

立法會 *Legislative Council*

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Committee on Members' Interests' interpretation of the phrase of "a sector thereof" in Rule 84(1) of the Rules of Procedure

Purpose

The paper informs Members of the deliberations of the Committee on Members' Interests (the Committee) on the phrase "a sector thereof" in Rule 84(1) of the Rules of Procedure.

Rule 84(1) of the Rules of Procedure

2. Rule 84(1) of the Rules of Procedure provides that "A Member shall not vote upon any question, whether in the Council or in any committee or subcommittee, 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. Where there is such a direct pecuniary interest on a question to be voted on in the Council or a committee of the whole Council, the Member concerned shall withdraw therefrom when the vote is taken."

Review of the Rule

3. The Committee reviewed Rule 84(1) at its meetings held on 12 December 2000 and 6 February 2001, to examine some members' concern that the phrase "a sector thereof" might be interpreted as allowing a Member to vote on motions in which he has a direct pecuniary interest so long as he can find at least one member of the public who has the same direct pecuniary interest as he did. The Committee also studied the question raised at recent House Committee meetings as to whether LegCo Members who are also District Council (DC) members are allowed to vote on the question concerning remuneration for DC members.

The interpretation of the phrase "a sector thereof"

4. In considering whether the phrase "a sector thereof" may give rise to different interpretations and requires a definition, the Committee has the following understanding:

- (a) The present registration and disclosure system is an honour system, which is founded on the initiatives of individual members and subject to the scrutiny of the public.
- (b) Normally, the participation of a Member in the voting on a question in which only the Member himself and members of his profession, trade, class of business, religion, sector or constituency, rather than the rest of the population of Hong Kong, have a direct pecuniary interests would not be considered as inappropriate by the public. It serves to preserve the right of a Member elected from a constituency to vote on matters relating to his constituency, and is in line with the principle of representation. In this regard, the Committee notes that in the United States of America, it has generally been held that "where legislation affected a class as distinct from individuals, a member may vote", "the disqualifying interest must be such as affects the Member directly, and not as one of a class", and that "nothing is more sacred to the democratic process than each person casting his own vote".
- (c) In most circumstances, no matter how many people a direct pecuniary interest is common to, one can always identify at least some inhabitants of Hong Kong who do not have that interest. Therefore, strictly speaking, the question always involves "a sector thereof" rather than "the rest of the population of Hong Kong".
- (d) It is generally difficult and impracticable to equate "a sector thereof" to a minimum number of people, or to put it down simply as "publicly recognized trades, professions, social strata or groups".

5. The Committee has therefore concluded that it is technically impossible to give a clear and clean definition of the phrase "a sector thereof", and individual Members should decide whether their pecuniary interests are common to "a sector of the population of Hong Kong", having regard to their own particular circumstances, and they will be held politically responsible for their own decisions and actions. The Committee also notes that if other Members should consider that a Member should not vote on a question or should withdraw from voting, there are safeguards in the Rules of Procedure which enable motions to be moved under Rule 84(4) to disallow a Member's vote, or under Rule 84(3A) to require the withdrawal of a Member on grounds of his direct pecuniary interest.

Case study

6. Applying the above understanding to the question of whether LegCo Members who are also District Council(DC) members should vote on motions concerning remuneration for DC members, the Committee agrees that the Rules of Procedure allow LegCo Members who are also DC members to vote on motions relating to remuneration for DC members. This is also consistent with Legal Adviser's opinion given at the relevant House Committee meetings. However, if a question relates to an increase of fees by a private company of which a Member is a Director and the increase would have a direct relationship with the income of the Member, then the Committee considers that the Member could be considered as having a direct pecuniary interest and should withdraw from the Council and the committee of the whole Council when the relevant question is put to vote, or should abstain from voting on such question in any other Committee or Sub-committee.

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