

立法會

Legislative Council

LC Paper No. CMI/31/14-15

Ref : CB3/C/1 (12-16)

Paper for the House Committee Meeting on 30 January 2015

Amendments to Rule 83A of the Rules of Procedure proposed by the Committee on Members' Interests

Purpose

This paper seeks the views of the House Committee on the amendments to Rule 83A of the Rules of Procedure ("RoP") proposed by the Committee on Members' Interests ("CMI").

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 of that Member which might reasonably be thought to be relevant to those proceedings.

3. At the request of the House Committee, CMI deliberated on the following issues about Members' disclosure of pecuniary interests under Rule 83A of the RoP, which were raised by the Bills Committee on the Stamp Duty (Amendment) Bill 2012 during its scrutiny of the Bill:

- (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

- (b) 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 ("repeated disclosures").

4. To address the aforesaid issues raised by the Bills Committee, which are pertinent to other committees, subcommittees and the Council, CMI puts forward the two proposals set out in paragraphs 8 and 11 below.

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 indirect¹. 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.

6. Whilst Rule 83A does not exempt a Member from the disclosure of common pecuniary interests, such interests are excluded in Rule 84(1) and (1A). Rule 84(1) provides that a Member shall not vote upon any question in which the Member has a direct pecuniary interest except where the Member's interest is in common with the rest of the population of Hong Kong or a sector thereof or the Member's vote is given on a matter of Government policy. Rule 84(1A) provides that a Member shall withdraw 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 the Member's interest is in common with the rest of the population of Hong Kong or a sector thereof or the Member's 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 which are common to all Members and arising solely from that specific capacity.² Likewise in the House of Commons of the Parliament of Canada, although their Members are prohibited from participating in debate or voting on a question in which they have a "private interest", 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.³

¹ LC Paper No. CMI/10/12-13.

² 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 of the 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).

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

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, CMI proposes to exclude common pecuniary interests from the requirement of Rule 83A on disclosure of pecuniary interests by Members in the Council or any committee or subcommittee (**proposal 1**).

Repeated disclosures of the same pecuniary interest

9. CMI has noted that Rule 83A appears to require a Member to disclose the same pecuniary interest in a matter each time he speaks 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.

10. CMI has noted the practice of the UK House of Commons that for a public bill committee⁴, their 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 repeated declarations at subsequent meetings are not necessary except when a Member speaks on an amendment to which the interest is particularly relevant.⁵ Also, the interests declared by Members will be recorded in the minutes of the first meeting which will be uploaded onto the UK House of Commons' web site for public inspection.

11. CMI proposes to adopt a practice similar to that of UK by expressly providing 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 (**proposal 2**). Apart from the current practice of recording in the minutes of meetings the pecuniary interests disclosed by Members at such committee/subcommittee meetings, CMI considers that a list of such

⁴ 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)

⁵ 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.

interests may be uploaded onto the web site of the Legislative Council for public access.

12. To implement the two proposals set out in paragraphs 8 and 11 above, it is necessary to amend Rule 83A. Rule 83A with the proposed amendments marked up is in **Appendix I**. The proposed new subrules (3) and (2) of Rule 83A seek to implement Proposals 1 and 2 respectively.

Consultation with Members on the two proposals

13. Before deciding the way forward, CMI sought, by way of a questionnaire issued in June 2014, the views of all Members on the two proposals and the revised Rule 83A. All Members except the President responded to the questionnaire. The consultation outcome is set out in **Appendix II** and summarized as follows:

Proposal 1

- (a) 58 Members (84%) agree to Proposal 1 and the proposed new Rule 83A(3);
- (b) 9 Members (13%) disagree with Proposal 1;
- (c) 2 Members (3%) have no view on Proposal 1 and the proposed new Rule 83A(3);

Proposal 2

- (a) 60 Members (87%) agree to Proposal 2 and the proposed new Rule 83A(2);
- (b) 7 Members (10%) disagree with Proposal 2; and
- (c) 2 Members (3%) have no view on Proposal 2 and the proposed new Rule 83A(2).

