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Committee on Members' Interests
Paper for the meeting on 29 April 2014

**Compliance issues in relation to the disclosure of
pecuniary interests under Rule 83A of the Rules of Procedure**

Purpose

This paper assists members of the Committee on Members' Interests ("CMI") in their consideration of compliance issues in relation to the disclosure of pecuniary interests under Rule 83A of the Rules of Procedure ("RoP") by Members of the Legislative Council ("LegCo") and possible changes to the rule.

Background

2. Rule 83A of the RoP provides that "[i]n 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 disclosure of pecuniary interests by a Member is to ensure that other Members and the public are made aware, when the 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.¹

3. During the scrutiny of the Stamp Duty (Amendment) Bill 2012, members of the Bills Committee concerned raised the following issues about compliance with Rule 83A:

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.

- (a) whether a Member is required to disclose a pecuniary interest which is in common with the rest or a sector of the population of Hong Kong ("common pecuniary interest"); and
- (d) whether a Member is required to disclose the same pecuniary interest in a matter each time he speaks on the matter in the same committee.

4. At the request of the House Committee, CMI discussed the matter at its meeting on 30 April 2013. CMI considered it necessary to address the specific issues raised by the Bills Committee, which were pertinent to other committees, subcommittees and the Council as well. The Secretariat was requested to explore ways to facilitate Members' compliance with the requirements for disclosure of pecuniary interests, taking into account the views expressed by CMI of various terms and the existing relevant practice. The outcome of the Secretariat's study is set out in the ensuing paragraphs.

Disclosure of common pecuniary interests

5. The 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 has been the view of CMI of different terms that 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 or a committee. The basic principle adopted by CMI for 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. It has been the view of CMI that 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.²

² 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.

6. While Rule 83A is silent on whether a Member is required to disclose a pecuniary interest which is in common with the rest or a sector of the population, the RoP has express provisions for dealing with the voting in or withdrawal from the Council or any committee by Members in case of a direct common pecuniary interest. Rule 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. Rule 84(1A) stipulates the requirement for the withdrawal of a Member from the Council or a committee of the whole Council when a vote is taken on a question in which the Member 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.

7. CMI has noted that in the House of Commons of the Parliament of the United Kingdom ("UK"), their Members are not required to declare interests common to all Members and solely arising from that specific capacity³. In the House of Commons of the Parliament of Canada, their Members are prohibited from participating in debate or voting on a question in which they have a "private interest", and such a "private interest" excludes matters which are of general application or that affect Members or others as part of a broad class of the public.⁴

8. As common pecuniary interests are of general application and not unique to individual Members, and having regard to the relevant rules of the legislatures in UK and Canada, as well as the express exclusion of direct common pecuniary interests in Rule 84(1) and (1A) of the RoP, members of CMI have expressed the view that the requirement for disclosure of pecuniary interests in the Council or any committee should exclude common pecuniary interests.

9. Members may wish to note that CMI of the Second LegCo had considered the interpretation of the phrase "a sector of the population" and come to the following view: it is technically impossible to give a clear and

³ 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. See paragraph 75, Guide to the rules relating to the Conduct of Members (approved by the House of Commons on 9 February 2009 and updated in May 2010).

⁴ Sections 3(3) and 13, Conflict of Interest Code for Members of the House of Commons (Consolidated version as of June 9, 2011).

clean definition, and individual Members should decide whether pecuniary interests are common to a sector of the population in the context of their own circumstances.

10. Members may consider excluding common pecuniary interests from disclosure under Rule 83A, and amending the rule to such effect.

Repeated disclosures of the same pecuniary interest

11. 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 for 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, it has been the view of CMI that a Member should disclose his pecuniary interest at the beginning of his speech on the matter.⁵ However, Rule 83A is unclear on whether a Member should disclose the same pecuniary interest in a matter each time he speaks on the matter.

12. It is the view of CMI of the Fourth LegCo that it will be prudent of Members to interpret Rule 83A as requiring a Member to disclose the nature of his pecuniary interest each time before he speaks on the matter concerned. However, 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, and the practice adopted by Members has all along been that of disclosing 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 the meeting of the committee on a particular day to know the nature of such interest that the Member has.

⁵ Paragraph 3.8, 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.

