on Members' Interests ("CMI") of the Fourth Legislative Council ("LegCo") on disclosure of pecuniary interest by Members under Rule 83A of the Rules of Procedure ("RoP"), and invites members to consider the way forward.

Background

2. Rule 83A of 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 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 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 proceedings¹.

¹ Speech of the Chairman of CMI of the Fourth LegCo during the debate on "Issues in relation to procedural rules on pecuniary interests" at the Council meeting of 13 July 2011, Hansard, p. 14324.

3. When the Bills Committee on Stamp Duty (Amendment) Bill 2012 commenced its scrutiny work early this year, its members sought clarification of Rule 83A in respect of the following:

- (a) whether a Member is required to disclose a pecuniary interest which is in common with the rest or a sector of the population in Hong Kong; and
- (b) whether a Member is required to disclose the same pecuniary interest at each and every meeting of the Bills Committee.

4. Members of the Bills Committee are concerned that should they be required to disclose the same pecuniary interest at each and every meeting of the Bills Committee, its proceedings may be unduly impeded. The matter was brought to the attention of the House Committee at its meeting on 25 January 2013. The House Committee noted that CMI of the last LegCo had reviewed Rule 83A and the relevant issues would be followed up by CMI of the current LegCo. CMI was requested to expedite its review work.

Review conducted by CMI of the Fourth LegCo

5. CMI of the Fourth LegCo has conducted a review of the requirement for the registration and disclosure of Members' Interests. As far as disclosure of interests is concerned, CMI has noted the views expressed by Members at a relevant motion debate in the Council² and identified the following issues:

- (a) the lack of a definition of direct and indirect pecuniary interests in Rule 83A of RoP has rendered it difficult for Members to judge whether they have a direct or indirect pecuniary interest in the matter under consideration at the relevant meeting for the purposes of the Rule;
- (b) although it is generally understood that 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, better guidance should be given on the timing of making disclosure of interests. For instance, it

² The motion debate on "Issues in relation to procedural rules on pecuniary interests" was conducted at the Council meeting of 13 July 2011.

is not clear whether a Member is deemed to have disclosed a relevant interest if he or she has disclosed such an interest at a previous meeting(s) of the same committee deliberating on the same matter; and

- (c) Rule 83A of RoP should be expanded to require that a Member must disclose interests if he or she has a reasonable expectation of pecuniary interests in a matter under consideration by a committee of the Council.

Direct and indirect pecuniary interest

6. CMI of the Fourth LegCo has noted that RoP does not provide specifically the circumstances under which a Member does or does not have a pecuniary interest in a matter that is before the Council or a committee, be it direct or indirect. It is for individual Members to judge whether they have a direct or indirect pecuniary interest in the matter under consideration at the relevant meeting of the Council and committees. CMI takes the view that 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. For a pecuniary interest to be direct, it should be immediate and not merely of a remote or general character. 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.³

Timing of disclosure of pecuniary interest

7. CMI of the Fourth LegCo has also noted that under Rule 83A, disclosure by a Member of the nature of his direct or indirect pecuniary interest in a matter in the Council, a committee or subcommittee is a condition to the 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, the view of CMI was that a

³ Paragraph 3.4, Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK tabled at the Council meeting of 22 June 2011.

Member should disclose his pecuniary interest at the beginning of his speech on the matter.⁴

8. CMI of the Fourth LegCo has also noted that since Rule 83A is silent on the question as to whether a Member should disclose his pecuniary interest on a matter each time before he speaks on the matter at a meeting, it would be prudent to interpret the rule as requiring a Member to disclose the nature of his pecuniary interest each time before he speaks on the matter concerned. However, CMI has recognized that it is impracticable for a Member who speaks several times at a meeting on a matter to disclose the nature of such interest each time he speaks. Hence, the practice adopted by Members all along has been to disclose the nature of such interest in a matter when they first speak on the matter. Where a matter is discussed at a series of meetings of a committee, the good practice is for a Member to disclose the nature of his or her pecuniary interest afresh on each day of the meeting, so as to enable members of the public observing a particular session of a meeting to know the nature of such interest which the Member has.

Disclosure of interest requirements in overseas legislatures

9. In the course of its review⁵, CMI of the Fourth LegCo has studied the relevant practices in the House of Commons of the Parliament of the United Kingdom ("UK"). In the UK House of Commons, a Member must disclose any relevant financial interest when speaking in a debate, in a way sufficiently informative to allow a listener to understand the nature of the interest. It is up to the Member whether he or she draws attention to a registered interest or explains in more details. Members are required to declare both relevant past interests and relevant interests which they may be expecting to have. In practice, only interests held in the recent past, i.e. those within the previous 12 months, need normally be considered for declaration, and expected future interests may be more relevant. Members are not required to declare interests common to all Members and solely arising from that specific capacity⁶.

⁴ Paragraph 3.8, *ditto*.