14. As the consultation outcome indicates the support by a majority of Members, CMI decided at its meeting held on 9 December 2014 that the two proposals and the revised Rule 83A of the RoP should be taken forward.

Consultation with the Committee on Rules of Procedure

15. On 13 January 2015, CMI consulted the Committee on Rules of Procedure on the proposed amendments to Rule 83A of the RoP. The Committee supported the proposed amendments.

Advice sought

16. Members are invited to consider CMI's proposed amendments to Rule 83A of the RoP in Appendix I. Subject to the views of the House Committee, the Chairman of CMI will move a motion at the Council meeting of 18 March 2015 to amend Rule 83A of the RoP. The wording of the motion is in **Appendix III**.

Council Business Division 3
Legislative Council Secretariat
23 January 2015

Proposed revised Rule 83A of the Rules of Procedure

83A. Personal Pecuniary Interest to be Disclosed

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

- ~~(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.~~

Legend:

- Texts proposed to be deleted are shown with deletion lines.
- Texts proposed to be added are shown in italic and underlined.

**Consultation on proposals in relation to the disclosure of
pecuniary interests under Rule 83A of the Rules of Procedure**

Detailed outcome of Members' responses

Q.1: Proposal to exclude common pecuniary interests from the requirement of Rule 83A

Agree: 58	Disagree: 9	No view : 2
------------------	--------------------	--------------------

Agree			
CHAN Kam-lam	Albert HO	Tommy CHEUNG	MA Fung-kwok <i>(NCF) (1 member)</i>
TAM Yiu-chung	James TO	Vincent FANG	
WONG Ting-kwong	Emily LAU	James TIEN	POON Siu-ping <i>(FLU) (1 member)</i>
Starry LEE	WU Chi-wai	Frankie YICK	
CHAN Hak-kan	SIN Chung-kai	CHUNG Kwok-pan <i>(LP) (5 members)</i>	Joseph LEE
IP Kwok-him	Helena WONG <i>(DP) (6 members)</i>	LEE Cheuk-yan	CHAN Kin-por
Steven HO		Cyd HO	LEUNG Ka-lau
CHAN Han-pan	WONG Kwok-hing	CHEUNG Kwok-che	Paul TSE
LEUNG Che-cheung	WONG Kwok-kin	Fernando CHEUNG <i>(LaP) (4 members)</i>	NG Leung-sing
Elizabeth QUAT	CHAN Yuen-han		YIU Si-wing
CHIANG Lai-wan	Alice MAK	Regina IP	IP Kin-yuen
Christopher CHUNG <i>(DAB) (12 members)</i>	KWOK Wai-keung	Michael TIEN <i>(NPP) (2 members)</i>	Martin LIAO
	TANG Ka-piu <i>(FTU) (6 members)</i>		Tony TSE <i>(UI) (9 members)</i>
LAU Wong-fat		Charles Peter MOK <i>(PC) (1 member)</i>	
Abraham SHEK	Ronny TONG	Frederick FUNG <i>(ADPL) (1 member)</i>	
Jeffrey LAM	Claudia MO		
Andrew LEUNG	Kenneth CHAN <i>(CP) (3 members)</i>		
Priscilla LEUNG			
Christopher CHEUNG			
LO Wai-kwok <i>(BPA) (7 members)</i>			

Disagree		No View
Alan LEONG	Kenneth LEUNG <i>(PC) (1 member)</i>	LAM Tai-fai
KWOK Ka-ki		WONG Yuk-man <i>(UI) (2 members)</i>
Dennis KWOK <i>(CP) (3 members)</i>	LEUNG Yiu-chung <i>(NWSC) (1 member)</i>	
Albert CHAN	LEUNG Kwok-hung <i>(LSD) (1 member)</i>	
CHAN Chi-chuen <i>(PP) (2 members)</i>	Gary FAN <i>(ND) (1 member)</i>	

Q.2: Proposed subrule (3) of Rule 83A in Appendix I

Among the 58 Members who agree to Q.1:

Agree: 58	Disagree: 0
------------------	--------------------

Q.3: Proposal that members of a committee/subcommittee on legislative proposals are only required to disclose pecuniary interests when they first speak and repeated disclosures at subsequent meetings are not required

Agree: 60	Disagree: 7	No view : 2
------------------	--------------------	--------------------

Agree			
CHAN Kam-lam	Albert HO	Tommy CHEUNG	MA Fung-kwok (NCF) (1 member)
TAM Yiu-chung	James TO	Vincent FANG	
WONG Ting-kwong	Emily LAU	James TIEN	POON Siu-ping (FLU) (1 member)
Starry LEE	WU Chi-wai	Frankie YICK	
CHAN Hak-kan	SIN Chung-kai	CHUNG Kwok-pan (LP) (5 members)	Joseph LEE
IP Kwok-him	Helena WONG (DP) (6 members)	LEE Cheuk-yan	CHAN Kin-por
Steven HO		Cyd HO	LEUNG Ka-lau
CHAN Han-pan	WONG Kwok-hing	CHEUNG Kwok-che	Paul TSE
LEUNG Che-cheung	WONG Kwok-kin	Fernando CHEUNG (LaP) (4 members)	NG Leung-sing
Elizabeth QUAT	CHAN Yuen-han	Regina IP	YIU Si-wing
CHIANG Lai-wan	Alice MAK	Michael TIEN (NPP) (2 members)	IP Kin-yuen
Christopher CHUNG (DAB) (12 members)	KWOK Wai-keung	Charles Peter MOK (PC) (1 member)	Martin LIAO
LAU Wong-fat	TANG Ka-piu (FTU) (6 members)		Tony TSE (U/I) (9 members)
Abraham SHEK	Ronny TONG		
Jeffrey LAM	Alan LEONG		
Andrew LEUNG	Claudia MO		
Priscilla LEUNG	Kenneth CHAN		
Christopher CHEUNG	KWOK Ka-ki		
LO Wai-kwok (BPA) (7 members)	Dennis KWOK (CP) (6 members)		

Disagree		No View
Albert CHAN	Frederick FUNG (ADPL) (1 member)	LAM Tai-fai
CHAN Chi-chuen (PP) (2 members)	LEUNG Kwok-hung (LSD) (1 member)	WONG Yuk-man (U/I) (2 members)
Kenneth LEUNG (PC) (1 member)	Gary FAN (ND) (1 member)	
LEUNG Yiu-chung (NWSC) (1 member)		

Q.4: Proposed subrule (2) of Rule 83A in Appendix I

Among the 60 Members who agree to Q.3:

Agree: 60	Disagree: 0
------------------	--------------------

Abbreviations

ADPL	Hong Kong Association for Democracy and People's Livelihood	FTU	The Hong Kong Federation of Trade Unions	NPP	New People's Party
BPA	Business and Professionals Alliance for Hong Kong	LaP	Labour Party	NWSC	Neighbourhood and Worker's Service Centre
CP	Civic Party	LP	League of Social Democrats	PC	The Professional Commons
DAB	Democratic Alliance for the Betterment and Progress of Hong Kong	LSD	Liberal Party	PP	People Power
DP	Democratic Party	NCF	New Century Forum	U/I	Political affiliation undeclared/Independents
FLU	The Federation of Hong Kong and Kowloon Labour Unions	ND	Neo Democrats		

**Basic Law of the Hong Kong Special Administrative Region of the
People's Republic of China**

Resolution

(Under Article 75 of the Basic Law of the Hong Kong Special
Administrative Region of the People's Republic of China)

**Rules of Procedure of the Legislative Council of the
Hong Kong Special Administrative Region**

Resolved that the Rules of Procedure of the Legislative Council of the
Hong Kong Special Administrative Region be amended as set out in the
Schedule.

Schedule

Amendment to Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region

1. Rule 83A substituted

Rule 83A –

Repeal the Rule

Substitute

“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) (House Committee) for the purpose of assisting the House Committee in the performance of its functions under Rule 75(10) (House Committee),

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. ”.