13. Members of CMI have noted the practice on disclosure of interests adopted by public bill committees⁶ of the UK House of Commons. Members of a public bill committee 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 repeated declarations at subsequent meetings are not necessary except when a Member speaks on an amendment to which the interest is particularly relevant.⁷ The interests declared by Members would be recorded in the minutes of the first meeting which would be uploaded onto the UK House of Commons' web site for public inspection.

14. While upholding the important principle of ensuring other Members and the public to have knowledge of the pecuniary interest which a Member has in the matter relevant to the proceedings of the Council or any committee, members consider it equally important to ensure at the same time that the proceedings should not be unduly impeded by repeated disclosures of the same interest by Members. Notwithstanding the differences between public bill committees of the UK House of Commons and bills committees of LegCo in terms of functions and modus operandi, members may refer to the UK practice in considering the requirements on Members' disclosure of pecuniary interests at committees/subcommittees of LegCo tasked to scrutinize legislative proposals, i.e. bills committees, subcommittees on subsidiary legislation or other instruments made under any Ordinance and subcommittees on any draft of subsidiary legislation or instrument formed by the House Committee under Rule 75(12) of the RoP. Considerations may be given to adopting a practice similar to that of UK in which Members are required to disclose pecuniary interests at the first meeting of such a committee/subcommittee or on the first occasion on which they speak on a matter before the committee/subcommittee, and repeated disclosures of the same pecuniary interests at subsequent meetings are not necessary. Apart from the current practice of recording in the minutes of meetings the pecuniary interests disclosed by Members at such committee/

⁶ In the UK House of Commons, except for a small number of bills (bills of constitutional importance and urgent bills), the committee stage of most bills is dealt with in a Public Bill Committee ("PBC") and not in the Committee of the Whole House. The House considers the bill in the form in which PBC reported it: there is no need to ratify amendments which PBC has already made. If the House wishes to overturn an amendment made in PBC, this could be done by a further amendment at the report stage. (Paragraphs 2.6 and 2.7, House of Commons Background Paper: Public Bills in Parliament)

⁷ Guide to the rules relating to the Conduct of Members (approved by the House of Commons on 9 February 2009 and updated in May 2010), paragraph 77.

subcommittee meetings, a list of such interests may be uploaded onto the LegCo web site for public access.

15. Should members consider it appropriate to adopt a practice similar to that of UK for Members' disclosure of pecuniary interests in committees/subcommittees of LegCo tasked to scrutinize legislative proposals, it will be necessary to amend Rule 83A as the existing Rule makes no distinction of different types of committees or subcommittees on disclosure of pecuniary interests.

Advice sought

16. Members are invited to consider whether Rule 83A of the RoP should be amended as follows:

- (a) to exclude common pecuniary interests from the requirement on disclosure of pecuniary interests by Members in the Council or any committee or subcommittee (paragraphs 8 to 10 above);
- (b) to expressly provide that members of a committee/subcommittee on legislative proposals are required to disclose pecuniary interests when they first speak on a matter in the committee/subcommittee and repeated disclosures of the same interests at subsequent meetings are not necessary (paragraphs 13 to 15 above); and
- (c) in the manner as set out in the **Appendix** to reflect the changes in (a) and (b) above.

17. Subject to members' views, the Committee on Rules of Procedure and the House Committee will be consulted on CMI's decisions on the issues in paragraph 16.

Council Business Division 3
Legislative Council Secretariat
25 April 2014

Proposed new Rule 83A of Rules of Procedure

83A. Personal Pecuniary Interest to be Disclosed

(1) Subject to subrules (2) and (3), a Member shall not in the Council or in any committee or subcommittee—

- (a) move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or
- (b) speak on any such matter,

except where he discloses the nature of that interest.

(2) In—

- (a) any Bills Committee; or
- (b) any subcommittee appointed pursuant to Rule 75(12) for the purpose of assisting the House Committee in the performance of its functions under Rule 75(10),

a Member, who has disclosed as required under subrule (1) his pecuniary interest in relation to a matter at a meeting of the relevant committee or subcommittee, shall not be required to declare the same interest in subsequent meetings of the same committee or subcommittee before the Member speaks on the same matter.

(3) Subrule (1) shall not apply where the Member's interest in a matter is in common with the rest of the population of Hong Kong or a sector thereof.