⁵ Paragraph 15, LC Paper No. CMI/19/11-12.

⁶ For example, in a debate on employment law, Members are not required to declare any interest as employers of staff in relation to those employed wholly in connection with their parliamentary duties. (Paragraph 75, Guide to the rules relating to the Conduct of Members, Approved by the House of Commons on 9 February 2009 (Updated in May 2010))

10. The UK House of Commons has made elaborate guidelines on declaration of interests in proceedings of different types⁷. Members are required to declare relevant interests on the Order Paper (or Notice Paper) when submitting a written notice initiating a proceeding such as questions, early day motions and presentation of a bill. Whenever such an interest is declared, the symbol [R] is printed on the Order Paper after the name of the Member concerned denoting that the Member has declared a relevant interest.⁸ Besides, Members are required to disclose any relevant interest in correspondence and meetings with Ministers and public officials or whenever the Member is attempting to influence his fellow Members.⁹

11. In a debate in the UK House of Commons, a Member should declare an interest briefly, usually at the beginning of his or her speech. If the House is dealing with different stages of a bill, it will normally be sufficient for the Member to declare a relevant interest when speaking for the first time. In Public Bill Committees, Members are required to declare relevant interests at the first meeting of the Committee or on the first occasion on which they address the Committee, and it is not necessary for a declaration to be repeated at subsequent meetings except when the Member speaks on an amendment to which the interest is particularly relevant.¹⁰

12. CMI of the Fourth LegCo agreed that the issues identified in paragraph 5 (a) to (c) above should be re-visited and the practice of the UK House of Commons on declaration of interests on the Order Paper in paragraph 10 above should be considered.

13. To assist members in considering the matter, the Secretariat has recently studied the relevant requirements of another two overseas legislatures, namely the House of Commons of the Parliament of Canada, and the House of Representatives of the Parliament of Australia. Like the the UK¹¹ House of Commons, the Canadian¹² legislature has also put in place requirements for disclosure of interest by their Members in

⁷ Guide to the rules relating to the Conduct of Members, Approved by the House of Commons on 9 February 2009 (Updated in May 2010)

⁸ Paragraphs 78 and 79, *ditto*.

⁹ Paragraph 86, *ditto*.

¹⁰ Paragraph 77, *ditto*.

¹¹ Resolutions of the House of Commons on 22 May 1974, 12 June 1975 and 13 July 1992.

¹² Section 12, the Conflict of Interest Code for Members of the House of Commons.

proceedings, whereas oral declaration of interest is not required in the Australian legislature¹³.

14. In the House of Commons of Canada, if a matter in which a Member has a private interest is being discussed in the Chamber or in a committee of which he or she is a member, the Member shall, if present during consideration of the matter, disclose at the first opportunity the general nature of the matter either orally or in writing to the Clerk of the House¹⁴. Their Members are prohibited from participating in debate or voting on a question in which they have a "private interest", and "private interest" excludes matters which are of general application or that affect Members or others as part of a broad class of the public.¹⁵

Advice given to Members of the current LegCo on compliance with Rule 83A

15. At its meeting on 26 November 2012, CMI of the current LegCo considered the rules in RoP on disclosure of direct or indirect pecuniary interest by Members, and not voting or withdrawal in case of direct pecuniary interest. Pursuant to the decision of CMI, an information paper¹⁶ in this regard was issued on 30 November 2012 to all Members to assist them in the understanding of the requirements and the compliance with the relevant rules. The information paper contains the advice concerning direct and indirect pecuniary interests and timing of disclosure of pecuniary interest in paragraphs 6 to 8 above.

16. Members may wish to note that Rule 83A is silent on whether a Member shall disclose his pecuniary interest which is in common with the rest or a sector of the population. The only reference made to such interest in RoP is in Rule 84 concerning voting or withdrawal in the Council or in any committee/subcommittee in case of direct pecuniary interest¹⁷.

¹³ The Australian House of Representatives passed a resolution on 30 November 1988, abolishing the requirement for Members to make oral declarations.

¹⁴ Section 12, the Conflict of Interest Code for Members of the House of Commons.

¹⁵ Sections 3(3) and 13, Conflict of Interest Code for Members of the House of Commons (Consolidated version as of June 9, 2011).

¹⁶ LC Paper No. CMI/10/12-13.

¹⁷ Rule 84(1) and (1A)

(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

Advice sought

17. Members are invited to note the above information and consider the following issues:

- (a) whether the practice of disclosing pecuniary interests on a matter before a Member first speaks on the matter at a meeting of the Council or its committees should be formalized (paragraph 8 above); and
- (b) whether pecuniary interests to be disclosed under Rule 83A of the RoP should exclude those interests which are in common with the rest or a sector of the population (paragraph 16 above); and
- (c) whether the practice of the UK House of Commons to declare relevant interest when initiating a proceeding should be examined further with a view to applying it to the LegCo Hong Kong (paragraph 10 above).

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with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.

- (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.